73129-7

73129-7

73129-7

NO.

IN THE COURT OF APPEALS, DIVISION I

OF THE STATE OF WASHINGTON

DAVID W. AIKEN,

Appellant,

vs.

CYNTHIA L. AIKEN,

Respondent.

BRIEF OF RESPONDENT

COURT OF APPEALS DIV I
STATE OF WASHINGTON
2015 JUL 29 PM 3:11

Gail B. Nunn
O'Loane Nunn Law Group, PLLC
Attorney for Respondent
2707 Colby Ave., Ste. 1204
PO Box 5519
Everett, WA 98206
425.258.6860 phone
425.259.6224 fax

ORIGINAL

Table of Contents

TABLE OF AUTHORITIES

Cases

Statutes

Rules

Constitutional Provisions

A. ASSIGNMENT OF ERROR

1. Appellant's first assignment of error relates to the entry of a temporary order of protection on November 24, 2014 on the basis there was no notice to Appellant and that there was insufficient evidence and that the petition failed to identify actual harm that would result if an order was not issued immediately. Respondent contends that this issue is moot as a full, extended hearing occurred on February 3, 2015.

2. Appellant's second assignment of error relates to the court's denial of the Appellant to have a full testimonial hearing and the denial of the request to depose R. A., then 14 years old. The court rightfully under the case law for the state of Washington and RCW 26.50 denied these requests. Appeal on these grounds should be denied.

3. Appellant's third assignment of error is that the court erred in finding domestic violence and entering a one year order based on insufficiency of evidence and violation of his due process and constitutional rights. Appellant's due process rights were met and the court had an abundance of evidence on which to grant the order. Appeal on these grounds should be denied.

4. Appellant's fourth assignment of error is that the court granted a modified order on reconsideration on February 26, 2015 that went beyond the relief requested in the motion. The court acted within its powers. Appeal on these grounds should be denied.

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Whether it is error for a Court Commissioner to follow the statute in entering an order without notice to the respondent or to a GAL who is appointed in a companion dissolution of marriage action.
2. Whether a Respondent in a Domestic Violence Protection action is entitled, as a matter of due process, to cross-examination of a minor child victim prior to entry of a one year order.
3. Whether the court used the correct legal standard in considering evidence in this matter, specifically the preponderance of the evidence instead of clear, cogent and

convincing, and if there was sufficient evidence to enter the order.

4. Whether the court may issue an order beyond the scope of the relief requested in a motion for reconsideration.
5. Whether Ms. Aiken should be awarded fees for having to defend this appeal.

C. STATEMENT OF THE CASE

1. Procedural History

The Petition for Domestic Violence Protective Order and supporting sealed medical records were filed November 24, 2014. (C.P. 246, 410-472) A temporary order issued the same day signed by Commissioner *pro tem* David Patterson on an *ex parte* basis without notice to Respondent. The hearing for a one year order was set 14 days later for December 8, 2014. (C.P 325)

On December 4, 2014, supplemental sealed medical records were provided to the court by Ms. Aiken. (C. P. 366-409) On December 8, 2014, both sides appeared with counsel before Court Commissioner Lee

Tinney. (C.P. 322) Mr. Aiken had not yet been served with the pleadings although his counsel had received courtesy copies from Ms. Aiken's counsel as evidenced by his attendance at the return hearing. Mr. Aiken was formally served immediately prior to the hearing. (C.P. 317) Mr. Aiken's counsel made an oral motion for a full testimonial hearing with cross examination. Because there were also motions pending in the couple's dissolution of marriage action, the count continued the hearing for the same day and calendar as those motions and declined to rule on an oral motion. (C.P. 322) The court issued a renewed temporary order with modifications regarding visits between the father and the two younger children, M.A and Q.A. (C.P. 233)

Prior to the December 22nd hearing both sides filed documents supporting their positions. Ms. Aiken's were supplemental in nature. (C.P. 161-190, 298-303, 304-216, 332-366) The clerk's papers do not reflect a formal Response to the Petition by Mr. Aiken.

On December 22, 2014, the parties again appeared, this time before Commissioner *pro tem*, G. Geoffrey Gibbs. Mr. Aiken's attorney had filed a formal Motion on December 10th for a full evidentiary hearing and to depose R.A. (C.P. 191) Mr. Aiken's motion for an extended hearing was granted but his request for a full testimonial hearing or request to depose R.A. was denied. (CP 140)A renewed Temporary Order

entered until the next available date for extended hearings, February 3, 2015. (C.P. 296-297)

On January 9, 2015, counsel for Mr. Aiken deposed Ms. Aiken for one and half hours. (C.P. 67-136) On January 23, 2015, the parties entered into an Agreed Modified Reissuance of Temporary Order for Protection permitting the parties to both attend events for M.A. and Q.A. (C.P. 137).

Both parties submitted additional documents. Ms. Aiken's were supplemental in nature. (C.P. 294) The GAL, Jeannette Heard, filed a report. (C.P. 138, 260-264). Mr. Aiken's pleadings are not reflected in the clerk's papers.

On February 3, 2015, an extended hearing was held before Court Commissioner Jacalyn Brudvik. Besides the Temporary Order of Protection, the court heard several other motions filed by the parties relating to their divorce proceeding. (C.P.192) The resulting order restrained Mr. Aiken from "causing physical harm, bodily injury, assault, including sexual assault, and from molesting, harassing, threatening, or stalking all three children." It further restrains him from " "harassing, following, keeping under physical or electronic surveillance, cyber stalking as defined in RCW 9.61.260, and using telephonic, audiovisual, or other electronic means to monitor the actions, locations, or wire or

electronic communication" of all three children. Visitation was allowed, "subject to future orders in a dissolution or paternity action." The order was issued for one year, until February 3, 2016. (C.P. 10)

Ms. Aiken filed a Motion for Reconsideration of the order with supporting documents as to the child R.A. on February 13, 2015 asking that Mr. Aiken be restrained from having any contact with R.A., or going to her home or school. (C.P. 23-28, 36-66, 329-333) Mr. Aiken replied in a written declaration. (C.P. 29-40) The order was modified by the court on February 26, 2015. The court also included restraints for Ms. Aiken in this revised order. The order is in place until February 3, 2016, one year from the extended hearing of February 3, 2015. (C.P. 4, 5)

Mr. Aiken did not avail himself of the opportunity to file a Motion for Revision under RCW 2.24.050, but filed his Notice of Intent to Appeal. (C.P. 27)

2. Statement of the Facts.

This is an appeal of an action based on a Petition for Domestic Violence Protection Order sought by Ms. Aiken on behalf of herself and her three children, after disclosure of abuse by the oldest child. (C.P. 246, 410-472) As stated in Mr. Aiken's brief, the parties had settled their divorce issues at mediation on October 31, 2014. At the conclusion, they executed a Civil Rule 2A agreement concluding all issues in their divorce

matter. Final pleadings were drafted and circulated but had not yet entered with the court as of November 24, 2014, the day of filing of the action being considered under this appeal.

The parties have three children: R. A. age 14; M.A., age 12; and Q. A., age 10 (ages are as of November 2014). After the mediation, but before entry of the final decree and parenting plan, R.A., the oldest of the parties' three daughters, then age 14, cut herself then took an overdose of medications, stating that she did so in order to avoid visits with her father.(C.P. 253-256, 346-348) She also disclosed physical abuse to her school counselor. (C.P. 254)This was a new allegation, not previously disclosed. (C.P.254) The school counselor and the child's doctor both made reports to Child Protective Services for the State of Washington. (C.P. 295)

Ms. Aiken appeared on the next available court day on a *pro se* basis at the *ex parte* calendar on Monday November 24, 2014 to present her Petition for a Domestic Violence Restraining Order on behalf of herself and her three children. Mr. Aiken was not given notice of her appearance. The evidence she presented consisted of her declaration and counseling records from the Everett Clinic for the three children for the year 2014.(C.P.246, 410-472)

The court was provided with notice of the dissolution of marriage action and the Commissioner *pro tem* took note of the parenting issues in entering the temporary order, specifically stating on page 2 of the order under section 9,

> Other. The Respondent's visits with the parties' children under course # 13-3-02944-0 is suspended pending hearing on this petition. Petitioner shall provide GAL Jeannie Heard with a copy of this order and the petition.
>
> (C. P. 326)

The hearing was set in two weeks for December 8, 2014 at 1:00 p.m. (C.P. 325) At this hearing, Mr. Aiken's attorney made an oral motion for an extended hearing on the matter and to be able to depose and/or have R.A. testify at the hearing. (C.P. 322) The court declined to rule on an oral motion. Because there were several other motions pending in the divorce matter, the court continued the hearing on the protection order to December 22nd the same day and court calendar as the divorce matter. [1] The Temporary DVPO was reissued but the court modified the order to permit the two younger children, M.A. and Q.A. to have visits with their father. (C.P. 233)

The December 22nd hearing included Mr. Aiken's then written motion for an extended hearing, whether a one year order should enter at

[1] In Snohomish County DVPO hearings are normally set on a separate calendar from family law matters.

that time in the DVPO issue and several other issues in the divorce matter. Mr. Aiken's request for an extended hearing was granted, and the request for testimony of a minor child was denied. (C.P. 140) The Temporary DVPO was reissued. (C.P. 296, 297)The matter was yet again continued to February 3, 2015. The continuance was extended to accommodate both attorney schedules and the limited time the court grants to extended hearings.[2]

The extended February hearing brought many issues before Commissioner Jacalyn Brudvik. The DVPO order she issued protected the safety of all three children but deferred to the orders in the dissolution of marriage action as to the parenting arrangements. (C.P. 10)

R.A. took another overdose of pills on that evening and this time was admitted to Fairfax Hospital. (C.P. 42, 53, 292, 331)Ms. Aiken then sought a reconsideration of the order to include language that the Mr. Aiken would not have contact with R.A. The court granted this and added restraints protecting Ms. Aiken as well, something left off of the preceding one year order. The reconsidered final order in this matter is effective until February 3, 2016. (C.P. 4-9)

---

[2] Snohomish County courts allow for a limited number of special set hearings under Local Rule SCLRC 7 (b) (2) (D) 110 (C). These hearings allow for extra reading time for the Commissioner and extra time for argument for the parties.

D. ARGUMENT

1. **Standard of Review**

The standard of review of a Domestic Violence Protection order case is abuse of discretion. Domestic Violence Protection actions are actions seeking injunctive relief. The only issue before the court in a DVPO action is whether or not to grant a protection order limiting, in this case, Mr. Aiken's contact with his wife and children. Injunctions are equitable in nature. *Blackmon v Blackmon*, 155 Wash. App. 715, 721, 230 P.3d 233, 236 (2010). "Abuse of discretion occurs 'when the trial court's decision is manifestly unreasonable or based upon untenable grounds or reasons.'" *Id.* (quoting *State v. Brown,* 132 Wash.2d 529, 572, 940 P.2d 546 (1997), *cert. denied,* 523 U.S. 1007, 118 S.Ct. 1192, 140 L.Ed.2d 322 (1998). A court's decision is manifestly unreasonable if it is outside the range of acceptable choices, given the facts and the applicable legal standard. Untenable grounds may be found if the factual findings are unsupported by the record or if it is based on untenable reasons, an incorrect standard, or the facts do not meet the requirements of the correct standard. *Bay v. Jensen*, 147 Wash. App. 641, 651, 196 P.3d 753, 758 (2008) citing *In re Marriage of Littlefield,* 133 Wash.2d 39, 47, 940 P.2d 1362 (1997) .

In this case there was no live testimony and the appellate court may use the exception to this rule of substantial evidence. The Supreme Court found this appropriate in a civil contempt action where the underlying court did not take live testimony.

> We hold here that the Court of Appeals correctly concluded that the substantial evidence standard of review should be applied here where competing documentary evidence had to be weighed and conflicts resolved. The application of the substantial evidence standard in cases such as this is a narrow exception to the general rule that where a trial court considers only documents, such as parties' declarations, in reaching its decision, the appellate court may review such cases de novo because that court is in the same position as trial courts to review written submissions. *See, e.g., Smith,* 75 Wash.2d at 718-19, 453 P.2d 832.

