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IN THE WASHINGTON STATE COURT OF APPEALS
DIVISION THREE

STATE OF WASHINGTON,
Respondent,

V.

DAVID NICKELS,
Petitioner

Court of Appeals No. 353699
Grant County No. 10-1-00322-6

PETITIONER'S REPLY BRIEF

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I. Summary of Reply to Respondent’s Response.

The respondent’s responding brief is premised on an over-generalized statement of the issue presented in this case.¹ The issue is not whether *any* RPC 1.9 conflict of the elected prosecutor² results in a *per se* disqualification of the entire office. It is more specific: the disqualification of a prosecutor’s office when (1) the conflict involves the *elected prosecutor* (as opposed to a deputy prosecutor) and (2) the elected prosecutor had previously represented or consulted professionally with the defendant on the *same or similarly situated* case that the elected prosecutor’s office is now prosecuting.

Under the more narrow “elected prosecutor/same case” situation, a bright-line rule disqualifying the entire prosecutor’s office not only furthers the public trust and confidence in the

¹ See *e.g.*, Brief of Respondent (BOR) 1 (Does an RPC 1.9 conflict of the elected prosecutor result in a *per se* disqualification of the entire office?); BOR 5 (“many jurisdictions, including Washington, still allow the elected prosecutor to be screened” when disqualified due to *a* conflict of interest”) (“This case essentially presents two questions: (1) if an elected prosecutor is disqualified on a case under RPC 1.9 is that conflict automatically imputed to the office. . .”).

² Authority and the parties use the term “prosecuting attorney” “elected prosecuting attorney” and “elected prosecutor” interchangeably.

integrity of the administration of justice -- by ensuring that criminal prosecutions appear and are fair; it also promotes judicial efficiency and other policy considerations.

II. Reply to Respondent's Argument.

A. Standard of Review.

Both parties agree that the elected prosecutor, Garth Dano (Dano) has a disqualifying conflict of interest. CP 97 (“There is no real question that Mr. Dano . . . [is] disqualified from this case.”). Both parties also agree that the standard of review on the disqualification of the entire Grant County Prosecutor’s Office is *de novo*. BOR 5; *see also State v. Greco*, 57 Wn.App. 196, 787 P.2d 940 (1990), citing *State v. Stenger*, 111 Wn.2d 566, 521-22, 760 P.2d 357 (1988) (“We review *de novo* the trial court’s decision not to disqualify the prosecutor.”)

B. Case Law in Washington.

Thirty years ago, the Washington State Supreme Court was asked whether an elected prosecutor who previously represented a defendant requires disqualification of the entire prosecutor’s office. *Stenger*, 111 Wn.2d at 518. The Court’s answer turned on whether the elected prosecutor’s previous representation of the accused was on the same or a closely related case as the one being prosecuted. If

the case was not the same or closely related, then disqualification the entire prosecutor's office might not be required if appropriate screening procedures are employed. *Id.*, at 522-23.

The Court concluded differently when it involved the *same case* as the one being prosecuted:

... Where the prosecuting attorney (as distinguished from a deputy prosecuting attorney) has previously personally represented the accused in the same case or in a matter so closely interwoven therewith as to be in effect a part thereof, the entire office of which the prosecuting attorney is administrative head should ordinarily also be disqualified from prosecuting the case and a special deputy prosecuting attorney appointed.

Stenger, 111 Wn.2d at 520-22.

The case before this court falls into the latter category. Nonetheless, the respondent argues the Supreme Court's use of the phrase "should ordinarily" means the "elected prosecutor/same case" rule is permissive and should not be followed in this case. BOR 7.

Although *Stenger* did not directly address the "elected prosecutor/same case" bright line rule – since it was not specifically asked to – a review of the case makes it is clear that it did not hold the rule discretionary. First, the court relied on *State v. Tippencanoe County Court*, 432 N.E. 2d 1377, 1379 (1982), to support its

“elected prosecutor/same case” rule, which illustrates the court’s intent to have the rule mandatory. *Stenger*, 111 Wn.2d at 522, fn.13, citing *Tippencanoe*, 432 N.E. 2d at 1379 (“[t]hus, if the elected prosecutor himself becomes a witness in a case or otherwise is disqualified by reason of having an interest in the outcome, his *entire staff of deputies must be recused* in order to maintain the integrity of the process of criminal justice.”) (emphasis added).

