NO. 72844-0-I

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I

GEOFFREY CHISM,

Appellant/Cross-Respondent,

v.

TRI-STATE CONSTRUCTION, INC. and LARRY AGOSTINO,

Respondent/Cross-Appellants.

BRIEF OF *AMICUS CURIAE* ASSOCIATION OF CORPORATE COUNSEL

Steven P. Caplow
Davis Wright Tremaine LLP
Attorneys for *Amicus Curiae*
1201 Third Ave., Suite 2200
Seattle, WA 98101-3045
(206) 622-3150 Phone
(206) 757-7700 Fax

Of Counsel:

Amar D. Sarwal
Association of Corporate Counsel
1025 Connecticut Ave., N.W., Suite 200
Washington, D.C. 20036
(202) 293-4103

TABLE OF CONTENTS

INTRODUCTION AND STATEMENT OF INTEREST 1

ARGUMENT 3

I. IF LEFT UNDISTURBED, THE DECISION BELOW WILL WREAK HAVOC ON THE IN-HOUSE COUNSEL PROFESSION IN WASHINGTON 3

A. CHISM'S SITUATION IS NOT UNIQUE 3

B. NO OTHER COURT HAS IMPOSED THE OBLIGATIONS CREATED BY THE DECISION BELOW 5

II. RPC 1.5, 1.7 AND 1.8 DO NOT APPLY TO IN-HOUSE COUNSEL COMPENSATION AGREEMENTS 6

A. RULE 1.5 APPLIES TO OUTSIDE COUNSEL FEES, NOT EMPLOYEE COMPENSATION 6

B. RULE 1.7 APPLIES TO IN-HOUSE COUNSEL, BUT NOT TO THEIR EMPLOYEE COMPENSATION ISSUES 11

C. RULE 1.8 DOES NOT APPLY TO STANDARD SALARY AND BONUS NEGOTIATIONS 13

III. THIS LITIGATION IS NOT THE APPROPRIATE VENUE TO ALTER THE STANDARD ETHICAL OBLIGATIONS OF IN-HOUSE COUNSEL 14

A. THE WASHINGTON SUPREME COURT SHOULD USE THE STANDARD RULES AMENDMENT PROCESS TO APPLY ETHICS RULES TO IN-HOUSE COUNSEL COMPENSATION AGREEMENTS 15

B. CASE-BY-CASE EXPLORATION WILL EXACERBATE THE HARM OF THE DECISION BELOW 17

CONCLUSION 18

TABLE OF AUTHORITIES

Page(s)

Cases

Eriks v. Denver,
118 Wash.2d 451 (1992) 16

In re Teleglobe Communications Corp.,
493 F.3d 345 (3rd Cir. 2007) 11

Other Authorities

John K. Villa, Corporate Counsel Guidelines §1:16 (2015) 4

Rules

RPC Preamble and Scope §14 14

RPC 1.5 ..... *passim*

RPC 1.7 ..... 6, 11, 18

RPC 1.7(a) 11, 14, 17

RPC 1.8 ..... 6, 13, 18

RPC 1.8(a) 13, 14, 17

RPC 1.13 5

RPC 8.4 ..... 6, 18

RPC 8.4(c) 6

INTRODUCTION AND STATEMENT OF INTEREST

The Association of Corporate Counsel ("ACC") is a global bar association that promotes the common professional and business interests of in-house counsel. ACC has over 40,000 members who are in-house lawyers employed by over 10,000 organizations in more than 85 countries. Its Washington Chapter has over 500 members and provides opportunities for continuing legal education, networking, ethics awareness and pro bono awareness.

For over 30 years, ACC has advocated across the country to ensure that courts, legislatures, regulators, bar associations, and other law or policy-making bodies understand the role and concerns of in-house counsel and the legal departments in which they work. For instance, when the Washington Supreme Court implemented a new in-house counsel registration system, ACC and its Washington Chapter participated by advancing their unique in-house counsel perspective.

ACC submits this brief to articulate the views of the in-house counsel profession. Not only does the case raise numerous issues of first, or limited, impression, but it also strikes at the heart of the in-house counsel's relationship with his or her corporate client, namely how in-house counsel are to be compensated. Without explicit support in the professional ethics rules themselves, the decision below introduces a new,

rather formless, paradigm for compensation decisions in the employment context. If the decision were to stand without revision, its breathtaking scope would retroactively undermine employment negotiations and agreements between in-house counsel and their employers not only in Washington, but across the country.[1]

Respondent's cross-appeal advances a novel reading of RPC 1.5 that extends the rule beyond its proper focus on fee agreements with outside counsel to the very different context of salary negotiations with corporate executives responsible for setting the compensation of employees throughout the company. Not only does the rule's text not demand such an unnatural reading, but the unjust results that would surely follow should also counsel in favor of rejecting it.

