

# **YAKIMA COUNTY**

## **LAW & JUSTICE**

### **PANEL REVIEW COMMITTEE REPORT**

**By: Jeffrey C. Sullivan, Abby M. Sanders & Richard R. Johnson**

**MAY 31, 2016**

## 2016 YAKIMA COUNTY REVIEW PANEL REPORT

The Board of Yakima County Commissioners appointed the undersigned to assess and report on issues concerning Janelle Riddle, the elected Clerk of Yakima County (*See Appendix 1*). The Board also authorized Ms. Sarah Wixson, a lawyer with the Stokes Lawrence Velikanje, Moore & Shore law firm, of Yakima, to investigate the issues and to report on the factual background. (*See, Summary of Investigative Findings - Appendix 2*).

Ms. Wixson met with Ms. Riddle, and her legal counsel, Mr. Joseph Thomas. They indicated that Ms. Riddle would provide a written response by Friday, May 27, 2016. That did not occur. So, without response / input by Ms. Riddle, the findings and conclusions reached by Ms. Wixson in her reporting are adopted by the undersigned.

The issues / the problems that Ms. Riddle / the Clerk's office have been facing could have, and should have, been solved by better interaction and communication on the part of Ms. Riddle. She expressed to Ms. Wixson that the problems could be solved if she had more help. We were told that we would have Ms. Riddle's proposals by Friday, May 27, 2016, but nothing was provided.

There are open positions in the Clerk's office. The Human Resources Director for Yakima County, Ms. Linda Dixon, is / has been available and ready to assist Ms. Riddle with personnel needs in the Clerk's office. We don't know what Ms. Riddle sees as the staffing needs for the Clerk's office because we haven't had the benefit of her input on that.

The elected Prosecuting Attorney, Joseph Brusic, is / has been available to Ms. Riddle for legal counsel, but she hasn't asked Mr. Brusic for his assistance.

All of the elected officers of Yakima County have been / are willing to do whatever they can to help Ms. Riddle, but she hasn't enlisted their assistance, either.

On the subject of concurrent court / clerk managerial authority of in – court deputy clerks, the Washington State Constitution – Article IV. The Judiciary – Section 26 - Clerk of the Superior Court - provides that,” The county clerk shall be by virtue of his office, clerk of the superior court.”

RCW 2.32.050 (*See, Appendix 3*) sets out the powers and the duties of the County Clerk, which include recording the proceedings of the court, keeping the records, files, and other books and papers appertaining to the court, attending the court to administer oaths, and receive jury verdicts, keeping the journal of the proceedings of the court, entering orders, judgments, and decrees of the court, and, in the performance of his or her duties, to conform to the direction of the court.

RCW 36.23.030 (*See Appendix 4*) sets out the records that are to be kept by the Clerk of the Superior Court.

The Superior Court historically employed official court reporters for each courtroom to make a verbatim record of the oral proceeding of the court. Many Superior Courts across the state of Washington were confronted with budgetary constraints and replaced official court reporters with courtroom recording equipment.

The former Yakima County Clerk, Kim Eaton, and the Yakima County Superior Court, entered into a written Memorandum of Understanding in March, 2010, whereby the duties of in – court deputy clerks were consolidated with duties of electronic recording of the court proceedings. The purpose of doing so was “...to promote efficiencies in courtroom resources and staffing for case management and processing.” Two employees of Yakima County were transferred from the Superior Court to the Yakima County Clerk’s office, and the Clerk’s budget was increased accordingly. In - court deputy clerks were responsible for operating the recording equipment.

On December 29, 2014, Janelle Riddle, as Clerk – elect, entered into a written agreement with the Judges of the Yakima County Superior Court (*See Appendix 5*). The parties agreed that ten designated employees of the County Clerk would be cross deputized for service in the courtroom and would perform the statutory duties of the Court Clerk under RCW 2.32.050 and 36.23.030, and the duties of the official reporter to keep a full record of all oral proceedings in court as required by RCW 2.32.200, effective January 1, 2015.

The December 29, 2014 Agreement also provided that the Clerk and the Presiding Judge, or his / her designee, would have concurrent managerial authority over the ten in – court clerks. The agreement also provided that all hiring, disciplinary and / or termination decisions were to be jointly made by the Clerk and the Presiding Judge, or his / her designee. In the event of an impasse between the Clerk and the Presiding Judge the dispute would be submitted to the “Hutton Commission” for resolution.

The December 29, 2014 Agreement also provided that the parties would meet and confer on a regular basis to discuss concerns, issues or problems, and would meet by June 30, 2015 to determine whether the Agreement would be continued or nullified, and would report to the Board of County Commissioners.

Pursuant to Article IV, Section 24, of the Washington State Constitution, RCW 2.04.210, RCW 2.08.23 and Civil Rule of the Superior Court 83 (CR 83), the Judges of the Yakima County Superior Court adopted Local Administrative Rule 3 (LAR 3), entitled Courtroom Responsibilities and Procedures Assigned to Clerk, effective April 20, 2015 (*See Appendix 6*). The rule provides that the Clerk or her / his deputies shall be responsible for opening and closing courtrooms before or after each court session, ensuring the courtrooms are provided with supplies and other customary requirements as directed by the judicial officer, announcing the opening and closing of each session of court, continuing to assist in efficiently carrying out the court process and assist in court as directed by the judicial officer, including providing forms necessary for the administration of the docket, calling the CourtCall operator to connect attorneys and / or parties on line, calling for security, paging interpreters, ensuring the scanned files for cases and / or hearings assigned to the individual judicial officers to be heard are loaded in Liberty / Odyssey folders no later than 4:30 p.m. the day before matters are scheduled, ensuring that the digital recording system is working correctly by performing a systems test before each session of court, activating the recording system for each session and ensuring the integrity of the recordings by periodic checks, maintaining a log which describes the events which occur in the courtroom and are the subject of the recording, saving, maintaining and cataloging each recorded session in a manner allowing ease of access, making copies of digital recordings available on request of the Court, lawyers or the public, complying with all statutory requirements and otherwise conforming to the order and direction of the Court.

Ms. Riddle and the Judges of the Yakima County Superior Court entered into a written extension of the Agreement of December 29, 2014 through December 31, 2015, which was signed by Ms. Riddle on April 29, 2015. (*See Appendix 7*). The parties agreed to meet and confer on a regular basis and to meet by November 12, 2015 to determine if the Agreement would be continued and / or modified.

Ms. Riddle and the Judges of the Yakima County Superior Court entered into a second written extension of the Agreement of December 29, 2014 through December 31, 2016, which was signed by Ms. Riddle on November 17, 2015. (*See Appendix 8*). The parties agreed to meet and confer on a regular basis and to meet by June 1, 2016 to determine if the Agreement would be continued and / or modified.

Ms. Riddle has indicated that she would not continue to abide by the Agreement of December 29, 2014 / would not agree to further extension of that Agreement. She has also indicated that in 2017 the in – court deputy clerks in Yakima County Superior Court will not operate the recording equipment, nor will they perform other courtrooms functions that they are currently performing.

**Conclusions / Recommendations:** It is common practice in the Superior Courts of the state of Washington for in - court deputy clerks to operate the courtroom recording system in courtrooms that do not have an official court reporter. The Clerk of Superior Court has the statutory duty to record the proceedings of the court. *See, RCW 2.32.050 (2).*

It is not indicated, or necessary, for Yakima County to incur the expense of employing people to operate the recording system in courtrooms, or to perform other courtroom functions, when the in – court deputy clerks can easily continue to do so without concern for being able to fully perform all of their other duties.

The elected County Clerk is, and should be, responsible for the hiring, discipline and / or termination of the in – court clerks / deputy clerks, not the Judges of the Yakima County Superior Court. The Judges should discuss any performance concerns they may have with in – court clerks with the County Clerk.

Yakima County Superior Court LAR 3 has been in place / in effect since April 20, 2015. That rule addresses all of the issues and concerns covered by the Agreement of December 29, 2014, and its extensions. LAR 3 is lawful and enforceable, and it should be adhered to / followed by all parties / persons concerned.

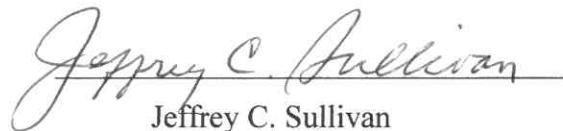
Accordingly it is not necessary for the County Clerk and the Yakima County Superior Court to extend / renew the Agreement of December 29, 2016 past June 1, 2016. LAR 3 should control.

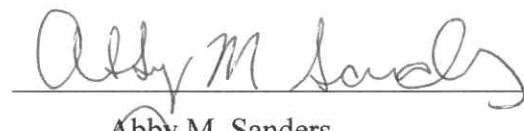
The remaining issues the Board of Yakima County Commissioners asked us to assess are addressed in the reporting of Ms. Wixson (Appendix 2). There really is no valid reason, or excuse, for Ms. Riddle / the Clerk's office not to have been able to fully integrate the Odyssey case management system. The other early adopter counties, including Franklin County, were able to do so.

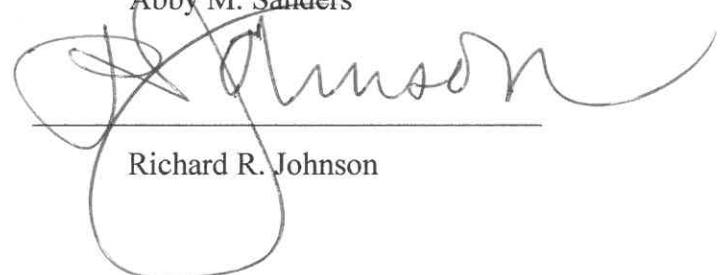
There is no valid reason, or excuse, for Judgments not to be promptly entered in the Execution Docket for the benefit of title insurance companies and the public. Nor is there any valid reason, or excuse, for child support orders not to be promptly entered. This has resulted in a loss of money for Yakima County, which obviously affects everyone in Law & Justice community, and the county, as a whole.

Ms. Riddle shouldn't feel like she is alone on an island. She can turn things around in the Clerk's office during the remainder of her term if she becomes more open and communicative, and if she enlists the assistance of others who are available, capable and willing to help her.

DATED at Yakima, Washington May 31, 2016.

  
Jeffrey C. Sullivan

  
Abby M. Sanders

  
Richard R. Johnson

# Appendix

1. Review Panel Objectives from BOCC
2. Summary of Investigative Findings by Sarah Wixson
3. RCW 2.32.050
4. RCW 36.23.030
5. December 29, 2014 Agreement
6. Yakima County Superior Court Local Administrative Rule 3
7. First extension of the Agreement of December 29, 2014
8. Second extension of the Agreement of December 29, 2014

# APPENDIX 1

## 2016 Yakima County Independent Review Panel

### Objectives

- 1) Assess the functionality and cost effectiveness of:
  - a. The current (and longstanding) Court / Clerk concurrent managerial authority of designated court clerks
  - b. Alternatives as identified by the Clerk

(Note BOCC 82% General Fund L&J funding threshold)  
(3/10ths funds are not included in the 82%)

- 2) Assess other law and justice issues as identified by both non - county and county parties

Title companies

DSHS – child support orders

State Auditor management letter

Fines / fee collections (in house program)

ULP's / turnover rate / employee complaints & unionization

Unilateral actions (Odyssey & collection agency agrmts)

42K Liberty licensing extension / failure of conversion

Lack of cooperation / communication

Recent additional items

Unlawful LFO wage garnishment

Security violations

Debi Utterback letter

3) Other unknown law and justice items of significance

# APPENDIX 2

**Stokes Lawrence  
Velikanje Moore & Shore**

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Stokes Lawrence, P.S.  
Seattle | Yakima

**SUMMARY OF INVESTIGATIVE FINDINGS**

May 31, 2016

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TO: Independent Review Panel  
FROM: Sarah L. Wixson  
RE: Investigation regarding Yakima County Law & Justice System

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I was retained to conduct an investigation to evaluate the function, appropriate funding allocations, and efficient operation of the law and justice system in Yakima County. Representatives and employees from many aspects of the law and justice system were interviewed: including, but not limited to judges, court administration staff, the Clerk, clerk employees, Clerks from other counties, jail personnel, members of the Prosecutor's Office, Department of Assigned Counsel, private attorneys and title company employees.

**Summary of Findings**

Based upon my interviews, the documents reviewed and the processes observed, I reach the following findings:

- A. When no court reporter is present, in-court clerks in Yakima County and in the majority of counties in the state, run audio recording equipment and keep the required logs. Trained and experienced clerks are able to handle this additional duty without hardship.