Secondly, had the *Stenger* court considered the “elected prosecutor/same case” rule permissive with appropriate screening, it would have expressly stated so -- as it did when the elected prosecutor’s previous representation was *not* the same case:

This is not to say, however, that anytime a prosecuting attorney is disqualified in a case for any reason that the entire prosecuting attorney's office is also disqualified. *Where the previous case is not the same case (or one closely interwoven therewith) that is being prosecuted*, and where, for some other ethical reason the prosecuting attorney may be totally disqualified from the case, *if that prosecuting attorney separates himself or herself from all connection with the case and delegates full authority and control over the case to a deputy prosecuting attorney*, we perceive no persuasive reason why such a complete delegation of authority and control and screening should not be honored if scrupulously maintained.

Stenger, 111 Wn.2d at 522-23. (emphasis added).

The respondent reliance on *State v. Ladenburg*, 67 Wn.App. 749, 840 P.2d 228 (1992) to support its claim that the “elected prosecutor/same case” rule is permissive also falls short. BOR 7.

In *Ladenburg*, the day before going to trial, the defendant filed a motion to disqualify the county prosecutor’s office because the elected prosecutor was his uncle. *Ladenburg*, 67 Wn.App. 749. The question presented to the court was whether prosecuting one’s relative is a *per se* conflict of interest requiring disqualification of the elected prosecutor and his office. *Id.*, at 751. In concluding that disqualification was not required, the court noted that no Washington case had addressed whether prosecuting one’s relative was a *per se* conflict requiring disqualification; that the prosecuting attorney did not have a prior professional relationship with the defendant implicating the Rule of Professional Conduct; and the questionable timeliness of the defendant’s motion. *Ladenburg*, 67 Wn.App. at 751-755.³

³ Even though the elected prosecutor did not represent the defendant in the same case that his office was prosecuting, no RPC was implicated, and that the motion was untimely, the court still expressed concern: “[I]n an abundance of caution, the prosecutor and his office should have considered yielding the prosecution of the case to another prosecuting attorney’s office.” *Ladenburg*, 67 Wn.App. at 755

The facts presented here are significantly different than those in *Ladenburg*. First, the conflict here is based on an attorney-client relationship, not uncle-nephew. CP 97 (“There is no real question that Mr. Dano . . . [is] disqualified from this case.”). Second, and unlike *Ladenburg*, Dano does have a professional relationship with the accused thus implicating the Rules of Professional Conduct. *Stenger*, 111 Wn.2d at 520 (As a corollary of this general rule [RPC 1.9(a)], a prosecuting attorney is disqualified from acting in a criminal case if the prosecuting attorney has previously personally represented or been consulted professionally by an accused with respect to the offense charged...”).

Finally, the *Ladenburg* court expressed concern over the defendant’s untimely motion to disqualify the prosecutor and his office. *Ladenburg*, 67 Wn.App. at 755. (“To not raise the motion to disqualify until the morning of trial suggests to us that the disqualification effort was more tactical than substantive.”). Here, the appellant filed a motion to disqualify the Grant County Prosecutor’s Office immediately upon remand. VRP 5/9/2017 at 4.

Nothing in *Ladenburg* advances the respondent’s position that the *Stenger*’s “elected prosecutor/same case” disqualification rule is permissive.

Last year, Division Two of this Court issued an unpublished opinion applying the *Stenger* “elected prosecutor/same case” disqualification rule. *State v. Fox*, 2017 Wn.App. LEXIS 839 (April 4, 2017). The respondent points to the court’s use of the phrase “under the facts of this case” to suggest the *Stenger* “elected prosecutor/same case” disqualification rule is permissive. BOR 7-8.

But *Fox* actually supports the petitioner’s point. In *Fox*, like here, the elected prosecutor represented the accused on the same case that his office was prosecuting. As such, and “under the facts of this case”, the court turned to the *Stenger’s* “elected prosecutor/same case” disqualification rule to conclude *because* it was the elected prosecutor who represented Fox on the *same* case that his office was prosecuting then entire office must be disqualified.

Here, *because* Jurvakainen had represented Fox in *this case* and was later elected county prosecutor during the pendency of Fox's case, a conflict of interest existed, and he was disqualified from the case. In fact, Jurvakainen admitted in his declaration that he was disqualified from the case. *And because Jurvakainen became the elected prosecutor for the county, the entire Cowlitz County Prosecuting Attorney's Office should have been disqualified* as well, and a special deputy prosecutor should have been appointed.

