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Division I
State of Washington
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STATE OF WASHINGTON
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SUPREME COURT No. 99672-5

IN THE SUPREME COURT FOR THE STATE OF WASHINGTON

K.M.P., a minor child, by and through her natural mother and custodial
parent,

SARAH HALL PINHO ,

Respondents ,

v.

BIG BROTHER BIG SISTERS OF PUGET SOUND and
MICHAEL WAYNE SANCHEZ,

Petitioner.

MOTION FOR DISCRETIONARY REVIEW

Treated as a Petition for Review

KING COUNTY SUPERIOR COURT No. 17-2-19614-2 KNP
COA - Div.I No. 802933

DATED this 15th day of April, 2021.

/s Peter T. Connick

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I. IDENTITY OF PETITIONER AND DECISION BELOW

Michael Sanchez, appellant/petitioner, seeks review of the 2/22/21 Court of Appeals Division decision(s), denial of reconsideration on 3/16/21 which affirmed these trial court orders: (a) 5/15/19 orders of denying Sanchez's motion to continue the trial date, and for withdrawal/substitution. (b) 6/21/19 orders granting summary judgment; 7/23/19 and denying reconsideration. (c) 9/18/21 order for RCW 4.25.510 sanctions against Sanchez. (d) Court of Appeals exclusion of parts of the trial court record. (Objection filed 12/20/20). Copies attached per (RAP 13.4 (c) (9)).

II. ISSUES PRESENTED FOR REVIEW:

This court should accept review because:

► RAP 2.3(1)&(2). The decision conflicts with Supreme Court and Court of Appeals decisions below and review is warranted:

- (a) *Richmond v. Thompson*, 130 Wn. d 368 (1996).
- (b) *Leishman v. O.M.W*, 196 Wn.2d 898 (2021).
- (c) *Davis v. Cox*, 180 Wn. App. 514 (2014)
- (d) *Johnson v. Ryan*, 186 Wn. App. 562 (2015)

► RAP 2.3(3). The decision raises significant constitutional questions.

- (a) Due Process rights listed in Part IV, i.e. right to Counsel, right to

be heard (and read), and right to be present and present evidence.

(b) Whether the right to defend against lawsuits is a constructive waiver of SLAPP immunity from defensive counterclaims from the same transaction. See (4)(d) below.

► RAP 2.3(4). The decision involves the following substantial issues of public interest that only this court can determine:

(a) In expanding and misapplying *Leishman's* holding that “person” *can* mean “persons” within an organization (who can share SLAPP immunity), to any loosely associated group, causes such uncertainty, that it denies access to justice for those who can’t afford to risk SLAPP sanctions, in this case, \$40,000 for an indigent to litigate a narrow RCW 4.24.510 motion.

(b) Like tenpins in a bowling alley, it unhinged this court’s balance of access to justice vs. rights to access government.

(c) It eviscerated protections against the malicious defamation of an attention-seeking minor, as if the minor were talking with law enforcement, not a mentor who the trial court had already ruled has no duty to KMP - a minor who resisted talking to police.

III. STATEMENT OF THE CASE

Sanchez's submitted deposition, photos, and police reports support the facts below. On 4/29/16, KMP approached Sanchez on a pier, complaining she never caught a fish. Sanchez handed her his pole, holding the top so the fish wouldn't pull it into the water. To keep KMP from sliding into the lake, Sanchez held the end of KMP's long coattail while she lay face down washing her hands. Thirty (30) minutes later, Sanchez learned of KMP's delayed accusation that KMP told Darla Tishman. Ms. Tishman called 911. Sanchez ran to the pier to talk to police and gather witnesses watching close by, which demonstrated his confidence that witnesses would confirm his innocence. KMP's conduct also implied Sanchez's innocence - i.e., KMP resisted talking to police because she "knew" nobody saw any molestation and Sanchez would deny it. KMP knew witnesses surrounded them, which supported the inference that KMP "knew" nobody saw any improper touching because it didn't happen. Another inference: Sanchez knew the crowd would stop him if he tried. Neither court

considered these inferences. Chang never raised them, consistent with his conflict of interest.

Sanchez made his *Alford* plea to reduce his risk from life in prison to 16 months, but got life anyway when the State filed its SVP petition against Sanchez alleging the unproven KMP allegation as its jurisdictional predicate offense. KMP then filed a private civil suit against Sanchez, naming BBBS and mentor Darla Tishman as codefendant for negligent supervision. KMP filed psychologist records to show KMP was disturbed, alleging BBBS's negligent-selection of mentor Tishman, who lacked clinical expertise. But the court dismissed defendant Tishman because she had no duty to "protect" KMP, and ordered a CR 35 psychiatric evaluation of KMP. Sanchez's DPD Attorney, Edward Klein, filed a NOA on Sanchez's behalf seeking the evaluator's records. In response, KMP filed a CR 41 motion to dismiss Sanchez without prejudice. Sanchez was faced with CR 41 dismissal that would delay his chance to prove innocence to convince the SVP prosecutor to dismiss, knowing they could not prove the KMP

incident (*Alford* plea) to an SVP jury. So with counsel's advice, Sanchez filed his CR 41 objection to dismissal with his defamation counterclaim. The trial court denied KMP's CR 41 motion, accepting Sanchez's counterclaim. Private counsel Ken Chang replaced Attorney Klein pro bono. All of KMP's 12(b)(6) motions against the counterclaim failed. Chang neglected the case for 10 months as scheduling order deadlines expired. As the trial date approached, Chang admitted his malpractice in his motions to withdraw and continue, since, objectively Chang faced discipline and malpractice liability. KMP offered a suggestion: The court could find that 4.24.510 immunity invalidated the counterclaim as worthless which would moot Chang's neglect. Chang needed to lose summary judgment. So Chang moved to withdraw to substitute an attorney who could evaluate KMP's SLAPP defense without the confirmation bias that confronted Chang. Chang submitted two declarations in his motion to continue and withdraw, which articulated the conflict. The trial court denied Chang's motions without hearing or comment. Summary judgment proceeded. The

court found no prima facie case on falsity, malice, or damages and found SLAPP immunity. This rendered as res judicata the RCW 4.24.510 defense of bad faith because the court had pre-judged facts on whether SLAPP applied, and the bad faith defense prior to the SLAPP hearing. Nothing in the record supports Chang having explained the gravity of the hearing to Sanchez or allowed his option to appear by phone which is routine from McNeil Island. The Court Records showed Chang having timely filed Sanchez's deposition with highlighted details explained above, but nothing on the record shows the court's acknowledgement of them. This enabled KMP to successfully argue that bare denial of allegations is insufficient to establish the falsity element.

IV. ARGUMENT

1. The trial and appeals decision conflicts with Supreme Court holdings which necessitates this court's review.

A. *Leishman* case: Division One's decision has changed the legal landscape by its reliance on *Leishman's* definition of "person" far beyond its scope, thus requiring parties to guess whether their claim

will succeed or fail with heavy sanctions. The appellate holding thus increased the risk premium on any First Amendment right to recover damages beyond what *Leishman* intended. *Leishman* was decided just before the court's decision. (*Leishman* opinion 01/28/21; *KMP v. Sanchez's* reply brief 04/03/20; opinion 03/19/21). This left no chance for parties to learn the legal theory the court would select: whether the term "person" means "people", which could be any group of persons sharing communal immunity. Sanchez's counterclaim was straight-forward. There was no factual or legal basis for Tishman to share her SLAPP immunity with KMP. Tishman was a chaperone on a social outing, not an "agent" of an organization that included KMP. In applying *Leishman*, the appeals court reclassified Tishman and KMP as one, composite "person". But *Leishman* does not make multiple persons into one person without other factors. They were not a corporation, government contractor, or homeowner's lobbying group. Each of these groups functioned to provide information to government. In contrast, the KMP court dismissed Tishman as a party because

Tishman *was* a private person with no duty to KMP. To decline review would muddle *Leishman's* criteria for designating any group of "persons" into one "person" to share immunity. *Leishman* interpreted "person" to "also be read as people - "RCW 4.24.510 tolerates some degree of over-inclusiveness: in order for the immunity to protect against the burden of litigation that would deter people from reporting information to the government, any person who communicates information reasonably of concern to the government must be immune to suit based on the communication." *Leishman* 196 Wn.2d at 899, 908.

This would allow any court to deem any group as one "person" and sharing in each other's RCW 4.24.510 immunity by cobbling together some theory that unites them into one "person" such as a *qualified* common interest privilege, child abuse reporting statutes, etc. Then just apply *Leishman* to allow all courts to deem any group of people to be one private person with communal SLAPP immunity, thereby extending *Leishman's* "person" beyond its holding and the decisional history it cites, namely, corporations

or businesses delegated to communicate with law enforcement. But KMP's communication to Tishman and Pinho, and Tishman's later call to 911 were separate and distinct communications - Tishman's call to seek government services and KMP to seek childish attention. Tishman had absolute immunity because she sought police services. But *Leishman* does not make KMP and Tishman a single person with shared immunity. Even if *Leishman* had meant for Division I to apply it as it did, this case still merits review to explain whether *Leishman* meant that any amorphous group can share SLAPP immunity such as a minor and her social mentor, or based on child abuse reporting qualified immunity, so any court can bootstraps absolute SLAPP immunity onto the qualified immunity of "common interest" or other privilege. In *Leishman*, the AGO (a government agency) hired the OWM law firm to investigate employee misconduct. Termination resulted. The employee sued the law firm and its government-contracted investigator, alleging their investigator's defamatory statements were not SLAPP-protected because they were not directed to government. This Court rejected

that argument because the government (AGO's) contract made OWM into the government's investigative organ so the firm could be a single person under the definition of "person", reasoning they are like agents of each other and are thus one "person". But this result rested on two legal constructs: (1) the government contract made the investigating agency (OMW) an arm of the government, (AGO); and (2) any individual person who made defamatory statements to and within the scope of the investigating firm's function to provide law enforcement with information, thus sharing imputed SLAPP immunity among firm members. The concurring opinion mentioned the agency theory. This court clarified the legislative intent of the SLAPP definition of "person", to mean it "can include" a singular organization with multiple "person(s)" with shared immunity regardless of which spokesman reports to law enforcement. This court's examples allowed shared SLAPP immunity in the limited circumstances: i.e., organizations which function to give information to government. In expanding *Leishman*, Division I reasoned that KMP and Tishman are like the OMW, the

AGO firm contracting with government to investigate the employee's misconduct. Or, that KMP's mentor Tishman, was like part of the lobbying group in *Right-Price Recreation, LLC v. Connells Prairie Community Council*, 146 Wn.2d 370, 384 (2002) (groups were entitled in *Prairie Council* to statutory immunity on a developer's claim for defamation, as the developer failed to establish that the groups' statements at public meetings were made with actual malice.)

However, the Supreme Court has held that government agencies are not "persons" under the statute. *Segaline v. Dep't of Labor & Indus.*, 169 Wn.2d 467, 470 (2010) (plurality opinion). In both cases of *Prairie Council* and *Segaline*, the organizations were conceptually one "person" and therefore shared SLAPP immunity for direct communications to government, even if the communications were through a spokesman. But here, the court, without any notice to the litigants, applied *Leishman* beyond its facts to coalesce two persons, neither of whom was de facto or by law a "spokesman" for the other. This also denied Sanchez's right

to present the facts that distinguish Sanchez from *Leishman*, let alone to have them adjudicated by a jury or fact finder, as this court required in *Davis, supra*. Such facts include that neither KMP nor Tishman had a contract or function to give law enforcement information, nor were they “agents” of each other, nor can Tishman be considered “in loco parentis” when the trial court dismissed her as KMP’s defendant precisely because she had no such responsibilities for KMP who resisted talking to police.

Every child abuse reporting statute gives immunity to all reporters but they already limit child abuse reporting immunity to good faith (which malice overcomes). These are fact issues that the courts denied Sanchez and his right to adjudicate. If this decision stands, fewer lawyers would dare take cases with this uncertainty about *Leishman’s* scope, when it’s uncertain whether a mentor program, religious sect, or book club, shares each other’s SLAPP immunity as one “person”. Would the Three Musketeers share immunity as one person being “All for one and one for all”? The court’s holding that it is absurd not to find that people relaying

child abuse had communal SLAPP immunity, it is not at all absurd. A less-hyperbolic summary of the law the appellate decision generalizes is this: For any minor who knowingly communicates malicious defamation to private persons, and where tort law holds such minor at the age of capacity to know the wrongfulness of her tort, then yes, she will have to call the police him/herself to get SLAPP immunity beyond the qualified immunity already afforded. *Robinson v. Lindsay*, 92 Wn.2d 410, 413 (1979) (holding that when activity a child engages in is inherently dangerous, like operating dangerous machinery, the child should be held to an adult standard of care); *Berry v. Howe*, 39 Wn.2d 235, 238 (1951) (affirming the trial court's finding that an 11-year-old caddy was guilty of contributory negligence for failing to protect himself from being hit in the eye by a golf ball); *Brown v. Derry*, 10 Wn. App. 459, 464 (1974) (affirming the trial court's holding that a 16-year-old was guilty of contributory negligence for injuries he sustained from riding on the trunk of a moving car while wearing a wetsuit).

These child tort liability cases do not produce the image of

helpless children who must dial 911 themselves for relief from child abuse. Tort law already defines the classes of children exempt from defamation liability so small children don't call the police themselves to enjoy absolute immunity from malicious defamation. In *Garratt v. Dailey*, 46 Wn.2d 197, 79 P.2d 1091 (1955), the Supreme Court observed that children under 6 may be held liable for volitional, wrongful conduct. Exceptions are trial issues, not CR 56 issues.¹

Child abuse immunity protects children, SLAPP protects against litigation. When kids play with matches, the law allows recovery. It is far from "absurd" to limit absolute SLAPP immunity to communications direct to law enforcement. Unlike communications to those from whom a minor seeks attention, statements to law enforcement function to access government. The

¹ E.g., see *Graving v. Dorn*, 63 Wn.2d 236237, 386 P.2d 621 (1963): "In cases involving children of from seven to fourteen years, that the question of the capacity of such child was a question of fact...since the presumption of incapability did not attach at such ages.

qualified common interest privilege defines the limits of immunity to defamatory statements to family members.² No statutory construction allows the appeals court to infer SLAPP's absolute immunity to protect children when the very statutes the appeals court cites provide only qualified immunity. *Leishman* recognized this delicate balance. In the SLAPP statutes' amendments there is absolute immunity for all statements to government (not private persons) because even people with good faith could be burdened with litigation challenging said good faith. But the appeals court's vague, amalgamation of groups of people into one "person" sharing SLAPP immunity necessitates this court's review.

B. Conflicts with *Richmond v. Thompson* (supra), and Supreme Court approved Jury Instructions.

The trial court's dismissal also contradicts the Supreme Court's decision in *Richmond v. Thomson* (supra). The Supreme

² E.g., *Valdez-Zontek v. Eastmont Sch. Dist.*, 154 Wn. App. 147, 5 P.3d 339 (2010) - this privilege generally applies to organizations, partnerships and associations, and arises when parties need to speak freely and openly about subjects of common organizational or pecuniary interest.

Court's approval of the jury instruction that defines "malice" in the disjunctive, where knowledge of falsity alone established prima facie evidence for clear and convincing evidence of malice. *Doe v. Gonzaga*, 143 Wn.2d 687 (2001). In *Richmond*, this court noted that personal knowledge of assault allegations, if true, is sufficient for malice if false. See also *Ratner v. Kohler*, No. 17-00542 HG-KSC, 2018 U.S. Dist. LEXIS 30761 (D. Haw. 02/26/18); see also *Chastain v. Hodgdon*, 202 F.Supp.3d 1216, 1221-22 (D. Kan. 2016), (sexual assault cases). When court failed to infer knowledge of falsity, it mooted the bad faith .510 defense.

C. Conflict with *Davis vs. Cox*: In *Davis* this Supreme Court deemed the subtle differences in attorney fees provided in the RCW 4.24.525 fee assessment procedures that tipped the balance between litigation-deterrence over the right to litigate too far. The decision appealed in this case, hammered the delicate balancing scale defined in *Davis v. Cox*:

Whatever the precise contours of the line, RCW 4.24.525(6) a doubtlessly falls on the impermissible side that punishes the exercise of the right to petition. In addition to attorney fees and

cost shifting, the statute assesses a statutory penalty of \$ 10,000 (potentially to each movant, as in this case below, where \$ 160,000 was awarded in total to the 16 movants) and “[s]uch additional relief...as the court determines to be necessary to deter repetition of the conduct and comparable conduct by others similarly situated.”RCW 4.24.525(6)(a)(iii). This is harsh punishment for bringing what may be a nonfrivolous claim, albeit one that cannot show by clear and convincing evidence a probability of succeeding at trial.

Davis v. Cox, 183 Wn.2d 69, 96, fn. 12.

The trial and appeals court assessed those fees anyway.

(2) Conflicts with other published Court of Appeals decisions as approved in *Leishman* and herein.

(3) The decisions raise a significant questions of law under the Federal or State Constitutions.

A. **Denial of right to trial.** The court denied Mr. Sanchez's state and federal rights to a jury trial. Seventh Amend., U.S. CONST. and WASH CONST., art. 1, § 1, (*Davis*, 183 Wn.2d 69, 96, note 7).

When the trial court substituted its evaluation of the evidence in this case for a jury's, it was error including the court's failure to consider reasonable inferences in a light most favorable to Mr. Sanchez. Instead, the court determined credibility by disregarding Sanchez's detailed denials. KMP urged the court to consider the

officers' opinions of guilt. The court denied Sanchez his right to present facts *Leishman* found relevant. See also *Johnson v. Ryan*, 186 Wn. App. 562 (2015) citing *Wilson v. State*, 84 Wn. App. 332, 342 (1996).

B. The court denied the right to present evidence. The rulings were unresponsive to the evidence submitted. (see appendices).

C. Denial of the right to counsel in a civil case. The Court of Appeals affirmed the court's denial (without comment) of counsel's withdrawal and continuance motions. The court held that with a conflict between counsel and client on apportioning sanctions between them, there is no conflict when not ripe. But that was not the conflict. In applying *In re Wixom*, 182 Wn.2d 1938 (1994), the appeals court ruled on a different conflict than what Chang proffered in its affidavits: The lawyer's compelling interest (in losing his client's summary judgment hearing) disqualified him. The record did not support that the court considered the conflict, let alone whether it necessitated withdrawal. Any ruling is an abuse of discretion when nothing in the record supports it. Once the court

denied Chang's withdrawal for substitution pursuant to RPC 1.7(c), the court became responsible for denying Sanchez representation.

See *Bounds v. Smith*, 430 U.S. 817 (1977).³

D. Right to litigate offset counterclaims. Immunity is a shield: not a sword. This court should consider whether the right to defend against civil claims creates a constructive waiver of the SLAPP defense against the original claim from the same transaction (the assault that the plaintiff falsely filed a private lawsuit for).

E. Right to be present. The court denied Sanchez his right to be present when his lawyer never told Mr. Sanchez about the hearing's commencement to allow telephonic presence. The court used facts

³ Prisoners have a constitutional right of access to the courts. *Bounds v. Smith*, 430 U.S. 817, 821, 97 S. Ct. 1491, 52 L. Ed. 2d 72 (1977), *abrogated on other grounds by Lewis v. Casey*, 518 U.S. 343, 116 S. Ct. 2174, 135 L. Ed. 2d 606 (1996). This right includes access to civil proceedings. *Whitney v. Buckner*, 107 Wn.2d 861, 865, 734 P.2d 485 (1987) (citing *Wolff v. McDonnell*, 418 U.S. 539, 578-79, 94 S. Ct. 2963, 41 L. Ed. 2d 935 (1974)). Prisons must also provide basic supplies to the extent necessary to ensure that a prisoner's access to the court is meaningful. The Supreme Court has further rule that a prisoner must be provided legal counsel if it means he will receive a "meaningful appeal." *Douglas v. California*, 372 U.S. 353 (1963).

unsupported in the record that Sanchez knew about the scheduled hearing and chose not to appear...at a hearing that cost him over \$40,000 that was in his attorney's existential interest to lose.

4. The decision involves the following substantial issues of public interest that only this court can determine.

(a) Expanding *Leishman* beyond this court's intent reduces attorneys to a blackjack dealer's function to explain the rules, risking public anxiety and resentment. (b) It disturbs the balance between the right to access government services vs. the right to tort recovery. (c) Public interest is tied to its fear of whether a child can spread false allegations with total immunity if the police are later called by anyone. (d) Whether lawyers serve their profession when their work is not reviewed is of interest to lawyers and the public. The gaps in the court's response to submissions concern anyone seeking justice when the tribunal is unresponsive.

V. CONCLUSION: For the aforesaid reasons, petitioner requests review of the decisions in the attached appendices.

VI. APPENDICES

KMP v. Sanchez

1. COA 02/22/21 Decision
2. COA Denial of Reconsideration on 03/16/21
3. Superior Court Order 06/06/19 Denying Sanchez's Motion to Continue the Trial Date & Withdrawal/Substitution.
4. Superior Court order 06/21/19 granting summary judgment
5. Superior Court 07/23/19 Order denying reconsideration
6. Superior Court 10/15/19 Order for RCW 4.25.510 sanctions against Sanchez.
7. 05/20/19 Chang Declaration
8. 06/03/19 Henrikson Declaration
9. 02/14/20 Order regarding Appellant's Motion and Declaration to Allow Appendices
10. 02/06/20 Motion and Declaration to Allow Appendices to Appellant's Opening Brief

APPENDICE 1

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

K.M.P., a minor child, by and through)	No. 80293-3-I
her natural mother and custodial parent,)	
SARAH HALL PINHO, an individual,)	
)	
Respondents,)	
)	
v.)	
)	
BIG BROTHER BIG SISTERS)	
OF PUGET SOUND and MICHAEL)	PUBLISHED OPINION
WAYNE SANCHEZ,)	
)	
Appellant.)	
)	

VERELLEN, J. — When a minor child tells their caregiver that they have been abused and the caregiver relays that information to police, both the child and the caregiver are “persons” communicating information to police entitled to immunity under the anti-SLAPP statute, RCW 4.24.510.¹

The alleged abuser’s argument that the child’s statement to her caregiver is not covered by the anti-SLAPP statute fails. To require a minor child to call 911 herself to acquire immunity would be an absurd result. The child is entitled to immunity against the abuser’s defamation claim based upon her comments to her caregiver.

¹ The acronym SLAPP stands for strategic lawsuit against public participation.

The trial court did not abuse its discretion in issuing CR 11 sanctions against the defendant's attorney or denying the attorney's motion to withdraw.

As the prevailing party on appeal, the child is entitled to attorney fees under RCW 4.24.510.

Therefore, we affirm.

FACTS

On April 29, 2016, nine-year-old KMP joined her "big sister" from Big Brothers Big Sisters of Puget Sound (BBBS) for a trip to a local lake.² KMP and her "big sister" walked to the dock where people were fishing. Michael Sanchez, one of the fisherman, caught a fish and asked KMP if she wanted to reel it in. KMP agreed, and Sanchez "positioned [her] right in front" of him "so he was right behind her" holding on to the pole. Soon after, KMP knelt down beside the lake to rinse her hands, and Sanchez "held on to her jacket."³ Later, Sanchez approached KMP again so he could tie a longer string to her fish.

