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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR THE COUNTY OF KING

DANA BITTINGER,

Plaintiff,

v.

SNOHOMISH COUNTY,

Defendant.

NO.

COMPLAINT FOR HARASSMENT,
DISCRIMINATION AND
RETALIATION IN VIOLATION OF
RCW 49.46 ET SEQ; NEGLIGENT
SUPERVISION AND RETENTION;
NEGLIGENT AND INTENTIONAL
INFLECTION OF EMOTIONAL
DISTRESS

COMES NOW Plaintiff Dana Bittinger ("Plaintiff"), by and through her counsel of record,
Lasher Holzapfel Sperry & Ebberson, P.L.L.C., and asserts the following causes of action against
the named Defendant:

I. PRELIMINARY STATEMENT

1.1 This is an action under the Washington Law Against Discrimination, RCW 49.60
et seq. and Washington common law for declaratory injunctive relief compensatory and monetary
damages, costs, and attorneys' fees. Plaintiff alleges that during the time she worked for Defendant
Snohomish County, Defendant created a hostile work environment, harassed, and discriminated

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LASHER
HOLZAPFEL
SPERRY &
EBBERSON

ATTORNEYS AT LAW
2600 TWO UNION SQUARE
601 UNION STREET
SEATTLE WA 98101-4000
TELEPHONE 206 624-1230
Fax 206 340-2563

1 against her based on her gender and disability. Defendant failed to adequately supervise its
2 employees, and thereafter retaliated against the plaintiff.

3 1.2 Plaintiff further alleges that Defendant committed the torts of intentional and
4 negligent infliction of emotional distress, negligent supervision and negligent retention. Plaintiff
5 seeks injunctive relief, compensatory damages and all other damages allowed by law, and payment
6 of costs and attorneys' fees.
7

8 II. JURISDICTION AND VENUE

9

10 2.1 This action arises under RCW 4.96.010 *et seq.*

11 2.2 Jurisdiction is invoked pursuant to RCW 4.92.010 *et seq.*

12 2.3 Venue in King County is proper pursuant to RCW 36.01.050.

13 2.4 Declaratory, injunctive, and equitable relief is sought pursuant to RCW
14 49.60 *et seq.*
15

16 2.5 Compensatory damages are sought pursuant to RCW 49.60 *et seq.*

17 2.6 Costs and reasonable attorney fees may be awarded pursuant to RCW
18 49.60.030.
19

20 2.7 This Court has personal jurisdiction over the defendant.

21 2.8 The employment practices alleged to be unlawful were committed in
22 Snohomish County.
23

24 III. COMPLIANCE WITH RCW 4.96 *et. seq.*

25

26 3.1 Plaintiff has complied with the procedural requirements of RCW 4.96 *et. seq.*

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LASHER
HOLZAPFEL
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ATTORNEYS AT LAW
2600 TWO UNION SQUARE
601 UNION STREET
SEATTLE WA 98101-4000
TELEPHONE 206 624-1230
Fax 206 340-2563

1 by filing a Claim for Damages against Snohomish County more than 60 days prior to the filing
2 of this Complaint.

3
4 **IV. PLAINTIFF**

5 4.1 Plaintiff Dana Bittinger is a United States citizen, a resident of the State of
6 Washington, and resides in Snohomish County.

7
8 **V. DEFENDANT**

9 5.1 Defendant Snohomish County is a county of the State of Washington, and a
10 local government entity for purposes of RCW 4.96.010. At all relevant times, Snohomish
11 County has continuously been an employer with at least eight employees. King County is a
12 contiguous county of Snohomish County. At all relevant times, Snohomish County was
13 plaintiff's employer. Defendant Snohomish County is responsible for all acts committed by
14 its agents, representatives, and employees, acting within the course and scope of their agency
15 or employment with the County.
16
17

18 **VI. FACTUAL ALLEGATIONS**

19 6.1 Plaintiff incorporates by reference the foregoing paragraphs of plaintiff's
20 Complaint as if set forth herein at length.
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22 6.2 Defendant employed Plaintiff Dana Bittinger at all times relevant to this
23 Complaint.
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25 6.3 Repeatedly and continuously during plaintiff's employment, defendant
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1 intentionally discriminated against her based on her gender and disability and intentionally
2 subjected her to a sexually charged hostile work environment and retaliatory treatment.

