904685

NO. 68772-7-I

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

In Re the Dependency of M.H.P., minor child,

STATE OF WASHINGTON,
DEPARTMENT OF SOCIAL AND HEALTH SERVICES,

Petitioner,

v.

P. PARVIN AND L. BRAMLETT,

Respondents.

DSHS OPENING BRIEF

ROBERT W. FERGUSON
Attorney General

TRISHA MCARDLE
Senior Counsel, for DSHS
WSBA #16371
Office of Attorney General
800 Fifth Avenue, Suite 2000
Seattle, WA 98104
(206) 464-7045

ORIGINAL

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

Constitutional Provisions

I. INTRODUCTION

At issue in this appeal is the informal motion practice chosen by the Office of Public Defense and Superior Court in King County to administer funding for expert witnesses in juvenile dependency, and termination cases. The chosen practice, approved by the court below, is neither necessary nor permitted by the Constitution, court rule or statute. It allows defense attorneys representing parents to obtain orders to seal and appoint experts before a criminal judge through a secret proceeding where: (a) the public is excluded; (b) the other parties are not notified and are also excluded; (c) the court does not make the individualized findings required for an order to seal; and (d) the court authorizes public funding for defense experts even though the discovery cutoff date and the deadline to disclose experts has long since passed.

As a consequence, the state and child's court appointed special advocate ("CASA") are blindsided on the eve of trial with defense experts that neither party has had the opportunity or time to depose, or to explore the basis of their opinions, or to prepare for cross-examination, or even reevaluate the case in light of the expert's opinion. King County's practice, which is not used by other counties in our state, fosters a system in which public funds are authorized and wasted without accountability. It is a practice that jeopardizes the trial court's ability to make a well-

informed decision about the child and threatens the safety of dependent children in our state.

II. ASSIGNMENT OF ERROR

The court below erred in denying the Department's motion to vacate orders to seal and approve litigation expenses where the orders were obtained *ex parte* in violation of the court rules, the rules of professional conduct, and established law, and the court's refusal to vacate orders that were entered after the discovery cutoff and deadline for disclosing witnesses results in an ongoing defense practice that prejudices the other parties and places children at risk of an ill-informed decision by the trial court.

III. STATEMENT OF THE CASE

This case concerns four year old M.H.P. His parents are Leslie Bramlett and Paul Parvin. When M.H.P. was less than two years old the court found him dependent as defined by RCW 13.34.030(6)(c) based on the parents' mental illness, substance abuse, history of violence, and resulting neglect of the child. M.H.P. was removed from his parents in June of 2010 and despite multiple services being provided to the parents, M.H.P. could never safely return to their care. CP 610-615, Supp CP ___ (Sub. No. 202).

On August 31, 2011, the Department filed a petition for termination of parental rights. CP 1-10. The court issued a case schedule establishing a discovery cutoff date in December for all parties, and the Department served a discovery demand requesting disclosure of all defense witnesses. CP 11-4, 15-16. The court set December 5, 2011 as the deadline for the exchange of witness lists. CP 11-14.

Long after the court-imposed deadline for the parties to identify witnesses and complete discovery, defense counsel for the parents brought multiple *ex parte* motions to authorize public funding for expert defense services along with *ex parte* motions to seal. CP 59- 105, 180- 194.[1] The first was brought January 11, 2012, more than one month after the discovery cutoff and witness disclosure deadline had passed, when counsel for the mother sought and obtained an *ex parte* order for expert services and an *ex parte* order to seal. CP 59- 71, The second was brought on February 2, 2012, two months after the discovery cutoff and witness disclosure deadline had passed, when counsel for the father brought an *ex parte* motion to appoint a defense expert and his proposed order requested that payment for that expert be directed to DSHS. CP 72-105. The third request was brought on March 10, 2012, a full three months after the discovery cutoff and witness

[1] *See* Appendix 1 for copies of pleadings related to these motions, which the Department has been able to access. Many pleadings remain sealed so the Department has no access to CP 62- 105, 137, 138, 139, 183-184, 187-194, and 472-477 to know exactly what was requested or ordered.

disclosure deadline, when counsel for the mother again sought and obtained an additional *ex parte* order for expert services along with an *ex parte* order to seal. CP 180-194. Neither the Department nor the child's CASA were provided notice of these motions or given the opportunity to be heard so that they could plan for the possibility of additional discovery; and defense counsel never advised the Department or CASA of the possibility of additional defense witnesses, or requested that the court extend the discovery deadline or their deadline to disclose witnesses. *Id.*

In fact, these *ex parte* orders were discovered inadvertently by the CASA when reviewing the legal file after the parents made a joint motion to continue the trial date. CP 312-339. On March 15, 2012, the Office of the Attorney General challenged entry of these *ex parte* orders and challenged the same defense practice in four other cases involving dependency and termination of parental rights. CP 195-286. A motion to vacate the *ex parte* orders was brought before the Honorable Ronald Kessler, a criminal judge, who was the judge before whom all of the defense motions were brought.[2] *Id.* The state also sought additional relief, including a request for the identification of other cases in which this

[2] King County Local General Rule 15(c)(1) requires all motions related to sealing court documents in civil cases to be brought before the assigned judge, or if there is no assigned judge then to the Chief Civil Judge, so it remains unclear why all of these motions were brought before Judge Kessler, a criminal judge having no responsibility for juvenile dependency or termination cases. KCLGR 15(c).

practice had occurred so that appropriate relief could be sought. *Id.* Among other concerns, the state noted its concern that this practice resulted in surprise witnesses being disclosed at the last minute, leaving the state and CASA no time to conduct meaningful discovery before trial. *Id.*

Judge Kessler denied the state's motion on April 10, 2012, in a memorandum decision and later denied the state's request for clarification and for entry of an order containing Findings of Fact and Conclusions of Law. CP 438-443, 496-497. *See* copies of the court's rulings attached as Appendix 2. The state immediately appealed both orders, but this court subsequently determined that appellate review could only be obtained by discretionary review, and it stayed review in the other four cases pending resolution of this appeal. CP 484-493.

Meanwhile, the trial concerning M.H.P., which was originally set for January 17, 2012, was continued multiple times at the request of one or both parents, or by agreed order, and in April of 2012, the termination petition was substituted with a guardianship petition. CP 11-14, 47-57, 113-179, 445-446, 479-483, CP 508. The last order entered August 3, 2012, continued the trial to August 27, 2012 at mother's request to give her attorney additional time to prepare, but the court specifically directed that there would be no further continuances. CP 508. Throughout all of

the continuances and the substitution of the termination petition for a guardianship petition, the court never modified the discovery deadlines or eliminated the obligation to timely disclose defense witnesses. *Id.*, CP 112, 178-179, 445-446, 483.

Additionally, after Judge Kessler upheld the defense practice of obtaining *ex parte* orders to seal and approve litigation expenses, the mother's counsel sought additional *ex parte* orders to seal and appoint defense experts in May of 2012, and these motions appear to have been granted by the court even though they were brought five months after the court-imposed discovery cutoff date.[3] CP 464- 477. Neither the Department nor the child's CASA were provided notice of these motions.

On August 14, 2012, just two weeks before trial, mother's counsel served the state with a witness list that, for the first time, identified Dr. Makiko Guji, Psy.D., as an expert witness for the mother. CP 509-511. Defense counsel claimed that Dr. Guji had treated the mother for the past year and would testify that she has made good progress in mental health treatment and that her medications controlled her symptoms. *Id.* No records, reports, evaluations, qualifications or other information verifying the expected testimony by Dr. Guji was provided to the state, nor was there time to seek any of this information before trial. CP 518-560. Then,

[3] As indicated *supra* at 3, many pleadings were sealed so the Department has no access to know exactly what was requested or ordered.

on Friday, August 24, 2012, just one business day before trial was supposed to start, a second surprise defense expert was identified when counsel for the mother sent the state an evaluation of the mother that had been completed by Dr. Carmela Washington-Harvey, Ph.D. CP 515-517. This was the first the state learned that Dr. Washington-Harvey had evaluated the mother and would be called as an expert witness. At no point previously had she been identified by defense, nor was she listed on the August 14, 2012 witness list.[4] CP 509-511. Thus, both Dr. Guji and Dr. Washington-Harvey were surprise witnesses not disclosed until the eve of trial, long after the discovery cutoff date, and the deadline for disclosing witnesses had passed.

The state filed a motion to exclude their testimony at trial, and that motion was argued the first day of trial before the Honorable James Doerty. CP 518-560. The CASA joined in the state's motion, and Judge Doerty, mindful of this pending appeal and the implications that denying the state's motion might have on the practice of secretly obtaining defense experts, granted the motion and excluded the defense witnesses from

[4] The assigned Assistant Attorney General reviewed the legal file and discovered that counsel for the mother had filed an additional witness list on August 16, 2012 that listed Dr. Washington-Harvey but it was never served on the state, so the first the state learned of her was August 24, 2012, the day before trial when her evaluation was provided. CP 515-517, 518-560.

testifying.[5] RP 27-35, Supp CP ___(Sub. No. 204). *See* Appendix 3 for a copy of the Order Excluding Defense Witnesses.

On April 1, 2013, Commissioner Neel granted the Department's Motion for Discretionary Review. The remaining cases in which the Department has challenged King County's practice of appointing defense experts are stayed pending resolution of this case.

IV. ARGUMENT

A. The Constitution, Established Case Law And General Rules Of The Court Require Court Proceedings To Be Open And That All Parties Be Given Notice Of Motions To Seal Court Records.

1. The Proceedings Below Were Closed To The Public And To The Other Parties.

Washington's Constitution mandates that "[j]ustice in all cases shall be administered openly, and without unnecessary delay." Const. art. I § 10. This provision is mandatory. *State v. Duckett*, 141 Wn. App. 797, 804, 173 P.3d 948 (2007) (citation omitted). It assures fair trials and fosters "understanding and trust in the judicial system" by giving "judges the check of public scrutiny." *Id.* at 803 (citing *State v. Brightman*, 155

[5] Judge Doerty expressed his support of Judge Kessler's ruling in this case, and acknowledged the practice of King County's defense agencies to name the individual attorney as attorney of record rather than the agency so as to insulate the agency from responsibility for actions taken on the case. He told defense that he worried they would lose the ability to seek litigation defense experts in the manner they had done so previously if they did not disclose their witnesses timely. He directed a bright line rule "[I]n this case, at least" "so Ms. Thorp and Ms. McArdle can't say to the Court of Appeals "Look what happened." RP 27-33, 33-34.

Wn.2d 506, 514, 122 P.3d 150 (2005). Because our courts are presumptively open, the party seeking to restrict access bears the burden of justifying an infringement on the public's right of access. *Nebraska Press Ass'n v. Stuart*, 427 U.S. 539. 558-59, 569-70 (1976). Restrictions on access are to be granted only in rare circumstances. *State v. Bone-Club*, 128 Wn.2d 254, 258, 906 P.2d 325 (1995) ("[P]rotection of this basic constitutional right clearly calls for a trial court to resist a closure motion except under the most unusual circumstances.").

In addition to the constitutional requirement that civil judicial proceedings be conducted in open court, the legislature has mandated that proceedings involving dependent children not be conducted in secrecy. Specifically, RCW 13.34.115 requires that all hearings under chapter 13.34 RCW shall be public. RCW 13.34.115(1); *In re the Dependency of J.A.F.*, 168 Wn. App. 653, 278 P.3d 673 (2012)(finding it constitutional error for the court to have closed a termination proceeding for the testimony of one witness).

In this case, orders authorizing the expenditure of public funds and approving defense experts were entered not only through secret proceedings to which the public was not permitted, but through secret procedures in which even the other *parties* to the case were denied notice

and an opportunity to be heard. No legal justification exists for such secrecy.

It is well-established that GR 15 governs the sealing of juvenile dependency and termination court records. *In re the Dependency of J.B.S.*, 122 Wn.2d 131, 856 P.2d 694 (1993); *In re the Dependency of J.A.F.*, 168 Wn. App. 653, 278 P.3d 673 (2012); *In re the Dependency of G.A.R.* 137 Wn. App. 1, 150 P.3d 643 (2007).

GR 15(c) provides as follows:

> (1) In a civil case, the court or any party may request a hearing to seal or redact the court records. In a criminal case or juvenile proceeding, the court, any party, or any interested person may request a hearing to seal or redact the court records. Reasonable notice of a hearing to seal must be given to all parties in the case. In a criminal case, reasonable notice of a hearing to seal or redact must also be given to the victim, if ascertainable, and the person or agency having probationary, custodial, community placement, or community supervision over the affected adult or juvenile. No such notice is required for motions to seal documents entered pursuant to CrR 3.1(f) or CrRLJ 3.1(f).