About 15 minutes later, KMP told her "big sister" that Sanchez had "inappropriately touched" her on her "privates."⁴ Moments later, her "big sister" received a phone call from Sarah Pinho, KMP's mother. Her "big sister" told Pinho

² "Big Brothers Big Sisters of Puget Sound is a youth-serving nonprofit in Washington [s]tate. Its mission is to provide children facing adversity with strong and enduring, professionally supported one-on-one relationships that change their lives for the better. Big Brothers Big Sisters of Puget Sound makes monitored matches between adult volunteers ("Bigs") and children ("Littles"), ages 6 through 18." Appellant's Br. at 5.

³ Clerk's Papers (CP) at 808.

⁴ CP at 183.

what happened and then called the police after Pinho urged her to. Within minutes, the police arrived and KMP told them Sanchez touched her inappropriately.

On July 25, 2017, KMP sued her “big sister” and BBBS for negligence and sued Sanchez for sexual battery. The trial court dismissed her “big sister,” and BBBS settled with KMP. Sanchez entered an Alford⁵ plea to the charge of attempted second degree child molestation. As a result of Sanchez’s guilty plea, KMP moved to dismiss her sexual battery claim against Sanchez. Sanchez objected and filed various counterclaims against KMP.⁶

When Sanchez filed his counterclaims, he was also a respondent in a sexually violent predator (SVP) civil commitment proceeding. One of Sanchez’s attorney’s in the SVP case, Kenneth Henrikson, assisted Sanchez in drafting and filing pleadings in his civil action against KMP, until his superiors insisted that he terminate the representation. Henrikson asked his former colleague, Kenneth Chang, to represent Sanchez.

In March 2019, KMP’s counsel met with Chang and provided him with deposition transcripts from KMP’s sexual battery case and a copy of RCW 4.24.510, the anti-SLAPP statute. KMP’s counsel told Chang that if Sanchez did not agree to terminate the litigation, KMP would seek both the statutory remedies provided by RCW 4.24.510 and CR 11 sanctions against Chang.

⁵ North Carolina v. Alford, 400 U.S. 25, 91 S. Ct. 160, 27 L. Ed. 2d 162 (1970).

⁶ The only counterclaim at issue on appeal is defamation.

Soon after, KMP filed a motion for summary judgment, arguing that Sanchez had insufficient evidence to establish a prima facie case of his defamation counterclaim and that, under RCW 4.24.510, she was immune from all counterclaims arising from her report of sexual abuse.

The trial court granted KMP's motion for summary judgment. The trial court concluded that KMP was immune from civil liability under RCW 4.24.510 because "without evidence of any malice or of any ill-content" there was no evidence "that a child could be liable for reporting abuse to her caregivers."⁷ As a result, the trial court ordered Sanchez to pay \$10,000 in statutory damages under RCW 4.24.510 and Chang to pay \$4,000 in CR 11 sanctions.

Sanchez appeals.

ANALYSIS

I. Immunity from civil liability under RCW 4.24.510

Sanchez contends that KMP is not entitled to immunity or statutory damages under RCW 4.24.510 because the statute does not apply to conversations between private persons. Specifically, Sanchez argues that KMP's communication of sexual abuse to her "big sister" was not protected speech under section .510 because the statute can only immunize KMP's direct statements to police.

⁷ RP (Sept. 16, 2019) at 85.

“We review an order granting summary judgment de novo.”⁸ Summary judgment is appropriate “only when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law.”⁹ We view the evidence in the “light most favorable to the non-moving party.”¹⁰ “The party opposing a motion for summary judgment may not rely on speculation [or] on argumentative assertions that unresolved factual issues remain.”¹¹ “Ultimate facts or conclusions of fact are insufficient; conclusory statements of fact will not suffice.”¹²

We interpret a statute based on the statute’s plain meaning and the legislature’s intent.¹³

The anti-SLAPP statute, RCW 4.24.510, provides:

A person who communicates a complaint or information to any branch or agency of federal, state, or local government . . . is immune from civil liability for claims based upon the communication to the agency or organization regarding any matter reasonably of concern to that agency or organization. A person prevailing upon the defense provided for in this section is entitled to recover expenses and reasonable attorneys’ fees incurred in establishing the defense

⁸ Loeffelholz v. Univ. of Wash., 175 Wn.2d 264, 271, 285 P.3d 854 (2012) (quoting Mohr v. Grantham, 172 Wn.2d 844, 859, 262 P.3d 490 (2011)).

⁹ Bavand v. OneWest Bank, 196 Wn. App. 813, 824-25, 385 P.3d 233 (2016) (citing Scrivener v. Clark Coll., 181 Wn.2d 439, 444, 334 P.3d 541 (2014)).

¹⁰ Loeffelholz, 175 Wn.2d at 271.

¹¹ Seiber v. Poulsbo Marine Ctr., Inc., 136 Wn. App. 731, 736, 150 P.3d 633 (2007 (citing Seven Gables Corp. v. MGM/UA Entm’t Co., 106 Wn.2d 1, 13, 721 P.2d 1 (1986))).

¹² Id. at 737 (citing Grimwood v. Univ. of Puget Sound, 110 Wn.2d 355, 359-60, 753 P.2d 517 (1988)).

¹³ State v. Reeves, 184 Wn. App. 154, 158, 336 P.3d 105 (2014) (citing State v. Ervin, 169 Wn.2d 815, 820, 239 P.3d 354 (2010)).

and in addition shall receive statutory damages of ten thousand dollars. Statutory damages may be denied if the court finds that the complaint or information was communicated in bad faith. ^[14]

The purpose of RCW 4.24.510 is to protect citizens who come forward with information that will help make law enforcement and government more efficient and more effective.¹⁵

Because KMP did not initially communicate the sexual abuse to the police, Sanchez relies upon the phrase “person who communicates . . . information to . . . government” to argue KMP is ineligible for statutory immunity or a \$10,000 damage award. But adopting Sanchez’s interpretation of section .510 would undermine the legislature’s intent.

Specifically, the use of the singular “person” can also be read as “people” or “persons.”¹⁶ Thus, the legislature intended to shield multiple “persons” who may be making a single report or communication.¹⁷ Here, KMP’s report of sexual abuse to her “big sister” and her “big sister”’s report to the police on behalf of KMP constituted a single communication. By interpreting “person” in the plural to encompass both the caregiver or parent and the minor child relying on the caregiver or parent to make a report, the statute’s terms better effectuate the

¹⁴ RCW 4.24.510.

¹⁵ Lowe v. Rowe, 173 Wn. App. 253, 259, 294 P.3d 6 (2012); Segaline v. Dep’t of Labor & Indus., 169 Wn.2d 467, 479, 238 P.3d 1107 (2010).

¹⁶ See RCW 1.12.050 (when reading statutes, “[w]ords importing the singular number may also be applied to the plural of persons and things.”); see also Leishman, No. 97734-8, slip op. at 6-7.

¹⁷ See Leishman, No. 97734-8, slip op. at 8-9.

legislature's intent.

Further, we do not derive the legislature's intent from the statute's words alone because we also consider "the context of the entire act as well as any 'related statutes which disclose legislative intent about the provision in question.'"¹⁸

A closely related statute, the child abuse reporting statute, provides immunity to:

any person participating in good faith in the making of a report . . . in connection with a report, investigation, or legal intervention pursuant to a good faith report of child abuse or neglect shall in so doing be immune from any civil or criminal liability arising out of such reporting.^[19]

This statute plainly shields KMP from liability because her "big sister"'s report to the police occurred only because KMP told her about Sanchez's abuse.

Interpreting RCW 4.24.510 to extend immunity to a minor child who reports sexual abuse to a caregiver or a parent, who in turn relays that report to police, aligns

¹⁸ Jametsky v. Olsen, 179 Wn.2d 756, 762, 317 P.3d 1003 (2014) (quoting Dep't of Ecology v. Campbell & Gwinn, LLC, 146 Wn.2d 1, 11, 43 P.3d 4 (2002)).

¹⁹ RCW 26.44.060. Public policy clearly supports that caregivers report allegations of child abuse to law enforcement. In addition to the mandatory reporting requirements of RCW 26.44.030(1)(a), "[w]hen any practitioner, county coroner or medical examiner, law enforcement officer, professional school personnel, registered or licensed nurse, social service counselor, psychologist, pharmacist, employee of the department of children, youth, and families, licensed or certified child care providers or their employees, employee of the department of social and health services, juvenile probation officer, placement and liaison specialist, responsible living skills program staff, HOPE center staff, state family and children's ombuds or any volunteer in the ombud's office, or host home program has reasonable cause to believe that a child has suffered abuse or neglect, he or she shall report such incident, or cause a report to be made, to the proper law enforcement agency or to the department as provided in RCW 26.44.040." The legislature also promotes that "[a]ny other person who has reasonable cause to believe that a child has suffered abuse or neglect may report such incident to the proper law enforcement agency or to the department as provided in RCW 26.44.040." RCW 26.44.030(3) (emphasis added).

with the legislature's intent to provide immunity to "any person [or persons] participating" in reporting child abuse to police.

And to conclude otherwise would produce an absurd result. We decline to read the plain language of the statute to generate an absurd result, "even if [we] must disregard unambiguous statutory language to do so."²⁰ Requiring a minor child who is a victim of sexual abuse to directly call 911 to receive the immunity protection of section .510 would be an absurd result. KMP is both immune from civil liability and entitled to \$10,000 in statutory damages under section .510.²¹

Sanchez argues that KMP loses the immunity protection and the resulting statutory damages under section .510 because her allegation of sexual abuse was made in bad faith.

Bad faith is defined as acting with "dishonesty of belief, purpose, or motive."²² And bad faith can be established through a showing of actual malice.²³ But "[i]ndividual factors that evidence actual malice are not generally sufficient to establish actual malice. For example, hostility alone will not constitute actual malice."²⁴

²⁰ Samish Indian Nation v. Wash. Dep't of Licensing, 14 Wn. App. 2d 437, 444, 471 P.3d 261 (2020) (quoting In re Dep. of D.L.B., 186 Wn.2d 103, 119, 376 P.3d 1099 (2016)).

²¹ Because we find that KMP is entitled to immunity under RCW 4.24.510, we need not address Sanchez's defamation counterclaim.

²² BLACK'S LAW DICTIONARY 171 (11th ed. 2019).

²³ Lillig v. Becton-Dickinson, 105 Wn.2d 653, 657, 717 P.2d 1371 (1986).

²⁴ Herron v. KING Broad. Co., 109 Wn.2d 514, 524-25, 746 P.2d 295 (1987), clarified on reh'g, 112 Wn.2d 762, 776 P.2d 98 (1989).

Specifically, Sanchez contends that his perception of KMP's actions at the time of the incident establish that KMP's allegation of sexual abuse was made in bad faith. Sanchez recalled that KMP was "frightened or upset" when he told her that she could not hold his fishing pole by herself, and that she acted "disgust[ed]" when he told her she could eat the fish.²⁵ But because Sanchez presented mere subjective evidence of individual factors of alleged actual malice, his evidence of bad faith was insufficient.

II. CR 11 sanctions and motion for continuance and leave to withdraw

Sanchez argues that the trial court erred in entering CR 11 sanctions against Chang because the court failed to "specify which filings violated CR 11" in its "findings."²⁶

We review a trial court's imposition of CR 11 sanctions and denial of a motion for continuance and leave to withdraw for abuse of discretion.²⁷ A trial court abuses its discretion when its decision is based on untenable grounds or reasons.²⁸

CR 11 requires attorneys to date and sign all pleadings, motions and legal memoranda. Such signature constitutes the attorney's certification that: "to the best of the . . . attorney's knowledge, information, and belief, formed after reasonable inquiry it [the pleading motion or memoranda] is well grounded in fact and is warranted by

²⁵ CP at 878.

²⁶ Appellant's Br. at 17.

²⁷ Biggs v. Vail, 124 Wn.2d 193, 197, 876 P.2d 448 (1994); State v. Downing, 151 Wn.2d 265, 272, 87 P.3d 1169 (2004).

²⁸ State v. Guevara Diaz, 11 Wn. App. 2d 843, 856, 456 P.3d 869 (citing State v. Powell, 126 Wn.2d 244, 258, 893 P.2d 615 (1995)), review denied, 195 Wn.2d 1025 (2020).

existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.”^{29]}

“The court must make a finding that either the claim is not grounded in fact or law and the attorney or party failed to make a reasonable inquiry into the law or facts, or the paper was filed for an improper purpose.”³⁰

Here, in both the trial court’s oral decision and its written findings of fact, the trial court stated that in filing the amended counterclaim on August 28, 2018, Chang “failed to make [a] reasonable inquiry into [Sanchez’s] claims.”³¹ In rendering its decision, the trial court emphasized that Chang “had no discovery in the underlying litigation, had not been present or reviewed any of the depositions[,] had not yet reviewed the police report[, and] was unfamiliar with the immunity provisions” under RCW 4.24[.510].³² Additionally, the trial court found that even after Chang became aware of section .510, he continued to pursue counterclaims without “any evidence.”³³ And “he was also made aware and given notice of the possibility of CR 11 sanctions.”³⁴ Because the trial court’s “findings” specified which filing violated CR 11, the court did not abuse its discretion by imposing CR 11 sanctions.

²⁹ Biggs, 124 Wn.2d at 196 (alterations in original) (quoting CR 11).

³⁰ Id. at 201 (citing CR 11).

³¹ RP (Sept. 16, 2019) at 84.

³² Id.

³³ Id. at 84-85.

³⁴ Id. at 85.

Additionally, Sanchez contends that because KMP sought available remedies against Sanchez and Chang, KMP created a per se conflict of interest that required the court to allow Chang to withdraw from the case.

“If attorney and client disagree about who is at fault and point their fingers at each other in response to a request for sanctions, the interests of the two are clearly adverse.”³⁵ But there was no conflict between Sanchez and Chang.

Both sides refer to In re Marriage of Wixom, where a contested divorce and child custody dispute resulted in the trial court entering sanctions against the father and his counsel.³⁶ The father and his counsel were deemed jointly liable for the sanctions.³⁷ On appeal, the father’s counsel argued that the father should be solely responsible for the sanctions.³⁸ As a result, the court required the father’s counsel to withdraw.³⁹ It held that “if and when an attorney seeks to limit a sanction award against only his or her client, the attorney must withdraw from representing the client.”⁴⁰

Unlike the father’s counsel in Wixom, Chang did not argue that Sanchez was responsible for the CR 11 sanctions, and thus no per se conflict of interest resulted. Because Chang’s interests were not adverse to Sanchez’s, the court did

³⁵ In re Marriage of Wixom & Wixom, 182 Wn. App. 881, 899, 332 P.3d 1063 (2014).

³⁶ 182 Wn. App. 881, 885, 332 P.3d 1063 (2014).

³⁷ Id.

³⁸ Id. at 897.

³⁹ Id. at 908-09.

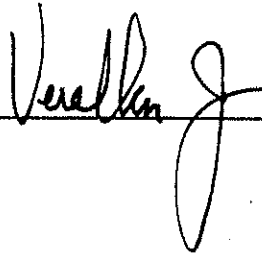
⁴⁰ Id. at 899.

not abuse its discretion in denying Chang's motion for continuance and leave to withdraw.⁴¹


III. Attorney fees

KMP requests attorney fees on appeal. As the prevailing party, KMP is entitled to reasonable attorney fees under RCW 4.24.510 for successfully defending her immunity on Sanchez's defamation claim, subject to her compliance with RAP 18.1(d).

Therefore, we affirm.



WE CONCUR:



⁴¹ Sanchez also contends that his due process rights were violated because the trial court denied his motion for continuance and withdrawal of counsel and he was not permitted to appear at the September 16, 2019 sanctions hearing. But at the summary judgment hearing on June 21, 2019, Chang requested oral argument before sanctions were imposed. And at the sanctions hearing on September 16, 2019, Chang argued against the trial court's imposition of sanctions against Sanchez. And there is no evidence in the record supporting Sanchez's contention that he was prevented from being present at the September 16, 2019 hearing. Therefore, Sanchez's due process rights were not violated.

RICHARD D. JOHNSON,
Court Administrator/Clerk

The Court of Appeals
of the
State of Washington

DIVISION I
One Union Square
600 University Street
Seattle, WA
98101-4170
(206) 464-7750
TDD: (206) 587-5505

March 16, 2021

Peter Thomas Connick
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12351 Lake City Way NE Ste 203
Seattle, WA 98125-5437
Peterconnick@gmail.com

Richard L. Anderson
Schroeter Goldmark Bender
810 3rd Ave Ste 500
Seattle, WA 98104-1657
anderson@sgb-law.com

CASE #: 80293-3-I
K.M.P., et ano. v. Big Brothers Big Sisters of Puget Sound, et al.

Counsel:

Enclosed please find a copy of the Order Granting Motion To Publish entered by this court in the above case today.

Sincerely,



Richard D. Johnson
Court Administrator/Clerk

LAM

Enclosure

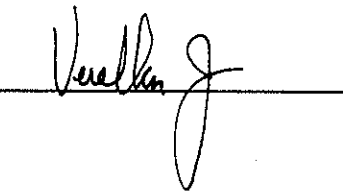
cc. Reporter of Decisions
Hon. Aimee Sutton

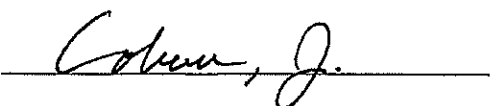
IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

K.M.P., a minor child, by and through) her natural mother and custodial parent,) SARAH HALL PINHO, an individual,) Respondents,) v.) BIG BROTHER BIG SISTERS) OF PUGET SOUND and MICHAEL) WAYNE SANCHEZ,) Appellant.)	No. 80293-3-I ORDER GRANTING MOTION TO PUBLISH
--	--

Respondents filed a motion to publish the court's February 22, 2021 opinion. The panel has determined the motion should be granted. Now, therefore, it is hereby

ORDERED that the motion to publish is granted.





King County Superior Court
Judicial Electronic Signature Page

Case Number: 17-2-19614-2
Case Title: KMP ET ANO VS BIG BROTHERS BIG SISTERS OF PUGET
SOUND ET AL
Document Title: ORDER FFCL

Signed by: Aimee Sutton
Date: 10/15/2019 1:05:42 PM

A rectangular box containing a handwritten signature in black ink, which appears to be 'Aimee Sutton'.

Judge/Commissioner: Aimee Sutton

This document is signed in accordance with the provisions in GR 30.

Certificate Hash: FE7AF5938B62B0D6530B26DB6BADCEA39154E68E
Certificate effective date: 3/7/2019 12:13:53 PM
Certificate expiry date: 3/7/2024 12:13:53 PM
Certificate Issued by: C=US, E=kcscefiling@kingcounty.gov, OU=KCDJA,
O=KCDJA, CN="Aimee Sutton:
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APPENDICE 2

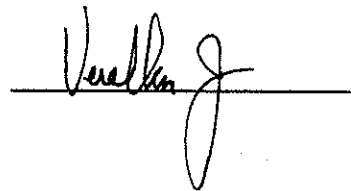
IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

K.M.P., a minor child, by and through) her natural mother and custodial parent,) SARAH HALL PINHO, an individual,) Respondents,) v.) BIG BROTHER BIG SISTERS) OF PUGET SOUND and MICHAEL) WAYNE SANCHEZ,) Appellant.)	No. 80293-3-I ORDER DENYING MOTION FOR RECONSIDERATION
--	--

Appellant filed a motion for reconsideration of the court's February 22, 2021 opinion. The panel has determined the motion should be denied. Now, therefore, it is hereby

ORDERED that the appellant's motion for reconsideration is denied.

FOR THE PANEL:



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

APPENDICE 3

1 FILED
2 2019 JUN 06 09:00 AM
3 KING COUNTY
4 SUPERIOR COURT CLERK
5 E-FILED
6 CASE #: 17-2-19614-2 KNT

Honorable Aimée Sutton
Trial Date: July 8, 2019
Hearing Date: June 4, 2019

7 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
8 IN AND FOR THE COUNTY OF KING

9 K.M.P., a minor child, by and through her
10 natural mother and custodial parent,
11 SARAH HALL PINHO,

12 Plaintiffs.

13 v.

14 BIG BROTHERS BIG SISTERS OF
15 PUGET SOUND, and MICHAEL WAYNE
16 SANCHEZ, an individual,

17 Defendants.

No. 17-2-19614-2 KNT

ORDER DENYING DEFENDANT'S
MOTION TO CONTINUE TRIAL
DATE AND DENYING MOTION FOR
WITHDRAWAL OF COUNSEL

18 THIS MATTER having come on duly and regularly before the undersigned judge of the
19 above-entitled court upon Defendant's Motion to Continue Trial Date and Motion for Withdrawal
20 of Counsel; the parties appearing by and through their respective counsel, the Court having
21 considered the records and files herein, and being fully apprised in the premises, now, therefore,
22

23 IT IS HEREBY ORDERED that defendant's Motion to Continue Trial Date is DENIED.

24 IT IS HEREBY ORDERED that defendant's Motion for Withdrawal of Counsel is
25 DENIED. Any subsequent motion to withdraw by Defendant must comply with CR 71.
26

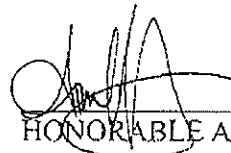
ORDER DENYING DEFENDANT'S MOTION
TO CONTINUE TRIAL DATE AND DENYING
MOTION FOR WITHDRAWAL OF COUNSEL

- 1

SCHROETER, GOLDMARK & BENDER
810 Third Avenue • Suite 500 • Seattle, WA 98104
Phone (206) 622-8000 • Fax (206) 682-2305

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DATED this 5th day of June, 2019.


HONORABLE AIMÉE SUTTON
JUDGE

Presented by:

SCHROETER, GOLDMARK & BENDER



RICHARD L. ANDERSON, WSBA #25115
Counsel for Plaintiffs

ORDER DENYING DEFENDANT'S MOTION
TO CONTINUE TRIAL DATE AND DENYING
MOTION FOR WITHDRAWAL OF COUNSEL

- 2

SCHROETER, GOLDMARK & BENDER
810 Third Avenue • Suite 500 • Seattle, WA 98101
Phone (206) 622-8000 • Fax (206) 682-2305

King County Superior Court
Judicial Electronic Signature Page

Case Number: 17-2-19614-2
Case Title: KMP ET ANO VS BIG BROTHERS BIG SISTERS OF PUGET
SOUND ET AL
Document Title: ORDER DENYING DEF MOT TO CONTINUE

Signed by: Aimee Sutton
Date: 6/6/2019 9:00:00 AM



Judge/Commissioner: Aimee Sutton

This document is signed in accordance with the provisions in GR 30.

Certificate Hash: FE7AF5938B62B0D6530B26DB6BADCEA39154E68E
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O=KCDJA, CN="Aimee Sutton:
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Page 3 of 3

APPENDICE 4

FILED
KING COUNTY, WASHINGTON

JUN 21 2019

SUPERIOR COURT CLERK
BY Pamela Tomsuden
DEPUTY

Honorable Aimée Sutton
Trial Date: July 8, 2019
Hearing Date: June 21, 2019

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

K.M.P., a minor child, by and through her
natural mother and custodial parent,
SARAH HALL PINHO.

