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SUPREME COURT  
OF THE STATE OF WASHINGTON

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ROBIN EUBANKS and ERIN GRAY,

Respondents,

v.

DAVID BROWN, individually and on behalf of his marital community,

Petitioner,

and

KLICKITAT COUNTY, KLICKITAT COUNTY PROSECUTING  
ATTORNEY'S OFFICE,

Defendants.

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ANSWER TO  
PETITION FOR REVIEW

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 ORIGINAL

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A. INTRODUCTION

Robin Eubanks and Erin Gray (collectively “Eubanks/Gray”) sued David Brown, the Klickitat County Prosecuting Attorney’s Office, and Klickitat County in 2010, alleging that Brown sexually harassed them while they worked with him in the prosecutor’s office. They sued in Benton County under the mistaken belief that they could sue all parties in any adjoining county, but subsequently had the case transferred to Clark County. Brown did not appeal that order.

Brown later moved to dismiss or, alternatively, to transfer venue to Klickitat County, claiming he was entitled as a public officer to be sued in his county of residence where the cause of action arose. The trial court refused to transfer venue from Clark County. The Court of Appeals, Division II, affirmed the trial court’s venue decision based on the interaction between three venue statutes: (1) RCW 4.12.025; (2) RCW 4.12.020; and (2) RCW 36.01.050.<sup>1</sup> *Eubanks v. Brown*, \_\_\_ Wn. App. \_\_\_, 285 P.3d 901, Slip Op. at ¶ 17 (2012).

Brown petitions for review. His attempt to concoct an argument that satisfies any of the requirements of RAP 13.4(b) to justify review by this Court falls far short. He argues for the first time in the case that the

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<sup>1</sup> The text of the three statutes is reproduced in the Appendix.

Court must intervene to define the term "by virtue of his or her office" to serve a substantial public interest. RAP 13.4(b)(4). He also argues for the first time that review is warranted because the Court of Appeals failed to answer certain questions posed by the facts of this case. Having failed to present these issues and questions to the trial court or to the Court of Appeals, he cannot raise them now. RAP 2.5(a). He also argues that review is warranted because the Court of Appeals decision conflicts with other appellate decisions addressing the same venue statutes. RAP 13.4(b)(2). It does not. The Court of Appeals opinion is consistent with other appellate precedent.

In the end, Brown offers little real analysis to support the proposition that the Court of Appeals incorrectly decided the venue question posed here. This Court should deny review.

**B. ISSUES PRESENTED FOR REVIEW**

Eubanks/Gray acknowledge the issues that Brown presents for review, but believe they are more appropriately formulated as follows:

- (1) Should this Court decline to consider new issues raised for the first time in Brown's petition for review where the issues were never raised in the trial court or the Court of Appeals and this Court is limited to the questions and theories presented before and determined by those courts?

(2) Should this Court deny review of a decision by the Court of Appeals to affirm a trial court order denying Brown's motion to change venue where he fails to identify an issue of substantial public interest meriting such review?

(3) Should this Court deny review of a decision by the Court of Appeals to affirm a trial court order denying Brown's motion to change venue where he fails to identify any conflict between the Courts of Appeals considering the venue statutes at issue?

C. RESPONSE TO BROWN'S STATEMENT OF THE CASE

The Court of Appeals decision provides the proper overview of the general facts of this case, which Eubanks/Gray incorporate by reference. They provide the following facts to offset Brown's misleading factual contentions.

Brown continues to avoid mentioning Eubanks/Gray's explicit allegations against him. Pet. at 1-2. But the nature of his alleged misconduct and the question of whether he was acting "by virtue of his office" when he engaged in that misconduct are the crux of this case and should not be overlooked. CP 10, 12. Eubanks/Gray allege that Brown, a very large man, regularly sat in their shared office with his pants unzipped and his legs spread open on his desk; that he positioned himself in the doorway to the office so that they would need to rub against his body when they left the office; that he gave unwanted gifts to Eubanks; and that he stared at Gray's breasts during conversations. CP 10, 12. Even after

the County no longer required Eubanks to work for Brown or to share office space with him, he continued to engage in sexually harassing behavior whenever he saw her. CP 10. Eubanks/Gray suffered emotional and economic damages and eventually lost their employment with the County because of Brown's harassment.<sup>2</sup> CP 11, 13, 21.

