90054-0

NO. 43983-2-II

COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON

JOYCE KELLEY, Individually, Respondent

v.

PIERCE COUNTY, a county corporation, MARK SKAGREN & "JANE DOE" SKAGREN, Petitioners

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PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER

Pierce County, defendant in the above action, asks this Court to accept review of the decision designated in part B of this petition.

B. COURT OF APPEALS DECISION

Defendant Pierce County seeks review of the February 20, 2014, part published opinion of Division Two of the Washington State Court of Appeals, in *Kelley v. Pierce County* __ Wn.App. __, 319 P.3d 74 (2014), Numbers 43983–2–II, 43986–7–II, converting a CR 12(b)(6) motion to dismiss into a CR 56 summary judgment motion and affirming the refusal to dismiss a guardian ad litem and his employer because it found absolute quasi-judicial immunity does not apply if sexual harassment is alleged.

A copy of the decision is in the Appendix at pages APP 1-15.

C. ISSUES PRESENTED FOR REVIEW

1. Where the Court of Appeals affirms the denial of a motion to dismiss a quasi-judicial officer and his County employer because absolute judicial immunity does not apply if a complaint alleges the official committed sexual harassment while performing his quasi-judicial function, is its decision in conflict with decisions of this Court and the Court of Appeals as well as involves an issue of substantial public interest that this Court should determine? *See* RAP 13.4(b)(1)-(b)(2) & (b)(4).

2. Where the Court of Appeals treats a CR 12(b)(6) motion to dismiss as one for summary judgment under CR 56 because the moving party relies on pre-existing court records, is its decision in conflict with decisions of the Supreme Court and Court of Appeals? *See* RAP 13.4(b)(1); RAP 13.4(b)(2).

D. STATEMENT OF THE CASE

Pierce County Superior Court records disclose that on June 13, 2011, defendant Mark Shagren was appointed as that court's Guardian Ad Litem (hereinafter "GAL") in a dependency action for plaintiff Joyce Kelly's son. *See* CP 8; Cy Supp. CP (6/13/11 Order in P.C. Sup.Ct. Cause #09-7-01643-1). Pierce County District Court records further show that later, on December 13, 2011, plaintiff unsuccessfully pursued an anti-harassment order against the GAL alleging "acts of unlawful harassment" by his supposed inappropriate "calls and texing [sic] me ... under the influence" as well as coming "to my jobs multible [sic] times" which made her fear "he is going to have a day where he is drinking and take further action" and "fear for what he can do to me and my son" so as to lead her to also contact police. *See* CP 27. On December 20, 2011, a new GAL in the underlying dependency matter was appointed, *see* Cy Supp. CP (Order Substituting GAL in P.C. Sup.Ct. Cause #09-7-01643-1), and on December 27, 2011, a hearing was held on plaintiff's anti-harassment petition

wherein she testified under oath without offering any additional allegations of misconduct. CP 149. At the conclusion of an evidentiary hearing the court dismissed the petition finding: "No actionable activity, Resp. was working as a GAL at times of these events." CP 29, 150. Plaintiff did not appeal the District Court but instead filed the instant suit half a year later on June 1, 2012. CP 1. *See also* CP 7.

Her complaint named Pierce County, GAL Shagren, and his wife, alleging they all are liable because Shagren was appointed as "GAL for the purposes of reporting to the court plaintiff's relationship with her son" and supposedly "used his authority, tasks, tools and premises of his job and assignment to stalk, prey, assault, batter and sexually harass Ms. Kelley." CP 8. Pierce County immediately moved to dismiss under CR 12(b)(6) on the ground that, among other things, the complaint failed to state a claim because it was barred by the GAL's absolute quasi-judicial immunity and collateral estoppel. *See generally* CP 13-23, CP 94-107. The County's motion relied on the allegations of the complaint, the court's records of the underlying Superior Court dependency proceeding specifically described in the complaint, and certified copies of District Court records from plaintiff's previous unsuccessful anti-harassment proceeding against the GAL. *Id.* In response, plaintiff filed a declaration that added previously unmentioned allegations of the GAL's supposedly "touch[ing]"

her "inappropriately," CP 51, and a declaration of her attorney that repeated her brief's legal arguments. CP 52-53. The County moved to strike both declarations. CP 94-95.

On July 20, 2012, the Honorable Judge Garold E. Johnson denied the County's motion to dismiss stating that a judicial official's "using your authority to do something you're not entitled to do would not be within the functions of that person." *See* CP 108; 7/20/12 VRP 1 (emphasis added). Judge Johnson, however, certified the matter involved "controlling questions of law as to which there is substantial ground for a difference of opinion and that immediate review of those orders may materially advance the ultimate termination of the litigation." *See* CP 108. On July 30, 2012, the County moved for reconsideration under CR 59(a)(7)-(9), *see* CP 110-120, 135-143, but this too was denied. *See* CP 151.

On September 21, 2012, the County filed notice of discretionary review. *See* CP 153. On November 15, 2012, Commissioner Eric Schmidt granted review on "the issue of whether quasi-judicial immunity applies to Skagren" because it "is one where 'there is substantial ground for a difference of opinion and that immediate review of the order may materially advance the ultimate termination of the litigation.'" CP 165-66. Review, however, was denied for the County's other defenses, including whether "the district court's denial of ... an order of protection on grounds

of quasi-judicial immunity precludes her claim here," because: "Unlike the immunity issue, collateral estoppel would confer only a defense against the claim of damages, not immunity from suit." CP 168–69, 172.[1]

Thereafter, the County's opening brief to the Court of Appeals argued that because the test for quasi judicial immunity depends on "the function being performed," *see* AB 10 (*citing Lallas v. Skagit County*, 167 Wn.2d 861, 865, 225 P.3d 910 (2009); *Regan v. McLachlan*, 163 Wn.App. 171, 179, 257 P.3d 1122 (2011)), and because the complaint expressly alleged the GAL used his court-ordered function to commit the alleged tort, *see* CP 8, the complaint on its face presented a *prima facie* statement of absolute quasi-judicial immunity. *See* AB 7-14. Indeed, during the January 6, 2014, oral argument in Division Two, plaintiff's counsel expressly conceded it was "factually true" that "the only reason that this contact oc-

