NO. 32769-8-III

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION III

WASHINGTON COUNTIES RISK POOL, a public entity,

RESPONDENT,

vs.

TAMARA MARIE CORTER, a married individual, STEVE GROSECLOSE, an individual,

APPELLANTS

and

DOUGLAS COUNTY, a municipal corporation,

RESPONDENT.

APPEAL FROM DOUGLAS COUNTY SUPERIOR COURT
CAUSE NO. 14-2-00039-9

OPENING BRIEF OF APPELLANT

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I. INTRODUCTION

RCW 4.96.041(4) provides that when an employee of a local governmental entity has been represented in a civil rights action at the local government's expense and the court hearing the action has found that the employee was acting within the scope of his or her official duties, the local government is obligated to pay the judgment. In addition to RCW 4.96.041, both Douglas County Code ("DCC") 2.90 and the Joint Self-Insurance Liability Policy ("JSILP") insurance policy also require indemnification when an officer is found to have acted, or in good faith purported to have acted, within the scope of his official duties.

In this case, a jury found that Steve Groseclose, an employee of Douglas County, acted under color of law, and a judgment was entered against him under 42 U.S.C. § 1981. For an officer to be found to be acting under color of law, his acts must be performed while acting or purporting to act in the performance of his official duties. *McDade v. West*, 223 F.3d 1135, 1139-40 (9th Cir.2000) (citing *Van Ort v. Estate of Stanewich*, 92 F.3d 831, 838 (9th Cir. 1996)). As a result of Groseclose being found to have acted under color of law, Douglas County and Washington Counties Risk Pool ("WCRP") are obligated to indemnify him under RCW 4.96.041, DCC 2.90, and the JSILP insurance policy. The trial court erred when it found otherwise.

II. ASSIGNMENTS OF ERROR

1. The Superior Court erred by denying Appellants' Motion for Summary Judgment.

2. The Superior Court erred by granting Respondent's & Douglas County's Motions for Summary Judgment.

III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Did Douglas County authorize the payment of expenses for the defense of Groseclose given that Douglas County readily admits it made such payments?

2. Is the phrase "scope of official duties" as used in RCW 4.96.041 more consistent with "color of law" than with "scope of employment"?

3. Was Groseclose acting within the scope of his official duties, where he was found to be acting under color of law?

4. Should the JSILP policy be interpreted consistent with RCW 4.96.041?

5. Has Douglas County waived all defenses to indemnification, as it accepted the defense of Groseclose?

6. Is Groseclose bound to the Interlocal Agreement and WCRP bylaws to which he is neither a member nor a party?

IV. STATEMENT OF THE CASE

A. Summary of the Underlying Case.

The underlying case involves Groseclose's improper use of his position as a detective with the Douglas County Sheriff's Office to access police reports regarding his ex-wife Tamara Corter containing sensitive, private health information. CP 13-16, 26-27. Within a few months of accessing this report and learning Corter's private health information, Groseclose used this privileged information to file a petition for sole guardianship of their child. CP 15. Thereafter, Corter filed a § 1983[1] claim against Groseclose and Douglas County for violation of her privacy rights.

B. Douglas County's Insurance Coverage through WCRP.

Douglas County is a member of the WCRP, a multi-county organization designed for the purpose of self-insurance. CP 188. The WCRP is governed by an Interlocal Agreement, signed by all member counties, as well as a set of bylaws.[2] CP 203-25. The WCRP provides liability insurance to its member counties under a policy known as JSILP. CP 227-38. The JSILP policy provides:

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[1] 42 U.S.C. § 1983.

[2] The Interlocal Agreement defines its membership as follows:

> THIS AGREEMENT is made and entered into by and among the several countries organized and existing under the Constitution and laws as political subdivisions of the State of Washington which are parties signatory to this Agreement (Collectively "Member Counties", and individually "Member County").

CP 203.

2. PERSONS AND ORGANIZATIONS INSURED: This policy shall insure:

...

B. Subject to and conditioned upon authorization by the member county, as provided in RCW 4.96.041 and the member county's implementing ordinance or resolution, all past and present employees, elected and appointed officials, and volunteers, whether or not compensated, while acting or in good faith purporting to act within the scope of their official duties for the member county or on its behalf, including, but not limited to, all commissions, agencies, districts, authorities, boards (including the governing board) or similar entities which operate under the member county's supervision or control.

CP 230. If coverage is denied, the appeal process is governed not by the JSILP policy, but by WCRP's bylaws. CP 221-23. The bylaws provide that the aggrieved party must submit its appeal to the WCRP's executive director within 30 days of the initial decision. CP 221. The only provision on review of decisions actually contained in the policy states,

> No action shall lie against the Pool unless, as a condition precedent thereto, there shall have been full compliance with all of the terms of this policy, nor until the amount of the **insured's** obligation to pay shall have been finally determined either by judgment against the **insured** after actual trial or by written agreement of the **insured**, the claimant and the Pool.

CP 236 (emphasis in original). However, nowhere in the JSILP policy does it state that WCRP's bylaws were meant to be incorporated into the terms and conditions of the policy.

C. Douglas County Paid Expenses for the Defense of Groseclose.

Douglas County Code 2.90.030 states, in relevant part:

(A) Douglas County shall grant the request to defend a claim and pay the necessary expenses of defense upon a determination that the claim is based upon an alleged act or omission of the officer, employee or volunteer which was, or in good faith purported to be, within the scope of his or her official duties. Such determination shall be made as follows:

1. By a majority vote of a quorum of the board of county commissioners consisting of members not named as a party to such claim; or

2. If a quorum of unnamed members of the board is not possible, then by a written opinion of legal counsel, other than the prosecuting attorney, as selected by the board. Such legal counsel shall not be an attorney or member of a law firm who has performed services within the past three years for Douglas County.

(B) Douglas County shall not defend or pay for the expense of defending a claim against an officer, employee or volunteer based which alleges unlawfully obtaining personal benefits while acting in his or her official capacity.

(C) Douglas County shall not pay any expenses of defending a claim which are paid or incurred by an officer, employee or volunteer prior to receipt of a proper written request by the board of county commissioners. Douglas County shall not pay any expenses of defending a claim in advance of services being rendered or costs being incurred.

Douglas County Code does not allow Douglas County to authorize the payment of expenses for a defense unless the claim against the officer is that

he unlawfully obtained personal benefits while acting in his official capacity. DCC 2.90.030.

After Corter filed her § 1983 complaint, Douglas County sent a copy of the complaint and summons to the WCRP. RP 5. The WCRP then authorized the payment of expenses for Groseclose's defense, subject to a reservation of rights. CP 341, 376. The WCRP appointed an attorney to defend Groseclose against Corter's claims. CP 341, 376. The appointed attorney defended Groseclose throughout the entire action. CP 376. In addition to its regular insurance premiums, Douglas County also spent $25,000, the policy's deductible limit, on the underlying litigation. RP 24. Nothing in the record indicates that Douglas County ever specified that the funds were to be used only for the claims against the County.