GR15(c)(1)(emphasis added)

It is equally well-established that to obtain an order sealing court files, the moving party has the burden of establishing that "compelling circumstances" justify such an order. Before the court approves sealing an order, it must first weigh the five factors established by *Allied Daily Newspapers*, 121 Wn.2d 205, 848 P.2d 1258(1993) and *Seattle Times Co. v. Ishikawa*, 97 Wn.2d 30, 640 P.2d 716 (1982), and it must enter written

findings establishing that sealing or redacting is justified by identified, compelling privacy or safety concerns which outweigh the public interest. GR 15(c)(2), *State v. Waldon*, 148 Wn. App. 952, 202 P.3d 325 (2009).

The Washington Supreme Court made the requirement of notice for motions to seal abundantly clear in *Rufer v. Abbott Labs.*, 154 Wn.2d 530, 114 P.3d 1182 (2005), and in *Dreiling v. Jain*, 151 Wn.2d 900, 93 P.3d 861 (2004). In these cases, the Court clarified that documents in a court file may be sealed only if: (1) the proponent of sealing shows a need for sealing; (2) opponents of sealing are given an opportunity to object; (3) sealing is the least restrictive means available to protect the interests at stake and will be effective; (4) the court weighs the competing interests, considers alternative methods, and makes findings; and (5) the order is no broader in application or duration than necessary. *Rufer,* 154 Wn. 2d at 543-44 & n. 7 (citing *Seattle Times Co. v. Ishikawa*)(emphasis added)*; see also In re Marriage of R.E.*, 144 Wn. App. 393, 399-400 (2008) (discussing how GR 15 was significantly amended in 2006, in the wake of *Rufer* and *Dreiling*).

None of these requirements were met in this case where multiple motions to seal were made by the parents' attorneys without notice to any other party and without the legally required findings. In fact, the remarkable similarity of the orders entered suggests that public defense used a canned form with boilerplate findings and the court never made the required

individualized inquiry. *See* Appendix 1, and CP 62- 105, 137, 138, 139, 183-184, 187-194, and 472-477. This plainly violates GR 15 and numerous appellate court decisions discussed above. And, where the original orders to seal never complied with constitutional and rule-based mandates, the orders should be presumed void.

Even if some orders contained the necessary findings, since both the state and the CASA were not given notice of the hearing and the opportunity to object, neither could challenge the defense attorney's self-serving assertion that "compelling circumstances" exist. The legal standard for sealing court records is a question of law which the court reviews *de novo*. *Rufer v. Abbott Laboratories*, 154 Wn.2d 530, 540 114 P.3d 1182 (2005); *In re the Dependency of J.A.F.*, 168 Wn. App. 653, 278 P.3d 673 (2012).

The record in this appeal demonstrates that the practice of secretly going before judges to obtain orders approving publicly funded experts, and then sealing those records without notice is an ongoing practice in King County. *See* Declaration of Assistant Attorney General Joel Delman attached to Motion for Discretionary Review as Appendix 2. Such motions are routinely brought after the discovery cutoff date and have been presented in a variety of contexts including: when the case is being litigated before another judge who has retained the case and has independently appointed defense experts, and they have even been brought after the litigation has

concluded and parental rights have been terminated. In one case, a motion for litigation expenses was brought a year after the litigation was concluded. In some cases, these *ex parte* orders have formed the basis for defense motions to continue the trial even where another judicial officer has ruled that any further continuances would be detrimental to the child. The court has also granted *ex parte* orders similar to one presented here and ordered the Department to pay the cost of the defense expert, even though the cost of indigent defense is by law a county expense. *In re J.D.*, 112 Wn. 2d 164, 769 P. 2d 291 (1989). The problems demonstrated by this case are thus not isolated events but reflect a widespread practice affecting many cases, and the problems have not been eliminated since the Department raised its concern about the practice one year ago.

2. The Court Erred By Dispensing With The Notice Requirement As "Meaningless."

In upholding the defense practice of not giving notice of the motions to seal to the other parties, Judge Kessler acknowledged that the notice provision of GR 15(c) "arguably" applies, but dispensed with the requirement by summarily concluding that notice would be "meaningless" because, according to Judge Kessler, the notice could only inform the parties that the underlying motion sought to be sealed concerned "services for an indigent parent other than counsel." CP 442. The state disagrees

that it is not entitled to notice of all motions brought in a case in which it is a party, but assuming for the sake of argument that the underlying motion for defense experts could be brought *ex parte*, notice of the motion to seal may not.

Notice of the motions to seal would give the state and the CASA the opportunity to provide complete information to the court, such as the relevant discovery deadlines and pending trial dates, or it could inform the court that the litigation has been concluded and parental rights terminated. Since the records in this case are sealed, it is unclear what defense told the court, but since *every* motion for litigation experts was approved *after* the discovery cutoff, it must be presumed that Judge Kessler was not apprised of the relevant discovery deadlines or the trial schedule. Notice of the motions to seal might well have prevented the surprise developments in this case, which ultimately squandered public funds and provided no benefit to the parents.

Additionally, it makes no difference that the judge presiding at trial ultimately excluded the testimony of the defense witness, whose appointment and identity had originally been sealed without notice. First, there is no guarantee that other judges hearing these cases will similarly exclude witnesses disclosed after the discovery deadlines; particularly where it was *the court* who appointed those experts *after* the discovery

deadlines, and the court might be reluctant to waste the public funds it approved. Second, both the CASA and the Department were forced to research, brief and argue the exclusion motion, requiring the expenditure of resources neither will recoup, which would not have been necessary if proper notice had been given in the first place. Third, the father has appealed the order excluding the witnesses, which will require expenditure of additional public attorney resources and will further delay the child's permanency.[6]

Finally, the denial of the right to open proceedings, since the benefits of a public proceeding are frequently intangible and difficult to prove but nonetheless real, "is one of the limited classes of fundamental rights not subject to harmless error analysis." *State v. Easterling*, 157 Wn.2d 167, 182, 137 P.3d 825 (2006); see also *In re Detention of D.F.F.*, 144 Wn. App. 214, 226, 183 P.3d 302 (2008), *affirmed*, 172 Wn. 2d 37, 256 P. 3d 357 (2011), *In re Dependency of J.A.F.*, 168 Wn. App. 653, 663-64, 278 P 3d 673 (2012). Case law has repeatedly recognized the importance of these rights. *See Landmark Comm., Inc. v. Virginia*, 435 U.S. 829, 839 (1978)

[6] Both parents have appealed the guardianship order, and the father has additionally appealed the order excluding the defense witnesses. Supp CP ___(Sub. No. 209, 211. If the witnesses had not been excluded however, the state and the child would have been presented a Hobson's choice of proceeding to trial without the preparation needed to effectively cross examine the defense witnesses, or requesting a delay of the trial to depose the witnesses. Both choices are harmful to the child, who would face a trial with less than full preparation or a delay in obtaining a permanent placement.

("[O]perations of the courts and judicial conduct of judges are matters of utmost public concern.").

B. The Court Below Erred By Applying Criminal Rules To A Civil Case And By Ignoring The Notice Requirements Simply Because The Issue Relates To The Litigation Expenses Of An Indigent Parent, And The Underlying Proceeding Concerns Parental Interests That Are Fundamental.

1. Juvenile Dependency, Guardianship, And Termination Cases Are Civil Cases Governed By The Civil Rules.

It is well-established that juvenile dependency, termination, and guardianship cases are civil cases that are governed by the civil rules, not by the criminal rules. JuCR 1.4(a); *In re Penelope B.*, 104 Wn.2d 643, 709 P.2d 1185 (1985); *In re Luscier*, 84 Wn.2d 135, 139, 524 P.2d 906 (1974); *In re the Welfare of S.E.*, 63 Wn. App. 244, 249, 820 P.2d 47, *review denied*, 118 Wn.2d. 1017, 827 P.2d 1012 (1991). In rejecting arguments that criminal prohibitions on the admission of evidence apply to a dependency case, the United States Supreme Court said it best:

> "The public's interest in this particular segment of the area of assistance to the unfortunate is protection and aid for the dependent child whose family requires such aid for that child. The focus is on the child and, further, is on the child who is dependent. There is no more worthy object of the public's concern. The dependent child's needs are paramount, and only with hesitancy would we relegate those needs, in the scale of comparative values to a position secondary to what the [father] claims as [his] rights."
>
> *Wyman v. James*, 400 U.S. 309, at 318, 91 S. Ct. 381 (1971)

It is equally well-established that all parties have a right to notice and an opportunity to be heard in juvenile dependency, termination and guardianship cases. RCW 13.34.090(1); *In re Dependency of R.H.,* 129 Wn. App. 83, 117 P.3d 1179 (2005). The rules of professional conduct require candor toward the tribunal, fairness to opposing counsel, and they prohibit *ex parte* communication with the tribunal unless authorized by law. RPC 3.3, RPC 3.4, RPC 3.5(b). The court below ignored these basic requirements in refusing to vacate orders that had been entered in secret without notice to any of the other parties and erroneously applied a criminal rule to a civil case.

The court below justified its ruling based on an erroneous and oversimplified "right to counsel" analysis in which it concluded that criminal rules apply because there "is no analogous rule in the Civil Rules." CP 440-441. In reaching this conclusion, the court ignored the significant differences between juvenile dependency/termination cases and criminal proceedings, and the child whose interest is most at stake; and the court inappropriately created a new court rule by judicial fiat. This not only violates rule-making requirements but is disapproved by the Supreme Court: "foisting [a] rule upon courts and parties by judicial fiat could lead to unforeseen consequences." *In re Pers. Restraint of Carlstad*, 150 Wn.2d

583, 592 n. 4 80 P.3d 587 (2003), *see also* GR 9 (setting forth the purpose and procedures for adopting court rules).

Indeed, despite the state warning the court below about the possibility of surprise witnesses that this *ex parte* practice encouraged, the ruling in this case led to that exact situation where a defense expert, authorized in secret, was not timely disclosed resulting in the exclusion of that witness from trial, and a waste of public funds.

In characterizing this as a "right to counsel" issue, the court below concluded that the parents would be denied their statutorily guaranteed right to counsel if they could not bring these motions wholly in secret, because that would treat impoverished parents differently than those who are not indigent. CP 440-442. The court also held that the only reason the state would want notice of these motions is to obtain a "tactical advantage" in the proceedings, and that in order to protect the parent's fundamental interests in these proceedings, the court must provide them protection from the state's "voyeuristic eyes." *Id.* The court's analysis is mistaken.

First, the fact that parents have a fundamental interest in their children and are statutorily entitled to counsel at public expense when indigent does not excuse them from following established procedural rules of notice to other parties. Indeed this court previously rejected a similar

argument made by an indigent parent who sought to dismiss a dependency at a shelter care hearing, without adequate notice to the other parties. This court reversed the juvenile court's order of dismissal noting the following:

> [T]he fact that fundamental rights are at stake does not mean that principles of procedural fairness are abandoned. On the contrary, the more important the substantive rights, the more important the procedural protections. Ryan forgets that R.H. has fundamental rights at stake as well – the fundamental rights to health and safety, which the state, through the Department, has a compelling interest in protecting and which the court cannot ensure without orderly inquiries.
>
> *In re Dependency of R.H.*, 129 Wn. App. 83, 88-89, 117 P.3d 1179, 1181(2005).

This court in *R.H.* rejected the claim that because parental rights are fundamental, the juvenile court should be allowed to dismiss a proceeding whenever it finds dismissal in the child's best interest. This court ruled that a shelter care hearing is not the place for a surprise challenge to the merits of the Department's case; that all parties are entitled to notice and an opportunity to be heard; and the child has a right to a well-considered decision that is not based on hunches or snap judgments. *Id.* at 1181.

The same rationale applies here. The child involved in this case, and all children involved in dependency, guardianship and termination cases, have a right to health and safety, which is equally (if not more) compelling than the rights of their parents. A child's interests are best

protected through procedural fairness that provides everyone with the right to be heard in a fair and orderly process. Conducting secret hearings, before a secret tribunal where only the parent's attorney is heard, and then sealing those records, does not serve the child's best interest. It increases the risk of error since the court hears from only one party and therefore cannot possibly weigh the competing interests involved in the case.

As noted by this court:

> In order to function properly, our adjudicative process requires an informed, impartial tribunal capable of administering justice promptly and efficiently according to procedures that command public confidence and respect. Not only must there be competent, adverse presentation of evidence and issues, but a tribunal must be aided by rules appropriate to an effective and dignified process. The procedures under which tribunals operate in our adversary system have been prescribed largely by legislative enactments, court rules and decisions, and administrative rules.