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[1] Due to the Commissioner's ruling, the County did not pursue its collateral estoppel argument that the prior legal ruling "precludes her claim here." CP 166 (emphasis added). Rather, the County argued to the Court of Appeals that the District Court's prior factual finding that Shagren "was working as a GAL at times of these events" provided a separate and additional factual ground through collateral estoppel for the issue about which discretionary review was granted; *i.e.*, that "quasi-judicial immunity applies to" the GAL. *Id.* at 172 (emphasis added). *See also* AB 14-17; *Nielson v. Spanaway General Medical Clinic, Inc.*, 135 Wn.2d 255, 262, 956 P.2d 312 (1998) ("[w]hen an issue of fact or law is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, the determination is conclusive in a subsequent action between the parties, whether on the same or a different claim") (quoting Restatement (Second) of Judgments § 27 (1982)) (emphasis added); *Lemond v. State Dept. of Licensing*, 143 Wn. App. 797, 833, 180 P.3d 829 (2008) (same). As to that use of collateral estoppels to establish further facts supporting immunity, however, the Court of Appeals held, among other things, that: "Under the ruling granting review, collateral estoppel issues are not properly before this court and we consider it no further." *Kelley v. Pierce County* __ Wn.App. __, 319 P.3d 74, 76 n.3 (2014).

curred was because [Shagren] was acting as judicial officer" and that he had been "using that power for his own purposes." 1/6/14 VRP at 23-24 (emphasis added).

Even so, the Court of Appeals affirmed the denial of the motion to dismiss. First, the court ruled that the CR 12(b)(6) motion would be treated by it as one for summary judgment because it believed "the County submitted additional materials to the superior court in its motion to dismiss and the court considered the whole record, including Kelley's additional responsive materials ...." *See Kelley v. Pierce County,* __ Wn.App. __, 319 P.3d 74, 77 (2014). Second, though the Court recognized absolute quasi-judicial immunity applied where the GAL had "been performing the GAL's function to investigate facts and to report facts during the conduct in question," it nevertheless held if plaintiff could prove her claims of sexual harassment "are true, Skagren was not acting within a GAL's function when he engaged in this conduct and, therefore, would not be entitled to immunity." *Id.* at 78-79 (emphasis added). Despite the complaint and plaintiff's concession in oral argument that "the only reason that this contact occurred was because [Shagren] was acting as judicial officer" and that she was alleging he was "using that power for his own purposes," 1/6/14 VRP at 23-24, the *Kelley* decision concluded the complaint's "allegation that Skagren *used* his GAL position as his opportunity to commit

the alleged torts against Kelley does not mean that he was acting within his statutory GAL functions." 319 P.3d at 79 (emphasis in original).

In holding that absolute quasi-judicial immunity will be overcome even when a judicial function is being performed at the time of the alleged improper conduct, the decision is in conflict with decisions of this Court and the Court of Appeals and long-settled public policy. *See discussion infra* at 10-14. Because this published decision dramatically transforms quasi-judicial immunity into a "qualified" rather than "absolute" immunity, it is an issue of substantial public interest. Likewise, the conversion of the CR 12(b)(6) motion into one under CR 56 on the ground judicial notice is taken of court records, conflicts with well settled decisions of this Court and the Court of Appeals. Pierce County therefore petitions for discretionary review to this Court. *See* RAP 13.4(b)(1)-(b)(2) & (b)(4).

E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

1. Where it is Claimed That Misconduct Occurred While a Quasi-Judicial Function Was Being Performed, an Official's Absolute Immunity Cannot Be Defeated by the Type of Tort Alleged

It is well settled that "guardians ad litem in guardianship proceedings ... act as an arm of the court, and are therefore entitled to quasi-judicial immunity from civil liability." *Barr v. Day*, 124 Wn.2d 318, 332, 879 P.2d 912 (1994). *See, e.g., also West v. Osborne*, 108 Wn.App. 764, 772-74, 34 P.3d 816 (2001) (absolute immunity barred suit against GAL).

Indeed, such immunity is especially necessary "in custody cases" because:

> A guardian ad litem must ... be able to function without the worry of possible later harassment and intimidation from dissatisfied parents. Consequently, a grant of absolute immunity would be appropriate. A failure to grant immunity would hamper the duties of a guardian ad litem in his role as advocate for the child in judicial proceedings.

Fleming v. Asbill, 42 F.3d 886, 889 (4th Cir. 1994) (*quoting Kurzawa v. Mueller*, 732 F.2d 1456, 1458 (6th Cir. 1984)). *See also Tindell v. Rogosheske*, 428 N.W.2d 386 (Minn. 1988) (a "guardian must be free, in furtherance of the goal for which the appointment was made, to engage in a vigorous and autonomous representation of the child" so "[i]mmunity is necessary to avoid harassment from disgruntled parents who may take issue with any or all of the guardian's actions"). A GAL's ability and willingness to make a vital report "to the court [on] Plaintiff's relationship with her son," as the complaint here affirmatively states, *see* CP 8, would be hampered and his or her role as a vigorous advocate for the child inhibited if "the specter of litigation" could so easily be raised to intimidate the GAL when a dissatisfied parent files a vague and evolving complaint that sexual harassment occurred during a GAL's court-ordered investigation. Indeed, the vital importance of immunity is reflected by the fact that it "is not just immunity from liability, but immunity from suit." *See Becker v.*

Washington State University, 165 Wn.App. 235, 254, 266 P.3d 893 (2011) (emphasis added).

Quasi-judicial immunity is not limited by the fact a judicial official's function may be performed out of court. Hence, in *Reddy v. Karr*, 102 Wn.App. 742, 750-51, 9 P.3d 927 (2001), the Court upheld "quasi-judicial immunity for family court investigators performing court-ordered parenting evaluations" because they "are appointed by and serve at the pleasure of the court," RCW 26.12.050(3), and noted that while "performing court-ordered functions, [they] act as an arm of the court" because "Judges cannot personally perform these independent investigations." Similarly, though it there found court officials were not immune for "supervisory responsibilities," this Court in *Taggart v. State*, 118 Wn. 2d 195, 213, 822 P.2d 243 (1992), held that out of court judicial functions of court officials such as "enforcing the conditions of parole" were "protected by quasi-judicial immunity." In so doing, this Court noted with approval a decision where a decision found quasi-judicial immunity for conduct outside a courtroom; *i.e.*, allowing "a probationer to leave an interview knowing he was carrying a rifle" that he then used to shoot a plaintiff" since "the interview was part of the officer's investigations in preparing a presentence report" which was "a function integral to the judicial process

and was acting as an arm of the court." *Id.* at 211 (*citing Hulsman v. Hemmeter Dev. Corp.*, 65 Haw. 58, 65, 647 P.2d 713 (1982)).

