No. _____

In The

Supreme Court of the United States

STEVEN ANDREW JANDA,

Petitioner,

v.

STATE OF WASHINGTON,

Respondent.

On Petition For Writ Of Certiorari To The Supreme Court Of The State Of Washington

PETITION FOR WRIT OF CERTIORARI

STEVEN ANDREW JANDA
pro se
233 1st Ave. S.
Kent, WA 98032
253-850-9500

QUESTIONS PRESENTED

The defendant, Steven Andrew Janda, was sentenced on April 20, 2011. His sentence was stayed on bond on May 16, 2011, without conditions of release or community custody. On June 14, 2011, the court granted a motion by the state providing community custody without notice to the defendant or any allegations in support thereof as required for due process. On July 13, 2011, the defendant appealed the ruling to the Washington State Supreme Court based upon deprivation of due process. The state did not respond to the motion. On September 21, 2011, Washington State Supreme Court Commissioner Goff acknowledged Petitioner is not included in the plain meaning by ruling a "sensible construction" is required to include persons (like Petitioner) who have never been members of the bar as not active members, thereby constructing an oxymoron. The defendant filed a motion for reconsideration, which the Court treats as a modification under RAP 17.7. Again, the state did not respond to the motion. On November 21, 2011, the Supreme Court affirmed the ruling of the Commissioner, but without findings of fact or conclusions of law. The defendant appeals to the U. S. Supreme Court raising the following issues:

1. Did the King County Superior Court violate the due process rights of the defendant, Steven Janda, by imposing community custody without complying with Due Process under the Fifth and Fourteenth Amendments to the U. S. Constitution?

QUESTIONS PRESENTED – Continued

2. Did the Court, by including persons who were never members in the "not active member" class of persons defined by the legislature under RCW 2.48.180(1)(b), violate the Equal Protection Clause of the U. S. Constitution and Wash. St. Const. Art. I § 12?

3. Did the Washington State Supreme Court, by including persons who were never members in the "not active member" class of persons defined by the legislature under RCW 2.48.180(1)(b), based on a "sensible construction" inherently declare the statute ambiguous, but deprive the defendant of due process of law by denying the defendant the benefit of the rule of lenity?

4. Did the Court, by including persons who were never members in the "not active member" class of persons defined by the legislature under RCW 2.48.180(1)(b), render the word "active" superfluous, and thereby deprive the defendant of due process of law?

5. Did the Court, by including persons who were never members in the "not active member" class of persons defined by the legislature, under RCW 2.48.180(1)(b), render the statute constitutionally overbroad as applied?

6. Did the Court, by including persons who were never members in the "not active member" class of persons defined by the legislature, under RCW 2.48.180(1)(b), contradict the canon of expressio unius est exclusio alterius, thereby violating due process of law?

QUESTIONS PRESENTED – Continued

7. Did the Court, by including persons who were never members in the "not active member" class of persons defined by the legislature, under RCW 2.48.180(1)(b), contradict the rule of ejusdem generis?

8. Did the Court, by including persons who were never members in the "not active member" class of persons defined by the legislature, under RCW 2.48.180(1)(b), contradict the doctrine of noscitur a sociis, thereby evidencing deprivation of the due process and Equal Protection rights of the defendant?

9. Did the Court, by including persons who were never members in the "not active member" class of persons defined by the legislature, under RCW 2.48.180(1)(b) violate the separation of powers?

10. Did the Court, by ruling persons who were never members are included in the "not active member" class of persons defined by the legislature, under RCW 2.48.180(1)(b), rule contrary to RCW 18.130.040 and RCW 18.130.190, which protects persons from allegations of similar conduct in the practice of law, thereby violating Due Process and the Equal Protection provisions of the Fifth and Fourteenth Amendments?

QUESTIONS PRESENTED – Continued

11. Did the Court, by ruling persons who were never members are included in the "not active member" class of persons defined by the legislature, under RCW 2.48.180(1)(b), exercise jurisdiction over the defendant under color of law, constitute a claim for relief under 42 U.S.C. § 1983?

12. Did the Court, by ruling persons who were never members are included in the "not active member" class of persons defined by the legislature under RCW 2.48.180(1)(b), constitute official misconduct under RCW 9A.80.010?

13. Did the Court, by ruling persons who were never members are included in the "not active member" class of persons defined by the legislature, under RCW 2.48.180(1)(b), constitute extortion under RCW 9A.56.130?

14. Did the Court, by ruling persons who were never members are included in the "not active member" class of persons defined by the legislature, under RCW 2.48.180(1)(b), constitute leading organized crime under RCW 9A.82.060?

LIST OF PARTIES

The name of the petitioner is:

Steven Andrew Janda

The name of the Respondent is:

The State of Washington

TABLE OF CONTENTS

TABLE OF CONTENTS – Continued

TABLE OF AUTHORITIES

Page

CASES

TABLE OF AUTHORITIES – Continued

Page

TABLE OF AUTHORITIES – Continued

TABLE OF AUTHORITIES – Continued

TABLE OF AUTHORITIES – Continued

PETITION FOR WRIT OF CERTIORARI

Petitioner, Steven Andrew Janda, petitions the Court for a Writ of Certiorari to review a final ruling of the Washington State Supreme Court, entered November 21, 2011, affirming the ruling denying the motion to vacate by the Washington Supreme Court Commissioner, entered September 21, 2011.

OPINIONS BELOW

The opinion of the Washington State Supreme Court is not reported and is included in the Appendix (App., *infra*, at 12). The ruling of the Commissioner of the Washington State Supreme Court is not reported and is included in the Appendix (App., *infra*, at 9).

STATEMENT OF JURISDICTION

The ruling of the Washington State Supreme Court was entered on November 21, 2011. *See* App., *infra*, at 12. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U. S. Const., amend. I:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

U. S. Const., amend. XIV, § I:

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U. S. Const., amend. V:

No person shall be . . . deprived of life, liberty, or property, without due process of law;

Wash. St. Const. Art. I § 3:

No person shall be deprived of life, liberty, or property, without due process of law.

Wash. St. Const. Art. I § 12:

No law shall be passed granting to any citizen, class of citizens, or corporation other than municipal, privileges or immunities which upon the same terms

shall not equally belong to all citizens, or corporations.

STATEMENT OF THE CASE

Steven Andrew Janda was sentenced on April 20, 2011. His sentence did not provide conditions of release in the event the defendant posted bond. On May 16, 2011, the court ordered the defendant was free upon posting bond without the entry of conditions of release. Defendant posted bond on May 18, 2011, deferring his sentence pending appeal. On June 14, 2011, the court ordered community custody without findings of fact or conclusions of law on motion from the state without complying with the minimal due process requirements set forth in *Morrissey v. Brewer*.[1] The defendant motioned on July 13, 2011, to the Washington State Supreme Court to vacate the order upon grounds of deprivation of Due Process. On September 21, 2011, the Washington Supreme Court Commissioner passed over the deprivation claims of due process and asserted an oxymoron was the meaning of "not active member" specifically, persons who have never been members of the bar are "not active members" despite the legal and factual impossibility. The Commissioner ruled a "sensible construction" was required, thereby acknowledging construction

[1] *Morrissey v. Brewer*, 408 U. S. 471, 92 S. Ct. 2593, 33 L. Ed. 2d 484 (1972).

was required to modify the plain meaning of the statute, since not active membership requires prior active membership in virtually all organizations that have members, including the Washington State Bar Association. The defendant filed for a motion for reconsideration with the Washington State Supreme Court Justices. The ruling was affirmed by the Justices on November 21, 2011, without findings of fact or conclusions of law. The defendant appeals primarily on grounds of deprivation of Due Process and Equal Protection under the Fifth and Fourteenth Amendments to the U. S. Constitution and Wash. St. Const. Art. I §§ 3 and 12.

REASONS FOR GRANTING THE WRIT

1. Did the King County Superior Court violate the due process rights of the defendant, Steven Janda, by imposing community custody without complying with Due Process under the Fifth and Fourteenth Amendment to the U. S. Constitution?

Since the privileges and immunities clause of the Washington State Constitution under Art. I § 12, is substantially identical to the equal protection clause of the Fourteenth Amendment to the United States

Constitution, challenges under both clauses may be dealt with simultaneously.[2]

The Fourteenth Amendment states in pertinent part: No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. To establish a due process violation, an individual must at least allege that the violation caused deprivation of notice or the opportunity to be heard; that is, the individual must show some prejudice.[3]

An offender who is under the terms of a suspended sentence has minimal due process rights, including (a) written notice of the claimed violations; (b) disclosure to the defendant of the evidence against him; (c) the opportunity to be heard; (d) the right to confront and cross-examine witnesses (unless there is good cause for not allowing confrontation); (e) a neutral and detached hearing body; and (f) a statement by the court as to the evidence relied upon and the reasons for the revocation.[4] The court in *State v. Dahl* cited the minimal due process rights stating,

---

[2] *American Network, Inc. v. Utilities & Transp. Comm'n*, 113 Wn.2d 59, 77, 776 P.2d 950 (1989).

[3] *State v. Perry*, 96 Wn. App. 1 (1999).

[4] *Morrissey v. Brewer*, 408 U. S. 471, 92 S. Ct. 2593, 33 L. Ed. 2d 484 (1972).

"These requirements exist to ensure that the finding of a violation of a term of a suspended sentence will be based upon verified facts."[5] The court in *State v. Swanson*[6] ruled the maxim expressio unius est exclusio alterius refutes the state's argument that the court is free to impose conditions that were not imposed at the sentencing of the defendant by rendering all terms and conditions not included in the sentence, considered and intentionally omitted and barred from inclusion without due process of law.[7]

Here, the defendant was sentenced on April 20, 2011, without excepting any part of his sentence from deferral in the event the defendant posted bond. The court ordered the sentence of the defendant deferred on bond on May 16, 2011, without imposing conditions of release. The state set a clarification hearing to verify the bond stayed the community custody portion of the sentence, which was heard on June 14, 2011, and the court verified the entire sentence was stayed on bond. Thereafter, at the same hearing, the state motioned impromptu, for the defendant to be subject to community custody with respect to refraining from the "practice of law" without notice or allegations against him and without findings of fact and conclusions of law, thereby prejudicing his due process right of notice to prepare a meaningful

---

[5] *State v. Dahl*, 139 Wn.2d 678, (1999); *State v. Badger*, 64 Wn. App. 904, 908, 827 P.2d 318 (1992).

[6] *State v. Swanson*, 116 Wn. App. 67 (2003).

[7] *State v. Swanson*, 116 Wn. App. 67 (2003).

opportunity to be heard.[8] Nevertheless, the court granted the order authorizing the Department of Corrections authority to work out the details to confirm the defendant is not practicing law. The defendant motioned to the Washington State Supreme Court on July 13, 2011, to vacate the order based upon failure of the state to comply with Due Process. Moreover, even if the state had complied with due process, the order authorizes the state to unreasonably intrude into the reasonable expectation of privacy of the defendant by interfering with contractual relations, contrary to the Wash. St. Const. Art. I § 7, and the Fifth Amendment right of the defendant to work for persons in the exercise of their Sixth Amendment right to conduct their own legal affairs free from government interference.[9]

Supreme Court Commissioner Goff did not explicitly rule on the due process claims, but raised the "not active member" issue, ruling since the defendant has never been a member of the bar he is not an active member, somehow reasoning the assertion of the oxymoronic meaning of "not an active member" outweighed the deprivation claims of due process. Commissioner Goff also stated the defendant was ordered as a part of his sentence not to practice law. This is false. There was no such provision in the sentence. The defendant filed a motion for reconsideration, but

---

[8] *Morrissey v. Brewer*, 408 U. S. 471, 92 S. Ct. 2593, 33 L. Ed. 2d 484 (1972).

[9] *Faretta v. California*, 422 U. S. 806 (1975).

the Court still did not address the due process claims and the state did not respond. Without findings of fact or conclusions of law, the Washington State Supreme Court affirmed the ruling of Commissioner Goff on November 21, 2011, thereby approving the oxymoron as the meaning of the RCW 2.48.180(1)(b); i.e., the Court includes persons the law excludes.

The King County Superior Court order violates Due Process since it was entered without notice to the defendant and prejudiced his right to have a meaningful opportunity to be heard. Moreover, the order was entered in violation of the minimal due process requirements, and was, therefore, entered in violation of the due process rights of the defendant.[10]

Therefore, the order on June 14, 2011, must be vacated since it was entered in violation of Due Process.

Moreover, the order of the Washington State Supreme Court gives rise to many claims in violation of Due Process and the Equal Protection Clause of the Fourth and Fourteenth Amendments to the U. S. Constitution and the Wash. St. Const. Art. I § 12, discussed in the remainder of this brief.

---

[10] *Morrissey v. Brewer*, 408 U. S. 471, 92 S. Ct. 2593, 33 L. Ed. 2d 484 (1972).

2. Did the Court, by including persons who were never members in the "not active member" class of persons defined by the legislature under RCW 2.48.180(1)(b), violate the Equal Protection Clause of the U. S. Constitution and Wash. St. Const. Art. I § 12?