Plaintiffs,

v.

BIG BROTHERS BIG SISTERS OF
PUGET SOUND, and MICHAEL WAYNE
SANCHEZ, an individual.

Defendants.

No. 17-2-19614-2 KNT

[PROPOSED] ORDER GRANTING
PLAINTIFFS' MOTION FOR
SUMMARY JUDGEMENT

THIS MATTER came on before the undersigned judge of the King County Superior Court upon the Plaintiffs' Motion for Summary Judgment. The Court has considered the following documents for and related to the motion:

1. Plaintiffs' Motion for Summary Judgment;
2. Declaration of Richard Anderson in Support of Plaintiffs' Motion for Summary Judgment, and documents attached thereto;
3. Declaration of Kris Durell;
4. Declaration of Nicholas Wong;

[PROPOSED] ORDER GRANTING
PLAINTIFFS' MOTION FOR SUMMARY
JUDGEMENT - 1
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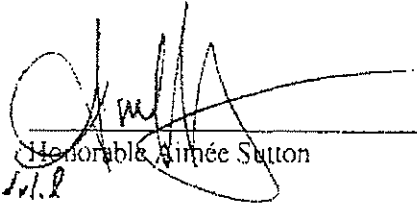
SCHROETER GOLDMARK & BENDER
810 Third Avenue • Suite 500 • Seattle, WA 98104
Phone (206) 622-6000 • Fax (206) 662-3305

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- 5. Defendant's Response and attached declarations :
- 6. Plaintiff's Reply :
- 7. Richard v. Thompson, 130 Wn.2d 368 (1996)
- and
- 8. _____

The Court also considered oral argument from the parties' counsel. The Court is fully advised in the premises. Now therefore, it is hereby ORDERED as follows:

1. Plaintiff's motion for summary judgment is granted. *The court's oral ruling is incorporated by reference*
 DONE IN OPEN COURT this 21st day of June, 2019.



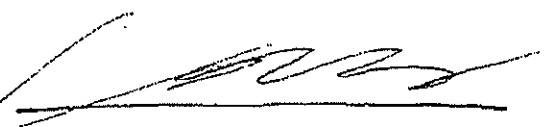
 Honorable Kimée Sutton

A motion for fees and costs is scheduled for July 31st, 2019 @ 9:30 a.m.

Presented by:
 SCHROETER, GOLDMARK & BENDER



 RICHARD L. ANDERSON, WSBA #25115
 Counsel for Plaintiffs



counsel for Mr. Sanchez

APPENDICE 5

FILED
2019 JUL 23 10:14 AM
KING COUNTY
SUPERIOR COURT CLERK
E-FILED

SUPERIOR COURT OF THE STATE OF WASHINGTON COUNTY OF KING
CASE # 17-2-19614-2 KNT

K.M.P., a minor child, by and through her
natural mother and custodial parent, SARAH
HALL PINHO

Plaintiff,

v.

BIG BROTHER BIG SISTERS OF PUGET
SOUND, and MICHAEL WAYNE
SANCHEZ,

Defendant.

NO. 17-2-19614-2 KNT

ORDER DENYING
RECONSIDERATION

This matter having come on for hearing this day before the undersigned judge of the above entitled Court upon reconsideration of Plaintiffs' Motion for Summary Judgment and the court having reviewed the Defendant's motion to reconsider and attached exhibits, the records and files herein.

IT IS HEREBY ORDERED that Defendant's Motion for Reconsideration is DENIED.

DATED this 23rd day of July, 2019.



JUDGE AIMEE SUTTON

APPENDICE 6

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KING COUNTY
SUPERIOR COURT CLERK
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CASE #: 17-2-19614-2 KNT
Honorable Aimée Sutton
Hearing date: September 16, 2019 8:30 a.m.

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

K.M.P., a minor child, by and through her
natural mother and custodial parent,
SARAH HALL PINHO,

Plaintiffs,

v.

BIG BROTHERS BIG SISTERS OF
PUGET SOUND, and MICHAEL WAYNE
SANCHEZ, an individual,

Defendants.

No. 17-2-19614-2 KNT

ORDER GRANTING PLAINTIFFS'
MOTION FOR COSTS, FEES,
STATUTORY FINES AND CR 11
SANCTIONS AND FINDINGS OF
FACT AND CONCLUSIONS OF LAW
IN SUPPORT

THIS MATTER having come on duly and regularly before the undersigned
judge of the above-entitled court upon plaintiffs' motion for costs, fees, statutory fines and CR
11 sanctions; the parties appearing by and through their respective counsel, the Court having
considered the records and files herein, having heard the arguments of counsel on September 16,
2019, and being fully apprised in the premises, now, therefore, enters the following findings:

ORDER GRANTING PLAINTIFFS' MOTION
FOR COSTS, FEES, STATUTORY FINES AND
CR 11 SANCTIONS AND FINDINGS OF FACT
AND CONCLUSIONS OF LAW IN SUPPORT -

SCHROETER, GOLDMARK & BENDER
810 Third Avenue • Suite 500 • Seattle, WA 98104
Phone (206) 622-8000 • Fax (206) 682-2305

1 1. RCW 4.24.510 provides immunity from civil liability to any party who
2 communicates information to law enforcement that is regarding a matter reasonably of concern
3 to that law enforcement agency for any claims based on those communications. The statute
4 further requires that a party prevailing upon the defense of immunity provided by RCW
5 4.24.510 is entitled to recover expenses and reasonable attorney's fees incurred and shall receive
6 statutory damages of \$10,000.
7

8 2. There are numerous Washington appellate court opinions upholding the
9 imposition of costs, fees, and fines against those parties bringing claims in violation of the
10 immunity provisions in RCW 4.24.510. The Court does not find any basis or supporting
11 authority to deem this statute unconstitutional.
12

13 3. The Court finds that K.M.P.'s and Ms. Pinho's reports to the Federal Way Police
14 Department regarding the allegations of child molestation perpetrated by Mr. Sanchez were
15 matters reasonably of concern to Federal Way Police, and are therefore immune from civil
16 liability. The Court further finds that there was no evidence that the communications to law
17 enforcement were made in bad faith.

18 4. Mr. Sanchez, as the party bringing the counterclaims based on K.M.P.'s and Ms.
19 Pinho's communications to Federal Way Police, is responsible for paying the costs, reasonable
20 attorney's fees, and the statutory fine of \$10,000.
21

22 5. Based on the documentation provided in the plaintiffs' motion, specifically the
23 information of hours worked, type of work performed, and the declaration of Harry Schneider,
24 the Court finds the amount of attorney's fees and costs requested by the plaintiffs to be
25 reasonable and awards \$31,960 in attorney's fees and \$1,308.66 in costs.
26

1 6. CR 11 sanctions are appropriate in circumstances when the actions are not well
2 grounded in fact, when the action is not warranted by existing law, and when the attorney
3 signing the pleadings fails to make a reasonable inquiry into the factual and legal basis of the
4 action.

5 7. Mr. Chang, counsel for Mr. Sanchez, failed to conduct reasonable inquiry when
6 filing an amended counterclaim on August 28, 2018. Months later, in March 2019, Mr. Chang
7 acknowledged that he had no discovery in the underlying litigation, that he had not attended nor
8 reviewed any depositions, that he had not reviewed the police report associated with the
9 allegations of child molestation by plaintiff, and that he was unfamiliar with the immunity
10 provisions of RCW 4.24.510.

11 8. The second instance of actionable conduct was when Mr. Chang continued to
12 pursue the counterclaims by filing additional pleadings after being made aware of the immunity
13 provisions of RCW 4.24.510. He failed to produce any evidence of numerous elements of the
14 defamation claims, presented no evidence on the falsity of K.M.P.'s report, could not articulate
15 any legal theory of how the communication privilege to caregivers might be overcome, and
16 could not present any admissible evidence of damages that may have occurred as a result of
17 K.M.P.'s allegedly defamatory statements.

18 9. Furthermore, Mr. Chang argued that even if the immunity provisions of RCW
19 4.24.510 applied to Ms. Tishman or Ms. Pinho, those provisions did not protect the original
20 statements of K.M.P. to those individuals. This position is wholly inconsistent with caselaw,
21 public policy and common sense.

22 10. There is no support for the position that a child, without any evidence of malice
23 or ill intent, could be liable for reporting abuse to her caregivers. A survey of caselaw in
24
25
26

1 Washington and nationally yields no support for claims such as those brought by Mr. Sanchez
2 with the support and counsel of Mr. Chang.

3 11. Finally, although the Court finds that there is some evidence that the
4 counterclaims at issue were brought for an improper purpose, the Court finds that there is
5 insufficient evidence to make any such finding against Mr. Chang or Mr. Henrikson.
6

7 12. The Court finds that, if liability existed at all for Mr. Henrikson, it would have to
8 be found under CR 11(b). As the costs and attorney's fees requested were incurred after Mr.
9 Chang began representing Mr. Sanchez, the Court finds no basis to impose such sanctions
10 against Mr. Henrikson.

11 13. The Court does, however, impose sanctions in the amount of \$4,000 under CR
12 11 against Mr. Chang for his failure to make reasonable inquiry into the legal and factual basis
13 for the counterclaims filed against K.M.P. and Ms. Pinho.
14

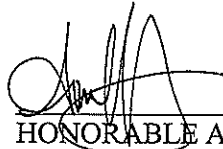
15
16 Based on the above findings, IT IS HEREBY ORDERED AS FOLLOWS.

- 17
18 1. Plaintiffs' motion for costs, fees and statutory fines against Defendant Michael Wayne
19 Sanchez is GRANTED, and Mr. Sanchez is ordered to pay \$1,308.66 in costs, \$31,960
20 in attorney's fees, and the statutory penalty of \$10,000 to the plaintiff. Total amount
21 awarded to the plaintiff is *\$43,268.66 (forty-three thousand two hundred sixty-eight*
22 *dollars and sixty-six cents)*.
23
24
25 2. Plaintiffs' motion for CR 11 sanctions against attorney Ken Chang is GRANTED, and
26 Mr. Chang is ordered to pay sanctions in the amount of *\$4,000 (four thousand dollars)*.

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3. Plaintiffs' motion for CR 11 sanctions against attorney Ken Henrikson is DENIED.

DATED this 15th day of October, 2019.



HONORABLE AIMÉE SUTTON
KING COUNTY SUPERIOR COURT JUDGE

Presented by:

SCHROETER, GOLDMARK & BENDER



RICHARD L. ANDERSON, WSBA #25115

Approved as to Form; Notice of Presentation Waived

/s/ Ken Chang
KENNETH CHANG, WSBA #26737
Counsel for Michael Sanchez

/s/ Seth Rosenberg
SETH ROSENBERG, WSBA #41660
Counsel for Kenneth Henrikson

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CERTIFICATE OF SERVICE

I certify that I caused to be served in the manner noted below a copy of the foregoing pleading on the following individual(s):

Counsel For: Plaintiffs
J. Ryan Call
Federal Way City Attorney
33325 Eighth Avenue South
Federal Way, WA 98003
ryan.call@cityoffederalway.com

- Via Facsimile
- Via First Class Mail
- Via Messenger
- Via Email
- Via EFiled/EService

Counsel For: Defendant
Kenneth M. Chang
Hart Jarvis Murray Chang PLLC
155 NE 100th Street, Suite 210
Seattle, WA 98125
kchang@hjmc-law.com

- Via Facsimile
- Via First Class Mail
- Via Messenger
- Via Email
- Via EFiled/EService

Kenneth Henrikson
The Defender Association Division
Dexter Horton Building
710 2nd Ave Ste 200
Seattle, WA 98104
kenneth.henrikson@kingcounty.gov

- Via Facsimile
- Via First Class Mail
- Via Messenger
- Via Email
- Via EFiled/EService

DATED: October __, 2019, at Seattle, Washington.

Victoria Molina, Legal Assistant
810 Third Avenue, Suite 500
Seattle, WA 98104
(206) 622-8000
molina@sgb-law.com

APPENDICE 7

1 FILED
2 2019 MAY 20 04:27 PM
3 KING COUNTY
4 SUPERIOR COURT CLERK
5 E-FILED
6 CASE #: 17-2-19614-2 KNT

7 IN THE SUPERIOR COURT OF WASHINGTON
8 IN AND FOR THE COUNTY OF KING

9 K.M.P., a minor child, by and through her
10 natural mother and custodial parent, SARAH
11 HALL PINHO,

12 Plaintiffs,

13 vs.

14 BIG BROTHER BIG SISTERS OF PUGET
15 SOUND, and MICHAEL WAYNE SANCHEZ.

16 Defendants.

No. 17-2-19614-2 KNT

**DECLARATION OF COUNSEL IN
SUPPORT OF DEFENDANT'S
MOTION TO CONTINUE TRIAL
DATE AND MOTION FOR
WITHDRAWAL OF COUNSEL**

Honorable Aimee Sutton

17 I, Kenneth M. Chang, declare that the following is true and correct to the best of my
18 knowledge under penalty of perjury pursuant to the laws of the State of Washington.

19 1. I am the counsel of record for Defendant Mr. Michael Sanchez.

20 2. Attached as **Exhibit A** is a true and copy of the cover page and excerpt of the
21 March 13, 2018 deposition of Darla Tishman, as previously filed in the court file as Exhibit A to
22 Declaration of Daniel L. Syhre in Support of Defendants Big Brother Big Sisters of Puget
23 Sound's Motion for Summary Judgment on April 6, 2018, as shown by the Electronic Court
24 Records in this case.
25

**DECLARATION OF COUNSEL IN SUPPORT OF
DEFENDANT'S MOTION TO CONTINUE TRIAL
DATE AND MOTION FOR WITHDRAWAL OF
COUNSEL - 1**

HART JARVIS MURRAY CHANG PLLC
155 N.E. 100th Street, Suite 210
Seattle, WA 98125
Tel: (206) 735-7474
Fax: (206) 260-2950

1 2. Attached as **Exhibit B** is a true and copy of the page 66 of the aforementioned
2 deposition of Ms. Darla Tishman. This is being provided under a separate cover, as the exhibit
3 that was previously filed did not contain pages 66 to 68, probably as an inadvertent mistake.
4 This deposition copy of Ms. Tishman was obtained from Mr. Richard Anderson, counsel for
5 Plaintiffs.

6 3. Attached as **Exhibit C** is a true and copy of the April 29, 2016 sworn written
7 statement of John Wayne Monroe, as previously filed in the court file as Exhibit C to Declaration
8 of Daniel L. Syhre in Support of Defendants Big Brother Big Sisters of Puget Sound's Motion
9 for Summary Judgment on April 6, 2018, as shown by the Electronic Court Records in this case.

10 4. Attached as **Exhibit D** is a true and copy of the April 29, 2016 sworn written
11 statement of Matthew J. Kilburn, as previously filed in the court file as Exhibit D to Declaration
12 of Daniel L. Syhre in Support of Defendants Big Brother Big Sisters of Puget Sound's Motion
13 for Summary Judgment on April 6, 2018, as shown by the Electronic Court Records in this case.

14 5. Attached as **Exhibit E** is a true and copy of the police report and supplements
15 consisting of sixteen pages, as previously filed in the court file as Exhibit E to Declaration of
16 Daniel L. Syhre in Support of Defendants Big Brother Big Sisters of Puget Sound's Motion for
17 Summary Judgment on April 6, 2018, as shown by the Electronic Court Records in this case.

18 6. Attached as **Exhibit F** is a true and copy of Declaration of Michael Sanchez.
19 previously filed in this case.

20 7. Attached as **Exhibit G** is a true and correct copy of this Court's ruling on June 8,
21 2018 that Mr. Sanchez' claim was severed "for independent adjudication by the court."
22

23 8. In November 2018, at the request of the previous counsel for Plaintiffs, I agreed
24 to continue the trial date. The stipulated proposed order was presented to the court court, and a
25

1 new case scheduling order issued on December 3, 2018. Unfortunately, I failed to calendar the
2 new case scheduling order. My failure to comply with the case scheduling order can be
3 objectively interpreted as conflicting with the attorney's unimpaired judgement in continuing to
4 represent Mr. Sanchez in this matter. Because of this, RPC 1.7 requires my withdrawal from the
5 representation of my client.

6 9. As a result, I failed to disclose Mr. Sanchez' primary witness disclosure. I should
7 have made the witness disclosure as attached in **Exhibit H**, which is served today along with this
8 motion to Plaintiffs' new counsel.

9 10. According to the interrogatory responses from Plaintiffs, Plaintiff Sarah Pioho
10 made unprivileged publication of the statements at issue in this case to family friends such as
11 Franisbel Cella and Holly, and to her ex-husband and possibly other friends.
12

13 **HART JARVIS MURRAY CHANG PLLC**

14 s/ Kenneth M. Chang
15 Kenneth M. Chang, WSBA No. 26737
16 Attorney for Defendant Sanchez
17 Hart Jarvis Murray Chang PLLC
18 155 N.E. 100th Street, Suite 210
19 Seattle, WA 98125
20 Telephone: (206) 735-7474
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22 E-mail: kchang@hjmc-law.com
23
24
25

DECLARATION OF COUNSEL IN SUPPORT OF
DEFENDANT'S MOTION TO CONTINUE TRIAL
DATE AND MOTION FOR WITHDRAWAL OF
COUNSEL - 3

HART JARVIS MURRAY CHANG PLLC
155 N.E. 100th Street, Suite 210
Seattle, WA 98125
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Fax: (206) 260-2950

CERTIFICATE OF SERVICE

I, Kenneth M. Chang, certify under penalty of perjury under the laws of the State of Washington that I am the counsel for Respondent herein and that on 5/20/2019 I caused to be served on the person listed below in the manner shown.

DECLARATION OF COUNSEL IN SUPPORT OF DEFENDANT'S MOTION TO CONTINUE TRIAL DATE AND MOTION FOR WITHDRAWAL OF COUNSEL

Richard Anderson, WSBA No. 25115
Counsel for Plaintiffs
Schroeter, Goldmark & Bender
810 Third Ave. Suite 500
Seattle, WA 98104
Tel: 206-622-8000
Fax: 206-682-2305

- United States Mail, First Class _____
- By E-Service May 20, 2019
- By Facsimile _____
- By Email Attachment May 20, 2019

Dated this 20th day of May, 2019

/s/ Kenneth M. Chang
Kenneth M. Chang, WSBA No. 26737

Exhibit A

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

K.M.P., a minor child, by)
and through her natural)
mother and custodial)
parent, SARAH HALL PINHO,)
an individual,)

Plaintiffs,)

No. 17-2-19614-2
KNT

vs.)

BIG BROTHERS BIG SISTERS OF)
PUGET SOUND; DARLA TISHMAN,)
an individual; and MICHAEL)
WAYNE SANCHEZ,)

Defendants.)
-----)

DEPOSITION OF DARLA TISHMAN
Seattle, Washington
Tuesday, March 13, 2018

Reported by:
Connie Recob, CCR 2631, RMR, CRR
JOB NO. 138088

1 March 13, 2018
2 9:42 a.m.

3
4
5 Deposition of DARLA TISHMAN, held at
6 the offices of Betts Patterson Mines, 701
7 Pike Street, Suite 1400, Seattle,
8 Washington, before Connie Recob, CCR 2631,
9 RMR, CRR, a Notary Public of the State of
10 Washington.
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1 APPEARANCES:

2
3
4 LEE & LEE
5 Attorneys for Plaintiffs
6 1001 Fourth Avenue
7 Seattle, Washington 98154
8 BY: RISA WOO
9
10

11 BETTS, PATTERSON & MINES
12 Attorneys for Defendants
13 701 Pike Street
14 Seattle, Washington 98101
15 BY: LAURA KRUSE
16
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1 DARLA TISHMAN,
2 called as a witness, having been duly sworn
3 by a Notary Public, was examined and
4 testified as follows:

5 EXAMINATION BY
6 MS. WOO:

7 Q. Okay. Thank you. Do you prefer
8 Ms. Tishman or Darla?

9 A. Darla.

10 Q. Okay. All right. Can you just tell
11 me a little bit about what do you do for work?

12 A. I do customer service at the
13 airport.

14 Q. Okay. For a particular airline?

15 A. Virgin America right now.

16 Q. How long have you been doing that?

17 A. About four years.

18 Q. And what kind of work did you do
19 before that?

20 A. I was an appraiser.

21 Q. Like residential properties?

22 A. House, uh-huh.

23 Q. And how long did you do that for?

24 A. About 20 years.

25 Q. And prior to that or was that --

1 A. Prior to that I did some sales,
2 office supply sales. Going way back. I did
3 public relations. These are different states.
4 I did placement. I placed nurses on temporary
5 assignments so that's pretty much it.

6 My first job out of college was
7 public relations. Then I took a sales job
8 placing nurses, basically a recruiter for
9 nurses for traveling assignments. Then I got
10 into office sales and then I got into
11 appraisals and started having kids.

12 Q. How many kids do you have?

13 A. Two.

14 Q. Are they adults?

15 A. Uh-huh.

16 MS. KRUSE: Sorry. Just so the
17 record is clear, say "yes" or "no" rather
18 than "uh-huh."

19 THE WITNESS: Okay.

20 MS. KRUSE: Just to make sure it's
21 on the record.

22 BY MS. WOO:

23 Q. Okay. Two adult children. What's
24 your educational background?

25 A. I went to the University of Missouri

1 in Columbia, Missouri, four years college.
 2 Q. And your degree?
 3 A. University -- journalism.
 4 Q. And is Missouri, is that where
 5 you're from?
 6 A. Uh-huh, yes.
 7 Q. That's okay. It takes some getting
 8 used to.
 9 A. Okay.
 10 Q. Yes, you're from Missouri. How did
 11 you end up out here in Seattle?
 12 A. Moved here about nine years ago from
 13 Maryland, had family out here and just wanted
 14 to be closer to family and move out West.
 15 Q. Okay. And so since you moved out
 16 here -- are you living right now in the Tacoma
 17 area?
 18 A. Uh-huh, yes.
 19 Q. Yes. And have you lived in the
 20 Tacoma area the entire nine years you've been
 21 here?
 22 A. Tacoma area, yes.
 23 Q. All right. So in any of your other
 24 prior lines of work have you had any experience
 25 working with children?