Contrary to the published decision in *Kelley*, a judicial officer's immunity also does not depend on the category of tort that a complaint alleges rather than on whether the official is performing a function of the Court at the time the alleged tort supposedly is committed – regardless of the tort alleged. Indeed, the well settled and reasoned law is that "the advancement of broader public policies sometimes requires that concededly tortious conduct, no matter how reprehensible, go unremedied, at least by means of a civil action for damages." *Demery v. Kupperman*, 735 F.2d 1139, 1144 (9th Cir.), *cert. denied*, 479 U.S. 1127 (1984) (emphasis added). *See also Lallas v. Skagit County*, 167 Wn.2d 861, 865, 225 P.3d 910 (2009) ("Absolute immunity prevents recovery even for malicious or corrupt actions") (emphasis added); *Mireles v. WACO*, 502 U.S. 9, 10 (1991) ("judicial immunity is not overcome by allegations of bad faith or malice, the existence of which ordinarily cannot be resolved without engaging in discovery and eventual trial") (emphasis added). For example, in *West v. Osborne*, the Court of Appeals found a GAL immune even though she allegedly "used her ... influence on the Pierce County Sheriff's Dept. to intimidate, threaten, and influence her charge" as well as "threaten[] the mother." 108 Wn.App. at 767. Despite these allegations of clearly non-

judicial acts, the Court affirmed that the GAL and her employer were absolutely immune because – like here – the alleged misconduct occurred while the GAL "was acting as an arm of the court at all times." 108 Wn. App. at 767, 774.[2]

If quasi-judicial immunity could be overcome by merely alleging a specific category of reprehensible tort, the public policy behind absolute immunity – *i.e.*, to allow court personnel to act without fear of intimidation by dissatisfied litigants – would easily and regularly be nullified. Hence, if a judge oversees a jury's view of a scene and is the last one out of a room behind a party, if that party after an unfavorable ruling then alleges the judge supposedly "touched" the party "inappropriately" for the moment they were alone in the room – as plaintiff's claims have evolved to here – the judge would be required to endure the time, cost, inconvenience, distraction from official duties, and potential intimidation by civil litigation even though the alleged tort undeniably occurred during the performance of a judicial function. "Absolute immunity" will have become "qualified immunity" and be conditioned on the nature of the tort a plain-

[2] The County's Appellate Briefing and oral argument repeatedly noted that *West* addressed tortuous conduct occurring outside the duties of a GAL's proper function (*i.e.*, supposedly intimidating and threatening her charge and his mother), yet still found the guardian and her employer absolutely immune because the alleged tortuous acts occurred while she was performing her GAL function. *See* AB 9, 11; Reply Br. 23-24; 1/6/14 VRP 8-11. The opinion in *Kelley*, however, does not discuss these noted allegations in *West* of non-judicial conduct outside the GAL's function and states instead that *West* is "unlike Kelley's case because Kelley alleges that Skagren committed acts outside of his GAL function." *See* 319 P.3d at 79.

tiff alleges rather than the nature of the "function" being performed by the judicial official at the time of an alleged tort. Whether it will even be just a "defense" will depend on the tort a plaintiff chooses to allege. Absolute quasi-judicial immunity, however, cannot be so easily overcome.

Until *Kelley*, our state has never held that merely accusing a judicial or quasi-judicial official of a particularly offensive tort takes an official categorically "outside the function" of the office and strips the Court's surrogate of the absolute immunity the judicial function requires so as to ensure unintimidated and impartial justice. Instead: "Absolute immunity protects an official from suit for any act done in the course of performing his or her duties, and serves as a shield from liability even where willful misconduct is alleged." *Musso-Escude v. Edwards*, 101 Wn.App. 560, 568, 4 P.3d 151 (2000). For good public policy reasons, until now, the test of this Court and the Court of Appeals for quasi-judicial immunity has exclusively relied on "the function being performed" within a judicial official's jurisdiction at the time of the alleged tort and thereby protected such officials from allegations of misconduct supposedly occurring while the official was "acting as an 'arm of the court' and performing court ordered functions." *Lallas, supra.; Regan v. McLachlan, supra.* (emphasis added). *See also Babcock v. State*, 116 Wn.2d 596, 623, 809 P.2d 143 (1991) (if an official is "acting pursuant to court order, then absolute quasi-judicial im-

munity is necessary") (J. Anderson, concurring); *Ward v. San Diego County Dep't of Soc. Sevs*, 691 F.Supp. 238, 240 (S.D.Cal. 1988) (GAL immune while "acting as an extension of the court by performing the quasi-judicial functions of investigating the facts"); *Smith v. DSHS*, 2010 WL 4483531, *2 (W.D. Wash. 2010) (same).

As a matter of law, "[t]he purpose of this immunity is not to protect judges as individuals, but to ensure that [judicial officials] can administer justice without fear of personal consequences." *See Taggart*, 118 Wn.2d at 203. Though parents being evaluated can seek to have a GAL whom they allege sexually harassed them disciplined by the court, fired by the County employer, or criminally prosecuted by police – all of which the record shows plaintiff sought here, CP 27 – they cannot sue the GAL and the County employer and in so doing undermine the public's overarching and well established need for absolute quasi-judicial immunity. *See, e.g., Creelman v. Svenning*, 67 Wn.2d 882, 885, 410 P.2d 606 (1966) (quasi-judicial immunity "requires immunity for both the state and the county for acts of judicial and quasi-judicial officers in the performance of the duties which rest upon them; otherwise, the objectives sought by immunity to individual officers would be seriously impaired or destroyed. If the [official] must weigh the possibilities of precipitating tort litigation involving the county and the state against his action in any ... case, his freedom and

independence in proceeding ... will be at an end"); *Lutheran Day Care v. Snohomish County*, 119 Wn.2d 91, 101 (1992) (rule of vicarious quasi-judicial immunity holds county "which employs an officer also enjoys the quasi-judicial immunity of that officer for the acts of that officer"); *Reddy*, 102 Wn.App. at 931-32 (GAL's immunity required dismissal of his County employer); *Tanner v. City of Federal Way*, 100 Wn.App. 1, 4-6 (2000) ("City shares Wohl's absolute immunity from Tanner's state tort claims").

