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Supreme Court No. 1032528
King County Superior Court No. 24-6-02709-7

**SUPREME COURT
OF THE STATE OF WASHINGTON**

IN RE THE DETENTION OF M.E.

**APPELLANT KING COUNTY EXECUTIVE DOW
CONSTANTINE'S OPENING BRIEF**

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I. INTRODUCTION

The Superior Court exceeded its jurisdiction and authority when it required King County Executive Dow Constantine (“Executive”) to ensure the appointment of indigent defense counsel under the Involuntary Treatment Act (“ITA”), chapter 71.05 RCW. *See* CP (R.S. Vol. 1) 4 (ordering the Executive to “promptly appoint counsel for respondent” in the captioned case). Without identifying any constitutional infirmity, the Superior Court overrode binding provisions of the King County Charter (“Charter”) and King County Code (“Code”) that vest exclusive authority over indigent defense matters with the King County Public Defender (“Public Defender”). *See* Charter § 350.20.60; K.C.C. § 2.60.020. Moreover, without establishing personal jurisdiction, the court haled the Executive before it to answer for something outside his control, contrary to principles of comity and separation of powers. No party argued for this approach before the Superior Court and no party endorses or defends it on appeal.

The Executive has the utmost respect for the authority of the judicial branch. Courts serve a crucial role in assuring that individual rights and statutory duties are respected by the political branches of government and that we remain a nation governed by the rule of law. Although the power of judicial review grants courts the unique authority to set laws aside, courts and other agencies of government are otherwise bound by those laws. *See Marbury v. Madison*, 5 U.S. 137, 180 (1803) (“a law repugnant to the constitution is void” but “*courts*, as well as other departments, are bound by that instrument”) (emphasis in original). Here, without finding any provision of the Charter infirm, the Superior Court erred by ordering the Executive to exceed his lawful authority under the Charter and Code to infringe on public defense matters within the exclusive province of the Public Defender. The Court should vacate or reverse that portion of the Superior Court’s orders requiring the Executive to interfere with the Public Defender’s exclusive control over indigent defense matters.

II. ASSIGNMENTS OF ERROR

A. Assignments of Error

The Superior Court erred in entering the following orders:

1. Paragraph 2 of the Conclusions of Law in the July 2 Order and the July 9 Order, which found that it is the Executive's responsibility "to provide counsel to those who are indigent in Criminal proceedings, ITA proceedings and other proceedings as mandated by statute." CP (R.S. Vol. 1) 2; CP (M.E. Vol. 1) 6.

2. The portion of the July 2 Order and July 9 Order that ordered the Executive to appoint counsel. CP (R.S. Vol. 1) 4; CP (M.E. Vol. 1) 8.

3. The July 25, 2024 order in *In re R.S.* and the July 31, 2024 order in *In re M.E.* that denied the Executive's motions to vacate the July 2 and July 9 Orders. CP (R.S. Vol. 1) 22-23; CP (M.E. Vol. 3) 451-52.

B. Issues Pertaining to Assignments of Error

1. Whether the Superior Court, in the absence of any argument or determination that King County Charter provisions

allocating public defense functions exclusively to the Public Defender are unconstitutional or contrary to state statute, was free to ignore those Charter provisions and order the Executive to interfere with the prerogatives of the Public Defender's office?

Answer: No.

2. Whether the Superior Court lacked jurisdiction or authority over the Executive when the Executive was not a party to the action, the court acted without perfecting personal service over the Executive, and principles of comity and separation of powers would counsel against a *sua sponte* court order haling the Executive before it to answer for something outside the Executive's charter authority? Answer: Yes.

III. STATEMENT OF CASE

A. The Involuntary Treatment Act.

The ITA provides the statutory framework for civil investigation, evaluation, detention, and commitment of individuals experiencing a mental or substance abuse disorder who may need to be treated on an involuntary basis. Initial

detentions for a 120-hour commitment take place on the county level. The decision to refer an individual to involuntary treatment is made by a designated crisis responder. RCW 71.05.153.