C. Dismissal of Douglas County from the Underlying Case.

On September 20, 2013, the court in the underlying case granted Douglas County's motion for summary judgment stating:

> The second § 1983 prong is whether the unconstitutional conduct was committed by a person acting under color of state law. There is no dispute that the County, as a municipality, is a person under § 1983 and may be liable for a constitutional violation. *See Monell v. Dep't of Soc. Servs. of City of N.Y.*, 436 U.S. 658, 690 (1978). However, it is disputed whether the County "acted" under color of state law. A municipality cannot be liable based on respondeat superior; instead to prove a municipality "acted" under color of state law, a plaintiff must show that a "policy or custom" of the municipality caused the injury. *Id.* at 689-91.

CP 368.

While the court in the underlying case found Douglas County had not instituted a policy or custom that caused injury to Corter, and thus did not act under color of state law, the court made no finding as to whether Groseclose was acting under color of law. CP 361-72. That was left to the jury. Additionally, the court stated that the application of respondeat superior was irrelevant, and declined to address it. CP 368.

D. Findings of Fact and Conclusions of Law at Trial.

At the trial for the underlying case, the jury was presented with the following instruction on the term, "under color of law":

> A person acts "under color of law" when the person acts or purports to act 1) in the performance of official duties under any state, county, or municipal law, ordinance, or regulation; 2) in some meaningful way either to his governmental status or to the performance of his duties; or 3) under pretense of his governmental status.

Jury Instruction No. 8, CP 318.

Jury Instruction No. 8 defined "under color of law" for purposes of Jury Instruction No. 7 addressing liability:

> The Plaintiff brings her claim under the federal statute, 42 U.S.C. § 1983, which provides that any person who, under color of law, deprives another of any right, privilege, or immunity secured by the Constitution or laws of the United States shall be liable to the injured party. In order to prevail on her § 1983 claim, the Plaintiff must prove each of the following elements by a preponderance of the evidence:

(1) the Defendant acted under color of law; and

(2) the Defendant's act(s) deprived the Plaintiff of her right to informational privacy under the U.S. Constitution.

If you find the Plaintiff has proved each of these elements, your verdict should be for the Plaintiff. If, on the other hand, the Plaintiff has failed to prove any one or more of these elements, your verdict should be for the Defendant.

Jury Instruction No. 7, CP 320.

On October 30, 2013, the jury returned a verdict finding Groseclose did "act under color of law when he accessed the March 30, 2009 law enforcement incident report via Spillman." CP 41, 322.

On October 30, 2013, a judgment was entered under 42 U.S.C. § 1981 against Groseclose in the amount of $60,000.00 dollars. CP 324. On February 18, 2014, a second judgment was entered under 42 U.S.C. § 1981 against Groseclose in the amount of $61,025.50 for attorney's fees and costs related to the underlying claim by Corter. CP 326.

E. The Current Lawsuit.

On February 20, 2014, a letter was sent by counsel for Corter to Douglas County requesting payment on the judgments entered against Groseclose. CP 328. In response, WCRP filed a complaint in Douglas County Superior Court, requesting a declaratory judgment that it was not liable for Groseclose's judgment, under the terms of its policy. CP 1-52. Groseclose and Corter (collectively "Appellants") answered and filed a

cross-claim against Douglas County. CP 58-70. Douglas County answered both complaints, and filed its own cross-claim for declaratory relief against Appellants. CP 53-57. All parties filed for summary judgment on their claims. CP 75-88, 188-98, 282-307.

The trial court consolidated the parties' motions, and conducted a hearing on all motions on August 7, 2014. RP 1. In its oral ruling, the trial court stated

> I don't believe that Mr. Groseclose under either *McDade I*[3] or *McDade II*[4] was acting within the scope of his employment or acting within the scope of his official duties. I think it's probably true that Mr. Groseclose carries a badge around probably everywhere he goes, which doesn't necessarily mean that everything he does is within the scope of his duties as a police officer, and particularly in relation to a relationship with his ex-wife and/or their child.

RP 27. The trial court further found that Groseclose had not exhausted all administrative remedies before seeking payment from WCRP. RP 27. Accordingly, the trial court found that neither WCRP nor Douglas County had a duty to indemnify Groseclose, and granted both WCRP's and Douglas County's motions for summary judgment. CP 380-83.

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[3] *McDade v. West*, 223 F.3d 1135 (9th Cir. 2000).

[4] *McDade v. West*, 60 Fed. App'x 146 (9th Cir. 2003). This was the follow up to the 9th Circuit's review in which they found Ms. West to be acting within the scope of her official duties. As the opinion was unpublished, no further reference to this opinion will appear in this brief. *See* Ninth Circuit Rule 36-3.

Appellants timely filed their notice of appeal on September 17, 2014. CP 386-91.

D. ARGUMENT

A. Standard of Review.

This Court reviews decisions on summary judgment de novo. *Coronado v. Orona*, 137 Wn. App. 308, 313, 153 P.3d 217 (2007). Summary judgment is appropriate only when there is no genuine issue of material fact. *Id.*; CR 56. A genuine issue of material fact exists when reasonable minds could differ on the facts controlling the outcome of the litigation. *Ranger Ins. Co. v. Pierce Cnty.*, 164 Wn.2d 545, 552, 192 P.3d 886 (2008). The party moving for summary judgment has the burden of proving that summary judgment is appropriate. *Mason v. Kenyon Zero Storage*, 71 Wn. App. 5, 9, 586 P.2d 410 (1993). In reviewing a motion for summary judgment, all facts and reasonable inferences are viewed in the light most favorable to the nonmoving party. *Dowler v. Clover Park Sch. Dist. No. 400*, 172 Wn.2d 471, 484, 258 P.3d 676 (2011).

This Court also reviews issues of statutory interpretation de novo. *Coronado*, 137 Wn. App. at 315. Statutes should be interpreted so as to give effect to the intent of the legislature. *Five Corners Family Farmers v. State*, 173 Wn.2d 296, 320, 268 P.3d 892 (2011).

B. RCW 4.96.041 Requires Douglas County to Indemnify Groseclose.

Pursuant to RCW 4.96.041, Douglas County is required to indemnify Groseclose for the judgment entered against him in the underlying case. RCW 4.96.041 states, in relevant part:

> (1) Whenever an action or proceeding for damages is brought against any past or present officer, employee, or volunteer of a local governmental entity of this state, arising from acts or omissions while performing or in good faith purporting to perform his or her official duties, such officer, employee, or volunteer may request the local governmental entity to authorize the defense of the action or proceeding at the expense of the local governmental entity.
>
> ...
>
> (4) When an officer, employee, or volunteer of the local governmental entity has been represented at the expense of the local governmental entity under subsection (1) of this section and the court hearing the action has found that the officer, employee, or volunteer was acting within the scope of his or her official duties, and a judgment has been entered against the officer, employee, or volunteer under chapter 4.96 RCW or 42 U.S.C. Sec. 1981 et seq., thereafter the judgment creditor shall seek satisfaction for nonpunitive damages only from the local governmental entity, and judgment for nonpunitive damages shall not become a lien upon any property of such officer, employee, or volunteer.

