

NO. 68772-7-I

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**COURT OF APPEALS, DIVISION I  
OF THE STATE OF WASHINGTON**

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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.

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**DSHS REPLY BRIEF**

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ROBERT W. FERGUSON  
Attorney General

TRISHA L. McARDLE  
Senior Counsel, for DSHS  
WSBA #16371  
OID #91016  
Attorney General's Office  
800 Fifth Avenue, Suite 2000  
Seattle, WA 98104  
(206) 464-7045

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COURT APPEALS DIVISION I  
STATE OF WASHINGTON  
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ORIGINAL

**TABLE OF CONTENTS**

I. INTRODUCTION.....1

II. ARGUMENT .....3

    A. The Fact That Parents Are Statutorily Entitled To Appointed Counsel In These Proceedings Does Not Entitle Them To An *Ex Parte* Hearing To Appoint Experts And To Seal Court Records.....3

    B. Parents Have Not And Cannot Show That Existing Civil And General Rules Are Insufficient To Protect Confidentiality In Work Product And Attorney/Client Communications. ....5

    C. Applying Criminal Law to Dependency And Termination Cases Will Compromise Children’s Safety And The Court’s Ability To Provide Them Timely Permanency.....8

    D. The Discovery Violations That Occurred On This Case Are Inextricably Linked To The Secretive Proceedings Used To Appoint Defense Experts. ....15

    E. It Is Not The Department’s Responsibility To Create A Safe Harbor Rule For The Public Defense Agencies And The Court To Follow To Administer Litigation Funding.....19

III. CONCLUSION .....21

## TABLE OF AUTHORITIES

### Cases

|   |    |
|---|----|
| <i>Allied Financial Services, Inc. v. Mangum</i> ,<br>72 Wn. App. 164, 864 P.2d 1 (1993).....           | 13 |
| <i>Hickman v. Taylor</i> ,<br>329 U.S. 495, 67 S. Ct. 385, 91 L. Ed. 451 (1947).....                    | 10 |
| <i>In re Allen</i> ,<br>139 Wash. 130, 245 P.2d 919 (1926) .....  | 11 |
| <i>In re Dependency of J.A.F.</i> ,<br>168 Wn.App. 653, 278 P.3d 673 (2012).....                        | 19 |
| <i>In re Dependency of M.S.R.</i> ,<br>174 Wn. 2d 1, 271 P. 3d 234 (2012).....                          | 4  |
| <i>In re Dependency of R.H.</i> ,<br>129 Wn. App. 83, 117 P. 3d 1179 (2005).....                        | 10 |
| <i>In re Sego</i> ,<br>82 Wn.2d 736, 738, 513 P.2d 831 (1973).....                                      | 9  |
| <i>In re the Dependency of J.S.</i> ,<br>111 Wn. App. 796, 46 P.3d 273 (2002).....                      | 9  |
| <i>In re the Matter of the Adoption of Lybbert</i> ,<br>75 Wn.2d 671, 453 P.2d 650 (1969).....          | 12 |
| <i>In re the Welfare of B.D.F.</i> ,<br>126 Wn. App. 562, 109 P.3d 464 (2005).....                      | 11 |
| <i>In re the Welfare of G.E., T.E., and N.E.</i> ,<br>116 Wn. App 326, 332, 65 P.3d 1219 (2003).....    | 4  |
| <i>In the Interest of J.T.G., H.N.M., B.M.L.</i> ,<br>121 S.W.3 <sup>rd</sup> 117(Tex. App. 2003) ..... | 4  |

|  |    |
|--|----|
| <i>In the Matter of Day,</i><br>189 Wash. 368, 65 P.2d 1049 (1937) .....   | 11 |
| <i>Lancaster v. Perry,</i><br>127 Wn. App. 826, 113 P. 3d (2005).....  | 13 |
| <i>Lassiter v. Department of Social and Health Services,</i><br>452 U.S. 18, 31-32, 101 S. Ct. 2153, 68 L. Ed. 2d 640 (1981) .....               | 4  |
| <i>M.W. v. Department of Soc. &amp; Health Svcs.,</i><br>149 Wn.2d 589, 599, 70 P.3d 954 (2003).....   | 9  |
| <i>M/V La Conte, Inc. v. Leisure,</i><br>55 Wn. App. 396, 777 P. 2d 1061 (1989).....   | 13 |
| <i>Port of Seattle v. Equitable Capital Group, Inc.</i><br>127 Wn.2d 202, 898 P.2d 275 (1995).....   | 13 |
| <i>Russell v. Catholic Charities,</i><br>70 Wn.2d 451, 423 P.2d 640 (1967).....  | 11 |
| <i>State v. Apelt,</i><br>176 Ariz. 349, 861 P. 2d 634 (1993) <i>cert. denied</i> , 513 U.S. 834,<br>115 S.Ct. 113, 130 L. Ed. 2d 59 (1994)..... | 4  |
| <i>State v. Easterling,</i><br>157 Wn.2d 167, 137 P. 3d 825 (2006).....  | 19 |
| <i>State v. Floody,</i><br>481 N.W.2d 242, 256 (S.D. 1992).....  | 4  |
| <i>State v. Garner,</i><br>136 N.C. App. 1, 523 S.E.2d 689 (1999), <i>appeal dismissed, cert.</i><br><i>denied</i> , 351 N.C. 477 (2000).....    | 5  |
| <i>State v. McEnroe,</i><br>174 Wn. 2d 795, 279 P. 3d 861 (2011).....  | 6  |
| <i>State v. Phipps,</i><br>331 N.C. 427, 418 S.E.2d 178 (1992).....  | 5  |

|   |    |
|---|----|
| <i>State v. Ray</i> ,<br>116 Wn.2d 531, 806 P.2d 1220 (1991).....         | 14 |
| <i>State v. Thacker</i> ,<br>94 Wn.2d 276, 280, 616 P. 2d 655 (1980)..... | 14 |
| <i>State v. Touchet</i> ,<br>642 So.2d 1213 (La. 1994) .....              | 5  |
| <i>State v. White</i> ,<br>340 N.C. 264, 457 S.E. 2d 841 (1995).....      | 5  |

**Statutes**

|                               |    |
|-------------------------------|----|
| RCW 13.34 .....               | 10 |
| RCW 13.34.020 .....           | 9  |
| RCW 13.34.105(1)(a)-(f) ..... | 10 |
| RCW 13.34.145(3)(b)(vi) ..... | 9  |

