Igor Lukashin

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April 30, 2024 ***Sent via email***

Ms. Erin L. Lennon
Clerk - Washington State Supreme Court
P.O. Box 40929
Olympia, WA 98504-0929
Email: supreme@courts.wa.gov

Re: Opposition to proposed amendments to RAP 12.4

Dear Ms. Lennon,

I appreciate the opportunity to submit my comments regarding proposed amendments to a variety of court rules listed on the Washington Courts website, including RAP 12.4.

Unfortunately, I was the subject of a recent order by the Washington Supreme Court in No. 100437-1, declaring me a "vexatious litigant", without pre-deprivation notice or the opportunity to argue post-deprivation that the filing restriction should not be imposed by filing a motion for reconsideration. The certiorari petition I filed, *Lukashin v. Washington State Department of Revenue*, No. 22-189, ("*Lukashin*") raising Due Process concerns, was denied by the US Supreme Court, but that was not a judgment as to the merits, *see e.g. United States v. Carver*, 260 U.S. 482, 490 (1923) ("The denial of a writ of certiorari imports no expression of opinion upon the merits of the case, as the bar has been told many times."), recently cited by *Brown v. Davenport*, 142 S. Ct. 1510, 1529 (2022).

A motion for reconsideration is an efficient way to alert the relevant decision-maker of a potential error. For example, Division One of the Court of Appeals filed an amended opinion and ordered that opinion published in *Watkins & Clark v. ESA Management*, No. 85225-6-I (Wash. App. Apr. 29, 2024), claiming, p. 12 n. 3:

> Although *Laffranchi* refers to "subject matter jurisdiction," we have since clarified "[i]f the type of controversy is within the superior court's subject matter jurisdiction, as it is here, then all other defects or errors go to something other than subject matter jurisdiction." *MHM & F, LLC v. Pryor*, 168 Wn. App. 451, 460, 277 P.3d 62 (2012)…

Yet, as *Ronald Wastewater*, our Supreme Court opinion (cited in *Lukashin* petition*, supra*), indicates, the*Laffranchi* statement of the law, rather than MHM&F's statement, might be the correct one. A motion for reconsideration (or a non-party motion to intervene for such purpose) could be appropriate to help state appellate courts avoid perpetuating incorrect statements of the law and creating diverging lines of appellate court cases.

Thus, motions for reconsideration should be encouraged, rather than be further restricted, as the proposed RAP 12.4 "clarification" purports to do.

In addition, reconsideration would be appropriate where the Supreme Court Clerk's office first promised a hearing on the merits of a request to waive a requirement of a RAP rule, and subsequently declined to take further action, also rejecting my attempt to timely file a motion to modify back in June 2013.

After I brought it up again via email to the Clerk's Office in June-July 2020, including after *Towessnute* order was issued on July 10, 2020, the then-Clerk Carlson still refused to open the case or abide by the requirements of RAP 17.7 (see attached emails). Of course, *State v. Towessnute*, 486 P.3d 111, 112-13 (Wash. 2021) demonstrated the breadth of RAP 1.2(c) to waive or modify the rules of appellate procedure by recalling a mandate over a century later and vacating "any conviction existing then or now", stating:

> Under the Rules of Appellate Procedure (RAP) 1.2(c), this court may act and waive any of the RAP "to serve the ends of justice." We do so today. We cannot forget our own history, and we cannot change it. We can, however, forge a new path forward, committing to justice as we do so.

If the Supreme Court Clerk could reconsider its predecessors' clearly-wrong decisions, it would surely be helpful to demonstrate the Court's true commitment to justice.

I oppose the currently proposed language to RAP 12.4. Whether or not it is adopted, I request that the Court consider adding, at the end of RAP 12.4(a), the following language:

> The restrictions in this subsection (a) are subject to waiver or modification when appropriate to serve the ends of justice, see RAP 1.2(c).

Thank you for considering my comments.

Sincerely,
s/ Igor Lukashin
Attachment follows

IGOR LUKASHIN <igor_lukashin@comcast.net> 7/24/2020 2:10 PM

Clear usurpation of authority under recent binding/persuasive authority: Motion to modify RE: Lukashin v AllianceOne - motion re: June 18, 2013 order

To CLERK OFFICE RECEPTIONIST <supreme@courts.wa.gov> •
igor_lukashin@comcast.net <igor_lukashin@comcast.net>

