

April 22, 2022

In RE: The proposed amendment of CrLj 2.1

To whom it may concern,

First and foremost, it is a duty for all government workers to "protect and maintain individual rights" (See Article 1 Section 1 WA Const.). The proposed stripping away of procedures that allow citizens to exercise those rights, will only result in unfavorable outcomes. Mere inconvenience is no excuse for dereliction of duty.

The citizens should be properly considered as the trunk from which all branches of government are derived, it is from the citizens' grant of power in the state constitution that all authority for government action flows. This includes the powers of the prosecutor. With a citizen prosecution it is not properly considered that the judge is the prosecutor, the judge only decides if the case can proceed by the citizen filing the complaint, and takes no actions resembling prosecution, therefore the claims of violation of the separation of powers fails. There are ways this rule can be modified such that the annoyance of frivolous filings can be avoided, and the preservation of the check on prosecutorial power can be attained. For example if the judge can appoint a special prosecutor to the case upon the finding of probable cause in a sworn complaint.

This procedure was not created by court rule, as it has been claimed. It stems from the English common law, and on through the laws of the Territory of Washington.

1873 P 394 SEC.219. Upon complaint being made to any justice of the peace, or judge of the district court, in open court, or in vacation, that a criminal offense had been committed, he shall examine on oath the complainant, and any witness provided by him, and shall reduce the complaint to writing, and shall cause the same to be subscribed by the complainant, and if it shall appear that any offense has been committed of which the district court has exclusive jurisdiction, the magistrate shall issue a warrant reciting the substance of the accusation. and requiring the officer to whom it shall be directed, forthwith to take the person accused and bring him before the person issuing the warrant, unless he shall absent or unable to attend thereto, then before some other magistrate of the county, to be dealt with according to law, and in the same warrant may require the officer to summon such witnesses as shall be therein named, to appear and give evidence on the examination.

It is worth noting that in 1873 this procedure was only for misdemeanor crimes, this is where that aspect of the court rule flowed from. Felony crimes were only allowed to be brought by grand juries in that time.

1873 P 180 SEC.1 That no person shall be held to answer in any court for an alleged crime or offense, unless upon indictment by a grand jury, except in cases of misdemeanor before a justice of the peace, or before a court martial.

Also there is already a legislatively granted remedy for invalid citizen prosecutions / complaints. For the court to render this statute by the legislature moot, by removing citizen initiated prosecution, it would be an actual violation of the separation of powers.

RCW 10.16.080

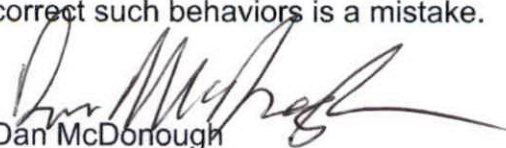
Discharge of defendant—Frivolous complaints.

If it should appear upon the whole examination that no offense has been committed, or that there is not probable cause for charging the defendant with an offense, he or she shall be discharged, and if in the opinion of the magistrate, the complaint was malicious, or without probable cause, and there was no reasonable ground therefor, the costs shall be taxed against the party making the complaint.

The claim by the Board of Governors of the Washington State Bar Association that "RCW 43.10.232 provides a more effective, and constitutional, mechanism for cases where a local elected prosecutor refuses to act." fails, as one would have to convince the governor to "request" the attorney general to pursue charges. The statute does not allow a citizen to utilize that process. Also it does not allow for prosecutions against prosecutors should such an action be necessary, which this court rule does allow.

There is an attempt at removing a balance of power here. Will it be the one that topples the whole system? Probably not, but it will make it more likely to topple in the future. Prosecutors would be wholly untouchable in any circumstance, for any crime, if this is removed.

See the following email chain evidencing what I allege could be considered misconduct by a prosecutor or, at the very least, actions unbecoming an officer of the court. That the government and court employees are working in such ways against the citizens, instead of for the citizens is quite abhorrent, and is the antithesis of what had been intended in the founding of this state. To take away the only process that can correct such behaviors is a mistake.


Dan McDonough
PO BOX 944
Preston, WA 98050



From: Dan McDonough <commercialmachinery@comcast.net>
Sent: Thursday, February 17, 2022 12:57 PM
To: Hepburn, Michael <Michael.Hepburn@kingcounty.gov>; Hendrix, Jill
<Jill.Hendrix@kingcounty.gov>
Subject: Code Enforcement case #E9900841

[EXTERNAL Email Notice!] External communication is important to us. Be cautious of phishing attempts. Do not click or open suspicious links or attachments.

Hello Michael and Jill,

I am writing to you today because I believe that you might be reviewing this case for further enforcement. I am asking you, please, will you review the lien, the Ordinance 13263 cited within the lien, and the code authorizing liens for code enforcement (KCC 23.40.010(A))? I would hope that you would report back to the DDES of their failure to record the lien within the prescribed time limit of 90 days after a cost is due. The last appeal was denied on June 16th 2015, and this lien was recorded almost a full three years later on May 11th, 2018.

