No. 56455-6-II



COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

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SHEILA LAROSE,
*Petitioner,*

v.

KING COUNTY, WASHINGTON,
*Respondent,*

and

PUBLIC DEFENDER ASSOCIATION D/B/A THE DEFENDER ASSOCIATION (TDA),
*Defendant below*.

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ON APPEAL FROM PIERCE COUNTY SUPERIOR COURT
Honorable Stanley J. Rumbaugh

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# RESPONDENT KING COUNTY'S ANSWER TO PETITION FOR REVIEW

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## I. INTRODUCTION

King County respectfully requests that this Court deny Sheila LaRose's petition for discretionary review.

## II. STATEMENT OF THE CASE

### A. PROCEDURAL FACTS

Former public defender Sheila LaRose filed this lawsuit against two former employers, the Public Defender Association D/B/A The Defender Association ("TDA") and King County, alleging negligence, hostile work environment, disability discrimination and failure to accommodate, based on harassment by a former client, anonymously referenced as "Smith." CP_4014-4037. The trial court initially granted TDA and King County's motions to dismiss. CP_5231. LaRose appealed. In a 2019 published opinion, the Court of Appeals reversed the trial court in part and affirmed in part, holding that (1) under certain circumstances an employer may be subject to liability for a hostile work environment claim based on a nonemployee's harassment of an employee in the workplace, (2) a genuine issue

of fact existed regarding whether LaRose's PTSD was a compensable injury under the Industrial Insurance Act ("IIA") (barring her negligence claim), (3) LaRose's disability discrimination claim was properly dismissed, and (4) King County was not vicariously liable for TDA's conduct prior to July 1, 2013, when LaRose became a County employee. CP_5232; *LaRose v. King County*, 8 Wn. App. 2d 90, 437 P.3d 701 (2019) (*LaRose I*).

On remand, King County again moved for summary judgment. CP_5484. King County argued that sexual harassment by a former client outside the workplace could not be imputed to King County, and that the negligence claim should be dismissed. CP_5498-5505. The trial court denied the motion. CP_6258-60. At trial, King County moved for judgment as a matter of law. CP_9773-75, 10121-23. The court denied that motion and submitted the hostile work environment and negligence claims

against TDA and King County to the jury. RP2_1770[1]; CP_10275, 10279.

Although TDA had been LaRose's employer for seven of eight months that LaRose represented Smith, the jury found TDA not liable on LaRose's hostile work environment and negligence claims. CP_10297-98. In contrast, the jury found King County liable on the hostile work environment claim. CP_10297. The jury was instructed not to reach the negligence claim if they found for LaRose on the hostile work environment claim. CP_10298.

The jury awarded LaRose $2,200,000 in economic damages and $4,800,000 in noneconomic damages. CP_10297-98. The jury also found by special verdict that LaRose's PTSD was the result of a single traumatic event. CP_10300.

[1] The verbatim report of proceedings is contained in two continuously paginated volumes: RP1 (Reporter Frederick) and RP2 (Reporter O'Neill).

King County appealed. CP_11193-11199. In an unpublished decision, the Court of Appeals reversed. The court held that that the trial court erred in not granting judgment as a matter of law to King County on LaRose's hostile work environment claim because the evidence at trial showed that Smith's conduct was not imputable to King County. In addition, the jury's special verdict that LaRose's PTSD was caused by a single traumatic event barred LaRose's negligence claim because her PTSD was a compensable injury under the IIA.[2]

[2] LaRose did not seek review of the Court of Appeals' holding in *LaRose I* that it was a jury question whether LaRose's PTSD and other mental conditions were caused by a single traumatic event, and thus compensable under the IIA. *LaRose I,* 8 Wn. App. 2d at 119. Likewise, LaRose did not seek review of the holding that King County was not collaterally estopped by IIA proceedings from arguing that her injury was compensable*, id.* at 120, and did not respond to King County's argument on appeal in *LaRose II* that remand on the negligence claim was precluded because of the jury's finding that LaRose's injuries were compensable under the IIA. As such, LaRose's present argument that the County "can't have it both ways" is simply an attempt to bypass the law of the case doctrine.

