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Washington's Separation of Powers: How Judicial Self Governance Undermined Constitutional Balance - A Structural Analysis of Washington's Judiciary and Its Consequences for Families, Public Accountability, and the Rule of Law

Executive Summary

Washington's Constitution established a three-branch system of government designed to prevent any single branch from accumulating unchecked authority. Over time, however, the judiciary has developed administrative structures that operate with limited external oversight from the Legislature or the public.

This paper examines how judicial rulemaking authority, internal oversight systems, immunity doctrines, and the delegation of governmental functions to court-authorized private actors have collectively altered the balance envisioned by the separation of powers framework. Through decades of incremental structural drift, Washington's courts have increasingly exercised authority that includes:

- Rulemaking with the force of law, affecting procedural and administrative governance (1);
- Internal disciplinary systems that operate largely outside public review (3);
- Expansions of judicial and quasi-judicial immunity that limit external accountability (4);
- Professional influence over judicial selection and appointment pipelines (9); and
- Delegation of family court functions to privately compensated actors operating within judicial systems (6).

Family court therefore serves as an important structural stress test for understanding how judicial administrative authority, delegated private actors, and immunity doctrines interact in practice and how those dynamics may affect constitutional safeguards such as due process and the right to seek redress. Together, these developments raise important structural questions about how judicial independence can coexist with the constitutional principles of transparency, accountability, and separation of powers.

I. State Constitutional Framework: The Design of Balance

A. The Architecture

Washington's Constitution divides governmental authority among three branches of government (1):

• Legislative (Article II): Enacts laws representing the will of the people.

• Executive (Article III): Enforces laws and administers state operations.

• Judicial (Article IV): Interprets laws and ensures their consistency with the Constitution.

This structure was intended to prevent the concentration of governmental authority in any single branch.

B. The Function of Separation

Separation of powers operates through mutual checks between the branches. Each branch exercises distinct responsibilities while remaining accountable within the constitutional framework. This structure protects individual liberty by preventing the consolidation of lawmaking, enforcement, and adjudication within a single institution.

C. State Constitutional Guardrails and Institutional Boundaries

The effectiveness of this system depends on each branch operating within its constitutional role. When institutional practices allow one branch to exercise functions traditionally reserved for another, the balance envisioned by the framers can begin to shift. Concerns about that balance arise when judicial administrative authority expands beyond adjudication into areas that resemble rulemaking, policy development, or delegated governance.

II. Structural Drift

A. State Constitutional Framework

The Washington Constitution establishes a system of separated powers designed to prevent the concentration of governmental authority. Article II vests legislative power in the Legislature, Article III vests executive power in the Governor, and Article IV vests judicial power in the courts (1). Within this framework, the judiciary's primary role is adjudicative: resolving disputes, interpreting law, and ensuring that government action complies with constitutional limits. Judicial authority traditionally operates through procedural safeguards including evidentiary standards, adversarial testing, and appellate review (2).

Modern judicial administration, however, increasingly involves functions beyond adjudication. Courts now oversee institutional systems that include court-appointed investigators, evaluators, and supervisors who operate within judicial proceedings as arms of the court but are not themselves judges. When these systems expand without corresponding accountability mechanisms, the balance envisioned by separation-of-powers principles can shift.

This structural drift rarely occurs through a single policy decision. Instead, it develops gradually through the interaction of institutional mechanisms that expand judicial administrative authority while limiting external oversight.

B. Judicial Selection and Insider Vetting

Judicial selection systems influence the institutional culture and accountability of the judiciary. Although Washington utilizes nonpartisan judicial elections, a substantial number of judges first reach the bench through gubernatorial appointment to fill vacancies and later stand for election as incumbents. In practice, elections frequently function less as a competitive selection process and more as a confirmation mechanism for individuals already serving on the bench.

Recent data indicate that a large majority of judicial elections are uncontested. In recent election cycles, more than ninety percent of judicial races in Washington were uncontested, and voter drop-off rates for judicial ballots exceeded forty percent in many jurisdictions (3). As a result, competitive electoral review of judicial performance occurs relatively infrequently.

