

FILED  
SUPREME COURT  
STATE OF WASHINGTON  
3/27/2024 11:34 AM  
BY ERIN L. LENNON  
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No. 102560-2  
COA No. 84310-9

SUPREME COURT  
OF THE STATE OF WASHINGTON

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AMINA J. CONDEL,

Respondent,

v.

FRANK GARRETT CONDEL,

Petitioner.

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ADDITIONAL AUTHORITIES PURSUANT TO  
RAP 10.8 IN SUPPORT OF AMENDED OBJECTIONS  
TO RESPONDENT'S RAP 18.1(d) AFFIDAVIT OF  
FEES AND EXPENSES

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On pp. 2-3 of the Respondent's Reply to Petitioner's Objections to RAP 18.1(d) Affidavit of Fees and Expenses, the Respondent's attorneys assert, without citation to any legal authority:

The Court of Appeals was well within its authority when it awarded Amina attorney fees. When Amina filed her petition for domestic violence order for protection, former chapter 26.50 RCW<sup>1</sup> governed civil DVPO proceedings. Garrett filed an appeal of entry of that DVPO. Therefore, RCW 26.50 still governs this proceeding. Under former RCW 26.50.060(1)(g), the court has discretion to require a respondent in a DVPO proceeding to pay petitioner's reasonable attorney fees.

However, Amina first requested an award based on RCW 26.50.060(1)(g) when she filed her Response Brief on March 6, 2023, months after RCW 26.50 had been repealed.

According to this Court's holding in *Cassanigi v.*

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<sup>1</sup> The DVPA (RCW 26.50) was repealed by 2011 ch. 215 § 170, effective July 1, 2022. Its provisions are now codified under Civil Protection Orders, ch. 7.105 RCW.

*General Elec. Credit Corp.*, 132 Wn.2d 433, 441,938

P.2d 819 (En Banc 1997):

Absent a saving clause, “[a] repealing act terminates all rights dependent upon the repealed statute and all proceedings based on it.” [Citations omitted].

RCW 26.50.060(1)(g) is thus **not** the “applicable law” required by RAP 18.1(a).

Also, in *Mahler v. Szucs*, 135 Wash.2d 398,434, 957 P.2d 632(En Banc.1998), this Court held:

... the party seeking fees bears the burden of proving the reasonableness of the fees. [Citation omitted].

Under the lodestar methodology, a court must first determine that counsel expended a reasonable number of hours in securing a successful recovery for the client. Necessarily, this decision requires the court to exclude from the requested hours any wasteful or duplicative hours and any hours pertaining to unsuccessful theories or claims. [Citation omitted]. Counsel must provide contemporaneous records documenting the hours worked.

According to *Johnson v. State, Dept. of Transp.*,

177 Wn.App. 684, 699, 313 P.3d 1197 (2013):

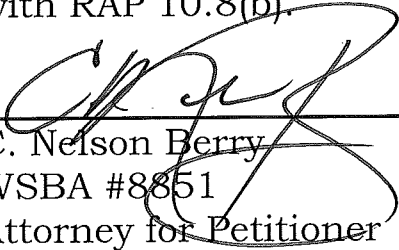
Although such records need not to be exhaustive, any reconstructed hours 'should be credited only if reasonable under the circumstances and supported by other evidence such as testimony or secondary documentation'.

Yet the Respondent's attorneys did **not** provide any "contemporaneous records" or "other evidence" supporting their reconstructed hours.

They have thus failed to meet their burden.

Respectfully submitted this 27<sup>th</sup> day of March, 2024.

I declare that this Memorandum contains 349 words in compliance with RAP 10.8(b).

  
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**March 27, 2024 - 11:34 AM**

**Transmittal Information**

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**Appellate Court Case Number:** 102,560-2  
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Additional Authorities Pursuant to RAP 10.8 In Support Of Amended Objections to Respondent's RAP 18.1(d)  
Affidavit of Fees and Expenses

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