1 A. Not in lines of work but
 2 volunteering.
 3 Q. Okay. Tell me about that.
 4 A. I guess my earliest volunteering was
 5 when my kids were young and I volunteered for
 6 their school.
 7 Q. Okay.
 8 A. I chaperoned field trips -- well, I
 9 guess the earliest was my kids were in a co-op
 10 preschool so I had to work at the preschool.
 11 You do your shifts, like once every two weeks
 12 you work in the classroom, chaperoning field
 13 trips, and then when they got to elementary
 14 school I was a room volunteer. I actually had
 15 a paid job with the schools working in the
 16 lunchroom as a recess monitor and lunchroom
 17 monitor.
 18 Q. Is that elementary school?
 19 A. Yeah.
 20 Q. How long did you do that for?
 21 A. A couple years when my kids were in
 22 elementary school.
 23 Q. So the entire time?
 24 A. No, not the entire time. Really
 25 just kind of started as volunteer and then

1 would just do various volunteer jobs at the
 2 school and then started -- they needed a lunch
 3 person so probably did that two and a half
 4 years.
 5 Q. Okay. Anything else kind of related
 6 to children?
 7 A. I've taught yoga to kids. Yoga was
 8 a side thing. I haven't taught in like
 9 two years, but I got my teaching certificate
 10 and I've taught yoga classes to kids. I've
 11 taught yoga classes to moms and babies. What
 12 else have I done with kids? I taught yoga to
 13 my son's lacrosse team, teenagers.
 14 Q. How was that?
 15 A. Yeah, that was fun. He loved it.
 16 No, I'm kidding.
 17 Q. Going back to you teaching yoga, not
 18 your son's lacrosse team, what was the age
 19 range that you were working with?
 20 A. Well, I taught a variety of classes.
 21 I could teach anything and my regular classes
 22 were not always the kids' class but I subbed
 23 for someone kind of regularly and they, the
 24 kids were probably 2 to 12 because there was a
 25 class that the parents came in with and there

1 was also a different class that was just kids.
 2 Q. Was this at a yoga studio or was
 3 it --
 4 A. Yoga studio.
 5 Q. Okay. All right. Do you have any
 6 background, training, experience in working
 7 with victims of sexual assault?
 8 A. No.
 9 Q. Okay. How did you decide to become
 10 involved with the Big Brothers program?
 11 A. I have a friend who does it and it
 12 was just my youngest had moved out of the
 13 house, gone off to college and it was just one
 14 of those things where I had time and wanted to
 15 do something good and helpful and I like --
 16 whenever I do things like going on hikes, I
 17 thought it would be something fun to take kids
 18 on. And I was a member of the Mountaineers and
 19 they were starting a kids program in Seattle,
 20 but I don't live close enough to Seattle to
 21 really ever come up here so I thought it would
 22 be a fun and a good thing to do.
 23 And I've had exchange students, I
 24 forgot about that.
 25 Q. Tell me about that before we come

1 back to Big Brothers.

2 A. Well, not since I've lived here in
3 Washington, but I've been around exchange
4 students because my aunt is a pretty active
5 volunteer with AFS which is American foreign
6 exchange students, and she always has exchange
7 students at their house and she kind of uses me
8 as the person who will take them to do fun
9 things because she's older. So she's like,
10 Darla, will you take these kids hiking? So
11 whatever, I'm kind of the connection to someone
12 younger than she is because they don't have
13 kids at all in the house.

14 So anyway, but I've had three
15 exchange students in the past but that was when
16 I lived out East.

17 Q. Okay.

18 A. But they were teenagers.

19 Q. More than 10 years ago?

20 A. Yeah, more than 10 years ago, yes.

21 Q. They come in and stay with you at
22 your house?

23 A. Uh-huh.

24 Q. "Yes"?

25 A. Yes.

1 Q. For how long?

2 A. That was -- the exchange students I
3 had were summer programs so just during the
4 summer.

5 Q. And so this is three separate
6 summers, you didn't have three at once?

7 A. No.

8 Q. So yes, three separate summers?

9 A. Yes, three separate summers.

10 Q. All right. And you said they're
11 teenagers?

12 A. Yes. They're in high school.

13 Q. What kind of background or training
14 is required to host a foreign exchange student?
15 What kind of process?

16 A. I don't really remember. I just
17 remember filling out an application. They come
18 to your house, look at your house, interview
19 the people in your family, like they
20 interviewed my husband. They got references.
21 And I don't really know the extent of all the
22 background that they did but I do remember they
23 came to the house and did like a home visit to
24 see where the bedroom would be that they would
25 sleep.

1 Q. So before any kids came --

2 A. Oh, yeah.

3 Q. -- they do all this?

4 A. Yes.

5 Q. Do you remember about how long the
6 process was?

7 A. I mean just long enough to get the
8 paperwork done, I guess.

9 Q. Okay. Did they have you go through
10 any kind of training or anything?

11 A. No.

12 Q. Okay.

13 A. I knew that -- actually the woman
14 who worked that, I knew her from my church so
15 there wasn't really formal training to be a
16 host. I think just a lot of paperwork.

17 Q. And was there a reason that there
18 was only -- you only hosted three children?

19 A. Just because I did it when my kids
20 got a little bit older.

21 Q. Okay.

22 A. And then I moved.

23 Q. And -- sorry?

24 A. I moved.

25 Q. Oh, okay.

1 A. I would have continued to do it, and
2 I actually hosted a Plebe from the Naval
3 Academy too one year.

4 Q. So not -- that's not one of the
5 three students?

6 A. No, that is something completely
7 different. It's things that -- it's something
8 that if you live in Annapolis you do because
9 kids that go to the Naval Academy, they come
10 from all over the world so they don't have
11 families. And we were involved in the Naval
12 Academy because my kids played hockey there and
13 it was just a thing, they would put out the
14 word looking for host families.

15 And that's probably how the other
16 one happened too, they just needed host
17 families so they were spreading the word and
18 then I volunteered.

19 Q. Okay. So now back to getting
20 involved with Big Brothers. When did you first
21 become involved?

22 A. I don't know the exact timeline, but
23 it was probably about six months before [REDACTED]
24 because she was my first little sister.

25 MS WOO: [REDACTED] is [REDACTED]

1 BY MS. WOO:

2 Q. So describe the process that you had
3 to go through to become a Big Sister.

4 A. I just remember looking on line at
5 their website because a friend of mine had done
6 it and said it was a good organization to
7 volunteer for. So I remember getting on line,
8 reading through it, just filling out some
9 information on line, then someone called me and
10 I either filled out an application on line or
11 they sent me an application maybe, just
12 probably like an introduction type application.
13 And then I remember getting another phone call
14 again and getting asked more in-depth
15 questions.

16 And then probably asking me a lot of
17 the things that you are, just my background,
18 have I worked with kids, why I wanted to do it.
19 And then at some point a more formal interview
20 because they got more personal information like
21 license number, ran -- you know, signed
22 something to give them authorization to run a
23 background check, and I think I had to go in
24 and sign some things for that.

25 And then I guess that probably took

1 a little while. I remember some time in
2 between each stage kind of and so that took a
3 little while and then they said, We'll call you
4 when that comes back. And then I got a phone
5 call and went in for an interview, I guess with
6 a case manager or someone who worked there. I
7 don't remember the person's name, just -- just
8 a one-on-one interview.

9 And then she -- I don't know what
10 happened behind the scenes, but then they
11 called and said I had been accepted and I
12 needed to come in for like office -- not office
13 training but just training in their office.
14 And then after that I was -- I guess that was
15 the final check mark and I could be considered
16 to be matched up with someone.

17 Q. Okay. So do you think that the
18 process lasted six months roughly?

19 A. I don't remember when I applied. So
20 I don't remember like the exact date I first
21 got on line and sent it in so maybe six months
22 or less.

23 Q. Okay. You mentioned coming in for
24 in-office training.

25 A. Uh-huh.

1 Q. Was that the only training session
2 that was offered to you?

3 A. Uh-huh.

4 MS. KRUSE: Object to form.

5 BY MS. WOO:

6 Q. "Uh-huh," "yes"?

7 A. Yes.

8 Q. Okay.

9 A. Oh, I didn't hear what you said.

10 MS. KRUSE: Same objection. That's
11 fine. You have to still answer.

12 BY MS. WOO:

13 Q. All right. Can you tell me about
14 that training?

15 A. It was in a conference room similar
16 to this. It was me and the instructor and it
17 was a lot of handouts and a slide show.

18 Q. Like a PowerPoint?

19 A. Yeah, PowerPoint. And it was --
20 seemed like it was pretty instructional, like
21 all set out like the same for everyone.

22 Q. Like standard?

23 A. A curriculum, yeah, kind of had a
24 curriculum that they went through.

25 Q. Okay. Do you remember about how

1 long it lasted?

2 A. Maybe like half a day, like the late
3 morning into afternoon.

4 Q. Do you remember the topics that were
5 covered?

6 A. Not really specifically, but I have
7 reviewed -- I had -- got a packet, so like that
8 sort of jogged my memory but I didn't really
9 remember specifically.

10 Q. You said you recently reviewed
11 something?

12 A. Yes.

13 Q. Okay. Roughly when was that?

14 A. Just because they gave me a copy of
15 the information that we went over in class and
16 so then that kind of made me remember because I
17 don't really remember any specifics. But
18 just -- it was just like the general like rules
19 of Big Brother Big Sister, a lot of scenarios,
20 but I don't remember specifically what they
21 were, but I just remember some specific things
22 that stood out like don't use -- it was kind of
23 common sense but don't put pictures of your
24 kids, don't talk about them, you know, on your
25 social media.

1 It was a lot of rules and
2 regulations. It was a lot of guidelines, just
3 safety things like don't drink around -- you
4 know, don't let anyone else drive them
5 anywhere, and just to be sure and get -- I kind
6 of remember just be sure and respect the
7 parents and get permission from the parents to
8 do anything. Don't -- it was just kind of like
9 general guidelines dealing with the family and
10 the kid.

11 Q. So there wasn't really anything in
12 there that came as a surprise to you?

13 A. No.

14 Q. Just kind of standard things that
15 you would expect --

16 A. Uh-huh.

17 Q. -- their rules to be?

18 A. Uh-huh.

19 MS. KRUSE: Object to form.

20 THE WITNESS: Yes.

21 BY MS. WOO:

22 Q. "Uh-huh," "yes"?

23 A. Yes.

24 Q. You said that they recently showed
25 you some materials. Who is the "they" that

1 you're referring to?

2 MS. KRUSE: I'm going to object. I
3 think the question probably. What did you
4 review to prepare for the deposition? -- is
5 probably what I think the question is, so
6 if you want to testify as to what you
7 reviewed, not necessarily how the materials
8 came to you.

9 THE WITNESS: Okay. Just that I was
10 given a copy of all the -- all the training
11 materials and everything I guess relating
12 to this. I got a copy of my statement to
13 the police, just a packet of information.

14 BY MS. WOO:

15 Q. Okay. How recently?

16 A. I guess two or three months ago.

17 Q. All right. And did it all look
18 familiar? It all looked right?

19 A. Uh-huh.

20 Q. "Yes"?

21 A. I didn't go through every single
22 page, but...

23 Q. All right. Apart from the
24 PowerPoint presentation -- oh, I meant to ask:
25 Was there anybody else being trained at the

1 same time as you were?

2 A. No.

3 Q. All right. Apart from the
4 PowerPoint presentation and the written
5 materials that you received, were there any
6 other kind of training sessions or
7 opportunities?

8 MS. KRUSE: Object to form. Asked
9 and answered.

10 THE WITNESS: I don't know if there
11 were other opportunities but I wasn't -- I
12 didn't participate in any because that was
13 my first.

14 BY MS. WOO:

15 Q. Your first training session?

16 A. Training, yeah. So I think -- it
17 seemed like there were probably things you
18 could participate in if you were -- if I was
19 still involved with it, but that was just my
20 first.

21 Q. All right. Did you feel adequately
22 prepared to take on mentoring after this
23 training session and those materials?

24 A. Yes.

25 Q. Okay. What's your understanding of

1 the type -- the population of children that Big
2 Brothers seeks to help?

3 MS. KRUSE: Object to form. Calls
4 for speculation.

5 BY MS. WOO:

6 Q. You can answer.

7 MS. KRUSE: You can answer.

8 THE WITNESS: Yeah, okay.

9 MS. KRUSE: Yeah, you can still
10 answer. It's just for the record.

11 THE WITNESS: Sorry. I don't know
12 what that means. So just knowing -- I've
13 heard of Big Brother Big Sister for many
14 years, even when I was a kid I remember
15 hearing of it so I just knew it was just a
16 mentoring program for kids who might be
17 latchkey kids, might have single parents,
18 might just need some extra attention,
19 maybe -- so I just thought it was kids who
20 needed extra attention. So maybe both
21 parents worked or they had single parents
22 and just I always felt bad for kids who
23 would come home from school and have no one
24 there all day

25 So that's sort of what I thought.

1 kids that have been in rough families or
 2 anything like that so I just don't have
 3 experience with that.
 4 Q. What do you mean "emotional issues"?
 5 Can you give me an example?
 6 A. Well, I just am pulling in my mind
 7 things I've heard in the news like people
 8 adopting a kid and finding out they have severe
 9 problems and they don't -- so in my mind I'm
 10 thinking -- I don't know how you would describe
 11 it, but detachment or -- I don't know. Maybe
 12 anger or violence or -- I don't know.
 13 Q. I'm not this familiar with the
 14 program but if you're a female, are you only
 15 allowed to take on a little sister or can you
 16 take on a little brother as well?
 17 MS. KRUSE: Object to form.
 18 THE WITNESS: I don't actually know
 19 for sure but I wanted a little sister.
 20 BY MS. WOO:
 21 Q. Okay. Would you consider a child
 22 who had previously been the victim of a sexual
 23 assault, would that fall in your category of
 24 one with emotional issues that you wouldn't
 25 have necessarily wanted to take on?

1 MS. KRUSE: Object to form.
 2 THE WITNESS: I probably would not
 3 have done that.
 4 BY MS. WOO:
 5 Q. You --
 6 A. Like if they gave me a variety of
 7 kids and said this one has these issues, this
 8 one has these issues, I would not want a kid
 9 with emotional issues.
 10 Q. Any particular reason?
 11 A. Because I don't know how -- I'm not
 12 experienced and I wouldn't want to say
 13 something that I'm not supposed to say.
 14 Q. Okay. After completing the training
 15 that you went through, what was your
 16 understanding of any restrictions on behavior
 17 during activities with your little?
 18 A. They had a certain few rules about
 19 when you could bring them to your house, that
 20 you could never have a sleep over, that -- just
 21 if you were going to do anything dangerous with
 22 them, say skydiving, that you would get signed
 23 permission, if you were going to do anything --
 24 can't cross state lines, I do remember that.
 25 Basically just to get parental approval before

1 you do anything just like if you were
 2 babysitting somebody else's kid.
 3 Q. Would something like a dangerous
 4 activity like skydiving require permission from
 5 the parent as well as Big Brothers or just the
 6 parent?
 7 A. I think so.
 8 Q. Yes, both?
 9 A. Yes, both. I don't know. I never
 10 would --
 11 MS. KRUSE: Object to form.
 12 THE WITNESS: Would even probably --
 13 I don't myself want to go skydiving, so...
 14 BY MS. WOO:
 15 Q. Okay. What about -- do you remember
 16 what the rules were about when you could bring
 17 a child to your house?
 18 A. I think it was after three months.
 19 Q. What was your understanding of why
 20 that rule is in place?
 21 MS. KRUSE: Object to the form.
 22 THE WITNESS: My understanding of
 23 it, I just think it was understandable.
 24 They -- I don't know their exact reason
 25 behind it, but I didn't question it. It

1 made sense.
 2 BY MS. WOO:
 3 Q. Concerning a home visit after the
 4 three months, were there additional rules on
 5 whether other people had to be present for a
 6 home visit or --
 7 A. Not that I remember.
 8 Q. Would it be okay for a one-on-one
 9 visit at the big's house?
 10 A. I believe so because I have a friend
 11 who has a little and she brings her to her
 12 house.
 13 Q. How about the extent of actual
 14 physical contact that's permitted between the
 15 little and a big?
 16 MS. KRUSE: Object to form.
 17 THE WITNESS: What do you mean
 18 "allowed"?
 19 BY MS. WOO:
 20 Q. Are there any don't -- "do not dos"
 21 about any physical contact with littles? Are
 22 you allowed to hug them?
 23 A. I think it was kind of common sense
 24 like if they hug you first, you can hug them,
 25 but not to initiate any physical contact.

1 Q. Do you recall that this is what you
 2 were told or is this based on what -- your
 3 common sense and how you proceeded?
 4 MS. KRUSE: Object to form.
 5 THE WITNESS: It was in the training
 6 material.
 7 BY MS. WOO:
 8 Q. What was?
 9 A. Not to initiate, but it's also
 10 common sense.
 11 Q. Okay. So a hug would be okay if the
 12 little initiated it?
 13 A. (Witness nods head up and down.)
 14 Q. All right. Was there any rules on,
 15 you know, just a side hug or a full-on hug or
 16 anything like that?
 17 MS. KRUSE: Object to form.
 18 THE WITNESS: No.
 19 BY MS. WOO:
 20 Q. No rules, okay. What about other --
 21 let me ask this: So any physical contact that
 22 was initiated by the little would be acceptable
 23 based on the training?
 24 MS. KRUSE: Object to form.
 25 THE WITNESS: What do you mean?

1 Like holding hands? Yes, I would think --
 2 they didn't specify every little thing but
 3 I held her hand and I don't think that was
 4 against any rules.
 5 BY MS. WOO:
 6 Q. Held hands, arm around shoulder?
 7 A. Uh-huh.
 8 Q. "Yes"?
 9 A. Yes.
 10 Q. Yes, you did that, or yes, you think
 11 it's okay?
 12 A. Yes, I would think that was okay.
 13 Q. Earlier you mentioned that there
 14 were some rules about not having a friend drive
 15 your little?
 16 A. Uh-huh.
 17 Q. What other rules like that were
 18 there about other people tending to the little?
 19 MS. KRUSE: Object to form.
 20 THE WITNESS: I don't remember all
 21 the rules because it's been two years and I
 22 haven't had any other...
 23 BY MS. WOO:
 24 Q. Little since?
 25 A. Yes.

1 Q. Okay. Just the best -- I understand
 2 it's been some time.
 3 A. I'm sure there were rules about that
 4 but just the typical don't drink and drive,
 5 don't let anyone else drive that kid, make sure
 6 they wear a seat belt, follow all laws.
 7 Q. Were you permitted to leave little
 8 with a friend?
 9 A. No.
 10 Q. Okay.
 11 A. I do remember that now.
 12 Q. Well, how about --
 13 A. And I do remember another thing.
 14 They just said never drop off the little at
 15 their house if the parents aren't home. They
 16 said even if you set a time to bring them back
 17 and the parent for some reason says I'll be
 18 there at 5:00 and they're not, you can't leave
 19 the little there.
 20 Q. You got to sit there and wait until
 21 the parent comes home?
 22 A. Uh-huh.
 23 Q. So not allowed to leave little with
 24 a friend. How about a spouse or a closer
 25 family member?

1 A. My spouse or their step spouse or
 2 something?
 3 Q. Your spouse.
 4 A. My spouse, no. I think basically if
 5 you're on an outing with your little, you're
 6 supposed to be with your little.
 7 Q. The entire time?
 8 A. Yes.
 9 Q. Okay. Do you remember whether Big
 10 Brothers set out certain child safety rules?
 11 MS. KRUSE: Object to the form.
 12 THE WITNESS: What, physical safety
 13 rules like seat belts or --
 14 BY MS. WOO:
 15 Q. Anything?
 16 MS. KRUSE: Object to form. Asked
 17 and answered. Vague.
 18 THE WITNESS: It's in the training
 19 materials but I don't know specifically
 20 right now.
 21 BY MS. WOO:
 22 Q. Okay. Do you think that there were
 23 any of the safety rules that you did not
 24 follow?
 25 A. No.

1 Q. Were you trained on what to do if a
 2 little reported abuse to you?
 3 A. I don't remember exactly, but I
 4 think we were supposed to let a case manager
 5 know right away.
 6 Q. Let me ask you: Do you not remember
 7 whether you were trained on it or do you not
 8 remember what exactly the procedure was that
 9 you were supposed to follow?
 10 A. Well, by "training" do you mean --
 11 like what kind of training do you mean? Just
 12 handing me a piece of paper that says, In this
 13 case do this?
 14 Q. I guess. I mean did Big Brothers
 15 provide you any guidance whether it was in
 16 materials or training?
 17 A. Yes, in materials.
 18 Q. Okay. So they did give you guidance
 19 on how to respond if a little reports abuse to
 20 you?
 21 A. Yes.
 22 Q. And this was in written materials?
 23 A. Yes.
 24 Q. Not necessarily covered in the
 25 PowerPoint?

1 A. It's not what kind of training I
 2 would consider like acting out training, like
 3 let's run through a case, you know, a
 4 reenactment of something.
 5 Q. Yeah. Role playing?
 6 A. Yeah, role playing.
 7 Q. Okay.
 8 A. It was more, This is what you would
 9 do in this case.
 10 Q. Okay. So you did get that
 11 information?
 12 A. Yes.
 13 Q. And the best that you can recall,
 14 what were you supposed to do?
 15 A. Let a case manager know is all I can
 16 really remember.
 17 Q. How soon after the report were you
 18 supposed to let the case manager know?
 19 A. I don't know what the training
 20 materials said about that.
 21 Q. Do you recall anything about -- do
 22 you recall whether you were provided with
 23 information about how you were supposed to
 24 respond to the little when they reported the
 25 abuse to you?

1 A. No, I don't remember anything
 2 specific about that.
 3 Q. Anyone else that you were advised to
 4 report the abuse to besides the case manager?
 5 The police?
 6 A. No.
 7 MS. KRUSE: Object to form. Asked
 8 and answered.
 9 THE WITNESS: I don't remember what
 10 the training materials said.
 11 BY MS. WOO:
 12 Q. Okay. Let's shift gears a little.
 13 bit and talk specifically about being matched
 14 with [REDACTED]. Once you are notified that you've
 15 been matched, what happens?
 16 A. They called me and said, We think we
 17 have someone for you, and they kind of told me
 18 where she lived because they ask you to, with
 19 your ideal match, how far you would -- as far
 20 as geographic area, how far you're comfortable
 21 driving because you are -- usually you have to
 22 go pick them up. And so they kind of told me
 23 where she lived, what grade she was in, that
 24 she lived with her mom and I think they said a
 25 sister or sisters, that she -- her common

1 interests -- well, not her common, just her
 2 interests.
 3 And they just gave me -- they just
 4 said they thought that we would be a great
 5 match because she had a lot of energy and she
 6 really liked to do outdoorsy things. And one
 7 thing that stood out is they said she really
 8 liked horses and I have a cousin who has horses
 9 and I just remember saying that and I've taken
 10 my other niece to see her horses and I must
 11 have mentioned that in an interview or
 12 something because they said, Oh, she really
 13 loves horses.
 14 Q. Is that cousin local?
 15 A. Yes.
 16 Q. All right. So they -- go ahead.
 17 A. So basically they just gave me a
 18 little background and they asked me if I would
 19 be -- if I would consider her
 20 Q. And obviously you did?
 21 A. Yes.
 22 Q. Was this the first potential match
 23 that was brought to you, presented to you?
 24 A. Yes.
 25 Q. Okay. So did you just kind of

1 immediately say, Yes, this sounds great, or did
2 you have to think about it?

3 A. I did think about it because she was
4 farther out than I really wanted to go because
5 I don't really know that area at all. I wanted
6 someone within like 10 or 20 minutes because I
7 just figured proximity, I know the area and I
8 would like someone that I could go pick up and
9 like. What are you doing in an hour?

