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No. 98968-1

In the
SUPREME COURT OF THE STATE OF WASHINGTON

IN RE THE MATTER OF RECALL
CHARGES AGAINST
BENTON COUNTY SHERIFF,
GERALD D. HATCHER,

Appellant.

On Appeal from the Superior Court
Of the State of Washington
For Benton County, Cause No. 20-2-00980-3

The Honorable Scott Wolfram,
Walla Walla Superior Court, Department 23

APPELLANT'S REPLY BRIEF

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I. INTRODUCTION

Unfortunately, this case epitomizes political steering by County Commissioners and the County Prosecutor to remove the elected Sheriff. Coupled with a fixated labor attorney who has taken an unusual and inappropriate interest in ousting Sheriff Hatcher, this Court is respectfully asked wade through the political maneuvering periphery of facts asserted and determine if advancement of Sheriff Hatcher's recall petition is proper.

Nevertheless, context matters when viewing Sheriff Hatcher's decisions, intent, and actions to the allegations. For background purposes, the political tensions within the Benton County Justice Center have been brewing against Sheriff Hatcher ever since he began voicing his objections to the County Commissioner's leadership style. Inevitably, this caused significant war lines to be drawn amongst county department heads who rely on the Commissioner's 'good graces' for their budgets. Most importantly, the Prosecuting Attorney's Office which exists to supply legal advice to all department heads and the Commissioners. Prosecuting Attorney Andy Miller enjoys considerable political clout himself in Benton County. Mr. Miller has made it abundantly clear to Sheriff Hatcher that his office works for the Commissioners not the Sheriff's Office and thus he is on his own for defending against the recall or seeking advice concerning the same. CP 778-780. Yet, Prosecuting Attorney Andy Miller's questionable involvement also includes many private after-hours

conversations with Alan Harvey both before and during the pendency of the recall petition as well as forcing Monica Hatcher to make a report against Sheriff Hatcher. CP 779, RP Vol 1, p. 26, lines 1-13, CP 778.

Benton County has three Commissioners: Jim Beaver, Jerome Delvin, and Shawn Small. The significance of the County dissention is what gave birth to Hatcher's recall plot. Despite allegations that Sheriff Hatcher has violated the Anti-discrimination and Harassment policy at Benton County and should be subject to recall, the Sheriff has been subject to significant harassment himself by the leaders. Most horrendous are Commissioner Beaver's repeated emails at all hours of the day/night seeking Sheriff Hatcher's resignation, for example:

> Tuesday, November 26, 2019:
>
> "Jerry, I think it would be fitting for you to resign. We can't take our community and the department through this program! Respectfully. Commissioner James Beaver."
> (See Appx. A, p. 813).
>
> Wednesday, November 27, 2019:
>
> "Jerry, I stand by my opinion that you should resign immediately!"
> (Appx. A, p. 812).
>
> Wednesday, November 27, 2019:
>
> "Jerry, would you just resign please! Jim."
> (Appx. A, p. 811).
>
> Wednesday, November 27, 2019:
>
> "Jerry, I am hopeful we get your resignation letter. Commissioner James Beaver."
> (Appx. A, p. 810).

Wednesday, November 27, 2019:

"Jerry I have not seen a letter yet. Jim."
(Appx. A, p. 808).

Saturday, November 30, 2019:

"Mr. Hatcher I was hoping to have your resignation letter before Thanksgiving!"
(Appx. A, p. 805).

Wednesday, December 11, 2019:

"Jerry, respectfully resign! Jim."
(Appx. A, p. 804).

Wednesday, December 11, 2019:
"Jerry, you're all about yourself! Hiding behind the public safety badge!! I'm not stupid!! Jim."
(Appx. A, p. 803).

Wednesday, December 11, 2019:

"Jerry, I did not know the word narcissistic until my wife told me! Had no idea. Retired teacher go figure! You're in the wrong place!" Commissioner James R. Beaver.
(Appx. A, p. 801).

Thursday, February 6, 2020:

"Jerry, I again would accept your resignation!
Commissioner James Beaver."
(Appx. A, p. 800).

Friday, April 3, 2020:

"Jerry, I still think it would be in the best interests of our community if you would resign.
Commissioner James R. Beaver."
(Appx. A, p. 789).

Wednesday, April 22, 2020:
"Jerry, I would accept your resignation immediately!
Commissioner James R. Beaver."
(Appx. A, p. 797).

Thursday, July 16, 2020:
"MR. HATCHER I would accept your resignation immediately!! Budget requests are a joke! Get the h-/out!!." (Appx. A, p. 796).

Monday, August 3, 2020:
"Mr. Hatcher please find a way to step down!!" (Appx. A, p. 795).

Regrettably, the County's 'policies' against harassment have no recourse mechanism or penalty identified if one is violated. In addition to Commissioner Beaver's unacceptable behavior and inability to keep his opinions private, Commissioner Delvin has made very disparaging and unprofessional remarks in a Benton County Commissioner meeting over wanting Hatcher removed from office. (Appx. A, p. 764). Likewise, Commissioner Shawn Small previously contacted Sheriff Keene and requested he reach out to Sheriff Hatcher in attempting to "buy him out". Id. Fortunately, Recall Petitioner require certain standards to prevent the political desires of a few from changing outcomes decided in elections.

II. REPLY

A. Factual Sufficiency Requirements for Prima Facie Showing

Given the statutory mandate for direct review of a recall petition, this Court is well aware of the substantive standards for establishing factual sufficiency. RCW 29A.56.140. Factual sufficiency means the petition must comply with the specificity requirements of RCW 29A.56.110. Per, **Herron v. McClanahan**, 28 Wn. App. 552, 560, 625 P.2d 707 (1981): "these statutory requirements ensure that both the public electorate and the challenged elective official will make informed

decisions in the recall process". Factual sufficiency suggests that although the charges may contain some conclusions, taken as a whole they do state sufficient facts to identify to the electors and to the official being recalled acts or failure to act which without justification will constitute a prima facie showing of misfeasance, malfeasance, or a violation of the oath of office. **Chandler v. Otto**, 103 Wn.2d 268, 274, 693 P.2d 711 (1984) (emphasis added). In addition, when a petitioner charges that the elected official has violated the law, petitioner must show that the elected official "at least had knowledge of the facts which indicate an intent to commit an unlawful act". **In Recall of Wade**, 115 Wn.2d 544, 549, 799 P.2d 1179 (1990). (emphasis added).

In re Recall of Kast, the recall petitioner alleged Kast violated RCW 52.14.110 which provides that fire districts shall use competitive sealed bid processes, whenever practicable, to purchase materials or contract for labor. 114 Wn.2d 807, 31 P.3d 677 (2001). The recall petitioners alleged that Kast made a motion and voted to unlawfully divide a public project into two parts, and thus, create two jobs to cost less than the threshold $2,500. Id. The **Kast** recall petitioners explained that the official completed his breach of the State Competitive Bidding Laws by hiring Jerry Iverson Trucking to complete the labor on a ditch project. Id. In support of the recall petitioners, the state auditor confirmed the division of the project was unlawful and that Kast was aware of the State Competitive Bidding Law. Id. Factual sufficiency

therefore was met. However, unlike the instant case, petitioners in **Kast** offered additional evidence regarding Kast's intent to violate the law when he made statements that he knew the project exceeded the $2,500 threshold, and he knew that he was breaking the law. Id. Based on such facts, this Honorable Court concluded sufficiency was met.

B. Legal Sufficiency Requirements

Legal sufficiency means an elected official cannot be recalled for appropriately exercising the decision granted him or her by law. "To be legally sufficient, the petition must state with specificity **substantial** conduct clearly amounting to misfeasance, malfeasance or violation of the oath of office." **Chandler**, 103 Wn.2d at 274, 693 P.2d 71 (emphasis added). Additionally, this Court is also recognized that a charge is legally insufficient if the conduct complained of is **insubstantial** or **if the elected official acted with legal justification**. **Graco v. Parsons**, 105 Wn.2d 669, 671-72, 717 P.2d 1368 (1986) (emphasis added). In **Kast**, 114 Wn.2d at 682, the official suggested that making a motion is insubstantial conduct that cannot be a basis of a recall. (*citing* **In re Recall of Call**, 109 Wn.2d 954, 958, 749 P.2d 674 (1988)). While a motion by itself may not be considered *substantial* conduct, the court was aware that the elected official voted to adopt the motion and then proceeded to hire/retain a contractor in violation of the State Competitive Bidding Law. Id. Indeed, his actions as a whole were found to be substantial conduct. Id.

Official Kast argued that violation of RCW 52.14.110 "does not result in a civil fine or criminal penalty and is therefore not malfeasance as that term is defined in RCW 29A.56.110(1)(b)". Nevertheless, this Court considered malfeasance under Section 1 because his purported violation of the law was "wrongful conduct" and because his conduct "interfered with the performance of his official's duties" by failing to promote the best interest of the fire district. See RCW 29A.56.110(2). Thus, *as a result of his conduct*, the fire district could not be sure it received the best value or price for the ditch project. **Kast** at 816.

C. Ballot Synopsis #1: Illegally appropriated for his own use 14 cases of ammunition belonging to Benton County.

Recall petitioner's charge no. 4 is the only specific 'charge' which correlates with facts summarized in Ballot Synopsis no. 1 claiming that Sheriff Hatcher 'illegally' appropriated 14 cases of County ammo for his own use. Recall petitioner's responsive brief mistakenly highlights the summary as stated in the Ballot Synopsis rather than establishing specific facts identified in his actual charge to overcome the requisite sufficiency standards. This Court must conduct a de novo review of the facts charged in the recall petition. See CP 49-63. For clarity, Sheriff Hatcher's reply shall utilize the same responsive headings to assist this Court in evaluating the sufficiency of the underlying facts presented below and correlate to the Synopsis.

In response to Sheriff Hatcher challenging the sufficiency of facts identified in Ballot Synopsis No 1, recall petitioner argues that BCSO

Det. Todd Carlson was the person responsible for distribution of ammo in the Sheriff's Department since 2016.[1] Response Brief, p. 9. Yet he alleges, BCSO Det. Carlson had never seen an accumulation of 14 cases of ammunition by an individual so he immediately reported it to his immediate supervisor. Id. Alan Harvey includes facts in his responsive brief which appear to question how/why certain firearms were possessed by the Sheriff. Response Brief, p. 9. Neither the Ballot Synopsis no. 1 nor charge no. 4 address any improper firearms possession. See CP 50-51, CP 587.

Recall petitioner further cites BCSO Cmdr. Law's belief that it was not reasonable for an employee to practice with ammunition for a weapon which has not been assigned to said employee and that possessing "case" quantities is not reasonable for "practice". Response Brief, p. 10. However, recall petitioner's charge no. 4 states "between October 7, 2019 and February 14, 2020 Sheriff Hatcher violated RCW 40.16.02 in that he was an 'officer' withing (sic) that statue and who fraudulently appropriate to his own use or/and or did secrete with intent to appropriate to such use property entrusted to him, by virtue of his office." CP 50-51. The fact that Sheriff Hatcher advised KPD several times to retrieve his department issued firearms and practice ammo flies in the face of recall petitioner's charge. CP 338-339.

[1] Note that Sheriff Hatcher began serving as Sheriff on May 16, 2017. CP 336. Importantly, BCSO Det. Carlson does not state that Sheriff stole or improperly acquired the ammo or even that Carlson was otherwise aware of 14 cases of ammo missing from the armory.

Other than Det. Carlson not being aware of the 14 "cases" of BCSO ammo which was relocated from Sheriff Hatcher's residence to BCSO and Cmdr. Law's 'belief' that his superior's actions were unreasonable for an employee, there is no allegation Sheriff Hatcher violated any identified rule, policy, law, or otherwise committed any crime. Likewise, there are no facts to suggest any of the County owned ammunition was wrongfully used, secreted with intent to appropriate to such use, or otherwise inappropriately used by Sheriff Hatcher. In fact, the ammo was ordered by his predecessor and included a mistaken double order, on 4/22/15 and 4/29/15. CP 666.

