Washington State Court of Appeals

Division II

Appellate Court Cause Number: 56175-1

Amorea Rocha, Respondent

v.

Hamal Strand, Appellant

APPELLANT'S PETITION FOR REVIEW (RAP 13.4)

Filed by: Hamal Strand
470 West 2nd St. #108 |
Sumas Washington | 98295 |
360-499-9278 | hamaljay@gmail.com

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A. IDENTITY OF PETITIONER

Appellant, Hamal Strand, asks the Supreme Court to accept review of the Court of Appeals decisions terminating review designated in Part B. of this paper.

B. THE COURT OF APPEALS DECISIONS

Strand petitions this court to review the UNPUBLISHED OPINION filed on **November 1st 2022**, the ORDER DENYING MOTION FOR RECONSIDERATION **filed November 28th 2022**, and the ORDER DENYING MOTION TO PUBLISH filed **December 5th 2022**. A copy of the OPINION is in the Appendix at App 1 through 13, a copy of the order denying Strand's motion for RECONSIDERATION is in the Appendix at App 14, finally a copy of the order denying the Family Violence Appellate Project's motion to PUBLISH is in the Appendix at App 15.

C. ISSUES PRESENTED FOR REVIEW

1. The *OPINION* correctly concludes that Kitsap County Superior Court made no findings on this case yet, the *OPINION* makes findings that the courts below did not make. Does the Court of Appeals have jurisdiction to make surplage findings and holdings not backed by the record or law? (Issue one) RAP 13.4(b)(1)
2. The *OPINION* erroneously concludes that the courts below had subject matter jurisdiction in this case. Even though the petition did not comply with RCW 10.14.040(1) and the case should have been transferred to superior court pursuant to RCW 10.14.150(1). The OPINION further erroneously concludes – as a matter of law – that the petition used to initiate this case was adequate because the attachments that were filed with the petition were considered signed under penalty of perjury –

because the petition was signed as such. Does signing a petition under penalty of perjury include – that all the attachments are under penalty of perjury as well? And should this court accept review to align the relief granted with *Ronald wastewater,* and the factor of "specifically limited by the legislature" in *Major and Wiser* regarding subject matter jurisdiction? Or should this court clarify the definition of subject matter jurisdiction and what it means? (Issue two) RAP 13.4(b)(1)(2)(4)

3. The court below, upon initiation of this case – and ex parte – made an erroneous finding that Strand was present at the hearing and had an opportunity to object to the court *sua sponte* issuing an order of surrender weapons. Can the courts ignore Wash. Const. Art. 1 § 7 and conduct a pretextual search for firearms without a warrant based on clearly erroneous findings? And can the Court of Appeals

decline to review this issue under RAP 2.4(b) or should this court – as a policy making body – review this issue under RAP 2.4(b) to give instruction to lower courts, and does the substantial public interest outweigh mootness, as in *Price v Price*? (Issue three) RAP 13.4(b)(2)(3)(4)

4. Pursuant to RAP 10.4(d) Strand filed a dispositive motion in his reply brief. Can the Court of Appeals completely ignore a properly filed and argued dispositive motion under authority granted by RCW 26.51 and can the Court deny equal protection? (Issue four) RAP 13.4(b)(3)
5. The *OPINION* was unpublished and the Family Violence Appellate Project's motion to publish was denied. Should opinions resolving matters of first impression be published? (Issue five) RAP 13.4(b)(1)(4)

D. STATEMENT OF THE CASE

Strand and the Respondent, Amorea Rocha (Rocha) have been in and out of civil litigation for several years (CP 18[1]). Strand filed and served a lawsuit against Rocha and her spiritual husband (CP 94) Matthew White (White) in December of 2019 (CP 283 L. 15-28). On January 27th 2020 Strand filed an anti harassment action in Whatcom County against White (CP 18) and was told to go to Kitsap County. On January 29th 2020 Strand filed an anti harassment action in Kitsap County against White case 20UH00020 (CP 18). On February 3rd 2020 Rocha (CP 1) and White (CP 18) filed anti harassment actions pursuant to RCW 10.14 in Kitsap County District Court naming Strand as the respondent. Case 20UH00024 was dismissed, case 20UH00025 Rocha v. Strand was heard ex parte. Rocha did not ask for surrender of weapons (CP

[1] It should be noted by this court that CP 18 is a **confidential** printout from the The Judicial Access Browser System (JABS) dated 2-3-20 and was attached to the petition, somehow, and filed by Rocha.

1, CP 326 L.16-17) and did not include an affidavit made under oath stating the specific facts and circumstances from which relief is sought, leaving questions unanswered (CP 3,4,5). District Court made statements on the record about the insufficiency of the petition (RP 5 L. 5-14).

District Court then proceeded to – *sua sponte* –issue an order of surrender weapons without notice (CP 23,24) making a clearly erroneous finding that Strand was present at the ex parte hearing and he had an opportunity to object (CP 19 #1.6). The court also issued a temporary order of protection. The court ordered Rocha to forward the orders to the Sumas Police Department within one judicial day (CP 22). . Strand was served the temporary orders on February 14th 2020 (CP 339,340).

Strand had no firearms (CP 341) and now his abuser (CP 379 at #5) knew that. At a contested hearing on February 27th 2020 (CP 147) District Court issued an order of protection (CP 19). Strand appealed and was

successful; the Court exercising appellate jurisdiction ruled that District Court did not have subject matter jurisdiction, and ordered the case transferred to Kitsap County Superior Court (CP 144).

The case was transferred, and on July 15th 2021 a contested hearing was held in Kitsap County Superior Court. Arguments were heard (RP 26-41), testimony was not taken. The hearing was regarding the anti-harassment action filed in February of 2020 (CP 1) and a motion for order re: abusive litigation filed by Strand (CP 151).

Superior Court made no findings on any issues, only conclusions of law granting the petition for protection and denying the motion for order regarding abusive litigation (CP 241-243). Strand appealed directly to the Supreme Court and, before the first brief was filed, the Supreme Court transferred the case to Division II Court of Appeals. Strand filed his opening brief (See Appellant's opening brief hereby **AOB**) And Rocha filed her Brief Of

Respondent (hereby **BOR**). Strand filed his Reply brief and included a dispositive motion (RAP 10.4(d)) authorized by RCW 26.51. The Court of Appeals ultimately vacated two orders under appeal because there were no findings and the court could not do a meaningful review (see OPINION).

The OPINION did not review any orders under RAP 2.4(b) an issue argued in the AOB Part IV. § 1 P. 24,25.

The OPINION did not make mention of the motion for an order regarding abusive litigation filed by Strand in his reply brief.

The decision to not publish the OPINION was not unanimous (see OPINION).

E. ARGUMENT

SUMMARY of ARGUMENTS

This court has stepped in to give instruction to lower courts in anti harassment actions before because, as this court explained, an anti harassment proceeding could happen to other people and therefore there is substantial public interest. Putting aside for a moment the facts that point towards the District Court acting under the color of law to deprive Strand of constitutional rights guaranteed by Wash. Const. Art. 1 § 7, and the U.S. Const. Amend. 1,2 and 14; and getting straight into the meat and potatoes of the argument –subject matter jurisdiction – and the vague requirements thereof as it is in Washington State; it is clear that the highest court in the State needs to set some understandable and unambiguous policy regarding subject matter jurisdiction. Further, most of the issues brought up during the appeal were – and still are– matters of first impression, containing significant

questions of law under the Constitutions, creating substantial public interest because it could happen to anyone. Even you[2], f the courts are allowed to act with impunity towards the rules and Constitutions of the State and the Nation. How does that promote confidence in the judiciary? The courts below need instruction from a policy making body to maintain and protect individual rights for everyone in Washington (Wash. Const. Art. 1 § 1 App 39).

What is subject matter jurisdiction, what is a petition, what gives the courts authority in Washington?

This case is locked in the past, RCW 10.14 (App. 16-31) has been repealed and has been re-codified as RCW 7.105[3], the words are the same, and it is clear the legislature limited the powers of the Courts and yet the courts acted under color of law, denying equal protection.

[2] If not you, then somebody that you know or care about.
[3] It should be noted by the court that all of the old statutes cited in this paper are verbatim in RCW 7.105 showing that the legislature's intent is the same now as it was then. The only differences between the two do not concern the issues presented in the appeal or review.

1. The Court of Appeals does not have jurisdiction to make surplage findings and holdings not backed by the record or law (Issue one)

RAP 2.5(a) provides: “A party or the court may raise at any time the question of appellate court jurisdiction.”

Case law is very specific here, the appeals court is not a finder of fact, the OPINION contains findings and holdings that were not made by a trial court see Part VII. of MOTION FOR RECONSIDERATION pages 17-22.

1.1. Surplage findings, holdings.

The Court of Appeals has appellate jurisdiction while trial courts have original jurisdiction; jurisprudence has dictated that appellate courts are not finders of fact, it is not their function. A tribunal with original jurisdiction has the authority to make findings of fact, see *Berger Engineering Co. v. Hopkins*, 54 Wash.2d 300, 308, 340 P.2d 777(1959) (an appellate court “is not a fact-finding branch of the judicial system of this state”).

A tribunal with only appellate jurisdiction is not permitted or required to make its own findings, *id*, see also *Maranatha Mining, Inc. v. Pierce Cy.,* 59 Wash.App. 795, 802, 801 P.2d 985 (1990), and such findings, if entered, are surplusage. *Grader v. Lynnwood*, 45 Wash.App. 876, 879, 728 P.2d 1057 (1986)

The OPINION correctly states that the court made no findings. Meaning there are no facts for the Appeals Court to review. The appeals court did make findings and held things that were not found, such as the sufficiency of the petition. Due to brevity Strand cannot go over all here.

First, the OPINION lists multiple facts that weren't considered; the trial court did not consider anything that was older than 3 months before the filing of the petition in February of 2020 as the record reflects,

"Tell me, in the last three months, what is it that he has done to you that you think is harassment?" – Kitsap County District Court (**RP 6 L. 21-23**).

On page 8 the OPINION says," the petition alleges that Strand made hostile remarks to Rocha". It is unclear why the OPINION finds the remarks are "hostile". Rocha never said how anything made her feel in her petition[4], and the comments quoted on page 8 were never considered by any Court, and no findings made thereof.

Moreover, the OPINION made holdings that the petition was sufficient contrary to the findings of District Court regarding the petition,

"Ms. Rocha, I did have a chance to read through your written materials and it looks to me as if the contact for which you complain either had occurred in the context of a pending lawsuit of some sort in San Juan County or was in the form of demands -- I don't want to say settlement negotiations, but demands and cross-demands between one another. So I don't see what's harassment about this--- other than you want the case to go away, andI can't sign an order that will make that happen.
(RP 5 L.5-14)
"So there's nothing in here that says that he's been contacting you repetitively by email or text. What -- what is it? Tell me, in the last three months what is it that he has done to you that you think is harassment?"
(RP 6 L.19-23)

[4] In fact Rocha refused to answer how she felt. See (CP 5 question #6 N/A)

This list is not exhaustive and the OPINION contains more findings/ holdings not backed by the record or law.

1.2. RAP 13.4(b)(1)

The decision of the court of appeals is in conflict with *Berger Engineering, Maranatha Mining* and, *Grader*. And the court should accept review pursuant to RAP 13.4(b)(1)(2) to correct the overreach of jurisdiction and to remove all surplage findings/ holdings.

2. Subject matter jurisdiction and the petition. (Issue two)

Whether or not the court had authority to act *ab initio* or not relies on whether or not the petition was sufficient enough to gain subject matter jurisdiction over the parties. And whether signing a virtually blank petition (CP 03 #5), and attaching untitled documentary evidence without providing any offer proof is acceptable in Washington State. District Court made statements on the record that the petition was not sufficient (see RP 5 L. 5-14 & RP 6

L. 19-23) Superior Court made no findings, the court of appeals held that the petition was sufficient because of the attached documentary evidence. Pursuant to RAP 13.4(b)(4) this court should accept review of this issue because of substantial public interest that should be determined by the Supreme Court. Petitions are things that initiate cases, unlike a claim in a lawsuit, petitions are used as evidence in a court for hearings and appeals. Petitions are of substantial public interest because it could affect Washington citizens in all walks of life.