Persons facing commitment under the ITA have both a statutory and constitutional right to counsel. RCW 71.05.217(5)(a). *See also Quesnell v. State*, 83 Wn.2d 224, 230–32, 517 P.2d 568 (1973) (every “person accused of mental illness is guaranteed the full protection of due process of law before he may be subjected to any deprivation of his liberty” and the right to counsel provided in the ITA embraces a “basic element[] of procedural due process.”); *United States v. Budell*, 187 F.3d 1137, 1143 (9th Cir. 1999) (due process requires civil committee be afforded counsel at discharge hearing); *In re Matter of Det. of L.H.*, 18 Wn. App. 2d 516, 524, 492 P.3d 192 (2021) (“respondents in ITA hearings have significant procedural protections,” including “the right to an attorney (including appointed counsel)”); *In re Det. of T.A.H.-L.*, 123 Wn. App. 172,

180-81, 97 P.3d 767 (2004) (effective assistance of counsel at ITA proceeding analyzed under Sixth Amendment *Strickland* test). In King County, the Public Defender provides indigent representation in these cases.

B. Under the Charter and Code, the Provision of Indigent Defense Is Under the Exclusive Control of the Public Defender and the Executive May Not Interfere with the Public Defender’s Exercise of this Duty.

Unlike a Title 36 RCW three-commissioner county, King County is not a creature of the legislature. As a home rule county organized directly under the Washington Constitution, King County’s organic law is its Charter. *See* Article XI, § 4 (amendment 21) (“Any county may frame a ‘Home Rule’ charter for its own government subject to the Constitution and laws of this state.”).

The Charter expressly allocates executive branch authority for the appointment of indigent defense counsel to the Public Defender and the Department of Public Defense (“DPD”):

[t]he duties of the department of public defense shall include providing legal counsel and representation to indigent individuals in legal

proceedings, including those in the superior and district courts for King County . . . to the extent required under the sixth amendment to the United States Constitution or Article I, Section 22, of the Constitution of the State of Washington.

Section 350.20.60. To maintain the Public Defender's independence, the Charter prohibits other County elected officials—including the Executive—from interfering with DPD's exercise of its delegated authority. *See id.* (affirmatively providing that County elected officials “shall not interfere with” DPD's exercise of its duties). DPD's duties include any “[a]dditional duties [that] may be prescribed by ordinance.” *Id.*

The Code obligates DPD to make indigent legal defense services “available to all eligible persons for whom counsel is constitutionally required.” K.C.C. § 2.60.050(A). Counsel is constitutionally required for individuals facing commitment under the ITA. Thus, because both the Charter and the Code vest DPD with responsibility for providing indigent representation in all ITA matters, the Executive is not permitted to interfere with that responsibility.

C. The Public Defender Informs the Superior Court that it Cannot Appoint Indigent Counsel for Individuals Subject to the ITA Consistent with Caseload Standards.

On May 24, 2024, Public Defender Anita Khandelwal¹ informed the Superior Court that DPD would soon reach caseload capacity under CrR 3.1, Standards 3.3 and 3.4. CP (M.E. Vol. 1) 71. DPD stated that “without an order of the court directing DPD to make assignments in excess of court rule maximum, [DPD] will not be able to assign all the cases referred to us.” CP (M.E. Vol. 1) 71-72. On May 28, DPD further informed the Superior Court that it was “unable to represent the remaining ITA respondents because all of DPD’s ITA attorneys had reached their caseload limit.”² CP (M.E. Vol. 1) 72.

¹ Ms. Khandelwal has since resigned as Public Defender. The current King County Public Defender is Matt Sanders, who was appointed to the permanent position on March 21, 2025. *See* King County Bulletin, Executive Constantine Appoints Matt Sanders as DPD Director, *available at* https://content.govdelivery.com/bulletins/gd/WAKING-3d817bc?wgt_ref=WAKING_WIDGET_11 (last accessed March 25, 2025).

² No party (including DPD) has alleged that the funding DPD

On May 28, 29, and 30, King County Superior Court Commissioner Holman directed DPD to appoint counsel to ITA respondents who had been detained regardless of the attorney caseload limits. CP (M.E. Vol. 1) 72. Some of Commissioner Holman’s orders claimed that they were based on DPD’s “negotiated responsibilities with the King County Executive”—but the Public Defender’s duty to represent indigent clients derives from the Charter and Code, not the Executive. *See* CP 163-277. The Commissioner also issued a show cause order setting a hearing for June 14, 2024, and requesting briefing from DPD by June 7, 2024. On May 30, 2024, the Commissioner issued several similar orders. CP (M.E. Vol. 2) 278-95.