B. The Yakima County Clerk maintains that in 2017 her in-court clerks will not run the recording equipment or perform many other courtroom functions that they are currently performing.

C. The records of the Yakima County Clerk, currently accessible from the Odyssey system, are not up to date and contain numerous errors.

1. Judgments are not being timely posted to the execution docket.
2. Child support orders are not being timely delivered to the State Department of Child Support as required by statute.
3. Juvenile diversion payments are not being reflected in the record.
4. Records, including those transferred from the prior system and those that have been input since the implementation of Odyssey, are filed in the wrong cases and are not properly indexed.

D. Court dockets relied upon by judges, parties, jail staff and attorneys are incomplete and contain numerous errors.

E. The Clerk's office has engaged in employment practices which are arguably unfair, or otherwise polarizing.

F. The Clerk's office is isolated from other participants in the law and justice system. Communication and cooperation between participants is lacking.

G. The Clerk's Trust Account has not been reconciled monthly as required.

H. Monies from the Clerk's Trust Account have not been properly allocated to various accounts due to coding errors and other factors.

I. The Clerk's office has not billed nor collected for jury services it provides to other entities since May, 2015.

## Discussion

### I. Background

#### A. Ms. Riddle

##### 1. Background

Ms. Riddle is a native of Naches, Washington where she attended Naches High School and Yakima Business College. When she was 19 years old, Ms. Riddle worked under Yakima County Clerk Agnes Thomas. After about four years, she became the court clerk supervisor. She also supervised office staff on occasion. After working for the clerk's office for nine years, she started a family.

She is married to Don Riddle. They have two sons. When her boys were small, she helped with the bookkeeping and record keeping in the family excavation business, Don Riddle Excavation. She also served as a para-pro in her children's school.

Ms. Riddle also worked for five years (1990-1995) as the city clerk-treasurer of Naches. She worked for three years under Mayor Mary Tenney. Don MacNeil served as mayor under an appointment for two years, but after he was elected to the position he fired Ms. Riddle, "in the best interest of the community and the staff."<sup>1</sup> Ms. Riddle asserts that Mayor MacNeil wanted to handpick his treasurer once he was elected.

In 2008, Ms. Riddle also worked as the clerk-treasurer in Tieton, but resigned after only one month. The circumstances regarding her departure are disputed. Ms. Riddle asserted that the books were in bad shape and she did not have the time needed to straighten them out. However, Tieton's mayor, Stan Hall, said that her resignation wasn't under the circumstances described.<sup>2</sup>

Ms. Riddle ran unsuccessfully against the prior Clerk Kim Eaton for the Yakima County Clerk position in 2006 and 2010. During the 2010 campaign, Ms. Riddle said that there were financial and communication problems in the clerk's office that needed to

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<sup>1</sup> *Yakima County Clerk Race a Rematch*, <http://www.lyncmigration.com/news/2010/10/09/5058173.htm>

<sup>2</sup> *Id.* Ms. Riddle did not mention her stint in Tieton during our interview.

be addressed. In 2010, she said that she didn't think that felony penalties were being collected as diligently as they should, noting that felony crime had increased, but payments decreased.<sup>3</sup>

## **2. Clerk's Office**

Ms. Riddle believes that Kim Eaton upset the staff prior to her taking office. Several members of the current staff indicated that Ms. Eaton told them that Ms. Riddle would make their lives difficult and they should start looking for a new job. As a result, Ms. Riddle asserts that when she took office in January 2015, 32 of the 34 staff members already didn't like her. In addition, Ms. Riddle was not allowed access to the Clerk's office prior to her actually taking office.

After the election, but before taking office, Ms. Riddle attended the Clerk's Association meeting in December. She was assigned a mentor clerk, Jose Delvin, of Benton County. She has also worked closely with Linda Enlow in Thurston County.

Ms. Riddle noted that Ms. Eaton had problems toward the end of her tenure and Ms. Riddle was going to make changes. Initially, she met with the staff and indicated that she might interpret the law a little differently than the prior clerk and was going to implement some changes, but that she encouraged their feedback. The changes outlined to the staff included:

1. Moving collections in house, and
2. Implementing e-filing.

## **B. Superior Court**

Courts used to employ court reporters in every courtroom. A court reporter is someone who makes "by means of written symbols or abbreviations in shorthand or machine writing or oral recording by a stenomask reporter of a verbatim record of any oral court proceeding, deposition, or proceeding before a jury, referee, court

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<sup>3</sup> *Id.*

commissioner, special master, governmental entity, or administrative agency and the producing of a transcript from the proceeding.” RCW 18.145.020. Court reporters must be certified. RCW 18.145.030.

Although court reporters were once the norm, most counties use some kind of recording technology and retain fewer court reporters. (See table attached). Courts across the state faced with budget issues began investing in recording equipment to replace the cost of court reporters<sup>4</sup>. Even Washington’s court rules reflect that electronic recording is widely used. Civil Rule 80 (amended 9/1/15) is titled “Court reporters.” However, the rule says nothing about actual court reporters. Rather it provides that, except in a capital (death penalty)<sup>5</sup> case, “any civil or criminal proceedings may be recorded electronically in lieu of or supplementary to shorthand or stenographic notes.” The use of electronic recording devices “rests within the sole discretion of the court.” The only requirement of the judges in Rule 80 is that “[t]he judicial officer shall assure that all case participants identify themselves for the record.”

If a proceeding is subject to appeal, the needed portion of the recording may be transcribed by a certified court reporter<sup>6</sup> in order to be an official report of the proceedings. GR 35. To aid in the location of a particular proceeding in a full day’s recording CR 80.1 requires that “[w]hen the proceedings are electronically recorded, the court shall ensure that a written log of the proceedings is created that indicates the time of relevant events.”

In March 2010, the Clerk’s Office and the Superior Court entered into a Memorandum of Understanding whereby in-court clerk duties were consolidated with electronic recording duties “to promote efficiencies in courtroom resources and staffing for case management and processing.” As a result of this agreement, two staff members

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<sup>4</sup> According to <http://www1.salary.com/WA/Yakima/Court-Reporter-salary.html>, a court reporter in Yakima makes between \$38,424 and \$69,702, with the median salary being \$53,254.

<sup>5</sup> SPRC 3 requires that a court reporter be designated at the beginning of a capital case. The court reporter’s notes under this special rule must be indexed and stored by the Clerk’s office.

<sup>6</sup> The rule also allows a court employee or authorized transcriptionist to prepare the record. GR 35.

were transferred from the Court to the Clerk's office. After this agreement, the in-court clerks were responsible for the recording equipment and logs. The Clerk's office budget increased as a result of this transfer.

One traditional court reporter remains on court staff, Joan Anderson. She primarily records significant cases such as murders or other felonies, but is used wherever her services might be needed.

### **C. Legal Context**

#### **1. What does the Clerk do?**

The responsibilities of the County Clerk are assigned by statute, State and local rules. Washington Constitution Article 4, sec. 26 provides that the county clerk is the clerk of the superior court. There has been a great deal of discussion regarding the “separation of powers” by the Clerk, and her attorney, Joseph Thomas. Valerie Knott, Ms. Riddle’s deputy clerk, has also asserted that she is not subject to the judge’s orders because she is not a courtroom employee.<sup>7</sup>

However, under Washington law, “a clerk of court is an officer of a court of justice, who attends to the clerical portion of its business, and who has custody of its records and files and of its seal.” *Swanson v. Olympic Peninsula Motor Coach Co.*, 190 Wash. 35, 66 P.2d 842 (1937).

The court clerk’s powers and duties are set forth under RCW 2.32.050 and include:

1. To record the proceedings of the court;
2. To keep records, files and other books and papers appertaining to the court;
3. To file all papers delivered to him or her for that purpose in any action or proceeding in the court as directed by court rule or statute; and

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<sup>7</sup> [http://www.yakimaherald.com/news/crime\\_and\\_courts/judge-rips-yakima-county-clerk-over-staffing-issues/article\\_026ad5a4-d548-11e5-992a-6bb302720e7f.html](http://www.yakimaherald.com/news/crime_and_courts/judge-rips-yakima-county-clerk-over-staffing-issues/article_026ad5a4-d548-11e5-992a-6bb302720e7f.html)

4. In the performance of his or her duties conform to the direction of the court

## **2. What is the scope of the Judges' authority?**

The state constitution provides the judges of the superior courts with authority to adopt “uniform rules for the government of the superior courts.” Const. art. IV, § 24. The superior courts also have the authority to adopt rules of procedure that are supplementary and do not conflict with statewide rules adopted by the Supreme Court. RCW 2.04.210; RCW 2.08.230. The Washington Supreme Court has also adopted a rule that authorizes each superior court to “make and amend local rules governing its practice not inconsistent with these rules.” CR 83(a).

To this end, in April 2015 the judges adopted Local Rule 3 which sets forth the courtroom responsibilities and procedures assigned to the Clerk. The duties set forth in Local Rule 3 include:

1. Opening and closing the courtroom before or after each session;
2. Announcing the opening and closing of each court session (acting as the “crier”);
3. Ensuring the courtroom is provided with supplies;
4. Ensure scanned files for cases to be heard are loaded into the judge’s Odyssey folders no later than 4:30 the day before matters are scheduled;
4. Ensure, where applicable, that the recording system is working and activate the recording system and perform periodic tests to ensure the proceeding is recorded;
5. Maintain a log which describes events which occur in the courtroom.

A local rule which conflicts with a statute or state procedural rule is invalid. *In re Marriage of Lemon*, 118 Wn.2d 422, 823 P.2d 1100 (1992)(invalidating a local court rule

that imposed a more restrictive time frame for filing an affidavit of prejudice than required by RCW 4.12.050).

### **3. What remedy is there if Clerk fails to adhere to Local Rule 3?**

According to an Attorney General Opinion issued in 2001, the remedy available to the court if a court clerk violates a court rule, is to issue an order and if the order is disregarded, impose contempt sanctions. Op.Atty.Gen.2001, No. 6, September 10, 2001, 2001 WL 1250133.

## **D. Conflict Context**

### **1. The First Conflict: Odyssey**

Yakima County, along with Thurston, Franklin, Lewis, is an “early adopter” of the Odyssey case management system. Yakima County committed to use the system under a 2014 agreement entered into by the Court, the Commissioners, and then-Clerk, Kim Eaton. After she was elected, Ms. Riddle indicated that she was not going to agree to the use of Odyssey. She favored a different system, On-Base. Ms. Riddle did not feel like she should have to honor an agreement made by the outgoing clerk. By letter dated January 7, 2015 from the Commissioners, Ms. Riddle was told that she did not have the authority to enter into contracts of this nature alone. Rather, “only the Board of Commissioners and the Superior Court has such contracting authority.”

By March 2015, Ms. Riddle agreed to proceed with the implementation of Odyssey. However, Ms. Riddle feels like the Court and the County Commissioners essentially forced her into using this system and required her to commit to it before she had the opportunity to understand its implications.

Toward the end of the go-live process, Ms. Riddle was not responding to requests for her to make a number of decisions that needed to be made by her before the program could be implemented. On October 9, 2015, Judge Bartheld issued a letter, which was

served upon her, ordering her pursuant to RCW 2.32.050 to meet with Technology Services at a certain time and certain location in order to finalize her decisions.

It appears Ms. Riddle is not committed to Odyssey's success.

**2. Ms. Riddle believes she is being bullied.**

On February 27, 2015, Ms. Riddle and Debbie Utterback met with Commissioner Rand Elliot regarding the adoption of Odyssey. Mr. Elliot lost his temper and slammed his hand against the table. He told Ms. Riddle the meeting was over. He purportedly took her arm to escort her out of the office, at which time Ms. Riddle looked at his hand on her arm and said, "Excuse me?" Commissioner Elliot said, "I'm sorry, I'm sorry." Ms. Riddle said she found the entire exchange frightening and intimidating.

A formal investigation occurred. On May 6, 2015, Commissioner Elliot signed a written apology.

Ms. Riddle and key members of her staff assert that the Court, and Judge Elfson, in particular, have bullied her. At a hearing on or about February 16, 2016, Judge Elfson publicly (and in front of the Yakima Herald- Republic reporter that was present in the courtroom) expressed his frustration with the Clerk's office. Ms. Riddle and Ms. Knott opined that the press was in attendance because the Court alerted them to the issue and that Judge Elfson's statement was just another one of his "\*\*\*\*y little photo ops" <sup>8</sup> in order to gain public support for his position in this now long-standing dispute and assist in his re-election this fall.

