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COURT OF APPEALS
DIVISION II
OF THE STATE OF WASHINGTON

NO. 42329-4-II

ROBIN EUBANKS and ERIN GRAY
Respondents/Plaintiffs,

v.

DAVID BROWN, individually and behalf of his marital community

Petitioner/Defendants.

&

KLICKITAT COUNTY, KLICKITAT COUNTY PROSECUTING
ATTORNEY'S OFFICE;

Defendants

STATE OF WASHINGTON
DENIED

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FILED
COURT OF APPEALS
DIVISION II

PETITION FOR DISCRETIONARY REVIEW
TO THE SUPREME COURT

FILED
OCT 25 2012
COURT OF APPEALS
WASHINGTON
CRO

EVANS, CRAVEN & LACKIE, P.S.
Michael E. McFarland Jr., WSBA #23000
818 W. Riverside, Suite 250
Spokane, WA 99201-0910
(509) 455-5200
ATTORNEYS FOR PETITIONER

TABLE OF CONTENTS

A.	IDENTITY OF PETITIONER.....	1
B.	COURT OF APPEALS DECISION	1
C.	ISSUES PRESENTED FOR REVIEW	1
D.	STATEMENT OF CASE	1
E.	ARGUMENT WHY REVIEW SHOULD BE ACCEPTED	3
1.	Substantial Public Interest Is Served By This Court Defining The Term "By Virtue Of His Or Her Office."	4
2.	The Court of Appeals' Decision In This Case Conflicts With Other Court of Appeals' Cases.....	11
F.	CONCLUSION	17

TABLE OF AUTHORITIES

Cases

Eubanks v. Brown, 285 P.3d 901, Wash.App. Div. 2 (2001)
..... 1, 2, 3, 10, 13, 16, 17, and 18

Roy v. Everett, 48 Wn.App. 369, 738 P.2d 1090 (1987)
..... 3, 4, 5, 6, 8, 10, 11, 12, 13, 16, 17, and 18

Yunker v. Douglas County, 162 Wn.App. 448, 258 P.3d 60 (2011)
..... 3, 4, 5, 6, 8, 10, 11, 12, 13, 16, 17, and 18

Statutes and Rules

RAP 13.4(b)(2)4

RAP 13.4(b)(4) 3, 11,

RCW 4.12.020(2)..... 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 15, 16, 17, and 18

A. IDENTITY OF PETITIONER

Petitioner is David Brown.

B. COURT OF APPEALS DECISION

Mr. Brown is seeking review of the decision in *Robin Eubanks and Erin Gray v. David Brown and Klickitat County*, Court of Appeals, Division II, NO. 42329-4-II. The Court of Appeals' decision was issued on September 18, 2012.

C. ISSUES PRESENTED FOR REVIEW

1. What is the definition of the term "*for an act done by him or her in virtue of his or her office*" as used in RCW 4.12.020(2)?
2. Can unsubstantiated allegations of intentional conduct in a complaint deprive a public officer of his or her venue rights under RCW 4.12.020(2)?

D. STATEMENT OF THE CASE

Petitioner David Brown was previously employed as a deputy prosecuting attorney for Klickitat County. [CP 4, 11, 17] Respondents Robin Eubanks and Erin Gray were likewise employed in the Klickitat County Prosecuting Attorney's Office. [CP 4, 17] Ms. Eubanks and Ms. Gray brought suit against Mr. Brown and Klickitat County, asserting several causes of action based upon the allegation that Mr. Brown, as their "supervisor," sexually harassed them while they were all employed in the

Klickitat County Prosecuting Attorney's Office. [CP 4, 17] Mr. Brown denies that he sexually harassed either Ms. Eubanks or Ms. Gray. The lawsuit is pending in Clark County.

Before any discovery had taken place, Mr. Brown brought a motion to change venue pursuant to RCW 4.12.020(2), arguing that he could not be sued in Clark County, as venue for the claims against him is only proper in Klickitat County. *Eubanks v. Brown*, 285 P.3d 901, Wash.App. Div. 2 (2001) (App. A). RCW 4.12.020(2) provides:

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

(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; (emphasis added)

When the trial court denied Mr. Brown's challenge to venue in Clark County, Mr. Brown sought discretionary review in Division II of the Court of Appeals. The Court Commissioner granted discretionary review, finding that the trial court appeared to have committed obvious error.

The Court of Appeals subsequently affirmed the trial court, finding in pertinent part that RCW 4.12.020(2) did not mandate venue in Klickitat County because Mr. Brown "*is not being sued for actions done by virtue of his office.*" *Eubanks*, 285 P.3d at 904. Instead, the Court of Appeals

concluded, based upon the unsubstantiated assertions of the Complaint, that Mr. Brown was being sued solely for "*personal misconduct in a workplace.*" *Eubanks*, 285 P.3d at 904.

In arriving at its decision, the Court of Appeals held that both *Youker v. Douglas County*, 162 Wn.App. 448, 258 P.3d 60 (2011) and *Roy v. Everett*, 48 Wn.App. 369, 738 P.2d 1090 (1987) were not "controlling," as the officers in those cases were being sued for actions done by virtue of their office, as opposed to the alleged "personal misconduct" of Mr. Brown. This petition followed.

E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

This Court should accept review for two reasons. First, no Washington court has defined the term "by virtue of his or her office." Substantial public interest would thus be served by having this Court not only define the term "by virtue of his or her office," but also identify what courts should rely upon in determining whether a particular cause of action asserts liability based upon acts done by "virtue of his or her office." Review is therefore appropriate pursuant to RAP 13.4(b)(4).

Second, the Court of Appeals' decision in this case is in direct conflict with two Court of Appeals cases (*Roy v. Everett, supra.*, and *Youker v. Douglas County, supra.*). In both *Roy* and *Youker*, the Court of Appeals held that the defendant officers were entitled to venue in the

county where the cause of action arose, notwithstanding the fact that the officers were sued for having allegedly committed intentional torts, which, if proven, would be acts outside the scope of the officers' employment, and therefore indistinguishable from the alleged (and unproven) "personal misconduct" of Mr. Brown. This case is in direct conflict with *Roy* and *Youker*, making review appropriate pursuant to RAP 13(b)(2).

**1. Substantial Public Interest Is Served By This Court
Defining The Term "By Virtue Of His Or Her Office."**

No Washington court has defined the term "by virtue of his or her office." In fact, no Washington court has even addressed the definition of the term prior to the Court of Appeals in this case. The problem with that is two-fold. First, without a definition of the term "by virtue of his or her office," courts are left with no guidance in determining whether a particular cause of action against a public officer alleges an act taken "by virtue of his or her office." Second, the absence of a definition of the term has already resulted in conflicting appellate cases, and will inevitably result in further conflicting cases in the future.

