

FILED  
SUPREME COURT  
STATE OF WASHINGTON  
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CLERK

Supreme Court No. 97528-1

SUPREME COURT  
OF THE STATE OF WASHINGTON

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**CARMELITA ESCARCEGA**  
**(fka CARMELITA BARRETT),**  
Respondent,

v.

**DANIEL J. BARRETT,**  
Petitioner.

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ON APPEAL FROM PIERCE COUNTY SUPERIOR COURT

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**ANSWER TO PETITION FOR REVIEW**

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Daniel W. Smith  
WSBA #15206  
Barbara J. Kastama  
WSBA #16789  
*Attorneys for Respondent Carmelita  
Escarcega*

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## **I. IDENTITY OF RESPONDENT**

Respondent is Carmelita Escarcega (“Escarcega”).

## **II. COUNTERSTATEMENT OF THE ISSUE**

Is there any basis, as required under Rule 13.4(b), for this Court to accept review of the Court of Appeals’ award of fees and costs on appeal to Escarcega?

## **III. COUNTER STATEMENT OF THE CASE**

In 2002, at trial the Court entered a Permanent Restraining Order against Daniel Barrett (“Barrett”) on Escarcega’s Petition to Modify the Parenting Plan relative to the parties’ five (5) children. (CP 167.)

On May 16, 2017, Daniel Barrett filed a Motion on May 16, 2017 to lift the Permanent Restraining Order. (CP 134-137.) Mr. Barrett cited RCW 26.50.130(1), (2), and (3) in support of his Motion. (CP 134-135.) Therefore, on September 1, 2017, Escarcega filed a Motion for Attorney’s Fees below pursuant to RCW 26.50.100. (CP 10, 194.) The Trial Court, after tolerating Barrett’s repeated Motions for Continuance, failure to comply with Court Orders, and other intransigence, denied Barrett’s Motion without prejudice and awarded fees to Escarcega. (CP 109-111.)

Barrett appealed the Trial Court’s fee award. While the Court of Appeals ultimately determined that RCW 26.09.140 applied to the award of fees, it remanded to the Trial Court for entry of Findings of Fact and

Conclusions regarding the fee award below. Petitioner's Appendix at A-005 (Court of Appeals' Opinion).

During the appellate proceedings, Escarcega timely filed a Financial Declaration, as required by RAP 18.1(c). Respondent's Appendix, at A-001. Her total monthly income of \$2,673.46 as a Tribal Support Advocate barely exceeds her monthly expenses of \$2,624.11. *Id.*

Barrett did not file a Declaration challenging Escarcega's need or his ability to pay. Instead, he objected to Escarcega's Financial Declaration on the meritless ground that the Declaration was inadmissible "new evidence" on appeal. *See* Respondent's Appendix, at A-006.

The Court of Appeals stated that Escarcega had shown financial need, and granted her request for attorneys' fees and costs for defending against Barrett's appeal. Petitioner's Appendix, at A-004.

#### **IV. BARRETT'S PETITION FOR REVIEW SHOULD BE DENIED**

Under RAP 13.4(b), this Court will accept a Petition for discretionary review of a Court of Appeals decision only if (1) the Court of Appeals decision conflicts with a decision of this Court, (2) the Court of Appeals decision conflicts with a published decision of the Court of Appeals, (3) the Petition presents a significant federal or state constitutional

question, or (4) the Petition presents an issue of substantial public interest that should be determined by this Court.

The Petition does not contain any direct argument addressing why review should be accepted under the criteria in RAP 13.4(b). This alone should be reason enough to deny review. *See* RAP 13.4(c)(7) (requiring that Petitions set forth “[a] direct and concise statement of the reason why review should be accepted under one or more of the tests established in section (b), with argument.”).

Nevertheless, certain arguments in the Petition might be read to imply that review should be accepted under RAP 13.4(b)(1) or (2), because Barrett argues that the Court of Appeals awarded fees without considering “statutory/case law factors.” Petition at 3. If so, Barrett is mistaken. The Court of Appeals awarded fees to Escarcega consistent with RCW 26.09.140, and the decisions of this Court and the Court of Appeals. Review is not warranted under RAP 13.4(b)(1) or (2), or any other criteria established in RAP 13.4(b).