State v. Jones, 33 Wn. App. 865, 872, 658 P.2d 1262 (1983) (*emphasis added*).

In the absence of an adverse presentation of the issues, judges who hear these *ex parte* motions in secret are not in a position to determine whether appointing another expert for the parent is in the child's best interest or would threaten the child's right to permanency and a speedy resolution. Only if notice of the motion is given to the state and CASA and they are provided an opportunity to respond will a judge be in a

position to render a just decision. "Proper judicial decision making requires notice and an opportunity for interested parties to be meaningfully heard." *Wash. State Republican Party v. King County Div. of Records, Elections & Licensing Servs.*, 153 Wn.2d 220, 226-27, 103 P.3d 725 (2004) (Chambers, J., concurring).

Second, the state agrees that parents have a statutory right to counsel in these cases and it has no objection to defense agencies requesting expert fees and expert expenses necessary to provide an adequate defense to parents involved in dependency and termination actions. It simply opposes these motions being brought *ex parte* along with *ex parte* motions to seal because no legal authority exists for this secret process. If the public defense bar chose to use a motion practice in the pending dependency/termination action in Superior Court to appoint litigation experts, rather than the administrative process used in other counties, the public defense bar and the Superior Court must follow the statutes and rules that govern these court proceedings. Neither practitioners nor judges are exempt from these rules.

2. The Fact That A Public Defender Is Requesting Expert Expenses Or That A Court Is Authorizing Public Funds Is Not In And Of Itself Confidential.

Contrary to the ruling below, the fact that a public defender is requesting expert expenses or that a court is authorizing public funds for

expert expenses is not in and of itself confidential. *State v. Mendez*, 157 Wn. App. 565, 238 P.3d 517(2010) (fees charged for indigent defense are not confidential); *In re Personal Restraint Petition of Jonathan Gentry*, 137 Wn.2d 378, 389 972 P.2d 1250 (1999) (rejecting claim that sealing a motion for public funding of investigative expenses is necessary to protect rights in a retrial upon remand because state would only learn the avenues of investigation being pursued, not the evidence itself).

The Public Records Act, which the lower court relied upon by analogy, provides as follows:

> ("[N]o reasonable construction of chapter 42.56 has ever allowed attorney invoices to be withheld in their entirety by any public entity in a request for documents...It is further the intent of the legislature that specific descriptions of work performed be redacted only if they would reveal an attorney's mental impressions, actual legal advice, theories, or opinion, or are otherwise exempt...with the burden upon the public entity to justify each redaction and narrowly construe any exception to full disclosure. The legislature intends to clarify that the public's interest in open, accountable government includes an accounting of any expenditure of public resources").
>
> RCW 42.56.904

Thus, there is no need to maintain the secrecy of the entire defense request in order to protect attorney-client communications or work product. Particularly since courts are required to interpret liberally the Public Records Act provisions related to the disclosure provisions and

narrowly as related to the exemption provisions. *Progressive Animal Welfare Soc'y v. Univ. of Wash.*, 125 Wn.2d 243, 884 P.2d 593 (1994).

3. The Statewide General Rules And King County Local Rules Provide A Process Whereby Defense Attorneys Can Make Litigation Funding Requests And Protect Attorney/Client Privilege And Work Product While Still Providing Notice Of Their Motions To The Other Parties.

Ignoring the fact that King County's system of appointing defense experts is not the only system available, or used by other counties, the court below mistakenly concluded that existing general rules do not protect against forced revealing of work product or attorney-client communication. However, nothing in GR 15 prevents the defense agencies, from filing their motions for expert expenses, with notice to all parties but without attorney-client and/or work product information, and asking the court prospectively to permit the filing of a declaration under seal or that redacts those portions containing mental impressions, theories, opinions, or legal advice, so that their work product is protected. Editorial comments to GR 15 and CR 26, 3 Wash. Court Rules Ann., at 21 (2nd ed. 2008-2009) 2 Wash. Court Rules Ann., at 287; and *see Mendez,* 238 P.3d at 585. The court could then conduct an in-camera review of the particular pleading at issue and redact those portions that would otherwise reveal attorney-client confidences or work product, leaving the rest of the

pleading unsealed. This would give all parties the requisite notice of the motion for expert services and the motion to seal so they would have the opportunity provided in GR 15 to object.

In fact, King County's General Rule already authorizes this practice whenever a party wishes to bring a motion to seal contemporaneous with a motion they would like to keep confidential. KCLGR 15(c)(3). This local rule adopts the requirements of GR 15, but outlines a procedure whereby the court conducts an in-camera review of the documents sought to be sealed, and makes specific findings, setting forth the basis for sealing or redacting the documents. *Id.* The Washington Supreme Court recently held that this rule applies to civil and domestic relations actions, and that if a motion to seal is denied, the moving party is allowed to withdraw the documents sought to be sealed. *State v. McEnroe*, 174 Wn.2d 795, 279 P.3d 861(2011). Thus, it was not only erroneous for the court below to apply a criminal rule to what is clearly a civil case, it was unnecessary since GR 15 and KCLGR 15(c)(3) provide the means to request public funding of defense experts by motion in a manner that fully protect the parents' interest in protecting their trial strategy, work product and attorney/client communications.

Following the process set out by GR 15(c) and KCLGR 15(c)(3) would also prevent the inappropriate blindsiding of other parties with

"expert" opinions that none of the other parties have heard of, or had the chance to depose, or review records, or even had the chance to meaningfully interview. It would also allow the court to hear evidence besides the self-serving motion of the parent requesting funding for expert services, so as to make an informed decision about whether expert expenses have previously been approved for the same service, or whether the parent has already had their chosen provider perform the same service at state expense.[7] It would additionally permit the court, if it decides to grant the motion, to impose discovery deadlines that ensures all parties a fair trial. There is simply no authority for the court's broad proposition that the entire defense request for funding, along with the defense request to seal, must all be done in a secret court of law, without notice to anyone.

C. Equal Protection Guarantees Do Not Justify The Procedures Sanctioned Here.

The court below took great pains to justify its ruling by asserting that a wealthy parent could hire a consulting witness without disclosure to the other parties and indigent parents should be allowed to do the same.

---

[7] The dependency statute requires that evaluations ordered by the court be conducted by service providers who are mutually agreed upon. RCW 13.34.370. So in many cases, the parent has already had their chosen provider conduct the evaluation, and additional expenditure of public funds for another chosen defense expert might not be justified. In this case, the mother had already been evaluated by a professional she agreed to, and it was only because she presumably did not like the conclusions of that agreed upon evaluator, that she sought public funding for another evaluation. CP 561-564. Although it would not be dispositive of whether defense fees for an additional expert should be allowed, it might be a factor in the court's decision, yet is not likely to be disclosed by the defense attorney requesting the additional funding.

CP 438-443. The problem with the court's analysis is that every order relating to defense experts was entered after the discovery deadlines had passed. The last was entered five months after the deadlines had passed and was approved by the court even after the Department had forewarned the court that this secretive process might lead to surprise witnesses and the exact result that occurred on this case. Although an affluent parent could theoretically hire and pay for an expert after the discovery cutoff, they are not likely to do so because of the financial loss they would suffer having that witness excluded at trial. In this case, like most others in King County, the secretive process condoned by the court led to, and was inextricably linked, to discovery violations, and violations of LJuCR 4.4(c), and KCLCR 26(k)(1). The rulings at issue in this case ultimately wasted public resources and of much greater importance, delayed permanency for this child. Under the secret process condoned here, appointed attorneys ignored the case schedule and avoided timely disclosure of witnesses, which non-indigent parents would not do. If the indigent defense bar were directed to simply follow the dictates of LJuCR 4.4(c), GR 15(c), KCLGR 15(c)(3) and case law, all parents would be treated equally.

Even in criminal cases, our courts have rejected similar equal protection claims that revealing defense fees and expenses for indigent

clients treats their clients differently than clients who can afford private counsel. *State v. Mendez*, 157 Wn. App. 565, 586, 238 P. 3d 517 (2010). In *Mendez,* the court held that the defendant had no standing to complain about how unknown others may be affected in some other time, and the fact that retained counsel typically do not have to disclose information about their fees actually flows from the fact that fees are typically not relevant rather than they are somehow privileged. 157 Wn. App. at 586 (citing cases such as *Seventh Elect Church*, 102 Wn. 2d 527, 531-532, 688 P. 2d 506 (1984) where private counsel was required to divulge fee arrangements and billing of the client).

The United States Supreme Court and courts in other jurisdictions have also rejected claims that due process and/or equal protection provisions require the states to equalize the resources of indigent and wealthy respondents. *Ross v. Moffitt*, 417 U.S. 600, 616, 94 S. Ct. 2437, 2447, 41 L. Ed. 2d 341 (1974)(state need not purchase for the indigent defendant all the assistance that his wealthier counterpart might buy); *Ex parte Jimenez*, 364 S.W.3d 866 (2012)(no constitutional right to a "team of experts" paid for by the taxpayers); *State v. Apelt*, 176 Ariz. 349, 861 P.2d 634 (1993)(no requirement for an *ex parte* hearing to request defense expert).

By unnecessarily and inappropriately applying criminal law to the case at hand, the court below also ignored established discovery rules applicable to civil cases that insulate and protect the opinions of consulting experts from being disclosed. By identifying a witness as a "consulting witness" defense attorneys can prevent the other parties from deposing that witness, unless and until the defense attorney decides to call them as a witness. *Mothershead v. Adams*, 32 Wn. App. 325, 647 P.2d 525 (1982); *Pimentel v Roundup Co.*, 100 Wn.2d 39, 666 P.2d 888 (1983). *Id.*

Defense attorneys in this case could have effectively shielded the parents' experts from the "voyeuristic eyes" of the state by simply requesting funding in advance of the discovery deadlines, with notice to all parties under King County's general and civil rules described above, for a "consulting witness." *Id.* But, they should not be permitted to make and have these requests granted after the discovery cutoff and thereby escape the obligation to identify these witnesses to the other parties at a point that other parties can conduct meaningful discovery of their opinions before trial. CR 26(b)(5)(A); KCLCR 26(k)(1)(4).

In granting the *ex parte* motions to seal and approve funding for defense experts long after the discovery cutoff date and the deadline for disclosing witnesses, the court violated King County's local juvenile court

rule that requires discovery to be conducted early enough in the process to meet the deadline for disclosing witnesses. LJuCR 4.4(c) That rule provides: "Discovery requests must be served early enough that responses will be due and depositions will have been completed by the applicable cutoff date." LJuCR 4.4(c)

Neither the statute, the Constitution, the civil rules, nor King County's local rules offer defense counsel in juvenile dependency and termination proceedings the luxury of stealth litigation in which they surprise all other parties at trial or in a motion, with an "expert" no one has heard of before. The secret process sanctioned by the court below, which allows for the *ex parte* appointment of defense experts long after the discovery cutoff has passed, gives indigent parents an advantage that wealthy parents do not have. It circumvents all opportunity for orderly discovery, open proceedings, and the fair administration of justice, and it places children at risk of an ill-informed decision by the trial court.

V. CONCLUSION

King County's decision to administer defense litigation funding in juvenile dependency and termination cases in the same manner as criminal cases is a choice borne of expediency, rather than necessity. It is not the only way that public defense attorneys can hire forensic experts, it is not

the way that other counties administer this funding, and it violates the law. The ruling below should be reversed and the Office of Public Defense and King County Superior Court should be directed to administer this litigation funding in a manner that does not involve a motion practice, or that follows the rules and laws applicable to these civil court proceedings.

RESPECTFULLY SUBMITTED this 1st day of May, 2013.

ROBERT W. FERGUSON
Attorney General

Trisha L McArdle

TRISHA MCARDLE
Senior Counsel, for DSHS
WSBA #16371
Office of Attorney General
800 Fifth Avenue, Suite 2000
Seattle, WA 98104
(206) 464-7045

Appendix 1

21059014

FILED

12 JAN 11 PM 4:06

KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA

RECEIVED

OCT 27 2011

Office of the Public Defender

IN THE SUPERIOR COURT OF WASHINGTON
FOR KING COUNTY

IN RE THE DEPENDENCY OF: M.H.P. DOB: 11/11/2008 MINOR CHILD(REN)	NO: ~~10-2-07201-0 KNT~~ 11-7-02455-3 KNT MOTION AND ORDER TO SEAL (ORSD) CLERK'S ACTION REQUIRED

MOTION

Repondent, appearing *ex parte*, moves, pursuant to RCW 13.34.090, JuCR 9.2, and In re V.R.R., 134 Wash.App. 573, 141 P.3d 85 (2006), that the documents referenced below be placed under court seal.