**Other Authorities**

|   |    |
|---|----|
| Laws of 2008, Ch. 152, sec. 3 .....   | 9  |
| WASH. STATE BAR ASS'N., COURT RULES AND<br>PROCEDURES COMMITTEE, MEETING MINUTES Feb. 25,<br>2013 [243-245] (Comm. Print 2013) which can be viewed at:<br><a href="http://www.wsba.org/Legal-Community/Committees-Boards-and-Other-Groups/Court-Rules-and-Procedures-Committee/~media/Files/Legal%20Community/Committees_Boards_Panels/Court%20Rules/Agendas%20and%20Meeting%20Materials/March%2018%202013%20Meeting%20Materials.ashx">http://www.wsba.org/Legal-Community/Committees-Boards-and-Other-Groups/Court-Rules-and-Procedures-Committee/~media/Files/Legal%20Community/Committees_Boards_Panels/Court%20Rules/Agendas%20and%20Meeting%20Materials/March%2018%202013%20Meeting%20Materials.ashx</a> ..... | 21 |

**Rules**

|                    |    |
|--------------------|----|
| CrR 4.7(b) .....   | 14 |
| GALR 4(h)(3) ..... | 10 |

|                     |         |
|---------------------|---------|
| GR 15(c)(1).....    | 6, 7, 8 |
| JuCR 9.3.....       | 20      |
| KCLCR 26(k)(1)..... | 16      |
| KCLGR 15(c)(3)..... | 6       |
| KCLJuCR 3.10.....   | 6       |
| KCLJuCR 4.4(c)..... | 12, 16  |
| KLCR 26(K)(4).....  | 13      |

## I. INTRODUCTION

Rather than respond to the problems created by secretive hearings, or the alternative procedures King County could use to administer defense funding of experts, the parents mischaracterize the state's claims. They assert that the state wants: (1) notice of trial preparations and strategic decisions made by defense counsel in order to obtain a tactical advantage; and (2) to prevent poor parents from obtaining experts. *See* parents brf. at 3, 6, 9, 12. In actuality, the state makes no such requests.

The parents also assert that this case demonstrates the current secretive system works well – providing an efficient means of administering defense funding that prevents delay without compromising the parents' ability to prepare a defense. Yet, simultaneously, the mother, in her appeal of the guardianship order, challenges the trial court for excluding the witness it approved in secret and claims that she received ineffective assistance of counsel when her attorney failed to disclose the witness appointed by the court after the discovery cutoff date. *See* parents' brf. at 12-13 and compare with mother's Opening brf. in No. 69713-7-I. She argues that the proper remedy for her violation of discovery deadlines was to delay the trial once again, even though trial had already been continued five times. Apparently she believes she is entitled to both have defense experts appointed in secret without regard to the discovery

deadlines, and to call those witnesses at trial regardless of whether she has identified those witnesses in advance of trial so that the other parties can conduct discovery or otherwise properly prepare.

Notwithstanding the mother's claims to the contrary, the secretive process for appointing experts, condoned by the court below, led to and was inextricably linked to the discovery violations that occurred in this case, and the waste of public funds that ensued because every order appointing experts was entered after the discovery cutoff and deadline for disclosing witnesses, making it impossible to "timely" disclose the witnesses. This case demonstrates fully that the current system does not work. It is fraught with abuse, it engenders unnecessary and protracted litigation, and it causes excessive delays – as evidenced by the fact that the child who is the subject of this case still has no permanent home after three years of litigation. If the mother succeeds on appeal, parents will be encouraged to wait until after the discovery deadlines expire to make their requests for defense experts, knowing it will only further delay the court judging and perhaps terminating their parental rights.

Cutting through the parents' hyperbole, the issues and relief sought by the state are simple. If King County chooses to use a civil motion practice to administer its funding of defense experts, it must follow the law. If King County prefers not to follow existing laws applicable to all



motions in civil cases and to all parties – rich or poor – it must adopt an administrative procedure like other counties use that does not involve the court.

## II. ARGUMENT

### A. **The Fact That Parents Are Statutorily Entitled To Appointed Counsel In These Proceedings Does Not Entitle Them To An *Ex Parte* Hearing To Appoint Experts And To Seal Court Records.**

In support of Judge Kessler's ruling below, the parents argue that because they are indigent, and because these proceedings concern interests that are fundamental, they are constitutionally entitled to request funding for defense experts and orders to seal wholly outside the presence of the public and without providing notice to the other parties. Parents brf. at 3-4. They cite no authority for this proposition, but instead rely on a 'right to counsel' argument and assert that because wealthy parents would not need to notify the state when they hire an expert, they should not have to notify the state either. But wealthy parents do not use a civil motion practice to hire their experts, and they do not bring motions to seal court records without notifying other parties – for if they did, the state would most assuredly complain.

While parents do have a statutory right to counsel, Washington courts have yet to conclude that parents also have a constitutional right to

counsel in all cases. *In re Dependency of M.S.R.*, 174 Wn. 2d 1, 271 P. 3d 234 (2012)(Court adopted case by case analysis approved by the U.S. Supreme Court's ruling in *Lassiter v. Department of Social and Health Services*, 452 U.S. 18, 31-32, 101 S. Ct. 2153, 68 L. Ed. 2d 640 (1981); *see also In re the Welfare of G.E., T.E., and N.E.*, 116 Wn. App 326, 332, 65 P.3d 1219 (2003). The dicta in the cases cited by parents that suggests a constitutional right to counsel predated these rulings.

Even if the right to counsel in these cases is constitutional, it does not follow that parents therefore have a right to bring motions for experts, and motions to seal those court records, wholly in secret. No court in Washington has concluded as much, and courts in other jurisdictions have declined to extend criminal rules allowing *ex parte* appointment of experts to parental rights cases. *In the Interest of J.T.G., H.N.M., B.M.L.*, 121 S.W.3<sup>rd</sup> 117(Tex. App. 2003). Even in criminal cases, courts in other jurisdictions have rejected arguments that *ex parte* hearings on the appointment of experts is constitutionally required. *See e.g. State v. Apelt*, 176 Ariz. 349, 861 P. 2d 634 (1993) *cert. denied*, 513 U.S. 834, 115 S.Ct. 113, 130 L. Ed. 2d 59 (1994)(no constitutional requirement for an *ex parte* hearing to request a defense expert); *State v. Floody*, 481 N.W.2d 242, 256 (S.D. 1992)(statute requiring adversarial hearing prior to appointment of defense expert does not violate defendant's due process or equal

protection rights); *State v. Touchet*, 642 So.2d 1213 (La. 1994)(authorized request for funding to be considered in camera, but required notice of the motion to the state and an opportunity for the state to object, and required the defendant to show particularized prejudice in allowing the state to participate.); *State v. Phipps*, 331 N.C. 427, 418 S.E.2d 178 (1992)(indigent defendant has right to tools of adequate defense, including expert assistance, but *ex parte* hearing to consider request is not constitutionally required); *State v. White*, 340 N.C. 264, 457 S.E. 2d 841 (1995)(no constitutional right to an *ex parte* hearing to consider request to appoint investigator for defendant); *State v. Garner*, 136 N.C. App. 1, 523 S.E.2d 689 (1999), *appeal dismissed, cert. denied*, 351 N.C. 477 (2000)(no due process right to an *ex parte* hearing on motion for funds to employ an eyewitness identification expert); *see also* Department's Opening brf. at 27-28. The cases cited by the parents relied on a federal statute, rather than constitutional doctrine, and none of those cases justify King County's *ex parte* practice condoned by the court below.