In re Marriage of Rideout, 150 Wash. 2d 337, 351, 77 P.3d 1174, 1180 (2003), *as corrected* (Oct. 27, 2003)

2. **Whether it is error for a Court Commissioner to follow the statute in entering an order without notice to the respondent.**

First and foremost the entry of the temporary order of protection by Commissioner *pro tem* David Patterson on November 24, 2014 is moot. A case is moot if a court can no longer provide effective relief. *Blackmon* at 719. Mr. Aiken had subsequent notice and a full hearing on the issues that he complains did not happen at the presentation of the Petition and request for immediate relief. Furthermore, RCW 26.50.070

(1) specifically permits the court to issue a temporary order pending a full hearing.

> Where an application under this section alleges that irreparable injury could result from domestic violence if an order is not issued immediately without prior notice to the respondent, the court may grant an ex parte temporary order for protection, pending a full hearing, and grant relief as the court deems proper, including an order..

In the Aiken case Ms. Aiken alleges the need for immediate relief in her Petition and supporting declaration. In her Petition she checked the box that states, "An emergency exists as described below. I request that a Temporary Order for Protection granting the relief requested above in 1) through 12) be issued immediately, without prior notice to the respondent, to be effective until the hearing." Her declaration includes her statement as to why this was necessary including self-harm by R.A. in the form of cutting and pill taking, and disclosure of physical and verbal threats by their father. This was further supported by the medical records provided at time of filing. Given this evidence the commissioner had sufficient evidence to issue the temporary order. The court should not disturb the ruling of the court commissioner absent a clear showing of

abuse of discretion. State ex rel. Carroll v. Junker, 79 Wn. 2d 12, 26, 482 P.2d 775 (1971).

Washington courts have found that the provisions in RCW 26.50 are not ambiguous. Spence v. Kaminski, 103 Wash. App. 325, 334, 12 P.3d 1030, 1035 (2000). An unambiguous statute is not subject to judicial interpretation and the statute's meaning is derived from its language. State v. Chester, 133 Wash 2d 15, 21, 940 P.2d 1374 (1997).

It was the Legislative intent of RCW 26.50 to intervene before injury occurs. There is a strong public interest in preventing domestic violence. In its statement of intent for RCW 26.50, the Legislature stated that domestic violence, including violations of protective orders, is expressly a public, as well as private, problem, stating that:

> Domestic violence is a problem of immense proportions affecting individuals as well as communities. Domestic violence has long been recognized as being at the core of other major social problems: Child abuse, other crimes of violence against person or property, juvenile delinquency, and alcohol and drug abuse. Domestic violence costs millions of dollars each year in the state of Washington for health care, absence from work, services to children, and more.

Laws of 1992, ch. 111, sec. 1.

A cited in , State v. Dejarlais, 136 Wash. 2d 939, 944, 969 P.2d 90, 92 (1998).

3. **Whether a Respondent in a Domestic Violence Protection action is entitled, as a matter of due process, to cross examine a minor child victim.**

Mr. Aiken's assignments of error 2 and 4 are virtually the same and the issues are addressed here. Appellant cites *Davis v. Alaska*, 415 U.S. 308, 94 S.Ct. 1105 (1974) as authority for his position. This is a criminal case where the issue is the ability to cross examine a prosecution witness who had identified the defendant in the crime. The right to confront witnesses in a criminal case is a constitutional right. U.S. Const. Amend. VI; Wash. Const. art. I § 22. Ms. Aiken agrees that right exists. This however, is not a criminal case.

Appellant cites two Washington Supreme Court cases in his argument. One case cited, *In re Marriage of Rideout*, 150 Wash. 2d 337, 77 P.3d 1174, (2003, *as corrected* (Oct. 27, 2003), is a civil contempt case where a mother was found in contempt for failing to follow the parenting plan. The hearing was on the written statements only and no live testimony was provided. The court upheld the finding of contempt despite there being no oral testimony.

Our Washington Supreme Court addressed almost identical issues on appeal as Mr. Aiken's in its *en banc* decision in *Gourley v. Gourley*,

158 Wn. 2d 460, 145 P.3d 1185 (2006). This is the second case cited by Mr. Aiken. While the alleged abuse in *Gourley* was sexual abuse as opposed to physical abuse by Mr. Aiken, one cannot ignore the similarities in the demands of Mr. Gourley to those of Mr. Aiken. In both cases there is a request for a full testimonial hearing, including cross examination of the minor child involved. Interestingly, the *Gourley* case also originated in Snohomish County, Washington.

The Washington Supreme Court found the due process requirements of being heard at a meaningful time and in a meaningful manner are protected by the procedure outlined in RCW 26.50. citing *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (quoting *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)). *Gourley* at 468. Mr. Aiken, like Mr. Gourley claims due process requires cross examination. While the statute refers to a full hearing, it does not require live testimony, and as found in *Gourley*, it certainly does not include a requirement for cross examination. "Therefore, nothing in the statutory scheme explicitly requires a trial judge to allow the respondent in a domestic violence protection order proceeding to cross-examine a minor who has accused him of sexual abuse." *Gourley* at 469-70.

The *Gourley* decision was based on the facts of that case as Mr. Gourley did not claim that the statute was unconstitutional. Mr. Aiken also does not claim the statute unconstitutional. The evidence considered in the Aiken case by Commissioner Brudvik at the extended hearing was abundant. The Commissioner had before her the written, sworn testimony of Ms. Aiken, Sandra Morrill, Noel Chipongian, Terri Day, the GAL report of Jeannette Heard, the deposition transcript for deposition of Cynthia Aiken taken January 9, 2015, and sealed medical records, including mental health records, for R.A., M.A. and Q.A. The court commissioner had ample evidence upon which to base her decision to grant a one year order without cross examination or live testimony.

Furthermore, in her concurring decision in *Gourley*, Judge Christine Quinn-Britnall serving as a justice *pro tempore* accurately points out that the constitutional right to confrontation of accusers is explicitly limited to criminal prosecutions. U.S. Const. Amend. VI; Wash. Const. art. I § 22. This concurring opinion also pointed out that due process is not a legal rule but is flexible and calls for such procedural protections as the particular situation demands. *Gourley* at 474. Mr. Aiken's counsel deposed Ms. Aiken prior to the hearing and provided the transcript for the court. Furthermore the GAL appointed in the divorce case, had opportunity to interview the children and their mental health care

providers and she too filed a report for the court based on her investigation.

Mr. Aiken includes an assignment of error that the order issued for one year without his due process rights being met. RCW 26.50.060(2)[3] limits the issuance of DVPO's on behalf of children to one year. Commissioner Brudvik followed the statute and issued an order for a one year period of time. Her order is also clearly subject to orders in the dissolution of marriage case as to M.A. and Q.A. and thus, Mr. Aiken's time with his two younger children was not really impinged at all. He was restrained from harming them, but not seeing them.

Mr. Aiken claims his right to care for his children was violated. This claim was also made by Mr. Gourley. The courts have recognized a fundamental liberty interest in the care of one's children. *Troxel v. Granville,* 530 U.S. 57, 120 S.Ct 2054, 147 L.Ed.2d 49 (2000). However, protection orders are not permanent orders and the standard of proof is the preponderance of the evidence. In considering the one year order, the *Gourley* court stated,

> However, the possible length of the deprivation of the interest is also an important factor in the *Mathews* test.

[3] RCW 26.50.060 (2) If a protection order restrains the respondent from contacting the respondent's minor children the restraint shall be for a fixed period not to exceed one year.

> *Mathews,* 424 U.S. at 341, 96 S.Ct. 893. Thus, we must consider that Mr. Gourley's right was only temporarily restrained by the protection order. On its face, the duration of the protection order was only one year, and the order was further subject to orders issued in the dissolution action.

Gourley v. Gourley, 158 Wash. 2d 460, 468, 145 P.3d 1185, 1188 (2006)

In the Aiken matter, the order was subject to orders in the dissolution action and father had the right to continue to visit with M.A and Q.A. but not R.A.

Since *Gourley*, the Washington courts have consistently upheld the constitutionality of the domestic violence protection laws. In addition the courts have addressed the due process and right to cross examination issue in several cases.

> Given all, we hold DVPA protection orders are special proceedings. Thus, the trial court retained the inherent authority and discretion to decide the nature and extent of any discovery under the DVPA. Therefore, the trial court did not err in denying Mr. Crosby's discovery request because he fails to show an abuse of discretion.

Scheib v. Crosby, 160 Wash. App. 345, 352, 249 P.3d 184, 187 (2011).

See also *Blackmon v. Blackmon*, 155 Wash. App. 715 (2010); *Spence v. Kaminski*, 103 Wash App 325 (2000); *Hecker v. Cortinas*, 110 Wash. App. 865 (2002).

Mr. Aiken also claims the order interferes with this constitutional right of freedom to travel. His fear that Ms. Aiken or R.A. will abuse the orders by attending events of M.A. or Q.A. thus forcing him to leave or risk being arrested. This is mere speculation and not supported by the record. As support of his argument, he cites the *en banc* decision in *State v. Lee*, 135 Wn. 2d 369, 957 P.2d 741 (1998). In *State v. Lee*, two defendants convicted of violation the stalking laws filed appeal in part based on this argument. While it is not specifically argued in his brief that he is claiming that RCW 26.50 is unconstitutional based on this right to travel, the short answer should be, no it is not unconstitutional on these grounds. The Lee court stated,

> This Court has held that freedom of movement may not be used to impair the individual rights of others. No travel rights of one individual can supersede the constitutional rights of other individuals.
>
> When the purpose of legislation is to promote the health, safety and welfare of the public and bears a reasonable and substantial relationship to that purpose, every presumption must be indulged in favor of constitutionality

State v. Lee, 135 Wash. 2d 369, 390, 957 P.2d 741, 752 (1998)

The court of appeals addressed the right to travel in relation to the entry of a DVPO, citing *Lee*.

> But that freedom of movement cannot be used to impair the individual rights of others. *Lee,* 135 Wash.2d at 390, 957 P.2d 741. As with the stalking statute, RCW 9A.46.110, the protection order of RCW 26.50 curtails an abuser's right to move about when such movement is harmful or illegal and interferes with the victim's right to be free of invasive, oppressive and harmful behavior.

Spence v. Kaminski, 103 Wash. App. 325, 336, 12 P.3d 1030, 1036 (2000).

While Mr. Aiken seeks his right to travel, that right does not have precedence over Mrs. Aiken's and/or R.A. right to be and feel safe in their own activities.

Mr. Aiken next complains that the order will create a social stigma and will impact his employment and housing opportunities. He cites *In re Meyer,* 142 Wn. 2d 608, 16 P3d 563 (2002). Meyer is a rape case. In the decision, the court addresses when damage to reputation rises to the level of social stigma. The court finds reputational interest does not give rise to a liberty interest, discussing the U.S. Supreme Court ruling.

> But reputational interest does not give rise to a liberty interest. In *Paul v. Davis*, 424 U.S. 693, 712, 96 S.Ct. 1155, 47 L.Ed.2d 405 (1976), the United States Supreme Court found an individual had no right to due process before

> police officers posted his picture with an identification as an "Active Shoplifter" in various retail establishments. That individual filed a 42 U.S.C. § 1983 action, alleging his procedural due process rights were violated and claiming a protected interest in reputation and future employment opportunities. *Paul,* 424 U.S. at 701, 96 S.Ct. 1155. Justice Rehnquist examined a long line of decisions in which the Court had protected an interest in reputation, and then wrote an interest in reputation is "neither 'liberty' nor 'property' guaranteed against state deprivation without due process of law." *Id.* at 712, 96 S.Ct. 1155. The Court reasoned the government's conduct to be actionable, must not only affect the individual's reputation, but must be accompanied by some other injury. *Paul,* 424 U.S. at 708-10, 96 S.Ct. 1155. The Court ruled "reputation alone, apart from some more tangible interests" is not deserving of protection. *Id.* at 701, 96 S.Ct. 1155. This holding has come to be known as the "stigma-plus" requirement.

In re Meyer, 142 Wn. 2d 608, 620, 16 P.3d 563, 569 (2001).