3
4 6.4 Managers at Defendant's workplace created an atmosphere such that plaintiff
5 felt threatened and harassed. Those managers and supervisors include Mark Roe, Craig
6 Matheson and Joan Cavagnaro. Plaintiff was often intimidated or made to be afraid of
7 suffering the loss of her job or other repercussions if she were to complain about the
8 atmosphere of harassment and discrimination.

9
10 6.5 Discriminatory practices and harassment directed toward plaintiff were severe
11 and pervasive. Plaintiff could not work in an environment free from discriminatory
12 intimidation and insult.

13
14 6.6 Plaintiff was employed by Snohomish County from 2010 to January 2019 as a
15 Deputy Prosecuting Attorney in the criminal division.

16
17 6.7 During plaintiff's tenure with Defendant, Mark Roe was the Prosecuting
18 Attorney for Defendant. Joan Cavagnaro was the Chief of the Criminal Division and plaintiff's
19 manager. Thereafter, Craig Mathieson was plaintiff's direct supervisor.

20
21 6.8 During the course of plaintiff's employment at Snohomish County, Mark Roe
22 participated in inappropriate conduct in the workplace including but not limited to the
23 following:

- 24
25 • Mark Roe would refer to heavyset women in the office as "cows";
26

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LASHER
HOLZAPFEL
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ATTORNEYS AT LAW
2600 TWO UNION SQUARE
601 UNION STREET
SEATTLE WA 98101-4000
TELEPHONE 206 624-1230
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- 1 • Mark Roe would openly discuss his preference for skinny women;
- 2 • Mark Roe would routinely criticize female diets and food choices;
- 3 • Mark Roe would say “fuck you,” and “you can suck my dick.”
- 4 • Mark Roe would refer to men in the office as “faggots,” “homos,” “retards,” and
- 5 “bitches”;
- 6 • Mark Roe would refer to women as “crazy bitch,” “bitches,” and “cunts;”
- 7 • Mark Roe had the habit of standing close to female employees with his foot up on a
- 8 desk resulting in his genitalia near the faces of female employees. This was commonly
- 9 referred to as getting a “Captain Morgan” from Mark Roe.
- 10 • Mark Roe would routinely counsel prosecutors that he would never put a fat chick on
- 11 jury because they were stupid and lazy;
- 12 • Mark Roe would routinely referred to fat women as women who were lazy with no
- 13 self-esteem;
- 14 • Mark Roe stated to plaintiff, “it’s like this, you can fuck a million women and no one
- 15 bats an eye. You suck one cock and you’re a cocksucker for life.”
- 16 • Mark Roe would frequently come into plaintiff’s office to speak with her, close the
- 17 door, and stand in front of the door, making plaintiff feel as if she were a prisoner. This
- 18 made plaintiff uncomfortable. When she asked him to move and/or to keep the door
- 19 open, Mark Roe refused and continued his behavior.
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1 6.9 Plaintiff was extremely uncomfortable with Roe's workplace conduct.

2 6.10 During the course of plaintiff's employment at Snohomish County, Joan
3 Cavagnaro made inappropriate comments in the workplace. For example, Ms. Cavagnaro told
4 a female employee who had just had a miscarriage that it was "inconvenient for the office
5 when women [got] pregnant." Ms. Cavagnaro also told this employee "Oh, I hope you're not
6 pregnant again. It's really inconvenient for the rest of us for you to go out on leave." Ms.
7 Cavagnaro also referred to women who chose to have children as being on the "mommy track"
8 for their careers.

9 6.11 After having a baby, Plaintiff was told by a supervising Deputy Prosecuting
10 Attorney that she needed to exercise and loose weight if she ever wanted a promotion.

11 6.12 When it was suggested to Adam Cornell to post open prosecutor's positions on
12 the Minority Bar Association website. Cornell responded that he would not be posting on the
13 minority Bar Association website because he was "trying to get the best applicants."

14 6.13 During the course of plaintiff's employment at Snohomish County, female
15 attorneys were being passed up for promotion, receiving less desirable placements in attorney
16 rotations, and awarded less merit pay. Female attorneys who took maternity leave were also
17 not given their full maternity leave, but were required to report back to work from their leave
18 early.