## B. FACTS PRESENTED AT TRIAL

For purposes of this response, King County construes the evidence in the light most favorable to Plaintiff, as did the Court of Appeals when it reversed the judgment.

### 1. As a TDA Employee, LaRose Was Assigned to Represent Smith on Stalking Charges, and Received Harassing Calls and Letters From Him for Four Months, But Elected to Continue Representing Him.

LaRose had been employed as a public defender with TDA for several years when she was assigned to represent "Smith"[3] on a stalking charge in October 2012. RP1_1552, 1587; RP2_697, 702. After she represented Smith for several months, he began calling LaRose repeatedly and leaving messages such as "I love you. I want to be with you. I want to marry you." RP2_714-15. These calls were persistent. RP1_1390; RP2_718. Smith also gave LaRose letters in which professed his love for her.

[3] Throughout the trial, the client who stalked LaRose was referred to as "Smith" or "Client A."

RP1_1363-66. LaRose raised the issue of Smith's competency to stand trial with the court. RP1_1367.

In April 2013, LaRose told her TDA supervisor, Ben Goldsmith, that she wanted to be removed from Smith's case because of the nature of the calls. RP2_716-17. Goldsmith responded "Okay." RP2_717. However, LaRose was struggling with her workload and felt her relationship with Goldsmith was strained. RP2_695, 715-717. For these reasons, she reconsidered her request to be removed from Smith's case and told Goldsmith days later that she would finish the case. RP1_1610; RP2_717-18. He deferred to her professional judgment that she could continue to represent Smith. RP1_1912. She did not report fearing Smith or considering herself a stalking victim based on his calls. RP1_1912; RP2_447-49. If she had, she could not have ethically continued to represent Smith. RP1_1916-17.

While employed by TDA, LaRose also spoke to her co-worker and former supervisor Leo Hamaji about Smith's

behavior. RP1_1378; RP2_594, 633-34. He advised her to ignore Smith's calls. RP1_1380.

### 2. As a County Employee, LaRose Continued to Represent Smith for 26 Days Until She Withdrew as Counsel.

On July 1, 2013, King County established in-house public defense services through the Department of Public Defense, and LaRose became a County employee. RP1_678; CP_10278. By that time, LaRose had been representing Smith for eight months. RP2_697. LaRose continued to represent Smith for 26 more days, until July 26, 2013. RP1_1393-94. On that date, the Superior Court allowed her to withdraw because Smith sought to challenge the guilty plea that LaRose had negotiated. RP1_1391-94. She could not withdraw prior to that date without the Superior Court's permission. CrR 3.1(e); Ex. 57. Once LaRose was allowed to withdraw, she knew that she was under no further professional obligation to take Smith's calls. RP2_1023.

### 3. After Her Withdrawal, LaRose Continued to Receive Harassing Calls From Smith But Was Able to Screen Them and Disregarded Advice to Call the Police.

After LaRose withdrew as counsel, Smith continued to call her. Using call screening technology provided by the County, LaRose screened his calls to avoid speaking with him. RP2_1023-24; RP2_1333-34. She spoke to Goldsmith about the fact that Smith's calls were continuing. RP1_1390, 1407-08. He advised her to call the police. RP1_1407-08. But she was reluctant to call the police and thought she could "handle" the situation. RP1_856; RP2_1030-31.

At some point in the fall of 2013, LaRose saw Smith in a Pierogi shop. RP1_1405. She told Hamaji that she had seen Smith at the shop. RP1_1405. When Smith called LaRose a short time later, Hamaji answered and told him to stop calling LaRose. RP1_1406. He also advised LaRose to call the police. RP1_1155; RP2_610. She decided not to call them. RP2_1028.

Despite Hamaji's attempt to convince Smith to stop calling, Smith's calls continued. LaRose continued to screen

Smith's calls. RP1_1164-65; RP2_1023-24. LaRose never encountered Smith at her office because access to the attorney area was controlled by secured reception. RP2_1241; RP1_1685-86. LaRose later told police that she felt safe at work because Smith could not access her there. RP1_817, 855, 858.