Fox, 217 Wn.App. LEXIS. at 6-7. (emphasis added).

The respondent's belief that the *Fox* court considered *Stenger's* "elected prosecutor/same case" disqualification rule permissive with appropriate screening procedures was also undeniably rejected:

Although screening procedures were set in place, such procedures are only sufficient when the prosecutor involved is a deputy prosecutor. The "public has a right to absolute confidence in the integrity and impartiality of the administration of justice" and "[t]he conflicts presented in this case [where one attorney holds the roles of prosecution and defense], at the very minimum, give the proceeding an appearance of being unjust and prejudicial."

Id., at 7-8. (internal cites omitted) (emphasis added).

Further guidance contradicting the respondent's position is the Washington State Bar Association's 1997 advisory opinion. The questions presented was: "(1) Does a conflict of interest prohibit a prosecuting attorney from prosecuting a former client for criminal conduct; and, (2) If a conflict of interest does exist, may the prosecutor participate in any aspect of the criminal case against the former client; and/or is the entire prosecuting attorney's office disqualified from prosecuting the former client?" Upon applying the relevant RPCs, the WSBA advisory opinion echoed the *Stenger* "elected prosecutor/same case" disqualification rule: "the entire prosecuting attorney's office *is* disqualified . . . when the

prosecuting attorney personally represented the defendant in the same or a substantially related proceeding.” WSBA Advisory Opinion 1773 (1997) (emphasis added). The respondent does not to address the WSBA advisory opinion.

Washington law requiring the disqualification of an entire prosecuting office under the “elected prosecutor/same case” rule has been consistent for three decades. Contrary to the respondent’s assertion, neither *Stenger*, *Ladenburg*, *Fox*, nor WSBA Advisory Opinion 1773 support the rule being permissive. In fact, the authority establishes the opposite.

C. Foreign Cases.

The respondent next turns to three foreign cases for relief. BOR 8-11. Although authority from other jurisdictions is not binding on Washington courts, *Eugster v. Wash. State Bar Ass’n*, 198 Wn.App. 758, 397 P.3d 131 (2017), they may be considered when Washington is silent regarding the particular claim or cause of action. *Grange Ins. Ass’n v. Roberts*, 179 Wn.App. 739, 320 P.3d 77 (2013). Since, as noted, the Washington Supreme Court has addressed the issue before this court, respondent’s reliance on outside authority is unwarranted.

Nonetheless, the foreign cases do nothing to advance the respondent's claim. The first case, *Hannon v. Smith*, 48 Ala.App 613, 266 So.2d 825 (1972), provides little assistance to the respondent as it pre-dates both *Stenger* (1988) and Washington state's adoption of Rules of Professional Conduct (1985).⁴

Moreover, the issue presented in *Hannon* is different than the one here. In *Hannon*, the defendant did not seek to have the prosecuting agency disqualified. Rather, he moved to dismiss the charges because one of his former attorneys was elected the prosecuting attorney. *Hannon*, 48 Ala.App at 615. The court acknowledged it was "a case of first impression in this State so far as a *motion of this kind* is concerned", and then concluded the trial court did not error since the state had an interest in prosecuting the case and no confidences were divulged. *Id.*, at 618, 622-623. (emphasis added). The court nonetheless cautioned:

To permit a District Attorney to prosecute his former client, or to divulge to one of his assistants, in charge of the prosecution, the confidential information imparted to him by the client, can never be sanctioned. It would constitute an act wholly at war with due process of law. The injury would not be limited to the defendant -- there is injury to the entire

⁴ The RPC's became effective in Washington state on September 1, 1985. *State v. Hunsaker*, 74 Wn.App. 38, 41, n2, 873 P.2d 540 (1994).

system of justice, to the law as an institution, to the community at large, to the democratic ideal reflected in the processes of our court and would destroy the last vestige of public confidence and respect in the administration of our criminal laws.

Hannon, 48 Ala.App at 618.

The respondent next turns to *United States v. Goot*, 894 F.2d 231 (7th Cir. 1990), but that too fails to provide assistance. In *Goot*, the defendant hired an attorney to represent him in his defense. The defense attorney was subsequently appointed the United States Attorney for the Northern District of Indiana, where the case was being prosecuted. *Goot*, 894 F.2d at 232. The federal court concluded that the disqualification of the entire office was not required.