The frustration stemmed from the fact that there was insufficient in-court clerk staff to attend hearings in two different court rooms. One clerk had previously scheduled the day off and the other clerk was out sick. Judge Elfson and another judge waited, along with counsel and clients, for more than an hour while the Clerk's office tried to

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<sup>8</sup> Interview with Valerie Knott.

find clerks to staff the courtrooms. One deputy clerk, Valerie Knott was to staff Judge Elofson's courtroom. She purportedly told another clerk that she was being called into the courtroom "to wipe Judge Elofson's \*\*\*." Ms. Knott denies that she said this, but whether she said it or not, Judge Elofson learned of the purported statement prior to Ms. Knott arriving in court. Tensions were high.

Judge Elofson was attempting to put the reason for the delay of the proceedings on the record and also expressing his frustration with the Clerk's office. He instructed Ms. Knott to stop typing while he was talking. He wanted her to hear what he was saying. She stopped typing briefly but then resumed typing. As the actual hearing was to begin, one of the attorneys present, Shawn Murphy, noted that it did not appear that the proceedings were being recorded. The recording device was not running. Ms. Knott stated that she did not intentionally fail to record the proceedings, but was flustered by the statements against the Clerk's office. At that point, the proceedings were stopped again and Judge Elofson requested a different clerk.

Some present in the courtroom, including attorneys and clients, were uncomfortable with the presence of the press at their divorce trial and with the on-the-record dressing down of the Clerk's office that that had nothing to do with their case. In addition, clients were unhappy that they were paying for attorney time that did nothing to advance their case.

The Superior Court has indicated that Ms. Knott will not be allowed to serve as an in-court clerk, for any judge, until such time as they are confident in her ability to accurately take the record. Judge Elofson has offered to meet with Ms. Riddle and Ms. Knott regarding what steps could be taken to restore Ms. Knott's in-court duties. Ms.

Knott and Ms. Riddle believe that the court has no say in how courtrooms are staffed by court clerks.<sup>9</sup>

Ms. Riddle was also ordered by the Court to meet with technology services with regard to the implementation of Odyssey and ordered to appear in Court regarding lack of proper notice for a collection initiated by her office. Ms. Riddle and Ms. Knott believe that Judge Elofson and other judges have contacted third parties, including the Yakima Herald-Republic and title companies, regarding purported deficiencies in the Clerk's office functioning rather than contacting the Clerk directly. Judge Elofson and the Court Administration staff assert that they have to "work around" the Clerk because she refuses to communicate or work with them.

Most recently, Ms. Riddle has had her security clearance revoked for being on County premises after hours. She asserts that clerk employees and employees from other departments in the building have routinely accessed the premises without County Commissioner permission.

## II. Issues

### A. In-Court Staff

On or about March 20, 2015 (Ex. 2-1), Ms. Riddle indicated to the Court that she would limit her deputy clerk in-court staff to "pressing the start and stop" buttons at the beginning and end of each court session they attend. They would not prepare the courtrooms, act as the crier or the reporter. There have been on-going agreements regarding the role of the in-court clerk, but Ms. Riddle, and her attorney have indicated that once the current agreement expires, her in-court clerks will no longer serve dual roles as "court reporters." Despite the express duties set forth in Local Rule 3, Ms. Riddle has

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<sup>9</sup> The law is clear that the Clerk has the sole authority to make hiring decisions for her office. *Osborn v. Grant County By and Through Grant County Com'rs*, 78 Wash.App. 246, 896 P.2d 111, (1995) review granted 128 Wn.2d 1001, 907 P.2d 296, affirmed in part, reversed in part 130 Wn.2d 615, 926 P.2d 911, reconsideration denied.

indicated that they will not prepare the courtroom, (stock orders, fill water pitchers etc.). They will not serve as criers (state “all rise” etc. at the opening and closing of court). They will not operate FTR (For the Record, the digital recording system in most court rooms) or keep the log of court proceedings.

Ms. Riddle asserts that her reasons for refusing to follow Local Rule 3 are: 1. her clerks are not certified/trained/paid as court reporters, 2. the court’s staff is responsible for these duties, and 3. the Clerk needs her clerks to focus on Clerk’s office duties. Ms. Riddle asserts the Court has plenty of staff to take “its own record” and that she is only responsible for “the public’s record.”

Under Ms. Riddle’s plan, the court would need to provide an additional person to operate the FTR system and log for every courtroom where there is not a court reporter. Currently, the Court employs one court reporter, Joan Anderson. Estimates of how this would impact the law and justice budget vary. Including the jail and the juvenile courtrooms there are 11 courtrooms and ten judges/commissioners. On a typical day there are at least eight courtrooms in use. The salary and benefits for seven<sup>10</sup> clerks runs \$311,269 - \$355,481 per year depending on the classification of the employees. One of the eight employees would be an office coordinator with salary and benefits running approximately \$54,391. Additional computers, work spaces and equipment would also be needed. The estimated cost to provide an additional person in each courtroom to take the record is \$464,891-\$509,103 in the first year and then approximately \$400,000 each year thereafter.

Ms. Riddle suggests that there is sufficient court administrative staff to put an additional person in each court room. There are seven court administrator employees (not including court reporter, Joan Anderson) and one court administrator and one court

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<sup>10</sup> It is assumed that when Ms. Anderson is reporting that an additional clerk to perform recording would not be needed. If the office coordinator also serves as a reporter, one fewer clerk would be needed and the estimated cost would be reduced by approximately \$50,000 per year.

consultant. There are enough bodies to staff nine courtrooms, but the other functions of the court staff would go virtually unattended.

The Clerk's office has more than 30 employees<sup>11</sup>. The in-court clerks are already manning the courtroom, operating the FTR system and maintaining the log. I have spoken at length to many current in-court clerks regarding whether the operation of the FTR and maintaining the log in addition to their "in-court clerk" duties is problematic. With few exceptions, in-court clerks do not find the additional duties problematic. Even those who staff the busiest and most challenging dockets, the domestic and criminal calendars, find that it is "not that big of a deal." That is not to say the in-court clerks' job isn't difficult. Not anyone can or should be an in-court clerk. Those who are on the most difficult dockets have had training and years' of experience. They are good at their jobs and take pride in being able to keep the courtroom running smoothly. In contrast, an inexperienced and untrained in-court clerk is going to find the job difficult regardless of whether these duties are included.

In the vast majority of counties who use recording devices, the in-court clerk runs the system and keeps the log. I have received in-court clerk minutes from a case where FTR is used and where the hearing was recorded by court reporter Joan Anderson for comparison. The minutes kept by the in-court clerk are not appreciably different.<sup>12</sup>

## **B. The Record**

The Clerk's duty is "[t]o keep records, files and other books and papers appertaining to the court." For a variety of reasons, a variety of records are incomplete, inaccurate or untimely.

### **1. Odyssey**

Yakima County, along with Thurston, Franklin, Lewis, is an "early adopter" of the Odyssey case management system. Yakima County committed to use the system under

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<sup>11</sup> The phone roster received in late April includes 34 staff and the Clerk. However, employees have quit since I received the roster and some staff are on FMLA or intermittent FMLA.

<sup>12</sup> A sample of the clerk's minutes is included in the attached documents.

then-clerk, Kim Eaton. When Ms. Riddle took office she initially rejected the use of Odyssey and favored a different system. Odyssey replaced the existing case management system, Liberty. The AOC anticipates that most counties will move to Odyssey eventually. Snohomish County recently switched to Odyssey as well.

The fact that is a new system means that it is not perfect. The early adopters are the ones who have to identify its short comings and figure out a way to either fix it or work around it.

There have been delays in obtaining Odyssey access. Several people have complained that they have sought Odyssey passwords or accounts and have been waiting for months to receive them. E-mails and inquiries regarding the requests have gone unanswered.

**a. Transfer of data from Liberty to Odyssey**

Records predating Odyssey (11/2/15) needed to be transferred from Liberty, the prior system, to the new system. Becky Bishop from Yakima County Technology Services Department was in charge of the Odyssey project. She and her staff developed protocols for the transfer of data from Liberty to Odyssey. This involved downloading information from Liberty into folders and uploading the information to the Odyssey system one folder at a time.

Ms. Utterback reports that Odyssey will not read pdf documents and there were other instances which caused a replication error between the two systems. As a result the files needed to be verified against the existing Liberty documents. The verification was done at the beginning, middle and end of a particular folder. If the documents were off, then Ms. Utterback had to work her way back through the folders, find, and correct the replication error. If there was a pdf document in Liberty then Ms. Utterback states that she must print and scan that document into Odyssey. Ms. Utterback believes that she had insufficient assistance and guidance during this process. Ms. Bishop believes that in some instances verification was not done according to the established protocols.

The end result is that when Odyssey went live, many of the folders are off. For example, you will access a case in Odyssey to find documents filed in the wrong case. In addition, the docket sheet bears no correlation to the actual document attached to it. For example, you click on what was labeled as a Note for Motion Docket and it was actually an Order of Child Support. In addition, my office staff was able to access sealed financial documents which included account numbers, names of minor children etc. All of these documents pre-dated 11/2/15, the date Odyssey went live. The County paid an additional licensing fee to Liberty for 2016 (approximately \$40,000). Liberty will be needed until such time as the records in Odyssey are be correct and reliable

The errors in the Odyssey conversion process are so extensive that Ms. Utterback, working primarily with Tyler, Odyssey's vendor, is reloading and re-verifying a large number of folders. The conversion happens on a local level. Other counties converting to Odyssey went through the same laborious verification and trouble-shooting process, but have not had the same kind of issues as a result of the conversion process.

#### **b. Current records**

Records filed after the go-live date also contain numerous mistakes. Each type of document has a code associated with it. The person(s) scanning the document into the system tells the system what it is, and then scans in the document. Each piece of paper is coded and scanned individually. Other Odyssey users group documents and then scan in batches (batch scan) and/ or use a bar code (much like the Assessor's office uses). Franklin County has a half time scanner that scan 90% of their scanning with a barcode. They also use batch and interactive scanning. Numerous Yakima employees have indicated that they would prefer to go to batch scanning or bar scanning, but Ms. Riddle has not agreed to change the process. Clerks believe the current process is unnecessarily time-consuming.

In addition, many documents are entered under the most generic code, such as “order” or “declaration” which makes it difficult to determine what the document is when looking at the docket sheet. A user (judge or attorney) must open the document to see what it is. In some instances, a form pleading has a docket code printed right in the heading of the document, but it is still coded incorrectly. Ms. Knott stated that clerks aren’t attorneys and don’t know what code documents fall under.

Documents are scanned in one by one from a stack of documents on a clerk’s desk, but often times without regard to the order in which they should appear in the record. For example, the order might be in the record before the motion. This makes the record difficult to decipher from what has happened in a case from the docket sheet. It significantly increases the time spent preparing the clerk’s papers. I suspect this is the result of the individual document scanning. Clerks aren’t trying to put the documents in order, they are simply scanning the next one in the pile.

Documents are also filed incorrectly. For example, two probate orders were entered on the same day. When the attorney called the clerk’s office for a certified copy of one of the orders, it could not be found. The attorney discovered the order had been scanned and filed in Odyssey in the other probate case.

There have been several instances in which the judge could not determine the status of a warrant. In one case, the case was flagged with a warrant, but the documents in Odyssey (all post conversion) indicated that the bench warrant had been quashed. In another instance, the case was flagged with a warrant, but although the Odyssey file contained documents from multiple other cases, he could find no order issuing a bench warrant or quashing a bench warrant. Case managers at juvenile court also cannot determine the validity of warrants without searching the paper files. These cases can result in either someone who should go to jail going free or someone who should be free

going to jail.<sup>13</sup> Mistakes will occur no matter the system, but it is unclear how often this is happening. At least parts of the record, both before and after the implementation of Odyssey, are incorrect.

Even when the information is correct, it may be delayed. The Sheriff's office notes that protective orders are not always received in a timely manner. A person may obtain a temporary short-term restraining order, which after notice to the alleged abuser and a hearing, is followed by a permanent order. This is a dangerous time for the person seeking protection. If the temporary order lapses, after 24 hours, it disappears from the system. If there is a delay in receipt of the permanent order, there is no longer any record of the temporary order in the system and police officers responding to a disturbance or dispute during this period do not have all of the relevant information. This presents a danger to both the public and the responding officers. The Sheriff's office used to work closely with the Clerk's office when problems or questions arose. This working relationship has been damaged because Clerk employees are being moved around and with such frequency, the Sheriff's office is unsure whom to contact. In addition, a clerk employee told the Sheriff's office that she was no longer allowed to provide assistance to the Sheriff's office. Instead, the Sheriff's office was told that they needed to call the Clerk's main office for assistance with protection orders.