At issue in this case is subsection (4) of the statute. The trial court interpreted "scope of official duties," as used in RCW 4.96.041(4), DCC 2.90.030, and the WCRP insurance policy, as a phrase equivalent to "scope of employment." It therefore concluded that Groseclose was not entitled to

indemnification, despite the finding that he was "acting under color of law," because his actions were not within the scope of his employment. The trial court's interpretation of the statutory phrase "scope of official duties" is erroneous and should be reversed by this Court.

1. Douglas County Authorized the Expenditure of Funds for Groseclose's Defense.

RCW 4.96.041(4) mandates two prerequisites before a public employee can be indemnified for a judgment against him. First, the local governmental entity must have agreed to represent the employee. Second, the court in the underlying action must have found that the employee was acting within the scope of his official duties. Both of these prerequisites have been satisfied here, and Groseclose is entitled to be indemnified.[5]

The agreed-upon facts in this case establish that Douglas County authorized the defense of Groseclose at its expense. First, Douglas County admits that it paid a deductible for use in the underlying case, including attorney's fees and other defense costs incurred up to the County's deductible limit. DCC 2.90.010 defines "expense" as "reasonable attorney's fees and litigation costs." The required process for authorization of payment of attorney's fees and costs by Douglas County is outlined in DCC 2.90.030, which states:

[5] Although the trial court decided this matter under the second part of the test, both parts are addressed here for the sake of completeness.

> (A) Douglas County shall grant the request to defend a claim and pay the necessary expenses of defense upon a determination that the claim is based upon an alleged act or omission of the officer, employee or volunteer which was, or in good faith purported to be, within the scope of his or her official duties. Such determination shall be made as follows:
> ...
>
> (B) Douglas County shall not defend or pay for the expense of defending a claim against an officer, employee or volunteer based which alleges unlawfully obtaining personal benefits while acting in his or her official capacity.
>
> (C) Douglas County shall not pay any expenses of defending a claim which are paid or incurred by an officer, employee or volunteer prior to receipt of a proper written request by the board of county commissioners. Douglas County shall not pay any expenses of defending a claim in advance of services being rendered or costs being incurred.

DDC 2.90.030.

Pursuant to its own municipal code, Douglas County is prohibited from paying ***any*** expenses of defending a claim against an officer until a request for defense is received by the board of county commissioners and a majority of the board of county commissioners (or legal counsel selected by the board) determines that the claim against that officer is based upon an alleged act or omission of the officer which was, or in good faith purported to be, within the scope of his or her official duties. DDC 2.90.030. Here, Douglas County **did** pay attorney's fees and costs for

Groseclose in the underlying action. This action is in and of itself evidence of Douglas County's authorization of Groseclose's defense at the County's expense.

Douglas County's act of paying the expense of the defense of Groseclose constitutes waiver of the argument that it did not authorize Groseclose's defense. Washington courts recognize that in certain cases the common law doctrine of waiver will preclude a defendant from raising an affirmative defense. *Lybbert v. Grant Cnty.*, 141 Wn.2d 29, 38, 1 P.3d 1124 (2000). Our Supreme Court has held that waiver of affirmative defenses can occur in two ways: if assertion of the defense is inconsistent with the defendant's prior behavior or if the defendant has been dilatory in raising the defense. *Lybbert*, 141 Wn.2d at 38–39; *King v. Snohomish Cnty.*, 146 Wn.2d 420, 424, 47 P.3d 563 (2002). The doctrine of waiver is "designed to prevent a defendant from ambushing a plaintiff during litigation either through delay in asserting a defense or misdirecting the plaintiff away from a defense for tactical advantage." *King*, 146 Wn.2d at 424 (citing *Lybbert*, 141 Wn.2d at 40).

Here, by paying the expenses of the defense of Groseclose, Douglas County waived the defense that it did not authorize the payment of legal expenses. Douglas County's action of paying defense expenses in the underlying litigation is inconsistent with its current position that it did

not authorize the defense. If Douglas County did not authorize the defense it could not have paid the expenses related to the defense. DCC 2.90. However, Douglas County admits that it spent $25,000 on the underlying litigation. Thus, Douglas County is precluded from asserting that it did not authorize the expenditure of funds in Groseclose's defense.

2. "Scope of official duties," as used in RCW 4.96.041, is akin to "color of law" and does not equate to "scope of employment."

Groseclose was represented by an attorney appointed by the WCRP. The WCRP provided this attorney at Douglas County's expense of a $25,000 deductible plus its regular insurance premiums. Thus, pursuant to RCW 4.96.041(4), the County must pay the judgment entered against Groseclose, so long as "the court hearing the [underlying] action has found that the officer ... was acting within the scope of his or her official duties."

No Washington case has interpreted the phrase "scope of official duties" as used in RCW 4.96.041.[6] This case therefore presents an issue of first impression. For the reasons that follow, this Court should hold that "scope of official duties" is akin to "color of law" rather than "scope of

[6] Because DCC 2.90 was enacted pursuant to RCW 4.96.041 and uses many of the same terms and phrases, it is reasonable to infer that the County legislative board intended that the code should be interpreted in conformity with the statute. Accordingly, the following analysis applies equally to RCW 4.96.041 and DCC 2.90.

employment," and that the statute encompasses Groseclose's conduct in the underlying case.

The closest Washington has come to interpreting the phrase "scope of official duties" was in *LaMon v. City of Westport*, 22 Wn. App. 215, 588 P.2d 1205 (1978). In that case, the Westport city council passed a resolution to indemnify the legal expenses of the police chief, who had been sued for civil rights violations. *Id.* at 216. Division Two of the Court of Appeals held that the City was entitled to indemnify the police chief if it so chose. *Id.* at 219. In dicta, the Court stated,

> More importantly, the United States District Judge's finding that the police chief willfully refused equal police protection to plaintiffs does not change the result of this case or render the action of the City in indemnifying the police chief illegal. Plaintiffs admit in this petition that **the United States District Court found that the police chief was acting under color of state law** and his office when he engaged in the activity that led that court to find liability. As we have held above, the City of Westport has the power to indemnify its officials and employees for attorney fees incurred in suits resulting from an action or failure to act within the scope of the employee's or official's duties. The existence of the federal judgment thus does not per se render the action of the city council in indemnifying the police chief arbitrary or capricious.

Id. at 220 (emphasis added). In contrast, the Court did not use the phrase "scope of employment" anywhere in its opinion. By specifically noting the federal court's finding, the Court of Appeals suggested that the phrases "scope of official duties" and "under color of state law" are similar in

meaning, if not identical. This Court should go one step further and precisely hold what *LaMon* merely suggests.