ACC is strongly committed to ensuring that in-house counsel abide by the highest standards of professional conduct, and it recognizes that in-house counsel – like outside counsel – are subject to ethical rules. The rules cited by the trial court, however, do not extend to the specific and narrow context of in-house compensation arrangements.

[1] As the briefs in this matter demonstrate, few courts in any jurisdiction have considered the positions adopted by the trial court below, so the decision of this Court will carry great weight in other states.

ARGUMENT

I. IF LEFT UNDISTURBED, THE DECISION BELOW WILL WREAK HAVOC ON THE IN-HOUSE COUNSEL PROFESSION IN WASHINGTON

ACC and its Washington Chapter believe that the decision below is unwarranted, as a matter of law. But this Court should pay special attention to this case because the trial court and the Cross-Appellants have opened a veritable Pandora's box in twisting the ethics rules to cast aspersions on the standard process used in setting compensation of in-house counsel. Both the trial court and the Cross-Appellants mistakenly believe that their efforts will not impose severe harm, because Chism's situation assertedly is unique. It is not. These errors have led to one of the most perplexing and disturbing ethics cases that ACC has ever come across, a case that could unfairly put at risk the compensation earned over the course of years by virtually every in-house counsel in Washington.

A. CHISM'S SITUATION IS NOT UNIQUE

At a crucial point in its decision, the trial court asserts, without any support, that its decision will not apply to the wide breadth of in-house counsel because Chism occupied a "unique relation to Tri-State," CP 2476, by serving as

> (1) the corporation's General Counsel;
> (2) the corporation's sole in-house counsel;
> (3) the only in-house counsel that the
> corporation has ever hired; and (4) the

> corporation relies on that sole in-house counsel to recommend when outside attorneys should be retained, hire other attorneys, review the reasonableness of most other attorney's fees, and advise the corporation on which attorney's fees to pay.

CP 2477. ACC and its Washington Chapter can represent without fear of contradiction that a not insignificant portion of its membership fit these criteria. They simply are not "unique" at all. Many companies do not possess the resources to employ more than one in-house lawyer, who performs all of those functions, and that in-house lawyer usually comes from the ranks of outside counsel, often outside counsel who formerly represented the company.

The features of Chism's employment common to in-house counsel do not end with those laid out by the trial court above. Chism also served as the president of one of Tri-State's subsidiaries, which caused him to wear more than just a legal hat in his time at Tri-State. While only a minority of in-house counsel have the opportunity to occupy a significant business role, as did Chism, virtually all of them provide business advice in addition to legal advice. Hence, a whole body of privilege law has arisen around courts carefully separating out legal advice from business advice in the in-house lawyer context. *See generally* John K. Villa, Corporate Counsel Guidelines §1:16 (2015) (collecting cases). Just as the

privilege rules properly distinguish between in-house counsel acting as a member of the business team versus acting as a member of the legal team, the ethics rules recognize that in performing the business function of negotiating salaries, in-house counsel acts as a member of the executive team, not on behalf of the company as its legal counsel.

B. NO OTHER COURT HAS IMPOSED THE OBLIGATIONS CREATED BY THE DECISION BELOW

In-house counsel represent organizations, not individual persons as clients.[2] If the decision below had acknowledged that the fact of employment changed the calculus of the ethics rules—at least as they're currently written—this case would be in a completely different posture. No court, besides the one below, has inserted the professional ethics rules into standard salary and bonus negotiations in the in-house counsel context. The rules of professional conduct were never intended to act as unjust traps. The decision below and the Cross-Appellants before this Court cite no case whatsoever that is remotely similar to the case before this Court. This omission cannot be emphasized enough, as that lack of precedent demonstrates the lack of fair notice to the in-house bar of its purported obligations. The lack of precedent should serve as a strong caution. As further discussed at Section III below, rather than upset the

[2] As such, in-house counsel are governed by RPC 1.13 ("Organization as Client"), one of the few ethics rules carefully designed for the in-house context.

in-house counsel compensation arrangements within Washington dating back over many years, this Court should permit the normal rules amendment process to change ethics rules, if and as appropriate.