The grounds for this motion are that these records are confidential, privileged and governed by rules of confidentiality and attorney work product, and may not be disseminated by counsel to any third party under the Rules of Professional Conduct. The documents listed below contain information that is work product and confidential under RCW 13.34.090, JuCR 9.2, and In re V.R.R., 134 Wash.App. 573, 141 P.3d 85 (2006). They outline the Respondent's theory of the case and identify potential experts. This motion is also based on the equal protection clauses of the Washington State and United States Constitutions, which require that all Respondents be

afforded the same right to prepare their defense confidentially, regardless of their financial status.

DATED this 27 day of October, 2011.

Katharine Edwards, WSBA # 43093
Attorney for Respondent

ORDER

The Court finds that the documents listed below are privileged and attorney work-product under RCW 13.34.090, JuCR 9.2, and In re V.R.R., 134 Wash.App. 573, 141 P.3d 85 (2006).

IT IS ORDERED that the following documents be placed under court seal in the court file until further order of this Court: Mot'l Disclosed + Att'y Cert'l.

Order Authorizing Expert Services at Public Expense Dated: 10/27/11.

Motion ~~and Declaration of Counsel for Appointment of Expert~~ for Funding of Expert Services Dated: 10/27/11

Decl. of Counsel Re OPD Funding Dated: 10/27/11

Dated:

Dated:

IT IS FURTHER ORDERED that this order shall be filed in the court file, unsealed.

DATED this ____ day of JAN 10 2012, 20__.

JUDGE

IN THE SUPERIOR COURT OF WASHINGTON
FOR KING COUNTY

IN RE THE DEPENENCY OF: M.H.P DOB: 11/11/2008 MINOR CHILD(REN)	NO: ~~10-2-07201-0 KNT~~ 11-7-02455-3 KNT MOTION AND PROTECTIVE ORDER FOR EXPERT WITNESS AND SERVICES FUNDING REQUEST

MOTION

COMES NOW, Respondent Leslie Bramlett, and requests a protective order limiting the disclosure of the following documents and the information contained in these documents:

1. Motion ~~and Declaration for Appointment of Expert,~~ for Funding of Expert Services dated October 27, 2011.
2. Order Authorizing Expert Services at Public Expense, dated October 27, 2011.
3. Decl. of Counsel re OPD Funding, dated 10/27/11
4. _____, dated _____

The Defender Association
420 W Harrison Suite 202
Kent, WA 98032
253-852-1599

These documents were provided to the Office of Public Defense (OPD) and the records and information concerning these documents will be provided to various agencies in the future to conduct financial business.

This request is made pursuant to the recent Washington Supreme Court decision in *Yakima County v. Yakima Herald-Republic* 170 Wn. 2d 775 (2011). The Supreme Court ruled that documents prepared by court personnel in connection with court cases and maintained by the court are judicial documents governed by the court rules for disclosure and not the Public Records Act (PRA). In addition, such documents when transferred to non-judicial county entities, are governed by the PRA unless they are subject to a protective order. The documents listed above, contain information that is work product and confidential under RCW 13.34.090, JuCR 9.2, and In re V.R.R., 134 Wash.App. 573, 141 P.3d 85 (2006). They outline Respondent's theory of the case and identify potential experts. Thus, pursuant to the most recent Supreme Court decision, the defense requests that a protective order be issued limiting the disclosure of the documents listed above. The protective order should place restrictions on various agencies from releasing any of these materials or any information contained in these materials.

The Defender Association
420 W Harrison Suite 202
Kent, WA 98032
253-852-1599

ORDER

IT IS HEREBY ORDERED that any King County records or information that concern the above-mentioned documents and are released to a King County Agency, the Washington State Auditor, the Washington State Department of Revenue, the Internal Revenue Services pursuant to state or federal law, or a state or county government financial institution for payment purposes are subject to a protective order and, upon proper service of this order, shall not be released to any requestor, including pursuant to a PRA request, to the King County Prosecuting Attorney's Office Criminal Division, Office of the Attorney General, or to any governmental agency responsible for the investigation or prosecution of the above-listed Respondent, until further order of the court. Respondent's counsel is responsible for effecting service.

DONE this ___ day of JAN 10 2012, 20___.

JUDGE

Presented by:

s/Katharine Edwards
Attorney for Leslie Bramlett

Bar # 43093

The Defender Association
420 W Harrison Suite 202
Kent, WA 98032
253-852-1599

21089014

FILED
KING COUNTY, WASHINGTON
FEB 06 2012
SUPERIOR COURT CLERK

RECEIVED
DEC 28 2011
Office of the Public Defender

IN THE SUPERIOR COURT OF WASHINGTON
FOR KING COUNTY, JUVENILE COURT

In re the Dependency of: M. H. P. DOB: 11/11/08 Minor Child.	No. 11-7-02455-3 KNT MOTION AND ORDER TO SEAL DOCUMENTS, CrR 3.1(f) (ORSD) CLERK'S ACTION REQUIRED

MOTION

Defendant, appearing *ex parte*, moves that the documents referenced below be placed under court seal. The grounds for this motion are that these records are confidential, privileged and governed by rules of confidentiality for attorney work product, CrR 3.1(f).

DATED this 28 day of December, 2011.

R. Daewoo Kim, WSBA #25434
Attorney for Paul Parvin, Father

FINDINGS: The court finds that said documents, pursuant to CrR 3.1(f) are protected by the attorney-client and work product privileges, and are not subject to disclosure to the state or to the public. Now, therefore,

IT IS ORDERED that the following documents be placed under court seal, that said documents be used only by the court for purposes of the defense motion to authorize expert services at public expense, and that said documents shall not otherwise be disclosed to the public or the state absent further order of the court. No disclosure

~~Order Authorizing Expert Services at Public Expense~~ Dated: ~~12/27/11~~

~~Order Appointing Expert and Directing Payment (DSHS)~~ Dated: ~~12/28/11~~

Motion and Certification for Appointment of Expert Dated: 12/27/11

Order Denying Independent Expert as Professional Person & Directing Payment by DSHS Dated: 12/28/11

Dated:

IT IS FURTHER ORDERED that this order shall be filed in the court file, unsealed.

DATED this ____ day of FEB - 7 2012, 20__.

COMMISSIONER/JUDGE

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY
REGIONAL JUSTICE CENTER, JUVENILE DIVISION

11702455J

IN RE THE DEPENDENCY OF:	)	**NO.** ~~10-1-10239-2 SEA~~
M.H.P.	)	**ORDER AUTHORIZING**
	)	**EXPERT SERVICES AT**
DOB: 11/11/08	)	**PUBLIC EXPENSE**
	)	**(ORES)**

THIS MATTER comes before the undersigned authorized representative of the Office of the Public Defender (OPD) on behalf of the respondent, through his/her attorney, Daewoo Kim, for expert services necessary to an adequate defense in this case to be performed at public expense. The services requested are for:

- [x] Psychological Evaluation
- [ ] Psychiatric Evaluation
- [ ] Evidence Examination
- [ ] Forensic
- [ ] Investigative
- [ ] Sexual Deviancy Evaluation
- [ ] Alternate Placement
- [x] Other: with parenting component

Defense attorney represents that previous request(s) for funding was/were dated _____ in the amount of $ _____ for the purpose of _____.

The client is: [ ] in-custody or [x] out-of-custody, and the trial date set is: 3/5/12.

The attached documentation and declaration of counsel show that such expert services are necessary to an adequate defense, the number of hours and hourly rate expected, and that the defendant is financially unable to obtain them.

NOW THEREFORE, pursuant to CrR 3.1 (f), **IT IS ORDERED** that Dr. Robert Deutsch is authorized to perform the expert services indicated above at public expense in the amount not to exceed $180/hr. (pretrial) for 20 hours, for a maximum of $3,600. (Amounts exceeding $250 per

SOCIETY OF COUNSEL
REPRESENTING ACCUSED PERSONS
420 WEST HARRISON ST. SUITE 101
KENT, WASHINGTON 98032
253-852-9460

expert must be submitted to the OPD Administrator.) If the expert is to perform a competency or insanity defense evaluation,

☐ **A FURTHER APPLICATION is submitted herewith for an additional $800 that is reimbursable by DSHS.**

If expert *testimony* is permitted, it shall be compensated at not more than $240 per hour for a maximum of $960 (4 hours). (Please check item below). $960

☑ **This ORDER** approves this additional amount.
☐ **An ADDITIONAL APPLICATION** will be made for testimony if required and permitted.

PAYMENT IN EXCESS OF THE ABOVE LIMIT(S) WILL NOT BE MADE WITHOUT PRIOR AUTHORIZATION.

THIS PROVIDES notification to the Department of Adult Detention that the above-named expert be granted admittance to the King County Correctional Facility at reasonable times as necessary to perform said services, along with the following equipment:

☐ Standard psychological testing equipment and materials authorized to be admitted into DJAD facility with expert.
☐ Other electronic equipment authorized to be admitted to DJAD facility with expert, specifically:_____

IT IS FURTHER ORDERED that the attorney shall deliver to the service provider a copy of this order before the expert service begins.

☐ **This Expert Order will be Sealed** ☐ **This Expert Order will NOT be Sealed**

Attorney is: ☐ **Appointed** ☐ **Retained** ☐ **Pro Bono** ☐ **Pro Se**

PRESENTED BY:

Attorney for Respondent
Email: daewoo.kim@scraplaw.org
Telephone:206-726-7739

Date submitted: 12/27/11

☑ **APPROVED**
☐ **DENIED**

for the Office of the Public Defender

OR Trial Judge **(If Less Than $250)**

Date ORDERED: 12/29/11

If denied, reasons therefore:_____

SOCIETY OF COUNSEL
REPRESENTING ACCUSED PERSONS
420 WEST HARRISON ST. SUITE 101
KENT, WASHINGTON 98032
253-852-9460

SUPERIOR COURT IN THE KING COUNTY OF WASHINGTON STATE
JUVENILE DIVISION

IN RE THE DEPENDENCY OF	NO 11-7-~~03566-3 KNT~~ 024553 ~~10-2-07201-0 KNT~~
M.H.P	MOTION FOR ORDER TO SEAL
DOB 11/11/2008	(ORSD)
Minor Child	

MOTION

Respondent, appearing *ex parte*, pursuant to RCW 13 34 090, JuCR 9 2 , and In re V R R ,134 Wash App 573, 141 P 3d 85 (2006), that the documents referenced below be placed under court seal

The grounds for this motion are that these records are confidential privileged and governed by rules of confidentiality and attorney work product, and may not be disseminated by counsel to any third party under the Rules of Professional Conduct The documents listed below contain information that is work product and confidential under RCW 13 34 090, JuCR 9 2, and In re V R R ,134 Wash App 573, 141 P 3d 85 (2006) They outline the Respondent's theory of the case and identify potential experts This motion is also based on the equal protection clauses of the Washington State and United States Constitutions, which require that all Respondents be afforded the same right to

Law Offices of the Defender Association
Juvenile Division
1401 E Jefferson Suite 400
Seattle WA 98122
206-447 3900

prepare their defense confidentially, regardless of their financial status

DATED this 26 day of April, 2012

_____/S/_____
Devon Knowles, WSBA# 39155
Attorney for Mother

Law Offices of the Defender Association
Juvenile Division
1401 E Jefferson Suite 400
Seattle, WA 98122
206-447 3900

21089014

FILED
12 MAY 11 PM 12 14
KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA

RECEIVED
MAY 02 2012
Office of the Public Defender

SUPERIOR COURT IN THE KING COUNTY OF WASHINGTON STATE
JUVENILE DIVISION

IN RE THE DEPENDENCY OF	) NO	11-7-~~03566-3~~ 02455 KNT
	)	~~10-2-07201-0~~ KNT
M. H. P.	)	ORDER TO SEAL
Dob 11/11/2008,	)	
	)	(ORSD)
Minor Child	)	**CLERK'S ACTION REQUIRED**

ORDER

The Court finds that the documents listed below are privileged and attorney work-product under RCW 13 34 090, JuCR 9 2, and In re V R R 134 Wash App 573, 141 P 3d 85 (2006)

IT IS ORDERED that the following documents be placed under court seal in the court file until further order of this Court

Order Authorizing Expert Services at Public Expense **Dated 4/26/2012**

Motion For Funding of Expert Services **Dated 4/26/2012**

Declaration ~~for Appointment of Expert Services~~ of Counsel Re OPD Funding **Dated 4/26/2012**

IT IS FURTHER ORDERED that this order shall be filed in the court file, unsealed

DATED this 10 **day of** May **2012**

JUDGE

Law Offices of the Defender Association
Juvenile Division
1401 E Jefferson Suite 400
Seattle WA 98122
206-447 3900

SUPERIOR COURT IN THE KING COUNTY OF WASHINGTON STATE
JUVENILE DIVISION

IN RE THE DEPENDENCY OF: M.H.P. Dob:11/11/2008, Minor Child.	NO: ~~10-2-07201-0 KNT~~ 11-7-02455-3 KNT **MOTION FOR PROTECTIVE ORDER FOR EXPERT WITNESS AND SERVICES FUNDING REQUEST**

MOTION

COMES NOW Respondent and requests a protective order limiting the disclosure of the following documents and the information contained in these documents:

1. Motion for Funding of Expert Services, dated: 2/10/2012.
2. Declaration of Counsel Re OPD Funding, dated: 2/10/2012
3. Order Authorizing Expert Services at Public Expense, dated 2/10/2012
3. _____, dated_____
4. _____, dated_____

These documents were provided to the Office of Public Defense (OPD) and the records and information concerning these documents will be provided to various agencies in the future to conduct financial business.