To ensure transparency, Sheriff Hatcher ordered an independent investigation (IA) to review any issues relating to the storage of practice ammo at his residence. He sought assistance from an outside agency, Franklin County Sheriff's Office. CP 641. Specifically, Sheriff Hatcher asked the outside agency to review his conduct for compliance with Benton County's Standard Operating Procedures, Department Policies, Standard Practices, and compliance with Washington State Law. CP 641. In conclusion of the IA, Sheriff Raymond stated:

> "One should be concerned about the appearance or perception of labor attempting to control the internal review and operations in the Benton County Sheriff's Office.
>
> This seems to be occurring with the assistance of your command staff help at times. Your command staff believes, in general, that you stole the disputed ammunition. Furthermore, they believe that you and I conspired to create an environment to conceal or obstruct the perceived theft. Your command staff, the FOP, and Alan Harvey clearly want to utilize officer

involved incidents/ S.I.U. protocols in this internal review process…

BCSO command staff and Alan Harvey, along with the local Fraternal Order of Police, are not pleased with the outcome of your criminal investigation which was conducted by WSP along with Benton County Prosecutor's office. Frankly, they believe you should be charged and held accountable. Furthermore, they generally believe there should be a 'do-over criminal investigation' which should be conducted by an outside law enforcement agency, but not FCSO or WSP. The theme is that FCSO and WSP have no idea what they are doing.

As the Benton County Sheriff, you should be concerned that your appointed command staff have decided to become part of labor.

Weapons/firearms and ammunition storage policy: the theme mentioned above carries over into the storage of firearms and ammunition at your residence. Your command staff with the assistance of the local FOP and Alan Harvey are attempting to paint a picture that you stole the ammunition. I point you to the Kennewick Police Department reports on the ammunition and firearms storage issues for your reference.

Of course, there is an effort underway to paint a picture that Sheriff Raymond and Sheriff Hatcher are ruining the ability for criminal investigation to be conducted on this topic by our actions. This, of course, is followed by a volley of RCWs being cited by your command staff as references during their controlled interviews with Alan Harvey driving the direction of the interviews. These control interviews are similar to 'officer involved shooting' statement processes under the criminal review portion of the SIU guidelines. Another analogy can be made regarding canned or rehearsed presentations during these interviews.

The investigation found no sustaining factors concerning BCSO firearms policies and practices. However, I strongly suggest you revamp these policies and practices thus removing the perceptions of entitlement away from all members of the Benton County Sheriff's Office.

> It would probably be wise for the Benton County Sheriff's Office to undergo a complete inventory of all property issued and stored by the Benton County Sheriff's Office followed by strict documented inventory and issuance controls. These processes need to be documented, controlled, and tracked. Limitations need to occur regarding who issues and tracks the properties. In this arena, do whatever it takes to remove the perception of the 'entitlement' which appears to be occurring within the Benton County Sheriff's Office. The paradigm shift needs to occur to change this culture.
>
> With all time consuming, I would strongly suggest that part of your agency's goals settings should be to achieve WASPC accreditation for the Benton County Sheriff's Office. This achievement/goal will certainly help with bringing your organization into accordance with the 21st Century policing practices." CP 632-633.

Recall petitioner and his counsel, Alan Harvey purportedly take issue with the idea that Sheriff Hatcher maintained county property at his personal residence. Aside from the lack of policies and standards for issuing practice ammo, the record reveals instances where Sheriff Hatcher texted KPD Cmdr. Guerro reminders to collect the firearms and ammo from his residence. The fact that the Sheriff notified law enforcement to collect the county owned ammo and firearms, suggests he was not attempting to conceal or misappropriate any county property.

Notably, when interviewed by FCSO Captain Huber and Captain Diaz on March 4, 2020 and shown a text that was provided by Sheriff Hatcher, KPD Cmdr. Guerro "recalled the text and stated that it was one of a string of texts". CP 658. Cmdr. Guerro advised they attempted several times to pick up the guns and ammo, but Monica Hatcher was delaying them. Id. "At some point they were done attempting to reach out

to her, since Jerry Hatcher did not live at the residence, and there was an order that prohibited him from being over there." CP 658. Cmdr. Guerro also noted that "Alan Harvey had somehow received a copy of the Evidence/Property Sheet and sent it to WSP requesting the matter be investigated he had also inquired with KPD about investigating the matter." CP 658. Of the several texts sent by Sheriff Hatcher to Cmdr. Guerro, one 'text' was included in the record below (printed out on 2/18/20). See CP 627. While Alan Harvey's responsive brief implies Sheriff Hatcher's sworn by oath reference to October 3 text 'makes little sense as the order to surrender' was not entered until October 2019 (Brief p. 11), it was a typo as Sheriff's same declaration, line 24, states "I sent a reminder text to Cmdr. Guerro on October 7th reminding him of my two (2) department issued firearms and practice ammo that needed to be picked up". CP 338-339.

Accordingly, Sheriff Hatcher cannot be in violation of his oath of office when he volunteered the practice ammo was stored at his residence and needed to be collected by KPD and returned to Benton County for use. Likewise, since the 'double order' of ammo was created by the former Sheriff and largely left intact but stored by Sheriff Hatcher, there is no evidence Sheriff Hatcher was attempting to 'illegally appropriate the same for his own use'. Findings from the FCSO investigation revealed as to the 13700 rounds: "This ammunition was from 2015 and 2016 (indicating it had been around for some time). CP 706.

Charge No. 4 should have failed at factual sufficiency as it is limited in time to a period in which the Sheriff had a domestic no contact order preventing access to his residence. So, Alan Harvey is not concerned Sheriff Hatcher 'stole' the property, it's because the sheriff didn't have access during a time an order prevented him from access. But he neglects to note that all the property was returned to the county. However, even if the court accepts the charge on its face, there is no evidence the Sheriff abused his position by storing practice ammo at his residence. In the event the court believes this conduct amounts to a violation, there are no facts showing Sheriff Hatcher ever maintained at an intent to commit an unlawful act. The ammo and firearms were collected at the Sheriff's insistence. Note also the ammo was never even subject to the Surrender of Weapons order. See CP 629. For these reasons, the charge should have failed legal sufficiency as well.

As to the Court's second determination, the Ballot Synopsis inaccurately provides Sheriff Hatcher "illegally" appropriated property of the County. This is an inaccurate legal conclusion implying criminal culpability. Along these lines, it is a highly prejudicial and inflammatory misrepresentation designed to sway voters. The court additionally erred in approving the Synopsis no 1.

D. Ballot Synopsis No. 2: Illegally tampered with physical evidence by directing the distribution of ammunition that was potential evidence of his own alleged unlawful acts

Ballot Synopsis No. 2 correlates to facts raised/identified in charge Nos 5 &6. See CP 51 and CP 587. Similar to the above charge, facts at issue are limited to a specific time period of January 13, 2020 to February 13, 2020. CP 51. The underlying facts allege/charge Sheriff Hatcher committed a crime involving 'tampering with physical evidence' (RCW 9A.72.150)[2] and 'official misconduct' (RCW 9A.80.010)[3]. This is a serious offense to lodge at a sitting Sheriff who is supposed to uphold the law. The same underlying conduct purportedly supports the two charges. CP 51. Apparently, since Sheriff Hatcher (who didn't think he did anything wrong by storing the ammo and having it returned to BCSO because he couldn't physically go to the residence), ordered his commander to redistribute the ammo so his deputies could use the practice ammo somehow constitutes 'illegally tampering with evidence'. The claim fails because the 'evidence' was not 'evidence' of a crime. The ammo was documented and photographed to preserve the record. In the event BCSO deputies had used the older ammo for practice, it remained accounted and inventoried. The charges fail

[2] Per RCW 9A.72.150(1): "A person is guilty of tampering with physical evidence if, having reason to believe that an official proceeding is pending or about to be instituted and acting without legal right or authority he (a) destroys…conceals, removes, or alters physical evidence with an intent to impair its appearance, character, or availability in such pending or prospective official proceeding…."

[3] Per RCW 9A.80.010(1): "A public servant is guilty of official misconduct if, with intent to obtain a benefit….(a) He intentionally commits an unauthorized act under color of law…."

because there was no 'official proceeding' during January to February 2020. The charges fail because Sheriff was not acting without legal authority. Likewise, there is no offering of evidence that Sheriff Hatcher intended to commit an unlawful act of any kind. To the contrary, Sheriff Hatcher believed he had authority to re-distribute the practice ammo among his staff. In fact, he did maintain such lawful authority.

Recall petitioner and Alan Harvey had clearly hoped they could contort Sheriff Hatcher's storage of practice ammunition at his residence into some criminal act or misconduct, but all attempts failed.[4] None of the local law enforcement agencies sought fit to pursue the Sheriff's lengthy storage of the ammo (which was returned to the County in its entirety) as a crime or potential crime worthy of investigation. Such local agencies include Richland Police Department, Washington State Patrol, Kennewick Police Department, the Attorney General, Franklin Sheriff's Office and Pasco Police Department.

Moreover, the facts show Cmdr. Caughey was provided one additional case of ammo that was not County property, so he returned it to KPD. CP 152. Not surprisingly, the Sheriff maintained and stored his

[4] Notably, FOP counsel Alan Harvey attended and interjected himself during several interviews as FSCO officers were conducting the IA to determine if any policy or legal violations occurred with respect to the quantity of ammunition. Specifically, attorney Harvey appeared beside Steve Caughney (CP 660), Todd Carlson (CP 667), Jon Law (CP 675) and Erik Magnuson (CP 697). At times, attorney Harvey would hijack the independent interview process to ask his own questions (CP 673, 684, 686, 688-690), 'refresh witness memory' by showing notes on his computer (CP 664-665, 661), highlight legal points (CP 663, 679-680, 697) and/or redirect the investigative focus (CP 672, 676, 678, 663).

own personal ammo at his residence. Given there was no evidence/facts to suggest he depleted the County's ammo, and since he has his own, one could easily conclude he used his own personal ammo for practice/recreation. No intent to steal or other misconduct exists.

In the event Synopsis No. 1 was legally/factually established as criminal activity, perhaps Synopsis No. 2 could be stretched into another category/violation, but it too is without merit. In the responsive brief p.12, Alan Harvey claims BCSO Cmdr. Caughey 'was informed by KPD staff that there may be a crime associated with the ammunition located at Sheriff' Hatcher's home citing to Caughey' s declaration. This assertion is contrary to Kennewick Police Department official reports and the lack of any local agency actually investigating Sheriff Hatcher's conduct. CP 151. Indeed, nothing in KPD Cmdr. Guerro's report suggests any potential crime associated with the collection of firearms and ammo. Id. Likewise, Cmdr. Guerro failed to indicate his impression of a crime or potential crime when FSCO investigators questioned him during the administrative IA review. See CP 658.

The superior court had no basis to find factual or legal sufficiency of these charges as Sheriff Hatcher's directive to have the practice ammo used by deputies wasn't even performed. BCSO Cmdr. Steve Caughey was so desirous of persuading someone that Sheriff Hatcher committed a crime, he preserved the ammunition by labeling it 'do no touch' and placing his name on it. CP 663. The Commander's conduct constitutes

clear insubordination. By his own admission during FCSO interviews, Cmdr. Caughey contemplated whether or not this was a mandated reporting issue on his part and if he needed to do something official with it. CP 663. Nonetheless, recall petitioner has not shown any Sheriff Hatcher acted unlawfully, that there was any 'official proceeding', that the practice ammo returned constitutes 'evidence' to some pending or future 'official proceeding', or even that anything was ever done to 'tamper' with the ammo. For these reasons, the charges fail.

Moreover, the superior court did nothing to alter/address Synopsis No. 2 which wrongfully depicts Sheriff Hatcher "illegally tampered with physical evidence" when he had not. This inaccurate legal conclusion strongly implies criminal wrongdoing by using "illegal" and "unlawful act" when nothing has been shown to be, in fact 'illegal' or 'unlawful'. Such words were designed to incite the public for favorable votes.

