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SUPREME COURT OF THE STATE OF WASHINGTON

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JARED KARSETTER AND JULIE KARSETTER

Petitioners,

V.

KING COUNTY CORRECTIONS GUILD,

Respondents.

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RESPONDENT KING COUNTY CORRECTIONS GUILD'S  
SUPPLEMENTAL BRIEF IN SUPPORT OF AFFIRMANCE

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## **IDENTITY OF RESPONDENT**

Respondent is the King County Corrections Guild (“Guild”), which was appellant below.

## **SUMMARY OF ARGUMENT**

The Court of Appeals correctly held that Karstetter’s breach of contract and wrongful termination claims fail as a matter of law.

Karstetter’s breach of contract claim is barred because, under well-established existing law, the Guild, as a legal client, had the absolute right to discharge Karstetter’s firm as its attorney, whether or not he was its in-house counsel. Even if an exception for in-house attorneys existed, moreover, it would be limited (as it is in other states), such that clients would still retain the unfettered right to terminate the attorney-client relationship when the cause for discharge pertains to the attorney’s role as such, rather than as an employee – precisely the case here.

Neither has Karstetter stated a claim for wrongful termination. Critically, Karstetter has not alleged facts that would establish “jeopardy,” a necessary element demonstrating the plaintiff engaged in any conduct relating to the fulfilment of a public policy. Karstetter’s effort to overcome this deficiency by characterizing his disclosure of client confidences when requested to do so as “whistleblowing” and misreading the Court of Appeals’ cogent analysis of the elements comprising a wrongful

termination claim are meritless.

### **STATEMENT OF THE CASE**

The 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. (“Karstetter”) 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. CP 6, ¶ 26.<sup>1</sup> The Guild

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<sup>1</sup> 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

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 suit 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 the 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.

Among other remedies, Plaintiffs’ Complaint sought Karstetter’s reinstatement as the Guild’s legal counsel via specific performance of contract, payment of the firm’s fees under the contract through the end of 2016 (i.e., a date long after the date of the termination of his law firm’s contract with the Guild), and double damages, attorney fees, and costs. *Id.*

On June 29, 2016, the Guild filed a motion to dismiss Karstetter’s

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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.

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.<sup>2</sup> CP 39-40. On September 1, 2016, the Guild moved for discretionary review of the trial court's ruling. The Court of Appeals, Division I granted the motion on November 16, 2016. On December 26, 2017, the Court of

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

Appeals issued an opinion reversing the trial court's denial of the Guild's motion to dismiss. *See Karstetter v. King Cty. Corr. Guild*, 1 Wn. App. 2d 822, 407 P.3d 384 (2017).

### **ISSUES PRESENTED**

1. Did the Court of Appeals Correctly Rule that Washington Public Policy Bars Karstetter's Breach of Contract Claim Because the Contract Provisions Relied Upon Violate a Client's Ability to Terminate An Attorney-Client Relationship At Any Time And for Any Reason?
2. Did the Court of Appeals Correctly Dismiss Karstetter's Wrongful Discharge Claim On the Grounds That Karstetter Failed to Plead All Elements of Such a Claim?

### **ARGUMENT**

#### **I. THE COURT OF APPEALS CORRECTLY RULED THAT WASHINGTON PUBLIC POLICY BARS KARSTETTER'S BREACH OF CONTRACT CLAIM.**

- A. Legal clients in Washington are afforded the clear right to discharge a lawyer at any time, with or without cause.

As the Court of Appeals properly noted, 1 Wn. App. 2d at 827, 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). Unwavering Washington precedent cited by the Court of Appeals has affirmed this essential client right. *See e.g., Belli v. Shaw*, 98 Wn.2d 569, 577, 657 P.2d 315 (1983) ("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”); *Barr v. Day*, 124 Wn.2d 318, 328, 879 P.2d 912 (1994) (“Given the special nature of the attorney-client relationship, we find the image of a client unwillingly saddled with an attorney she neither wants nor needs highly disturbing.”); *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”); *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.”).

B. The Court of Appeals properly found that there is no exception to this rule for in-house counsel.

The Court of Appeals properly rejected Karstetter’s argument that his alleged status as a common-law employee of the Guild, as “in-house counsel,” justified the Court in adopting a new rule at variance from the well-established principle cited above. The Court of Appeals correctly found that neither of the two appellate decisions he relies upon, *Chism v. Tri-State Constr., Inc.*, 193 Wn. App. 818, 374 P.3d 193 (2016); *Corey v. Pierce Cty.*, 154 Wn. App. 752, 225 P.3d 367 (2010), support such a

dramatic change in existing law.