Judicial candidates also commonly emerge from the same legal community that regularly appears before the courts, including attorneys, prosecutors, government lawyers, and former judicial clerks. Professional bar associations and local legal communities frequently play a significant role in candidate vetting and endorsements (4). When appointments, incumbency advantages, and limited electoral competition combine, professional networks within the legal community can exert substantial influence over who ultimately serves on the bench.

While professional vetting can promote legal expertise, it may also produce institutional environments that are relatively insulated from external accountability. When judicial turnover is limited and competitive elections are rare, the judiciary can develop characteristics of a self-reinforcing professional system rather than a fully competitive electoral institution. These dynamics become particularly significant when combined with the judiciary's authority to govern its own institutional procedures through rulemaking.

C. Judicial Rulemaking and Institutional Self-Governance

In addition to adjudicating disputes, the Washington judiciary exercises significant authority over court administration through rulemaking powers. The Washington Supreme Court adopts statewide procedural rules, while individual superior courts adopt local rules governing case administration within their jurisdictions (5). These rules carry the force of law within judicial proceedings and shape how courts conduct litigation, manage cases, and appoint court-affiliated professionals.

Examples include:

• Guardian ad Litem Rules governing appointment and conduct of guardians ad litem (6)

• Family Law Rules governing domestic relations procedure (7)

• Local superior court rules governing evaluator lists, appointment procedures, and case management practices (8)

Although procedural rulemaking is a traditional judicial function, its expansion into areas that influence substantive family rights raises structural considerations. Many operational aspects of modern family court proceedings, including investigative processes, evaluator reports, and supervision of parenting disputes, are governed primarily through administratively created rules rather than statutes enacted by the Legislature.

Courts therefore establish the operational framework governing the professionals who assist the court. They define professional standards, determine how actors are selected and assigned to cases, and evaluate their work within the same institutional structure.

Because these procedures originate through judicial rulemaking rather than legislative enactment, the judiciary effectively determines how key investigative and evidentiary mechanisms operate within family court proceedings. Rules governing court-appointed professionals, investigative reports, and evaluation procedures can significantly shape how information reaches the court and how litigants may challenge that information.

When procedural structures limit opportunities for adversarial testing, cross-examination, or meaningful appellate review, litigants may face substantial barriers to obtaining redress for errors or misconduct occurring within the court's administrative framework.

The consequences of these structures can be particularly significant in family court proceedings, where judicial decisions may permanently affect parental rights, custody arrangements, child safety, and family relationships.

D. Judicial Immunity and Its Extension to Court-Appointed Actors

Judicial immunity is a long-established doctrine designed to protect judicial independence. Judges are generally immune from civil liability for acts performed within their judicial capacity, ensuring that litigation cannot be used to influence judicial decision-making (9). See *Taggart v. State*, 118 Wn.2d 195 (1992).

Over time, courts have extended similar protections through doctrines commonly described as quasi-judicial immunity to non-judicial actors performing court-appointed functions. Washington courts have applied these protections to several categories of court-affiliated professionals, including:

• Guardians ad Litem described as "arms of the court" (*Barr v. Day*, 124 Wn.2d 318 (1994)) (10)

• Parenting evaluators (*Reddy v. Kar*, 25 Wn. App. 17 (2000)) (11)

• Other quasi-judicial officers such as commissioners and arbitrators

These doctrines are intended to allow court-appointed actors to perform court assigned functions within the scope of their appointment without fear of retaliatory litigation. However, extending immunity to non-judicial actors creates structural differences in accountability. Judges operate within constitutional accountability systems including elections, disciplinary oversight through the Commission on Judicial Conduct, and ethical rules established by the Code of Judicial Conduct.

Court-appointed professionals, by contrast, often operate as private contractors drawn from registries or professional networks and are typically regulated primarily through court-created rules which vary based on geographics.