From this, the respondent writes, “It should be noted that both *Goot* and the case Mr. Nickels relies upon, *State v. Tippecanoe County Court*, 432 N.E.2d 1377 (Ind. 1982), rely upon the Indiana rules of professional conduct, but reach different conclusions.” BOR 10. The respondent fails to appreciate the context in which *Goot* applied *Tippencanoe*. The court was providing examples to show the difference between the Indiana Supreme Court’s application of the ethical rules and the Seventh Circuit’s determination of a constitutional violation:

While in general the Indiana Supreme Court has relied upon its ethical rules in requiring complete office recusal in criminal cases, *we observe that this court at times* has distinguished between what may be inappropriate ethical conduct for a prosecutor and what may be a constitutional violation. *Compare State v. Tippecanoe County Court*, 432 N.E.2d 1377, 1379 (Ind. 1982) (holding that when the elected prosecutor and not just one of his deputies is disqualified, the entire office must be disqualified) *with Havens v. Indiana*, 793 F.2d 143, 145 (7th Cir.) (finding no sixth amendment violation by prosecutor, who had previously represented the defendant, when charges were four years apart and were unrelated, but nevertheless, chastising the government's ethical decision not to recuse the prosecutor anyway), *cert. denied*, 479 U.S. 935, 93 L. Ed. 2d 363, 107 S. Ct. 411 (1986).

Goot, 894 F.2d at 234 (emphasis added).

It is within the constitutional violation context that the federal court engaged in a three-part sequential inquiry specific to that federal circuit to resolve the issue of disqualification. *Id.*, at 234 *citing Schiessle v. Stephens*, 717 F.2d 417, 420-21 (7th Cir. 1983) (“This circuit employs a three-part sequential inquiry in deciding the question whether disqualification of an office is necessary when an attorney has switched from one side to another.”).

The respondent attempts to use the Seventh Circuit’s three-part inquiry – and one not employed in Washington - to suggest

similarities with the present case. BOR 10-11.⁵ For instance, the respondent claims that Dano's involvement in this case was minimal and questions whether confidences were shared. *Id.* Although the respondent does not provide record citation for these bold assertions,⁶ they are belied by the record. The record contains an unchallenged declaration setting forth examples of the depths of Dano's involvement, which include: his consultation with defense counsel about a wide-range of matters; his entering a Notice of Appearance and representing the petitioner when the jury reached a verdict; his private consultation with the petitioner; and that he provided post-verdict investigation and consultation. CP 178-179 In fact, the trial court found that although Dano did not direct the defense, it accepted the representations that he did consult with

⁵ By way of illustration, Washington federal district courts look to the Washington Rules of Professional Conduct, as promulgated, amended, and interpreted by the Washington State Supreme Court ... and the decisions of any court applicable thereto." *FMC Techs., Inc. v. Edwards*, 420 F. Supp. 2d 1153, 1157 (W.D. Wash. 2006)

⁶ See e.g. RAP 10.3(a)(6) (argument in support of issue should be accompanied with reference to relevant part of the record); *Perry v. Costco Wholesale, Inc.*, 123 Wn.App. 783, 98 P.3d 1264 (2004) (RPC 10.3(a)(4) does require references to the record for each factual statement in the brief.").

counsel on issues and likely had conversations with the petitioner.
CP 159.

Finally, the respondent cites a Nevada case to ask this court to abandon the rule set out in *Stenger*.⁷ BOR 11. Principles of *stare decisis* “requires a clear showing that an established rule is incorrect and harmful before it is abandoned.” *Riehl v. Foodmaker, Inc.*, 152 Wn.2d 138, 147, 94 P.3d 930 (2004) (quoting *In re Rights to Waters of Stranger Creek*, 77 Wn.2d 649, 653, 466 P.2d 508 (1970)). This respect for precedent “promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process.” *Payne v. Tennessee*, 501

⁷ One significant difference between the respondent’s Nevada case and Washington authority is the mechanism used to resolve the issue. In Nevada, review is restricted to the extraordinary remedy of a mandamus. *State v. Eighth Judicial Dist. Court of the State*, 321 P.3d 882, 884 (Nev. 2014). “Accordingly, where the district court has exercised its discretion, a writ of mandamus is available only to control an arbitrary or capricious exercise of discretion.” *Id.*, citing *Round Hill Gen. Improvement Dist. v. Newman*, 97 Nev. 601, 603-04, 637 P.2d 534 (1981). Cf. *State v. Greco*, 57 Wn.App 196, 787 P.2d 940 (1990), citing *State v. Stenger*, 111 Wn.2d 566, 521-22, 760 P.2d 357 (1988) (“We review *de novo* the trial court’s decision not to disqualify the prosecutor.”).