E. Ballot Synopsis No. 3: Interfered in an investigation into his conduct by acting to prevent witnesses from being interviewed.

The underlying facts supporting Synopsis No. 3 correlate with charges 11&12. CP 587, CP 53-54. These charges suggest on March 9, 2020 Sheriff Hatcher violated County Anti-Discrimination and Harassment policy when he 'interfered or prevented' an interview from occurring. CP 53-54. The charges re-state the same conduct on the same date using two individual Commanders who were given the same directive. Id. There is no secret surrounding Cmdr. Law and Caughey's desire to for Sheriff Hatcher's removal.

In similar fashion, facts in the charges are omitted which would show Sheriff Hatcher acted in his discretionary capacity, as Elected Sheriff. Accordingly, his actions can easily be interpreted as trying his best to serve the County and promote transparency. Pursuant to RCW 36.28.011, the Sheriff is statutorily obligated to investigate and make complaints of all violations of criminal law within his Office. In other words, Sheriff Hatcher's official duties include making complaints and conducting investigations of all criminal violations which come to his knowledge, within his respective jurisdiction. RCW 36.28.011. Thus, he is in violation of the law if a complaint is made and he does nothing. Here, he attempted to engage an independent Sheriff to be a part of the investigation process, in the event the HR complaint becomes criminal in nature or involves criminal activity.

RCW 36.28.010 mandates that the Sheriff is the chief executive officer and conservator of the peace of the county. In the execution of his office, Sheriffs are required to keep and preserve the peace in their respective counties, apprehend or secure any person for felony or breach of the peace, and they may call to their aid such persons, or power of their county as they may deem necessary. RCW 36.28.010. Hence, sheriffs maintain lawful discretionary authority to receive/pursue complaints and conduct investigations should a sheriff perceive it necessary to do so.

In his official capacity and authority, Sheriff Hatcher had voiced significant and meaningful concerns about the how the complaint in his jurisdiction would be handled/investigated. He was concerned about the process including if fairness, due process, and transparency would be afforded to all sides given the political interest in controlling the nature/scope of an investigation internal to his Office. CP 625-626. Prior to the County Prosecutor's launch of the HR investigation, Sheriff Hatcher authored a letter to HR Manager Lexi Wingfield outlining his concerns as follows:

> "It is my understanding that there has (recently) been a complaint made by a Benton County Sheriff's Office employee (against me). I am unaware of the nature of the complaint. I want to address the process going forward within the sheriff's office.
>
> If the complaint is of criminal nature, by RCW the complaint will come to my office in accordance with the RCW, and I will assign it to independent investigators to be investigated without delay. If the complaint is of the county policy violation and the county wishes to have it investigated, I will be assigning an independent elected sheriff to be a part of the investigation to ensure the office of the sheriff is protected to the fullest extent in accordance with the RCW and the appropriate WACs.
>
> As the active sheriff, I feel it is necessary for two reasons. (1) This will ensure that we have a complete, non-biased investigation which protects the complainants' interest, the county's interest, and the office of the sheriff. (2) regarding conflicts of interest, the county's HR department, who would be tasked with setting up this investigation is directly controlled by the county commissioners; commissioners who openly have stated and shown their on-going biases towards me personally, as the elected sheriff, and the actual office of the sheriff.

> In addition, the prosecutor's office, who would be given legal advice (or direction) in this investigation, has been very clear with me and my staff several times over the years, that when it comes to an issue between the sheriff's office and the commissioner's office, "it worked for the county commissioners" a clear conflict of interest.
>
> While we all recognize that bringing in outside investigators can help control these clear biases, we also need to recognize that these contracted investigators are still directed and controlled by commissioners. The commissioners either directly or indirectly set up the contract, pay for the contractors and/or ultimately determine the scope of the investigation which would control the end narrative.
>
> Further, I have personally expressed these on-going concerns and stated biases, to the county's HR manager (Lexie). Finally, I have also expressed to her, my concerns about her office's neutrality being compromised for years, because it is under the direct control of the commissioner's office and her very job depends on their approval. She has agreed with my summation.
>
> If the HR department receives direction that does not allow this collaborative investigation, the Benton County Sheriff's Office will conduct its own independent internal investigation. It is my hope that we can work together to conduct an investigation that is both comprehensive without bias; a fair investigation that does not get exploited for personal or political reasons. …" (CP 625-626).

In an aggressive display of power, the County Commissioner's ignored Sheriff Hatcher's official concerns and asserted their dominance by authorizing their assigned investigator to proceed. CP 645. Upon introduction, Sheriff Hatcher wrote back to investigator Blatt, apologizing for the inconvenience but explained 'there is a lot of political agendas and biases at work here in Benton County and I have

been forced to take the appropriate steps to having investigations done within my office in a manner that promotes transparency, and protects the interest of the accuser, the county, and Office of Sheriff." CP 645. Sheriff Hatcher advised Ms. Blatt that she was "not authorized to contact any Benton County Sheriff employees until we establish the investigative steps and process." Id. The law authorized and required the Sheriff to act.

Yet, Sheriff Hatcher's expectations to have an independent Sheriff involved in the investigation went further ignored when Ms. Blatt contacted his staff anyway. Cmdrs. Law and Caughey scheduled interviews for March 9 unbeknownst to Sheriff Hatcher. CP 344. The Sheriff explained to his command staff that he 'had no issue with them participating' but he written a letter to HR and was waiting to hear back. Id. Both commanders expressed no concern with waiting until the issue was resolved with Ms. Blatt and HR. Id. Eventually, the interviews occurred outside of the commander's regular working hours.

The charges allege Sheriff Hatcher utilized his position as Sheriff to 'interfere' and/or 'prevent' witnesses from being interviewed. CP 54. To the extent that was perceived, Sheriff Hatcher was justified in his conduct believing he had a duty to the County in ensuring investigations done within his office were performed in the appropriate manner. Having two of his command staff delay their HR interviews does not

constitute substantial conduct clearly amounts to misfeasance, malfeasance, or a violation of his oath of office.

F. Ballot Synopsis No. 4: Violated county policy by hindering an investigation and retaliating against witnesses.

The underlying charges summarized by Synopsis No. 4 are included in charges 26, 24, 23, 20, 19, 14, 13, 22, and 7. These charges again involve only rouge Cmdrs. Law and Caughey. Allan Harvey again attempts to paint Sheriff Hatcher's conduct as criminal using a politically charged HR administrative investigation finding. No due process was afforded to Sheriff Hatcher within the administrative review process. As previously discussed, Sheriff Hatcher's attempts to ensure the integrity of said investigation was preserved with another Sheriff/law enforcement involvement is somehow contorted to reflect the appearance of 'intimidation' and/or 'retaliation'. His decision and directives were appropriately guided by his discretion.

Sheriff Hatcher is statutorily obligated as the chief executive officer and conservator of peace for the county to make judgment with respect to any criminal complaint in his jurisdiction. See RCW 36.28.010. The legislature was desirous of ensuring the chief law enforcement officer of the county has authority to make and take actions relative to criminal complaints within said county. Likewise, as the Benton County Sheriff, he has a duty to the citizens to initiate and launch criminal investigations where appropriate. See RCW 36.28.011. Sadly, his duty was superfluously stripped from him by the

Commissioners. Within his role as Sheriff, he endeavored to bring in an independent law enforcement presence to investigate the alleged criminal conduct and maintained authority to do so even against himself. As sheriff, the law affords him such power to deputize for special appointments. See RCW 36.28.020. He was categorically denied use of his own authority and now Alan Harvey attempts to use the same 'investigation' as proof of criminal wrongdoing or misconduct.

1. Charge No 7: Alleges the official used his authority to order Cmdr. Caughey to disclose 'the fact of a complaint' and identity of complainant.

Again, Sheriff Hatcher, as chief executive law enforcement officer, was duty bound and obligated to know basic facts in order to adequately perform his job. If he had not determined the basic facts, Alan Harvey would claim the lack of knowledge was malfeasance. As the chief, he is entitled to know regardless of who asked who, regardless of who the complaint is against, the identity of a complainant to ensure the person has adequate protection from recourse. More importantly, and vital to his chief role, Sheriff Hatcher needed to know if it was criminal in nature so he could act. This is consistent with his statement to the court:

> "Cmdr. Steve Caughey advised me that Lt. Magnuson had file a complaint with HR. After being told of the complaint being filed by Magnusson, I compelled Caughey to let me know if the complaint was criminal. This is in direct alignment with the RCW and my oath of office. No other entity within the county has investigative authority over criminal matters. I did not ask the details or any information, or who was involved, I followed the law and inquired if the complaint was criminal and that does not violate the county policy anyway" CP 342, §18.

2. Charges Nos 13-26: Allege the official made threats, intimidated, and retaliated against commanders based upon a biased administrative finding.

Intimidating a witness is a serious offense. Making unlawful threats is a crime. Making false or misleading statements to a public servant constitutes a crime. Alan Harvey is well aware as attorney for law enforcement. Yet he boldly alleges Sheriff Hatcher violated criminal law.[5] Rather, Sheriff Hatcher was attempting to do his job to the best of his ability while navigating a set of turn coat commanders that were circling for his position. Intimidating a witness is a class B felony. Id. Significantly, Sheriff Hatcher has not been charged or accused of any criminal offense. Instead he is being martyred by the media based on an administrative finding that a policy was violated.

This court should take notice that the policy has no teeth. Absolutely nothing happens if one violates the 'policy' - like when Commission Beaver sends a multitude of harassing emails to an official. But implying the policy violation 'finding' is tantamount to a criminal law violation is improper. Alan Harvey should know better. Alas, the agenda to get Sheriff Hatcher to resign grew sea legs.

The administration's investigation 'findings' have become the corner stone of Alan Harvey's charges in support of the Recall. The administrative findings are based on one single person's perspective after talking with Sheriff Hatcher's command staff (Cmdrs. Caughey

[5] RCW 9A.72.110, RCW 9A.04.110, RCW 9A.76.180

and Law – who are next in line to be sheriff). These findings do not reveal criminal conduct or misconduct in violation of his oath of office.

In reality, Sheriff Hatcher, as the County Sheriff, is entitled to 5 non-classified employees who are appointed and serve at his pleasure. See RCW 41.14.020 (power to select, appoint or employ), RCW 41.14.140 (no infringement on appointment power), and RCW 36.16.070 ("may revoke each appointment at his pleasure."). Thus, when there is a media frenzy and political are agendas mounting, he is permitted by law to have a 'loyal' command staff. They are at-will. Yet no change in duties or conditions occurred. Despite allegations, no law enforcement agency has charged Sheriff Hatcher with any criminal wrongdoing. All of his actions in navigating an administrative investigation within his office were justified under his belief that he was acting in the best interest of the Benton County Sheriff's Office.

III. CONCLUSION

Based on the foregoing, Sheriff Hatcher respectfully asks this court to reverse the superior court and dismiss each and every charge identified in the recall petition.

DATED this 9th day of October, 2020.

TELARE´ LAW, PLLC

By:_____
GEORGE E. TELQUIST, WSBA#27203
Attorneys for Appellant

CERTIFICATE OF FILING AND SERVICE

The undersigned hereby declares, under penalty of perjury, under the laws of the State of Washington, that on October 9, 2020, I caused the original of the foregoing document to be filed electronically with the Supreme Court of the State of Washington.

I also caused a true and correct copy of the foregoing document to be served on the following, via email and the Clerk's electronic portal on October 9, 2020, to:

Alan Harvey
Northwest Legal Advocates, LLC
PO Box 61912
Vancouver, WA 98666
alan.harvey@nwladvocates.com
alan.harvey@pnwla.com

Andy Miller
Benton County Prosecutors Office
7122 West Okanogan Place
Kennewick, WA 99336
andy.miller@co.benton.wa.us

Reid Hay
Benton County Prosecutors Office
7122 West Okanogan Place
Kennewick, WA 99336
reid.Hay@co.benton.wa.us

DATED this 9th day of October, 2020, at Richland, Washington.