The jail also reports periodic difficulty in receiving timely orders. When court concludes at the jail, the in-court clerks are instructed to return to the main courthouse to scan the orders, then the orders are placed in a box that jail staff must then retrieve. Delay in receiving the orders may cause the prisoner to miss the prison transport. This can result, depending upon gang affiliation, in a week or two of additional incarceration at Yakima County expense. Jail personnel indicated that the delay could be minimized if

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<sup>13</sup> The Sheriff's office indicated that they are receiving warrant information in a timely fashion, although they occasionally receive an order to quash without having record of the underlying warrant in the system. The Sheriff's office indicates that orders to quash without record of a warrant occasionally happened under the old system as well.

the criminal docket was held earlier in the day and if they could retrieve orders from the jail building instead of having to collect them from the Clerk's office across the street.

**c. Court minutes**

Court clerks take notes called "minutes" to reflect what happens in court hearings. They are a vital part of the record and relied upon by many- attorneys, judges, and jail staff.

In addition, by e-mail dated 9/24/15 Ms. Riddle indicated that they would no longer keep an in-court record of the entry of ex parte documents. She asserts that ex parte documents "speak for themselves."

This creates several problems. First, when the ex parte document is entered in open court there is no notation of where in the recording that entry occurs. If counsel made oral representations prior to the entry of the order that would be subject to later review, it would be extremely difficult to find. Second, the number of matters heard by the court impacts its statistics, which impacts its state funding. The number of court hearings indicates to the state how many judges are needed in a particular county. Failure to keep a record of ex parte presentations results in a lower case count. Third, the notations in the clerk's minutes help the court, its administrative staff, and jail personnel figure out what went on that day. If there is no reference to an ex parte order in the docket/record, the court and jail personnel may not know that they are missing an order. The scheduling of hearings or trials and/or the transport of inmates might not occur. In several instances, an ex parte order was entered releasing an inmate, but the ex parte order was not entered in the court minutes and the jail staff did not receive a copy of the order. The release of the inmate was delayed.

**d. Receipt of documents for filing**

Seventy-five to eighty law firms and practitioners use AMS, a legal courier service, to deliver documents to one another and to file legal documents with the Clerk's office. AMS used to drop off originals and copies for filing twice a day into a basket. The Clerk's office would then file the originals and conform (stamp the date) on copies for AMS to pick up later in the day. Without prior notice, AMS was informed that the Clerk's office would no longer "be doing AMS's job" and would not conform copies for AMS. AMS and its customers adjusted. AMS typically files documents in the Clerk's office twice a day. Once in the morning and again in the afternoon. AMS was informed that if they placed documents in the basket near the end of the day, those documents would be processed the following day. Most pleadings are filed within fairly strict timelines, a day's delay in processing documents delivered to the Clerk's office can mean that the filing is untimely and will not be heard. RCW 2.32.050 requires the clerk "[t]o file all papers delivered to him or her for that purpose in any action or proceeding in the court as directed by court rule or statute."

Filing means filing with the clerk under CR 5. A document is filed with the clerk when it is delivered to the clerk. *State v. Robinson*, 104 Wash.App. 657, 668, 17 P.3d 653 (2001). The clerk's filing stamp is evidence of the time and date of delivery. File stamping documents after they are received is contrary to the duty of the clerk.

**2. Court Dockets**

Court hearings are confirmed two days' prior to the hearing. A docket is then prepared so that the judge hearing the case can review the files and be apprised of the issues before the hearing. The dockets are not prepared in a timely fashion and are not always correct. This has been an ongoing issue. Judges are preparing for cases that may not have been confirmed and therefore will not be heard. Judges are refusing to hear cases that their docket reflects were not confirmed, when actually the case had been

confirmed.<sup>14</sup> Counsel may travel from out of town to attend a hearing that is not actually going forward.

Untimely dockets presents a significant problem for the jail. The jail either gets a courtesy copy from the in-court clerk or relies upon the docket posted on-line to the general public. The on-line docket makes no mention of who is in custody and who is not. Because defendants often have gang affiliations, the jail must plan their transports carefully to keep those inmates separate. With incorrect dockets jail personnel often have inmates there that shouldn't be or must arrange for last minute transportation of an inmate who wasn't listed on the docket.

In addition, hearings are being incorrectly coded on the docket. Different types of hearings take different amounts of time. Courtrooms and staff are scheduled based upon time estimates from the docket.

Based upon the confirmed hearings, electronic files are put into each judge's folder so that they have ready access to the necessary materials in their office and on the bench. The cases are often scanned, but not indexed. Therefore, the judge has to open each file to see what document it is. On the bench the judge needs to be able to find the relevant documents quickly.

Ms. Riddle, in an August 18, 2015 e-mail in response to complaints by the judges, noted that mistakes were being made because "the court clerks do not know how to docket /scan documents into the record, and the in-office clerks do not know much at all about in-court preparation." Clerks have indicated that they were instructed **not** to spend significant time preparing the dockets because that is really court administrative function. Ms. Riddle has stated that one of her goals is to cross-train employees. However, employees indicate that they have been thrown into areas that they don't know much about without training or guidance. Employees appear to be trying to learn new areas, but often don't have a clear understanding of what is required.

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<sup>14</sup> The attorney had e-mail proof of verification.

### **3. Judgments**

The clerk is required by law to create a separate record of the judgment entered by the court in the case. CR 78(e); RCW 4.64.030. By statute, “[e]very county clerk shall keep in the clerk's office a record, to be called the execution docket, which shall be a public record and open during the usual business hours to all persons desirous of inspecting it. The record must be indexed both directly and inversely, and include all judgments, abstracts, and transcripts of judgments in the clerk's office. The index must refer to each party against whom the judgment is rendered or whose property is affected by the judgment.” RCW 4.64.060.<sup>15</sup> Clerks at the municipal, district, superior, and appellate courts across the state enter information on the cases filed in their courts. Judgment are to be filed “immediately after they are signed by the judge.” CR 58(a).

The Court and title companies in the county have expressed concern regarding the delay with which judgments are recorded and available to the public. Title companies, who are insuring the title of property based upon the public record, are particularly concerned with any gaps in the record.

The issue regarding judgments predated Odyssey’s implementation. At one point the Clerk’s office was simply very far behind in entering documents. However, Oma Jolly, with Fidelity Title Company, has been tracking judgments since Odyssey went live. Every day she checks the new judgement index and notes any missing judgment numbers. If she runs into missing numbers she searches the judgment number in Odyssey and can find out what case they belong to. She then puts the missing judgments in her report so that she can be up to date on what judgments have been entered even when they don’t show on the index. When older judgments hit the index she crosses them off her list, but she notes that there are still a good number of judgments that are never shown. She is concerned that judgments are falling through the cracks.

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<sup>15</sup> A sample of the Judgment Index is in the attached documents. Ex. 4-1. Judgments are issued a number separate and apart from the case number.

It appears that some of the judgments on the list are not really judgments at all. Odyssey assigns a judgment number to cases, like Juvenile Court's Order on Adjudication and Disposition, which should not receive a judgment number at all. However, not all of the missing judgments are misclassified; some actual judgments are not showing up on the index.

Ms. Riddle's response to the judgment issue by e-mail through her counsel, was: "I am not sure what else can be done until the staffing issue is sorted out. It seems to me if the County Clerk's office had adequate staffing then there probably would not be a problem."

#### **4. Child Support Orders**

The Clerk "shall, within five days of entry, forward to the Washington state support registry, a true and correct copy of all superior court orders or administrative orders establishing or modifying a support obligation that provide that support payments shall be made to the support registry." In exchange for complying with this statute the Clerk is reimbursed "for the reasonable costs of copying and sending copies of court orders to the registry."

Prior to Odyssey, office clerks would route child support orders into a que called "WSSR"<sup>16</sup> and the orders would be e-mailed about once a day to the Department of Child Support. Once Odyssey went live, it appears that clerks who had little docketing experience were unaware of this obligation. An e-mail from Gail Hurlbert to Valerie Knott dated January 12, 2016 asked " Since you are asking for this and stating the system has not been set up yet to send documents to WSSR, does that mean you have not been transmitting ANY orders to WSSR the past few months?" Ms. Knott sent an e-mail in response indicating that she would have to "check what process has been used . . ." She

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<sup>16</sup> Washington State Support Registry.

checked with in-court clerks and was told that “[c]ourt staff have not been involved with WSSR. . . . Antoinette [an in-court clerk] has been teaching herself docketing and is probably not aware of the requirement.”<sup>17</sup>

Four months later, the Clerk’s office is still working on a process to get these documents to the Division of Child Support. On April 6, 2016, after a process had been laid out for them by Technology Services, Ms. Knott replied, “This sounds like a lot of added work [YIKES!:]”

Ms. Curtis from the Division of Child Support contacted the panel. She indicated that DSHS did not receive many orders for December 2015 and January 2016, but by February 2016, it appears that the Clerk’s office was making an effort. They received all of the orders for March of which they are aware. DSHS can track orders entered by the Prosecuting Attorney, but have no way of tracking orders entered by private attorneys. DSHS recently sent a message to the Yakima County Bar Association asking private attorneys to verify that orders have been received by DSHS. She said April numbers were very low and they suspect that they have not received all of the orders.

Even when orders are received, they are often not within the five day deadline. For example one order was filed on 11/10/15, but the order wasn’t received until 2/26/16. This can have a disastrous effect on both the support recipient and the obligor. A spouse waiting for support isn’t getting it for months at a time, while the obligor spouse is months’ behind on child support before the order (and the wage assignment) is even entered. Obligor spouses have gone to the DCS offices, only to be told that the office can’t take their money because no order has been entered.

Yakima County suffers as a result too. The Clerk’s Office receives a reimbursement for sending these child support orders to DSHS of approximately \$23,000

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<sup>17</sup> Ms. Riddles’ counsel expressed surprise that child support was an issue and responded, “Could you please explain to me since I am new to the Yakima political scene, why child support orders are of any concern?”

per month. Ms. Curtis states that Yakima will not receive reimbursement for December - January (\$46,000) and may not be eligible for reimbursement for other months as well.

### **5. Confidentiality of records**

I have been able to access documents and information in Odyssey which are supposed to be sealed. For example, I have been able to access sealed financial forms which include account numbers, even though I am not a party to the action. A gentleman filed a public records request with the County, and while it was being processed, received the information directly from the Clerk's office. He told the public records supervisor in the Prosecutor's office that he had already received the documents that he needed and forwarded a copy to her of what he received. Included in the information was account information and other private financial data that should not have been released.

### **C. In House Collections**

Ms. Riddle states that Yakima County is one of only two or three counties that uses a collection agency. She states that most other counties are doing collections in-house. She believes that turning over the collections to a private company is losing the County money. She believes that keeping it in house will allow her to collect a higher percentage of the fees. She does not have any figures to support whether this is true or not. She has modeled her collection practices after Thurston County's. The Thurston County Clerk, Linda Enlow and her staff were consulted and have provided assistance and training on an on-going basis.

YCCS had a collection contract with Yakima County. When YCCS initiates a collection process, the defendant is responsible for paying the fees associated with that collection. However, YCCS was not assigned all the cases for collection. According to

Larry Ausink, cases were referred to YCCS in a haphazard fashion and only a small percentage of cases were actually in active collection. According to Mr. Ausink, thousands of cases remain. Ms. Riddle implemented the program on November 19, 2015. The collection department is comprised of Jessica Dobbs and Larry Ausink. The intent is to implement a system that does not require the prosecutor's office to move for a writ of garnishment.

The legislature provided for the mandatory assignment of wages for child support, criminal financial obligations and public assistance overpayments. A mandatory wage assignment must be processed in accordance with the terms of the assignment or court order. Under the terms of the newer Judgment and Sentences the clerk's office has the ability to collect under a wage assignment, rather than going through a garnishment process. This is essentially collection superpowers. There are generally two types of wage assignments – voluntary wage assignments and mandatory wage assignments. A voluntary wage assignment is an employee's written consent to transfer future wages to a third party. Wage assignments are generally only for a part of the employee's wages. A mandatory wage assignment is a similar transfer of earnings required by law or court order. They had their first "bump" in their very first batch collections mid-March because the Judgment and Sentence order did not contain the wording necessary to send out a wage assignment to employer absent notice.<sup>18</sup> *See RCW 9.94A.7602 (1)(b)(i).* This resulted in a court hearing and the Clerk being called to appear before the court and explain her collection process. The wage assignment was quashed.