E. Court-Authorized Private Actors

Many family court proceedings rely heavily on professionals who are neither judges nor sovereign employees but who are court assigned to perform investigative or evaluative roles that influence judicial decision-making. This paper refers to these professionals collectively as

court-authorized private actors: individuals who derive authority from judicial appointment but operate as private contractors.

Examples include:

• Guardians ad Litem

• Parenting evaluators

• Parenting coordinators

• Supervised visitation providers

These actors frequently conduct investigations, interview parties and children, and prepare factual reports that inform judicial determinations regarding custody, visitation, and family structure. Because courts often rely on these reports when making decisions affecting parental rights, their work can significantly shape the court's fact-finding process.

When such influence occurs outside traditional evidentiary procedures, adversarial testing, or independent regulatory oversight, their role raises structural questions regarding the procedural safeguards normally associated with judicial decision-making.

F. Delegation Without Liability (RCW 26.12)

Washington law authorizes counties to administer a range of family court services. RCW 26.12 permits counties to provide programs such as Guardian ad Litem services, parenting evaluations, and supervised visitation programs (12). In practice, these services are frequently provided through private contractors operating within court systems.

When disputes arise regarding the conduct of these quasi-actors, courts frequently apply quasi-judicial immunity doctrines that limit civil liability. Individuals affected by the actions of court-affiliated professionals may therefore face significant barriers when attempting to pursue legal remedies.

This combination of delegated authority and limited liability raises broader structural questions regarding accountability when governmental functions affecting fundamental family relationships are performed by private actors operating within judicial proceedings.

These dynamics are most visible in family court proceedings, where judicial authority is frequently exercised through networks of court-appointed professionals performing investigative and supervisory roles that materially influence judicial outcomes. Family court therefore provides a useful case study for examining how judicial delegation, quasi-judicial immunity, and privately performed investigations interact in practice, and how those dynamics may affect constitutional safeguards such as due process, evidentiary standards, and adversarial testing.

The interaction of these institutional mechanisms, judicial rulemaking authority, delegated investigative functions, and immunity protections, creates a structural framework in which significant governmental authority may be exercised within judicial administrative systems with limited external oversight. These dynamics can arise in multiple areas of judicial administration, but they are particularly visible in family court proceedings. Family courts function as specialized divisions of the judiciary that frequently rely on networks of court-appointed private actors to conduct investigations, evaluations, and supervisory roles affecting parental rights and child

safety. Because these proceedings depend heavily on delegated investigative functions operating within procedural frameworks established through judicial rulemaking, family court provides a useful case study for examining how judicial delegation, quasi-judicial immunity, and privately performed investigations interact in practice and how those dynamics may affect constitutional safeguards such as due process and the right to seek redress.

III. Family Court as a Structural Stress Test of Judicial Delegation

Family court provides one of the clearest modern examples of how judicial self-governance and delegated authority can combine to produce systems operating with limited external accountability. Unlike most areas of law, family courts frequently rely on court-appointed private actors to perform investigative, evaluative, and supervisory functions that materially influence judicial decisions affecting fundamental parental rights. These actors derive authority from judicial appointment yet are not government employees and often fall outside regulatory systems that normally govern professionals exercising comparable influence over citizens' rights.

Common court-authorized private actors include:

- Guardians ad Litem
- Custody or parenting evaluators
- Parenting coordinators
- Court-appointed therapists
- Reunification program providers
- Supervised visitation providers
- Private evaluators used as quasi-experts

Funding Structure: Court-Ordered but Privately Paid

In most Washington family court proceedings, these actors are not compensated by the State or county government. Instead, their services are ordered by the court but paid directly by the litigating parties, often at hourly rates ranging from $100 to $400.

This funding structure is unusual when compared to most areas of government decision making, where individuals exercising governmental authority are compensated by the State rather than by citizens whose rights are being adjudicated. As a result, individuals who exercise significant influence over custody outcomes may operate as private contractors performing court authorized functions while being funded by the very parties subject to their recommendations.