Law Offices of the Defender Association
Juvenile Division
1401 E. Jefferson, Suite 400
Seattle, WA 98122
206-447-3900

This request is made pursuant to the recent Washington Supreme Court decision in *Yakima County v. Yakima Herald-Republic* 170 Wn. 2d 775 (2011). The Supreme Court ruled that documents prepared by court personnel in connection with court cases and maintained by the court are judicial documents governed by the court rules for disclosure and not the Public Records Act (PRA). In addition, such documents when transferred to non-judicial county entities, are governed by the PRA unless they are subject to a protective order. The documents listed above, contain information that is work product and confidential under RCW 13.34.090, JuCR 9.2, and In re V.R.R., 134 Wash.App. 573, 141 P.3d 85 (2006). They outline Respondent's theory of the case and identify potential experts. Thus, pursuant to the most recent Supreme Court decision, the defense requests that a protective order be issued limiting the disclosure of the documents listed above. The protective order should place restrictions on various agencies from releasing any of these materials or any information contained in these materials.

Presented by:

/S/
Devon Knowles, WSBA#39153
Attorney for Respondent

Law Offices of the Defender Association
Juvenile Division
1401 E. Jefferson, Suite 400
Seattle, WA 98122
206-447-3900

21089014

RECEIVED
MAY 02 2012
Office of the Public Defender

FILED
KING COUNTY, WASHINGTON
MAY 11 2012
SUPERIOR COURT CLERK

SUPERIOR COURT IN THE KING COUNTY OF WASHINGTON STATE
JUVENILE DIVISION

IN RE THE DEPENDENCY OF M. H. P. Dob 11/11/2008, Minor Child	) NO	~~10-2-07201-0 KNT~~ 11-7-02455-3 KNT **PROTECTIVE ORDER FOR EXPERT WITNESS AND SERVICES FUNDING REQUEST**

ORDER

IT IS HEREBY ORDERED that any King County records or information that concern the above-mentioned documents and are released to a King County Agency, the Washington State Auditor, the Washington State Department of Revenue, the Internal Revenue Services pursuant to state or federal law, or a state or county government financial institution for payment purposes are subject to a protective order and, upon proper service of this order, shall not be released to any requestor, including pursuant to a PRA request, to the King County Prosecuting Attorney's Office Criminal Division, Office of the Attorney General, or to any governmental agency responsible for the investigation or prosecution of the above-listed Respondent, until further order of the court Respondent's counsel is responsible for effecting service

Law Offices of the Defender Association
Juvenile Division
1401 E Jefferson Suite 400
Seattle, WA 98122
206-447-3900

DONE this 10 day of May, 2012

JUDGE

Presented by

/S/
Devon Knowles
Attorney for Respondent, WSBA#39153

Law Offices of the Defender Association
Juvenile Division
1401 E Jefferson Suite 400
Seattle WA 98122
206-447-3900

SUPERIOR COURT IN THE KING COUNTY OF WASHINGTON STATE
JUVENILE DIVISION

IN RE THE DEPENDENCY OF M. H. P. Dob 11/11/2008, Minor Child	) NO))))))))	~~10-2-07201-0 KNT~~ 11-7-02455-3 KNT **MOTION FOR PROTECTIVE ORDER FOR EXPERT WITNESS AND SERVICES FUNDING REQUEST**

MOTION

COMES NOW Respondent and requests a protective order limiting the disclosure of the following documents and the information contained in these documents

1. Motion for Funding of Expert Services, dated, 4/26/2012
2. Order Authorizing Expert Services at Public Expense, dated 4/26/2012
3. Declaration of Counsel RE OPD Funding, dated 4/26/2012
4. _____, dated_____

These documents were provided to the Office of Public Defense (OPD) and the records and information concerning these documents will be provided to various agencies in the future to conduct financial business

Law Offices of the Defender Association
Juvenile Division
1401 E Jefferson, Suite 400
Seattle WA 98122
206-447-3900

This request is made pursuant to the recent Washington Supreme Court decision in *Yakima County v Yakima Herald-Republic* 170 Wn 2d 775 (2011) The Supreme Court ruled that documents prepared by court personnel in connection with court cases and maintained by the court are judicial documents governed by the court rules for disclosure and not the Public Records Act (PRA) In addition, such documents when transferred to non-judicial county entities, are governed by the PRA unless they are subject to a protective order The documents listed above, contain information that is work product and confidential under RCW 13 34 090, JuCR 9 2, and In re V R R ,134 Wash App 573, 141 P 3d 85 (2006) They outline Respondent's theory of the case and identify potential experts Thus, pursuant to the most recent Supreme Court decision, the defense requests that a protective order be issued limiting the disclosure of the documents listed above The protective order should place restrictions on various agencies from releasing any of these materials or any information contained in these materials

Presented by

/S/
Devon Knowles
Attorney for Respondent, WSBA#39153

Law Offices of the Defender Association
Juvenile Division
1401 E Jefferson, Suite 400
Seattle WA 98122
206 447-3900

Appendix 2

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

Dependency of HTS, ARS, VW-C, MW-C, DW-C, IK, MHP, AL, EL and KL	Case Nos. 11-7-02695-5, 11-7-02696-3, 10-7-03414-3, 10-7-03360-1, 10-7-03361-9, 10-7-03362-7, 10-7-03707-0, 11-7-02455-3, 11-7-01615-1, 11-7-01616-0, 11-7-01614-3 MEMORANDUM OPINION AND ORDER DENYING MOTION TO SHOW CAUSE WHY SEALED *EX PARTE* DOCUMENTS SHOULD NOT BE VACATED

The State of Washington filed dependency and termination petitions claiming that children are dependent and that parents are so unfit that their parental rights should be permanently terminated. Counsel for indigent respondents have obtained *ex parte* orders providing expert and other services, and have obtained orders sealing the motions, declarations and orders approving those services at public expense[1]. The Attorney General, representing petitioner Department of Social and Health Services, and counsel for the guardians *ad litem* have moved for orders vacating the orders to seal.

The Washington State Legislature has set forth the legislative branch position relative to counsel:

> The legislature finds that effective legal representation must be provided for indigent persons and persons who are indigent and able to contribute, consistent with the constitutional requirements of fairness, equal protection, and due process in all cases where the right to counsel attaches.

[1] While most of the approvals of the funds for services other than counsel were made by an executive branch agency, the King County Office of Public Defense, and thus are not court orders, and others are by orders of Superior Court judges, this opinion will refer to approvals and orders interchangeably.

King County Superior Court
516 Third Avenue C-203
Seattle, Washington 98115

RCW 10.101.005. The Supreme Court has expressly applied this statute to dependency and termination actions, *Dependency of Grove,* 127 Wn.2d 221 (1995), recognizing that it applies even though it is housed in a criminal procedure chapter of the Revised Code of Washington; the court applied the Equal Protection clause of the United States Constitution to the analysis, *Grove,* at 229. The Court, in *Grove,* was addressing whether a dependency respondent has the right to counsel on appeal; the court held that there is such a right. The Court, in addressing the question of whether a right to counsel on appeal includes the right to the record on appeal, wrote:

> The right to counsel without a corresponding right to present a record to the reviewing court is an empty right. The Legislature's intent, as evidenced from its finding that indigent litigants who have a right to counsel should have "*effective* legal representation", would be thwarted were we to hold that the statutory right to counsel on appeal did not include the instruments necessary to permit effective presentation of the issues on appeal.

Grove, at 234. Parents are thus entitled to counsel on appeal and, when they cannot afford counsel, a lawyer is provided at public expense and indigent parents are entitled to a transcript of the hearings below.

The relationship between a parent and his or her lawyer is identical whether counsel is paid for by the parent, a private third party, the government, or where counsel is appearing *pro bono publico.* Services other than counsel are frequently needed for a parent to defend against a dependency or termination petition. A wealthy parent retains counsel and employs whatever services are deemed necessary by counsel and the parent in order to defend; the wealthy parent may choose to disclose to other parties who has been retained to provide the services other than counsel and must disclose to other parties expert witnesses or services that the parent decides will be used in court. Those services not used in court and not disclosed remain a secret forever. So that impoverished parents may also defend against dependency and termination petitions, counsel is authorized to seek funding by court order for those services. King County and, in some circumstances, the State of Washington, pays for those services[2]. The process for obtaining

[2] In other jurisdictions, the government assigns the budget for expert services to the defense agency providing those services. In those jurisdictions, counsel retains the expert without having to seek authorization from another executive branch agency or the court. No order sealing files is needed in that system.

King County Superior Court
516 Third Avenue C-203
Seattle, Washington 98115

funding for those services is that counsel applies to the King County Office of Public Defense, setting forth in a request and declaration the reason why the services are necessary. The declaration of counsel often contains work product, defined as "factual information which is collected or gathered by an attorney, as well as the attorney's legal research, theories, opinions, and conclusions," *West v. Thurston County,* 144 Wn.App. 573 (2008), including "materials created in anticipation of litigation, even after that litigation has terminated", *Soter v. Cowles Pub. Co.,* 162 Wn.2d 716, 732 (2007).

The Office of Public Defense either approves the request and provides the funding or denies the request. Where denied, parents may seek review *de novo* from the Superior Court. Often, the parent seeks to seal the pleadings and the authorization from the Office of Public Defense or the order of the court approving or denying the request for services. The purpose of a motion to seal in these circumstances is twofold: 1. the motion, declaration and order contain privileged information including disclosures by the client to counsel and work product, *i.e.*, "the mental impressions, conclusions, opinions, or legal theories of an attorney...concerning the litigation," CR 26(b)(4), and 2. to keep from an adverse party the name of an expert who may not be used by the defense, so that the adverse party does not obtain an advantage that the adverse party would not have if the parent were wealthy or if the funding came from the budget of the attorney, *see:* note 2, *supra.*

Assume that the wealthy parent retains a psychologist to evaluate the parent and render an opinion as to the parent's fitness. The retention of the psychologist has no therapeutic function; it is purely forensic. The psychologist sets forth in her report her opinion: the parent is unfit. Counsel for the wealthy parent puts that evaluation in a drawer never again to see the light of day. The wealthy parent then hires another psychologist who evaluates the parent and declares that the parent is fit. Counsel decides that this psychologist will testify for the parent, discloses the name and provides the report to the adverse parties. Counsel does not disclose his or her thought processes in retaining the psychologist. No one, other than counsel, the client and the first psychologist know of the first evaluation.

King County Superior Court
516 Third Avenue C-203
Seattle, Washington 98115

The indigent parent in King County does not have the luxury of complete nondisclosure since the indigent parent is asking a third party, the government, to pay for the evaluation, and the government has a budgetary interest in assuring that the services are, indeed, necessary.

The State of Washington, in the within motions, seeks an advantage which only applies to the indigent parent: disclosure of the information provided by the parent and counsel to obtain the expert services and the name of the expert whether or not the parent chooses to use that expert in his or her case. The government's reason for wanting disclosure can only be for this tactical advantage. The tactic may be to obtain disclosure in order to call the witness to testify for the government, or to obtain information which may be used for cross-examination, or to persuade the court to deny providing the funding to the indigent parent. In each situation, the government's interest is to treat the poor parent differently than the wealthy parent. The discovery rules are clear:

> A party may through interrogatories require any other party to identify each person *whom the other party expects to call as an expert witness at trial*..., A party may... depose each person whom any other party *expects to call as an expert witness at trial*... A party may discover facts known or opinions held by an expert who is not expected to be called as a witness at trial, *only as provided in rule 35(b) or upon a showing of exceptional circumstances* under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means. [emphasis supplied].

