

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

Pierce County's Substitute Appellant's Brief

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I. ASSIGNMENT OF ERROR

A. Assignment of Error

The trial court erred by denying Pierce County's motions to dismiss and for reconsideration.

B. Issue Pertaining to Assignment of Error

Where the face of the complaint and court record demonstrate that plaintiff had been denied an anti-harassment order against a judicial officer after an evidentiary hearing because it found he was "working as a GAL at times of these events," and where plaintiff does not appeal but later sues expressly asserting that the official "used his authority, tasks, tools and premises of his job and assignment to stalk, prey, assault, batter and sexually harass" her, is it error to refuse dismissal under CR 12(b)(6) on the grounds of quasi-judicial immunity?

II. STATEMENT OF THE CASE

Pierce County Superior Court records disclose that on June 13, 2011, defendant Mark Shagren was appointed by the Court as its 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 plaintiff on December 13, 2011, unsuccessfully pursued an anti-

harassment order against him alleging "acts of unlawful harassment" by his supposed inappropriate "calls and texting [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 were he is drinking and take further action" causing further "fear for what he can do to me and my son" and led to her contacting 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 beyond her initial request. 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 Superior Court suit half a year later on June 1, 2012. CP 1. *See also* CP 7.

In this separate action plaintiff sues Pierce County, GAL Shagren, and his wife, alleging they are liable because Shagren was appointed as "GAL for the purposes of reporting to the court plaintiff's relationship with her son" but claims now that he "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 quasi-judicial immunity and collateral estoppel. *See generally* CP 13-23, CP 94-107. The County's motion relied in part on 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 declarations by her adding even more new allegations of the GAL's supposedly "touch[ing]" of her "inappropriately," *see* CP 51, and by her attorney repeating her brief's legal arguments, *see* CP 52-53 -- both of which the County moved to strike. *See* CP 94-95.

On July 20, 2012, the Honorable Judge Garold E. Johnson denied the County's motion to dismiss but certified that the matter involves "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

discretionary review on "the issue of whether quasi-judicial immunity applies to Skagren." CP 172.

III. ARGUMENT

It is undisputed that if the Superior Court erred in denying the County's motion to dismiss on the grounds of immunity or collateral estoppel, plaintiff's suit would be barred as a matter of law. *See City of Aberdeen v. Regan*, 170 Wn.2d 103, 239 P.3d 1102 (2010) (Division Two affirmed for reversing on discretionary review a trial court's failure to dismiss on collateral estoppel grounds); *Byrd v. System Transport, Inc.*, 124 Wn.App. 196, 99 P.3d 394 (2004) (discretionary review granted and trial court reversed on grounds of immunity). Further, as to immunity, it is "an immunity from suit rather than a mere defense to liability ... it is effectively lost if the case is erroneously permitted to go to trial." *See Jones v. State, Dept. of Health*, 170 Wn.2d 338, 242 P.3d 825 (2010) (quoting *Pearson v. Callahan*, 555 U.S. 223, 129 S.Ct. 808, 815, 172 L.Ed.2d 565 (2009) and *Mitchell v. Forsyth*, 472 U.S. 511, 526, 105 S.Ct. 2806, 86 L.Ed.2d 411 (1985)). Because "a defendant is denied the protection from inconvenience and expense intended by immunity if a claim is not dismissed at the earliest possible time," *Strange v. Spokane County*, __ Wn.App. __, 287 P.3d 710, 716 (2012), *see also Feis v. King County Sheriff's Dept.*, 165 Wn.App. 525, 539, 267 P.3d 1022 (2011) ("availability of

immunity must be determined at the earliest possible stage in litigation, its value being entirely frustrated when an officer is erroneously compelled to participate in a full trial"), Pierce County immediately moved under CR 12(b)(6) to dismiss plaintiff's claim. *See* CP 13. As shown below, it was error not to grant the County's motion to dismiss.

A. CR 12(b)(6) Standard

Under CR 12(b)(6), "where it is clear from the complaint that the allegations set forth do not support a claim, dismissal is proper." *Berge v. Gorton*, 88 Wn.2d 756, 759, 567 P.2d 187 (1977). For example, dismissal is appropriate where "plaintiff's allegations show on the face of the complaint an insuperable bar to relief." *Yeakey v. Hearst Communications, Inc.*, 156 Wn.App. 787, 791, 234 P.3d 332 (2010); *West v. Stahley*, 155 Wn.App. 691, 696, 229 P.3d 943 (2010). Typical examples are cases where immunity or collateral estoppel bar suit. *See Yurtis v. Phipps*, 143 Wn.App. 680, 689, 181 P.3d 849 (2008) (affirming grant of "CR 12(b)(6) motion to dismiss on the grounds of res judicata and collateral estoppel"); *Trohimovich v. Department of Labor and Industries*, 73 Wn.App. 314, 317-18, 869 P.2d 95 (1994) (CR 12(b)(6) dismissal on quasi-judicial immunity).

