APPENDIX

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APPENDIX PAGE OF INTERNET LINKS FOR FILINGS

Pro Se Flarity is not allowed a West Law account. This page is a substitute for the equivalent filings posted to our website exactly as stamped and recorded by https://ac.courts.wa.gov/index.cfm?fa=reg.otrReg.

AP-1(a):

Complaint, 20-2-16134-0, King County, WA Superior Court

https://inthejawsofjackals.com/state/01/01-Complaint.pdf

AP-1(b):

Supreme Court Petition for above case

https://inthejawsofjackals.com/state/07/07_Petition_for_Review.pdf

AP-1(c):

22-2-02806-34, Thurston County, WA Superior Court

https://inthejawsofjackals.com/state/08/08-Amended-Thurston-Complaint.pdf

AP-2

AP-1(d):

Supreme Court Petition, No. 103322-2, for above case

https://www.inthejawsofjackals.com/state/Review_No_1033222.pdf

AP-1(e):

Supplement for Oral Argument for *Tyler v. Hennepin County*

https://www.inthejawsofjackals.com/state/Tyler_Supplemental.pdf

AP-3

SUPREME COURT OF THE STATE OF WASHINGTON

No. 1033222

Review of Division II Cause 57601-5
22-2-02806-34
Before the Honorable Judge Wilson
Thurston County

Joe Patrick Flarity, a marital community
v.
Unknown Officials, in their official and personal capacities,
State of Washington, Et Al.

MOTION TO INCLUDE SUPPLEMENTAL AUTHORITY SUPPORTING RIGHT TO PRIVACY STATE V. McGee, 102134-8

1. IDENTITY OF PETITIONER

Joe Flarity, as an individual, residing at:
101 FM 946 S
Oakhurst, TX 77359
piercefarmer@yahoo.com

2. AUTHORITY TO INCLUDE

Supplements are allowed for recent decisions that influence the outcome by RAP 10.8(b).

3. APPLICABILITY

Div. II has allowed ""fruit of the poisonous tree" evidence that benefits officials. Flarity's Brief, P17, AP-136; Flarity's Reply to State, P8.

4. REASONS

For Flarity, Judge Wilson and Div. II are inconsistent with widely accepted 42 U.S.C. §§ 1983 protections as expertly demonstrated when Judge Bryan allowed trespassing Appraiser Heather Orwig to escape accountability by refusing to toll the case for RCW 4.92 delays. Our private affairs where then made public records and proved beneficial to the BOE whom brazenly cited Vohnof as authority. It would be shocking to the conscious if drug-dealing convicted murderers enjoy a higher level of protection for privacy than law abiding citizens.

I made a personal promise to permanently damaged Jon Vonhof that I would do everything in my power to remove his name from further trampling of Art. I, Sec. 7. **AP-15-17**. [REMOVED]

I respectfully request consistency with *McGee* for *all the people* and enforcement of *Matter of Maxfield, 945 P.2d 196, 133 Wash. 2D 332 (1997)*, to eliminate further abuses by officials openly defying the Panel's authority as an independent branch of government:

> The narrow exceptions to the warrant requirement are "'jealously and carefully drawn.'" Id. (quoting *Houser*, 95 Wash.2d at 149, 622 P.2d 1218).

The "but for," and *attenuation doctrine* also do not apply to Flarity. Per *McGee*:

> ...we know unlawful searches and arrests happen notwithstanding the protections called out in our founding documents, raising the question of **how** individuals may vindicate their rights in the wake of violations, and **when**, if ever, **illegally obtained evidence may be used against them**.

5. CONCLUSION

For the reasons stated, *McGee* should be included in the decision and the "how and when" question answered as required per Art. 1, Sec. 29.

CERTIFICATION OF WORD LIMIT.

The Word Count is 272 words and is within the limit of the RAP for Supplemental Authorities.

CERTIFICATION AND SIGNING:

Per RCW 9A.72.085, I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct and I have followed the RAP 13 to the best of my knowledge for this Motion.

Date of Signing: November 29, 2024

Signature of plaintiff: /S/

Joe Flarity, for himself
101 FM 946 S.
Oakhurst, TX 77359
piercefarmer@yahoo.com

AP-7

Filed
Washington State
Court of Appeals
Division Two
June 13, 2023

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

JOE PATRICK FLARITY, a marital community,
Appellant,
v.
ARGONAUT INSURANCE COMPANY, SUE TESTO, MARY ROBNETT, PIERCE COUNTY, a municipal corporation, STATE OF WASHINGTON, et al.,
Respondents.

No. 56271-5-II

UNPUBLISHED OPINION

PRICE , J. — Joe P. Flarity appeals the superior court's order dismissing his complaint against Argonaut Insurance Company (Argonaut), the State of Washington, and Sue Testo, Mary Robnett, and Pierce County (collectively Pierce County). Flarity

argues that the superior court erred by denying his motion to change venue. Flarity also argues that the trial court erred by dismissing his claims. We affirm.

FACTS

Flarity owned two parcels of real property in Pierce County that had been receiving the benefit of a reduced tax value from the county's Farm & Agricultural Tax Program. In July 2017, Sue Testo of the Pierce County Office of the Assessor-Treasurer sent Flarity a letter informing him that an appraiser from her department notified her that it appeared a house was being built on one of Flarity's parcels and a person was residing in a trailer on Flarity's other parcel. Because this would potentially disqualify his property from the farm tax program, Testo included action items that needed to be resolved in order for Flarity to continue to receive a tax benefit under the program. Flarity responded with a one-page letter denying he spoke to anyone at his property, suggesting that a transcript should be provided of the assessor's activities on his property, and stating that he had "zero interest in withdrawing any portion from my farm agreement." Clerk's Paper (CP) at 54.

On August 31, Testo sent Flarity another letter stating that because Flarity had not provided the necessary information she had requested in her July

letter, she was sending a "Notice of Removal." CP at 55. Testo encouraged Flarity to contact her to discuss the issues regarding the property. The Notice of Removal sent with the letter noted the reason for the change in designation as "[f]ailure to provide requested information for continued eligibility." CP at 56, 58. The Notice of Removal also included instructions on how to appeal to the County Board of Equalization (Board).

On September 19, Flarity responded to Testo's letter. Objecting to the potential removal of his property from the program, Flarity asserted the removal was not legally permissible and provided the following information: "**All the land and buildings are farm related on the two parcels**." CP at 62.

On September 27, Testo sent Flarity a letter offering to meet with him to resolve the outstanding issues regarding the information needed for the property to remain under the farm tax program. Testo stated that if Flarity did not meet with her to resolve the outstanding issues the property would have to be removed from the farm tax program.

Sometime between November 28 and December 4, Flarity sent a petition to the Board requesting an extension of the time limit for filing the petition.[1] Flarity explained that his petition was delayed

1 The letter is dated November 28; however it contains no post mark or date stamp. Documents from the Board indicate the letter was not actually mailed until December 4.

because he had property in Texas damaged by Hurricane Harvey, his father-in-law had a stroke, and he had received misinformation from employees of the Board, specifically Testo.