RCW 4.12.020(2) does not contain any definition as to what causes of action are and are not subject to the statute, or even what *types* of causes of action (i.e., misfeasance v. malfeasance) are and are not subject to the statute. Right now, case law provides no guidance in that regard.

In its opinion in this matter, the Court of Appeals clearly struggled with the lack of a definition of the term "by virtue of his or her office." Without such a definition, and in an effort to distinguish *Roy* and *Youker*, the Court of Appeals held that RCW 4.12.020(2) applies to conduct taken in furtherance of the defendant's "official duties." The Court of Appeals also seemingly attempted to distinguish between causes of action based upon misfeasance (i.e., "failing to protect the plaintiffs") and causes of action alleging malfeasance ("personal misconduct").

As a result of the absence of a definition of "by virtue of his office," the Court of Appeals rendered a decision that is erroneous and in direct conflict with both *Roy* and *Youker*. Rather than answer the question of when RCW 4.12.020(2) applies, the Court of Appeals has created even greater ambiguity. There are seven errors in the Court of Appeals' opinion, all of which create confusion about the applicability of RCW 4.12.020(2), and all of which support review by this Court.

First, the statute itself does not limit its applicability to conduct undertaken in furtherance of the defendant's "official duties." That language simply does not appear in the statute, and actions taken in furtherance of a defendant's "official duties" are not necessarily the equivalent to acts taken "by virtue of" a defendant's office.

Second, RCW 4.12.020(2) makes no distinction between allegations of misfeasance and allegations of malfeasance. As long as the cause of action is based upon an "act" taken by an officer "by virtue of his or her office," RCW 4.12.020(2) is applicable, regardless of whether the claim alleges misfeasance or malfeasance.

Third, the Court of Appeals' attempt to distinguish the alleged "failures" of the officers in *Roy* and *Youker* from the alleged "personal misconduct" of Mr. Brown only creates ambiguity, as the officers in *Roy* and *Youker* were sued for alleged intentionally tortious conduct (i.e., assault, false imprisonment and malicious prosecution). Since intentional torts such as assault and false imprisonment are not in furtherance of an officer's "official duties," it is unclear why RCW 4.12.020(2) applies to the intentional torts asserted against the officers in *Roy* and *Youker*, but does not apply to the "personal misconduct" of Mr. Brown.

Fourth, Mr. Brown was in fact sued for taking actions in furtherance of his "official duties." Specifically, Ms. Eubanks and Ms. Gray asserted that the alleged acts of Mr. Brown "were on behalf of Klickitat County and occurred within the scope of employment." (CP 7, *Complaint, Par. 2.3*). Ms. Eubanks and Ms. Gray further asserted that at the time of the alleged harassment, Mr. Brown was acting in a "supervisory attorney position" and was therefore "acting in the interests

and for the benefit of the defendant, employer Klickitat County." (CP 7, *Complaint, Par. 5.4.*) The Court of Appeals' conclusion that Mr. Brown is not being sued for actions done by virtue of his office is in direct conflict with the specific allegations of the Complaint.

Fifth, in finding that Mr. Brown was not entitled to venue in Klickitat County, the Court of Appeals erroneously took as verities the unsubstantiated allegations of the Complaint. Mr. Brown has denied that he ever sexually harassed either Ms. Eubanks or Ms. Gray. Nonetheless, implicit in the Court of Appeals' decision is a determination that (1) Mr. Brown did in fact engage in the conduct as alleged; and (2) Mr. Brown engaged in the conduct for "personal" reasons.

Mr. Brown submits that a public officer cannot be denied his or her venue rights under RCW 4.12.020(2) based upon unsubstantiated and unproven allegations in a complaint. Venue rights are significant and important, and should not be lost based solely upon unsubstantiated allegations. If public officers are forced to defend themselves in counties other than where the cause of action arose, based solely upon unsubstantiated allegations, RCW 4.12.020(2) is rendered meaningless. Whether or not Mr. Brown sexually harassed the plaintiffs is a question of fact for the jury to decide – not a court determining whether venue is proper. Yet in this case, if the jury determines that Mr. Brown did not

sexually harass Ms. Eubanks and Ms. Gray, and that there was no merit to the their allegations, Mr. Brown will have had to defend himself in Clark County based solely upon unsubstantiated allegations. RCW 4.12.020(2) gives Mr. Brown the right to prove that Ms. Eubanks' and Ms. Gray's claims have no merit in the county where the cause of action arose.

Sixth, in arbitrarily attempting to distinguish the alleged intentional tort claims brought against the officers in *Roy* and *Youker* from the alleged "personal misconduct" of Mr. Brown, the Court of Appeals left unanswered the question of where venue properly lies if a public officer is sued for both sexual harassment and a cause of action that the Court of Appeals accepted as an act taken pursuant to the officer's official duties. That is, what if a public official is sued for both sexual harassment and malicious prosecution? What if a public official is sued for both sexual harassment and false imprisonment? What if a public official is sued for both sexual harassment and negligence? In each of those cases, is venue proper in the county where the cause of action arose, or does the claim of sexual harassment allow the plaintiff to sue in some other county?

These very questions were before the Court of Appeals in this case, as Mr. Brown was sued for not only sexual harassment, but also for negligence-based claims. Specifically, Ms. Eubanks and Ms. Gray asserted

a claim of negligent infliction of emotional distress against Mr. Brown.¹ *See, CP 7, Complaint, pg. 8, "Third Cause of Action."* Ms. Eubanks and Ms. Gray alleged that "Defendants' conduct was negligent, extreme, outrageous, and/or intentional," and that "Defendants' conduct proximately caused injuries and damages." *Id. at pgs. 8-9.* Mr. Brown was thus sued both for alleged sexual harassment and alleged negligent infliction of emotional distress. By denying Mr. Brown's venue rights under RCW 4.12.020(2), the Court of Appeals' decision can be interpreted as holding that if a public officer is sued for sexual harassment in conjunction with any other cause of action that would otherwise be tried where the cause of action arose, the sexual harassment claim trumps the other claims and allows the public officer to be sued in a county other than where the cause of action arose. Review by this Court is necessary to resolve the confusion/contradiction created by the Court of Appeals.

Seventh, the Court of Appeals has created an internal conflict in RCW 4.12.020(2) by giving broader venue rights to an individual carrying out a command of a public officer than those of a public officer himself or

¹ In their original Complaint, the plaintiffs asserted a claim of negligence against Mr. Brown. In an Amended Complaint filed after this matter was before the Court of Appeals, the plaintiffs amended their Complaint and arguably clarified that their negligence claim did not apply to Mr. Brown.

herself. That is, according to the Court of Appeals, a public officer is entitled to venue in the county where the cause of action arose only if he or she is furthering his or her "official duties." However, according to RCW 4.12.020(2), a person carrying out a command of a public officer is entitled to venue in the county where the cause of action arose if that person is doing "*anything touching on the duties of the officer.*" This language conveys broader venue rights to persons carrying out the command of a public officer than the Court of Appeals' interpretation of the term "by virtue of his office." This could lead to the absurd result of a public official being forced to defend himself or herself in a county other than where the cause of action arose, while a person carrying out a command of that public officer being entitled to venue in the county where the cause of action arose. This Court should accept review in order to rectify the conflict created by the Court of Appeals.

