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SUPREME COURT
OF THE STATE OF WASHINGTON

NO. 88021-2

C/A 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

**SUPPLEMENTAL BRIEF OF PETITIONER
DAVID BROWN PURSUANT TO RAP 13.7(d)**

EVANS, CRAVEN & LACKIE, P.S.
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ATTORNEYS FOR PETITIONER

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A. INTRODUCTION

RCW 4.12.020(2) provides public officers the right to defend against claims brought against them based upon acts "done by him or her in virtue of his or her office" in the county where the cause of action arose. In the instant case, there is no dispute that the cause of action arose in Klickitat County. There is likewise no dispute that Petitioner David Brown is a "public officer" within the meaning of RCW 4.12.020(2).

What is in dispute is whether a plaintiff's right to sue a county in an adjoining county pursuant to RCW 36.01.050 gives that plaintiff the right to sue a public officer in that adjoining county. Mr. Brown respectfully submits that RCW 36.01.50's permissive language does not trump a public official's right to have an action tried in the county where the cause of action arose. As long as the lawsuit against the public official is based upon acts "done by him or her in virtue of his or her office," that public officer cannot be forced to defend a lawsuit in an adjoining county simply because a plaintiff elects to sue the county in the adjoining county pursuant to RCW 36.01.050.

Respondents Robin Eubanks and Erin Gray have sued Mr. Brown premised upon the argument that in his position as a deputy prosecuting attorney, he sexually harassed them. Ms. Eubanks and Ms. Gray specifically claim that Mr. Brown engaged in the alleged behavior "within

the scope of [his] employment." As such, Ms. Eubanks' and Ms. Gray's claims against Mr. Brown assert liability based upon alleged acts done by him in virtue of his office. Pursuant to RCW 4.12.020(2), venue for those claims is therefore proper in Klickitat County – not Clark County.

B. ASSIGNMENTS OF ERROR

The Court of Appeals held that Mr. Brown is not entitled to venue in Klickitat County pursuant to RCW 4.12.020(2) because he "is being sued individually for personal misconduct in a workplace and not for any failure concerning his official duties." *Eubanks v. Brown*, 170 Wash. App. 768, 773, 285 P.3d 901, 904 (2012). This ruling is in error for the following three reasons.

First, the finding is contrary to the allegations of Ms. Eubanks' and Ms. Gray's Complaint, in which they specifically allege that Mr. Brown was acting "within the scope of [his] employment" and "on behalf of Klickitat County." *CP 9, Complaint, Par. 2.3*

Second, in concluding that Mr. Brown was not being sued for an act done by him in virtue of his office, the Court of Appeals wrongfully took as verities the allegations of the Complaint. Mr. Brown has denied that he ever sexually harassed Ms. Eubanks or Ms. Gray, yet the Court of Appeals' decision requires him to defend against that claim in a county other than where the cause of action arose, based solely upon those

unsubstantiated allegations. Mr. Brown submits that in determining venue under RCW 4.12.020(2), courts cannot simply accept as true the allegations of the complaint.

Third, the Court of Appeals' interpretation of "in virtue of his or her office" is simply too narrow and makes an impermissible distinction between misfeasance and malfeasance allegations, which has the effect of making RCW 4.12.020(2) meaningless.

C. STATEMENT OF CASE

Mr. Brown incorporates by reference the statement of the case set forth in his Petition for Review, but adds the following procedural history.

Ms. Eubanks' and Ms. Gray's original Complaint in Clark County was filed on February 24, 2011. In that Complaint, Ms. Eubanks and Ms. Gray alleged that the claimed sexual harassment occurred in the course and scope of Mr. Brown's employment:

All alleged acts and omissions of Klickitat County officials, managers, supervisors, agent employees or representatives, including deputy attorney David Brown, were on behalf of Klickitat County and occurred within the scope of employment.