RCW 2.48.180(1)(a) and (b) reads as follows: (1) As used in this section: (a) "Legal provider" means an active member in good standing of the state bar, and any other person authorized by the Washington state supreme court to engage in full or limited practice of law; (b) "Nonlawyer" means a person to whom the Washington supreme court has granted a limited authorization to practice law but who practices law outside that authorization, and a person who is not an active member in good standing of the state bar, including persons who are disbarred or suspended from membership.

The "not active member" provision under RCW 2.48.180(1)(b), defines the bar member nonlawyers who have incurred a change of membership status from "active" to "not active" and non-member nonlawyers who had a limited authorization to practice law in a limited scope, but have incurred an official change of status and are not presently authorized to practice law. RCW 2.48.180(1)(a) defines the elements of a bar member legal provider and a non-member legal provider. Washington State Supreme Court Commissioner Goff ruled a "sensible construction" is required to include persons who have never been members of the bar; thereby acknowledging such

persons are not included in the statute under the plain meaning. So the question is whether adding a class of persons omitted by the legislature violates the Equal Protection Clause.

There are three ways to analyze an equal protection claim: (1) strict scrutiny, (2) intermediate scrutiny, and (3) rational basis.[11] Under a strict scrutiny analysis, a law will be upheld only if it is found to be absolutely necessary to promote a compelling state interest.[12] Under intermediate scrutiny, a law will be upheld so long as it furthers a substantial state interest.[13] Rational basis only requires that the law further a legitimate state interest.[14] A strict scrutiny analysis is used whenever a fundamental right is affected or a suspect class is involved. A strict scrutiny analysis is employed when a law directly and substantially interferes with a fundamental right.[15] The right to work is a fundamental right under the Fifth Amendment. The Supreme Court has clearly indicated that laws which do not place direct restrictions on an individual's ability to exercise a right do not constitute a direct and substantial interference.[16]

---

[11] *State v. Smith*, 117 Wn.2d 263, ___ P.2d 652 (1991).

[12] *State v. Phelan*, 100 Wn.2d 508, 512, 671 P.2d 1212 (1983).

[13] *State v. Schaaf*, 109 Wn.2d 1, 17, 743 P.2d 240 (1987).

[14] *Smith*, 117 Wn.2d at 277.

[15] *Lyng v. Castillo*, 477 U. S. 635, 638, 106 S. Ct. 2727, 91 L. Ed. 2d 527 (1986).

[16] *Bowen v. Gilliard*, 483 U. S. 587, 107 S. Ct. 3008, 97 L. Ed. 2d 485 (1987).

When the interpretation of a statute creates an inherent suspect class affecting a fundamental right it is subject to strict scrutiny.

Here, the defendant challenges the construction of RCW 2.48.180(1)(b) by the court for violating the Equal Protection Clause, thus, the constitutional challenge to the statute is "as applied" by the Court. By admitting a "sensible construction" was required to support the inclusion of the defendant in the statute, the court admitted the defendant was not included under the plain meaning. However, since "not active membership" requires prior active membership, persons who have never been members are excluded under the plain meaning. Therefore, the ruling of the Court adds a class of persons expressly excluded by the legislature under the plain meaning, contrary to law.[17]

Since the defendant has never been a member of the bar, he is not situated similarly to suspended and disbarred attorneys, or otherwise not active members. Since the court has added the defendant to the statute in the same class as suspended and disbarred attorneys, the court has added a class of persons to a defamatory professional class of persons who were intentionally omitted by the legislature, some of whom have been disciplined for moral turpitude,

[17] The court will not judicially supply an element the legislature has chosen to omit. *State v. Sainz*, 23 Wn. App. 532, 540, 596 P.2d 1090 (1979).

constituting a dissimilarly situated class of persons, thereby violating the Equal Protection Clause.

Therefore, the "sensible construction" of the Court violates the equal protection clause.

3. Did the Washington State Supreme Court, by including persons who were never members in the "not active member" class of persons defined by the legislature under RCW 2.48.180(1)(b), based on a "sensible construction" inherently declare the statute ambiguous, but deprive the defendant of due process of law by denying the defendant the benefit of the rule of lenity?

The primary purpose of statutory interpretation is to ascertain the legislative intent. A statute which does not reasonably inform a person of the proscribed conduct does not give adequate notice and violates Due Process. If a statute is unambiguous, it is not subject to judicial construction and its meaning is to be derived from the language of the statute alone.[18] The court may not add language to a clear statute, even if it believes the Legislature intended something else but failed to express it adequately.[19] Where a statute may reasonably be interpreted to have more than one meaning, the statute is ambiguous and the

---

[18] *Cherry v. Municipality of Metro. Seattle*, 116 Wn.2d 794, 799, 808 P.2d 746 (1991).

[19] *Adams v. DSHS*, 38 Wn. App. 13, 16, 683 P.2d 1133 (1984).

court applies the rules of statutory construction. If a statute is ambiguous, it must be interpreted in favor of the defendant and the rule of lenity applies.

Here, the Court admitted a sensible construction was required to apply the statute to the defendant, thereby requiring a finding of ambiguity. However, the court did not give the defendant the benefit of the ambiguity and apply the rule of lenity.

Therefore, since the defendant was not given the benefit of the ambiguity by applying the rule of lenity, he was deprived of due process of law.

4. Did the Court, by including persons who were never members in the "not active member" class of persons defined by the legislature under RCW 2.48.180(1)(b), render the word "active" superfluous, and thereby deprive the defendant of due process of law?

A statute is to be interpreted so that no word is treated as superfluous. Here, the court has altered the use of the adjective "active" by silencing its purpose. It is not possible to have not active membership status without prior active membership status. The meaning of "not an active member" is a member who is not active, thus, not active members are members, in contrast to persons who have never been members. The meaning of the statute is clear. The statute reasonably only has one meaning. Therefore, it is not ambiguous. The sensible construction of the court

was applied to an unambiguous statute, and was therefore, contrary to the rules of construction. Not active membership requires prior membership. The court reads the statute to mean "persons who have never been members" in place of "persons who are not active members" resulting in changing the nonlawyer statutory class of persons for the nonlawyer colloquial class of persons in the court rules, thereby depriving the defendant of due process because the class of persons defined by the legislature does not include persons who were never members and does not give notice to such persons.

Therefore, since the statute does not inform persons who have never been authorized to practice law in the statute, it is a violation of due process to apply the statute to such persons, like the defendant.

5. Did the Court, by including persons who were never members in the "not active member" class of persons defined by the legislature, under RCW 2.48.180(1)(b), render the statute constitutionally overbroad as applied?

It is well settled that when the same words are used in different parts of a statute, the meaning is presumed to be the same throughout.[20] Consequently, the meaning of "nonlawyer" applies throughout the statute since the term is first defined in the statute,

[20] *DeGrief v. City of Seattle*, 50 Wn.2d 1, 297 P.2d 940 (1956).

specifically "As used in this section" and then applied by using the term to define the elements of the unlawful practice of law throughout the remainder of RCW 2.48.180. A statute is constitutionally overbroad "as applied" if the interpretation of the statute cannot be enforced without sweeping within its purview a substantial amount of constitutionally protected speech.[21] The First Amendment right of speech is integrated throughout the Bill of Rights because communication is an element of many civil rights, including, but not limited to, the Fifth Amendment right to life, liberty, and property. When the GR 24 definition of the practice of law is applied to define the element of the practice of law under RCW 2.48.180 and arbitrarily enforced against persons who were never members of the bar, such persons are deprived of Due Process and Equal Protection of the law under the Fifth and Fourteenth Amendments. RCW 2.48.180 provides bright lines of forbidden conduct between active and not active bar members, as well as limited practice persons. The restrictions manifest the intent of the legislature to criminalize financial entanglement between active and not active members of the bar. The imposition of such restrictions to persons who have never been authorized to

[21] A criminal statute that "sweeps constitutionally protected free speech activities within its prohibitions" may be overbroad and thus violate the First Amendment. *City of Seattle v. Abercrombie*, 85 Wn. App. 393, 397, 945 P.2d 1132, review denied, 133 Wn.2d 1005 (1997); *Thornhill v. Alabama*, 310 U. S. 88, 97, 60 S. Ct. 736, 84 L. Ed. 1093 (1940).

practice law is overbroad and violates Due Process and the Equal Protection Clause.

Here, if not active members includes persons who have never been members, then active members cannot employ such persons because it is a violation of the Rules of Professional Conduct under RPC 5.5 and 5.8. Consequently, under the sensible construction of the Supreme Court, all active members who presently employ non-members are in violation of the rules of professional conduct, thereby sweeping the fundamental right to work within the purview of the statute and rendering it constitutionally overbroad as applied.

RCW 2.48.180(1)(c) defines an ownership interest to include the right to control the affairs of a business, or the right to share in the profits of a business, and includes a loan to the business when the interest on the loan is based upon the income of the business or the loan carries more than a commercially reasonable rate of interest. RCW 2.48.180(2) states the following constitutes the unlawful practice of law: (2)(b) A legal provider holds an investment or ownership interest in a business primarily engaged in the practice of law, knowing that a nonlawyer holds an investment or ownership interest in the business; (2)(c) A nonlawyer holds an investment or ownership interest in a business primarily engaged in the practice of law; (2)(d) A legal provider works for a business that is primarily engaged in the practice of law, knowing that a nonlawyer holds an investment or

ownership interest in the business; or (2)(e) A nonlawyer shares legal fees with a legal provider.

Under the sensible construction of the Supreme Court, persons who have never been members of the bar are "not active members" under RCW 2.48.180(1)(b). Persons who are not active members in the statute are "nonlawyers." Consequently, persons who have never been authorized to practice law cannot make loans to law firms under (2)(c) because it constitutes an investment interest, since loans are extended with the intent to profit. If the loan is above a commercially reasonable interest rate, the loan constitutes an ownership interest. All such loans by not active members to the firms of active members constitutes the unlawful practice of law, thereby incriminating active members and any person for making such loans if such person is defined as not an active member. Rental real estate also constitutes an investment interest because property is rented with the expectation to profit, thereby sweeping within the purview of the statute the fundamental right to life and property under the Fifth Amendment, by criminalizing the right of persons who have never been authorized to practice law from profiting by extending loans or renting property to active members of the bar, thereby rendering the statute constitutionally overbroad as applied by the Washington State Supreme Court.

Under RCW 2.48.180(2)(d), an active member of the bar cannot work for an active member of the bar knowing a not active member holds an investment or ownership interest in the firm. Consequently, the

right of persons to organize as banks and lending institutions and to extend loans to law firms constitutes the unlawful practice of law under the "sensible construction" of the Washington State Supreme Court, thereby sweeping the fundamental right of such institutions within the prohibition of the statute and constituting the unlawful practice of law. In short, all financial services on behalf of law firms between active members and not active members, constitutes the unlawful practice of law.

Since the right to share in the profits of a business constitutes an ownership interest, not active members cannot participate in profit-sharing plans of active members, contrary to the right of persons who are not members of the bar as provided under the Rules of Professional Conduct 5.3.

Persons who have never been authorized to practice law are also required to sit on all the boards which govern the practice of law. These persons are referred to as nonlawyers under the colloquial meaning in the court rules forty-nine times in the Enforcement of Lawyers Conduct, thereby distinguishing the nonlawyers in the court rules from the bar member nonlawyers in the state bar act under RCW 2.48.180.

The defendant raised these constitutionally overbroad issues in his motion for reconsideration. The state did not respond to the motion.

RCW 2.48.180(6) provides that violations of the statute is cause for discipline and constitutes

unprofessional conduct. Persons who have never been members of the bar are not subject to discipline and cannot constitute unprofessional conduct because they are not subject to the rules of professional conduct per RPC 5.3 and Wash. St. Const. Art. 4 §§ 1 and 2.[22]

RCW 2.48.180(7) provides that the defenses in a proceeding under the statute includes the Rules of Professional Conduct or Admission to Practice Rules or Washington business and professions licensing statutes or rules, none of which apply to persons who assist pro se persons in the independent exercise of their Sixth Amendment right to conduct their own legal affairs. [23]

The "sensible construction" of RCW 2.48.180 by the Washington State Supreme Court renders all these provisions superfluous, contrary to law, thereby undermining the clear legislative intent.[24] The court would have to amputate all these provisions from the statute to support its overbroad construction to continue the judicially created nonexistent offense of unlawful practice of law under RCW 2.48.180 with respect to persons who have never been authorized to practice law, thereby violating all the rules of

---

[22] *Hizey v. Carpenter*, 119 Wn.2d 251, ___ P.2d 646 (1992).

[23] *Faretta v. California*, 422 U. S. 806 (1975).

[24] *State v. Roggenkamp*, 153 Wn.2d 614, 625, 106 P.3d 196 (2005).

construction the court follows to derive a sensible construction.

