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8 **SUPERIOR COURT OF WASHINGTON
FOR SAN JUAN COUNTY**

9 THE LAW OFFICE OF JAMES P. GRIFO, LLC; a
10 Washington State Limited Liability Company; and
11 THE LAW OFFICE OF NICHOLAS POWER,
PLLC, a Washington State Professional Limited
Liability Company,

12 Plaintiffs,

13 v.

14 AMERICAN FEDERATION OF STATE,
15 COUNTY AND MUNICIPAL EMPLOYEES, a
labor union; WALTER BLAIR, as purported
16 administrator of Local 114; COLIN MAYCOCK,
as a member of Local 1849, President of Local
17 1849, and as a member of American Federation of
State, County, & Municipal Employees; JAELE
18 KOMAC, a member of Local 114, as former
President Local 114, and a member of American
19 Federation of State, County, & Municipal
Employees; LOCAL 1849, a labor union operating
20 in the State of Washington; and LOCAL 114, a
labor union operating in the State of Washington,

21 Defendants.
22

NO. 19-2-05179-28

ANSWER, AFFIRMATIVE DEFENSES,
AND COUNTER CLAIM OF
DEFENDANTS AFSCME, BLAIR, AND
LOCAL 114

Comes now the defendants, American Federation of State, County and Municipal Employees; AFSCME Local 114; and Walter Blair as Administrator for Local 114 (collectively referred to hereinafter as “AFSCME”), by and through their attorney of record, Edward Earl Younglove III of YOUNGLOVE & COKER, P.L.L.C., and, by way of answer to plaintiffs' Complaint, admit, deny, and allege as follows:

I. INTRODUCTION

1.1 AFSCME admits that the plaintiffs are making the claims identified therein which AFSCME more specifically responds to hereinafter and AFSCME denies that plaintiffs are entitled to relief on the claims identified therein.

II. PARTIES

2.1 AFSCME alleges that it is currently without sufficient information to form a belief as to the truth or falsity of the allegations in paragraph 2.1 of plaintiffs' complaint and therefore denies same.

2.2 AFSCME alleges that it is currently without sufficient information to form a belief as to the truth or falsity of the allegations in paragraph 2.2 of plaintiffs' complaint and therefore denies same.

2.3 AFSCME admits paragraph 2.3 of plaintiffs' Complaint.

2.4 AFSCME admits paragraph 2.4 of plaintiffs' Complaint.

2.5 AFSCME admits paragraph 2.5 of plaintiffs' Complaint.

2.6 AFSCME admits paragraph 2.6 of plaintiffs' Complaint.

2.7 AFSCME admits paragraph 2.7 of plaintiffs' Complaint.

2.8 AFSCME admits paragraph 2.8 of plaintiffs' Complaint and alleges that Walter Blair is the duly appointed Administrator of AFSCME Local 114.

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1 4.7 AFSCME denies paragraph 4.7 of plaintiffs' Complaint and alleges that the file
2 referenced therein belongs to AFSCME Local 114 and that release of the same to AFSCME Local
3 1114 cannot as either a practical or legal matter jeopardize or prejudice the interest of AFSCME Local
4 114.

5 4.8 AFSCME denies paragraph 4.8 of plaintiffs' Complaint.

6 4.9 AFSCME admits the allegation in paragraph 4.9 of plaintiffs' Complaint that Council
7 2 in conjunction with AFSCME requested the non-privileged financial portions of the file from
8 plaintiffs, which was refused, and denies the remaining allegations therein.

9 4.10 AFSCME admits the allegation in paragraph 4.10 of plaintiffs' Complaint that Jeremy
10 Kruse is the Deputy Administrator for AFSCME Local 114, that he authored the letter attached as
11 Exhibit B, alleges that the letter speaks for itself, and denies the remaining allegations therein.

12 4.11 AFSCME alleges in response to the allegations in paragraph 4.11 of plaintiffs'
13 Complaint that Exhibit B speaks for itself and denies the remaining allegations. By way of further
14 answer, AFSCME alleges that AFSCME's counsel in this matter sent a letter to plaintiffs on December
15 2, 2019, related to the administratorship of Local 114 duly established by AFSCME, a copy of which
16 is attached hereto as Exhibit 1 (minus referenced exhibits to the letter).

17 4.12 AFSCME admits the allegations in paragraph 4.12 of plaintiffs' Complaint.

18 4.13 AFSCME denies that plaintiffs have furnished their client file to Local 114 and as to
19 the allegations regarding the furnishing of the file to other defendants. AFSCME alleges it is without
20 sufficient information to form a belief as to the truth or falsity of the remaining allegations in paragraph
21 4.13 of plaintiffs' Complaint and therefore denies same.