**B. Parents Have Not And Cannot Show That Existing Civil And General Rules Are Insufficient To Protect Confidentiality In Work Product And Attorney/Client Communications.**

Without citing authority, the parents simultaneously claim that they are "required to file a motion to ask the court for funds to hire experts" while later in their brief they assert "there is no clearly applicable

juvenile court rule that covers this situation.” Parents brf. at 3 and 15. But even Judge Kessler acknowledged that King County’s chosen system is not legally required, nor is it the system used by other counties. CP 776 ft. note 2. In fact, the decision to use a motion practice for the appointment of defense experts is unique to King County. *Id.* In other jurisdictions, the budget for expert services is assigned to the defense agency providing the services, and the expert is retained without seeking authorization from the court, and without sealing any court records. *Id.* King County has the option to follow the procedures used in other counties, but has simply chosen not to.

In claiming there is no clearly applicable rule, the parents ignore the Department’s argument that existing civil and general rules provide a procedure that would ensure notice, yet still protect them from revealing trial strategies, attorney/client confidences, and even the name of the consulting witness they wish to have appointed. The procedure for filing motions in juvenile dependency proceedings is delineated in KCLJuCR 3.10. The general rules of the court direct the procedures for sealing court records. GR 15(c)(1), KCLGR 15(c)(3), and the Supreme Court’s ruling in *State v. McEnroe*, 174 Wn. 2d 795, 279 P. 3d 861 (2011) authorize a motion to seal contemporaneous with a motion for the appointment of an expert, and allow for withdrawal of the motion if the request to seal is

denied. The editorial comments to GR 15(c)(1) provide support for practitioners to file a motion, with notice to all parties, asking the court prospectively to permit filing of a declaration under seal, or that redacts those portions containing mental impressions, theories, opinion, or legal advice, so their work product is protected. *See* DSHS Opening brf. 23- 25. The discovery rules also provide a mechanism to designate experts as “consulting witnesses” to shield them from being deposed by the state or the child unless and until counsel for the parent decides to call them as a witness. *See* Department’s Opening brf. at 28.

Thus, contrary to the parents’ claim and the ruling below, the issue before the court is not an all-or-nothing proposition, in which the entire defense request and motion to seal must all be done in secret, or everything must be revealed. Parents can be effectively represented, and they can have experts appointed without revealing confidential information, and they can even use a motion practice if they desire. But neither the statutes nor the rules allow for stealth litigation via secret proceedings before a criminal tribunal known only to the public defense bar, where motions for experts and motions to seal are brought outside the public eye, without notice to other parties after the discovery deadlines have passed. And, contrary to the ruling below, no authority exists for the application of criminal law to what is clearly a civil case.

**C. Applying Criminal Law to Dependency And Termination Cases Will Compromise Children's Safety And The Court's Ability To Provide Them Timely Permanency.**

The parents cite no authority to justify Judge Kessler's conclusion that criminal law governs these motions and permits them to be brought in secret. Nonetheless they argue that criminal law *should* apply because they claim the interests involved are the same as in criminal cases. Parents brf. at 9-12. In fact, they assert the interests are "indistinguishable." *Id.* at 9. That is incorrect.

The parents do not dispute that juvenile dependency and termination cases are civil cases, and they concede that GR 15(c)(1) governs motions to seal. Parents brf. at 8. GR 15(c)(1) provides that in a civil case "Reasonable notice of a hearing to seal must be given to all parties in the case." GR 15(c)(1). Even if we were to ignore the plain language in the rule, and assume for the sake of argument that there is no applicable rule to govern these motions, neither Judge Kessler nor the parents offer any authority for the proposition that criminal law applies in absence of an applicable civil rule. CP 779. As pointed out in the state's opening brief, there are significant practical and policy reasons for not treating juvenile dependency and termination cases the same as criminal cases.

Unlike criminal cases, where the defendant is the only party besides the state, in juvenile dependency and termination cases the parents are not the only other party to the case, nor is the parent the party whose interests are most at stake. In dependency and termination cases, it is the *child* whose interests are paramount, and the *child's* statutory and constitutional rights outweigh the interests of the parents. *In re Sego*, 82 Wn.2d 736, 738, 513 P.2d 831 (1973); *and see* the Department's opening brf. at 18-20. The child has a right to safety and well being, a right to speedy resolution, and a right to a permanent home early in the process. RCW 13.34.020; *M.W. v. Department of Soc. & Health Svcs.*, 149 Wn.2d 589, 599, 70 P.3d 954 (2003); *In re the Dependency of J.S.*, 111 Wn. App. 796, 46 P.3d 273 (2002)(statute mandates *speedy* resolution in order to allow the child to have a safe, stable and permanent home). The right to a permanent home is so important to children's health and development that the Department is required to file a termination petition when the child has been out of the parents' care for fifteen months. Laws of 2008, Ch. 152, sec. 3, codified at RCW 13.34.145(3)(b)(vi). In this case, M.H.P. has been out of his parents' home for more than three years, and the action that was intended to bring him permanency is still pending after almost two years.

Because of the child's unique position in this case with protected statutory and constitutional rights, he is not the same as a 'victim' in a

criminal case who has no party status to a criminal prosecution, and no right to demand that the criminal trial occurs within a certain period of time. The speedy trial right in a criminal case is the defendant's right alone. And, unlike criminal cases where the state may not learn the identity of adverse witnesses called by the defendant well in advance of trial, our courts have consistently held that protecting the best interests of the child in a dependency case requires procedural fairness and notice of issues to all parties. *In re Dependency of R.H.*, 129 Wn. App. 83, 117 P. 3d 1179 (2005)(reversing dismissal where state was not given proper notice of motion and an opportunity to respond). Even the United States Supreme Court case cited by the parents note that "Mutual knowledge of all relevant facts gathered by parties to litigation is essential" in civil cases. Parents brf. at 6, *citing Hickman v. Taylor*, 329 U.S. 495, 67 S. Ct. 385, 91 L. Ed. 451 (1947).