Questions: Does signing a petition under penalty of perjury make all the attachments signed under penalty of perjury as well? Does subject matter jurisdiction turn on the relief a court can grant?

2.1. Subject matter jurisdiction

First, looking at *Ronald Wastewater District v. Olympic View Water and*..., 196 Wash.2d at 371-73, 474 P.3d 547

(2020) to see that that subject-matter jurisdiction can indeed turn on the kind of relief that a court issues.

This court elaborated on the distinction between errors of law and lack of subject matter jurisdiction in *Ronald* 35 years after the original judgment was made. There, the trial court lacked subject matter jurisdiction to enter an order adjudicating the annexation of a sewer district because the nature of the controversy was annexation, and "annexation authority is a plenary power enjoyed by the State, which the legislature may delegate to courts by statute." *Id*. at 373, 474 P.3d 547. Showing that a lack of subject matter jurisdiction is not a claim that can be considered moot.

Further, this is a case where the legislature specifically restricted the issuances of surrender weapons and temporary orders with the threshold requirement of a petition and this provided for the subject matter jurisdiction for courts as the legislature intended, but only

if the petition was sufficient to the Court of original jurisdiction, and it was not (RP 5,6)

Some of these questions about subject matter jurisdiction and how they relate to limitations by the legislature have been raised recently in *Matter of Marriage of Kaufman*, 17 Wash.App.2d 497, Wash.App. Div. 2, (2021), A case where one party raises the question of subject matter jurisdiction and the Court of appeals held that a dissolution decree was not void for lack of subject matter jurisdiction, the court relied on *in re Marriage of Weiser* 14 Wash. App. 2d 884, 888, 475 P.3d 237 (2020) saying, “As we explained in Weiser, ' in light of this broad constitutional and statutory grant of subject matter jurisdiction, courts may only find a lack of jurisdiction under compelling circumstances, such as when it is explicitly limited by the Legislature or Congress.’ ” *Id*. (quoting *in re Marriage of Major,* 71 Wash. App. at 534, 859 P.2d 1262).

In the case before this court now, the legislature has limited the court from acting without a valid petition. RCW 10.14.040 therefore "explicitly limited" the powers of the court as described in *Major* by demanding a petition.

The Courts below acted without subject matter jurisdiction once it noticed the petition was insufficient (RP 5-6). RCW 10.14.140 (App. 18) provides,

> "There shall exist an action known as a petition for an order for protection in cases of unlawful harassment. (1) A petition for relief shall allege the existence of harassment and shall be accompanied by an affidavit made under oath stating the specific facts and circumstances from which relief is sought."

Without a petition that conforms to the law and the intent of the legislature how can Justice be served?

The Court of Appeals "held" the petition was sufficient. And the resulting orders in District Court are moot, contrary to even though on its face the Court lacked authority see *STEWART v. LOHR*. 1 Wash. 341, 25 P. 457, 22 Am.St.Rep. 150 (1890) (*infra* p. 26).

2.2. RAP 13.4(b)

The OPINION is in conflict with *Ronald* and *Stewart*, and pursuant to RAP 13.4(b)(1) this court should accept review. The OPINION is also in conflict with *Major* and *Weiser*, and pursuant to RAP 13.4(b)(2) this court should accept review. Finally, this is a civil anti harassment action, with matters of first impression that could happen to other citizens of Washington. Pursuant to RAP 13.4(b)(4) this court should accept review because of issues of substantial public interest such as in *Price v. Price*, 174 Wash. App. 894, 301 P.3d 486, 174 Wn. App. 894 (Wash. Ct. App. 2013[5]). See also part E. § 3 *Infra*.

3. Wash. Const. Art. 1 § 7 , RAP 2.4(b), erroneous findings. Substantial public interest.

[5]Price v *Price* is an anti harassment action – like this one – where the Supreme Court said, "we can provide her with “effective relief” by removing the “stigma” of the erroneous anti-harassment protection orders from her record. . . therefore, even though the orders have expired, we consider her appeal because it involves a matter of continuing and substantial public interest."

(Issue three)

Can the court invade someone's privacy, reliant on erroneous findings? Is there a substantial public interest when a court does not follow the rules and invades privacy in order to conduct a warrantless search?

None of these questions were answered by the decision below, some were openly ignored, its authority to do so is not supported by case law or rules, see *Right-Price Recreation, LLC v. Connells Prairie Cmty. Council,* 146 Wn. 2d 370, 146 Wash. 2d 370, 46 P.3d 789 (2002) (*infa* p. 21,22).

3.1. RAP 2.4(b).

As a matter of right, Strand appealed, and in the AOB pursuant to RAP 2.4(b) requested the court of appeals review the orders that initiated the case.

By its terms, RAP 2.4(b) applies to bring up an appealable order not designated in the notice. As noted in

Adkins v. Aluminum Co. of Am., 110 Wn.2d 128, 134, 750 P.2d 1257, 756 P.2d 142 (1988).

In *Right-Price Recreation, LLC v. Connells Prairie Cmty. Council,* 146 Wn. 2d 370, 146 Wash. 2d 370, 46 P.3d 789 (Wash. 2002) The Supreme Court held that the Court of Appeals erred in declining review of an order of dismissal, employing too limited a test, and confirmed the test for prejudicial effect in *Adkins*.

Further going on to say that,

"Once review is granted, however, the provisions governing the scope of review, which are addressed in RAP 2.4(a) and (b), apply to both notices of appeal and notices for discretionary review equally. Unlike RAP 13.6, which allows the Supreme Court to specify the issue or issues as to which review is granted upon accepting discretionary review of a Court of Appeals' decision, RAP 2.4 does not allow the Court of Appeals to so limit its review of the trial court decisions it accepts for appeal or discretionary review.

In sum, the Court of Appeals should not have declined to review the trial court's denial of the motion to dismiss. While the Court of Appeals may wish to limit the issues on discretionary review, its authority to do so is not supported by our case law or rules. Rather than remanding to the Court of Appeals for a determination on the dismissal, we will resolve the outstanding issues in the interest of

judicial economy." *Right-Price Recreation, LLC v. Connells Prairie Cmty. Council,* 146 Wn. 2d 370, 146 Wash. 2d 370, 46 P.3d 789 (Wash. 2002)

The Court of Appeals did not employ any test; rather it ignored Strand's request to review district court orders. The OPINION is in conflict with *Right-Price*, and pursuant to RAP 13.4(b)(1) this court should accept review of the district court orders brought up in the AOB as a matter of right pursuant to RAP 2.4(b)

3.2. The court can't invade privacy without authority of law.

Strand argued in the AOB that the District Court orders that initiated this case invaded privacy guaranteed by Wash. Const. Art. 1 § 7 (App. 39). The court completely ignored the entire issue and argument. However, a claim of error may be raised for the first time on appeal if it is a manifest error affecting a constitutional right. RAP 2.5(a)(3). *State v. Walsh,* 143 Wash.2d 1, 7, 17 P.3d 591 (2001).

Strand argued in his brief before the Court of Appeals that the District Court issuing an order of surrender weapons without notice and without grounds or authority was a pretextual search[6], that not only invaded privacy without a warrant[7] but did so with erroneous findings (*infra* § 3.3*)*. This clearly was a manifest error that affected a constitutional right to privacy and pursuant to RAP 2.5(a)(3) should be reviewed, as a matter of right in the appeal such as in *State v. Kirkman* 159 Wash.2d 918, 155 P.3d 125 (2007).

Pursuant to RAP 13.4(b)(1) this court should also accept review for judicial economy, because the OPINION is in conflict with *State v. Kennedy, State v. Walsh,* and, *State v. Kirkman* and the court of appeals should have reviewed the district court orders.

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[6] In this case the pretextual search was for weapons, without any evidence of any (CP 5)

[7] If the police or other governmental agent conducts a search, then Const. art. 1, § 7 is implicated and the search must be conducted pursuant to a warrant, *State v. Kennedy*, 107 Wn.2d 1, 10, 726 P.2d 445 (1986)

3.3. The clearly erroneous finding need to be addressed to give guidance.

Finding 1.6 (CP 25) entered February 3rd 2020 stated that Strand was present at an ex parte hearing and had an opportunity to object to the court *sua sponte*[8] issuing in order to surrender weapons without notice (CP 23-24). Strand argued in the AOB the court should review finding 1.6 under the "clearly erroneous" standard see *State v. Jeannotte*, 133 Wn.2d 847, 856, 947 P.2d 1192 (1997), the court of appeals declined to address the issue without clear reasoning, denying review as a matter of right pursuant to RAP 2.4 and *Right-Price (see supra* part E. § 3.1 p. 21-23) This court should accept review of this issue pursuant to RAP 13.4(b)(1)(3) to aligned the OPINION with *Right-Price* and to give guidance to the lower courts

[8] Rocha never ask the court for surrender weapons (CP 01 and never provided evidence of a credible threat (CP 5). The court took this route on its own initiative, without a conclusion of law (CP 29).

on how not to conduct searches for firearms pursuant to Wash. Const. Art. 1 § 7 (App. 39) and other laws.

3.4. Substantial public interest exists

As discussed *supra* (Part E. § 3 p. 19), this court in *Price v. Price,* stepped in to give guidance to lower courts because, the Court could provide "effective relief" by removing the "stigma" of the erroneous anti-harassment protection orders from her record, because as the *Price v Price* Court said,

> "[The] court exceeded its statutory authority in entering these protection orders under the anti-harassment statute, RCW 10.14.080(8); therefore, even though the orders have expired, we consider her appeal because it involves a matter of continuing and substantial public interest."

If an improperly entered order under an anti harassment statute is a continuing and substantial public interest for one it should be a continuing and substantial public interest for all in Washington. (Equal protection).

Supreme Court of Washington State has held,

"A judgment unreversed, though void upon its face, may seriously embarrass the person against whom it is in form rendered, though it can, of course, be of no benefit to the person who has secured it. This being so, such judgment should not be allowed to stand STEWART v. LOHR. 1 Wash. 341, 25 P. 457, 22 Am.St.Rep. 150 (1890). **(Emphasis added).**

The *Price v Price* court giving effective relief to remove the "stigma" directly aligns with the STEWART v. LOHR court in 1890, yet the OPINION below does not, instead it denied equal protection, and with an unpublished opinion.

Therefore it's proper for this court to accept review pursuant to RAP 13.4(b)(1),(3)&(4) since the OPINION is in conflict with STEWART v. LOHR and Price *v Price*, and as matter of first impression involving substantial public interest, that this court can give "effective relief" to Strand by removing an "embarrassment" that – as has been held since 1890 – such judgment should not stand.

4. RCW 26.51, RAP 10.4(d) and the proper motion before the court.

(Issue four)

Does ignoring Strand's motion for an order regarding abusive litigation pursuant to RCW 26.51 deny equal protection guaranteed by the 14th Amendment of the US Constitution (App. 40)? Or is Strand in a class of one?

RAP 10.4(d) provides that a party may include in a brief a motion, which if granted, would preclude hearing the case on its merits. Strand filed a motion with his reply brief under RCW 26.51 (App. 16) and in the Appellant's reply brief[9] Strand asked the court to dismiss the case with prejudice (see AMENDED APPELLANT'S REPLY BRIEF P. 20) making the motion dispositive. The court allowed Rocha to answer the motion and Strand filed a reply to the answer to the motion. The Court of Appeals did not mention the motion in the opinion. Being an issue of first impression this court should accept review

[9] It should be noted by the court, the Court of Appeals attempted to not file Strand's first reply brief because it contained the dispositive motion, so Strand motioned the court to accept his amended reply brief which was essentially the same. The motion was granted.

pursuant to RAP 13.4(b)(3) because a significant question under the US Constitution Article 14 (App. 40) equal protection clause exists; can the Court of Appeals ignore a dispositive motion in an appeal?

