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FILED
IN COUNTY CLERK'S OFFICE

The Honorable John R. Hickman

A.M. **AUG 18 2006** P.M.

PIERCE COUNTY, WASHINGTON
KEVIN STOCK, County Clerk
BY _____ DEPUTY

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

KEVIN DOLAN and a class of similarly
situated individuals,)

NO. 06-2-04611-6

Plaintiffs,)

CLASS ACTION

v.)

FIRST AMENDED COMPLAINT

KING COUNTY, a political subdivision of
the State of Washington,)

Defendant.)

INTRODUCTION

In Pierce County the public defenders and others working in the criminal justice system – the judge, the prosecutor, the court reporter, the bailiff, the court clerk, the jail guard, and the probation officer – are members of the Public Employee Retirement System (PERS). In contrast, in King County, those working in the criminal justice system are PERS members *except public defenders*. The sole reason for the difference is Pierce County pays its public defenders directly, whereas King County funnels the funds by which its public defenders are paid through nonprofit corporations that it controls through contracts and funding.

Plaintiff Kevin Dolan is challenging King County's failure to enroll him and the other King County public defense employees in PERS and its failure to make contributions on their behalf.

COPY

1 **PARTIES AND VENUE**

2 1. Plaintiff Kevin Dolan is a public defender in King County, Washington. Plaintiff
3 Dolan represents a class of similarly situated employees, as described in the class action
4 allegations below.

5 2. Defendant King County is a political subdivision of the State of Washington.

6 3. Venue is proper in Pierce County under RCW 36.01.050 because it is one of the
7 two judicial districts nearest King County.

8 **FACTS**

9 4. In Washington it is a mandated government service for counties to provide legal
10 defense services to indigent persons for whom the right to counsel is constitutionally required.

11 5. King County is responsible for providing indigent defense services for felony and
12 juvenile defendants on a county-wide basis, and King County also provides indigent defense
13 services for misdemeanor defendants in unincorporated areas.

14 6. King County provides these mandated indigent legal defense services through
15 contracts with the Associated Counsel for the Accused and other nonprofit agencies.

16 7. King County controls the Associated Counsel for the Accused and the other
17 nonprofit agencies through funding and contracts. King County's funding and contracts with the
18 Associated Counsel for the Accused and other nonprofit agencies control the level of pay and
19 benefits of individuals such as Kevin Dolan who perform indigent legal defense services. The
20 agencies use County funds to provide pay and benefits to Dolan and class members.

21 8. King County does not report the individuals performing indigent legal defense
22 services to the Department of Retirement Systems, nor does it make retirement contributions on
23 their behalf.

24 **CLASS ACTION ALLEGATIONS**

25 9. Plaintiff Kevin Dolan is a lawyer paid through an agency, the Associated Counsel
for the Accused, to perform indigent defense services for King County. He represents a class of

1 similarly situated individuals.

2 10. The class is defined as follows:

3 All W-2 employees of the King County public defender agencies and any former
4 or predecessor King County public defender agencies who meet either of two
5 conditions: (a) they work or have worked for one of the King County public
6 defender agencies within three years of the filing of this lawsuit or (b) they work
7 or have worked in a PERS-eligible position within three years of the filing of this
8 lawsuit.

9 11. Kevin Dolan and class members are entitled to membership and benefits in the
10 Public Employees Retirement System (PERS).

11 12. King County or its agent failed to report Kevin Dolan and members to the
12 Department of Retirement Systems.

13 13. King County or its agent failed to make retirement contributions to the
14 Department of Retirement Systems in relation to Kevin Dolan and class members.

15 14. Plaintiff Dolan and class members have lost and are continuing to lose retirement
16 benefits due to King County's failure to report and contribute toward retirement benefits in
17 PERS.

18 15. Plaintiff Dolan and class members are harmed by the loss of retirement benefits
19 and by the failure of King County or its agents to make the required contributions.

20 16. Plaintiff Dolan is an adequate class representative because he is treated the same
21 as others in the class and he is personally affected by the failure to report and contribute to state-
22 mandated retirement benefits in the same manner as other class members are affected.

23 17. There are common questions applicable to the entire class. The common
24 questions include, but are not limited to: King County's control by way of funding and contract
25 over the nonprofit agencies performing defense services, its duty to enroll individuals performing
indigent legal defense services in PERS and contribute to the retirement program, whether the
County breached this duty, and the appropriate relief for the breach.

