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DIVISION ONE

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65434-9

NO. 65434-9-I

**COURT OF APPEALS  
DIVISION I  
OF THE STATE OF WASHINGTON**

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**RODOLFO APOSTOL, Appellant**

**vs.**

**RONALD WASTEWATER DISTRICT, Respondent.**

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**REPLY BRIEF OF APPELLANT RODOLFO M. APOSTOL**

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COURT OF APPEALS  
DIVISION ONE  
CLERK OF COURT

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**I.****ISSUES**

1. Could the Court of Appeals determine that Plaintiff presented sufficient evidence to determine the motivating factor of Plaintiffs termination on February 28, 2006 was because of his race and the Plaintiff belonging to a certain member of a protected class?
2. Could the Court of Appeals conclude the Trial Court applied the wrong legal standard of the Statute of Limitations in this case and determine whether summary judgment was appropriate?
3. Could the Court of Appeals conclude that Plaintiff presented sufficient evidence of one or more acts of harassment within three years of his suit filed in August 28, 2008?
4. Could the Court of Appeals conclude that Plaintiff has produce sufficient evidence and medical documentation which supports his disability status while on Medical Leave?
5. Could the Court of Appeals conclude that the Employer violated RCW 49.60 Washington State Law Against Discrimination (WLAD) when the Employer failed to promote the Plaintiff?
6. Could the Court of Appeals conclude that the Employer violated RCW Title The Industrial Insurance Act when the Employer terminated the Plaintiff for seeking workers compensation benefits?

7. Could the Court of Appeals determine that Plaintiff has produce sufficient evidence that Plaintiff's disability status was proximate cause in the course of his employment and can be imputed to his employer?
8. Could the Court of Appeals conclude that the Employer violated 'RCW 49.60 Washington State Law Against Discrimination (WLAD) when the Employer failed to promote the Plaintiff when direct evidence for discrimination animus was produce and presented in the Clerks Paper (CP) as well as the Certified Appeal Boards Record file (CABR); thus apply the analysis in Morgan adopted by the Washington State Supreme Court in this case?
9. Could the Court of Appeals determine that Plaintiff has produce sufficient evidence that Plaintiff is entitled to damages, economic damages and noneconomic damages as well as attorney fees?
10. Could the Court of Appeals reverse summary judgment on all claims and remands the case to the trial court for further proceedings?

## **II. ASSIGNMENT OF ERRORS**

1. Was it proper for Hon. Jeffrey Ramsdell ordered granting defendant's motion for summary judgment dismissing:

- a. **Claims -B, RCW 49.60 Discrimination-Human Rights Commission, Public Policy Mandate (WLAD), RCW 49.60.180, Unfair Labor Practice of Employers, RCW 49.60.030 (1) Freedom from discrimination-Declaration of civil rights because of race, creed, color, national origin, sex....sexual orientation, or the presence of any sensory, mental, or physical disability...is recognized as and declared to be a civil right. This right shall include, but not be limited to: (a) The right to obtain and hold employment without discrimination;**
- b. **Claim- C, RCW 4.16.080 (2); Personal Injury Actions allowed for violations under WLAD**
- c. **Claim -I, RCW 51.48.025 Retaliation by employer prohibited- Investigation-Remedies. (The Industrial Insurance Act);**

on April 23, 2010 by Hon. Judge J. Ramsdell?

- 2. Was summary judgment proper granting defendant's motion for summary judgment dismissing:
  - a. **Claims- A RCW 49.60.030 Declaration of Civil Rights;**
  - b. **Claims D, RCW 49.60.180 (3) Unfair practices of employers to discriminate against any person in compensation or in other**

terms or conditions because of age, sex, marital status, sexual orientation, race, creed, color, national origin....the presence of any sensory, mental, or physical disability ...