As the law exists right now, there are two Washington cases (*Roy* and *Youker*) that hold that officers being sued for intentional torts are entitled to the venue benefits of RCW 4.12.020(2), and one Washington case (*Eubanks v. Brown*) that holds that an officer simply accused of sexual harassment is not entitled to the venue benefits of RCW 4.12.020(2). If not a direct conflict between these cases, there is at the

very least significant ambiguity as to how to interpret and apply the term "by virtue of his or her office."

This Court should accept review of this case because the undefined term of "by virtue of his or her office" has resulted in decisions that are in direct conflict. RAP 13.4(b)(2). Further, without a decision from this Court defining "by virtue of his or her office," courts will be left to arbitrarily determine what claims arise from acts done by virtue of a defendant's office, and which claims allege only "personal misconduct."

2. The Court Of Appeals' Decision In This Case Conflicts With Other Court Of Appeals' Cases.

The Court of Appeals' decision in this case directly conflicts with both *Younker v. Douglas County*, and *Roy v. Everett*. In both of those cases, the Court of Appeals held that pursuant to RCW 4.12.020(2), the officers were entitled to be sued in the county where the cause of action arose. In this case, the Court of Appeals held that Mr. Brown is not entitled to the same rights as was afforded the officers in *Roy* and *Youker*. As set forth herein, the distinction identified by Court of Appeals between *Roy/Youker* and the instant case simply does not exist. To the contrary, in all of the cases, the plaintiffs alleged that the officers engaged in some form of intentionally tortious conduct. Nonetheless, while the Court of Appeals in *Roy* and *Youker* found that the alleged intentionally tortious acts were acts done "by virtue of" the officers' office, the Court of Appeals

in this case held to the contrary. As such, this case directly conflicts with *Roy* and *Youker*.

In *Roy v. City of Everett*, 48 Wash.App. 369, 370, 738 P.2d 1090 (1987), an injured citizen brought suit against the estate of an assailant, the City of Everett, individual police officers, Snohomish County and county prosecutors to recover for injuries caused by the assailant. The plaintiff alleged several causes of action, including the intentional tort of assault. *Roy*, 48 Wash.App. at 370. Similarly, in *Youker v. Douglas County*, 162 Wash.App. 448, 258 P.3d 60 (2011), the plaintiff asserted several causes of action, the intentional torts of including malicious prosecution, false arrest, false imprisonment, and invasion of privacy. Despite the fact that the plaintiffs in both of these cases alleged intentional torts against the officers, the Court of Appeals in both cases held that RCW 4.12.020(2) required the suit against them to be brought in the county where the cause of action arose.

In the instant case, the Court of Appeals attempted to distinguish *Roy* and *Youker* by mischaracterizing the nature of the claims asserted against the officers in *Roy* and *Youker*. Specifically, although the plaintiffs in both *Roy* and *Youker* asserted claims involving intentional conduct against the officers, the Court of Appeals characterized those claims as involving only a "failure" to perform the officers' official duties. The

Court of Appeals then compared those officers' "failure" to perform their duties with Mr. Brown's alleged "personal misconduct."

Mr. Brown's alleged "harassment" of Ms. Eubanks and Ms. Gray is no more "personal misconduct" than the officers' alleged intentionally tortious conduct in *Roy* and *Eubanks*. Yet the Court of Appeals in this case concluded that "unlike the deputies in *Youker* and the officers in *Roy*, Brown is not being sued for actions done by virtue of his office." *Eubanks v. Brown*, 285 P.3d at 904.

Implicit in that holding is that the deputies in *Youker* and the officers in *Roy* were acting "by virtue of" their offices in allegedly committing the intentional acts of assault, false imprisonment, invasion of privacy, false arrest and malicious prosecution. If the deputies in *Youker* and the officers in *Roy* were acting "by virtue of" their offices in allegedly committing intentional torts, what is the justification for the conclusion that Mr. Brown was not acting "by virtue of" his office when he allegedly sexually harassed Ms. Eubanks and Ms. Gray?

The Court of Appeals attempted to justify this distinction by noting that Mr. Brown was being sued "individually" for his alleged "misconduct." There are two inherent problems with the Court of Appeals' decision in this regard.

First, there is no question that Mr. Brown was sued based upon his employment in the Klickitat County Prosecuting Attorney's Office, and specifically because of his "supervisory authority" over the plaintiffs:

Defendant David Brown had decision-making capacity to exercise control over plaintiffs' activities in the Klickitat County Prosecuting Attorney's Office so as to be responsible for the actions he took with regard to plaintiffs, and did in fact exercise those powers so as to cause damage to plaintiffs.

App. B, Amended Complaint, Par. 4.2

During the period of her employment, from November 2007 through April 2009, defendant David Brown was one of the deputy prosecuting attorneys for whom plaintiff Robin Eubanks was assigned to provide secretarial and administrative work. As such, plaintiff Eubanks was subject to defendant Brown's supervisory authority.

CP 7, Complaint, Par. 4.3

At all times during his sexual harassment of plaintiff, defendant Brown had supervisory authority over Ms. Eubanks, as she was a secretary/administrative assistant in the Prosecuting Attorney's office. **David Brown was therefore acting in the interests and for the benefit of his employer, defendant Klickitat County.**

CP 7, Complaint, Par. 4.6 (emphasis added)

During the period of her employment from April 2009 through July of 2010, David Brown was one of the deputy prosecuting attorneys for whom plaintiff Erin Gray was assigned to provide secretarial and administrative work. As such, Mr. Brown had supervisory authority over Ms. Gray.

CP 7, Complaint, Par. 5.2

At all times during his actions toward Plaintiff Erin Gray, defendant David Brown was the supervisory attorney over Ms. Gray and was, therefore, acting in the interests and for the benefit of his employer, defendant Klickitat County.

CP 7, Complaint, Par. 5.4 (emphasis added)

The idea that Mr. Brown was acting "individually" and not "by virtue of" his office is a fiction. It simply cannot be disputed that the only reason Ms. Eubanks and Ms. Gray can bring any claims against Mr. Brown is because he allegedly engaged in the alleged conduct at work, during his employment and as their "supervisor." If Mr. Brown was not Ms. Eubanks' and Ms. Gray's "supervisor," as they allege in their Complaint, he could not and would not be a defendant herein.