10 Q. So about how far was she from where
11 you lived at the time?

12 A. Probably like 30 to 40.

13 Q. 30-, 40-minute drive?

14 A. Uh-huh.

15 Q. With no traffic?

16 A. Yes. But the only reason I
17 considered it, it was because it was on my way
18 home from work so I figured I could make it --
19 schedule meetings with her that were after I
20 got off work

21 Q. Did you have a set work schedule?

22 A. It changes every eight to 12 weeks.

23 Q. Okay. Is it a full-time schedule?

24 A. Yes. It varies.

25 Q. Whether or not it's full time varies

1 also?

2 A. Yes, yes.

3 Q. Okay. So ultimately obviously you
4 decided to go ahead and accept the match?

5 A. Uh-huh.

6 Q. Do you remember any other
7 information that you were provided about [REDACTED]
8 to make your decision?

9 A. They said that I was her second
10 match, that she had -- I don't know how long
11 she had been in between but they said she had a
12 previous Big Sister that they had to end the
13 match and they said they couldn't give me any
14 details, but they still thought we would be a
15 good match and they thought our personalities
16 would...

17 Q. Okay. Anything else?

18 A. That they told me?

19 Q. Uh-huh.

20 A. The only thing that stands out is
21 that they told me that the Big Sister might
22 have disciplined her or something like that and
23 the mother didn't like it and that's the only
24 thing -- they said. We can't give you any
25 details but it came to an end.

1 So I didn't really want to ask too
2 many -- I just respected that and said, Okay.
3 In my mind I kind of figured it was between
4 them and I kind of get along with most people
5 so I thought in my mind, Okay, we'll be fine
6 because I -- you know, I'll be a good Big
7 Sister and we'll have fun.

8 Q. So did the fact that she had a prior
9 match that was closed, did that weigh in on
10 your decision at all?

11 A. I think it did --

12 Q. In what way?

13 A. -- a little. I was just worried
14 that maybe she wouldn't like me. I didn't know
15 if it was the girl or the mom or if it was
16 really the Big Sister so you just have
17 questions because you know people are
18 different. So I was like, Well, maybe that Big
19 Sister was really strict and not a lot of fun
20 and didn't let [REDACTED] be a kid. Or I didn't
21 know if it was really that [REDACTED] was, you
22 know, hard to deal with and maybe the mom was
23 hard to deal with so I didn't know but I was
24 going in with being optimistic thinking that I
25 would be able to get along with her.

1 Q. Okay. So you accept the match and
2 then what happens next?

3 A. I -- I accept the match to meet her,
4 so then we set up a date to meet at their
5 apartment so we met at her apartment in Federal
6 Way. And for the first half of the meeting
7 there was a representative, and I don't
8 remember who it was, from Big Brother Big
9 Sister, and we kind of met as a family like we
10 all -- I remember we all four sat in her living
11 room, the mother, [REDACTED] the Big Sister
12 representative and me, and just talked.

13 Q. Kind of getting to know you type
14 stuff?

15 A. Uh-huh.

16 Q. About how long was this meeting?

17 A. I think the Big Sister was probably
18 there a half-hour to 45 minutes and then she
19 left.

20 Q. The Big Sister representative?

21 A. Yes. And then she left and she
22 said, I want you guys to stay and spend some
23 time alone and get to know each other, so we
24 did. I stayed probably another 30 minutes, but
25 they were getting ready to go somewhere so they

1 only had a certain amount of time, the mother.
2 They had to leave. I think she was going to
3 maybe see her dad or go do something, I don't
4 remember.

5 Q. Mother was going to see mother's dad
6 or --

7 A. I don't remember. I just remember
8 getting like, Aren't we leaving soon? I
9 remember her kind of saying -- like it was sort
10 of abrupt and it was like, Okay, you guys have
11 to go somewhere, that's fine. I'll...

12 Q. Okay. So during that -- after the
13 representative from Big Brothers left, was it
14 still kind of an ongoing just getting to know
15 you kind of --

16 A. Yes, that's all it was.

17 Q. All right. Were there plans made at
18 that time for an outing?

19 A. No.

20 Q. So how did you get from the end of
21 that session to an ultimate outing with her?

22 A. What I think happened, so that was
23 more of an in-person introduction. So after
24 that I think that the mother and [redacted] had
25 their own discussion and then talked with Big

1 Brother Big Sister and they decided whether
2 they liked me or not. I think for me it felt
3 kind of in a way like an interview, like I was
4 going there to see if [redacted] liked me and if
5 the mom liked me and then they were deciding if
6 I was acceptable.

7 So then Big Brother Big Sister
8 called me, I don't know how many days later and
9 said, Okay, you're chosen.

10 Q. Okay. Prior to receiving that call
11 but after the meeting, how were you feeling
12 about the potential of matching?

13 A. Fine.

14 Q. Now that you met them? Fine?

15 A. Fine.

16 Q. Okay. So within a few days or so
17 they let you know that it's an actual match and
18 then what?

19 A. And then -- this part, I don't
20 really remember a lot, but I think I was going
21 out of town so we said -- I do remember Big
22 Brother Big Sister said, Try to make an outing
23 pretty soon while you are, you know, fresh.

24 So we set something up which was the
25 first outing so we -- I think I e-mailed to --

1 e-mailed with the mother and maybe spoke with
2 her on the phone to set up a date, a mutual
3 date. And then...

4 Q. And how did you come to decide on
5 what the outing would be?

6 A. I was just being flexible and said I
7 would do whatever [redacted] and her mom wanted me
8 to do because it was the first outing.

9 Q. So pretty much left it up to [redacted]
10 and her mom to figure out?

11 A. Uh-huh.

12 Q. "Yes"?

13 A. Yes.

14 Q. All right. So let's go now to the
15 day of the outing. What's the first thing you
16 remember about that day?

17 A. The first thing I remember about the
18 day? Picking her -- well, I remember telling
19 her what time I would be there and I wasn't
20 sure exactly what we were going to do because
21 the mom and [redacted] she said, We'll tell you --
22 I'm going to talk with [redacted] and we'll decide
23 what to do and I think she either told me by
24 text or on the phone. And it was pretty close
25 to when I was getting there that she thought

1 [redacted] would like to go swimming and that they
2 had a park that they went to pretty often.

3 Q. All right. So at some point prior
4 to arriving at the apartment, she let you know
5 what they were planning on for the outing?

6 A. Yeah. I think it was either -- I
7 kind of feel like I was a little bit surprised.
8 I remember she said that she wanted to go to
9 this park and then when I got to the house to
10 pick her up she said she really wanted to go
11 swimming. I just thought it was odd because it
12 was pretty chilly but I just thought, Okay,
13 she's a kid and this is what she wants to do.
14 And the mom had packed her a towel and some
15 beach toys and just said, a couple times. She
16 really loves to go to this park and she really
17 loves to go swimming and here's her stuff.

18 Q. And what was the intended duration
19 of the visit going to be?

20 A. There was no set intended time.

21 Q. Did you not make plans on what time
22 you'd have her back?

23 A. No.

24 Q. Were you planning on bringing her
25 back to the house?

1 A Certain parts of it. Certain parts
2 of it were maybe more congested because there
3 would be people on both sides and then
4 sometimes you had to stand by to let someone
5 walk by but then sometimes there would be
6 space. Maybe as long as this conference room
7 where there wouldn't be anybody and then you
8 would get to a spot and there would be more
9 people.

10 Q. I'm not good with estimating
11 distances either. What would you say is the
12 length of this conference room?

13 MS. KRUSE: Object to form.

14 THE WITNESS: I don't know

15 BY MS. WOO:

16 Q. 25 feet?

17 MS. KRUSE: Same objection. If you
18 don't know, you don't know.

19 BY MS. WOO:

20 Q. Somewhere around there?

21 A. I could agree with that, 20, 25

22 Q. Can you estimate how many of these
23 conference rooms was the dock long?

24 MS. KRUSE: Object to form. She
25 already testified she doesn't know how long

1 it was.

2 THE WITNESS: No. I mean I can
3 picture it in my head but I can't estimate
4 how long it was.

5 BY MS. WOO:

6 Q. Is this the only dock at the park
7 that you're aware of?

8 A. That I saw.

9 Q. So when we're talking about the
10 dock, it's only this one?

11 A. Yes.

12 Q. Okay.

13 A. But I have not been back and I
14 wouldn't be surprised if I looked at a picture
15 and it was like completely different. You know
16 what I mean?

17 Q. Yeah.

18 A. Because I just know how that goes
19 with remembering something. I'm picturing one
20 dock and then if someone showed me a picture
21 like it was completely different, I wouldn't
22 even remember that.

23 Q. Okay. Did the length of the dock,
24 did it just keep going out into further and
25 deeper water?

1 A. Yes. I do know that.

2 Q. Could you tell at the deepest point,
3 the furthest out that the dock was, about how
4 deep the water was?

5 MS. KRUSE: Object to form.

6 BY MS. WOO:

7 Q. Could you see the bottom?

8 A. It was dark water.

9 Q. Okay. What were people mostly doing
10 on the dock?

11 A. Either fishing or sitting or
12 walking, watching people, just cruising.

13 Q. Do you remember the weather that
14 day?

15 A. It was mild and sunny.

16 Q. What would you consider mild? 60s,
17 50s?

18 A. Probably 50s. I remember it got
19 chilly quick because I had a coat on but mild
20 for -- it felt like a nice day.

21 Q. For that time of year?

22 A. Uh-huh.

23 Q. Okay. So was it the girls looking
24 for their phone what drew you and [redacted] to the
25 dock or were you already headed that way?

1 A. I don't know what drew us to the
2 dock. [redacted] was just kind of leading the way.
3 Like she felt very comfortable being there and
4 her mom said she had been there many times so I
5 was just kind of following [redacted] where she
6 wanted to go. If she wanted to play on the
7 playground I would have played on the
8 playground. If she wanted to take an adventure
9 walk, I would have done really whatever she
10 wanted to do.

11 Q. Okay. And besides chatting with
12 those girls, was she conversing with other
13 people on the dock too?

14 A. Anyone that was nearby.

15 Q. Did she seem pretty outgoing?

16 A. Yes.

17 Q. Okay. So at some point she
18 encountered somebody who you now know as
19 Michael Sanchez?

20 A. Uh-huh.

21 Q. "Yes"?

22 A. Yes.

23 Q. What all happened before that?

24 MS. KRUSE: Object to form.

25 BY MS. WOO:

1 Q So you got to the park. You've
2 talked about seeing the girls looking for their
3 phone off the dock. Between that time and
4 encountering Mr. Sanchez, what else was going
5 on?

6 A. At one point she actually got in the
7 water because she was going to help them get
8 their cell phone. So she got in the water and
9 I just stood on the dock and watched her and --

10 Q. How deep into the water did she get?
11 Like how high?

12 A. Probably up to her armpits, yeah, at
13 least her chest maybe. I remember her like
14 trying to stay out, you know, because it was
15 cold.

16 Q. Yeah. Was she able to locate the
17 phone?

18 A. No.

19 Q. What else happened?

20 A. I just watched her. She thought
21 that was super exciting. She thought she was
22 going to save the day getting this girl's phone
23 but then she came back and she was really cold
24 so she sat on -- she put her coat on and
25 wrapped her towel around herself and she just

1 sat on my and we were kind of watching them for
2 a while and they were reaching down and getting
3 all wet. It was just kind of like a little
4 entertainment show for us. So we ended up
5 somehow going to get a net for them and so we
6 walked down the dock and just borrowed
7 someone's net and brought it back.

8 Q. Like a fishing net?

9 A. Yeah. And someone, it seems like
10 someone else came to maybe help them but we
11 really didn't do anything with the net. We
12 just gave it -- we were just the couriers. We
13 went and got the net and gave it to them and
14 then I think it got to the point where they
15 must have just given up, I don't know. But
16 they gave us the net back and we really were
17 just going to return the net to the person that
18 we borrowed it from and then that -- she
19 started talking to people and then noticing
20 everyone fishing.

21 Q. Okay.

22 A. And there were lots of people
23 fishing.

24 Q. Was the person you borrowed the net
25 from Sanchez or somebody else?

1 A. I don't think it was Sanchez. I
2 think it was someone else.

3 Q. When she got in the water and was up
4 to her armpits had she taken off her clothes
5 and was she just in her bathing suit?

6 A. Uh-huh, yes.

7 Q. So she now notices people are
8 fishing off the dock?

9 A. Yes.

10 Q. Then what happened?

11 A. We were just entertained watching
12 people. She was asking people if she could see
13 their fish and just -- she didn't really have a
14 lot of inhibitions about talking to people and
15 asking if she could see the fish and she would
16 just look over the railing and look over the
17 water at people's catches or ask to see what's
18 in their coolers. It was just a nice way to
19 walk down the dock.

20 Q. Were people pretty responsive to
21 her?

22 A. For the most part.

23 Q. Okay. Did she ask any of these
24 people to let her help fish or --

25 A. I think she was just asking. What

1 are you catching? What are you -- you know, I
2 don't remember her asking to help

3 Q. Okay. So at some point she
4 encounters Sanchez?

5 A. Uh-huh.

6 Q. Tell me about that.

7 A. That was a little farther down the
8 dock because we had taken our time walking down
9 talking to everyone along the way and just the
10 usual -- he was just another person standing
11 there with various people around and just the
12 same exact conversations as with everyone, What
13 are you catching? Did you catch anything? And
14 they said they had caught some other fish. And
15 I was talking too, probably said like, What
16 kind of fish are you catching?

17 Q. Okay. When you say "they" said that
18 they had caught some fish, Sanchez and other
19 people as well?

20 A. Yes. Well, he happened to be with
21 his grandson so they were kind of both talking.

22 Q. How did you know that was his
23 grandson?

24 A. Because he said.

25 Q. Okay.

1 A. He told me.
 2 Q. Could you tell how old the grandson
 3 was?
 4 A. He was a teenager.
 5 Q. Did it appear any other individuals
 6 were there with Sanchez and his grandson?
 7 A. I don't know about with them but he
 8 seemed to be talking a lot to this other guy so
 9 I don't know if they came together or if they
 10 were just friends from being on the dock and
 11 fishing together.
 12 Q. Do you remember anything about that
 13 other guy, anything about his appearance, what
 14 he looked like? Can you describe him?
 15 A. I just remember he was a black guy
 16 and he seemed friendly and very talkative, just
 17 they had a fishing banter going on.
 18 Q. Okay. Can you estimate age?
 19 A. I don't remember.
 20 Q. If not, that's okay.
 21 A. Old is my age-ish. Not younger than
 22 30, but not older than 70, 50. I don't know.
 23 Q. That's okay.
 24 A. He was an adult.
 25 Q. All right. So -- sorry. You said

1 they were standing out on the dock where it's
 2 deeper?
 3 A. Yes. The only thing I do remember
 4 is we were sort of near the end. Like there
 5 was only -- because I do remember this Asian
 6 guy kind of at the end. He like owned the end
 7 of the dock. That was like his territory kind
 8 of. Because if you set up on the end, right,
 9 no one can really share it with you. So he had
 10 kind of like taken over the end. And some
 11 people had chairs, but I think that guy at the
 12 end kind of had a little chair and a lot of
 13 people had coolers so that would take up spots.
 14 Q. Do you remember what --
 15 A. But -- so anyway I was saying we
 16 were kind of close to the end at that point
 17 because we had already talked to a lot of
 18 people and they were kind of like the last and
 19 we thought we were going to turn around and go
 20 back.
 21 Q. Sanchez and his grandson were kind
 22 of the last people out there?
 23 A. I'm going to -- they were definitely
 24 a pair because I knew they were together
 25 because he told me that and then there were a

1 few scattered people. But we were near the
 2 end. There wasn't much -- it was -- we were
 3 towards the last 10 to 15 percent of the dock.
 4 There wasn't much farther we could go.
 5 MS. KRUSE: Before we get into --
 6 can we take a break?
 7 (Recess 10:47-10:55.)
 8 EXAMINATION (Continuing)
 9 BY MS. WOO:
 10 Q. So you're out there on the dock.
 11 You encounter Sanchez and his grandson. Tell
 12 me about that interaction between [REDACTED] and
 13 Sanchez.
 14 A. Okay. Nothing really stands out out
 15 of the ordinary, just that he was another
 16 person fishing on the dock. [REDACTED] didn't
 17 treat him any differently than anyone else.
 18 Q. Do you remember -- can you describe
 19 Sanchez?
 20 A. He seemed pretty tall, taller than
 21 me.
 22 Q. How tall are you?
 23 A. Five-six. He seemed like a pretty
 24 tall man, grandfather age -- well, I knew he
 25 was a grandfather but definitely had that salt

1 and pepper gray, looked to me like a typical
 2 fisherman. Like not dressed up in any way,
 3 wearing grungy fishing clothes, looked in
 4 place, like didn't look out of place.
 5 Q. Do you remember the grandson?
 6 A. I just remember he kind of had short
 7 hair. He was wearing jeans, not really. I do
 8 kind of remember thinking that it was nice that
 9 the grandson was going fishing with the
 10 grandfather just because I have boys and my
 11 dad's always trying to get them to do things
 12 with him when they're not busy and sometimes
 13 you have to force them.
 14 Q. Yeah.
 15 A. So I just remember kind of thinking
 16 it was nice like, oh -- I remember thinking
 17 this kid is nice to spend time with his
 18 grandfather, so just that's like a little first
 19 impression I got.
 20 Q. All right. So how did it come to be
 21 that [REDACTED] ended up helping Sanchez with the
 22 fishing?
 23 A. I've tried to remember that exactly
 24 and it's kind of a blur. It just seemed like
 25 it happened. I don't remember if he said, I've

1 got a fish, do you -- and [REDACTED] said, Can I
2 help? Or I don't remember if he said, I got a
3 fish, do you want to reel it in? I don't
4 remember exactly how that happened. It just
5 seemed like it happened.

6 We were standing there talking. A
7 fish came on the line and it may even be that
8 like the grandson or the other guy is. You got
9 a fish on, you know. Like one of those things
10 where when someone caught a fish, we would all
11 kind of like watch them because you would want
12 to see how big it was when it came in. So when
13 they realized there was a fish on the line,
14 everyone sort of perked up and noticed. And I
15 don't remember exactly how, if she said, Oh,
16 wow, can I help? Or if he said, Come here, do
17 you want to reel it in?

18 Q. Okay. Prior to that all the other
19 people that had -- that she had stopped and
20 talked to or that you had both stopped and
21 talked to, had anybody else caught a fish
22 during the time you were chatting?

23 A. Not right in front of us. They
24 either had fish in their buckets or they were
25 actively fishing.

1 Q. So one way or another [REDACTED] ends up
2 helping him reel it in. Describe what she did.

3 A. She was just kind of listening to
4 what you do. I just kind of remember him
5 saying, Hold on and you're going to put your
6 hand here. I just remember she was pretty
7 intent and kind of, it almost seemed like she
8 was taking it very seriously like she was kind
9 of excited about this was her first fish. I
10 remember her saying this was her first fish and
11 she was kind of talkative about it, like, This
12 is my first fish.

13 And so I -- she just seemed sort of
14 focused on and excited and proud of her -- she
15 just sort of seemed kind of enjoying it like
16 she was proud of it.

17 Q. Okay.

18 A. And I was happy -- I was like,
19 [REDACTED] that's awesome, you know. I do
20 remember it being like a good experience.

21 Q. So he told her to hold on. Hold on
22 to what?

23 A. The fishing pole.

24 Q. How were their bodies positioned at
25 that point?

1 A. Well, at that point I think he --
2 kind of like he was holding on to the fishing
3 pole and he said -- however she came over he
4 like allowed her to be positioned right in
5 front, right behind the pole, so he was right
6 behind her too holding on to the pole and he
7 let her kind of do the reeling part and he was
8 holding on to the pole.

9 Q. Do you remember --

10 A. He let her kind of just move it and
11 I think that she wasn't like smooth with it so
12 he was just sort of holding on to the pole.
13 (Indicating.)

14 Q. So you were just kind of
15 demonstrating reeling with one hand?

16 A. Yeah.

17 Q. And the other hand, was she holding
18 the pole with the other hand?

19 A. I'm assuming or maybe she had both
20 on the reel. I don't really know. All I know
21 is that we were kind of watching the whole
22 scene. I wasn't really focused on her hands
23 and just kind of talking to her.

24 Q. Do you recall whether Sanchez had
25 both of his hands on the pole?

1 A. He did, and I recall that mostly
2 because I took a picture of it but it was kind
3 of like an in-action situation. It wasn't like
4 a still thing. So his hands were on the pole
5 and then the fish came up and then the pole was
6 on the dock, so...

7 Q. Okay. So that whole thing from
8 start to finish where he says, I've got a fish,
9 and to him reeling it in and getting it on the
10 dock, about how much time passed do you think?

11 A. I don't know how long it takes to
12 reel in a fish reality wise, and how long did
13 it seem, I don't know.

14 MS KRUSE: I don't want you to
15 guess though.

16 THE WITNESS: Reeling in a fish
17 time, I don't know exactly and I would be
18 afraid to guess because then they might
19 say, No, you were totally off. That was
20 not 30 seconds. That was 12 hours. No, I
21 don't -- so I don't know but not that long.
22 A few instants, you know.

23 BY MS. WOO:

24 Q. It happened pretty quick?

25 A. Pretty quick.

1 A. But his clothes were kind of big so
2 I feel like those were like touching her
3 jacket, so I don't -- there was like I feel
4 like some space between them but he had a
5 jacket on so it was, you know, his jacket came
6 out like that far from his arms (indicating.)

7 MS. KRUSE: You're saying the jacket
8 could have been touching her?

9 THE WITNESS: Yes.

10 MS. KRUSE: But not his body?

11 THE WITNESS: I don't -- yeah.

12 Especially on the arms.

13 BY MS. WOO:

14 Q. So the arms you're referring to, I
15 am asking specifically about since he's
16 standing directly behind her, whether the front
17 part of his body was touching the backside of
18 her body?

19 A. No.

20 Q. No. And you saw that?

21 A. Right.

22 Q. You kind of held your hands up a
23 couple times saying there was space in between
24 them?

25 A. Uh-huh.

1 Q. What would you estimate was the
2 space between?

3 A. I'm going to say like that far
4 (indicating.)

5 MS. KRUSE: Three inches?

6 THE WITNESS: Three to four inches.

7 BY MS. WOO:

8 Q. Okay. So what happens after they
9 get this fish up on to the dock?

10 A. They just pulled it out and we were
11 all looking at it like, oh, wow, just pulled it
12 up. He took the hook out and I just assumed at
13 that point we'd either throw the fish back or
14 we'd give them the fish. I kind of remember
15 saying thank you and, Thanks for, you know,
16 letting [redacted] reel in her first fish. That
17 was -- that was fun.

18 And thought we would just walk back.
19 And I think he said, Well, you can keep it.
20 And I was thinking, Well, we don't really need
21 it, you know, we don't want the fish, but
22 [redacted] wanted to keep it so I guess at that
23 point I was -- I kind of think -- well, I was
24 like, We don't really have a way to keep it so
25 we don't need it, you can keep it. But then he

1 said, Well, we can just tie a string to it and
2 you can keep it in the water.

3 And she was all excited about that
4 and wanted to take it back and show everyone
5 her fish so I said, Okay. Well, we can take it
6 back, but what are we going to do with it? And
7 whatever, that was just a small part of the
8 conversation. But then we were just getting
9 the fish on a string so that she could somehow
10 keep ahold of it because it was still slightly
11 alive.