4.1. Was the RCW 26.51 motion proper?

Strand filed the motion under RCW 26.51.040 (App. 32-38). Pursuant to RCW 26.51.030(1)(a)&(b)(App. 36) Strand can motion the court for relief by motion or in an answer response in an ongoing open case initiated by someone who had been found to have committed domestic violence[10] See RCW 26.51.020(1)(a) (App. 33).

Pursuant to RCW 26.51.060 (App. 36) the court should have decided if abusive litigation was occurring and if so enter an order and if not enter written findings (*id* at 3).

Strand argues that the court should have, at the very least, followed through with the legislature's intent, and either entered an order or, explained why it was denied.

[10]In this case the assault of Strand (CO 196 #5 by a former intimate partner Rocha (RP 17 L. 16-19)

5. Family Violence Appellate Project's motion to publish and matters of first impression. (Issue five)

Without a doubt this case has many matters of first impression, that contain significant questions of law under the statutes of Washington State and the Constitution thereof. Is it not the Supreme Court's place to give guidance during matters of first impression? The anti harassment statutes and domestic violence proceedings have been repealed and codified together with little to no change in the actual language. And there is very little instruction from the courts and virtually none regarding the issues presented by Strand throughout these proceedings. Do findings have to be made in abusive litigation proceedings under RCW 26.51? As is, this matter of first impression – and it's resulting outcome.-- are not binding for anybody. The Court of Appeals did not want to make policy on this so the Supreme Court should

step in pursuant to RAP 13.4(b)(1)(4) because these are issues of substantial public interest that should be determined by the Supreme Court. And because the decision to not publish was not unanimous as in *State v. Fitzpatrick*, 5 Wn. App. 661, 491 P.2d 262 (1971), review denied, 80 Wn.2d 1003 (1972)). (Factors to publish).

F. CONCLUSION

For all the aforementioned reasons the court should accept review to answer significant questions regarding constitutional issues, substantial public interest and to align the court with decisions of the Supreme Court and published decisions of the Court of Appeals, or to make policy, providing equal protection and maintaining the right of privacy for all in Washington State.

G. SIGNATURE BLOCK

I declare under penalty of perjury and the laws of Washington State that everything in this paper is true and accurate to the best of my knowledge.

I further certify that this paper contains 4,667 words, below the word limit set by RAP 18.17(c)(10) as calculated by Google docs, not including exemptions allowed by RAP 18.17(c).

Respectfully signed,

_/S/_Hamal Strand_Sumas_Washington_01/04/2023_

Hamal Strand
470 West 2nd St. STE108
Sumas Washington | 98295
hamaljay@gmail.com | 360-499-9278

H. APPENDIX TABLE CONTENTS

I. PROOF OF SERVICE

I declare under penalty of perjury and the laws of Washington state that I filed this paper and attached documents with the Appellate Court electronic file system thereby notifying all parties on record.

_/S/_Hamal Strand_Sumas_Washington_01/04/2023
Hamal Strand
470 West 2nd St. STE108
Sumas Washington | 98295
hamaljay@gmail.com | 360-499-9278

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//End of petition//

Filed
Washington State
Court of Appeals
Division Two

November 1, 2022

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

AMOREA ROCHA, Respondent, v. HAMAL STRAND, Appellant.	No. 56175-1-II UNPUBLISHED OPINION

WORSWICK, P.J. — Amorea Rocha petitioned the Kitsap County District Court for a protection order against Hamal Strand. That court granted the order and Strand appealed to superior court. Kitsap County Superior Court vacated the district court's protection order and ordered the district court to transfer the matter to superior court. When the matter was transferred to superior court, Strand petitioned that court for an order restricting abusive litigation against Rocha based on a related action in San Juan County Superior Court. The Kitsap County Superior Court entered a protection order against Strand that included a provision denying Strand's request to restrict abusive litigation.

Strand appeals the protection order. We hold that (1) Strand's arguments regarding the district court protection orders are moot, (2) the superior court had proper subject matter jurisdiction, (3) we are unable to review the merits of the order on appeal because the superior court failed to make the required findings of fact regarding the issuance of the protection order and the denial of the order restricting abusive litigation, and (4) Rocha is not entitled to

reasonable attorney fees. Accordingly, we vacate the protection order and the denial of the motion for an order restricting abusive litigation and remand with instructions to the superior court to make and enter necessary findings of fact and conclusions of law to be followed by the entry of an appropriate order based on those findings and conclusions.

FACTS

This case has a complicated procedural history. In October 2018, Rocha applied for a protection order against Strand in Kitsap County District Court. The order was granted two months later and expired in July 2019. In November 2018, Strand petitioned for a protection order against Rocha in San Juan County Superior Court. That same day, the San Juan County Superior court entered an order denying his petition. During the next several months, the parties litigated several issues regarding restraining orders at various levels of court.

Relevant to this case, in February 2020, Rocha petitioned the Kitsap County District Court for another protection order, alleging that Strand stole a copy of Rocha's son's birth certificate, tracked her phone, bullied her online, filed unfounded court proceedings, and stalked her family. Rocha attached several pieces of evidence to her petition including messages from a blocked number telling Rocha that she is "fake news" and that "[her] entire life is a lie," a Facebook post by Strand which indirectly referred to Rocha as a "crazy lady" who had stalked him, and a "cease and desist letter" from Rocha to Strand wherein she noted that he had sent her "300 harassing messages on [her] cell phone referencing [] [her] family as child predators." Clerk's Papers (CP) at 9, 12, 14.

At the end of February 2020, after a contested trial, the district court granted Rocha a protection order. Strand appealed that order to the Kitsap County Superior Court arguing that the

district court lacked subject matter jurisdiction under former RCW 10.14.150.[1] In October, the superior court agreed with Strand and remanded the case to district court to vacate its decision and transfer the case to superior court.

Meanwhile, Strand also petitioned the San Juan County Superior Court for a domestic violence protection order against Rocha. In June 2020, that court denied his petition. However, the court found that "[Strand] alleged, and [Rocha] did not rebut, that [Rocha] and a group of friends assaulted [Strand] in 2001." CP at 196. That court discounted the importance of the assault because (1) it focused its inquiry on the "allegations that have occurred since the denial of [Strand's] request for a domestic violence protection order in December 2018," and (2) Strand had "not proven by a preponderance of the evidence that he has a current, reasonable fear of imminent physical harm, bodily injury or assault." CP at 196. Ultimately, by a preponderance of the evidence, the court found that there was no domestic violence and denied Strand's petition.

On July 2, 2021, acting upon the Kitsap County Superior Court's order, the Kitsap County District Court transferred the case involving Rocha's February 2020 petition for a protection order to Kitsap County Superior Court. As a part of the order to transfer, the district court mandated that a temporary protection order remain in effect until July 15, the date of the

[1] RCW 10.14.150 was repealed in 2022 during a major revision of civil protection order laws. LAWS of 2021, Ch. 215, § 170. Under former RCW 10.14.150 (2018), district courts were required to transfer antiharassment actions to superior court when "a superior court has exercised or is exercising jurisdiction." Since the San Juan County Superior Court exercised jurisdiction in 2018 before the Kitsap County District Court's 2020 hearing, the Kitsap County District Court should have transferred the antiharassment action to the superior court. Because it did not transfer the action, it acted without jurisdiction when it issued the protective order.

superior court hearing. On July 7, Strand filed a request in Kitsap County Superior Court for an order restricting abusive litigation against Rocha.

The superior court held a hearing to decide both issues. Rocha testified to several facts to support the issuance of a protection order, largely centered around the same facts that her February 2020 petition raised. Strand testified that he did not send her 300 emails, steal her son's birth certificate, track her phone, or stalk her family.

Regarding Strand's motion for an order restricting abusive litigation, Strand testified to facts in an attempt to support an order restricting abusive litigation. He argued that he was a domestic violence victim because Rocha and her friends committed domestic violence against him when they assaulted him and stole his birth certificate in 2001. In his motion for an order restricting abusive litigation, he argued that the domestic violence finding was memorialized in the San Juan County Superior Court order from June, 2020.

Kitsap County Superior Court stated:

> Based on the information that's been provided . . . Mr. Strand has engaged in a knowing and willful course of conduct directed at Ms. Rocha, which seriously alarmed, annoyed, or harassed her and was detrimental to her person and served no legitimate or lawful purpose.
>
> This course of conduct was one that would cause a reasonable person to suffer substantial emotional distress and would actually cause substantial emotional distress to the petitioner.

Report of Proceedings (RP) at 41-42. The superior court then issued a protection order. In the "other" section of that protection order, the court stated that it "does not find Petitioner has engaged in abusive litigation," and denied Strand's motion to restrict abusive litigation. CP at 242. Strand appeals the superior court's protection order including its refusal to issue the order restricting abusive litigation.

ANALYSIS

Strand makes multiple arguments concerning the Kitsap County District Court protection orders. He also argues that Kitsap County Superior Court erred by entering the protection order without proper subject matter jurisdiction because Rocha's petition was deficient, and that the superior court erred when it issued the protection order without making specific findings of fact.

We hold that Strand's challenges to the district court orders are moot and that the superior court had jurisdiction to issue a protection order. However, we hold that the superior court failed to make sufficient findings of fact to allow us to review either the issuance of the protection order or the denial of the order restricting abusive litigation. Finally, we hold that Rocha is not entitled to reasonable attorney fees on appeal.

I. MOOTNESS

Strand makes multiple arguments concerning the Kitsap County District Court protection orders. He argues that the district court entered those protection orders without jurisdiction, and that the orders violated his constitutional right to privacy and free speech. Strand also assigns error to the district court's finding of fact 1.6. Rocha argues that this court should decline to review the district court orders because they are moot, and Strand did not appeal them. We agree with Rocha.

"A case becomes moot when a court can no longer provide effective relief." *Gronquist v. Dep't of Corr.*, 196 Wn.2d 564, 569, 475 P.3d 497 (2020). The expiration of a protection order renders an appeal of that order moot. *See Price v. Price*, 174 Wn. App. 894, 902, 301 P.3d 486 (2013).

Strand raises several issues in his appeal regarding the district court protection orders, including that the district court erred in entering a finding of fact. But the permanent district court order was vacated, and the temporary order expired on July 15, 2021. Accordingly, we cannot provide effective relief and these issues are moot.

II. SUBJECT MATTER JURISDICTION AND STATUTORY COMPLIANCE

Strand argues that the superior court lacked subject matter jurisdiction to issue the protection order because Rocha's petition did not conform to former RCW 10.14.040(1) because it lacked specific facts and circumstances warranting relief. Rocha argues that her petition substantially complied with the statute. We hold that the trial court had jurisdiction and that Rocha's petition complied with the statute.

WASH. CONST. art. IV, § 6 bestows broad jurisdiction over most original court actions. "'If the type of controversy is within the subject matter jurisdiction, then all other defects or errors go to something other than subject matter jurisdiction.'" *Dougherty v. Dep't of Labor & Indus.*, 150 Wn.2d 310, 316, 76 P.3d 1183 (2003) (quoting *Marley v. Dep't of Labor & Indus.*, 125 Wn.2d 533, 539, 886 P.2d 189 (1994)). The determination of subject matter jurisdiction is a question of law reviewed de novo. *Dougherty*, 150 Wn.2d at 314.