**A. RAP 13.4(b)(1): The Court of Appeals Decision Is Not in Conflict with Any Decision of This Court.**

Barrett fails to demonstrate how the decision of the Court of Appeals conflicts with any decision of this Court. Indeed, the Court of Appeals’ award of fees to Escarcega is consistent with this Court’s decisions,

including *In re Marriage of Rideout*, 150 Wn. 2d 337, 357, 77 P.3d 1174 (2003).

Barrett first argues that he, not Escarcega, is entitled to fees because he was the “prevailing party” on appeal. Petition at 4. As an initial point, this is incorrect. The Court of Appeals could not review the Trial Court’s award for want of findings and conclusions, and remanded for entry of such findings and conclusions. Petitioner’s Appendix at A-004. Thus, there is no “prevailing party” on appeal.

More importantly, Barrett’s argument is irrelevant because being the “prevailing party” is not the standard for a fee award pursuant to RCW 26.09.140:

The aforementioned statute [RCW 26.09.140] does not support an award of attorney fees to a party simply on the basis that they are “prevailing.” Although the statute does invest appellate courts with discretion to order a party to pay fees and costs to the opposing party, that provision must be read in light of the fact that the statute ties the award of fees to a consideration of financial circumstances

*In re Marriage of Rideout*, 150 Wn. 2d at 357.

RCW 26.09.140 provides that “[u]pon any appeal, the appellate court may, in its discretion, order a party to pay for the cost to the other party of maintaining the appeal and attorney’s fees in addition to statutory costs.” This statute applies only to dissolution proceedings and “invest[s] appellate courts with discretion to order a party to pay fees and costs to the



opposing party [after] consider[ation] of financial circumstances.” *In re Marriage of Rideout*, 150 Wn.2d at 357; *see also In re Marriage of Chandola*, 180 Wn.2d 632, 656, 327 P.3d 644 (2014).

The Court of Appeal’s award of appellate fees to Escarcega is based upon a straightforward application of RCW 26.09.140 to undisputed facts. Escarcega filed a timely declaration showing financial need. Barrett did not, nor did he challenge Escarcega’s declaration on its merits. The Court of Appeals’ award of appellate fees to Escarcega is a proper exercise of its discretion, entirely consistent with this Court’s decisions.

**B. RAP 13.4(b)(2): The Court of Appeals Decision Is Not in Conflict with Another Decision of the Court of Appeals.**

The Petition does not contain any plausible argument asserting that the Court of Appeals’ decision conflicts with another decision of the Court of Appeals. In fact, its decision adheres to a line of decisions awarding fees when one party provided a financial declaration, and the other did not. *See In re Marriage of Fox*, 58 Wn. App. 935, 940, 795 P.2d 1170 (1990) (awarding attorney fees on appeal where one party demonstrated a need and the other party fails to submit a contravening affidavit); *In re Marriage of Ambrose*, 67 Wn. App. 103, 110, 834 P.2d 101 (1992) (same); *In re Marriage of Sanborn*, 55 Wn. App. 124, 130-31, 777 P.2d 4 (1989) (same).

**C. RAP 13.4(b)(3): The Petition Does Not Present A Significant Federal or State Constitutional Issue.**

Barrett's Petition does not identify or present a significant federal or state constitutional issue.

**D. RAP 13.4(b)(4): The Petition Does Not Present an Issue of Substantial Public Importance That Should Be Decided by This Court.**

Barrett's Petition also does not identify or present "an issue of substantial public interest that should be determined by the Supreme Court." RAP 13.4(b)(4). The Court of Appeals' fee award to Escarcega affects only the parties to this proceeding, and has no further ramifications.

