



State of Washington
PUBLIC DISCLOSURE COMMISSION

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June 2, 2016

The Honorable Robert Ferguson
Attorney General
1125 Washington St SE
PO Box 40100
Olympia, WA 98504-0100

Subject: National Organization for the Reform of Marijuana Laws (NORML) National;
NORML Washington; and NORML Pierce County
PDC Case 12-016

Dear Attorney General Ferguson:

This letter follows up on a matter that your office referred to the Public Disclosure Commission for review and possible investigation on September 27, 2012 after a 45-day Citizen Action Complaint (Complaint) was filed with the Attorney General on September 26, 2012.

The Complaint alleged that the National Organization for the Reform of Marijuana Laws (NORML) National; NORML Washington; and NORML Pierce County violated: (1) RCW 42.17A.205 by failing to register as a political committee; and (2) RCW 42.17A.235 and .240 by failing to file reports of contribution and expenditure activities as a political committee in support of I-502, a Washington State Initiative on the November 6, 2012 general election ballot.

On December 12, 2012, Arthur West, one of the complainants in this matter, filed a Citizen Action in Thurston County Superior Court in accordance with RCW 42.17.400(4) prior to staff completing the investigation. While Mr. West's case was dismissed, he filed several appeals in 2013, 2014 and 2015. On April 12, 2016, the Washington State Court of Appeals issued an opinion affirming the Thurston County Superior Court's dismissal of Mr. West's suit, and the Court denied reconsideration on May 6, 2016. See *No on I-502, Arthur West v. Washington NORML, et al*, 193 Wn. App. 368 (2016), copy attached.

The Commission considered this matter at the May 26, 2016 Commission meeting, where PDC staff presented an Executive Summary and Staff Analysis, and made a recommendation to the Commission to dismiss the allegations. PDC staff reviewed:

- The response letters and emails received from representatives of NORML National, NORML Washington, or NORML Pierce County; none of the three entities solicited or accepted contributions, or made or incurred any expenditures in support of I-502.
- The PDC database and the campaign finance reports filed by New Approach Washington, the political committee registered to support I-502; no monetary or in-kind contributions had been received from NORML National, NORML Washington, or NORML Pierce County.

Staff's review and initial investigation found: No reason that NORML National, NORML Washington, or NORML Pierce County had an obligation to register and report with the PDC as a political committee supporting I-502, and no evidence of any violations of RCW 42.17A.

The Commission voted unanimously to dismiss the allegations listed above concerning NORML National, NORML Washington, and NORML Pierce County, and to recommend no further action by the Attorney General with respect to these allegations. I have also attached a copy of the Commission's Order of Dismissal.

If you have any questions, please contact me at (360) 664-2735. Thank you.

Sincerely,


Evelyn Fielding Lopez
Executive Director

Enclosure: Order of Dismissal, PDC Case 12-016

cc: Linda A. Dalton, Sr. Assistant Attorney General
R. Keith Stroup, Legal Counsel, National Organization for the Reform of Marijuana Laws

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5 **BEFORE THE PUBLIC DISCLOSURE COMMISSION**
6 **OF THE STATE OF WASHINGTON**

7 IN RE COMPLIANCE WITH RCW 42.17A:

PDC CASE NO. 12-016

8 National Organization for the Reform of
9 Marijuana Laws (NORML) National; NORML
10 Washington; and NORML Pierce County

FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
ORDER

11 Respondents.

12 This matter came before the Washington State Public Disclosure Commission (PDC)
13 on May 26, 2016 at the PDC Office, 711 Capitol Way, Room 206, Olympia, Washington.

14 Those present included Katrina Asay, Commission Chair, Anne Levinson, Vice-Chair, and
15 John Bridges and Jack Johnson, Commission Members. Also present were Evelyn Fielding
16 Lopez, PDC Executive Director, Kurt Young, PDC Compliance Officer on behalf of the PDC
17 Staff, and PDC staff member Jana Greer as recorder/reporter of the proceedings. No
18 representatives of the Respondents, National Organization for the Reform of Marijuana Laws
19 (NORML) National, NORML Washington, and NORML Pierce County were present. The
20 proceeding was open to the public and recorded.
21
22

23 This case concerns a 45-day Citizen Action letter (complaint) that was filed by Arthur
24 West, Steve Sarich, John Worthington, and Saroj Sidhu on September 27, 2012, pursuant to
25 RCW 42.17A.765(4) alleging that the Respondents violated RCW 42.17A.205 by failing to
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1 timely register as political committees, and RCW 42.17A.235, and .240 by failing to disclose
2 contribution and expenditure activities undertaken in support of Initiative 502 (I-502).