CP 9, Complaint, Par. 2.3

On July 21, 2011, Mr. Brown initiated appellate proceedings on the venue issue. After the Court of Appeals had already accepted

discretionary review (August 31, 2011), Ms. Eubanks and Ms. Gray filed an Amended Complaint, in which two new plaintiffs were added.

With the venue issue squarely at issue before the Court of Appeals, and specifically the issue of whether Mr. Brown's alleged harassment was done "in virtue of his office," Ms. Eubanks and Ms. Gray still alleged:

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. A, Amended Complaint, Par. 4.2

At all times during his sexual harassment of plaintiff, defendant David 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.

App. A, Amended Complaint, Par. 6.2.5

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.

App. A, Amended Complaint, Par. 6.3.4

Notably, in both their original Complaint, and in their Amended Complaint, Ms. Eubanks and Ms. Gray seek to impose liability on Mr. Brown's employer (Klickitat County), for the alleged acts of Mr. Brown while acting as a deputy prosecuting attorney.

D. ARGUMENT

RCW 4.12.020(2) states unequivocally that lawsuits against public officers "shall be tried" in the county where the cause of action arose. Since it is undisputed that Mr. Brown is a public officer and that Ms. Eubanks' and Ms. Gray's causes of action arose in Klickitat County, the only real issue is whether or not Mr. Brown is being sued for acts done "by virtue of" his office. For the reasons set forth herein, Mr. Brown submits that the answer to that question is undeniably "yes."

1. Mr. Brown Is Being Sued Based Upon Acts Done In Virtue Of His Office.

The allegations of Ms. Eubanks' and Ms. Gray's Complaint and Amended Complaint leave no doubt that they have sued Mr. Brown for alleged acts taken in his position as a deputy prosecuting attorney for Klickitat County. While Ms. Eubanks and Ms. Gray now attempt to run from those allegations, it simply cannot be disputed that the entire basis for this lawsuit is the employment relationship between the parties. Specifically, Ms. Eubanks alleges that Mr. Brown was her "supervisor,"

for whom she provided "secretarial and administrative work." *CP 10, Complaint, Par. 4.3* Ms. Gray similarly alleges that as a deputy prosecuting attorney, Mr. Brown had "supervisory authority" over her, as she was "assigned to provide secretarial and administrative work" to Mr. Brown. *CP 12, Complaint, Par. 5.2* Since Mr. Brown allegedly engaged in the conduct at issue while supervising Ms. Eubanks and Ms. Gray, he was acting "in the interests and for the benefit" of Klickitat County. *CP 5, 13, Complaint, Pars. 4.6, 5.4*

It is beyond dispute that had Mr. Brown not been employed as a deputy prosecutor with "supervisory authority" over Ms. Eubanks and Ms. Gray, this lawsuit would not exist. Stated simply, it is the existence of the employment relationship that gives rise to the causes of action. In the absence of the employment relationship, Ms. Eubanks and Ms. Gray simply could not bring sexual harassment/hostile work environment claims against Mr. Brown or Klickitat County.

Indeed, it is because the alleged acts occurred within the context of an employment relationship that Ms. Eubanks and Ms. Gray can bring any claims against their former employer, Klickitat County. If the alleged conduct giving rise to all of Ms. Eubanks' and Ms. Gray's claims were not done "in virtue of" Mr. Brown's position as a deputy prosecuting attorney,

the entirety of Ms. Eubanks' and Ms. Gray's employment-based claims would not exist.

2. The Unsubstantiated Allegations Of The Complaint Cannot Determine Venue.

Mr. Brown emphatically denies all of Ms. Eubanks' and Ms. Gray's allegations of harassment. In fact, it is Mr. Brown's position that the harassment claim was brought for politically-motivated purposes. Specifically, it is of no small significance that the harassment claim was first brought forward only a few days after Mr. Brown announced that he was running for Klickitat County Prosecuting Attorney against the candidate Ms. Eubanks and Ms. Gray supported. Mr. Brown is confident that a jury will ultimately find that he did not harass Ms. Eubanks or Ms. Gray, and that their claim of harassment was a politically-motivated effort designed to hinder Mr. Brown's efforts to become the prosecuting attorney, while helping the candidate they supported win the election.