U.S. 808, 827, 111 S.Ct. 2597, 115 L.Ed.2d 720 (1991); *City of Federal Way v. Koenig*, 167 Wn.2d 341, 217 P.3d 1172 (2009).

The respondent fails to provide any analysis justifying why this court should abandon long-standing authority. Moreover, the fact that the “elected prosecutor/same case” disqualification rule has been in existence for three decades and echoed by both the Washington State Bar Association and just recently Division Two of this Court provides support for adhering to precedent and reliance on judicial decisions.

The respondent’s reliance on foreign cases is unwarranted and does not justify this Court abandoning the rule set out in *Stenger*.

D. Policy considerations.

Claiming policy considerations, the respondent writes, “The case essentially boils down to a policy choice. Should *any* disqualification of the elected prosecuting attorney under RPC 1.9 *always* be imputed to the entire office?” BOR 11 (emphasis added). Again, the respondent overstates the facts and issue presented in this case. It is not, generally, “any” disqualification of the elected prosecutor that requires disqualification of the entire prosecuting attorney’s office. Rather, it is the specific situation presented here,

namely an elected prosecutor who represented or consulted on the *same case* that his office is now prosecuting.

The respondent claims that Dano did not represent Nickels in the way the “term is commonly understood.” BOR 11-12. To advance this argument, the respondent suggests that Dano merely took the verdict and did not say anything of substance on the record, did not consider himself Nickels’s attorney, and was “effectively screened.”⁸ BOR 11-12. Yet, the respondent concedes that Dano has a conflict of interest under RPC 1.9 (CP 97), which by definition is an admission that he previously represented the accused.⁹ The

⁸ The respondent references adequate screening a few times in its response. BOR 3, 12. Such a reference is inappropriate and questionable. First, the Commissioner of this Court ruled that alleged screening procedures are irrelevant and to be stricken from the appellate record. See Commissioner’s Ruling, 5/12/2018 (“This Court agrees that subsequent declarations [regarding alleged screening] are irrelevant. . . and the entirety of that supplemental designation is stricken from the record before this Court in the discretionary review.”). Second, and although irrelevant to the present issue, the respondent is silent on Dano’s involvement in the attempts to have other agencies handle the case. BOR 4. Finally, whether appropriate or not, the trial court ruled that the elected prosecutor should not attend any open court hearings (VRP 5/31/2017, 32), yet according to the transmittal information, the elected prosecutor receives every pleading about this case that has been electronically filed with this Court.

⁹ Rules of Professional (RPC) 1.9(a) reads:

A lawyer who has *formerly represented* a client in a matter shall not thereafter represent another person in the same or a

respondent also acknowledges, as it must, there is no *de minimus* exception to RPC 1.9(a). CP 97.

The respondent's assertion also illustrates the inherent problems with the type of conflicts presented here. For instance, the respondent looks to the open record to suggest Dano's involvement was minimal. BOR 11-12. But merely relying on the open record provides a distortedly limited view of the actual conflict since Dano, the elected prosecutor and administrative head of the Grant County Prosecutors' Office, cannot divulge communications without revealing privileged information, and the petitioner should not be forced to disclose confidential communications he may have made to Dano. RPC 1.6; *See e.g., State ex rel. Sowers v. Olwell*, 64 Wn.2d 828, 832, 394 P.2d 681 (1964) (The attorney-client privilege exists in order to allow the client to communicate freely with an attorney without fear of compulsory discovery); *Pappas v. Holloway*, 114 Wn.2d 198, 203, 787 P.2d 30 (1990) (privilege encourages free and open communications by assuring that communications will not be

substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing. (Emphasis added).

disclosed to others directly or indirectly). Consequently, the open record cannot and would not address the full extent of private confidential communications between Dano and undersigned counsel or Dano and the petitioner. *See e.g.*, CP 178-179.

Dano's conflict also extends to his own office. It is his office that is contesting the extent of his representation and consultation with the petitioner during the initial proceeding, against his former client's best interest.

