

Corrected as to citations only

No. 95531-0

NO. 75671-1-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

KING COUNTY CORRECTIONS GUILD,
Appellant,

v.

JARED KARSTETTER and JULIE KARSTETTER,
Respondents.

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Court of Appeals
Division I
State of Washington

APPELLANT'S UPDATED OPENING BRIEF

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I. INTRODUCTION

Appellant King County Corrections Guild (hereafter, “Guild”) submits this opening brief in its appeal of a King County Superior Court order denying dismissal of two claims brought against the Guild by its former legal counsel, Attorney Jared C. Karstetter, Jr. (“Karstetter”). The Guild contends that the trial court’s order, failing to grant dismissal of two claims against the Guild which undisputedly stem directly from the Guild’s decision to sever its attorney-client relationship with Karstetter, is in error.

II. ASSIGNMENTS OF ERROR

1. Did the trial court err in denying the King County Corrections Guild’s motion to dismiss Plaintiff Jared Karstetter’s claim for termination of employment in breach of contract, which was predicated on the Guild’s termination of its attorney-client relationship with Mr. Karstetter?

2. Did the trial court err in denying the King County Corrections Guild’s motion to dismiss Plaintiff Jared Karstetter’s claim for wrongful termination of employment, which likewise was predicated on the Guild’s termination of its attorney-client relationship with Mr. Karstetter?

III. STATEMENT OF THE CASE

The King County Corrections Guild is an independent labor union based in Tukwila, Washington, which represents certain correctional officers and sergeants employed by the King County Department of Adult and Juvenile Detention (DAJD) for the purposes of collective bargaining. CP 2-3, ¶ 7. The Law Firm of Jared C. Karstetter, Jr., P.S., based in Edmonds, Washington (“Karstetter Law Firm”), served as the Guild’s legal counsel from approximately 1996 to April 2016. CP 2, ¶ 5. Jared C. Karstetter, Jr. is the managing partner of the Karstetter Law Firm and was the primary provider of legal services to the Guild. *Id.* Karstetter admits that, during his relationship with the Guild, his firm maintained other legal clients. CP 7, ¶ 30. It is undisputed that the firm also employed at least one associate attorney to assist in its legal practice. CP 18, ¶ 34. Karstetter also alleges that the firm employed his wife, Julie Karstetter, as an office support staffer. CP 2, ¶ 6.

During the period in which the Guild was represented by the Karstetter Law Firm, the Guild and the Karstetter Law Firm were party to a series of written agreements. CP 11-15. The most recent agreement, executed on October 12, 2011, states on its face that it was entered into by the Guild and The Law Firm of Jared C. Karstetter, Jr., P.S. CP 11, 13. The agreement was drafted with an express duration of January 1, 2012 to

December 31, 2016. CP 12. Styled as an “Employment Agreement,” it set forth a monthly fee rate of \$8,500 in exchange for prescribed legal services from The Karstetter Law Firm. CP 11-12. The agreement purported to provide the Karstetter Law Firm just cause and procedural due process rights before termination of the attorney-client relationship, including the right to “due notice,” “an opportunity to correct any behavior that [the] Guild deems inappropriate,” and “an opportunity to answer any and all charges” before such termination could be effected. CP 12-13.

On April 27, 2016, the Guild decided to end its relationship with the Karstetter Law Firm. CP 6-7. Prior to terminating the relationship, Guild leadership sought and received the opinion of a different law firm, the Public Safety Labor Group (“PSLG”), as to whether the protections negotiated by the Karstetter Law Firm in its written agreements with the Guild were enforceable. CP 6, ¶ 25. PSLG advised the Guild that not only were the terms of the agreement protecting the Karstetter Law Firm from termination likely unenforceable, but that the Guild should terminate its relationship with the Karstetter Law Firm in light of strong evidence that Karstetter had disclosed Guild client confidences in violation of Rule

of Professional Conduct (“RPC”) 1.6. CP 98-105 (April 21, 2016 letter, appended as exhibit to Declaration of David Brown).¹

The Guild informed Karstetter of the termination of the attorney-client relationship between it and the Karstetter Law Firm on April 28, 2016. CP 7, ¶ 28.