Brown also fails to mention the convoluted procedural history of this case. Pet. at 1. Eubanks/Gray intended to file their lawsuit in Benton County, but an error by the process server caused the complaint to be misfiled in Klickitat County. KCP 1, 3, 5, 17-18.<sup>3</sup> The Klickitat County court later dismissed the case on Eubanks/Gray's motion. KCP 17-20. They refiled the case in Benton County and later amended their complaint to sue Brown *in his individual capacity*. CP 26-27, 41-56. But Brown never mentions the amended complaint in his petition or its impact on the venue question.

Eubanks/Gray eventually filed the case in Clark County and moved in Benton County for a change of venue. CP 37-39. Critically

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<sup>2</sup> Eubanks suffered a mental and emotional breakdown because of Brown's sexual harassment and the County's failure to protect her from it. CP 11. She took extended family medical leave to recover, but later resigned from her position with the County because the thought of returning to work caused her to suffer severe stress, post-traumatic stress responses, and panic attacks. CP 11, 120. Her mental health provider expressly recommended that she not return to work at the County because of the possibility that she might relapse if she returned to the place where she was victimized. CP 120.

<sup>3</sup> "KCP" refers to the pleadings misfiled in Klickitat County.

missing from Brown's petition is any mention of the fact that he did not present any argument to oppose the motion and instead merely stated that he would not stipulate to venue in Clark County and that he did not agree to the transfer. CP 30-32. He later admitted that he did not oppose the motion. CP 134. The Benton County trial court granted Eubanks/Gray's motion and transferred the case to Clark County. CP 24, 28. *Brown never appealed that transfer order.* Instead, he filed a motion to dismiss or, alternatively, to transfer the case to Klickitat County. CP 97-100. After acknowledging that Eubanks/Gray had sued him *in his individual capacity*, he argued that venue was proper in Klickitat County because that was where he lived and that was where Eubanks/Gray's cause of action arose. CP 94, 97-98. It was only in his reply in support of his motion that he truly argued for the first time that he was entitled as a public officer to be sued in Klickitat County. CP 130-34.

This Court should rely on the facts as the Court of Appeals and Eubanks/Gray have objectively presented them, rather than on the one-sided summary that Brown presents in his petition.

D. ARGUMENT WHY REVIEW SHOULD BE DENIED<sup>4</sup>

(1) The Court Should Not Consider the New Issues that Brown Raises for the First Time in His Petition for Review

Brown raises three issues in his petition for review *never before addressed in this case*. First, he contends that no Washington court has defined the phrase “by virtue of his or her office” and that the absence of a definition presents a matter of substantial public interest meriting this Court’s review. Pet. at 1, 3, 4-11, 17-18. Second, he contends that unsubstantiated allegations of intentional misconduct cannot deprive a public officer of his or her venue rights under RCW 4.12.020(2) and that the Court of Appeals’ implicit acceptance of Eubank/Gray’s unproven allegations raises a substantial public interest warranting review.<sup>5</sup> *Id.* at 1, 7-8, 15-16. Finally, he contends that the Court of Appeals opinion impacts a substantial public interest because it leaves unanswered questions on the interplay between the venue statutes at issue here. Pet. at

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<sup>4</sup> This Court is fully familiar with the criteria for review set forth in RAP 13.4(b). Review by this Court of a Court of Appeals decision terminating review is a matter of discretion. RAP 13.3(a). This Court will accept a petition for review only if the petition involves an issue of substantial public interest that should be determined by this Court or if the decision of the Court of Appeals is in conflict with a decision from another intermediate appellate court. RAP 13.4(b)(2), (4). RAP 13.4(b)(2) and (3) do not apply because Brown does not raise them in his petition.

<sup>5</sup> Brown argues that Eubanks/Gray have not proven their allegations against him; consequently, he is still entitled to venue in Klickitat County. Pet. at 7-8, 15-16. The Court should not concern itself with the merits of the action at this stage of the proceedings. *State ex rel. Hand v. Superior Court*, 191 Wash. 98, 108, 71 P.2d 24 (1937). Whether Brown, as an individual, sexually harassed Eubanks/Gray is a question for the trier of fact and not this Court.

5, 8. Review of these issues and questions is not merited because they are not properly before the Court.