The case of *Hough v. Stockbridge*, 113 Wash App. 532 (2002) cited by Appellant does not support his argument. The Houghs claimed that the order against them was stigmatizing, but this is not the basis for the finding of error in issuing the anti-harassment order. The underlying trial court's action was found to be in error because there was no petition, no affidavit, no notice and no admissible evidence of harassment. This case was reversed by the Washington Supreme court in a *per curium* decision, *Hough v. Stockbridge*, 150 Wash. 2d 234, 236, 76 P.3d 216, 217 (2003).

We know nothing of how Mr. Aiken's reputation or employment is or may be damaged by this restraining order. There has been no state action against him, and the courts have clearly ruled reputation is not a property or liberty interest. The alleged damage is again mere speculation. The other case cited by Appellant is *Meyer v. University of Washington*, 105 Wn 2d 847, 854, 719 P2d 98 (2008). This is a defamation case by a tenured professor who was reprimanded by the university. The court found no liberty interest was damaged by the reprimand.

All of Mr. Aiken's complaints as to his constitutional rights and interests lead to his argument that the standard of proof in a Domestic Violence Restraining action should be clear, cogent and convincing as opposed to preponderance of the evidence. Appellant's argument fails to persuade that the standard of proof should be raised.

> Clear, cogent, and convincing evidence exists when the ultimate fact in issue is shown by the evidence to be " 'highly probable' ". *In re Sego,* 82 Wash.2d 736, 739, 513 P.2d 831 (1973) (quoting *Supove v. Densmoor,* 225 Or. 365, 358 P.2d 510 (1961)).

In re Dependency of K.R., 128 Wash. 2d 129, 141, 904 P.2d 1132, 1138 (1995).

The dependency statute cited in Appellant's brief requires the State of Washington to prove parental unfitness by clear, cogent and convincing

evidence.[4] A dependency case is a far cry from a one year protection order. In a dependency action the state is attempting to permanently sever the parent/child relationship. Mr. Aiken's status as a parent is not altered by the relief granted to Ms. Aiken.

The purpose of protection orders is to provide those who allege they are victims with ready access to the protections of the court. They are equitable in nature and essentially a type of injunction. ER 1101 provides that the rules of evidence need not be applied in these proceedings. "Consequently, competent evidence sufficient to support the trial court's decision to grant or deny a petition for a domestic violence protection order may contain hearsay or be wholly documentary." *Blackmon v. Blackmon*, 155 Wash. App. 715, 722, 230 P.3d 233, 236 (2010) *citing Gourley,* 158 Wash.2d at 467, 145 P.3d 1185; and *Hecker,* 110 Wash. App. at 870, 43 P.3d 50. To change the burden of proof would be to deny protections to thousands of victims of domestic violence, including children .

[4] RCW 13.34.180(5) provides that there must be proof by clear, cogent, and convincing evidence that there is little likelihood that conditions will be remedied so that the child can be returned to the parent.

This is to be contrasted by the court's holding in a Vulnerable Adult Protective order case, *In re Knight*, 178 Wash. App. 929, 937, 317 P.3d 1068, 1072 (2014):

> We hold the standard of proof for proving whether the adult is a vulnerable adult in a case contested by the alleged vulnerable adult is clear, cogent, and convincing evidence and remand for the trial court to determine whether Eric met his burden.

But note that this standard of proof relates to proving the adult who objects to being protected is indeed vulnerable, so the court determined that using a higher standard of proof was necessary to protect that person's autonomy interests in being able to associate with persons he or she may choose. The court also looked to make this burden of proof the same as that used in guardianship cases.

4. Whether the court may issue an order beyond the scope of the relief requested in a motion for reconsideration.

Motions for reconsideration are filed under Civil Rule 59. CR 59 (e) defines how those motions are to be heard; including whether they will be heard on written documents only or with oral argument upon request. Mr. Aiken made no request for oral argument.

Under Snohomish County local civil rules, SCLR 59 (e) (3) (B) states the method for filing a motion for reconsideration. It further states, "Absent order of the court, the motion will be taken under advisement. Oral arguments will be scheduled only if the court request the same." Again, Mr. Aiken did not request oral argument.

Mr. Aiken cites no authority for the basis of his claim that the court erred by granting a revised order purportedly beyond the scope of the Motion for Reconsideration. However, commissioner Brudvik's order is clearly within the relief requested in the original Petition for a protective order, it is within her judicial power, and not an abuse of discretion to *sua sponte* grant this relief.

> [a] court granting a protection order "shall have broad discretion to grant such relief as the court deems proper." Sitting in equity, a court "may fashion broad remedies to do substantial justice to the parties and put an end to litigation." *Carpenter v. Folkerts,* 29 Wash.App. 73, 78, 627 P.2d 559 (1981) (citing *Esmieu v. Hsieh,* 92 Wash.2d 530, 535, 598 P.2d 1369 (1979)).

Hough v. Stockbridge, 150 Wash. 2d 234, 236, 76 P.3d 216, 217 (2003).

5. **Attorney fees.**

Ms. Aiken seeks an award of attorney fees and costs in this action. Attorney fees may be awarded under RCW 26.50.060 (1)(g)[5]. While Ms. Aiken did not seek them in the underlying action, they may be awarded for the appeal. She incurred not only attorney fees but was forced to request Supplemental Clerk's papers as Appellant failed to order all of the evidence for the court's review.

> Here, the basis for the fee request is statutory and limits her request to appellate fees. If attorney fees are allowable at trial, the prevailing party may recover fees on appeal. RAP 18.1; *see also Landberg v. Carlson,* 108 Wash.App. 749, 758, 33 P.3d 406 (2001).

Scheib v. Crosby, 160 Wash. App. 345, 353, 249 P.3d 184, 188 (2011).

E. CONCLUSION

Appellant's requested relief should be denied and Ms. Aiken should be awarded her fees pursuant to RAP 18.1. The Appellant has failed to provide this court with authority sufficient to support an order to

---

[5] RCW 26.50.060 (1) (g) Require the respondent to pay the administrative court costs and service fees, as established by the county or municipality incurring the expense and to reimburse the petitioner for costs incurred in bringing the action, including reasonable attorneys' fees.

reverse and/or remand the Temporary Order of Protection entered on November 24, 2014, or the Domestic Violence Protection order issued on February 26, 2015. The court did not abuse its discretion in making its findings that no cross examination be permitted of the minor child. The record reflects that despite the lack of oral testimony and cross examination as demanded by Appellant, there is ample evidence for the court to have granted a one year order of protection. Mr. Aiken's claims that his constitutional rights to travel, to care for his children and to avoid the stigma of the entry of such an order also fail. Mr. Aiken's argument lacks the proper legal authority and facts to support these claims. Finally, there is no legal basis to change the standard of proof in a domestic violence protection action. The far reaching impacts of such a decision by this court would have more than a chilling effect on the hundreds of adults and children who seek protection through the courts every day. In all, four separate court commissioners made rulings on this case. All of those rulings were soundly within the confines of the applicable statute, RCW 26.50 *et. seq.*, the Civil Rules of Procedure of the State of Washington, and the Constitution of the United States and the State of Washington. Mr. Aiken's appeal should be denied on all grounds and Ms. Aiken awarded costs and fees.

Respectfully submitted this 27 day of July, 2015.

O'Loane Nunn Law Group, PLLC

Gail B. Nunn, WSBA 16827
Attorney for Respondent, Cynthia Aiken

APPENDIX

Chapter 26.50 Revised Code of Washington

Evidentiary Rule 1101

Civil Court Rule 59

Snohomish County Local Civil Rule 59

Chapter 26.50 RCW
DOMESTIC VIOLENCE PREVENTION

RCW Sections

order.

26.50.120 Violation of order -- Prosecuting attorney or attorney for municipality may be requested to assist -- Costs and attorney's fee.

26.50.123 Service by mail.

26.50.125 Service by publication or mailing -- Costs.

26.50.130 Order for protection -- Modification or termination -- Service -- Transmittal.

26.50.135 Residential placement or custody of a child -- Prerequisite.

26.50.140 Peace officers -- Immunity.

26.50.150 Domestic violence perpetrator programs.

26.50.160 Judicial information system -- Database.

26.50.165 Judicial information system -- Names of adult cohabitants in third-party custody actions.

26.50.200 Title to real estate -- Effect.

26.50.210 Proceedings additional.

26.50.220 Parenting plan -- Designation of parent for other state and federal purposes.

26.50.230 Protection order against person with a disability, brain injury, or impairment.

26.50.240 Personal jurisdiction -- Nonresident individuals.

26.50.250 Disclosure of information.

26.50.800 Recidivism study.

26.50.900 Short title.

26.50.901 Effective date -- 1984 c 263.

26.50.902 Severability -- 1984 c 263.

26.50.903 Severability -- 1992 c 111.

Notes:

Abuse of children: Chapter 26.44 RCW.

Arrest without warrant: RCW 10.31.100(2).

Dissolution of marriage: Chapter 26.09 RCW.

Domestic violence, official response: Chapter 10.99 RCW.

Nonparental actions for child custody: Chapter 26.10 RCW.

Shelters for victims of domestic violence: Chapter 70.123 RCW.

26.50.010
Definitions.

*** CHANGE IN 2015 *** (SEE 1943.SL) ***

As used in this chapter, the following terms shall have the meanings given them:

(1) "Domestic violence" means: (a) Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault, between family or household members; (b) sexual assault of one family or household member by another; or (c) stalking as defined in RCW 9A.46.110 of one family or household member by another family or household member.

(2) "Family or household members" means spouses, domestic partners, former spouses, former domestic partners, persons who have a child in common regardless of whether they have been married or have lived together at any time, adult persons related by blood or marriage, adult persons who are presently residing together or who have resided together in the past, persons sixteen years of age or older who are presently residing together or who have resided together in the past and who have or have had a dating relationship, persons sixteen years of age or older with whom a person sixteen years of age or older has or has had a dating relationship, and persons who have a biological or legal parent-child relationship, including stepparents and stepchildren and grandparents and grandchildren.

(3) "Dating relationship" means a social relationship of a romantic nature. Factors that the court may consider in making this determination include: (a) The length of time the relationship has existed; (b) the nature of the relationship; and (c) the frequency of interaction between the parties.

(4) "Court" includes the superior, district, and municipal courts of the state of Washington.

(5) "Judicial day" does not include Saturdays, Sundays, or legal holidays.

(6) "Electronic monitoring" means a program in which a person's presence at a particular location is monitored from a remote location by use of electronic equipment.

(7) "Essential personal effects" means those items necessary for a person's immediate health, welfare, and livelihood. "Essential personal effects" includes but is not limited to clothing, cribs, bedding, documents, medications, and personal hygiene items. [2008 c 6 § 406; 1999 c 184 § 13; 1995 c 246 § 1. Prior: 1992 c 111 § 7; 1992 c 86 § 3; 1991 c 301 § 8; 1984 c 263 § 2.

[2008 c 6 § 406; 1999 c 184 § 13; 1995 c 246 § 1. Prior: 1992 c 111 § 7; 1992 c 86 § 3; 1991 c 301 § 8; 1984 c 263 § 2.]

NOTES:

Part headings not law—Severability—2008 c 6: See RCW 26.60.900 and 26.60.901.

Short title—Severability—1999 c 184: See RCW 26.52.900 and 26.52.902.

Severability—1995 c 246: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1995 c 246 § 40.]

Findings—1992 c 111: See note following RCW 26.50.030.

Finding—1991 c 301: See note following RCW 10.99.020.

Domestic violence offenses defined: RCW 10.99.020.

26.50.020

Commencement of action — Jurisdiction — Venue.

(1)(a) Any person may seek relief under this chapter by filing a petition with a court alleging that the person has been the victim of domestic violence committed by the respondent. The person may petition for relief on behalf of himself or herself and on behalf of minor family or household members.

(b) Any person thirteen years of age or older may seek relief under this chapter by filing a petition with a court alleging that he or she has been the victim of violence in a dating relationship and the respondent is sixteen years of age or older.

(2)(a) A person under eighteen years of age who is sixteen years of age

or older may seek relief under this chapter and is not required to seek relief by a guardian or next friend.

(b) A person under sixteen years of age who is seeking relief under subsection (1)(b) of this section is required to seek relief by a parent, guardian, guardian ad litem, or next friend.