Unlike criminal cases, there is also the child's CASA or Guardian ad litem ("GAL") who is an additional party to the proceedings with rights and obligations wholly independent of the state. *See* RCW 13.34.105(1)(a)-(f)(role is to investigate and make independent recommendations, and to advocate for the best interest of the child); GALR 4(h)(3)(rights and powers include right to introduce exhibits, examine witnesses, and appeal orders in RCW 13.34 cases); *In re the*



*Welfare of B.D.F.*, 126 Wn. App. 562, 109 P.3d 464 (2005)(GAL for children have roles and rights to act on behalf of children that are independent of the Department). The CASA/GAL cannot adequately investigate, much less properly advise the court on a course of action that will serve the child's best interest if they lack knowledge of a proposed defense expert, and/or any opportunity to conduct discovery of that expert before trial. Additionally, any expert evaluation conducted without the collateral input of the CASA/GAL is likely to have little credibility with the court. RP 8-11.

King County's system of allowing *ex parte* motions to appoint defense experts for parents and to seal those proceedings without notice to the state, or the child, or the child's CASA or GAL presumes that the parent is the only party with rights at issue, it presumes that the child's interests are aligned with the parent, and it eliminates any consideration by the court of the interests and circumstances of the one party whose rights are paramount to all others.<sup>1</sup> See e.g., *In re Allen*, 139 Wash. 130, 245 P.2d 919 (1926); *In the Matter of Day*, 189 Wash. 368, 65 P.2d 1049 (1937); *Russell v. Catholic Charities*, 70 Wn.2d 451, 423 P.2d 640 (1967);

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<sup>1</sup> King County's system would even allow a parent to request an expert evaluation of the child, or an observation of the parent and child together, without the CASA or DSHS being informed or able to provide the court any input as to how that might negatively affect the child.

*In re the Matter of the Adoption of Lybbert*, 75 Wn.2d 671, 453 P.2d 650 (1969).

Treating these cases like criminal cases, King County allows a parent to file a self-serving and secretive motion claiming they need an expert appointed to assist in their defense, without divulging any significant, or even accurate facts or history of the case, or disclosing the number of times they have already had an expert of their choice at public expense, or the special needs of the child that might be negatively implicated, or the delay of trial that might ensue. As shown by the record in this case, the existing practice does not require parents to make their requests for experts in advance of the discovery cutoff or to inform the court of the trial date or applicable discovery deadlines, even though a local rule requires discovery requests to be made early enough in the process that responses will be due and depositions will be taken before the discovery cutoff.<sup>2</sup> KCLJuCR 4.4(c). Instead of facilitating compliance with its own local rule, King County presents these ‘motions’ before a *criminal* judge who has no responsibility for the case and who is the least

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<sup>2</sup> The parents claim difficulty imagining “how a request for expert services would not reveal confidential attorney/client communications” but trial schedules and discovery deadlines are not confidential and they are a perfect example of what should never be sealed. But in their all-or-nothing defense of Judge Kessler’s legal conclusion that the *entire* defense request must *all* be done in secret, it is impossible to know whether parents counsel informed the court, or whether the court inquired about the discovery deadlines or trial schedule, and if the court intended to appoint an expert after the discovery deadline, it remains curious why it did not consider that to be an issue that could negatively impact the other parties and the trial schedule.

likely to be knowledgeable about the child, the procedural history, or the salient facts of the case.

The parents' reliance on criminal law, and their attempt to separate the secretive nature of these proceedings from the discovery violations that occurred, also ignores the implications that applying a criminal rule to the appointment of experts will have on the question of whether those witnesses, who are not timely identified, should be excluded from testifying. That issue has significant implications on the truth seeking function of the court, and the gamesmanship that might be played in these cases.

It is well settled that in civil cases, exclusion of an expert witness can be an appropriate sanction for failing to disclose the identity of that witness timely. *M/V La Conte, Inc. v. Leisure*, 55 Wn. App. 396, 777 P. 2d 1061 (1989). King County in fact has adopted a rule specifically permitting exclusion when witnesses have not been disclosed properly. KCLCR 26(K)(4) (“Any person not disclosed in compliance with this rule may not be called to testify at trial, unless the Court orders otherwise for good cause and subject to such conditions as justice requires.”); *Lancaster v. Perry*, 127 Wn. App. 826, 113 P. 3d (2005); *Port of Seattle v. Equitable Capital Group, Inc.* 127 Wn.2d 202, 898 P.2d 275 (1995); *Allied Financial Services, Inc. v. Mangum*, 72 Wn. App. 164, 864 P.2d 1 (1993).

However, exclusion of a defense witnesses is not a remedy ordinarily permitted in criminal cases when the defense fails to timely disclose witnesses to the state. CrR 4.7(b); *State v. Ray*, 116 Wn.2d 531, 806 P.2d 1220 (1991)(suppression of evidence is not one of the sanctions available for failure to comply with discovery rules); *State v. Thacker*, 94 Wn.2d 276, 280, 616 P. 2d 655 (1980)(same). In criminal cases, a continuance of trial typically provides an adequate remedy to the state.

If the mother prevails in this appeal and in her appeal of the guardianship order, parents will have no motivation to make their requests for experts prior to the discovery cutoff because they will know it will only benefit them by postponing the time at which their parental rights will be judged, curtailed, and perhaps terminated. The state, the CASA, and the attorney for the child will continue to be subjected to surprise witnesses appointed after the discovery cutoff, and not disclosed until the eve of trial. These parties will continue to be presented with a Hobson's choice of either proceeding to trial unprepared to cross examine the defense expert, who was not timely disclosed, or to request a continuance of trial and thereby delay permanency, and possibly threaten the safety and stability of the child.<sup>3</sup>

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<sup>3</sup> At the time of trial the parents had a pending request for increased visits, and overnight visits, and a transition home, so the circumstances of the case would not remain

Neither of these options serves the best interest of the child nor do they enhance the truth finding function of the court. If the parties proceed to trial ill-prepared to cross examine the defense expert, they risk the court placing undue weight on the testimony of the defense 'expert' and possibly sending the child home to a dangerous situation. If the parties request a continuance, so they can conduct the discovery necessary to get prepared, they risk the child being subjected to an on-going parental relationship that is harmful to the child's growth and development, and a delay in the child obtaining a permanent home.