On May 31, 2024, Public Defender Khandelwal filed a motion for accelerated review with the Supreme Court seeking a writ of review or, in the alternative, a writ of prohibition. CP (M.E. Vol. 1) 32. On June 6, DPD voluntarily withdrew its

receives is inadequate or in any way causally related to DPD’s inability to meet the Court’s caseload standards.

motion for accelerated review and moved to continue the Show Cause hearing set for June 14. CP (M.E. Vol. 1) 32.

On June 7, 2024, the Superior Court requested, in the matter *In re A.A.*, King County Superior Court Case No. 24-6-02228-1, briefing from DPD, KCPAO, and the Executive documenting the efforts “by the Executive and DPD to ensure that ITA respondents have representation.” CP (M.E. Vol. 1) 33. The Superior Court then held an evidentiary hearing on June 28.

D. The Executive Makes a Limited Appearance to Answer the Superior Court’s Evidentiary Questions.

As a matter of courtesy to a co-equal branch of government, the Executive made a limited appearance in *In re A.A.* “to clarify County structure with regard to the DPD” and to preserve his concerns with being haled before the court on a matter outside his purview. CP (M.E. Vol. 2) 302 at n.1. In briefing, the Executive explained the allocation of responsibility under the Charter and Code with respect to indigent defense.

At the June 28 evidentiary hearing, all parties agreed that the Executive has no role in the appointment of indigent counsel

and that the Charter bars the Executive from taking action related to indigent defense. RP 20:11-19. No party argued that Charter restrictions on the Executive were unconstitutional, or otherwise contrary to general laws.

E. The Superior Court, Contrary to the Charter, Orders the Executive to Take Action with Respect to Indigent Defense.

Despite the parties' agreement that the Executive had no role in indigent defense matters, the Superior Court nevertheless issued a July 2 Order in a *different* matter, *In re R.S.*, requiring the Executive to take action with respect to indigent defense. The court instructed that "DPD, *or Executive*, shall promptly appoint counsel for respondent in the above captioned case." CP (R.S. Vol. 1) 4 (emphasis added). The Superior Court issued a nearly identical order (July 9 Order) in yet another matter, *In re M.E.*, CP (M.E. Vol. 1) 8 ("DPD, *or the Executive*, shall continue to ensure an attorney represents respondent in the above-captioned case.") (emphasis added).

Both the July 2 and July 9 Orders require the Executive to

violate provisions of the Charter that prohibit the Executive's interference in public defense matters. Although the Superior Court ignored these provisions of the Charter, it did not find the Charter unconstitutional, nor did it claim any conflict with general laws.

The Executive moved the Superior Court to vacate the July 2 and July 9 Orders—or, at least, those portions of the Orders that injected the Executive into the process of appointing indigent counsel. CP (R.S. Vol. 1) 7-18; (M.E. Vol. 2) 380-92. The Executive argued that the Superior Court lacked jurisdiction and that maintaining those sections of the July 2 and 9 Orders pertaining to the Executive would violate separation of powers principles. CP (R.S. Vol. 1) 11-14; CP (M.E. Vol. 2) 384-88. The Executive also sought reconsideration on the basis that any directive to the Executive to ensure the continued appointment of indigent defense counsel violates the Charter, which no party argued was unconstitutional or contrary to general laws. CP (R.S. Vol. 1) 15-16; CP (M.E. Vol. 2) 388-90. The Executive

also requested that the Superior Court correct other errors in its July 2 and July 9 Orders regarding the relationship between the Executive and the Prosecuting Attorney's Office and between the Executive and the independent DPD. CP (R.S. Vol. 1) 8; (M.E. Vol. 2) 381.

On July 25 and July 31, the Superior Court denied the Executive's motions for reconsideration in *In re R.S.* and *In re M.E.* for several reasons: (1) because the matter "is moot, as counsel was appointed for the Respondent and the case is now closed"; (2) because the Executive lacked standing, as he was "not a party to this proceeding and did not move to intervene" (despite the fact that the trial court purported to issue an order directing the Executive to act and the Executive voiced an objection to being haled before the court); (3) because RCW 10.101.030 "requires each county to adopt standards for the delivery of public defense services" and the Executive "provides these required services through" the DPD; and (4) because the order "was written specifically to aid the DPD in further

litigation regarding an ongoing issue.” CP (R.S. Vol. 1) 22-23;
CP (M.E. Vol. 3) 486-87.