(3) No guardian or guardian ad litem need be appointed on behalf of a respondent to an action under this chapter who is under eighteen years of age if such respondent is sixteen years of age or older.

(4) The court may, if it deems necessary, appoint a guardian ad litem for a petitioner or respondent who is a party to an action under this chapter.

(5) The courts defined in RCW 26.50.010(4) have jurisdiction over proceedings under this chapter. The jurisdiction of district and municipal courts under this chapter shall be limited to enforcement of RCW 26.50.110(1), or the equivalent municipal ordinance, and the issuance and enforcement of temporary orders for protection provided for in RCW 26.50.070 if: (a) A superior court has exercised or is exercising jurisdiction over a proceeding under this title or chapter 13.34 RCW involving the parties; (b) the petition for relief under this chapter presents issues of residential schedule of and contact with children of the parties; or (c) the petition for relief under this chapter requests the court to exclude a party from the dwelling which the parties share. When the jurisdiction of a district or municipal court is limited to the issuance and enforcement of a temporary order, the district or municipal court shall set the full hearing provided for in RCW 26.50.050in superior court and transfer the case. If the notice and order are not served on the respondent in time for the full hearing, the issuing court shall have concurrent jurisdiction with the superior court to extend the order for protection.

(6) An action under this chapter shall be filed in the county or the municipality where the petitioner resides, unless the petitioner has left the residence or household to avoid abuse. In that case, the petitioner may bring an action in the county or municipality of the previous or the new household or residence.

(7) A person's right to petition for relief under this chapter is not affected by the person leaving the residence or household to avoid abuse.

(8) For the purposes of this section "next friend" means any competent individual, over eighteen years of age, chosen by the minor and who is capable of pursuing the minor's stated interest in the action.

[2010 c 274 § 302; 1992 c 111 § 8; 1989 c 375 § 28; 1987 c 71 § 1; 1985 c 303 § 1; 1984 c 263 § 3.]

Notes:

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

Findings -- 1992 c 111: See note following RCW 26.50.030.

Severability -- 1989 c 375: See RCW 26.09.914.

Effective date -- 1985 c 303 §§ 1, 2: "Sections 1 and 2 of this act shall take effect September 1, 1985." [1985 c 303 § 15.]

26.50.021

Actions on behalf of vulnerable adults — Authority of department of social and health services — Immunity from liability.

The department of social and health services, in its discretion, may seek the relief provided in this chapter on behalf of and with the consent of any vulnerable adult as those persons are defined in RCW 74.34.020. Neither the department nor the state of Washington shall be liable for failure to seek relief on behalf of any persons under this section.

[2000 c 119 § 1.]

Notes:

Application -- 2000 c 119: "The penalties prescribed in this act apply to violations of court orders which occur on or after July 1, 2000, regardless of the date the court issued the order." [2000 c 119 § 31.]

26.50.025
Orders under this chapter and chapter 26.09, 26.10, or 26.26 RCW — Enforcement — Consolidation.

(1) Any order available under this chapter may be issued in actions under chapter 26.09, 26.10, or 26.26 RCW. If an order for protection is issued in an action under chapter 26.09, 26.10, or26.26 RCW, the order shall be issued on the forms mandated by RCW 26.50.035(1). An order issued in accordance with this subsection is fully enforceable and shall be enforced under the provisions of this chapter.

(2) If a party files an action under chapter 26.09, 26.10, or 26.26 RCW, an order issued previously under this chapter between the same parties may be consolidated by the court under that action and cause number. Any order issued under this chapter after consolidation shall contain the original cause number and the cause number of the action under chapter 26.09, 26.10, or 26.26RCW. Relief under this chapter shall not be denied or delayed on the grounds that the relief is available in another action.

[1995 c 246 § 2.]

Notes:

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

26.50.030
Petition for an order for protection — Availability of forms and informational brochures — Bond not required.

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

(1) A petition for relief shall allege the existence of domestic violence, and shall be accompanied by an affidavit made under oath stating the specific facts and circumstances from which relief is sought. Petitioner and respondent shall disclose the existence of any other litigation concerning the custody or residential placement of a child of the parties as set forth in RCW 26.27.281 and the existence of any other restraining,

protection, or no-contact orders between the parties.

(2) A petition for relief may be made regardless of whether or not there is a pending lawsuit, complaint, petition, or other action between the parties except in cases where the court realigns petitioner and respondent in accordance with RCW 26.50.060(4).

(3) Within ninety days of receipt of the master copy from the administrative office of the courts, all court clerk's offices shall make available the standardized forms, instructions, and informational brochures required by RCW 26.50.035 and shall fill in and keep current specific program names and telephone numbers for community resources. Any assistance or information provided by clerks under this section does not constitute the practice of law and clerks are not responsible for incorrect information contained in a petition.

(4) No filing fee may be charged for proceedings under this section. Forms and instructional brochures shall be provided free of charge.

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

[2005 c 282 § 39; 1996 c 248 § 12; 1995 c 246 § 3; 1992 c 111 § 2; 1985 c 303 § 2; 1984 c 263 § 4.]

Notes:

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

Findings -- 1992 c 111: "The legislature finds that:

Domestic violence is a problem of immense proportions affecting individuals as well as communities. Domestic violence has long been recognized as being at the core of other major social problems: Child abuse, other crimes of violence against person or property, juvenile delinquency, and alcohol and drug abuse. Domestic violence costs millions of dollars each year in the state of Washington for health care, absence from work, services to children, and more. The crisis is growing.

While the existing protection order process can be a valuable tool to increase safety for victims and to hold batterers accountable, specific

problems in its use have become evident. Victims have difficulty completing the paperwork required particularly if they have limited English proficiency; model forms have been modified to be inconsistent with statutory language; different forms create confusion for law enforcement agencies about the contents and enforceability of orders. Refinements are needed so that victims have the easy, quick, and effective access to the court system envisioned at the time the protection order process was first created.

When courts issue mutual protection orders without the filing of separate written petitions, notice to each respondent, and hearing on each petition, the original petitioner is deprived of due process. Mutual protection orders label both parties as violent and treat both as being equally at fault: Batterers conclude that the violence is excusable or provoked and victims who are not violent are confused and stigmatized. Enforcement may be ineffective and mutual orders may be used in other proceedings as evidence that the victim is equally at fault.

Valuable information about the reported incidents of domestic violence in the state of Washington is unobtainable without gathering data from all law enforcement agencies; without this information, it is difficult for policymakers, funders, and service providers to plan for the resources and services needed to address the issue.

Domestic violence must be addressed more widely and more effectively in our state: Greater knowledge by professionals who deal frequently with domestic violence is essential to enforce existing laws, to intervene in domestic violence situations that do not come to the attention of the law enforcement or judicial systems, and to reduce and prevent domestic violence by intervening before the violence becomes severe.

Adolescent dating violence is occurring at increasingly high rates: Preventing and confronting adolescent violence is important in preventing potential violence in future adult relationships." [1992 c 111 § 1.]

Effective date -- 1985 c 303 §§ 1, 2: See note following RCW 26.50.020.

Child abuse, temporary restraining order: RCW 26.44.063.

Orders prohibiting contact: RCW 10.99.040.

Temporary restraining order: RCW 26.09.060.

26.50.035

Development of instructions, informational brochures, forms, and handbook by the administrative office of the courts — Community resource list — Distribution of master copy.

(1) The administrative office of the courts shall develop and prepare instructions and informational brochures required under RCW 26.50.030(4), standard petition and order for protection forms, and a court staff handbook on domestic violence and the protection order process. The standard petition and order for protection forms must be used after September 1, 1994, for all petitions filed and orders issued under this chapter. The instructions, brochures, forms, and handbook shall be prepared in consultation with interested persons, including a representative of the state domestic violence coalition, judges, and law enforcement personnel.

(a) The instructions shall be designed to assist petitioners in completing the petition, and shall include a sample of standard petition and order for protection forms.

(b) The informational brochure shall describe the use of and the process for obtaining, modifying, and terminating a domestic violence protection order as provided under this chapter, an antiharassment no-contact order as provided under chapter 9A.46 RCW, a domestic violence no-contact order as provided under chapter 10.99 RCW, a restraining order as provided under chapters 26.09, 26.10, 26.26, and 26.44 RCW, an antiharassment protection order as provided by chapter 10.14 RCW, and a foreign protection order as defined in chapter 26.52 RCW.

(c) The order for protection form shall include, in a conspicuous location, notice of criminal penalties resulting from violation of the order, and the following statement: "You can be arrested even if the person or persons who obtained the order invite or allow you to violate the order's prohibitions. The respondent has the sole responsibility to avoid or refrain from violating the order's provisions. Only the court can change the order

upon written application."

(d) The court staff handbook shall allow for the addition of a community resource list by the court clerk.

(2) All court clerks shall obtain a community resource list from a domestic violence program, defined in RCW 70.123.020, serving the county in which the court is located. The community resource list shall include the names and telephone numbers of domestic violence programs serving the community in which the court is located, including law enforcement agencies, domestic violence agencies, sexual assault agencies, legal assistance programs, interpreters, multicultural programs, and batterers' treatment programs. The court shall make the community resource list available as part of or in addition to the informational brochures described in subsection (1) of this section.

(3) The administrative office of the courts shall distribute a master copy of the petition and order forms, instructions, and informational brochures to all court clerks and shall distribute a master copy of the petition and order forms to all superior, district, and municipal courts.

(4) For purposes of this section, "court clerks" means court administrators in courts of limited jurisdiction and elected court clerks.

(5) The administrative office of the courts shall determine the significant non-English-speaking or limited English-speaking populations in the state. The administrator shall then arrange for translation of the instructions and informational brochures required by this section, which shall contain a sample of the standard petition and order for protection forms, into the languages spoken by those significant non-English-speaking populations and shall distribute a master copy of the translated instructions and informational brochures to all court clerks by January 1, 1997.

(6) The administrative office of the courts shall update the instructions, brochures, standard petition and order for protection forms, and court staff handbook when changes in the law make an update necessary.

[2005 c 282 § 40; 2000 c 119 § 14; 1995 c 246 § 4; 1993 c 350 § 2; 1985 c 303 § 3; 1984 c 263 § 31.]

Notes:

Application -- 2000 c 119: See note following RCW 26.50.021.

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

Findings -- 1993 c 350: "The legislature finds that domestic violence is a problem of immense proportions affecting individuals as well as communities. Domestic violence has long been recognized as being at the core of other major social problems including child abuse, crimes of violence against person or property, juvenile delinquency, and alcohol and drug abuse. Domestic violence costs include the loss of lives as well as millions of dollars each year in the state of Washington for health care, absence from work, and services to children. The crisis is growing.

While the existing protection order process can be a valuable tool to increase safety for victims and to hold batterers accountable, specific problems in its use have become evident. Victims have difficulty completing the paperwork required; model forms have been modified to be inconsistent with statutory language; different forms create confusion for law enforcement agencies about the contents and enforceability of orders. Refinements are needed so that victims have the easy, quick, and effective access to the court system envisioned at the time the protection order process was first created.

Valuable information about the reported incidents of domestic violence in the state of Washington is unobtainable without gathering data from all law enforcement agencies. Without this information, it is difficult for policymakers, funders, and service providers to plan for the resources and services needed to address the issue." [1993 c 350 § 1.]

Severability -- 1993 c 350: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1993 c 350 § 9.]

26.50.040
Fees not permitted — Filing, service of process, certified copies.

No fees for filing or service of process may be charged by a public agency to petitioners seeking relief under this chapter. Petitioners shall be provided the necessary number of certified copies at no cost.

[1995 c 246 § 5; 1985 c 303 § 4; 1984 c 263 § 5.]

Notes:

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

26.50.050
Hearing — Service — Time.

Upon receipt of the petition, the court shall order a hearing which shall be held not later than fourteen days from the date of the order. The court may schedule a hearing by telephone pursuant to local court rule, to reasonably accommodate a disability, or in exceptional circumstances to protect a petitioner from further acts of domestic violence. The court shall require assurances of the petitioner's identity before conducting a telephonic hearing. Except as provided in RCW 26.50.085 and 26.50.123, personal service shall be made upon the respondent not less than five court days prior to the hearing. If timely personal service cannot be made, the court shall set a new hearing date and shall either require an additional attempt at obtaining personal service or permit service by publication as provided in RCW 26.50.085 or service by mail as provided in RCW 26.50.123. The court shall not require more than two attempts at obtaining personal service and shall permit service by publication or by mail unless the petitioner requests additional time to attempt personal service. If the court permits service by publication or by mail, the court shall set the hearing date not later than twenty-four days from the date of the order. The court may issue an ex parte order for protection pending the hearing as provided in RCW 26.50.070, 26.50.085, and26.50.123.