The Board denied the request. The Board noted that, because Pierce County had adopted a 60-day appeal period, Flarity had until October 30 to appeal the August 31 Notice of Removal. The Board explained its rationale for determining that none of Flarity's explanations for the delay justified an extension. Flarity attempted to appeal the determination with multiple filings at the Washington State Board of Tax Appeals, all of which were rejected.

On November 3, 2020, Flarity filed a complaint for damages and declaratory judgment in King County Superior Court against the State, Pierce County, and Argonaut based on allegations that the unconstitutional change in the status of his property caused him damages.[2] Later, Flarity amended his

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2 Flarity originally filed this action in King County Superior Court. King County Superior Court granted a change of venue and transferred the case to Pierce County Superior Court. Although Flarity asserts that the case was properly filed in King County Superior Court, he provides no assignment of error to the King County Superior Court decision nor does he provide argument or citation regarding the King County Superior Court decision. Accordingly, we do not review the King County Superior Court's decision transferring the case to Pierce County Superior Court.

complaint. The amended complaint alleged three claims:

COUNT 1
Claim for Violation of Due Process for Removal from Farm Status (against all defendants)

5. Washington State Constitution, Article 1, SECTION 3 PERSONAL RIGHTS. No person shall be deprived of life, liberty, or property, without due process of law. Government enforcement agent, Sue Testo, with assistance from the Pierce County Board of Equalization (hereafter BOE), Prosecutor Robnett, and Washington State Department of Revenue (hereafter DOR) did remove Flarity'sfarm status at significant personal cost effectively ending Flarity's ability to farm the property and forcing Flarity to restructure the property for sale as "best use" with no hearing. This action was in violation of RCW 84.34.320, RCW 84.34.370, RCW 84.34.108 and most significantly, RCW 84.34.300 which contains specific warnings pertaining to farmland removal. Flarity's intent to preserve farm status was made clear to Sue Testo in several letters from 2017. SEE EXHBIT 1.

CONSTITUTIONAL CHALLENGE

COUNT 2
Claim for Substantive Due Process Violation by Unconstitutional Statutes WAC 458-14-056 and RCW 84.40.038

6. WAC 458-14-056, with emphasis added, is as follows:

(3) Late filing of petition – Waiver of filing deadline. No late filing of a petition will be allowed except as provided in this sub-section. The board **may** waive the filing deadline if the petition is filed within a reasonable time after the filing deadline and the petitioner shows good cause, as defined in this subsection, for the late filing. . . . **The board's decision regarding a waiver of the filing deadline is final and not appealable to the state board of tax appeals**. . . .

7. *Vagueness doctrine: (a) fair notice as to what conduct is allowed or proscribed. (b) sufficient detail to prevent arbitrary enforcement.* These statutes are unconstitutional on their face because "may" ALWAYS forces obeisance on even the most compelling petitions. The DOR recognizes the arbitrary nature of these statutes and encouraged the BOE to reject all petitions for waiver as a standard process. The only *compelling state interest* in these statutes is the predatory collection of taxes at the

expense of a small number of taxpayers often suffering very difficult circumstances.

8. The people come forward in good faith, forced to expose their personal records to the public with the expectation that the BOE will likewise consider their waivers for delay in good faith, not understanding that "may" in the statute always means NO by pattern and practice in Pierce County. This is a live issue as the illegal practice is ongoing in Pierce County.

COUNT 3: Civil Rights Tort Claims are liable to the Argonaut Insurance Company

9. Flarity alleges that there is a bad faith agreement corrupting official behavior at work in Pierce County. The Argonaut Insurance Company knew or should have known that tens of millions of taxpayer dollars for civil rights violations of which they were liable was instead being sneaked onto Pierce County taxpayers. SEE EXHBIT 2. The people paid them about $306,000 of yearly premiums which is about what a small city (like Duvall or Buckley) pays for liability insurance. Despite these suspiciously low premiums, Argonaut should honor their contract for civil rights violations. Public insurers have a moral and legal responsibility for oversight of the officials. Argonaut has

> bre[a]ched its duty, contributing to Pierce County's pattern and practice of civil rights violations. This failure was an intentional, or negligent tort, by strict or implied liability.

CP at 38-40 (footnote omitted).

On July 2, 2021, Argonaut filed a CR 12(c) motion to dismiss. The same day, Pierce County also filed a CR 12(b)(6) motion to dismiss. On July 19, Flarity filed a notice that he was unavailable from July 19 until August 15 because his parents were visiting for a vacation. Flarity did not file any responses to Argonaut's or Pierce County's motions to dismiss. The superior court granted both motions to dismiss.

On August 9, 2021, Flarity filed a motion for a change of venue. Flarity also filed motions to vacate the orders dismissing his claims against Argonaut and Pierce County. On August 11, the State filed its own motion to dismiss based on CR 12(b)(6) and CR 12(c). The superior court heard all motions on September 10.

At the September 10 hearing, the superior court denied the motion to change venue. The superior court also granted the State's motion to dismiss.[3] However, rather than deny Flarity's motions to vacate the dismissals, the superior court reset

3 The superior court later denied Flarity's motion to reconsider the order granting the State's motion to dismiss.

consideration of Flarity's motions to September 24 to allow Flarity the opportunity to submit additional briefing in response to Argonaut's and Pierce County's motions to dismiss. On September 24, the superior court denied Flarity's motions to vacate and affirmed the dismissal of his claims. Flarity appeals.[4]

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4 After the close of briefing but prior to oral argument, Flarity filed numerous additional authorities with this court:

- Motion to Include Supplemental Authority Meredith v. State, No. 100135-5 (Mar. 27, 2023)
- Motion to Include Supplemental Authority Wilkins v. U.S. (Mar. 31, 2023)
- Motion to Include Supplemental Authority Quinn v. State, No. 100769-8 (Apr. 10, 2023)
- Motion to Include Supplemental Authority Idaho House Bill 242 Planned Parenthood v. Labrador, 1:23-cv-00142-DKG (Apr. 17, 2023)
- Motion to Include Supplemental Authority Martinez v. Anderson County 6:22-cv-171- JCB-KNM (Apr. 17, 2023)
- Motion to Include Supplemental Authority Evenson-Childs v. Ravalli County cv-21-89- M-DLC-KLD (Apr. 17, 2023)
- Motion to Include Supplemental Authority Tyler v. Hennepin County, MN et. al (Apr. 28, 2023)
- Motion to Include Supplemental Authority Harper v. Hall, No. 413PA21-2 (May 2, 2023)
- Motion to Include Supplemental Authority Axon Enterprise v. FTC, No. 21-86 SEC v. Michelle Cochran, No. 21-1239 (May 8, 2023)

ANALYSIS

Flarity argues that the superior court erred by denying his motion to change venue. Flarity also argues that the trial court erred by dismissing his claims. We affirm.[5]

The Respondents filed objections to some of these additional authorities, questioning their compliance with the rules. State of Washington's Objection to Appellant's Motion to Include Supplemental Authority (Apr. 11, 2023); State of Washington's Objection to Appellant's Motion to Include Supplemental Authority (*Tyler v. Hennepin County, MINN.*) (May 1, 2023). Although we decline to strike these additional authorities, we note they did not have any substantive effect on our decision.