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1 4.14 AFSCME is without sufficient information to form a belief as to the truth or falsity of
2 the allegations regarding the actions of the plaintiffs' alleged therein and therefore denies those
3 allegations and denies the remaining allegations in paragraph 4.14 of plaintiffs' Complaint.

4 4.15 AFSCME denies the allegations in paragraph 4.15 of plaintiffs' Complaint.

5 4.16 AFSCME admits the allegations in paragraph 4.16 of plaintiffs' Complaint.

6 4.17 AFSCME does not believe any answer to paragraph 4.17 of plaintiffs' Complaint is
7 required, but to the extent an answer is required, AFSCME alleges it is without sufficient information
8 to form a belief as to the truth or falsity of the allegations and therefore denies those allegations.

9 4.18 AFSCME does not believe any answer to paragraph 4.18 of plaintiffs' Complaint is
10 required, but to the extent an answer is required, AFSCME denies same.

11 **V. COUNT I: INTERPLEADER OF CLIENT FILE**

12 5.1 AFSCME answers the allegations in paragraph 5.1 of plaintiffs' Complaint as
13 previously set forth.

14 5.2 AFSCME admits the general allegation alleged in paragraph 5.2 of plaintiffs'
15 Complaint as may be modified by law or court rule.

16 5.3 AFSCME admits the allegation in paragraph 5.3 of plaintiffs' Complaint that AFSCME
17 Locals 114 and 1849 were named defendants and that plaintiffs have contractual and ethical
18 obligations as to AFSCME Local 114 and allege insufficient knowledge to admit or deny the
19 remaining allegations and therefor denies same.

20 5.4 AFSCME admits the allegation in paragraph 5.4 of plaintiffs' Complaint that the
21 Administrator of Local 114 has asserted the right and legally has the right to the referenced file, which
22 must be furnished to the Administrator, and denies every other allegation therein.

1 5.5 AFSCME admits the allegation in paragraph 5.5 of plaintiffs' Complaint regarding the
2 right of the Local 114 Administrator to a copy of the referenced client file and denies the remaining
3 allegations to the extent they allege that such right requires a court determination.

4 5.6 AFSCME denies the allegation in paragraph 5.6 of plaintiffs' Complaint.

5 5.7 AFSCME denies the allegation in paragraph 5.7 of plaintiffs' Complaint.

6 5.8 AFSCME denies the allegation in paragraph 5.8 of plaintiffs' Complaint.

7 5.9 AFSCME alleges it is without sufficient information to form a belief as to the truth or
8 falsity of any actions alleged in paragraph 5.9 of plaintiffs' Complaint regarding the plaintiffs' conduct
9 and therefore denies same and denies any suggestion in paragraph 5.9 of plaintiffs' Complaint that the
10 file should not be tendered to AFSCME.

11 **VI. COUNT II: DECLARATORY RELIEF**

12 6.1 AFSCME answers the allegations in paragraph 6.1 of plaintiffs' Complaint as
13 previously set forth.

14 6.2 AFSCME answers the allegations in paragraph 6.2 of plaintiffs' Complaint that the
15 referenced statute speaks for itself and that no further answer is required, and to the extent any answer
16 is required, AFSCME denies same.

17 6.3 AFSCME alleges it is without sufficient information to form a belief as to the truth or
18 falsity of the allegations in paragraph 6.3 of plaintiffs' Complaint and therefore denies same.

19 6.4 AFSCME alleges it is without sufficient information to form a belief as to the truth or
20 falsity of the allegations in paragraph 6.4 of plaintiffs' Complaint and therefore denies same.

21 6.5 AFSCME denies the allegations in paragraph 6.5 of plaintiffs' Complaint to the extent
22 they are in reference to AFSCME and as the to the remaining defendants, AFSCME alleges it is

1 without sufficient information to form a belief as to the truth or falsity of the other allegations therein
2 and therefore denies same.

3 6.6 AFSCME admits the allegations in paragraph 6.6 of plaintiffs' Complaint.

4 6.7 AFSCME alleges that plaintiffs' Complaint speaks for itself, that no answer is required
5 as to paragraph 6.7 of plaintiffs' Complaint, and denies that plaintiffs are entitled to the declaratory
6 relief sought.

7 6.8 AFSCME denies the allegation in paragraph 6.8 of plaintiffs' Complaint with regard to
8 AFSCME.

9 **VII. RELIEF REQUESTED**

10 WHEREAS, paragraphs 7.1 through 7.4 contains prayers for damages and relief, and to the
11 extent that the prayer for relief requires any answer, AFSCME specifically denies the same.