- c. Claim E, RCW 49.60.030(2) Any person deeming himself or herself injured by any act in violation of this chapter shall have a civil action in a court of competent jurisdiction to enjoin further violations, or to recover the actual damages sustained by the person, or both, together with the cost of suit including reasonable attorneys' fees or any other appropriate remedy authorized by this chapter or the United States Civil Rights Act of 1964 as amended, or the Federal Housing Amendments Act of 1988 (42 U.S.C. Sec. 3601 et seq.).

Disparate Impact for Race and Disability Discrimination.

- d. Claim F, RCW 49.60.030(2) Disparate Treatment for Race Disability Discrimination
- e. Claim G, RCW 49.60.210, Unfair practices-Discrimination against person opposing unfair practice-Retaliation against whistleblower when Plaintiff engaged in statutorily protected activity when he complained that he was the victim of employment discrimination from the email Plaintiff written to

his employer, Mike Derrick GM as well as to his Union, Susan Mindenbergs, attorney for the plaintiff, Tim J. O'Connell attorney from Stoel Rives for the employer on February 15, 2006. Adverse action taken on February 28, 2006 Employer terminated the Plaintiff which was a substantial factor motivating the employer to discharge the Plaintiff.

- f. Claim H, RCW 49.60.030(2) Disability Harassment and disparate treatment. The Plaintiff was disabled and was perceived as disabled by this employer and co-workers and the Defendants subjected the Plaintiff to ongoing discriminatory harassment, in the form of extraordinary job duties, lack of promotions to positions the Plaintiff was most qualified to fill, heightened criticism, physical and mental torture and harassing conduct. The Plaintiff suffered adverse employment action from the Defendants' conduct. A substantial factor in the Defendants' conduct was the Plaintiff's disability status.
- g. Claim J, RCW 41.56 Chapter, Public employees' collective bargaining. The Plaintiff attempted to exercise rights

protected under RCW 41.56. The Defendant retaliated by interfering with Plaintiff, restraining Plaintiff and coercing Plaintiff against the exercise of the rights guaranteed by chapter 41.56. The Defendant imposed adverse employment consequences upon the Plaintiff. The Defendant discriminated against the Plaintiff after he filed an unfair labor charge. The Defendant committed an unfair labor practice against public policy against the Plaintiff, because a substantial factor in the Defendants' misconduct as the Plaintiff's protected concerted action.

- h. Claim K, RCW 51.24.020 Actions at law for injury or death against employer for intentional injury-Negligent Infliction of Emotional Distress. The Defendant's conduct was negligent and inflicted emotional distress upon the Plaintiff. The actual result to Plaintiff was severe emotional distress, which was manifest with objective symptomatology and eventual diagnosis of Post-Traumatic-Stress- Disorder. Substantial evidence is documented and presented as evidence throughout Plaintiff's medical and psychological mental health records contained in Clerk's Papers and Certified Appeal Boards

Records. Defense counsel and Employer had knowledge of Plaintiff's disabilities and injuries which were provided through the discovery process and interrogations in July 2009. (Defense counsel had scanned Plaintiff's boxes of evidences and records and documents brought to the Interrogation Proceedings in July 2009).

- i. Claim L, RCW 51.24.020 Intentional Infliction of emotional distress/Outrage. Actions at law for injury or death against employer for intentional injury. The Defendant engaged in extreme and outrageous conduct toward the Plaintiff. The Defendant's conduct was intentional or reckless and inflicted emotional distress upon Plaintiff. The actual result to Plaintiff was severe emotional distress, which was manifest with objective symptomatology and eventual diagnosis of PTSD. Substantial evidence is documented and presented as evidence throughout Plaintiff's medical and psychological mental health records contained in Clerk's Papers and Certified Appeal Boards Records. Defense counsel and Employer had knowledge of Plaintiff's disabilities and injuries which were

July 2009. Furthermore, wrongful termination of an employee in violation of public policy is an intentional tort(\*) on March 12, 2010 by Hon. Judge J. Ramsdell.

