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To: Washington State Court of Appeals Division III
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Spokane WA 99201
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Honorable Judges of Division III:

“Every result or goal you want to achieve is preceded by a process” ~ Hal Elrod

I am writing this letter to ask Judge Fearing to deny the Spokane County Prosecuting Attorney’s Office (SCPAO) request for recusal on all Spokane County criminal cases.

On June 4, 2020, our State Supreme Court authored a letter to all members of the judiciary and legal community imploring us to have the courage and will to address racism and the on-going injustices faced by black Americans. The Supreme Court acknowledged that “[t]oo often in the legal profession, we feel bound by tradition and the way things have ‘always’ been” and that “even the most venerable precedent must be struck down when it is incorrect and harmful.” *Washington State Supreme Court’s Open Letter to Washington State’s Judiciary and Legal Community*, June 4, 2020.

While my office handled the original matter at the trial court level, we were not part of the appeal. I have not personally familiarized myself with the transcripts from the trial, and I do not believe I need to do so in order to respond to the SCPAO’s request. It is important to note, though, that the majority opinion began “by acknowledging that this is an emotionally and racially charged case.” *State v. Vaile* No. 37943-4-III (May 11, 2023).

Judge Fearing was part of a 3-member panel of judges that heard the appeal in *Vaile*. The process, when a 3-member panel does not come to an agreement, is for the majority to issue the opinion and the remaining member to author a concurring and/or dissenting opinion. Judge Fearing, Judge Lawrence-Berrey, and Judge Staab followed this process when deciding *Vaile*. Judge Fearing’s concurring and dissenting opinion appears to be in response to the call to action by our State Supreme Court issued on June 4, 2020. In my opinion, the issue is whether Judge Fearing’s decision to address what he perceived as racial bias followed appellate precedence. This is the exact issue our Supreme Court addressed in their letter regarding tradition and precedent.

“The legal profession is largely self-governing. Although other professions also have been granted powers of self-government, the legal profession is unique in this respect

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because of the close relationship between the profession and the processes of government and law enforcement. This connection is manifested in the fact that ultimate authority over the legal profession is vested largely in the courts.” *The American Bar Association Model Rules of Professional Conduct Preamble* [10]. “Every lawyer is responsible for observance of the Rules of Professional Conduct. A lawyer should also aid in securing their observance by other lawyers. Neglect of these responsibilities compromises the independence of the profession and the public interest which it serves.” *Id.* at [12].

Just as attorneys must abide by the Rules of Professional Conduct, all judicial officers must abide by the Code of Judicial Conduct. “A judge having knowledge that another judge has committed a violation of this Code that raises a substantial question regarding the judge’s honesty, trustworthiness, or fitness as a judge in other respects should inform the appropriate authority.” *Code of Judicial Conduct Rule 2.15(A)*. Similarly, “[a] lawyer who knows that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge’s fitness for office should inform the appropriate authority.” *Rules of Professional Conduct 8.3*. In the comments to both rules, it is explained that “an apparently isolated violation may indicate a pattern of misconduct that only a disciplinary investigation can uncover.” *Id.* at Comment [1], *CJC 2.15* at Comment [1].

To my knowledge, the SCPAO has not filed a complaint against Judge Fearing to the Judicial Conduct Commission. The ethical rules lay out the appropriate process to follow if an attorney or Judge believes a violation has occurred. In their recusal request, the SCPAO lists what they believe to be numerous violations of the CJC, yet they fail to follow the process their ethical duties require. They ask for a remedy without an independent disciplinary investigation. Similarly, if the two other Judges hearing the *Vaile* case believed Judge Fearing had violated the CJC, they would also be expected to refer a complaint.

Further, the legal procedure to request recusal has also not been followed. A request for recusal requires the moving party to file a motion with supporting evidence. Whether to grant a motion for recusal is within the sound discretion of the court. *Kauzlarich v. Yarbrough*, 105 Wash. App. 632, 653, 20 P.3d 946, 957 (2001) *Citing State v. Bilal*, 77 Wn. App. 720, 893 P.2d 674, *review denied*, 127 Wn.2d 1013, 902 P.2d 163 (1995). The SCPAO’s request for blanket recusal puts the cart before the horse.

The request for Judge Fearing’s recusal does not follow the processes in place to address alleged violations of the CJC. The rules have not been followed. The request for recusal should be denied.



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