CR 26(b)(5). The rule does not include the language "unless a party is poor."

The court has created a method of protecting the indigent parent from unfair advantage by allowing the parent to seek the services by an *ex parte* process and by sealing the declaration and order from the eyes of opposing counsel. The court scrutinizes the parent's motion to seal and decides whether or not the declaration contains work product and whether or not it would be inequitable to disclose the service requested and grants or denies the motion to seal.

The process the court has adopted is akin to the process in criminal cases, *i.e.*, that contemplated in CrR 3.1(f). There is no analogous rule in the Civil Rules. The Juvenile Court Rules provide for appointment of counsel in dependency and termination cases, JuCR 9.2(c), and provides a method for appointment of experts in offender cases, JuCR 9.3; curiously, this latter rule does not provide for the *ex parte* process contained in CrR 3.1(f), but the need for an *ex parte* process is obvious and is followed in juvenile offense cases and in Sexually Violent

King County Superior Court
516 Third Avenue C-203
Seattle, Washington 98115

Predator cases, *see:* KCLCR 98.50. The Supreme Court of Washington has repeatedly held that the Civil Rules apply in criminal cases where the Criminal Rules are silent on the issue at hand, *State v. Cronin*, 130 Wn.2d 392, 397 (1996), *State v. Clark*, 129 Wn.2d 805, 815 (1996), *State v. Hackett*, 122 Wn.2d 165, 170 (1993), *State v. Gonzalez*, 110 Wn.2d 738, 744 (1988). This court concludes that CrR 3.1(f) applies to dependency and termination cases as the Juvenile Court rules are silent on the issue at hand and the need for a process shielding parents' needs for experts from the voyeuristic eyes of the government is identical. CrR 3.1(f) expressly authorizes sealing of documents relative to services other than counsel.

While arguably the notice provision of GR 15(c) applies[3], the only notice the indigent parent could provide would be that the parent is seeking the sealing of a motion, declaration and order without disclosing the nature of the motion other than, perhaps, that it concerns services for an indigent parent other than counsel; such notice is meaningless since the only objection the government could make is a general objection.

Once an appointed expert is disclosed to the adverse party, the need for sealing the order appointing the expert no longer exists; those orders should be unsealed[4]. The declaration filed in support of the motion for the expert may still contain work product or other privileged information and thus should remain sealed at least until the case is completed by dismissal or through direct appeal, if any.

The petitioner argues that orders appointing investigators should not be sealed. This court agrees and does not seal orders appointing investigators; where the declaration in support of the appointment of an investigator contains work product, then that declaration is sealed; if it does not, it is not sealed.

Consistent with this decision, and at least instructive, is the legislative exemption from the public records act of work product, RCW 42.56.290.

---

[3] A prior version of GR 15(c) exempted motions to seal pursuant to CrR 3.1(f) from the notice requirement. That exemption now rests within the Criminal Rule.

[4] While court records in dependency cases are presumptively confidential, they are available to "participants in the juvenile justice...system," RCW 13.50.100(3). All court records in dependency cases are sealed so that the public does not have access. The clerk's office in King County refers to orders to seal in dependency cases as "supersealed," since the parties do not have access to those few documents.

King County Superior Court
516 Third Avenue C-203
Seattle, Washington 98115

Petitioner's motions to unseal are denied. Petitioner's motion that respondents' lawyers provide notice to all other parties of all filings under seal not previously disclosed is denied.

All parties' motions for attorney fees and sanctions are denied.

DATED this 9th day of April, 2012.

RONALD KESSLER, Judge

King County Superior Court
516 Third Avenue C-203
Seattle, Washington 98115

SUPERIOR COURT OF WASHINGTON FOR THE COUNTY OF KING
JUVENILE DEPARTMENT

IN RE DEPENDENCY OF:

Dependency of:

KJ
DOB: 5/22/07

H.S.
DOB: 10/10/07

A.S
DOB: 2/4/10

W-C.V
DOB: 10/11/04

W-C, M
DOB: 9/9/06

W-C, D
DOB: 2/27/08

A.L
DOB: 8/19/08

E.L
DOB: 5/17/07

K.L
DOB: 9/11/10

M, H, P.
DOB: 11/11/08

Minor Child(ren).

NO. 10-7-03707-0 SEA

NO. 11-7-02695-5 KNT
11-7-02696-3 KNT
10-7-03414-3 KNT

NO. 10-7-03360-1 KNT
10-7-03361-9 KNT
10-7-03362-7 KNT

NO. 11-7-01615-1 KNT
11-7-01616-0 KNT
11-7-01614-3 KNT

NO. ~~10-7-02697-3 KNT~~ 11-7-02455-3KNT

ORDER DENYING DEPARTMENT'S REQUEST FOR CLARIFICATION AND PRESENTATION OF ORDER

THIS MATTER, having come on before the court on the Department's Motion for clarification and entry of proposed Findings, Conclusions, and Order , and the court

ATTORNEY GENERAL OF WASHINGTON
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188
(206) 464-7744

having reviewed the foregoing Motion, responses if any, and being familiar with the records and files herein, it is hereby:

ORDERED, ADJUDGED and DECREED the Department's Motion is denied.

DATED this 21 day of June, 2012.

JUDGE RONALD KESSLER

Presented by:

ROBERT M. MCKENNA
Attorney General

By _____
JOEL DELMAN
Assistant Attorney General
WSBA #16688

ATTORNEY GENERAL OF WASHINGTON
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188
(206) 464-7744

Appendix 3

FILED
KING COUNTY, WASHINGTON

~~Exhibit A~~

NOV 19 2012

SUPERIOR COURT CLERK
BY LEANNE SYMONDS
DEPUTY

SUPERIOR COURT OF WASHINGTON FOR THE COUNTY OF KING
JUVENILE DEPARTMENT

IN RE DEPENDENCY OF: M.H.P. dob: 11-11-08 Minor Child(ren).	NO. 11-7-02455-3 KNT ORDER EXCLUDING DEFENSE WITNESSES

THIS MATTER, came before the court on the Department's Motion to exclude the testimony of Makiko Guji, Psy.D. and Carmella Washington-Harvey, PhD. as witnesses for the defense, and the court having reviewed the foregoing Motion, heard argument of the parties, if any, and being familiar with the records and files herein, enters the following **FINDINGS OF FACT AND CONCLUSIONS OF LAW:**

1. Trial in this case has been continued multiple times, and was ultimately scheduled to start on August 27, 2012. At the Pre Trial Conference on August 3, 2012, mother's request for continuance was granted to give her additional time to prepare, but the court ordered that there would be no more continuances.
2. On August 14, 2012, counsel for DSHS learned for the first time that the mother intended to call Dr. Makiko Guji as defense expert at trial. The state learned of this development when counsel for the mother served a new witness list identifying Dr. Guji. Although Dr. Guji has been mother's mental

health counselor for the past year and a half, she has never before been revealed as a defense witness, and none of her records or reports were provided to the state or to the CASA. Although the mother was under a court ordered obligation to sign releases of information since 2010, she did not, so neither the CASA or DSHS were able to investigate her involvement.

3. Dr. Guji would not be permitted to testify as to the issues proposed by mother's counsel in any event because she was the mother's mental health counselor. She did not conduct a parenting evaluation of the mother, with collateral information, or interview the child so she is not qualified to offer an opinion as to whether mother is capable of parenting.

4. On August 24, 2012 counsel for DSHS learned for the first time that the mother also intends to call Dr. Washington-Harvey as a defense expert at trial. The state learned this after receiving an evaluation by Dr. Washington-Harvey of the mother. No updated witness list identifying Dr. Washington-Harvey was served on the state, but she was identified on an additional witness list e-filed on August 15, 2012. Other than the evaluation, and a copy of the referral letter sent by mother's counsel to Dr. Washington-Harvey, no other documents or information describing what information was provided to Dr. Washington-Harvey by mother's counsel has been provided to the state. Dr. Washington-Harvey had never before been revealed as a defense witness to either the state or the CASA, even though Judge Kessler authorized public funding for mother's attorney to have Dr. Washington-Harvey evaluate the mother in February of 2012.

ATTORNEY GENERAL OF WASHINGTON
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188
(206) 464-7744

5. This case has been pending for almost one year. The court imposed date for the exchange of witness lists and cutoff of discovery has passed. Although there have been multiple continuances of this case, neither the mother nor the father have requested an extension of the discovery cutoff date, or an extension of time to disclose witnesses to the state, and the court has not amended the original case schedule.

6. The issue of whether it is proper for parents' counsel to seek *ex parte* motions for defense experts and *ex parte* motions to seal those requests before Judge Kessler is on appeal and not before this court. However, the state's previous challenge to this practice placed the defense on notice that timely disclosure of defense experts was important, and the defense had an obligation, consistent with civil and local rules and the court imposed case schedule, to timely disclose their expert witnesses and/or seek permission from the court to extend these obligations.

7. Public defense attorneys cannot have it both ways. They cannot get public funding for forensic consultants to help them put together their case, and keep that secret only to disclose the evaluator as an expert witness at the eleventh hour. They also had an obligation to provide continuity of representation when the case was transferred from one defense attorney to another, and in this case they should have tracked the evaluation process by Dr. Washington-Harvey to ensure that her evaluation was completed timely and so they could ensure that her identity as an expert witness was timely disclosed.

8. Even if it was not willful, disclosure of defense witnesses one day or even two weeks before trial is not timely, and does not provide the state or CASA a

ATTORNEY GENERAL OF WASHINGTON
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188
(206) 464-7744

meaningful chance to conduct discovery and prepare for trial. It would prejudice the state and violate the child's right to timely permanency to continue the trial again.

9. Exclusion of a witness for failure to disclose timely is an appropriate remedy. The local juvenile court rules require parties to conduct their discovery early enough that they will be able to comply with the deadlines established in the case schedule (LJuCR 4.4). King County's civil rules specifically prohibit witnesses to be called to testify if they were not disclosed in accordance with the case schedule. (LCR 26(k)(4))

10. The court is not going to grant attorneys fees to the state, because it makes no sense to take taxpayer dollars out of the public defender's pocket and put it in the Attorney General's pocket when they are paid by tax dollars too.

Having entered the foregoing findings of fact and conclusions of law, it is hereby

ORDERED, ADJUDGED and DECREED that neither Makiko Guji, Psy.D. Nor Carmela Washington-Harvey, Ph.D. will be permitted to testify on behalf of the parents at trial.

DATED this 19 day of November, 2012.

JUDGE/COMMISSIONER

Presented by:

ROBERT M. MCKENNA
Attorney General

pursuant to objections, exceptions and oral argument at presentation hearing 11-08-2012 with supplemental submissions

By _____
TANYA L. THORP

FILED
KING COUNTY, WASHINGTON

NOV 19 2012

SUPERIOR COURT CLERK
BY LEANNE SYMONDS
DEPUTY

SUPERIOR COURT OF WASHINGTON
COUNTY OF King
JUVENILE COURT

Guardianship of: M.H.P. D.O.B.: 11/11/2008	**No:** 11-7-02455-3 KNT **Findings and Conclusions re Petition for Order Appointing Title 13 RCW Guardian - Granted (FNFCL)**

I. Basis

1.1 **Petition**: A guardianship petition was filed by the Department of Social and Health Services under RCW 13.36, seeking appointment of a guardian in this case.

1.2 **Appearance**: The following persons appeared at the hearing:

[ ]	Child	[ ]	Child's Lawyer
[X]	Mother	[X]	Mother's Lawyer, Leona Thomas
[X]	Father	[X]	Father's Lawyer, Daewoo Kim
[ ]	Title 13 RCW Guardian	[ ]	Title 13 RCW Guardian's Lawyer
[X]	Child's GAL/CASA, Diana Farrow	[X]	GAL/CASA's Lawyer, Kathleen Martin
[X]	DSHS/Supervising Agency Worker,	[X]	Agency's Lawyer, Tanya Thorp
[ ]	Tribal Representative	[ ]	Proposed Substitute Title 13 RCW Guardian
[ ]	Interpreter for [ ] mother [ ] father [ ] other	[ ]	Other

[ ] the [ ] mother [ ] father agreed to entry of the order and waived his/her right to notice of the hearing

1.3 **Basis**: [X] The court held a hearing that commenced on September 13, 2012, and concluded on October 2, 2012, on a petition requesting guardianship of the

ATTORNEY GENERAL OF WASHINGTON
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188
(206) 464-7744

above-named child. The court heard testimony from 20 witnesses and admitted 71 exhibits.