5 At oral argument, Flarity appeared remotely by Zoom while other parties appeared in person. Flarity questioned whether the court rules required all parties to appear via Zoom when one party requested to appear remotely and suggested that it was improper for the other parties to appear in the courtroom when he was appearing remotely.

However, the protocols for oral argument at Division II provide, "For Judicial Panel oral arguments, those participants who have requested to do so will appear virtually, while those who have not will appear in the courtroom." WASH. STATE CT. OF APPEALS , DIV . TWO, ORAL ARGUMENT PROTOCOLS AND ADDITIONAL INFORMATION (undated), https://www.courts.wa.gov/appellate_trial_courts/div2/pdf/COA2%20Oral%20Argument%20Courtroom%20Protocols.pdf [https://perma.cc/6VSD-TP35]. Flarity was the only party to request a virtual appearance, and therefore, was the only

I. MOTION TO CHANGE VENUE

Flarity argues that the superior court erred by denying his motion to change venue from Pierce County to a neighboring county based on RCW 36.01.050. We disagree.

We review a superior court's decision on a motion to change venue for a manifest abuse of discretion. *Unger v. Cauchon*, 118 Wn. App. 165, 170, 73 P.3d 1005 (2003). A manifest abuse of discretion occurs "when no reasonable person would adopt the trial court's position." *Id.*

RCW 36.01.050(1) provides:

All actions against any county may be commenced in the superior court of such county, or in the superior court of either of the two nearest judicial districts. All actions by any county shall be commenced in the superior court of the county in which the defendant resides, or in either of the two judicial districts nearest to the county bringing the action.

But RCW 36.01.050 is not the only statute which addresses venue. RCW 4.12.020 provides:

> Actions for the following causes shall be tried in the county where the cause, or some part thereof, arose . . . (3) For the recovery of damages for injuries to the person or for injury to personal

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party to appear remotely. (We note that Division II has different protocols for its commissioner hearings.)

> property, the plaintiff shall have the option of suing either in the county in which the cause of action or some part thereof arose, or in the county in which the defendant resides, or if there be more than one defendant, where some one of the defendants resides, at the time of the commencement of the action.

And RCW 4.12.030 addresses the grounds that authorize a change of venue:

> The court may, on motion, in the following cases, change the place of trial when it appears by affidavit, or other satisfactory proof:
> (1) That the county designated in the complaint is not the proper county; or,
> (2) That there is reason to believe that an impartial trial cannot be had therein; or,
> (3) That the convenience of witnesses or the ends of justice would be forwarded by the change; or,
> (4) That from any cause the judge is disqualified; which disqualification exists in either of the following cases: In an action or proceeding to which he or she is a party, or in which he or she is interested; when he or she is related to either party by consanguinity or affinity, within the third degree; when he or she has been of counsel for either party in the action or proceeding.

Here, nothing in RCW 36.01.050 requires that this case be transferred out of Pierce County. And under RCW 4.12.025, Pierce County is presumptively the correct county for the cause of action because the property at issue and all the actions that gave rise to Flarity's cause of action occurred in Pierce County. Finally, Flarity has failed to present an affidavit or other proof that would support any of the four grounds to change venue in RCW 4.12.030. Flarity's conclusory, unsupported claim that he could not receive a fair trial in Pierce County is insufficient to warrant a change of venue.

Because there was no evidence supporting a change of venue, the superior court did not abuse its discretion in denying Flarity's motion. Accordingly, we affirm the superior court's order denying Flarity's motion for a change of venue.

II. MOTIONS TO DISMISS

Flarity brought three claims in his complaint: (1) a claim for damages for the removal of farm status against all three defendants, (2) a claim that RCW 84.40.038 is unconstitutionally vague, and (3) a claim that Argonaut is liable for paying civil rights claims paid by Pierce County.

Flarity argues that the superior court erred by dismissing all three of Flarity's claims. We disagree.

We review dismissals under CR 12(b)(6) and CR 12(c) de novo. *Wash. Trucking Assoc. v. Emp. Sec. Dep't,* 188 Wn.2d 198, 207, 393 P.3d 761, cert. denied, 138 S. Ct. 261 (2017). " 'We treat a CR 12(c) motion . . . identically to a CR 12(b)(6) motion.' " *Id.* (alteration in original) (quoting *P.E. Sys., LLC v. CPI Corp.*, 176 Wn.2d 198, 203, 289 P.3d 638 (2012)). "Dismissal under either subsection is 'appropriate only when it appears beyond doubt' that the plaintiff cannot prove any set of facts that 'would justify recovery.' " *Id.* (quoting *San Juan County v. No New Gas Tax*, 160 Wn.2d 141, 164, 157 P.3d 831 (2007)); *P.E. Sys.*, 176 Wn.2d at 210.

A. DISMISSAL OF CLAIM FOR REMOVAL OF FARM STATUS

Flarity's first claim was against all defendants for damages related to the loss of farm status on his property. Flarity alleged that all defendants violated multiple statutes when removing the farm status from his property. But because Flarity fails to establish that any referenced statute creates a private cause of action, the superior court properly dismissed this claim.

In order to determine whether a statute creates an implied cause of action, we apply the test from *Bennett v. Hardy*, 113 Wn.2d 912, 784 P.2d 1258 (1990). *Swank v. Valley Christian Sch.*, 188 Wn.2d 663, 675, 398 P.3d 1108 (2017) (confirming the use of

the *Bennet* test in subsequent cases). *Bennet* established a three-part test: "first, whether the plaintiff is within the class for whose 'especial' benefit the statute was enacted; second, whether legislative intent, explicitly or implicitly, supports creating or denying a remedy; and third, whether implying a remedy is consistent with the underlying purpose of the legislation." 113 Wn.2d at 920-21.

Flarity alleges Testo violated RCW 84.34.030, RCW 84.34.108, RCW 84.34.320, and 84.34.370 but offers no explanation or argument establishing that any of these statutes create a private cause of action. Nothing in any of the cited statutes indicates that the legislature intended to create a private cause of action for violation of the statutes cited by Flarity. Moreover, a private cause of action would not be consistent with the underlying purpose of the legislation, which is to maintain open space lands. RCW 84.34.010.

Because Flarity has failed to show that the statutes he references create a private cause of action, there are no set of facts that would entitle Flarity to relief for this claim. Therefore, the superior court properly granted all the defendants' motions to dismiss Flarity's claim for damages.