#### 4. More Than Five Months After She Withdrew, Smith Began Stalking LaRose For Five Days at Her Home and in a Private Parking Garage, Until His Arrest.

During the President's Day weekend of February 16-18, 2014, Smith's conduct suddenly escalated. LaRose found a pamphlet she suspected Smith had placed in the mailbox outside her home. RP1_1409, 1413. Realizing that Smith had likely been to her house, she decided to contact the police for the first time and reported that Smith was stalking her. RP1_841-42, 1410, 1413-14. Smith later appeared at LaRose's house, outside the gate, and she called 911 but the police were unable to find him. RP1_1410-13. Smith also left her a voicemail referencing LaRose's daughter. RP1_1409.

On Tuesday, February 18, LaRose emailed her colleagues, telling them about Smith's visits to her house. Ex. 63. The managing attorney, Floris Mikkelson, met with LaRose that day and offered her a wearable alarm as well as a safe place for her and her daughter to stay until Smith was apprehended. RP1_1418-19, 1565, 1779; RP2_1009. Other colleagues also offered her a place to stay. RP1_1565, 2006, 2114; RP2_1067. She declined all such offers. RP1_1565. The front desk was alerted that if Smith came to the office, LaRose would not be paged, no one would provide information about her, and a supervisor would be the one to interact with him. RP1_1579. A safety plan was developed by King County on February 19. RP1_1048-50. But Smith did not come to the office. RP2_1020.

Hamaji accompanied LaRose to court on February 19 to obtain a protective order. RP1_1419, 1422. After work that day, LaRose saw Smith in the privately-owned parking garage where she had parked her car. RP1_1423-26. She called the police, but he was not apprehended. RP1_1426. That night, Smith came to

LaRose's house twice, eventually throwing a rock through her window. RP2_957-59. She called the police both times he appeared, but they could not find him when they responded. RP2_958-59.

On February 21, LaRose decided to try to lure Smith to a downtown coffee shop so that he could finally be apprehended by police. RP2_753, 878-79, 1070-76. LaRose's colleagues did not let her go alone; they accompanied her to the coffee shop. *Id.* The plan worked, and Smith was arrested at the coffee shop and was charged and convicted of stalking LaRose. RP2_970-71. Smith did not attempt to contact LaRose after his arrest. RP1_855; RP2_1031.

**5. Smith's Stalking at LaRose's Home Caused Her to Suffer PTSD and Depression, and Led to Her Medical Separation From King County.**

As a result of being stalked by Smith at her home during the week of February 16-21, LaRose began experiencing severe emotional distress and was eventually diagnosed with PTSD and depression. RP1_1302, 1347-48; RP2_845-46, 857. LaRose's

expert testified that her PTSD occurred as a result of traumatic events that occurred in February of 2014, and that no traumatic events occurred to cause PTSD during her representation of Smith. RP1_1347-49; RP2_845-46. LaRose went on extended leave. RP1_1793. King County extended her leave for more than a year. RP2_885, 890. Ultimately, LaRose and her doctors determined she could not work for King County in any capacity, and she was medically separated from her employment. RP1_1794; RP2_885, 896.

### C. THE COURT OF APPEALS DECISION

In a unanimous unpublished decision, the Court of Appeals reversed the judgment of the trial court, holding the trial court erred in not granting judgment as a matter of law to King County on the hostile work environment claim. *LaRose v. King County,* 2024 WL 2148386, *1 (May 14, 2024) (*LaRose II*). The court noted that the Washington Law Against Discrimination ("WLAD") seeks to end discrimination in the workplace, but does not protect employees from injuries that occur outside the

workplace that are only remotely related to employment. *Id.* at *14. The court held that when a nonemployee with no existing relationship with the employer engages in harassing behavior away from the workplace, the employer is not liable for the harassment under the WLAD. *Id.* Thus, as a matter of law, King County was not liable for Smith's stalking of LaRose outside the workplace after July 26, 2013. *Id.* at *20.