On appeal, "[w]hether dismissal was appropriate under CR 12(b)(6) is a question of law that we review de novo." *San Juan County v.*

No New Gas Tax, 160 Wn.2d 141, 164, 157 P.3d 831 (2007). See also *Regan v. McLachlan*, 163 Wn.App. 171, 177, 257 P.3d 1122 (2011) (de novo review of CR 12(b)(6) motion on grounds of quasi-judicial immunity). In making that analysis the "court is not required to accept the complaint's legal conclusions as true," *Rodriguez v. Loudeye Corp.*, 144 Wn. App. 709, 717-18, 189 P.3d 168 (2008); see also *Haberman v. Washington Public Power Supply System*, 109 Wn.2d 107, 120-21, 744 P.2d 1032 (1987) (same), and will ignore plaintiff's conclusory factual allegations if they "do not reasonably follow from his description of what happened, or if these allegations are contradicted by the description itself." 5 C. Wright & A. Miller, *Federal Practice and Procedure* § 1357, at 597 (1969). Further, the Court will examine not only the complaint but also take "judicial notice of matters of public record." *Berge*, 88 Wn.2d at 763. See also *Rodriguez*, 144 Wn.App. at 725-26 ("[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"); *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"); ER 201(f) ("Judicial notice may be taken at any stage").

Here, the face of the complaint and Court record¹ confirm this action should have been dismissed on the insuperable bar of absolute immunity.

B. Superior Court Erred by Denying Quasi-Judicial Immunity

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). Such immunity is especially necessary "in custody cases" because:

¹ Plaintiff below claimed that taking judicial notice of Court records converted the motion into one for summary judgment and therefore she was entitled to discovery. CP 75. First, as noted above, the Court can properly take judicial notice of prior proceedings under CR 12(b)(6). *See e.g. Berge*, 88 Wn.2d at 763 (examined party's oral argument in another appeal); *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); *Rodriguez*, 144 Wn.App. at 727 (took judicial notice of prior "SEC filings"); *Yurtis*, 143 Wn.App. at 689 (granted "CR 12 (b)(6) motion to dismiss on the grounds of res judicata and collateral estoppel" based on prior court records). Second, quasi-judicial immunity is a question of law and plaintiff nowhere explained how additional discovery would change the legal issues of the complaint's allegations or the significance of the Court's own record. Third, as explained in *Becker v. Washington State University*, 165 Wn.App. 235, 254, 266 P.3d 893 (2011): the "'driving force' behind ... immunity is that 'insubstantial claims' against government officials be resolved prior to discovery" because immunity "is not just immunity from liability, but immunity from suit." (Emphasis added).

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 complaint that sexual harassment occurred during a GAL's court-ordered investigation.

The type of tort a plaintiff alleges does not control a GAL's quasi-judicial immunity because "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 damag-

es." *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"); *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"). For example, this Court in *West v. Osborne*, 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. If quasi-judicial immunity could be overcome by merely alleging a specific category of unacceptable torts, the purpose of absolute immunity to allow court personnel to act without fear of intimidation by dissatisfied litigants would easily and regularly be nullified.

Likewise, quasi-judicial immunity is not limited to an official's in court activities. 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 per-

form these independent investigations." Similarly, though it there found court officials were not immune for "supervisory responsibilities," our Supreme 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, the Supreme Court noted with approval a decision where a Court 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)).

Rather than examining the type of tort alleged or the location where it is claimed to have occurred, the test for quasi-judicial immunity looks exclusively "to the function being performed" at the time of the alleged tort and therefore protects the official from allegations of misconduct occurring while he was "acting as an 'arm of the court' and performing court ordered functions." *Lallas, supra.*; *Regan v. McLachlan, supra.* GALs "act as an arm of the court, and are therefore entitled to quasi-judicial immunity from civil liability," *Barr*, 124 Wn.2d at 332, because

their function of gathering and reporting information is an "integral part of the judicial process." *Kurzawa*, 732 F.2d at 1458. Indeed, a GAL is required by statute, *see e.g.* RCW 11.88.090(5) -- and here the complaint admits the GAL was required by the Court, CP 8 -- to perform duties outside the courtroom upon which plaintiff makes her claims. Hence, again in *West v. Osborne*, this Court dismissed a GAL because absolute immunity barred the parents' suit for allegedly using her "influence on the Pierce County Sheriff's Dept. to intimidate, threaten, and influence her charge" and to "threaten [] the mother," since the GAL "was acting as an arm of the court at all times." 108 Wn.App. at 767, 774 (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 immunity 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).