F. The Executive Appeals the Superior Court’s Erroneous Orders.

The Executive filed a timely notice of appeal in both *In re M.E.* and *In re R.S.* CP (M.E. Vol. 3) 476; CP (R.S. vol. 1) 25. After procedural briefing on whether the appeals were discretionary or appeals of right, the Commissioner directed the Executive to file motions for discretionary review. Those motions were granted on November 6, 2024. The Court consolidated this case under the caption *In re M.E.*, Supreme Court Case No. 1032528.

IV. ARGUMENT

The Executive was haled into court despite the Superior Court lacking subject matter and personal jurisdiction. The Executive was not a party to the action below and no party argued that the Executive should bear responsibility for the appointment of indigent defense counsel. Even so, the Superior Court ordered the Executive to take action contrary to binding provisions of the

Charter and Code. The Superior Court's Orders were made without authority and contrary to separation of powers principles.

A. The Superior Court Lacked Jurisdiction Over the Executive.

1. The Superior Court's July 2 and 9 Orders requiring the Executive to act are void because the court lacked personal jurisdiction over the Executive.

The Superior Court acted without jurisdiction or authority when it ordered the Executive to take action contrary to the Charter and Code.

The Executive is a non-party to the action,³ which was a civil commitment proceeding against an indigent respondent. It

³ The Executive's status as a nonparty does not—contrary to the Superior Court's July 25 and 31 Orders on the Executive's Motions to Vacate (CP (R.S. (Vol. 1) 22; CP (M.E. Vol. 3) 486)—implicate the Executive's standing to contest the validity of the July 2 and 9 Orders. That the Superior Court needed personal jurisdiction over the Executive for the Executive to be a party to the action does not change the fact that the Executive was harmed by the Superior Court's Orders, including by the Superior Court's issuance of a mandatory injunction requiring the Executive to act, which was without authority and contrary to the doctrine of separation of powers. *See In re the Matter of*

is well-settled that the Court lacks jurisdiction over non-parties. “[O]ne is not bound by a judgment *in personam* in a litigation in which he is not designated as a party or to which he has not been made a party by service of process.” *City of Seattle v. Fontanilla*, 128 Wn.2d 492, 502, 909 P.2d 1294 (1996) (quoting *Martin v. Wilks*, 490 U.S. 755, 761 (1989)); *see also Ronald Wastewater Dist. v. Olympic View Water & Sewer Dist.*, 196 Wn.2d 353, 370, 474 P.3d 547 (2020); *State v. G.A.H.*, 133 Wn. App. 567, 576 137 P.3d 66 (2006) (reversing King County Superior Court order requiring the Department of Social and Health Services to place child in foster care when Department was not party to the proceeding).

In *City of Fontanilla*, a litigant sought reimbursement from the State under RCW 9A.16.110, which permits an acquitted

B.C., 11 Wn. App. 2d 1077, 2020 WL 1893644, at *3 (Jan. 21, 2020) (unpublished) (State’s failure to name litigant as necessary party “formed the basis for his motion to vacate” and thus gave him standing to challenge validity of order despite non-party status).

defendant to recover costs and legal fees when the acquittal is based on the grounds that the defendant acted in self-defense. 128 Wn.2d at 494. The municipal court declined to order the State to reimburse the litigant because the State was not a party to the action and had no notice of the action. *Id.* at 495. This Court held that the municipal court properly denied the reimbursement application because it was “without authority to order an entity that is not a party to the litigation to do anything.” *Id.* at 502.

Similarly, in *Ronald Wastewater District*, this Court cited *Fontanilla* favorably, observing that the notion that a court lacks jurisdiction over a nonparty is “consistent with the general rule that a judgment is not binding on an entity that has not been made a party to the action by service of process.” 196 Wn.2d at 370. In that case, because the court had failed to obtain personal jurisdiction over certain parties who had a legally protected interest in sewerage services, the court lacked the authority to issue an order “that implicated their rights and interests.” *Id.* at

371.