On May 24, 2016, Karstetter and Julie Karstetter filed the instant litigation against the Guild, six individuals with relationships to the Guild as officers, Executive Board members, and/or general members (“individual Guild Defendants”; together with the Guild, “Guild Defendants”), three PSLG attorneys and that firm itself (together, the “Attorney Defendants”). *See generally*, CP 1-16. In Plaintiffs’ Complaint, Karstetter claims that the Guild had a “permanent” employment relationship with him and that the Guild breached the terms of its agreement with him by denying him the agreement’s substantive just cause and pre-termination procedural rights. CP 5, ¶¶ 18-20; CP 8. He also alleged that the termination constituted “wrongful discharge.” CP 8.

¹ In the advice letter, PSLG summarized the evidence of Karstetter’s troubling pre-termination misconduct, which included instigating what PSLG dubbed a “rambling, accusatory, and unrestrained” interview with DAJD in which he revealed extensive client confidences of the Guild, including but not limited to (1) the details of a sensitive internal Guild investigation against its former officer, (2) contents of a confidential settlement agreement between the Guild and that officer, (3) the substance of legal advice he had previously provided to the Guild, and (4) communications between Guild officers and other Guild counsel to which he was privy. CP 98-105 (April 21, 2016 letter, appended as exhibit to Declaration of David Brown).

Against the individual Guild Defendants, Karstetter pled claims for wrongful discharge, retaliatory discharge, defamation, and negligent infliction of emotional distress. CP 8-9. Finally, Karstetter pled claims for wrongful discharge, negligent infliction of emotional distress, tortious interference, and deceptive business practices against the Attorney Defendants arising from their consultation with the Guild and their subsequent retention by the Guild for legal services after the termination of its relationship with the Karstetter Law Firm. *Id.* Among other remedies, Plaintiffs' Complaint sought Karstetter's reinstatement as the Guild's legal counsel via specific performance of contract, payment of the Karstetter Law Firm's fees under the contract through the end of 2016, and double damages, attorney fees, and costs based on the theory that the fees constituted unpaid employment wages. *Id.*

On June 29, 2016, the Guild filed a motion to dismiss Karstetter's claims against it. *See generally*, CP 17-30. In its motion to dismiss, the Guild argued that Karstetter's claims for termination in breach of contract and wrongful discharge should be dismissed because they did not plead causes of action applicable to the attorney-client relationship. CP 19-23. In light of the unambiguous and consistently-recognized public policy allowing legal clients in Washington to terminate their relationship with their counsel at any time, for any reason or for no reason at all, with no

special formality required to effect the termination, the Guild argued that the provisions of the Karstetter Law Firm's agreements with the Guild entitling it to protection from termination must be deemed unenforceable. CP 18-20. The Guild argued further that, to protect this fundamental right of legal clients, Karstetter must not be allowed to pursue a claim for breach of contract through termination of employment, or for wrongful discharge, against his former client. CP 20-22.

On July 21, 2016, the trial court granted the Guild's motion to dismiss as to certain other of Karstetter's claims, but did not grant dismissal of the breach of contract and wrongful termination counts.² CP 39-40.

Following the Court's ruling on the Guild's motion to dismiss, Plaintiffs issued three sets of discovery requests to the Guild Defendants. These requests sought a broad swath of information, documents, and correspondence relating to the performance history of Karstetter and the Karstetter Law Firm as the Guild's counsel, the expectations set for such performance, and communications by the Guild's officers and Executive Board members relating to such performance. *See generally*, Declaration Of Counsel In Support Of Petitioner's Motion For Discretionary Review (filed Sept. 1, 2016), Ex. 2-4 (total of 59 requests for production and six

² The trial court did dismiss Karstetter's claim for reinstatement via specific performance, however. CP 40.

interrogatories propounded to the Guild); *see in particular*, Ex. 2, Request for Production No. 1 (seeking “all personnel files, administration files, disciplinary files or other documents retained by Defendant Guild that relates to work performance of Plaintiff Jared Karstetter” from the beginning of his relationship with the Guild); Ex. 2, Request for Production No. 4 (seeking “all emails, correspondence, or other documents that reference in any manner the performance of Plaintiff Jared Karstetter” from January 1, 2006, to present); Ex. 4, Request for Production No. 58 (“For the period of January 1, 2006 through the present, produce all emails, correspondence or other documents that reference any expectation of Guild Defendants that Plaintiff Jared Karstetter keep records of billable hours spent on any matter relating to Guild business”).