Notwithstanding Mr. Brown's denial of the harassment claim, and notwithstanding the fact that no substantive discovery had taken place, the Court of Appeals concluded that the alleged acts of harassment were not done "in virtue of" Mr. Brown's office, but were instead workplace "misconduct." *Eubanks*, 170 Wash. App. at 773. In so concluding, the Court of Appeals not only ignored the assertions in the Complaint that Mr.

Brown was acting "in the interests and for the benefit" of Klickitat County, but also took as verities the allegations of harassment. The Court of Appeals concluded not only that Mr. Brown had in fact engaged in the conduct as alleged, but also that he did so for improper and personal purposes. This deprives Mr. Brown of his right to challenge those claims in the venue provided by RCW 4.12.020(2).

By relying upon the unsubstantiated and unproven allegations of the complaint, the Court of Appeals denied Mr. Brown his venue rights without any proof that he in fact engaged in the conduct in question, or that he engaged in the alleged conduct for improper/illegal purposes. The fact is that there was (and is) no evidence in the record that Mr. Brown engaged in any of the purported conduct. In addition, there is no evidence that any of the alleged acts, even if true, were performed for improper/illegal purposes.

Ms. Eubanks and Ms. Gray allege that Mr. Brown engaged in the following "harassing" conduct: (1) frequently sitting at his desk with his pants unzipped and his legs spread; (2) sitting at his desk in such a way that female staff could not get by him; (3) positioning himself so that female staff would have to rub against him to leave the office; (4) constantly staring at the breasts of female employees while speaking to them; and (5) "incessantly" licking his lips while talking with female staff.

CP 10, 12, Complaint, Par. 4.4, 5.3 While Mr. Brown denies this conduct, the fact is that Mr. Brown is a 400+ pound man who was working in the small confines of a cramped office space. It is thus very plausible that Ms. Eubanks' and Ms. Gray's assertions, *even if true*, can be attributed to unintentional acts of Mr. Brown. For example, it may very well be that Mr. Brown's size, as opposed to improper motives or intentional conduct, was the cause of any physical contact between Mr. Brown and any female staff member. It may very well be that Mr. Brown's size, as opposed to any improper motives or intentional conduct, caused him to unknowingly have his zipper down on an unknown number of occasions. It is likewise plausible that Mr. Brown "incessantly" licks his lips when talking with anyone, male or female, and that as opposed to being harassing and/or improper is simply an idiosyncrasy, of which he is unaware. Finally, it is entirely plausible that Ms. Eubanks and Ms. Gray merely *believed* that Mr. Brown was staring at their breasts, and that in reality, for whatever reason, he merely avoids eye contact when talking with others, both male and female. It is likewise equally plausible that all of these allegations are simply untrue, and were asserted in an effort to damage Mr. Brown's political goals. These are all possibilities that the Court of Appeals ignored by concluding that Mr. Brown had engaged in the conduct in question, and had done so for an improper purpose.

Whether or not Mr. Brown engaged in the allegedly harassing acts, and if so, whether the acts were done for improper purposes, is for the jury to determine, not the trial court or the Court of Appeals when determining whether venue is proper. RCW 4.12.020(2) mandates that venue be in the county where the cause of action against a public officer arose if based upon acts done "in virtue of" his or her office. To assume as true the allegations of a complaint in determining venue acts to deny public officers the rights conveyed in RCW 4.12.020(2). If simply alleging intentional conduct in a complaint is sufficient to defeat a public officer's right to venue in the county where the cause of action arose, those venue rights would be rendered meaningless and illusory. That is, should this matter proceed to trial in Clark County, and should a jury determine that Mr. Brown did not engage in the alleged behavior, or that any of alleged behavior did not constitute harassment, Mr. Brown will have had to stand trial in Clark County based upon conduct done "in virtue of" his office. As a public officer, Mr. Brown has the right to have a jury in the county where the cause of action arose determine if the allegations of the complaint are true. Putting the issue of whether he engaged in the acts in question to a jury in Clark County effectively renders the mandatory venue language of RCW 4.12.020(2) meaningless.