Neither party here argues that the type of controversy at issue is not within the general subject matter jurisdiction granted by the constitution. Strand argues only that Rocha's allegedly defective petition somehow deprived the superior court of jurisdiction. But Strand does not explain how a defective petition can deprive the trial court of subject matter jurisdiction. Moreover, defective pleadings generally are not exceptions to the constitution's jurisdictional grant. *See MHM & F, LLC v. Pryor*, 168 Wn. App. 451, 460, 277 P.3d 62 (2012). Thus, any

argument regarding the form of the petition is "something other than subject matter jurisdiction." Accordingly, the superior court had subject matter jurisdiction to issue the order.

Moreover, Rocha's petition complied with former RCW 10.14.040(1). Under that statute, petitions for protection orders "shall allege the existence of harassment and shall be accompanied by an affidavit made under oath stating the specific facts and circumstances from which relief is sought." RCW 10.14.040(1) Of note,

> "Unlawful harassment" means a knowing and willful course of conduct directed at a specific person which seriously alarms, annoys, harasses, or is detrimental to such person, and which serves no legitimate or lawful purpose. The course of conduct shall be such as would cause a reasonable person to suffer substantial emotional distress, and shall actually cause substantial emotional distress to the petitioner, or, when the course of conduct would cause a reasonable parent to fear for the well-being of their child.

Former RCW 10.14.020(2) (2018).

Here, Rocha signed a petition under oath that alleged that Strand stole a copy of her son's birth certificate, harassed and tracked her new phone number, bullied her online as well as through government agencies, filed unfounded court proceedings, and stalked her family. Strand argues Rocha's petition is void of specific facts, but we disagree.

Strand also argues that the attachments to the petition should not be considered because they are not individually signed under the penalty of perjury as required by GR 13. But the court-approved petition form expressly gives the petitioner the option to attach certain types of evidence other than testimony to the petition, like copies of emailed messages, social media messages, and text messages. Rocha checked five such boxes. And on the very next page, she certified the petition under the penalty of perjury. CP at 6. Accordingly, the petition complies

with GR 13. Thus, the attachments are properly considered when determining if Rocha complied with the statute.

The petition alleges that Strand made hostile remarks to Rocha, including that her "life is a lie" and that she is "fake news." CP at 9. It also alleges that Strand made a Facebook post referring to Rocha as a "crazy lady." CP at 12. Further, it alleges that Strand sent "300 harassing messages [to her] cell phone referencing to [her] family as child predators." CP at 14. These allegations are sufficiently specific. Moreover, the alleged hostility and volume of the comments in conjunction with Strand's alleged stalking gives an inference that unlawful harassment had occurred. Because Rocha provided specific factual allegations, we hold that Rocha complied with the statute.

We hold that the superior court had jurisdiction to issue the protection order. And in any case, we hold that the petition complied with the statute.

III. FAILURE TO ISSUE SPECIFIC FINDINGS

Strand makes several arguments alleging that the superior court erred when it issued the protection order and denied his motion to restrict Rocha's abusive litigation because the superior court did not make findings of fact as to either ruling. We hold that the superior court's findings of fact are insufficient to permit review.

Following proceedings where findings of fact are necessary for appellate review, "we review the trial court's findings of fact . . . to determine whether they are supported by substantial evidence, and [] then review whether those findings support the trial court's conclusions of law." *Tiller v. Lackey*, 6 Wn. App. 2d 470, 484, 431 P.3d 524 (2018). A conclusion of law is "a result which follows from examination and consideration of

circumstances in a particular case and interpretation and application of legal principles to those facts." *City of Tacoma v. O'Brien*, 85 Wn.2d 266, 272, 534 P.2d 114 (1975). Where findings merely parrot statutory language, they are generally conclusions of law. *In re C.R.B.*, 62 Wn. App. 608, 618-19, 814 P.2d 1197 (1991).

A. *Protection Order*

Strand argues that the protection order must be remanded because the superior court violated CR 52(a)(1) when it failed to issue written findings of fact. Strand also seems to argue that even if specific findings of fact were not required, the superior court erred in issuing the protective order because a preponderance of the evidence did not show that unlawful harassment existed.[2] We agree that the trial court failed to make necessary findings of fact, and we decline to consider Strand's sufficiency of the evidence argument.

CR 52(a)(1) provides that when an action is tried without a jury, the court must "find the facts specially and state separately its conclusions of law." Such findings "should at least be sufficient to indicate the factual bases for the ultimate conclusions." *In re Detention of LaBelle*, 107 Wn.2d 196, 218, 728 P.2d 138 (1986). Where the trial court fails to enter the required factual findings, an appellate court "cannot review an assignment of error which requires consideration of whether there was sufficient evidence to support such findings." *State v. Denison*, 78 Wn. App. 566, 570, 897 P.2d 437 (1995).

Although CR 52 generally requires written findings in any matter tried without a jury, appellate courts in antiharassment order cases have considered findings contained in the trial

[2] Because there are no findings of fact, we do not review Strand's argument that the evidence does not support the superior court's order.

courts' oral rulings. *See Trummel v. Mitchell*, 156 Wn.2d 653, 657-58, 131 P.3d 305 (2006); *Price*, 174 Wn. App. at 900-01. We recognize that requests for civil protection orders can arise in matters with varying degrees of complexity and formality. Accordingly, we impose no onerous requirement that trial court enter written findings of fact in these actions. However, when there are competing testimonies, the trial court should articulate a sufficient factual basis for this court to conduct a meaningful review.

Here, the superior court entered no written findings but did make an oral ruling regarding the issuance of the protection order.[3] The court stated:

> Based on the information that's been provided . . . Mr. Strand has engaged in a knowing and willful course of conduct directed at Ms. Rocha, which seriously alarmed, annoyed, or harassed her and was detrimental to her person and served no legitimate or lawful purpose.
>
> This course of conduct was one that would cause a reasonable person to suffer substantial emotional distress and would actually cause substantial emotional distress to the petitioner.

RP at 41-42. However, this oral ruling contains no findings of fact. Rather, these statements are merely a recitation of the legal definition of unlawful harassment. Former RCW 10.14.020(2) (2018). Moreover, these statements are a result which follows from examination and consideration of circumstances in this case and an application of legal principles to those facts. As such, they are legal conclusions. The court made no other findings regarding the issuance of a protective order. Because the superior court heard conflicting testimony and considered conflicting evidence, we cannot determine the factual bases for the legal conclusion that unlawful harassment occurred without reviewing findings of fact.

[3] We note that there is no area on the superior court's order form to even include such findings.

B. *Abusive Litigation Provision*

Strand argues the superior court made no findings as to why he was not entitled to an order restricting abusive litigation under CR 52(a)(2)(C). He also seems to argue that because he met his evidentiary burden regarding the RCW 26.51.020 factors, the superior court abused its discretion by denying his requested order restricting abusive litigation. We agree that this case should be remanded for findings, but we decline to consider Strand's sufficiency of the evidence argument.

CR 52(a)(2)(C) provides that "findings and conclusions are required: . . . [i]n connection with any other decision where findings and conclusions are specifically required by statute, by another rule, or by a local rule of the superior court." And RCW 26.51.060(3) provides, "If the court finds by a preponderance of the evidence that the litigation does not constitute abusive litigation, the court shall enter written findings and the litigation shall proceed."

Here, the superior court's order states only that Rocha "has [not] engaged in abusive litigation." CP at 242. Because this sentence is an interpretation and application of legal principles to the facts of the case, this is not a factual finding, but a legal conclusion. The superior court made no factual findings as to why Strand was not entitled to relief. This failure is in violation of CR 52(a)(2)(C) and RCW 26.51.060(3).

Accordingly, we cannot engage in meaningful appellate review of the superior court's denial of Rocha's request to restrict abusive litigation because it is not clear what factual bases the superior court relied on to deny Rocha's request.

ATTORNEY FEES

Rocha argues that she is entitled to reasonable attorney fees on appeal under former RCW 10.14.090(2) because she had to respond to baseless arguments and has been subject to years of harassment inside and outside the legal system. We disagree.

RAP 18.1(a)-(b) provides for the recovery of reasonable attorney fees on appeal if "applicable law grants to a party the right to recover reasonable attorney fees or expenses on review" and the party properly requests it. In an anti-harassment action, the trial court may require the respondent to reimburse the petitioner for reasonable attorney fees. Former RCW 10.14.090(2). Accordingly, we have discretion to award fees and costs. Because Rocha does not prevail on appeal, we deny her request for attorney fees.

CONCLUSION

First, we hold that Strand's challenges regarding the district court's protection order are moot. Second, we hold that the superior court had jurisdiction to issue the protection order. Third, we hold that the superior court erred when it failed to make specific findings of fact as to why it issued the protection order and denied the order restricting abusive litigation. Lastly, we refuse to review whether any findings are substantially supported by the evidence because the superior court did not make the required factual findings.

Accordingly, we vacate the protection order and the denial of the motion for an order restricting abusive litigation and remand with instructions to the superior court to make and enter necessary findings of fact and conclusions of law to be followed by the entry of an appropriate order based on those findings and conclusions.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

Worswick, P.J.

We concur:

Maxa, J.

Price, J.

Filed
Washington State
Court of Appeals
Division Two

November 28, 2022

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

AMOREA ROCHA, Respondent, v. HAMAL STRAND, Appellant.	No. 56175-1-II ORDER DENYING MOTION FOR RECONSIDERATION

Appellant, Hamal Strand, filed a motion for reconsideration of the court's November 1, 2022 unpublished opinion. After consideration, the court denies the motion for reconsideration. Accordingly, it is

SO ORDERED

PANEL: Jj. Worswick, Maxa, Price

FOR THE COURT:

Worswick, P.J.

Filed
Washington State
Court of Appeals
Division Two

December 5, 2022

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

AMOREA ROCHA, Respondent, v. HAMAL STRAND, Appellant.	No. 56175-1-II ORDER DENYING MOTION TO PUBLISH

Non-party Evangeline Stratton, on behalf of Family Violence Appellate Project, filed a motion to publish in-part § III(B) of the court's November 1, 2022 opinion pursuant to RAP 12.3(e). After consideration, the motion to publish is denied. Accordingly, it is

SO ORDERED.

PANEL: Jj. Worswick, Maxa, Price

FOR THE COURT:

Worswick JPT

Worswick, J.P.T.

Chapter 10.14 RCW

HARASSMENT

Sections

RCW 10.14.010

Legislative finding, intent. *(Effective until July 1, 2022.)*

The legislature finds that serious, personal harassment through repeated invasions of a person's privacy by acts and words showing a pattern of harassment designed to coerce, intimidate, or humiliate the victim is increasing. The legislature further finds that the prevention of such harassment is an important governmental objective. This chapter is intended to provide victims with a speedy and inexpensive method of obtaining civil antiharassment protection orders preventing all further unwanted contact between the victim and the perpetrator.

[1987 c 280 § 1.]

RCW 10.14.020

Definitions. *(Effective until July 1, 2022.)*

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Course of conduct" means a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose. "Course of conduct" includes, in addition to any other form of communication, contact, or conduct, the sending of an electronic communication, but does not include constitutionally protected free speech. Constitutionally protected activity is not included within the meaning of "course of conduct."

(2) "Unlawful harassment" means a knowing and willful course of conduct directed at a specific person which seriously alarms, annoys, harasses, or is detrimental to such person, and which serves no legitimate or lawful purpose. The course of conduct shall be such as would cause a reasonable person to suffer substantial emotional distress, and shall actually cause substantial emotional distress to the petitioner, or, when the course of conduct would cause a reasonable parent to fear for the well-being of their child.

[2011 c 307 § 2; 2001 c 260 § 2; 1999 c 27 § 4; 1995 c 127 § 1; 1987 c 280 § 2.]