B. DISMISSAL OF CLAIM FOR UNCONSTITUTIONALITY OF RCW 84.40.038 AGAINST THE STATE

Flarity's second claim against the State alleged that RCW 84.40.038 and its corresponding administrative rule, WAC 458-14-056,[6] are unconstitutionally vague. The superior court properly dismissed this claim.

"Statutes are presumed to be constitutional, and the party asserting that a statute is unconstitutionally vague must prove its vagueness beyond a reasonable doubt." *State v. Evergreen Freedom Found.*, 192 Wn.2d 782, 796, 432 P.3d 805, *cert. denied*, 139 S. Ct. 2647 (2019). " 'A statute is vague if either it fails to define the offense with sufficient precision that a person of ordinary intelligence can understand it, or if it does not provide standards sufficiently specific to prevent arbitrary enforcement.' " State v. Yishmael, 195 Wn.2d 155, 176, 456 P.3d 1172 (2020) (quoting *State v. Eckblad*, 152 Wn.2d 515, 518, 98 P.3d 1184 (2004)). RCW 84.40.038(1) sets the time limit for filing petitions with the county board of equalization. And RCW 84.40.038(2) provides when the board of equalization may waive the filing deadline:

> The board of equalization may waive the filing deadline if the petition is filed within a reasonable time after the filing deadline and the petitioner shows good cause for the late filing. However, the

6 WAC 458-14-056 mirrors the language of RCW 84.40.038. Accordingly, we do not address WAC 458-14-056 separately from RCW 84.40.038.

board of equalization must waive the filing deadline for the circumstance described under (f) of this subsection if the petition is filed within a reasonable time after the filing deadline. The decision of the board of equalization regarding a waiver of the filing deadline is final and not appealable under RCW 84.08.130. Good cause may be shown by one or more of the following events or circumstances:

(a) Death or serious illness of the taxpayer or his or her immediate family;

(b) The taxpayer was absent from the address where the taxpayer normally receives the assessment or value change notice, was absent for more than fifteen days of the days allowed in subsection (1) of this section before the filing deadline, and the filing deadline is after July 1;

(c) Incorrect written advice regarding filing requirements received from board of equalization staff, county assessor's staff, or staff of the property tax advisor designated under RCW 84.48.140;

(d) Natural disaster such as flood or earthquake;

(e) Delay or loss related to the delivery of the petition by the postal service, and documented by the postal service;

(f) The taxpayer was not sent a revaluation notice under RCW 84.40.045 for the current assessment

> year and the taxpayer can demonstrate both of the following:
> (i) The taxpayer's property value did not change from the previous year; and
> (ii) The taxpayer's property is located in an area revalued by the assessor for the current assessment year; or
> (g) Other circumstances as the department may provide by rule.

Flarity asserts that the statute fails to provide standards to prevent arbitrary enforcement. However, the plain language of the statute clearly contains standards for determining whether good cause is established by providing specific, enumerated grounds that qualify as good cause. Therefore, as a matter of law, RCW 84.40.038 is not unconstitutionally vague. Accordingly, the superior court properly granted the State's motion to dismiss Flarity's claim that RCW 84.40.038 is unconstitutionally vague.

C. CLAIM AGAINST ARGONAUT

Finally, Flarity claimed that Argonaut is liable for civil rights claims that were actually paid by Pierce County taxpayers. Flarity has failed to establish that such a cause of action exists.

Flarity has alleged nothing more than that Argonaut is Pierce County's insurance company. He has provided no factual or legal basis for his

contention that an individual taxpayer has a claim against a county's insurance company for sums the individual taxpayer believes the insurance company, rather than the taxpayers, should have paid. Further, we have found no legal basis for such a claim.

Because Flarity's claim against Argonaut insurance company has no legal basis, there is no set of facts that would entitle Flarity to relief for such a claim. Accordingly, the superior court properly granted Argonaut's motion to dismiss Flarity's claim that it is liable for civil rights torts claims.

CONCLUSION

The superior court did not abuse its discretion by denying Flarity's motion to change venue. Further, the superior court properly dismissed all of Flarity's claims. Accordingly, we affirm the superior court's orders.[7]

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7 Flarity also argues that the superior court's orders should be reversed because they were obtained by trial irregularities and that we should remand this case to allow him to amend his complaint to remedy any deficiencies. However, because Flarity's complaint failed to allege any legal cause of action, dismissal of his complaint was proper. Moreover, although Argonaut and Pierce County obtained the initial dismissal without a response from Flarity, the superior court ultimately allowed Flarity to present briefing and argument on the motions to dismiss by extending the date for consideration of his motions to vacate until

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

/s/ Price, J.
PRICE , J.

We concur:

/s/ Lee, P. J.
LEE , P.J.

/s/ Che, J.
CHE , J.

September 24 and inviting additional briefing. And because Flarity has failed to allege any legal cause of action, remand to amend his complaint would be futile. *Nakata v. Blue Bird, Inc.*, 146 Wn. App. 267, 278, 191 P.3d 900 (2008), *review denied*, 165 Wn.2d 1033 (2009).

AP-27

Filed
Washington State
Court of Appeals
Division Two
July 2, 2024

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

JOE PATRICK FLARITY, a marital community,
Appellant,
v.
UNKNOWN WASHINGTON STATE OFFICIALS in their official and personal capacities, and STATE OF WASHINGTON, et. al,
Respondents.

No. 57601-5-II

UNPUBLISHED OPINION

LEE, J. — Joe P. Flarity appeals the superior court's order dismissing his claims against the State of Washington. Flarity argues that the superior court erred by denying his motion to certify questions to this court, by dismissing his complaint, and by

granting the State's motion for sanctions. We affirm the superior court.

FACTS

This is the fourth lawsuit arising from Flarity's dispute with Pierce County and the State over tax assessments for property he owned in Buckley, Washington.[8]

In 2019, Flarity filed an appeal with the Board of Tax Appeals (BTA) seeking review of the Pierce County Assessor's 2019 assessment of one of his parcels of property. At the same time, Flarity also attempted to appeal two decisions of the Pierce County Board of Equalization (BOE) denying his request for an extension of time to challenge the Pierce County Assessor's decision to remove his property from farm status.

With regard to the BOE's decision denying Flarity's request for an extension of time, the BTA denied Flarity's appeal because WAC 458-14-056(3) states that BOE decisions on extensions of time are final and not appealable to the BTA. With regard to Flarity's appeal of the 2019 tax assessment, the BTA accepted the appeal under No. 19-105. On August 24,

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8 The facts underlying the dispute are not relevant for resolving the issues raised on appeal. However, we provide a full recitation of the facts underlying the dispute in *Flarity v. Argonaut Insurance Co. et al*, No. 56271-5-II (Wash. Ct. App. June 13, 2023) available at https://www.courts.wa.gov/opinions/pdf/D2%2056271-5-II%20Unpublished%20Opinion.pdf.

2022, the BTA issued its final decision in No. 19-105, and sustained the Pierce County Assessor's assessment.