As for Smith's post-representation harassing calls placed to LaRose in workplace, the court noted that the WLAD requires prompt action reasonably calculated to end the harassment, but that the fact that efforts do not succeed is not determinative. *Id.* In this case, LaRose did not present evidence that King County's response to the continuing phone calls was not reasonably prompt and adequate, where it was undisputed that LaRose had the ability to screen Smith's calls using call-screening technology provided by the County, and LaRose was under no obligation to listen to Smith's harassing messages. *Id.* at *21. The court noted that King County had no ability to stop calls from a

non-employee coming from outside the workplace, and it could not be liable for a hostile work environment just based on the fact that Smith continued to make calls. *Id.* at *20-21.

As for the calls that Smith made to LaRose during the 26-day period when LaRose represented him as a County employee, the court concluded there was no evidence that the calls escalated during that period from what had been occurring for five months prior, and no evidence that they affected the terms and conditions of LaRose's employment, which is entirely consistent with the jury's finding that TDA was not liable for a hostile work environment for the calls that occurred from March through July. *Id.* at *21-22. The court additionally found that King County took adequate corrective action when LaRose was permitted to withdraw from the case, especially since it was law of the case that she could not withdraw until she received court approval. *Id.* at *22-23.

Finally, consistent with its prior holding, the court held that the jury's determination that LaRose's PTSD was caused by

a single traumatic event (and was thus compensable under the IIA) barred her negligence claim. *Id.* at *24.

## III. ARGUMENT WHY REVIEW IS NOT WARRANTED

### A. THE COURT OF APPEALS DECISION IS NOT IN CONFLICT WITH ANY DECISIONS OF THIS COURT OR THE COURT OF APPEALS.

In analyzing LaRose's hostile work environment claim, the Court of Appeals applied the framework adopted by this Court in *Glasgow v. Georgia Pacific Corp.,* 103 Wn.2d 401, 693 P.2d 708 (1985). Consistent with this Court's precedent, the Court of Appeals considered the facts in the light most favorable to LaRose. *Mancini v. City of Tacoma*, 196 Wn.2d 864, 877, 479 P.3d 656 (2021). Indeed, the facts regarding Smith's behavior and its effect on LaRose in the workplace came almost entirely from LaRose's own trial testimony.

In *Glasgow*, management knew that a male co-worker was sexually harassing female employees in the workplace and took no corrective or disciplinary action for a long period while the

behavior continued. *Glasgow*, 103 Wn.2d at 402-03. The *Glasgow* court held that hostile work environment claims could be brought under the WLAD, and adopted a framework for such claims. The framework provides that a plaintiff establishes a prima facie claim of a hostile work environment when the employee shows that 1) the harassment was unwelcome, 2) the harassment was because of sex, 3) the harassment altered the terms and conditions of employment, and 4) the harassment can be imputed to the employer. *Id.* at 406. Harassment is imputable to the employer as follows:

> Where an owner, manager, partner or corporate officer personally participates in the harassment, this element is met by such proof. To hold an employer responsible for the discriminatory work environment created by a plaintiff's supervisor(s) or co-worker(s), the employee must show that the employer (a) authorized, knew, or should have known of the harassment and (b) failed to take reasonably prompt and adequate corrective action. This may be shown by proving (a) that complaints were made to the employer through higher managerial or supervisory personnel or by proving such a pervasiveness of sexual harassment at the work place as to create an inference of the employer's knowledge or constructive knowledge

> of it and (b) that the employer's remedial action was not of such nature as to have been reasonably calculated to end the harassment.

*Id.* In this case, there is no contention that any manager participated in the harassment. Thus, Smith's harassment in the workplace could only be imputed to King County if LaRose showed that King County knew of the harassment and failed to take reasonably prompt and adequate corrective action. *Id*.

LaRose argues the Court of Appeals erred in its application of the *Glasgow* framework to the facts of her case. Even if true, that would not meet the criteria for review by this Court. *See* RAP 13.4(b). Either way, however, the Court of Appeals' analysis is a well-reasoned application of the *Glasgow* framework to the unique facts of this case.

LaRose continues to argue that Smith's behavior, which consisted of both harassing phone calls to the workplace and subsequent stalking behavior outside the workplace, must be viewed and analyzed as a "unitary whole." Doing so, of course, would be improper bootstrapping and would blur the line

between conduct *inside* the workplace that can be imputed to the employer if all other elements are met, and conduct *outside* the workplace (or work-related locations) that cannot be imputed to the employer under *Glasgow*. The Court of Appeals decision faithfully follows this Court's *Glasgow* framework.