12 Q. All right. Was -- Sanchez was
13 working with her in doing that, getting the
14 fish on the string or were you doing that?

15 A. I was not putting the fish on the
16 string and I believe that he was putting -- it
17 was basically fishing line on the fish so that
18 she could sort of hold it like a leash.

19 Q. So did she end up keeping it for the
20 duration of the visit there?

21 A. Uh-huh.

22 Q. All right. "Yes"?

23 A. She was pretty proud of it.

24 Q. What did you end up doing with it
25 after -- when you left the park?

1 A. I happened to have a spare grocery
2 bag in my car and I put it in the grocery bag.

3 Q. So you ended up taking it with you
4 in your car and everything?

5 A. She ended up keeping it. She wanted
6 to keep it and I was happy for her to. She
7 really wanted to show it to her family.

8 Q. Okay. So after reeling in the fish
9 and Sanchez ties it with the fishing line, then
10 what happened?

11 A. Then -- so he ties it up. She's
12 kind of got it and we're like starting to make
13 our way. We're kind of done with that part of
14 it and I'm realizing like it's been a little
15 while now, we should start heading out of the
16 park. So we start heading back and I think
17 someone else caught a fish but she was
18 distracted because I think then someone else
19 had just brought one in and she might have --
20 she wanted to go touch it.

21 So I think she went to go touch a
22 fish or maybe it was even her own fish, but
23 then it was like, Oh, I need to rinse off my
24 hands. So that's when she goes to the side of
25 the dock that does not have a rail and she

1 just, from what I remember she just sort of
2 lays down and reaches her arms down and swishes
3 them around in the water and Sanchez came over
4 and just sort of like held on to her jacket and
5 I was like, She's all right. I said, She's all
6 right, she can swim. And he's like, Oh, no, I
7 have grandchildren. I just don't want her to
8 fall in.

9 So then that was about it and then
10 instantly, you know, she was done. She got up.
11 So we said, Okay. Thank you again. Goodbye.
12 And started walking farther, we were leaving.

13 The only other thing that stands out
14 is I remember at that point we had ran into two
15 kids she knew from school and her dad and I
16 think we talked to them for like just a few
17 words of conversation and she was excited about
18 her fish and she was just sort of like walking
19 along.

20 And then the main -- the next event
21 that happened was when we were kind of pretty
22 close to leaving. I mean, we had -- they were
23 far behind and he kind of comes up after us and
24 says, Hey, let me see your fish. I think you
25 need a longer string or something. And [REDACTED]

1 is like, Okay. And then he ties a longer --
2 gives her like an extension to her, somehow is
3 like tying another string on there so she
4 doesn't have to keep it like that long. He
5 just made it longer for her. (Indicating.)

6 Q. Okay.

7 A. And then that was it and I said,
8 Okay, [REDACTED] let's go. I was ready to go like
9 before that, and we just kept getting like
10 stopped along the way going back, so...

11 Q. So was it -- were you walking back
12 off the dock with the intention of heading
13 straight to the car and leaving?

14 A. That's in my mind, yes.

15 Q. Okay. But you kind of got waylaid
16 in there?

17 A. Well, we were taking our time
18 getting off the dock just like we kind of took
19 our time, but not as much time like we were
20 just sort of, Okay, that was fun, and we were,
21 you know, seeing if the fish was going to
22 survive.

23 Q. So was she walking back like --

24 A. She was on the right side of me
25 because that was the side without a rail so I

1 do remember. So she was on my right side
2 because for some reason going back to land, the
3 left side of the dock had a rail. The right
4 side did not until you got to the end and I
5 think both sides might have had a rail.

6 Q. So was she like walking with the
7 fish alongside her?

8 A. The fish was in the water. She was
9 kind of dragging the fish.

10 Q. And at the point that she got down
11 to rinse her hands off in the water?

12 A. That was before.

13 Q. Before what?

14 A. Before we were walking back with the
15 fish.

16 Q. Okay. When she got down into the
17 water to rinse off her hands, how far away was
18 Sanchez?

19 MS. KRUSE: Object to form.

20 THE WITNESS: I don't know, just in
21 that same general area.

22 BY MS. WOO:

23 Q. Okay. And --

24 A. It was right in, I'm going to say
25 our fishing territory, which was one side of

1 the dock to the other.

2 Q. Okay. So pretty close to the area
3 where she actually reeled in the fish?

4 A. Yes.

5 Q. And with her laying flat on the
6 ground she was able to reach the water?

7 A. Uh-huh.

8 Q. "Yes"?

9 MS. KRUSE: "Yes"?

10 THE WITNESS: Yes.

11 BY MS. WOO:

12 Q. Okay. Could she reach it -- like
13 did she have to lay flat on the ground in order
14 to get her hands wet or could she reach it by
15 kind of squatting and crouching?

16 MS. KRUSE: Object to form.

17 THE WITNESS: I don't know but she
18 was just, you know, trying to get her hands
19 rinsed off.

20 BY MS. WOO:

21 Q. Okay. You described Sanchez
22 grabbing her jacket?

23 A. Uh-huh.

24 Q. When she was laying flat on the
25 ground?

1 A. Uh-huh.
 2 Q. "Yes"?
 3 A. When she was like bending -- yeah,
 4 she was putting her hands in the water and I
 5 remember him kind of taking ahold of her jacket
 6 and I just said, She can swim. Like, You don't
 7 have to worry, like don't have to panic. And
 8 then he said, Oh, no. I've got grandchildren, I
 9 don't want her falling in. And then she was
 10 kind of at that point about done and got back
 11 up.
 12 Q. So when he grabbed her jacket --
 13 what was your reaction? Was it that he was
 14 overreacting?
 15 A. I thought he was overreacting. I
 16 mean I -- also way back in high school, I mean
 17 I was a lifeguard and I was kind of being
 18 protective of her too because I didn't want her
 19 to fall in the water. I just thought that
 20 would be an event we didn't, you know, I didn't
 21 want to have happen that day so I was kind of
 22 just, you know, watching her. But then I
 23 thought, like he was being really
 24 overprotective.
 25 Q. So did you kind of -- were you

1 trying to discourage him from touching her
 2 jacket by telling him that, She's okay, or what
 3 was the point of you saying, She's okay?
 4 A. Because, yeah, if it's other
 5 people's kids I might say, Be careful, but
 6 unless they're in real danger -- I mean I have
 7 touched people's kids before to, you know, save
 8 them from something, but...
 9 Q. This didn't seem like that?
 10 A. Usually if the patient is right
 11 there I'll be like, Watch, you know, so I
 12 thought that was not what I would do.
 13 Q. Had you, in any of the chatting that
 14 you were doing with Sanchez, explained to him
 15 what your relationship with [REDACTED] was?
 16 A. Huh-uh. I assumed he thought I was
 17 her mother, just figured, because...
 18 Q. Yeah. But -- so did you tell him
 19 anything about you two?
 20 A. No.
 21 Q. Was it mostly him talking about
 22 fishing with [REDACTED]?
 23 A. He was mostly talking about fishing.
 24 The only other thing he said was they had
 25 caught a lot of salmon at home on a different

1 fishing trip. That's the only thing I
 2 remember. And at one point he took a call from
 3 his wife but we weren't talking to them the
 4 whole time. I remember sort of talking to the
 5 other people and he was on the phone with his
 6 wife but nothing else.
 7 Q. So for that instance where he was --
 8 had ahold of her jacket, was that with one hand
 9 or two hands?
 10 A. I feel like it was sort of just like
 11 with one and he was sort of holding because it
 12 felt like -- it felt like her, you know, it was
 13 almost like pulling her up in a way.
 14 Q. And how long would you estimate he
 15 had ahold of her jacket?
 16 A. Just long enough for her to --
 17 almost like hand washing.
 18 Q. At any point while he had ahold of
 19 her jacket was she -- was her body in a
 20 different position than laying flat on the
 21 dock?
 22 A. I don't remember, but she did have
 23 to transition from laying on the dock to
 24 getting up and she got -- you know...
 25 Q. And was he still holding on at the

1 point that she was getting up?
 2 A. I don't remember that either, but I
 3 just remember watching like, oh, sort of like
 4 watching her because I didn't want her to fall
 5 in, but I don't know if he held her jacket the
 6 whole entire time because then I kind of came
 7 over but then she got up and then we kind of
 8 went on our way.
 9 Q. Okay. So how far from her were you
 10 at the point that he grabbed her by the jacket?
 11 A. I could have probably grabbed her
 12 jacket too.
 13 Q. Okay.
 14 A. I mean it was just sort of like she
 15 was right there.
 16 Q. Within arm's reach?
 17 A. Yeah.
 18 Q. Is it fair to say that you're kind
 19 of paying more attention to [REDACTED] at this time
 20 than you are to Sanchez and kind of what he's
 21 doing?
 22 MS. KRUSE: Object to form.
 23 THE WITNESS: Yes.
 24 BY MS. WOO:
 25 Q. Okay. So were those two instances

1 the extent of the interaction that [REDACTED] had
2 with Sanchez that you saw?

3 A. By "two" you mean catching the fish
4 and washing the hands?

5 Q. Yes.

6 A. Well, no, because he followed us.

7 Q. The third one where he gave her
8 additional line?

9 A. Yeah.

10 Q. Okay. At any point during that
11 third interaction when he tied the line,
12 additional line, did he get within a pretty
13 close distance to her again?

14 A. I would --

15 MS. KRUSE: Object to form.

16 BY MS. WOO:

17 Q. Go ahead.

18 A. By "pretty close"?

19 Q. As he had when he grabbed her?

20 A. Well, he could reach the fish and
21 she was right there too.

22 Q. Did they have any physical contact
23 at that point?

24 A. Not that I saw.

25 Q. And was that third interaction

1 pretty brief as well?

2 A. Yeah. I mean I could just -- as
3 long as it takes to like tie a shoe. Like I
4 felt it was just, you know. I know I'm like
5 just there and there's the fish and, you know
6 (indicating.)

7 Q. So she's -- then she's kind of
8 carrying this fish out of the water?

9 A. Well, when we got to the end of the
10 dock but she didn't take it out of the water
11 until we got to like the end of the dock, where
12 the dock meets the land.

13 Q. And then it went into a grocery bag
14 to your car?

15 A. Yeah. When he tied the string on he
16 was tying it to the end of the string, not to
17 the fish again.

18 Q. Right.

19 A. Took the end of one string and tied
20 it to another string.

21 Q. Like the end of the leash?

22 A. So the fish was kind of still in the
23 water and she was trying to move it around
24 to -- I kind of remember saying, Give it a
25 little move so it can revive it.

1 Q. Was it pretty dead?

2 A. I don't remember. I kind of
3 remember that I thought, oh, this is like --
4 whatever. I'm like, Yeah, it looks great. But
5 I didn't think it was very healthy looking,
6 like not happy.

7 Q. There was no expectation this fish
8 was going to survive the drive home?

9 A. No, not at all.

10 Q. Okay.

11 A. I knew that. I was just --

12 Q. What was -- did [REDACTED] seem to think
13 that --

14 A. No, I don't know if she thought that
15 or not actually.

16 Q. Okay.

17 A. I don't think she thinks that it
18 would survive from the lake to the house.

19 Q. So you get back to the car
20 eventually and at some point does [REDACTED]
21 disclose to you that something had happened?

22 A. Yes.

23 Q. Okay. Tell me about that.

24 A. We were already leaving the park.
25 She was in the back seat and I was in the front

1 seat and we were just still in the parking lot
2 and I just remember her saying my name and she
3 said, Do you know that man on the dock? And I
4 said, What man? Or maybe she said, Do you
5 remember that man I caught the fish? And I
6 said -- and she said, He touched me
7 inappropriately.

8 And I just remember stopping the
9 car. We weren't going very fast and I was
10 like, What? I just remember turning around and
11 going -- in my mind I'm like starting to -- I
12 didn't really know what to think. I was kind
13 of in shock and kind of speechless and I said,
14 Are you sure? Or maybe I said, What do you
15 mean? And she said, He touched my privates.
16 And I was just kind of in shock and I might
17 have said, What man? I don't remember exactly
18 then because that part definitely is a blur.
19 but...

20 Q. So just prior to her saying, Darla,
21 remember that man, were you talking about
22 anything?

23 A. Probably like we were talking about
24 what we were going to go do on the way home and
25 just small chitchat.

1 Q. Okay. But you're still -- you're
 2 just making your way out of the parking lot at
 3 this point?
 4 A. Yes. From -- probably from what I
 5 remember like halfway out of the parking lot
 6 Q. So you were talking but not about
 7 anything having to do with the guy on the dock?
 8 A. No.
 9 Q. So this -- she brought this up on
 10 her own?
 11 A. Yes. Maybe we were saying, What are
 12 you going to do with the fish? Just I don't
 13 remember that at all.
 14 Q. Okay. And the words "he touched me
 15 inappropriately," do you remember those are the
 16 words that she used?
 17 A. Uh-huh, yes.
 18 Q. Yes. Okay. How did that strike
 19 you, that word choice?
 20 A. Mature.
 21 Q. So then you followed up with either,
 22 Are you sure, or, What do you mean? Tell me
 23 the best you can remember what happened after
 24 that.
 25 A. I think I do remember turning around

1 and looking at her and I said, [REDACTED] what do
 2 you mean, or, Are you sure? I think I said --
 3 I must -- I don't know if I must have but I
 4 think I said, What do you mean? And she said,
 5 He touched my privates. And I might have
 6 said -- I don't know what I said. I probably
 7 said like, Really? And then I think I just was
 8 just kind of like, oh, pretty devastated like,
 9 Oh, my gosh, really? And --
 10 Q. Did you believe her?
 11 A. I -- I mean I did. I just took her
 12 for what she said. I didn't know not to
 13 believe her.
 14 Q. How would you describe her demeanor
 15 as she's telling you this?
 16 A. Very matter of fact. Very almost
 17 like innocent.
 18 Q. Did that demeanor surprise you or
 19 how did it strike you? Is it what you
 20 expected?
 21 A. It definitely threw me off because
 22 I'm not used to kids being so communicative
 23 like that at that age, you know.
 24 Q. All right.
 25 A. And I guess so willing and I mean, I

1 was glad. I think I said, I'm glad you told
 2 me.
 3 Q. Is this the only time that a child
 4 has reported being sexually abused to you?
 5 A. Yes.
 6 Q. Did she provide any other details
 7 about what happened?
 8 A. No.
 9 Q. Just, He touched me inappropriately.
 10 He touched my privates?
 11 A. Yes.
 12 Q. Did you ask any other questions for
 13 clarification on exactly what she meant by her
 14 privates or when or how it happened?
 15 A. I might have said, When, and I think
 16 she said, Down on the dock, and then I might
 17 have said, Where on the dock? And then she
 18 might have told me but I don't remember that
 19 part at all. I just kind of remember going,
 20 When, you know, just asking her like just what
 21 she remembered, but I don't really remember
 22 what she said. It was just pretty vague, "down
 23 on the dock."
 24 Q. Okay. How do you -- how would you
 25 describe your demeanor the best you can

1 remember?
 2 A. I think my heart was racing and
 3 like, oh, my gosh, this is a serious situation,
 4 and I was just sort of getting a little freaked
 5 out like, oh, what --
 6 Q. Were you making an effort to kind of
 7 keep cool, though, in front of her?
 8 A. Yes. I was very calm. I was like,
 9 Okay.
 10 Q. Did she -- so you said she
 11 additionally told you that it happened down on
 12 the dock?
 13 A. Uh-huh.
 14 Q. Any other details that she provided
 15 you can remember?
 16 A. No.
 17 Q. So you're trying to keep calm but
 18 what happens next?
 19 A. Well, it just so happened as we're
 20 pulling out her mom calls and I just remember
 21 sort of being so discombobulated I sort of look
 22 at the phone and I talked to her and she just
 23 said -- from what I can recall she was just
 24 calling to check in on us and see what we were
 25 doing and I said, Well -- like I didn't even

1 know what to say. I was like, Well, we were
2 leaving to go do something but I have to tell
3 you [redacted] just told me something that's really
4 bad, and I said, She literally just told me
5 like ten -- you know, like right now. Like I
6 just found out.

7 We're still in the middle of the
8 parking lot and I, you know, have to go back
9 right now and have to call the police and I was
10 sort of like, I gotta go. You know what I
11 mean? We got to go back. In my mind I'm
12 thinking we're in a movie or something and I
13 have to make sure this guy doesn't leave the
14 park.

15 I was thinking -- when she told me
16 this I was thinking now he's going to try to
17 escape or something and I have to like call the
18 police and go back and get it. You know, I
19 don't know. It was just really weird.

20 Q. Yeah.

21 A. So I just called the police right
22 there and they said I had to go back and I was
23 like, oh -- I didn't even want to go back. I
24 didn't even want to take her back there but
25 they said, You have to go back. So I remember

1 we kind of parked a little further away because
2 I was trying to see if he was still there but
3 the dock was pretty long and there was a lot of
4 people so I didn't even know. I was thinking
5 maybe he got away or something. If he did this
6 I was thinking, oh, my gosh, like, you know,
7 but I didn't want to say anything in front of
8 [redacted] or do anything. So I was just sitting
9 there. Yes, you know, we're waiting right here

10 Q. So you're on the phone with 911 in
11 the car and [redacted] is in the back of the car
12 also?

13 A. Back seat.

14 Q. Okay. Police arrive?

15 A. (Witness nods head up and down.)

16 Q. And what happens when the police get
17 there?

18 A. I got out of the car. We were just
19 sort of staying in the car with the heat on
20 because by this time we were cold. I told them
21 what happened and they asked me -- I don't
22 remember the order that all of this happened
23 exactly but I just remember them asking me what
24 happened and I said -- I told them. They asked
25 for a description and I was trying to describe

1 him and they said, Can you come down to the
2 dock? And I said, No. I didn't want to go
3 back down there and I didn't want to take
4 [redacted] back down there

5 And they were like asking me what he
6 was wearing and I said, I can't -- I don't even
7 know. I don't remember what he was wearing but
8 then I remembered that I had pictures so I gave
9 them the pictures. I said, Here, I have these
10 pictures, so I was glad I had that at that
11 point. I was like, oh, just offering. So I
12 gave them the pictures and then I just kind of
13 waited there with [redacted] and we didn't even
14 have any idea what was going on but I was just
15 hoping that he was there and they were going to
16 have this like perfect description and picture.

17 And then we sort of waited it
18 seemed like a pretty long time and then I was
19 just -- [redacted] was in the back seat and I
20 remember either her mom called me back or I
21 called her back, I don't remember, and talked
22 to her and then saw them bringing -- I saw the
23 police -- I could kind of see them coming up
24 the dock and I was like, oh -- my heart was
25 like, oh, my gosh, they're bringing him up.

1 And then his friend and grandson
2 were kind of like lagging, you know, a little
3 bit behind too. And the police car was not
4 that -- was on the other side of the parking
5 lot and I was like, oh. And I just remember
6 the friend like pointing at us and I was like,
7 oh, my gosh he's going to get my license plate
8 number. So anyway, that's pretty much what I
9 remember.

10 Q. Okay. They asked you if you would
11 go out on to the dock with them and you didn't
12 want to?

13 A. Uh-huh. I didn't want to.

14 Q. What's the reason you didn't want
15 to?

16 A. I didn't want to take [redacted] back
17 down there and I didn't want to go back down
18 there.

19 Q. Were you scared for your personal
20 safety or [redacted] or both?

21 A. Both really because I just thought,
22 oh, my gosh, if he's -- I didn't know, you
23 know, so...

24 Q. Okay. And at any point did the
25 police ask you to identify, to say, to confirm

1 about what happened?
 2 A. Uh-huh.
 3 MS KRUSE: Object to form.
 4 BY MS. WOO:
 5 Q. How would you have expected a child
 6 to react?
 7 MS. KRUSE: Object to form. Calls
 8 for speculation.
 9 THE WITNESS: I don't know. Should
 10 I speculate? No. I don't know.
 11 BY MS. WOO:
 12 Q. I don't want you to speculate but if
 13 a child is reporting to you that they've been
 14 touched inappropriately --
 15 A. Something bad happened.
 16 Q. -- what would you expect? Would you
 17 expect a child to be screaming and hysterical?
 18 People have different kind of notions about how
 19 kids should respond, so I'm curious, do you
 20 have any?
 21 MS. KRUSE: Same objection.
 22 THE WITNESS: I would expect it to
 23 be more vague, I guess. I only have -- I
 24 actually did remember something. You asked
 25 me earlier if I'd ever known -- I remember

1 a neighbor when my kids were little. Their
 2 kid said something -- but they didn't say
 3 it like that. They just said like, We were
 4 playing upstairs and so and so did
 5 something, but I would not expect it to be
 6 so mature. So I don't know or maybe I
 7 would expect someone to be upset. I don't
 8 know.
 9 BY MS. WOO:
 10 Q. Okay. So was there anything about
 11 the way that [redacted] told you about what
 12 happened, the way that she was acting when she
 13 told you that affected whether or not you
 14 believed her?
 15 MS. KRUSE: Object to form. Asked
 16 and answered.
 17 THE WITNESS: No.
 18 BY MS. WOO:
 19 Q. Okay. Do you happen to remember the
 20 names of the individuals at Big Brothers that
 21 you spoke to about what happened?
 22 A. No, but I think they have a record
 23 of it.
 24 Q. Okay. Do you remember how many
 25 different individuals it was?

1 A. That I spoke to after?
 2 Q. Uh-huh.
 3 A. Maybe two.
 4 Q. Did -- I may have asked you this
 5 already. I'm sorry if I did. Did you continue
 6 to volunteer with Big Brothers after this?
 7 A. No.
 8 Q. Was that because you chose not to?
 9 Did Big Brothers choose not to have you back?
 10 A. They said they could give me another
 11 match but I was just a little skattish about
 12 anything like that again.
 13 Q. Okay. So if you had been
 14 interested, they would have allowed you to
 15 continue volunteering?
 16 A. It seemed like that
 17 MS. WOO: I think I'm almost done.
 18 Let me just have a few minutes.
 19 BY MS. WOO:
 20 Q. Okay. During the entire trip to the
 21 park, what would you say was the furthest
 22 distance that [redacted] got away from you?
 23 A. Maybe from like here to that wall
 24 when she was running because she was running
 25 out ahead of me. She was kind of ahead of me

1 most of the time and sometimes she was running
 2 and I would say, Slow down.
 3 Q. 15ish feet?
 4 A. Oh, I wish we had a tape measure
 5 because in my mind it was probably like that
 6 far.
 7 Q. Okay.
 8 MS. KRUSE: So are you agreeing that
 9 it was 15 feet or --
 10 THE WITNESS: Okay. I could pace it
 11 out. Okay. 15.
 12 MS. KRUSE: You don't have to agree
 13 that's 15. You don't have to. I just want
 14 to make sure that the record is clear that
 15 you think it's still this distance to the
 16 wall but you don't know how far that is or
 17 do you know how far that is?
 18 THE WITNESS: Okay. I'll say 10 to
 19 15 feet. Just far enough for her to run
 20 five -- you know, a couple steps, and I
 21 just remember saying, [redacted] slow down,
 22 you're going to fall. Just, yeah.
 23 BY MS. WOO:
 24 Q. And just so that you know, I'm not
 25 trying to trick you with distances either

Exhibit B

1 Q. All right. So you said he was
2 positioned right behind her?

3 A. Yes.

4 Q. How close were they standing?

5 A. Right behind -- he was right behind
6 her because -- as long as his arms are to the
7 pole.

8 Q. All right. Could you tell, was any
9 part of his body touching her? Is that how
10 close they were?

11 A. Not smush touching her but his arms
12 were probably touching her. I wouldn't say
13 that -- I do remember saying to her like, Okay,
14 K[KMP], hold on tight, because it seemed like
15 he was really worried about the pole falling
16 into the water when he gave it to her. So I
17 was like, Hold on tight, and he said, Don't
18 worry, I'm not letting go of this pole, it's an
19 expensive pole.