### **III. ISSUES TO ASSIGNMENT OF ERRORS**

1. Trial Court applied the wrongly legal standard for RCW 49.60 Washington State Law Against Discrimination. In Plaintiff's suit of race discrimination and hostile work environment claims for otherwise time barred acts.
2. Contrary to trial court judgment, sufficient evidence was provided and produced contained in Clerk's Papers and Certified Appeal Boards Records support of Plaintiff's negligent infliction of emotional distress and intentional infliction of emotional distress claims.
3. Issues and material of facts exist which the outcome of this case depends.

### **IV. STANDARD OF REVIEW**

An appellate court reviews a summary judgment de novo by engaging in the same inquiry as the trial court and applying the standard of CR56(c) to

the evidence and the reasonable inferences therefrom as viewed most favorably toward the nonmoving party. *Patricia E. Marquis v. The City of Spokane, et. Al.*, 130 Wn.2d 97, 922 P.2d 43, Sept. 1996.

The list in RCW 49.60.030 (1) of rights protected by the Law Against Discrimination is nonexclusive. A statute that is not clear on its face is interpreted in the manner that best fulfills the Legislature's purpose and intent. The mandate of RCW 49.60.020 that the Law Against Discrimination be liberally construed requires that a court view with caution any construction that would narrow the coverage of the law. The Law Against Discrimination (RCW 49.60) is to deter and eradicate discrimination *Marquis v. Spokane*, 130 Wn.2d 97, 922 P.2d 43, Sept. 1996.

A material fact is a fact upon which the outcome of a case depends. *Fell v. Spokane Transit Auth.* 619, 128 Wn.2d 618, 911 P.2d 1319, Feb. 1996.

The Plaintiff's injuries and medical leave that occurred within the statute of limitations are facts upon which the outcome of this case depends. The termination date of Plaintiff occurred within the statute of limitations are facts upon which the outcome of this case depends. The wrong legal standard was applied in a common law statute RCW4 49.60 and a strong public policy (Washington State Law against Discrimination) in hostile

work environment claims such as Plaintiff's case here, as well as Title RCW 51 of the Industrial Insurance Act are facts upon which the outcome of this case depends.

V. **ARGUMENT**

**MEDICAL LEAVE and INJURIES –SUMMARY JUDGMENT  
DISMISSAL IS PLAIN ERROR COMMITTED BY BENCH  
TRIAL**

Plain error critical to Plaintiffs case in RCW 49.60 WLAD Public Policy Mandate, Personal Injury Actions RCW 4.16.080 (2) and RCW Title 51 Workers Compensation Statutes for Retaliation for Filing Workers Compensation Claim.

Plaintiff's Sleep Apnea, Post Traumatic Stress Disorder for Medical Leave starting on September 22, 2005 within the Statute of Limitation Period.

1. Plaintiff claims Medical Certification documents were submitted with proper Certification and furthermore collective bargaining agreement states Medical Leave is granted" .....when a physician's certificate is provided documenting the reason for leave and the expected duration. See CP Page 145(Bargaining Agreement Article IX Section 9.5 and Section 9.5.3.) physician's certificate provided documenting the reason for leave and the

expected duration is located at Clerk's Paper pages 520,480, 482, 484, 483, 481, 466, 468. Proof of delivery of Certificate to the employer/Mike Derrick GM, can be found on CP Page 519-522, 477, 479, 482, 470-471. Labor and Industries Claim can be found on CP Page 510.

The sleep apnea diagnosis CP Page 445-464 and post-traumatic-stress-disorder (PTSD) diagnosis can be found in the Certified Appeals Board Record (CABR) titled TESTIMONY Claim No- Y-677589, Docket No. 06 12871, IN RE: RODOLFO M. APOSTOL, Seattle, Washington, February 20, 2007, DAVID M. DIXON, Ph. D., Examination (Judge) JUDIT E. GEBHARDT, Claimant, Rodolfo M. Apostol, pro se, Employer appearances by Katherine K. Rosenbaum, Attorney at Law, Law Office of Stoel Rives LLP, Department of Labor and Industries appearance by The Office of the Attorney General per Andrew J. Simons, Assistant Attorney General; in pages 1-38 of transcripts copy.