Court-Authorized Private Actors

This paper refers to these professionals collectively as court-authorized private actors: individuals who derive authority from judicial appointment but operate as private contractors. Because their investigations, reports, and recommendations frequently shape judicial decisions affecting parental rights and custody outcomes, their work can materially influence the court's fact finding process.

When such influence occurs outside traditional evidentiary procedures, adversarial testing, or independent regulatory oversight, their role raises structural questions regarding whether the procedural safeguards typically associated with judicial decision making remain fully available.

Although these roles vary in title and scope, they share several common structural characteristics:

1. Authority derived from judicial appointment
2. Significant influence over custody and parenting determinations
3. Operation as private contractors rather than public officials
4. Limited civil liability due to quasi-judicial immunity or judicial deference
5. Limited independent regulatory oversight

When courts rely heavily on such actors, a hybrid system can emerge in which private individuals perform functions that materially affect constitutional rights while operating under judicial authority but outside traditional accountability frameworks.

A. Guardians ad Litem as a Case Study of Delegated Authority

Guardians ad Litem (GAL) provide one of the clearest examples of delegated authority within family court. Although GALs must meet qualifications established under RCW 26.12.175 and court-maintained registries (5, 8), they lack independent professional licensing comparable to attorneys, psychologists, or social workers who regularly interact with families and children in high-stakes settings.

Under the current system, GALs are credentialed through court-maintained registries with training requirements set by judicial rules such as the Guardian ad Litem Rules (GALR). This structure places both professional standards and oversight within the judiciary itself. By contrast, professionals such as attorneys and psychologists are regulated through independent licensing systems created by statute, including the Washington State Bar Association and the Department of Health, which provide public complaint procedures and external oversight. As a result, concerns regarding GAL conduct are often addressed within the same institutional structure that authorized the appointment.

RCW 13.34.100(6) delegates to individual superior courts the authority to establish local grievance procedures for Guardians ad Litem. The statute does not require uniform procedural standards, independent review mechanisms, or statewide oversight. Consequently, grievance processes are administered at the county level, often without consistent requirements for transparency, publication of outcomes, or appellate review. This decentralized structure can result in variation in how complaints are handled and may limit meaningful external accountability for court-appointed actors (34).

Although RCW 26.12.175 establishes baseline requirements related to GAL training and administration, it does not create a comprehensive statewide framework governing complaint adjudication or disciplinary enforcement. Oversight mechanisms are therefore largely defined through local court rules rather than uniform statutory standards. By contrast, other professions involved in child welfare and family services are regulated through statewide licensing systems under the Washington Administrative Code, which include standardized complaint procedures and external oversight. The absence of comparable statewide regulation for GALs highlights a structural distinction in how accountability is administered for court-appointed actors.

B. Derivative Immunity and the Accountability Gap

Guardians ad Litem operate within the doctrine of quasi-judicial immunity, which protects court appointed actors within the scope of their assignment, while performing functions integral to the judicial process. As a result, parents often have limited ability to pursue civil remedies when investigative failures, bias, or factual errors occur during a GAL investigation. Many GALs also hold professional licenses, including law degrees or mental-health credentials. In theory, these licenses provide additional oversight through professional disciplinary bodies.

In practice, however, oversight organizations such as the Washington State Bar Association or the Washington Department of Health frequently decline jurisdiction when complaints arise from actions performed in a GAL capacity rather than within the individual's licensed profession. The result can be a structural accountability gap in which a licensed professional exercises significant authority within a family court proceeding while operating outside the disciplinary framework that normally governs their profession.

Documented Oversight Concerns in Washington

Concerns regarding investigative practices and oversight mechanisms involving court-appointed actors have been documented through litigation records, investigative journalism, and independent case reviews.