3 The complaint was submitted to the Washington State Attorney General's Office and
4 the King County Prosecutor's Office, and was referred to the PDC by the Attorney General's
5 Office for investigation and possible action.

6 The Commission was provided an Executive Summary and PDC Staff Analysis. Mr.
7 Young summarized the preliminary investigation, and recommended that the Commission: (1)
8 Enter an order dismissing the allegation that Respondents NORML National, NORML
9 Washington, and NORML Pierce County were required to register and report as political
10 committees with the PDC; and (2) recommend that the Attorney General take no further action
11 with respect to the allegations in the complaint.
12

13 The Commission voted unanimously to dismiss the allegations and to recommend that
14 the Attorney General take no further action against the Respondents. The Commission hereby
15 enters the following Findings of Fact, Conclusions of Law, and Order.
16

17 I. FINDINGS OF FACT

18 1. On June 1, 2011, New Approach Washington filed a Committee Registration (C-1pc
19 report) with the PDC registering as a Ballot Measure committee in support of I-502, a
20 Washington State ballot proposition on the November 6, 2012 general election ballot
21 concerning the legalization of marijuana. On November 6, 2012, I-502 was approved by
22 Washington State voters by more than 353,000 Yes votes 55.7% to 44.3%.
23

24 2. On December 12, 2012, Arthur West filed a Citizen Action in Thurston County
25 Superior Court in accordance with RCW 42.17.400(4), alleging that NORML National,
26

1 NORML Washington, and NORML Pierce County, may have violated provisions of RCW
2 42.17A by failing to register and report as political committees disclosing contribution and
3 expenditure activities undertaken in support of I-502. Mr. West's filed the Citizen Action in
4 Thurston County Superior Court prior to PDC staff completing the investigation,

5 3. The Citizen Action was dismissed, but Mr. West filed several appeals in 2013, 2014
6 and 2015. On April 12, 2016, Division II of the Washington State Court of Appeals issued a
7 decision affirming the Thurston County Superior Court's dismissal of Arthur West's suit in *No*
8 *On I-502 et al. v. Washington NORML et al.*, explaining that because Mr. West was "not acting
9 solely on his own behalf... permitting him to maintain this action without representation by a
10 licensed attorney would amount to the unauthorized practice of law." 193 Wn. App. 368. The
11 Court denied a request for reconsideration on May 6, 2016. Exhibit #1.

12
13 **NORML National**

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15 4. On October 17, 2012, R. Keith Stroup, Legal Counsel for NORML National,
16 provided PDC staff with the information that NORML National had not endorsed Initiative
17 502, and neither raised any money for I-502, nor incurred any expenditures in support of I-502.

18 5. Mr. Stroup stated that based on his review of the relevant PDC laws, rules, and
19 reporting requirements, it did not appear that NORML National was covered by the statutes in
20 question, and therefore had no obligation to register with, or report to, the PDC.

21
22 6. PDC staff reviewed the PDC database and the campaign finance reports filed by
23 New Approach Washington and found no monetary or in-kind contributions had been received
24 from NORML National.

1 7. Based on the evidence reviewed, there is no reason to find that NORML National
2 had an obligation to register and report as a political committee supporting I-502 as alleged in
3 the complaint.

4 **NORML Washington**

5 8. Kevin Oliver, Executive Director, NORML WA, stated that NORML WA endorsed
6 I-502, but did not raise any money, and did not make any expenditures in support of I-502. He
7 stated he spent time supporting I-502 as a non-paid volunteer, but that he did not use or donate
8 any NORML literature or resources to support I-502 in his capacity as Executive Director of
9 NORML Washington.
10

11 9. PDC staff reviewed the PDC database and the campaign finance reports filed by
12 New Approach Washington and found no monetary or in-kind contributions had been received
13 from NORML Washington.
14

15 10. Based on the evidence reviewed, there is no reason to find that NORML
16 Washington had an obligation to register and report as a political committee supporting I-502
17 as alleged in the complaint.