Here, the Executive appeared not as a party but as a courtesy to a co-equal branch of government to furnish the Superior Court with information it needed to issue an order affecting the parties to the action. CP (M.E. Vol. 4) 497 at n.1.⁴ The Executive has a legal interest in upholding the Charter and Code and the Superior Court therefore acted without authority

⁴ The Civil Rules authorize the entry of a notice of limited appearance. See CR 70.1(b). It is not uncommon for a party to make a notice of appearance that preserves the right to object to jurisdiction or improper service of process albeit a “voluntary appearance does not waive any objection to the court’s jurisdiction . . . insufficiency of process, or the insufficiency of the service of process.” *Adkinson v. Digby, Inc.*, 99 Wn.2d 206, 210, 660 P.2d 756 (1983); see also e.g., *Millett v. Olympic Med. Ctr.*, No. 59455-2-II, 2025 WL 551519, at *1 (Wn. Ct. App. Feb. 19, 2025) (unpublished) (no waiver of defense of insufficient service of process); *Smith v. Champness*, 24 Wn. App. 2d 1012, 2022 WL 16549065, at *4 (Wn. Ct. App. Oct. 31, 2022) (unpublished) (appearance entered “without waiving objections as to improper service, venue or jurisdiction” found not to waive defense of service of process); *O’Neill v. Farmers Ins. Co. of Wash.*, 124 Wn. App. 516, 528, 125 P.3d 134 (2004) (insufficiency of service of process raised in “appearance”); *Crouch v. Friedman*, 51 Wn. App. 731, 735, 754 P.2d 1299 (1988) (appearance did not preclude litigant from challenging service of process).

when it ordered the nonparty Executive to take action with respect to indigent defense.

Because the Superior Court lacked personal jurisdiction, any order it entered against the Executive is void. *Marley v. Dep't of Labor & Indus. of State*, 125 Wn.2d 533, 541, 886 P.2d 189 (1994); *see also Ronald Wastewater Dist.*, 196 Wn.2d at 371; *State, Dep't of Soc. & Health Servs. v. Zamora*, 198 Wn. App. 44, 73, 392 P.3d 1124 (2017) (“If a court lacks personal jurisdiction over a party, any order entered against that party is void.”). The Superior Court’s Orders should be vacated as a result.

2. The Superior Court lacked subject matter jurisdiction to decide issues not properly before it and acted without authority when it ordered the Executive to take action with respect to indigent defense.

The Superior Court also lacked subject matter jurisdiction because no party asserted a claim against the Executive. Subject matter jurisdiction “means not only authority in the court to hear and determine the class of actions in which the particular action

is comprised, but also authority to hear and determine the particular question which it assumes to determine.” *State ex rel. Troy v. Superior Ct., King Cty.*, 38 Wn.2d 352, 357, 229 P.2d 518 (1951); *see also State v. Durham*, 39 Wn.2d 781, 784, 238 P.2d 1201 (1951) (“One of the three essential elements which must be present to establish jurisdiction of a court in any case is that the point decided must be, in substance and effect, within the issues before the court.”).

Accordingly, there are three essential elements of subject matter jurisdiction: “(1) the court must have cognizance of the class of cases to which the one to be adjudged belongs; (2) the proper parties must be present; and (3) the point decided must be, in substance and effect, within the issues before the court.” *State ex rel. N. Y. Cas. Co. v. Superior Ct. for King Cty.*, 31 Wn.2d 834, 840, 199 P.2d 581 (1948).

When adjudicating whether a court has subject matter jurisdiction, “the controlling question is whether the court possessed the authority to adjudicate the *type of controversy*

involved in the action.” *Ronald Wastewater Dist.*, 196 Wn.2d at 372 (emphasis in original). The authority to issue a particular form of relief “is limited by the nature of the particular claim.” *Id.* This Court offered an apt analogy in *Ronald Wastewater District*: in a quiet title action, the court is limited to ordering the appropriate relief—“that is, to quiet title. The court would exceed its relief authority if it were to issue tax relief.” *Id.*

Applying these principles in the context of this case, the Superior Court was without authority to order the Executive to do anything. The issue before the court was *DPD*’s request for a court order allowing *DPD* to exceed caseload limits. Nothing about the Executive’s role (or lack thereof) in the provision of indigent defense services was at issue based on that request. The Superior Court was not permitted to initiate a cause of action against the Executive when no claims were made against him.