Because the decision in *Kelley* conflicts with fundamental legal principles that are established in decisions of this Court and the Court of Appeals, as well as conflicts with well settled public policy that protects the independence of our judicial system, it presents an issue of substantial public interest. Accordingly, discretionary review by this Court of the issue of absolute quasi-judicial immunity is appropriate under RAP 13.4(b)(1)-(b)(2) & (b)(4).

2. A Movant's Reliance on a Court's Preexisting Record Does Not Convert a CR 12(b)(6) Motion to Dismiss Into a CR 56 Motion for Summary Judgment

The Court of appeals also converted the County's CR 12(b)(6) motion to dismiss for failure to state a claim into a motion for summary judgment under CR 56. It did so because it concluded: "the County submitted additional materials to the superior court in its motion to dismiss and the court considered the whole record, including Kelley's additional

responsive materials ...." *See Kelley v. Pierce County,* __ Wn.App. __, 319 P.3d 74, 77 (2014). This too was contrary to prior Supreme Court and Court of Appeals decisions.

CR 12(b) provides in pertinent part as to this issue:

> If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by rule 56.

As to whether this applies to plaintiff's declarations opposing CR 12(b)(6) dismissal – which the County moved to strike, *see* CP 94-95 – is answered in the negative by the fact our courts expressly allow plaintiff to present even "hypothetical facts outside the record." *FutureSelect Portfolio Management, Inc. v. Tremont Group Holdings, Inc.,* 175 Wn.App. 840, 865, 309 P.3d 555 (2013). The only limit, other than CR 11, *see Havsy v. Flynn*, 88 Wn.App. 514, 520, 945 P.2d 221 (1997) (complaint must "allege" facts supporting claim "without violating CR 11), is that hypothetical facts must be those "which plaintiff could prove, consistent with the complaint, [that] would entitle the plaintiff to relief on the claim." *See e.g. McCurry v. Chevy Chase Bank*, 169 Wn.2d 96, 863, 233 P.3d 861 (2010) (*quoting Halvorson v. Dahl*, 89 Wn.2d 673, 674, 574 P.2d 1190 (1978).

See also Stangland v. Brock, 109 Wn.2d 675, 676, 747 P.2d 464 (1987) (a hypothetical "set of facts" must be "consistent with the complaint"). Since hypothetical facts "outside the record" which a plaintiff "could" prove are properly within CR 12(b)(6), the submission of actual supposed "proof" should not be the type of matter "outside the pleading" that can convert such a motion into one under CR 56. Otherwise every defendants' CR 12(b)(6) motion could be unilaterally converted at the whim of every plaintiff – despite objections such as the County made here. *See* CP 94-95. As to the County's submissions, its motion did request that the trial court – in addition to the face of the complaint – take judicial notice of the underlying Superior Court dependency proceeding specifically described in the complaint and certified copies of District Court records from plaintiff's previous, unsuccessful anti-harassment matter against the GAL. *See generally* CP 13-23, CP 94-107. As to the latter anti-harassment records, such were relevant only as the additional factual basis under collateral estoppel further establishing that Shagren was immune because he "was working as a GAL at times of these events." *See* CP 29, 150. *See also supra* discussion at 5 n. 1. In that the *Kelley* decision held "collateral estoppel issues are not properly before this court and we consider it no further," 319 P.3d at 76 n.3, those records would not be a basis for converting

the matter from a CR 12(b)(6) because they were not considered by the Court of Appeals.

In any case, even had the Court of Appeals considered both the certified copies of the harassment proceeding and the records of the dependency proceeding specifically described in the complaint, they still would have been properly considered under CR 12(b)(6) as a matter of law. Under CR 12(b)(6), this Court and the Court of Appeals have held that a trial court may properly consider not only the complaint but also take "judicial notice of matters of public record." *Berge v. Gorton*, 88 Wn.2d 756, 763, 567 P.2d 187 (1977) (examining party's oral argument in a separate appeal); *Rodriguez v. Loudeye Corp.*, 144 Wn. App. 709, 727, 189 P.3d 168 (2008) (taking judicial notice of prior "SEC filings"); *Yurtis v. Phipps*, 143 Wn.App. 680, 689, 181 P.3d 849 (2008) (granting CR 12(b)(6) motion to dismiss based on prior court records). *See also* ER 201(f) ("Judicial notice may be taken at any stage") (emphasis added); *Iacaponi v. New Amsterdam Casualty Co.*, 379 F.2d 311 (3d Cir. 1967), *cert. denied*, 389 U.S. 1059 (1968) (trial court "took judicial notice of the state proceedings" and held it "shows that the Court considered these allegations and the evidence in support of them thoroughly and found that there was ... no evidence" of the claim).

Further, specifically as to records of the dependency proceeding that was described in the complaint, *see* CP 8, it is also well settled that "[d]ocuments whose contents are alleged in a complaint but which are not physically attached to the pleading may also be considered in ruling on a CR 12(b)(6) motion to dismiss." *See Rodriguez*, 144 Wn.App. at 725-26. *See also Tellabs, Inc. v. Makor Issues & Rights, Ltd* 551 U.S. 308, 322 (2007) ("[C]ourts must consider the complaint in its entirety, as well as other sources courts ordinarily examine when ruling on Rule 12(b)(6) motions to dismiss, in particular, documents incorporated into the complaint by reference, and matters of which a court may take judicial notice"). Hence, both documents referred to in a complaint and materials of which a Court takes judicial notice, are not "outside the pleadings and [are] properly considered" under CR 12(b)(6)). *See Rodriguez*, 144 Wn.App. at 725-26. Accordingly, their consideration should not convert a CR 12 motion into a CR 56 motion. *See Haberman v. Washington Public Power Supply System*, 109 Wn. 2d 107, 121, 744 P. 2d 1032 (1987) (though "court considered matters extraneous to the complaints, it ruled as a matter of law that plaintiffs and intervenors had not stated a claim and did not make any determination of facts in dispute" so "standard of review remains that required by CR 12(b)(6)"); *Ortblad v. State*, 85 Wn.2d 109, 111, 530 P.2d 635 (1975) (CR 12(b)(6) motion not converted since "basic operative facts

are undisputed and the core issue is one of law"); *Judy v. Hanford Environmental Health Foundation*, 106 Wn.App. 26, 34, 22 P.3d 810 (2001) (same).