18 **NORML Pierce County**

19 11. Keith Henson, Director for NORML Pierce County, stated that the Director
20 position is voluntary, unpaid, and non-compensated. During the period of July 14, 2011
21 through November 6, 2012, he spent some of his time volunteering for the New Approach
22 Washington committee in support of I-502. He stated that NORML Pierce County did not
23 receive, collect, or make contributions in support of state initiative I-502, and did not make
24 expenditures in support of I-502.
25
26

1 12. PDC staff reviewed the PDC database and the campaign finance reports filed by
2 New Approach Washington and found no monetary or in-kind contributions received from
3 NORML Pierce County.

4 13. Based on the evidence reviewed, there is no reason to find that NORML Pierce
5 County had an obligation to register and report as a political committee supporting I-502 as
6 alleged in the complaint.
7

8 II. CONCLUSIONS OF LAW

9 1. The Commission has jurisdiction to hear this matter as provided in RCW 42.17A.

10 2. RCW 42.17A.005(39) defines "political committee" as "any person (except a
11 candidate or an individual dealing with his or her own funds or property) having the
12 expectation of receiving contributions or making expenditures in support of, or opposition to,
13 any candidate or any ballot proposition."
14

15 3. RCW 42.17A.205 requires political committees to register with the PDC if they
16 have the expectation of receiving contributions or making expenditures in support of a
17 statewide ballot proposition.
18

19 4. RCW 42.17A.235 states that RCW 42.17A.240 requires political committees,
20 including bona fide political party committees, to timely and accurately file reports of
21 contributions and expenditures, including the disclosure of contributions made to candidates
22 for public office.
23

24 5. Respondents NORML National, NORML Washington, and NORML Pierce County
25 were not political committees as defined at RCW 42.17A.005(39), and did not have the
26

1 expectation of receiving contributions or making expenditures in support of, or opposition to,
2 any candidate or any ballot proposition, including I-502.

3
4 6. Based upon the record herein, the Commission concludes that the Respondents did
5 not violate RCW 42.17A as alleged in the complaint, and therefore the allegations should be
6 dismissed.

7
8 **III. ORDER**

9 By unanimous vote, the Commission dismisses the allegations against the Respondents
10 in the complaint, and directs staff to send a letter to the Attorney General recommending that
11 he take no further action with respect to the allegations in the complaint.

12 The Executive Director is authorized to enter this order on behalf of the Commission.

13 So ORDERED this 7th day of June, 2016.

14 WASHINGTON STATE PUBLIC
15 DISCLOSURE COMMISSION

16 FOR THE COMMISSION:

17 
18 Evelyn Fielding Lopez
19 Executive Director

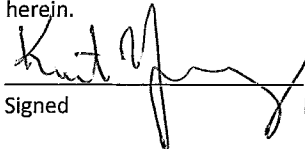
20 *Attachment: Appeals and Enforcement of Final Orders*

21 *Copy of this Order of Dismissal sent electronically to:*

22 NORML National
23 Keith Stroup "Keith@norml.org"

24 NORML Washington
25 "director@wanorml.org"

26 NORML Pierce County
Keith Henson "keithahenson@gmail.com"

I, Kurt Young, certify that I mailed a copy
of this order to the Respondent/Applicant at his/her
respective address postage pre-paid on the date stated
herein.
 6/3/2016
Signed Date



1 of 1 DOCUMENT



Analysis
As of: Jun 06, 2016

NO ON I-502 ET AL., *Appellants*, v. WASHINGTON NORML ET AL., *Respondents*.

No. 46640-6-II

COURT OF APPEALS OF WASHINGTON, DIVISION TWO

193 Wn. App. 368; 2016 Wash. App. LEXIS 724

January 21, 2016, Oral Argument

April 12, 2016, Filed

SUBSEQUENT HISTORY: Reconsideration denied by *No on I-502 v. NORML*, 2016 Wash. App. LEXIS 986 (Wash. Ct. App., May 6, 2016)

PRIOR-HISTORY: Appeal from Thurston Superior Court. Docket No: 12-2-02545-0. Judge signing: Honorable Gary R Tabor. Judgment or order under review. Date filed: 08/22/2014.