TELARE LAW, PLLC

By:_____
KRISTI FLYG, *Legal Assistant*

APPENDIX "A"

JOSIE DELVIN
BENTON COUNTY CLERK
AUG 10 2020
FILED

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR BENTON COUNTY

In re: Recall of Gerald D. Hatcher, Respondent.	Case No. 20-2-00980-03 **DECLARATION OF GERALD HATCHER**

I, Gerald D. Hatcher am the Respondent in the above entitled proceeding have personal knowledge of the facts contained in this declaration.

1. On June 25, 2020 when I realized the Sheriff's Guild was proceeding with the recall petition, I began requesting that Prosecuting attorney Andy Miller assist me to obtain legal counsel to represent me regarding the recall. (See attached Exhibit A). My requests were denied. Only after I was served on July 31, 2020 with the petition and ballot initiative did Miller submit my request for assistance with legal representation to the Benton County Commissioners, for August 4, 2020.

2. I have received emails from Commissioner Beaver since November 2019, telling me to resign my position as sheriff or get the hell out. (See attached Exhibit B).

3. Commissioner Devlin has made very disparaging and unprofessional remarks in a BOCC meeting over wanting me removed from office.

4. Commissioner Small has contacted Sheriff Keane and requested he speak to me about the Commissioner's "buying me out".

COPY

TELARE LAW, PLLC
1321 Columbia Park Trail
Richland, WA 99352
(509)737-8500/(509)737-9500 fax

5. Since the Sheriff's Guild began indicating their intent to proceed with a recall petition, there have been numerous news articles in the local paper, the Tri-City Herald, news stations including both TV and radio regarding the recall petition referencing investigative reports conducted, the Benton County Board of Commissioners writing letters expressing their support of the recall petition.

6. Attorney Harvey who represents Jason Erikson, has made numerous statements to the press and the Guild regarding the recall petition. I believe this is to put me in a bad light to the local citizens of Benton County who ultimately would have to vote on the recall.

7. As there has been no hearing as of yet on this petition that would determine if the allegations made are factual or even legally sufficient, I do not believe that I can get a fair hearing in Benton County as I am being unfairly prejudiced against in the news and by county personnel.

I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 6 day of August, 2020.

GERALD HATCHER, Respondent

TELARE LAW, PLLC
1321 Columbia Park Trail
Richland, WA 99352
(509)737-8500/(509)737-9500 fax

EXHIBIT

A

APPENDIX "A"

JOSIE DELVIN
BENTON COUNTY CLERK
AUG 10 2020
FILED

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR BENTON COUNTY

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I, Gerald D. Hatcher am the Respondent in the above entitled proceeding have personal knowledge of the facts contained in this declaration.

1. On June 25, 2020 when I realized the Sheriff's Guild was proceeding with the recall petition, I began requesting that Prosecuting attorney Andy Miller assist me to obtain legal counsel to represent me regarding the recall. (See attached Exhibit A). My requests were denied. Only after I was served on July 31, 2020 with the petition and ballot initiative did Miller submit my request for assistance with legal representation to the Benton County Commissioners, for August 4, 2020.

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COPY

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7. As there has been no hearing as of yet on this petition that would determine if the allegations made are factual or even legally sufficient, I do not believe that I can get a fair hearing in Benton County as I am being unfairly prejudiced against in the news and by county personnel.

I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 6 day of August, 2020.

GERALD HATCHER, Respondent

TELARE LAW, PLLC
1321 Columbia Park Trail
Richland, WA 99352
(509)737-8500/(509)737-9500 fax

EXHIBIT

A

[redacted]

From: Jerry Hatcher [redacted]
Sent: Tuesday, August 4, 2020 12:07 PM
To: [redacted]
Subject: FW: Recall matter

SHERIFF JERRY HATCHER
Benton County Sheriff's Office
7122 W. Okanogan Place, Bldg. B
Kennewick, Washington 99336
509-735-6555 ext. [redacted]

From: Jerry Hatcher
Sent: Friday, July 31, 2020 13:51
To: george [redacted]
Subject: FW: Recall matter

SHERIFF JERRY HATCHER
Benton County Sheriff's Office
7122 W. Okanogan Place, Bldg. B
Kennewick, Washington 99336
509-735-6555 ext. [redacted]

From: Andy Miller [redacted]
Sent: Friday, July 31, 2020 13:37
To: Jerry Hatcher [redacted]
Cc: Andy Miller [redacted]
Subject: RE: Recall matter

As noted in the article on the Thurston County recall, we keep a wall between the person who writes the recall pleadings (Reid) and others in office—so Reid would not have known status

I understand your concern about timing. That is why I repeatedly emailed you last Friday on this issue, hoping to get on the agenda on Tuesday the 28th

From: Jerry Hatcher [redacted]
Sent: Friday, July 31, 2020 12:17 PM
To: Andy Miller [redacted]
Subject: RE: Recall matter

I think it was sent to me by Hope instead of Reid. Is it normal that the filing gets filed before a decision on representation? I ask because as you know the filing starts the time line and if the BOCC says no, its two days I loose in identifying an attorney and them having adequate time to prepare a case.. doesn't seem right

SHERIFF JERRY HATCHER
Benton County Sheriff's Office
7122 W. Okanogan Place, Bldg. B
Kennewick, Washington 99336
509-735-6555 ex[redacted]

From: Andy Miller [redacted]
Sent: Friday, July 31, 2020 12:12
To: Jerry Hatcher [redacted]
Cc: Andy Miller [redacted]
Subject: FW: Recall matter

Here is Reid's email with attachments

From: Reid Hay [redacted]
Sent: Friday, July 31, 2020 12:05 PM
To: Andy Miller [redacted]
Cc: Hope Houck [redacted]
Subject: RE: Recall matter

Andy,

Yes, electronic copies were sent at 10:25 a.m. today. A copy of the message is attached.

--- Reid

Reid Hay
Deputy Prosecuting Attorney
Benton County Prosecuting Attorney's Office
Phone: (509) 735-3591
Fax: (509) 222-3705

This email, any and all attachments hereto, and all information contained and conveyed herein may contain and be deemed confidential attorney client privileged and/or work product information. If you have received this email in error, please delete and destroy all electronic, hard copy and any other form immediately. It is illegal to intentionally intercept, endeavor to intercept or procure any other person to intercept or endeavor to intercept, any wire, oral or electronic communication.

From: Andy Miller [redacted]
Sent: Friday, July 31, 2020 12:01 PM
To: Reid Hay [redacted]
Cc: Andy Miller [redacted]
Subject: FW: Recall matter

Reid,

Were electronic copies forwarded to the parties? You can see Hatcher's question below.

If not, we could forward electronic copies to both Hatcher and Harvey?

From: Jerry Hatcher [redacted]
Sent: Friday, July 31, 2020 11:55 AM
To: Andy Miller [redacted]
Subject: RE: Recall matter

Andy,

I have not received the electronic copy as the email below indicates?? In addition when will I hear about my approval for representation especially since the time line has started?

SHERIFF JERRY HATCHER
Benton County Sheriff's Office
7122 W. Okanogan Place, Bldg. B
Kennewick, Washington 99336
509-735-6555 [redacted]

From: Andy Miller [redacted]
Sent: Friday, July 31, 2020 10:44
To: Jerry Hatcher [redacted]
Cc: Andy Miller [redacted]
Subject: FW: Recall matter

Jerry,

Please see the email below. Josie Delving will be mailing you the documents that were filed with the court.

If you like, you can come upstairs and we can provide you a copy now

From: Reid Hay [redacted]
Sent: Friday, July 31, 2020 10:29 AM
To: Andy Miller [redacted]; Ryan Brown [redacted]
Subject: Recall matter

Andy, Ryan,

The Hatcher recall documents have been filed with the court. Conformed copies are ready to go out by mail to the parties, and electronic copies have been sent.

Court Administration has assigned 9 a.m. on Thursday, August 13th for the hearing. I spoke again to Josie Delvin this morning, and her office will be mailing out the notices of hearing today.

-- Reid

Reid Hay
Deputy Prosecuting Attorney
Benton County Prosecuting Attorney's Office
Phone: (509) 735-3591
Fax: (509) 222-3705

This email, any and all attachments hereto, and all information contained and conveyed herein may contain and be deemed confidential attorney client privileged and/or work product information. If you have received this email in error, please delete and destroy all electronic, hard copy and any other form immediately. It is illegal to intentionally intercept, endeavor to intercept or procure any other person to intercept or endeavor to intercept, any wire, oral or electronic communication.

[redacted]

From: Jerry Hatcher [redacted]
Sent: Tuesday, August 4, 2020 12:10 PM
To: [redacted]
Subject: FW: Recall Representation

SHERIFF JERRY HATCHER
Benton County Sheriff's Office
7122 W. Okanogan Place, Bldg. B
Kennewick, Washington 99336
509-735-6555 ext. [redacted]

From: Andy Miller [redacted]
Sent: Thursday, July 30, 2020 8:50
To: Jerry Hatcher [redacted]
Subject: RE: Recall Representation

Thank you Jerry

From: Jerry Hatcher [redacted]
Sent: Wednesday, July 29, 2020 6:29 PM
To: Andy Miller [redacted]
Subject: Recall Representation

Thank you for the conversation today and I would request that the county represent me in my recall petition as I was acting in my official capacity. I would like to work with you on identifying the proper representation outside of your office as this is an important issue for voters of Benton County.

Thank you for your consideration in this matter have a good evening

SHERIFF JERRY HATCHER
Benton County Sheriff's Office
7122 W. Okanogan Place, Bldg. B
Kennewick, Washington 99336
509-735-6555 ext [redacted]

[redacted]

From: Jerry Hatcher [redacted]
Sent: Tuesday, August 4, 2020 12:10 PM
To: [redacted]
Subject: FW: Hatcher Recall

SHERIFF JERRY HATCHER
Benton County Sheriff's Office
7122 W. Okanogan Place, Bldg. B
Kennewick, Washington 99336
509-735-6555 ext. [redacted]
[redacted]

From: Andy Miller [redacted]
Sent: Thursday, July 30, 2020 9:25
To: Ryan Brown [redacted]>; Jerry Hatcher [redacted]
Cc: Andy Miller [redacted]
Subject: RE: Hatcher Recall

Jerry,

I am closing out this email string given the email that you sent last night at 6:29 pm. Let me know if you have different perspective. And thank you

From: Andy Miller [redacted]
Sent: Wednesday, July 29, 2020 1:45 PM
To: Ryan Brown [redacted] Jerry Hatcher [redacted]
Cc: Andy Miller [redacted]
Subject: RE: Hatcher Recall

Jerry,

Just following up on our brief conversation this afternoon. I understand you were in meetings this morning and not been able to read my email. I briefly summarized the below and we also discussed options as to who would represent. As I discussed in the original email in this string below, my first preference would be to ask Prosecutors in other counties. You expressed reservations about Shawn Sant, not because of any issue with him, but just that he may be too close. That sounds like an appropriate concern to me

I suggested that you take time and read the email fully and get back with me. You agreed and mentioned that you and the command staff had an appointment now but it sounds like we can close the loop this afternoon

From: Andy Miller [redacted]
Sent: Wednesday, July 29, 2020 11:25 AM
To: Ryan Brown [redacted]; Jerry Hatcher [redacted]
Cc: Andy Miller [redacted]
Subject: RE: Hatcher Recall

Jerry,

I just left a message on your voicemail about this. I think we should expedite as much as we can

From: Andy Miller [redacted]
Sent: Wednesday, July 29, 2020 10:41 AM
To: Ryan Brown [redacted]>; Jerry Hatcher [redacted]
Cc: Andy Miller [redacted]
Subject: RE: Hatcher Recall

Jerry,

Please see the email exchange between Ryan Brown and myself. Ryan is correct in that we should forward the request from you. However, as you can see from my email reply I am concerned that your request for representation is included in emails that also contain discussions between you and I that are protected by Attorney Client privilege.