*Chism* is entirely inapposite because it addressed only whether attorney could recover bonuses negotiated by contract despite committing RPC violations. *Chism*, 193 Wn. App. at 858-60. The Supreme Court in that case decided that, in the face of the RPCs' silence on attorney wages, the state's general wage statutes should prevail. *Id.* at 858-59. As the Court of Appeals noted, the instant case revolves around Karstetter's effort to receive lost future income for services that he will never provide, not any alleged entitlement to compensation for services rendered. 1 Wn. App. 2d at 829-30. *Chism* is therefore provides no support for his claim.

*Corey* does not conflict with the decision below either. In that case, a court of appeals held in part that a deputy public prosecutor could pursue a promissory estoppel claim based on the Prosecuting Attorney's promise to include a just cause provision in her contract if she would accept a deputy prosecutor position. *Corey*, 154 Wn. App. at 768-69. The appellate decision upheld that claim's viability only against the defendant's challenge that a just cause provision violated "RCW 36.27.040, RCW 41.56.030(2), and the Pierce County Charter." *Id.* at 770. The defendant never raised the effect of RPC 1.16 on such a contract provision, and so the court of appeals never considered it. As the court below noted, *Corey* presents no conflict because "[a]n opinion is not authority for what is not

mentioned therein and what does not appear to have been suggested to the court by which the opinion was rendered.” 1 Wn. App. 2d at 829 n. 16.

Moreover, Washington law recognizes that there are differences in the legal relationships, rights, and responsibilities of attorneys in private practice and those in public-sector roles. *See, e.g.,* RPC, Scope, § 18 (describing certain such differences, e.g., “under various legal provisions...government lawyers may [have] authority concerning legal matters that ordinarily reposes in the client in private client-lawyer relationships.”); *see also, Wise v. City of Chelan*, 133 Wn. App. 167, 172, 135 P.3d 951 (rejecting city’s *Belli*-based argument to void employment contract with municipal judge, as “[t]he relationship was not that of attorney and client,” and thus, contract was not “an attorney-client contract under which the client can discharge its attorney at any time”).

The unique features of public legal service mean the basic dynamic of the facts here were absent from *Corey*: the *client’s* expression of a desire to discharge its attorney. The client in *Corey* was Pierce County and, by statute, its legal representative was the Pierce County Prosecuting Attorney, not any individual deputy within the Pierce County Prosecuting Attorney’s Office (“PCPA”). *See* RCW 36.27.005 (defining “[p]rosecuting attorneys” as “attorneys authorized by law to appear for and represent the state and the counties thereof in actions and proceedings before the courts

and judicial officers”); RCW 36.27.020(4) (assigning prosecuting attorney duty to “[p]rosecute all criminal and civil actions in which the state or the county may be a party, defend all suits brought against the state or the county, and prosecute actions upon forfeited recognizances and bonds and actions for the recovery of debts, fines, penalties, and forfeitures accruing to the state or the county”). Deputy prosecutors are appointed agents of the prosecuting attorney who, while exercising the same powers as “their principal” during their tenure, are ultimately subject to the prosecuting attorney’s – not the county executive or board’s – employment decisions. *See* RCW 36.27.040 (defining role of deputy prosecutors); *Spokane Cty. v. State*, 136 Wn.2d 644, 655, 966 P.2d 305 (1998) (as elected officials, prosecuting attorneys are entitled to have confidence in their deputies and therefore have “the authority to ‘clean house’ and appoint an entire new staff of deputies” when they enter office). That status insulates deputy prosecutors from direct control by lay government officials.

The plaintiff in *Corey*, an employee within the PCPA, premised her promissory estoppel claim on a just cause guarantee made by the newly elected Prosecuting Attorney. *Corey*, 154 Wn.App. at 757. The Prosecuting Attorney was not the plaintiff’s *client*, but instead was her principal and superior within the PCPA. *Id.* Meanwhile, Pierce County, the actual client in *Corey*, never sought to terminate its relationship with

its legal representative, the Prosecuting Attorney, or to otherwise interfere with its attorney's employment decision.<sup>3</sup> Thus removed from any client preference, the contractual promise at issue in *Corey* raised an intra-PCPA personnel issue fairly analogous to contractual disputes among lawyers in private sector law firms. *Corey* simply clarified that in exercising his discretion as an employer, a prosecuting attorney may be bound by the contractual promises he makes to his employee agents during his term of office. *Corey*, 154 Wn.App. at 771. It in no way abridged the general rule that a *client* can sever its relationship to its attorney.