On October 11, 2022, Flarity filed a complaint against Vikki Smith, the former director of the Department of Revenue (DOR), John Ryser, acting director of DOR, and the State of Washington. The complaint asserted three specific claims: (1) a due process violation based on the BTA delay in issuing its final decision, (2) a claim that BTA's due process failures amounted to constructive fraud, and (3) review of the administrative ruling in No. 19-105.

Flarity also sought declaratory judgment. Specifically, Flarity requested that the superior court declare (1) the BTA's delay in issuing its decision was unconstitutional, (2) specific WACs and RCWs unconstitutional because they allowed due process violations, (3) inspection of property by trespass is illegal, (4) BOE hearings must be open to the public, (5) the statute requiring exhaustion of remedies is unconstitutional, and (6) the BTA's final decision in No. 19-105 invalid. And Flarity requested damages, a refund for taxes paid on the property for 2018 through 2021, and unspecified injunctive relief.

On October 13, Flarity filed an amended complaint naming unknown Washington officials as defendants in place of Smith and Ryser. The complaint was otherwise unchanged.

On October 17, Flarity filed a motion to have questions certified to this court under RAP 2.3(b)(4). Specifically, Flarity sought to have the following questions certified to this court:

> . . . Question 1: Delay as a state weapon
>
> . . . .
>
> . . . Question 2: When does an assessor inspection violate privacy
>
> . . . .
>
> . . . Question 3: Are state attacks on fundamental liberties indicative of constructive fraud
>
> . . . .
>
> . . . Have peculiar forces risen to the level where federal oversight is necessary?
>
> . . . Does the collection of taxes trump fundamental liberties?

Clerk's Papers at 550-52 (boldface omitted). The superior court denied Flarity's motion to certify questions to this court.

On November 3, Flarity filed a motion to amend his complaint to add Pierce County as a defendant. Flarity's motion to amend was noted for November 18. On November 7, the State filed a CR 12(b)(6) motion to dismiss based on a failure to state a claim upon which relief can be granted. The State's motion to dismiss was noted for December 9. On November 17, the superior court ordered the hearing on Flarity's motion to amend be continued to December

9 so the motion could be heard at the same time as the State's motion to dismiss.

In its motion to dismiss, the State argued that Flarity's complaint was a request for judicial review of agency action under the Administrative Procedure Act (APA), chapter 34.05 RCW. The State also argued that because Flarity failed to timely and properly serve the required parties under the APA—the BTA and the Pierce County Assessor—Flarity's petition for judicial review must be dismissed. The State further argued several reasons why Flarity's remaining claims must be dismissed, including exceeding the scope of review under the APA, collateral estoppel, quasi- judicial immunity, and failure to comply with RCW 4.92.100, which requires presentation of damages claims to the office of risk management prior to filing a complaint.

On November 23, Flarity filed a motion to stay the case pending appeal and noted the motion for December 9. In his motion to stay, Flarity attached a notice of appeal or, alternatively, a notice of discretionary review that he had filed with this court to challenge the superior court's order continuing the hearing on Flarity's motion to amend from November 18 to December 9. In his notice of appeal to this court, Flarity argued that the superior court's order was appealable as a matter of right under RAP 2.2(a)(3). Flarity also argued that discretionary review would be warranted under RAP 2.3(b)(2). The State

opposed the stay. The State also argued the motion to stay was patently frivolous and requested sanctions for responding to the motion.

On December 9, the superior court heard the State's motion to dismiss, Flarity's motion to amend, and Flarity's motion to stay the appeal. At the hearing, Flarity asserted that he had filed a motion for sanctions against the State. The superior court stated that the motion for sanctions was not properly noted and the superior court was not prepared to consider it. Thus, the superior court declined to hear Flarity's motion for sanctions.

The superior court denied Flarity's motion to amend his complaint as futile because there was no way that Flarity could timely serve the Pierce County Assessor as required by the APA. The superior court also denied Flarity's motion for a stay and found that the motion for a stay violated CR 11. The superior court imposed sanctions against Flarity in the amount of $1,775.00, which was the reasonable cost of the attorney general responding to Flarity's motion. The superior court also found that Flarity's complaint was an action seeking judicial review of the BTA's decision in No. 19-105, which was governed by the APA and that Flarity failed to serve the BTA and the Pierce County Assessor within the statutorily prescribed time limit. Therefore, the superior court dismissed Flarity's APA claims. The superior court also dismissed Flarity's

damages claims for failure to comply with RCW 4.92.100.

The superior court granted the State's motion to dismiss and dismissed Flarity's amended complaint with prejudice. The superior court also awarded statutory attorney fees in the amount of $200. The superior court entered a judgment against Flarity that included $1,775 for sanctions and $200 for statutory attorney fees.

Flarity appeals.

ANALYSIS

Flarity appeals, arguing that the superior court erred by dismissing his complaint and sanctioning him for his motion to stay pending appeal. We disagree and affirm the superior court.

A. MOTION TO DISMISS COMPLAINT

Flarity argues that the superior court erred in dismissing his amended complaint against the State. We disagree.

We review a dismissal under CR 12(b)(6) de novo. *Wahkiakum Sch. Dist. No. 200 v. State,* 2 Wn.3d 63, 77, 534 P.3d 808 (2023). "Dismissal is appropriate if the court concludes that the plaintiff can prove no set of facts that would justify recovery." *Id.* We presume the factual allegations in the complaint are true and

draw all reasonable inferences in favor of the plaintiff. Id. We may affirm the superior court on any ground supported by the record. See *Eylander v. Prologis Targeted U.S. Logistics Fund*, LP, 2 Wn.3d 401, 407, 539 P.3d 376 (2023).

The APA is the exclusive means of reviewing an agency action. RCW 34.05.510. Under RCW 34.05.542(2), "[a] petition for judicial review of an order shall be filed with the court and served on the agency, the office of the attorney general, and all parties of record within thirty days after service of the final order." When a party fails to comply with the service requirements of RCW 34.05.542(2), dismissal is the appropriate remedy. *Sprint Spectrum, LP v. State*, 156 Wn. App. 949, 963, 235 P.3d 849 (2010), review denied, 170 Wn.2d 1023 (2011).

Here, Flarity's complaint was clearly an attempt to seek judicial review of the BTA decision in No. 19-105, despite also attempting to raise additional claims. Therefore, Flarity's complaint is governed by the APA. See RCW 34.05.510. The BTA issued its decision on August 24, 2022. In order to comply with the APA requirements, the complaint seeking judicial review had to be served on the agency (the BTA) and all parties of record (the Pierce County Assessor) by September 23, 2022. RCW 34.05.542(2). It is undisputed that Flarity has failed to serve either the BTA or the Pierce County Assessor, and

therefore, Flarity has failed to comply with the service requirements of RCW 34.05.542(2).[9]

Accordingly, the superior court properly dismissed Flarity's complaint.[10]

B. SANCTIONS FOR MOTION TO STAY PENDING APPEAL

---

9 Flarity appears to argue that he should be permitted to amend his complaint to add the appropriate parties. However, no amendment to the complaint can cure Flarity's failure to serve the Pierce County Assessor or the BTA within the 30 days required by RCW 34.05.542(2). Therefore, amending the complaint would be futile. *Nakata v. Blue Bird, Inc.,* 146 Wn. App. 267, 278, 191 P.3d 900 (2008), *review denied,* 165 Wn.2d 1033 (2009).