Collective Bargaining Agreement Contract on CP page 145, Section 9.5 Medical Leave states"....shall be granted to employees ....when a physician's certificate is provided documenting the reason for leave and the expected duration. The Employer may request a second medical

opinion;” and Section 9.5.3 states “The limitation for a medical leave shall be six (6) months or one (1) year in the event of an on the job injury.”

The Employer never requested a second opinion The Plaintiff was terminated on February 28, 2006. Five months and 6 days into his Medical Leave. (September 22, 2005 through February 28, 2006).

Second Injury discovered while on Medical Leave-Left fractured wrist, put on full disability work status until March 30, 2006 and follow-up exam needed on March 30, 2006.

Treated by David Kim, M.D. Virginia Mason, 1100 Ninth Ave., P.O. Box 900, Seattle, WA 98111, see CP page 467, 475, 487.is Dr. Kim’s certificate and medical diagnosis and put on full Disability until March 30, 2006.

Plaintiff notified employer on January 24, 2006 letter to Mike Derrick see CP page 492.

Further proof employer was notified and informed of Plaintiff’s physical injury of a fractured wrist from the Department of Labor and Industries Claims Manager Donald C. Roman stating in his letter dated Feb. 8, 2006 Mr. Roman states, “.... that the department called your employer of injury for the exact date of the injury. Your employer does not have an injury report regarding your left wrist for any dates in the fall of 2005. Your

employer also informed the department that you never informed him of any injury prior to your last date worked.” The statement made by my employer was not true. Employer knew of my wrist injury from my letter mailed to Mike Derrick. If my Employer was not aware of my wrist injury, why did Mr. Derrick never emailed or notified the Plaintiff if a wrist injury did occur and prevented the Plaintiff to return to work as well as Plaintiff’s sleep apnea and PTSD diagnosis.

The Department of Labor and Industries initially denied my claimed, see CP 551, Plaintiff appealed and the Department of L & I reconsidered and again stated, “....the order is correct and is affirmed.”, by Letter dated March 2, 2006

Furthermore, Plaintiff notified the employer by email (CP Page 490) on February 15, 2006 confirming his fractured left wrist and disability status.

The email was also sent to my union, my attorney Susan Mindenbergs, and Tim J. O’Connell, attorney from Stoel Rives Defendants attorney. The email contains other incidents describing harassment and threats made against the Plaintiff and including the June 1, 2005 gun shooting by Jason Sharpe at Plaintiff’s head in front of the maintenance staff and George Dicks, Maintenance Manager. On February 28, 2006, the employer terminated the Plaintiff.

The employer wrongfully terminated Plaintiff's employment while he was disabled and injured and a claim for disability discrimination is actionable that is within the statute of limitation. Therefore Plaintiff's Claim C for WLAD Personal Injury Action RCW 4.16.080 (2) was improperly dismissed by Hon. Judge Ramsdell Summary Judgment on April 23, 2010, ("....dismissing all remaining claims...") Plaintiff Claim C summary judgment Claim C dismissal should be reversed and grant in favor for the Plaintiff.

The Employer in turn, violated RCW 49.60.180 (2) Unfair practices of employers:

It is an unfair practice for any employer to discharge or bar any person from employment because of age, sex, marital status, sexual orientation, race, creed, color, national origin, ...or the presence of any sensory, mental, or physical disability .....

In general, a claim of wrongful discharge in violation of public policy is cognizable only if the constitution, legislation, or a prior court decision has clearly established the alleged public policy. 140 Wn.2d 58, Roberts v. Dudley Feb. 2000.

The elements of a common law claim for wrongful discharge in violation of public policy are (1) the existence of a clear public policy, (2) the

employers termination of the plaintiff jeopardizes or contravenes the public policy, (3) the plaintiff's public-policy linked conduct was the cause of the termination, and (4) the employer is unable to offer a justification for the termination sufficient to override the clear mandate of public policy. 140 Wn.2d 58, Roberts v. Dudley, Feb. 2000.