Therefore, by holding that persons who have never been members of the bar are not active members, all of the restrictions between active and not active members extend to persons who have never been authorized to practice law, sweeping a substantial amount of protected conduct within the purview of the statute, thereby rendering the statute constitutionally overbroad as applied by the Washington State Supreme Court, thereby violating Due Process and the Equal Protection Clauses of the Fifth and Fourteenth Amendments to the U. S. Constitution.

6. Did the Court, by including persons who were never members in the "not active member" class of persons defined by the legislature, under RCW 2.48.180(1)(b), contradict the canon of expressio unius est exclusio alterius, thereby violating due process of law?

Where a statute specifically designates the things or classes of things upon which it operates, an inference arises in law that all things or classes of things omitted from it were intentionally omitted by the legislature under the maxim expressio unius est

exclusio alterius – specific inclusions exclude implication.[25]

Here, the legislature amended RCW 2.48.180 in 1995, introducing a different definition exclusively within the statute for "not active members of the bar." The root meaning of "inactive" is not active. Disbarred and suspended members are included by specific expression in the not active class. When the legislature designates exceptions, the exceptions specified exclude implication of other exceptions, thereby barring, here, the implication of other persons who have never been authorized to practice law in the not active member class.[26] Consequently, persons who were never members of the bar are rendered considered and intentionally omitted by the legislature.

Therefore, when the court ruled "not active members" extends to persons who were never members under the guise of a sensible construction, the construction added a class of persons intentionally excluded by the legislature under the canon of expressio

---

[25] *Washington Natural Gas Co. v. Public Util. Dist. No. 1*, 77 Wn.2d 94, 98, 459 P.2d 633 (1969) (citing *State v. Roadhs*, 71 Wn.2d 705, 707, 430 P.2d 586 (1967)).

[26] "Where a statute provides for a stated exception, no other exceptions will be assumed by implication." *Jepson v. Department of Labor & Indus.*, 89 Wn.2d 394, 404, 573 P.2d 10 (1977); *Sulkosky v. Brisebois*, 49 Wn. App. 273, 277, 742 P.2d 193 (1987). The exceptions become exclusive. *State v. Sommerville*, 111 Wn.2d 524, 535, 760 P.2d 932 (1988).

unius est exclusio alterius, and violated due process of law because the defendant reasonably relied on the history of Washington State Appellate Court decisions would be honored by the Washington Supreme Court when interpreting RCW 2.48.180.

7. Did the Court, by including persons who were never members in the "not active member" class of persons defined by the legislature, under RCW 2.48.180(1)(b), contradict the rule of ejusdem generis?

The ejusdem generis rule requires that general terms appearing in a statute in connection with specific terms are to be given meaning and effect only to the extent that the general terms suggest items similar to those designated by the specific terms. In short, specific terms modify or restrict the application of general terms where both are used in sequence.

Wash. Rev. Code § 2.48.180 is a textbook example of the rule of ejusdem generis. In re the *State v. Van Woerdon*, 93 Wn. App. 110, 967 P.2d 14 (1998), the court gave an example of ejusdem generis that follows the same model of legislative language of "general term" "including" "specific term" and "specific term" as the unauthorized practice of law statute expressed in RCW 2.48.180(1)(b). The court even used the word "including" in the example just like the legislature did in the statute. The rule states that general terms, like "not an active member" are confined to the meaning of specific terms, like "disbarred and suspended"

when placed together in the statute. That is, the specific terms in the nonrestrictive clause confine the meaning of the general term, and exclude implication of other things.

Therefore, the "sensible construction" also contradicts the application of ejusdem generis.

8. Did the Court, by including persons who were never members in the "not active member" class of persons defined by the legislature, under RCW 2.48.180(1)(b), contradict the doctrine of noscitur a sociis, thereby evidencing deprivation of the due process and Equal Protection rights of the defendant?

Under the doctrine of noscitur a sociis, the meaning of a word may be determined by reference to its relationship to other words in the statute.[27] The words in a non-restrictive clause are specifically intended to bear a direct relationship to the meaning of the last antecedent and may not be disregarded by the court. That which the statute specifically includes bars inclusion of other things not expressed under the expressio rule. When that language is deleted, the general meaning of the last antecedent is susceptible to mistake and obvious error. Whenever the WSBA

[27] *Shurgard Mini-Storage v. Department of Revenue*, 40 Wn. App. 721, 727, 700 P.2d 1176 (1985) (citing *City of Mercer Island v. Kaltenbach*, 60 Wn.2d 105, 109, 371 P.2d 1009 (1962)).

renders an opinion of the unlawful practice of law against a non-member of the bar, the WSBA amputates the non-restrictive clause from the opinion, removing key language to ascertain the legislative intent by the application of the rules of statutory construction.

In RCW 2.48.180, the fact that the legislature placed the term "active" before "member" is evidence of the legislative intent to distinguish the "status" of membership of the bar members. The presence of the word "active" before "member" indicates the legislative intent was to distinguish a status element of the member, not whether or not the person was a member because status of membership is confined to members only.

Therefore, the ruling that a "sensible construction" is required to extend the statute to persons who were never members is contrary to the rule of noscitur a sociis, which is further evidence of deprivation of the due process rights of the defendant and evidence that the defendant has been deprived of Equal Protection of the Law.

9. Did the Court, by including persons who were never members in the "not active member" class of persons defined by the legislature, under RCW 2.48.180(1)(b) violate the separation of powers?

Authority to define crimes and set punishments rests firmly with the legislature.[28] Specifically, the legislature is responsible for defining the elements of a crime. [29] It is unconstitutional for the Legislature to abdicate or transfer its legislative function to others.[30] The court does not have the authority to replace elements of crimes under the guise of a sensible construction when the statute is clear. The legislative intent is ascertained by the plain meaning of the statute.

Where "a statute is clear on its face, its meaning [should] be derived from the language of the statute alone."[31] "Courts should assume the Legislature means exactly what it says" in a statute and apply it as

---

[28] *State v. Wadsworth*, 139 Wn.2d 724, 734, 991 P.2d 80 (2000).

[29] *State v. Evans*, 154 Wn.2d 438, 447 n.2, 114 P.3d 627 (2005); *Wadsworth*, 139 Wn.2d at 734.

[30] *Brower v. State*, 137 Wn.2d 44, 54, 969 P.2d 42 (1998).

[31] *Kilian v. Atkinson*, 147 Wn.2d 16, 20, 50 P.3d 638 (2002) (citing *State v. Keller*, 143 Wn.2d 267, 276, 19 P.3d 1030 (2001)); *see also BedRoc Ltd. v. United States*, 541 U. S. 176, 183, 124 S. Ct. 1587, 158 L. Ed. 2d 338 (2004).

written.[32] Statutory construction cannot be used to read additional words into the statute.[33]

When the court replaced the class of persons "not active members" with persons "who were never members" the court added a class of persons under the nonlawyer homonym switch who were intentionally omitted by the legislature under the canon of expressio unius est exclusio alterius, the state redefined the class of persons, which is an exclusive legislative role and, therefore, violated the separation of powers in deprivation of the civil rights of the defendant.

10. Did the Court, by ruling persons who were never members are included in the "not active member" class of persons defined by the legislature, under RCW 2.48.180(1)(b), rule contrary to RCW 18.130.040 and RCW 18.130.190, which protects persons from allegations of similar conduct in the practice of law, thereby violating Due Process and the Equal Protection provisions of the Fifth and Fourteenth Amendments?

The court *In re the Marriage of Dahlthorp*[34] ruled the fact that the Judge was not an active member of

---

[32] *State v. Keller*, 143 Wn.2d 267, 276 (2001); *see also Conn. Nat'l Bank v. Germain*, 503 U. S. 249, 253-54, 112 S. Ct. 1146, 117 L. Ed. 2d 391 (1992); *State v. Roggenkamp*, 153 Wn.2d 614, 625, 106 P.3d 196 (2005).

[33] *State v. Chester*, 133 Wn.2d 15, 21, 940 P.2d 1374 (1997).

[34] *In re the Marriage of Dahlthorp*, 23 Wn. App. 904 (1979).

the bar, satisfied the jurisdiction requirement because the statute merely requires the Judge of the Court to be a member, thus, proving in an independent context that "not active" members are members. The court explained the word "active" was used by the legislature to provide a statutory basis to distinguish status among members of the bar. Thus, any time the word "active" appears in the state bar act, it is used to define a status element among members only, just as it does in the military, sports teams, unions, associations, and the like. Otherwise, the whole world would have not active status in all organizations, which is absurd and a consequence forbidden by the rules of construction.[35] RCW 18.130.040 protects persons from allegations of unlicensed conduct in support of cease and desist orders in a profession for which a license is required, unless the profession is specified in the statute. The practice of law is not specified, thus, it is protected from such allegations. The "sensible construction" of the Washington State Supreme Court fosters what is expressly against the law in RCW 18.130.040 by allowing the Practice of Law Board to invite complaints against persons for the unlawful practice of law for performing conduct that is protected from such allegations. Substantive conduct of the practice of law was intentionally omitted from RCW 2.48.180 by the legislature under the canon of expressio unius est exclusio alterius. The legislative silence must be

[35] *State v. Cann*, 92 Wn.2d 193, 595 P.2d 912 (1979).

given weight.[36] It is against the law for the court to provide an element that was omitted by the legislature.[37]

Therefore, since the "sensible construction" of the Washington State Supreme Court fosters complaints against conduct that is protected from such allegations under RCW 18.130.040, it violates Due Process and the Equal Protection Clauses.

11. Did the Court, by ruling persons who were never members are included in the "not active member" class of persons defined by the legislature, under RCW 2.48.180(1)(b), exercise jurisdiction over the defendant under color of law, constitute a claim for relief under 42 U.S.C. § 1983?

Section 1983 provides in relevant part that every person who, under color of any statute or ordinance, subjects any United States citizen to the deprivation of any rights, privileges, or immunities secured by the constitution and laws, shall be liable to the injured party in an action at law. The violation of rights guaranteed solely by the state constitution and state law is not actionable under section 1983.[38] The

---

[36] *State ex rel. Port of Seattle v. Dept. of Pub. Serv.*, 1 Wn.2d 102, 95 P.2d 1007 (1939).

[37] *Adams v. DSHS*, 38 Wn. App. 13, 16, 683 P.2d 1133 (1984).

[38] *Shutt v. Moore*, 26 Wn. App. 450, 453, 613 P.2d 1188 (1980).

claimant must show the state acted under color of law and deprived the claimant of an established right under federal law. Certainly, due process of law is an established federal right under the Fifth and Fourteenth Amendments to the U. S. Constitution. The right to hold specific private employment free from unreasonable government interference is a fundamental right that comes within the liberty and property concepts of the Fifth Amendment.[39] This fundamental right is protected against state interference by the Fourteenth Amendment. A court which exercises jurisdiction over the defendant under color of law, in the clear absence of jurisdiction, is not immune.[40]

Here, the "sensible construction" of the Washington State Supreme Court has deprived the defendant of due process of law and equal protection. The deprivation occurred by the highest body in the state having authority to construct the statute. The ruling violates the statutory scheme as a whole and renders substantial provisions of the statute superfluous, as well as contradicting the plain language of the statute. The order of community custody on June 14, 2011, while the defendant was free on bond without complying with the minimal due process requirements as provided *in re Morrissey v. Brewer*[41] deprived the defendant of his federally established right

---

[39] U. S. Const. Amend. V.

[40] *Stump v. Sparkman*, 435 U. S. 349, 357 (1978).

[41] *Morrissey v. Brewer*, 408 U. S. 471, 92 S. Ct. 2593, 33 L. Ed. 2d 484 (1972).

to live free from the imposition of additional terms and conditions not imposed at sentencing without due process of law under the Fifth and Fourteenth Amendments to the U. S. Constitution. The Washington State Supreme Court aggravated the deprivation by ignoring the claim altogether and asserted under color of law the defendant is not an active member of the bar, thereby raising the deception of the "sensible construction" as the basis for denying the motion to vacate the order on June 14, 2011, entered by the King County Superior Court.

Depriving the defendant of his fundamental right to work by placing his business under the cloud of community custody deprived the defendant of his federally established Fifth Amendment right to work, thereby depriving the defendant of a right protected from interference by the U. S. Constitution.[42]

Therefore, the deprivation constitutes a valid claim for relief under 42 U.S.C. § 1983.

---

[42] *Duranceau v. City of Tacoma*, 27 Wn. App. 777, 620 P.2d 533 (1980).

12. Did the Court, by ruling persons who were never members are included in the "not active member" class of persons defined by the legislature under RCW 2.48.180(1)(b), constitute official misconduct under RCW 9A.80.010?

An official who deprives a person of a right or privilege under color of law commits official misconduct under RCW 9A.80.010. Since the state held out the defendant was defined in RCW 2.48.180(1)(a) as a "not active member of the bar" the state did so falsely under color of law, since the plain meaning of "not an active member" requires prior active membership, and the defendant was never a member. Therefore, the defendant was deprived of his Due Process and Equal Protection rights under color of law, constituting official misconduct.

13. Did the Court, by ruling persons who were never members are included in the "not active member" class of persons defined by the legislature, under RCW 2.48.180(1)(b), constitute extortion under RCW 9A.56.130?