18. This case should be certified as a class action under CR 23(b)(1) and (b)(2)

1 because, among other reasons, the lost PERS retirement benefits are tied directly to injunctive
2 and/or declaratory relief and the benefits or loss thereof would be calculated by a mechanical
3 formula based on payroll records and because the prosecution of individual actions would create
4 a risk of inconsistent adjudications which could result in incompatible standards of conduct for
5 King County. Alternatively, although the class is most properly certified under CR 23(b)(1) and
6 (b)(2), the class could also be certified under CR 23(b)(3) solely for a damages action because
7 the common questions concerning the County's liability predominate over any individual
8 questions concerning the amount owed for each class member.

9 CLAIMS

10 First Claim

11 19. King County violated its duty to report plaintiff Dolan and class members to the
12 Department of Retirement Systems for the purpose of retirement benefits and to make the
13 required contributions on their behalf. Plaintiff Dolan and the class have lost and continue to
14 lose retirement benefits due to these omissions. They are further harmed because they lost tax
15 benefits they would have had if their retirement contributions were properly made by King
16 County. Plaintiff Dolan and the class were denied the opportunity to choose to join PERS Plan 3
17 due to King County's omissions, and they were denied the 110% transfer payment that would
18 have been paid by the Department of Retirement Systems if they elected to join PERS Plan 3 by
19 June 1, 2003.

20 Second Alternative Claim

21 20. Kevin Dolan filed a claim for damages with King County on October 17, 2005.
22 King County did not respond to the damage claim within 60 days and thus it was denied. If the
23 class were certified as a CR 23(b)(3) class, plaintiff Dolan and the class should receive monetary
24 damages equal to the actuarial value of their pensions, including the pension value that would
25 accrue in the future. The actuarial value is greater than the omitted retirement contributions plus
interest and related losses that King County would pay under the First Claim. The actuarial

1 value would also include additional sums to account for the increased taxes that would have to be
2 paid for receiving payment for the value of the lost pension benefits in one lump sum, instead of
3 receiving pension benefits over time which would be taxed at lower rates.

4 **RELIEF**

5 21. Plaintiff Dolan and the class should be awarded the following relief:

6 A) Declaratory and injunctive relief concerning King County's duty to
7 provide PERS retirement benefits to plaintiff and class members;

8 B) An order requiring King County to report plaintiff and class members to
9 the Department of Retirement Systems for the purpose of retirement benefits and to make all
10 omitted contributions needed to properly fund plaintiff's and class members' state retirement
11 benefits. For those who elect to be in PERS Plan 3, the County shall pay the omitted employer's
12 payments plus interest, it shall pay the 110% transfer payment plus interest to the defined
13 contribution portion of PERS Plan 3, and, if the employee elects, the County shall fund the
14 employee's portion of the defined contribution plan, plus interest;

15 C) RCW 41.50.140(3) authorizes King County to obtain reimbursement for
16 the employee's share of omitted PERS contributions that King County is required to pay, but the
17 reimbursement amount should be offset by the loss to the class by virtue of having to reimburse
18 the County with after-tax dollars, instead of before-tax dollars if King County had acted
19 properly;

20 D) Attorney fees under RCW 49.48.030 and the common fund doctrine;

21 E) Prejudgment interest;

22 F) Other incidental monetary relief or other relief as the Court may deem just
and equitable; and

23 G) Costs.

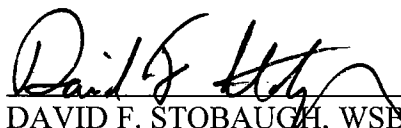
24 22. If the class were certified under CR 23(b)(3), plaintiff Dolan and the class should
25 receive:

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- A) Monetary damages in an amount equal to the actuarial value of the lost pension including future pension value, and including an additional amount to account for the fact that Dolan and the class members will receive damages for the lost pension in one lump sum instead of in monthly pension checks which would be taxed at lower rates;
- B) Attorney fees under RCW 49.48.030 and the common fund doctrine;
- C) Such additional monetary or other relief as the Court may deem just and equitable; and
- D) Costs.

DATED this 19~~th~~ day of August, 2006.

BENDICH, STOBAUGH & STRONG, P.C.



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