SUMMARY:

WASHINGTON OFFICIAL REPORTS SUMMARY

Nature of Action: In a "citizen's action," a pro se litigant alleged that the Fair Campaign Practices Act was violated by organizations that supported a statewide initiative to legalize marijuana for recreational use.

Superior Court: The Superior Court for Thurston County, No. 12-2-02545-0, Gary R. Tabor, J., on August 22, 2014, dismissed the complaint.

Court of Appeals: Holding that the action could not be maintained by the plaintiff as a pro se litigant, the court *affirms* the dismissal order.

COUNSEL: *Elizabeth Hallock* (of Law Office of Elizabeth Hallock PC), for appellants.

Hilary Bricken, Robert McVay, and Daniel P. Harris (of *Harris & Moure PLLC*), for respondents.

JUDGES: Authored by Jill M Johanson. Concurring: Linda Cj Lee, Lisa Worswick.

OPINION BY: Jill M Johanson

OPINION

¶1 JOHANSON, J. -- Arthur West appeals a superior court order dismissing his complaint that alleged a violation of the Fair Campaign Practices Act (FCPA), *ch. 42.17A RCW*. The superior court ruled that West could not bring an FCPA action as a self-represented (pro se) litigant because the FCPA requires that such actions be maintained in the name of the State. West argues that the trial court erred by dismissing his suit because the FCPA contemplates that individuals may file "citizen's actions" under the statute without representation of legal counsel. Although the FCPA speaks of "persons" and "individuals," a citizen's action under the FCPA precludes suits by pro se litigants because such actions must be brought in the name of the State. Therefore, we hold that the superior court did not err in dismissing West's suit and we affirm.

FACTS

¶2 In 2012, Washington voters approved Initiative 502 (I-502), the legislation that legalized marijuana for recreational use. LAWS OF 2013, ch. 3. In December 2012, West, on behalf of "No on I-502," an organization that opposed I-502, sued the American Civil Liberties Union (ACLU) and the Pierce County and Washington

Chapters of the National Organization for the Reform of Marijuana Laws (NORML). West attempted to sue under the "citizen's action" provision of the FCPA.

¶3 West's complaint alleged that the ACLU and NORML, in supporting I-502, had engaged in electoral politics without registering as political action committees in violation of state law. West alleged that by so acting, NORML violated its own articles of incorporation and engaged in conduct prohibited to entities registered as nonprofit organizations under 26 U.S.C. § 501(c).

¶4 In response, the ACLU, joined by NORML, moved to dismiss West's suit based in part on what it alleged was West's inability to maintain the action as a pro se litigant. In the ACLU and NORML's view, although the FCPA authorizes "citizen's actions" for alleged violations of the act, the statute requires that such actions be filed in the name of the State. Therefore, West was representing the State's interests. Because West is not a licensed attorney, NORML argued that his prosecution of the alleged FCPA violations would amount to the unauthorized practice of law, which Washington law forbids. NORML asked the superior court to dismiss West's complaint under *CR 12(b)(1)* for lack of subject matter jurisdiction and also under *CR 12(b)(6)* for failure to state a claim on which relief can be granted.

¶5 The superior court agreed that West could not sue in the name of the State as a pro se litigant and entered an order dismissing the action if West did not obtain legal representation within two weeks. The superior court ruled that it would not permit West to proceed without counsel in this action because doing so would constitute the unauthorized practice of law. A licensed attorney then appeared on behalf of West but shortly thereafter withdrew.

¶6 Subsequently, West moved for voluntary dismissal of the ACLU but maintained his claims against NORML. Nearly a year later, when West had still failed to secure the services of an attorney, the superior court dismissed the case, consistent with its original order. West appeals.

ANALYSIS

¶7 West argues that the superior court erred in dismissing his complaint by failing to construe the applicable statutory provisions liberally to effectuate the statute's remedial intent. He asserts further that the superior court erred by misinterpreting the citizen's action provision of the FCPA, which states that "persons" and "individuals" may bring such actions. We disagree.