On September 19, 2016, the Guild filed its First Amended Answer to Karstetter’s complaint, asserting a counterclaim against Karstetter. CP 116-127 (Guild’s First Amended Answer and Counterclaim). In its counterclaim, the Guild alleges that Karstetter has interfered with, coerced, and restrained the Guild’s members in the free exercise of their rights under Chapter 41.56 RCW following the severance of his attorney-client relationship with the Guild, by, *inter alia*, holding himself out as though he should still be treated as the Guild’s legal representative and

systematically attempting to interfere in the Guild's representation of its members. *Id.* at 10-11.

The Guild has also filed a grievance against Karstetter with the Washington State Bar Association, alleging that certain misconduct which formed the basis of the Guild's decision to terminate its attorney-client relationship with the Karstetter Law Firm violated the Washington RPCs. *See*, King County Corrections Guild's Motion For Discretionary Review at 13 (filed Sept. 1, 2016); Declaration Of Counsel, Ex. 5 (filed Sept. 1, 2016). This misconduct included, *inter alia*, Karstetter's disclosure of extensive Guild's client confidences to DAJD officials during his voluntary interview with them, which he admitted during the interview was for the purpose of making such client confidences public, undermining his client's officers before the Guild membership, and squelching political dissent against him within the Guild. *Id.* That grievance remains pending.³

In light of the trial court's failure to dismiss Karstetter's claims for breach of contract and wrongful termination, the Guild filed its Motion for

³ Also pending is a lawsuit by the Washington State Attorney General against Karstetter for campaign finance misconduct committed in his role as the Guild's legal counsel. *See*, *State of Washington v. Jared Karstetter*, Thurston County Superior Court, Cause No. 16-2-04713-34 (filed November 21, 2016). In that suit, the Attorney General alleges that Karstetter concealed the source of \$12,650 or more in campaign contributions made by the Guild, as well as contributions made by another legal client, by reporting himself or his wife as the donor, in violation of RCW 42.17A.435.

Discretionary Review with this Court. *See* Petitioner King County Corrections Guild’s Motion For Discretionary Review (filed Sept. 1, 2016). On November 16, 2016, the Court of Appeals accepted review. *See*, Commissioner’s Notation Ruling (entered Nov. 16, 2016). Pursuant to the perfection schedule issued by the Court, this brief of appellant timely follows.

IV. ARGUMENT

A. Standard Of Review

The standard of review is *de novo*. *Tenore v. AT&T Wireless*, 136 Wn.2d 322, 330, 962 P.2d 104 (1998). Dismissal is appropriate under Civil Rule (“CR”) 12(b)(6) if it is beyond a doubt that a party “can prove no set of facts which would entitle it to relief.” *Bravo v. Dolsen Companies*, 125 Wn.2d 745, 750, 888 P.2d 147 (1995). Dismissal of a complaint is also appropriate under CR 12(b)(6) for failure to either articulate or fairly imply the specific legal theories it alleges or to plead the elements of such theories. *See, Northwest Line Constr. Chapter of Nat’l Elec. Contractors Ass’n v. Snohomish Cnty. Pub. Util. Distr. No. 1*, 104 Wn. App. 842, 848-49, 17 P.3d 1251 (2001) (failure to identify theory); *Dewey v. Tacoma Sch. Dist. No. 10*, 95 Wn. App. 18, 24-25, 974 P.2d 847 (1999) (failure to plead elements).

B. The Trial Court Erred By Failing To Dismiss Attorney Karstetter’s Breach Of Contract Claim, Which Is Predicated Upon Unenforceable Terms Limiting The Guild’s Right To Discharge Its Legal Counsel.