19 6.14 Plaintiff personally objected to the abusive, hostile, and discriminatory
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1 environment created by Defendant and its manager, supervisors, and employees. In 2013,
2 Plaintiff complained about the sexist work environment in the Prosecuting Attorney's Office.
3 Plaintiff complained to her union and lead. Plaintiff complained about the work environment
4 and mistreatment of females in the office at union meetings, to union leadership, including
5 Nate Sugg, Ed Stemler, and Cindy Larsen, to section leads, including Hal Hupp, Cindy Larson,
6 Walt Sowa and Jarrett Goodkin and to Administrative Chief Criminal Deputy Julie Mohr.
7

8
9 6.15 Despite complaints by plaintiff, the hostile work environment, and harassing
10 and discriminatory behavior persisted.
11

12 6.16 In 2015, plaintiff became pregnant. Ms. Cavagnaro told plaintiff that her
13 pregnancy was an inconvenience to the office. When plaintiff told Ms. Cavagnaro that plaintiff
14 was getting married, Ms. Cavagnaro told plaintiff it would be an inconvenience to have to
15 learn another name and that she wished she would not have to. As a result of this conversation,
16 plaintiff felt compelled to continue to practice law under her maiden name.
17

18 6.17 In February 2016, plaintiff gave birth to a child, but was not allowed to use her
19 full maternity benefits. Plaintiff requested, as a reasonable accommodation, the ability to work
20 from home during her maternity leave, but her request was denied. Plaintiff was also not
21 provided a safe place to express milk. Defendant failed to accommodate plaintiff's disability
22 requests.
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1 6.18 In 2016, Mark Roe had all criminal division employees participate in an
2 “anonymous employment satisfaction survey.” Although the survey was presented as
3 anonymous, Mark Roe required that survey responses be handwritten. Mark Roe held a
4 meeting to review the responses and match responses with employees.
5

6 6.19 On or around the same time, plaintiff attended a sexual harassment training
7 session sponsored by Snohomish County. During the session, the trainer explained the
8 investigative process. He indicated that once his investigation was completed it went to the
9 agency head for determination of punishment. Trainer was then confirmed that if the complaint
10 had been made against the prosecuting attorney’s office, Mark Roe would know who
11 complained. The trainer confirmed that Mark Roe would in fact know the identity of any
12 individual who made a complaint about him.
13
14

15 6.20 Plaintiff’s survey responses clearly complained of gender discrimination and
16 hostile work environment.
17

18 6.21 After plaintiff submitted her survey responses, Mark Roe engaged in retaliatory
19 conduct against plaintiff. Such conduct included refusing to promote plaintiff; promoting
20 younger, less experienced male attorneys before plaintiff; paying plaintiff less merit pay than
21 her male counterparts; sneering at plaintiff and refusing to greet her; and calling plaintiff
22 names.
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6.22 The environment of harassment and discrimination was hostile and abusive. It unreasonably interfered with plaintiff's work performance. Said environment created an intimidating, hostile, and offensive working environment, and discouraged employees that objected to such an abusive environment from remaining on the job. Mark Roe's retaliatory conduct was so severe that plaintiff was forced to take medical leave of absence.

6.23 Defendant Snohomish County took no effectual action to stop the harassment, discrimination, or retaliation, despite actual and constructive knowledge of such unlawful activity. The unlawful employment practices complained of above were done with malice or with reckless indifference to the protected rights of plaintiff.

6.24 Due to defendant's failure to accommodate, the sexually abusive atmosphere and defendant's retaliatory conduct, plaintiff left the employ of the defendant in January 2019. Plaintiff was constructively discharged.

VII. CAUSES OF ACTION

First Cause of Action: Washington State Human Rights Violations

7.1 Plaintiff incorporates by reference the foregoing paragraphs of Plaintiff's Complaint as if set forth herein at length.

7.2 The above-described harassment and discrimination on the basis of disability and gender is a violation of RCW 49.60.

7.3 Ms. Bittinger was a victim of discrimination that would not have occurred but

1 for her gender and disability. The harassment was sufficiently pervasive so as to affect the
2 terms, conditions, and/or privileges of employment such that it unreasonably interfered with
3 plaintiff's work performance by creating an intimidating, hostile, and offensive working
4 environment that any reasonable person would have found offensive. Defendant failed to
5 reasonably accommodate plaintiff's request after being notified of plaintiff's disability.
6 Defendant's actions, through its agents, were not accidental but were intentional,
7 inappropriate, and demeaning in nature.
8