Federal law interpreting 42 U.S.C. § 1983 demonstrates why this Court should interpret "scope of official duties" as akin to "under color of law." One of the early Supreme Court cases to construe the phrase "under color of law" was *Screws v. United States*, 325 U.S. 91, 65 S. Ct. 1031, 89 L. Ed. 1495 (1945). In that case, the Court stated,

> It is clear that under 'color' of law means under 'pretense' of law. Thus acts of officers in the ambit of their personal pursuits are plainly excluded. **Acts of officers who undertake to perform their official duties are included** whether they hew to the line of their authority or overstep it. If, as suggested, the statute was designed to embrace only action which the State in fact authorized, the words 'under color of any law' were hardly apt words to express the idea.

Id. at 111 (emphasis added). The Court accordingly held that the defendant police officers were acting under color of law, as it was within the scope of their official duties to effectuate an arrest, even though they beat the plaintiff to death in the process. *Id.*

Courts continue to look to the scope of an employee's official duties when analyzing whether an action is taken "under color of law." For example, the 1st Circuit has held that "whether a police officer is acting under color of state law turns on the nature and circumstances of the officer's conduct and the relationship of that conduct to the

performance of his official duties." *Martinez v. Colon*, 54 F.3d 980, 986 (1st Cir. 1995). The 8th Circuit has more explicitly made the connection between the two standards: "Absent any actual or purported relationship between the officer's conduct and his duties as a police officer," i.e., his official duties, "the officer cannot be acting under color of state law." *Roe v. Humke*, 128 F.3d 1213, 1216 (8th Cir. 1997).

As established in *Screws*, an act does not need to be authorized, permitted, or within the employee's job description in order to fall within the employee's scope of official duties. "[A]n officer acts under color of law when he acts in performance of his official duties, whether he strictly adheres to those duties or oversteps the bounds of his authority." *Neuens v. City of Columbus*, 275 F.Supp.2d 894, 900 (S.D. Ohio 2003); *see also Gamage v. Peal*, 217 F. Supp. 384, 387 (N.D. Cal. 1962) ("Mistaken, erroneous or even tortious conduct does not, in itself, take such conduct outside the scope of duty of the actors."). This does not mean, however, that "everything [an officer] does is within the scope of his duties." RP 27. The trial court's concern that "scope of official duties" would include everything an officer does if the "scope of employment" test is not applied, is overblown: federal civil rights law already recognizes that this is not the case. Officers do not act under color of law simply because they wear a badge. *Martinez*, 54 F.3d at 986. Rather, the "color of law"

question requires examination of what the officer is generally authorized or expected to do. *Washington-Pope v. City of Philadelphia*, 979 F.Supp.2d 544, 554 (E.D. Pa. 2013) (listing multiple factors considered in determining whether a police officer acted under color of law). Accordingly, "color of law" is the proper standard to use when examining whether an act falls within an officer's "scope of official duties."

Assuming *arguendo* that "scope of official duties" is not akin to "color of law," this Court should still hold that the trial court improperly conflated the concepts of "scope of official duties" with "scope of employment." The "scope of official duties" standard is frequently utilized in federal law. In interpreting this standard, many federal courts refuse to equate it with "scope of employment." The 10th and 7th Circuits have held that "scope of official duties" includes acts that "bear some reasonable relation to and connection with the duties and responsibilities of the official." *Scherer v. Brennan,* 379 F.2d 609, 611 (7th Cir. 1967); *Nietert v. Overby*, 816 F.2d 1464, 1466 (10th Cir. 1987). The 8th Circuit has stated that an action need not be covered by the job description, or even legal, to fall within "scope of official duties." *United States v. Street*, 66 F.3d 969, 978 (8th Cir. 1995). Finally, as the D.C. Circuit has described, the connection between "scope of official duties" and the scope of employment is actually quite loose:

> And we said concerning the meaning of scope of official duty that it is not necessary, in order that acts may be done within the scope of such duty, that they should be prescribed by statute or be specifically directed or requested by a superior officer. It is sufficient, we said, if such acts are done by an officer 'in relation to matters committed by law to his control or supervision,' or that they have 'more or less connection with the general matters committed by law to his (the officer's) control or supervision,' or that they are governed by a lawful requirement of the department under whose authority the officer is acting.

Cooper v. O'Connor, 107 F.2d 207, 209 (D.C. Cir. 1939). Thus, this Court should hold that "scope of employment" is not a proper interpretation of RCW 4.96.041.

Appellant anticipates that Respondent will ask this Court to rely upon Wisconsin law, as articulated in *Cameron v. City of Milwaukee*, 102 Wis.2d 448, 307 N.W.2d 164 (1981), to hold that "scope of employment" is the proper standard to use under RCW 4.96.041. Wisconsin's indemnity statute states,

> (1)(a) If the defendant in any action or special proceeding is a public officer or employee and is proceeded against in an official capacity or is proceeded against as an individual because of acts committed while carrying out duties as an officer or employee and the jury or the court finds that the defendant was acting **within the scope of employment**, the judgment as to damages and costs entered against the officer or employee, except as provided in s. 146.89(4), in excess of any insurance applicable to the officer or employee shall be paid by the state or political subdivision of which the defendant is an officer or employee.

Wis. Stat. § 895.46 (emphasis added). In contrast, RCW 4.96.041 and DCC 2.90 are concerned only with whether officers act within the scope of their **official duties**. RCW 4.96.041(1), (2), and (4) each make reference to whether the officer was acting "within the scope of his or her official duties." DCC 2.90.020, .030, and .050 make reference to whether the officer was acting "within the scope of his or her official duties." The term "scope of employment" is never used in RCW 4.96.041 or DCC 2.90. The legislature's use of "scope of official duties" rather than "scope of employment" was presumably intentional. *Cf. Lundberg ex rel. Orient Found, v. Coleman*, 115Wn. App. 172, 177-78, 60 P.3d 595 (2002) ("[W]hen the model act in an area of law contains a certain provision, but the legislature fails to adopt such a provision, our courts conclude that the legislature intended to reject the provision."). Thus, Wisconsin law is inapposite and should not be applied here.

The trial court erred when applying the "scope of employment" standard to RCW 4.96.041 and DCC 2.90, as "scope of official duties" is actually more akin to "color of law."

3. The federal court found that Groseclose was acting within the scope of his official duties.

Recognizing that "scope of official duties" is akin to "color of law," the question then becomes whether the federal court found that

Groseclose was acting within the scope of his official duties. The Court should answer this question in the affirmative.

The Ninth Circuit addressed a substantially similar question in *McDade v. West*, 223 F.3d 1135 (9th Cir. 2000). In *McDade,* a state employee, Ms. West, accessed a county database to locate McDade's address at a battered women's shelter and used the information in her husband's child custody dispute. *Id.* at 1138. The court was thus required to confront the issue of "whether a state employee who accesses confidential information through a government-owned computer database acts 'under color of state law.'" *Id.* at 1139.