NOTES:

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Findings—Intent—2001 c 260: "The legislature finds that unlawful harassment directed at a child by a person under the age of eighteen is not acceptable and can have serious consequences. The legislature further finds that some interactions between minors, such as "schoolyard scuffles," though not to be condoned, may not rise to the level of unlawful harassment. It is the intent of the legislature that a protection order sought by the parent or guardian of a child as provided for in this chapter be available only when the alleged behavior of the person under the age of eighteen to be restrained rises to the level set forth in chapter 10.14 RCW." [2001 c 260 § 1.]

Intent—1999 c 27: See note following RCW 9A.46.020.

RCW 10.14.030

Course of conduct—Determination of purpose. *(Effective until July 1, 2022.)*

In determining whether the course of conduct serves any legitimate or lawful purpose, the court should consider whether:

(1) Any current contact between the parties was initiated by the respondent only or was initiated by both parties;

(2) The respondent has been given clear notice that all further contact with the petitioner is unwanted;

(3) The respondent's course of conduct appears designed to alarm, annoy, or harass the petitioner;

(4) The respondent is acting pursuant to any statutory authority, including but not limited to acts which are reasonably necessary to:

(a) Protect property or liberty interests;

(b) Enforce the law; or

(c) Meet specific statutory duties or requirements;

(5) The respondent's course of conduct has the purpose or effect of unreasonably interfering with the petitioner's privacy or the purpose or effect of creating an intimidating, hostile, or offensive living environment for the petitioner;

(6) Contact by the respondent with the petitioner or the petitioner's family has been limited in any manner by any previous court order.

[1987 c 280 § 3.]

RCW 10.14.040

Protection order—Petition. *(Effective until July 1, 2022.)*

There shall exist an action known as a petition for an order for protection in cases of unlawful harassment.

(1) A petition for relief shall allege the existence of harassment and shall be accompanied by an affidavit made under oath stating the specific facts and circumstances from which relief is sought.

(2) A petition for relief may be made regardless of whether or not there is a pending lawsuit, complaint, petition, or other action between the parties.

(3) All court clerks' offices shall make available simplified forms and instructional brochures. Any assistance or information provided by clerks under this section does not constitute the practice of law and clerks are not responsible for incorrect information contained in a petition.

(4) Filing fees are set in RCW 36.18.020, but no filing fee may be charged for a petition filed in an existing action or under an existing cause number brought under this chapter in the jurisdiction where the relief is sought or as provided in RCW 10.14.055. Forms and instructional brochures shall be provided free of charge.

(5) A person is not required to post a bond to obtain relief in any proceeding under this section.

(6) The parent or guardian of a child under age eighteen may petition for an order of protection to restrain a person age eighteen years or over from contact with that child upon a showing that contact with the person to be enjoined is detrimental to the welfare of the child.

(7) The parent or guardian of a child under the age of eighteen may petition in superior court for an order of protection to restrain a person under the age of eighteen years from contact with that child only in cases where the person to be restrained has been adjudicated of an offense against the child protected by the order, or is under investigation or has been investigated for such an offense. In issuing a protection order under this subsection, the court shall consider, among the other facts of the case, the severity of the alleged offense, any continuing physical danger or emotional distress to the alleged victim, and the expense, difficulty, and educational disruption that would be caused by a transfer of the alleged offender to

another school. The court may order that the person restrained in the order not attend the public or approved private elementary, middle, or high school attended by the person under the age of eighteen years protected by the order. In the event that the court orders a transfer of the restrained person to another school, the parents or legal guardians of the person restrained in the order are responsible for transportation and other costs associated with the change of school by the person restrained in the order. The court shall send notice of the restriction on attending the same school as the person protected by the order to the public or approved private school the person restrained by the order will attend and to the school the person protected by the order attends.

[2002 c 117 § 1; 2001 c 260 § 3. Prior: 1995 c 292 § 2; 1995 c 127 § 2; 1987 c 280 § 4.]

NOTES:

Findings—Intent—2001 c 260: See note following RCW 10.14.020.

RCW 10.14.045

Protection order commissioners—Appointment authorized. *(Effective until July 1, 2022.)*

In each county, the superior court may appoint one or more attorneys to act as protection order commissioners pursuant to this chapter to exercise all powers and perform all duties of a court commissioner appointed pursuant to RCW 2.24.010 provided that such positions may not be created without prior consent of the county legislative authority. A person appointed as a protection order commissioner under this chapter may also be appointed to any other commissioner position authorized by law.

[2013 c 84 § 20.]

RCW 10.14.050

Administrator for courts—Forms, information. *(Effective until July 1, 2022.)*

The administrator for the courts shall develop and prepare, in consultation with interested persons, model forms and instructional brochures required under RCW 10.14.040(3).

[1987 c 280 § 5.]

RCW 10.14.055

Fees excused, when. *(Effective until July 1, 2022.)*

No fees for filing or service of process may be charged by a public agency to petitioners seeking relief under this chapter from a person who has stalked them as that term is defined in RCW 9A.46.110, or from a person who has engaged in conduct that would constitute a sex offense as defined in RCW

9A.44.128, or from a person who is a family or household member or intimate partner as defined in RCW 26.50.010 who has engaged in conduct that would constitute domestic violence as defined in RCW 26.50.010.

[2020 c 29 § 8; 2002 c 117 § 2.]

NOTES:

Effective date—2020 c 29: See note following RCW 7.77.060.

RCW 10.14.060

Proceeding in forma pauperis. *(Effective until July 1, 2022.)*

Persons seeking relief under this chapter may file an application for leave to proceed in forma pauperis on forms supplied by the court. If the court determines that a petitioner lacks the funds to pay the costs of filing, the petitioner shall be granted leave to proceed in forma pauperis and no filing fee or any other court related fees shall be charged by the court to the petitioner for relief sought under this chapter. If the petitioner is granted leave to proceed in forma pauperis, then no fees for service may be charged to the petitioner.

[1987 c 280 § 6.]

RCW 10.14.065

Orders—Judicial information system to be consulted. *(Effective until July 1, 2022.)*

Before granting an order under this chapter, the court may consult the judicial information system, if available, to determine criminal history or the pendency of other proceedings involving the parties.

[2011 c 307 § 6.]

RCW 10.14.070

Hearing—Service. *(Effective until July 1, 2022.)*

Upon receipt of the petition alleging a prima facie case of harassment, other than a petition alleging a sex offense as defined in chapter 9A.44 RCW or a petition for a stalking protection order under chapter 7.92 RCW, the court shall order a hearing which shall be held not later than fourteen days from the date of the order. If the petition alleges a sex offense as defined in chapter 9A.44 RCW, the court shall order a hearing which shall be held not later than fourteen days from the date of the order. Except as provided in RCW 10.14.085, personal service shall be made upon the respondent not less than five court days before the hearing. If timely personal service cannot be made, the court shall set a new hearing date and shall either require additional attempts at obtaining personal service or permit service by publication as provided by RCW 10.14.085. If the court permits service by publication, the court shall set the hearing date not later

than twenty-four days from the date of the order. The court may issue an ex parte order for protection pending the hearing as provided in RCW 10.14.080 and 10.14.085.

[2013 c 84 § 30; 2005 c 144 § 1; 1992 c 143 § 10; 1987 c 280 § 7.]

RCW 10.14.080

Antiharassment protection orders—Ex parte temporary—Hearing—Longer term, renewal—Acts not prohibited. *(Effective until July 1, 2022.)*

(1) Upon filing a petition for a civil antiharassment protection order under this chapter, the petitioner may obtain an ex parte temporary antiharassment protection order. An ex parte temporary antiharassment protection order may be granted with or without notice upon the filing of an affidavit which, to the satisfaction of the court, shows reasonable proof of unlawful harassment of the petitioner by the respondent and that great or irreparable harm will result to the petitioner if the temporary antiharassment protection order is not granted. If the court declines to issue an ex parte temporary antiharassment protection order, the court shall state the particular reasons for the court's denial. The court's denial of a motion for an ex parte temporary order shall be filed with the court.

(2) An ex parte temporary antiharassment protection order shall be effective for a fixed period not to exceed fourteen days or twenty-four days if the court has permitted service by publication under RCW 10.14.085. The ex parte order may be reissued. A full hearing, as provided in this chapter, shall be set for not later than fourteen days from the issuance of the temporary order or not later than twenty-four days if service by publication is permitted. Except as provided in RCW 10.14.070 and 10.14.085, the respondent shall be personally served with a copy of the ex parte order along with a copy of the petition and notice of the date set for the hearing. The ex parte order and notice of hearing shall include at a minimum the date and time of the hearing set by the court to determine if the temporary order should be made effective for one year or more, and notice that if the respondent should fail to appear or otherwise not respond, an order for protection will be issued against the respondent pursuant to the provisions of this chapter, for a minimum of one year from the date of the hearing. The notice shall also include a brief statement of the provisions of the ex parte order and notify the respondent that a copy of the ex parte order and notice of hearing has been filed with the clerk of the court.

(3) At the hearing, if the court finds by a preponderance of the evidence that unlawful harassment exists, a civil antiharassment protection order shall issue prohibiting such unlawful harassment.

(4) An order issued under this chapter shall be effective for not more than one year unless the court finds that the respondent is likely to resume unlawful harassment of the petitioner when the order expires. If so, the court may enter an order for a fixed time exceeding one year or may enter a permanent antiharassment protection order. The court shall not enter an order that is effective for more than one year if the order restrains the respondent from contacting the respondent's minor children. This limitation is not applicable to civil antiharassment protection orders issued under chapter 26.09, *26.10, 26.26A, or 26.26B RCW. If the petitioner seeks relief for a period longer than one year on behalf of the respondent's minor children, the court shall advise the petitioner that the petitioner may apply for renewal of the order as provided in this chapter or if appropriate may seek relief pursuant to chapter 26.09 or * 26.10 RCW.

(5) At any time within the three months before the expiration of the order, the petitioner may apply for a renewal of the order by filing a petition for renewal. The petition for renewal shall state the reasons why the petitioner seeks to renew the protection order. Upon receipt of the petition for renewal, the court shall order a hearing which shall be not later than fourteen days from the date of the order. Except as provided in RCW 10.14.085, personal service shall be made upon the respondent not less than five days before the hearing. If timely service cannot be made the court shall set a new hearing date and shall either require additional attempts at obtaining personal service or permit service by publication as provided by RCW

10.14.085. If the court permits service by publication, the court shall set the new hearing date not later than twenty-four days from the date of the order. If the order expires because timely service cannot be made the court shall grant an ex parte order of protection as provided in this section. The court shall grant the petition for renewal unless the respondent proves by a preponderance of the evidence that the respondent will not resume harassment of the petitioner when the order expires. The court may renew the protection order for another fixed time period or may enter a permanent order as provided in subsection (4) of this section.

(6) The court, in granting an ex parte temporary antiharassment protection order or a civil antiharassment protection order, shall have broad discretion to grant such relief as the court deems proper, including an order:

(a) Restraining the respondent from making any attempts to contact the petitioner;

(b) Restraining the respondent from making any attempts to keep the petitioner under surveillance; and

(c) Requiring the respondent to stay a stated distance from the petitioner's residence and workplace.

(7) In issuing the order, the court shall consider the provisions of RCW 9.41.800, and shall order the respondent to surrender, and prohibit the respondent from possessing, all firearms, dangerous weapons, and any concealed pistol license as required in RCW 9.41.800.

(8) The court in granting an ex parte temporary antiharassment protection order or a civil antiharassment protection order shall not prohibit the respondent from exercising constitutionally protected free speech. Nothing in this section prohibits the petitioner from utilizing other civil or criminal remedies to restrain conduct or communications not otherwise constitutionally protected.

(9) The court in granting an ex parte temporary antiharassment protection order or a civil antiharassment protection order shall not prohibit the respondent from the use or enjoyment of real property to which the respondent has a cognizable claim unless that order is issued under chapter 26.09 RCW or under a separate action commenced with a summons and complaint to determine title or possession of real property.