For purposes of an action for wrongful discharge in violation of public policy, the determination of what qualifies as a clear mandate of public policy is a question of law. 140 Wn. 2d 58, Roberts v. Dudley, Feb. 2000. Public policy may be judicially recognized. Wilmot v. Kaiser Aluminum, 118 Wn. 2d 46, P.2d 18, Dec. 1991.

A tort cause of action for wrongful discharge against an employer that discharges an employee in retaliation for having pursued workers' compensation benefits can be based either on the common law or on RCW 51 of the Industrial Insurance Act. Wilmot v. Kaiser Aluminum, 118 Wn.2d 46, P.2d 18, Dec. 1991.

The exclusive remedy provision of the Industrial Insurance Act (RCW 51) does not bar common law actions against an employer for injuries that fall outside the basic coverage of the act, i.e., that constitute neither an "injury" nor an "occupational disease" under the act. The exclusive remedy provision of the Industrial Insurance Act, does not bar an employee's tort

claim against the employer if the tort claim resulted in emotional damages that are readily distinguishable from any damages covered by the act.

Wheeler v. Catholic Archdiocese, 65 Wn. App., 552, 829 P.2d 196, May 1992.

Summary judgment dismissal was not proper and summary judgment dismissal should be reverse and grant in favor for the Plaintiff and remands for further proceedings.

#### Plaintiff's Left Wrist Fracture

Plaintiff's left wrist fracture claimed in January 2006 occurred within the three year statute of limitation. Plaintiff's termination date occurred in February 28, 2006 occurred within the statute of limitation. Summary Judgment dismissal should be reverse and grant in favor for the Plaintiff.

#### **DEFENDANTS REASONS ARE UNWORTHY OF BELIEF**

In an employment discrimination action in which the defendant presents sufficient evidence of legitimate, nondiscriminatory reasons for the adverse employment action to rebut the plaintiff's prima facie case, the plaintiff must come forward with some evidence that the defendant's reasons are unworthy of belief. Domingo v. Boeing Employee's Credit Union 75, 124 Wn. App. 71, Sept. 2004.

The Defendant's reason of Plaintiff "...lacked the communication skills and CAD skills....." for not being promoted to the Technical Support Specialist, and the Plaintiff, "...Inappropriate behavior...." for not being considered for the Technical Support as well as the Crew Chief position and "...failed to provide Medical Certification...." And not attending a Loudermill Hearing in terminating the Plaintiff's are reasons that are unworthy of belief.

Plaintiff provides in CP and CABR sufficient evidence such as engineering diploma from WSU, exemplary performance reviews given by Steve Paulis, Maintenance Manager and Phil Montgomery, GM, and medical documents from Doctor Mayeda and Doctor David Kim treating Plaintiff during his Medical Leave on putting Plaintiff on full disability status "This can be shown by evidence that the reasons have no basis in fact, by evidence that, even if the defendant's reasons are based in fact, the defendant was not motivated by the reasons, or by evidence that the reasons are insufficiently to motivate the adverse employment action. The plaintiff may also demonstrate pretext or discrimination intent by showing disparate treatment, i.e. by showing that he or she was treated differently from similarly situated employees outside the protected class." *Domingo v. Boeing Employees' Credit Union*, 124 Wn. App. 71, Sept. 2004.

The “smoking gun” or direct evidence produce in the CABR which Phil Montgomery employers General Manager and Gary Shirley employers President/Secretary Board of Commissioners documents reason both supporting Mark Dewey for the Technical Support position which Mr. Montgomery states plaintiff “.....lack the communications skills and.....lack CAD skills....” Is unworthy of belief due to Plaintiff grew up in the United States since he was one year old and obtained an engineering degree from WSU and took the Washington State Professional Engineering Exam and obtained his professional certificate to practice engineering in the State of Washington and spoke with thousands of families from the state of Ohio, Pennsylvania, Oklahoma, and Kentucky while selling books door to door to work his way through college and plus the fact Mr. Dewey confess to me he had no experience in CAD nor worked with the sewer industry prior to his hire.