The *McDade* Court began its analysis identifying the purpose of Section 1983. The Court stated, "The purpose of § 1983 is to deter state actors from using the badge of their authority to deprive individuals of their federally guaranteed rights." *Id.* at 1139 (citing *Wyatt v. Cole*, 504 U.S. 158, 161, 112 S.Ct. 1827, 118 L.Ed.2d 504 (1992)). Therefore, the Court held that the acts must be performed while the officer is acting, purporting, or pretending to act in the performance of his or her official duties. *Id.* at 1140 (citing *Van Ort*, 92 F.3d at 838); *see also Monroe v. Pape*, 365 U.S. 167, 171, 81 S. Ct. 473, 5 L. Ed. 2d 492 (1961), overruled on other grounds by *Monell*, 436 U.S. at 658, 98 S. Ct. 2018 ("There can be no doubt ... that Congress has the power to enforce provisions of the

Fourteenth Amendment against those who carry a badge of authority of a State and represent it in some capacity, whether they act in accordance with their authority or misuse it.").

Ms. West had been authorized, "and expected as part of her official duties," to access the county's database. *Id.* at 1140. The *McDade* Court held:

> Because Ms. West's status as a state employee enabled her to access the information, she invoked the powers of her office to accomplish the offensive act. Therefore, however improper Ms. West's actions were, they clearly related to the performance of her official duties.

Id. at 1140. Accordingly, "since she committed an act that was related to her official duties, [the Court] conclude[d] that Ms. West acted under color of state law." *Id.* at 1141.

The facts of *McDade* are strikingly similar to the facts in the instant case. In both cases, a state employee "acted under the pretense of state employment" to access personal information for use in litigation involving a child custody proceeding. *Id.* at 1141. Much like Ms. West, Groseclose invoked the powers and duties of his position to accomplish the offensive act of invading the privacy of Ms. Corter. However objectionable the conduct, it was clearly related to the performance of Groseclose's official duties because it would have been impossible for him

to accomplish if not for the County's expectation that Groseclose should have access to the police reports.

Some federal courts hold that there is some conduct for which a person may be liable under 42 U.S.C. § 1983, but that does not fall within the scope of the person's official duties. However, even pursuant to these cases, the judgment against Groseclose necessarily includes a finding that he acted within the scope of his official duties. In *United States v. Giordano*, 442 F.3d 30, 44 (2d Cir. 2006), the Court held that there is a category of claims for which 1983 liability is appropriate, "even though the official committed abusive acts for person reasons far removed from the scope of official duties." The Court cited as examples *Monsky v. Moraghan*, 127 F.3d 243 (2d Cir. 1997), and *United States v. Tarpley*, 945 F.2d 806 (5th Cir. 1991). In *Monsky*, the plaintiff alleged that a judge had allowed his dog to "aggressively nuzzle" him at a court office. 127 F.3d at 244. The Court held that the judge was acting under color of law, because he had invoked his status as a judge in order to keep the dog at his office. *Id.* at 246. In *Tarpley*, a police officer was arrested for violating the constitutional rights of his wife's lover, after beating the man and telling him "I'll kill you. I'm a cop. I can." 945 F.2d at 808. The Court held that the officer acted under color of law by "claim[ing] to have special authority for his actions." *Id.* at 809.

From *Monsky*, *Tarpley*, and other examples cited by *Giordano*,[7] it is apparent that the category of conduct falling within color of law but not scope of official duties encompasses situations where the state employee invokes their job description as a means of exerting power over another individual. The underlying action here does not resemble any of these cases. The violation of constitutional rights did not involve any direct contact between Groseclose and Corter. Groseclose did not, for example, demand custody of his child by threatening to arrest Corter. Rather, like the defendant in *McDade*, Groseclose violated Corter's rights by retrieving information from a database that he had access to through his official duties. Thus, regardless of whether there may be conduct outside the scope of official duties but still under color of law, the factual findings in ***this*** case necessarily result in the conclusion that Groseclose was acting within the scope of his official duties.

At the trial court, Douglas County argued that its dismissal from the underlying suit precludes a finding that Groseclose acted within the scope of his official duties. Essentially, what Douglas County argued is that it cannot be obligated to indemnify Groseclose unless it is also liable for the underlying misconduct. This Court should reject this argument, as it is contrary to legislative intent. Prior to 1979, counties were only

[7] *Griffin v. City of Opa-Locka*, 261 F.3d 1295 (11th Cir. 2001); *United States v. Walsh*, 194 F.3d 37 (2d Cir. 1999).

permitted to defend and indemnify their employees when the county was sued simultaneously. H.R. Comm. Report on S.S.B. 2411 (attached hereto as Appendix A). RCW 4.96.041 was enacted to allow counties to defend and indemnify their employees irrespective of the county's presence in the suit. Appendix A. Thus, it is apparent that the legislature did not intend for the application of RCW 4.96.041 to depend on the county's liability. The trial court erred when it decided otherwise.

For these reasons, the Court should reverse the decision of the trial court and hold that Groseclose is entitled to indemnification because he was acting within the scope of his official duties.

C. The JSILP Policy Should be Interpreted Consistent with RCW 4.96.041.

This Court engages in de novo review for questions regarding interpretation of insurance contracts. *McDonald v. State Farm Fire & Cas. Co.*, 119 Wn.2d 724, 730, 837 P.2d 1000 (1992). Courts determine the meaning of policy provisions by first examining the plain language of the insurance contract. *Allemand v. State Farm Ins. Cos.*, 160 Wn. App. 365, 368, 248 P.3d 111 (2011). Any ambiguities must be construed in favor of coverage. *Riley v. Viking Ins. Co. of Wis.*, 46 Wn. App. 828, 830, 733 P.2d 556 (1987).

"Scope of official duties" is a term frequently utilized in insurance policies. In this context, courts have held that "scope of official duties" means something different than "scope of employment." *State Farm Fire & Cas. Co. v. Liberty Ins. Underwriters, Inc.*, 613 F. Supp. 2d 945, 957 (W.D. Mich. 2009) *aff'd*, 398 F. App'x 128 (6th Cir. 2010); *Leggett v. Nat'l Union Fire Ins. Co. of Pittsburgh, Pa.*, 844 A.2d 575, 578 (Pa. Super. Ct. 2004). In *Latiolais v. State Farm Mut. Auto Ins. Co.*, 949 So.2d 455, 462 (La. App. 3 Cir. 2006), a priest was involved in a collision with another driver while traveling to his parish to conduct Mass. The driver filed a claim with the parish's auto insurer. *Latiolais*, 949 So.2d at 457. The parish's insurance policy provided for coverage for incidents occurring while its employees were acting "within the scope of their duties" or "in their official capacity as such." *Id.* at 459-60. However, the insurer maintained that it was not liable on the claim because the priest was not acting "within the course and scope of his employment" at the time of the accident. *Id.* at 457. The Louisiana Court of Appeals rejected the insurer's interpretation as inconsistent with the plain language of the policy. *Id.* at 460. In doing so, the court held that the word "duties" had a very different meaning than the word "employment." *Id.* at 461. The court stated, "The use of the word 'duties' indicates expansive coverage over actions complementary to any of many job duties rather than coverage of

actions that are only employment rooted or essential to an employee's entire employment." *Id.* at 461. Under this interpretation, the priest could have been acting within the scope of his duties when he was driving to the parish while dressed in "a priest-like manner," even if driving to the parish was not within the scope of his employment.[8] *Id.*at 462.