10 Even if the petition had been properly served, there would be an issue of whether the declaratory judgment claims and the damages claims should be dismissed as outside the scope of a petition. *See* RCW 34.05.554 (prohibiting raises issues not before the agency on judicial review). And this is not a complaint *solely* for damages based on an agency action which would be exempt from APA requirements. RCW 34.05.510(1) ("The provisions of this chapter for judicial review do not apply to litigation in which the *sole issue* is a claim for damages or compensation and the agency whose action is at issue does not have statutory authority to determine the claim.") (emphasis added). Accordingly, the dismissal of the entire complaint was warranted based on the failure to comply with RCW 34.05.542(2).

Furthermore, even if Flarity's claim for damages is considered separately from Flarity's APA claims, dismissal was proper because Flarity failed to comply with RCW 4.92.100. RCW

Flarity argues that the superior court erred by imposing sanctions against him for filing the motion to stay pending appeal. We disagree.

We review the imposition of CR 11 sanctions for an abuse of discretion. *Stiles v. Kearney*, 168 Wn. App. 250, 260, 277 P.3d 9, *review denied*, 175 Wn.2d 1016 (2012). The superior court abuses its discretion if its decision in manifestly unreasonable or based on untenable grounds. *Id.* CR 11 addresses two types of filings: (1) baseless filings and (2) filings made for an improper purpose. *West v. Wash. Ass'n of County Officials*, 162 Wn. App. 120, 135, 252 P.3d 406 (2011). A filing is baseless if it is "'(a) not well-grounded in fact, or (b) not warranted by (i) existing law or (ii) a good faith argument for the alteration of existing law.'" *Id.* (internal quotation marks omitted) (quoting *MacDonald v. Korum Ford*, 80 Wn. App. 877, 883-84, 912 P.2d 1052 (1996)). If a party files a baseless motion, the superior court may impose sanctions upon a party's motion or on its own initiative. CR 11(a).

4.92.100(1) requires that all claims for damages against the State must be presented to the office of risk management. The remedy for failure to comply with the claim filing requirements of RCW 4.92.100 is dismissal of the complaint for damages. *Hyde v. Univ. of Wash. Med. Ctr.*, 186 Wn. App. 926, 929, 347 P.3d 918, *review denied*, 184 Wn.2d 1005 (2015). It is undisputed that Flarity failed to file a claim for damages with the office of risk management in compliance with RCW 4.92.100; therefore, the superior court properly dismissed Flarity's damages claims against the State.

Here, Flarity was sanctioned for filing a baseless motion to stay the superior court proceedings based on Flarity's appeal of the superior court's order continuing his motion to amend for three weeks. Flarity argued that the continuance order was appealable as a matter of right under RAP 2.2(a)(3), or that discretionary review should be granted under RAP 2.3(b)(2). Neither of these arguments is well-grounded in law.

RAP 2.2(a)(3) allows direct appeal of "[a]ny written decision affecting a substantial right in a civil case that in effect determines the action and prevents a final judgment or discontinues the action." Here, the superior court's order simply continued Flarity's motion; the order made no substantive decision in the case and certainly did not prevent a final judgment or discontinue the action. There is no well-grounded basis in law to argue that the order continuing the hearing on Flarity's motion to amend was appealable as a matter of right under RAP 2.2(a)(3).

Alternatively, Flarity argued that discretionary review of the order was warranted under RAP 2.3(b)(2). This court will grant discretionary review of a superior court decision if the "superior court has committed probable error and the decision of the superior court substantially alters the status quo or substantially limits the freedom of a party to act." RAP 2.3(b)(2). It is well-established, under existing

law, that to meet the requirements of RAP 2.3(b)(2), the superior court's action must go beyond affecting the parties' ability to conduct the litigation. State v. Howland, 180 Wn. App. 196, 207, 321 P.3d 303 (2014), review denied, 182 Wn.2d 1008 (2015). There is no well-grounded argument that the superior court's order continuing Flarity's motion to amend the complaint for three weeks had any effect outside of the litigation, and therefore, there is no well-grounded argument that discretionary review would be warranted under RAP 2.3(b)(2).

Because there was no basis for a direct appeal or discretionary review of the superior court's order continuing Flarity's motion to amend the complaint for three weeks that was well- grounded in existing law, there was no well-grounded basis for moving to stay the superior court proceedings pending review of the superior court's continuance order by this court. Therefore, Flarity's motion was baseless, and the superior court did not abuse its discretion in imposing sanctions under CR 11.

We affirm.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

/s/ Lee, J.
Lee, J.

We concur:

/s/ Veljacic, A.C.J.
Veljacic, A.C.J.

/s/ Price, J.
Price, J.

AP-40

THE SUPREME COURT
STATE OF WASHINGTON

ERIN L. LENNON
SUPREME COURT CLERK

SARAH R. PENDLETON
DEPUTY CLERK/
CHIEF STAFF ATTORNEY

TEMPLE OF JUSTICE
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OLYMPIA, WA 98504-0929
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March 22, 2024
LETTER SENT BY EMAIL

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> Re: Court of Appeals No. 56271-5-II - Joe Patrick Flarity, Appellant v. Argonaut Insurance Company, et al., Respondents

Clerk, Counsel, and Joe Patrick Flarity:

On March 21, 2024 the Court of Appeals forwarded to this Court the Petitioner's "PETITION FOR REVIEW" filed there on the same date.

> Because the Court of Appeals issued a mandate in the case. RAP 12.7(b) provides:

> The Supreme Court loses the power to change or modify a decision of the Court of Appeals upon issuance of the mandate of the Court of Appeals in accordance with rule 12.5.

Accordingly, the Supreme Court does not have authority to act on the petition for review at this time. Any party seeking further Supreme Court review must first move the Court of Appeals to recall the mandate. Since the Court can take no action can be taken on the petition for review, it will be placed in unfiled papers.

Sincerely,
/s/ Sarah R. Pendleton
Sarah R. Pendleton
Supreme Court Deputy Clerk

SRP:bw

AP-43

FILED
SUPREME COURT
STATE OF WASHINTON
NOVEMBER 6, 2024
BY ERIN L. LENNON
CLERK

THE SUPREME COURT OF WASHINGTON

No. 103208-1
ORDER
Court of Appeals
No. 56271-5-II

JOE PATRICK FLARITY,
Petitioner,

v.

ARGONAUT INSURANCE COMPANY, et al.,
Respondents.

Department II of the Court, composed of Chief Justice González and Justices Madsen, Stephens, Yu and Whitener, considered this matter at its November 5, 2024, Motion Calendar and unanimously agreed that the following order be entered.

