

THE SUPERIOR COURT OF THE STATE OF WASHINGTON
COUNTY OF KITTITAS

L. Candace Hooper
Judge
Department One



Scott R. Sparks
Judge
Department Two

December 10, 2018

Mr. W. Dale Kamerrer
PO Box 11880
Olympia, WA 98508-1880

Ms. Heather Yakely
818 W. Riverside Avenue, STE 250
Spokane, WA 99201

RE: The Judges of Benton and Franklin Counties v. Killian
Franklin County Superior Court Case #18-2-50285-11

Counsel:

As you are aware, oral argument on Plaintiffs' motion for summary judgment occurred on December 7, 2018 in Ellensburg. This letter sets forth the ruling of the Court.

This case, like all cases, is unique. But it is a very special case for me because the parties in this case are, by position, my closest colleagues; fellow Superior Court Judges and the Franklin County Superior Court Clerk. While I am not personally close to these Judges or to this Clerk, I share a common bond with them: we are all legal professionals who are doing our very best to improve the legal system in the State of Washington.

It is sometimes forgotten that even before Washington became a state in 1889 there were courts in the Washington Territory to ensure that the people who lived or found themselves here had a forum to which they could apply for assistance when disputes became acute. After Statehood our Constitution provided for a Supreme Court and a Superior Court to adjudicate disputes, and later the Legislature, through statute provided our Court of Appeals and our Courts of Limited Jurisdiction. Although I am aware that as I get older time passes more quickly, it is sometimes hard to believe that our Court of Appeals Inaugural Ceremony occurred as recently as September 8, 1969. At that ceremony, then Attorney General Slade Gorton quoted Mr. Daniel Webster: "Justice... is the great interest of man on earth." 1 Wn.App. xvi, xxii (1969). I make this reference because I believe it is important to remember, as we go about our daily work as Judges and Clerks, that although we may have good faith differences of opinion as to which road we should travel, we are all seeking the same destination: justice for all.

The history of the world, the history of the United States and the State of Washington, and all of the thoughts of those human beings who have lived before us were passed down to us, chiefly, through the use of pen and paper. The invention of the Guttenberg printing press (circa 1440),

Sarah H. Keith
Court Administrator

Kittitas County Courthouse
205 West Fifth Avenue Room 207
Ellensburg, Washington 98926
509-962-7533

Robin Raap
Assistant Court Administrator

the typewriter (1878), hot metal typesetting (1884), and mimeograph and ditto machines (1960s) all in their own unique way revolutionized the way in which information could be copied, disseminated, and stored. But none of these data management process changes were as revolutionary as that change which we are in the midst of now; the change from paper to electronic data storage. This revolution is literally occurring right before our eyes.

Although the Franklin County Superior Court's records have always been kept on paper, both the Plaintiffs' and the Defendant agreed that there existed a need to modernize and so in keeping with that agreed goal the Franklin County Superior Court and the Superior Court Clerk adopted the State's Odyssey¹ system for electronic data storage. During the transition from paper court records to electronic court records the Clerk continued to keep paper records. Believing that the transition from paper to electronic records was complete, the Clerk notified the Judges that he would no longer keep paper files. Believing that the need for paper files had not yet ceased, the Judges notified the Clerk that they were not ready to transition away from paper records. The Clerk, believing that he had the authority to decide when the provision of paper records would cease, informed the Judges of a date certain after which paper files would not be kept. The Judges, believing that the Clerk did not possess the authority to make that decision, unanimously expressed their position by passing Local General Rule 3 (LGR 3), which, inter alia, required the Clerk to continue to keep paper files. The Clerk, being under the impression that LGR 3 infringed upon his discretionary authority, chose to not comply with LGR 3. The Judges, being under the impression that the Clerk was required to comply with LGR 3, brought this instant lawsuit, in an effort to compel, via Mandamus, the Clerk to comply with LGR 3.