23.40.010 Filing and contents.

A. Within ninety days from the date any civil penalty, civil fine, abatement cost, or enforcement cost is due pursuant to this title, a director may record a lien against the property of a person responsible for code compliance

I feel that I am being extorted out of the \$15,750.00 for this invalid lien, because my current financial situation requires refinancing to cover the clean up costs I have incurred on this property. I cannot get refinanced with this lien clouding my title. The DDES is still claiming this lien is valid despite the time limitation on recording not being met.

I ask you, please, will you give them the legal advice they need to make the proper choice as to not use color of law to take money from me unlawfully?

This code enforcement case and lien is from my father's actions who is now deceased, and it is worth noting that none of this was my responsibility in the first place. Yet I have cleaned it up and continue to get it into compliance myself at considerable expense. This is not me evading just enforcement, rather I hope you can see that this is

an unjust enforcement under color of law. I am still working with the code enforcement officer on this to bring this property into compliance, so I do not understand why the abatement officer has referred this to your offices.

If you feel that my assessment of this situation is mistaken, please do inform me of my mistake.

Sincerely,

Dan McDonough

Mr. McDonough,

We have reviewed your email, and in preparation of our reponse, we also reviewed your communications with Abatement Manager LaDonna Whalen at Permitting. The clear context from these communications is that as part of the course of settlement negotiations between you and Ms. Whalen, you made an offer to her to payoff the lien recorded against the subject property in full, and Ms. Whalen unconditionally accepted your offer.

PAO is duty-bound to represent the legal interests of its client, and these facts support the conclusion that a legally enforceable settlement for payment of the lien has been reached. Based upon the above, PAO requests that you please advise when Permitting should expect to receive the agreed upon payment which you promised.

Thank you,

Michael D. Hepburn

He/Him

Jill Higgins Hendrix

She/Her

Senior Deputy Prosecuting Attorneys

King County Prosecuting Attorney's Office

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Email: michael.hepburn@kingcounty.gov

Email: jill.hendrix@kingcounty.gov

Michael and Jill,

Thank you for the communication. To be perfectly clear, inquiring as to the place and the amount I would be forced to pay under duress is neither a settlement offer, nor a legally binding agreement. Here is exactly what was asked.

"Hello Ladonna,

Thank you for the communication. That is unfortunate, it seems pretty cut and dry that the 90 day period to file the lien was missed.

In the event I choose to pay this lien to preserve the time limited low interest rate I have in the works...

Would payment need to be check or ACH? Also what is the total payoff amount that would currently be accepted to release the lien?

*Thank you for your time,
Dan McDonough"*

Your email makes it clear that you are willing to bend your ethics. Attorneys are held to a high standard, as they should be. Particularly, The Rules Of Professional Conduct. I find these specifically to be pertinent to this situation. Emphasis added.

RPC 4.1

TRUTHFULNESS IN STATEMENTS TO OTHERS

In the course of representing a client a lawyer shall not knowingly:

- (a) make a false statement of material fact or law to a third person; or*
- (b) fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by Rule 1.6.*

Comment - Crime or Fraud by Client

[3] Under Rule 1.2(d), a lawyer is prohibited from counseling or assisting a client in conduct that the lawyer knows is criminal or fraudulent. Paragraph (b) states a specific application of the principle set forth in Rule 1.2(d) and addresses the situation where a client's crime or fraud takes the form of a lie or misrepresentation. Ordinarily, a lawyer can avoid assisting a client's crime or fraud by withdrawing from the representation. Sometimes it may be necessary for the lawyer to give notice of the fact of withdrawal and to disaffirm an opinion, document, affirmation or the like. In extreme cases, substantive law may require a lawyer to disclose information relating to the representation to avoid being deemed to have assisted the client's crime or fraud. If the

lawyer can avoid assisting a client's crime or fraud only by disclosing this information, then under paragraph (b) the lawyer is required to do so, unless the disclosure is prohibited by Rule 1.6.

RPC 4.3

DEALING WITH PERSON NOT REPRESENTED BY A LAWYER

In dealing on behalf of a client with a person who is not represented by a lawyer, a lawyer shall not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding. The lawyer shall not give legal advice to an unrepresented person, other than the advice to secure the services of another legal practitioner, if the lawyer knows or reasonably should know that the interests of such a person are or have a reasonable possibility of being in conflict with the interests of the client.

RPC 8.4

MISCONDUCT

It is professional misconduct for a lawyer to:

- (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;*
- (i) commit any act involving moral turpitude, or corruption, or any unjustified act of assault or other act which reflects disregard for the rule of law, whether the same be committed in the course of his or her conduct as a lawyer, or otherwise, and whether the same constitutes a felony or misdemeanor or not; and if the act constitutes a felony or misdemeanor, conviction thereof in a criminal proceeding shall not be a condition precedent to disciplinary action, nor shall acquittal or dismissal thereof preclude the commencement of a disciplinary proceeding;*

While I am not necessarily one to go reporting to the authorities, it has become apparent that I will have to in this case unless you immediately correct your actions. You have joined in the felony theft, under the color of law. I urge you to correct your course for the sake of your career.

I will not be paying this unless and until I am under the duress of the last minute to do so. And I would already be proceeding in court to recover it if I did.

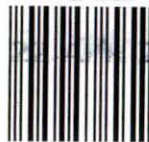
Sincerely,

Dan McDonough

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Preston WA 98050



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