II. RPC 1.5, 1.7 AND 1.8 DO NOT APPLY TO IN-HOUSE COUNSEL COMPENSATION AGREEMENTS

With one limited exception,[3] none of the rules relied upon by the trial court below, or by Cross-Appellants before this Court, apply to in-house counsel in the context of employee salary or bonus negotiations. Nevertheless, both the trial court and Cross-Appellants torture the plain meaning of the terms of each of these rules, while ignoring the background legal landscape in which the rules operate. This Court should refuse to sanction these strained readings of the rules.

A. RULE 1.5 APPLIES TO OUTSIDE COUNSEL FEES, NOT EMPLOYEE COMPENSATION

Cross-Appellants' invocation of RPC 1.5 underscores how little connection the referenced ethics rules have to the facts of this case.

---

[3] Both the trial court and the Cross-Appellants rely upon RPC 8.4(c), which provides that "it is professional misconduct for a lawyer ... to engage in conduct involving dishonesty, fraud, deceit or misrepresentation[.]" ACC wholeheartedly agrees that this rule applies equally to in-house counsel, as it does to their outside counsel counterparts. However, the factual allegations forming the basis of the alleged RPC 8.4 violation are wholly derivative of the conduct challenged under the other rules discussed in this brief. Indeed, there is no independent misconduct advanced either below or in the cross-appeal to support a violation of RPC 8.4(c). As such, the invocation of the rule is reflective of the Cross-Appellants grab bag approach, rather than a more sensitive, apt and honest application of the rules to the context of in-house counsel.

First, RPC 1.5,[4] by its very title, applies to "[f]ees". Fees are not commonly understood to cover internal employee compensation. That common understanding is no less true in the legal context, as, for instance, "legal fees" and "in-house compensation" are treated quite differently in every corporate budget that ACC has ever examined.

Second, buttressing the use of "[f]ees" in its title, RPC 1.5 clearly concentrates its focus on the nature of the *matters* undertaken, as it outlines the types of factors that govern the reasonableness of fee arrangements. Such a focus makes eminent sense in the context of outside

---

[4] RPC 1.5 provides in pertinent part:

> "(a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:
>
> (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
>
> (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
>
> (3) the fee customarily charged in the locality for similar legal services;
>
> (4) the amount involved and the results obtained;
>
> (5) the time limitations imposed by the client or by the circumstances;
>
> (6) the nature and length of the professional relationship with the client;
>
> (7) the experience, reputation, and ability of the lawyer or lawyers performing the services;
>
> (8) whether the fee is fixed or contingent; and
>
> (9) the terms of the fee agreement between the lawyer and the client, including whether the fee agreement or confirming writing demonstrates that the client had received a reasonable and fair disclosure of material elements of the fee agreement and of the lawyer's billing practices.
>
> (b) The scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation except when the lawyer will charge a regularly represented client on the same basis or rate. Any changes in the basis or rate of the fee or expenses shall also be communicated to the client. Upon the request of the client in any matter, the lawyer shall communicate to the client in writing the basis or rate of the fee."

counsel compensation, but not for employees, who, as described above, wear multiple hats and for whom the scope of whose work cannot be so tightly defined.

Third, the Rule relies on a "reasonableness" standard wholly foreign to the complex arena of negotiated compensation with an employee under direct control of the employer company, as opposed to a fee unilaterally demanded in the form of an invoice from outside counsel in a matter in which he/she has almost complete control over the time and effort expended. While a few of the factors are sufficiently general to conceivably apply to compensation of house counsel – *e.g.*, the customary fee in the locality for similar legal services – most have no application whatsoever to in-house counsel. For example, in-house counsel do not forego the opportunity to work with other fee-paying clients when they advise on a particular matter, do not work on a contingent basis, and do not have any need to disclose their "billing practices."

But in reality, the details of the RPC factors are beside the point. The client is not selecting between a boutique law firm that charges $250/hour and a full services law firm that charges $500 – 700 or more per hour, or between top of class contingent fee lawyer and a novice. Instead, companies generally use their own pay scales to determine whether the services of a lawyer working in-house mostly closely match a manager,

director, vice president or more senior officer. The discussion of pay occurs with reference to the company's existing compensation scheme, not the fee schedule set by the attorney's firm.[5] Under the circumstances, once the company sets the pay, it makes little sense to then require the in-house lawyer to validate the company's paygrade decision based on RPC 1.5, or to require the company to hire counsel to issue a form of estoppel to protect the in-house attorney from a retroactive pay decrease.