Dear Clerk Carlson,

Thank you for a detailed response. Alas, you ignored my citation to, inter alia, Isom v. Arkansas, 140 S. Ct. 342 (U.S. 2019), and again served to review and elaborate on your change of mind in the two June 2013 letter rulings. That violates my right to Due Process, and would require reversal, as the Court demonstrated just yesterday (and you would undoubtedly be familiar with it, as your signature attests that was filed in the Court at 8 a.m. yesterday on the title page) - *see In re Welfare of M.B.*, No. 97731-3, pp. 6–15, 19–20 (Wash. July 23, 2020) (unanimous) (denial of Due Process at the initial trial held sufficient to warrant reversal), available at http://www.courts.wa.gov/opinions/pdf/977313.pdf . As four Justices in ***Colvin v. Inslee***, No. 98317-8, *Dissent* pp. 1 – 2 , 6 (Wash. July 23, 2020) indicate, http://www.courts.wa.gov/opinions/pdf/983178.pdf , mandamus relief should be available (but should not be needed but for your staunch refusal to exercise RAP 1.2(c), including in this case, where you usurped the power in 2013 and again acted in unconstitutional review of your own prior and clearly erroneous action.

The difference you attempted to draw with ***Towessnute*** does not hold water - just yesterday, Division Three (which would not be binding on you, but would demonstrate that categorical refusal is untenable), considered a 24-years-late-filed appeal on the merits, where Commissioner applied RAP 18.8(b), well before recent guidance from this Court (including suspension of RAP 18.8(b) and very broad reach of RAP 1.2(c)) , ***see State v. Mendoza***, No. 36557-3-III, pp. 2–6 (Wash. App. Div. 3 July 23, 2020) (unp.), available at http://www.courts.wa.gov/opinions/pdf/365573_unp.pdf

See also previously-cited (No. 97825-5) State v. Gonzalez, No. 36421-6-III (Wash. Ct. App. Oct. 1, 2019) (extending time to appeal for over a year).

Another reason you gave, that the District Court judge declined, in a letter ruling, to issue the necessary statement, may go to the merits of whether waiver of RAP 4.3(a)(2) should be granted, but should not categorically bar it. By definition, a waiver would be sought either by a litigant whose judge delays the ruling too long or whose judge refuses to issue a requisite statement. Moreover, as shown in the original motion and repeatedly to the court, complete lack of statement of reasons violates Due Process, so District Court judge's 2013 letter was void for want of due process. *See e.g.* ***Kashem v. Barr***, 941 F.3d 358, 377–383 (9th Cir. 2019) (full statement of reasons neededd - "[T]he opportunity to guess at the factual and legal bases for a government action does not substitute for actual notice of the government's intentions." Al Haramain II, 686 F.3d at 986-87.); ***Zerezghi v. USCIS***, 955 F.3d 802, 808–13 (9th Cir. 2020) (“Individuals are necessarily entitled to a proper procedure to contest a government determination of ineligibility”; applying Matthews).

As a government representative, you do not get to decide to tell a person, including me, how I should petition the government (you unilaterally decided, after promising to open the case, that you will not do so), when in the process you burdened my First Amendment rights, *cf.* ***New Hope Family Services, Inc. v. Poole***, No. 19-1715-cv, pp. 54–75 (2d Cir. July 21, 2020), https://scholar.google.com/scholar_case?case=8282899130977772034& ; also available from: https://www.ca2.uscourts.gov/decisions.html . As New Hope stated, in part:

> "At the heart of the First Amendment" is the principle "that each person should decide for himself or herself the ideas and beliefs deserving of expression, consideration, and adherence." Agency for Int'l Dev. v. All. for Open Soc'y Int'l, Inc., 570 U.S. at 213 (quoting Turner Broad. Sys., Inc. v. FCC, 512 U.S. 622, 641 (1994)). Consistent with this principle, freedom of speech means that the "government may not prohibit the expression of an idea," even one that society finds "offensive or disagreeable."

Towessnute illustrated (yet again) that RAP 1.2(c) reach is truly unlimited, and your attempts to distinguish it fail. You may disagree with it, but, in that case, you (not I) should have the burden to obtain a limiting construction from the Court. Compare ***Williams v. Dart***, No. 19-2108, pp. 2, 8–10, 17–21, 21–27 (7th Cir. July 23, 2020), available at http://media.ca7.uscourts.gov/cgi-bin/rssExec.pl?Submit=Display&Path=Y2020/D07-23/C:19-2108:J:Hamilton:aut:T:fnOp:N:2551529:S:0 and citing well-established
Walker v. City of Birmingham, 388 U.S. 307 (1967)

While I would have a significant challenge proving a discriminatory animus on your part against me personally, the timing of your sudden change of heart (shortly after oral argument in *Lewis*, which came out eventually 5-4 in favor of AllianceOne) can go a long way, cf. ***George v. Youngstown State University***, No. 19-3581, pp. 13–14 (6th Cir. July 17, 2020), at https://www.opn.ca6.uscourts.gov/opinions.pdf/20a0221p-06.pdf ; see also ***Sommerfield v. Knasiak***, No. 18-2045, pp. 4, 6–8 (7th Cir. July 23, 2020) http://media.ca7.uscourts.gov/cgi-bin/rssExec.pl?Submit=Display&Path=Y2020/D07-23/C:18-2045:J:Wood:aut:T:fnOp:N:2551222:S:0 - which speaks to the fact that a now-retired decisionmaker may have somehow insulated your decision from this attack is likely a meritless argument. *See also* ***Bracy v. Gramley***, 520 U.S. 899, 904-910 (1997), available at https://scholar.google.com/scholar_case?case=18366988689608369514& which may authorize a discovery-like inquiry into the true reasons of your change-of-heart in 2013.