Discretionary review of the decision in *Kelley* to convert on appeal the County's CR 12(b)(6) motion into a motion for summary judgment under CR 56 also is appropriate under RAP 13.4(b)(1)-(b)(2) because it is in conflict with decisions of both this Court and the Court of Appeals.

F. CONCLUSION

For the above reasons, Pierce County respectfully requests the grant of discretionary review under RAP 13.4(b)(1), (b)(2) and (b)(4).

Respectfully submitted this 24th day of March, 2014.

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing PETITION FOR REVIEW was delivered this 24th day of March, 2014, by electronic mail and to ABC-Legal Messengers, Inc., with appropriate instruction to forward the same to the following:

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

JOYCE KELLEY, individually, Respondent, v. PIERCE COUNTY, a county corporation and MARK SKAGREN and "JANE DOE" SKAGREN, and the marital community composed thereof, Appellants.	No. 43983-2-II (consolidated with No. 43986-7-II) PART PUBLISHED OPINION

JOHANSON, A.C.J. — On discretionary review, we are asked whether quasi-judicial immunity should apply to Mark Skagren,[1] a guardian ad litem (GAL) appointed in a parental termination action who is alleged to have "used his authority, tasks, tools and premises of his job and assignment to stalk, prey, assault, batter and sexually harass" Joyce Kelley. Clerk's Papers (CP) at 2. Pierce County (County) and Skagren argue that the superior court should have applied quasi-judicial immunity and dismissed Kelley's claims because (1) Washington courts have applied quasi-judicial immunity to GALs in the past and (2) the face of Kelley's complaint establishes that quasi-judicial immunity applies here. In the published portion of our opinion, we

[1] The clerk's papers contain both "Skagren" and "Shagren" as spellings. "Skagren" is the spelling used in the superior court caption below and the court caption on appeal.

hold that Skagren is not entitled to quasi-judicial immunity when acting outside of his statutory GAL functions and under the facts alleged in Kelley's complaint and contained in her declaration; accordingly, the superior court was correct in not dismissing her claims. We affirm.

In the unpublished portion of our opinion, we reject Kelley's argument that we should strike the County's appellate brief because it does not adequately assign error. However, we order $500 in sanctions against the County for including extensive argument in its opening brief on collateral estoppel even though we specifically denied discretionary review of that issue and without even acknowledging our denial of discretionary review.

FACTS

In June 2011, the superior court assigned Skagren as GAL to perform duties under RCW 13.34.100 in the context of a parental termination action. In December, Kelley petitioned the district court for a protection order to protect herself and her son from Skagren, claiming that he had unlawfully harassed her. She alleged that Skagren preyed on her as a vulnerable woman, continuously called and texted her, including when he was under the influence of alcohol; stopped by her job even when she was not there; stopped by her home one night near midnight; and was not performing his GAL duties. She feared that Skagren would retaliate against her and her son in her termination case.

After a hearing, the district court denied her request and dismissed her petition. The district court noted that "[t]he work of Mr. Skagren at the time as a [GAL] permits, in fact, requires a guardian to make certain observations and investigations, and it appears that's what was going on. So this matter is dismissed." CP at 150.

About six months later, Kelley filed a complaint for damages against the County, Skagren, and "Jane Doe" Skagren, alleging that Skagren, as her court-appointed GAL, "used his

authority, tasks, tools and premises of his job and assignment to stalk, prey, assault, batter and sexually harass" her. CP at 2. Kelley alleged causes of action (1) under the Washington Law Against Discrimination (WLAD), chapter 49.60 RCW, for sexual discrimination and/or harassment, gender discrimination, hostile environment, disparate treatment, assault and battery, and unlawful retaliation; (2) for negligent hiring, training, supervision, and retention; (3) for intentional infliction of emotional distress/outrage; and (4) for families with children discrimination.

In lieu of an answer, the County moved to dismiss under CR 12(b)(6), alleging that Kelley's complaint failed to state a claim under the WLAD and that it was barred in its entirety by immunity and collateral estoppel. As part of the motion, the County also submitted Kelley's petition for an order of protection from the district court and the district court's order denying her a protection order. The County argued that (1) Skagren was acting within his GAL duties and was entitled to the protection of quasi-judicial immunity, and (2) collateral estoppel applied because the district court denied Kelley's protection order petition after finding that she had failed to show "actionable activity" because Skagren "was working as a GAL at times of these events." CP at 21.

Kelley moved for a continuance under CR 56(f) in order to conduct discovery and appropriately respond to the County's motion, arguing that the County had essentially moved for summary judgment when it submitted materials outside the pleadings in support of its motion. Kelley argued that quasi-judicial immunity did not apply to sexual harassment claims, that Skagren was not engaged in a judicial function when he sexually harassed her, and that collateral estoppel did not apply because the protection order proceeding involved an entirely different issue and was not a final judgment on the merits.

In her responsive declaration, Kelley made allegations similar to those that she had in the protection order matter. Kelley again explained that Skagren had continuously called and texted her, often after midnight, including when he was under the influence of alcohol; sent picture messages of himself holding alcoholic beverages and asking if he could buy her a drink; and stopped by her home and job even when she was not there and, when she was there, he never asked about her son. Moreover, in addition to the allegations Kelley made at the protection order hearing, Kelley also alleged that Skagren talked to her and touched her shoulders, legs, knees, and hair in an inappropriate and sexual manner, constantly pressured her to go on dates with him, offered her money and to help her get her driver's license reinstated, and said that she could "find some way to pay [him] back" in a sexual manner. CP at 50.

The superior court denied the County's motion to dismiss and certified that the case involved controlling questions of law as to which there is substantial ground for a difference of opinion and that immediate appellate review may materially advance the ultimate termination of the litigation. The order noted that the superior court had "reviewed the records and files in this case." CP at 108. Our court commissioner granted discretionary review as to the issue of quasi-judicial immunity and denied discretionary review on the collateral estoppel issue. Regarding collateral estoppel, our commissioner explained, "Unlike the immunity issue, collateral estoppel would confer only a defense against the claim of damages, not immunity from suit. And given the lack of authority to the contrary, the County and Skagren fail to show that the trial court committed obvious or probable error, so discretionary review under RAP 2.3(b)(1) or (2) is not appropriate." CP at 168-69.