9
10 7.4 Defendant knew, or should have known, of the hostile and offensive working
11 environment created and sustained by employees, particularly Mark Roe and Joan Cavagnaro,
12 who held management positions during the aforementioned discrimination, harassment and
13 retaliation. Defendant took no action against the participating management and did nothing to
14 stop the discriminatory actions.
15

16
17 7.5 Defendant is strictly liable under RCW 49.60 *et seq.* for its employees' actions
18 because it knew, or should have known, of the unlawful conduct, as managerial personnel were
19 either direct or tacit participants in the unlawful discriminatory acts. Defendant was negligent,
20 if not willful, in failing to remedy, deter, or otherwise correct the unlawful discrimination that
21 was perpetuated, conducted, and condoned by its own management. Such inaction on the part
22 of defendant constituted a reckless indifference to the protected rights of Ms. Bittinger.
23

24
25 7.6 The unlawful employment practices complained of above were intentional.
26

1 7.7 The unlawful employment practices complained of above were done with
2 malice or with reckless indifference to the protected rights of plaintiff.

3
4 7.8 As a direct and proximate result of defendant's failure to adequately supervise
5 employees, its failure to take meaningful action within a reasonable time to correct the
6 atmosphere of discrimination, retaliation and harassment, and its failure to take reasonable
7 action against the employees who participated in such conduct, Ms. Bittinger has been harmed
8 in an amount to be proven at trial.
9

10 **Second Cause of Action: Intentional Infliction of Emotional Distress**

11
12 7.9 Plaintiff incorporates by reference the foregoing paragraphs of Plaintiff's
13 Complaint as if set forth herein at length.

14 7.10 Defendant acted in conscious disregard of the high probability of causing
15 emotional distress to Ms. Bittinger. Defendant knew, or should have known, there was a high
16 degree of probability that emotional distress would result to Ms. Bittinger from the unwelcome
17 harassing and discriminating conduct. Knowing this, defendant acted in conscious disregard
18 of those probable results.
19

20
21 7.11 Certain Snohomish County employees' acts of gender harassment,
22 discrimination and retaliation caused Ms. Bittinger to suffer emotional distress and mental
23 suffering, and defendant is liable for the intentional infliction of emotional distress and mental
24 suffering incurred by Ms. Bittinger in the past, present and future.
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2600 TWO UNION SQUARE
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1 7.12 Defendant is vicariously liable under the doctrine of *respondeat superior* for
2 employees' actions, which caused Ms. Bittinger to suffer emotional distress and mental
3 suffering, and by way of its failure to take reasonably prompt and adequate corrective action
4 calculated to end the harassment and discrimination. This is particularly evident where the
5 unlawful discriminatory acts were conducted, condoned and perpetuated by management
6 personnel. Defendant is thus liable for the intentional infliction of emotional distress and
7 mental suffering incurred by Ms. Bittinger in past, present and future.
8

9
10 **Fourth Cause of Action: Negligent Infliction of Emotional Distress**
11

12 7.13 Plaintiff incorporates by reference the foregoing paragraphs of Plaintiff's
13 Complaint as if set forth herein at length.

14 7.14 Defendant acted in negligent disregard of the high probability of causing
15 emotional distress to Ms. Bittinger in that defendant knew, or should have known, there was a
16 high degree of probability that emotional distress would result to Ms. Bittinger from the
17 harassing, and discriminatory and retaliatory conduct. Knowing this, defendant acted in
18 negligent disregard of those probable results.
19

20
21 7.15 Certain Snohomish County employees' acts of harassment, discrimination and
22 retaliation caused Ms. Bittinger to suffer emotional distress and mental suffering, and
23 defendant is liable for the negligent infliction of emotional distress and mental suffering
24 incurred by Ms. Bittinger in the past, present and future.
25
26

1 7.16 Defendant is vicariously liable under the doctrine of *respondeat superior* for
2 employees' actions, which caused Ms. Bittinger to suffer emotional distress and mental
3 suffering, and by way of its failure to take reasonably prompt and adequate corrective action
4 calculated to end the discrimination, harassment and retaliation. This is particularly evident
5 where the unlawful discriminatory acts were conducted, condoned and perpetuated and other
6 management personnel. Defendant is thus liable for the negligent infliction of emotional
7 distress and mental suffering incurred by Ms. Bittinger in past, present and future.
8

9
10 **Fifth Cause of Action: Negligent Supervision**
11

12 7.17 Plaintiff incorporates by reference the foregoing paragraphs of plaintiff's
13 Complaint as if set forth herein at length.