Second, implicit in the Court of Appeals' decision in this matter is a determination by the Court of Appeals that Mr. Brown engaged in the "misconduct" in question. Mr. Brown has denied from the outset of this litigation that he in any manner sexually harassed Ms. Eubanks or Ms. Brown. Notwithstanding the same, the Court of Appeals denied Mr. Brown his venue rights under RCW 4.12.020(2) because he is being sued "for personal misconduct in a workplace." In so holding, the Court of Appeals has put the proverbial cart before the horse. Instead of recognizing that possibility that Mr. Brown may actually have genuine

defenses to the unsubstantiated allegations of Ms. Eubanks and Ms. Gray and/or that Ms. Eubanks and Ms. Gray have simply made malicious and improperly-motivated allegations against Mr. Brown, the Court of Appeals instead assumed the truth of the plaintiffs' unsubstantiated allegations to support a finding that Mr. Brown's alleged "misconduct" denies him his venue rights under RCW 4.12.020(2).

As the law exists in this state today, there are two cases (*Roy* and *Younker*) that hold that a public official sued for such alleged acts as assault, false imprisonment and malicious prosecution have the right to be sued in the county where the cause of action arose, and one case (*Eubanks*) that holds that when a public official is sued for sexual harassment does not have the right to be sued in the county where the cause of action arose. This Court needs to accept review of this case to resolve the conflict that exists between these three cases and define the term "by virtue of his or her office."

If the Court does not accept review, case law will remain unsettled, and in fact, conflicting. Courts addressing venue pursuant to RCW 4.12.20(2) will be left with no guidance as to whether a particular claim or cause of action should be considered "misconduct" or based upon an act done "by virtue of" the defendant's office. As it stands now, trial courts

know only that claims involving malicious prosecution, false arrest, false imprisonment and assault involve acts done "by virtue of" a defendant's office, while a claim of sexual harassment does not. Because there is no definition of "by virtue of his or her office," and because the instant case conflicts with *Roy* and *Youker*, trial courts have no guidance going forward as to whether any cause of action not addressed in *Eubanks*, *Roy* and *Youker* involve conduct taken "by virtue of" a defendant's office. Left unanswered is whether a whole multitude of causes of action involve conduct taken "by virtue of" a defendant's office, including claims of discrimination, defamation, wrongful discharge, intentional infliction of emotional distress, negligent infliction of emotional distress, false light, trespass, nuisance, misrepresentation, fraud and civil rights violations. Review by this Court is necessary in order to define the term "by virtue of his or her employment," so that courts faced with venue questions pursuant to RCW 4.12.020(2) have guidance on whether a particular cause of action is or is not governed by the statute.

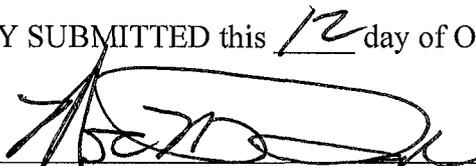
F. CONCLUSION

In both *Roy* and *Youker*, the officers were sued for allegedly engaging in intentionally tortious conduct. In both *Roy* and *Youker*, the Court of Appeals held that pursuant to RCW 4.12.020(2), venue was proper in the county in which the cause of action arose. In the instant case,

Mr. Brown has likewise been accused of intentionally tortious conduct, yet the Court of Appeals denied Mr. Brown the right to have the claims against him tried in the county where the causes of action arose. As a result of these conflicting opinions, case law is now unsettled and gives little guidance to trial courts on how to interpret RCW 4.12.020(2) with respect to any cause of action not specifically identified in *Roy*, *Youker* or *Eubanks*. Having this Court define "by virtue of his or her public office" will thus serve a substantial public interest.

Based upon the foregoing, Mr. Brown respectfully request that the Court accept review of this matter.

RESPECTFULLY SUBMITTED this 12 day of October, 2012.

A handwritten signature in black ink, appearing to read "McFarland", written over a horizontal line.

MICHAEL E. MCFARLAND, WSBA # 23000
Attorneys for Petitioner David Brown

CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on the 12th day of October, 2012, a true and correct copy of the foregoing *Petitioner's Opening Brief*, was served upon the following parties and their counsel of record in the manner indicated below:

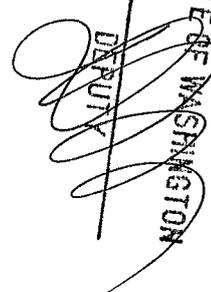
Thomas S. Boothe	Via Regular Mail	<input type="checkbox"/>
Attorney at Law	Via Certified Mail	<input type="checkbox"/>
1635 S.W. Westmoor Way	Via Overnight Mail	<input checked="" type="checkbox"/>
Portland, OR 97225	Via Facsimile	<input type="checkbox"/>
	Hand Delivered	<input type="checkbox"/>

Francis S. Floyd	Via Regular Mail	<input type="checkbox"/>
Floyd, Pflueger & Ringer, P.S.	Via Certified Mail	<input type="checkbox"/>
200 w. Thomas, Suite 500	Via Overnight Mail	<input checked="" type="checkbox"/>
Seattle, WA 98119-4296	Via Facsimile	<input type="checkbox"/>
	Hand Delivered	<input type="checkbox"/>

Philip A. Talmadge	Via Regular Mail	<input type="checkbox"/>
Talmadge-Fitzpatrick	Via Certified Mail	<input type="checkbox"/>
18010 Southcenter Parkway	Via Overnight Mail	<input checked="" type="checkbox"/>
Tukwila, WA 98188	Via Facsimile	<input type="checkbox"/>
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Dated: 10/12/12


Brooke Johnson

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COURT OF APPEALS
DIVISION II
2012 OCT 16 PM 1:31
STATE OF WASHINGTON
BY  DEPUTY

Appendix A

285 P.3d 901
Court of Appeals of Washington,
Division 2.

Robin EUBANKS and Erin Gray, Respondents,

v.

David BROWN, individually and on behalf
of his marital community, Appellant,
Klickitat County, Klickitat County
Prosecuting Attorney's Office, Defendants.

No. 42329-4-II. | Sept. 18, 2012.

Synopsis

Background: Administrative assistants for county deputy prosecuting attorney filed suit against county and prosecuting attorney, seeking damages allegedly caused by prosecuting attorney's sexual harassment of them. Prosecuting attorney filed motion for change of venue. The Superior Court, Clark County, Robert A. Lewis, J., denied motion. Prosecuting attorney appealed.

Holdings: The Court of Appeals, Quinn-Brintnall, J., held that:

[1] prosecuting attorney was not entitled to venue in county in which cause of action arose, and

[2] administrative assistants were entitled to bring their suit in either adjacent county, situs county, or a county where one of the defendants resided.

Affirmed.

West Headnotes (8)

[1] **Appeal and Error**

☞ Change of venue

A decision to change venue that properly exists is reviewed for abuse of discretion.