LaRose's claim that there are no "territorial" "limitations" to a hostile work environment claim is simply unsupported by the Washington cases she cites. *See Loeffelholz v. University of Washington,* 175 Wn.2d 264, 285 P.3d 854 (2012) (derogatory comments and abusive behavior *in the workplace* based on sexual orientation); *Coles v. Kam-Way Transport*, 2017 WL 3980563 (Wn. App. 2017) (unpublished) (derogatory comments and hostile treatment *in the workplace* based on sexual orientation); *Goode v. Tukwila School District No. 406*, 2016 WL 3670590 (Wn. App. 2016) (unpublished) (racially derogatory comments to teacher by superintendent *in the workplace*).

LaRose can cite no authority from any jurisdiction that would hold an employer liable for a hostile work environment based on harassment by a former client outside the workplace and away from work-events. The cases she cites present facts that are very different from this case. In *Christian v. Umpqua Bank*, 984 F.3d 801, 806-08 (9th Cir. 2020), a bank employee was stalked by a current bank customer in the workplace. One incident occurred at a work-related charity event the employee attended on behalf of the bank. The Ninth Circuit noted that incidences of "*workplace* behavior" should be "evaluated together." *Id.* at 809-10 (emphasis added). Christian's hostile work environment claim was squarely based on behavior in the workplace and at a work-related event. In *Fuller v. Idaho Dept. of Corrections*, 865 F.3d 1154, 1158-59 (9th Cir. 2017), the employee had a relationship with a co-worker who raped her. In response, the employer denied her paid leave, but granted paid leave to the rapist. *Id.* at 1160. She returned to an "'uncomfortable work environment' with supervisors." *Id.* The

District Court and Ninth Circuit both held that the employer was *not* liable for the rape outside the workplace as a matter of law. *Fuller v. Idaho Dep't of Corr.*, 694 F. App'x 590, 591 (9th Cir. 2017). Instead, the courts permitted a hostile work environment claim to go forward based on *supervisors'* reactions to the rape, which plausibly created a hostile work environment because they essentially condoned the rape and endorsed the rapist. 865 F.3d at 1163. Similarly, in *Little v. Windermere*, 301 F.3d 958, 964 (9th Cir. 2002), the plaintiff was drugged and raped by a current client at a work dinner to discuss the client's account. Upon reporting the rape to her employer, the plaintiff was counseled not say anything for fear the company would lose the account. *Id.* at 965. The employer then took retaliatory action against her. *Id.* Little's claim was that the employer's response to the rape created a hostile work environment. *Id.* at 966.

By contrast, LaRose has never argued, nor presented evidence, that King County's *response* to Smith's stalking behavior outside the workplace created a hostile work

environment. Instead, LaRose's own testimony demonstrated that supervisors and co-workers at King County were fully supportive of Smith's arrest and prosecution as soon as they learned of the stalking, including assisting LaRose in obtaining a protection order and in Smith's apprehension. RP1_1418-22, 1579, 1565; RP2_1008-09. And the stalking ceased as soon as Smith was arrested. RP1_855; RP2_1031.

In sum, by arguing that King County should have been liable for Smith's stalking at LaRose's home months after the professional relationship ended, LaRose seeks to expand employer liability in a manner that has no support in this Court's precedent or any case law. The Court of Appeals' rejection of LaRose's unsupported argument does not warrant review by this Court.

### B. THIS CASE DOES NOT INVOLVE A SUBSTANTIAL ISSUE OF PUBLIC IMPORTANCE THAT SHOULD BE DETERMINED BY THIS COURT.

This case presents a unique fact pattern. The Court of Appeals applied the existing legal framework to that unique fact

pattern. As such, this case does not involve a substantial issue of public importance that should be determined by this Court.

In *LaRose I,* the Court of Appeals followed federal precedent in holding that, "under certain circumstances, an employer may be subject to liability for a hostile work environment claim based on a non-employee's harassment of an employee in the workplace." 8 Wn. App. 2d at 97. That holding is not at issue in this appeal.