12 By way of further answer and affirmative defenses, AFSCME alleges as follows:

13 **VIII. AFFIRMATIVE DEFENSES**

14 8.1 Those defenses enumerated in CR 12(b), which at the option of the pleader, are being
15 asserted herein rather than by motion pending further discovery. Upon request and after conducting
16 discovery in this case, AFSCME will withdraw any of the affirmative defenses that are unsupported
17 by facts revealed in pretrial discovery and investigation, should there be any.

18 8.2 Some or all of plaintiffs' claims fail to state facts sufficient to constitute a cause of
19 action or to state a claim upon which relief can be granted to plaintiffs.

20 8.3 Plaintiffs' claims may be barred in whole or in part by the doctrine of waiver, estoppels,
21 laches and/or waiver.

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1 claims, cross-claims, third-party claims, and/or affirmative defenses as may be warranted by the
2 evidence produced through discovery or otherwise.

3 XI. REQUESTS FOR RELIEF

4 WHEREFORE, having answered the allegations in plaintiffs' Complaint and having raised
5 affirmative defenses, AFSCME prays for judgment for the following relief:

6 11.1 Dismissing plaintiffs' Complaint against AFSCME with prejudice;

7 11.2 Ordering plaintiffs to deliver the client file referenced herein to AFSCME Local 114
8 through its Administrator;

9 11.3 Ordering plaintiffs to provide AFSCME with an accounting of any and all fees, costs,
10 expenses, or other expenditures by plaintiffs which plaintiffs allege were incurred in rendering the
11 professional services to AFSCME Local 114, together with an accounting of all payments received,
12 from any source, by plaintiffs for such services.

13 11.4 Awarding judgment to AFSCME against plaintiffs for AFSCME's attorney's fees and
14 costs pursuant to RCW 4.84.185, RCW 4.84.250, or other statute, court rule, or contract;

15 11.5 In the event any judgment against AFSCME is entered herein for plaintiffs' fees and/or
16 costs, that AFSCME have judgment against the other defendants for their proportionate share; and

17 11.6 Awarding such other and further relief as the Court deems just.

18 DATED this 18th day of December, 2019.

19 YOUNGLOVE & COKER, P.L.L.C.

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21 Edward Earl Younglove III, WSBA #5873
22 Attorney for Defendants, AFSCME Local 114

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PROOF OF SERVICE

I certify that I served a copy of this document on all parties or their counsel of record on the date below as follows:

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Law Office of Nicholas Power
540 Guard Street, Suite 150
Friday Harbor, WA 98250

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Attorney at Law
164 Dougherty Lane
Friday Harbor, WA 98250

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☐ Hand delivered

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

Dated this 18th day of December, 2019, at Olympia, Washington.

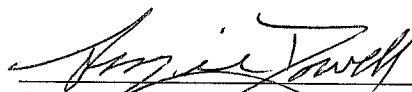

Angie Dowell, Paralegal
Younglove & Coker, P.L.L.C.

EXHIBIT 1

Younglove & Coker

A PROFESSIONAL LIMITED LIABILITY COMPANY

ATTORNEYS AT LAW

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December 3, 2019

SENT VIA EMAIL

Mr. Nicholas Power
Law Office of Nicholas Power
540 Guard Street, Suite 150
Friday Harbor, WA 98250

Mr. James P. Grifo
The Law Office of James P. Grifo, LLC
164 Dougherty Lane
Friday Harbor, WA 98250

RE: The Law Office of James P. Grifo, LLC, et al. v. AFSCME, et al.,
San Juan County Superior Court No. 19-2-05179-28

Dear Messrs. Power and Grifo:

You have requested information regarding Local 114's administratorship so that you may appropriately comply with your professional responsibilities arising from your past representation of Local 114. As you should know, AFSCME International President Lee Saunders placed Local 114 under an emergency administratorship on October 16, 2019, pursuant to Article IX, section 37 of the AFSCME Constitution. In doing so, he appointed Walter Blair and Jeremy Kruse as Local 114's administrator and deputy administrator, respectively. (See October 16, 2019 letters, attached). The matter was simultaneously referred to the AFSCME Judicial Panel in accordance with section 39 and 40 of Article IX of the AFSCME Constitution. Following the requisite notice, Judicial Panel Chairperson Abelson convened an evidentiary hearing on November 5, 2019, in Bellingham. Thereafter, on November 26, 2019, Mr. Abelson issued the attached decision, outlining his reasons, and the evidence supporting them, for sustaining President Saunders' imposition of the emergency administratorship.