**D. The Discovery Violations That Occurred On This Case Are Inextricably Linked To The Secretive Proceedings Used To Appoint Defense Experts.**

The parents' attempt to separate the secretive nature of King County's practice of appointing defense experts from the discovery violations that occurred in this case is disingenuous at best given the claims they make on their appeal of the guardianship order. *See* Mother's Opening brf. in *In re the Dependency of M.H. P.*, No. 69713-7-I.

In this appeal they argue that no one should be allowed to ignore the case schedule; that the *ex parte* appointment of experts is an issue wholly separate from whether parents must follow the discovery schedule; and that exclusion of the witnesses at trial cured any defect in the

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status quo. The child would most definitely be impacted by continuing the case yet again. RP 23-24.

proceeding. But every single order appointing defense experts in this case was entered after the discovery deadlines had passed. *See* State’s Opening brief at 3-4. The last one was entered five months after the deadlines had passed, and it was signed even after the Department had warned the court that this secretive process might lead to surprise witnesses and the exact result that occurred in this case. *Id.* at 5, 6. Notwithstanding the parents’ claims to the contrary, the secretive process for appointing experts, condoned by the court below, led to and was inextricably linked to the discovery violations that occurred in this case and the waste of public funds that ensued. King County’s system in fact made it impossible to “timely” disclose the witness or to prevent the result that occurred here.

In his ruling, Judge Kessler justified this process by claiming that it removed a pretrial disadvantage to an indigent parent, but in actuality he attempted to grant an advantage to a poor parent that no other party has by appointing an expert after the discovery deadline passed, without making any order requiring the attorneys to disclose that witness at any point before trial, or giving any of the other parties notice that additional witnesses might be named. KCLJuCR 4.4(c), and KCLCR 26(k)(1). And, while the parents suggest the state was made whole by the exclusion of the witnesses at trial, the mother challenges that ruling in her appeal of the guardianship order, and she insists that the proper remedy was not

exclusion of the witnesses but another continuance of the trial, despite the fact that trial had already been continued *five* times. Four of those continuances were granted at the parents' request, the other was with the parents' agreement, and the last time the court continued the case (at mother's request) it specifically directed that there would be no further continuances.<sup>4</sup> Because of the secretive nature of the rulings at issue in this appeal, public resources were wasted, and permanency for this child delayed indefinitely.

The fact that Judge Doerty ultimately excluded the witness from testifying does not remedy the problems caused by secretive motions in

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<sup>4</sup> The parents incorrectly claim that "many of the delays were occasioned by changes in counsel" or the Department's "failure to provide parents counsel with discovery." Parents brf. at 1. Parents also claim that counsel for the mother was not assigned the case until July 9, 2012. *Id.* These assertions are belied by the record. The mother had an attorney representing her continuously from the very first shelter care hearing held in the dependency case on June 23, 2010 through the guardianship trial in the Fall of 2012, and that representation was from the same defense agency (The Defender Association) the entire time. *See* Ex. 1 in appeal No. 69713-7-I. With respect to the continuances, the original trial date was January 17, 2012. CP 11. The trial was continued at father's request to March 5, 2012 to allow him to obtain a second psychological evaluation from the Veteran's Administration. CP 179-185. The parents then jointly moved to continue the trial for three months, but the court denied that request and continued it only two months – to April 30, 2012. CP 361-362. In April of 2012, an agreed order was entered that substituted the termination petition for a guardianship petition, and that agreed order continued the trial to May 21, 2012, but did not alter discovery deadlines. CP 693-694. On June 8, 2012, the trial date was continued again by agreement to August 13, 2012 due to discovery issues, but the problem was not the Department's failure to provide parents counsel with discovery. 758. Instead, the discovery disc provided to parents counsel had too much information, and accidentally contained confidential information that should have been redacted. RP 21. On August 3, 2012, the mother on shortened time requested an additional continuance of the trial from August 13, 2012 to August 27, 2012 to allow her attorney additional time to prepare. CP 818. The court granted her request but specifically directed that there would be no further continuances. CP 854. None of the above continuance orders entered by the court amended the original case schedule or modified the original discovery deadlines. *Id.* *See* Copies of Continuance Orders attached in Appendix A.

this or other cases. First, there is no guarantee that other judges will similarly exclude witnesses, particularly when a judge appointed the expert after the discovery deadline and approved public funding for their services. Exclusion of the witness is even less likely to be ordered by future judges if this court affirms the ruling below and agrees that criminal law controls this issue. Second, both the CASA and the Department will have to continue expending resources to brief and argue the exclusion motion, and like this case, those expenses will not be recouped, particularly if other judges deny attorney's fees as Judge Doerty did. *See* Appendix 3 to Department's Opening brief. Third, the mother's appeal of the guardianship order and her challenge to the order excluding witnesses demonstrates that the issues presented by this appeal are not moot, and will require the expenditure of additional attorney resources. Fourth, as indicated *supra* at 14-15 if the witness had not been excluded, the state and the child's CASA/GAL would have had to choose between two alternatives – proceeding as scheduled without being prepared to cross examine the mother's 'expert' or delaying the trial to complete discovery. Both choices are harmful to the child, who faces a trial with less than full preparation, or a delay in obtaining a permanent placement.

Finally, the exclusion of the witness does not vindicate the Constitutional right of the public to open proceedings and a judiciary that



is accountable. While the parents argue that the Department provided “no proof” that King County judges and the Office of Public Defense are incapable of protecting and managing public funds, the record in this case speaks for itself. *See* Department’s Opening brf. at 3-4, 6, 8 ft note 5, and *see* RP 28, 35. It shows that every request for expert funding was presented and granted after the discovery cutoff, and no one accepted responsibility for the public funds wasted, or made any changes to the accepted practice. *Id.* The Department’s motion for discretionary review demonstrates the problems have not abated since the Department challenged the practice more than a year ago. *See* Declaration of Joel Delman and attached samples of orders entered in other cases since this appeal was filed. Even if the problems presented by this case could be considered isolated events; the denial of the right to open proceedings is not subject to a harmless error analysis. *State v. Easterling*, 157 Wn.2d 167, 137 P. 3d 825 (2006); *In re Dependency of J.A.F.*, 168 Wn.App. 653, 278 P.3d 673 (2012).

**E. It Is Not The Department’s Responsibility To Create A Safe Harbor Rule For The Public Defense Agencies And The Court To Follow To Administer Litigation Funding.**

After claiming they are required to follow the motion practice condoned by Judge Kessler in his ruling below, and after ignoring the alternative procedures the Department described in its Opening brief that

King County could chose to follow instead of the current system, the parents argue that there is no clear rule, and so the Department should propose a rule. The parents are mistaken. If King County wishes to use a motion practice to continue administering litigation funding in juvenile dependency and termination cases, it should follow the existing rules applicable to all civil motions and motions to seal records in civil cases.