Brown *never briefed these issues or raised these questions* in the trial court or in the Court of Appeals. He only asserted them *after* the Court of Appeals issued its decision. This is improper. It is well-established in Washington that new issues cannot be raised for the first time in a petition for review. RAP 2.5(a); *Heg v. Alldredge*, 157 Wn.2d 154, 162, 137 P.3d 9 (2006) (noting this Court will not review an issue raised for first time in a petition for review, citing RAP 2.5(a)); *Fisher v. Allstate Ins. Co.*, 136 Wn.2d 240, 252, 961 P.2d 350 (1998) (same). Thus, the Court is limited to the questions and theories presented before and determined by the Court of Appeals, and to claims of error directed to that court's resolution of such issues. *People's Nat'l Bank v. Peterson*, 82 Wn.2d 822, 829-30, 514 P.2d 159 (1973) (declining to review issues and theories raised for the first time in a petition for review where they were not presented in the trial court or the Court of Appeals). Since Brown did not raise these issues or pose these questions in a timely fashion at the trial court or in the Court of Appeals, it is too late for him to do so in his petition. The Court should decline to address them.

(2) This Case Does Not Warrant Review by This Court

Brown pays scant attention in his petition to the criteria of RAP 13.4(b) and conflates his arguments. Pet. at 4-5, 10. He does not articulate an issue of substantial public interest sufficient to merit this Court's review. Similarly, his efforts to create a conflict where none exists do not warrant review. Far from being in conflict with prior decisions addressing the venue statutes at issue here, the Court of Appeals opinion is in agreement with them.

(a) The Court of Appeals opinion does not threaten the public interest

Brown claims that a substantial public interest will be served if this Court accepts review to define the phrase "by virtue of his or her office" and to provide an authoritative determination for future guidance that addresses the factors a court should consider when deciding if a particular cause of action asserts liability based on acts performed by a public officer by virtue of his or her office. Pet. at 3-11. He argues that the lack of a definition creates confusion and requires this Court's intervention. He is mistaken. The Court of Appeals opinion does not implicate a substantial public interest meriting this Court's review.

The criteria generally considered to determine if an issue is of substantial public interest "are the public or private nature of the question

presented, the desirability of an authoritative determination for the future guidance of public officers, and the likelihood of future recurrence of the question.” See, e.g., *Sorenson v. City of Bellingham*, 80 Wn.2d 547, 558, 496 P.2d 512 (1972). Rather than address these factors, however, Brown spends an inordinate amount of time arguing for the Court to accept review to define the phrase “by virtue of his or her office” because “[n]o Washington court has defined the term . . . or even addressed the definition of the term prior to the Court of Appeals in this case.” Pet. at 4-5. Not so. This Court defined the phrase nearly 100 years ago.

In *Greenius v. American Sur. Co. of New York*, 92 Wash. 401, 403, 159 P. 384 (1916), this Court was asked to consider whether a constable’s actions in arresting and assaulting the plaintiffs without a warrant or reasonable grounds for believing that they had committed a felony was an act done by virtue of his office thereby rendering his surety liable. The surety argued that the act was a naked trespass, an act done *colore officii*, for which it was not liable. *Id.* at 403. Rather than fixing an arbitrary line of demarcation between acts done *colore officii* and those done *virtute officii*,<sup>6</sup> this Court explained:

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<sup>6</sup> Acts done by an officer which are of such a nature that the office gives him or her no authority to do them are “*colore officii*.” *Stone Machinery Co. v. Kessler*, 1 Wn. App. 750, 755, 463 P.2d 651 (1970). Acts done *virtute officii* occur “where they are within the authority of the officer, but in doing them he exercises that authority improperly or abuses the confidence which the law reposes in him.” *Greenius*, 92 Wash.

Much mental energy has been expended in drawing distinctions between acts of public officers done *colore officii*, and acts done *virtute officii*, and we shall not undertake to assemble definitions. Our understanding is that when an officer acts in the performance of his duty, and, so acting, acts to the hurt or annoyance of a third party or an innocent party, he is nevertheless acting in virtue of his office. That is to say, *if his office gives him authority to act, he is acting in virtue of his office*, although, in the performance of a specific duty, he improperly exercises his authority.

(emphasis added). See also, 70 Am Jur.2d *Sheriffs, Police, and Constables* § 77 (explaining “[t]hose acts of a sheriff . . . or other such officer are by virtue of office, or *virtute officii*, which are within the authority of the officer[.]”).