ANALYSIS

DENIAL OF MOTION TO DISMISS

The County argues that the superior court erred by denying its motion to dismiss and rejecting its argument that quasi-judicial immunity created an absolute bar to liability here.[2] Specifically, the County argues that (1) Washington courts have applied quasi-judicial immunity to GALs in the past, even when acting outside of the courtroom; (2) the face of Kelley's complaint establishes that quasi-judicial immunity applies; and (3) Kelley's previous protection order litigation establishes that quasi-judicial immunity applies.[3] We hold that Skagren is not entitled to quasi-judicial immunity as a matter of law because if the facts alleged in Kelley's complaint and in her declaration are true, Skagren was not acting in a judicial or quasi-judicial function when he engaged in the complained-of actions. Accordingly, the superior court properly denied the County's motion to dismiss.

A. STANDARD OF REVIEW

We apply the de novo standard of review to a superior court's decisions under CR 12(b)(6).[4] *Burton v. Lehman*, 153 Wn.2d 416, 422, 103 P.3d 1230 (2005). Under 12(b)(6), dismissal is appropriate only if "'it appears beyond doubt that the plaintiff cannot prove any set of facts which would justify recovery.'" *Burton*, 153 Wn.2d at 422 (quoting *Tenore v. AT&T Wireless Servs.*, 136 Wn.2d 322, 330, 962 P.2d 104 (1998)). When a superior court considers

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[2] Skagren and "Jane Doe" Skagren join in the County's appellate opening and reply briefs.

[3] This third argument cites to collateral estoppel law and principles. Under the ruling granting review, collateral estoppel issues are not properly before this court and we consider it no further.

[4] CR 12(b) provides, in part, "that the following defenses may at the option of the pleader be made by motion: . . . (6) failure to state a claim upon which relief can be granted."

matters outside the pleadings, a CR 12(b)(6) motion converts to a motion for summary judgment under CR 56. CR 12; *Sea-Pac Co., Inc. v. United Food & Commercial Workers Local Union 44*, 103 Wn.2d 800, 802, 699 P.2d 217 (1985). In this case, the County submitted additional materials to the superior court in its motion to dismiss and the court considered the whole record, including Kelley's additional responsive materials; therefore, we will treat the motion as one for summary judgment.

When reviewing an order for summary judgment, we engage in the same inquiry as the trial court. *Macias v. Saberhagen Holdings, Inc.*, 175 Wn.2d 402, 407, 282 P.3d 1069 (2012). Summary judgment is appropriate only if the pleadings, affidavits, depositions, and admissions on file demonstrate the absence of any genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. CR 56(c). A material fact is one on which the outcome of the litigation depends in whole or in part. *Anderson v. Dussault*, 177 Wn. App. 79, 88, 310 P.3d 854 (2013). We construe all facts and reasonable inferences in the light most favorable to the nonmoving party, and we review all questions of law de novo. *Berrocal v. Fernandez*, 155 Wn.2d 585, 590, 121 P.3d 82 (2005).

B. QUASI-JUDICIAL IMMUNITY

Judicial immunity does not exist for the benefit of an individual judge but to protect justice. *Lallas v. Skagit County*, 167 Wn.2d 861, 864, 225 P.3d 910 (2009); *Taggart v. State*, 118 Wn.2d 195, 203, 822 P.2d 243 (1992). Therefore, judicial immunity ensures that judges can administer justice without fear of personal consequences. *Lallas*, 167 Wn.2d at 864; *Taggart*, 118 Wn.2d at 203. Quasi-judicial immunity "attaches to persons or entities who perform functions that are so comparable to those performed by judges that it is felt they should share the judge's absolute immunity while carrying out those functions." *Lutheran Day Care v.*

Snohomish County, 119 Wn.2d 91, 99, 829 P.2d 746 (1992), *cert. denied*, 506 U.S. 1079 (1993); *Savage v. State*, 127 Wn.2d 434, 441, 899 P.2d 1270 (1995). Therefore, quasi-judicial immunity protects those who perform judicial-like functions to ensure they can also do so without fear of personal consequences. *See Lutheran Day Care*, 119 Wn.2d at 99; *Taggart*, 118 Wn.2d at 203.

"When [quasi-judicial immunity] applies, it is an absolute bar to civil liability and necessarily leaves wronged claimants without a remedy." *West v. Osborne*, 108 Wn. App. 764, 773, 34 P.3d 816 (citing *Lutheran Day Care*, 119 Wn.2d at 99; *Babcock v. State*, 116 Wn.2d 596, 606-08, 809 P.2d 143 (1991)), *review denied*, 145 Wn.2d 1012 (2001). As a result, "caution should accompany any application of absolute immunity." *Lallas*, 167 Wn.2d at 864.

To determine if immunity applies, Washington courts will look to the function the person is performing, rather than to the person who is performing it. *Regan v. McLachlan*, 163 Wn. App. 171, 179, 257 P.3d 1122 (2011) (citing *Lallas*, 167 Wn.2d at 865). This analysis may require a court to examine the functions of the official as set forth in statute. *See West*, 108 Wn. App. at 772-73. Under juvenile dependency and termination statutes, a GAL's function is to represent the child's best interest by investigating the child's situation and reporting to the court. Former RCW 13.34.030(10) (2011); RCW 13.34.105(1). Specifically, RCW 13.34.105(1) provides that the GAL shall

> (a) . . . investigate, collect relevant information about the child's situation, and report to the court factual information regarding the best interests of the child;
> (b) . . . meet with, interview, or observe the child. . . .
> . . . .
> (f) . . . represent and be an advocate for the best interests of the child.

And under RCW 13.34.105(2), a GAL "shall be deemed an officer of the court for the purpose of immunity from civil liability."

Our Supreme Court has applied quasi-judicial immunity to a GAL when the GAL was acting "as an arm of the court." *Barr v. Day*, 124 Wn.2d 318, 332, 879 P.2d 912 (1994). We have also applied quasi-judicial immunity to a GAL who was acting within the scope of his statutory duties. *West*, 108 Wn. App. at 773-74.