A threat must be wrongful under RCW 9A.04.110, otherwise, the court has found the statute constitutionally overbroad.[43] A wrongful threat which deprives a person of life and property rights set forth in RCW 9A.04.110(28) including, but not limited to, his

[43] *State v. Pauling*, 149 Wn.2d 341 (2003).

reputation, business, and relationships in the community, constitutes extortion under RCW 9A.56.130. Depriving a person of his civil rights constitutes official misconduct and satisfies the wrongfulness requirement.

Therefore, when the state ordered community custody without due process of law under the guise the court had the authority to do so, the court held out that the minimal due process requirements for the imposition of additional terms not imposed at sentencing was within the jurisdiction of the court, thereby depriving the defendant of due process of law under color of law, constituting official misconduct under RCW 9A.80.010.

14. Did the Court, by ruling persons who were never members are included in the "not active member" class of persons defined by the legislature, under RCW 2.48.180(1)(b), constitute leading organized crime under RCW 9A.82.060?

Extortion under RCW 9A.56.130 constitutes criminal profiteering under RCW 9A.82.010(4)(k), which constitutes a pattern of criminal profiteering under RCW 9A.82.010(12) if it occurs three times within a five year period after July 1, 1985, which constitutes leading organized crime under RCW 9A.82.060.

Here, the state held out the defendant was not an active member of the bar in the indictment filed against him on June 10, 2010, and four times

by amendment in concert by the state prosecutors thereafter throughout trial until March 15, 2011. Washington State Supreme Court Commission Goff held out the same in his ruling denying the motion to vacate on September 21, 2011, and the Supreme Court Justices affirmed the ruling on November 21, 2011, satisfying the three occurrence element for a pattern of criminal profiteering, constituting leading organized crime.

Therefore, the deprivations of due process and equal protection constitute leading organized crime under RCW 9A.82.060.

CONCLUSION

For the foregoing reasons, the Petitioner respectfully requests that the Petition for Writ of Certiorari be granted.

Respectfully submitted,

STEVEN ANDREW JANDA
233 1st Ave. S.
Kent, WA 98032
253-850-9500

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON Respondent, v. STEVEN ANDREW JANDA, Petitioner.	NO. 85909-4 RULING DENYING EMERGENCY MOTION TO VACATE ORDER. (Filed Sep. 21, 2011)

A King County Superior Court jury convicted Steven Janda of two counts of unlawful practice of law and two counts of first degree theft. Mr. Janda appealed directly to this court. As a condition of his release the trial court ordered that Mr. Janda refrain from practicing law. Mr. Janda has now filed an emergency motion to vacate this trial court order.

Mr. Janda advances various arguments for why the trial court's order should be vacated, all without merit. His theory on appeal seems to be that since he has never been a member of the state bar, he cannot be considered a "nonlawyer." A "nonlawyer" is defined in part as "a person who is not an active member in good standing of the state bar, including persons who are disbarred or suspended from membership." RCW 2.48.180(1)(b). But the statutory definition of non-lawyer must be given a sensible construction, and the only sensible construction is that persons who have never been an active bar member are nonlawyers. This reading of the statute finds support in RCW 2.48.170, which says that "[n]o person shall practice

law in this state . . . unless he or she be an active member [of the state bar]." Such persons may not practice law precisely because they are not active bar members. That includes Mr. Janda. The superior court's order does no more than these statutes, which plainly prohibit Mr. Janda from practicing law.

The emergency motion to vacate the superior court's order is denied.

/s/ Steven Goff
COMMISSIONER

September 21, 2011

SUPERIOR COURT
FOR THE STATE OF WASHINGTON
IN THE COUNTY OF KING

STATE OF WASHINGTON, Plaintiff, vs. [Steven Janda], Defendant	Case No. [10-1-05571-8 KNT] ORDER ON CRIMINAL MOTION (ORCM)

The above-entitled Court, having heard a motion to set conditions pending appeal.

IT IS HEREBY ORDERED Mr. Janda, as a condition of release pending appeal, is to refrain from practicing law and check in (telephonically ok) with CCO Mr. Coleman ~~at least once a week~~. CCO Coleman has authority to work out manner and frequency of reporting with Mr. Janda as well as how to confirm prohibition against practicing law.

DATED: 6/14/11

/s/ Hollis R. Hill
Judge Hollis R. Hill

/s/ Charles Sherer 39277
Deputy Prosecuting Attorney

/s/ Synthia A. Melton 43593
Attorney for Defendant

SUPERIOR COURT OF THE
STATE OF WASHINGTON
COUNTY OF KING

STATE OF WASHINGTON vs.	Plaintiff,	NO. 10-1-005571-8 KNT
[Steven Janda] Defendant.		ORDER ON CRIMINAL MOTION (ORCM)

The above-entitled Court, having heard a defendant's motion to set appellate bond.

IT IS HEREBY ORDERED that appellate bond is set at $15,000.00. If defendant posts bond, imposition of sentence shall be deferred until case is remanded after appeals are exhausted.

DATED: 5/16/11

/s/ Mary E. Roberts
JUDGE MARY E. ROBERTS
JUDGE

/s/ Charles Sherer 39277
Deputy Prosecuting Attorney

/s/ Lee Rousso 43593
Attorney for the Defendant

[425-457-3314
Lee Rousso 33340]

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON, Plaintiff, v. STEVEN ANDREW JANDA Defendant.	No. 10-1-05571-8 KNT **JUDGMENT AND SENTENCE, NON-FELONY – Count(s)** (Jail Commitment Only) **SEE FELONY J AND S COUNT II, III, IV**

The Prosecuting Attorney, the above-named defendant and counsel being present in Court, the defendant having been found guilty of the crime(s) charged in the amended information on 3/16/2011 by trial and there being no reason why judgment should not be pronounced;

IT IS ADJUDGED that the defendant is guilty of the crime(s) of: **COUNT I** – UNLAWFUL PRACTICE OF LAW/RCW 2.48.180 and that the Defendant be sentenced to a term of confinement of 12 months* [X] in the King County Jail, Department of Adult Detention, [ ] in King County Work/Education Release subject to conditions of conduct ordered this date, [ ] in King County Electronic Home Detention subject to conditions of conduct ordered this date, said terms to be served [ ] concurrently [ ] consecutively with each other; and to be served [X] concurrently [ ] consecutively with time served on counts II, III, & IV.

* – suspended for a period of 24 months* on the condition that the defendant serve 60 days in jail and comply with conditions set forth in the felony J&S.

The term(s) imposed herein shall be served consecutively with any term not referenced herein.

CREDIT is given for [ ] ___ days served [X] days determined by the King County Jail solely on this cause.

Sentence will commence [ ] immediately [X] Date: 5/20/11 no later than 4 ~~a.m.~~ p.m.

[Note: 24 mo. period of suspended sentence to run *consecutively* to 12 mo. First Time Offender Waiver. Intent is for 36 mo. of total supervision.]

Defendant shall pay to the clerk of this Court:

(1) [ ] Restitution is not ordered;
[X] Order of Restitution is attached; [Additional restitution may be ordered]
[ ] Restitution to be determined at a restitution hearing on (Date) _____ at ___ __.m.;
[ ] Date to be set;
[ ] The defendant waives presence at future restitution hearing(s);

(2) $ _____, Court costs;

(3) $ _____, Victim assessment, $500 for gross misdemeanors and $100 for misdemeanors;

(4) $ _____, Recoupment for attorney's fees to King County Public Defense Programs;

(5) [ ] $100 DNA collection fee;

(6) $ _____, $, Fine;

(7) TOTAL financial obligation: [See felony J & S]

The payments shall be made to the King County Superior Court Clerk according to the rules of the Clerk and the following terms: [ ] Not less than $ _____ per month; [ ] to be paid in full by (Date) _____.

[ ] The defendant shall have a biological sample collected for purposed of DNA identification analysis and the defendant shall fully cooperate in the testing, as ordered in Appendix G (for stalking, harassment, or communicating with a minor for immoral purposes).

Date: 4/20/11 /s/ Hollis Hill
Judge, King County
Superior Court
Print Name: _____

Presented by Hollis R. Hill

/s/ [Illegible]
Deputy Prosecuting Attorney WSBA # 39277
Print Name: Charles Sherer

Form Approved for Entry:

/s/ Steven A. Janda – objected noted
Attorney for Defendant WSBA #
Print Name: _____

SUPERIOR COURT OF WASHINGTON
FOR KING COUNTY

STATE OF WASHINGTON, Plaintiff, Vs. STEVEN ANDREW JANDA, Defendant,	No. 10-1-05571-8 KNT **JUDGMENT AND SENTENCE FELONY (FJS)**

I. HEARING

I.1 The defendant, the defendant's lawyer, PRO SE, and the deputy prosecuting attorney were present at the sentencing hearing conducted today. Others present were: Irene Frelin, Julie Konikkeberg, Det. Heather Vance, Julie Shankland, Sandra Schilling

II. FINDINGS

There being no reason why judgment should not be pronounced, the court **finds**:

2.1 **CURRENT OFFENSE(S)**: The defendant was found guilty on 3/16/2011 by jury verdict of:

Count No.:	I
Crime:	SEE MISDEMEANOR J AND S
RCW	
Date of Crime:	
Crime Code:	
Incident No.	10-1501

Count No.:	II
Crime:	UNLAWFUL PRACTICE OF LAW
RCW	2.48.180
Date of Crime:	2/5/2008 TO 2/7/2008
Crime Code:	77903
Incident No.	10-1501

Count No.:	III
Crime:	THEFT IN THE FIRST DEGREE
RCW	9A.56.030(1)(A) & 9A.56.020(1)(B)
Date of Crime:	5/31/1994 TO 7/14/2009
Crime Code:	02514
Incident No.	10-1501

Count No.:	IV
Crime:	THEFT IN THE FIRST DEGREE
RCW	9A.56.030(1)(A) & 9A.56.020(1)(B)
Date of Crime:	2/5/2008 TO 2/8/2008
Crime Code:	02514
Incident No.	10-1501

[ ] Additional current offenses are attached at **Appendix A**.

SPECIAL VERDICT or FINDING(S):

(a) [ ] While armed with a **firearm** in count(s) _____ RCW 9.94A.533(3).

(b) [ ] While armed with a **deadly weapon** other than a firearm in count(s) _____ RCW 9.94A.533(4).

(c) [ ] With a **sexual motivation** in count(s) _____ RCW 9.94A.835.

(d) [ ] A V.U.C.S.A offense committed in a **protected zone** in count(s) _____ RCW 69.50.435.

(e) [ ] **Vehicular homicide** [ ] Violent traffic offense [ ] DUI [ ] Reckless [ ] Disregard.

(f) [ ] **Vehicular homicide** by DUI with _____ prior conviction(s) for offense(s) defined in RCW 46.61.5055, RCW 9.94A.533(7).

(g) [ ] **Non-parental kidnapping** or unlawful imprisonment with a minor victim. RCW 9A.44.128, .130.

(h) [ ] **Domestic violence** offense as defined in RCW 10.99.020 for count(s) _____.

(i) [ ] Current offenses encompassing **the same criminal conduct** in this cause are count(s) _____ RCW 9.94A.589(1)(a).

(j) [ ] **Aggravating circumstances** as to count(s) _____: _____

2.2 **OTHER CURRENT CONVICTION(S)**: Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number): _____

_____

2.3 **CRIMINAL HISTORY**: Prior convictions constituting criminal history for purposes of calculating the offender score are (RCW 9.94A.525):

[ ] Criminal history is attached in **Appendix B**.

[ ] One point added for offense(s) committed while under community placement for count(s) _____

2.4 **SENTENCING DATA**:

Sentencing Data	**Offender Score**	**Seriousness Level**	**Standard Range**	**Enhance-ment**	**Total Standard Range**	**Maximum Term**
Count II	2	II	3 TO 9 MONTHS		3 TO 9 MONTHS	5 YRS AND/OR $10,000
Count III	2	II	3 TO 9 MONTHS		3 TO 9 MONTHS	10 YRS AND/OR $20,000
Count IV	2	II	3 TO 9 MONTHS		3 TO 9 MONTHS	10 YRS AND/OR $20,000
Count						

[ ] Additional current offense sentencing data is attached in **Appendix C.**

2.5 **EXCEPTIONAL SENTENCE**

[ ] Findings of Fact and Conclusions of Law as to sentence above the standard range:

> *Finding of Fact*: The jury found or the defendant stipulated to aggravating circumstances as to Count(s) _____.
>
> *Conclusion of Law*: These aggravating circumstances constitute substantial and compelling reasons that justify a sentence above the standard range for Count(s) _____. [ ] The court would impose the same sentence on the basis of any one of the aggravating circumstances.

[ ] An exceptional sentence above the standard range is imposed pursuant to RCW 9.94A.535(2) (including free crimes or the stipulation of the defendant). Findings of Fact and Conclusions of Law are attached in Appendix D.

[ ] An exceptional sentence below the standard range is imposed. Findings of Fact and Conclusions of Law are attached in Appendix D.