[2008 c 287 § 2; 1995 c 246 § 6; 1992 c 143 § 1; 1984 c 263 § 6.]

Notes:

Short title -- 2008 c 287: "This act shall be known as the Rebecca Jane Griego act. Recent tragic events have demonstrated the need to find ways

to make legal protections for domestic violence victims more accessible. On March 6, 2007, Rebecca Jane Griego, an employee at the University of Washington, had obtained a temporary protection order against the man who eventually shot her and then himself in a murder-suicide on April 2, 2007. However, because her stalker had evaded the police and service of process, Ms. Griego had to return to court numerous times and did not have the opportunity to have a hearing for a permanent protection order. Under current court rules, which vary by court, if a process server fails to serve process after an unspecified number of times, process may be served by publication or by mail. Establishing greater uniformity in the service of process of petitions for orders for protection or modifications of protection orders in domestic violence cases may help to protect the safety of future domestic violence victims." [2008 c 287 § 1.]

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

26.50.055
Appointment of interpreter.

(1) Pursuant to chapter 2.42 RCW, an interpreter shall be appointed for any party who, because of a hearing or speech impairment, cannot readily understand or communicate in spoken language.

(2) Pursuant to chapter 2.43 RCW, an interpreter shall be appointed for any party who cannot readily speak or understand the English language.

(3) The interpreter shall translate or interpret for the party in preparing forms, participating in the hearing and court-ordered assessments, and translating any orders.

[1995 c 246 § 11.]

Notes:

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

26.50.060
Relief — Duration — Realignment of designation of parties — Award of costs, service fees, and attorneys' fees.

(1) Upon notice and after hearing, the court may provide relief as follows:

(a) Restrain the respondent from committing acts of domestic violence;

(b) Exclude the respondent from the dwelling that the parties share, from the residence, workplace, or school of the petitioner, or from the day care or school of a child;

(c) Prohibit the respondent from knowingly coming within, or knowingly remaining within, a specified distance from a specified location;

(d) On the same basis as is provided in chapter 26.09 RCW, the court shall make residential provision with regard to minor children of the parties. However, parenting plans as specified in chapter 26.09 RCW shall not be required under this chapter;

(e) Order the respondent to participate in a domestic violence perpetrator treatment program approved under RCW 26.50.150;

(f) Order other relief as it deems necessary for the protection of the petitioner and other family or household members sought to be protected, including orders or directives to a peace officer, as allowed under this chapter;

(g) Require the respondent to pay the administrative court costs and service fees, as established by the county or municipality incurring the expense and to reimburse the petitioner for costs incurred in bringing the action, including reasonable attorneys' fees;

(h) Restrain the respondent from having any contact with the victim of domestic violence or the victim's children or members of the victim's household;

(i) Restrain the respondent from harassing, following, keeping under physical or electronic surveillance, cyberstalking as defined in

RCW 9.61.260, and using telephonic, audiovisual, or other electronic means to monitor the actions, location, or communication of a victim of domestic violence, the victim's children, or members of the victim's household. For the purposes of this subsection, "communication" includes both "wire communication" and "electronic communication" as defined in RCW 9.73.260;

(j) Require the respondent to submit to electronic monitoring. The order shall specify who shall provide the electronic monitoring services and the terms under which the monitoring must be performed. The order also may include a requirement that the respondent pay the costs of the monitoring. The court shall consider the ability of the respondent to pay for electronic monitoring;

(k) Consider the provisions of RCW 9.41.800;

(l) Order possession and use of essential personal effects. The court shall list the essential personal effects with sufficient specificity to make it clear which property is included. Personal effects may include pets. The court may order that a petitioner be granted the exclusive custody or control of any pet owned, possessed, leased, kept, or held by the petitioner, respondent, or minor child residing with either the petitioner or respondent and may prohibit the respondent from interfering with the petitioner's efforts to remove the pet. The court may also prohibit the respondent from knowingly coming within, or knowingly remaining within, a specified distance of specified locations where the pet is regularly found; and

(m) Order use of a vehicle.

(2) If a protection order restrains the respondent from contacting the respondent's minor children the restraint shall be for a fixed period not to exceed one year. This limitation is not applicable to orders for protection issued under chapter 26.09, 26.10, or 26.26 RCW. With regard to other relief, if the petitioner has petitioned for relief on his or her own behalf or on behalf of the petitioner's family or household members or minor children, and the court finds that the respondent is likely to resume acts of domestic violence against the petitioner or the petitioner's family or household members or minor children when the order expires, the court may either grant relief for a fixed period or enter a permanent order of protection.

If the petitioner has petitioned for relief on behalf of the respondent's minor children, the court shall advise the petitioner that if the petitioner wants to continue protection for a period beyond one year the petitioner may either petition for renewal pursuant to the provisions of this chapter or may seek relief pursuant to the provisions of chapter 26.09 or 26.26 RCW.

(3) If the court grants an order for a fixed time period, the petitioner may apply for renewal of the order by filing a petition for renewal at any time within the three months before the order expires. The petition for renewal shall state the reasons why the petitioner seeks to renew the protection order. Upon receipt of the petition for renewal the court shall order a hearing which shall be not later than fourteen days from the date of the order. Except as provided in RCW 26.50.085, personal service shall be made on the respondent not less than five days before the hearing. If timely service cannot be made the court shall set a new hearing date and shall either require additional attempts at obtaining personal service or permit service by publication as provided in RCW26.50.085 or by mail as provided in RCW 26.50.123. If the court permits service by publication or mail, the court shall set the new hearing date not later than twenty-four days from the date of the order. If the order expires because timely service cannot be made the court shall grant an ex parte order of protection as provided in RCW 26.50.070. The court shall grant the petition for renewal unless the respondent proves by a preponderance of the evidence that the respondent will not resume acts of domestic violence against the petitioner or the petitioner's children or family or household members when the order expires. The court may renew the protection order for another fixed time period or may enter a permanent order as provided in this section. The court may award court costs, service fees, and reasonable attorneys' fees as provided in subsection (1)(g) of this section.

(4) In providing relief under this chapter, the court may realign the designation of the parties as "petitioner" and "respondent" where the court finds that the original petitioner is the abuser and the original respondent is the victim of domestic violence and may issue an ex parte temporary order for protection in accordance with RCW 26.50.070 on behalf of the victim until the victim is able to prepare a petition for an order for protection in accordance with RCW 26.50.030.

(5) Except as provided in subsection (4) of this section, no order for

protection shall grant relief to any party except upon notice to the respondent and hearing pursuant to a petition or counter-petition filed and served by the party seeking relief in accordance with RCW 26.50.050.

(6) The court order shall specify the date the order expires if any. The court order shall also state whether the court issued the protection order following personal service, service by publication, or service by mail and whether the court has approved service by publication or mail of an order issued under this section.

(7) If the court declines to issue an order for protection or declines to renew an order for protection, the court shall state in writing on the order the particular reasons for the court's denial.

[2010 c 274 § 304; 2009 c 439 § 2; 2000 c 119 § 15; 1999 c 147 § 2; 1996 c 248 § 13; 1995 c 246 § 7; 1994 sp.s. c 7 § 457. Prior: 1992 c 143 § 2; 1992 c 111 § 4; 1992 c 86 § 4; 1989 c 411 § 1; 1987 c 460 § 55; 1985 c 303 § 5; 1984 c 263 § 7.]

Notes:

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

Finding -- Intent -- 2009 c 439: "The legislature finds that considerable research shows a strong correlation between animal abuse, child abuse, and domestic violence. The legislature intends that perpetrators of domestic violence not be allowed to further terrorize and manipulate their victims, or the children of their victims, by using the threat of violence toward pets." [2009 c 439 § 1.]

Application -- 2000 c 119: See note following RCW 26.50.021.

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

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

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

Findings -- 1992 c 111: See note following RCW 26.50.030.

Short title -- Section captions -- Effective date -- Severability -- 1987 c 460: See RCW 26.09.910 through 26.09.913.

26.50.070
Ex parte temporary order for protection.

(1) Where an application under this section alleges that irreparable injury could result from domestic violence if an order is not issued immediately without prior notice to the respondent, the court may grant an ex parte temporary order for protection, pending a full hearing, and grant relief as the court deems proper, including an order:

(a) Restraining any party from committing acts of domestic violence;

(b) Restraining any party from going onto the grounds of or entering the dwelling that the parties share, from the residence, workplace, or school of the other, or from the day care or school of a child until further order of the court;

(c) Prohibiting any party from knowingly coming within, or knowingly remaining within, a specified distance from a specified location;

(d) Restraining any party from interfering with the other's custody of the minor children or from removing the children from the jurisdiction of the court;

(e) Restraining any party from having any contact with the victim of domestic violence or the victim's children or members of the victim's household;

(f) Considering the provisions of RCW 9.41.800; and

(g) Restraining the respondent from harassing, following, keeping under physical or electronic surveillance, cyberstalking as defined in RCW 9.61.260, and using telephonic, audiovisual, or other electronic means to monitor the actions, location, or communication of a victim of domestic violence, the victim's children, or members of the victim's

household. For the purposes of this subsection, "communication" includes both "wire communication" and "electronic communication" as defined in RCW 9.73.260.

(2) Irreparable injury under this section includes but is not limited to situations in which the respondent has recently threatened petitioner with bodily injury or has engaged in acts of domestic violence against the petitioner.

(3) The court shall hold an ex parte hearing in person or by telephone on the day the petition is filed or on the following judicial day.

(4) An ex parte temporary order for protection shall be effective for a fixed period not to exceed fourteen days or twenty-four days if the court has permitted service by publication under RCW26.50.085 or by mail under RCW 26.50.123. The ex parte order may be reissued. A full hearing, as provided in this chapter, shall be set for not later than fourteen days from the issuance of the temporary order or not later than twenty-four days if service by publication or by mail is permitted. Except as provided in RCW 26.50.050, 26.50.085, and 26.50.123, the respondent shall be personally served with a copy of the ex parte order along with a copy of the petition and notice of the date set for the hearing.

(5) Any order issued under this section shall contain the date and time of issuance and the expiration date and shall be entered into a statewide judicial information system by the clerk of the court within one judicial day after issuance.

(6) If the court declines to issue an ex parte temporary order for protection the court shall state the particular reasons for the court's denial. The court's denial of a motion for an ex parte order of protection shall be filed with the court.

[2010 c 274 § 305; 2000 c 119 § 16; 1996 c 248 § 14; 1995 c 246 § 8; 1994 sp.s. c 7 § 458; 1992 c 143 § 3; 1989 c 411 § 2; 1984 c 263 § 8.]

Notes:

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

Application -- 2000 c 119: See note following RCW 26.50.021.

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

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

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

Child abuse, temporary restraining order: RCW 26.44.063.

Orders prohibiting contact: RCW 10.99.040.

Temporary restraining order: RCW 26.09.060.

26.50.080
Issuance of order — Assistance of peace officer — Designation of appropriate law enforcement agency.

(1) When an order is issued under this chapter upon request of the petitioner, the court may order a peace officer to accompany the petitioner and assist in placing the petitioner in possession of those items indicated in the order or to otherwise assist in the execution of the order of protection. The order shall list all items that are to be included with sufficient specificity to make it clear which property is included. Orders issued under this chapter shall include a designation of the appropriate law enforcement agency to execute, serve, or enforce the order.

(2) Upon order of a court, a peace officer shall accompany the petitioner in an order of protection and assist in placing the petitioner in possession of all items listed in the order and to otherwise assist in the execution of the order.

[1995 c 246 § 9; 1984 c 263 § 9.]

Notes:

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

26.50.085

Hearing reset after ex parte order — Service by publication — Circumstances.

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

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

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

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

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

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

(3) The publication shall be made in a newspaper of general circulation in the county where the petition was brought and in the county of the last

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

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

. . . . . , Petitioner

vs. No. . . . . .