Ms. Riddle was also asked to prepare a list of defendants who were subject to the same collection process, but whose judgment and sentence did not provide for wage assignment without notice. It has been two months and Judge Harthcock has still not received this list. Mr. Ausink indicated that the list was nearly complete. There is

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<sup>18</sup> Under RCW 9.94A.7602, even though the wage assignment notice can issue without notice, "[a]n informational copy of the notice of payroll deduction shall be mailed to the offender's last known address. . ."

concern regarding possible liability for the collection process, however, the statute provides “[n]either the department nor any of the agents of the department shall be held liable for actions taken under RCW 9.94.760 and 9.94A.7601 through 9.94A.761.

Mr. Ausink indicated that unlike the garnishment process which rolls in costs of collection, the Clerk’s office is not collecting any costs of collection from the defendant. It is unclear whether this allocation of resources will make financial sense in the long run. Ms. Riddle has not responded to my questions regarding the financial performance of the collection program, therefore, it is unclear how much has been collected. Pursuant to RCW 9.94A.760, “the county clerk shall provide the administrative office of the courts with notice of payments by . . . offenders no less frequently than weekly.” Ramsey Radwan, Director of the AOC, indicated that the information identified in RCW 9.94A.760 including juvenile LFOs is in Odyssey. He indicated that he did not have any “indication regarding Yakima LFO collections or the frequency [of] information being entered into Odyssey.” It seems that this particular check on this system is not very effective if no one is really watching it. It is unclear if anyone other than the Clerk is keeping track of the LFO receipts and disbursements.

## **D. Finances**

### **1. Reporting**

The state pays for half the salaries of superior court judges. All costs of operating superior courts are borne by the state’s 39 counties. The law and justice system in Yakima County is comprised of the Court, the Clerk, the Prosecutor and the Department of Assigned Counsel, the Sheriff’s Office and the Yakima County Department of Corrections. This makes up about 82% of the County’s budget each year. Filing fees, fines and infraction penalties collected by the Clerk are shared by local and state governments.

Monies received by the Clerk’s office is divided into various “buckets” based upon the nature of the fee or money received. Codes determine what bucket the money

goes into. Other county departments must deposit monies received with the County Treasurer within 24 hours. The Clerk is unique in that she has her own accounts. She deposits monies into her accounts and also remits the “bucket” funds to the County Treasurer. The Treasurer and the County Financial Director are aware of what ends up in the buckets, but do not have access to the Clerk’s accounts. Effective financial management typically includes a system of checks and balances. Every other agency is accountable to the County Treasurer. However, the Clerk’s Office runs without significant County oversight over her trust accounts.

The accounts both before and after Ms. Riddle’s tenure as Clerk have been a bit of a mess. The only entity that has authority to review the accounts is the State Auditor’s Office. In 2013 and 2014, the state auditor noted that approximately four million dollars was received by the Clerk Trust Fund account in each of these years. Activity in the Clerk’s Trust Fund is recorded in the Washington State Judicial Information System (JIS). The bank statements should be reconciled to JIS monthly. The bank statements were not reconciled in a timely manner prior to Ms. Riddle taking office, nor after she took office.

At one point, Craig Warner, the County Financial Director, was allowed to assist the Clerk’s office and help them reconcile her accounts. He had her bank accounts reconciled through April 2015. The current state of reconciliation is unclear.

When Odyssey went live some financial codes were left blank because Ms. Riddle did not designate a code. Some codes were incorrect.<sup>19</sup> This was only discovered because some buckets were curiously low. One fund, the JSP (Superior Court Revenue) received no money from November 1, 2015 to March 17, 2016<sup>20</sup>, whereas in years prior it had received some money every day.

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<sup>19</sup> Approximately 37 codes were incorrect in the system prior to Ms. Riddle taking office.

<sup>20</sup> The fund received a \$4,620.09 deposit on March 18, 2016.

Ilene Thomson, the County Treasurer, is working with the AOC and other Odyssey counties (particularly Thurston County), in an effort to set up the correct codes so that money can be tracked to the right buckets and there can be a reconciliation of money that was placed in the wrong bucket.

Ms. Thomson has taken the laboring oar on this. She states that this is not her role, but that it needs to get resolved. She says that part of the problem has been communication. Ms. Riddle is not terribly communicative. AOC has been difficult and a bit defensive about the system.

## **2. Revenue**

It appears that the money in the “wrong bucket” issue is being resolved. More problematic, is the originating accounts. Craig Warner notes that the Clerk’s revenue<sup>21</sup> has been fairly consistent. The revenue (rounded to the nearest thousand) for the last several years is as follows:

2009	759,000
2010	755,000
2011	748,000
2012	744,000
2013	701,000
2014	749,000
2015	691,000

There is simply no way to know why revenue was down significantly for 2015. I have asked Ms. Riddle if she knows why revenue is down, but have had no response. In addition, the Auditor’s office indicates that the Clerk’s office’s revenue for 2016 is short revenue by approximately \$150,000 to \$200,000 so far.

In addition to the reimbursement from DSHS for child support orders, the Clerk’s office is reimbursed by several courts, including the City of Yakima, and Union Gap, and

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<sup>21</sup> Mr. Warner states that the Clerk’s revenue is divided into two categories: 1. grants and contracts, and 2. everything else. The “revenue” is the “everything else” category.

Grandview for jury administration. The City of Yakima, Yakima County District Court, Union Gap Municipal Court and Grandview Municipal have not been billed since May 2015. The City of Yakima reimbursement was included in the Clerk's budget for last year for approximately \$15,000. Yakima County District Court, Union Gap and Grandview were billed approximately \$11,000 total for the months of January 2015 through May 2015.

The Clerk's office has indicated that it is working on preparing the bill, but it does not know the methodology used to calculate what is due. The previous bills were based on a rather complicated formula that allocated percentages of various staff's salary. However, a simple average of prior reimbursements would probably be a starting point for a more simplified flat fee reimbursement. Postage for jury notices alone runs about \$2,000 a month. Those entities that owe the reimbursement would like to be able to clear their books. They are afraid to push too hard on this issue for fear Ms. Riddle will decide to cease providing jury services for them.

### **3. Other**

In addition, there have been reports that those owed money by the Clerk's office including guardians ad litem, witnesses owed fees and those seeking disbursement of monies deposited in the court have either not been paid or have experienced significant delay in receiving their money. Due to time constraints, I have not verified these complaints or made significant efforts to see if these issues have been resolved.

## **E. Employment Issues**

### **1. Staffing**

Approximately 25% of the staff has left.<sup>22</sup> The departing staff are largely comprised of those who had long tenures, positions of authority and responsibility. A great deal of institutional knowledge is simply gone. For example, as of Friday April 29, 2015, the juvenile court will have lost three of its four employees. Approximately a third

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<sup>22</sup> As a result approximately \$100,000 of Ms. Riddle's budget went back into the general fund in 2015.

of the remaining employees are on some kind of intermittent FMLA<sup>23</sup> leave. Staffing is an issue.

Current employees have unionized because they feel like their jobs are in jeopardy. This belief is not unfounded. Valerie Knott who describes her role as “internal HR” stated that but for the service rules, many of the current employees would be gone. Ms. Riddle and Ms. Knott assert that HR is a hindrance to hiring. Ms. Knott asserted that HR and the personnel committee, “made up of judges”, are working together to prevent the Clerk’s office from hiring and structuring positions in their office. Ms. Knott states that she is working as an executive assistant, but is not classified or paid as such.

Linda Dixon, who has been Yakima County’s Human Resource director for 15 years disagrees with the characterization. She states that HR is not approving the hiring because Ms. Riddle is not submitting the proper paperwork. HR provided Ms. Riddle copies of all existing job descriptions. Ms. Riddle is not giving HR the new descriptions in order to process the paperwork timely.

## **2. Employment claims**

There are numerous unfair labor complaints and grievances as well as a whistleblower complaint against Ms. Riddle.

Ms. Riddle has twice stripped a supervisor in her department of supervisory duties without cause and without following the processes and procedures set forth for public employees. In both instances, the removal of authority was not accompanied by an adjustment in pay. Continuing to pay an employee as if they carried supervisory duties when they do not mischaracterizes the employee in the County pay system. Ms. Riddle admitted that she made a mistake with regard to the first employee and reinstated her. However, this employee reports that her duties have not actually been restored. Despite acknowledging that the demotion was not proper, she did it again with another employee.

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<sup>23</sup> There are not currently any claims related to FMLA. However, several clerks have been removed from in court duties due to her need for intermittent leave. Several have challenged, in e-mails, this removal as being discriminatory. Claims have not yet been pursued.

The second demotion has been reported as an unfair labor practice and is being still being processed.

The second demoted employee was the supervisor of the in-court clerks. When she was stripped of this duty there was no one trained to take her place and mistakes were made. The removed supervisor, Marla Pascal, is not allowed to even train new in-court clerks. For some reason, in-court clerks appear to have had job duties added. Many are now tasked with scanning the documents that were entered during their in-court service. Commissioner Naught has noted that he will often see his in-court clerk still scanning until long after the Clerk's office is closed for the day.

Prior to Ms. Riddle taking office positions were divided. Some employees served as court room clerks and others would fill rolls primarily in the office. Since Ms. Riddle took office it appears that everyone is doing everything- even if they do not actually know how to do it. Ms. Riddle acts unilaterally and inconsistently. One employee reported that in the fifteen months since Ms. Riddle took office, she has moved desks/locations five times and changed job duties with about the same frequency. She now keeps her desk items in boxes to facilitate relocations. In what appears to be a constant state of reorganization, employees do not know one day to the next what their job might entail or what might be expected of them. No one has adequate time or resources to train people to do the jobs that they were assigned. There is little motivation to engage in training or being trained, since most job duties are subject to change without notice.

In some instances, the assignment of job duties appears to be retaliatory. For example, one clerk has historically been assigned the domestic calendar and another clerk the domestic violence calendar. Each has a level of expertise and knowledge in their positions. Without reason or explanation, their courtroom duties were switched so that both were simultaneously working in an area unfamiliar to them. The change was not

due to cross-training because neither of them actually received training. They were simply assigned to different and unfamiliar duties.

The constant upheaval has created a great deal of angst both for the clerks and for those who rely upon them. Counter clerks do not know how to open a probate. In-court clerks do not know how to run a jury trial. Operations are “disjointed”; it is “an unsettled environment.” Nobody has the information, tools or training required to do their job properly.

Ms. Dixon asserts that approximately 60-70% of her time is spent on issues directly related to the Clerk’s office. Two other new officials took office at the same time, including the new Sheriff, but she hasn’t had nearly the issues that she has faced with the Clerk’s office. Employees feel like neither HR nor the union can really help them.

It is beyond Ms. Dixon’s authority to audit the Clerk’s office. She can only respond to complaints or answer questions as they are presented. She “is waiting for the other shoe to drop.” One example cited by Ms. Dixon is that the Clerk’s office had a temporary worker who was working in excess of her categorization as a temporary worker. Ms. Dixon told the Clerk that this employee could no longer work there as a temporary employee. Rather than let the employee go, the employee kept working and the Clerk’s office just wasn’t turning in her time cards. She wasn’t getting paid. Ms. Dixon discovered that the temporary employee had not been paid for 4 - 6 weeks. She explained that this was a wage and hour violation and the employee needed to be paid. The temporary employee is no longer on the payroll. Ms. Dixon has no knowledge as to whether this person is still working for the Clerk’s office in a volunteer capacity.

There are other wage and hour violations occurring. Due to staffing issues, many employees, particularly in-court staff, are missing meals and rest breaks. An in-court clerk sent out a request to her co-workers asking someone to relieve her so that she could use the restroom. She was chastised for sending the request to all staff rather than just to

her supervisor, Ms. Riddle, and Valerie Knott. Staff who offer to assist one another, whether for breaks or covering courtrooms are chastised for offering. Requests must go through the “proper channels.” Often times such requests go unanswered. If a break is missed, employees are not receiving additional compensation for the missed breaks.

During the course of union negotiations, the Clerk was warned about making changes that could be seen as retaliatory in light of the union negotiations. She nonetheless moved her office into what used to be the clerk’s breakroom. It is not the fact that she moved her office to this location, it is the timing of the relocation that is problematic.

Ms. Riddle and her attorney have brought a union employee in for questioning or an interview without union representation. This is the subject of another unfair labor practice.

### **3. Overtime**

There are allegations that overtime and wages are not being paid appropriately. At one point Ms. Riddle was offering overtime for those who worked over their allotted 37.5 hours. Overtime is only available if an employee works over 40 hours. The Auditor’s Office became aware of and corrected this practice. However, the Auditor does not reconcile time cards with actual time worked. Mr. Ross indicated that the individual managers are responsible for the accuracy of the time reported.