The respondent also claims financial cost as a reason not to disqualify the Grant County Prosecutor's Office. BOR 13. But according to the respondent's factual assertion, it was unavailability – not financial considerations – which prevented other county prosecutors' or the Attorney General from accepting appointment. BOR 3-4. Indeed, when the elected prosecuting attorney has a disability, like here, the superior court has the authority to appoint a qualified attorney to handle the matter; and when no such person or agency will consent, the superior court has the authority to require it. *See* RCW 36.27.030; *Stenger*, 111 Wn.2d at 522, fn. 13. Additionally, "financial concerns" should not "be used as a justification for inhibiting the constitutional rights of criminal defendants." *State v. A.N.J.*, 168 Wn.2d 91, 121-22, 225 P.3d 956

(2010) quoting *State v Wilson*, 144 Wn.App. 166, 180, 181 P.3d 887 (2008).

The respondent next complains that since defense counsel continues to represent the petitioner, then “the same argument applies to the prosecuting attorney.” BOR 13. The respondent cites no authority for this proposition. *See State v. Young*, 89 Wn.2d 613, 625, 574 P.2d 1171 (1978)(“Where no authorities are cited in support of a proposition, the court is not required to search out authorities, but may assume that counsel, after diligent search, has found none.”). Of course, respondent’s position is not helped by the mere fact that defense counsel does not have a conflict of interest preventing its continued representation, whereas the Grant County Prosecutors Office does.

The respondent also contends that disqualification of the Grant County Prosecutor’s Office would result in significant delay. BOR at 14. This argument fails for several reasons. First, the conflict was created by the respondent – not the petitioner – so the respondent should not be heard to complain about potential consequences. Second, the respondent fails to provide any support for the proposition that potential delay caused by their conflict

trumps the petitioner’s right to a fair trial. *See e.g., State v. Tracer*, 173 Wn.2d 708, 720, 272 P.3d 199 (2012).

And finally, the respondent’s concern about “delay” actually supports the bright line “elected prosecutor/same case” disqualification rule set out in *Stenger* and advanced by the petitioner. Prosecuting agencies would know immediately that when the elected prosecutor previously represented or consulted with the accused on the same or similar case that his or her office is prosecuting, the whole office is disqualified. Had that rule been applied here, the Grant County Prosecutor’s Office would have known immediately of its disqualification, alleviating the concern for delay it now complains about.¹⁰

The *Stenger*’s “elected prosecutor/same case” bright line rule advocated by the petitioner would not only eliminate delay, it further advances judicial economy. Courts would not have to hold in-camera *Kastigar*¹¹-type hearings to determine the degree of the

¹⁰ In fact, it appears they were aware well before remand. *See e.g.,* CP 4-5: “Nickels appeals murder conviction, prosecutors unable to handle case”, August 5, 2015, Cameron Probert, I-FiberOne; *see also* BOR 4 (respondent explains early attempts to find conflict-free agencies to handle remand).

¹¹ *Kastigar v. United States*, 406 U.S. 441, 92 S.Ct. 1653, 32 L.Ed.2d 212 (1972) (evidentiary hearings to determine whether prosecution of immunized defendant is based on independent

elected prosecutor’s involvement; whether disclosures of confidences were revealed; and/or whether screening procedures are appropriately sufficient and continually followed. These hearing would require testimony and evidence, resulting in a process that would inevitably reveal confidences, divulge attorney-client privileges and expose work-product in order for the court to make any findings of fact and conclusion of law for potential appellate review.

Policy, judicial and economic considerations are advanced by the long-standing “elected prosecutor/same case” disqualification rule set out in *Stenger*, followed by the WSBA, Washington courts, and advocated by the petitioner.

III. CONCLUSION

Stenger’s “elected prosecutor/same case” bright-line approach ensures that criminal prosecutions are fair and furthers the public trust and confidence in the integrity of the administration of justice. Nothing supports abandoning this long-standing approach, yet, there are sufficient reasons for its continued use.

sources); *see also State v. Bryant*, 97 Wn.App. 479, 983 P.2d 1181 (1999).

Because the trial court erred in denying the defense's motion to disqualify the Grant County Prosecuting Attorney's Office, the petitioner requests this court reverse the June 1, 2017 Order, Paragraph A (CP 158-160).

DATED this 10th day of May, 2018.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 10^h day of May, 2018, I served via fax, email or mail (as noted below) the PETITIONER'S REPLY BRIEF to the following parties:

Washington State Court of Appeals, Division III (e-file)
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DATED this 10th day of May, 2018.

/s/ Mark A. Larrañaga
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May 10, 2018 - 3:10 PM

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