IT IS ORDERED:

That the Petitioner's motion to modify the Commissioner's ruling is denied.

DATED at Olympia, Washington, this 6th day of November, 2024.

For the Court

/s/ González, C. J.
CHIEF JUSTICE

AP-45

THE SUPREME COURT
State of Washington
June 4, 2020

Dear Members of the Judiciary and the Legal Community:

We are compelled by recent events to join other state supreme courts around the nation in addressing our legal community.

The devaluation and degradation of black lives is not a recent event. It is a persistent and systemic injustice that predates this nation's founding. But recent events have brought to the forefront of our collective consciousness a painful fact that is, for too many of our citizens, common knowledge: the injustices faced by black Americans are not relics of the past. We continue to see racialized policing and the overrepresentation of black Americans in every stage of our criminal and juvenile justice systems. Our institutions remain affected by the vestiges of slavery: Jim Crow laws that were never dismantled and racist court decisions that were never disavowed.

The legal community must recognize that we all bear responsibility for this on-going injustice, and that we are capable of taking steps to address it, if only we have the courage and the will. The injustice still plaguing our country has its roots in the individual and collective actions of many, and it

cannot be addressed without the individual and collective actions of us all.

As judges, we must recognize the role we have played in devaluing black lives. This very court once held that a cemetery could lawfully deny grieving black parents the right to bury their infant. We cannot undo this wrong——but we can recognize our ability to do better in the future. We can develop a greater awareness of our own conscious and unconscious biases in order to make just decisions in individual cases, and we can administer justice and support court rules in a way that brings greater racial justice to our system as a whole.

As lawyers and members of the bar, we must recognize the harms that are caused when meritorious claims go unaddressed due to systemic inequities or the lack of financial, personal, or systemic support. And we must also recognize that this is not how a justice system must operate. Too often in the legal profession, we feel bound by tradition and the way things have "always" been. We must remember that even the most venerable precedent must be struck down when it is incorrect and harmful. The systemic oppression of black Americans is not merely incorrect and harmful; it is shameful and deadly.

Finally, as individuals, we must recognize that systemic racial injustice against black Americans is not an omnipresent specter that will inevitably

persist. It is the collective product of each of our individual actions—every action, every day. It is only by carefully reflecting on our actions, taking individual responsibility for them, and constantly striving for better that we can address the shameful legacy we inherit. We call on every member of our legal community to reflect on this moment and ask ourselves how we may work together to eradicate racism.

As we lean in to do this hard and necessary work, may we also remember to support our black colleagues by lifting their voices. Listening to and acknowledging their experiences will enrich and inform our shared cause of dismantling systemic racism.

We go by the title of "Justice" and we reaffirm our deepest level of commitment to achieving justice by ending racism. We urge you to join us in these efforts. This is our moral imperative.

Sincerely,
/s/Debra L. Stephens
Debra L. Stephens
Chief Justice

/s/Charles W. Johnson
Charles W. Johnson,
Justice

/s/Barbara A. Madsen

Barbara A. Madsen,
Justice

/s/Susan Owens
Susan Owens,
Justice

/s/Steven C. González
Steven C. González,
Justice

/s/Sheryl Gordon McCloud
Sheryl Gordon McCloud,
Justice

/s/Mary I. Yu
Mary I. Yu,
Justice

/s/Raquel Montoya-Lewis
Raquel Montoya-Lewis,
Justice

/s/G. Helen Whitener
G. Helen Whitener,
Justice

AP-49

FILED
SUPREME COURT
STATE OF WASHINGTON
1/8/2025
BY ERIN L. LENNON
CLERK

THE SUPREME COURT OF WASHINGTON

No. 103322-2
ORDER
Court of Appeals
No. 57601-5-II

JOE PATRICK FLARITY,
Petitioner,

v.

STATE OF WASHINGTON, et al.,
Respondents.

Department I of the Court, composed of Chief Justice González and Justices Johnson, Gordon McCloud, Montoya-Lewis, and Mungia, considered at its January 7, 2025, Motion Calendar whether review should be granted pursuant to RAP 13.4(b) and unanimously agreed that the following order be entered.

IT IS ORDERED:

That the petition for review is denied. The Clerk's motion to strike the reply to the answer to the petition for review is granted.

DATED at Olympia, Washington, this 8th day of January, 2025.

For the Court

/s/ González, C. J.
CHIEF JUSTICE

[RESOLUTION] 400

AMERICAN BAR ASSOCIATION
KING COUNTY BAR ASSOCIATION
REPORT TO THE HOUSE OF DELEGATES
RESOLUTION

2 United States to adopt a code of judicial ethics binding on justices of the Supreme
3 Court of the United States that is comparable to the Code of Conduct for United
4 States Judges adopted by the Judicial Conference of the United States; and
5
6 FURTHER RESOLVED, That the American Bar Association urges federal, state,
7 local, and territorial bar associations to adopt their own resolutions urging the
8 Supreme Court of the United States to adopt a code of judicial ethics binding on
9 justices of the Supreme Court.

REPORT

"No man is above the law."
– Chesterfield Smith, President, American Bar Association, October 22, 1973

An independent judiciary is the cornerstone of the rule of law and our constitutional republic. It protects the liberty of the people. Yet public support for an independent judiciary can only be sustained if there is public confidence in the legitimacy of the judiciary. Public confidence requires that the public believe judges act ethically according to standards firmly grounded in judicial independence, integrity, and impartiality.

Essentially every judge in every jurisdiction in the United States – city, county, state, tribal, territorial, and federal – is subject to a binding code of ethics that embodies basic judicial ethical precepts with enforcement mechanisms. Justices of the United States Supreme Court (the "Court") are not.

There are judicial conduct requirements in our law that do address justices of the Court. It is reported that justices consult the Code of Judicial Conduct for Unites States Judges to resolve ethical issues. Some statutes do impose some ethical requirements on the justices. For example, 28 U.S.C. § 455 requires federal judges, including justices of the Court, to disqualify themselves from particular cases under specified circumstances, such as when a judge "has a personal bias or prejudice concerning a party" or "a financial interest in the subject matter in controversy." Congress has also directed justices to comply with certain financial disclosure requirements that apply to federal officials generally.

The Court has voluntarily resolved to comply with certain Judicial Conference regulations pertaining to receipt of gifts by judicial officers. Yet a set of rules including the full sweep of basic ethical principles applicable to other judges in this country has not been adopted by the Court.

The importance of the Court is clear. In addition to its lawmaking power, it exercises supervisory power over all federal courts. In addition to these core responsibilities grounded in the U.S. Constitution, the actions of the Court and its justices shape the public's perception of all courts, all judges, and their legitimacy.

The absence of a clearly articulated, binding code of ethics for the justices of the Court imperils the legitimacy of the Court. More than that, this absence potentially imperils the legitimacy of all American courts and the American judicial system, given the Court's central role enshrined in our federal republic. If the legitimacy of the Court is diminished, the legitimacy of all our courts and our entire judicial system is imperiled.