In arguing that the Department should propose a rule, the parents also neglect to mention that a King County defense agency already proposed an amendment to JuCR 9.3 in response to the issues raised in this appeal. The proposed amendment would have adopted King County's current system, and imposed it statewide. The Supreme Court referred the proposed amendment to the Rules Committee of the Washington State Bar Association, who voted unanimously, to not support the proposed amendment. *See* WASH. STATE BAR ASS'N., COURT RULES AND PROCEDURES COMMITTEE, MEETING MINUTES Feb. 25, 2013 [243-245] (Comm. Print 2013) which can be viewed at: [http://www.wsba.org/Legal-Community/Committees-Boards-and-Other-Groups/Court-Rules-and-Procedures-Committee/~/\\_media/Files/Legal%20Community/Committees\\_Boards\\_Panels/Court%20Rules/Agendas%20and%20Meeting%20Materials/March%2](http://www.wsba.org/Legal-Community/Committees-Boards-and-Other-Groups/Court-Rules-and-Procedures-Committee/~/_media/Files/Legal%20Community/Committees_Boards_Panels/Court%20Rules/Agendas%20and%20Meeting%20Materials/March%2)

018%202013%20Meeting%20Materials.ashx. The defense agency subsequently withdrew their proposed amendment.

### III. CONCLUSION

This court should reverse the ruling below, and should direct King County and the Office of Public Defense to administer its litigation funding in a manner that does not involve the court, or that follows the rules and laws applicable to these civil court proceedings.

RESPECTFULLY SUBMITTED this 15th day of July, 2013.

ROBERT W. FERGUSON  
Attorney General



TRISHA L. McARDLE  
Senior Counsel, for DSHS  
WSBA #16371  
OID #91016  
Attorney General's Office  
800 Fifth Avenue, Suite 2000  
Seattle, WA 98104  
(206) 464-7045

# **Appendix A**

FILED

11 AUG 31 PM 3:01

KING COUNTY  
SUPERIOR COURT CLERK  
E-FILED  
CASE NUMBER: 11-7-02455-3 KNT

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

MATHEW HUDSON WHEELER PARVIN, DOB  
11-11-2008

In Re the Dependency Termination of:

NO. 11-7-02455-3 KNT

Order Setting Original Case Schedule:  
(\*ORSCS) Termination of Parental Rights Kent  
Assignment Area

FILE DATE: 08/31/2011

TRIAL DATE: 01/17/2012

**I. PETITION FOR TERMINATION SCHEDULE NOTICES:**

**IMPORTANT NOTICE TO PARENTS!**

**YOU MUST COME TO THE HEARINGS LISTED ON THIS CASE SCHEDULE.**

**All hearings in this case will be held at the Regional Justice Center, 401 Fourth Avenue N., Kent, WA 98032.**

If you do not come to the preliminary hearing, or otherwise respond to the Notice and Summons, the Court will enter a default order permanently terminating your parental rights to your child(ren).

\_\_\_\_\_|\_\_\_\_\_  
Print Name Sign Name

Order Setting Original Case Schedule: (\*ORSCS) Termination of Parental Rights Kent Assig

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**I. TERMINATION SCHEDULE NOTICES: (continued)**

**STAY IN CONTACT WITH YOUR LAWYER!**

If you do not stay in contact with your lawyer, your lawyer may not be able to effectively represent you in court and the Court can enter an order permanently terminating your parental rights to your child(ren).

**HOW TO GET A COURT-APPOINTED LAWYER:**

To find out if you qualify for a Court-Appointed lawyer, go to the King County Office of Public Defense in Room G-0242, of the Regional Justice Center.

The King County Office of Public Defense is open: Monday - Friday 8:30 AM to 4:00 PM.  
The phone number for the King County Office of Public Defense is: (206) 205-8851.

**FILING TERMINATION PETITION:**

The Termination Petition must be filed at the Juvenile Court Clerk's Office.  
For SEA designated cases, file at 1211 East Alder St. Room 307, Seattle, Washington.  
For KNT designated cases, file at 401 4th Ave. N., Room 2C, Kent, Washington.

**STATEMENT OF EVIDENCE:**

Each party shall prepare and submit Individual Statements of Evidence unless a Joint Statement of Evidence is being submitted.

A copy of the Statement of Evidence must be given to the Judge by noon the day before the pre-trial conference. Take the Statement of Evidence to Room 2D at the Regional Justice Center.

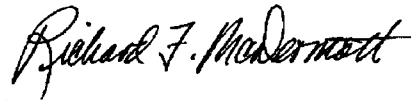
**II. CASE SCHEDULE**

| <b>CASE EVENT</b>   | <b>DEADLINE<br/>or<br/>EVENT DATE</b> | <b>Filing<br/>Needed</b> |
|---|---------------------------------------|--------------------------|
| Termination Petition filed.   | Wed 08/31/2011                        | *                        |
| Signed Order for Service by Publication filed.  | Mon 09/12/2011                        | *                        |
| DEADLINE for filing of Answer.  | Fri 11/04/2011                        | *                        |
| <b>Preliminary Hearing: Parents Must Attend.</b><br>Date for Termination of Publication Hearing/Motion for Default.<br>REVIEW of appointment of GAL/Attorney for Child(ren).<br>DEADLINE for Discovery Cutoff.<br>DCFS provides Assistant Attorney General with information necessary to draft Settlement Proposals. (If DCFS is Petitioner.)<br><b>8:00 AM Court Room 1L</b> | Thu 12/01/2011                        |                          |
| DEADLINE - Settlement Proposals received by all parties.  | Mon 11/28/2011                        |                          |
| DEADLINE for Exchange of Lists of Possible Witnesses.   | Mon 12/05/2011                        |                          |
| DEADLINE - Parties meet and discuss Settlement Proposals, stipulations, and exhibits.   | Mon 12/12/2011                        |                          |
| DEADLINE - Parties file Joint/Individual Statements of Evidence 3 days prior to the pre-trial conference if parties intend to present a case at trial   |                                       | *                        |
| <b>Pre-Trial Conference: Parents Must Attend.</b><br>Completion of Service of Process.<br><b>**The date for the pre-trial conference will be set at the preliminary hearing and shall be approximately one month before trial.</b><br><b>1:30 PM Court Room 1L</b>  |                                       |                          |
| <b>Fact Finding trial: Parents Must Attend.</b><br><b>9:00 AM Court Room 3A</b>   | Tue 01/17/2012                        |                          |

**III. ORDER**

Individuals involved in this action must comply with the above *schedule*. It is ORDERED that the party filing the petition must serve this *Order Setting Original Case Schedule* on all other parties.