20 And I kind of remember him saying
21 that and I was like, Okay. And then I was
22 worried, oh, no, he's going to be mad if we
23 drop the pole in the water or something, so
24 that just sort of stood in my mind for that
25 moment.

Exhibit C

FEDERAL WAY POLICE DEPARTMENT

STATEMENT

CASE NUMBER 16-6581

Victim Witness

Date: 04-29-16 Time Taken: 2013 Officer: T. PAU

Location Taken: STEEL LAKE PARK / 2410 N 1312 ST

Statement Of: MONROE, JOHN WAYNE Date of Birth: 10-18-57

Residence address: 33314 22 41 ST

HOME PHONE: 206-964-9175 CELL PHONE: _____

SWW

ON 04-29-16, A LITTLE AFTER 5:00PM, I WAS ON THE DOCK AT STEEL LAKE PARK FISHING WITH SEVERAL OTHER PEOPLE. A MOTHER AND LITTLE DAUGHTER CAME TO THE DOCK AND WAS LAUGHING AND TALKING WITH US. THE LITTLE GIRL WAS PLAYING WITH FISH WE HAD ALREADY CAUGHT. A GENTLEMAN HOOKED A FISH AND ASKED IF THE LITTLE GIRL ^{WANTED} TO REEL IT IN. HE HELD THE FISHING POLE WHILE THE LITTLE GIRL REELED IN THE FISH. THE MOTHER WAS THERE THE WHOLE TIME AND I WAS STANDING RIGHT NEXT TO THEM. AFTER REELING IN THE FISH, THE MAN TIED A STRAP SO SHE COULD HAVE THE FISH ON HER WRIST. THE LITTLE GIRL AND HER MOTHER WALKED THE FISH DOWN THE DOCK, SAID GOODBYE AND LEFT. THEY DID NOT RETURN TO THE DOCK AFTER THAT.

John

This statement was prepared by OFF. T. PAU in my presence. It contains 1 pages in its entirety. I have reviewed the entire statement and find it to be true and accurate to the best of my knowledge. I am willing to testify in court regarding the facts contained in this statement. I declare, under penalty of perjury under the laws of the state of Washington, that the entire statement is true and correct. Signed in

FEDERAL WAY, Washington, on 04-29-16
(City) (Date)

Signature: John W Monroe Date: 4-29-16

Exhibit D

FEDERAL WAY POLICE DEPARTMENT

STATEMENT

CASE NUMBER 16-6581

Victim Witness

Date: 04-29-16 Time Taken: 1934 Officer: T. FALL

Location Taken: STEEL LAKE PARK / 2410 S 512 ST

Statement Of: MATTHEW J. KILBOURN Date of Birth: 01-07-98

Residence address: 37427 40 AVE S AUBURN, WA 98001

HOME PHONE: 253.227.1287 CELL PHONE: _____

MJK

ON 04-29-16 MY GRANDPA, MICHAEL GONCHEZ, AND I CAME TO STEEL LAKE PARK AND WERE FISHING FROM THE DOCK ^{AT THE} ~~AT~~ ABOUT 11:00 AM. ~~AT~~ ~~SOME~~ ~~TIME~~ BEFORE 3:30 PM A WOMAN AND HER DAUGHTER WERE WALKING UP AND ON THE DOCK, HANGING OUT LOOKING AT ALL THE PEOPLE FISHING ALONG THE DOCK. AT ONE POINT MY GRANDPA ASKED THE LITTLE GIRL IF SHE WANTED TO TRY AND CATCH A FISH. THE GIRL SAID YES AND HER MOTHER WAS AWARE AND OKAY WITH IT. MY GRANDPA HELPED THE GIRL BY HOLDING THE FISHING POLE AND ALLOWING THE GIRL TO REEL IN THE LINE. SHE CAUGHT A FISH SO MY GRANDPA CUT THE LINE AND MADE A LOOP IN IT SO SHE COULD CARRY IT. THE GIRL WAS HAPPY AND WALKING AROUND WITH THE FISH SHE CAUGHT. THEN THE GIRL, HER MOTHER, AND MY GRANDPA WALKED TO THE CORNER OF THE DOCK. MY GRANDPA TOLD THEM HAVE A NICE DAY AND HE WALKED BACK TO WHERE WE WERE →

This statement was prepared by OFFICER T. FALL in my presence. It contains 2 pages in its entirety. I have reviewed the entire statement and find it to be true and accurate to the best of my knowledge. I am willing to testify in court regarding the facts contained in this statement. I declare, under penalty of perjury under the laws of the state of Washington, that the entire statement is true and correct. Signed in

FEDERAL WAY, Washington, on 04-29-16
[City] [Date]

Signature: [Handwritten Signature] Date: 4/29/16

FEDERAL WAY POLICE DEPARTMENT
STATEMENT (CONTINUED)

Victim Witness

CASE NUMBER: 16-6581

~~FIGHTING~~

THE LITTLE GIRL AND HER MOTHER LEFT AND
DID NOT COME BACK TO THE DECK.

MY GRANDPA DID NOT TOUCH THE LITTLE GIRL AT
ANYTIME. HE WAS HOLDING THE FLUORINE RED THE
ENTIRE TIME WITH HER.

(MJP)

This statement was prepared by OFF. T. PAU in my presence.
It contains 2 pages in its entirety. I have reviewed the entire statement and find it to be true
and accurate to the best of my knowledge. I am willing to testify in court regarding the facts
contained in this statement. I declare, under penalty of perjury under the laws of the state of
Washington, that the entire statement is true and correct. Signed in

FEDERAL WAY, Washington, on 04-29-16
[City] [Date]

Signature: [Handwritten Signature]

Date: 4/29/16

Exhibit E



Federal Way Police Department

Police Report for Incident 160006581

Nature: Sex Offense
Location: P0080

Address: 2410 S 312TH ST
Federal Way WA 98003

Received By: A. Myers	How Received: T	Agency: FWPD
Responsible Officers: J. Clary	Disposition: ACT 04/29/16	
When Reported: 21:27:47 04/29/16	Occurred Between: 21:27:47 04/29/16 and 21:27:47 04/29/16	

Assigned To:	Detail:	Date Assigned: **/**/**
Status:	Status Date: **/**/**	Due Date: **/**/**

Complainant:

Last:	First:	Mid:
DOB: **/**/**	Dr Lic:	Address:
Race:	Sex:	Phone:
		City:

Alert Codes:

Offense Codes

Reported:	Observed:
-----------	-----------

Additional Offense: SOFF Sex Off. Forcible Fondling

Circumstances

- AT02 Digital Photographs Taken
- BM99 Unknown Bias
- IC01 None
- LF46 Recreation/Entertainment
- RC41 Victim was Stranger
- WA90 None
- IBR NIBRS VALIDATION

Responding Officers:

Unit :

- N. WONG
- B. Losvar

Responsible Officer: J. Clary

Agency: FWPD

Received By: A. Myers

Last Radio Log: **/**/** **/**/**

How Received: T Telephone

Clearance: AAF Cleared Adult Arrest - Felony

When Reported: 21:27:47 04/29/16

Disposition: ACT Date: 04/29/16

05/03/16

Judicial Status:

Occurred between: 21:27:47 04/29/16

Misc Entry:

and: 21:27:47 04/29/16

Modus Operandi:

Description :

Method :

Involvements

Date	Type	Description	
04/30/16	Want.	NON-EXP;STEEL LAKE PARK;2410 S 312	Originated by
		ST	
05/02/16	Name	TISHMAN, DARLA JEAN	WITNESS
04/30/16	Name	F[CV], SARA	OTHER
04/29/16	Name	MONROE, JOHN WAYNE	WITNESS
04/29/16	Name	SANCHEZ, MICHAEL WAYNE	SUSPECT
04/29/16	Name	KILBOURN, MATTHEW J	WITNESS
04/29/16	Name	F[CV] K[CV] M	VICTIM
04/29/16	Name	JOINSON, JAYSON P	OTHER/WITNESS
04/29/16	Property	Other SWABS 0	SEIZED
04/29/16	Property	PNK Clothing BATHINGSUIT 0	SEIZED
04/29/16	Property	BLK Clothing SKIRT 0	SEIZED
04/29/16	Property	BLU Clothing SHIRT 0	SEIZED
04/29/16	Property	CAM Clothing Jacket 1	SEIZED

05/02/16

Narrative

16006581/SEX OFFENSE/ACTIVE

A juvenile female victim reported being inappropriately touched at Steel Lake Park. The suspect was located and arrested at the scene.2W37

Responsible LEO:

Approved by:

Date

05/02/16

Supplement

160006581/T. PAU/SUPPLEMENTAL REPORT

REPORTING OFFICER:

Pau, Tanner/0197

ADDITIONAL OFFICER(S) INVOLVED:

Officer N. Wong
Officer P. Loavar

CHRONOLOGICAL INVESTIGATION:

On 04-29-16, I was assigned to uniformed patrol in the City of Federal Way as 2W35. At about 1924 hours, I responded to Steel Lake Park, located at 2410 S 312th Street, to assist other units on a sex offense investigation. I arrived at about 1926 hours.

Upon arrival, I spoke with Officer N. Wong at the northernmost parking lot of the park near the boat launch/dock area. Officer Wong advised that he was investigating a sex offense and requested that I speak with the grandson of the suspect and obtain a written statement from him if he was willing. Officer Wong identified a white male, seated in the driver's seat of a silver colored pickup truck that was parked in the parking lot, as the suspect's grandson. Officer Wong and I approached the male and Officer Wong explained to the male, later identified via Washington State driver's license as Matthew Kilbourn, that I was there to obtain a statement from him. I then identified myself to Matthew and asked him to come to my patrol vehicle to speak with me.

Matthew came to my vehicle and I allowed him into the rear seat of the vehicle. I advised Matthew that I was assisting with the alleged assault investigation. I asked Matthew what happened and he stated that he and his grandfather, Michael Sanchez, came to Steel Lake Park to fish off the dock. He stated that they arrived at about 1100 hours. Matthew stated that sometime before 1530 hours, a woman and her daughter came to the dock and were walking up and down the dock, looking at all the other people fishing. He stated that at one point, Michael asked the little girl if she wanted to try and catch a fish, to which the girl said yes. Matthew stated that the mother was aware and okay it. Matthew stated that Michael then helped the girl by holding the fishing pole and allowing her to reel in the line. Matthew stated that she caught a fish so Michael cut the line and made a loop in it so that the girl could tie it around his wrist and take her fish with her. Matthew stated that Michael, the mother and the little girl walked to the corner of the dock. He stated that Michael told them to have a nice day and Michael walked back to where he and Matthew were fishing on the dock. Matthew stated that the girl and her mother did not return to the dock after leaving.

Matthew stated that he did not see Michael touch the little girl at any time during his contact with her. Matthew provided a written statement in reference to this incident. Refer to written statement provided by Matthew Kilbourn.

After speaking with Matthew and while still in the parking lot, a male approached me and said "he didn't touch that girl." The male, identified via Washington State driver's license as John Monroe, had apparently briefly spoke with Matthew, after I did, while returning to his vehicle in the parking lot. John stated that he was a witness to the interaction between the male that police arrested, John did not know his name but was familiar with him and his

05/02/16

grandson from prior occasions fishing, and a little girl while he was fishing at the dock as well.

John stated that a little after 1700 hours, while he was fishing on the dock with several other people, a mother and her little daughter came to the dock. He stated that they were laughing and talking to him and the other people fishing and the little girl was playing with fish that had already been caught. John stated that the male had hooked a fish and asked the little girl if she wanted to reel it in. John stated that the male held the fishing pole with the little girl reeled in the fish. He stated that the girl's mother was standing right there and that he was right next to them while this was happening. John stated that the male then tied the string so that the girl could hang the fish from her wrist. He stated that the little girl and her mother walked the fish down the dock, said goodbye, left the dock and did not return.

John provided a written statement in reference to this incident. Refer to written statement provided by John Monroe.

After speaking with John, he advised that there may be another possible witness still at the dock and he proceeded to the dock to attempt to locate him. Shortly thereafter, John returned and stated that another witness was coming to the parking lot to speak with me.

After about five minutes, a male, identified via Washington State driver's license as Jayson Johnson, walked to the parking lot from the dock area. John advised that this was the witness he had located. I then spoke with Jayson away from John, at his vehicle. Jayson stated that he came to Steel Lake Park to fish and upon arriving at the dock, he recognized a male who was fishing there, from prior fishing occasions. He stated that as far as he knew the male was always helpful to other fishermen and kids. Jayson stated that he also saw a little girl and her mother with a fish on a line walking down the dock. Jayson stated that he did not see much interaction between the male and the little girl. He stated that he did not see any interaction or contact that he felt was out of line in any way. Jayson identified that male that was arrested by police as the male he was referring to.

Jayson did not wish to provide a written statement at the time but did provide his contact information. Above listed statement was taken verbally from Jayson.

After speaking with Jayson, I advised Officer Wong of the statements provided. I then cleared from the scene, concluding my involvement in this investigation.

RECOMMENDATION:

Refer to primary report.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT ALL STATEMENTS MADE HEREIN ARE TRUE AND ACCURATE AND THAT I AM ENTERING MY AUTHORIZED USER ID AND PASSWORD TO AUTHENTICATE IT (RCW 9A.72.085).

Electronically Signed: Yes Signature: Tanner Pau/0197

Federal Way/King/Washington Date: 04-29-16

05/02/16

Supplement

160006581/Losvar/04-29-16

1. REPORTING OFFICER:

E Losvar

2. CASE NUMBER:

160006581

3. ADDITIONAL OFFICERS INVOLVED:

Refer to main report

4. CHRONOLOGICAL INVESTIGATION:

On 04/29/16 at 1544 hours, I was in full uniformed operating a marked patrol vehicle. Officer Wong and I were assigned to Steel Lake park located at 2410 S 312 St Federal Way. Regarding a sex assault type call. The reporting party who identified herself as Darla Fishman. Reported about [fifteen minutes ago her nine year sister was touched inappropriately by an unknown male while on the dock there. Darla reported she believes the unknown male is still on the dock and can point him out to Police. Darla stated she is waiting for Police in the parking lot near the fishing dock.

Upon arrival, I observed Officer Wong speaking with an adult female and juvenile female near the parking lot next to the fishing dock. I approached Officer Wong and overheard the juvenile female tell Officer Wong she was touched by an unknown male on her private area outside her clothing, and under her skirt, but still outside her clothing. Refer to Officer Wong's report for additional information.

The adult female and juvenile female were later identified as Daral Fishman (adult) and K [CV] 9 [CV] (9 years old).

Darla stated K [CV] brought this to her attention about fifteen minutes after it occurred. Darla described the male as, White, about 50 years old, wearing a camouflage jacket and camouflage hat. Stated she thinks he's still on the dock.

It should be noted, I observed K [CV]'s demeanor as nervous and scared. No injuries reported or observed.

Officer Wong and I made checks on the fishing dock for the suspect. We contacted a male matching the description of suspect. Escorted him off the dock to the beach and detained him in handcuffs without incident. This male was identified as Michael Sanchez via his Washington State ID with matching photo. He was informed of the reason why he was being detained

Officer Wong stood by with Michael and contacted Darla and K [CV] near the parking lot. Darla positively identified the detained male as the person K [CV] told her touched her.

I informed Officer Wong that Michael was positively ID. Michael was advised he

was under arrest and placed in the rear of my patrol vehicle. After Michael was in the rear of my patrol vehicle, Officer Wong informed me that he had advised Michael of his Miranda rights.

I then transported Michael to the Federal Way Police Department and placed him in holding cell number 2 without incident. It should be noted Michael advised me he was type two diabetic and was not feeling well. Fire responded, treated and released Michael at the Police Station.

Detectives, Kim and Durrell responded and interviewed Michael at the Police Station. Refer to Detectives reports for additional information.

I completed the Superform via Ingress and transported Michael to SCORE for booking and processing without incident.

This concludes my involvement in this case.

5. INJURIES:

Refer to main report

6. SCENE:

Refer to main report

7. EVIDENCE/PROPERTY:

Refer to main report

8. SUSPECT INFORMATION:

Refer to main report

9. RECOMMENDATIONS:

Forward to CIS

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT ALL STATEMENTS MADE HEREIN ARE TRUE AND ACCURATE AND THAT I AM ENTERING MY AUTHORIZED USER ID AND PASSWORD TO AUTHENTICATE IT (RCW 9A.72.063).

Electronically Signed: Yes Signature: Officer Blake Loewer 200

Federal Way/King/Washington Date: 04/28/16

Supplement

16-0006581/ N. WONG #195/04-30-16

1. REPORTING OFFICER:
N. WONG #195

2. CASE NUMBER:
16-0006581

3. ADDITIONAL OFFICERS INVOLVED:
Officer Pau obtained witness statements.
Officer Losvar transported the suspect.
Detectives responded to interview the suspect.

4. CHRONOLOGICAL INVESTIGATION:
On 4/29/16 at 1841, I was dispatched to a reported sex offense at Steel Lake Park, 2410 S 312 St. Dispatch advised that a 9 year old girl had been 'touched inappropriately' by a suspect described as a white male in his 60's, 6'0" with grey hair and a camouflage jacket.

I arrived with Officer Losvar at 1854, and contacted the reporting party, Darla Fishman, and the victim, nine year old K[CV] P[CV]. Darla said she was K[CV]'s older sister, but it was later clarified that Darla meant she is a mentor with the Big Brothers Big Sisters program, and that she was assigned to K[CV] through this program. Darla said she had been at the park with K[CV] for some time, and as they were leaving, K[CV] had disclosed to her that she had been 'touched inappropriately while they were on the dock.

Darla had asked K[CV] what she meant, and said K[CV] related that a man had touched her 'private parts.' Darla told me that the suspect had helped K[CV] catch fish, and showed me multiple photos she had taken of K[CV] with a male wearing a camouflage jacket, including one showing his face. Darla believed he was still on the dock.

I spoke to K[CV], and asked her to tell me what had happened. K[CV] said she had been at the docks watching the fish, and had been "touched inappropriately" by a man who was helping her and had let her catch a fish. I asked K[CV] what she meant by touched inappropriately, and she said he had touched her "private parts." I made a gesture pointing to the front of my uniform below my belt and asked "you mean like here?" K[CV] said yes, and added that the suspect had touched her "kind of secretively."

K[CV] described the touching as "rubbing," and said that it was first outside, and then inside her clothing. K[CV] also said the suspect had touched her "kind of secretively." I did not ask further questions of K[CV] to get more detail, to avoid asking her leading questions. K[CV] did not say if there was any penetration of her genitals by the suspect.

I walked to the end of the dock with Officer Losvar, and located a male matching the photo Darla had showed me. He was escorted to the shore, where he was informed that he had been reported as touching the genital area of a young girl, and detained in handcuffs. The suspect was identified by WA driver's license as Michael Sanchez, DOB 3/28/1954. Michael denied any wrongdoing, saying that all he had done was help her catch fish and keep her from falling into the water. Michael further said that the only thing he had done wrong all day was to go back to his car and drink a beer before returning to the dock to fish, but noted

05/02/16

that he was not driving and did not believe he was drunk.

Michael was escorted to the edge of the beach, and Officer Losvar went to locate Darla and K. CV. for a field showup. I told Michael I needed to read something to him as I pulled my department issued Miranda card from my pocket, and Michael said he already knew his rights, and that he had heard it before. Michael said he was a convicted felon, and when I asked what his charge had been, he said it was "murder one." I then read Michael his Miranda warnings from my department issued card. Michael said he understood, and was willing to speak.

Michael said he had served more than 20 years in prison, but insisted he was not guilty of the crime, and that the Innocence Project was working on his case to clear his name. Michael said repeatedly that he would never molest a child, and that he was there at the park with his grandson, who could confirm that he had not done anything. During this time, Officer Losvar found Darla and K. CV. and returned to inform me that they had made positive identification.

Michael was informed that he was under arrest, and secured in Officer Losvar's patrol car. We were approached by Matthew Kilbourn, Michael's grandson, who said he would like to provide a statement. As I needed to continue interviewing Darla, I told Matthew he would have to wait. Officer Pau later responded and obtained a statement from Matthew, and also from another witness, John Monroe. Both stated that they had not seen Michael touch K. CV. in any inappropriate way. Refer to Officer Pau's report for further.

At this time I notified Lt Clary of the arrest and that the incident had occurred on city property. Michael was transported to the FWPD station for a potential detective interview.

I contacted Darla again, and at that point she explained the Big Brothers Big Sisters involvement, and confirmed she was not actually related to K. CV. Darla provided contact information for K. CV.'s mother, Sara P. CV. I contacted Sara by phone, and she agreed to come to the park and take custody of K. CV. While speaking to Sara, she informed me that K. CV. had been sexually molested at age 5 by another child, and had been in counselling in the past as a result. Sara said that due to this experience, K. CV. knew more than most children her age about sex and related language, and was more able to speak about it than could otherwise be expected.

I spoke to K. CV. again, and asked her to tell me again what had happened at the park. K. CV. told me at some length about the various things that had happened before she and Darla went onto the dock, and then repeated her account of the contact with Michael. K. CV.'s statement at this time was extremely consistent with her initial statement to me, except that she said the third time Michael had touched her "was even more inappropriate." When I asked what this meant, she said that Michael had put his fingers underneath her clothes. Darla had been standing nearby, and noted without being asked that she was surprised that K. CV.'s statement to me had been so consistent with what she had related to Darla prior to police arrival.

I contacted Darla a third time, and she said she was willing to provide a written statement. Darla said she had met K. CV. only once before approximately three weeks ago, at a group introduction where the Big Brothers Big Sisters program paired them together. Darla said that today's trip to Steel Lake Park was their first outing together since that initial meeting. While at the park, they went out onto the dock, and Darla noted that K. CV. was very excited about

05/02/16

the fish in the lake and the people fishing.

Darla said they were on the dock for at least half an hour, and that K. CV talked to many people about the fish and about fishing. During this time, Darla saw Michael call out that he had a fish on his line, and said Michael let K. CV reel it in. Darla said she did not think it was particularly suspicious at the time, but later believed Michael stood unusually close to K. CV, claiming that he wanted to make sure his expensive fishing rod was not dropped into the water.