(10) The court in granting an ex parte temporary antiharassment protection order or a civil antiharassment protection order shall not limit the respondent's right to care, control, or custody of the respondent's minor child, unless that order is issued under chapter 13.32A, 26.09, *26.10, 26.26A, or 26.26B RCW.

(11) A petitioner may not obtain an ex parte temporary antiharassment protection order against a respondent if the petitioner has previously obtained two such ex parte orders against the same respondent but has failed to obtain the issuance of a civil antiharassment protection order unless good cause for such failure can be shown.

(12) The court order shall specify the date an order issued pursuant to subsections (4) and (5) of this section expires if any. The court order shall also state whether the court issued the protection order following personal service or service by publication and whether the court has approved service by publication of an order issued under this section.

[2019 c 245 § 11; 2019 c 46 § 5011; 2011 c 307 § 3; 2001 c 311 § 1; 1995 c 246 § 36; 1994 sp.s. c 7 § 448; 1992 c 143 § 11; 1987 c 280 § 8.]

NOTES:

Reviser's note: *(1) Chapter 26.10 RCW, with the exception of RCW 26.10.115, was repealed by 2020 c 312 § 905, effective January 1, 2021.

(2) This section was amended by 2019 c 46 § 5011 and by 2019 c 245 § 11, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—1995 c 246: See note following RCW **26.50.010**.

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW **43.70.540**.

Effective date—1994 sp.s. c 7 §§ 401-410, 413-416, 418-437, and 439-460: See note following RCW **9.41.010**.

RCW 10.14.085

Hearing reset after ex parte order—Service by publication—Circumstances. *(Effective until July 1, 2022.)*

(1) If the respondent was not personally served with the petition, notice of hearing, and ex parte order before the hearing, the court shall reset the hearing for twenty-four days from the date of entry of the order and may order service by publication instead of personal service under the following circumstances:

(a) The sheriff or municipal officer files an affidavit stating that the officer was unable to complete personal service upon the respondent. The affidavit must describe the number and types of attempts the officer made to complete service;

(b) The petitioner files an affidavit stating that the petitioner believes that the respondent is hiding from the server to avoid service. The petitioner's affidavit must state the reasons for the belief that the respondent is avoiding service;

(c) The server has deposited a copy of the summons, in substantially the form prescribed in subsection (3) of this section, notice of hearing, and the ex parte order of protection in the post office, directed to the respondent at the respondent's last known address, unless the server states that the server does not know the respondent's address; and

(d) The court finds reasonable grounds exist to believe that the respondent is concealing himself or herself to avoid service, and that further attempts to personally serve the respondent would be futile or unduly burdensome.

(2) The court shall reissue the temporary order of protection not to exceed another twenty-four days from the date of reissuing the ex parte protection order and order to provide service by publication.

(3) The publication shall be made in a newspaper of general circulation in the county where the petition was brought and in the county of the last known address of the respondent once a week for three consecutive weeks. The newspaper selected must be one of the three most widely circulated papers in the county. The publication of summons shall not be made until the court orders service by publication under this section. Service of the summons shall be considered complete when the publication has been made for three consecutive weeks. The summons must be signed by the petitioner. The summons shall contain the date of the first publication, and shall require the respondent upon whom service by publication is desired, to appear and answer the petition on the date set for the hearing. The summons shall also contain a brief statement of the reason for the petition and a summary of the provisions under the ex parte order. The summons shall be essentially in the following form:

In the ..... court of the state of Washington for the county of .....

....., Petitioner

vs. No. .....

....., Respondent

The state of Washington to ..... (respondent):

You are hereby summoned to appear on the

. . . . day of . . . . . ., (year) . . . ., at . . . . a.m./p.m., and respond to the petition. If you fail to respond, an order of protection will be issued against you pursuant to the provisions of chapter 10.14 RCW, for a minimum of one year from the date you are required to appear. A temporary order of protection has been issued against you, restraining you from the following: (Insert a brief statement of the provisions of the ex parte order). A copy of the petition, notice of hearing, and ex parte order has been filed with the clerk of this court.

. . . .
Petitioner . . . .

[2016 c 202 § 4; 1992 c 143 § 12.]

RCW 10.14.090

Representation or appearance. *(Effective until July 1, 2022.)*

(1) Nothing in this chapter shall preclude either party from representation by private counsel or from appearing on his or her own behalf.

(2) The court may require the respondent to pay the filing fee and court costs, including service fees, and to reimburse the petitioner for costs incurred in bringing the action, including a reasonable attorney's fee. If the petitioner has been granted leave to proceed in forma pauperis, the court may require the respondent to pay the filing fee and costs, including services fees, to the county or municipality incurring the expense.

[1992 c 143 § 14; 1987 c 280 § 9.]

RCW 10.14.100

Service of order. *(Effective until July 1, 2022.)*

(1) An order issued under this chapter shall be personally served upon the respondent, except as provided in subsections (5) and (7) of this section.

(2) The sheriff of the county or the peace officers of the municipality in which the respondent resides shall serve the respondent personally unless the petitioner elects to have the respondent served by a private party. If the order includes a requirement under RCW 9.41.800 for the immediate surrender of all firearms, dangerous weapons, and any concealed pistol license, the order must be served by a law enforcement officer.

(3) If the sheriff or municipal peace officer cannot complete service upon the respondent within ten days, the sheriff or municipal peace officer shall notify the petitioner.

(4) Returns of service under this chapter shall be made in accordance with the applicable court rules.

(5) If an order entered by the court recites that the respondent appeared in person before the court, the necessity for further service is waived and proof of service of that order is not necessary. The court's order, entered after a hearing, need not be served on a respondent who fails to appear before the court, if material terms of the order have not changed from those contained in the temporary order, and it is shown

to the court's satisfaction that the respondent has previously been personally served with the temporary order.

(6) Except in cases where the petitioner has fees waived under RCW **10.14.055** or is granted leave to proceed in forma pauperis, municipal police departments serving documents as required under this chapter may collect the same fees for service and mileage authorized by RCW **36.18.040** to be collected by sheriffs.

(7) If the court previously entered an order allowing service by publication of the notice of hearing and temporary order of protection pursuant to RCW **10.14.085**, the court may permit service by publication of the order of protection issued under RCW **10.14.080**. Service by publication must comply with the requirements of RCW **10.14.085**.

[**2019 c 245 § 12**; **2002 c 117 § 3**; **2001 c 311 § 2**; **1992 c 143 § 15**; **1987 c 280 § 10**.]

RCW 10.14.105

Order following service by publication. *(Effective until July 1, 2022.)*

Following completion of service by publication as provided in RCW **10.14.085**, if the respondent fails to appear at the hearing, the court may issue an order of protection as provided in RCW **10.14.080**. That order must be served pursuant to RCW **10.14.100**, and forwarded to the appropriate law enforcement agency pursuant to RCW **10.14.110**.

[**1992 c 143 § 13**.]

RCW 10.14.110

Notice to law enforcement agencies—Enforceability. *(Effective until July 1, 2022.)*

(1) A copy of an antiharassment protection order granted under this chapter shall be forwarded by the clerk of the court on or before the next judicial day to the appropriate law enforcement agency specified in the order.

Upon receipt of the order, the law enforcement agency shall forthwith enter the order into any computer-based criminal intelligence information system available in this state used by law enforcement agencies to list outstanding warrants. The law enforcement agency shall expunge expired orders from the computer system. Entry into the law enforcement information system constitutes notice to all law enforcement agencies of the existence of the order. The order is fully enforceable in any county in the state.

(2) The information entered into the computer-based system shall include notice to law enforcement whether the order was personally served or served by publication.

[**1992 c 143 § 16**; **1987 c 280 § 11**.]

RCW 10.14.115

Enforcement of order—Knowledge prerequisite to penalties—Reasonable efforts to serve copy of order. *(Effective until July 1, 2022.)*

(1) When the court issues an order of protection pursuant to RCW 10.14.080, the court shall advise the petitioner that the respondent may not be subjected to the penalties set forth in RCW 10.14.120 and 10.14.170 for a violation of the order unless the respondent knows of the order.

(2) When a peace officer investigates a report of an alleged violation of an order for protection issued under this chapter the officer shall attempt to determine whether the respondent knew of the existence of the protection order. If the officer determines that the respondent did not or probably did not know about the protection order, the officer shall make reasonable efforts to obtain a copy of the protection order and serve it on the respondent during the investigation.

[1992 c 143 § 17.]

RCW 10.14.120

Disobedience of order—Penalties. *(Effective until July 1, 2022.)*

Any willful disobedience by a respondent age eighteen years or over of any temporary antiharassment protection order or civil antiharassment protection order issued under this chapter subjects the respondent to criminal penalties under this chapter. Any respondent age eighteen years or over who willfully disobeys the terms of any order issued under this chapter may also, in the court's discretion, be found in contempt of court and subject to penalties under chapter 7.21 RCW. Any respondent under the age of eighteen years who willfully disobeys the terms of an order issued under this chapter may, in the court's discretion, be found in contempt of court and subject to the sanction specified in RCW 7.21.030(4).

[2001 c 260 § 4; 1989 c 373 § 14; 1987 c 280 § 12.]

NOTES:

Findings—Intent—2001 c 260: See note following RCW 10.14.020.

RCW 10.14.125

Service by publication—Costs. *(Effective until July 1, 2022.)*

The court may permit service by publication under this chapter only if the petitioner pays the cost of publication or if the petitioner's costs have been waived pursuant to RCW 10.14.055, unless the county legislative authority allocates funds for service of process by publication for petitioners who are granted leave to proceed in forma pauperis.

[2002 c 117 § 4; 1992 c 143 § 18.]

RCW 10.14.130

Exclusion of certain actions. *(Effective until July 1, 2022.)*

Protection orders authorized under this chapter shall not be issued for any action specifically covered by chapter 7.90, 10.99, or 26.50 RCW.

[2006 c 138 § 22; 1987 c 280 § 13.]

NOTES:

Short title—2006 c 138: See RCW 7.90.900.

RCW 10.14.140

Other remedies. *(Effective until July 1, 2022.)*

Nothing in this chapter shall preclude a petitioner's right to utilize other existing civil remedies.

[1987 c 280 § 14.]

RCW 10.14.150

Jurisdiction. *(Effective until July 1, 2022.)*

(1) The district courts shall have original jurisdiction and cognizance of any civil actions and proceedings brought under this chapter, except the district court shall transfer such actions and proceedings to the superior court when it is shown that (a) the respondent to the petition is under eighteen years of age; (b) the action involves title or possession of real property; (c) a superior court has exercised or is exercising jurisdiction over a proceeding involving the parties; or (d) the action would have the effect of interfering with a respondent's care, control, or custody of the respondent's minor child.

(2) Municipal courts may exercise jurisdiction and cognizance of any civil actions and proceedings brought under this chapter by adoption of local court rule, except the municipal court shall transfer such actions and proceedings to the superior court when it is shown that (a) the respondent to the petition is under eighteen years of age; (b) the action involves title or possession of real property; (c) a superior court has exercised or is exercising jurisdiction over a proceeding involving the parties; or (d) the action would have the effect of interfering with a respondent's care, control, or custody of the respondent's minor child.

(3) The civil jurisdiction of district and municipal courts under this chapter is limited to the issuance and enforcement of temporary orders for protection in cases that require transfer to superior court under subsections (1) and (2) of this section. The district or municipal court shall transfer the case to superior court after the temporary order is entered.

(4) Superior courts shall have concurrent jurisdiction to receive transfer of antiharassment petitions in cases where a district or municipal court judge makes findings of fact and conclusions of law showing that meritorious reasons exist for the transfer.

(5) The municipal and district courts shall have jurisdiction and cognizance of any criminal actions brought under RCW 10.14.120 and 10.14.170.

[2019 c 216 § 1; 2011 c 307 § 1; 2005 c 196 § 1; 1999 c 170 § 1; 1991 c 33 § 2; 1987 c 280 § 15.]