Sometimes the time reported is not accurate. Time cards and time is reported for each month a few days prior to the end of the month. For example, if the end of the month is Friday, payroll would be due on the prior Wednesday. Time for the remaining two days is estimated, reported and then often not reconciled when someone doesn’t come to work on the gap days. There are other instances in which the employees were overpaid. For example, one employee went home at 12:30 pm., but was paid for working 9.5 hours. It is unlikely that she began work at 3:30 am. In another example, an employee was out sick, but paid 7.5 hours for the day. Valerie Knott earned six hours of

overtime on the day that she accompanied Joseph Thomas into the clerk's office. She asserts she was doing her own work during this time. Ms. Knott is approving her own PTO. These wage and hour issues are the subject of a whistleblower complaint.

#### **4. Communication**

Employees' access- physical access, computer access, and access to informational resources - is restricted. The Clerk has shut down many informal collaborative processes. For example, the Clerk's office has historically participated in a monthly brown bag meeting with the Court Commissioner and family law practitioners. The purpose of this meeting is to collaborate and make improvements in the family law docket. Ms. Pascal asked if she could go. The Clerk told her she could go, but it would be on her own time - off the clock- and that she could not speak on behalf of the Clerk's office.

An in-court clerk received information from law enforcement regarding new requirements regarding full and complete names on paperwork<sup>24</sup>. This information, as well as the need for training, was forwarded to the Clerk. The information was never disseminated to employees.

Ms. Utterback was told that she was to make certain IT decisions. She and another employee attended a demonstration by the Technology Services Department of an application that would enable the records department to more efficiently handle ITA files. It would allow them to "break apart" the files electronically. The application costs approximately \$150 and would arguably be more efficient and less expensive than the Adobe program currently used at a cost of \$800 per license. Ms. Utterback was chastised by Ms. Riddle for attending the demonstration without express permission. Ms. Utterback believed that she had permission. The demonstration took approximately a

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<sup>24</sup> The Sheriff's office indicated that lack of the proper names is a significant problem when they enter information into their data base because every alias needs to be entered. Each variation in a name requires an additional entry.

half an hour. Afterwards, Ms. Riddle refused to hear anything about the app or its possible benefits to the office.

Employees do not have computer access to properly do their job. For example, the employee who inputs restitution does not have access to the juvenile restitution. Employees are instructed not to ask questions. If they do ask questions, they often do not receive answer and are required to figure it out themselves. Employees are not allowed to engage in a great number of activities independently and without express permission from the Clerk. Employees are reluctant to bring anything to the Clerk whether that is an idea to make things run more efficiently or a complaint. Employees are not allowed to contact the Court Administrative office, and former clerk Jessica Albert in particular. The Court Administrative employees once had fairly open access and easy communication with the Clerk's office and employees. Now Court Administrative staff are treated much like the rest of the public, they must wait at the counter with everyone else and pick up and leave their documents in a basket. Commissioner Naught wanted to talk to the in-court clerk to resolve some issues, but the clerk told him that she was not allowed to talk to him about the issues related to the Clerk's office, instead he would have to talk directly with Clerk.

## **5. Lack of Cooperation**

Ms. Riddle often makes changes unilaterally without input from or advance notice to those who will be affected. Since Ms. Riddle took office, employees have been moved from offices. Cubical partitions have been removed. Major moves with the assistance of the technical services department have occurred at least three times. Employees have been removed from positions, and others with less experience have been promoted into those positions. A number of employees believe the Clerk promised promotions and then either promoted someone else or left the position open without warning or explanation. There is a strong belief that those in position of authority do not have the requisite amount of experience necessary to perform their jobs.

The office has been polarized. Those who are loyal or are viewed as “loyal” to the Clerk are rewarded with duties and supervisory authority (some call this favoritism) and those who are not viewed as loyal have not been similarly rewarded (some call this punishment). As a result, both sides are willing to throw monkey wrenches into the process. There is little incentive to work as a team. Making the “bad guys” look bad sometimes takes priority.

This unilateral conduct also has impacted others that deal with the Clerk’s office. The jail, the court administrative staff, legal messenger services and many others have had to adjust to abrupt changes in policy and procedure.

## **6. Union Contract**

Currently, there is no agreement between the Clerk’s office and the union. Negotiations are continuing. Many employees are frustrated and angry. They are holding on to see if there will be change as a result of the union contract or the Panel recommendations. They threaten suits if change is not forthcoming.

## **7. Security**

The Clerk changed the access to the Clerk’s office from keys to security badges. This was in conjunction with notifying the Court Administrator’s office that their employees would no longer have access to the Clerk’s office for “security reasons.” Recently, there was a fire drill. During the fire drill, the electric key cards do not work. Employees can exit their offices, but they cannot re-enter.<sup>25</sup> Clerk and her assistant Valerie Knott have keys, but both were out of town. Those with the responsibility of ensuring that the offices had been cleared could not do so because the doors were inaccessible. When the fire drill was over, the office could not be reopened by clerk staff. Employees believe that this change occurred without input from staff or fire or

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<sup>25</sup> Technology Services indicated that in the event of a fire or a power outage the doors should remain open. Mr. Helton was going to verify if the Clerk’s office and the records room also remain open.

rescue personnel and impedes their access and puts them at risk during an emergency or active shooter situation. They have filed an unfair labor practice as a result.

In addition, an employee is concerned because the new collections department puts felons in close proximity to her office. The office is also the repository for trial exhibits of all kinds which must remain secure. The collection personnel works with convicted felons in a relatively small office space. The door, which is approximately 50 feet from security personnel at the building's entrance, is locked. There is a panic button installed in one of the offices and the room is video monitored. There is no counter or barrier from the doorway to the rest of the offices.

On Saturday March 19, 2016, Joseph Thomas, Ms. Riddle's personal attorney was accompanied into the Clerk's office by Valerie Knott. Ms. Knott logged into the system under her credentials and then Mr. Thomas takes her place at the computer. Ms. Knott logs in again and is seen at another work station. County policy and the log on screen indicate that "non-county employee use is forbid except as required to perform official county business." The type of data Mr. Thomas was viewing is unclear. Technology Services was unable to track his activity.<sup>26</sup> During my initial interview with Ms. Riddle, he indicated that he was reviewing files to find instances in which portion of the recorded proceedings were inaudible which could lead to reversible error. Mr. Thomas asserted that there could be a due process violation if an unqualified "court reporter" (an in-court clerk) took an incomplete record.<sup>27</sup>

Both the Prosecutor's office and the Department of Assigned Counsel voiced grave concerns about Mr. Thomas' access to clerk records because a number of high profile cases are currently pending in Yakima County.

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<sup>26</sup> Technology Services is making changes to prevent multiple log ins on the same account. In addition, it is going to add tracking capabilities. AOC may be able to track the activity to ascertain what was viewed.

<sup>27</sup> Mr. Thomas did not think this presented a conflict in his representation of the Clerk.

#### **F. Juvenile Court**

There were four experienced staff at the Juvenile Court facility. Three have quit. The clerk's office in the facility is sometimes closed during business hours with a note affixed to the door directing people to the downtown office. This is the result of staffing shortages and happens without warning. This presents a hardship to families and juveniles who often have limited transportation. They cannot obtain copies of documents they need for court and cannot pay fines or restitution. Attorneys cannot file documents they need to file.

Juvenile court relies heavily on diversion programs. This basically requires the offender to make restitution payments, stay out of trouble and resolve his or her legal issues. When they successfully complete what is required, their cases are closed and they are given a clean slate.

Juvenile diversion accounts have not been opened since Odyssey went live. Money being paid by juvenile defendants is not receipted to their cases. Victims are not receiving the restitution they are owed. The employee who used to enter all legal financial obligations for both adults and juveniles lost access to input data when Odyssey was implemented. Her access has not been restored even though she has made numerous requests to Ms. Riddle. As a result, case managers in the juvenile diversion program cannot track the money being paid through Odyssey, and it is not showing on JIS or JCS either. A juvenile case manager attempted to look up a receipt and has not found it anywhere in the system. She is advising her clients to keep each of their receipts and to not mail in any payments directly to the Clerk's office so that they will have proof of what they have paid in.

The court and juvenile diversion staff has no way to track where juvenile defendants stand with regard to diversion payments. The Clerk's office used to run a report for the Juvenile report that showed the diversion fees and the restitution and/or fines from diversions. Ms. Riddle has been asked to resume sending this information.

Ms. Riddle responded by stating that the only access they should have in Odyssey is “view only.” She then asked why the reports were being requested. The response was that “Juvenile absolutely needs to receive financial reports for payments made to restitution and diversion fees . . .” Juvenile still has not received these reports.

A case cannot be closed because they cannot verify if the required payments have been made. The open case status may keep juveniles from entry into the armed forces or college.

#### **G. Actions by Proxy**

At a meeting of the law and justice committee, the Clerk’s personal attorney, Joseph Thomas, purported to act on her behalf by presenting a signed proxy. This is not permitted by statute. Under RCW 36.16.070, if “the duties of any county office are greater than can be performed by the person elected to fill it, the officer may employ deputies and other necessary employees with the consent of the board of county commissioners.” Clerk employees are covered under her bond. Mr. Thomas cannot act on behalf of the Clerk and is not covered by her bond.

#### **H. Communication and cooperation**

A common theme in many of the issues plaguing Yakima’s law and justice system is communication. Many agencies including the judges, court administrative staff, the Prosecutor’s office, Yakima Treasurer, Yakima County’s Human Resource Managers, and numerous other people interviewed in the course of this investigation, indicate at the core of many of the problems is communication. People have offered to help, the court administrative office has offered to lend staff, and many if not most have put forth extraordinary efforts and taken on extra tasks and duties in order to keep the system running. They assert that Ms. Riddle has not followed through with communication. Phone calls to her go unanswered and e-mails unreturned.

She has rebuffed offers of collaboration in order to resolve many of the on-going issues. Employees are not encouraged and sometimes even rebuffed for offering ideas and solutions. Ms. Riddle indicates that she does not have the staff to attend meetings with various law and justice partners.

### **III. Recall**

Several of the people I have interviewed have inquired about the possibility of recall. The right to recall elected officials is a right of the people guaranteed by article I, sections 33 and 34 (amendment 8) of the Washington Constitution. *In re Recall of Pearsall-Stipek*, 136 Wn.2d 255, 262, 961 P.2d 343 (1998). Section 33 contains the substantive right of recall and provides that “[e]very elective public officer of the state of Washington ... is subject to recall and discharge by the legal voters of the state....” Section 34 permits the Legislature to “pass the necessary laws” to carry out section 33. Pursuant to this authority, the Legislature adopted RCW 29.82, which was enacted “to provide the substantive criteria and procedural framework for the recall process.” *Pearsall-Stipek*, 136 Wn.2d at 262–63, 961 P.2d 343.

A charge is factually sufficient if the facts “establish a *prima facie* case of misfeasance, malfeasance, or violation of the oath of office” and are “stated in concise language and provide a detailed description” in order to “enable the electorate and a challenged official to make informed decisions.” *In re Recall of Wasson*, 149 Wn.2d 787, 791, 72 P.3d 170 (2003) (citing *Cole v. Webster*, 103 Wn.2d 280, 285, 692 P.2d 799 (1984); *Chandler*, 103 Wn.2d at 274, 693 P.2d 71). The petitioner must have some knowledge of the facts underlying the charges. *In re Recall of Ackerson*, 143 Wn.2d 366, 372, 20 P.3d 930 (2001). Where the charge alleges the official violated the law, the facts must show the official intended to do so. *In re Recall of Wade*, 115 Wash.2d 544, 549, 799 P.2d 1179 (1990).

RCW 29A.56.110 defines malfeasance and misfeasance:

- (1) “Misfeasance” or “malfeasance” in office means any wrongful conduct that affects, interrupts, or interferes with the performance of official duty;
  - (a) Additionally, “misfeasance” in office means the performance of a duty in an improper manner; and
  - (b) Additionally, “malfeasance” in office means the commission of an unlawful act.

Lawful, discretionary acts are not a basis for recall. *Chandler*, 103 Wn.2d at 274, 693 P.2d 71. A reviewing court must not consider the truthfulness of the charges but instead must accept the allegations as true and determine whether the charges on their face support the conclusion the officer abused his or her position. *Cole*, 103 Wn.2d at 287, 692 P.2d 799; *Teaford*, 104 Wn.2d at 586, 707 P.2d 1327.