DISCRIMINATION-HARASSMENT-HOSTILE WORK

ENVIRONMENT-STATUTE OF LIMITATION DOES NOT APPLY TO THIS CASE.

Trial court judge improperly applied the wrong legal standard in Plaintiff's Discrimination and hostile work environment claims, claim A, claim B,

claim C, claim D claim E, claim F, claim G, claim H, claim J, claim K,  
claim L.

**WA Supreme Court adopts analysis in National Railroad  
Passenger Corp. v. Morgan.** 536 U.S. 101, 122 S. Ct. 2061, 153 L.Ed.2d  
106 (2002).

In *Antonius v. King County*, 153 Wn.2d 256, Dec. 2004, the Washington State Supreme Court states, “We believe that Morgan’s analysis for determining liability under Washington’s Law Against Discrimination for hostile work environment claims more fully advances the legislature’s intent to end discrimination.” This view is in contrast to previous case law from the Court of Appeals treating the discriminatory acts as a continuing violation giving rise to an equitable exception to the statute of limitations. A persuasive federal case law analysis may be adopted by a state court to resolve a disputed issue of state law concerning a claim of unlawful discrimination if the analysis furthers the purposes and mandates of state law.”

In *Morgan*, the Court distinguished those cases involving discrete retaliatory or discriminatory acts, such as termination, failure to promote, denial of transfer, or refusal to hire, from cases involving claims of a hostile work environment. For discrete acts, the

limitation period runs from the act itself, and if the limitations period has run, a discrete act is not actionable even if it relates to acts alleged in timely filed charges. *Morgan*, 536 U.S. at 108-113.

However, the Court concluded that hostile work environment claims “are different in kind from discrete acts” and [t]heir very nature involves repeated conduct.” *Morgan*, 536 U.S. at 115. The Court said that the

“Unlawful employment practice’ therefore, cannot be said to occur on any particular day. It occurs over a series of days or perhaps years and, in direct contrast to discrete acts, a single act of harassment may not be actionable on its own....Such claim are based on the cumulative effect of individual acts.

*Morgan*, 536 U.S. at 115 (citations omitted). The Court explained that “[a] hostile work environment claim is composed of a series of separate acts that collectively constitute one ‘unlawful employment practice.’” *Morgan*, 536 U.S. at 117 (quoting 42 U.S.C. & 2000e-5(e) (1)).

Because Title VII’s filing provision requires only that the charge be filed within a certain period after the unlawful practice occurred, the Court reasoned, “[i]t does not matter,

for purposes of the statute, that some of the component acts of the hostile work environment may be considered by a court for the purposes of determining liability.” Morgan, 536 U.S. at 117.

The Court also rejected the rule applied by several of the circuits that a plaintiff could not base suit on acts occurring outside the statute of limitations’ period unless it would have been unreasonable to expect the plaintiff to sue before the statute ran. It did so ‘precisely because the entire hostile work environment [claim] encompasses a single unlawful employment practice.” Morgan, 536 U.S. at 117. Thus, it does not matter that a plaintiff knows or should know at the time discriminatory acts occur outside the statute of limitations period that the acts are actionable, Morgan, 536 U.S. at 121 (O’Connor, J., concurring at 123, 127).

In applying Morgan’s analysis to Antonius v. King County, the Court of Appeals concluded that Antonius presented sufficient evidence of one or more acts of harassment within three years of her suit filed in December 2000 and therefore the trial court could consider the discriminatory conduct occurring before December 1997. Antonius, noted at 118 Wn. App. 1011, slip op. at 5-6.

Accordingly, the Court of Appeals ruled partial summary judgment was improperly granted in favor of the County.