Mr. Brown, as a public officer, has the right to have any claim based upon acts done "in virtue of" his office tried in the county where the cause of action arose, which in this case is Klickitat County. Courts should not be permitted to deny this right based upon unsubstantiated, and unequivocally denied, allegations contained in a complaint.

3. The Court Of Appeals' Interpretation Of The Term "In Virtue Of" Is Too Narrow.

Left without a definition of "an act done by him or her in virtue of his or her office," the Court of Appeals wrongfully adopted the standard for determining whether an employee's tortious conduct can impose vicarious liability upon the employer. Citing to *Robel v. Roundup Corp.*, 148 Wash.2d 35, 59 P.3d 611 (2002) and *Thompson v. Everett Clinic*, 71 Wash.App. 548, 554, 860 P.2d 1054, *review denied*, 123 Wash.2d 1027, 877 P.2d 694 (1994), the Court of Appeals concluded that the alleged sexual harassment could not constitute acts done "in virtue of [Mr. Brown's] office," as the alleged sexual harassment was merely "personal misconduct." Pursuant to *Robel* and *Thompson*, an employer can avoid liability for an employee's conduct if the alleged conduct was (1) intentional and (2) outside of the scope of his or her employment. *Robel*, 148 Wash.2d at 53; *Thompson*, 71 Wash.App. at 554. That is the standard

that the Court of Appeals used to define the term "in virtue of his or her office" as contained in RCW 4.12.020(2).

For the following reasons, the Court of Appeals' adoption of this standard to define whether an act was done "in virtue of his or her office" is erroneous, as it too narrowly defines "in virtue of his or her office" and thus acts to deny rights conveyed to public officers by the legislature.

First, the Court of Appeals' interpretation of "in virtue of his or her office" is inconsistent with the language of the statute. Had the legislature wanted venue rights to be limited to acts performed "in the course and scope of employment," the legislature could have adopted that language. Similarly, if the legislature had intended venue rights to be limited to acts sufficient to impose vicarious liability on a public officer's employer, the legislature could have adopted that language. The fact is that the legislature did not use such language, so it must be presumed that the use of "in virtue of" has a meaning different than the vicarious liability standard adopted by the Court of Appeals. *See, In re Marriage of Gimlett v. Gimlett*, 95 Wash.2d 699, 701–02, 629 P.2d 450 (1981).

Second, as is best evidenced by this case, the Court of Appeals' adoption of the vicarious liability standard to determine venue creates an internal and irreconcilable conflict within lawsuits in which a plaintiff sues both a public officer and his or her employer, based upon assertions of

vicarious liability, in a neighboring county. That is, if a trial court at the outset of litigation rules on venue under RCW 4.12.020(2) based upon the application of a vicarious liability standard, the same by necessity would have some type of preclusive affect on the vicarious liability claim the employee has against the employer. For example, if the trial court determines that venue is proper in a neighboring county as to the public officer pursuant to the Court of Appeals' vicarious liability standard, that finding precludes a subsequent finding of vicarious liability against the employer. In other words, if in resolving the venue issue the trial court finds that the officer's acts were both intentional and outside the course of employment (making venue proper in the adjoining county), that finding must act to preclude the plaintiff from pursuing any vicarious liability claim against the employer. Conversely, if the trial court determines that venue is not proper as to the public officer pursuant to the Court of Appeals' vicarious liability standard, the employer would be deprived of the ability to defend the case premised upon the argument the conduct of the officer was intentional and outside the scope of employment. In other words, if in resolving the venue issue the trial court finds that the officer's acts were not intentional and were within the course of employment, that finding must preclude the employer from later arguing that the officer's acts do not allow for the imposition of vicarious liability.

