

January 8, 2013

Board of County Commissioners
for Yakima County
Room 232
128 North 2nd Street
Yakima WA 98901

Re: Legal Rights and Duties of Coequal Branches of Government; Separation of Powers Doctrine; Establishment of Funding and Governance Protocols

Dear Commissioners Leita, Bouchey, and Elliott:

I represent the Superior and District Courts for Yakima County ("Court"). The Court contacted me about its concerns that the Board of County Commissioners for Yakima County ("Board") is unaware of the Board's constitutional and statutory obligations to provide adequate funding for the Court and to respect the governmental management prerogatives of the Court. To address these concerns now and for the long term, the presiding judges of the Court invite the Board to meet with them and develop a set of intergovernmental protocols that will assure proper judicial funding levels for the Court, along with appropriate recognition of the respective authority and responsibilities of each branch of government.

The Court's invitation is grounded in the rights, duties, and obligations of the judicial and legislative branches of government under the Separation of Powers doctrine. Some of the basic principles of this doctrine are summarized below for the Board's convenience. The attachment to this letter provides a more thorough discussion of the doctrine. By jointly establishing a set of protocols governing the exercise of these rights and duties, the business of government can be expedited, governmental cooperation can be enhanced, more consistent and reliable funding decisions will occur, and there will be less confusion about each branch's respective sphere of authority.

Summary of Separation of Powers Doctrine

The Separation of Powers doctrine is embedded in the Washington State and federal constitutions and State law. The doctrine recognizes that the judicial and legislative branches of government are separate and coequal, and that cooperation between the branches is essential for the effective operation of the government.

Under the Washington Constitution, the Court comprises the judicial branch of government for Yakima County. As the judicial branch, the Court is charged with administering the judiciary's internal functions and providing for the prompt and efficient administration of justice within Yakima County. The Washington Supreme Court has stated in several different

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ways and cases that the Court is responsible for defining the reasonable and necessary needs and activities of the courts, specifically including "ancillary requirements" such as staffing levels and facilities.

For its part, the Board comprises the legislative branch of government in Yakima County. Among its other responsibilities, the Board is charged with properly funding the Court so that it can meet its judicial branch obligations. Under Separation of Powers principles, the Board does not have the authority to compel specific funding cuts or changes in judicial service levels, cannot compel the Court to close on judicial days, and cannot interfere with the Court's management of its judicial affairs. While the Board has the power to set generally the budgets of the Court, the Board may not impose or dictate a budget, or take other actions, that would result in any of the following effects:

- Impairing the efficient administration of justice
- Diminishing the final control of the Courts over all necessary judicial functions
- Impairing the ability of the Courts to perform their fundamental functions
- Threatening the independence or integrity of the Courts
- Invading the prerogatives of the Courts in administering judicial functions

The Washington Supreme Court has reaffirmed on different occasions that, should the legislative branch fail to provide sufficient funding for the reasonable and necessary operations of the judicial branch, courts have the inherent authority to compel such funding. The Washington Supreme Court went to some length to explain that this principle is uniformly recognized throughout the United States. As just one example, the Supreme Court cited *Leahey v. Farrell*, a 1949 Pennsylvania case which noted the presumption that "public officers will perform a public trust", and then quoted the following statement of judicial authority from the case:

Should Commissioners, however, neglect or refuse to furnish funds, or sufficient funds, for reasonable judicial functions, and in consequence the efficient administration of the judicial branch of the government is thereby impaired or destroyed, the courts possess the inherent power to require such necessities to be furnished and to direct payment therefor out of the public treasury.

The Washington Supreme Court has also stated many times that when the integrity of the judicial branch is threatened by actions of another coequal branch, either through inadequate funding or interference with the internal management of the judiciary, it is incumbent on the courts to take such action as necessary to protect the proper functioning of the judicial branch.

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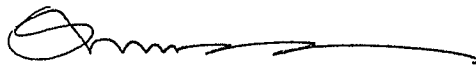
Invitation to Adopt Protocols

The Court is not yet in the position where it must exercise the authority articulated by the Washington Supreme Court. However, the Court is more than mindful of the Supreme Court's repeated admonitions about the constitutional requirement to fully and properly perform the judiciary's functions, the importance of providing for the efficient administration of justice, and the duty to maintain the integrity of the judicial branch of government. The corollary duty of the legislative branch – to provide the reasonable and necessary funding required to meet those demands – is no less important.

The Board has a history of attempted encroachments into judicial branch matters, and exhibits a continuing pattern of treating the judicial branch of government as a "department" of the legislative branch. Those actions are clearly inconsistent with the law, harmful to the Court, and dismissive of the Court's role in ensuring justice in our democracy. The Court believes it is time to correct that conduct, and proactively address future problems, by developing and adopting intergovernmental protocols that address judicial–legislative branch relations. The goals for such protocols should be to clarify the responsibilities of each branch and establish principles of conduct that effectively apply the Separation of Powers doctrine in Yakima County.

The Superior and District Courts hope the Board is ready and willing to take this important step and looks forward to the Board's response.

Sincerely,
SHORT CRESSMAN & BURGESS PLLC



Scott M. Missall

SMM:

Encl.

cc: Superior Court for Yakima County
District Court for Yakima County
Harold Delia, Consultant to the Courts