*LaRose II* applied the holding of *LaRose I.* Neither decision requires employees to accept harassment by third parties in the workplace as a condition of employment, as LaRose claims. However, strict liability is not imposed on an employer that tries but is unable to stop harassment by third parties. The *Glasgow* framework only requires employers to take reasonably prompt and effective corrective action to stop harassment in the workplace. As the Court of Appeals reasonably concluded, a hostile work environment claim based on third party actions must be based on conduct that occurs in the workplace or a work-

related context. *LaRose II,* at *18. And even when harassment occurs in the workplace, under *Glasgow* there is no requirement that employers take all possible measures of corrective action. *Estevez v. Faculty Club of University of Washington*, 129 Wn. App. 774, 796, 120 P.3d 579 (2005). Consistent with federal law, Washington law recognizes that employer liability must be limited to the failure to take reasonable actions within the employer's control. *Id.* (co-worker's "bizarre and frightening" behavior not imputable to employer where employer took reasonably prompt and adequate corrective action by placing him on leave and ordering him to obtain a mental health evaluation); *Campbell v. Hawaii Dep't of Educ.*, 892 F.3d 1005, 1018 (9th Cir. 2018) (explaining "our law does not require an employer to be immediately and perfectly effective in preventing all future harassment by a third party"). When the harassment is caused by a third party over whom the employer has no control, it is possible that an employer's reasonably prompt and corrective action may not be sufficient to end the harassment.

As the Ninth Circuit has explained: "That a corrective action did not actually end the harassment does not necessarily mean that, at the time the employer chose such course of action, it was unreasonable to expect that it would." *Id. See also Modern Continental v. Mass. Com'n Against Discrimination*, 445 Mass. 96, 833 N.E.2d 1130, 1140 (2005) (explaining that under the negligence standard utilized in hostile work environment claims, "the fact that an employer's efforts do not actually succeed in stopping or preventing the harassment is not determinative"); *Akines v. Shelby County*, 512 F. Supp. 2d 1138, 1147 (W.D. Tenn 2007) (in regard to third party harassment in a prison setting, "the effectiveness inquiry should look, 'not to whether offensive behavior actually ceased but to whether the remedial and preventative action was reasonably calculated to end the harassment'").[4]

[4] Notably, LaRose argued in closing that King County was required to "end the harassment," a misstatement of the law that likely affected the verdict due to the substantial instructional errors detailed in the Brief of Appellant. RP1_2208.

In this case, the only harassment by Smith that occurred in the workplace while LaRose was employed by King County was his phone calls. The Court of Appeals correctly concluded that for the brief period of 26 days in which LaRose represented Smith while a County employee, her removal from Smith's case, which required court approval, was reasonably prompt and adequate corrective action. *LaRose II*, at *22-23.[5] For the period after representation ended, the Court of Appeals properly concluded that the call screening technology was reasonably adequate to shield LaRose from Smith's harassing calls since she had no obligation to listen to the calls. *Id.* at *21. The evidence was undisputed that call screening was available to LaRose: She testified she had call screening technology that she began to

[5] In addition, the jury found there was no hostile work environment prior to July 1 while LaRose was employed by TDA. The Court of Appeals carefully evaluated the record and concluded that the evidence at trial showed there was no escalation of behavior between July 1 and July 26 that would have altered the terms and conditions of LaRose's employment. *LaRose II*, at *22.

utilize to screen Smith's calls in October of 2013. RP2_1024.[6] While one receptionist could not recall when the call screening technology was put into place (RP1_95-54), that is beside the point; Lisa Daugaard, the former deputy director of TDA, testified that as of 2013 the "caller announce" technology was universally available to attorneys and allowed them to screen calls. RP1_1657; RP2_1333-34.[7]

The Court of Appeals' opinion is a straightforward application of the *Glasgow* framework to the unique facts of this case. This case does not present a substantial issue of public importance that requires resolution by this Court.

## IV. ISSUES RAISED BUT NOT DECIDED BY THE COURT OF APPEALS.

The unpublished decision of the Court of Appeals reversed the judgment entered in the trial court, determined that judgment

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[6] LaRose never testified that call screening was not available to her prior to October.