. . . . . , Respondent

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

You are hereby summoned to appear on the . . . . day of . . . . . , 19. . . , at . . . . a.m./p.m., and respond to the petition. If you fail to respond, an order of protection will be issued against you pursuant to the provisions of the domestic violence protection act, chapter 26.50RCW, for a minimum of one year from the date you are required to appear. A temporary order of protection has been issued against you, restraining you from the following: (Insert a brief statement of the provisions of the ex parte order). A copy of the petition, notice of hearing, and ex parte order has been filed with the clerk of this court.

. . . . . .

Petitioner . . . . . .

[1992 c 143 § 4.]

26.50.090

Order — Service — Fees.

(1) An order issued under this chapter shall be personally served upon the respondent, except as provided in subsections (6) and (8) of this section.

(2) The sheriff of the county or the peace officers of the municipality in which the respondent resides shall serve the respondent personally unless the petitioner elects to have the respondent served by a private party.

(3) If service by a sheriff or municipal peace officer is to be used, the clerk of the court shall have a copy of any order issued under this chapter forwarded on or before the next judicial day to the appropriate law enforcement agency specified in the order for service upon the respondent. Service of an order issued under this chapter shall take precedence over the service of other documents unless they are of a similar emergency nature.

(4) If the sheriff or municipal peace officer cannot complete service upon the respondent within ten days, the sheriff or municipal peace officer shall notify the petitioner. The petitioner shall provide information sufficient to permit notification.

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

(6) If an order entered by the court recites that the respondent appeared in person before the court, the necessity for further service is waived and proof of service of that order is not necessary.

(7) Municipal police departments serving documents as required under this chapter may collect from respondents ordered to pay fees under RCW 26.50.060 the same fees for service and mileage authorized by RCW 36.18.040 to be collected by sheriffs.

(8) If the court previously entered an order allowing service of the notice of hearing and temporary order of protection by publication pursuant to RCW 26.50.085 or by mail pursuant to RCW26.50.123, the court may permit service by publication or by mail of the order of protection issued under RCW 26.50.060. Service by publication must comply with the requirements of RCW26.50.085 and service by mail must comply with the requirements of RCW 26.50.123. The court order must state whether the court permitted service by publication or by mail.

[1995 c 246 § 10; 1992 c 143 § 6; 1985 c 303 § 6; 1984 c 263 § 10.]

Notes:

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

26.50.095
Order following service by publication.

Following completion of service by publication as provided in RCW 26.50.085 or by mail as provided in RCW 26.50.123, if the respondent fails to appear at the hearing, the court may issue an order of protection as provided in RCW 26.50.060. That order must be served pursuant to RCW 26.50.090, and forwarded to the appropriate law enforcement agency pursuant to RCW 26.50.100.

[1995 c 246 § 12; 1992 c 143 § 5.]

Notes:

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

26.50.100
Order — Transmittal to law enforcement agency — Record in law enforcement information system — Enforceability.

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

Upon receipt of the order, the law enforcement agency shall forthwith enter the order into any computer-based criminal intelligence information system available in this state used by law enforcement agencies to list outstanding warrants. The order shall remain in the computer for the period stated in the order. The law enforcement agency shall only expunge from the computer-based criminal intelligence information system orders that are expired, vacated, or superseded. Entry into the law enforcement

information system constitutes notice to all law enforcement agencies of the existence of the order. The order is fully enforceable in any county in the state.

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

[1996 c 248 § 15; 1995 c 246 § 13; 1992 c 143 § 7; 1984 c 263 § 11.]

Notes:

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

26.50.110
Violation of order—Penalties.

*** CHANGE IN 2015 *** (SEE 5631-S.SL) ***

*** CHANGE IN 2015 *** (SEE 1316-S.SL) ***

(1)(a) Whenever an order is granted under this chapter, chapter 7.92, 7.90, 9A.46, 9.94A, 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, or there is a valid foreign protection order as defined in RCW 26.52.020, and the respondent or person to be restrained knows of the order, a violation of any of the following provisions of the order is a gross misdemeanor, except as provided in subsections (4) and (5) of this section:

(i) The restraint provisions prohibiting acts or threats of violence against, or stalking of, a protected party, or restraint provisions prohibiting contact with a protected party;

(ii) A provision excluding the person from a residence, workplace, school, or day care;

(iii) A provision prohibiting a person from knowingly coming within, or knowingly remaining within, a specified distance of a location;

(iv) A provision prohibiting interfering with the protected party's efforts to remove a pet owned, possessed, leased, kept, or held by the petitioner, respondent, or a minor child residing with either the petitioner or the respondent; or

(v) A provision of a foreign protection order specifically indicating that a violation will be a crime.

(b) Upon conviction, and in addition to any other penalties provided by law, the court may require that the respondent submit to electronic monitoring. The court shall specify who shall provide the electronic monitoring services, and the terms under which the monitoring shall be performed. The order also may include a requirement that the respondent pay the costs of the monitoring. The court shall consider the ability of the convicted person to pay for electronic monitoring.

(2) A peace officer shall arrest without a warrant and take into custody a person whom the peace officer has probable cause to believe has violated an order issued under this chapter, chapter7.92, 7.90, 9A.46, 9.94A, 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, or a valid foreign protection order as defined in RCW 26.52.020, that restrains the person or excludes the person from a residence, workplace, school, or day care, or prohibits the person from knowingly coming within, or knowingly remaining within, a specified distance of a location, if the person restrained knows of the order. Presence of the order in the law enforcement computer-based criminal intelligence information system is not the only means of establishing knowledge of the order.

(3) A violation of an order issued under this chapter, chapter 7.92, 7.90, 9A.46, 9.94A, 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, or of a valid foreign protection order as defined in RCW26.52.020, shall also constitute contempt of court, and is subject to the penalties prescribed by law.

(4) Any assault that is a violation of an order issued under this chapter, chapter 7.92, 7.90, 9A.46, 9.94A, 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, or of a valid foreign protection order as defined in RCW 26.52.020, and that does not amount to assault in the first or second degree under RCW 9A.36.011 or 9A.36.021 is a class C felony, and any conduct in violation of such an order that is reckless and creates a substantial risk of death or serious physical injury to another person is a class C felony.

(5) A violation of a court order issued under this chapter, chapter 7.92, 7.90, 9A.46, 9.94A, 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, or of a valid foreign protection order as defined in RCW26.52.020, is a class C felony if the offender has at least two previous convictions for violating the provisions of an order issued under this chapter, chapter 7.90, 9A.46, 9.94A, 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, or a valid foreign protection order as defined in RCW 26.52.020. The previous convictions

may involve the same victim or other victims specifically protected by the orders the offender violated.

(6) Upon the filing of an affidavit by the petitioner or any peace officer alleging that the respondent has violated an order granted under this chapter, chapter 7.92, 7.90, 9A.46, 9.94A, 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, or a valid foreign protection order as defined in RCW 26.52.020, the court may issue an order to the respondent, requiring the respondent to appear and show cause within fourteen days why the respondent should not be found in contempt of court and punished accordingly. The hearing may be held in the court of any county or municipality in which the petitioner or respondent temporarily or permanently resides at the time of the alleged violation. [2013 c 84 § 31. Prior: 2009 c 439 § 3; 2009 c 288 § 3; 2007 c 173 § 2; 2006 c 138 § 25; 2000 c 119 § 24; 1996 c 248 § 16; 1995 c 246 § 14; 1992 c 86 § 5; 1991 c 301 § 6; 1984 c 263 § 12.

[2013 c 84 § 31. Prior: 2009 c 439 § 3; 2009 c 288 § 3; 2007 c 173 § 2; 2006 c 138 § 25; 2000 c 119 § 24; 1996 c 248 § 16; 1995 c 246 § 14; 1992 c 86 § 5; 1991 c 301 § 6; 1984 c 263 § 12.]

NOTES:

Finding—Intent—2009 c 439: See note following RCW 26.50.060.

Findings—2009 c 288: See note following RCW 9.94A.637.

Finding—Intent—2007 c 173: "The legislature finds this act necessary to restore and make clear its intent that a willful violation of a no-contact provision of a court order is a criminal offense and shall be enforced accordingly to preserve the integrity and intent of the domestic violence act. This act is not intended to broaden the scope of law enforcement power or effectuate any substantive change to any criminal provision in the Revised Code of Washington." [2007 c 173 § 1.]

Short title—2006 c 138: See RCW 7.90.900.

Application—2000 c 119: See note following RCW 26.50.021.

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

Finding—1991 c 301: See note following RCW 10.99.020.

Violation of order protecting vulnerable adult: RCW 74.34.145.

26.50.115

Enforcement of ex parte order — Knowledge of order prerequisite to penalties — Reasonable efforts to serve copy of order.

(1) When the court issues an ex parte order pursuant to RCW 26.50.070 or an order of protection pursuant to RCW 26.50.060, the court shall advise the petitioner that the respondent may not be subjected to the penalties set forth in RCW 26.50.110 for a violation of the order unless the respondent knows of the order.

(2) When a peace officer investigates a report of an alleged violation of an order for protection issued under this chapter the officer shall attempt to determine whether the respondent knew of the existence of the protection order. If the law enforcement officer determines that the respondent did not or probably did not know about the protection order and the officer is provided a current copy of the order, the officer shall serve the order on the respondent if the respondent is present. If the respondent is not present, the officer shall make reasonable efforts to serve a copy of the order on the respondent. If the officer serves the respondent with the petitioner's copy of the order, the officer shall give petitioner a receipt indicating that petitioner's copy has been served on the respondent. After the officer has served the order on the respondent, the officer shall enforce prospective compliance with the order.

(3) Presentation of an unexpired, certified copy of a protection order with proof of service is sufficient for a law enforcement officer to enforce the order regardless of the presence of the order in the law enforcement computer-based criminal intelligence information system.

[1996 c 248 § 17; 1995 c 246 § 15; 1992 c 143 § 8.]

Notes:

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

26.50.120

Violation of order — Prosecuting attorney or attorney for municipality may be requested to assist — Costs and attorney's fee.

When a party alleging a violation of an order for protection issued under this chapter states that the party is unable to afford private counsel and asks the prosecuting attorney for the county or the attorney for the municipality in which the order was issued for assistance, the attorney

shall initiate and prosecute a contempt proceeding if there is probable cause to believe that the violation occurred. In this action, the court may require the violator of the order to pay the costs incurred in bringing the action, including a reasonable attorney's fee.

[1984 c 263 § 13.]

26.50.123
Service by mail.

(1) In circumstances justifying service by publication under RCW 26.50.085(1), if the serving party files an affidavit stating facts from which the court determines that service by mail is just as likely to give actual notice as service by publication and that the serving party is unable to afford the cost of service by publication, the court may order that service be made by mail. Such service shall be made by any person over eighteen years of age, who is competent to be a witness, other than a party, by mailing copies of the order and other process to the party to be served at his or her last known address or any other address determined by the court to be appropriate. Two copies shall be mailed, postage prepaid, one by ordinary first-class mail and the other by a form of mail requiring a signed receipt showing when and to whom it was delivered. The envelopes must bear the return address of the sender.

(2) Proof of service under this section shall be consistent with court rules for civil proceedings.

(3) Service under this section may be used in the same manner and shall have the same jurisdictional effect as service by publication for purposes of this chapter. Service shall be deemed complete upon the mailing of two copies as prescribed in this section.

[1995 c 246 § 16.]

Notes:

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

26.50.125
Service by publication or mailing — Costs.

Except as provided in RCW 10.14.055, the court may permit service by publication or by mail under this chapter only if the petitioner pays the cost of publication or mailing unless the county legislative authority allocates funds for service of process by publication or by mail for indigent petitioners.

[2002 c 117 § 5; 1995 c 246 § 17; 1992 c 143 § 9.]

Notes:

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

26.50.130
Order for protection — Modification or termination — Service — Transmittal.

(1) Upon a motion with notice to all parties and after a hearing, the court may modify the terms of an existing order for protection or may terminate an existing order for protection.