This case gives a good illustration of the foregoing. Ms. Eubanks and Ms. Gray have alleged that Klickitat County is vicariously liable for Mr. Brown's alleged sexual harassment. *CP 14, Complaint, Par. 6.2*¹ Pursuant to *Robel*, Klickitat County can only be liable for Mr. Brown's alleged conduct if that conduct was (1) unintentional and (2) within the scope of his employment. *Robel*, 148 Wash.2d at 53. By citing to *Robel* and *Thompson*, and by finding that Mr. Brown's alleged conduct was not done "in virtue of his office" because it is "personal misconduct in the workplace," the Court of Appeals has effectively held that Klickitat County cannot, as a matter of law, be liable for Mr. Brown's alleged conduct. It would be wholly inconsistent for the trial court to now allow Ms. Eubanks and Ms. Gray to pursue any claim against Klickitat County in which they seek to impose liability on the County based upon Mr. Brown's alleged conduct.

This, of course, is contrary to the allegations of Ms. Eubanks and Ms. Gray, who seek to impose liability upon Klickitat County for the alleged acts of Mr. Brown under the specifically-alleged theory that Mr. Brown's alleged conduct was in fact "within the scope of employment."

¹ In their Amended Complaint, Ms. Eubanks and Ms. Gray state that the "conduct of defendants and employees of defendants and their agents" give rise to a hostile work environment and retaliation claim. *App. A. First Amended Complaint, Par. 7.2*

CP 9, Complaint, Par. 2.3 In order to pursue liability against Klickitat County based upon Mr. Brown's alleged acts, Ms. Eubanks and Ms. Gray must prove that Mr. Brown was acting within the scope of his employment. *Robel*, 148 Wash.2d at 53. In attempting to establish the same, Ms. Eubanks and Ms. Gray must necessarily establish that Mr. Brown's alleged acts were done "in virtue of his office," making venue proper in Klickitat County.

Presumably, should this Court affirm the Court of Appeals' decision, Klickitat County will move for summary dismissal of any claim based upon a theory of vicarious liability. Judicial estoppel would preclude Ms. Eubanks and Ms. Gray from challenging such a motion. This conflict will arise in any future case in which a trial court uses the Court of Appeals' vicarious liability standard for determining venue under RCW 4.12.020(2). This Court should therefore find that the Court of Appeals' finding is erroneous and too narrow.

4. The Court Of Appeals' Interpretation Of The Term "In Virtue Of His Or Her Office" Creates Two Separate Standards For Determining Venue Under RCW 4.12.020(2).

The Court of Appeals' overly-narrow interpretation of the term "in virtue of his or her office" creates at worst a conflict, and at best an

ambiguity, with the second phrase contained in the statute. RCW

4.12.020(2) reads in full:

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;

Pursuant to the Court of Appeals' decision, a public officer is only entitled to venue where the cause of action arose if the conduct is (1) unintentional and (2) within the scope of his or her employment. However, a person acting upon the command or in the aid of a public officer is entitled to venue where the cause of action arose for "anything touching the duties of such officer." This is a much broader standard and gives persons acting under the direction of a public officer much greater venue rights than the public officer. There is no basis for this distinction. Further, the inclusion of the language "anything touching the duties of such officer" signals the legislature's intent to provide broader venue rights than as determined by the Court of Appeals.