Robust models for codes of judicial ethics exist. These include the Code of Conduct for United States Judges, adopted by the Judicial Conference of the United States. The ABA Model Code of Judicial Conduct, adopted by the ABA House of Delegates in 1990, has formed the basis for binding judicial ethics standards in many jurisdictions.

Moreover, while the Court's role in our federal system is unique, and the issues posed in framing a binding code of conduct for judges of a court of last resort can be challenging, they are not insurmountable. Every state, territorial, and tribal high court has the same challenges. This Resolution rests upon the premise that the Court has the capacity to successfully address these and other challenges in adopting a binding code of ethics.

Further, this Resolution takes no position on the nature or extent of any enforcement mechanism or sanctions that might attach to violations of such a code of ethics, as these questions are best left to the Court's own judgment and discretion. This Resolution, however, does call for a code of ethics that is more than merely aspirational.

To be clear, this Resolution is not grounded upon, nor does it ask the ABA House of Delegates to make any findings, or comment upon, any particular conduct by any one or more current or former members of the Court.

Still, events of recent years, especially including the January 6, 2021, insurrection, vividly remind us that the legitimacy of our nation's key institutions lies at the foundation of our democratic and republican way of life. These events have made clear to most American citizens, and to a larger majority of American lawyers, that reforms to our institutions aimed at buttressing public confidence must be

undertaken not in the midst of crisis, but before crises occur.

Respectfully submitted,
Tahmina Watson, President
King County Bar Association
February 2023

AP-56

Court of Appeals
Division II
State of Washington
1/25/2023 4:28 PM

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

JOE PATRICK FLARITY, a marital community,
Plaintiff,
vs.
VIKKI SMITH, JOHN RYSER, and STATE OF WASHINGTON, et al,
Defendants.

NO. 22-2-02806-34

COA NO. 57601-5-II

VERBATIM REPORT OF PROCEEDINGS

BE IT REMEMBERED that on January 6, 2023, the above-entitled and numbered cause came on for motion hearing before the HONORABLE MARY SUE WILSON, judge of Thurston County Superior Court, Olympia, Washington.

Cheri L. Davidson

Official Court Reporter
Thurston County Superior Court
Olympia, Washington 98502
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APPEARANCES

For the Plaintiff:
(Via Zoom)

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For the Defendant:
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Assistant Attorney General
Attorney General of Washington

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Enforcement Division
1125 Washington Street SE
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[--- EXCERPT – From Pages 16 through 19 ---]

....

THE COURT: Thank you, Mr. Flarity. You have one minute for any rebuttal.

Mr. Comfort, you have ten minutes.

MR. COMFORT: Good morning, Your Honor. Cam Comfort here on behalf of the State.

The State has submitted a proposed order granting defendant's motion to dismiss. That order closely tracks this court's oral ruling on December 9th except for we added one thing, and that is the statutory attorney's fees of $200, which prevailing parties are entitled to when they obtain a judgment in their favor.

THE COURT: Just stop for a moment. Can the parties, including Mr. Flarity -- can you hear Mr. Comfort?

MR. FLARITY:

Yes. And I didn't hear the statute where that is -- there's no reference to a statute that I see.

THE COURT: Mr. Comfort, continue.

MR. COMFORT: Yes. The proposed order cites RCW 4.84.010 subsection (6) and 4.84.080 subsection (1), so these statutes are in RCW 4.84. the proposed order. So that's The State believes this order is consistent with the judge's ruling, and it addresses what needs to be addressed, which is Mr. Flarity had 30 days to serve the Board of Tax Appeals, to serve the Pierce County Assessor, and he did not do it, and that was the basis for dismissal, and that's what the order reflects.

On the presentation of judgment, it's just a simple presentation of judgment that --

THE COURT: Well, before you move to the second one --

MR. COMFORT: Yes.

THE COURT:-- I did receive a proposed order from Mr. Flarity. I think it was filed December 19th, Order Granting State's Motion to Dismiss with other proposed language. Do you have any comments on that proposed order?

MR. COMFORT: Yes, Your Honor. My only comment is all the suggestions that he proposes are entirely inappropriate, not consistent with this court's rulings.

THE COURT: Okay.

MR. COMFORT: The judgment is just a reflection of the fact the court ordered sanctions for the State in the amount of $1,775, to which I've added the $200.

Lastly, on the reconsideration, leave to amend, I did not file a response to that because under Local Rule 59 no response is allowed unless there is a request from the court, and I did not receive a request.

I am prepared to talk about a few things that Mr. Flarity has argued today.

THE COURT: And I would welcome that input. You're right, I did not direct a response.

MR. COMFORT: First, this argument that the

State is arguing on behalf of Pierce County is just ludicrous. It is a -- it's a frivolous argument. Mr. Flarity has made similar arguments before that the State is arguing on behalf of Argonaut. That was rejected in the prior litigation.

What the State did here was move to dismiss, state the reasons why this court should grant it, and one of those reasons is that Mr. Flarity failed to timely serve the Pierce County Assessor. That is not an argument on behalf of Pierce County. The State was arguing why this court should dismiss the State. So that's a flawed argument.

Secondly, the fact that it was filed in Division II is just simply irrelevant. Pierce County filed that really just to show that Mr. Flarity is a vexatious litigant.

....

AP-61

PRESIDENT DONALD J. TRUMP
The WHITE HOUSE
PRESIDENTIAL ACTIONS
Preventing Abuses of the Legal System and the Federal Court
Presidential Memoranda
March 22, 2025

MEMORANDUM FOR THE ATTORNEY GENERAL

THE SECRETARY OF HOMELAND SECURITY

SUBJECT: Preventing Abuses of the Legal System and the Federal Court

Lawyers and law firms that engage in actions that violate the laws of the United States or rules governing attorney conduct must be efficiently and effectively held accountable. Accountability is especially important when misconduct by lawyers and law firms threatens our national security, homeland security, public safety, or election integrity.

Recent examples of grossly unethical misconduct are far too common. For instance, in 2016, Marc Elias, founder and chair of Elias Law Group LLP, was deeply involved in the creation of a false "dossier" by a foreign national designed to provide a fraudulent basis for Federal law enforcement to

investigate a Presidential candidate in order to alter the outcome of the Presidential election. Elias also intentionally sought to conceal the role of his client — failed Presidential candidate Hillary Clinton — in the dossier.

....

Unfortunately, far too many attorneys and law firms have long ignored these requirements when litigating against the Federal Government or in pursuing baseless partisan attacks. To address these concerns, I hereby direct the Attorney General to seek sanctions against attorneys and law firms who engage in frivolous, unreasonable, and vexatious litigation against the United States or in matters before executive departments and agencies of the United States.

....

Law firms and individual attorneys have a great power, and obligation, to serve the rule of law, justice, and order. The Attorney General, alongside the Counsel to the President, shall report to the President periodically on improvements by firms to capture this hopeful vision.