(2) A respondent's motion to modify or terminate an order for protection that is permanent or issued for a fixed period exceeding two years must include a declaration setting forth facts supporting the requested order for termination or modification. The motion and declaration must be served according to subsection (7) of this section. The nonmoving parties to the proceeding may file opposing declarations. The court shall deny the motion unless it finds that adequate cause for hearing the motion is established by the declarations. If the court finds that the respondent established adequate cause, the court shall set a date for hearing the respondent's motion.

(3)(a) The court may not terminate an order for protection that is permanent or issued for a fixed period exceeding two years upon a motion of the respondent unless the respondent proves by a preponderance of the evidence that there has been a substantial change in circumstances such

that the respondent is not likely to resume acts of domestic violence against the petitioner or those persons protected by the protection order if the order is terminated. In a motion by the respondent for termination of an order for protection that is permanent or issued for a fixed period exceeding two years, the petitioner bears no burden of proving that he or she has a current reasonable fear of imminent harm by the respondent.

(b) For the purposes of this subsection, a court shall determine whether there has been a "substantial change in circumstances" by considering only factors which address whether the respondent is likely to commit future acts of domestic violence against the petitioner or those persons protected by the protection order.

(c) In determining whether there has been a substantial change in circumstances the court may consider the following unweighted factors, and no inference is to be drawn from the order in which the factors are listed:

(i) Whether the respondent has committed or threatened domestic violence, sexual assault, stalking, or other violent acts since the protection order was entered;

(ii) Whether the respondent has violated the terms of the protection order, and the time that has passed since the entry of the order;

(iii) Whether the respondent has exhibited suicidal ideation or attempts since the protection order was entered;

(iv) Whether the respondent has been convicted of criminal activity since the protection order was entered;

(v) Whether the respondent has either acknowledged responsibility for the acts of domestic violence that resulted in entry of the protection order or successfully completed domestic violence perpetrator treatment or counseling since the protection order was entered;

(vi) Whether the respondent has a continuing involvement with drug or alcohol abuse, if such abuse was a factor in the protection order;

(vii) Whether the petitioner consents to terminating the protection order, provided that consent is given voluntarily and knowingly;

(viii) Whether the respondent or petitioner has relocated to an area more distant from the other party, giving due consideration to the fact that acts of domestic violence may be committed from any distance;

(ix) Other factors relating to a substantial change in circumstances.

(d) In determining whether there has been a substantial change in circumstances, the court may not base its determination solely on: (i) The fact that time has passed without a violation of the order; or (ii) the fact that the respondent or petitioner has relocated to an area more distant from the other party.

(e) Regardless of whether there is a substantial change in circumstances, the court may decline to terminate a protection order if it finds that the acts of domestic violence that resulted in the issuance of the protection order were of such severity that the order should not be terminated.

(4) The court may not modify an order for protection that is permanent or issued for a fixed period exceeding two years upon a motion of the respondent unless the respondent proves by a preponderance of the evidence that the requested modification is warranted. If the requested modification would reduce the duration of the protection order or would eliminate provisions in the protection order restraining the respondent from harassing, stalking, threatening, or committing other acts of domestic violence against the petitioner or the petitioner's children or family or household members or other persons protected by the order, the court shall consider the factors in subsection (3)(c) of this section in determining whether the protection order should be modified. Upon a motion by the respondent for modification of an order for protection that is permanent or issued for a fixed period exceeding two years, the petitioner bears no burden of proving that he or she has a current reasonable fear of imminent harm by the respondent.

(5) Upon a motion by a petitioner, the court may modify or terminate an existing order for protection. The court shall hear the motion without an adequate cause hearing.

(6) A court may require the respondent to pay court costs and service fees, as established by the county or municipality incurring the expense

and to pay the petitioner for costs incurred in responding to a motion to terminate or modify a protection order, including reasonable attorneys' fees.

(7) Except as provided in RCW 26.50.085 and 26.50.123, a motion to modify or terminate an order for protection must be personally served on the nonmoving party not less than five court days prior to the hearing.

(a) If a moving party seeks to modify or terminate an order for protection that is permanent or issued for a fixed period exceeding two years, the sheriff of the county or the peace officers of the municipality in which the nonmoving party resides or a licensed process server shall serve the nonmoving party personally except when a petitioner is the moving party and elects to have the nonmoving party served by a private party.

(b) If the sheriff, municipal peace officer, or licensed process server cannot complete service upon the nonmoving party within ten days, the sheriff, municipal peace officer, or licensed process server shall notify the moving party. The moving party shall provide information sufficient to permit notification by the sheriff, municipal peace officer, or licensed process server.

(c) If timely personal service cannot be made, the court shall set a new hearing date and shall either require an additional attempt at obtaining personal service or permit service by publication as provided in RCW 26.50.085 or service by mail as provided in RCW 26.50.123.

(d) The court shall not require more than two attempts at obtaining personal service and shall permit service by publication or by mail unless the moving party requests additional time to attempt personal service.

(e) If the court permits service by publication or by mail, the court shall set the hearing date not later than twenty-four days from the date of the order permitting service by publication or by mail.

(8) Municipal police departments serving documents as required under this chapter may recover from a respondent ordered to pay fees under subsection (6) of this section the same fees for service and mileage authorized by RCW 36.18.040 to be collected by sheriffs.

(10) [(9)] In any situation where an order is terminated or modified

before its expiration date, the clerk of the court shall forward on or before the next judicial day a true copy of the modified order or the termination order to the appropriate law enforcement agency specified in the modified or termination order. Upon receipt of the order, the law enforcement agency shall promptly enter it in the law enforcement information system.

[2011 c 137 § 2; 2008 c 287 § 3; 1984 c 263 § 14.]

Notes:

Findings -- 2011 c 137: "The legislature finds that civil domestic violence protection orders are an essential tool for interrupting an abuser's ability to perpetrate domestic violence. The legislature has authorized courts to enter permanent or fixed term domestic violence protection orders if the court finds that the respondent is likely to resume acts of domestic violence when the order expires. However, the legislature has not established procedures or guidelines for terminating or modifying a protection order after it is entered.

The legislature finds that some of the factors articulated in the Washington supreme court's decision in *In re Marriage of Freeman*, 169 Wn.2d 664, 239 P.3d 557 (2010), for terminating or modifying domestic violence protection orders do not demonstrate that a restrained person is unlikely to resume acts of domestic violence when the order expires, and place an improper burden on the person protected by the order. By this act, the legislature establishes procedures and guidelines for determining whether a domestic violence protection order should be terminated or modified." [2011 c 137 § 1.]

Short title -- 2008 c 287: See note following RCW 26.50.050.

26.50.135

Residential placement or custody of a child — Prerequisite.

(1) Before granting an order under this chapter directing residential placement of a child or restraining or limiting a party's contact with a child, the court shall consult the judicial information system, if available, to determine the pendency of other proceedings involving the residential placement of any child of the parties for whom residential placement has

been requested.

(2) Jurisdictional issues regarding out-of-state proceedings involving the custody or residential placement of any child of the parties shall be governed by the uniform child custody jurisdiction [and enforcement] act, chapter 26.27 RCW.

[1995 c 246 § 19.]

Notes:

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

26.50.140
Peace officers — Immunity.

No peace officer may be held criminally or civilly liable for making an arrest under RCW 26.50.110 if the police officer acts in good faith and without malice.

[1984 c 263 § 17.]

26.50.150
Domestic violence perpetrator programs.

Any program that provides domestic violence treatment to perpetrators of domestic violence must be certified by the department of social and health services and meet minimum standards for domestic violence treatment purposes. The department of social and health services shall adopt rules for standards of approval of domestic violence perpetrator programs. The treatment must meet the following minimum qualifications:

(1) All treatment must be based upon a full, complete clinical intake including but not limited to: Current and past violence history; a lethality risk assessment; history of treatment from past domestic violence perpetrator treatment programs; a complete diagnostic evaluation; a

substance abuse assessment; criminal history; assessment of cultural issues, learning disabilities, literacy, and special language needs; and a treatment plan that adequately and appropriately addresses the treatment needs of the individual.

(2) To facilitate communication necessary for periodic safety checks and case monitoring, the program must require the perpetrator to sign the following releases:

(a) A release for the program to inform the victim and victim's community and legal advocates that the perpetrator is in treatment with the program, and to provide information, for safety purposes, to the victim and victim's community and legal advocates;

(b) A release to prior and current treatment agencies to provide information on the perpetrator to the program; and

(c) A release for the program to provide information on the perpetrator to relevant legal entities including: Lawyers, courts, parole, probation, child protective services, and child welfare services.

(3) Treatment must be for a minimum treatment period defined by the secretary of the department by rule. The weekly treatment sessions must be in a group unless there is a documented, clinical reason for another modality. Any other therapies, such as individual, marital, or family therapy, substance abuse evaluations or therapy, medication reviews, or psychiatric interviews, may be concomitant with the weekly group treatment sessions described in this section but not a substitute for it.

(4) The treatment must focus primarily on ending the violence, holding the perpetrator accountable for his or her violence, and changing his or her behavior. The treatment must be based on nonvictim-blaming strategies and philosophies and shall include education about the individual, family, and cultural dynamics of domestic violence. If the perpetrator or the victim has a minor child, treatment must specifically include education regarding the effects of domestic violence on children, such as the emotional impacts of domestic violence on children and the long-term consequences that exposure to incidents of domestic violence may have on children.

(5) Satisfactory completion of treatment must be contingent upon the

perpetrator meeting specific criteria, defined by rule by the secretary of the department, and not just upon the end of a certain period of time or a certain number of sessions.

(6) The program must have policies and procedures for dealing with reoffenses and noncompliance.

(7) All evaluation and treatment services must be provided by, or under the supervision of, qualified personnel.

(8) The secretary of the department may adopt rules and establish fees as necessary to implement this section.

(9) The department may conduct on-site monitoring visits as part of its plan for certifying domestic violence perpetrator programs and monitoring implementation of the rules adopted by the secretary of the department to determine compliance with the minimum qualifications for domestic violence perpetrator programs. The applicant or certified domestic violence perpetrator program shall cooperate fully with the department in the monitoring visit and provide all program and management records requested by the department to determine the program's compliance with the minimum certification qualifications and rules adopted by the department.

[2010 c 274 § 501; 1999 c 147 § 1; 1991 c 301 § 7.]

Notes:

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

Finding -- 1991 c 301: See note following RCW 10.99.020.

26.50.160
Judicial information system — Database.

To prevent the issuance of competing protection orders in different courts and to give courts needed information for issuance of orders, the judicial information system shall be available in each district, municipal, and superior court by July 1, 1997, and shall include a database containing

the following information:

(1) The names of the parties and the cause number for every order of protection issued under this title, every sexual assault protection order issued under chapter 7.90 RCW, every criminal no-contact order issued under chapters 9A.46 and 10.99 RCW, every antiharassment order issued under chapter 10.14 RCW, every dissolution action under chapter 26.09 RCW, every third-party custody action under chapter 26.10 RCW, every parentage action under chapter 26.26 RCW, every restraining order issued on behalf of an abused child or adult dependent person under chapter26.44 RCW, every foreign protection order filed under chapter 26.52 RCW, and every order for protection of a vulnerable adult under chapter 74.34 RCW. When a guardian or the department of social and health services has petitioned for relief on behalf of an abused child, adult dependent person, or vulnerable adult, the name of the person on whose behalf relief was sought shall be included in the database as a party rather than the guardian or department;

(2) A criminal history of the parties; and

(3) Other relevant information necessary to assist courts in issuing orders under this chapter as determined by the judicial information system committee.

[2006 c 138 § 26. Prior: 2000 c 119 § 25; 2000 c 51 § 1; 1995 c 246 § 18.]

Notes:

Short title -- 2006 c 138: See RCW 7.90.900.

Application -- 2000 c 119: See note following RCW 26.50.021.

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

26.50.165
Judicial information system — Names of adult cohabitants in third-party custody actions.

In addition to the information required to be included in the judicial information system under RCW 26.50.160, the database shall contain the names of any adult cohabitant of a petitioner to a third-party custody action under chapter 26.10 RCW.

[2003 c 105 § 4.]

26.50.200
Title to real estate — Effect.

Nothing in this chapter may affect the title to real estate: PROVIDED, That a judgment for costs or fees awarded under this chapter shall constitute a lien on real estate to the extent provided in chapter 4.56 RCW.