Amicus curiae the Washington State Association of County Clerks and the Washington State Association of Counties support the Franklin County Superior Court Clerk. These associations, which represent a collection of the various elected officials served by said associations, describe the Clerk's decision to 'go paperless' as a discretionary act which the Judges are powerless to resist. The Clerk himself, in resisting the Judges' effort to get him to comply with LGR 3, clearly sets forth that argument: "It is undisputed that the Franklin County Clerk is required to maintain Court records. It is undisputed that the record must be available for the judges; that is not discretionary. However, it is discretionary as to the manner in which those records are maintained." *Defendant's Response In Opposition to Plaintiff's Motion For Summary Judgment*, page 8, line 10-12 (emphasis in original). It is important to note that neither the Clerk nor amicus curiae provide any authority for the assertion that the *manner* in which the Clerk holds the records is a discretionary act. Of course, it is perfectly reasonable that there exists no authority for this assertion. When the relative authority of the Clerk and the Superior Court were previously set forth, those authorities were set forth, in writing, on paper, and no one then contemplated future courts (or anyone else) going paperless.

Since there is no legal authority underpinning the Clerk's assertion that it is his sole responsibility to decide what manner the Court's records should be kept, it must be determined if there exists authority for the Judges to determine what manner the Court's records should be kept. Put another way, in order to decide this case, I must decide whether there exists, in the law, some sort of expression of whose opinion matters more when there is a dispute between a Superior Court Clerk and the Superior Court itself.

¹ Note the irony. Homer's poem, "The Odyssey," describes Odysseus' *ten-year* journey home from war.

Of course, there is such an expression. It is clearly set forth in a case from our Supreme Court issued as recently as October of last year. Rather than quote from that case, for ease of reading I will paraphrase:

While a County Clerk retains authority over their office, by virtue of that office they are also the Clerk of the Superior Court.² The duties of a county clerk as clerk of the superior court are defined both by statute and court rules. Generally speaking, a clerk of court is an office of a court of justice, who attends to the clerical portion of its business, and who has custody of its records and file and of its seal. Such an office is essentially ministerial in its nature, and the clerk is neither the court nor a judicial officer.³ The superior court has power to control in furtherance of justice the conduct of its ministerial officer, such as county clerks.⁴ Therefore, when acting as the clerk of the superior court, the county clerk has always been required in the performance of his or her duties to conform to the direction of the court.⁵ The clerk's general powers and duties as clerk of the superior court are set forth in RCW 2.32.050 and any local rules. *See, generally, Recall of Riddle*, 189 Wn.2d 565, 583 (2017).

What these words mean to this Judge is that when a person becomes a County Clerk in the State of Washington, they put on two hats; a County Clerk hat and Superior Court Clerk hat. When wearing the Superior Court Clerk hat, the Clerk must conform their performance to the direction of the Judges, because the role of Superior Court Clerk is ministerial. More simply put, what this means is that whenever the word "court" is mentioned, the authority of the Court Clerk to take any action derives from the Court: because they are the "Court Clerk," at that instant they have no independent discretion or authority but rather they are doing the Court's work, and are operating under the authority and discretion of the Court.

One consequence of this reality is that if a Superior Court Clerk wishes to exercise discretion which does not conform with the direction of the Court, then they are operating (a) without any authority upon which their decision can be sustained, and (b) in contravention to the judgment of the entity to whom such authority was given. It is impossible for any Court, if it is basing its decision on the law, to countenance either of those results.

Another consequence of this reality is that the entire court system (and any records kept therein) operates under one direct chain of command, from the Supreme Court to the trial court, through operation of the Code of Judicial Conduct. Judges (and lawyers) are directly accountable to the Supreme Court in a way that other elected officials are not. The reality that in Washington the Court Clerks report directly to the Court (or Judges) they serve ensures that there is one, uniform system of justice operating under the direction and supervision of the Supreme Court.

² CONST. art. IV, section 26.

³ *Swanson v. Olympic Peninsula Motor Coach Co.*, 190 Wash., 35, 38 (1937).

⁴ RCW 2.28.010(5).

⁵ RCW 2.32.050(9).

In summary, while I am in agreement with the Franklin County Superior Clerk that there exists a need for our Courts to go paperless, I also agree with the Franklin County Superior Court Judges that the timing of when that action occurs is theirs, and not that of the Court Clerk.

The Franklin County Superior Court Clerk is not authorized to disregard the authority of the Franklin County Superior Court. An *Order Granting Summary Judgment* and a *Writ of Mandamus* is attached.

Sincerely,



Scott R. Sparks

SRS/hs

cc: File