[2] **Appeal and Error**

☞ Cases Triable in Appellate Court

The question whether venue should be changed because the complaint has not yet been brought

in the proper county is a legal question that the appellate court reviews de novo.

[3] **Venue**

☞ Constitutional and statutory provisions

Venue in the state is governed by statute.

[4] **Venue**

☞ Place in which action may be brought or tried in general

Venue

☞ Right to sue in more than one county or district, and election

Venue rules limit a plaintiff's choice of forum to ensure that the lawsuit's locality has some logical relationship to the litigants or to the dispute's subject matter, but where those rules provide several places where venue may be proper, the choice lies with the plaintiff in the first instance.

[5] **Venue**

☞ Constitutional and statutory provisions

It is generally accepted that specific venue statutes control over general venue statutes.

[6] **Venue**

☞ Privileges of Defendants

Under the default venue statute, defendant has a right to have an action against him commenced in the county of his residence, except under specific circumstances governed by other statutes. West's RCWA 4.12.025(1).

[7] **Venue**

☞ Place in which action may be brought or tried in general

Venue

☞ Actions against public officers and others for official acts

County deputy prosecuting attorney, against whom sexual harassment suit had been brought by his administrative assistants, was not entitled

to venue in county in which cause of action arose, pursuant to statute providing that proper venue for claims against officers is county where the cause, or some part thereof, arose, as attorney was not being prosecuted for actions done by virtue of his office, but was being sued individually for personal misconduct in a workplace. West's RCWA 4.12.020(2).

[8] **Counties**

✦ Jurisdiction and venue

Venue

✦ Place in which action may be brought or tried in general

Venue

✦ Actions against public officers and others for official acts

Statute permitting commencement in adjacent county of any suit against a county and statute governing venue of county in which action arose, read together, permitted administrative assistants of county deputy prosecuting attorney to bring suit against attorney alleging emotional distress, pain and suffering, and other damages stemming from attorney's sexual harassment of them against county and attorney in either the adjacent county, the situs county, or a county where one of the defendants resided. West's RCWA 4.12.020(3), 36.01.050.

Attorneys and Law Firms

*902 Michael Early Mcfarland Jr., Attorney at Law, Spokane, WA, for Petitioner.

Francis Stanley Floyd, Floyd Pflueger & Ringer PS, Seattle, WA, for Defendant.

Karen Suzette Lindholdt, Karen S. Lindholdt, PLLC, Marletta Giles-Ward, Colton Ward PLLC, Spokane, WA, Philip Albert Talmadge, Emmelyn Hart, Talmadge/Fitzpatrick, Tukwila, WA, for Respondent.

Opinion

QUINN-BRINTNALL, J.

¶ 1 David Brown appeals the Clark County Superior Court's denial of his motion for a change of venue, arguing that he had the right under Washington's venue statutes to have the action against him commenced in Klickitat County. Finding no error, we affirm.

FACTS

¶ 2 Brown is a former deputy prosecuting attorney for Klickitat County. During his employment with the county, he had supervisory authority over administrative assistants Robin Eubanks and Erin Gray. In 2010, Eubanks and Gray sued Brown, Klickitat County, and the Klickitat County Prosecuting Attorney's Office, alleging that Brown sexually harassed them while they worked in the prosecutor's office. Noting that they were suing Brown individually, they alleged that he regularly sat in their shared office with his pants unzipped and his legs spread open on his desk; that he positioned himself in the office doorway so that they would need to rub against him when they left; that he licked his lips constantly while talking to them; that he stared at them while they worked and followed them around the office; that he gave unwanted gifts to Eubanks; and that he stared at Gray's breasts during conversations.

¶ 3 Eubanks and Gray filed their lawsuit in Benton County, apparently believing that they could sue all parties in any adjoining *903 county. When Brown's attorney informed them that venue in Benton County was not proper, they moved to change venue to, Clark County, and the Benton County Superior Court granted their motion.

¶ 4 Brown then moved to dismiss the complaint or to transfer venue of the claims against him to Klickitat County. Brown argued that although venue as to the county was proper in Clark County, he had the right as a public officer to be sued in Klickitat County. The Clark County Superior Court denied his motion, finding that venue was proper in Clark County. When Division Three of this court filed a decision appearing to support Brown's position, he filed a CR 60(b)(11) motion to vacate the order denying his motion to dismiss or to transfer venue, but the trial court denied that motion as well. We granted Brown's motion for discretionary review.

ANALYSIS

VENUE FOR ACTION AGAINST COUNTY AND DEPUTY PROSECUTING ATTORNEY

[1] [2] ¶ 5 At the outset, we disagree with the respondents' assertion that the standard of review is abuse of discretion. Although a decision to change venue that properly exists is reviewed for abuse of discretion, the question whether venue should be changed because the complaint has not yet been brought in the proper county is a legal question that we review de novo. *Moore v. Flateau*, 154 Wash.App. 210, 214, 225 P.3d 361, review denied, 168 Wash.2d 1042, 233 P.3d 889 (2010).

[3] [4] ¶ 6 Venue in Washington is governed by statute. See *Shoop v. Kittitas County*, 108 Wash.App. 388, 396, 30 P.3d 529 (2001) (in contrast to subject matter jurisdiction of the superior court, venue is appropriate subject for legislation), *aff'd*, 149 Wash.2d 29, 65 P.3d 1194 (2003). Venue rules limit a plaintiff's choice of forum to ensure that the lawsuit's locality has some logical relationship to the litigants or to the dispute's subject matter. *Shoop*, 108 Wash.App. at 396, 30 P.3d 529. But where those rules provide several places where venue may be proper, "the choice lies with the plaintiff in the first instance." *Baker v. Hilton*, 64 Wash.2d 964, 965, 395 P.2d 486 (1964); see also *Russell v. Marenakos Logging Co.*, 61 Wash.2d 761, 765, 380 P.2d 744 (1963) (plaintiffs should not be allowed to select forums indiscriminately).

[5] [6] ¶ 7 It is generally accepted that specific venue statutes control over general venue statutes. *Sim v. Wash. State Parks & Recreation Comm'n*, 90 Wash.2d 378, 382–83, 583 P.2d 1193 (1978); *Hickey v. City of Bellingham*, 90 Wash.App. 711, 716, 953 P.2d 822, review denied, 136 Wash.2d 1013, 966 P.2d 1278 (1998). Three venue statutes are at issue in this case. The First is the default provision found in RCW 4.12.025(1), which states that "[a]n 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." See *Moore*, 154 Wash.App. at 214–15, 225 P.3d 361 (recognizing RCW 4.12.025(1) as default venue provision for civil actions in Washington); *Hickey*, 90 Wash.App. at 716, 953 P.2d 822 (describing RCW 4.12.025 as the general venue statute). Under RCW 4.12.025(1), the legislature has decreed that the defendant has a right to have an action against him commenced in the county of his residence, except under

specific circumstances governed by other statutes. *Russell*, 61 Wash.2d at 765, 380 P.2d 744.