Brown’s pleas for review on this basis should fall on deaf ears. The Court has already defined the phrase “by virtue of his or her office” and provided guidance to courts considering whether a particular cause of action against a public officer alleges an act done by authority vested in the officer or an act done by the officer in his or her personal capacity. Nothing more is required.

Brown next argues that the plain language of RCW 4.12.020(2) does not limit its applicability to conduct undertaken in furtherance of a

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at 405 (citing *Lee v. Charmley*, 20 N.D. 570, 129 N.W. 448 (N.D. 1910)). Despite these distinctions, the almost uniform current of cases now regards the wrongful acts of a public officer *colore officii* as official acts rendering the surety liable.

public officer's "official duties."<sup>7</sup> Pet. at 5. He claims that the statute applies as long as the cause of action against the officer is based upon an "act" taken by the officer "by virtue of his or her office." Pet. at 6. Brown fails to understand that Eubanks/Gray's allegations are not directed at any acts done by virtue of his office such that venue under RCW 4.12.020(2) would be proper in Klickitat County.

Brown's argument suffers from two fatal flaws. First, he forgets that he is not being sued as a public officer. As he unequivocally *admitted* in the trial court but attempts to now ignore, Eubanks/Gray sued him in his *individual capacity* rather than in his public capacity. CP 98. In fact, they amended their complaint to clarify that they were suing him in his individual capacity. CP 41-56. Second, he turns a blind eye to the obvious - his sexual harassment of Eubanks/Gray, while an "act," was not done by virtue of his public office because it was not part of his prosecutorial duties. Bluntly stated, sexual harassment of subordinates is not part of the job description for a deputy prosecuting attorney in Washington. It is Brown's *personal* misconduct that is outside the scope

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<sup>7</sup> Brown generally asserts that actions taken in furtherance of a public officer's "official duties" are not necessarily the equivalent of acts taken "by virtue of" his or her office. Pet. at 5. Yet he fails to explain the distinction and offers no authority to support the argument. The Court should decline to consider it. *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d 549 (1992) (noting appellate courts need not consider arguments not supported by reference to the record or citation of authority).

of his employment. *Burlington Industries, Inc. v. Ellerth*, 524 U.S. 742, 759, 118 S. Ct. 2257, 141 L.Ed.2d 633 (1998) (noting sexual harassment is outside the scope of employment because it is done for personal motives). *See also, Robel v. Roundup Corp.*, 148 Wn.2d 35, 54, 59 P.3d 611 (2002) (where employee's acts are directed toward personal sexual gratification, employee's conduct falls outside scope of his employment); *Thompson v. Everett Clinic*, 71 Wn. App. 548, 553, 860 P.2d 1054 (1993), *review denied*, 123 Wn.2d 1027 (1994) (doctor's sexual assaults emanated from personal motive for sexual gratification and were not attributable to the clinic where he worked). Regardless of Brown's reasons for sexually harassing Eubanks/Gray, his misconduct was not job-related and was done for his own *personal* gratification. *See Thompson*, 71 Wn. App. at 553. Under these circumstances, RCW 4.12.020(2) does not apply to make venue proper in Klickitat County.

Review is not warranted under RAP 13.4(b)(4).

(b) The Court of Appeals opinion does not conflict with other appellate decisions addressing the same venue statutes

Brown also claims that review is warranted under RAP 13.4(b)(2) because the Court of Appeals opinion is allegedly inconsistent with *Youker v. Douglas County*, 162 Wn. App. 448, 258 P.3d 60 (2011) and *Roy v. City of Everett*, 48 Wn. App. 369, 738 P.2d 1090(1987). Pet. at 11-

17. He reads these cases far too broadly in an effort to create a conflict where none exists. The Court of Appeals opinion is in harmony with *Youker* and *Roy*.

*Youker* and *Roy* are factually and procedurally distinct and thus not controlling. In *Youker*, Youker sued Douglas County and two of its deputies for malicious prosecution, false arrest, and related claims arising out of a search, arrest, and ultimately-terminated prosecution. 162 Wn. App. at 453. He filed in Chelan County in reliance on RCW 36.01.050. The trial court granted a motion to transfer the case to Douglas County, reasoning that although RCW 36.01.050 provided for three acceptable venues in which to sue the county, RCW 4.12.020(2) specified that Douglas County was the only proper venue with respect to the deputies. The Court of Appeals affirmed, holding that the statutes applied as written and did not conflict. *Id.* at 459-60.