While I am not sure whether https://www.cjc.state.wa.us/ would have authority over your actions, I believe openly defying controlling Washington Supreme Court precedent represents judicial misconduct.

I understand you will not respond to this message.

Sincerely,
Igor Lukashin

> On 07/22/2020 8:24 AM OFFICE RECEPTIONIST, CLERK <supreme@courts.wa.gov> wrote:
>
> Mr. Lukashin:
>
> No action will be taken on your "RAP 17.7 MOTION TO MODIFY CLERK CARLSON'S JUNE 19, 2020 E-MAIL RULING" for the reasons explained in this email.
>
> First, my email below did not make a ruling on your case for which a motion to modify may be filed. The email simply advised you that the rules did not allow for opening a case seven years later.
>
> Your motion to modify relies on the Supreme Court's recent decision in *State of Washington v. Towessnute* as support for your request to open a case from 2013. However, in the *Towessnute* case, the Supreme Court had received an appeal many years ago and opened the case. The parties filed briefing and later the court issued an opinion deciding the case. This year, the opinion was brought to the Supreme Court's attention and the justices decided that it needed to be corrected. As to the matter you raise in your motion to modify, there was never a case opened at the Supreme Court.
>
> In the letter dated June 7, 2013, a copy of which is attached to your motion to modify, I indicated that a case would be opened when a copy of the notice of appeal was received from the district court clerk. However, additional information was subsequently received indicating that the district court judge had decided the case was not appropriate for direct review by the Supreme Court and had declined to enter the written statement required by RAP 4.3(a)(2). I advised the parties of this additional information in a letter dated June 18, 2013. I note that both of my letters advised you of the potential for review by the superior court and that you could seek review by the superior court of the district court judge's denial of your request for the written statement required by RAP 4.3.

In 2013, you objected to the decision not to open your case and filed a motion to modify. At that time, Clerk Carpenter reviewed the matter. In his letter dated June 28, 2013, he advised that no action would be taken on your motion to modify because the Deputy Clerk had not made a discretionary ruling in the case that could be the proper subject of a motion to modify pursuant to RAP 17.7. The Clerk again explained why the case would not be opened at the Supreme Court, and also referenced that review could be sought by the Thurston County Superior Court.

Your motion to modify has been placed in our unfiled papers. Any further correspondence in regard to this matter will also be placed in unfiled papers without acknowledgement of receipt.

Susan L. Carlson

Supreme Court Clerk

From: IGOR LUKASHIN [mailto:igor_lukashin@comcast.net]
Sent: Monday, July 20, 2020 4:55 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>; igor_lukashin@comcast.net
Subject: Motion to modify RE: Lukashin v AllianceOne - motion re: June 18, 2013 order

Dear Clerk Carlson,

Attached please find a motion to modify.

Your reasoning is untenable in light of ***State v. Towessnute*** (Wash. July 10, 2020).

Sincerely,

Igor Lukashin

> On 06/19/2020 9:53 AM OFFICE RECEPTIONIST, CLERK <supreme@courts.wa.gov> wrote:
>
> Mr. Lukashin: There are no provisions in the Rules of Appellate Procedure that would allow opening of this case seven years later. As indicated to you in the correspondence sent in 2013, your alternative to direct review by the Supreme Court was to seek review by the superior court. The time periods for seeking review are 30 days and that has long since expired. No action will be taken as to your attached motion.
>
> Susan L. Carlson, Clerk
>
> Washington Supreme Court
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> **From:** IGOR LUKASHIN [igor_lukashin@comcast.net]
> **Sent:** Thursday, June 18, 2020 2:28 PM
> **To:** OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>; igor_lukashin@comcast.net
> **Subject:** Lukashin v AllianceOne - motion re: June 18, 2013 order

Dear Clerk Carlson,

Seven years ago today, then a Deputy Clerk, you reversed your initial promise of opening a case and scheduling a hearing. As subsequent events clearly demonstrate, the only reason given for reversing your position is (and was at the time) legally untenable.

Therefore, I respectfully request that you make good on your original June 7, 2013 promise, assign a case number and schedule a hearing on this (and the original) motion.

Sincerely,

Igor Lukashin