### **APPLYING APOSTOL v. RWD TO MORGAN**

#### Civil Rights-Employment Discrimination-Hostile Work

#### Environment-Elements.

In General, a prima facie case of hostile work environment employment discrimination requires proof of (1) unwelcome harassment, (2) the harassment was because the claimant is a member of a protected class, (3) the harassment affected the terms or conditions of the claimant's employments, and (4) the harassment is imputable to the employer. *Domingo v. Boeing Employees' Credit Union*, 124 Wn. App. 71, Sept. 7, 2004.

**Rule ER 402** states all relevant evidence is admissible, except as limited by constitutional requirements or as otherwise provided by statute, by these rules, or by other rules or regulations applicable in the courts of this state. Evidence which is not relevant is not admissible.

**Rule ER 401** "Relative evidence" means having any tendency to make the existence of any fact that is of consequence to the

determination of the action more probably or less probably than it would be without the evidence.

Therefore, in applying Morgan's analysis to my case, the Court of Appeals could well conclude that I had presented sufficient evidence of one or more acts of harassment within three years of my suit of August 28, 2008... Accordingly, the Court of Appeals here should reverse summary judgment against RWD and make appropriate judgment in my favor on this claim.

Additional evidence was submitted in support of Plaintiff's claims in Clerks Papers (CP) pages 1-840 and Certified Appeals Board Record (CABR) page 1-page 808.

The court added,...The mandate of RCW 49.60.030 (1)(a) that a person has the right to hold employment without discrimination embodies a public policy of the highest priority that a court may consider when resolving a disputed issue of law concerning a claim of unlawful discrimination. An action alleging sex discrimination in employment based on hostile work environment sexual harassment is timely filed if any act contributing to the hostile work environment occurred within three years before the action was filed. So long as an act contributing to the claim occurs within the three-year period, the entire time period of the hostile work environment may be

considered by the court for the purpose of determining liability on the claim. It does not matter that some of the component acts of the hostile work environment occurred more than three years before the action was filed if some of them occurred within the three-year period. .... The court's task is to determine whether the acts about which the plaintiff complains are part of the same actionable hostile work environment practice and, if so, whether any act falls within the three-year time period. The acts must have some relationship to each other to constitute part of the same hostile work environment claim. If a relationship does not exist or, if for some other reason, such as some intervening action by the employer, the act is no longer part of the same hostile work environment claim, then the plaintiff cannot recover for the previous acts as part of a single claim. A gap in the plaintiff's employment in the particular work environment is not, in and of itself, a reason to treat acts occurring before and after the gap as not constituting parts of the same unlawful employment practice....”

The court also states. “Sex discrimination in employment action based on a claim of hostile work environment sexual harassment requires harassment that is sufficiently pervasive so as to alter the conditions of employment and create an abusive work environment. This is determined by considering the totality of the circumstances.”



NO. 65434-9-I

COURT OF APPEALS  
DIVISION I  
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RODOLFO APOSTOL, Appellant

vs.

RONALD WASTEWATER DISTRICT, Respondent.

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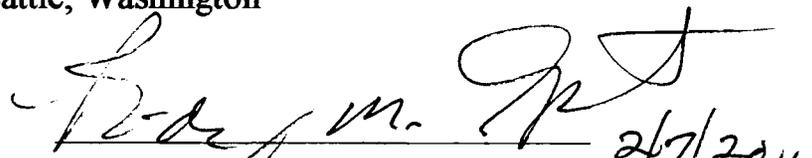
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CERTIFICATE OF MAILING

On February 7, 2011, at Seattle, Washington, I deposited in the United States mail a properly addressed, postage prepaid envelope, containing a copy of the Brief of Appellant Rodolfo Apostol directed to: Daniel P. Mallove, Law Ofc. Of Daniel P. Mallove PLLC, 2003 Western Ave. Ste. 400, Seattle, WA 98121-2142 and to: Scott Royal Sawyer, Law Ofc., of Daniel P. Mallove, PLLC, 2003 Western Ave. Ste. 400, Seattle, WA 98121-2142.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing statement is true and correct.

Dated: February 7, 2011 at Seattle, Washington

  
Rodolfo M. Apostol, pro se 2/7/2011