14 7.18 At all material times hereto, defendant knew or should have known, with
15 reasonable investigation, of its employees' and managers' inappropriate conduct as described
16 herein.
17

18 7.19 Defendant failed to adequately supervise and control the inappropriate behavior
19 of its managers.
20

21 7.20 Defendant failed to prevent, remedy, or reprimand the unlawful activities
22 described above as perpetuated and participated in by management personnel and other
23 personnel of defendant.
24

25 7.21 As plaintiff's employer, defendant had a duty to provide a safe workplace.
26

1 7.22 Defendant breached its duties to provide a safe workplace for Ms. Bittinger.

2 7.23 As a direct and proximate result of defendant's failure to adequately supervise
3 employees, its failure to take meaningful action within a reasonable time to correct the
4 atmosphere of discrimination, retaliation and harassment, and its failure to take reasonable
5 action against the employees who participated in such conduct, Ms. Bittinger has been harmed
6 in an amount to be proven at trial.
7
8

9 **Fifth Cause of Action: Negligent Retention**

10 7.24 Plaintiff incorporates by reference the foregoing paragraphs of Plaintiff's
11 Complaint as if set forth herein at length.
12

13 7.25 Defendant breached its duty of care owed to Ms. Bittinger by failing to provide
14 her with a safe working environment.
15

16 7.26 As a direct and proximate result of defendant's failure to adequately supervise
17 management, its failure to take meaningful action within a reasonable time to correct the
18 atmosphere of discrimination and harassment, and its failure to take reasonable action against
19 management who participated in such discrimination, retaliation and harassment, Ms. Bittinger
20 has been harmed in an amount to be proven at trial.
21

22 **Seventh Cause of Action: Constructive Discharge**

23 7.27 Plaintiff herein incorporates by reference the foregoing paragraphs of Plaintiff's
24 Complaint as if fully set forth at length.
25

26 7.28 At all material times hereto, Ms. Bittinger was satisfactorily performing her duties

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LASHER HOLZAPFEL SPERRY & EBBERSON

ATTORNEYS AT LAW
2600 TWO UNION SQUARE
601 UNION STREET
SEATTLE WA 98101-4000
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1 and obligations as a deputy prosecuting attorney.

2 7.29 As a direct and proximate result of Ms. Bittinger trying to ensure a safe and legal
3 work environment, defendant, through its agents, forced the resignation of Ms. Bittinger in
4 violation of public policy. Washington State has a vested interest in insuring a safe and hostile free
5 work environment.
6

7 7.30 Defendant, by the above referenced action, left Ms. Bittinger no choice but to
8 terminate her employment with Snohomish County.
9

10 7.31 As a direct and proximate result of being wrongfully and constructively discharged,
11 Ms. Bittinger has been damaged in an amount to be proven at trial.
12

13 **VIII. PRAYER FOR RELIEF**

14 Wherefore, plaintiff respectfully requests that this Court:

15 (1) Grant a permanent injunction enjoining defendant its officers, successors,
16 agents, assigns, and all persons in active concert or participation with them, from engaging in
17 any employment practice which discriminates and harasses on the unlawful bases detailed
18 above;
19

20 (2) Order defendant to institute and carry out policies, practices and programs
21 which provide equal employment opportunities for all employees, and which eradicate the
22 effects of its past and present unlawful employment practices;
23

24 (3) Order defendant to make plaintiff whole by providing compensation for past
25 and future pecuniary losses resulting from the unlawful employment practices described in the
26

1 above paragraphs, including out-of-pocket expenses, in amounts to be determined at trial;

2 (4) Order defendant to make plaintiff whole by providing compensation for past
3 and future non-pecuniary losses resulting from the unlawful practices complained of in the
4 above paragraphs, including without limitation emotional pain, suffering, anguish and loss of
5 enjoyment of life, in amounts to be determined at trial;

6 (5) Award plaintiff all of the recoverable costs of this action, attorney fees, and
7
8
9 prejudgment interest; and

10 (6) Grant any additional or further relief as provided by law which this Court finds
11 appropriate, equitable, or just.
12

13
14
15 RESPECTFULLY SUBMITTED this 23rd day of September, 2019.

16 LASHER HOLZAPFEL
17 SPERRY & EBBERSON, P.L.L.C.

18  WSBA # 45777
19 

20 Robin Williams Phillips, WSBA #17947
21 Attorneys for Plaintiff
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