Here, the Guild was the client and the Karstetter Law Firm its attorney. CP 11-15. The Guild, through its lay representatives, discharged the Karstetter Law Firm – not Karstetter individually – as its legal counsel. *Id.* at 6-7, ¶¶ 26-28. That decision represented the client's choice to end its relationship with its attorney. It did not in any way affect Karstetter's employment status within his firm.

C. Even If In-House Counsel Could Under Some Circumstances Have A Cause of Action for Breach of a Contract of Continued Employment, The Instant Case Does Not Present Such Circumstances.

Even were this Court to conclude that under some circumstances, clients who directly employ their attorneys might have a lesser right to

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<sup>3</sup> In fact, it would likely be legally barred from doing so. *See State ex rel. Banks v. Drummond*, 187 Wn.2d 157, 177-82, 385 P.3d 769 (2016) (county board had no authority to appoint outside counsel over objection of “able and willing prosecuting attorney”).

terminate that attorney-client relationship than clients who retain outside counsel, the Court should adopt the rule established in nearly every other jurisdiction to have considered the question: “in-house counsel should not be precluded from maintaining an action for breach of a contractual provision...*provided, however, that the essentials of the attorney-client relationship are not compromised.*” *Nordling v. N. States Power Co.*, 478 N.W.2d 498, 502 (Minn. 1991) (emphasis added). In *Nordling*, Minnesota became the first state to recognize breach of contract claims by in-house attorneys. However, this recognition was qualified. The Minnesota Supreme Court was careful to stress that “the job security aspects of the [in-house attorney] employer-employee relationship” should be preserved only “if this can be done without violence to the integrity of the attorney-client relationship.” *Id.* The court therefore analyzed, as a threshold matter, whether the reason for discharge had any connection to an attorney’s duties to his client. *Id.* Courts outside of Minnesota adopted this same threshold analysis. For instance, in *Golightly-Howell v. Oil, Chemical & Atomic Workers Intern. Union*, 806 F. Supp. 921, 924 (D. Colo. 1992), the district court, citing *Nordling*, held that under Colorado law, “where an in-house attorney whose employment is subject to a ‘just-cause’ contract is unlawfully discharged *for reasons not implicating the attorney-client relationship*, the attorney is not precluded from suing the

company.” *Id.* (emphasis added). The court then found, on the facts, that the attorney’s discharge for seeking employment elsewhere and teaching a CLE course while on leave “does not implicate the attorney-client relationship so as to bar the plaintiff’s claim.” *Id.* Likewise, in *Kiser v. Naperville Comm’ty Unit*, 227 F. Supp. 2d 954, 965-66 (N.D. Ill. 2002), another district court held that “the Illinois Supreme Court would not bar the recovery of post-termination breach of contract damages from a former client-employer by former in-house counsel *where the claim does not arise from the legal advisor’s activities as such or otherwise threaten the integrity of the attorney-client relationship.*” *Id.* (emphasis added) The *Kiser* court determined that the in-house attorney’s termination raised an “ordinary compensation dispute” that would not “force disclosure of confidential communications or that allowing such claims generally would affect client trust or attorney autonomy.” *Id.*

In stark contrast to *Nordling*, *Golightly-Howell*, and *Kiser*, here Karstetter acknowledges that the Guild severed its relationship with his firm because of his “disclosure of information to the Ombudsman and for disloyalty.” CP 6-7 ¶ 26. An attorney’s disloyalty to his client through disclosure of its confidences strikes at the heart of the attorney-client relationship. Judicial concepts such as attorney-client privilege and the duty to maintain confidences exist ensure that communications between

the two remain sacrosanct.

Karstetter cannot avoid the repercussions of violating this cardinal principal by trumpeting his status as employee while ignoring his simultaneous role as a lawyer. Other states have found a framework to balance these two identities by focusing on the one that relates to the reason for termination. Should it opt to limit client discretion, the Court should adopt the same framework, and in applying it, hold that the basis of Karstetter's discharge was intimately tied to his abuses as an attorney. As a result, his breach of contract claim is precluded.<sup>4</sup>

**II. THE COURT OF APPEALS ALSO DID NOT ERR IN ITS ANALYSIS OF KARSTETTER'S WRONGFUL DISCHARGE CLAIM.**

Karstetter's claim for wrongful discharge was also properly rejected by the Court of Appeals on the grounds that he failed to articulate a cognizable claim. Specifically, Karstetter was required to, but did not, plead "that he 'engaged in particular conduct, and the conduct directly relates to the public policy, or was necessary for the effective enforcement of the public policy.'" 1 Wn. App. 2d at 832 (citation omitted). Although Karstetter alleges that he was retaliated against in violation of the public