The State [ ] did [ ] did not recommend a similar sentence (RCW 9.94A.480(4)).

III. JUDGMENT

IT IS ADJUDGED that defendant is guilty of the current offenses set forth in Section 2.1 above and **Appendix A**.

[ ] The Court DISMISSES Count(s) _____.

IV. ORDER

IT IS ORDERED that the defendant serve the determinate sentence and abide by the other terms set forth below.

4.1 **RESTITUTION AND VICTIM ASSESSMENT**:

[X] Defendant shall pay restitution to the Clerk of this Court as set forth in attached **Appendix E**.

[ ] Defendant shall not pay restitution because the Court finds that extraordinary circumstances exist, and the court, pursuant to RCW 9.94A.753(5), sets forth those circumstances in attached Appendix E.

[X] Restitution to be determined at future restitution hearing on (Date) for Future Restitution at _____ __m.

[*plus*]

[X] Date to be set.

[ ] Defendant waives presence at future restitution hearing(s).

[ ] Restitution is not ordered.

Defendant shall pay Victim Penalty Assessment pursuant to RCW 7.68.035 in the amount of $500.

4.2 **OTHER FINANCIAL OBLIGATIONS**: Having considered the defendant's present and likely future financial resources, the Court concludes that the defendant has the present or likely future ability to pay the financial obligations imposed. The Court waives financial obligation(s) that are checked below

because the defendant lacks the present and future ability to pay them. Defendant shall pay the following to the Clerk of this Court:

(a) [X] $ 893 , Court costs (RCW 9.94A.030, RCW 10.01.160); [ ] Court costs are waived;

(b) $100 DNA collection fee (RCW 43.43.7541) (mandatory for crimes committed after 7/1/02);

(c) [ ] $ _____, Recoupment for attorney's fees to King County Public Defense Programs (RCW 9.94A.030); [X] Recoupment is waived;

(d) [ ] $ _____, Fine; [ ] $1,000, Fine for VUCSA [ ] $2,000, Fine for subsequent VUCSA (RCW 69.50.430); [X] VUCSA fine waived;

(e) [ ] $ _____, King County Interlocal Drug Fund (RCW 9.94A.030); [X] Drug Fund payment is waived;

(f) [ ] $ _____, $100 State Crime Laboratory Fee (RCW 43.43.690); [X] Laboratory fee waived;

(g) [ ] $ _____, Incarceration costs (RCW 9.94A.760(2)); [X] Incarceration costs waived;

(h) [ ] $ _____, Other costs for: _____.

4.3 **PAYMENT SCHEDULE**: Defendant's **TOTAL FINANCIAL OBLIGATION** is: $ $1,493 + Rest. in App. E plus *future restitution*. The payments shall be made to the King County Superior Court Clerk according to the rules of the Clerk and the following terms: [ ] Not less than $_____ per month; [X] On a schedule established by the defendant's Community Corrections Officer or Department of Judicial Administration (DJA) Collections Officer. Financial obligations

shall bear interest pursuant to RCW 10.82.090. **The Defendant shall remain under the Court's jurisdiction to assure payment of financial obligations: for crimes committed before 7/1/2000, for up to ten years from the date of sentence or release from total confinement, whichever is later; for crimes committed on or after 7/1/2000, until the obligation is completely satisfied.** Pursuant to RCW 9.94A.7602, if the defendant is more than 30 days past due in payments, a notice of payroll deduction may be issued without further notice to the offender. Pursuant to RCW 9.94A.760(7)(b), the defendant shall report as directed by DJA and provide financial information as requested.

[X] Court Clerk's trust fees are waived.

[X] Interest is waived except with respect to restitution.

4.4 **FIRST TIME OFFENDER WAIVER OF PRESUMPTIVE SENTENCE**: The court waives imposition of a sentence within the presumptive sentence range and imposes the following sentence pursuant to RCW 9.94A.650:

(a) Defendant shall serve a term of confinement as follows, commencing: [ ] immediately; [X] (Date): 5/18/11 by 4 ~~a.m.~~ p.m.

60 ~~months~~/days on count II; 60 ~~months~~/days on count III; 60 ~~months~~/days on count IV

This term shall be served:

[X] in the King County **Jail**.

[ ] in King County **Work/Education Release** subject to conditions of conduct ordered this date.

[ ] in King County **Electronic Home Detention** subject to conditions of conduct ordered this date.

[ ] For **burglary or residential burglary** offense, before entering Electronic Home Detention, 21 days must be successfully completed in Work/Education Release.

[ ] _____ days of confinement are converted to _____ days in King County Supervised Community Option (**Enhanced CCAP**) subject to conditions of conduct ordered this date.

[X] The terms in Count(s) No. I are ~~consecutive~~/concurrent. [for jail time only. Supervision is consecutive.]

This sentence shall run [ ] CONSECUTIVE [ ] CONCURRENT to the sentence(s) in cause _____ _____.

The sentence(s) herein shall run [ ] CONSECUTIVE [ ] CONCURRENT to any other term previously imposed and not referenced in this order.

Credit is given for time served in King County Jail or EHD solely for confinement under this cause number pursuant to RCW 9.94A.505(6): [ ] ____ day(s) or [X] days determined by the King County Jail.

[ ] Jail term is satisfied; defendant shall be released under this cause.

[ ] Credit is given for days determined by the King County Jail to have been served in the King County Supervised Community Option (Enhanced CCAP) solely under this cause number.

[ ] The court authorizes earned early release credit consistent with the local correctional facility standards for days spent in the King County Supervised Community Option (Enhanced CCAP).

[*] (b) [X] **COMMUNITY CUSTODY** is ordered for 12 months (up to 12 months unless treatment is [consecutive to 24 mo. supervision on count I.*] ordered, in which case not more than 24 months). The Defendant shall report to the Department of Corrections within 72 hours of release from custody, or this date if currently out of custody; shall comply with any affirmative acts imposed by the Department to monitor compliance with this sentence; shall comply with all rules, regulations and conditions of the Department for supervision of offenders; and shall not possess any firearm or ammunition; shall perform all affirmative acts necessary to monitor compliance and otherwise comply with the other terms of this sentence. [ ] APPENDIX F attached for additional conditions.

(c) [ ] **COMMUNITY RESTITUTION**: Defendant shall complete [ ] ___ days/hours of community restitution under the supervision of the Department of Corrections to be completed: [ ] on a schedule established by the defendant's Community Corrections Officer; or [ ] as follows: _____.
If the defendant is not supervised by the Department

of Corrections, this will be monitored by the Helping Hands Program.

[* – Intent is for 36 mo. total supervision by DOC.]

(d) [X] **NO CONTACT**: For the maximum term of 10 year(s), defendant shall have no contact with Julie Konikkeberg, Irene Frelin, Peter Perron, William McGraw

(e) **DNA TESTING**. The defendant shall have a biological sample collected for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing, as ordered in **APPENDIX G**.

[ ] **HIV TESTING**: For sex offense, prostitution offense, drug offense associated with the use of hypodermic needles, the defendant shall submit to HIV testing as ordered in **APPENDIX G**.

(f) [X] **OTHER CONDITIONS**: _____

[ ] Additional conditions are attached in **APPENDIX F**

Date: 4/20/11 /s/ Hollis Hill
JUDGE
Print Name: Hollis R. Hill

Presented by:
/s/ CS
Deputy Prosecuting Attorney, WSBA # 39277
Print Name: Charles Sherer

Approved as to form:
/s/ Steven Janda objection noted
Attorney for Defendant, WSBA #
Print Name:

THE SUPREME COURT OF WASHINGTON

STATE OF WASHINGTON, Respondent, v. STEVEN ANDREW JANDA, Appellant.	NO. 85909-4 **ORDER** (Filed Nov. 21, 2011) King County Superior Court 10-1-05571-8 KNT

Department I of the Court, composed of Chief Justice Madsen and Justices C. Johnson, Chambers, Fairhurst, and Stephens, considered this matter at its November 21, 2011, Motion Calendar and unanimously agreed that the following order be entered.

IT IS ORDERED:

That the Petitioner's Motion to Modify the Commissioner's Ruling is denied.

DATED at Olympia, Washington this 21st day of November, 2011.

For the Court

/s/ Madsen, C.J.
CHIEF JUSTICE

RCW 2.48.180

Definitions – Unlawful practice a crime – Cause for discipline – Unprofessional conduct – Defense – Injunction – Remedies – Costs – Attorneys' fees – Time limit for action.

(1) As used in this section:

(a) "Legal provider" means an active member in good standing of the state bar, and any other person authorized by the Washington state supreme court to engage in full or limited practice of law;

(b) "Nonlawyer" means a person to whom the Washington supreme court has granted a limited authorization to practice law but who practices law outside that authorization, and a person who is not an active member in good standing of the state bar, including persons who are disbarred or suspended from membership;

(c) "Ownership interest" means the right to control the affairs of a business, or the right to share in the profits of a business, and includes a loan to the business when the interest on the loan is based upon the income of the business or the loan carries more than a commercially reasonable rate of interest.

(2) The following constitutes unlawful practice of law:

(a) A nonlawyer practices law, or holds himself or herself out as entitled to practice law;

(b) A legal provider holds an investment or ownership interest in a business primarily engaged in the practice of law, knowing that a nonlawyer holds an investment or ownership interest in the business;

(c) A nonlawyer knowingly holds an investment or ownership interest in a business primarily engaged in the practice of law;

(d) A legal provider works for a business that is primarily engaged in the practice of law, knowing that a nonlawyer holds an investment or ownership interest in the business; or

(e) A nonlawyer shares legal fees with a legal provider.

(3)(a) Unlawful practice of law is a crime. A single violation of this section is a gross misdemeanor.

(b) Each subsequent violation of this section, whether alleged in the same or in subsequent prosecutions, is a class C felony punishable according to chapter 9A.20 RCW.

(4) Nothing contained in this section affects the power of the courts to grant injunctive or other equitable relief or to punish as for contempt.

(5) Whenever a legal provider or a person licensed by the state in a business or profession is convicted, enjoined, or found liable for damages or a civil penalty or other equitable relief under this section, the plaintiff's attorney shall provide written notification

of the judgment to the appropriate regulatory or disciplinary body or agency.

(6) A violation of this section is cause for discipline and constitutes unprofessional conduct that could result in any regulatory penalty provided by law, including refusal, revocation, or suspension of a business or professional license, or right or admission to practice. Conduct that constitutes a violation of this section is unprofessional conduct in violation of RCW 18.130.180.

(7) In a proceeding under this section it is a defense if proven by the defendant by a preponderance of the evidence that, at the time of the offense, the conduct alleged was authorized by the rules of professional conduct or the admission to practice rules, or Washington business and professions licensing statutes or rules.

(8) Independent of authority granted to the attorney general, the prosecuting attorney may petition the superior court for an injunction against a person who has violated this chapter. Remedies in an injunctive action brought by a prosecuting attorney are limited to an order enjoining, restraining, or preventing the doing of any act or practice that constitutes a violation of this chapter and imposing a civil penalty of up to five thousand dollars for each violation. The prevailing party in the action may, in the discretion of the court, recover its reasonable investigative costs and the costs of the action including a reasonable attorney's fee. The degree of proof required in an

action brought under this subsection is a preponderance of the evidence. An action under this subsection must be brought within three years after the violation of this chapter occurred.

[2003 c 53 § 2; 2001 c 310 § 2. Prior: 1995 c 285 § 26; 1989 c 117 § 13; 1933 c 94 § 14; RRS § 138-14.]

Notes:
Rules of court: RLD 1.1(h).

Intent – 2003 c 53: "The legislature intends by this act to reorganize criminal provisions throughout the Revised Code of Washington to clarify and simplify the identification and referencing of crimes. It is not intended that this act effectuate any substantive change to any criminal provision in the Revised Code of Washington." [2003 c 53 § 1.]

Effective date – 2003 c 53: "This act takes effect July 1, 2004." [2003 c 53 § 423.]

Purpose – 2001 c 310: "The purpose of this act is to respond to *State v. Thomas*, 103 Wn. App. 800, by reenacting and ranking, without changes, legislation relating to the crime of unlawful practice of law, enacted as sections 26 and 27, chapter 285, Laws of 1995." [2001 c 310 § 1.]

Effective date – 2001 c 310: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 14, 2001]." [2001 c 310 § 5.]

Effective date – 1995 c 285: See RCW 48.30A.900.

Severability – 1989 c 117: See RCW 19.154.901.

Practicing law with disbarred attorney: RCW 2.48.220(9).

GENERAL RULE 24

DEFINITION OF THE PRACTICE OF LAW

(a) General Definition: The practice of law is the application of legal principles and judgment with regard to the circumstances or objectives of another entity or person(s) which require the knowledge and skill of a person trained in the law. This includes but is not limited to:

(1) Giving advice or counsel to others as to their legal rights or the legal rights or responsibilities of others for fees or other consideration.

(2) Selection, drafting, or completion of legal documents or agreements which affect the legal rights of an entity or person(s).