In *Roy*, Roy sued the City of Everett, five Everett police officers, Snohomish County, three Snohomish prosecutors, and an estate. 48 Wn. App. at 370. She commenced her lawsuit in King County. The City and the police officers challenged venue in King County, but the trial court denied their motions to transfer venue to Snohomish County. The Court of Appeals reversed. Relying in part on RCW 4.12.020(2), that court ordered the case against the officers and the City of Everett transferred to

Snohomish County. Focusing on the language of the statutes, that court concluded that RCW 36.01.050 did not require Roy to file in King County but that RCW 4.12.020 required her to sue the City of Everett and the officers in Snohomish County, their county of residence. *Roy*, 48 Wn. App. at 372. In reaching this conclusion, the court considered the statutes separately.<sup>8</sup>

According to Brown, the Court of Appeals erred in this case by holding that he was not entitled to the same venue rights as those afforded to the public officer defendants in *Youker* and *Roy* because the plaintiffs in all three cases alleged that the defendants engaged in some form of intentionally tortious conduct. Pet. at 11. Brown misses the point. The critical distinction that he fails to make is that the defendants in *Youker* and *Roy* were sued in their official capacities for actions done *by virtue of their public offices*. In other words, they were sued for acts authorized by their public offices, *e.g.*, arrest, prosecution, but improperly exercised. Hence, RCW 4.12.020(2) applied to make venue proper where the causes of action arose. But here, Eubanks/Gray did not sue Brown in his official

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<sup>8</sup> This Court subsequently rejected the *Roy* court's interpretive approach to the venue statutes in *Cossel v. Skagit County*, 119 Wn.2d 434, 438, 834 P.2d 609 (1992), *overruled on other grounds by Shoop v. Kittitas County*, 149 Wn.2d 29, 65 P.3d 1194 (2003). There, the Court noted that the better approach is to read the venue statutes as complementary and to give effect to each. *Cossel*, 119 Wn.2d at 437. *See also, Hickey v. City of Bellingham*, 90 Wn. App. 711, 719 n.18, 953 P.2d 822, *review denied*, 136 Wn.2d 1013 (1998) (noting *Roy's* analysis as it pertains to RCW 36.01.050 is questionable in light of the *Cossel* court's subsequent decision).

capacity. As he admits, they sued him *in his individual capacity*. CP 98. Nor have they sued him for any acts done “by virtue of his public office.” His prosecutorial position does not authorize him to sexually harass his staff. His sexual misconduct is *personal* misconduct not within the scope of his employment. *See, e.g., Robel*, 148 Wn.2d at 54.

Two cases are illustrative of this distinction. In *State ex rel. McWhorter v. Superior Court*, 112 Wash. 574, 192 P. 903 (1920), Davis sued McWhorter in King County for malicious prosecution. McWhorter moved for a change of venue to Yakima, his county of residence. Davis then amended his complaint to show that McWhorter had prosecuted him in his capacity as an officer of the State Humane Bureau. *Id.* at 575. This Court held that McWhorter being sued as a public officer for actions done under color of and by virtue of his office statutorily fixed venue in the county where the cause of action arose and affirmed the trial court’s refusal to grant a change of venue. *Id.* at 578.

*State ex rel. Hand v. Superior Court*, 191 Wash. 98, 71 P.2d 24 (1937) provides the most graphic example. In that case, there was a genuine dispute whether the defendants, who were members of Washington’s National Guard, were public officers acting by virtue of their office. If they were, the acts complained of had occurred in Grays Harbor County and the plaintiff was entitled to bring his action for

malicious prosecution and false arrest in that county. The guardsmen claimed that they were not public officers; that they resided in various counties of the state other than Grays Harbor; and that the case should be transferred to Yakima County, the residence of one of the defendants, for trial. The trial court refused to change venue. This Court affirmed, holding that where the officers were not public officers, they were entitled to a change of venue. Merely because the guardsmen were in uniform did not mean that they were acting by virtue of their public offices. This Court clearly rejected the concept that Brown now advances more than 75 years ago.