Dissatisfied parents are protected from the conduct alleged here by their ability to report it to the court, to the GAL's employers, and to police -- as the record shows occurred here, CP 27 -- but they cannot undermine the essential role of a GAL as a child's advocate by bringing suit against

his employer so as to defeat the purposes of 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"). This is so because "[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." *Taggart*, 118 Wn.2d at 203.

1. Face of Complaint Establishes Quasi-Judicial Immunity

Plaintiff's complaint expressly admits GAL Shagran was assigned the court-ordered function of gathering information and "reporting to the

court the Plaintiff's relationship to her" child. CP 8. It then expressly alleges liability exists because the GAL supposedly then "used his authority, tasks, tools and premises of his job and assignment to" commit her newly minted allegations of harassment. *Id.* By expressly alleging the GAL used his court-ordered function to commit a tort, the complaint on its face presents a prima facie statement of quasi-judicial immunity. As a matter of law, the principles of CR 12(b)(6) preclude plaintiff from asserting any new hypothetical that the GAL was not really performing court-ordered functions at the time of the alleged sexual harassment. *See e.g. McCurry v. Chevy Chase Bank*, 169 Wn.2d 96, 863, 233 P.3d 861 (2010) (plaintiff's alleged "set of facts" must be those "which plaintiff could prove, consistent with the complaint, [that] would entitle the plaintiff to relief on the claim") (*quoting Halvorson v. Dahl*, 89 Wn.2d 673, 674, 574 P.2d 1190 (1978) (emphasis added). *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"); *Havsy v. Flynn*, 88 Wn.App. 514, 520, 945 P.2d 221 (1997) (hypotheticals must be "allege[d]" ... without violating CR 11); 5 C. Wright & A. Miller, *Federal Practice and Procedure* § 1357, at 597 (1969) (hypothetical facts will be disregarded when they "do not reasonably follow from his description of what happened, or if these allegations

are contradicted by the description itself"). Under CR 12(b)(6), plaintiff is bound by the allegations of her complaint.

2. Previous Litigation Also Establishes Judicial Immunity

Plaintiff also is bound by the outcome of her previous litigation, *see Yurtis*, 143 Wn.App. at 689 (granting "CR 12(b)(6) motion to dismiss on the grounds of res judicata and collateral estoppel"), and such "is not a mere matter of practice or procedure inherited from a more technical time than ours" but "a rule of fundamental and substantial justice, 'of public policy and of private peace,' which should be cordially regarded and enforced by the courts" *Federated Depart. Stores v. Moitie*, 452 U.S. 394, 401 (1981) (*quoting Hart Steel Co. v. Railroad Supply Co.*, 244 U.S. 294, 299 (1917)).

Before plaintiff filed the instant suit she sought an anti-harassment order claiming "harassment" by Shagren during the time he served as the GAL, *see* CP 25-27, but relief was denied because after an evidentiary hearing the Court expressly found: "Resp. was working as a GAL at times of these events." *See* CP 29. *See also* CP 148-159. Because "collateral estoppel ... prevents a second litigation of issues between the parties, even though a different claim or cause of action is asserted," *Rains v. State*, 100 Wn.2d 660, 665, 674 P.2d 165 (1983) (*quoting Seattle-First Nat'l Bank v. Kawachi*, 91 Wn.2d 223, 226, 588 P.2d 725 (1978)); *Yakima County v.*

Yakima County Law Enforcement Officers Guild, 157 Wn.App. 304, 330-331 (2010) (same), plaintiff is barred from attempting to avoid immunity by contradicting that holding and now disputing whether Shagren really was "working as a GAL at times of these events" as the Court previously held against her.²

Plaintiff below hypothesized that for unexplained reasons it is somehow "likely, that only a small portion of Plaintiff's allegations were before the district court when she unsuccessfully sought its protection." CP 45. However, the Court can take judicial notice that Shagren was appointed GAL on June 13, 2011, *see* Cy Supp. CP (6/13/11 Order in P.C. Sup.Ct. Cause #09-7-01643-1), was replaced as GAL on December 20, 2011, *id.* (12/20/11 Order Substituting GAL Order in P.C. Sup.Ct. Cause #09-7-01643-1), and the evidentiary hearing and order refusing a restrain-