5. The Court Of Appeals' Decision Cannot Be Reconciled With *Roy v. Everett* And *Youker v. Douglas County*.

The Court of Appeals attempted to distinguish *Roy v. Everett*, 48 Wash.App. 369, 738 P.2d 1090 (1987), and *Youker v. Douglas County*, 162 Wash.App. 448, 258 P.3d 60 (2011), by mischaracterizing the nature of the claims asserted against the officers in *Roy* and *Youker*. Specifically, the Court of Appeals characterized the claims against the officers in *Roy* and *Youker* as involving only a "failure" to perform the officers' official duties. This characterization is inconsistent with the intentional torts alleged against the officers in *Roy* and *Youker*. If the Court of Appeals' decision in this case is applied to law enforcement officers, those officers would not be entitled to the venue protections of RCW 4.12.020(2) whenever sued for false arrest, false imprisonment, malicious prosecution or assault and battery. All of those are intentional torts and all could be argued to be outside the scope of the officers' scope of employment. Since lawsuits against law enforcement officers almost all include intentional tort claims, an interpretation of RCW 4.12.020(2) consistent with the Court of Appeals' interpretation herein would render the statute meaningless to law enforcement officers.

With the exception of a simple negligence claim, it is difficult if not impossible to identify a cause of action against a public officer that

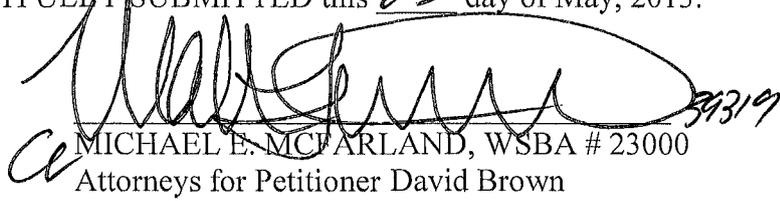
would fall into the Court of Appeals' interpretation of "in virtue of his or her office." Had the legislature wanted to limit RCW 4.12.020(2)'s application to negligence claims, it could have done so. The legislature did not so limit RCW 4.12.020(2)'s applicability, yet the Court of Appeals' narrow interpretation of the statute has that effect. This Court should find that the term "in virtue of his or her office" has a much broader meaning than defined by the Court of Appeals so as to not take away important venue rights conveyed to public officers by the legislature.

E. CONCLUSION

The Court of Appeals' decision in this matter was erroneous, as its narrow interpretation of RCW 4.12.020(2) significantly deprives public officers of significant venue rights. Further, the Court of Appeals erred in basing its decision on the bare, unsupported and denied allegations of the Complaint. If RCW 4.12.020(2)'s venue rights mean anything, the statute must be interpreted so as to give a public officer the right to defend against the allegations of the Complaint in the county where the cause of action arose. By pre-determining that the conduct in question in fact occurred, and by pre-determining that the conduct in question was taken for improper purposes, the Court of Appeals deprived Mr. Brown of the opportunity to defend against the allegations in the county where the cause of action occurred, rendering RCW 4.12.020(2) meaningless.

Based upon the foregoing, Mr. Brown respectfully requests that the Court reverse the Court of Appeals and find that venue as it relates to Ms. Eubanks' and Ms. Gray's claims against Mr. Brown is proper only in Klickitat County.

RESPECTFULLY SUBMITTED this 2nd day of May, 2013.

 5/31/13
MICHAEL E. MCFARLAND, WSBA # 23000
Attorneys for Petitioner David Brown

CERTIFICATE OF SERVICE

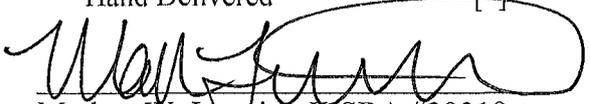
I certify under penalty of perjury under the laws of the State of Washington that on the 2nd day of May, 2013, a true and correct copy of the foregoing *Supplemental Brief of Petitioner*, was served upon the following parties and their counsel of record in the manner indicated below:

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"/>
	Hand Delivered	<input type="checkbox"/>

Dated: 5/2/13


Markus W. Louvier, WSBA #39319

APPENDIX A

NOV 18 2011,

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 Hocter, 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, Hocter terminated plaintiffs Diamond, Gray and Hayes, the female personnel who had complained about and opposed David Brown's sexually hostile actions.

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

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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

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