Nor do the matters codified by RCW 2.08.010 include the authority for the superior court to compel the Executive to take action with respect to indigent defense and “apply the resources

[he] has available.” CP (R.S. Vol. 1) 3; CP (M.E. Vol. 1) 19. The courts are limited to deciding “cases” that come before them. *See* Const. art. IV, § 6. Here, there is no case or controversy—in fact, all parties agree that the Executive has no role in the provision of indigent counsel under the Charter’s plain language. RP 20:11-19.

In short, the Superior Court’s role is to serve as a neutral arbiter of disputes, not to initiate and adjudicate a cause of action against the Executive. Nevertheless, the Superior Court opted to make and grant its own argument to the contrary. This action exceeded the Superior Court’s authority. Because the Superior Court lacked subject matter jurisdiction, its Orders should be vacated.

B. The Superior Court’s Orders Are Contrary to the Charter and Code, Despite No Finding of Unconstitutionality.

A “home rule charter is the organic law of a county, just as the constitution is for the State.” *Maleng v. King Cty. Corr. Guild*, 150 Wn.2d 325, 330-31, 76 P.3d 727 (2003). The Charter

both grants and limits Executive authority, as well as the authority of the Public Defender and DPD. Because the Charter both establishes DPD's independence subject to the Public Defender's management and precludes any oversight by the Executive, there is no legally valid basis for the Court to order the Executive to perform a function reserved by the Charter for DPD and its Director. The only avenue for doing so would be to declare provisions of the Charter and Code unconstitutional, which the Superior Court did not do.

1. The Superior Court never engaged in a constitutional analysis of the Charter or Code.

The Charter and Code are “presumed to be constitutional.” *Island County v. State*, 135 Wn.2d 141, 146, 955 P.2d 377 (1998). The burden is on the party challenging provisions of the Charter and Code “to prove its unconstitutionality beyond a reasonable doubt.” *Id.* The rationale for requiring this “high standard” is rooted in the judiciary's respect for the legislature “as a co-equal branch of government, which, like the court, is sworn to uphold the constitution.” *Id.* at 147. The Court is thus

“hesitant to strike a duly enacted statute unless fully convinced, after a searching legal analysis, that the statute violates the constitution.” *Id.* The Charter was adopted by King County voters and the Code adopted by the King County Council.

Here, no party challenged the constitutionality of the Charter or Code in the trial court, nor do they challenge it on appeal. The Superior Court thus had no opportunity to be presented with “argument and research” as to why the provisions of the Charter or Code the Executive cited were unconstitutional. *Id.* The Superior Court did not engage in any legal analysis of the constitutionality of the Charter and Code, let alone a “searching” one. *Id.*; *see also State v. Jenks*, 197 Wn.2d 708, 727 n.5, 487 P.3d 482 (2021) (“What the dissent appears to truly seek is to strike down the statute as unconstitutional—but that argument itself was struck and is not before the court.”); *State v. Peterson*, 198 Wn.2d 643, 645, 498 P.3d 937 (2021) (the “judicial branch has the power to declare a statute or its application unconstitutional or invalid under narrow

circumstances,” but in the “absence of those circumstances, we are bound by our role in our divided government to uphold and apply the laws properly enacted by our elected legislative bodies”). Instead, the Superior Court made conclusions of law that directly conflict with the Charter and the Code. These findings were not permitted absent a ruling that the Charter and Code are unconstitutional.

2. The Superior Court’s conclusion that the Executive has any responsibility for indigent defense in King County is contrary to binding Charter and Code provisions.

The Superior Court’s conclusion of law is flawed because it is contrary to binding Charter and Code provisions. The court concludes that it “is the Executive Branch’s responsibility to provide counsel to those who are indigent in Criminal proceedings, ITA proceedings and other proceedings as mandated by statute.” CP (M.E. Vol. 1) 18; CP (R.S. Vol. 1) 2. The court further concludes that the “Executive Branch has elected to have DPD provide counsel to ITA respondents as required by the Revised Code of Washington (RCW), the King

County Code (KCC), the King County Charter, and the Washington State Constitution.” CP (M.E. Vol. 1) 18; CP (R.S. Vol. 1) 2. The Superior Court cites to no authority for these statements, which are directly contrary to the Charter and Code.