Contractual provisions which run contrary to clearly-established public policy are unenforceable and should be voided. *LK Operating, LLC v. Collection Group, LLC*, 181 Wn.2d 48, 92, 331 P.3d 1147 (2014) (“It is... a settled issue that a contract that violates public policy is unenforceable in the courts”). The Washington Supreme Court has consistently applied this principle to contracts entered into by attorneys in violation of the Washington Rules of Professional Conduct (“RPCs”). *See e.g., LK Operating*, 181 Wn.2d at 95; *Valley/50th Ave LLC v. Stewart*, 159 Wn.2d 736, 743, 153 P.3d 186 (2007); *Belli v. Shaw*, 98 Wn.2d 569, 578, 657 P.2d 315 (1983). Because the contract provisions that Karstetter seeks to enforce via his breach of contract claim violate both Washington RPC 1.16 and unambiguous public policy declared by Washington’s appellate courts, the trial court below erred by failing to dismiss this claim.

Count I of Karstetter’s complaint below alleges that the Guild breached the terms of its “Employment Agreement” with him. Complaint For Damages And Relief, CP 8. This allegation is based on the substantive and procedural protections negotiated by Karstetter in the Karstetter Law Firm’s most recent fee agreement with the Guild, which

Karstetter purports provided him a “permanent employment relationship” with the Guild. *Id.*, CP 5, ¶ 18. Specifically, Karstetter seeks to enforce the Karstetter Law Firm’s contractual rights to “just cause,” “due notice... and an opportunity to correct any behavior that [the] Guild deems inappropriate,” and “an opportunity to answer any and all charges” before the Guild may terminate the parties’ attorney-client relationship. *Id.*, ¶ 19. As a remedy, Karstetter seeks his contractually-established fees for the remainder of the contract’s duration. *Id.*, CP 9. These are unenforceable contract terms.

Legal clients in Washington are afforded the clear right “to discharge a lawyer at any time, with or without cause.” *See*, RPC 1.16, Comment 4; *see also*, RPC 1.16(a)(3) (requiring attorneys to withdraw from representation if discharged by their client). This RPC contains no exceptions to protect in-house legal counsel, as Karstetter has, at times, characterized himself. Unwavering Washington precedent has affirmed this essential client right. *See e.g.*, *Belli*, 98 Wn.2d at 577 (“Unlike general contract law, under a contract between an attorney and a client, a client may discharge his attorney at any time with or without cause”); *Fetty v. Wenger*, 110 Wn. App. 598, 600 fn. 4, 36 P.3d 1123 (2001) (“Clients have the right to discharge their attorney at any time, for any reason.”); *Kimball v. Pub. Util. Dist. 1*, 64 Wn.2d 252, 257, 391 P.2d 205

(1964) (“A client may, at any time, either for good or fancied cause, or out of whim or caprice, or wantonly and without cause whatever, discharge his attorney and terminate the attorney-client relationship.”); *Wright v. Johanson*, 132 Wash. 682, 692, 233 P. 16, 20 (1925) (“That the client may at any time for any reason or without any reason discharge his attorney is a firmly established rule”).

It is equally clear that a legal client may effect the termination of his attorney without observing any special procedural formality. *Belli*, 98 Wn.2d at 577 (“Ordinarily, no special formality is required to discharge an attorney and any act of the client indicating an unmistakable purpose to sever relations is sufficient”); *Kimball*, 64 Wn.2d at 257 (client may even terminate attorney “wantonly”). For example, in *Belli*, the Washington Supreme Court held that merely employing other counsel inconsistent with continued representation by a prior attorney was sufficient to sever the attorney-client relationship. *Belli*, 98 Wn.2d at 577.

These unambiguous and consistently affirmed public policies render the provisions in Karstetter Law Firm’s agreement with the Guild that allegedly provide that firm or Karstetter a right to continued employment by the Guild, even over the Guild’s objection, unenforceable. They therefore warrant the dismissal of Karstetter’s claim for breach of contract. *Compare*, Complaint, CP 5, ¶ 19 (purporting to require “just

cause” for termination); *with, Kimball*, 64 Wn.2d at 257 (law permits client “to discharge his attorney *without good cause*”) (emphasis added); *compare*, Complaint, CP 5, ¶ 19 (purporting to require “due notice... and an opportunity to correct any behavior” before termination of attorney-client relationship); *with, Belli*, 98 Wn.2d at 577 (“any act of the client indicating an unmistakable purpose to sever relations is sufficient”).⁴

C. The Trial Court Also Erred By Failing To Dismiss Karstetter’s Wrongful Discharge Claim On the Grounds That It Failed To Plead The Elements Of This Common Law Tort.