¶ 8 The two more specific venue directives are found in RCW 36.01.050 and RCW 4.12.020. RCW 36.01.050(1) provides that all actions against a county "may be commenced in the superior court of such county, or in the superior court of either of the two nearest judicial districts." RCW 4.12.020 provides that actions against a public officer for acts done by him in virtue of his office "shall be tried in the county where the cause, or some part thereof, arose."

[7] ¶ 9 Brown argues that RCW 4.12.020(2) is the most specific venue statute applicable in this context and requires the action against him to be brought in Klickitat County, where the cause of action concerning acts done by him by virtue of his public office arose. As support, he cites Division Three's recent decision in *904 *Youker v. Douglas County*, 162 Wash.App. 448, 258 P.3d 60, review denied, 173 Wash.2d 1002, 268 P.3d 942 (2011).

¶ 10 Alleging malicious prosecution, false arrest, and related claims, the plaintiff in *Youker* sued Douglas County and two of its deputies in Chelan County Superior Court. 162 Wash.App. at 453, 456, 258 P.3d 60. The Chelan court granted a motion to transfer venue 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. *Youker*, 162 Wash.App. at 457–58, 258 P.3d 60. Division Three affirmed, holding that the statutes applied as written and did not conflict. *Youker*, 162 Wash.App. at 459–60, 258 P.3d 60.

¶ 11 As support, the court cited *Roy v. City of Everett*, 48 Wash.App. 369, 738 P.2d 1090 (1987). In *Roy*, the plaintiff brought suit in King County against Snohomish County, five Everett police officers, and several other defendants, and the trial court denied the officers' motion to transfer venue to Snohomish County. 48 Wash.App. at 370, 738 P.2d 1090. Division One of this court reversed, holding that the officers had the right to have the action against them commenced in Snohomish County under both RCW 4.12.020(2) and .025(1). *Roy*, 48 Wash.App. at 371–72, 738 P.2d 1090.

¶ 12 We do not see these cases as controlling because, unlike the deputies in *Youker* and the officers in *Roy*, Brown is not being sued for actions done by virtue of his office. The deputies in *Youker* were sued for their actions in arresting and incarcerating the plaintiff. 162 Wash.App. at 453–56, 258 P.3d 60. The officers in *Roy* were sued for failing to

protect the plaintiffs from their assailant. 48 Wash.App. at 370, 738 P.2d 1090. These actions and inactions clearly were related to the official duties of these public officers. Here, however, Brown is being sued individually for personal misconduct in a workplace and not for any failure concerning his official duties. See *Robel v. Roundup Corp.*, 148 Wash.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 Wash.App. 548, 554, 860 P.2d 1054 (1993) (doctor's sexual assaults emanated from personal motive for sexual gratification and were not attributable to clinic), review denied, 123 Wash.2d 1027, 877 P.2d 694 (1994); see also *State ex rel. Hand v. Superior Court of Grays Harbor County*, 191 Wash. 98, 107, 71 P.2d 24 (1937) (where National Guard officers were sued as individuals, predecessor to RCW 4.12.020(2) did not control venue).

¶ 13 Brown argues in the alternative that even if RCW 4.12.020(2) does not apply, RCW 4.12.020(3) requires venue to be changed to Klickitat County because that is the only county where any of the defendants reside. Under RCW 4.12.020(3), a plaintiff seeking damages for personal injury “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.”¹ Before its amendment in 2001, this provision addressed only damages arising from motor vehicle accidents; the amendment broadened its scope to include all injury actions. See former RCW 4.12.020(3) (1941); *Moore*, 154 Wash.App. at 215–16, 225 P.3d 361.

[8] ¶ 14 Eubanks and Gray argue that RCW 36.01.050 and RCW 4.12.020(3) can and should be reconciled in a manner that allows their claims against both Brown and the county to be commenced in Clark County. As support, they cite *Cossel v. Skagit County*, 119 Wash.2d 434, 834 P.2d 609 (1992), overruled by *Shoop v. Kittitas County*, 149 Wash.2d 29, 65 P.3d 1194 (2003).² Our Supreme *905 Court held that former RCW 4.12.020(3) and former RCW 36.01.050 (1963) could be read together to allow a plaintiff to commence an action against a county in either the adjacent county, the situs county, or a county where one of the defendants resides.³ *Cossel*, 119 Wash.2d at 437, 834 P.2d 609. Interpreting the two statutes in this manner was consistent with the purposes behind RCW 36.01.050:

“The policy ... is apparently to provide plaintiffs with alternative forums without the need to demonstrate bias or impartiality in any other forum. The statute affords a degree of protection to plaintiffs suing counties without unduly burdening the county officials who must respond to the charges.”

Cossel, 119 Wash.2d at 438, 834 P.2d 609 (quoting *Briedablik, Big Valley, Lofall, Edgewater, Surfrest, N. End Cmty. Ass'n v. Kitsap County*, 33 Wash.App. 108, 118, 652 P.2d 383 (1982), overruled on other grounds by *Save Our Rural Env't v. Snohomish County*, 99 Wash.2d 363, 367, 662 P.2d 816 (1983)).

¶ 15 *Cossel* also relied on our analysis in *Johanson v. City of Centralia*, 60 Wash.App. 748, 807 P.2d 376 (1991). The plaintiff in *Johanson* was a personal representative who sued Centralia and Thurston County in Pierce County after Johanson died in a car accident in Thurston County. 60 Wash.App. at 749, 807 P.2d 376. When the plaintiff appealed the trial court's order transferring the case to Thurston County, we considered the venue options in former RCW 4.12.020(3) and found them reconcilable with former RCW 36.01.050. *Johanson*, 60 Wash.App. at 749–50, 807 P.2d 376. We observed that former RCW 4.12.020(3) dealt with a specific kind of action while former RCW 36.01.050 dealt with a specific kind of defendant. *Johanson*, 60 Wash.App. at 750–51, 807 P.2d 376. Because former RCW 4.12.020(3) permitted the plaintiff to bring this particular kind of lawsuit where one of the defendants resided, Thurston County was a permissible venue. *Johanson*, 60 Wash.App. at 750, 807 P.2d 376. Former RCW 36.01.050, dealing with a specific kind of defendant, then came into play and allowed the plaintiff the further option of filing suit in adjoining Pierce County. *Johanson*, 60 Wash.App. at 750–51, 807 P.2d 376.