We have two options.

1) You could email me a fresh, stand alone request asking for the county to represent you on the recall petition.

2) You could waive your attorney client privilege and I could then simply forward the email strings.

Please let me know your preference

From: Andy Miller [redacted]
Sent: Wednesday, July 29, 2020 10:36 AM
To: Ryan Brown [redacted]
Cc: Andy Miller [redacted]
Subject: RE: Hatcher Recall

I'm concerned that his actual request(s) are in the midst of lengthy emails that would include discussions protected by Attorney/ Client Privilege.

I will email Jerry and see if he wants to waive that privilege or if he wants to make a clean email request

From: Ryan Brown [redacted]
Sent: Wednesday, July 29, 2020 10:32 AM
To: Andy Miller [redacted]
Subject: RE: Hatcher Recall

Andy,

Could you forward me Jerry's request for legal counsel in the recall matter. I think that should be forwarded to the Board, don't you. And I wasn't in the loop in the ton of emails going back and forth between you and Jerry yesterday. Thanks.

Ryan

From: Andy Miller [redacted]
Sent: Wednesday, July 29, 2020 10:20 AM

To: Jerrod MacPherson <Jerrod.MacPherson[redacted]
Cc: Andy Miller[redacted]; Ryan Brown[redacted] Jerry Hatcher
[redacted]
Subject: Hatcher Recall

Yesterday, Sheriff Hatcher made a request for the county to represent him on the recall. Ryan Brown will provide you with the statute for the process in making the decision and he is copied on this email.
I am approving the request from the Prosecutor perspective. We should expedite the decision by the Board and I request that the matter be placed on the agenda for next Tuesday.

As our office has the statutory duty to prepare the ballot synopsis, it would not be appropriate for our office to represent Sheriff Hatcher on the recall. If the Commissioners approve the request for representation I will first ask other County prosecutors if they would be able to represent Sheriff Hatcher on the recall. Given the number of cases we have handled for other counties I think it is probable that one of them will represent Sheriff Hatcher at no cost to the county. If not, we would then look at retaining outside counsel. I would make the decision as to who we would retain but of course our office does not have any budget for that. I will defer to the Commissioners and the Sheriff as where in the budget that money would come from if the Commissioners approve the representation.

Ryan Brown will prepare a more formal letter with the statute and process but I wanted to get this process started. I am copying Sheriff Hatcher

[redacted]

From: Jerry Hatcher [redacted]
Sent: Tuesday, August 4, 2020 12:12 PM
To: [redacted]
Subject: FW: Recent Whistleblower Complaints/Request for Administrative Hearing

Sheriff Jerry Hatcher
Benton County Sheriff's Office
7122 W. Okanogan Place, Bldg. B
Kennewick, Washington 99336
509-735-6555 ext [redacted]
[redacted]

-----Original Message-----
From: Andy Miller [redacted]
Sent: Tuesday, July 28, 2020 17:48
To: Jerry Hatcher [redacted]
Cc: Ryan Lukson [redacted]>; Andy Miller [redacted]
Subject: RE: Recent Whistleblower Complaints/Request for Administrative Hearing

Thank you Jerry.

We have a separate email string with your signing of the form. I will follow up on that email string and close this email string out. If you have a different preference, please let me know

-----Original Message-----
From: Jerry Hatcher [redacted]
Sent: Tuesday, July 28, 2020 4:05 PM
To: Andy Miller [redacted]
Subject: RE: Recent Whistleblower Complaints/Request for Administrative Hearing

I have received it and signed the form and sent it back

Sheriff Jerry Hatcher
Benton County Sheriff's Office
7122 W. Okanogan Place, Bldg. B
Kennewick, Washington 99336
509-735-6555 ext. [redacted]
[redacted]

-----Original Message-----
From: Andy Miller [redacted]
Sent: Tuesday, July 28, 2020 15:15
To: Ryan Lukson [redacted]>; Jerry Hatcher [redacted]
Cc: Andy Miller [redacted]
Subject: RE: Recent Whistleblower Complaints/Request for Administrative Hearing

Jerry,

I don't believe that you replied to this email. Ryan Lukson resent you the link and I asked you to confirm that you received it again.

I do know that this issue came up earlier, perhaps last year, and you did not want to fill out the form. At that time, Lukson researched the law and provided you the legal basis for the requirement that the form be filled out

-----Original Message-----
From: Andy Miller [redacted]
Sent: Tuesday, July 28, 2020 2:31 PM
To: Ryan Lukson [redacted]; Jerry Hatcher [redacted]
Cc: Andy Miller [redacted]
Subject: RE: Recent Whistleblower Complaints/Request for Administrative Hearing

Thank you Ryan

Jerry, can you please confirm that you have the link?

-----Original Message-----
From: Ryan Lukson [redacted]
Sent: Tuesday, July 28, 2020 2:29 PM
To: Andy Miller [redacted]>; Jerry Hatcher [redacted]
Subject: RE: Recent Whistleblower Complaints/Request for Administrative Hearing

Below is the link to BCC 5.12

https://gcc01.safelinks.protection.outlook.com/?url=http%3A%2F%2Fbenton.municipalcms.com%2Ffiles%2Fdocuments%2Fbcc%2FCHAPTER%25205.12%2520BCC.pdf&data=02%7C01%7CJerry.Hatcher%40co.benton.wa.us%7C59a85c90288a446f84f208d83359181d%7Cc05d225d762f47cbab948fdea11b5ad7%7C0%7C0%7C637315805081102833&sdata=kAK1uAfXDI7oXgpFeiRyAQ02c0ga6xkvH6mroEcgLz0%3D&reserved=0

Ryan J. Lukson
Deputy Pros. Attorney, Civil
Benton Co. Pros. Attorney's Office
Phone: (509) 735-3591
Fax: (509) 222-3705

This email, any and all attachments hereto, and all information contained and conveyed herein may contain and be deemed confidential attorney client privileged and/or work product information. If you have received this email in error, please delete and destroy all electronic, hard copy and any other form immediately. It is illegal to intentionally intercept, endeavor to intercept or procure any other person to intercept or endeavor to intercept, any wire, oral or electronic communication.

-----Original Message-----
From: Andy Miller [redacted]
Sent: Tuesday, July 28, 2020 2:18 PM
To: Jerry Hatcher [redacted]
Cc: Ryan Lukson [redacted]>; Andy Miller [redacted]
Subject: RE: Recent Whistleblower Complaints/Request for Administrative Hearing

Ryan,

Could you please resend the link to Jerry?

-----Original Message-----
From: Jerry Hatcher [redacted]
Sent: Tuesday, July 28, 2020 2:17 PM
To: Andy Miller [redacted]
Subject: RE: Recent Whistleblower Complaints/Request for Administrative Hearing

Andy,

I'm trying to get back to it as I have several emails from you and I'm trying to answer each of them

Sheriff Jerry Hatcher
Benton County Sheriff's Office
7122 W. Okanogan Place, Bldg. B
Kennewick, Washington 99336
509-735-6555 ext [redacted]
[redacted]

-----Original Message-----
From: Andy Miller [redacted]
Sent: Tuesday, July 28, 2020 14:08
To: Jerry Hatcher [redacted]
Cc: Andy Miller [redacted]>; Ryan Lukson [redacted]
Subject: RE: Recent Whistleblower Complaints/Request for Administrative Hearing

Jerry,

Before I read the whole email, I want to clarify if you have filled out the form I sent you that is required by both the County resolution and Risk Pool? We have had a lengthy discussion on this before and Ryan Lukson did some research for you. I am adding Lukson to this email

You do agree that I need to follow the law?

-----Original Message-----
From: Jerry Hatcher [redacted]
Sent: Tuesday, July 28, 2020 1:19 PM
To: Andy Miller [redacted]
Subject: RE: Recent Whistleblower Complaints/Request for Administrative Hearing

Andy,

There was a lot more to the conversation we had yesterday and the countless emails we have exchanged about my request for timely and proper representation.

Reference the Administrative review filed Friday when I asked you what it was, you indicated this is the first time you have ever heard of such a thing and related to me that you had sent me an email with countless RCW that cover approx. 50-100 pages and I expressed my concerns about this type of representation. I am not a lawyer and I do not feel it is my role to have to do all the research to understand what type of hearing, time frames, standards that must be met, burden of proof issues. I asked you for representation because I was acting in my official capacity as Sheriff and you tell me to fill

out the forms requesting your services and you will evaluate if you will represent me or not. Quite honestly, I'm tire of what I perceive as a continued threat of no representation. When you go to a lawyer in the public sector you hire an expert to represent you and they immediately make you feel they are there to help and will represent to the best of their abilities, and they certainly provide you with answers so you can aid in representing your case. As the county Prosecutor I feel it is your job to represent me and that does not mean doing the bare minimum or checking a box by sending an email documenting or saying the narrative you want heard.

You have been very clear you have the power or authority to represent or not and I accept the power granted to you by law. This power is supposed to be used fairly, justice which representation is part of is supposed to be blind and without bias. Unfortunately, you also have been engaged in a lot of issues with me and we don't always see eye to eye on some issue, our relationship has become very strained over the last 9 months. You have openly expressed your angry with me and spending too much time on issues with me, in my opinion it shows in the services I get from your office. I want to be clear I don't want to deal with all these issues either but unfortunately there is a labor attorney that has a clear agenda and we are going to have to answer his challenges.

After countless emails from me to you expressing great concern of the completeness and accuracy of the investigation done by Ms. Blatt and how it could be used against me I begged you to have it either reinvestigated with all the information investigated not just some, or ask that my rebuttal information and facts be investigated. You denied my countless request to get to the truth. I clearly demonstrated the investigation done by Ms. Blatt was factually flawed and omitted vital information and facts. When I told you how important it was that the investigation be accurate and complete and that if you would not have that done I would have an independent law enforcement agency investigate the case so that it would be accurate, complete and include all information. You told me that that would be a form of retaliation and you would not represent me if I got sued. When did asking for a complete and accurate investigation to be done that actually investigated all the facts and information become a bad or illegal way to conduct investigations? We are not in the business of suppressing information or the truth.

When Mr. Harvey publicly announced he was going to file a recall and the flawed Blatt investigation was the cornerstone of that challenge I asked you if you would represent me as I understood the very short timelines in the process. You basically asked me if they had actually filled yet and when they did you would review the case. You were already intimately familiar with the Blatt investigation and you clearly understand the short time frame give in the process to develop a case strategy for the hearing. This is my livelihood and part of my career; I do not have the luxury of taking this recall on me lightly or getting around to it when it suits you. You clearly left me with a feeling that you may or may not even represent me and I am under a very tight timeline on getting the appropriate representation, there is too much at stake here.

I'm not writing this to cause additional friction between us but I have to say it. I sought outside council because it in the best interest of the Office of Sheriff, the Community we serve, and me as the Elected Sheriff. I feel at this point it's a conflict of interest for your office and I would respectfully ask you to agree and I would further ask that you authorize my legal representation cost as I was acting in the official capacity of my elected position.

- While I think we will both agree the relationship between our offices is currently strained and there are many conflicts we could both identify that would justify me having outside legal representation:
- You were involved in the alleged criminal complaint against me.
- Your office filed charges against me that were later dropped by Spokane County.
- Monica Hatcher has alleged in court documents that you forced her to make the report against me.
- I have repeatedly asked for the timely and proper representation or legal advice from your office and have not gotten it.
- Your office selected and hired the Blatt investigation be done against me and this is the cornerstone to the recall.
- I clearly demonstrated to your office the Blatt investigation was factually flawed and facts and information were omitted.