(3) Representation of another entity or person(s) in a court, or in a formal administrative adjudicative proceeding or other formal dispute resolution process or in an administrative adjudicative proceeding in which legal pleadings are filed or a record is established as the basis for judicial review.

(4) Negotiation of legal rights or responsibilities on behalf of another entity or person(s).

(b) Exceptions and Exclusions: Whether or not they constitute the practice of law, the following are permitted:

(1) Practicing law authorized by a limited license to practice pursuant to Admission to Practice Rules 8 (special admission for: a particular purpose or action;

indigent representation; educational purposes; emeritus membership; house counsel), 9 (legal interns), 12 (limited practice for closing officers), or 14 (limited practice for foreign law consultants).

(2) Serving as a courthouse facilitator pursuant to court rule.

(3) Acting as a lay representative authorized by administrative agencies or tribunals.

(4) Serving in a neutral capacity as a mediator, arbitrator, conciliator, or facilitator.

(5) Participation in labor negotiations, arbitrations or conciliations arising under collective bargaining rights or agreements.

(6) Providing assistance to another to complete a form provided by a court for protection under RCW chapters 10.14 (harassment) or 26.50 (domestic violence prevention) when no fee is charged to do so.

(7) Acting as a legislative lobbyist.

(8) Sale of legal forms in any format.

(9) Activities which are preempted by Federal law.

(10) Serving in a neutral capacity as a clerk or court employee providing information to the public pursuant to Supreme Court Order.

(11) Such other activities that the Supreme Court has determined by published opinion do not constitute the unlicensed or unauthorized practice of law or

that have been permitted under a regulatory system established by the Supreme Court.

(c) Non-lawyer Assistants: Nothing in this rule shall affect the ability of non-lawyer assistants to act under the supervision of a lawyer in compliance with Rule 5.3 of the Rules of Professional Conduct.

(d) General Information: Nothing in this rule shall affect the ability of a person or entity to provide information of a general nature about the law and legal procedures to members of the public.

(e) Governmental agencies: Nothing in this rule shall affect the ability of a governmental agency to carry out responsibilities provided by law.

(f) Professional Standards: Nothing in this rule shall be taken to define or affect standards for civil liability or professional responsibility.

[Adopted effective September 1, 2001; amended effective April 30, 2002.]

IN THE SUPERIOR COURT
FOR THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

STATE OF WASHINGTON Petitioner vs. STEVEN ANDREW JANDA Respondent.	Cause No: 10-1-05571-8 KNT Supreme Court Case No. 85909-4

Official record of proceedings
Held before The Honorable
Judge Hollis Hill
On March 14, 2011
In Kent, Washington

Jane Wilkinson, Transcriptionist
Flygare & Associates, Inc.
1715 South 324th Place, Suite 250
Federal Way, WA 98003

[62] Mr. Perron.

JUDGE HILL: Any cross-examination?

MR. JANDA: Yes.

CROSS-EXAMINATION

BY MR. JANDA:

Q. Good morning, Mr. Perron. Do you pronounce your name Perron or Perron?

A. Perron.

Q. Perron. Perrons with an S?

A. No.

Q. Just Perron?

A. Yes.

Q. Okay. Mr. Perron, you said you've been a member of more than one bar; is that correct?

A. Yes.

Q. Have you ever had nonactive status before having active status?

A. I'm sorry?

Q. Have you ever had not active status before having active status?

A. Before having active status? There's no such thing.

Q. Thank you, very much.

MR. JANDA: No further questions.

JUDGE HILL: Any redirect?

THE SUPREME COURT
OF THE STATE OF WASHINGTON

SUPREME COURT CASE NO. 85909-4

State of Washington, Respondent,
v.
Steven Andrew Janda, Petitioner,

MOTION OF RECONSIDERATION OF EMERGENCY MOTION TO VACATE ORDER IN SUPERIOR COURT

(Filed Oct. 4, 2011)

The Petitioner is Pro se
233 1st Ave. S.
Kent, WA 98032
253-850-9500

A. Identity of Petitioner

Steven Andrew Janda is the petitioner on appeal from the decision of the King County Superior Court entered on March 16, 2011, and the sentence on April 20, 2011, under Case No. 10-1-05571-8KNT.

B. Motion for Reconsideration pursuant to RAP 17.2 of Emergency Motion under RAP 17.4(b)

The petitioner motions the Supreme Court for reconsideration of the emergency motion to vacate the

order dated June 14, 2011, of the King County Superior Court under Case No. 10-1-05571-8KNT, or alternatively to temporarily stay the order pending further proceedings as necessary in the discretion of The Washington State Supreme Court. The sentence on April 20, 2011, did not include a provision for community custody in the event that Steven Janda obtained an appellate bond staying his sentence. A copy of the sentence is attached as Exhibit C. Steven Janda is requesting the court vacate the order dated June 14, 2011, which added a condition of release upon impromptu motion at a clarification hearing without probable cause or notice. The impromptu motion of the state came without notice to Steven Janda in the midst of a clarification hearing when Prosecutor Charles Sherer said it was necessary to confirm that the bond stayed the community custody portion of the sentence. The appellate bond order entered on May 16, 2011, which authorized the bond to stay the sentence, was ordered without conditions of release. The state had ten days to file a motion for reconsideration and did not do so.

Supreme Court Commissioner Goff appears to be under the impression that Steven Janda is motioning to vacate the trial court order dated, April 20, 2011, since the Commissioner referred to the condition of release without acknowledging condition of release order was entered two months after the sentence was ordered. A copy of the ruling of the Supreme Court Commissioner Goff is attached as Exhibit D.

The petitioner is *not* requesting the court to vacate the trial court order on April 20, 2011, which did *not* provide a condition of release for Steven Janda to refrain from the practice of law. Judge Hill could not enter an order to cease and desist from the practice of law because it is against the law to do so based upon allegations against an unlicensed person for conduct of a profession not specified in RCW 18.130.050 and RCW 18.130.190, because of the protected conduct rule under life and property of the Fifth Amendment to the U.S. Constitution and the prohibition against interference with private affairs under Wash. St. Const. Art. 1 § 7. These fundamental choices of the public cannot be regulated by the state. Who a person believes is satisfactory in the performance of personal legal matter rests solely in the independent sovereignty of each person. *In re Faretta* 422 U.S. 806, decided June 30, 1975.

The Department would have to approve or disapprove of conduct that is off limits for state regulators. The practice of law is not listed among the professions required for cease and desist orders in RCW 18.130.050 and RCW 18.130.190. Nevertheless, prosecutor Sherer continues to solicit, request, incite, and encourage the court to enter a quasi-cease and desist order, even if it is through the Department of Corrections, which was never intended to provide such supervision, and cannot as a matter of law.

Steven Janda is motioning the Supreme Court to vacate the subsequent order dated June 14, 2011, nearly two months after the date of the sentence on

April 20, 2011, because the additional condition constitutes a modification and requires probable cause.

Steven Janda does not practice law or hold himself out as entitled to practice law, which even his accusers affirmed at trial. Due to the broad overlap conduct in what might constitute the practice of law and what is protected conduct under the constitution and RCW 9A.04.020, the law does not define elements that constitute the practice of law, but rather, the unlawful practice of law under RCW 2.48.180. Accordingly, Steven Janda was charged for the unlawful practice of law under RCW 2.48.180.

The order dated May 16, 2011, authorizing the appellate bond and deferring the imposition of the sentence is attached as Exhibit A. There was no condition of release to refrain from practicing law in the order, and the relevancy of such a provision is without statutory muster since Steven Janda has never been a member of the bar. The order dated June 14, 2011, authorizing the DOC to determine how to prohibit the "practice of law" is attached as Exhibit B.

The ruling of Supreme Court Commissioner Goff, dated September 21, 2011, does not address the issues raised in the emergency motion, including, but not limited to, an additional condition to a sentence constitutes a modification which requires probable cause together with a motion and order to show cause hearing. The petitioner respectfully requests the Court to rule on the issues raised by Steven Janda.

Instead, Commissioner Goff raised the issue of who is a "nonlawyer" under RCW 2.48.180. Commissioner Goff ruled that the order on June 14, 2011, " . . . does no more than what is included in these statutes . . . " meaning, RCW 2.48.170 and RCW 2.48.180. Neither of these statutes authorizes a modification of a sentence without probable cause, including community custody and conditions of release that present a foreseeable risk of harm of infringement to protected constitutional conduct, particularly, when after a sentence has been stayed on appellate bond.

In respectful recognition of Commissioner Goff raising the issue of "nonlawyer" the petitioner submits that the plain meaning rule requires the court to take into consideration the meaning of the statute as a whole so that no word is treated superfluous. The term "nonlawyer" was introduced into the state bar act in 1995, together with a few other new terms and were specifically defined differently than the ordinary meaning for the interpretation of the statute. The term nonlawyer appears several times. Whoever is included in the class of nonlawyers is prohibited from making loans to any business primarily engaged in the practice of law, which includes law firms because such constitutes holding an investment interest in the business. Moreover, if the interest rate is above a reasonably commercial rate, the loan constitutes an ownership interest. Consequently, what might appear to be "sensible construction" of the statute violates the plain meaning of the statute and criminalized

innocent conduct by making it against the law for any person who is not a legal provider to make a loan to a law firm, which is a very strange and absurd result and, thus, cannot be the meaning of nonlawyer. Virtually, any legal provider who has accepted a loan from any person would be guilty of the unlawful practice of law under the statute, and thousands of lenders across our nation could file suits to demand payment for making such loans, and sue the state for failure to prosecute in the presence of the statute.

The never-a-member interpretation presents a foreseeable risk of harm to the solvency of the practice of law in the state of Washington because the level of culpability for the investment and ownership interest provisions is "knowing" under RCW 2.48.180, and the lawyers are in the position to have a reason to know under RCW 9A.08.010(1)(b) since the law is defined in the state bar act, not the banks and other innocent persons who have been persuaded to lend their money to their lawyers. So for these reasons, I shun the inclusion of persons who were never members of the bar as included in the statute.

The court rules require nonlawyers to sit on the many boards that oversee the practice of law, even the newly created practice of law board for limited legal providers. Certainly, this is a different class of nonlawyers than the nonlawyers defined as not active, disbarred and suspended from the state bar in the statute. RPC 5.3 says nonlawyers have no training in the law and are not subject to the rule of

professional conduct, which includes not subject to GR 24 as provided in the rule.

The similar treatment requirement of Equal Protection under the Fourteenth Amendment requires that persons who are similarly situated be given similar treatment. There is a substantial difference in the class of statutory nonlawyers from the court rule nonlawyers. The classes are so distinct, trial court Judge Hill refused to allow the differences to be argued before the jury, and thereby, violated the Sixth Amendment right of the accused to argue elements of the offense before the jury and to face his accusers to compel answers for the allegations against him in a court of law. Not active members have doctorates in jurisprudence, have been admitted to practice law, and then incurred a change of status, normally for misconduct. They are a disgraceful class of persons. It is defamation to publish that a person is a member of a disgraceful class of persons if it is not true. The nonlawyers in RCW 2.48.180 had professional status to practice law. The nonlawyers in RPC 5.3 have no training in the law.

Therefore, since the nonlawyers in the court rules are substantially different from the nonlawyers under RCW 2.48.180, both are distinct classes of persons, which cannot be included together in the same statute without violating The Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution.

Peter Perron, Attorney at Law, testified at the trial and said, "There is no such thing" in response to the question of having not active status prior to having active status. Verbatim Report of the Proceedings, Page 62. Attached as Exhibit E. According to Peter Perron, there is no way to have "not active status" with the bar association prior to having active status. That is the cold hard truth. It simply does not exist. It is an impossibility with the bar association and with virtually any organization. The notion is pure nonsense.

A person who provides services for another person is the agent of the person and the other person is the principal. Steven Janda is the agent of the principals who hire him for services. It is impossible for the Department to supervise the services of a person who is an agent of principal, without interfering with the fundamental rights of the principal for whom the agent provides services, which is safeguarded from condemnation under the First, Fourth, Fifth, and Sixth Amendment and RCW 9A.04.020. The issue of when a person requires a legal provider rest in the sovereignty of each person alone, not in the discretion of the state, and definitely not in the discretion of the Department. Accordingly, the ruling of Supreme Court Commissioner Goff must be reconsidered to add language that does not infringe on rights which are protected under the Constitution including the right of privacy under the Fourth Amendment, the right to life and property under the Fifth Amendment, which includes the independent

right of all persons to independently conduct their personal affairs from interference from the Government under the Washington State Constitution. Wash. St. Const. Art. 1 § 7

Therefore, the order dated June 14, 2011, entered at the clarification hearing must be vacated.

C. Emergency Motion. Why the motion should be decided on an expedited basis.

The time required for motions under Title 17 precludes effective review and prejudices the due process rights of the defendant and does not prejudice the right of the state. The case is presently on review with The Supreme Court of Washington and the issues herein are pending review.