Karstetter’s claim for wrongful discharge should also have been dismissed below, both for its failure to articulate a cognizable claim and because Washington courts have never recognized this tort as one applicable to the attorney-client relationship.

In Washington, the tort of wrongful discharge in violation of public policy has four *prima facie* elements:

- (1) The plaintiffs must prove the existence of a clear public policy.
- (2) The plaintiffs must prove that discouraging the conduct

⁴ Washington law permitting attorney termination at the legal client’s will does not preclude a discharged attorney from suing to recover “a reasonable fee for the service he has rendered up to the time the attorney-client relationship is terminated.” *Kimball*, 64 Wn.2d at 257. This is typically accomplished through an *in quantum meruit* action. *See, Fetty*, 110 Wn. App. at 600 fn. 4 (attorney may recover *in quantum meruit* for the “reasonable value of the services rendered through the date of discharge”); *Seattle Inv. Co. v. Kilburn*, 5 Wn. App. 137, 139, 485 P.2d 1005 (1971) (“recovery... is necessarily based on *in quantum meruit* and not on the grounds of breach of contract”). However, Karstetter has not contended that the Guild failed to pay the Karstetter Law Firm’s contractual fees during the existence of their attorney-client relationship.

in which they engaged would jeopardize the public policy.

(3) The plaintiffs must prove that the public-policy-linked conduct caused the dismissal.

(4) The defendant must not be able to offer an overriding justification for the dismissal.

Gardner v. Loomis Armored, Inc., 128 Wn.2d 931, 941, 913 P.2d 377 (1996); *Rose v. Anderson Hay and Grain Co.*, 184 Wn.2d 268, 277, 358 P.3d 1139 (2015). When determining whether a public policy is clear and is violated, courts should:

[I]nquire whether the employer’s conduct contravenes the letter or purpose of a constitutional, statutory, or regulatory provision or scheme. Prior judicial decisions may also establish the relevant public policy.

Thompson v. St. Regis Paper Co., 102 Wn.2d 219, 232, 685 P.2d 1081 (1984).

Karstetter’s complaint does not adequately allege this tort, as it fails to identify any clear public policy Karstetter allegedly took action to support, which led to his termination, much less allege that discouraging Karstetter’s conduct would jeopardize that public policy. *Gardner*, 128 Wn.2d at 941 (first through third elements).

To the extent that Karstetter may seek to rely upon the allegation that he “participat[ed] in a whistleblowing investigation” by producing documentation to the King County Ombudsman’s Office, this does not

sufficiently identify conduct protected by any established public policy.⁵ Complaint, CP 8. While it is true that Washington courts have recognized a public policy interest “in protecting employees who are discharged in retaliation for reporting employer misconduct, i.e., employee ‘whistleblowing activity,’” upon a fair reading of Karstetter’s complaint, this is not what Karstetter alleges that he did. *Compare, Dicomés v. State*, 113 Wn.2d 612, 618, 782 P.2d 1002 (1989), with Complaint, CP 6, ¶ 22. Instead, Karstetter alleges that, by the permission of one non-executive officer of his client, he provided documents related to the Guild to a King County official in the context of a parking reimbursement investigation against two Guild members. *Id.* This is not “reporting *employer misconduct*” – the quintessential feature of whistleblowing – that has, in certain contexts, been deemed protected by public policy. *Dicomés*, 113 Wn.2d 618-619 (emphasis added).⁶

Finally, Karstetter’s complaint wholly fails to identify how the Guild’s termination of its attorney-client relationship with him could

⁵ Based on this premise, Karstetter also pled a cause of action for “retaliat[ion]... for participating in a whistleblowing investigation” in his complaint, which was dismissed by the trial court for its failure to state a claim for which relief could be granted. *See* Complaint, CP 8; Order Granting In Part Defendant King County Corrections Guild’s Motion to Dismiss Jared Karstetter’s Suit Against It, CP 40.