- I have made countless request for you to have the information and facts provided to Ms. Blatt investigate to ensure a complete and accurate investigation and have been denied.
- Your office has had many private conversations with Mr. Harvey the person filing the recall.
- I have not been provided with the allegations made against me from Tom Croskrey even though your office has been made aware from HR
- You have omitted to be angry with me personally
- Your office has admitted that they work for the County Commissioners not the Sheriff's Office during conflict and the Commissioners have openly and continually told me to resign.
- Your office does not have the experience or expertise to properly represent me in a recall
- Your office will be tied up representing me in an administrative hearing with the state

Andy, I'm not trying to pick a fight by saying these things and we can certainly belabor the points from our different prospective, my reasoning is to clearly demonstrate it would be in the best interest of all if I am provided outside legal counsel for the recall.

Sheriff Jerry Hatcher
Benton County Sheriff's Office
7122 W. Okanogan Place, Bldg. B
Kennewick, Washington 99336
509-735-6555 ext. [redacted]

-----Original Message-----
From: Andy Miller [redacted]
Sent: Monday, July 27, 2020 17:03
To: Jerry Hatcher [redacted]
Cc: Andy Miller [redacted]>; Ryan Lukson [redacted]
Subject: FW: Recent Whistleblower Complaints/Request for Administrative Hearing

Jerry,

I wanted to confirm this morning's conversation where we discussed that I had not heard back from you on these email strings. We also confirmed that you had asked about representation on the recall petition in June well before a petition being filed and you acknowledged that I said I would need to review the petition before making a decision. You did not make a request after the recall petition was filed and did not answer any of my emails. It of course is your right to hire an attorney at your own expense to represent you on the recall petition.

-----Original Message-----
From: Andy Miller [redacted]
Sent: Friday, July 24, 2020 11:41 AM
To: Jerry Hatcher [redacted]
Cc: Andy Miller [redacted]>; Jerry Hatcher [redacted]
Subject: RE: Recent Whistleblower Complaints/Request for Administrative Hearing

Jerry,

I went back and saw that you did not reply to my last emails about representation on the recall. I have attached them and one of those included our June 25 exchange.

On June 25th you emailed me that "Now that the Guild has indicated a desire for recall will your office be representing me in the process?"

I replied on the same day, June 25th asking you "Has there been a petition filed? I think the law anticipates that I review a recall petition before making that decision."

You did not reply to that email.

On July 22nd you were copied on an email exchange on which I answered to Mr Harvey that I had not heard from Sheriff Hatcher subsequent to the July 20 filing of the recall petition on the issue of representation.

You replied only to me stating
"I believe we spoke about this issue when I identified the Guild was going to use the Blatt investigation as their cornerstone for a recall and I was under impression you had no intent to represent me."

I replied on the same day, July 22nd
"I believe your memory is incorrect. I have attached the June 25 email exchange between you and I." That is the email that is referenced above which simply stated that I needed to review the petition before making the decision and noted that I was not aware of a petition being filed. That awareness was correct as the petition was not filed until July 20; 25 days after that email exchange.

You did not reply to that email.

Later on July 22nd, I emailed you again and advised you that RCW 4.96.041(3) sets out the procedure for the email. I then wrote

"I suggest that you review that and decide if you want to make a request for representation."

You did not reply to that email and did not have any communications with me about representation on the recall petition until the email I read this morning saying that you had retained representation.

In summary, you never asked for representation by the county after the recall petition was filed. I specifically advised you on July 22nd that you should review the statute and decide if you wanted to request representation from the County on the recall. The only communication prior to the recall petition being filed was that I would have to review an actual recall petition before deciding if the county would represent you.

-----Original Message-----
From: Andy Mille[redacted]
Sent: Friday, July 24, 2020 11:02 AM
To: Jerry Hatcher[redacted]
Cc: Andy Miller[redacted]
Subject: RE: Recent Whistleblower Complaints/Request for Administrative Hearing

Jerry, did you read my last two emails to you about the recall?

-----Original Message-----
From: Jerry Hatcher [redacted]
Sent: Friday, July 24, 2020 10:21 AM
To: Andy Miller[redacted]
Subject: Re: Recent Whistleblower Complaints/Request for Administrative Hearing

Andy, that's not fair I work more that 40 hours a week in fact the weekend before last I put in 20 just on the weekend alone and I work 4-10's with Friday's off that's 40 hours at a minimum.. there are many Friday's I have to work as well... What is a administrative hearing? And I was under the impression from you're email you would not represent me on the recall

Sent from my iPhone

> On Jul 24, 2020, at 10:11 AM, Andy Miller [redacted] wrote:
>

[redacted]

From: Jerry Hatcher [redacted]
Sent: Tuesday, August 4, 2020 12:10 PM
To: [redacted]
Subject: FW: Hatcher Recall

SHERIFF JERRY HATCHER
Benton County Sheriff's Office
7122 W. Okanogan Place, Bldg. B
Kennewick, Washington 99336
509-735-6555 ext. [redacted]
[redacted]

From: Andy Miller [redacted]
Sent: Thursday, July 30, 2020 9:25
To: Ryan Brown [redacted]; Jerry Hatcher [redacted]
Cc: Andy Miller [redacted]
Subject: RE: Hatcher Recall

Jerry,

I am closing out this email string given the email that you sent last night at 6:29 pm. Let me know if you have different perspective. And thank you

From: Andy Miller [redacted]
Sent: Wednesday, July 29, 2020 1:45 PM
To: Ryan Brown [redacted]; Jerry Hatcher [redacted]
Cc: Andy Miller [redacted]
Subject: RE: Hatcher Recall

Jerry,

Just following up on our brief conversation this afternoon. I understand you were in meetings this morning and not been able to read my email. I briefly summarized the below and we also discussed options as to who would represent. As I discussed in the original email in this string below, my first preference would be to ask Prosecutors in other counties. You expressed reservations about Shawn Sant, not because of any issue with him, but just that he may be too close. That sounds like an appropriate concern to me

I suggested that you take time and read the email fully and get back with me. You agreed and mentioned that you and the command staff had an appointment now but it sounds like we can close the loop this afternoon

From: Andy Miller [redacted]
Sent: Wednesday, July 29, 2020 11:25 AM
To: Ryan Brown [redacted]; Jerry Hatcher [redacted]
Cc: Andy Miller [redacted]
Subject: RE: Hatcher Recall

Jerry,

I just left a message on your voicemail about this. I think we should expedite as much as we can

From: Andy Miller [redacted]
Sent: Wednesday, July 29, 2020 10:41 AM
To: Ryan Brown [redacted] Jerry Hatcher [redacted]
Cc: Andy Miller [redacted]
Subject: RE: Hatcher Recall

Jerry,

Please see the email exchange between Ryan Brown and myself. Ryan is correct in that we should forward the request from you. However, as you can see from my email reply I am concerned that your request for representation is included in emails that also contain discussions between you and I that are protected by Attorney Client privilege.

We have two options.

1) You could email me a fresh, stand alone request asking for the county to represent you on the recall petition.

2) You could waive your attorney client privilege and I could then simply forward the email strings.

Please let me know your preference

From: Andy Miller [redacted]
Sent: Wednesday, July 29, 2020 10:36 AM
To: Ryan Brown [redacted]
Cc: Andy Miller [redacted]
Subject: RE: Hatcher Recall

I'm concerned that his actual request(s) are in the midst of lengthy emails that would include discussions protected by Attorney/ Client Privilege.

I will email Jerry and see if he wants to waive that privilege or if he wants to make a clean email request

From: Ryan Brown [redacted]
Sent: Wednesday, July 29, 2020 10:32 AM
To: Andy Miller [redacted]
Subject: RE: Hatcher Recall

Andy,

Could you forward me Jerry's request for legal counsel in the recall matter. I think that should be forwarded to the Board, don't you. And I wasn't in the loop in the ton of emails going back and forth between you and Jerry yesterday. Thanks.

Ryan

From: Andy Miller [redacted]
Sent: Wednesday, July 29, 2020 10:20 AM

To: Jerrod MacPherson [redacted]
Cc: Andy Miller [redacted]>; Ryan Brown [redacted]; Jerry Hatcher
[redacted]
Subject: Hatcher Recall

Yesterday, Sheriff Hatcher made a request for the county to represent him on the recall. Ryan Brown will provide you with the statute for the process in making the decision and he is copied on this email.
I am approving the request from the Prosecutor perspective. We should expedite the decision by the Board and I request that the matter be placed on the agenda for next Tuesday.

As our office has the statutory duty to prepare the ballot synopsis, it would not be appropriate for our office to represent Sheriff Hatcher on the recall. If the Commissioners approve the request for representation I will first ask other County prosecutors if they would be able to represent Sheriff Hatcher on the recall. Given the number of cases we have handled for other counties I think it is probable that one of them will represent Sheriff Hatcher at no cost to the county. If not, we would then look at retaining outside counsel. I would make the decision as to who we would retain but of course our office does not have any budget for that. I will defer to the Commissioners and the Sheriff as where in the budget that money would come from if the Commissioners approve the representation.

Ryan Brown will prepare a more formal letter with the statute and process but I wanted to get this process started. I am copying Sheriff Hatcher

[redacted] v. Sgt.

SHERIFF JERRY HATCHER
Benton County Sheriff's Office
7122 W. Okanogan Place, Bldg. B
Kennewick, Washington 99336
509-735-6555 ext. [redacted]

From: Jerry Hatcher
Sent: Wednesday, August 5, 2020 11:47
To: Andy Miller [redacted]
Subject: RE: Attempt to schedule prehearing conference for Docket No. 07-2020-GOV-00025 (Sheriff Jerry Hatcher v. Sgt. Erik Magnuson, et al)

Andy,

Again I appreciate your string on emails and your opinion on what they say or don't say.

I fundamentally disagree with your assertion that I somehow "waived any possibility by not raising any objection before they made their decision".

You have been crystal clear with your sole authority on whether or not I as the Sheriff can have representation and when I have asked countless times for outside representation you again remind me its your decision not mine. Understanding your role and authority I have brought you my concerns about the political issues and conflicts of interest here at Benton County countless times. If there was any sort of opportunity to have the decision made by a neutral third party then as my legal authority why did you not advise me of my options or advise the BOCC commissioners there are clear conflicts to them making this decision and they should recuse themselves.

I understand at this point the decision has been made and I'm going to financially have to deal with it but I again do not appreciate that this has somehow become my fault or neglect. It's bad enough

this will cost me tens of thousands of dollars I don't need you now telling me this is my fault.

SHERIFF JERRY HATCHER
Benton County Sheriff's Office
7122 W. Okanogan Place, Bldg. B
Kennewick, Washington 99336
509-735-6555 ext. [redacted]
[redacted]

From: Andy Miller [redacted]
Sent: Wednesday, August 5, 2020 11:02
To: Jerry Hatcher [redacted]
Cc: Andy Miller [redacted]
Subject: RE: Attempt to schedule prehearing conference for Docket No. 07-2020-GOV-00025 (Sheriff Jerry Hatcher v. Sgt. Erik Magnuson, et al)

Jerry,

I have attached three email strings that show that you were aware of the Commissioner's role in having to approve County representation for you on the recall petition.

On July 31st at 12:17 pm you emailed me asking if it was normal that the filing was done before a decision on representation was made(and this was after I had decided to give approval) You then wrote :

"I ask because as you know the filing starts the time line and if the BOCC says no, it's two days I loose in identifying an attorney and them having adequate time to prepare a case..doesn't seem right."

I replied that I understood your concern which is why I repeatedly emailed you on the previous Friday (July 24th) so I could have it on the agenda on July 28th. I believe you were out of state on the 24th.

To me, this July 31st email exchange is conclusive proof that you knew that the Board had to make a decision on representation and that you were aware of the possibility that they might refuse to approve representation.

I also attached a July 29th email where you were copied. I stated that I had approved representation and was advising Jerrod McPherson of the need to have the Commissioner action on the agenda for the August 4th meeting.

I also attached a different email string on July 29th after I approved the request that discussed the need for Commissioner action and that the Commissioners needed a written request from you. I gave you two options, you sending a clean request or my forwarding an email string that included

communications between you and I that contained Attorney/ Client information. You chose to send a clean email request.