² Collateral estoppel exists where: (1) the issue decided in the prior adjudication is identical with the one presented in the current action, (2) there was a final judgment on the merits, (3) the party against whom the plea is asserted was a party or a party in privity with a party to the prior adjudication, and (4) the application of collateral estoppel will not work an injustice on the party against whom the doctrine is applied. *Rains*, 100 Wn. 2d at 665. Here: (1) the determination Shagren was "working as a GAL at times of these events" addresses the same factual issue upon which quasi-judicial immunity turns here; (2) there was a final decision on the merits, *see e.g. Hough v. Stockbridge*, 150 Wn.2d 234, 76 P.3d 216 (2003) (affirming denial of an extended anti-harassment protection order); *State v. Noah*, 103 Wn.App. 29, 9 P.3d 858 (2000) ("We affirm the anti-harassment order"); (3) plaintiff had an opportunity to be heard at a hearing to support her allegations and to respond to the court's concerns and did so; CP 149-150; and (4) there is no injustice in precluding plaintiff from a second bite at the apple. As a matter of law the facts established in the anti-harassment proceeding cannot be challenged in a subsequent proceeding "because those facts have already been established in a prior judicial proceeding." *State v. Green*, 157 Wn.App. 833, 845-46 (2010) (noting "an anti-harassment order is issued only after a fact-finding hearing where a court finds unlawful harassment by a preponderance of the evidence") (*citing* RCW 10.14.080(3); *Noah*, 103 Wn.App.at 38).

ing order for "harassment" because he "was working as a GAL at times of these events" occurred thereafter on December 27, 2011. See CP 29, 148-150 (emphasis added). Hence, any alleged act of "harassment" by the GAL would have occurred by the time of the anti-harassment hearing and there so there is no basis for a contradictory hypothecation that plaintiff somehow held back some unidentified fact. See *McCurry v. Chevy Chase Bank*, FSB, 169 Wn.2d 96, 101 (2010) (an alleged "set of facts" opposing a CR 12(b)(6) motion must be those "which plaintiff could prove"); *Berge*, 88 Wn.2d at 763 (dismissal affirmed where complaint contained only "a conclusory allegation" but "no allegation which approaches the statement of a claim"); *Havsy v. Flynn*, 88 Wn.App. at 520 (in a CR 12(b)(6) motion a fact must be "allege[d] ... without violating CR 11 ..."); *Shutt v. Moore*, 26 Wn.App. 450, 453, 613 P.2d 1188 (1980) (under CR 12(b)(6) "[g]eneral conclusory allegations ... are insufficient").

Further, she is not allowed to provide "only a small portion of Plaintiff's allegations" about a matter in one litigation and then surprise her opponent with new allegations about the same matter in a second litigation. Plaintiff's assertion here of new, more offensive allegations is not a basis for avoiding collateral estoppel. See e.g. *Clark v. Yosemite Community College Dist.*, 785 F.2d 781, 784 (9th Cir.) (res judicata bars the maintenance of a second action where that suit involves the same wrong

by the defendant and the same injury to the plaintiff as that adjudicated in an earlier action even if plaintiff "pleads different theories of recovery, seeks different forms of relief and/or adds new facts supporting recovery." *Id.* (quoting *Eichman v. Fotomat Corp.*, 147 Cal.App. 1170, 1174-75 (1983)) (emphasis added).

IV. CONCLUSION

Though plaintiff's evolving allegations of GAL misconduct could be -- and here actually were -- the basis for her seeking to have the GAL disciplined, fired, or criminally prosecuted, they are not the basis for damages from his County employer because the face of her complaint, and her own court records, bind her to the holding that the GAL was acting "pursuant to court order" at the time of the alleged misconduct.

Accordingly, Pierce County respectfully requests this Court reverse the trial court and order that plaintiff's claim against it be dismissed.

DATED this 8th day of April, 2013.

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Pierce County's Substitute Appellant's Brief was delivered this 8th day of April, 2013, 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, DIVISION TWO
OF THE STATE OF WASHINGTON

JOYCE KELLEY, Individually,

Respondent,

vs.

PIERCE COUNTY, a county corporation and
MARK SKAGREN and "JANE DOE"
SKAGREN, and the Marital Community
Composed thereof,

Petitioners.

NO. 439832

DECLARATION OF SERVICE

The undersigned declares that I am over the age of 18 years, not a party to this action,
and competent to be a witness herein. I caused this Declaration and the following documents:

- 1. Motion for Leave to Substitute Corrected Brief Pursuant to RAP 17.1(a);
- 2. Declaration of Daniel R. Hamilton in Support of Motion for Leave to Substi-

tute Corrected Brief Pursuant to RAP 17.1(a);

- a. Pierce County's Corrected Appellant's Brief

to be served on the following parties and in the manner indicated below:

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- by Federal Express/Express Mail
- by Personal Delivery

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

DATED this 8th day of April, 2013.

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PIERCE COUNTY PROSECUTOR

April 08, 2013 - 3:42 PM

Transmittal Letter

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Comments:

Attachment to Declaration of Daniel R. Hamilton [--Non Valid Argument--] Pierce County's Substitute Appellant's Brief

Sender Name: Christina M Smith - Email: csmith1@co.pierce.wa.us

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