¶ 16 Also pertinent is *Rabanco, Ltd. v. Weitzel*, 53 Wash.App. 540, 768 P.2d 523 (1989). *Rabanco* concerned an action filed in the Benton–Franklin County judicial district against Grant County for breach of contract and against Dorothy and Jim Weitzel individually for tortious conduct. 53 Wash.App. at 541, 768 P.2d 523. The court held that venue was proper against all defendants in the adjoining Benton–Franklin County judicial district under former RCW 36.01.050, and that the Weitzels were not entitled to have the action against them brought in Grant County, their county of residence. *Rabanco*, 53 Wash.App. at 542, 768 P.2d 523; see also *Bruneau v. Grant County*, 58 Wash.App. 233, 236 n. 3, 792 P.2d 174 (1990) (had plaintiff sued Grant County sheriff's department employees as individuals and not as public

officials, she could have sued both them and the county in Chelan County).

¶ 17 Consequently, we conclude that the more specific venue statutes control over the general default statute, RCW 4.12.025. We conclude further that RCW 4.12.020(2) is inapplicable because Brown is not being sued for acts done by him in virtue of his office. Although RCW 4.12.020(3)

does apply, it presents two options that are not incompatible with the third option in RCW 36.01.050(1). The plaintiffs may choose among the options presented, and venue in Clark County is therefore proper as to both Klickitat County and Brown. Accordingly, the trial court's denial of Brown's motion for change of venue was proper and we affirm.

We concur: VAN DEREN, J., and JOHANSON, A.C.J.

Footnotes

- 1 The plaintiffs here seek damages for “emotional distress, loss of enjoyment of life, humiliation, pain and suffering, personal indignity, embarrassment, fear, anxiety and anguish, economic loss, damage to career, medical expenses,” and other general and special damages. Clerk's Papers at 21.
- 2 *Shoop* overruled *Cossel* in holding that RCW 36.01.050 relates only to venue and not to subject matter jurisdiction; 149 Wash.2d at 37, 65 P.3d 1194.
- 3 As enacted in 1963, RCW 36.01.050 allowed a suit against a county to be brought in that county or the adjoining county. In 1997, the statute was divided into subsections and the reference to adjoining county was changed to “the two nearest counties,” and in 2000, that reference was changed to “the two nearest judicial districts.” LAWS OF 1997, ch. 401, § 1; LAWS OF 2000, ch. 244, § 1.

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Appendix B

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Scott G. Weber, Clerk, Clark Co.

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLARK

**ROBIN EUBANKS, ERIN GRAY,
ANNA DIAMOND and KATHY HAYES,**

Plaintiffs,

v.

**Klickitat County and DAVID
BROWN,** individually and on behalf of his
marital community,

Defendants.

No. 11-2-00802-2

FIRST AMENDED COMPLAINT

1. Washington Law Against
Discrimination
2. Negligence

[JURY TRIAL DEMAND]

[Proposed]

Plaintiffs allege:

1.

PARTIES

1.1 Plaintiffs.

1.1.1 At all times material, plaintiffs were employed by Klickitat County to
work in the Klickitat County Prosecutor's Office.

1.2 Defendants.

1.2.1 Defendant Klickitat County is a governmental entity.

1.2.2 Defendant David Brown was employed by Klickitat County as a Deputy
Prosecuting Attorney in the Klickitat County Prosecuting Attorney's Office.

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2.

JURISDICTION AND VENUE

2.1 Personal and subject matter jurisdiction are proper in Clark County Superior Court. Plaintiffs each served a standard tort claim in accordance with RCW 4.91.100. For each of the plaintiffs, more than sixty days elapsed between serving her tort claim notice and commencing her complaints in this case.

2.2 The events giving rise to this lawsuit occurred in Klickitat County, Washington. Under RCW 36.01.050, venue is properly laid in Clark County Superior Court.

3.

JURY TRIAL

3.1 Plaintiff hereby asserts her right to present this matter for trial by a jury.

4.

STATUS OF PLAINTIFFS

4.1 Defendant Klickitat County was an employer of plaintiffs as that term is defined by RCW 49.60.040.

4.2 Defendant David Brown had decision-making capacity sufficient to exercise control over plaintiffs' activities at the Klickitat County Prosecuting Attorney's Office so as to be responsible for the actions he took with regard to plaintiffs, and did in fact exercise those powers so as to cause damage to plaintiffs.

5.

COMPLIANCE WITH RCW 4.92.100

5.1 Robin Eubanks and Erin Gray served Tort Claim Notices on Klickitat County, and a complaint was filed more than sixty days later.

5.2 Tort Claim Notices for Anna Diamond and Kathleen Hayes were served on Klickitat County on August 2, 2011.

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6.

FACTS COMMON TO ALL CLAIMS

6.1 With regard to all plaintiffs.

6.1.1 All plaintiffs worked for defendant Klickitat County at the Prosecuting Attorney's Office for all or part of defendant David Brown's period of employment as deputy prosecuting attorney beginning in 2007 and continuing through July of 2010.

6.1.2 Defendant David Brown harassed plaintiffs because of their sex in the following ways: (1) frequently sitting in his office with his pants unzipped and legs spread open upon his desk while female staff was present; (2) sitting in such a way that female staff could not get past him when trying to leave her desk; (3) positioning himself so that female staff would need to rub against his body as she left their office; (4) constantly staring at the breasts of female employees while he spoke to them; and (5) incessantly licking his lips while talking to female staff.

6.1.3 Even at time when plaintiffs were not required to work directly with defendant Brown, he continued to engage in behavior creating and fostering a sexual and gender hostile workplace when he would see plaintiffs in or around the office.

6.1.4 The current Klickitat County Prosecuting Attorney, Lori Hctor, stated during her campaign for prosecuting attorney's position that what was being done about David Brown "was trying to ruin a good man".

6.1.5 Following their reporting Mr. Brown's harassing behaviors and following her assuming office, Hctor terminated plaintiffs Diamond, Gray and Hayes, the female personnel who had complained about and opposed David Brown's sexually hostile actions.

6.1.6 Hctor did not terminate two female support personnel: the only two female support personnel who had not opposed David Brown's sexually hostile actions.

/////

1 **6.2 With regard to Robin Eubanks**

2 6.2.1 Defendant Klickitat County employed plaintiff Robin Eubanks as an
3 administrative assistant in the Prosecuting Attorney's Office from March of 2002 until
4 September 15, 2010.

5 6.2.2 During the period of her employment, from November 2007 through April
6 of 2009, defendant David Brown was one of the deputy prosecuting attorneys for whom plaintiff
7 Robin Eubanks was assigned to provide secretarial and administrative work. As such,
8 plaintiff Eubanks was subject to defendant Brown's supervisory authority.

9 6.2.3 Defendant David Brown harassed plaintiff Eubanks because of her sex in
10 the following ways: (1) sitting in their shared office with his pants unzipped and legs spread
11 open upon his desk on a regular basis; (2) staring at Ms. Eubanks for unusually long periods of
12 time while Ms. Eubanks was attempting to work; (3) licking his lips constantly while he was
13 talking to Ms. Eubanks; (4) following her around the office; (5) positioning himself so that
14 Ms. Eubanks would need to rub against his body as she left their office; (6) closing the door on
15 the office when they were in the small office space together; and (7) giving gifts to Ms. Eubanks,
16 even though she made it clear she did not want to accept them.