I have had a chance to review a memo from the civil division which probably makes this moot. Even if you had objected to their making the decision of the basis of bias or asked me to make that objection for you, there does not appear to be a legal basis for that. I will forward the legal reasoning in that in a separate letter. However, you waived any possibility by not raising any objection before they made their decision.

From: Jerry Hatcher [redacted]
Sent: Wednesday, August 5, 2020 10:06 AM
To: Andy Miller [redacted]
Subject: RE: Attempt to schedule prehearing conference for Docket No. 07-2020-GOV-00025 (Sheriff Jerry Hatcher v. Sgt. Erik Magnuson, et al)

Andy,

Good morning, I did not raise the issue because you were my legal representation and told me you had approved it and sent it to the BOCC for approval and based on your legal advice, I thought it was the process until I read the documents on the Administrative hearing and realized the two processes were done totally different. My email asking about the process was to clarify how the process is supposed to be done.

Please don't accuse me of "waiting" like it was some intentional act, I fully expected with your approval to hire representation for me the BOCC would approve the request as they had on the administrative hearing you had recommended.

It certainly doesn't constitute any sort of a wavier on my part? I followed the legal advise given to me, in addition, I brought to your attention the conflicts of interest I felt your office had. You are well aware of all the political issues and conflicts of interest with the BOCC, if you felt they should have recuse themselves you as their legal advisor you should have advised them to do so.

Andy, this is not my fault and at the end of the day because of it, I'm left with a significant financial burden just to have the representation I am entitled to.

SHERIFF JERRY HATCHER
Benton County Sheriff's Office
7122 W. Okanogan Place, Bldg. B
Kennewick, Washington 99336
509-735-6555 ext. [redacted]

From: Andy Miller [redacted]
Sent: Wednesday, August 5, 2020 8:09
To: Jerry Hatcher [redacted]

Cc: Andy Miller [redacted]
Subject: RE: Attempt to schedule prehearing conference for Docket No. 07-2020-GOV-00025 (Sheriff Jerry Hatcher v. Sgt. Erik Magnuson, et al)

Jerry,

I worked at home yesterday afternoon so I could concentrate on the Whittaker case without interruption. I asked the civil division to review with and provide legal citations.

My immediate reaction was that if you had raised this issue with me prior to the Board decision I would have had an opportunity to research and raise the issue. However, you chose to wait until after the Board made their decision to raise any concerns. That would constitute a waiver. I am not sure it would have made a difference given my understanding of the law. But if there was a valid reason to ask the Board to recuse themselves, it would have had to have been done prior to the Board's decision

From: Jerry Hatcher [redacted]
Sent: Tuesday, August 4, 2020 9:49 AM
To: Andy Miller [redacted]
Subject: RE: Attempt to schedule prehearing conference for Docket No. 07-2020-GOV-00025 (Sheriff Jerry Hatcher v. Sgt. Erik Magnuson, et al)

Andy,

With the commissioners denying my request for representation on the recall issue, I'm curious as to the actual process for determining representation for me.

- Reference my request for representation on the recall you indicated that you had approved it and would recommend it to the BOCC to authorize the outside representation.
- On my request for representation on the administrative hearing you again approved the representation but did not take it to the BOCC and made arrangements through the Risk Pool for outside representation.

1. My question is who actually has the authority to authorize outside representation for an elected official?
2. How does the above answer align or support your requirement to represent an elected official.
3. Do mere allegations made by a guild attorney demonstrate an elected official is/was acting outside their scope?
4. What is the requirement for a BOCC to use when determining the authorization of representation.
5. How can a BOCC determine a elected official was operating outside before a judge determines the same question?

I deeply concerned that an elected official would not be given representation as the law requires and

the determination of this representation it left to three commissioners who have all openly expressed their bias towards me:

- Commissioner Beaver has sent me emails since October telling me to resign or get the hell out
- Commissioner Devlin was actively engage in my wife's case against me and has openly in BOCC meeting stated very disparaging and unprofessional remarks over and over towards me wanting me removed from office
- Commissioner Small called Sheriff Keane and asked him to talked to me about the Commissioners buying me out and asked him to reach out to me. I believe trying to buy an elected official out is illegal.

With this clear bias and agenda how do we by law allow them to make a decision on my representation in accordance with the law?

SHERIFF JERRY HATCHER
Benton County Sheriff's Office
7122 W. Okanogan Place, Bldg. B
Kennewick, Washington 99336
509-735-6555 ext. [redacted]
[redacted]

From: Andy Miller [redacted]
Sent: Monday, August 3, 2020 8:46
To: Jerry Hatcher [redacted]
Cc: Andy Miller [redacted]
Subject: RE: Attempt to schedule prehearing conference for Docket No. 07-2020-GOV-00025 (Sheriff Jerry Hatcher v. Sgt. Erik Magnuson, et al)

That seems to be the logical option. We discussed that last Friday in conversation with risk pool. They are going to contact Mr Leitch

From: Jerry Hatcher [redacted]
Sent: Sunday, August 2, 2020 10:29 AM
To: Andy Miller [redacted]
Subject: RE: Attempt to schedule prehearing conference for Docket No. 07-2020-GOV-00025 (Sheriff Jerry Hatcher v. Sgt. Erik Magnuson, et al)

Andy,

To save time I am meeting with the one already assigned to me by the rick pool can we just use that one?

SHERIFF JERRY HATCHER
Benton County Sheriff's Office
7122 W. Okanogan Place, Bldg. B
Kennewick, Washington 99336

509-735-6555 ext. [redacted]
[redacted]

From: Andy Miller [redacted]
Sent: Friday, July 31, 2020 17:05
To: Stephen Hallstrom [redacted]; Ryan Brown [redacted]; Ryan Lukson [redacted]>; [redacted]
Cc: Jerry Hatcher [redacted]; Andy Miller [redacted]>
Subject: RE: Attempt to schedule prehearing conference for Docket No. 07-2020-GOV-00025 (Sheriff Jerry Hatcher v. Sgt. Erik Magnuson, et al)

Mr. Robinson,

This week Sheriff Hatcher made a formal request to me for representation by the County. I met with our Risk Pool today and this afternoon I approved the request. Our office is working with the risk pool to retain a lawyer to represent Sheriff Hatcher. We hope to have that complete on Monday

It seems to be a good idea to get the lawyer on Board before setting the pretrial hearing. I understand the need to expedite

From: Stephen Hallstrom [redacted]us>
Sent: Friday, July 31, 2020 5:01 PM
To: Andy Miller [redacted] Ryan Brown [redacted]
Ryan Lukson [redacted]
Cc: Stephen Hallstrom [redacted]
Subject: Attempt to schedule prehearing conference for Docket No. 07-2020-GOV-00025 (Sheriff Jerry Hatcher v. Sgt. Erik Magnuson, et al)
Importance: High

FYI

Stephen Hallstrom
Senior Deputy Prosecuting Attorney
Office of the Benton County Prosecutor, Civil Division
7122 W. Okanogan Place, Bldg. A
Kennewick WA 99336
Phone: (509) 735-3591
Fax: (509) 222-3705

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From: Robinson, Nathan (OAH) [redacted]
Sent: Friday, July 31, 2020 4:59 PM
To: Jerry Hatcher [redacted]
Cc: Stephen Hallstrom [redacted]; Hope Houck [redacted]>; Jerrod MacPherson [redacted]
Subject: [EXTERNAL] Attempt to schedule prehearing conference for Docket No. 07-2020-GOV-00025 (Sheriff Jerry Hatcher v. Sgt. Erik Magnuson, et al)
Importance: High

CAUTION: This email originated from outside of Benton County. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Good afternoon again Sheriff Hatcher and Mr. Harvey,

I've had an opportunity to touch base with Administrative Law Judge (ALJ) Martin regarding this appeal and he is adamant that we get a prehearing conference scheduled on his calendar as soon as possible, as he is obligated to render a decision no later than September 4th, which is 45 days from the day Mr. Harvey's request for a hearing was submitted to Benton County, per RCW 42.41.040. **This necessitates holding both a prehearing conference and hearing, and writing a decision, within a month from this coming Monday.** While ALJ Martin "*may grant specific extensions of time beyond this period of time for rendering a decision at the request of either party upon a showing of good cause*" the ideal place and time for consideration of any potential scheduling requests is on the record, at the prehearing conference. ALJ Martin's availability for a prehearing conference the week after next is as follows:

Monday, August 10, 2020	8:00 a.m.		10:00 a.m.	11:00 a.m.	12:00 p.m.	1:00 p.m.	2:00 p.m.	3:00 p.m.	4:00 p.m.
Tuesday, August 11, 2020	8:00 a.m.	9:00 a.m.	10:00 a.m.	11:00 a.m.	12:00 p.m.	1:00 p.m.	2:00 p.m.	3:00 p.m.	4:00 p.m.
Wednesday, August 12, 2020	8:00 a.m.	9:00 a.m.	10:00 a.m.	11:00 a.m.	12:00 p.m.	1:00 p.m.	2:00 p.m.	3:00 p.m.	4:00 p.m.
Thursday, August 13, 2020		9:00 a.m.	10:00 a.m.	11:00 a.m.	12:00 p.m.	1:00 p.m.			4:00 p.m.
Friday, August 14, 2020	8:00 a.m.								

As before, please let me know as soon as possible which of these dates and times will work with your schedules for a telephonic prehearing conference by ***replying all*** with your complete availability. If you still haven't heard back from Mr. Miller or Mr. Lukson regarding whether or not the Civil Division will be representing you by then Sheriff Hatcher, you can advise ALJ Martin of as much at the prehearing conference, and he will give your situation his full consideration then.

Best,

Nate Robinson
Legal Assistant III
[redacted]

Washington State
Office of Administrative Hearings
949 Market Street, Suite 500
Tacoma, WA 98402
Phone: (253) 476-6888
Fax: (253) 593-2200

From: Robinson, Nathan (OAH)
Sent: Monday, July 27, 2020 2:35 PM
To: [redacted]
Cc: [redacted]
[redacted] conference for Docket No. 07-2020-GOV-00025 (Sheriff Jerry Hatcher v. Sgt. Erik Magnuson, et al)
Importance: High

Good afternoon Sheriff Hatcher and Mr. Harvey,

My name is Nate Robinson, and I am a Legal Assistant with the Office of Administrative Hearings (OAH) in Tacoma. Our office is in receipt of a request for an administrative hearing for the above-referenced matter.* I am contacting you in order to schedule a prehearing conference; below you will find ALJ Martin's availability. Please let me know as soon as possible which of the following dates and times will work with your schedules for a telephonic prehearing conference by ***replying all*** with your complete availability.

Wednesday, July 29, 2020	8:00 a.m.		10:00 a.m.	11:00 a.m.		1:00 p.m.	2:00 p.m.	3:00 p.m.	
Thursday, July 30, 2020	8:00 a.m.	9:00 a.m.			12:00 p.m.				4:00 p.m.
Monday, August 03, 2020	8:00 a.m.	9:00 a.m.		11:00 a.m.	12:00 p.m.		2:00 p.m.	3:00 p.m.	4:00 p.m.
Tuesday, August 04, 2020	8:00 a.m.	9:00 a.m.	10:00 a.m.	11:00 a.m.	12:00 p.m.	1:00 p.m.	2:00 p.m.	3:00 p.m.	4:00 p.m.
Wednesday, August 05, 2020	8:00 a.m.	9:00 a.m.	10:00 a.m.		12:00 p.m.	1:00 p.m.	2:00 p.m.	3:00 p.m.	4:00 p.m.
Friday, August 07, 2020	8:00 a.m.	9:00 a.m.	10:00 a.m.	11:00 a.m.	12:00 p.m.	1:00 p.m.	2:00 p.m.	3:00 p.m.	4:00 p.m.
Monday, August 10, 2020	8:00 a.m.	9:00 a.m.	10:00 a.m.	11:00 a.m.	12:00 p.m.	1:00 p.m.	2:00 p.m.	3:00 p.m.	4:00 p.m.
Tuesday, August 11, 2020	8:00 a.m.	9:00 a.m.	10:00 a.m.	11:00 a.m.	12:00 p.m.	1:00 p.m.	2:00 p.m.	3:00 p.m.	4:00 p.m.