Both this state and the federal government, not to mention other jurisdictions around the country and around the world, have complicated rules to determine the level of compensation for covered employees. In

[5] Compensation of outside counsel is based on wholly different criteria than is compensation of inside counsel. Law firms have their own fee schedules that provide clients with a variety of choices. Altogether, even sophisticated clients may need the law firm's help to understand the details and operation of the firm's fee structure. For example, firms that represent defendants typically charge hourly rates, with fees in Washington ranging between $150/hour to $700/hour or more depending on the experience and qualifications of the practitioner, the area of law, and the location of the law firm. In contrast, plaintiffs' firms often represent clients on a contingent fee basis in which the attorney's fees are based on a percentage of the recovery, with fees ranging from 15% and 40% depending the lawyer's track record and the type of case. In some cases, firms offer hybrid fees that combine features of the hourly rate and a contingent fee. By holding out their services to the public, lawyers also subject themselves to heightened regulation. Even if the firm makes a full and proper disclosure of its fees, the rules of professional conduct allow a court effectively to rewrite the fee agreement to establish a reasonable fee under the circumstances. RPC 1.5.

A very different situation and process are presented when a lawyer joins a company's legal department. Companies typically have a compensation schedule for their directors, officers and employees. Regardless of whether the person is trained in law or particle physics, a company sets the employee's compensation based on its own standards and requirements, subject to relatively modest negotiation of individual employees' salaries. Corporations are not subject to the rules of professional conduct in their compensation of legal or non-legal staff. Instead, standards of fair pay from the perspective of the employee and the company's owners and shareholders are established by a wide range of laws, such as the labor and employment laws, and derivative actions and statutes that authorize the shareholders to remove directors who waste corporate assets.

designing a rule devoid of *any* of this complexity, the drafters of the rule could not have contemplated that they would be creating a separate system governing employee compensation of in-house counsel. At the very least, one would expect the drafters to consult in-house counsel or corporate clients for their views about how to design such a regulatory regime. To our knowledge, that consultation never occurred.

Fourth, no court, including the one below, has adopted the Cross-Appellants' novel approach. While ACC would like to see revisions to RPC 1.5 to accommodate changes in the practice of law since its adoption, it never once contemplated that the rule in its present form could apply to in-house compensation. The rule, as currently written, simply provides no notice, by its terms or structurally, that it applies to in-house counsel. If it does so apply, it provides no guidance whatsoever to the actual reality of in-house counsel practice.

Simply put, the Cross-Appellants' unfamiliar reading has no basis in the letter or spirit of RPC 1.5. For these reasons, the trial court properly rejected the Cross-Appellants' claim that Chism violated RPC 1.5. This Court should do likewise.

B. RULE 1.7 APPLIES TO IN-HOUSE COUNSEL, BUT NOT TO THEIR EMPLOYEE COMPENSATION ISSUES

The trial court's reliance on RPC 1.7(a)[6] should fare no better. The rule is ostensibly directed at conflicts of interest, conflicts that generally arise when there are multiple clients. ACC ***strongly*** supports RPC 1.7(a) in this context and recognizes that this rule may apply, depending on the circumstances, to in-house counsel, who advise and counsel multiple organizational entities. *See, e.g., In re Teleglobe Communications Corp.*, 493 F.3d 345, 373 (3rd Cir. 2007).

Nevertheless, this is not such a case. Instead, the decision below contends that Chism's *personal interest* in being paid for his services constituted the type of conflict that needed to be disclosed and waived by Tri-State. Neither the commentary to the rule nor any other reported decision supports this expansive and unnatural reading of "personal interest[.]" And, for good reason. The interest is not at all of the *personal* character that the Rule was intended to address. *Every* employee-employer relationship swims in the ocean of this type of interest. Both sides benefit from the interest of the prospective employer to pay for

[6] RPC 1.7(a) provides in pertinent part: "Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if: (1) the representation of one client will be directly adverse to another client; or (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer."

valuable work and from the prospective employee to do such work in exchange for pay.[7]

Tri-State contends that it somehow failed to appreciate that in negotiating his pay, Chism was representing his own interest, rather than acting on behalf of the company. It is simply hard to imagine that an employer, *any* employer, would not know that an employee would be advancing her own interests in negotiating her pay. In doing so, she could not possibly be engaging in distinctive conduct of which her client-employer would be unaware, *i.e.*, the type of conduct that if left undisclosed, could surprise and injure her client-employer. Indeed, there is simply no conflict between a client-employer who wishes to pay for valuable services and an in-house counsel who wishes to be paid for such services, and in any negotiation of salary and bonus terms that ensues. Both sides directly and transparently benefit from that arrangement and companies who get to the position they are hiring in-house counsel are under no delusion that the employee is not looking out for her own interests in negotiating her compensation.