17 6.2.4 After April of 2009, plaintiff Eubanks no longer performed secretarial or
18 administrative work for Mr. Brown and no longer shared office space with him. Nonetheless, he
19 continued to engage in sexually harassing behavior toward Robin Eubanks in or around the
20 office.

21 6.2.5 At all times during his sexual harassment of plaintiff, defendant David
22 Brown had supervisory authority over Ms. Eubanks, as she was a secretary/administrative
23 assistant in the Prosecuting Attorney's office David Brown was therefore acting in the interests
24 and for the benefit of his employer, defendant Klickitat County.

25 6.2.6 During or about December of 2007, and continuing until July of 2010,
6 plaintiff Robin Eubanks complained to Prosecuting Attorney Tim O'Neill and to Chief Criminal

1 Deputy Craig Juris about defendant Dave Brown's harassing conduct. Defendant Klickitat
2 County failed to take any action in response to plaintiff Eubanks' complaint.

3 6.2.7 On or about September 15, 2010, plaintiff Robin Eubanks went on Family
4 Medical Leave Act (FMLA) extended leave due to the emotional and mental breakdown she
5 suffered as a direct result both of David Brown's harassing conduct and of defendant Klickitat
6 County's failure to protect her from David Brown's sexual harassment.

7 6.2.8 On or about December 15, 2010, plaintiff Robin Eubanks resigned from
8 her employment at the Klickitat County Prosecuting Attorney's Office, following the advice of
9 her therapist because even thinking about returning to work at the Klickitat County Prosecuting
10 Attorney's Office caused Ms. Eubanks to suffer post-traumatic stress responses, panic attacks
11 such as fear, heart palpitations, aggravated startle reflex, and a desire to escape.

12 **6.3 With regard to Erin Gray**

13 6.3.1 Defendant Klickitat County employed plaintiff Erin Gray as an
14 administrative assistant at the Prosecuting Attorney's Office from approximately January 2001
15 until January 4, 2011.

16 6.3.2 During the period of her employment from April 2009 through July of
17 2010, David Brown was one of the deputy prosecuting attorneys for whom plaintiff Erin Gray
18 was assigned to provide secretarial and administrative work. As such, Mr. Brown had
19 supervisory authority over Ms. Gray.

20 6.3.3 Defendant David Brown created a hostile workplace for plaintiff Erin
21 Gray, including: (1) staring at Ms. Gray's breasts throughout conversations with her several
22 times daily; (2) staring at Ms. Gray for unusually long periods of time while Ms. Gray was trying
23 to work at her desk in her office; (3) licking his lips constantly while he was talking to her;
24 (4) following her around the office such that it was apparent he had no purpose other than just to
25 follow her; (5) positioning himself so that Ms. Gray, who was pregnant at the time, would need
6 to rub against his body to go through the entrance to her office; (6) hanging around outside

1 Ms. Gray's office for unusually long periods of time doing nothing other than breathing heavily
2 while looking in.

3 6.3.4 At all times during his actions toward plaintiff Erin Gray, defendant
4 David Brown was the supervisory attorney over Ms. Gray and was, therefore, acting in the
5 interests and for the benefit of his employer, defendant Klickitat County.

6 6.3.5 On multiple occasions from April of 2009 and into July of 2010,
7 plaintiff Erin Gray complained to Klickitat County Prosecuting Attorney Tim O'Neill about
8 defendant David Brown's conduct. Defendant Klickitat County failed to take meaningful action
9 in response to plaintiff Erin Gray's complaints.

10 6.3.6 Although Klickitat County interviewed several other female employees
11 of Klickitat County who also had been sexually harassed by David Brown between 2007 and
12 July of 2010, defendant took no meaningful action to respond to plaintiff Erin Gray's or Robin
13 Eubanks' complaints.

14 6.3.7 As a result of David Brown's actions, plaintiff Erin Gray has suffered
15 lasting emotional and mental anguish, depression, anxiety. As a result, Ms. Gray lost vacation
16 time and sick time and incurred medical expenses.

17 6.3.8 On December 27, 2010 plaintiff Erin Gray, Ms. Gray was still employed
18 by Klickitat County as an administrative assistant in the Prosecuting Attorney's Office.

19 6.3.9 On January 4, 2011, just days after filing her lawsuit, Ms. Gray was
20 terminated by the Klickitat County.

21 **6.4 With regard to Anna Diamond**

22 6.4.1 Defendant Klickitat County employed Anna Diamond as a Felony
23 Victim Witness Coordinator ("FVWC") in the Klickitat County Prosecuting Attorney's Office
24 from July 5, 2007 through January 6, 2011.

25 6.4.2 In the spring of 2010, Timothy O'Neil called Ms. Diamond into his
6 office and informed her that there was a situation involving defendant Brown. Plaintiff Diamond

1 was instructed to contact Randi Post in the Klickitat County Human Resources Department to
2 discuss defendant Brown's behaviors.

3 6.4.3 Ms. Diamond promptly followed the order, went to meet with Ms. Post
4 and told her that Mr. Brown stared at plaintiff Hayes and other women's breasts, that defendant
5 Brown obstructed doorways such that women were forced to brush up against his buttocks or
6 front to get past, and was otherwise creating a hostile working condition for women in the
7 Prosecuting Attorney's Office.

8 6.4.4 Plaintiff Diamond requested a leave of absence so that she could
9 undergo knee surgery. A six month FMLA leave was granted by Mr. O'Neil on December 16,
10 2010.

11 6.4.5 On or about January 6, 2011 and while plaintiff Diamond was on leave,
12 plaintiff Diamond received a letter from defendant Klickitat County terminating her
13 employment, and citing "*personnel changes*" as the reason for her dismissal.

14 **6.5 With regard to Kathleen Hayes**

15 6.5.1 Defendant Klickitat County employed plaintiff Hayes as a Victim
16 Witness Coordinator in Klickitat County Prosecuting Attorney's Office from August 11, 2007
17 until January 3, 2011.

18 6.5.2 Plaintiff Hayes was assigned to work for Defendant Brown after he was
19 hired by the Klickitat County Prosecuting Attorney's Office.

20 6.5.3 Plaintiff Hayes' desk was positioned such that Defendant Brown passed
21 by several times per day and each time he would pass, Defendant Brown would stare at her
22 chest, oftentimes licking his lips. The harassment was so pervasive; Ms. Hayes would carry a
23 legal-sized folder to cover her chest whenever she spoke to Defendant Brown.

24 6.5.4 Defendant Brown frequently would lead over the partial-height partition
25 separating the communal walkway and Plaintiff Hayes' desk to stare at her breasts while she

26 // ///