DATED: 08/31/2011



PRESIDING JUDGE

**FILED**  
KING COUNTY, WASHINGTON

DEC 21 2011

SUPERIOR COURT CLERK  
BY MOLLY SIMON  
DEPUTY

SUPERIOR COURT OF WASHINGTON  
COUNTY OF KING

IN RE THE DEPENDENCY OF: )

NO: 11-7-02455-3 KAT

MATHEW PARVIN )

ORDER OF CONTINUANCE  
DEPENDENCY/TERMINATION/GUARDIANSHIP

DOB: 11/11/08 )

CLERK'S ACTION REQUIRED

THIS MATTER having come on regularly to be heard in open court this day, upon the motion(s) of the Mr. Paul Parvin for an order changing the date of the  pre-trial conference  trial in the above entitled case, and counsel for said party having represented that a change of the  pre-trial conference date  trial date is necessary because of the following reasons:

| (Check all applicable reasons)   |   |
|--|---|
| <input type="checkbox"/> Additional party named: _____                 | <input type="checkbox"/> Lacking service on (party): _____        |
| <input type="checkbox"/> Late appointment of GAL/CASA on: _____        | <input type="checkbox"/> Appointment of new counsel on: _____     |
| <input type="checkbox"/> Pending dismissal/voluntary services contract | <input type="checkbox"/> Failure to comply: Party/Attorney: _____ |
| <input type="checkbox"/> Pending ICWA determination                    | <input type="checkbox"/> Pending criminal action                  |
| <input type="checkbox"/> Scheduling conflicts - attorney               | <input checked="" type="checkbox"/> Awaiting evaluation/report    |
| <input type="checkbox"/> Judicial availability                         | <input type="checkbox"/> Scheduling conflicts-caseworker          |
|  | <input type="checkbox"/> Other: _____                             |

and opposing counsel not objecting, or his/her objection overruled and all parties having been informed of the reason for this change of date, NOW THEREFORE:

IT IS HEREBY ORDERED:

The pre-trial conference, now set for 12/21/11, be changed to 2/15/12 @ 1:30pm  
 The trial, now set for 1/17/12, be changed to 2/5/12

IT IS FURTHER ORDERED:

An amended case schedule shall be issued for this case. The party bringing the motion for continuance is directed to forward a copy of this order and a copy of the amended case schedule to all parties.  
 No amended case schedule is necessary for this case. The party bringing the motion for continuance is directed to forward a copy of this order to all parties.

Dated: 12/21/11

Rebecca Shaw  
Judge/Commissioner

D Kim 2544  
Kathleen Martin #25636

Graham PT  
Robert W. G. 30894 for Mother  
32955



FEB 29 2012

SUPERIOR COURT CLERK  
BY MOLLY SIMON  
DEPUTY

SUPERIOR COURT OF WASHINGTON FOR THE COUNTY OF KING  
JUVENILE DEPARTMENT

|                          |   |  |
|--------------------------|---|--|
| In re the Dependency of: | ) | NO. 11-7-02455-3 KNT                     |
| MATTHEW PARVIN,          | ) | <del>(proposed)</del> ORDER GRANTING THE |
| DOB: 11/11/08            | ) | PARENTS' JOINT MOTION TO                 |
| Minor Child.             | ) | CONTINUE TERMINATION                     |
|                          | ) | FACT FINDING - <i>in part</i>            |

Pending before the court is the mother, Leslie Bramlett, represented by Devon Knowles of the Defender Association, and the father, Paul Parvin, represented by Daewoo Kim of Society of Counsel Representing Accused Persons, who bring a joint motion to continue the termination fact finding.

The court has reviewed the records and files herein. Being advised in the matter, the court hereby grants the parents' joint motion. <sup>*in part.*</sup> The court ORDERS that the termination fact finding is continued ~~three months~~ to

April 30, 2012, and ~~proceed~~ *proceed* April 18, 2012. @ 1:30pm

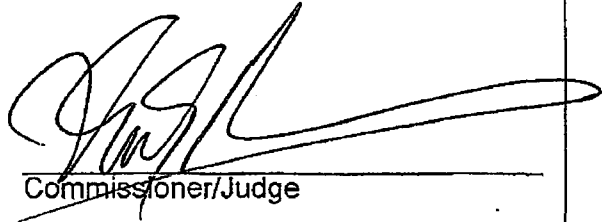
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[PROPOSED] ORDER GRANTING THE  
PARENTS' JOINT MOTION TO CONTINUE  
TERMINATION FACT FINDING: Page 1

SOCIETY OF COUNSEL  
REPRESENTING ACCUSED PERSONS  
1401 East Jefferson Street, Suite 200  
Seattle, Washington 98122  
(206)322-8400  
dacwoo.kim@scraplaw.org

1 IT IS SO ORDERED.

2 DATED: February 29, 2012.

3  
4  
5  
6   
Commissioner/Judge

7 Presented by:

8 ~~COMMISSIONER~~

9 223 12 FEB 29 2012

10 /s/ 

MARK J. HILLMAN  
COURT COMMISSIONER

11 Devon Knowles, WSBA # 39153  
12 The Defender Association  
13 420 West Harrison Street, Suite 202  
14 Kent, Washington 98032  
15 Attorney for Leslie Bramlett, Mother

16 Presented by:

17   
18  
19 Daewoo Kim, WSBA # 25434  
20 Attorney for Paul Parvin, Father

 32955  
RA 67

21  
22 Kathleen Martin  
23 Att for CASA #25636  
24

25 [PROPOSED] ORDER GRANTING THE  
26 PARENTS' JOINT MOTION TO CONTINUE  
TERMINATION FACT FINDING: Page 2

SOCIETY OF COUNSEL  
REPRESENTING ACCUSED PERSONS  
1401 East Jefferson Street, Suite 200  
Seattle, Washington 98122  
(206)322-8400  
daewoo.kim@scraplaw.org

**FILED**  
KING COUNTY WASHINGTON

APR 10 2012

SUPERIOR COURT CLERK  
BY MOLLY SIMON  
DEPUTY

SUPERIOR COURT OF WASHINGTON FOR THE COUNTY OF KING  
JUVENILE DEPARTMENT

IN RE DEPENDENCY OF:

MATHEW PARVIN  
dob: 11/11/08

Minor Child.