[7] Indeed, any perception of a "conflict" is belied by the ordinary practice of employers to increase pay in order to retain key employees. These companies clearly view the provision of enhanced compensation packages as being in their own interest, not just those of their employees.

C. RULE 1.8 DOES NOT APPLY TO STANDARD SALARY AND BONUS NEGOTIATIONS

Though relied upon by the decision below and the Cross-Appellants before this Court, RPC 1.8(a)[8] has little to do with the circumstances of the case at bar. RPC 1.8's explicit purpose is to provide specific examples of conflicts of interest in the current clients context. Again, as explained in the previous section, it is simply not a conflict of interest for an in-house lawyer to seek to be compensated fairly for her work for her client employer. And, notably, nowhere in RPC 1.8 is there any language to the contrary. Nowhere does this listing of possible conflicts of interest contain an explicit, or even clearly implicit, reference to the in-house employee compensation context.

Nevertheless, the decision below concludes that Chism entered into "business transactions" with Tri-State within the meaning of the rule in negotiating his employee compensation agreement. Like the other mistaken interpretations described above, it is an expansive, artful, but tortured, reading of a commonsense term. In fact, the rule itself contains a laundry list of different types of business transactions that require effective disclosure to the client. Not one of them is akin to standard employee

[8] RPC 1.8(a) provides in pertinent part: "A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client[.]"

compensation issues, such as salary or bonus negotiations, or even a standard hourly fee arrangement.

And, for good reason. Every single in-house counsel employee salary negotiation would be subject to the requirements of RPC 1.8(a). Such an outcome is simply absurd.[9] Given the rule of reason that should guide the interpretation of the entirety of the rules of professional conduct, RPC Preamble and Scope §14, RPC 1.8(a) should not be distorted to reach conduct that has nothing to do with its regulatory aim.

In their submission to this Court, Cross-Appellants emphasize the portion of RPC 1.8(a) that makes clear that lawyers cannot acquire "pecuniary interests adverse to a client." Brief of Respondents/Cross-Appellants, at 55. That argument fails for the same reason as did their RPC 1.7(a) argument. Negotiating salary and bonus compensation arrangements does not present a conflict of interest. In fact, it is an ordinary and transparent facet of employer-employee life, in which both sides benefit. This Court should decline to rewrite RPC 1.8(a), as well.

III. THIS LITIGATION IS NOT THE APPROPRIATE VENUE TO ALTER THE STANDARD ETHICAL OBLIGATIONS OF IN-HOUSE COUNSEL

In an effort to undermine a jury verdict against them, Cross-Appellants have converted this garden-variety litigation into a vehicle for

[9] Even the court below conceded the absurdity of its readings, but felt the circumstances were unique. CP 2475.

disrupting in-house counsel compensation throughout Washington and perhaps the country. Indeed, their shoehorn effort undermines ACC's long interest in ensuring that the ethics rules, which as written focus on outside lawyers, be redrafted to accommodate the specific circumstances of in-house practice. To fix these issues, ACC has made use of the appropriate vehicle for adopting those changes, namely the rules amendment process. That process allows for the voices of all the stakeholders to be heard and for consensus to be achieved in favor of forward-looking solutions that appropriate balance all stakeholders' interests. The instant litigation accomplishes none of that.

A. THE WASHINGTON SUPREME COURT SHOULD USE THE STANDARD RULES AMENDMENT PROCESS TO APPLY ETHICS RULES TO IN-HOUSE COUNSEL COMPENSATION AGREEMENTS

In its cross-reply, Cross-Appellants properly note the primacy of the Washington Supreme Court in regulating the practice of law within the state of Washington. Cross-Appellants Reply Brief, at 3. ACC agrees that the Supreme Court retains that important obligation. However, the Cross-Appellants then argue that the instant litigation provides an opportunity for this Court to exercise that inherent power in the context of in-house employee compensation. If all that were required were a simple application of the ethics rules to the facts of this case, the Cross-

Appellants would be correct. However, the Cross-Appellants are requesting a sea change in how the relevant ethics rules are understood and enforced, in effect legislating new rules. That type of request belongs in the rules amendment process, not before this Court.