- Snohomish County GAL Program Controversy: Court filings and evidentiary materials submitted in the federal civil rights litigation Bloom v. Snohomish County raise concerns regarding deliberate indifference regarding customs and practices as well as lack of oversight mechanisms within the county's GAL program (26).
- InvestigateWest Reporting: Investigative reporting by InvestigateWest has documented custody disputes in which GAL investigations were criticized for limited investigation, reliance on unverified allegations, or recommendations inconsistent with available evidence (25).
- Spokane County GAL Investigative Report: An independent review of 27 Guardian ad Litem cases in Spokane County identified concerns regarding investigative practices and evidentiary support, including cases in which GAL recommendations were accepted despite limited investigation or factual inconsistencies (27).
- Caroline Plumber Litigation: Litigation filed in King County Superior Court raised allegations involving court-appointed actors within family court proceedings (Case No. 22-2-01234-0 SEA; Case No. 21-2-11047-5 SEA). Both matters were resolved through private settlements, limiting published judicial findings while illustrating how disputes involving court-appointed actors may arise without producing broader systemic review.

These examples illustrate broader policy questions regarding whether existing oversight structures sufficiently address the authority delegated to court-appointed actors.

C. Economic Incentives and Structural Pressures

Family court litigants who raise concerns regarding investigative practices are often characterized as "disgruntled" parties, a framing that can discourage meaningful external review (17). At the same time, family court proceedings frequently rely on networks of court-approved professionals whose services are funded directly by litigants.

Critics argue that this arrangement can create structural incentives that unintentionally reward prolonged litigation and repeated appointments rather than efficient resolution of disputes (14).

When financial incentives operate within systems lacking independent oversight, procedural protections and constitutional safeguards may be difficult to enforce in practice.

D. The Human Cost: Parents, Children, and Lost Due Process

Research on Adverse Childhood Experiences (ACE) demonstrates that chronic exposure to instability, fear, and high conflict during childhood can produce long-lasting developmental consequences (28). Family court decisions often occur during critical periods of emotional and neurological development when a child's sense of safety and attachment is still forming (29).

When investigative failures, flawed evaluations, or procedural barriers lead to custody decisions that expose children to prolonged conflict or unsafe environments, the consequences extend beyond procedural injustice. Developmental trauma can affect emotional regulation, physical health, educational outcomes, and long-term psychological wellbeing (30). Because childhood development unfolds over a limited period of time, some harms cannot be fully repaired even if court errors are later acknowledged (31).

These risks are compounded when the institutional structure of family court limits meaningful avenues for accountability. Many investigative functions are performed by court-authorized professionals operating within systems governed largely by judicial rulemaking. When those actors are protected by quasi-judicial immunity and oversight mechanisms remain internal to the same institutional network that appoints them, families who believe the system has failed them may find meaningful review difficult to obtain (32).

Grievances dismissed as litigation conflict, and external investigation may be limited or unavailable. In some cases, the administrator of such grievances often becomes the adjudicator of later proceedings, blurring the lines between administrative and judicial functions. In such circumstances, the interaction of delegated authority, immunity protections, and internally controlled oversight can create a closed institutional loop in which the same system responsible for decisions affecting children also controls the mechanisms for reviewing those decisions (33).

IV. The Insider Network: A Closed Circuit of Power

Family court operates within a professional ecosystem where judges, commissioners, attorneys, and court-authorized private actors often circulate through the same institutional pathways. Judicial rotation, court appointments, and professional pipelines create an environment where influence and opportunity remain concentrated within a relatively small network of professionals. Of concern, the Bloom v Snohomish County federal lawsuit documents that a legal professional simultaneously held two positions at once: a Guardian ad litem appointed pursuant to RCW 26.12.175, and a Pro Tem Commissioner serving at the pleasure of the court, pursuant to GR 29. Although this is prohibited pursuant to RCW 2.08.185, little to no oversight exists to review the decisions made within each county court. Court appointed roles such as guardians ad litem, evaluators, and parenting coordinators frequently serve as stepping stones to judicial positions or other court-affiliated roles, reinforcing professional loyalty within the system. Oversight mechanisms largely operate within the same institutional framework that authorizes these actors, which can discourage meaningful external accountability. Within such a structure, criticism of investigative practices or professional conduct may be treated as disruption rather than oversight, reinforcing a culture where institutional stability and professional solidarity are prioritized over independent review.