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<sup>4</sup>Karstetter's breach of contract claim is also precluded because, although Karstetter's claim is predicated on his alleged status as "in-house counsel," Karstetter's own complaint alleged facts that establish that he did not fall into that category, as it is defined under Washington law. CP 7 ¶ 30. Thus, he could not in any event benefit from a ruling of this Court favoring the rights of in-house counsel. *See generally* Answer to Petition for Discretionary Review, pp. 15-17.

policy that protects “whistleblowing activity,” Karstetter did not actually allege that he engaged in any such activity. Karstetter alleges that he “participat[ed] in a whistleblowing investigation” by producing documentation to the King County Ombudsman’s Office, Complaint. CP 8. But as the Court of Appeals noted, this means only that he allegedly provided information to the investigator of a whistleblower complaint, *not* that he was a whistleblower himself. 1 Wn. App.2d at 833. This is not “reporting *employer misconduct*” – the quintessential feature of whistleblowing – that has, in certain contexts, been deemed protected by public policy. *Dicomes v. State*, 113 Wn.2d 612, 618-619, 782 P.2d 1002 (1989) (emphasis added).

Karstetter contends that the Court of Appeals erred by incorrectly relying on the “Perritt framework” to evaluate the nature of the conduct that allegedly motivated the Guild to discharge him. Instead, he argues, the Court should have only asked whether the alleged conduct fit into one of the four *Dicomes* scenarios in which conduct clearly relates to the fulfillment of a public policy. *See Dicomes*, 113 Wn.2d at 618. In fact, the Court of Appeals did precisely that. What is more, both the Perritt framework and the less systematic approach assess the public policy nature of a plaintiff’s conduct in the exact same way.

*A bona fide* whistleblower seeks to remedy the misconduct at issue

or otherwise “desire[s] to further the public good.” *Rickman v. Premera Blue Cross*, 184 Wn.2d 300, 313, 358 P.3d 1153 (2015)). Karstetter, by comparison, alleged that he assisted the investigation, as the court below synopsised it, only “because the King County Code and the threat of superior court action compelled him to.” 1 Wn. App. 2d at 833. Thus, while his actions concerned a third person’s whistleblower complaint, Karstetter “was not a whistleblower himself.” *Id.*

The so-called Perritt framework played no part in the foregoing analysis. The framework is a legal test which provides a method of evaluating the public policy component of a wrongful termination tort. It sets forth four elements a plaintiff must prove to succeed on this claim:

- (1) ...the existence of a clear public policy (the *clarity* element);
- (2) ...that discouraging the conduct in which they engaged would jeopardize the public policy (the *jeopardy* element);
- (3) ...that the public-policy-linked conduct caused the dismissal (the *causation* element);
- (4) [And] [t]he defendant must not be able to offer an overriding justification for the dismissal (the *absence of justification* element)

*Gardner v. Loomis Armored Inc.*, 128 Wn.2d 931, 941, 913 P.2d 377 (1996) (emphasis in original). The *Gardner* Court stressed that its “adoption of this test does not change the existing common law” in Washington but merely systematizes it. *Id.* In fact, citing *Dicomes*, the Supreme Court stated that “[c]ommon law already contains the clarity and

*jeopardy elements.” Id.* (citing *Dicomes*, 113 Wn.2d at 617) (emphasis added). Similarly, the Court noted, “[t]he causation element is also firmly established in Washington common law.” *Id.* at 942 (citation omitted). What is different about the Perritt framework is that it (1) conceptually distinguishes the clarity and jeopardy elements, which “prior decisions [had] lumped...together,” and (2) adds the “absence of justification” element in order to analyze cases where the employer defendant offered a legitimate justification for discharge that must be weighed against the given public policy. *Id.* at 941-42.

It is true that the court below enumerated each of the Perritt framework’s elements when introducing the elements of a wrongful termination claim. 1 Wn. App. 2d at 830. But the Court of Appeals focused solely on the jeopardy requirement, since it is as part of this element that a plaintiff must establish that his conduct directly related to or was necessary for the enforcement of a public policy. *Id.* (quoting *Rose v. Anderson Hay and Grain Co.*, 184 Wn.2d 268, 290, 358 P.3d 1139 (2015)). Because the common law already incorporates the jeopardy element, *Gardner*, 128 Wn.2d at 941 (citing *Dicomes*, 113 Wn.2d at 617), the Court of Appeals’ exclusive focus on that element meant that the Perritt framework’s unique features never came into play.