NOTES:

Effective date—1991 c 33: See note following RCW 3.66.020.

RCW 10.14.155

Personal jurisdiction—Nonresident individual. *(Effective until July 1, 2022.)*

(1) In a proceeding in which a petition for an order for protection under this chapter is sought, a court of this state may exercise personal jurisdiction over a nonresident individual if:

(a) The individual is personally served with a petition within this state;

(b) The individual submits to the jurisdiction of this state by consent, entering a general appearance, or filing a responsive document having the effect of waiving any objection to consent to personal jurisdiction;

(c) The act or acts of the individual or the individual's agent giving rise to the petition or enforcement of an order for protection occurred within this state;

(d)(i) The act or acts of the individual or the individual's agent giving rise to the petition or enforcement of an order for protection occurred outside this state and are part of an ongoing pattern of harassment that has an adverse effect on the petitioner or a member of the petitioner's family or household and the petitioner resides in this state; or

(ii) As a result of acts of harassment, the petitioner or a member of the petitioner's family or household has sought safety or protection in this state and currently resides in this state; or

(e) There is any other basis consistent with RCW 4.28.185 or with the constitutions of this state and the United States.

(2) For jurisdiction to be exercised under subsection (1)(d)(i) or (ii) of this section, the individual must have communicated with the petitioner or a member of the petitioner's family, directly or indirectly, or made known a threat to the safety of the petitioner or member of the petitioner's family while the petitioner or family member resides in this state. For the purposes of subsection (1)(d)(i) or (ii) of this section, "communicated or made known" includes, but is not limited to, through the mail, telephonically, or a posting on an electronic communication site or medium. Communication on any electronic medium that is generally available to any individual residing in the state shall be sufficient to exercise jurisdiction under subsection (1)(d)(i) or (ii) of this section.

(3) For the purposes of this section, an act or acts that "occurred within this state" includes, but is not limited to, an oral or written statement made or published by a person outside of this state to any person in this state by means of the mail, interstate commerce, or foreign commerce. Oral or written statements sent by electronic mail or the internet are deemed to have "occurred within this state."

[2010 c 274 § 308.]

NOTES:

Intent—2010 c 274: See note following RCW 10.31.100.

RCW 10.14.160

Where action may be brought. *(Effective until July 1, 2022.)*

For the purposes of this chapter an action may be brought in:

(1) The judicial district of the county in which the alleged acts of unlawful harassment occurred;
(2) The judicial district of the county where any respondent resides at the time the petition is filed;
(3) The judicial district of the county where a respondent may be served if it is the same county or judicial district where a respondent resides;
(4) The municipality in which the alleged acts of unlawful harassment occurred;
(5) The municipality where any respondent resides at the time the petition is filed; or
(6) The municipality where a respondent may be served if it is the same county or judicial district where a respondent resides.

[2005 c 196 § 2; 1992 c 127 § 1; 1987 c 280 § 16.]

RCW 10.14.170

Criminal penalty. *(Effective until July 1, 2022.)*

Any respondent age eighteen years or over who willfully disobeys any civil antiharassment protection order issued pursuant to this chapter shall be guilty of a gross misdemeanor.

[2001 c 260 § 5; 1987 c 280 § 17.]

NOTES:

Findings—Intent—2001 c 260: See note following RCW 10.14.020.

RCW 10.14.180

Modification of order. *(Effective until July 1, 2022.)*

Upon application with notice to all parties and after a hearing, the court may modify the terms of an existing order under this chapter. A respondent may file a motion to terminate or modify an order no more than once in every twelve-month period that the order is in effect, starting from the date of the order and continuing through any renewal. In any situation where an order is terminated or modified before its expiration date, the clerk of the court shall forward on or before the next judicial day a true copy of the modified order or the termination order to the appropriate law enforcement agency specified in the modified order or termination order. Upon receipt of the order, the law enforcement agency shall promptly enter it in the law enforcement information system.

[2019 c 245 § 13; 1987 c 280 § 18.]

RCW 10.14.190

Constitutional rights. *(Effective until July 1, 2022.)*

Nothing in this chapter shall be construed to infringe upon any constitutionally protected rights including, but not limited to, freedom of speech and freedom of assembly.

[1987 c 280 § 19.]

RCW 10.14.200

Availability of orders in family law proceedings. *(Effective until July 1, 2022.)*

Any order available under this chapter may be issued in actions under chapter 13.32A, 26.09, *26.10, 26.26A, or 26.26B RCW. An order available under this chapter that is issued under those chapters shall be fully enforceable and shall be enforced pursuant to the provisions of this chapter.

[2019 c 46 § 5012; 1999 c 397 § 4; 1995 c 246 § 35.]

NOTES:

***Reviser's note:** Chapter 26.10 RCW, with the exception of RCW 26.10.115, was repealed by 2020 c 312 § 905, effective January 1, 2021.

Severability—1995 c 246: See note following RCW 26.50.010.

RCW 10.14.210

Court appearance after violation. *(Effective until July 1, 2022.)*

(1) A defendant arrested for violating any civil antiharassment protection order issued pursuant to this chapter is required to appear in person before a magistrate within one judicial day after the arrest. At the time of the appearance, the court shall determine the necessity of imposing a no-contact order or other conditions of pretrial release in accordance with RCW 9A.46.050.

(2) A defendant who is charged by citation, complaint, or information with violating any civil antiharassment protection order issued pursuant to this chapter and not arrested shall appear in court for arraignment in accordance with RCW 9A.46.050.

(3) Appearances required pursuant to this section are mandatory and cannot be waived.

[2012 c 223 § 4.]

RCW 10.14.800

Master petition pattern form to be developed—Recommendations to legislature. *(Effective until July 1, 2022.)*

The legislature respectfully requests that:

(1) By January 1, 2014, the administrative office of the courts shall develop a single master petition pattern form for all antiharassment and stalking protection orders issued under chapter 7.92 RCW and this chapter. The master petition must prompt petitioners to disclose on the form whether the petitioner who is seeking an ex parte order has experienced stalking conduct as defined in RCW 7.92.020. An

antiharassment order and stalking protection order issued under chapter 7.92 RCW and this chapter must substantially comply with the pattern form developed by the administrative office of the courts.

(2) The Washington state supreme court gender and justice commission, to the extent it is able, in consultation with Washington coalition of sexual assault programs, Washington state coalition against domestic violence, Washington association of prosecuting attorneys, Washington association of criminal defense lawyers, and Washington association of sheriffs and police chiefs, consider other potential solutions to reduce confusion about which type of protection order a petitioner should seek and to provide any recommendations to the legislature by January 1, 2014.

[2013 c 84 § 21.]

Chapter 26.51 RCW

ABUSIVE LITIGATION—DOMESTIC VIOLENCE

Sections

RCW 26.51.010

Findings—Intent.

The legislature recognizes that individuals who abuse their intimate partners often misuse court proceedings in order to control, harass, intimidate, coerce, and/or impoverish the abused partner. Court proceedings can provide a means for an abuser to exert and reestablish power and control over a domestic violence survivor long after a relationship has ended. The legal system unwittingly becomes another avenue that abusers exploit to cause psychological, emotional, and financial devastation. This misuse of the court system by abusers has been referred to as legal bullying, stalking through the courts, paper abuse, and similar terms. The legislature finds that the term "abusive litigation" is the most common term and that it accurately describes this problem. Abusive litigation against domestic violence survivors arises in a variety of contexts. Family law cases such as dissolutions, legal separations, parenting plan actions or modifications, and protection order proceedings are particularly common forums for abusive litigation. It is also not uncommon for abusers to file civil lawsuits against survivors, such as defamation, tort, or breach of contract claims. Even if a lawsuit is meritless, forcing a survivor to spend time, money, and emotional resources responding to the action provides a means for the abuser to assert power and control over the survivor.

The legislature finds that courts have considerable authority to respond to abusive litigation tactics, while upholding litigants' constitutional rights to access to the courts. Because courts have inherent authority to control the conduct of litigants, they have considerable discretion to fashion creative remedies in order to curb abusive litigation. The legislature intends to provide the courts with an additional tool to curb abusive litigation and to mitigate the harms abusive litigation perpetuates.

[2020 c 311 § 1.]

RCW 26.51.020

Definitions. *(Effective until July 1, 2022.)*

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Abusive litigation" means litigation where the following apply:

(a)(i) The opposing parties have a current or former intimate partner relationship;

(ii) The party who is filing, initiating, advancing, or continuing the litigation has been found by a court to have committed domestic violence against the other party pursuant to: (A) An order entered under chapter 26.50 RCW; (B) a parenting plan with restrictions based on RCW 26.09.191(2)(a)(iii); or (C) a restraining order entered under chapter 26.09, *26.26, or 26.26A RCW, provided that the issuing court made a specific finding that the restraining order was necessary due to domestic violence; and

(iii) The litigation is being initiated, advanced, or continued primarily for the purpose of harassing, intimidating, or maintaining contact with the other party; and

(b) At least one of the following factors apply:

(i) Claims, allegations, and other legal contentions made in the litigation are not warranted by existing law or by a reasonable argument for the extension, modification, or reversal of existing law, or the establishment of new law;

(ii) Allegations and other factual contentions made in the litigation are without the existence of evidentiary support; or

(iii) An issue or issues that are the basis of the litigation have previously been filed in one or more other courts or jurisdictions and the actions have been litigated and disposed of unfavorably to the party filing, initiating, advancing, or continuing the litigation.

(2) "Intimate partner" is defined in RCW 26.50.010.

(3) "Litigation" means any kind of legal action or proceeding including, but not limited to: (a) Filing a summons, complaint, demand, or petition; (b) serving a summons, complaint, demand, or petition, regardless of whether it has been filed; (c) filing a motion, notice of court date, note for motion docket, or order to appear; (d) serving a motion, notice of court date, note for motion docket, or order to appear, regardless of whether it has been filed or scheduled; (e) filing a subpoena, subpoena duces tecum, request for interrogatories, request for production, notice of deposition, or other discovery request; or (f) serving a subpoena, subpoena duces tecum, request for interrogatories, request for production, notice of deposition, or other discovery request.

(4) "Perpetrator of abusive litigation" means a person who files, initiates, advances, or continues litigation in violation of an order restricting abusive litigation.

[2021 c 65 § 103; 2020 c 311 § 2.]

NOTES:

***Reviser's note:** The majority of chapter 26.26 RCW was repealed by 2018 c 6 § 907. For later enactment of the uniform parentage act, see chapter 26.26A RCW.

Explanatory statement—2021 c 65: See note following RCW 53.54.030.

RCW 26.51.020

Definitions. *(Effective July 1, 2022.)*

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Abusive litigation" means litigation where the following apply:

(a)(i) The opposing parties have a current or former intimate partner relationship;

(ii) The party who is filing, initiating, advancing, or continuing the litigation has been found by a court to have committed domestic violence against the other party pursuant to: (A) An order entered under chapter **7.105** RCW or former chapter **26.50** RCW; (B) a parenting plan with restrictions based on RCW **26.09.191**(2)(a)(iii); or (C) a restraining order entered under chapter **26.09**, 26.26A, or **26.26B** RCW, provided that the issuing court made a specific finding that the restraining order was necessary due to domestic violence; and

(iii) The litigation is being initiated, advanced, or continued primarily for the purpose of harassing, intimidating, or maintaining contact with the other party; and

(b) At least one of the following factors apply:

(i) Claims, allegations, and other legal contentions made in the litigation are not warranted by existing law or by a reasonable argument for the extension, modification, or reversal of existing law, or the establishment of new law;

(ii) Allegations and other factual contentions made in the litigation are without the existence of evidentiary support; or

(iii) An issue or issues that are the basis of the litigation have previously been filed in one or more other courts or jurisdictions and the actions have been litigated and disposed of unfavorably to the party filing, initiating, advancing, or continuing the litigation.