V. State Constitutional Consequences: A Fourth Branch of Government

When judicial rulemaking authority, delegated investigative power, and internal oversight operate within the same institutional network, the structural balance envisioned by the Constitution can become strained. Legislative authority may be weakened when court rules and administrative practices effectively shape policy governing family relationships. Public oversight may be limited when review mechanisms operate within confidential or internally controlled processes. For families navigating the system, these dynamics can affect the accessibility of core constitutional protections, including due process and equal protection. At the same time, the growth of a court-authorized professional industry funded largely by litigants themselves raises concerns about economic incentives within the justice system. When authority is delegated to quasi-judicial actors while liability and external oversight remain limited, the result can be a structure in which significant governmental power is exercised without the traditional checks designed to protect citizens.

VI. Legislative Pathways for Reform

The structural concerns described in this paper do not require dismantling the judiciary's role in family law. They require restoring the balance of authority between the legislative and judicial branches and ensuring that court-authorized actors operate within transparent and accountable systems. The Legislature possesses several tools to address these structural gaps. These include strengthening legislative oversight of judicial rulemaking processes such as GR 9, establishing independent oversight mechanisms for court affiliated professionals, and adopting transparency and reporting requirements that allow the public and policymakers to evaluate how family court systems function in practice (2, 3, 16). Statutory licensing standards for guardians ad litem, evaluators, and other court authorized professionals would further ensure that individuals exercising significant influence over custody and family decisions are subject to independent professional regulation rather than oversight solely within the judicial system (5, 8, 15).

Additional reforms could address the accountability gap created by broad quasi judicial immunity doctrines. The Legislature has authority to clarify the scope of immunity for court appointed private actors operating under statutory authority such as RCW 26.12. Possible reforms include defining the limits of immunity when actors exceed the scope of their appointment, establishing independent complaint review mechanisms, requiring professional liability insurance for court appointed actors, and creating public reporting requirements for disciplinary actions or removals from appointment registries. Judicial selection and election reforms may also be considered to strengthen democratic accountability within the judiciary itself (9, 10, 13). Together, these measures would not weaken judicial independence but instead reinforce it by ensuring that independence operates alongside transparency, professional accountability, and meaningful legislative oversight.

VII. Conclusion: Restoring the People's Legislative Branch

The concerns outlined in this paper began as a question of procedural autonomy within the judiciary but ultimately revealed a deeper separation of powers problem. When courts establish the rules governing their own administrative systems, appoint private actors to perform investigative and supervisory functions, and extend immunity protections that shield those

actors from meaningful accountability, the balance envisioned by the Washington Constitution begins to shift. Family court provides a particularly visible example of this structural drift because decisions affecting parental rights and child safety frequently rely on networks of court authorized professionals operating within judicially controlled systems.

The extension of quasi judicial immunity to private contractors illustrates how this imbalance can evolve. When government authority is delegated to private actors, accountability must follow that authority. A structure in which individuals exercise government power over fundamental family relationships while remaining largely insulated from external review raises serious constitutional concerns, including the accessibility of due process and the right to petition for redress of grievances.

Family court should not have become a proving ground for how far institutional autonomy extends before constitutional safeguards are weakened. The structural dynamics described here, if left unaddressed, risk spreading beyond family law into other areas of judicial administration. The Legislature, as the branch closest to the people, possesses both the authority and responsibility to restore balance by clarifying the limits of delegated authority, strengthening oversight mechanisms, and ensuring that judicial independence operates alongside public accountability.

Separation of powers is not preserved through institutional autonomy alone. It is preserved when each branch of government remains accountable within the constitutional framework that protects the rights of the people.

Citations

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34. RCW 13.34.100(6); see also local superior court GAL grievance procedures demonstrating county-level variation.