⁶ Further emphasizing the importance of reporting employer misconduct to a wrongful discharge in violation of public policy claim relating to alleged whistleblowing, the *Dicomés* Court went on state: “In determining whether retaliatory discharge for whistleblowing activity states a tort claim... courts generally examine the degree of alleged *employer wrongdoing*, together with the reasonableness in which the employee reported, or attempted to remedy, the alleged misconduct.” *Id.*

jeopardize the King County Ombudsman’s ability to investigate parking reimbursement complaints, moving forward. *See Gardner*, 128 Wn.2d at 941 (second *prima facie* element to prove this tort). This presents an additional basis for finding dismissal of this claim warranted. *Dewey v. Tacoma Sch. Dist. No. 10*, 95 Wn. App. at 24-25.

D. Dismissal Of Karstetter’s Wrongful Discharge Claim Is Additionally Appropriate On The Grounds That No Authority Suggests This Tort Is Available To Washington Attorneys Discharged By Their Clients.

Alternatively, Karstetter’s wrongful discharge claim should have been dismissed by the trial court on the basis that Washington law does not recognize the application of the tort of wrongful discharge in violation of public policy to attorneys discharged by their clients, whereas clear public policy reinforces clients’ rights to terminate their attorney-client relationships “for any reason.”⁷ *Fetty*, 110 Wn. App. at 600 fn. 4; *Kimball*, 64 Wn.2d at 257 (client may terminate “for good or fancied cause, or out of whim or caprice”). Allowing Karstetter to pursue a claim for wrongful discharge undermines this vital client right.

⁷ Faced with this argument before the trial court, Karstetter merely referred the court to *Weiss v. Law Offices of Judith A. Lonquist*, 173 Wn. App. 344, 224 P.3d 1264 (2013), a case which upheld an attorney’s right to pursue a wrongful discharge claim against her law firm employer, not the attorney’s legal client. CP 110-115 (Plaintiffs’ Response to Motion to Dismiss Claims Against Defendant King County Corrections Guild).

E. Substantial Public Policy Concerns Support The Conclusion That The Trial Court Erred In Failing To Dismiss Karstetter’s Termination-Related Claims Against the Guild.

Important public policy considerations underlie the well-established rule permitting legal clients to freely terminate their relationships with their counsel. Washington courts have frequently cited the “personal and confidential nature of the attorney-client relationship” as the primary reason clients must have control over whose legal services upon which they rely. *See, Kilburn*, 5 Wn. App. at 138; *Johanson*, 132 Wn. at 692 (this “firmly established rule... springs from the personal and confidential nature of the relation which such a contract of employment calls into existence”).⁸

Decisions in other jurisdictions support this policy rationale. *See e.g., Herbster v. North Am. Co. for Life & Health Ins.*, 150 Ill.App.3d 545, Ill.Dec. 417, 508 N.E.2d 728 (1987), *cert. denied*, 484 U.S. 850, 108 S.Ct. 150, 98 L.Ed.2d 105 (1987) (attorney-plaintiff did not have retaliatory discharge claim against client-employer due to presence of attorney-client relationship; court noted that it “cannot separate plaintiff’s role as an employee from his profession” and undermining the client’s right to terminate could promote “evil... gendered by any friction or distrust”

⁸ *See also, Matter of McGlothlen*, 99 Wn.2d 515, 529, 663 P.2d 1330 (1983) (in other context, calling the attorney-client relationship “one of the strongest fiduciary relationships known to the law” and “one of special trust and confidence”) (internal citation omitted).

between attorney and client); *Balla v. Gambro*, 584 N.E.2d 104, 108, 164 Ill.Dec. 892, 896, 145 L.2d 492, 501-501 (1991) (finding no retaliatory discharge tort available to attorney, in part, because “extending the tort... to in-house counsel would have an undesirable effect on the attorney-client relationship that exists”).

This is sound analysis; in order to receive the fullest benefit of counsel’s advice, a client must have confidence in his ability to both be candid with, and to rely on, counsel. If he feels that he cannot do those things, he must be free to obtain other counsel without the delay contract requirements like “an opportunity to correct any behavior” and “an opportunity to answer... all charges” would impose. Complaint, CP 5, ¶ 19. The same is true if a client in any way does not feel that his interests are being properly represented by his attorney.