The case that Karstetter relies upon, *Rose v. Anderson Hay*, implies

at most that when the public policy is obvious and important enough, it is not necessary to weigh it against an employer's justification. *Rose*, 184 Wn.2d at 287. But since this case was resolved on the logically anterior question of whether Karstetter's conduct even implicated a public policy, the Court of Appeals never reached the employer justification element.

What Karstetter really seems to be demanding is that the Court uncritically accept his characterization of his actions as "whistleblowing activity." No authority supports such an outlandish proposition. The *Dicomes* categories are legal designations. While a court must consult factual allegations to determine whether any of these categories has been satisfied, it undertakes that ascription process *de novo*. See *Haberman v. Wash. Pub. Power Supply Sys.*, 109 Wn.2d 107, 120, 744 P.2d 1032 (1987) (a court is "not required to accept the complaint's legal conclusions as correct"). Indeed, Washington courts have long distinguished between allegations of fact and conclusions of law. See *Dufur v. Lewis River Boom & Logging Co.*, 89 Wash. 279, 284, 154 P. 463 (1916) (complaint's claim that defendant had "duty" to catch and hold logs and failed to perform duty "is not an allegation of fact" but "the conclusion the court would draw from the pleadings were some fact alleged showing that the duty arose"); *In re Wilson's Estate*, 50 Wn.2d 840, 849, 315 P.2d 287 (1957) (complaint's allegation that plaintiff "were the owners of a one-half

interest in the caterpillar” was “a conclusion of law,” “not an allegation of fact”). Were it otherwise, a claim could always survive the pleading stage so long as the complaint’s drafter recited the name of a recognized cause of action or its elements. Accordingly, whether Karstetter’s actions constitute “whistleblowing” is a “purely legal question.” *Martensen v. Chicago Stock Exchange*, No. 17 C 1494, 2017 WL 2461548, at \*1 (N.D. Ill. 2017) (evaluating plaintiff’s “whistleblower” status under the Dodd-Frank Act). And as discussed, the Court of Appeals *did* evaluate whether the facts as alleged by Karstetter fell within the scope of *Dicomes*’ whistleblowing category. It found that they did not.<sup>5</sup>

Finally, Karstetter’s insistence that this Court cloak his brazen disregard of client confidences in the mantle of “whistleblowing” or “performance of a public duty” is all the more absurd in light of the fact that other jurisdictions have held attorney disclosures not to advance public policies even under far more favorable facts. For instance, in *Pang v. International Document Services*, 356 P.3d 1190 (Utah 2015), the Supreme Court of Utah held that an in-house attorney failed to state a claim for wrongful termination, even though the attorney plaintiff alleged he was fired because he had warned his employer that it was engaged in unlawful usurious practices and it feared he would expose those activities.

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<sup>5</sup> For the reasons discussed in note 4 of the Guild’s Answer to the Petition for Discretionary Review, Karstetter’s assertion that he separately claimed his conduct met the “performance of a public duty” *Dicomes* category is untrue. Ans. P. 11, n.4.

*Id.* at 1193-94. The court nonetheless held that the plaintiff’s cited public policies were not of “sufficient magnitude to override the at-will employment rule”, *id.* at 1200, and because of the countervailing interests in “protecting a client’s right to choose representation and deterring illegal conduct” by encouraging frank conversations with counsel. *Id.* at 1203. Accordingly, even when an attorney’s disclosures are based on benevolent intentions, they may not correlate to the advancement of a clear public policy. So much less, then, should a court weigh the intentions of an attorney who, unlike the sympathetic figure in *Pang*, volunteered client confidences for the simple, undisputed reason that an investigator asked for them. While reasonable minds can perhaps debate the appropriate weight to give to an attorney’s independent concern about his employer’s activities, no such ambiguity exists where an attorney simply yields to an external actor’s demands.

### CONCLUSION

For the foregoing reasons, the decision of the Court of Appeals should be affirmed.

Respectfully submitted this 6th day of July, 2018.

SCHWERIN CAMPBELL BARNARD IGLITZIN  
& LAVITT LLP

  
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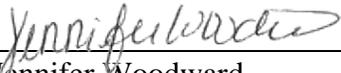
### DECLARATION OF SERVICE

I, Jennifer Woodward, hereby declare under penalty of perjury under the laws of the state of Washington that on July 6, 2018, I caused the foregoing document to be electronically filed with the clerk of the Supreme Court of the state of Washington, and a true and correct copy to be delivered via email service to:

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Signed in Seattle, Washington this 6<sup>th</sup> day of July, 2018.

  
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**SCHWERIN CAMPBELL BARNARD IGLITZIN & LAVITT**

**July 06, 2018 - 4:36 PM**

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