Also, please note that scheduling on highlighted dates will require waiving your right to receive seven (7) days written notice of a hearing event which you are required to attend.

Thank you,

Nate Robinson
Legal Assistant III
[redacted]

Washington State
Office of Administrative Hearings
949 Market Street, Suite 500
Tacoma, WA 98402
Phone: (253) 476-6888
Fax: (253) 593-2200

*Please note that our referring contacts from the Civil Division of the Prosecutor's Office are included here as well for convenience in scheduling, if-and-when it is established that their office will be representing you Sheriff Hatcher. Please let me know as soon as possible if you intend to retain counsel to represent you in this appeal, or if you have done so already.

EXHIBIT

B

Jerry Hatcher

From: Jim Beaver
Sent: Monday, August 3, 2020 19:01
To: Jerry Hatcher
Subject: Resign

Mr. Hatcher please find a way to step down!!

Sent from my iPhone

Jerry Hatcher

From: Jim Beaver
Sent: Thursday, July 16, 2020 14:30
To: Jerry Hatcher
Subject: Budget requests

Mr. HATCHER I would accept your resignation immediately!! Budget requests are a joke! Get the h—/ out!!
Sent from my iPhone

Jerry Hatcher

From: Jim Beaver
Sent: Wednesday, April 22, 2020 18:41
To: Jerry Hatcher
Subject: Resignation

Jerry, I would accept your resignation immediately! Commissioner James R Beaver

Sent from my iPad

Jerry Hatcher

From: Jim Beaver
Sent: Friday, April 3, 2020 12:02
To: Jerry Hatcher
Subject: Community

Jerry, I still think it would be in the best interest of our community if you would resign. Commissioner James R Beaver

Sent from my iPhone

Jerry Hatcher

From: Jim Beaver
Sent: Saturday, March 7, 2020 13:43
To: Jerry Hatcher
Subject: Resign

Jerry, I just attended Mrs Price's funeral service this past Friday. She was the City of Kennewick Clerk. For me she was so much more. Reinforcing to always work hard and do the right thing. Once, again I would accept your resignation because it is the right thing to do! Respectful Commissioner James R Beaver

Sent from my iPad

Jerry Hatcher

From: Jim Beaver
Sent: Thursday, February 6, 2020 11:06
To: Jerry Hatcher
Subject: Resign

Jerry, again I would accept your resignation!! Commissioner James R Beaver
Sent from my iPhone

Jerry Hatcher

From: Jim Beaver
Sent: Wednesday, December 11, 2019 15:36
To: Jerry Hatcher
Subject: Re: Community

Jerry, I didn't know the word Narcissistic until why wife told me! Had no idea. Retired teacher go figure! Your in the wrong place! Commissioner James R Beaver

Sent from my iPhone

On Dec 11, 2019, at 2:31 PM, Jerry Hatcher <Jerry.Hatcher@co.benton.wa.us> wrote:

> Actually my email is not about myself it actually states "Elected by the people of Benton County" that's about the citizens of Benton County..it further states "to ensure public safety" that's about the work I'm elect by the people to do.
>
> <image003.jpg>**SHERIFF JERRY HATCHER**
> Benton County Sheriff's Office
> 7122 W. Okanogan Place, Bldg. B
> Kennewick, Washington 99336
> 509-735-6555 ext. 3260
> 509-378-7950 Cell
>
> ---
>
> **From:** Jim Beaver <Jim.Beaver@co.benton.wa.us>
> **Sent:** Wednesday, December 11, 2019 14:28
> **To:** Jerry Hatcher <Jerry.Hatcher@co.benton.wa.us>
> **Subject:** Re: Community
>
> Jerry, your all about yourself! Hiding behind the public safety badge!! I'm not not stupid!! Jim
>
> Sent from my iPhone
>
> On Dec 11, 2019, at 2:20 PM, Jerry Hatcher <Jerry.Hatcher@co.benton.wa.us> wrote:
>
>> Commissioner,
>>
>> I was elected by the people of Benton County to be their Sheriff and ensure public safety, that is exactly what I intend on doing.
>>
>> <image003.jpg>**SHERIFF JERRY HATCHER**
>> Benton County Sheriff's Office
>> 7122 W. Okanogan Place, Bldg. B
>> Kennewick, Washington 99336
>> 509-735-6555 ext. 3260
>> 509-378-7950 Cell

From: Jim Beaver <Jim.Beaver@co.benton.wa.us>
Sent: Wednesday, December 11, 2019 14:09
To: Jerry Hatcher <Jerry.Hatcher@co.benton.wa.us>
Subject: Community

Jerry, respectfully resign! Jim

Sent from my iPhone

Jerry Hatcher

From: Jim Beaver
Sent: Wednesday, December 11, 2019 14:28
To: Jerry Hatcher
Subject: Re: Community

Jerry, your all about yourself! Hiding behind the public safety badge!! I'm not not stupid!! Jim

Sent from my iPhone

On Dec 11, 2019, at 2:20 PM, Jerry Hatcher <Jerry.Hatcher@co.benton.wa.us> wrote:

> Commissioner,
>
> I was elected by the people of Benton County to be their Sheriff and ensure public safety, that is exactly what I intend on doing.
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> **From:** Jim Beaver <Jim.Beaver@co.benton.wa.us>
> **Sent:** Wednesday, December 11, 2019 14:09
> **To:** Jerry Hatcher <Jerry.Hatcher@co.benton.wa.us>
> **Subject:** Community
>
> Jerry, respectfully resign! Jim
>
> Sent from my iPhone

Jerry Hatcher

From: Jim Beaver
Sent: Wednesday, December 11, 2019 14:09
To: Jerry Hatcher
Subject: Community

Jerry, respectfully resign! Jim

Sent from my iPhone

Jerry Hatcher

From: Jim Beaver
Sent: Saturday, November 30, 2019 16:08
To: Jerry Hatcher
Subject: Resignation

Mr. Hatcher I was hoping to have your resignation letter before Thanksgiving!
Sent from my iPad

Jerry Hatcher

From: Jim Beaver
Sent: Thursday, November 28, 2019 18:13
To: Jerry Hatcher
Subject: Resignation

I would accept that immediately!

Sent from my iPhone

Jerry Hatcher

From: Jim Beaver
Sent: Wednesday, November 27, 2019 18:46
To: Jerry Hatcher
Subject: Re: Resign

Sent from my iPhone

On Nov 27, 2019, at 6:44 PM, Jim Beaver <Jim.Beaver@co.benton.wa.us> wrote:

> Jerry I've not seen a letter yet. Jim
> Sent from my iPhone

Jerry Hatcher

From: Jim Beaver
Sent: Wednesday, November 27, 2019 18:45
To: Jerry Hatcher
Subject: Resign

Jerry I've not seen a letter yet. Jim
Sent from my iPhone

Jerry Hatcher

From: Jim Beaver
Sent: Wednesday, November 27, 2019 16:49
To: Jerry Hatcher
Subject: Resignation

Jerry , please send your resignation letter! Jim

Sent from my iPad

Jerry Hatcher

From: Jim Beaver
Sent: Wednesday, November 27, 2019 16:34
To: Jerry Hatcher
Subject: Resignation

Jerry, I'm hopeful we get your resignation letter. Commissioner James Beaver

Sent from my iPad

Jerry Hatcher

From: Jim Beaver
Sent: Wednesday, November 27, 2019 12:42
To: Jerry Hatcher
Subject: Re: Response to Commissioner Delvin letter

Jerry, would you just resign please! Jim

Sent from my iPhone

On Nov 27, 2019, at 12:12 PM, Jerry Hatcher <Jerry.Hatcher@co.benton.wa.us> wrote:

SHERIFF JERRY HATCHER
Benton County Sheriff's Office
7122 W. Okanogan Place, Bldg. B
Kennewick, Washington 99336
509-735-6555 ext. 3260
509-378-7950 Cell

<Letter - Commissioner Delvin 11.27.19.docx>

Jerry Hatcher

From: Jim Beaver
Sent: Wednesday, November 27, 2019 12:17
To: Jerry Hatcher
Subject: Re: Response to Commissioner Delvin letter

Jerry, I stand by my opinion that you should resign immediately! Commissioner James R Beaver.

Sent from my iPhone

On Nov 27, 2019, at 12:12 PM, Jerry Hatcher <Jerry.Hatcher@co.benton.wa.us> wrote:

SHERIFF JERRY HATCHER
Benton County Sheriff's Office
7122 W. Okanogan Place, Bldg. B
Kennewick, Washington 99336
509-735-6555 ext. 3260
509-378-7950 Cell

<mime-attachment>

Jerry Hatcher

From: Jim Beaver
Sent: Tuesday, November 26, 2019 19:59
To: Jerry Hatcher
Subject: Community

Jerry, I think it be fitting for you to resign. We can't take our community and the dept. through this program! Respectfully. Commissioner James R Beaver

Sent from my iPhone

Jerry Hatcher

From: Jim Beaver
Sent: Monday, November 25, 2019 18:38
To: Jerry Hatcher
Subject: Re:

Jerry, I'm doing what I think is right! Always have always will.

Sent from my iPhone

On Nov 19, 2019, at 11:37 AM, Jerry Hatcher <Jerry.Hatcher@co.benton.wa.us> wrote:

> Commissioner,
>
> Thank you for the meeting today, it is very clear to me at this point nobody wants to discuss what is right, have transparency or how we got here. I was a little disappointed because you were very clear "that I would have the jail back by Tuesday" as you stated you supported Commissioner Delvin's initial request but it was all about the money and you never saw a financial plan or advantage then(2017) and you have seen it now. Apparently something changed, I will respect your decision but I had to try one more time to see if there was any hope to for teamwork and doing what's right in this county. Now I know thank you.
>
> Have a good Thanksgiving

<image003.jpg>**SHERIFF JERRY HATCHER**
Benton County Sheriff's Office
7122 W. Okanogan Place, Bldg. B
Kennewick, Washington 99336
509-735-6555 ext. 3260
509-378-7950 Cell

CERTIFICATE OF FILING AND SERVICE

The undersigned hereby declares, under penalty of perjury, under the laws of the State of Washington, that on August 10, 2020, I caused the original of the foregoing document to be:

{X} filed
{ } sent for filing
{ } e-filed online for Judge's bench copy through eMotion software

with the:

{X} Benton County Superior Court

I also caused a true and correct copy of the foregoing document to be served on the following, via email on August 10, 2020, to:

Alan E. Harvey Northwest Legal Advocates, LLC PO Box 61912 Vancouver, WA 98686	{ } E-Mail per service agreement to: Alan.Harvey@nwladvocates.com

DATED this 10 day of August, 2020, at Richland, Washington.

TELARE LAW, PLLC

By: _____
CARLA GONZALES, *Legal Assistant*

TELARE LAW, PLLC
1321 Columbia Park Trail
Richland, Washington 99352
PH: 509.737.8500
FAX: 509.737.9500

TELARE LAW, PLLC

October 09, 2020 - 4:17 PM

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	98968-1
Appellate Court Case Title:	In Re the Recall of Gerald D. Hatcher
Superior Court Case Number:	20-2-00980-3

The following documents have been uploaded:

- 989681_Briefs_20201009161540SC352956_7810.pdf
  This File Contains:
  Briefs - Appellants Reply
  The Original File Name was Binder3.pdf

A copy of the uploaded files will be sent to:

- Alan.Harvey@NWLAdvocates.com
- andy.miller@co.benton.wa.us
- prosecuting@co.benton.wa.us
- reid.hay@co.benton.wa.us

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Sender Name: Kristi Flyg - Email: kristi@telarelaw.com
Filing on Behalf of: George E. Telquist - Email: george@telarelaw.com (Alternate Email: george@telarelaw.com)

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