The order entered June 14, 2011, by Judge Hollis Hill must be vacated immediately for the following reasons including, but not limited to, (1) the order is untimely and prejudices the Due Process rights of the defendant under the Fourth, Fifth, and Fourteenth Amendments, (2) the order is overbroad and infringes upon the First and Sixth Amendments rights of the defendant, (3) the order authorizes the DOC to determine when the "practice of law" occurs, which is not an element defined in the statutes of Washington State and is a violation of the landmark case in *Faretta* by the U.S. Supreme Court.

The order on June 14, 2011, was entered by Judge Hollis, who was also the Judge on the first day

of trial on March 1, 2011, who ordered in limine the defendant or the prosecution was not allowed to argue the law defining the essential elements of the charge under RCW 2.48.180 and relieved the prosecution of its burden to prove the essential elements of the offense, contrary to the Sixth Amendment right of the defendant to defend himself and to compel answers from his accusers regarding nature and the cause of the allegations against him.

D. Statement of the Case

On May 16, 2011, Judge Mary Roberts ordered the imposition of the sentence to be deferred upon the posting of a bond. The order was entered without conditions of release. After the time elapsed for a motion to revise, the prosecution scheduled a motion for Judge Hollis Hill to clarify the order, specifically, if the order authorizing the appellate bond deferred community custody. Judge Hill ordered that the entire sentence was deferred under the order and that she agreed with the order. The prosecution motioned in limine to add conditions of release that the defendant be subject to community custody with respect to the "practice of law" and provided in the order that the Department of Corrections work out the reporting requirements. The Judge questioned the prosecutor if such an order was possible with the DOC. The prosecutor, Charles Sherer, said it was provided the Judge ordered it. The defendant contested the order because it effectively modified the sentence by adding conditions of release. Moreover, a

modification of a sentence requires due process, which was violated through the untimely motion of the prosecutor and the ten day time limit for motions of revision.

Immediately after the order was signed on June 14, 2011, the defendant went to the DOC office and presented the order signed just prior that day providing "CCO Coleman has the authority to work out manner and frequency of reporting with Mr. Janda as well as how to confirm prohibition against practicing law." Mr. Coleman said that the DOC would not provide community custody under the terms of the order. Moreover, the order contradicted the order entered on May 16, 2011, which provided the sentence was deferred upon posting of the bond. Officer Coleman then said a motion to clarify was necessary and that he would be present next time for the hearing. He asked Mr. Janda to await his call.

On Friday, July 8, 2011, Officer Coleman notified Mr. Janda telephonically and said that he received "word" from the attorney general and needed to hear from Mr. Janda in the morning on Monday, July 11, 2011 to discuss the terms of the community custody under the order dated June 14, 2011. Mr. Janda responded to Officer Coleman telephonically on July 11, 2011, and requested in writing the instructions from the attorney general for him and his attorney since the AG has no jurisdiction in criminal custody matters of this nature. Officer Coleman responded telephonically citing the terms of the order dated June 14, 2011, that "he had the authority under the

order to work out how to confirm the prohibition against practicing law, and that if Mr. Janda did not cooperate, Mr. Coleman would report to the prosecutor that Mr. Janda is not complying with the terms of the order, dated June 14, 2011.

E. Argument why the Supreme Court should vacate the order dated June 14, 2011, from the Superior Court.

Under the U.S. Constitution, the right of due process is fundamental to all proceedings. It is a manifest abuse of discretion if a decision of the court prejudices the constitutional rights of the defendant. A defendant's constitutional rights are prejudiced if his due process rights are violated. It is the burden of the prosecution to timely file a motion to revise to modify an order.

A court abuses its discretion when an "order is manifestly unreasonable or based on untenable grounds." *Wash. State Physicians Ins. Exch. & Ass'n v. Fisons Corp., 122 Wn.2d 299, 339, 858 P.2d 1054 (1993).* A discretionary decision "is based on untenable grounds' or made for untenable reasons' if it rests on facts unsupported in the record *or was reached by applying the wrong legal standard*." *State v. Rohrich, 149 Wn.2d 647, 654, 71 P.3d 638 (2003)* (emphasis added) (quoting *State v. Rundquist, 79 Wn. App. 786, 793, 905 P.2d 922 (1995)).* Indeed, a court "would necessarily abuse its discretion if it based its ruling

on an erroneous view of the law." *Fisons, 122 Wn.2d at 339.*

In re the *State v. Miller,* 131 Wn.2d 78, An error which infringes upon the equal protection rights of the defendant is presumed prejudice because a defendant has the right to adequately prepare a defense. State v. Watt, 160 Wn.2d 626, the denial of the right to an unbiased adjudicator is one example.

Impairing a defendant of his ability to prepare for trial prejudices his constitutional rights; e.g., impromptu modifications in the form of conditions of release without timely notice first. The court weighs the private and public rights of each party. State v. Larry, 108 Wn. App. 894 (2001), quoting Wood, 94 Wn. App. 636, 641, 972 P. 2d 552 (1999)

(1) The order dated June 14, 2011, is untimely and prejudices the Due Process protections under the Fourth, Fifth, and Fourteenth Amendments.

Under Washington State Court rules a motion to revise must be filed within ten days. Modifying the terms of an order is not a motion to clarify, but a modification. The adding of additional terms and conditions of a sentence is a modification of a sentence. A motion to modify a sentence requires due process. Sentence modification hearings are substantially similar to other revocation hearings and require minimum due process protections as articulated in re *Morrissey v. Brewer,* 408 U.S. 471, 92 S. Ct. 2593, 33

L. Ed. 2d 484 (1972). Morrissey is the seminal case involving an individual's due process rights at a parole revocation hearing and to criminal modifications.

Here, the prosecutor, Charles Sherer, failed to raise the issue of conditions of release at the bond hearing on May 16, 2011. Moreover, the prosecutor did not file a timely motion to revise the ruling within ten days. Instead, the prosecutor deceitfully motioned to clarify the ruling with respect to the issue of whether or not the bond stayed the community custody aspects of the sentence, and then raised the issue of conditions of release on bond at the hearing without notice. In court on June 14, 2011, the issue of the deferred of the imposition of the sentence was resolved in seconds. The Judge said the entire sentence was deferred. Then, as is the custom of Charles Sherer, he made motion on another issue without notice to the defendant or the court for the court to impose conditions of release by authorizing the DOC to "work out" a method for the prohibition of the "practice of law" and, thereby, constituted a motion to modify the order since the conditions of release were additional terms not entered in the order on May 16, 2011, in the order authorizing the appellate bond.

Therefore, when the court granted the additional terms of release it was in violation of the due process rights of the defendant because the conditions were untimely, without due process, and constituted a modification, and must be vacated accordingly.

(2) The order is overbroad and violates the First and Sixth Amendments rights of the defendant by sweeping within its purview constitutionally protected conduct.

Under Washington State law, the statute defines the elements that constitute the unauthorized practice of law in 1995 under RCW 2.48.180, not the practice of law, which was defined in 2001 under GR 24 for limited legal providers for the expansion of legal services confirmed under GR 25. The rules are prohibited from being used to define standards of civil and professional liability. They are for a guide for the members of the bar and limited legal providers only and can never be used in litigation, certainly not in criminal proceedings to infringe upon protected constitutional rights such as the First, Fifth, and Sixth, and Fourteenth Amendments. *Hizey v. Carpenter*, 119 Wn.2d 251, P.2d 646 (June 1992).

Freedom of speech is protected against government infringement. Ordinary citizens all have the right to contract under the right to life and liberty under the concepts of the Fifth Amendment. All citizens have the right to contract with others in the performance of their legal affairs without the assistance of an attorney in their own discretion, not the discretion of the government. The Fourteenth Amendment guarantees all these fundamental rights to the states.

Here, the imposition of conditions of release are an attempt to regulate the business of the defendant under color of law because the prosecutor is asserting

the court has the authority to order the DOC to enforce community custody over the defendant by literally inventing rules to compel the defendant to report to the DOC regarding matters which are privileged and could not be divulged by Mr. Janda to the DOC without violating the reasonable expectation of privacy of persons for whom Mr. Janda provides services. Accordingly, the prosecutor is not only infringing on the Constitutional rights of the defendant, but presumes to violate the Constitutional rights of all persons Mr. Janda provides services. These are gross Constitutional violations that the High Court and the DOC should shun.

The prosecution should be cited for official misconduct under RCW 9A.80.010 for inventing a makeshift artifice under color of law, and thereby, depriving Mr. Janda of his civil rights under 42 U.S.C. § 1983. The court does not have the power to order the defendant to cease from doing an act that the Supreme Court has ruled is protected against government interference and is a fundamental right of the defendant. The court cannot order the DOC in any manner that violates the ruling of the U.S. Supreme Court in *Faretta.* Moreover, the court cannot enter an order the constitutes interference with the private affairs of the defendant in performing constitutionally protected services for others.

Therefore, since the order dated, June 14, 2011, authorizes the DOC to foreseeably interfere with the independent constitutional right of Mr. Janda and every person with whom he contracts in the performance of

that right, it is unconstitutional and void by law, and the order, dated June 14, 2011, must be vacated at once.

(3) The order authorizes the DOC to determine when the "practice of law" occurs, which elements are not even defined in the statutes of Washington State.

In re Faretta, the right to counsel under the Sixth Amendment, includes the inherent right of every person to conduct his or her own legal affairs, which includes hiring a person who is not an attorney as an independent constitutional right protected against intrusion from the government, thereby, reversing the California Supreme Court, which believed otherwise. *State of California v. Faretta,* 422 U.S. 806 June 30, 1975. In short, the impromptu motion and order of the prosecution on June 14, 2011, authorized an officer of the Department of Corrections to perform acts that the U.S. Supreme Court ruled in *Faretta* was protected from intrusion, interference, or infringement by the government.

Here, the order grants authority to the DOC to exercise discretion in determining when the practice of law occurs because it must be defined by the DOC before the DOC can "work out" a method of enforcement against the practice of law. The DOC does not have the authority to engage in conduct that the U.S.

Supreme Court ruled in *Faretta* was protected from intrusion.

Therefore, the order dated June 14, 2011, is unconstitutional and void because it is against the law to grant a DOC officer authority to define the "practice of law" or to "work out" a method for the prohibition of the practice of law because it is an express violation of the independent right of every person to conduct his or her own legal affairs, which includes making the determination of the requirement of an attorney an issue of sovereign choice.

Since it is a manifest abuse of discretion where the constitutional rights of the defendant are prejudiced, and the harm to the defendant includes his right to adequately prepare and defend himself against alleged offenses, the due process rights of the defendant will be prejudiced again unless the order entered on June 14, 2011, in the superior court is vacated so that the defendant can exercise his appellate rights freely under the appellate bond without further infringement.

Therefore, the Supreme Court is urged on emergency motion to enter an order without oral argument vacating the order entered on June 14, 2011, or temporarily stay the order pending further proceedings as necessary in the discretion of The Washington State Supreme Court.

The defendant requests the Supreme Court cite Prosecutor Charles Sherer for official misconduct and

any person who joins with him in violating the rights of the defendant including, but not limited to, acts under color of law constituting deprivation of civil rights under 42 U.S.C. § 1983, and conspiracy to commit the following crimes under RCW 9A.28.040, and the commission of any crimes thereto, including official misconduct under RCW 9A.80.010, attempted malicious prosecution under RCW 9A.28.020 and RCW 9.62.010, and threatening the welfare of the business and reputation of Steven Andrew Janda under 9A.04.110(27)(h)(i) and (j), which constitutes extortion under RCW 9A.56.130, which constitutes theft in the first degree under RCW 9A.56.030(1)(k), which constitutes criminal profiteering under RCW 9A.82.010(4)(e) and several acts thereof, which constitutes a pattern of criminal profiteering under RCW 9A.82.010(12), which constitutes leading organized crime under RCW 9A.82.060.

F. Conclusion

The Supreme Court should vacate the order of the superior court, which was ordered on June 14, 2011, or temporarily stay the order pending further proceedings as necessary in the discretion of The Washington State Supreme Court since the order prejudices the constitutional rights of the defendant and interferes with the review of the issues raised in

the petition for direct review by the Supreme Court or as otherwise directed to the Court of Appeals.

October 3, 2011.

Respectfully submitted,
Signature

Steven A. Janda

Steven Andrew Janda
233 1st Ave. S.
Kent, WA 98032
253-850-9500

Affidavit of Service to Parties is filed together with this Motion.

THE SUPREME COURT
OF THE STATE OF WASHINGTON

SUPREME COURT CASE NO. 85909-4

State of Washington, Respondent,
v.
Steven Andrew Janda, Petitioner,

EMERGENCY MOTION TO VACATE
ORDER IN SUPERIOR COURT

The Petitioner is Pro se
233 1st Ave. S.
Kent, WA 98032
253-850-9500

A. Identity of Petitioner

Steven Andrew Janda is the petitioner on appeal from the decision of the King County Superior Court entered on March 16, 2011, and the sentence on April 20, 2011, under Case No. 10-1-05571-8KNT.