For this reason, Cross-Appellants' citation of *Eriks v. Denver* is not to the contrary. 118 Wash.2d 451 (1992). That case involved the mere application of settled ethics rules to the facts of the case at bar. For instance, in the course of its ruling, the *Eriks* court makes clear that the rules speak "exactly" to the circumstances at hand and that "the evil the rules were designed to prevent actually came about in this case[.]" *Id.* at 459. This type of analysis hardly supports the kind of contortions necessary to find violations by Chism in this case.

If this Court is concerned that employee compensation issues in the in-house context lack effective guidance, a concern that *neither* ACC nor its members' clients share, the Court should recommend that the Washington Supreme Court conduct an open and transparent, forward-looking rules amendment process to canvass views and to determine whether the ethics rules are the right home for this type of corporate employee compensation regulation. But it should not seek to obtain retroactively this end without affording all stakeholders the procedural protections afforded by the rules amendment process.

B. CASE-BY-CASE EXPLORATION WILL EXACERBATE THE HARM OF THE DECISION BELOW

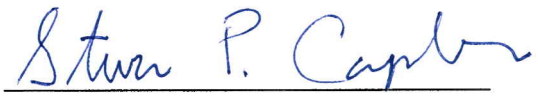
If the decision below is permitted to stand or if its flawed logic and misguided retroactive application is compounded to include Cross Appellant's novel reading of RPC 1.5, far more litigation will be necessary in order to provide *any* sort of guidance to in-house counsel regarding standard day-to-day salary issues. Ethics rules that heretofore have never entered this domain will have to form the basis of a new common law of in-house counsel employee compensation. An individual case does not provide the appropriate record, and presiding judges are not the appropriate arbiters, to create and extend that law, certainly not in the short-term. In the meanwhile, in-house counsel will have to worry that standard approaches to salary and bonus negotiations, approaches shared by every other employee within their businesses, have now been called into question without any solution in sight and no guidance as to what conduct is required in order to comply with the extension of RPCs 1.5, 1.7(a) and 1.8(a) to their compensation negotiations. The ethics rules, and the lawyers they govern, deserve a more reasoned, clear and productive process of change.

CONCLUSION

For the foregoing reasons, this Court should vacate the trial court's disgorgement award, which was premised on alleged violations of RPC 1.7, 1.8 and 8.4, and reject the cross-appeal, which, among other things, advances a mistaken reading of RPC 1.5.

RESPECTFULLY SUBMITTED this 27th day of January, 2016.

Davis Wright Tremaine LLP
Attorneys for *Amicus Curiae*

By 
Steven P. Caplow
WSBA #19843
1201 Third Ave., Suite 2200
Seattle, WA 98101-3045
Telephone: (206) 622-3150
Fax: (206) 757-7700
E-mail: stevencaplow@dwt.com

Of Counsel:

Amar D. Sarwal
Association of Corporate Counsel
1025 Connecticut Ave., N.W., Suite 200
Washington, D.C. 20036
(202) 293-4103

DECLARATION OF SERVICE

On said day below I emailed a courtesy copy and deposited in the U.S. Postal Service for service a true and accurate copy of the Motion for Leave to File Brief of Amicus Curiae in Court of Appeals Cause No. 72844-0-I to the following:

Jillian Barron
Tina M. Aiken
Sebris Busto James
14205 SE 36th St., Ste. 325
Bellevue, WA 98006-1505
jbarron@sebrisbusto.com
taiken@sebrisbusto.com

Thomas J. Breen
Lindsay L. Halm
Schroeter Goldmark Bender
810 3rd Ave., Ste. 500
Seattle, WA 98104-1657
breen@sgb-law.com
halm@sgb-law.com

John S. Riper
Sarah E. Cox
Ashbaugh Beal
701 Fifth Ave., Ste. 4400
Seattle, WA 98104
jriper@ashbaughbeal.com
scox@ashbaughbeal.com

Philip A. Talmadge
Talmadge/Fitzpatrick/Tribe
2775 Harbor Ave. S.W.
Seattle, WA 98126-2138
phil@tal-fitzlaw.com

Original filed with:
Court of Appeals, Division I
Clerk's Office

I declare under penalty of perjury under the laws of the State of Washington and the United States that the foregoing is true and correct.

DATED: January 27, 2015, at Seattle, Washington.

Lisa K. Bass