## Witnesses Interviewed

Janelle Riddle, Yakima County Clerk	Debra Utterback, Yakima County Clerk's Office	Tony Menke, Attorney	Harold Delia, Yakima County Superior Court Consultant
Shelie Aman, Yakima County Clerk's Office	Sheila Rank, Yakima County Clerk's Office	Megan Murphy, Attorney	George Helton, Director Yakima County Technology Services
Larry Ausink Yakima County Clerk's Office, Collections	Cecilia Garcia, Yakima County Clerk's Office	Robert Inouye, Yakima County Superior Court Commissioner (Juvenile Court)	Becky Bishop, Yakima County Technology Services
Karolyn Kraft Yakima County Clerk's Office	Angela Knoll, Yakima County Clerk's Office	Kevin Naught, Yakima County Superior Court Commissioner	Ilene Thomson, Yakima County Treasurer
Marla Young- Yakima County Clerk's Office Pascal	Paul Kelley, Attorney, Yakima County Department of Assigned Counsel	Richard Bartheld, Yakima County Superior Court Judge	Linda Enlow, Thurston County Clerk
Holly Sutliff, Yakima County Clerk's Office, shop steward	Joseph Brusic, Yakima County Prosecuting Attorney	Gail Harthcock, Yakima County Superior Court Judge	Tawni Sharp, Thurston County Deputy Clerk

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Antoinette Facio, Yakima County Clerk's Office	Blaine Connaughton, Attorney	Robyn Berndt, Superior Court Administrator	Mike Killian, Franklin County Clerk
Valerie Knott, Yakima County Clerk's Office	Kevan Montoya, Attorney	Shawn Murphy, Attorney	Ruby Ochoa, Franklin County Deputy Clerk
Linda Haggert, Court Services Manager, City of Yakima	Therese Murphy, Yakima County District Court Clerk	Kimberly Curtis, Washington Division of Child Support Services	Tracy Sampson, AMS
Oma Jolly, Fidelity Title	Mel Brown, paralegal Stokes Lawrence	Debbie Wilson, legal assistant Stokes Lawrence	Joan Anderson, Yakima County Superior Court Reporter
Brian Winter, Yakima County Sheriff	Carriann Ross, Sheriff Records Officer	Diane Caldwell, Sheriff's Office	Marsha Graf, Sheriff's Office
Charles Ross, Yakima County Auditor	Karen D'Hondt, Yakima County Auditor, Accounting Manager	Alison Camden, Office Manager, Dispositions, Yakima County	Betty Flynn, AOC
Rene Lewis, AOC, Comptroller	Robin Emmans, Attorney	Quinn Dalan, Yakima County DAC	Bella Kirby Case Manager, Juvenile Court

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RuthAnne Cortez Juvenile Court	Tracey Slagle Juvenile Court	Debra Delatorre, paralegal Yakima County Prosecutor's Office	Jim Hurley, Attorney
Marcus Frye, Attorney	Bill Pickett, Attorney		

## Courtroom Recording Duties - Court Admin or Deputy Clerk Assignments

	Deputy Clerk Operates Equip.	Court Staff Operates Equip.	Keeps Log Notes of FTR or other recording device	Checks periodically that system is recording.	Saves recording to secure location	Provides copies of recording to parties	Receives \$ for recording copies	Last Updated
<b>Thurston</b>	X#####		Dep. Clerk	Dep. Clerk	Dep. Clerk	Court Admin.	Dep. Clerk	2/17/2016
<b>Walla Walla</b>	X (JAVS)****		Dep. Clerk****	Dep. Clerk****	Dep. Clerk****	n/a	n/a	1/27/2016
<b>Whatcom</b>	X		Dep. Clerk	Dep. Clerk	Dep. Clerk	Dep. Clerk	Dep. Clerk	1/27/2016
<b>Whitman</b>	X		Dep. Clerk	Dep. Clerk	Dep. Clerk	Dep. Clerk	Dep. Clerk	1/27/2016
<b>Yakima</b>	X		Dep. Clerk	Dep. Clerk	Dep. Clerk	Dep. Clerk	Dep. Clerk	1/27/2016

Unless otherwise specified, "equipment" refers to FTR or CourtSmart recording equipment. JAVS refers to Video/Audio recording equipment

\*Pierce: Only has CourtSmart in the commissioner courtrooms & 3 criminal division courtrooms; the clerk turns system on & monitors it – the clerk could be someone from the Clerk's Office or one of admin staff who clerks in court, no separate staff. The judges all have court reporters.

\*\*Lincoln: Court Administrator does everything including deputy clerk duties.

\*\*\*Clark: Has JAVS in the courtrooms operated by Judicial Assistants.

\*\*\*\* Walla Walla County has court reporters and a JAVS system. The County Clerks run the JAVS system when used.

\*\*\*\*\*Chelan has live court reporters except at Juvenile where Court Admin runs the FTR while doing other courtroom duties

##Kittitas Court Administrator checks from her FTR Player at her desk to make sure it is recording during a hearing but deputy clerks are also checking during proceeding.

##Pacific/Waikakum Clerk & Court Admin share responsibilities w/ Pacific Court Admin handling all proceedings for Pacific & Clerk for Waikakum & back each other up.

##Skamania Court Admin monitors JAVS from her desk but clerk turns it on and also monitors.

####Thurston County has mostly live court reporters but does use FTR in some cases. When FTR is used, deputy clerk runs the equipment.

## Deputy Clerk vs. Court Admin staff operating FTR or other recording system

# Counties responding to survey - 32 out of 33  
# Counties where deputy clerk operates FTR, JAVS or CourtSmart = 30  
# Counties who not use deputy clerks = 3  
# Counties using Court Admin to provide FTR copy requests = 8  
# Counties where Deputy Clerk provides FTR copy requests = 21  
# Counties where Deputy Clerk checks system periodically, saves or auto saves = 26  
# Counties where Deputy Clerk keeps log notes = 26  
# Counties where Deputy Clerk saves recordings to secure location = 24

# APPENDIX 3

**RCW 2.32.050****Powers and duties of court clerks.**

The clerk of the supreme court, each clerk of the court of appeals, and each clerk of a superior court, has power to take and certify the proof and acknowledgment of a conveyance of real property, or any other written instrument authorized or required to be proved or acknowledged, and to administer oaths in every case when authorized by law; and it is the duty of the clerk of the supreme court, each clerk of the court of appeals, and of each county clerk for each of the courts for which he or she is clerk:

- (1) To keep the seal of the court and affix it in all cases where he or she is required by law;
- (2) To record the proceedings of the court;
- (3) To keep the records, files, and other books and papers appertaining to the court;
- (4) To file all papers delivered to him or her for that purpose in any action or proceeding in the court as directed by court rule or statute;
- (5) To attend the court of which he or she is clerk, to administer oaths, and receive the verdict of a jury in any action or proceeding therein, in the presence and under the direction of the court;
- (6) To keep the journal of the proceedings of the court, and, under the direction of the court, to enter its orders, judgments, and decrees;
- (7) To authenticate by certificate or transcript, as may be required, the records, files, or proceedings of the court, or any other paper appertaining thereto and filed with him or her;
- (8) To exercise the powers and perform the duties conferred and imposed upon him or her elsewhere by statute;
- (9) In the performance of his or her duties to conform to the direction of the court;
- (10) To publish notice of the procedures for inspection of the public records of the court.

[ 2011 c 336 § 45; 1981 c 277 § 1; 1971 c 81 § 12; 1891 c 57 § 3; RRS § 77. Prior: Code 1881 §§ 2180, 2182, 2184.]

**NOTES:**

**Rules of court:** SAR 16.

# APPENDIX 4

**RCW 36.23.030****Records to be kept.**

The clerk of the superior court at the expense of the county shall keep the following records:

(1) A record in which he or she shall enter all appearances and the time of filing all pleadings in any cause;

(2) A docket in which before every session, he or she shall enter the titles of all causes pending before the court at that session in the order in which they were commenced, beginning with criminal cases, noting in separate columns the names of the attorneys, the character of the action, the pleadings on which it stands at the commencement of the session. One copy of this docket shall be furnished for the use of the court and another for the use of the members of the bar;

(3) A record for each session in which he or she shall enter the names of witnesses and jurors, with time of attendance, distance of travel, and whatever else is necessary to enable him or her to make out a complete cost bill;

(4) A record in which he or she shall record the daily proceedings of the court, and enter all verdicts, orders, judgments, and decisions thereof, which may, as provided by local court rule, be signed by the judge; but the court shall have full control of all entries in the record at any time during the session in which they were made;

(5) An execution docket and also one for a final record in which he or she shall make a full and perfect record of all criminal cases in which a final judgment is rendered, and all civil cases in which by any order or final judgment the title to real estate, or any interest therein, is in any way affected, and such other final judgments, orders, or decisions as the court may require;

(6) A record in which shall be entered all orders, decrees, and judgments made by the court and the minutes of the court in probate proceedings;

(7) A record of wills and bonds shall be maintained. Originals shall be placed in the original file and shall be preserved or duplicated pursuant to RCW 36.23.065;

(8) A record of letters testamentary, administration, and guardianship in which all letters testamentary, administration, and guardianship shall be recorded;

(9) A record of claims shall be entered in the appearance docket under the title of each estate or case, stating the name of each claimant, the amount of his or her claim and the date of filing of such;

(10) A memorandum of the files, in which at least one page shall be given to each estate or case, wherein shall be noted each paper filed in the case, and the date of filing each paper;

(11) A record of the number of petitions filed for restoration of the right to possess a firearm under chapter 9.41 RCW and the outcome of the petitions;

(12) Such other records as are prescribed by law and required in the discharge of the duties of his or her office.

[ 2011 c 193 § 3; 2002 c 30 § 1; 1987 c 363 § 3; 1967 ex.s. c 34 § 2; 1963 c 4 § 36.23.030. Prior: (i) 1923 c 130 § 1; Code 1881 § 2179; 1863 p 417 § 6; 1854 p 366 § 6; RRS § 75. (ii) 1917 c 156 § 2; RRS § 1372. (iii) 1917 c 156 § 57; Code 1881 § 1384; 1863 p 219 § 118; 1860 p 181 § 85; RRS § 1427. (iv) 1917 c 156 § 72; Code 1881 § 1411; 1863 p 221 § 130; 1860 p 183 § 97; RRS § 1442.]

# APPENDIX 5

This agreement is entered into on the 25<sup>th</sup> day of December, 2014, by and between Jemelle Riddle and Clerk elect of Yatim Court, Gresham and the Judges of the Yatim Court Superior Court as follows:

1. Effective January 1, 2015 10 designated employees of the Club shall be cross appointed for service in the court room. Upon the statutory duties of the Court Clerk under RCM 2.32.050 and 36.23.030, and the Duties of the Agreed Reporter to keep a full record of all oral proceedings in court as required by RCM 2.32.200 and is the responsibility of the Presiding Judge in the courtroom.
2. The Club and the Presiding Judge or his/her designee shall have concurrent managerial control over the 10 designated court clerks. All hiring, discipline and termination decisions shall be jointly made by the Clerk and the Presiding Judge or his/her designee. On the event of an dispute between the Club and the Presiding Judge the dispute will be submitted to the Human Resources for resolution.

3. The Parties will meet and confer on a regular basis to discuss any concerns, issues or problems that arise under this agreement. On or about the 30<sup>th</sup> day of June 2015, the parties will meet to determine whether this agreement shall continue or be modified. Within 10 days of the mutual letters the parties, they shall jointly report the outcome to the Board of County Commissioners.