B. Emergency Motion under RAP 17.4(b)

The petitioner motions the Supreme Court on an emergency motion to vacate the order dated June 14, 2011, of the King County Superior Court under Case No. 10-1-05571-8KNT, or alternatively to temporarily stay the order pending further proceedings as necessary in the discretion of The Washington

State Supreme Court. The order dated May 16, 2011, authorizing the appellate bond and deferring the imposition of the sentence is attached as Exhibit A. The order dated June 14, 2011, authorizing the DOC to determine how to prohibit the "practice of law" is attached as Exhibit B.

C. Emergency Motion. Why the motion should be decided on an expedited basis.

The time required for motions under Title 17 precludes effective review and prejudices the due process rights of the defendant and does not prejudice the right of the state. The case is presently on review with The Supreme Court of Washington and the issues herein are pending review.

The order entered June 14, 2011, by Judge Hollis Hill must be vacated immediately for the following reasons including, but not limited to, (1) the order is untimely and prejudices the Due Process rights of the defendant under the Fourth, Fifth, and Fourteenth Amendments, (2) the order is overbroad and infringes upon the First and Sixth Amendments rights of the defendant, (3) the order authorizes the DOC to determine when the "practice of law" occurs, which is not an element defined in the statutes of Washington State and is a violation of the landmark case in *Faretta* by the U.S. Supreme Court.

The order on June 14, 2011, was entered by Judge Hollis, who was also the Judge on the first day of trial on March 1, 2011, who ordered in limine the

defendant or the prosecution was not allowed to argue the law defining the essential elements of the charge under RCW 2.48.180 and relieved the prosecution of its burden to prove the essential elements of the offense, contrary to the Sixth Amendment right of the defendant to defend himself and to compel answers from his accusers regarding nature and the cause of the allegations against him.

D. Statement of the Case

On May 16, 2011, Judge Mary Roberts ordered the imposition of the sentence to be deferred upon the posting of a bond. The order was entered without conditions of release. After the time elapsed for a motion to revise, the prosecution scheduled a motion for Judge Hollis Hill to clarify the order, specifically, if the order authorizing the appellate bond deferred community custody. Judge Hill ordered that the entire sentence was deferred under the order and that she agreed with the order. The prosecution motioned in limine to add conditions of release that the defendant be subject to community custody with respect to the "practice of law" and provided in the order that the Department of Corrections work out the reporting requirements. The Judge questioned the prosecutor if such an order was possible with the DOC. The prosecutor, Charles Sherer, said it was provided the Judge ordered it. The defendant contested the order because it effectively modified the sentence by adding conditions of release. Moreover, a modification of a sentence requires due process,

which was violated through the untimely motion of the prosecutor and the ten day time limit for motions of revision.

Immediately after the order was signed on June 14, 2011, the defendant went to the DOC office and presented the order signed just prior that day providing "CCO Coleman has the authority to work out manner and frequency of reporting with Mr. Janda as well as how to confirm prohibition against practicing law." Mr. Coleman said that the DOC would not provide community custody under the terms of the order. Moreover, the order contradicted the order entered on May 16, 2011, which provided the sentence was deferred upon posting of the bond. Officer Coleman then said a motion to clarify was necessary and that he would be present next time for the hearing. He asked Mr. Janda to await his call.

On Friday, July 8, 2011, Officer Coleman notified Mr. Janda telephonically and said that he received "word" from the attorney general and needed to hear from Mr. Janda in the morning on Monday, July 11, 2011 to discuss the terms of the community custody under the order dated June 14, 2011. Mr. Janda responded to Officer. Coleman telephonically on July 11, 2011, and requested in writing the instructions from the attorney general for him and his attorney since the AG has no jurisdiction in criminal custody matters of this nature. Officer Coleman responded telephonically citing the terms of the order dated June 14, 2011, that "he had the authority under the order to work out how to confirm the prohibition

against practicing law, and that if Mr. Janda did not cooperate, Mr. Coleman would report to the prosecutor that Mr. Janda is not complying with the terms of the order, dated June 14, 2011.

E. Argument why the Supreme Court should vacate the order dated June 14, 2011, from the Superior Court.

Under the U.S. Constitution, the right of due process is fundamental to all proceedings. It is a manifest abuse of discretion if a decision of the court prejudices the constitutional rights of the defendant. A defendant's constitutional rights are prejudiced if his due process rights are violated. It is the burden of the prosecution to timely file a motion to revise to modify an order.

A court abuses its discretion when an "order is manifestly unreasonable or based on untenable grounds." *Wash. State Physicians Ins. Exch. & Ass'n v. Fisons Corp.*, 122 Wn.2d 299, 339, 858 P.2d 1054 (1993). A discretionary decision "is based on untenable grounds' or made for untenable reasons' if it rests on facts unsupported in the record *or was reached by applying the wrong legal standard*." *State v. Rohrich*, 149 Wn.2d 647, 654 71 P.3d 638 (2003) (emphasis added) (quoting *State v. Rundquist*, 79 Wn. App. 786, 793, 905 P.2d 922 995)). Indeed, a court "would necessarily abuse its discretion if it based its ruling on an erroneous view of the law." *Fisons*, 122 Wn.2d at 339.

In re the *State v. Miller*, 131 Wn.2d 78, An error which infringes upon the equal protection rights of the defendant is presumed prejudice because a defendant has the right to adequately prepare a defense. State v. Watt, 160 Wn.2d 626, the denial of the right to an unbiased adjudicator is one example.

Impairing a defendant of his ability to prepare for trial prejudices his constitutional rights; e.g., impromptu modifications in the form of conditions of release without timely notice first. The court weighs the private and public rights of each party. State v. Larry, 108 Wn. App. 894 (2001), quoting Wood, 94 Wn. App. 636, 641, 972 P. 2d 552 (1999)

(1) The order dated June 14, 2011, is untimely and prejudices the Due Process protections under the Fourth, Fifth, and Fourteenth Amendments.

Under Washington State Court rules a motion to revise must be filed within ten days. Modifying the terms of an order is not a motion to clarify, but a modification. The adding of additional terms and conditions of a sentence is a modification of a sentence. A motion to modify a sentence requires due process. Sentence modification hearings are substantially similar to other revocation hearings and require minimum due process protections as articulated in re *Morrissey v. Brewer*, 408 U.S. 471, 92 S. Ct. 2593, 33 L. Ed. 2d 484 (1972). Morrissey is the seminal case involving an individual's due process rights at a

parole revocation hearing and to criminal modifications.

Here, the prosecutor, Charles Sherer, failed to raise the issue of conditions of release at the bond hearing on May 16, 2011. Moreover, the prosecutor did not file a timely motion to revise the ruling within ten days. Instead, the prosecutor deceitfully motioned to clarify the ruling with respect to the issue of whether or not the bond stayed the community custody aspects of the sentence, and then raised the issue of conditions of release on bond at the hearing without notice. In court on June 14, 2011, the issue of the deferred of the imposition of the sentence was resolved in seconds. The Judge said the entire sentence was deferred. Then, as is the custom of Charles Sherer, he made motion on another issue without notice to the defendant or the court for the court to impose conditions of release by authorizing the DOC to "work out" a method for the prohibition of the "practice of law" and, thereby, constituted a motion to modify the order since the conditions of release were additional terms not entered in the order on May 16, 2011, in the order authorizing the appellate bond.

Therefore, when the court granted the additional terms of release it was in violation of the due process rights of the defendant because the conditions were untimely, without due process, and constituted a modification, and must be vacated accordingly.

(2) The order is overbroad and violates the First and Sixth Amendments rights of the defendant by sweeping within its purview constitutionally protected conduct.

Under Washington State law, the statute defines the elements that constitute the unauthorized practice of law in 1995 under RCW 2.48.180, not the practice of law, which was defined in 2001 under GR 24 for limited legal providers for the expansion of legal services confirmed under GR 25. The rules are prohibited from being used to define standards of civil and professional liability. They are for a guide for the members of the bar and limited legal providers only and can never be used in litigation, certainly not in criminal proceedings to infringe upon protected constitutional rights such as the First, Fifth, and Sixth, and Fourteenth Amendments. *Hizey v. Carpenter*, 119 Wn.2d 251, P.2d 646 (June 1992). Freedom of speech is protected against government infringement. Ordinary citizens all have the right to contract under the right to life and liberty under the concepts of the Fifth Amendment. All citizens have the right to contract with others in the performance of their legal affairs without the assistance of an attorney in their own discretion, not the discretion of the government. The Fourteenth Amendment guarantees all these fundamental rights to the states.

Here, the imposition of conditions of release are an attempt to regulate the business of the defendant under color of law because the prosecutor is asserting the court has the authority to order the DOC to

enforce community custody over the defendant by literally inventing rules to compel the defendant to report to the DOC regarding matters which are privileged and could not be divulged by Mr. Janda to the DOC without violating the reasonable expectation of privacy of persons for whom Mr. Janda provides services. Accordingly, the prosecutor is not only infringing on the Constitutional rights of the defendant, but presumes to violate the Constitutional rights of all persons Mr. Janda provides services. These are gross Constitutional violations that the High Court and the DOC should shun.

The prosecution should be cited for official misconduct under RCW 9A.80.010 for inventing a makeshift artifice under color of law, and thereby, depriving Mr. Janda of his civil rights under 42 U.S.C. § 1983. The court does not have the power to order the defendant to cease from doing an act that the Supreme Court has ruled is protected against government interference and is a fundamental right of the defendant. The court cannot order the DOC in any manner that violates the ruling of the U.S. Supreme Court in *Faretta*. Moreover, the court cannot enter an order the constitutes interference with the private affairs of the defendant in performing constitutionally protected services for others.

Therefore, since the order dated, June 14, 2011, authorizes the DOC to foreseeably interfere with the independent constitutional right of Mr. Janda and every person with whom he contracts in the performance of that right, it is unconstitutional and void by

law, and the order, dated June 14, 2011, must be vacated at once.

(3) The order authorizes the DOC to determine when the "practice of law" occurs, which elements are not even defined in the statutes of Washington State.

In re Faretta, the right to counsel under the Sixth Amendment, includes the inherent right of every person to conduct his or her own legal affairs, which includes hiring a person who is not an attorney as an independent constitutional right protected against intrusion from the government, thereby, reversing the California Supreme Court, which believed otherwise. *State of California v. Faretta*, 422 U.S. 806 June 30, 1975. In short, the impromptu motion and order of the prosecution on June 14, 2011, authorized an officer of the Department of Corrections to perform acts that the U.S. Supreme Court ruled in *Faretta* was protected from intrusion, interference, or infringement by the government.

Here, the order grants authority to the DOC to exercise discretion in determining when the practice of law occurs because it must be defined by the DOC before the DOC can "work out" a method of enforcement against the practice of law. The DOC does not have the authority to engage in conduct that the U.S. Supreme Court ruled in *Faretta* was protected from intrusion.

Therefore, the order dated June 14, 2011, is unconstitutional and void because it is against the law to grant a DOC officer authority to define the "practice of law" or to "work out" a method for the prohibition of the practice of law because it is an express violation of the independent right of every person to conduct his or her own legal affairs, which includes making the determination of the requirement of an attorney an issue of sovereign choice.

Since it is a manifest abuse of discretion where the constitutional rights of the defendant are prejudiced, and the harm to the defendant includes his right to adequately prepare and defend himself against alleged offenses, the due process rights of the defendant will be prejudiced again unless the order entered on June 14, 2011, in the superior court is vacated so that the defendant can exercise his appellate rights freely under the appellate bond without further infringement.

Therefore, the Supreme Court is urged on emergency motion to enter an order without oral argument vacating the order entered on June 14, 2011, or temporarily stay the order pending further proceedings as necessary in the discretion of The Washington State Supreme Court.

The defendant requests the Supreme Court cite Prosecutor Charles Sherer for official misconduct and any person who joins with him in violating the rights of the defendant including, but not limited to, acts under color of law constituting deprivation of civil

rights under 42 U.S.C. § 1983, and conspiracy to commit the following crimes under RCW 9A.28.040, and the commission of any crimes thereto, including official misconduct under RCW 9A.80.010, attempted malicious prosecution under RCW 9A.28.020 and RCW 9.62.010, and threatening the welfare of the business and reputation of Steven Andrew Janda under 9A.04.110(27)(h)(i) and (j), which constitutes extortion under RCW 9A.56.130, which constitutes theft in the first degree under RCW 9A.56.030(1)(k), which constitutes criminal profiteering under RCW 9A.82.010(4)(e) and several acts thereof, which constitutes a pattern of criminal profiteering under RCW 9A.82.010(12), which constitutes leading organized crime under RCW 9A.82.060.

F. Conclusion

The Supreme Court should vacate the order of the superior court, which was ordered on June 14, 2011, or temporarily stay the order pending further proceedings as necessary in the discretion of The Washington State Supreme Court since the order prejudices the constitutional rights of the defendant and interferes with the review of the issues raised in the petition for direct review by the Supreme Court or as otherwise directed to the Court of Appeals.

July 13, 2011.

Respectfully submitted,
Signature

/s/ Steven A. Janda

Steven Andrew Janda
233 1st Ave. S.
Kent, WA 98032
253-850-9500

Affidavit of Service to Parties is filed together with this Motion.