Another critical distinction that Brown fails make is that the Court of Appeals has likewise already considered and rejected his arguments. In *Johanson v. City of Centralia*, 60 Wn. App. 748, 807 P.2d 376 (1991),<sup>9</sup> the court considered a nearly identical venue question. There, Johanson's wife died in a car accident in Thurston County. The personal representative of her estate filed a wrongful death action in Pierce County. The defendants moved for a change of venue to Lewis County, or alternatively, to Thurston County, arguing they could not be sued in Pierce County under RCW 4.12.020. The trial court granted the motion and

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<sup>9</sup> This Court quoted *Johanson* with approval in *Cossel*. *Cossel*, 119 Wn.2d at 437-38.

ordered the case transferred to Thurston County. *Id.* at 749.

The Court of Appeals considered the venue options in former RCW 4.12.020(3) and found them reconcilable with RCW 36.01.050:

We conclude that what superficially appears to be a conflict is really not. We believe the two statutes are complementary. RCW 4.12.020 permitted [Johanson] to bring this particular kind of *lawsuit* in the county where "some one of the defendants" resides; Thurston County was, therefore, a permissible venue. RCW 36.01.050, dealing with a specific kind of *defendant*, then came into play, allowing the plaintiff the further option of filing suit in adjoining Pierce County.

60 Wn. App. at 750 (citing *Save Our Rural Environment v. Snohomish County*, 99 Wn.2d 363, 366-67, 662 P.2d 816 (1983) and *Rabanco, Ltd. v. Weitzel*, 53 Wn. App. 540, 768 P.2d 523 (1989)).

In *Rabanco*, Rabanco brought an action against Grant County and the Grant County commissioners for breach of contract. It also sued Commissioner Jim Weitzel and his wife individually, alleging tortious conduct. The action was filed in the Benton-Franklin County judicial district pursuant to RCW 36.01.050. The Weitzels moved to dismiss on jurisdictional grounds pursuant to RCW 4.12.020(3), contending they were entitled to be sued in Grant County, the county where they resided. The trial court denied the motion.

The Court of Appeals affirmed, holding that Rabanco had the right to file the lawsuit in one of the counties adjoining Grant County pursuant

to RCW 36.01.050 despite the fact that RCW 4.12.020(3) states that actions against public officers should be brought in the county in which the public officer resides. *Id.* at 542. *See also, Brunecau v. Grant County*, 58 Wn. App. 233, 236 n.3, 792 P.2d 174 (1990) (had plaintiff sued Grant County sheriff's department employees as individuals, rather than as public officials, she could have sued them and the county in Chelan County). The Court of Appeals has rejected the very argument that Brown now makes to this Court.<sup>10</sup>

Despite Brown's best efforts to create a conflict to justify further review by this Court under RAP 13.4(b)(2), none exists. The Court of Appeals opinion here appropriately addressed the various decisions on venue and properly distinguished in *Youker* and *Roy*. Accordingly, the Court should deny Brown's petition for review.

#### E. CONCLUSION

Having had his arguments rejected by the trial court and the Court of Appeals Brown prefers to spend time on the procedural issue of venue rather than addressing the merits of his defense to his sexual harassment of Eubanks/Gray. He will have a fair trial in Clark County. This Court should not condone Brown's delaying tactics.

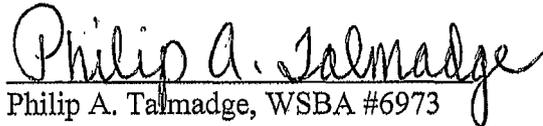
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<sup>10</sup> *Youker* did not overrule *Rabanco*, despite its later issuance.

Many of Brown's contentions are not found in his briefing in the trial court or in the Court of Appeals. It is too late for him to raise them now. RAP 2.5(a). Regardless, nothing in Brown's petition supports the proposition that the Court of Appeals incorrectly decided the venue question posed here. The Court of Appeals decision in this case was correct. This Court should decline to revisit it. The Court should deny review.

DATED this 14th day of November, 2012.