**E. Attorneys' Fees Should be Awarded to Escarcega.**

A party on appeal is entitled to attorney fees where applicable law authorizes the award. RAP 18.1(a). RCW 26.09.140 allows this Court, at its discretion, to award fees to Escarcega. Escarcega requests an award of her attorneys' fees and costs in filing this Answer.


**V. CONCLUSION**

Barrett's Petition fails to establish any of the criteria for discretionary review required by RAP 13(b)(1)-(4). The Court should deny the Petition for Review and award Escarcega her reasonable attorneys' fees and costs in filing this Answer.

////

Respectfully submitted this 9<sup>th</sup> day of September, 2019.


**CAMPBELL BARNETT PLLC**



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**Daniel W. Smith**, WSBA No. 15206  
Attorney for Respondent

**CAMPBELL BARNETT PLLC**



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**Barbara J. Kastama**, WSBA No. 16789  
Attorney for Respondent

# APPENDIX

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3.6.2019	Financial Declaration of Respondent	A1 to A-5
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# APPENDIX

NO. 51273-4-II

COURT OF APPEALS FOR DIVISION II  
OF THE STATE OF WASHINGTON

CARMELITA ESCARCEGA (fka  
CARMELITA BARRETT),

Respondent,

v.

DANIEL J. BARRETT,

Petitioner/Appellant.

FINANCIAL  
DECLARATION

I. SUMMARY OF BASIC INFORMATION

Declarant's Total Monthly Net Income (from § 3.3 below) – \$2,673.46

Declarant's Total Monthly Household Expenses (from § 5.9 below) –  
\$2,324.11

Declarant's Total Monthly Debt Expenses (from § 5.11 below) – \$300.00

Declarant's Total Monthly Expenses (from § 5.12 below) – \$2,624.11

II. PERSONAL INFORMATION

2.1 Occupation: Tribal Support Advocate

2.2 The highest year of education completed: MLS-IPL

2.3 Are you presently employed?  Yes  No

### III. INCOME INFORMATION

#### 3.1 GROSS MONTHLY INCOME.

- a. Imputed Income
- b. Wages and Salaries -- \$3,025.60
- c. Interest and Dividend Income
- d. Business Income
- e. Spousal Maintenance From Other Relationships
- f. Other Income
- g. **Total Gross Monthly Income -- \$3,025.60**
- h. Actual Gross Income (Year-to-date) -- \$6,051.20

#### 3.2 MONTHLY DEDUCTIONS FROM GROSS INCOME.

- a. Income Taxes -- \$145.64
- b. FICA/Self-employment Taxes -- \$115.73
- c. State Industrial Insurance Deductions
- d. MANDATORY Union/Professional Dues
- e. Pension Plan Payments -- \$90.77
- f. Spousal Maintenance Paid
- g. Normal Business Expenses
- h. **Total Deductions from Gross Income -- \$352.14**

#### 3.3 MONTHLY NET INCOME. -- \$2,673.46

#### 3.4 MISCELLANEOUS INCOME.

- a. Other miscellaneous income (list source and amounts) -- None
- b. **Total Miscellaneous Income -- None**

### IV. AVAILABLE ASSETS

- 4.1 Cash on hand & deposits in checking/savings accounts -- \$14.00
- 4.2 Stocks and bonds -- None  
Cash value of life insurance -- None
- 4.3 Other liquid assets: -- None

## V. MONTHLY EXPENSE INFORMATION

Monthly expenses for myself and 0 dependents are:

- 5.1 HOUSING.  
Rent, 1st mortgage or contract payments -- \$500.00  
Installment payments for other mortgages or encumbrances  
Homeowner's or Rental Insurance -- \$125.00  
**Total Housing -- \$625.00**
- 5.2 UTILITIES.  
Heat (gas & oil)  
Electricity -- \$150.00  
Water, sewer, garbage -- \$84.94  
Telephone -- \$100.00  
Cable -- \$29.99  
Other:  
**Total Utilities -- \$364.93**
- 5.3 FOOD AND SUPPLIES  
Food for 1 persons -- \$150.00  
Supplies (paper, tobacco, pets) -- \$30.00  
Meals eaten out  
Other:  
**Total Food Supplies -- \$180.00**
- 5.4 CHILDREN.  
Day Care/Babysitting  
Clothing  
Tuition (if any)  
Other child related expenses  
**Total Expenses Children -- \$0.00**
- 5.5 TRANSPORTATION.  
Vehicle payments or leases -- \$401.64  
Vehicle insurance & license -- \$446.62  
Vehicle gas, oil, ordinary maintenance -- \$130.00  
Parking  
Other transportation expenses  
**Total Transportation -- \$978.26**