¶8 An order granting a motion to dismiss under *CR 12(b)* is subject to de novo review. *McCarthy Fin., Inc. v. Premera*, 182 Wn.2d 936, 941, 347 P.3d 872 (2015). The

FCPA "shall be liberally construed to promote complete disclosure of all information respecting the financing of political campaigns and lobbying, and the financial affairs of elected officials and candidates, and full access to public records so as to assure continuing public confidence of fairness of elections and governmental processes, and so as to assure that the public interest will be fully protected." *RCW 42.17A.001*; *Utter v. Bldg. Indus. Ass'n of Wash.*, 182 Wn.2d 398, 406, 341 P.3d 953, cert. denied, 136 S. Ct. 79 (2015).

¶9 A provision within the FCPA gives Washington citizens the right to sue for unfair campaign practices provided that certain prerequisites have been met. *Utter*, 182 Wn.2d at 407. The "citizen's action" is permitted when the attorney general and the prosecuting attorney of a certain county either fail to commence or opt not to commence an action under the FCPA within a specified period of time. *RCW 42.17A.765(4)(a)(i)*.

¶10 Specifically, the citizen's action provision provides,

A person who has notified the attorney general and the prosecuting attorney in the county in which the violation occurred in writing that there is reason to believe that some provision of this chapter is being or has been violated may himself or herself bring *in the name of the state* any of the actions (hereinafter referred to as a citizen's action) authorized under this chapter.

...

(b) If the person who brings the citizen's action prevails, the judgment awarded shall escheat to the state, but he or she shall be entitled to be reimbursed by the state of Washington for costs and attorneys' fees he or she has incurred.

RCW 42.17A.765(4) (emphasis added). For the FCPA, "person" "includes an individual, partnership, joint venture, public or private corporation, association, federal, state, or local governmental entity or agency however constituted, candidate, committee, political committee, political party, executive committee thereof, or any other organization or group of persons, however organized." *RCW 42.17A.005(35)*.

¶11 West relies on the language of the statute and the definition of "person" to support his argument that the law permits him to maintain a citizen's action as a pro se litigant. According to West, the references to "persons" as individuals and using "himself" or "herself" in

the controlling provision, combined with the FCPA's stated policy of liberal construction, compel the conclusion that the superior court erred by dismissing his case solely because he failed to obtain representation by a licensed attorney.

¶12 West, however, fails to reconcile this argument with the long-standing rule that with limited exception, Washington law requires individuals appearing before the court on behalf of another party or entity to be licensed in the practice of law. *Dutch Vill. Mall v. Pelletti*, 162 Wn. App. 531, 535, 256 P.3d 1251 (2011). Ordinarily, only those persons licensed to practice law in this state may do so without liability for unauthorized practice. See RCW 2.48.170. Practicing law without a license is a gross misdemeanor in Washington. RCW 2.48.180(3)(a); *Advocates for Responsible Dev. v. W. Wash. Growth Mgmt. Hr'gs Bd.*, 155 Wn. App. 479, 485, 230 P.3d 608, rev'd on other grounds, 170 Wn.2d 577, 245 P.3d 764 (2010).

¶13 There is a recognized "pro se exception" to these general rules where a person "may appear and act in any court as his own attorney without threat of sanction for unauthorized practice." *Cottringer v. Emp't Sec. Dep't*, 162 Wn. App. 782, 787, 257 P.3d 667 (2011) (quoting *Wash. State Bar Ass'n v. Great W. Union Fed. Sav. & Loan Ass'n*, 91 Wn.2d 48, 56, 586 P.2d 870 (1978)). But this pro se exception is limited, applying "only if the layperson is acting solely on his own behalf with respect to his own legal rights and obligations." *Cottringer*, 162 Wn. App. at 787-88 (emphasis added) (quoting *Wash. State Bar Ass'n*, 91 Wn.2d at 57).

¶14 Here, notwithstanding a person's right to bring a citizen's action under the FCPA, the act itself expressly provides that any such action may be brought only in the name of the State. RCW 42.17A.765(4). The person has a right to sue if certain criteria are met, but the underlying claim always belongs to the State. The FCPA also provides that any judgment awarded based on an alleged violation of the act escheats to the State. RCW 42.17A.765(4)(b). Thus, by maintaining this action, West is not acting "solely on his own behalf with respect to his own legal rights and obligations." *Cottringer*, 162 Wn. App. at 787-88 (quoting *Wash. State Bar Ass'n*, 91 Wn.2d at 57). Instead, he is necessarily acting on behalf of the State, implicating rights that belong to the State.