[ ] The parties submitted an agreed order.

II. Findings of Fact

2.1 **Notice**: The following have received adequate notice of these proceedings as required by Laws of 2010, ch. 272 § 3:

The [X] mother [X] father [ ] guardian or legal custodian [X] DSHS/Supervising Agency [ ] child [X] the child's lawyer or guardian ad litem [X] proposed Title 13 RCW guardian, as provided in the Affidavits of Service filed herein.

[ ] The child is 12 or older and was notified that he/she may request a lawyer.

2.2 **Child's Indian status**

[X] The child is not a member of or eligible for membership in an Indian tribe and the Indian Child Welfare Act, 25 U.S.C. § 1901 et seq. does not apply to the proceedings.

[ ] The child is a member of or eligible for membership in an Indian tribe and the Indian Child Welfare Act, 25 U.S.C. § 1901 et seq. does apply to the proceedings.

[ ] The proposed guardian(s) fall within the placement preferences specified in 25 U.S.C. 1915(b) or (c); **Or**

[ ] The proposed guardian(s) does (do) not fall within the placement preferences of 25 U.S.C. 1915, but there is good cause to continue placement with the proposed guardian(s) because . **And**

[ ] The child's tribe has been notified of this proceeding by registered mail received at least 15 days prior to the hearing.

[ ] Pursuant to 25 U.S.C. §1912(d), active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the break-up of the Indian family, and these efforts have been unsuccessful.

[ ] Pursuant to 25 U.S.C. §1912(f), the court finds by clear and convincing evidence, including the testimony of a qualified expert witness, that continued custody of the child by the parent(s) or Indian

ATTORNEY GENERAL OF WASHINGTON
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188
(206) 464-7744

custodian is likely to result in serious emotional or physical damage to the child.

2.3 **Service Members' Relief Acts**

[X] The [X] federal Servicemembers Civil Relief Act of 2003, 50 U.S.C. § 501, et seq. [X] the Washington Service Members Civil Relief Act, chapter 38.42 RCW does not apply to the mother or the father in this proceeding.

[ ] The [ ] federal Servicemembers Civil Relief Act of 2003, 50 U.S.C. § 501, et seq. [ ] the Washington Service Members Civil Relief Act, chapter 38.42 RCW does apply to the mother in this proceeding. The requirements of the act(s) have been met as follows:

2.4 M. H. P. was born on November 11, 2008 and is a dependent child in King County.

2.5 The child's mother, Leslie Bramlett, currently resides at 18730 SE 268th St., Kent, WA 98042.

2.6 The child's father, Paul Parvin currently resides at 18730 SE 268th St., Kent, WA 98042.

2.7 Guardianship [X] is [ ] is not in the best interests of the child, rather than termination of the parent-child relationship and proceeding with adoption, or continuation of efforts to return custody of the child to the parents based upon the following facts: the factors as outlined in RCW 13.36 have been proven by clear, cogent and convincing evidence even though the lower burden of preponderance is legally sufficient. M has a well-developed bond with his parents that can be maintained through a guardianship. The parents have significant mental health issues and persist in a belief that their mental health has no effect on M The parents have reached a plateau of function that is insufficient and unsafe for M the proposed guardian is entirely suitable and has demonstrated an ability to assure M continues in services, maintains a relationship with his parents, and interacts with his cousins appropriately.

2.8 **Basis for Establishing Guardianship**

[ ] There is no basis to establish a guardianship.

[ ] The dependency guardian and DSHS/Supervising Agency agree that the court should convert the dependency guardianship entered on [date] in [cause number] under chapter 13.34 RCW into a

ATTORNEY GENERAL OF WASHINGTON
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188
(206) 464-7744

guardianship under Chapter 13.___ RCW.

Or

[ ] All parties to the dependency agree to entry of the guardianship order and the proposed guardian is qualified, appropriate, and capable of performing the duties or guardian under Laws of 2010, ch. 272, §5.

Or

[X] The following apply:

a. The child was found to be dependent pursuant to RCW 13.34.030 on August 30, 2010, by agreed order as to the mother; and August 11, 2010, by agreed order as to the father. Exhibits 2 and 3.

b. Mathew has been removed from the custody of his parents for a period of at least six consecutive months following a finding of dependency under RCW 13.34.030. M was removed from his parents' care on June 21, 2010. Since his removal, M has never been returned to either of his parents' care.

c. The credibility of both parents is significantly questioned by the court. During the trial both parents demonstrated issues with credibility through their demeanor, inability of either parent to understand and answer questions, and the significant corroboration of these characteristics by the parents' respective mental health evaluations and evaluators.

d. The father was unable to keep track during the trial and appeared to be almost asleep for short periods and unaware that a question was pending.

e. The mother's answers were non-responsive and frequently parroted back terminology used by her various service providers.

f. On August 30, 2010, the mother agreed to the following facts establishing dependency:

1. Leslie Bramlett and Paul Parvin are the parents of M[illegible]. P. n.

2. On 6.21.10, it was reported that the mother went to the emergency room at Swedish hospital and reported that a spider was in her ear and had been there for several weeks. After being examined by a physician, the mother was informed that she did not have anything in her ear. The mother disputed this conclusion and requested a second opinion. The mother was then examined by another physician who made the same conclusion. At this point the hospital was concerned about the mother's mental health and arranged for her to speak with a social worker. The mother then became irrational, paranoid and hostile. She threatened to beat up the social worker. At one point while the mother was yelling at staff, M almost fell from a hospital bed. Hospital staff was concerned for M s safety and called law enforcement. The police spoke to

ATTORNEY GENERAL OF WASHINGTON
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188
(206) 464-7744

the mother and placed M[illegible] into protective custody. The mother had to be escorted out of the hospital by security and continued to scream that everybody was out to get her.

3. The weekend of 5.31.10, the mother checked herself in to the University of Washington Medical Center. She was discharged on 6.4.10. During this hospitalization, the father placed M[illegible] with Kimberly Kerrigan. The mother was also hospitalized in February of 2010.

4. In February of 2009 the mother was hospitalized at St. Joseph's Hospital on a voluntary basis because she felt like she needed help for her mental health.

5. It has been reported that there is a history of conflict between the mother and father. On at least one occasion the father pushed the mother while she was holding M[illegible] M[illegible] was not injured in this incident.

6. In 2005 and 2009 the father reported to the Department that the mother was using meth-amphetamines.

7. On 7.8.08, law enforcement received a hang up call from the mother and father's home. When the police arrived to do a safety check, the father became agitated and had to be restrained with handcuffs. 5 pot plans were found in the home and both parents were charged with a VUCSA.

8. The mother receives a SSDI based disability grant.

9. The father has a significant criminal history including arrests for driving while intoxicated (8.6.09, 2.1.03, 4.30.99, 1.6.96 and 10.6.95); DWLS in the first degree (8.6.09), DWSL in the second degree (7.3.03); DWLS in the third degree (8.6.09, 9.2.07, 12.28.01, 9.4.01, 2.29.00, 12.4.99, and 4.22.96), VUCSA (7.9.08), harassment and resisting arrest (9.13.08); attempt to allude (7.8.07); criminal trespass and resisting arrest (6.3.07); assault in the forth degree domestic violence (12.7.01); assault domestic violence (7.11.01) and resisting arrest (4.30.99 and 4.22.09). The father was also convicted for resisting arrest in 1995 and 1996. He is currently under probation and receives domestic violence and substance abuse treatment through the Veteran's Administration. He is also required to do ua's.

10. The mother has another child, T[illegible] In 2005, the police placed T[illegible] into protective custody. T[illegible] has remained in the care of his father since that time.

11. The mother has been prescribed psychotropic medication in the past and it has been reported that she has not taken it on a consistent basis and that she also has substance abuse issues. Exhibit 3.

g. The mother's dispositional order required her to engage in a psychiatric assessment and follow treatment recommendations; individual mental health counseling and follow through with any treatment recommendations; a parenting assessment and comply with any recommendations once the mother is stabilized in terms of her mental health treatment, and that is confirmed by her provider; and random urinalysis two times per week. Exhibit 3.

ATTORNEY GENERAL OF WASHINGTON
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188
(206) 464-7744

h. Services ordered under RCW 13.34.130 and .136 have been offered or provided and all necessary services reasonably available, capable of correcting the parental deficiencies within the foreseeable future, have been offered or provided to the mother. Exhibits 14, 15, 17, 20, and 28.

i. RCW 13.36.040(c)(iv) does not require that services be expressly and understandably offered or provided.

j. The services offered to the mother included a psychiatric evaluation with parenting component by Dr. Joanne Solchany; mental health counseling and psychotropic medication management through Sound Mental Health; parent-coaching with child-parent psychotherapist, Abby White; parenting instruction through Childhaven; parenting classes including The Incredible Years, Puget Sound Adlerian Society and Auburn Youth Resources; SPARKS parenting class through Children's Home Society; and random urinalysis. Exhibits 14, 15, 17, 20, and 28.

k. At the time of the trial the mother's mental health provider was Janeen (Jackie) Hook. The mother was superficial in her discussions with Ms. Hook during their sessions. The mother did not regularly attend the full time allotted for a session. Ms. Hook was never able to assist the mother in addressing her mental health due to the mother's inability or unwillingness to share information in her sessions. Exhibit 63.

l. The mother engaged with Dr. Joanne Solchany, PhD for two interviews and one parent-child observation. Dr. Solchany issued her report in June 2011. Dr. Solchany diagnosed the mother with Schizophrenia, Undifferentiated type. The court finds this diagnosis accurate as demonstrated by the mother's presentation to the court.

m. Dr. Solchany opined that the mother did not seem capable of adequately and appropriately caring for M /. Dr. Solchany recommended that the mother continue in weekly mental health counseling sessions, including continuing to see her medication provider and be compliant with her medication plan on a regular basis. Dr. Solchany found the mother's prognosis to be poor. Dr. Solchany did not believe that the mother has the capacity to safely parent M and did not believe that there was a strong likelihood she could develop the skills and abilities to be able to parent him in the future. Dr. Solchany concluded that it is more likely than not that the mother's condition will worsen over time.

ATTORNEY GENERAL OF WASHINGTON
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188
(206) 464-7744

n. Per the dispositional order, the mother's parenting assessment was to commence once the mother is stabilized in terms of her mental health treatment, and this is confirmed by her provider. Exhibit 3.

o. The mother's parenting assessment complies with the provisions of the dispositional order. Dr. Solchany observed and testified that the mother's presentation on the second interview day was stable enough to proceed with the parenting assessment. Dr. Solchany would not have proceeded with the parenting assessment if the mother was not sufficiently stable. The mother additionally reported to Dr. Solchany what medications she was taking including the dosages, which Dr. Solchany corroborated with the mother's treatment records. The court finds Dr. Solchany's testimony and expertise credible on this issue.

p. The mother engaged in parent-coaching services with Abby White starting in September/October/November 2010. The mother has consistently engaged in this at least weekly service for the last 19 months.

q. On August 11, 2010, the father agreed to the following facts establishing dependency:

1. Leslie Bramlett and Paul Parvin are the parents of M~~H~~ P.

2. On 6.21.10, the mother went to the emergency room at Swedish hospital and reported that a spider was in her ear and had been there for several weeks. After being examined by a physician, the mother was informed that she did not have anything in her ear. The mother disputed this conclusion and requested a second opinion. The mother was then examined by another physician who made the same conclusion. At this point the hospital was concerned about the mother's mental health and arranged for her to speak with a social worker. The mother then became irrational, paranoid and hostile. She threatened to beat up the social worker. At one point while the mother was yelling at staff, M ' almost fell from a hospital bed. Hospital staff was concerned for M 's safety and called law enforcement. The police spoke to the mother and placed Mathew into protective custody. The mother had to be escorted out of the hospital by security and continued to scream that everybody was out to get her.

3. The mother has struggled to meet her mental health treatment needs for some time. On 6.10.10, the mother called 911 because she was not feeling safe. She reported that she thought the air was going to hurt her. The weekend of 5.31.10, the mother checked herself in to the University of Washington Medical Center. She was discharged on 6.4.10. During this hospitalization, Mathew was placed his paternal grandfather. The mother was also hospitalized in February of 2010.

4. In February of 2009 the mother was hospitalized at St. Joseph's Hospital on a voluntary basis because she was hearing voices and was psychotic. The voices told her that the father was killing people and playing with their bodies.

5. The mother has a pattern of asking relatives to take care of M ' for short periods and then disappearing for days or weeks.