- 5.6 HEALTH CARE. (Omit if fully covered)  
 Insurance  
 Uninsured dental, ortho., medical, eyecare expenses -- \$51.92  
 Other uninsured health expenses -- \$100.00  
**Total Health Care -- \$151.92**
- 5.7 PERSONAL EXPENSES (Not including children).  
 Clothing  
 Hair care/personal care expenses \$24.00  
 Clubs and recreation  
 Education  
 Books, newspapers, magazines, photos  
 Gifts  
 Other:  
  
**Total Personal Expenses -- \$24.00**
- 5.8 MISCELLANEOUS EXPENSES  
 Life insurance (if not deducted from income)  
 Other: Storage Unit  
 Other:  
**Total Miscellaneous Expenses -- \$0.00**
- 5.9 **TOTAL HOUSEHOLD EXPENSES** (The total of Paragraphs 5.1 through 5.8) -- **\$2,324.11**

5.10 INSTALLMENT DEBTS INCLUDED IN PARAGRAPHS 5.1 THROUGH 5.8.

<u>Creditor/Description of Debt</u>	<u>Balance</u>	<u>Month of Last Payment</u>
Alaska Federal C.U.; auto loan	\$28,319.66	February, 2019
Federal Loan Servicing; federal school loan	\$157,109.16	Forbearance



5.11 OTHER DEBTS AND MONTHLY EXPENSES NOT INCLUDED IN PARAGRAPHS 5.1 - 5.8.

<u>Creditor/Description of Debt</u> <u>Payment</u>	<u>Balance</u>	<u>Month of Your</u> <u>Last Payment</u>	<u>Amount of</u> <u>Monthly</u>
Home Depot credit card	\$475.13	2.2019	\$75.00
TJX credit card	\$467.80	2.2019	\$50.00
Les Schwab	\$12,051.18	2.2019	\$75.00
Dr. Stephen Kern	\$1,425.00	2.2019	\$50.00
Campbell Barnett	\$2,037.95	1.2019	\$50.00

Total Monthly Payments for Other Debts and Monthly Expenses – \$300.00

**5.12 TOTAL EXPENSES** (Add Paragraphs 5.9 and 5.11) – **\$2,624.11**

**VI. ATTORNEY FEES**

6.1 Amount paid for attorney fees and costs to date: – \$5,634.01

6.2 The source of this money was: Loan


6.3 Fees and costs incurred to date: -- \$7,671.96

6.4 Arrangements for attorney fees and costs are:

Monthly payments.

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

Signed at Puyallup, Washington, on March, 2019.

  
**Carmelita Escarcega**

FILED  
Court of Appeals  
Division II  
State of Washington  
4/3/2019 10:56 AM

No. 51273-4-II

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THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION TWO

---

DANIEL J. BARRETT

Appellant,

v.

CARMELITA ESCARCEGA  
(fka CARMELITA BARRETT),

Respondent.

---

APPELLANT'S OBJECTION TO  
INADMISSIBLE FINANCIAL DECLARATION

---

DANIEL J. BARRETT  
Appellant, Pro Se

PO Box 361  
South Prairie, WA 98385  
(253) 273-1110  
DanielJBarrett@outlook.com

**A-006**

## **I. IDENTITY AND NATURE OF OBJECTION**

Appellant Daniel J. Barrett objects to the Financial Declaration of Respondent Carmelita Escarcega, dated "March 2019" (month only, no date cited).