1 In his complaint, West claims to be an officer of "No on I-502" who is authorized by its board to maintain this action. It is not clear from the record whether "No on I-502" still exists. But to the extent West brings this suit as an agent of "No on I-502," he also acts on that group's behalf and not solely on his own behalf. Therefore, the pro

se exception would not apply for this reason as well.

¶15 West makes no attempt to demonstrate that the pro se exception applies, nor does he provide any analogous authority to support his argument. Although the citizen's action provision speaks in terms of individuals, corporations are also included in the definition of "person" under the FCPA. RCW 42.17A.005(35). And our courts have long held that corporations must appear in court through an attorney. *Advocates for Responsible Dev.*, 155 Wn. App. at 484-85. This is true even when a pro se litigant is the sole owner, member, and officer of a limited liability company. *Dutch Vill. Mall*, 162 Wn. App. at 534, 539. These rules lend credence to NORML's assertion that the legislature did not intend to carve out a pro se exception specific to citizen's actions merely because it provides "persons" the right to maintain actions under FCPA.

¶16 Although no Washington court has addressed this specific question, a decision from the Ninth Circuit Court of Appeals is instructive and analogous. In *Stoner v. Santa Clara County Office of Education*, 502 F.3d 1116, 1128 (9th Cir. 2007), the Ninth Circuit held that a pro se party could not prosecute a qui tam action on behalf of the United States. *Stoner* involved an alleged violation of the *False Claims Act*, 31 U.S.C. §§ 3729-3733. 502 F.3d at 1119. The statute at issue there provided that a "person may bring a civil action ... for the person and for the United States Government" and stated that such an action would be brought in the name of the government. 31 U.S.C. § 3730(b)(1). In holding that this language did not authorize *Stoner* to proceed pro se, the *Stoner* court reasoned that a party suing under the statute is not prosecuting only their "own case." 502 F.3d at 1126-27. Instead, the party also represents the United States, binding it to any adverse judgment. *Stoner*, 502 F.3d at 1126-27.

¶17 The Ninth Circuit then noted that while the legislation at issue there gave an individual a "right to conduct the action," *Stoner* could point to no language that would permit him to conduct the action without a licensed attorney. *Stoner*, 502 F.3d at 1127 (quoting 31 U.S.C. § 3730(c)(3)). The court concluded that because Congress did not expressly authorize a party to proceed pro se when acting on behalf of the United States, "it 'must have had in mind that such a suit would be carried on in accordance with the established procedure which requires that only one licensed to practice law may conduct proceedings in court for anyone other than himself.'" *Stoner*, 502 F.3d at 1127 (quoting *United States v. Onan*, 190 F.2d 1, 6 (8th Cir. 1951)).

¶18 The circumstances here are similar. The FCPA provides "persons" the right to bring a citizen's action but

mandates that such actions be brought in the name of the State. *RCW 42.17A.765(4)*. As in *Stoner*, West here seeks to prosecute an alleged FCPA violation not solely as his "own case" but necessarily on behalf of the State of Washington. Although the State would not be bound to an adverse judgment under this statutory scheme, it would be entitled to the award of any favorable judgment. *RCW 42.17A.765(4)(b)*. In this way, West is not acting solely on his own behalf regarding his own legal rights and obligations.

¶19 As in *Stoner*, West can point to no language that permits him to proceed pro se, and the legislature here did not specifically authorize citizen's actions to be maintained by pro se litigants. It appears as though the legislature envisioned that such actions would be carried on by licensed attorneys because the statute expressly provides for an award of attorney fees if the person who sues prevails. *RCW 42.17A.765(4)(b)*.

¶20 We hold that no pro se exception applies here because West is not acting solely on his own behalf.

Therefore, permitting him to maintain this action without representation by a licensed attorney would amount to the unauthorized practice of law. We affirm the superior court's dismissal of West's suit against NORML.²

2 West also attempts to argue the substantive merits of his underlying claim regarding NORML's alleged violation of the FCPA. But because it dismissed his complaint, the superior court never reached those issues and made no ruling related to them. As a result, these issues are not properly before us and we decline to address them.

WORSWICK and LEE, JJ., concur.

Reconsideration denied May 6, 2016.

Washington Rules of Court Annotated (LexisNexis ed.)

Annotated Revised Code of Washington by LexisNexis