In *Barr*, Lewis Barr was severely injured in an on-the-job accident. 124 Wn.2d at 321. He and his wife, Ella Barr, brought a tort action against his employer and, with his GAL's recommendation, the parties settled the suit prior to trial. *Barr*, 124 Wn.2d at 321. Ella Barr later sued the GAL, arguing that he negligently approved the settlement. *Barr*, 124 Wn.2d at 321. The Supreme Court reversed this court, holding that the GAL was protected from liability as a matter of law by quasi-judicial immunity. *Barr*, 124 Wn.2d at 321. Citing a GAL's statutory duties, the Supreme Court explained that it was proper to view GALs solely as surrogates of the court in the approval of settlements when they are acting on behalf of incompetents in civil claims because such duties represent "an arm of the court." *Barr*, 124 Wn.2d at 332.

In *West*, Sharon Carter and William West both sought custody of their son in their dissolution proceeding. 108 Wn. App. at 766. The court-appointed GAL interviewed witnesses, consulted therapists, reviewed records, supervised visitation, testified, and filed reports, ultimately recommending that the child be placed with West. *West*, 108 Wn. App. at 767. During the investigation, the GAL's relationship with Carter was "strained" and the court eventually allowed the GAL to withdraw and restrained Carter and the GAL from contacting each other. *West*, 108 Wn. App. at 767. Carter then sued the GAL, alleging that the GAL had negligently recommended that the child be placed with West; committed perjury, was

incompetent, and failed to perform her duties; and had alienated her son from her. *West*, 108 Wn. App. at 767.

The GAL moved for summary judgment, arguing that she was immune under quasi-judicial immunity. *West*, 108 Wn. App. at 767-68. On appeal, we agreed. *West*, 108 Wn. App. at 766. We determined that the case was "the same as [*Barr*, *Adkins*,[5] and *Reddy*[6]]" in that the GAL was acting as an arm of the court at all times; therefore, she was entitled to quasi-judicial immunity. *West*, 108 Wn. App. at 774.

Under RCW 13.34.105(2), *Barr*, and *West*, a GAL is protected by quasi-judicial immunity as "an arm of the court" when performing his statutory duties. *Barr*, 124 Wn.2d at 332; *West*, 108 Wn. App. at 774. Because immunity exists to protect the functions one is performing, rather than the person who is performing them, when a GAL is not acting within his statutory duties, he is not acting as "an arm of the court" and cannot be entitled to quasi-judicial immunity. *Regan*, 163 Wn. App. at 179.

In order for quasi-judicial immunity to apply to Skagren, he must have been performing the GAL's function to investigate facts and to report facts during the conduct in question. Here, we must construe all facts and reasonable inferences in Kelley's favor as the nonmoving party. *Berrocal*, 155 Wn.2d at 590. Kelley alleged in her complaint and declaration that Skagren stalked, preyed, assaulted, and sexually harassed her. Kelley further alleged in her declaration that Skagren repeatedly came to her home and her place of employment and asked her to go on dates with him without asking about her son; that he offered to give her money and to help her

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[5] *Adkins v. Clark County*, 105 Wn.2d 675, 717 P.2d 275 (1986).

[6] *Reddy v. Karr*, 102 Wn. App. 742, 9 P.3d 927 (2000).

get her driver's license reinstated, saying in a sexual manner that she could "find some way to pay [him] back"; that he would often send her text messages after midnight, including picture messages of himself holding alcoholic beverages and asking if he could buy her a drink; and that he was very "touchy feely" with her and touched her shoulders, legs, knees, and hair in inappropriate ways. CP at 50-51. If these allegations are true, Skagren was not acting within a GAL's function when he engaged in this conduct and, therefore, would not be entitled to immunity.

The County argues that we must apply quasi-judicial immunity under the facts of this case for two reasons. First, the County claims that quasi-judicial immunity is not limited to in-court activities and the *West* court determined that a GAL is acting as an arm of the court "at all times." Br. of Appellant at 11. Although the County is correct that in *West* we determined that the GAL was acting as an arm of the court at all times, we were referring to all times that were relevant in that case. 108 Wn. App. at 774. The phrase "at all times" cannot be taken out of context. We did not hold in *West* that a GAL is always protected or is never acting outside of his GAL duties. Such a result would be absurd.

In *West*, the mother's allegations against the GAL were that the GAL negligently placed the child with his father, that she had committed perjury, that she was incompetent to perform her GAL duties, and that she had alienated her son. 108 Wn. App. at 767. These allegations were aimed at what the GAL did while performing her GAL functions and were not like Kelley's allegations here that Skagren engaged in inappropriate stalking, preying, assault, and sexual misconduct against her outside of his GAL duties. The County also cites to *Reddy v. Karr*, but again, that case was also a lawsuit against a GAL for how the GAL performed her GAL function. 102 Wn. App. 742, 744, 9 P.3d 927 (2000). There was no question that the GAL there was

conducting her investigation and evaluation during the times that the mother relied on in her complaint. *Reddy*, 102 Wn. App. at 745-46. Therefore, her case was properly dismissed at summary judgment. *Reddy*, 102 Wn. App. at 753. But these two cases are simply unlike Kelley's case because Kelley alleges that Skagren committed acts outside of his GAL function.

Second, the County argues that the face of Kelley's complaint admits that quasi-judicial immunity must apply because Kelley alleges that Skagren used his court-ordered function to commit the torts alleged. Although Kelley's complaint alleges that Skagren "used his authority, tasks, tools and premises of his job and assignment to stalk, prey, assault, batter and sexually harass Ms. Kelley," Kelley did not allege that Skagren was performing his court-ordered function when he committed the alleged torts. CP at 2. Therefore, Kelley's allegation that Skagren *used* his GAL position as his opportunity to commit the alleged torts against Kelley does not mean that he was acting within his statutory GAL functions when he stalked, preyed, assaulted, and sexually harassed Kelley. Skagren is not entitled to be treated as an "arm of the court" automatically or as a matter of law, even though he may have used his position as a GAL to commit the alleged torts.

Accepting Kelley's allegations as true, we cannot say as a matter of law that Skagren was investigating facts or reporting facts to the court while assaulting and making sexual advances toward Kelley as described in her complaint and declaration. As a result, questions of fact exist as to whether Skagren was acting within his statutory or court-appointed functions when committing the alleged torts, and, therefore, is entitled to quasi-judicial immunity. Accordingly, we affirm the superior court's decision denying the County's motion to dismiss Kelley's case.