Indeed, the facts of this particular case, as set forth in the allegations and pleadings below, illustrate the wisdom and importance of this legal standard. Here, the Guild terminated its counsel because of what it credibly believed to be that attorney’s unauthorized and intentional disclosure of client confidences to a third-party. CP 98-105 (April 21, 2016 letter, appended as exhibit to Declaration of David Brown). If the Guild does not have an unrestricted right to discharge its counsel under this type of circumstance, courts will be forced to second-guess the

Guild's conclusions regarding whether its attorney's conduct was unprofessional or otherwise fell below the level of zealous representation to which the client is entitled. Thus, to cite just one example of how this might play out, should Karstetter be permitted to pursue his termination in breach of contract claim, the Guild's decision to terminate his law firm may be subjected to judicial second-guessing under the "seven tests of just cause."⁹

Undermining this client right could also subject legal clients to intrusive discovery regarding the rationales for their decision, performance expectations they set for counsel, and communications regarding counsel, as the Guild has seen here. *See generally*, Declaration Of Counsel (filed Sept. 1, 2016), Ex. 2-4.¹⁰ Legal clients' decisions to sever their relations with counsel were not intended to be subject to external scrutiny, as a client's legal goals, interests, preferences, and perceptions of his counsel's

⁹ *See generally*, Adolph M. Koven, Susan L. Smith, *Just Cause: The Seven Tests* (BNA 2nd ed. 1992); *Enterprise Wire Co.*, 46 LA 359 (Daugherty, 1966) (seminal "just cause" labor arbitration). Under the seven tests, the Guild's decision could be dissected to ensure that the Guild (1) set reasonable expectations for the Karstetter Law Firm's performance, (2) provided the firm notice of the possible consequences of its misconduct, (3) performed an adequate investigation into its grievances against the firm before severing the relationship, (4) conducted a fair investigation, (5) had sufficient evidence that the firm engaged in the wrongdoing of which it was accused at the time of severance, (6) treated the Karstetter Law Firm equally to others in comparable circumstances, and (7) whether severance of the relationship was a just penalty, in light of the misconduct and any positive mitigating factors regarding the firm's prior performance. *Id.*

¹⁰ *See* Ex. 2, RFP No. 1 (seeking documents "that relate[] to work performance of Plaintiff Jared Karstetter"); Ex. 2, RFP No. 4 (seeking correspondence and documents that reference "in any manner" Karstetter's performance over ten year span); Ex. 4, RFP No. 58 (seeking any correspondence or documents over ten year span that reference certain performance expectation of Guild to Karstetter Law Firm).

performance are inherently personal and subjective.¹¹ *Kilburn*, 5 Wn. App. at 138 (“personal... nature” of relationship).

The Guild’s counterclaim further illustrates how problematic it is to countenance an attorney claiming that he was fired unlawfully, because this creates the possibility of genuine confusion and ambiguity as to whether or not a particular attorney actually represents a client, which the Guild contends has already occurred in the instant matter. CP 116-127 (Guild’s First Amended Answer and Counterclaim). This is self-evidently at odds with the best interest of legal clients, as well as the public.

V. CONCLUSION

The trial court’s denial of dismissal here was reversible error. For the foregoing reasons, the Guild respectfully requests that the Court issue an order reversing the trial court’s order denying dismissal of Karstetter’s breach of contract and wrongful discharge claims against his former client.

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¹¹ It would be equally problematic for the trial court to attempt determine whether and how evidence of Karstetter’s alleged campaign finance misconduct with Guild funds, misconduct discovered only subsequent to the termination by the Guild of its relationship with the Karstetter Law Firm, may apply to Karstetter’s claims for relief based on wrongful discharge and termination in breach of a written agreement. *See, State of Washington v. Jared Karstetter*, Thurston County Superior Court, Cause No. 16-2-04713-34 (filed November 21, 2016).

RESPECTFULLY SUBMITTED this 27th day of February, 2017.

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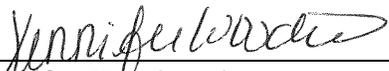
DECLARATION OF SERVICE

I, Jennifer Woodward, hereby declare under penalty of perjury under the laws of the State of Washington that on February 27, 2017, I caused the foregoing Appellant's Updated Opening Brief to be electronically filed with the Court of Appeals, Division I, and a true and correct copy of the same to be sent via email, per agreement of counsel, to the following:

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