With respect to your professional obligations and responsibilities to Local 114, quite simply, the administratorship changes nothing. Although arcane, this is a well-developed area of law. Because, unlike Local 114, some AFSCME local unions are covered by the Labor-Management Reporting and Disclosure Act, the International Constitution's administratorship provisions are modelled on, and comply with, the LMRDA's provisions respecting due process in the imposition of trusteeships by international unions over their subordinate bodies. See 29 USC section 461, *et seq.* Under the AFSCME constitution, and as authorized by the LMRDA, a trusteeship is effective immediately upon its imposition subject to a *post hoc* hearing and ratification. See, e.g., *Nat'l Ass'n of Letter Carriers, AFL-CIO v. Sombrotto*, 449 F.2d 915, 920-21 (2d Cir. 1971) ("§464(c) allows for the possibility of post hoc ratification as well as prior approval [to impose trusteeship] so long as the former course is

Mr. Nicholas Power
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provided for in the union's constitution or bylaws and the hearing follows with reasonable promptness.”; citing cases).

Pursuant to the LMRDA and section 45 of Article IX of the AFSCME constitution, once placed under administratorship, the International Union “assume[s] charge of the affairs and business of such subordinate body and may appoint an administrator for such purpose” who is “authorized and empowered to suspend from office any or all the officers and appoint temporary officers, from among the members in good standing of such subordinate body, for the duration of the administratorship; to remove or replace representatives or other employees of such subordinate body; and to take such other actions as in the administrator’s judgment are necessary for the preservation of the rights and interests of the members of the subordinate body and of the International Union.” In other words, once the administratorship is imposed, the appointed administrator stands in the shoes of the subordinate body’s executive board. See *County Municipal Employees' Supervisors' & Foremen's Union Local 1001 v. Laborers' Int'l Union of N. Am.*, 365 F.3d 576, 578 (7th Cir. 2004) (“[I]t is the International and the Trustee who stand in for the elected officers, and as the Trustee wants counsel gone they are obliged to go gracefully.”); see also *Laborers' Int'l Union of N. Am., AFL-CIO v. Nat'l Post Office Mail Handlers, Watchmen, Messengers & Grp. Leaders Div. of the Laborers' Int'l Union of N. Am., AFL-CIO*, 880 F.2d 1388, 1394 (D.C. Cir. 1989) (“The [LMRDA] regulates only the establishment, maintenance, or administration of a ‘trusteeship,’ which it defines as a method of control ‘whereby a labor organization suspends the autonomy otherwise available to a subordinate body under its constitution or bylaws.’”)

The placement of a local union under administratorship does not alter its status or its legal relationships as an organization. Indeed, the purpose of this procedure is to protect and preserve the organizational and institutional integrity of the local union. With respect to its lawyers, a union is entitled to the same rights and protections afforded any other organization under Washington Rule of Professional Conduct (“RPC”) No. 1.13 “the Organization as a Client.” As Local 114’s former counsel, your duties are owed to Local 114, as described in Comment 10 to Rule 1.13, which affirms the paramount obligation of counsel is to the organization even “when the organization’s interest may be or become adverse to those of one or more of its constituents.” As Comment 10 notes, your professional duty is to Local 114, not its former officers or any individual or groups of members.

Although your complaint-in-interpleader appears to question where your loyalties should lie, that professed concern is not sustainable as a matter of law. As the 7th Circuit noted in a case involving the former attorneys of a local union placed under trusteeship, “lawyers are obliged not to oppose or otherwise undermine their ex-client’s legal position” and such lawyers may not assume the role of an “ombudsmen authorized to pursue whatever legal remedies they think a client should favor, whether the client agrees or not.” *Local 1101*, 365 F.3d at 579.

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Finally, there is no basis to withhold Local 114's file from it out of concern for preserving any purported privileged communications between jointly-represented clients. There is no privilege as between parties to a joint representation, even when their interests later become adverse. See RPC No. 1.7, comment 30 ("With regard to the attorney-client privilege, the prevailing rule is that, as between commonly represented clients, the privilege does not attach. Hence, it must be assumed that if litigation eventuates between the clients, the privilege will not protect any such communications, and the clients should be so advised.")

I hope this answers your questions and, after reviewing this letter and the authorities it cites, you will withdraw your interpleader claim, or at least dismiss Count One, and provide Local 114 with the file and records to which it is entitled.

Sincerely,

YOUNGLOVE & COKER, P.L.L.C.

A handwritten signature in black ink, appearing to read 'E. Younglove III', with a long horizontal flourish extending to the right.

Edward Earl Younglove III
Attorney at Law

EEY:ad
Enclosures
cc: AFSCME