ATTORNEY GENERAL OF WASHINGTON
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188
(206) 464-7744

6. In 2005 and 2009 the father reported to the Department that the mother was using meth-amphetamines.

7. On 7.8.08, law enforcement received a hang up call from the mother and father's home. When the police arrived to do a safety check, the father became agitated and had to be restrained with handcuffs. 5 pot plans were found in the home and both parents were charged with a VUCSA. Father is authorized to have these plants because he is approved for medical marijuana. The VUCSA was dismissed.

8. The mother receives a SSDI based disability grant. The father is her payee.

9. The father has a criminal history including arrests for driving while intoxicated (8.6.09, 2.1.03, 4.30.99, 1.6.96 and 10.6.95); DWLS in the first degree (8.6.09), DWSL in the second degree (7.3.03); DWLS in the third degree (8.6.09, 9.2.07, 12.28.01, 9.4.01, 2.29.00, 12.4.99, and 4.22.96), VUCSA (7.9.08), harassment and resisting arrest (9.13.08); attempt to allude (7.8.07); criminal trespass and resisting arrest (6.3.07); assault in the forth degree domestic violence (12.7.01); assault domestic violence (7.11.01) and resisting arrest (4.30.99 and 4.22.09). The father was also convicted for resisting arrest in 1995 and 1996. He is currently under probation and receives substance abuse treatment through the Veteran's Administration. He is also required to do ua's.

10. The mother has another child, TI . In 2005, the police placed TI into protective custody due to the mother's mental illness. TI has remained in the care of his father since that time.

11. The mother's ability to be an appropriate parent is impaired due to mental illness. She has been prescribed psychotropic medication but has not taken it on a consistent basis. She may also have substance abuse issues.

12. The father has a history of substance abuse but he is approved for medical marijuana. He has been diagnosed with psychosis NOS and is prescribed medication.

13. The parties in agreement with the terms of this order stipulate there are sufficient facts to establish dependency and that dependency status is in the best interests of the child at this time. Exhibit 2.

r. The father's dispositional order required him to engage in age appropriate parenting class with agreed provider; compliance with mental health treatment through the VA including compliance with psychotropics as prescribed; random urinalysis two times per week; drug/alcohol evaluation and follow treatment recommendations; psychological evaluation with a parenting component with an agreed upon provider and compliance with any recommendations. Exhibit 2.

s. Services ordered under RCW 13.34.130 and .136 have been offered or provided and all necessary services reasonably available, capable of correcting the parental deficiencies within the foreseeable future, have been offered or provided to the father. Exhibits 16, 18, 19, 21,

ATTORNEY GENERAL OF WASHINGTON
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188
(206) 464-7744

22, 27, 29-31.

t. The father has reportedly attended services at the Veteran's Administration (VA) for chemical dependency treatment, mental health services, and marital counseling. The father has limited the releases of information he has provided to the Department to exclude written documentation from the VA. Exhibit 46.

u. The father has not provided consistent documentation as requested by the social worker. Exhibits 16, 18, 19, 21, 22, 27, 29-31. The father's failure to provide this information hindered the Department's ability to accurately assess his engagement in services.

v. The father's current involvement with mental health services or the use of psychotropic medication is unknown at this time.

w. The father engaged in a psychological evaluation with parenting component with Dr. Michael O'Leary, Ph.D. Dr. O'Leary issued his report in March 2011. The accuracy of the father's self-report is limited. Dr. O'Leary relied upon collateral information and several standard diagnostic tests, as well as a parent-child observation in reaching his conclusions. The court finds the evaluation and recommendations of Dr. O'Leary to be persuasive.

x. Dr. O'Leary diagnosed the father with Anxiety Disorder, with possible symptoms of PTSD; alcohol dependence by history; cannabis dependence; cognitive disorder affecting attention and concentration, short-term memory and executive decision-making ability; mixed personality disorder with paranoid, passive-aggressive and antisocial features, and psychosocial and environmental problems. This court finds this diagnosis accurate as demonstrated in the father's presentation to the court. Dr. O'Leary recommended that the father engage in a domestic violence perpetrator's treatment program; submit to urinalysis for the term of the dependency; be re-evaluated for the use of psychotropic medications to help him control his behavior; marital counseling if the parent's other psychiatric symptoms are under control and they have achieved emotional stability; FPS services; and engage in a high risk parenting class which deals with issues of "parenting in recovery." All of these recommendations were made with the caveat of "if and when the court deems reunification safe." The father's prognosis is poor given the father's significant developmental/cognitive problems which serve as a barrier to efficiently acquiring more adaptive and appropriate parenting behaviors. Dr. O'Leary opined that it is highly unlikely that the father will be able to remediate his parenting deficits to the degree that he

ATTORNEY GENERAL OF WASHINGTON
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188
(206) 464-7744

can be considered a consistently safe parent.

y. The father engaged in a domestic violence perpetrator treatment intake through ACT&T counseling. The evaluator determined that the father was not suitable for domestic violence treatment due to his high level of denial and inconsistent reporting. The evaluator recommended that the father engage in Moral Recognition Therapy and random drug screening during therapy before he would be amenable to domestic violence perpetrator's treatment.

z. The father refused to engage in Moral Recognition Therapy despite this service being offered by the Department.

aa. There is little likelihood that conditions will be remedied so that M could be returned to either parent in the near future.

bb. The mother's mental health issues remain significant, despite attempts at treatment and intervention. The mother's persistent belief that she suffers from panic attacks demonstrates her inability to identify the symptoms of her schizophrenia. The mother's inability to maintain mental health stability significantly hinders her ability to be a safe, stable care provider to M Exhibits 54-57.

cc. The father's current level of mental health stability is unknown at this time. The father has not demonstrated any ability to identify the risk that the mother's mental health symptoms present to a young child. The father's belief that the mother last had a mental health episode two years ago is indicative of the depth of his lack of understanding.

dd. Despite years of intervention and a purported safety plan, neither parent exhibited any insight into how their mental health issues have affected or might affect M

ee. Each parent has shown some ability in a structured context to follow parenting instructions, but absent structure they failed to demonstrate an underlying comprehension or ability to follow through with the parenting instruction at any point during the dependency case or through testimony at trial.

ff. The mother created a "safety plan," regarding how to respond if she has a mental health episode. However, the mother's plan failed to mention M at all. The mother's plan did not identify her providers by name or their contact information. Exhibit 71.

gg. Neither parent realized or identified that the point of a safety plan is to

ATTORNEY GENERAL OF WASHINGTON
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188
(206) 464-7744

protect M from the consequences of another acute psychotic episode by the mother.

hh. At no point has the dependency court, in its several review hearings, ever reached the point of changing the parents' services because return home was not feasible for M Exhibits 4-10, and 47.

ii. The totality of the evidence demonstrates that the parents have not established a continuum of improvement over the 25 months of this dependency. The parents reached a plateau of functioning that is less than marginal or psychologically safe for M as demonstrated at a minimum by the father's continuing obtuseness about the mother's chronic mental health, and the failure of the mother to address her mental health issues effectively.

jj. M s delays are developmental, not congenital, and are consistent with the effects of parental mental illness on infant mental health. When M came into the care of his aunt he was almost nonverbal, looked for food in the trash can, was unable to understand what affection was and had significant difficulties with transitions.

kk. Neither parent has acknowledged that they might have been a contributing factor to M s severe behavioral issues that include anxiety, speech delays and delays with social interaction. M anxiety has been demonstrated through his incredible difficulty with transitions that have resulted in significant tantruming behavior. The father acknowledged that M had these behaviors in the parents' care, but they never addressed this issue with M s pediatrician or at well-baby checks.

ll. M has made some progress in his speech development, transitions and social interactions. However, in order for M to continue on this trajectory he must be in a stable, structured environment where his emotional, psychological, educational, social, and behavioral needs can be met.

mm. The parents have not demonstrated a sustained ability to successfully meet M s needs.

nn. Guardianship is in the child's best interests. In addition to the facts outlined in paragraph 2.7 which are incorporated herein, it provides the safety, stability and permanence that the child needs, while also allowing the child's well-developed bond with his parents to be maintained.

ATTORNEY GENERAL OF WASHINGTON
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188
(206) 464-7744

oo. The proposed guardian has signed a statement acknowledging the guardian's rights and responsibilities toward the child and affirming the guardian's understanding and acceptance that the guardianship is a commitment to provide care for the child until the child reaches age 18.

2.9 **Exceptional Circumstances when the Child Has no Legal Parent**

[X] Does not apply.
[ ] The child has no legal parent. The following exceptional circumstances support the establishment of the guardianship:

[ ] the child has special needs and a suitable guardian is willing to *accept custody and able to meet the needs of the child to an extent* unlikely to be achieved through adoption.

[ ] the proposed guardian has demonstrated a commitment to provide for the long-term care of the child and:
[ ] is a relative of the child;
[ ] has been a long-term caregiver for the child and has acted as a parent figure to the child and is viewed by the child as a parent figure; or.
[ ] the child's family has identified the proposed guardian as the preferred guardian, and, if the child is age 12 years or older, the child also has identified the proposed guardian as the preferred guardian.

[ ] Other:

2.10 **Visitation**

[X] Contact between the child and [X] the child's mother and the child's father; [ ] the child's siblings, namely , is in the child's best interests, as follows:

(a) The Department and the guardian will work together to set up a transition period to reduce the number of visits between M and his parents at the parent's home to once a week, supervised.

(b) The guardian does not have a responsibility for transportation.

(c) If the Department does not have on-going funds for the visit transportation at the completion of the guardianship process, the parents are responsible for their own transportation.

(d) The amount of contact between his parents and M at family

ATTORNEY GENERAL OF WASHINGTON
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188
(206) 464-7744

gatherings and M s school events and activities is left to the sound discretion of the guardian.

2.11 Kim Kerrigan is qualified, appropriate, and capable of performing the duties of guardian under Laws of 2010, ch. 272, § 5 and meets the minimum requirements to care for children as established by DSHS under RCW 74.15.030.

2.12 **Need and Scope of Continued Court Oversight**

[X] There is no need for further court oversight.
[ ] There is a need for continued court oversight as follows:

III. Conclusions of Law

[X] The court has jurisdiction over the child, the parents and subject matter of this action.

[X] The elements of RCW 13.36 have been proven by clear, cogent and convincing evidence.

[ ] A Title 13 RCW guardianship should not be established under Laws of 2010, ch. 272 § 5.

[X] A Title 13 RCW guardianship should be established under Laws of 2010, ch. 272 § 5.

[ ] The dependency guardianship under [cause number] should be converted into a guardianship under chapter 13.__ RCW.

[X] The dependency cause number 11-7-02455-3 should be dismissed.

Dated: November 19 2012

James R Doerty
Judge James Doerty

Presented by: Pursuant to objections, exceptions and arguments in open court at presentation hearing 11/08/2012 with supplemental submissions

Signature

Tanya Thorp WSBA No. 32955
Assistant Attorney General

ATTORNEY GENERAL OF WASHINGTON
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188
(206) 464-7744

Copy Received. Approved for entry, notice of presentation waived.

_____
Signature of Mother's Lawyer

_____
Print Name WSBA No.

_____
Signature of Father's Lawyer

_____
Print Name WSBA No.

_____
Signature of CASA Counsel

_____
Print Name WSBA No.

ATTORNEY GENERAL OF WASHINGTON
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188
(206) 464-7744

NO. 68772-7-I

COURT OF APPEALS FOR DIVISION I
STATE OF WASHINGTON

IN RE DEPENDENCY OF: M.H.P, Minor Child, STATE OF WASHINGTON, DEPARTMENT OF SOCIAL AND HEALTH SERVICES Petitioner, P. PARVIN AND L. BRAMLETT, Respondents.	DECLARATION OF SERVICE

I, Nick Baluca, declare as follows:

I am a Legal Assistant employed by the Washington State Attorney General's Office. On May 1, 2013, I sent a copy of: DSHS Opening Brief; Department's Second Supplemental Designation of Clerk's Papers; and Declaration of Service.

Said copies were sent by Legal Messenger, on the 1st day of May, 2013, to: **Kathleen Martin, CASA**, 401 4th Avenue, Suite A2239, Kent, WA 98032-4429; and **Suzanne Elliot**, Hoge Building, 705 2nd Avenue, Suite 1300, Seattle, WA 98104-1797.

ORIGINAL

I declare under penalty of perjury, under the law of the State of Washington that the foregoing is true and correct.

DATED this 1st day of May, 2013 at Seattle, Washington.

NICK BALUCA
Legal Assistant