NO. 11-7-02455-3 KNT

AGREED  
ORDER

(Clerk's Action Required)

THIS MATTER, having come on before the court on the Department's Motion to substitute petitions, and the court having reviewed the foregoing Motion, heard argument of the parties, if any, and being familiar with the records and files herein, it is hereby:

**IT IS HEREBY ORDERED:**

1. The guardianship petition is substituted for the termination petition under the above-entitled cause;

2. The guardianship petition case schedule and the termination case schedule are consolidated for trial, which is currently brokered to begin April 30, 2012 with a pretrial conference on April 18, 2012.

3. The parties agree that the guardianship fact-finding will be continued to May 21, 2012.

DATED this 10<sup>th</sup> day of April, 2012.

  
JUDGE/COMMISSIONER

1  
ATTORNEY GENERAL OF WASHINGTON  
800 Fifth Avenue, Suite 2000  
Seattle, WA 98104-3188  
(206) 464-7744

ORDER  
Rev. 9-1-00 pp

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Presented by:

ROBERT M. MCKENNA  
Attorney General

By *Paul Roth* WSBA #19312 for  
KANYA L. THORP  
Assistant Attorney General  
WSBA #32955

**COPY RECEIVED; APPROVED FOR  
ENTRY; NOTICE OF PRESENTATION  
WAIVED:**

*Agreement provided by  
email.*

Devon Knowles, WSBA # 39153  
Attorney for Leslie Bramlett, Mother



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

*Agreement provided by  
email.*

Kathryn Barnhouse, WSBA #  
Attorney for CASA

**FILED**  
KING COUNTY WASHINGTON

JUN 06 2012

SUPERIOR COURT CLERK  
BY Linda Nguyen  
DEPUTY

|  |
|--|
| SUPERIOR COURT OF WASHINGTON<br>COUNTY OF KING<br>JUVENILE COURT |
| Dependency of<br><i>Mathew Parvin</i><br>DOB <i>11/11/08</i>     |

No *11-7-024553 KMT*

Order on Motion Hearing  
 Dependency guardianship  
 Clerk's action required

PRESENT  Mother, <sup>by phone</sup>  Mother's Atty *Krowles*,  Father, <sup>by phone</sup>  Father's Atty *Kim*  
 Child \_\_\_\_\_,  CASA/Child's Atty \_\_\_\_\_,  CASA Atty *Dunham*  
 Agency SW *Sargent*,  AAG *Thompson*,  Other \_\_\_\_\_

**I FINDINGS**

The Court makes the following findings

*discovery was not properly done in this case and it needs to be continued to allow defense counsel to prepare for trial.*

**II ORDER**

Having heard the motion, the above entitled court hereby orders

*The guardianship trial is continued to August 13, 2012 a pretrial conference will be held on August 3, 2012 at 8:30 before Judge Clark.*

Dated *6/8/2012* *Patricia H. Clark*

Judge/Commissioner  
Judge Patricia H. Clark

Presented by *[Signature]* *32515 Krowles* *[Signature]* *2543*

ORDER ON MOTION HEARING  
*D. Kim for Parvin*  
*Krowles #29153 for Mathew*

**ORIGINAL**

**FILED**  
KING COUNTY WASHINGTON

AUG 03 2012

**SUPERIOR COURT CLERK  
BY MARY TOWNSEND  
DEPUTY**

**SUPERIOR COURT OF WASHINGTON  
COUNTY OF KING**

IN RE THE DEPENDENCY OF )  
 )  
*Matthew Hudson Parvin* )  
 )  
DOB *11.11.2008* )

NO *11.7 02455 3 KNT*  
  
ORDER OF CONTINUANCE  
DEPENDENCY *guardianship*  
  
CLERK'S ACTION REQUIRED

THIS MATTER having come on regularly to be heard in open court this day, upon the motion(s) of the *mother's counsel* for an order changing the date of the [ ] pre-trial conference [ ] trial in the above entitled case and counsel for said party having represented that a change of the [ ] pre-trial conference date [ ] trial date is necessary because of the following reasons

| (Check all applicable reasons)   |  |
|--|--|
| <input type="checkbox"/> Additional party named _____                  | <input type="checkbox"/> Lacking service on (party) _____  |
| <input type="checkbox"/> Late appointment of GAL/CASA on _____         | <input type="checkbox"/> Appointment of new counsel on _____   |
| <input type="checkbox"/> Pending dismissal/voluntary services contract | <input type="checkbox"/> Failure to comply Party/Attorney _____                                      |
| <input type="checkbox"/> Pending ICWA determination                    | <input type="checkbox"/> Pending criminal action   |
| <input type="checkbox"/> Scheduling conflicts - attorney               | <input type="checkbox"/> Scheduling conflicts- interpreter   |
| <input type="checkbox"/> Judicial availability                         | <input type="checkbox"/> Scheduling conflicts-caseworker   |
|  | <input checked="" type="checkbox"/> Other <i>counsel for mother needs additional time to prepare</i> |

and opposing counsel not objecting, or his/her objection overruled and all parties having been informed of the reason for this change of date, NOW THEREFORE

IT IS HEREBY ORDERED  
 The pre-trial conference, now set for *08/03/2012* <sup>LT</sup>, be changed to \_\_\_\_\_  
 The trial, now set for *8/13/12*, be changed to *08/27/2012*

IT IS FURTHER ORDERED *THERE WILL BE NO FURTHER CONTINUANCES*  
 An amended case schedule shall be issued for this case. The party bringing the motion for continuance is directed to forward a copy of this order and a copy of the amended case schedule to all parties.  
 No amended case schedule is necessary for this case. The party bringing the motion for continuance is directed to forward a copy of this order to all parties.

Dated *08/03/2012*

*[Signature]*  
Judge/Commissioner

*[Signature]*  
as to further proceedings  
*[Signature]* 32955

*[Signature]* #13523  
*[Signature]* 25434 <sup>207</sup> for [Signature]

ORIGINAL

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 July 15, 2013, I sent a copy of: DSHS Reply Brief  
and Declaration of Service.

Said copies were sent by Legal Messenger, on the 15th day of July,  
2013, to: **Suzanne Elliot**, 705 2nd Avenue, Suite 1300, Seattle, WA  
98104-1797; and **Kathleen Martin**, CASA, 401 4th Avenue N, Suite  
A2239, Kent, WA 98032-4429.

I declare under penalty of perjury, under the law of the State of

///

2013 JUL 15 PM 2:26  
COURT OF APPEALS DIV I  
STATE OF WASHINGTON

ORIGINAL

Washington that the foregoing is true and correct.

DATED this 15th day of July, 2013 at Seattle, Washington.

A handwritten signature in black ink, appearing to read 'NB', written over a horizontal line.

NICK BALUCA  
Legal Assistant