[7] Hamaji also described the call screening feature in his testimony. RP1_1164-67.

as a matter of law should have been granted on LaRose's hostile work environment claim, and found that LaRose's negligence claim is now barred by the jury's special verdict. As appellant, King County raised a number of additional trial issues that were not reached by the Court of Appeals. King County does not believe review of the Court of Appeals decision is warranted. But if review is granted, review of these additional issues may be required, pursuant to RAP 13.4(d). Specifically, if this Court were to accept review and reverse the Court of Appeals' decision as to judgment as a matter of law, these additional issues, set forth in the Brief of Appellant, will need to be addressed by either this Court or on remand to the Court of Appeals. The issues raised by King County in the Brief of Appellant but not reached by the Court of Appeals include the following substantial issues:

1. Four serious instructional errors worked in tandem to mislead the jury into concluding that King County was liable for all damages caused by all of Smith's acts, including those that had no nexus to the workplace and

which King County had no ability to prevent. Did the trial court commit multiple prejudicial errors in its instructions to the jury on the elements of the hostile work environment claim by:

a. omitting any requirement that harassment occur "in the workplace" or have any nexus to workplace (CP 10274-75);

b. failing to properly define upper management (CP 10277);

c. failing to instruct the jury to limit damages to those proximately caused by King County (CP 10282); and

d. failing to instruct the jury to segregate damages caused by Smith (CP 10287, 10289)?

2. Did the trial court commit prejudicial error by providing the jury with a verdict form that not only allowed but encouraged duplicative non-economic damages? Setting forth the descriptors of noneconomic

damages contained in a now-repealed statute, RCW 4.56.020, as separately compensable items in the verdict form despite the obvious conceptual overlap was reversible error. CP 10297.

3. Did the trial court commit prejudicial error by excluding King County's only expert on local standards and practices in regard to managing difficult mentally ill clients in public defense offices as "cumulative" to TDA's national expert, where the question of TDA's liability was wholly separate from the question of King County's liability? RP2_1505. The excluded expert's testimony would have gone to the key question of whether King County's remedial action was reasonable. CP_8763. King County should have been entitled to its own standard of care expert where there was no joint liability, and the County's liability was based on different facts.

4. Did the trial court commit prejudicial error by repeatedly commenting on the accuracy of LaRose's testimony in violation of article IV, section 16 of the Washington constitution? In just one particularly egregious example of the trial court's pattern of behavior, he told the jury that King County's cross-examination of LaRose about certain key dates was "a waste of time" because those dates, which LaRose had been *inconsistent* about, had been "established through the testimony already." RP2_1019. Such comments, from which the jury would infer the trial court's own evaluation of the accuracy of LaRose's testimony, a *crucial* issue at trial, violated the constitution.
5. Did the trial court's hostility toward King County's attorney both in front of the jury and outside the jury's presence violate the appearance of fairness doctrine? As one example, the trial court's open hostility to King County's counsel was demonstrated during his *sua*

*sponte* interruption of cross-examination of LaRose in which the court angrily and unfairly chided counsel for wasting the jury's time, to King County's prejudice. RP2_1019, RP1_1437-38, RP2_1211, 1222.

## V. CONCLUSION

This case does not meet the standards for review by this Court set forth in RAP 13.4(b). Review should be denied.

*This document contains 5,000 words, excluding the parts of the document exempted from the word count by RAP 18.17.*

RESPECTFULLY SUBMITTED this 22nd day of August, 2024.

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## CERTIFICATE OF SERVICE

I hereby certify that on this date I electronically filed the foregoing document with the Clerk of the Court via the Washington State Appellate Courts' Portal, which automatically serves a copy of the uploaded file upon all active case participants with an email address and any additional interested individuals for which an email address is manually entered.

Dated: August 22, 2024 at Seattle, Washington.

*s/ Kelly M. Kennedy*
Kelly M. Kennedy, Legal Assistant

# MORGAN, LEWIS & BOCKIUS LLP

## August 22, 2024 - 4:04 PM

### Transmittal Information

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Respondent King County's Answer to Petition for Review

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