[1985 c 303 § 7; 1984 c 263 § 15.]

26.50.210
Proceedings additional.

Any proceeding under chapter 263, Laws of 1984 is in addition to other civil or criminal remedies.

[1984 c 263 § 16.]

26.50.220
Parenting plan — Designation of parent for other state and federal purposes.

Solely for the purposes of all other state and federal statutes which require a designation or determination of custody, a parenting plan shall designate the parent with whom the child is scheduled to reside a majority of the time as the custodian of the child. However, this designation shall not affect either parent's rights and responsibilities under the parenting

plan. In the absence of such a designation, the parent with whom the child is scheduled to reside the majority of the time shall be deemed to be the custodian of the child for the purposes of such federal and state statutes.

[1989 c 375 § 26.]

Notes:

Severability -- 1989 c 375: See RCW 26.09.914.

26.50.230
Protection order against person with a disability, brain injury, or impairment.

(1) The administrative office of the courts shall update the law enforcement information form which it provides for the use of a petitioner who is seeking an ex parte protection order in such a fashion as to prompt the person to disclose on the form whether the person who the petitioner is seeking to restrain has a disability, brain injury, or impairment requiring special assistance.

(2) Any peace officer who serves a protection order on a respondent with the knowledge that the respondent requires special assistance due to a disability, brain injury, or impairment shall make a reasonable effort to accommodate the needs of the respondent to the extent practicable without compromise to the safety of the petitioner.

[2010 c 274 § 303.]

Notes:

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

26.50.240
Personal jurisdiction — Nonresident individuals.

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

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

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

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

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

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

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

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

(3) For the purposes of this section, an act or acts that "occurred within this state" includes, but is not limited to, an oral or written statement made

or published by a person outside of this state to any person in this state by means of the mail, interstate commerce, or foreign commerce. Oral or written statements sent by electronic mail or the internet are deemed to have "occurred within this state."

[2010 c 274 § 306.]

Notes:

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

26.50.250
Disclosure of information.

(1)(a) No court or administrative body may compel any person or domestic violence program as defined in RCW 70.123.020 to disclose the name, address, or location of any domestic violence program, including a shelter or transitional housing facility location, in any civil or criminal case or in any administrative proceeding unless the court finds by clear and convincing evidence that disclosure is necessary for the implementation of justice after consideration of safety and confidentiality concerns of the parties and other residents of the domestic violence program, and other alternatives to disclosure that would protect the interests of the parties.

(b) The court's findings shall be made following a hearing in which the domestic violence program has been provided notice of the request for disclosure and an opportunity to respond.

(2) In any proceeding where the confidential name, address, or location of a domestic violence program is ordered to be disclosed, the court shall order that the parties be prohibited from further dissemination of the confidential information, and that any portion of any records containing such confidential information be sealed.

(3) Any person who obtains access to and intentionally and maliciously releases confidential information about the location of a domestic violence program for any purpose other than required by a court proceeding is guilty of a gross misdemeanor.

[2012 c 223 § 9.]

26.50.800
Recidivism study.

(1) The Washington state institute for public policy shall conduct a statewide study to assess recidivism by domestic violence offenders involved in the criminal justice system, examine effective community supervision practices of domestic violence offenders as it relates to Washington state institute for public policy findings on evidence-based community supervision, and assess domestic violence perpetrator treatment. The institute shall report recidivism rates of domestic violence offenders in Washington, and if data is available, the report must also include an estimate of the number of domestic violence offenders sentenced to certified domestic violence perpetrator treatment in Washington state and completion rates for those entering treatment.

(2) The study must be done in collaboration with the Washington state gender and justice commission and experts on domestic violence and must include a review and update of the literature on domestic violence perpetrator treatment, and provide a description of studies used in meta-analysis of domestic violence perpetrator treatment. The institute shall report on other treatments and programs, including related findings on evidence-based community supervision, that are effective at reducing recidivism among the general offender population. The institute shall survey other states to study how misdemeanor and felony domestic violence cases are handled and assess whether domestic violence perpetrator treatment is required by law and whether a treatment modality is codified in law. The institute shall complete the review and report results to the legislature by January 1, 2013.

[2012 c 223 § 10.]

26.50.900
Short title.

This chapter may be cited as the "Domestic Violence Prevention Act".

[1984 c 263 § 1.]

26.50.901
Effective date — 1984 c 263.

Sections 1 through 29 of this act shall take effect on September 1, 1984.

[1984 c 263 § 32.]

26.50.902
Severability — 1984 c 263.

If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

[1984 c 263 § 33.]

26.50.903
Severability — 1992 c 111.

If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

[1992 c 111 § 14.]

ER RULE 1101
APPLICABILITY OF RULES

(a) Courts Generally. Except as otherwise provided in section (c), these rules apply to all
actions and proceedings in the courts of the state of Washington. The terms "judge" and "court"
in these rules refer to any judge of any court to which these rules apply or any other officer
who is authorized by law to hold any hearing to which these rules apply.

(b) Law With Respect to Privilege. The law with respect to privileges applies at all stages of all
actions, cases, and proceedings.

(c) When Rules Need Not Be Applied. The rules (other than with respect to privileges, the rape
shield statute and ER 412) need not be applied in the following situations:

(1) Preliminary Questions of Fact. The determination of questions of fact preliminary to
admissibility of evidence when the issue is to be determined by the court under rule 104(a).

(2) Grand Jury. Proceedings before grand juries and special inquiry judges.

(3) Miscellaneous Proceedings. Proceedings for extradition or rendition; detainer proceedings under
RCW 9.100; preliminary determinations in criminal cases; sentencing, or granting or revoking probation;
issuance of warrants for arrest, criminal summonses, and search warrants; proceedings with respect to

release on bail or otherwise; contempt proceedings in which the court may act summarily; habeas corpus
proceedings; small claims court; supplemental proceedings under RCW 6.32; coroners' inquests; preliminary
determinations in juvenile court; juvenile court hearings on declining jurisdiction; disposition, review,
and permanency planning hearings in juvenile court; dispositional determinations related to treatment
for alcoholism, intoxication, or drug addiction under RCW 70.96A; and dispositional determinations under the
Civil Commitment Act, RCW 71.05.

(4) Applications for Protection Orders. Protection order proceedings under RCW 7.90, 7.92, 10.14, 26.50
and 74.34. Provided when a judge proposes to consider information from a criminal or civil database, the
judge shall disclose the information to each party present at the hearing; on timely request; provide each
party with an opportunity to be heard; and, take appropriate measures to alleviate litigants' safety concerns.
The judge has discretion not to disclose information that he or she does not propose to consider.

(d) Arbitration Hearings. In a mandatory arbitration hearing under RCW 7.06, the admissibility
of evidence is governed by MAR 5.3.

[Originally effective April 2, 1979. Amended effective January 1, 1980; August 27, 1980; September 1, 1989;
September 1, 1992; September 21, 1999; January 2, 2008; September 1, 2008, September 1, 2010; December 10, 2013.]

Comment 1101

[Deleted effective September 1, 2006.]

CR 59
NEW TRIAL, RECONSIDERATION, AND AMENDMENT OF JUDGMENTS

(a) Grounds for New Trial or Reconsideration. On the motion of the party aggrieved, a verdict may be vacated and a new trial granted to all or any of the parties, and on all issues, or on some of the issues when such issues are clearly and fairly separable and distinct, or any other decision or order may be vacated and reconsideration granted. Such motion may be granted for any one of the following causes materially affecting the substantial rights of such parties:

(1) Irregularity in the proceedings of the court, jury or adverse party, or any order of the court, or abuse of discretion, by which such party was prevented from having a fair trial.

(2) Misconduct of prevailing party or jury; and whenever any one or more of the jurors shall have been induced to assent to any general or special verdict or to a finding on any question or questions submitted to the jury by the court, other and different from the juror's own conclusions, and arrived at by a resort to the determination of chance or lot, such misconduct may be proved by the affidavits of one or more of the jurors;

(3) Accident or surprise which ordinary prudence could not have guarded against;

(4) Newly discovered evidence, material for the party making the application, which the party could

not with reasonable diligence have discovered and produced at the trial;

(5) Damages so excessive or inadequate as unmistakably to indicate that the verdict must have been the result of passion or prejudice;

(6) Error in the assessment of the amount of recovery whether too large or too small, when the action is upon a contract, or for the injury or detention of property;

(7) That there is no evidence or reasonable inference from the evidence to justify the verdict or the decision, or that it is contrary to law;

(8) Error in law occurring at the trial and objected to at the time by the party making the application; or

(9) That substantial justice has not been done.

(b) Time for Motion; Contents of Motion. A motion for a new trial or for reconsideration shall be filed not later than 10 days after the entry of the judgment, order, or other decision. The motion shall be noted at the time it is filed, to be heard or otherwise considered within 30 days after the entry of the judgment, order, or other decision, unless the court directs otherwise. A motion for a new trial or for reconsideration shall identify the specific reasons in fact and law as to each ground on which the motion is based.

(c) Time for Serving Affidavits. When a motion for new trial is based on affidavits, they shall be filed with the motion. The opposing party has 10 days after service to file opposing affidavits, but that period may be

extended for up to 20 days, either by the court for good cause or by the parties' written stipulation. The court
may permit reply affidavits.

(d) On Initiative of Court. Not later than 10 days after entry of judgment, the court on its own initiative
may order a hearing on its proposed order for a new trial for any reason for which it might have granted a new
trial on motion of a party. After giving the parties notice and opportunity to be heard, the court may grant a
timely motion for a new trial for a reason not stated in the motion. When granting a new trial on its own
initiative or for a reason not stated in a motion, the court shall specify the grounds in its order.

(e) Hearing on Motion. When a motion for reconsideration or for a new trial is filed, the judge by whom it
is to be heard may on the judge's own motion or on application determine:

(1) Time of Hearing. Whether the motion shall be heard before the entry of judgment;

(2) Consolidation of Hearings. Whether the motion shall be heard before or at the same time as the
presentation of the findings and conclusions and/or judgment, and the hearing on any other pending motion; and/or

(3) Nature of Hearing. Whether the motion or motions and presentation shall be heard on oral argument or
submitted on briefs, and if on briefs, shall fix the time within which the briefs shall be served and filed.

(f) Statement of Reasons. In all cases where the trial court grants a motion for a new trial, it shall, in

the order granting the motion, state whether the order is based upon the record or upon facts and circumstances outside the record that cannot be made a part thereof. If the order is based upon the record, the court shall give definite reasons of law and facts for its order. If the order is based upon matters outside the record, the court shall state the facts and circumstances upon which it relied.

(g) Reopening Judgment. On a motion for a new trial in an action tried without a jury, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment.

(h) Motion To Alter or Amend Judgment. A motion to alter or amend the judgment shall be filed not later than 10 days after entry of the judgment.

(i) Alternative Motions, etc. Alternative motions for judgment as a matter of law and for a new trial may be made in accordance with rule 50(c).

(j) Limit on Motions. If a motion for reconsideration, or for a new trial, or for judgment as a matter of law, is made and heard before the entry of the judgment, no further motion may be made without leave of the court first obtained for good cause shown: (1) for a new trial, (2) pursuant to sections (g), (h), and (i) of this rule, or (3) under rule 52(b).

[Amended effective July 1, 1980; September 1, 1984; September 1, 1989; September 1, 2005; April 28, 2015.]

SNOHOMISH COUNTY LOCAL RULES

RULE 59. NEW TRIAL, RECONSIDERATION AND AMENDMENT OF JUDGMENTS; POST TRIAL MOTIONS (e) Hearing on Motion. (3) Nature of Hearing. (A) Proposed Order. Each party must include in the materials delivered to the judge a proposed order sustaining his/her side of the argument. Should any party desire a copy of the order signed and filed by the judge, a preaddressed, stamped envelope shall accompany the proposed order. (B) Oral Argument. At the time of filing a motion under this rule, the moving party shall comply with CR 59(b) by filing a calendar note, setting the motion before the court which heard the motion. Absent order of the court, the motion will be taken under advisement. Oral arguments will be scheduled only if the court requests the same. [Amended effective October 1, 1990; September 1, 1992; September 1, 1993; September 1, 1998, September 1, 2009]