Respectfully submitted,



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# APPENDIX

©  
West's Revised Code of Washington Annotated Currentness  
Title 4. Civil Procedure (Refs & Annos)  
    ☐ Chapter 4.12. Venue--Jurisdiction (Refs & Annos)  
        → → 4.12.020. Actions to be tried in county where cause arose

Actions for the following causes shall be tried in the county where the cause, or some part thereof, arose:

- (1) For the recovery of a penalty or forfeiture imposed by statute;
- (2) Against a public officer, or person specially appointed to execute his or her duties, for an act done by him or her in virtue of his or her office, or against a person who, by his or her command or in his or her aid, shall do anything touching the duties of such officer;
- (3) For the recovery of damages for injuries to the person or for injury to personal property, the plaintiff shall have the option of suing either in the county in which the cause of action or some part thereof arose, or in the county in which the defendant resides, or if there be more than one defendant, where some one of the defendants resides, at the time of the commencement of the action.

**C**  
West's Revised Code of Washington Annotated Currentness  
Title 4. Civil Procedure (Refs & Annos)

▣ Chapter 4.12. Venue--Jurisdiction (Refs & Annos)

→→ 4.12.025. Action to be brought where defendant resides--Optional venue of actions upon unlawful issuance of check or draft--Residence of corporations--Optional venue of actions against corporations

(1) An action may be brought in any county in which the defendant resides, or, if there be more than one defendant, where some one of the defendants resides at the time of the commencement of the action. For the purpose of this section, the residence of a corporation defendant shall be deemed to be in any county where the corporation: (a) Transacts business; (b) has an office for the transaction of business; (c) transacted business at the time the cause of action arose; or (d) where any person resides upon whom process may be served upon the corporation.

(2) An action upon the unlawful issuance of a check or draft may be brought in any county in which the defendant resides or may be brought in any division of the judicial district in which the check was issued or presented as payment.

(3) The venue of any action brought against a corporation, at the option of the plaintiff, shall be: (a) In the county where the tort was committed; (b) in the county where the work was performed for said corporation; (c) in the county where the agreement entered into with the corporation was made; or (d) in the county where the corporation has its residence.

**C**

West's Revised Code of Washington Annotated Currentness

Title 36. Counties (Refs & Annos)

Chapter 36.01. General Provisions (Refs & Annos)

→→ 36.01.050. Venue of actions by or against counties

(1) All actions against any county may be commenced in the superior court of such county, or in the superior court of either of the two nearest judicial districts. All actions by any county shall be commenced in the superior court of the county in which the defendant resides, or in either of the two judicial districts nearest to the county bringing the action.

(2) The determination of the nearest judicial districts is measured by the travel time between county seats using major surface routes, as determined by the administrative office of the courts.

DECLARATION OF SERVICE

On said day below I emailed a courtesy copy and deposited in the U.S. Mail for service a true and accurate copy of the Answer to Petition for Review in Supreme Court Cause No. 88021-2 to the following parties:

Francis Floyd  
Floyd Pflueger & Ringer PS  
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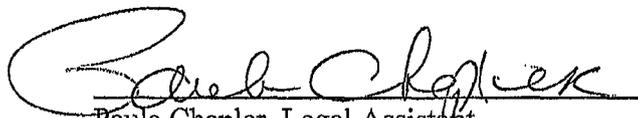
Thomas S. Boothe  
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Portland, OR 97225

Original efiled with:

Washington Supreme Court  
Clerk's Office  
415 12<sup>th</sup> Street W.  
Olympia, WA 98504-0929

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

DATED: November 14, 2012, at Tukwila, Washington.



Paula Chapler, Legal Assistant  
Talmadge/Fitzpatrick

## OFFICE RECEPTIONIST, CLERK

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**From:** OFFICE RECEPTIONIST, CLERK  
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**To:** 'Paula Chapler'  
**Subject:** RE: Eubanks v. Brown, et al. -- Cause No. 88021-2

Received 11/14/12

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

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**From:** Paula Chapler [<mailto:paula@tal-fitzlaw.com>]  
**Sent:** Wednesday, November 14, 2012 10:43 AM  
**To:** OFFICE RECEPTIONIST, CLERK  
**Subject:** Eubanks v. Brown, et al. -- Cause No. 88021-2

Per Mr. Talmadge's request, attached please find the Answer to Petition for Review for filing in the following case:

Case Name: Robin Eubanks v. Erin Gray v. David Brown, et al.  
Cause No. 88021-2  
Attorney: Philip A. Talmadge, WSBA #6973  
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Sincerely,

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