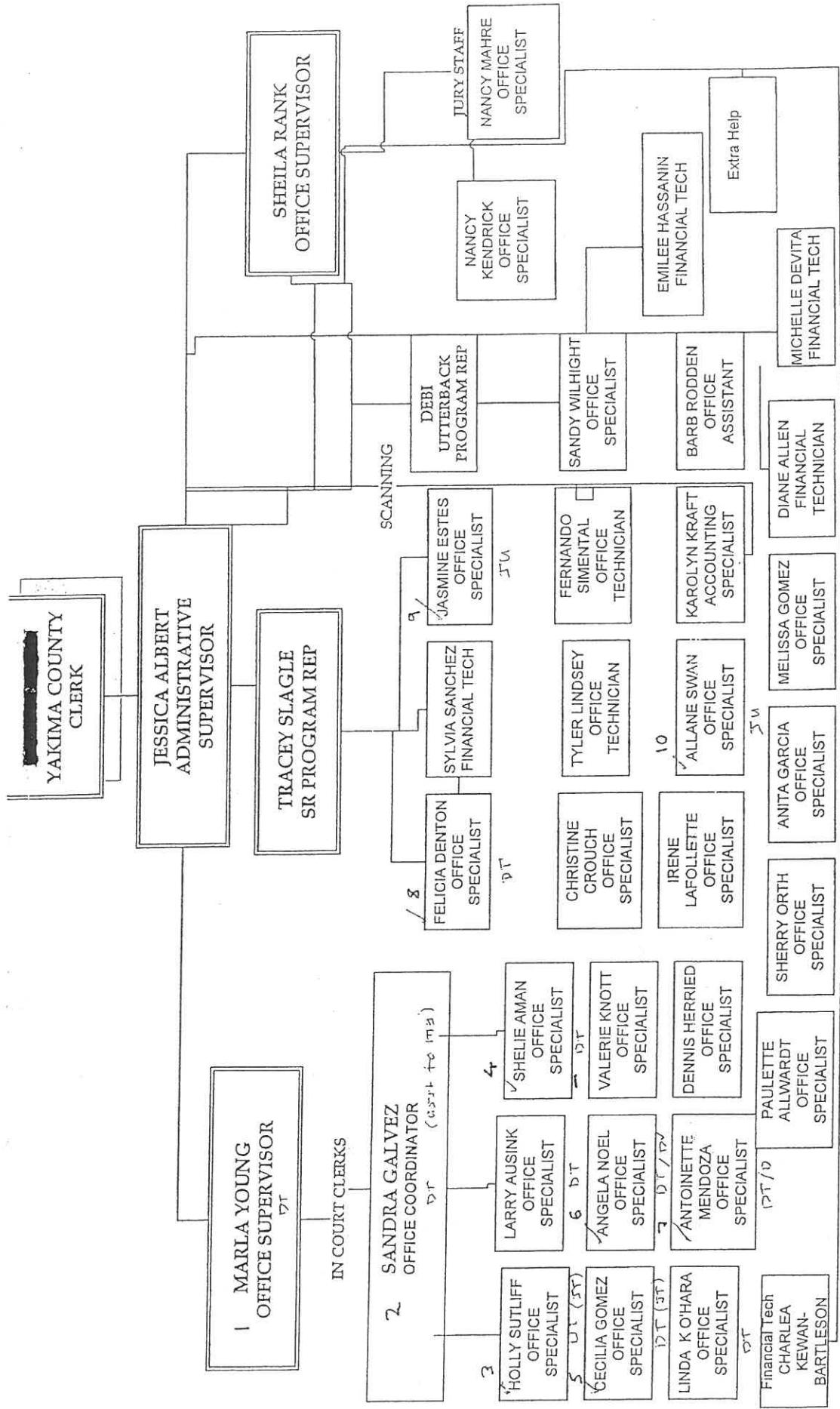
Janelle Riddle  
Janelle Riddle  
County Clerk Elect

Dave A. Professor  
Dave A. Professor  
Presiding Judge

Richard H. Battuel  
Richard H. Battuel  
Asst. Presiding Judge

Jerry D. Austin  
Jerry D. Austin  
Chair Genl. Pcty  
Prosecution Attorney

Joseph A. Brucc  
Joseph A. Brucc  
Prosecuting Attorney  
Elected



This agreement is entered into on this 29<sup>th</sup> day of December, 2014 by and between Janelle Riddle Clerk elect of Yakima County, Washington and the Judges of Yakima County Superior Court as follows:

1. Effective January 1, 2015, 10 designated employees of the Clerk shall be cross deputied for service in the courtroom and perform the statutory duties of the Court Clerk under RCW 2.32.050 and 36.23.030, and the duties of the official reporter to keep a full record of all oral recordings in court as required by RCW 2.32.200 which is the responsibilities of the Presiding Judge in the courtroom.
2. The Clerk and the Presiding Judge or his/her designee shall have concurrent managerial authority over the 10 designated in court clerks. All hiring, disciplinary and/or termination decisions shall be jointly made by the Clerk and the Presiding Judge or his/her designee. In the event of an impasse between the Clerk and the Presiding Judge, the dispute will be submitted to the Hutton Commission for resolution.
3. The Parties will meet and confer on a regular basis to discuss any concerns, issues or problems that arise under this agreement. On or about the 30<sup>th</sup> day of June 2015, the parties will meet to determine whether the agreement shall continue or be nullified. Within 10 days of the discussion between the parties, they shall jointly report the outcome to the Board of County Commissioners.

# APPENDIX 6

**LAR 3**  
**Yakima County Superior Court**

**COURTROOM RESPONSIBILITIES AND PROCEDURES**  
**ASSIGNED TO CLERK**

This rule describes actual current courtroom procedures and the responsibilities of the Clerk of the Court while in court. The purpose of the rule is to maintain and continue current practice without interruption. The Clerk of the Court does not have the authority to modify or regulate these procedures without the express, written permission of the Presiding Judge.

The Clerk of the Court or her/his deputy shall be responsible for the following courtroom duties: opening and closing the courtroom before or after each court session, ensuring the courtroom is provided with supplies and such other customary requirements as directed by the judicial officer, and announcing the opening and closing of each session of court. The Clerk of the Court or her/his deputy shall continue to assist in efficiently carrying out the court process and assist in court as directed by the judicial officer. Such assistance shall include, but is not limited to, providing the judicial officer any forms necessary for the administration of the docket, calling the CourtCall operator to connect attorneys and/or parties on line, calling for security, paging interpreters, etc. The Clerk of the Court or her/his deputy shall ensure the scanned files for all cases and/or hearings assigned to the individual judicial officers shall be loaded into said judicial officers' Liberty/Odyssey folders as soon as possible but no later than 4:30 PM the day before the matters are scheduled. This requirement does not apply to last minute re-assignments of judicial officers.

During those court sessions in which the proceedings are digitally recorded, the Clerk of the Court or her/his deputy shall before each session of court ensure the digital recording system is working correctly by performing a systems test. The Clerk of the Court or her/his deputy shall activate the recording for each session and ensure the integrity of the recordings by periodic checks.

Contemporaneous with the recording of each court session the Clerk of the Court or her/his deputy shall maintain a log which describes the events which occur in the courtroom and are the subject of the recording. For high volume court sessions which do not involve testimony the log may be limited to the items described in Attachment A, unless otherwise directed by the court. For hearings or trials in which evidence is presented the log shall be more specific and detailed and shall capture the events described in Attachment B and C. Attachment D is an exemplar of the log which shall be used and completed by the Clerk of the Court or her/his deputy for each session.

The Clerk of the Court or her/his deputy, as custodian, shall save, maintain and catalog each recorded session in a manner allowing ease of access.

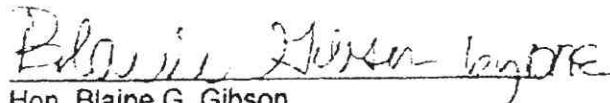
On request of the court, a lawyer, or the public, the Clerk of the Court or her/his deputy shall make available copies of such digital recordings. The Clerk of the Court may charge a reasonable fee of the public and lawyers for the copying of the requested recordings. The Clerk of the Court shall have the authority to certify such recordings as authentic.

During all court proceedings the Clerk of the Court or her/his deputy shall comply with all statutory requirements and otherwise conform to the order and direction of the court.

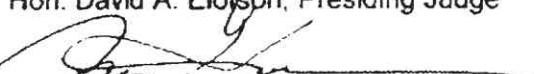
Adopted by the Yakima County Superior Court Judges this 20<sup>th</sup> day of April, 2015.



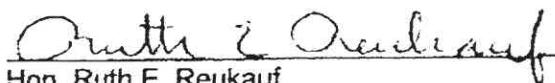
Hon. David A. Elofson, Presiding Judge



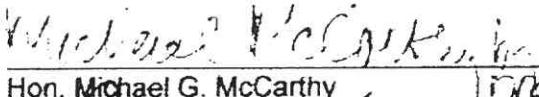
Hon. Blaine G. Gibson



Hon. Susan L. Hahn



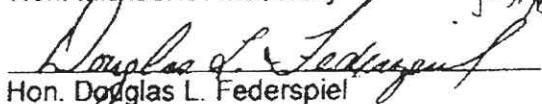
Hon. Ruth E. Reukauf



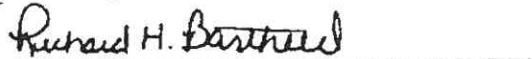
Hon. Michael G. McCarthy



Hon. Gayle M. Harthcock



Hon. Douglas L. Federspiel



Hon. Richard H. Bartheld

# APPENDIX 7

EXTENSION OF AGREEMENT BETWEEN COURT CLERK  
AND SUPERIOR COURT JUDGES

*(initials)* *12/29/14*  
This Extension of the Agreement between Court Clerk and Superior Court Judges dated the 25th day of December, 2014, is hereby agreed to by and between Janelle Riddle, Clerk, of Yakima County, Washington, and the Judges of the Yakima County Superior Court as follows:

1. Effective January 1, 2015 and continuing through December 31, 2015, 10 designated employees of the Clerk shall continue to be cross deputized for service in the court rooms to perform the statutory duties of the Court Clerk under RCW 2.32.050 and 36.23.030, and the duties of the official reporter to keep a full record of all oral proceedings in court as required by RCW 2.32.200 which is the responsibility of the Presiding Judge in the court room.
2. The Clerk and the Presiding Judge or his/her designee shall continue to have concurrent managerial authority over the 10 designated in-court clerks. All hiring, disciplinary and/or termination issues shall continue to be jointly resolved by the Clerk and the Presiding Judge or his/her designee. In the event of an impasse of the Clerk and the Presiding Judge, the dispute will be submitted to the Hutton Commission for resolution.
3. The parties will meet and confer on a regular basis to discuss any concerns, issues or problems that arise under this agreement. On or about the 12th day of November, 2015 the parties will meet to determine whether this agreement shall continue and/or be modified. Within 10 days of the discussion between the parties, they shall jointly report the outcome to the Board of County Commissioners.

*Janelle Riddle*  
JANELLE RIDDLE, Clerk *4/29/15*

*WILLIAM D. PICKETT*  
WILLIAM D. PICKETT, Attorney for  
Janelle Riddle *4/29/15*

*KERRY D. AUSTIN*  
KERRY D. AUSTIN, Chief Civil Deputy  
Prosecuting Attorney

*David A. Elofson*  
DAVID A. ELOFSON, Presiding Judge *5-1-15*

*RICHARD H. Bartheld*  
RICHARD H. BARTHELD, Assistant Presiding Judge

*Joseph A. Brusic*  
JOSEPH A. BRUSIC, Prosecuting Attorney

Extension of Agreement between Court Clerk and  
Superior Court Judges

**COPY**

# APPENDIX 8

SECOND EXTENSION OF AGREEMENT BETWEEN COURT CLERK  
AND SUPERIOR COURT JUDGES  
Dated November 2, 2015

W.R. 25th  
This Extension of the Agreement between Court Clerk and Superior Court Judges dated the 25th day of December, 2014, is hereby agreed to by and between Janelle Riddle, Clerk, of Yakima County, Washington, and the Judges of the Yakima County Superior Court as follows:

1. Effective January 1, 2016 and continuing through December 31, 2016, 10 designated employees of the Clerk shall continue to be cross deputized for service in the court rooms to perform the statutory duties of the Court Clerk under RCW 2.32.050 and 36.23.030, and the duties of the official reporter to keep a full record of all oral proceedings in court as required by RCW 2.32.200 which is the responsibility of the Presiding Judge in the court room. The parties shall fully comply with the provisions of LAR 3: Courtroom Responsibilities and Procedures Assigned to Clerk.

2. The Clerk and the Presiding Judge or his/her designee shall continue to have concurrent managerial authority over the 10 designated in-court clerks. All hiring, disciplinary and/or termination issues shall continue to be jointly resolved by the Clerk and the Presiding Judge or his/her designee. In the event of an impasse of the Clerk and the Presiding Judge, the dispute will be submitted to the Hutton Commission for resolution.

3. The parties will meet and confer on a regular basis to discuss any concerns, issues or problems that arise under this agreement. On or about the 1<sup>st</sup> day of June, 2016, the parties will meet to determine whether this agreement shall continue and/or be modified. Within 10 days of the discussion between the parties, they shall jointly report the outcome to the Board of County Commissioners.

*Janelle Riddle 11-17-15*  
JANELLE RIDDLE, Clerk

*David A. Elofson*  
DAVID A. ELOFSON, Presiding Judge

*William D. Pickett*  
WILLIAM D. PICKETT, Attorney for  
Janelle Riddle

*Richard H. Bartheld*  
RICHARD H. BARTHELD, Assistant  
Presiding Judge

*Don L. Anderson*  
DON ANDERSON, Chief Civil Deputy  
Prosecuting Attorney

*Joseph A. Brusic*  
JOSEPH A. BRUSIC, Prosecuting Attorney