Similarly, the JSILP policy uses the word "duties" rather than "employment." As articulated in *Latiolais*, the plain meaning of the two words is not the same. The JSILP policy cannot be read contrary to its plain language.

In addition to the plain meaning of these terms, other language contained in the policy demonstrates that WCRP did not intend "scope of duties" to mean "scope of employment." First, the phrase "course of employment" appears elsewhere in the JSILP policy. CP 229. Had WCRP wished to restrict coverage to acts occurring only within the scope of employment, it clearly had the language to do so. Second, the JSILP policy defines "insured" as "all past and present employees ...while acting or in good faith purporting to act within the scope of their official duties for the member county **or on its behalf**." CP 230 (emphasis added). The phrase "on [the employer's] behalf" is another way of saying that the employee was acting within the scope of employment. *Smith v. Sacred Heart Med. Ctr.*,

[8] *Latiolais* was decided on a motion for summary judgment, and the case was remanded for the trial court to resolve this question based on factual findings. *Id.* at 462.

144 Wn. App. 537, 543, 184 P.3d 646 (2008) ("[T]he employee must act **on behalf of** the employer" for vicarious liability to attach) (emphasis added). Insurance policies should be interpreted to give effect to all language. *Christal v. Farmers Ins. Co. of Wash.*, 133 Wn. App. 186, 191, 135 P.3d 479 (2006). Had the WCRP intended "scope of official duties" to mean "scope of employment," then the phrase "on its behalf" would be superfluous language. This is not a permissible reading of the policy.

The JSILP policy uses the "scope of official duties" language in the same manner as RCW 4.96.041 and, in fact, references the statute in its definition of "insured." CP 230. This indicates that the JSILP policy is meant to be interpreted in the same manner as the statute. Because "scope of official duties" as used in RCW 4.96.041 is akin to "color of law", and does not equal "scope of employment", the JSILP policy should be interpreted similarly. Accordingly, because Groseclose must be indemnified under the statute, he should also be entitled to coverage under the JSILP policy.

D. In Authorizing the Payment of Expenses for the Defense of Groseclose, Douglas County has Waived Any and All Defenses to Indemnification.

As for Douglas County, it has already waived the arguments it asserted during summary judgment proceedings. The process for authorization of the payment of attorney's fees and costs by Douglas County is outlined in DCC 2.90.030, which states:

> (A) Douglas County shall grant the request to defend a claim and pay the necessary expenses of defense upon a determination that the claim is based upon an alleged act or omission of the officer, employee or volunteer which was, or in good faith purported to be, within the scope of his or her official duties. ...
>
> (B) Douglas County shall not defend or pay for the expense of defending a claim against an officer, employee or volunteer based which alleges unlawfully obtaining personal benefits while acting in his or her official capacity.
>
> (C) Douglas County shall not pay any expenses of defending a claim which are paid or incurred by an officer, employee or volunteer prior to receipt of a proper written request by the board of county commissioners. Douglas County shall not pay any expenses of defending a claim in advance of services being rendered or costs being incurred. (Ord. 96-101-02 §4)

Douglas County authorized the payment of expenses for the defense of Groseclose, as demonstrated by expenditure of funds. By authorizing the payment of expenses for his defense, Douglas County waived any right to claim that Groseclose was not acting within the scope of his official duties. DCC 2.90.050.[9]

[9] DCC 2.90.050 states, "When Douglas County has defended a claim against an officer, employee or volunteer pursuant to this chapter and the court hearing the action has found that the officer, employee or volunteer was acting within the scope of his or her official duties, Douglas County shall pay any final nonpunitive monetary judgment entered on such claim."

As previously noted, Washington courts recognize the common law doctrine of waiver will preclude a defendant from raising an affirmative defense. *Lybbert*, 141 Wn.2d at 38. Waiver of affirmative defenses can occur in two ways: if assertion of the defense is inconsistent with the defendant's prior behavior or if the defendant has been dilatory in raising the defense. *Lybbert*, 141 Wn.2d at 38–39; *King*, 146 Wn.2d at 424.

Here, Douglas County waived its ability to deny indemnification by accepting the defense. The acceptance of the defense is inconsistent with Douglas County's current position that the acts alleged against Groseclose were not within the scope of his official duties. Moreover, Douglas County has been dilatory in raising such a defense.

Douglas County should have raised its current defense, that Groseclose was not acting within the scope of his official duties, prior to expending funds on Groseclose's behalf. DCC 2.90.030(A)(1)-(2) identifies the process for Douglas County to make such a determination and requires either a majority vote of the board of commissioners or the written opinion of counsel as selected by the board to decide whether the acts alleged were within the scope of official duties. If the board determines that the employee was not acting within the scope of his or her

official duties, it will deny a defense. The time to take such a position is ***prior to*** accepting the defense.

Should this Court hold otherwise, the result would be inequitable. If Douglas County decides whether he was acting within the scope of his duties prior to accepting the defense, Groseclose knows at the start of litigation whether he will be indemnified by Douglas County. Had he known that he would not be indemnified, Groseclose's strategy in the underlying litigation would have been different. For instance, Groseclose could have pushed to settle the matter as soon as possible in an amount that he could reasonably afford to pay. Instead, Groseclose took the issue to trial and now has a $120,000.00-plus judgment hanging over his head. Douglas County's late-asserted defense prejudiced Corter as well. Had Corter known that Groseclose would pay any judgment out of pocket, she may have accepted a different settlement prior to trial.

In short, the time for Douglas County to claim Groseclose was acting outside the scope of his official duties has long passed. Douglas County has waived this argument based upon the procedures Douglas County itself laid out in DCC 2.90.

E. Groseclose's Acceptance of the Defense Paid for by Douglas County is a Request for Defense.

Appellants anticipate that Defendants will attempt to argue that they are not obligated to indemnify Groseclose because Groseclose did not request a defense. The Court should reject this argument, as it lacks merit.