Washington undoubtedly has a strong policy that “effective legal representation must be provided for indigent persons . . . consistent with the constitutional requirements of fairness, equal protection, and due process in all cases where the right to counsel attaches.” RCW 10.101.005. Without regard to means, a person is considered “indigent” by virtue of being “[i]nvoluntarily committed to a public mental health facility.” RCW 10.101.010(3)(b). But these policy goals do not dictate that the Executive, rather than DPD, has control over the appointment of indigent defense counsel.

The Charter and Code establish an independent Public Defender and DPD immune from Executive or Council interference. As a home rule charter county, King County “may provide for such county officers as may be deemed necessary to

carry out and perform all county functions as provided by charter or by general law.” Const. art. XI, § 4. The Charter unquestionably places responsibility for the provision of indigent defense services with DPD and its Director. The very first sentence in Charter § 350.20.60 addresses DPD’s obligation: “The duties of the department of public defense shall include providing legal counsel and representation to indigent individuals in legal proceedings . . . *to the extent required under the sixth amendment to the United States Constitution or Article I, Section 22, of the Constitution of the State of Washington.*” (emphasis added). *See also* Charter § 350.20.60 (affirmatively providing that County elected officials “shall not interfere with” DPD’s exercise of its duties). This provision of the Charter limits the otherwise broad authority granted to the Executive in Charter section 320.20.

There is no requirement for the King County Charter to place all executive authority in the King County Executive. To the contrary, the Executive possesses only those executive

powers “which are not expressly vested in other specific elective officers by this charter.” Charter § 320.20. The Charter expressly vests executive authority over certain subjects in various independently elected officials, as well as the Public Defender. For example, the Department of Assessments and the Department of Elections are “executive departments” wholly controlled by separately elected officials with exclusively responsibility over assessments and elections, respectively. Charter §§ 350.20.10, .50. Like the Public Defender and DPD, these departments are outside the Executive’s chain of command.

The diffusion of executive power among multiple officials is a common model in Washington State. At the state level, for example, the Secretary of State, the Public Lands Commissioner, and the Attorney General all exercise executive authority independent of the Governor within their constitutional areas of responsibility. This model reflects the founder’s reluctance to centralize power in one person.

The Code unarguably supports an independent Public Defender and DPD, contrary to the Superior Court's conclusion of law. The Code provides that DPD alone "is responsible for managing and being fiscally accountable for the provision of public defense services." K.C.C. § 2.60.020(A). The Code vests the obligation to provide indigent defense services in the Public Defender and DPD by requiring DPD to make legal defense services "available to all eligible persons for whom counsel is constitutionally required." K.C.C. § 2.60.050(A). That directive includes individuals facing involuntary commitment under the ITA. *See Quesnell*, 83 Wn.2d at 230-32; *Budell*, 187 F.3d at 1143; *In re Det. of T.A.H.-L.*, 123 Wn. App. at 181. Moreover, the Code provides that the county public defender shall have responsibility for "[m]anaging the department of public defense." K.C.C. § 2.60.026; *see also* Charter § 350.20.60.

Per the Charter and the Code, only DPD has responsibility for providing indigent representation in ITA matters. The Executive has no authority to interfere with that responsibility.

Because the Charter and the Code control, the Superior Court was obligated to follow these controlling points of law.

V. CONCLUSION

For the foregoing reasons, this Court should vacate the Superior Court's July 2 and July 9 Orders as they pertain to the Executive and overrule the Superior Court's July 25 and 31 Orders on the Executive's Motions to Vacate.

I certify that this document contains 5,189 words in compliance with RAP 18.17(c)(2).

DATED this 26th day of March, 2025.

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CERTIFICATE OF SERVICE

The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

That on the 26th day of March, 2025, I arranged for service of the foregoing **APPELLANT KING COUNTY EXECUTIVE DOW CONSTANTINE'S OPENING BRIEF** via Electronic Service to the parties to this action as follows:

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