A majority of the panel having determined that only the foregoing portion of this opinion will be printed in the Washington Appellate Reports and that the remainder shall be filed for public record in accordance with RCW 2.06.040, it is so ordered.

KELLEY'S OBJECTIONS TO COUNTY'S BRIEF

A. KELLEY'S MOTION TO STRIKE COUNTY'S BRIEF

In her response, Kelley argues that the County's appellate brief fails to comply with RAP 10.3(a)(4) because its assignment of error is insufficient. We disagree with Kelley.

Under RAP 10.3(a)(4), an appellant's brief must contain a "separate concise statement of each error a party contends was made by the trial court, together with the issues pertaining to the assignments of error." The County's assignment of error states, "The trial court erred by denying Pierce County's motions to dismiss and for reconsideration." Br. of Appellant at 1. It then explained that the superior court erred in failing to dismiss on the grounds of quasi-judicial immunity. These statements comply with RAP 10.3(a)(4). It is clear that the County's assignment of error challenges the superior court's order denying the County's motion to dismiss because the court rejected its quasi-judicial immunity argument. The County's assignment of error does not leave room for confusion. We deny Kelley's motion to strike the County's brief and for sanctions on this basis.

B. KELLEY'S MOTION FOR SANCTIONS

Next, Kelley argues in her response that we should sanction the County for its failure to comply with the ruling granting discretionary review that limited our review to only the immunity issue and denied review on the collateral estoppel issue. Additionally, Kelley asks that we award her attorney fees as sanctions for the time it took to unnecessarily respond to the County's collateral estoppel argument.

We agree with Kelley that the ruling is clear that it denied appellate review on the collateral estoppel issue. The ruling states, "[T]here does not appear to be 'substantial ground for a difference of opinion' or that 'immediate review of the order may materially advance the ultimate termination of the litigation.'" CP at 168 (quoting RAP 2.3(b)(4)). The ruling clearly denied discretionary review of the issue. Additionally the ruling states, "Unlike the immunity issue, collateral estoppel would confer only a defense against the claim of damages, not immunity from suit. And given the lack of authority to the contrary, the County and Skagren fail to show that the trial court committed obvious or probable error." CP at 168-69. Review was denied under both RAP 2.3(b)(1) and (2).

In its opening brief, the County provided extensive argument regarding collateral estoppel. Further, it failed to acknowledge that our commissioner had denied discretionary review of the collateral estoppel issue. Only in its reply brief does the County assert that it did not violate the commissioner's ruling because its appellant brief does not actually argue collateral estoppel. The County claims that it is proper for it to argue that the district court's *factual findings* below support its argument that immunity applies to Skagren. It concedes that it would not be proper to argue that a district court's legal ruling precludes her claim as a matter of law under collateral estoppel, but contends that it is appropriate to argue that the district court's factual finding is properly considered in determining whether immunity applies to Skagren. We disagree.

Our commissioner explained that we were not accepting review of collateral estoppel because Kelley's allegations against Skagren in her superior court complaint included more allegations than the ones that she made against him in the district court protective order hearing. Specifically, Kelley did not allege to the district court that Skagren engaged in sexual

misconduct against her, but she did include allegations of sexual comments and assault for sexual purposes as part of her complaint against Skagren at the superior court level. In this way, Kelley presented different factual issues to the superior court that the district court did not consider. Therefore, the district court's finding that Skagren was engaged in his GAL duties during the events complained of did not take into account any sexual misconduct allegations and the County is not allowed to rely on the district court's finding to support its argument that immunity applies here. Additionally, our commissioner ruled that collateral estoppel, even if proved, would only apply as a defense and not as immunity to suit.

Also, the County argues that it did not argue collateral estoppel in its opening brief, but the second section of its opening brief clearly cites to and relies on collateral estoppel law. This argument was improper under our commissioner's ruling that collateral estoppel is not before us for review. Further, even if the County believed that the commissioner's ruling did not preclude its argument, it should have acknowledged in its opening brief that review had been denied on the collateral estoppel issue. We agree with Kelley that it was a waste of time for her to have to respond to the collateral estoppel arguments as well as for us to have to read and consider the portions of the parties' briefs that improperly addressed collateral estoppel.

Under RAP 10.7, we ordinarily impose sanctions on a party or counsel who files a brief that fails to comply with the RAP rules. And RAP 18.9(a) provides that we can order a party who fails to comply with the RAP rules to pay "terms or compensatory damages to any other party who has been harmed" by the failure to comply or to pay sanctions to the court. Compensatory damages can include an award of attorney fees and costs to the opposing party. *Holiday v. City of Moses Lake*, 157 Wn. App. 347, 356, 236 P.3d 981 (2010), *review denied*, 170

Wn.2d 1023 (2011). Because the County failed to comply with RAP 2.3(e) and made improper arguments in its opening brief, we order $500 sanctions against the County payable to Kelley.[7]

Johanson, A.C.J.

JOHANSON, A.C.J.

We concur:

Bjorgen, J.

BJORGEN, J.

Maxa, J.

MAXA, J.

[7] Kelley acknowledged that she could have filed a separate motion to strike the County's improper argument but chose not to do so because she did not want to further engender delay in this case which had already been subject to delay and disruption by this interlocutory appeal. In *Pugel v. Monheimer*, cited by Kelley, Division One of this court awarded an appellant attorney fees under RAP 18.9 after the respondent had attempted to challenge part of the trial court's findings of fact but failed to file his cross appeal on time. 83 Wn. App. 688, 693, 922 P.2d 1377 (1996), *review denied*, 131 Wn.2d 1024 (1997). Instead, he improperly included in his response brief assignments of error and claims for affirmative relief. *Pugel*, 83 Wn. App. at 693. Because the appellant had to respond to those arguments, Division One awarded attorney fees, noting that "[w]hile it might have been more efficient for [appellant] to move to strike the respondent's brief, unquestionably [respondent's] violation of the rules caused more work for [appellant]. Accordingly, an award of attorney fees is appropriate under RAP 18.9." *Pugel*, 83 Wn. App. at 693. Although we do not award attorney fees, Kelley was harmed by having to respond to improper arguments and we order the County to pay sanctions to Kelley.

PIERCE COUNTY PROSECUTOR

March 24, 2014 - 3:19 PM

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