Groseclose's acceptance of the defense paid for by Douglas County satisfies the requirements of RCW 4.96.041 and DCC 2.90.020. RCW 4.96.041(1) states:

> Whenever an action or proceeding for damages is brought against any past or present officer, employee, or volunteer of a local governmental entity of this state, arising from acts or omissions while performing or in good faith purporting to perform his or her official duties, such officer, employee, or volunteer ***may*** request the local governmental entity to authorize the defense of the action or proceeding at the expense of the local governmental entity. (emphasis added)

While an officer "may request" a defense from the local government entity, nothing in the language of RCW 4.96.041 requires an officer to request a defense to obtain the authorization of the local government entity. Thus, it is optional for the officer to request a defense. Here, Douglas County had already decided to provide a defense for Groseclose via the WCRP. It is nonsensical to require that Groseclose have formally requested the exact thing he was already receiving.[10]

[10] In addition or as an alternative to waiver, this Court may also wish to apply equitable estoppel to Douglas County's actions. The doctrine of equitable estoppel prohibits a party

Douglas County had the opportunity to make a coverage determination prior to paying for Groseclose's defense. RCW 4.96.041(2) allows a local government entity to create a procedure to determine whether the acts or omissions were within the scope of official duties or in good faith purported to be within those duties. RCW 4.96.041(2). If the request is granted, "the necessary expenses of defending the action or proceeding shall be paid by the local government entity." RCW 4.96.041(2). In this case, DCC 2.90.020 outlines Douglas County's process for requesting a defense, which states:

> An officer, employee or volunteer ***may*** request that Douglas County defend and pay the necessary expenses of defending any claim arising from acts or omissions while performing or in good faith purporting to perform his or her official duties. Such request shall be in writing and signed by the person or his or her attorney, shall be filed with the board of county commissioners, and shall include a summary of the claim. If the claim is pending, then a copy of the written claim, demand or lawsuit shall be attached to the request.

(emphasis added).

Similar to RCW 4.96.041(1), DCC 2.90.020 does not require Groseclose to request a defense from Douglas County. While DCC 2.90.020 outlines the process for requesting a defense, the language of DCC 2.90.020 is permissive on whether an officer is required to request a

---

from disavowing a representation it made to another party, who justifiably and good faith relied on the representation. *Wilson v. Westinghouse Elec. Corp.*, 85 Wn.2d 78, 81, 530 P.2d 298 (1975).

defense. Obviously, if Douglas County begins providing a defense, as it did here, there is no need for that officer to request a defense.

Moreover, the doctrine of waiver prohibits Douglas County from asserting that Groseclose failed to request a defense in the underlying litigation as (1) this argument is inconsistent with Douglas County's prior behavior; and (2) Douglas County has been dilatory is raising this defense - it should have been raised prior to authorizing the defense of Groseclose.

Here, by authorizing the defense of Groseclose at its expense, Douglas County waived the argument that Groseclose did not request a defense in the underlying litigation. Douglas County's action of providing a defense for Groseclose is inconsistent with its current position that Groseclose never requested a defense in the underlying litigation. If a request was necessary, but not made, then Douglas County could not have authorized the payment of expenses for Groseclose's defense.

Additionally, Douglas County was intransigent in raising this defense as it should have been raised immediately by denying the authorization of the payment of defense expenses. At that point, Groseclose would have been forced to request a defense as it was not being provided by Douglas County. Instead, Douglas County waited until the underlying proceedings were completely finished to claim that Groseclose had not requested a defense.

Accordingly, this Court should hold that Groseclose is not required to have formally requested a defense, and that Douglas County is precluded from asserting otherwise.

F. Groseclose is not Bound to the Interlocal Agreement or the WCRP Bylaws.

The trial court further erred in finding that Groseclose failed to exhaust his administrative remedies. This conclusion presumes that Groseclose was not a party to the interlocal agreement and/or a member of the WCRP. However, the administrative remedies do not apply to Groseclose, as he is not a party to the Interlocal Agreement nor the bylaws.

The WCRP's Interlocal Agreement clearly defines the parties, stating:

> THIS AGREEMENT is made and entered into by and among the several counties organized and existing under the Constitution and laws as political subdivisions of the State of Washington which are parties signatory to this Agreement (Collectively "Member Counties", and individually "Member County")

CP 203. The interlocal agreement was entered into by the member counties and only binds those member counties "which are parties signatory" to the interlocal agreement. CP 203.

Additionally, the WCRP bylaws are simply the "legal form of the program." RCW 48.62.071. Groseclose as he is not a member of the

WCRP. Moreover, the WCRP never secured Groseclose's agreement to be bound by the bylaws. Groseclose's inclusion under the insurance policy is irrelevant, as the policy does not incorporate either the Interlocal Agreement or the bylaws. As a result of his lack of membership and failure to secure an agreement to be bound, Groseclose is not bound by the bylaws of the WCRP.

Assuming *arguendo*, if Groseclose was bound to the Interlocal Agreement and/or bylaws, to which he is neither a member nor party, Groseclose is not obligated to fulfil the exhaustion requirement if exhaustion would be futile. RCW 34.05.534(3)(b). Whether exhaustion of administrative remedies would be futile is a question for the court. *Buechler v. Wenatchee Valley Coll.*, 174 Wn. App. 141, 154, 298 P.3d 110 *review denied*, 178 Wn.2d 1005 (2013) (citing *Beard v. King Cnty.*, 76 Wn. App. 863, 871, 889 P.2d 501 (1995)).

Exhaustion is excused as futile when "the available administrative remedies are inadequate, or if they are vain and useless." *Orion Corp. v. State*, 103 Wn.2d 441, 458, 693 P.2d 1369 (1985). Here, the uselessness of the administrative procedure is evidenced by WCRP's reliance upon the flawed argument conflating "scope of official duties" and "scope of employment."

As was the case with Douglas County, the WCRP attempted to reframe the stand for indemnification to prejudice Groseclose. This evidences a determination on the part of the WCRP to deny coverage regardless of whether Groseclose was found to have acted under color of law and within the scope of his official duties. Any administrative appeal would have continued to face this misapplication of the standard under the JSILP policy, thus making an administrative appeal futile.

Therefore, this Court should hold that Groseclose's failure to exhaust administrative remedies does not preclude relief in this case.

E. CONCLUSION

RCW 4.96.041 obligates counties to indemnify their employees when they have authorized the payment of litigation expenses and the employee is found to have acted within the scope of their official duties. The JSILP policy also provides for coverage when these same conditions have been met. Here, Douglas County spent over $25,000 on the underlying litigation against Groseclose. However, because the trial court erroneously conflated "scope of official duties" with "scope of employment," Appellants have been wrongfully denied the funds owed to them. RCW 4.96.041, DCC 2.90, and the JSILP policy do not support the trial court's holding. This Court should reverse the decision of the trial court and remand for entry of an order in favor of Appellants.

DATED this 27th day of January, 2015.

VAN SICLEN, STOCKS & FIRKINS

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APPENDIX A

STATE OF WASHINGTON

HOUSE OF REPRESENTATIVES

Receipt for Bills

Olympia, April 9, 1979

RECEIVED OF Local Gov't Comm.

_____ *H. B. No.* _____ *and* _____

S *S. B. No.* 2411 *and* _____

_____ *No.* _____ *and* _____

_____

By [signature]

SUBSTITUTE SENATE BILL NO. 2411

State of Washington
46th Regular Session

By Committee on Local Government
(Originally sponsored by Senators Wilson, Sellar and Fleming)

Read first time February 22, 1979, and passed to second reading.