(2) "Intimate partner" is defined in RCW **7.105.010**.

(3) "Litigation" means any kind of legal action or proceeding including, but not limited to: (a) Filing a summons, complaint, demand, or petition; (b) serving a summons, complaint, demand, or petition, regardless of whether it has been filed; (c) filing a motion, notice of court date, note for motion docket, or order to appear; (d) serving a motion, notice of court date, note for motion docket, or order to appear, regardless of whether it has been filed or scheduled; (e) filing a subpoena, subpoena duces tecum, request for interrogatories, request for production, notice of deposition, or other discovery request; or (f) serving a subpoena, subpoena duces tecum, request for interrogatories, request for production, notice of deposition, or other discovery request.

(4) "Perpetrator of abusive litigation" means a person who files, initiates, advances, or continues litigation in violation of an order restricting abusive litigation.

[**2021 c 215 § 143**; **2021 c 65 § 103**; **2020 c 311 § 2**.]

NOTES:

Reviser's note: This section was amended by 2021 c 65 § 103 and by 2021 c 215 § 143, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW **1.12.025**(2). For rule of construction, see RCW **1.12.025**(1).

Effective date—2021 c 215: See note following RCW **7.105.900**.

Explanatory statement—2021 c 65: See note following RCW **53.54.030**.

RCW 26.51.030

Order restricting abusive litigation—Who may request, when—Instructions, brochures, and forms—Fees.

(1) A party to a case may request from the court an order restricting abusive litigation if the parties are current or former intimate partners and one party has been found by the court to have committed domestic violence against the other party:

(a) In any answer or response to the litigation being filed, initiated, advanced, or continued;

(b) By motion made at any time during any open or ongoing case; or

(c) By separate motion made under this chapter, within five years of the entry of an order for protection even if the order has since expired.

(2) Any court of competent jurisdiction may, on its own motion, determine that a hearing pursuant to RCW **26.51.040** is necessary to determine if a party is engaging in abusive litigation.

(3) The administrative office of the courts shall update the instructions, brochures, standard petition, and order for protection forms, and create new forms for the motion for order restricting abusive litigation and order restricting abusive litigation, and update the court staff handbook when changes in the law make an update necessary.

(4) No filing fee may be charged to the unrestricted party for proceedings under this section regardless of whether it is filed under this chapter or another action in this title. Forms and instructional brochures shall be provided free of charge.

(5) The provisions of this section are nonexclusive and do not affect any other remedy available.

[**2020 c 311 § 3**.]

RCW 26.51.040

Hearing—Procedure.

(1) If a party asserts that they are being subjected to abusive litigation, the court shall attempt to verify that the parties have or previously had an intimate partner relationship and that the party raising the claim of abusive litigation has been found to be a victim of domestic violence by the other party. If the court verifies that both elements are true, or is unable to verify that they are not true, the court shall set a hearing to determine whether the litigation meets the definition of abusive litigation.

(2) At the time set for the hearing on the alleged abusive civil action, the court shall hear all relevant testimony and may require any affidavits, documentary evidence, or other records the court deems necessary.

[**2020 c 311 § 4**.]

RCW 26.51.050

Evidence creating a rebuttable presumption that the litigation is primarily for the purpose of harassing, intimidating, or maintaining contact with the other party.

At the hearing conducted pursuant to RCW **26.51.040**, evidence of any of the following creates a rebuttable presumption that litigation is being initiated, advanced, or continued primarily for the purpose of harassing, intimidating, or maintaining contact with the other party:

(1) The same or substantially similar issues between the same or substantially similar parties have been litigated within the past five years in the same court or any other court of competent jurisdiction; or

(2) The same or substantially similar issues between the same or substantially similar parties have been raised, pled, or alleged in the past five years and were dismissed on the merits or with prejudice; or

(3) Within the last ten years, the party allegedly engaging in abusive litigation has been sanctioned under superior court civil rule 11 or a similar rule or law in another jurisdiction for filing one or more cases, petitions, motions, or other filings, that were found to have been frivolous, vexatious, intransigent, or brought in bad faith involving the same opposing party; or

(4) A court of record in another judicial district has determined that the party allegedly engaging in abusive litigation has previously engaged in abusive litigation or similar conduct and has been subject to a court order imposing prefiling restrictions.

[2020 c 311 § 5.]

RCW 26.51.060

Burden of proof—Dismissal or denial of pending abusive litigation—Entry of order restricting abusive litigation.

(1) If the court finds by a preponderance of the evidence that a party is engaging in abusive litigation, and that any or all of the motions or actions pending before the court are abusive litigation, the litigation shall be dismissed, denied, stricken, or resolved by other disposition with prejudice.

(2) In addition to dismissal or denial of any pending abusive litigation within the jurisdiction of the court, the court shall enter an "order restricting abusive litigation." The order shall:

(a) Impose all costs of any abusive civil action pending in the court at the time of the court's finding pursuant to subsection (1) of this section against the party advancing the abusive litigation;

(b) Award the other party reasonable attorneys' fees and costs of responding to the abusive litigation including the cost of seeking the order restricting abusive litigation; and

(c) Identify the party protected by the order and impose prefiling restrictions upon the party found to have engaged in abusive litigation for a period of not less than forty-eight months nor more than seventy-two months.

(3) If the court finds by a preponderance of the evidence that the litigation does not constitute abusive litigation, the court shall enter written findings and the litigation shall proceed. Nothing in this section or chapter shall be construed as limiting the court's inherent authority to control the proceedings and litigants before it.

(4) The provisions of this section are nonexclusive and do not affect any other remedy available to the person who is protected by the order restricting abusive litigation or to the court.

[2020 c 311 § 6.]

RCW 26.51.070

Filing of new case or motion by person subject to an order restricting abusive litigation —Requirements—Procedures.

(1) Except as provided in this section, a person who is subject to an order restricting abusive litigation is prohibited from filing, initiating, advancing, or continuing the litigation against the protected party for the period of time the filing restrictions are in effect.

(2) Notwithstanding subsection (1) of this section and consistent with the state Constitution, a person who is subject to an order restricting abusive litigation may seek permission to file a new case or a motion in an existing case using the procedure set out in subsection (3) of this section.

(3)(a) A person who is subject to an order restricting litigation against whom prefiling restrictions have been imposed pursuant to this chapter who wishes to initiate a new case or file a motion in an existing case during the time the person is under filing restrictions must first appear before the judicial officer who imposed the prefiling restrictions to make application for permission to institute the civil action.

(b)(i) The judicial officer may examine witnesses, court records, and any other available evidence to determine if the proposed litigation is abusive litigation or if there are reasonable and legitimate grounds upon which the litigation is based.

(ii) If the judicial officer determines the proposed litigation is abusive litigation, based on reviewing the records as well as any evidence from the person who is subject to the order, then it is not necessary for the person protected by the order to appear or participate in any way. If the judicial officer is unable to determine whether the proposed litigation is abusive without hearing from the person protected by the order, then the court shall issue an order scheduling a hearing, and notifying the protected party of the party's right to appear and/or participate in the hearing. The order should specify whether the protected party is expected to submit a written response. When possible, the protected party should be permitted to appear telephonically and provided instructions for how to appear telephonically.

(c)(i) If the judicial officer believes the litigation that the party who is subject to the prefiling order is making application to file will constitute abusive litigation, the application shall be denied, dismissed, or otherwise disposed with prejudice.

(ii) If the judicial officer reasonably believes that the litigation the party who is subject to the prefiling order is making application to file will not be abusive litigation, the judicial officer may grant the application and issue an order permitting the filing of the case, motion, or pleading. The order shall be attached to the front of the pleading to be filed with the clerk. The party who is protected by the order shall be served with a copy of the order at the same time as the underlying pleading.

(d) The findings of the judicial officer shall be reduced to writing and made a part of the record in the matter. If the party who is subject to the order disputes the finding of the judge, the party may seek review of the decision as provided by the applicable court rules.

(4) If the application for the filing of a pleading is granted pursuant to this section, the period of time commencing with the filing of the application requesting permission to file the action and ending with the issuance of an order permitting filing of the action shall not be computed as a part of any applicable period of limitations within which the matter must be instituted.

(5) If, after a party who is subject to prefiling restrictions has made application and been granted permission to file or advance a case pursuant to this section, any judicial officer hearing or presiding over the case, or any part thereof, determines that the person is attempting to add parties, amend the complaint, or is otherwise attempting to alter the parties and issues involved in the litigation in a manner that the judicial officer reasonably believes would constitute abusive litigation, the judicial officer shall stay the proceedings and refer the case back to the judicial officer who granted the application to file, for further disposition.

(6)(a) If a party who is protected by an order restricting abusive litigation is served with a pleading filed by the person who is subject to the order, and the pleading does not have an attached order allowing the pleading, the protected party may respond to the case by filing a copy of the order restricting abusive litigation.

(b) If it is brought to the attention of the court that a person against whom prefiling restrictions have been imposed has filed a new case or is continuing an existing case without having been granted permission pursuant to this section, the court shall dismiss, deny, or otherwise dispose of the matter. This action may be taken by the court on the court's own motion or initiative. The court may take whatever action against the perpetrator of abusive litigation deemed necessary and appropriate for a violation of the order restricting abusive litigation.

(c) If a party who is protected by an order restricting abusive litigation is served with a pleading filed by the person who is subject to the order, and the pleading does not have an attached order allowing the pleading, the protected party is under no obligation or duty to respond to the summons, complaint, petition,

motion, to answer interrogatories, to appear for depositions, or any other responsive action required by rule or statute in a civil action.

(7) If the judicial officer who imposed the prefiling restrictions is no longer serving in the same capacity in the same judicial district where the restrictions were placed, or is otherwise unavailable for any reason, any other judicial officer in that judicial district may perform the review required and permitted by this section.

[2020 c 311 § 7.]

RCW 26.51.900

Construction—2020 c 311.

This act shall be construed liberally so as to effectuate the goal of protecting survivors of domestic violence from abusive litigation.

[2020 c 311 § 11.]

RCW 26.51.901

Effective date—2020 c 311.

This act takes effect January 1, 2021.

[2020 c 311 § 13.]

PREAMBLE

We, the people of the State of Washington, grateful to the Supreme Ruler of the universe for our liberties, do ordain this constitution.

ARTICLE I
DECLARATION OF RIGHTS

SECTION 1 POLITICAL POWER. All political power is inherent in the people, and governments derive their just powers from the consent of the governed, and are established to protect and maintain individual rights.

SECTION 2 SUPREME LAW OF THE LAND. The Constitution of the United States is the supreme law of the land.

SECTION 3 PERSONAL RIGHTS. No person shall be deprived of life, liberty, or property, without due process of law.

SECTION 4 RIGHT OF PETITION AND ASSEMBLAGE. The right of petition and of the people peaceably to assemble for the common good shall never be abridged.

SECTION 5 FREEDOM OF SPEECH. Every person may freely speak, write and publish on all subjects, being responsible for the abuse of that right.

SECTION 6 OATHS - MODE OF ADMINISTERING. The mode of administering an oath, or affirmation, shall be such as may be most consistent with and binding upon the conscience of the person to whom such oath, or affirmation, may be administered.

SECTION 7 INVASION OF PRIVATE AFFAIRS OR HOME PROHIBITED. No person shall be disturbed in his private affairs, or his home invaded, without authority of law.

Us Constitution

Fourteenth Amendment Equal Protection and Rights of Citizen

Section 1 Due Process

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

HAMAL STRAND - FILING PRO SE

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Transmittal Information

Filed with Court:	Court of Appeals Division II
Appellate Court Case Number:	56175-1
Appellate Court Case Title:	Amorea Rocha, Respondent v. Hamal Strand, Appellant
Superior Court Case Number:	21-2-01008-1

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