

## PUBLICATIONS

Decades of strategic case development and trial experience.

### PANDEMIC CLAIM FOR BUSINESS INTERRUPTION REJECTED

#### Case Updates

10.26.22

King County alleged that a judge was openly hostile to an attorney during a jury trial that resulted in the jury having negative feelings toward the defense. The court ruled that the audio recordings were not subject to disclosure as public records. The lack of transparency and accountability could make for a troublesome precedent.

#### Background Facts

Sheila LaRose is a former public defender for King County. She filed a suit against King County regarding an alleged hostile work environment caused by a client exhibiting stalking behavior toward her. The case went to trial with Judge Stanley Rumbaugh presiding. The jury awarded LaRose \$7 million dollars in damages and just under \$5 million in attorney fees and costs. King County appealed and the appeal was stayed pending King County's petition for a writ of mandamus. In this mandamus, due to questions regarding Judge Rumbaugh's treatment of King County's attorney, Eakes, it requested audio recordings from the trial and alleged that the judge was openly hostile to Eakes during trial and in front of the jury. King County opined that this hostility caused the jury to view Eakes in a negative light, thereby damaging her credibility and hurting its case. Other witnesses supported the claim that the Judge's behavior was openly hostile.

King County requested the audio recordings so that the interaction between Rumbaugh and Eakes could be properly assessed. Judge Rumbaugh denied the motion and instructed Eakes to file a public records request. Eakes then sent a formal request to Pierce County Superior Court for all audio recordings of the trial.

The court presiding over LaRose's trial used a court reporter taking stenographic notes during the trial but they also made and retained some audio recordings potentially responsive to the request. However, the court claimed the audio recordings are not court records, but instead were the private work product of the

#### PROFESSIONALS

Philip B. Grennan

## PUBLICATIONS

court reporters and produced only 7 of 252 responsive records.

The County requested an internal review of the decision pursuant to Court policy. Judge Sorenson affirmed the public records officer's decision and refused to produce the audio recordings. He did allow additional email communications to be produced.

### **The Petition for Writ of Mandamus**

King County filed a writ of mandamus and attempted to compel Judge Sorensen to produce all audio recordings of the trial and search all Court employee records, documenting responses.

The Supreme Court of Washington found that the County did not meet the requirements to prevail on its writ of mandamus. Specifically, it failed to show that Judge Sorensen had a duty to "personally respond to the record requests and search for responsive records under GR 31 and GR 31.1" Further, the Supreme Court had plain, speedy and adequate remedies in the ordinary course of law and therefore, the granting of extraordinary relief in this case was not warranted.

### **The Superior Court Clerk Has a Duty to Respond**

Although the County asserted that Judge Sorenson had a duty to produce the audio recordings and administrative records, Judge Sorensen successfully counter argued that the duty was on the superior court clerk to produce records, not the Judge, and the Supreme Court agreed.

GR 31 provides that "[t]he public shall have access to all court records except as restricted by federal law, state law, court order, or case law." The Supreme Court pointed to references in the Rule to the "court" and "clerk" so say that the duty to produce records does not fall on individual judges, and that "the duty to respond to record requests and disclose records belongs to the court, which is in turn delegated to the public records officer. "

### **Conclusion**

The Supreme Court dismissed the writ of mandamus as the County did not show that an extraordinary remedy was necessary. It also ruled that Judge Sorenson was not personally responsible to turn over audio tapes or other records under GR 31 or GR 31.1. Hence, the County was unsuccessful in obtaining any recordings or documentation to demonstrate the open hostility claimed by the County attorney or other witnesses to the trial.