AN ACT Relating to local government; and adding a new section to chapter 36.16 RCW.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. Section 1. There is added to chapter 36.16 RCW a new section to read as follows:

Whenever an action or proceeding for damages is brought against any officer or employee of a county of this state, arising from acts or omissions while performing or in good faith purporting to perform his or her official duties, such officer or employee may request the county to authorize the defense of the action or proceeding at the expense of the county.

If the county legislative authority finds that the acts or omissions of the officer or employee were, or in good faith purported to be, within the scope of his or her official duties, the request may be granted. If the request is granted, the necessary expenses of defending the action or proceeding shall be paid by the county. Any money judgment against the officer or employee may be paid on approval of the county legislative authority.

IN THE LEGISLATURE
of the
STATE OF WASHINGTON

CERTIFICATION OF ENROLLED ENACTMENT

SUBSTITUTE SENATE BILL NO. 2411

CHAPTER 72, LAWS OF 1979
1st Extraordinary Session
(46th Legislative Session)

Passed the Senate April 4, 19 79

Yeas 41 *Nays* 0

Passed the House April 11, 19 79

Yeas 73 *Nays* 23

CERTIFICATE

I, Sidney R. Snyder, Secretary of the Senate of the State of Washington do hereby certify that the attached is enrolled Substitute Senate Bill No. 2411 *as passed by the Senate and the House of Representatives on the dates hereon set forth.*

Secretary of the Senate

SUBSTITUTE SENATE BILL NO. 2411

State of Washington
46th Regular Session

By Committee on Local Government
(Originally sponsored by Senators Wilson, Sellar and Fleming)

Filed by Committee February 22, 1979, and ordered printed.

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If the county legislative authority finds that the acts or omissions of the officer or employee were, or in good faith purported to be, within the scope of his or her official duties, the request may be granted. If the request is granted, the necessary expenses of defending the action or proceeding shall be paid by the county. Any money judgment against the officer or employee may be paid on approval of the county legislative authority.

FILED
APR 26 1979
SECRETARY OF STATE
STATE OF WASHINGTON
10:12 A.M.

Passed the Senate April 4, 1979.

John A. Cherberg
President of the Senate.

Passed the House April 11, 1979.

Democratic Speaker of the House.

Approved April 26, 1979

Republican Speaker of the House.

Governor of the State of Washington

MEMBERS' VOTING RECORD

COMMITTEE: LOCAL GOVERNMENT

DATE: April 9, 1979 TIME: 7:30am PLACE: 431 HOB

BILL NO. SSB 2411

				FIRST AMEND.			SECOND AMEND.			THIRD AMEND.	
	DO PASS	DO NOT PASS	NOT VOTING	YES	NO		YES	NO		YES	NO
Joanne Brekke	✓										
Wendell Brown	✓										
Donn Charnley	✓										
Avery Garrett	✓										
Ron Keller											
Frances North	✓										
Eric Rohrbach	✓										
Wilma Rosbach	✓										
Rolland Schmitten											
Delores Teutsch	✓										
Roger Van Dyken	✓										
Jerry Vrooman											
Jim Whiteside	✓										
Hal Zimmerman	✓										

Report of Standing Committee

HOUSE OF REPRESENTATIVES

Olympia, Washington

April 1, 1974
(date)

Substitute Senate Bill No. 2411
(Type in House or Senate Bill, Resolution, or Memorial)

Prime Sponsor Senator Wilson

Providing for payment by a local government of judgments against employees
(Type in brief title exactly as it appears on back cover of original bill)

performing official duties

reported by Committee on Local Government (14)

MAJORITY recommendation: Do Pass.

Signed by
Representatives

[redacted] co-chairman

Brekke

Brown

Garrett

[redacted]

North

[redacted]

Zimmerman co-chairman

Rohrbach

Rosbach

[redacted]

Teutsch

Van Dyken

Whiteside

BILL REPORT
(As Passed by Committee)

HOUSE OF REPRESENTATIVES
Olympia, Washington

April 9, 1979
Date

Steve Lundin, 753-4808
Staff Contact
(Name & Phone No.)

Bill No.

[X] Original SSB 2411

[ ] Amended

[ ] Substitute

Companion Measure No. _____

Local gov't judgments pymt
Brief Title (from Status of Bills)

Fiscal Impact:

___ Yes (see fiscal note)
X No

Senator Wilson
Sponsor (Note if Agency, Committee, Agency or Executive Request

Reported by Committee on Local Government

Committee Recommendation: Roll Call Vote: Y 11 ; N 0
(If a Minority Report is filed, list last names below)

Majority Report Signed By: Zimmerman, Rohrbach, Rosbach, Teutsch, Van Dyken, Whiteside, Brekke, Brown, Garrett, North

Minority Report Signed By: _____

ISSUE:
Should counties be permitted to pay the costs of defending county officials or employees for official acts made in good faith and also to pay for judgments rendered against such officers or employees?

SUMMARY OF BILL (with amendments, if any):
Permits county officers or employees to request that the county defend an action against the officer or employee arising from acts or omissions for good faith performance of their official duties. If the county legislative authority finds that the acts or omissions of the officer or employee were within the scope of his or her official duties, the request may be granted. The county may pay for the expenses of defending the employee or officer and may pay for money judgments rendered against the employee or official.

ARGUMENTS PRESENTED FOR:
Currently counties may only defend their officers or employees if the officer or employee and the county are simultaneously sued. This bill would allow the counties to defend such officers or employees if actions are taken only against the officer or employee and not the county.

PRINCIPAL PROPONENTS:
Fred Saeger, Wn. Assn. of County Officials

ARGUMENTS PRESENTED AGAINST:
None presented

PRINCIPAL OPPONENTS:
None

HOUSE OF REPRESENTATIVES

Olympia, Washington

BILL ANALYSIS

BILL NO. SSB 2411

Comp. Meas.

Status

Date April 6, 1979

Local gov't judgments pymt
Brief Title

Senator Wilson
Sponsor

Steve Lundin
Staff Contact: 753-4808

Committee on Local Govt

SUBSTITUTE SENATE BILL 2411

Permits counties to pay for the costs of defending a county officer or employee for official acts made in good faith. Permits counties to pay for judgments rendered against such officers or employees.

1st Sub. S. B. 2411 By Senate Committee on Local Government

Providing for payment by a local government of judgments against employees performing official duties.

(DIGEST OF PROPOSED 1ST SUBSTITUTE)

Requires a county to pay, upon request, the necessary expenses of defending an action or proceeding and any money judgment against an officer or employee arising out of acts or omissions which were, or in good faith were purported to be, within the scope of employment.

Feb 22 Committee report; substitute bill be substituted, do pass.

CERTIFICATE OF SERVICE

The undersigned hereby declares under penalty of perjury under the laws of the State of Washington that on January 27, 2015, she caused the *Opening Brief of Appellant* to be served on the following parties of record and/or interested parties by sending copies by Federal Express, to the below as follows:

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Dated this 27th day of January, 2015.

Toni Miller
Toni Miller