As everyone knows, one cannot file new evidence in the Court of Appeals, after an appeal is filed, because this and any other appeal only involves the record on file at the trial court, pre-dating the appeal date of over one year ago, December 13, 2017.

## **II. BASES FOR OBJECTION**

Respondent ostensibly wants this court to consider the merits of their argument and the award of attorney fees in 2017, by asking this court to consider a Financial Declaration of the Respondent and her financial status now, in March 2019.

I can only assume that because, for some bizarre reason, the Respondent's attorney (with 33 years experience and admit date of 11/4/1985) has no other pleading explain what the purpose of this Financial Declaration is.

This bizarre filing is objectionable for three reasons:

(1) The court of appeals only considers the record on file.

- (2) The Respondent's financial status now (even if it was admissible) is totally irrelevant to the award of attorney fees in 2017 – the issue was whether or not the Respondent has the NEED AND if I have the ability to pay. An untimely (1 year + 3 months too late) Financial Declaration does not prove need in 2017.
- (3) The requirements for the Respondent to have prevailed is for HER to PROVE BOTH her need for help paying attorney fees AND my ability to pay her attorney fees. A March 2019 Financial Declaration does not prove either burden of hers from 2017.
- (4) Even if permitted, a new Financial Declaration does not speak to or address THE TRIAL COURT'S ERROR in not even attempting to consider the requisite legal standard of "need and ability to pay" which is clearly laid out in my brief.

The "need and ability to pay" doctrine practically goes without saying as it is well established and well known by any "rookie attorney" fresh out of law school, let alone an attorney with 33 years under his belt, working at a law firm that has been in place almost a century. It is noted that Dan Smith's WSBA # is incorrect on the signature line of the Response Brief of Respondent. That is the bar number of associate Hillary Holmes, but even she has 23+ years of experience (admit date 11/15/1996).

There is no excuse for filing a Financial Declaration 1 year and 3 months after it should have been filed in superior court. They cite no legal authority which allows them to do this.

### III. CONCLUSION

The court should strike the Financial Declaration and reverse the trial court's award of attorney fees since no legal standard was followed and no evidence is on file supporting the decision, even if the legal standard was attempted to be applied to the court's reasoning and conclusions.

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

Respectfully submitted on March 15, 2019.

A handwritten signature in black ink, appearing to read "Dan Barrett". The signature is written in a cursive, flowing style.

Daniel J. Barrett, pro se  
Appellant

Supreme Court No. 97528-1

SUPREME COURT  
OF THE STATE OF WASHINGTON

---

**CARMELIA ESCARCEGA**  
**(fka CARMELITA BARRETT),**  
Respondent,

v.

**DANIEL J. BARRETT,**  
Appellant.

---

Appeal from the Superior Court for Pierce County  
The Honorable Karena Kirkendoll

---

**Certificate of Service**

---

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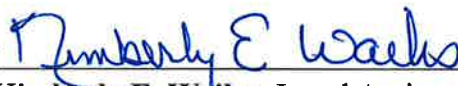
**DECLARATION OF SERVICE**

I, **Kimberly E. Wailes**, hereby declare under penalty of perjury under the laws of the State of Washington that I am employed by **Campbell Barnett PLLC**, and that on today's date, September 9, 2019, I served in the manner indicated by directing delivery to the following individuals:

Daniel Barrett  
P.O. Box 361  
South Prairie, WA 98385  
[DanielJBarrett@outlook.com](mailto:DanielJBarrett@outlook.com)

- by JIS/ECF
- by Electronic Mail
- by Facsimile Transmission
- by First Class Mail
- by Hand Delivery
- by Overnight Delivery

Dated this 9<sup>th</sup> day of September, 2019.

By   
**Kimberly E. Wailes**, Legal Assistant  
CAMPBELL BARNETT PLLC  
317 South Meridian  
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**CAMPBELL BARNETT P.L.L.C.**

**September 09, 2019 - 10:40 AM**

**Transmittal Information**

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**Superior Court Case Number:** 97-3-02158-7

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