Darla said Michael tied a length of fishing line to the fish so that K. CV could let it swim along the dock without letting it go, and she played with it for a while, still on the dock. A short time later, Darla said someone else hooked a fish, and let K. CV catch it, but K. CV got scales on her hands and bent down to wash them in the lake. Darla noted that the dock rises close to a foot above the water, and said Michael crouched down close behind her, saying he did not want to let her fall in. Darla believed this was one of the moments when Michael touched K. CV's genital area, but said she could not see what his hands were doing because Michael was wearing a large coat.

Darla said she saw Michael crouch down close behind K. CV two more times, each separated by about five minutes. Darla was again unable to see what Michael was doing. Darla said as she and K. CV were walking back along the dock toward the shore, Michael followed them more than half the length of the dock.

Darla said that she and K. CV got in her car and started to leave, and at that time, K. CV disclosed that Michael had touched her "inappropriately." Darla asked K. CV what that meant, and K. CV said "he touched my privates." Darla said while this conversation was happening, Sara was calling her on the phone. Darla informed Sara what had happened, then turned around and went back to the park and called 911.

Darla said that K. CV seemed calm to her, except that when she parked the car, she saw K. CV's legs shaking and asked if K. CV was cold. K. CV replied that she was scared, and asked "what if the man said he didn't do anything?"

I prepared a written statement containing the information provided by Darla, which she signed in my presence after reviewing it and declining to make any corrections or additions. I did not obtain a written statement from K. CV, but did take a photograph of her at the scene.

During my contact with K. CV, she appeared to be in generally good spirits, and did not appear to be particularly nervous, frightened, or sad. K. CV did not show any signs of injury or physical distress, and fire was not called for an evaluation. Due to the nature of the contact described by K. CV, I did not request that Sara take her to a hospital for a medical examination.

I returned to the station and spoke to detectives, who had interviewed Michael. I provided contact information for Sara and K. CV, so that K. CV's clothing could be recovered. Officer Loovar transported Michael to the SCORE Hall for booking on Child Molestation in the First Degree, as Michael had allegedly had sexual contact with a person under the age of 12 when he touched and rubbed K. CV's genitals both through her clothing and under it. Michael's coat was seized and turned over to Detective Durell.

5. INJURIES:

05/02/16

None.

6. SCENE:

Steel Lake Park, 241C S 312 St, Federal Way.

7. EVIDENCE/PROPERTY:

8. SUSPECT INFORMATION:

Sanchez, Michael W. DOB 03/28/1954.

9. RECOMMENDATIONS:

Forward to CIS.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT ALL STATEMENTS MADE HEREIN ARE TRUE AND ACCURATE AND THAT I AM ENTERING MY AUTHORIZED USER ID AND PASSWORD TO AUTHENTICATE IT (RCW 9A.72.085).

Electronically Signed: Yes Signature: NICHOLAS WONG #195

Federal Way/King/Washington Date: 4/30/16

05/02/16

16-1-01444-1 KNT

Sanchez_M 0011

Supplement

STMT OF MICHAEL SANCHEZ SAVED IN K:\DRIVE\16-0581-SANCHEZ, MICHAEL

Property

Property Number: 2669189
 Item: Other
 Brand: SWABS
 Year: 0
 Meas: EA
 Total Value: \$0.00
 Owner: SANCHEZ MICHAEL W 571094
 Agency: FWPD Federal Way Police Department
 Accum Amt Recov: \$0.00
 UCR: EVI Evidence Samples
 Local Status: EVF
 Crime Lab Number:
 Date Released: **/**/**
 Released By:
 Released To:
 Reason:
 Comments:

Owner Applied Nbr:
 Model:
 Quantity: 2
 Serial Nbr:
 Color:
 Tag Number: RCK1
 Officer: R. Kim
 UCR Status: EVI
 Storage Location:
 Status Date: 04/29/16
 Date Recov/Revd: **/**/**
 Amt Recovered: \$0.00
 Custody: **/**/** **/**/**

Property Number: 2669190
 Item: Clothing
 Brand: BATHINGSUIT
 Year: 0
 Meas: EA
 Total Value: \$0.00
 Owner: E CV K CV M 2171737
 Agency: FWPD Federal Way Police Department
 Accum Amt Recov: \$0.00
 UCR: CLO Clothes or Furs
 Local Status: EVF
 Crime Lab Number:
 Date Released: **/**/**
 Released By:
 Released To:
 Reason:
 Comments:

Owner Applied Nbr:
 Model:
 Quantity: 1
 Serial Nbr:
 Color: PNK
 Tag Number: RCK2
 Officer: R. Kim
 UCR Status: EVI
 Storage Location:
 Status Date: 04/29/16
 Date Recov/Revd: **/**/**
 Amt Recovered: \$0.00
 Custody: **/**/** **/**/**

Property Number: 2669191
 Item: Clothing
 Brand: SKIRT
 Model:

Owner Applied Nbr:

Year: 0
 Meas: EA
 Total Value: \$0.00
 Owner: P CV K CV M 2171737
 Agency: FWPD Federal Way Police Department
 Accum Amt Recov: \$0.00
 UCR: CLO Clothes or Furs
 Local Status: EVF
 Crime Lab Number:
 Date Released: **/**/**
 Released By:
 Released To:
 Reason:
 Comments:
 Property Number: 2669192
 Item: Clothing
 Brand: SHIRT
 Year: 0
 Meas: EA
 Total Value: \$0.00
 Owner: P CV K CV M 2171737
 Agency: FWPD Federal Way Police Department
 Accum Amt Recov: \$0.00
 UCR: CLO Clothes or Furs
 Local Status: EVF
 Crime Lab Number:
 Date Released: **/**/**
 Released By:
 Released To:
 Reason:
 Comments:
 Property Number: 2669193
 Item: Clothing
 Brand: Jacket
 Year: 0
 Meas: EA
 Total Value: \$1.00
 Owner: SANCHEZ MICHAEL WAYNE 2171732
 Agency: FWPD Federal Way Police Department
 Accum Amt Recov: \$0.00

Quantity: 1
 Serial Nbr:
 Color: BLK
 Tag Number: RCK3
 Officer: R. Kim
 UCR Status: EVI
 Storage Location:
 Status Date: 04/29/16
 Date Recov/Revd: **/**/**
 Amt Recovered: \$0.00
 Custody: **/**/** **/**/**
 Owner Applied Nbr:
 Model:
 Quantity: 1
 Serial Nbr:
 Color: BLU
 Tag Number: RCK4
 Officer: R. Kim
 UCR Status: EVI
 Storage Location:
 Status Date: 04/29/16
 Date Recov/Revd: **/**/**
 Amt Recovered: \$0.00
 Custody: **/**/** **/**/**
 Owner Applied Nbr:

Model:
 Quantity: 1
 Serial Nbr:
 Color: BLU
 Tag Number: RCK4
 Officer: R. Kim
 UCR Status: EVI
 Storage Location:
 Status Date: 04/29/16
 Date Recov/Revd: **/**/**
 Amt Recovered: \$0.00
 Custody: **/**/** **/**/**
 Owner Applied Nbr:

Model:
 Quantity: 1
 Serial Nbr:
 Color: CAM
 Tag Number: KD-1
 Officer: K. Durell

UCR: CLO Clothes or Furs
Local Status: EVF
Crime Lab Number:
Date Released: **/**/**
Released By:
Released To:
Reason:
Comments:

UCR Status: EVI
Storage Location:
Status Date: **/**/**
Date Recov/Revd: **/**/**
Amt Recovered: \$0 00
Custody: **/**/** **/**/**

Name Involvements:

WITNESS : 2171973

Last: TISHMAN	First: DARLA	Mid: JEAN
DOB: 11/29/67	Dr Lic: TISHMDJ330Q9	Address: 9621 56 ST W
Race:	Sex: F	Phone: (443)254-4204
		City: University Plac, WA 98467

OTHER/WITNESS : 2171745

Last: JOHNSON	First: JAYSON	Mid: P
DOB: 01/20/75	Dr Lic: JOHNSJP257B0	Address: 9002 186 AVE E #1104
Race: W	Sex: M	Phone: (206)641-6847
		City: Bonney Lake, WA 98391

VICTIM : 2171737

Last: F. CV	First: K. CV	Mid: M
DOB: 03/22/07	Dr Lic:	Address: CV
Race: W	Sex: F	Phone: (206)551-5754
		City: Federal Way, WA 98023

WITNESS : 2171735

Last: KILBOURN	First: MATTHEW	Mid: J
DOB: 01/05/98	Dr Lic:	Address: 37427 40 AVE S
Race: W	Sex: M	Phone: (253)227-1287
		City: Auburn, WA 98001

WITNESS : 427771

Last: MONROE	First: JOHN	Mid: WAYNE
DOB: 10/18/57	Dr Lic: MONROJW435P	Address: 33314 22 PL SW
Race: B	Sex: M	Phone: (206)954-9175
		City: Federal Way, WA 98023

SUSPECT : 2171732

Last: SANCHEZ	First: MICHAEL	Mid: WAYNE
DOB: 03/28/54	Dr Lic: SANCHMW469	Address: 37427 40 AVE S
Race: W	Sex: M	Phone: (253)293-1515
		City: Auburn, WA 98001

OTHER : 2171752

Last: F. CV	First: SARA	Mid:
DOB: 10/30/76	Dr Lic: PINHOS*241PT	Address: CV
Race: W	Sex: F	Phone: (206)551-5754
		City: Federal Way, WA 98023

Exhibit F

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

K.M.P., a minor child, by and through her
natural mother and custodial parent, SARAH
HALL PINHO,

Plaintiffs,

vs.

BIG BROTHER BIG SISTERS OF PUGET
SOUND, and MICHAEL WAYNE SANCHEZ,

Defendants.

No. 17-2-19614-2 KNT

**DECLARATION OF MICHAEL
SANCHEZ**

Honorable Julia Garratt

I, Michael Wayne Sanchez, Defendant in this matter declares as follows under the
penalty of perjury pursuant to the laws of the State of Washington that the following is true and
correct to the best of my knowledge:

1. On April 29th 2016, in King County Washington, I was fishing off a pier when I
let KMP, a minor, use my fishing pole and she caught a fish. At one point I saw her struggling
with the pole as there was a fish that appeared to be pulling her and the pole.

2. After catching the fish, she proudly dangled the fish off the end of the line and
skimmed it along the water for others to see and take photographs. She then lay down flat on the

DECLARATION OF MICHAEL SANCHEZ - 1

HART JARVIS MURRAY CHANG PLLC
155 N.E. 100th Street, Suite 210
Seattle, WA 98125
Tel: (206) 280-1474
Fax: (206) 280-2950

1 dock, her trunk hanging over the side, so she could wash her hands. She was wearing a jacket
2 over her other clothes. I was holding the back flap of her jacket behind her so she would not fall
3 in the water.

4 3. I did not fondler her, molest her, or touch her inappropriately at all.
5 There were multiple witnesses during this time, who saw that I did not assault her at all. The
6 police interviewed none of these witnesses at first because when they learned of my prior
7 conviction, they assumed that I must be guilty. At no time did I ever touch KMP in such a
8 manner that she would have mistakenly thought that I had touched any of her private parts or
9 intimate areas, either over or under her clothing
10

11 4. The original charge was Child Molesting in the First Degree. The penalty was an
12 indeterminate sentence up to Life Imprisonment. Because of doubts of my actual guilt, the State
13 offered me an "Alford Plea" to a lesser crime that I could not have committed since it was for an
14 "Attempted Child Molesting" in the 2nd Degree on a legally fictitious child that would be older
15 than KMP. I pled guilty to this crime because the penalty that inhered in the standard range was
16 15.7 months in prison which I had already served much of.
17

18 5. I am completely innocent of this crime, and the only reason I pled guilty was
19 because of the fear of what would happen if I went to the trial with my prior conviction on the
20 record.
21

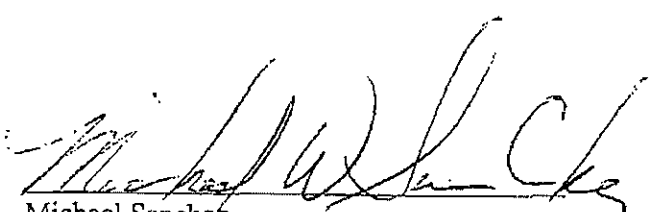
22 6. I have no idea why KMP would assert that I committed this crime, other than the
23 fact that she knowingly told untruth. I can only surmise that this was done in malice against me.
24

25 DATED this 26th day of July, signed on McNeil Island, Washington

DECLARATION OF MICHAEL SANCHEZ - 2

HART JARVIS MURRAY CHANG PLLC
155 N. E. 100th Street, Suite 210
Seattle, WA 98125
Tel: (206) 735-7474
Fax: (206) 260-2950

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Michael Sanchez
Defendant.

7-26-18

DECLARATION OF MICHAEL SANCHEZ - 3

HART JARVIS MURRAY CHANG PLLC
155 N.E. 100th Street, Suite 210
Seattle, WA 98125
Tel: (206) 438-7424
Fax: (206) 260-2950

CERTIFICATE OF SERVICE

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I, Kenneth M. Chang, certify under penalty of perjury under the laws of the State of Washington that I am the counsel for Respondent herein and that on 7/26/2018 I caused to be served on the person listed below in the manner shown.

DECLARATION OF MICHAEL SANCHEZ

Bethany C. Mito
Counsel for Plaintiffs
Lee & Lee, PS
1001 Fourth Avenue, Suite 4368
Seattle, WA 98154
bethany.lee@leeandleelaw.com

Laura Kruse
Dan Syhre
Counsel for Defendant BBBS
Betts Patterson Mines
701 Pike St # 1400
Seattle, WA 98101
lkruse@bpmlaw.com
dsyhre@bpm.law.com

- United States Mail, First Class 6/29/18
- By Legal Messenger _____
- By Facsimile _____
- By Email Attachment 6/29/18

Dated this 26th day of July, 2018

/s/ Kenneth M. Chang
Kenneth M. Chang, WSBA No. 26737

DECLARATION OF MICHAEL SANCHEZ - 4

HART JARVIS MURRAY CHANG PLLC
155 N.E. 100th Street, Suite 210
Seattle, WA 98125
Tel: (206) 735-7474
Fax: (206) 260-2950

Exhibit G

FILED
KING COUNTY, WASHINGTON

JUN 08 2018

HONORABLE JUDGE JULIA GARRATT

SUPERIOR COURT CLERK
BY Kamryn Bettelon
DEPUTY

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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

K.M.P., a minor child, by and through her
natural mother and custodial parent, SARAH
HALL PINHO,

Plaintiff(s),

v.
BIG BROTHER BIG SISTERS OF PUGET
SOUND, and MICHAEL WAYNE
SANCHEZ,

Defendant(s).

No: 17-2-19614-2 KNT

Motion for
ORDER OF DISMISSAL/
Severance of
Counter-claims

Clerk's Action Required

THE COURT, being fully advised in the premises, now, therefore, it is HEREBY
ORDERED that the Plaintiff's Motion to Dismiss only as to MICHAEL WAYNE SANCHEZ is
~~granted~~ Denied due to the late filed counterclaim.
However, the court is severing the counter claim
pursuant to CR 41(B)(3) + those counterclaims
can remain pending for independent adjudication
by the court.

DATED this 8 day of June, 2018.

Julia Garratt
HONORABLE JUDGE JULIA GARRATT

1 ORDER OF DISMISSAL - 1
Severance of Counter Claims

LEE & LEE, PS
1001 4th Avenue, Suite 4368
Seattle, Washington 98154
t. 206.458.6986 f. 206.458.6816

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Presented by:
LEE & LEE, PS

By: /s/ Bethany C. Mito
Bethany C. Mito, WSBA #42918
Attorney for Plaintiffs

Exhibit H

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

K.M.P., a minor child, by and through her
natural mother and custodial parent, SARAH
HALL PINHO,

Plaintiffs.

vs.

BIG BROTHER BIG SISTERS OF PUGET
SOUND, and MICHAEL WAYNE SANCHEZ.

Defendants.

No. 17-2-19614-2 KNT

**DEFFENDANT SANCHEZ' PRIMARY
WITNESS LIST**

Honorable Aimee Sutton

Defendant, Michael Sanchez, through his attorney of record, hereby names the following
witnesses.

- 1. John Wayne Monroe
33314 22 Pl. S.W.
Federal Way 98023
206.954.9175

Mr. Monroe was a witness identified by the Federal Way Police Department. He may be asked to testify about his knowledge of the facts and circumstances surrounding the incident that is the subject of this lawsuit. He may further be called to testify regarding his observation of K.M.P., Darla Tishman and Mr. Sanchez at the scene and any statements made by the parties at the scene.

**DEFFENDANT SANCHEZ' PRIMARY WITNESS
LIST - 1**

HART JARVIS MURRAY CHANG PLLC
155 N.E. 100th Street, Suite 210
Seattle, WA 98125
Tel: (206) 735-7474
Fax: (206) 260-2950

1 2. Matthew Kilbourn
37427 40 Ave. S.
2 Auburn, WA 98001
253.227.1287

3 Mr. Kilbourn was a witness identified by the Federal Way Police Department. He may
4 be asked to testify about his knowledge of the facts and circumstances surrounding the incident
5 that is the subject of this lawsuit. He may further be called to testify regarding his observation of
6 K.M.P., Darla Tishman and Mr. Sanchez at the scene and any statements made by the parties at
7 the scene.

8 3. Darla Tishman
9621 56th St. W.
University Place, WA 98467
443.254.4204

9 Ms. Tishman may be called to testify about her knowledge of the facts and circumstances
10 surrounding the incident that is the subject of this lawsuit. She may further be called to testify
11 regarding his observation of K.M.P., as well as the statements made by Plaintiffs regarding this
12 incident, as well as her observation of Mr. Sanchez at the scene. She may be called to testify
13 regarding all the matters that were addressed in her deposition taken in this case, as well as the
14 statements she made to the Federal Way Police Department.

15 4. Plaintiff K.M.P.
16 Plaintiff may be called to testify.

17 5. Plaintiff Sarah Pinho.
18 Plaintiff may be called to testify.

19 6. Jennifer Cheng Shannon, M.D.
20 Dr. Shannon interviewed KMP per court order. She may be called to testify statements
21 made by K.M.P., and regarding the subject matter covered under her CR 35 examination.

22 7. Zach Wagnild.
23 C/O Counsel for Mr. Sanchez

24 Mr. Wagnild was the criminal defense attorney for Mr. Sanchez. He may be called to
25 testify that Mr. Sanchez was advised to accept the plea offer of an Alford plea due to the fact that
the stake in the alternative was tantamount to life imprisonment, and that Mr. Sanchez has
always maintained his innocence. He may further be called to testify regarding the statements
made by Plaintiffs during their interviews with Mr. Wagnild.

8. Federal Way police and King County Victim Advocate who interviewed KMP, including
but not limited to Detective Kris Durell, and Alyssa Layne, may be called to testify regarding the
statements made by K.M.P.

DEFFENDANT SANCHEZ' PRIMARY WITNESS
LIST - 2

HART JARVIS MURRAY CHANG PLLC
155 N.E. 100th Street, Suite 210
Seattle, WA 98125
Tel: (206) 735-7474
Fax: (206) 260-2950

1 9. Michael Sanchez.
2 C/O Counsel for Mr. Sanchez.

3 Mr. Sanchez reserves the right to call any and all of witnesses who have been disclosed
4 by either Plaintiffs or Defendant BBBS in Mr. Sanchez' case in chief. Mr. Sanchez further
5 reserves the right to call any and all witnesses identified by Plaintiffs or by Mr. Sanchez himself
6 as a rebuttal witness to any of the Plaintiffs' witnesses called in Plaintiffs' case in chief.

7
8 Discovery is continuing. If and when new information becomes available affecting this
9 list, Mr. Sanchez reserves the right to supplement this list as soon as possible.

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HART JARVIS MURRAY CHANG PLLC

s/ Kenneth M. Chang

Kenneth M. Chang, WSBA No. 26737

Attorney for Defendant Sanchez

Hart Jarvis Murray Chang PLLC

155 N.E. 100th Street, Suite 210

Seattle, WA 98125

Telephone: (206) 735-7474

Fax: (206) 260-2950

E-mail: kchang@hjmc-law.com

DEFFENDANT SANCHEZ' PRIMARY WITNESS
LIST - 3

HART JARVIS MURRAY CHANG PLLC

155 N.E. 100th Street, Suite 210

Seattle, WA 98125

Tel: (206) 735-7474

Fax: (206) 260-2950

CERTIFICATE OF SERVICE

I, Kenneth M. Chang, certify under penalty of perjury under the laws of the State of Washington that I am the counsel for Respondent herein and that on 5/20/2019 I caused to be served on the person listed below in the manner shown.

DEFFENDANT SANCHEZ' PRIMARY WITNESS LIST

Richard Anderson, WSBA No. 25115
Counsel for Plaintiffs
Schroeter, Goldmark & Bender
810 Third Ave. Suite 500
Seattle, WA 98104
Tel: 206-622-8000
Fax: 206-682-2305

- United States Mail, First Class
By Legal Messenger
By Facsimile
By Email Attachment 5/20/19

Dated this 20th day of May, 2019

/s/ Kenneth M. Chang
Kenneth M. Chang, WSBA No. 26737

APPENDICE 8

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2019 JUN 03 11:01 AM
KING COUNTY
SUPERIOR COURT CLERK
E-FILED
CASE #: 17-2-19614-2 KNT

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

K.M.P., a minor child, by and through her
natural mother and custodial parent, SARAH
HALL PINHO,

Plaintiffs,

vs.

BIG BROTHER BIG SISTERS OF PUGET
SOUND, and MICHAEL WAYNE SANCHEZ.

Defendants.

No. 17-2-19614-2 KNT

**DECLARATION OF KENNETH P.
HENRIKSON IN SUPPORT OF
DEFENDANT'S MOTION TO
CONTINUE TRIAL DATE AND
MOTION FOR WITHDRAWAL OF
COUNSEL**

Honorable Aimee Sutton

DECLARATION

ATTORNEY DECLARATION TO BRING TO COURT'S ATTENTION THE
VIOLATIONS OF RULES OF PROFESSIONAL CONDUCT AND OMITTED
FACTS THAT COURT MAY FIND RELEVANT TO THE MOTION TO
CONTINUE;

*In the City of Poulsbo, County of Kitsap, for the County of King
I, Ken Henrikson, WSBA #17592, on oath say.*

DECLARATION OF KENNETH P. HENRIKSON
IN SUPPORT OF DEFENDANT'S MOTION TO
CONTINUE TRIAL DATE AND MOTION FOR
WITHDRAWAL OF COUNSEL - 1

HART JARVIS MURRAY CHANG PLLC
155 N.E. 100th Street, Suite 210
Seattle, WA 98125
Tel: (206) 735-7474
Fax: (206) 260-2950

1 1. I, Ken Henrikson, am, as of today, one of the court appointed attorneys assigned to represent Mr. Sanchez in the S.V.P. case.

2 2. While various attorneys have represented Mr. Sanchez on his S.V.P. case, I have been on the
3 71.09 case from the beginning.

4 3. My declaration is based on my own legal research, including consultation and staffing of this
5 KMP case, including the pleadings, Emails that have been filed by all counsel into the public
6 record herein, including Emails between Chang and KMP, depositions and discovery responses,
7 and reasonable, objective inferences therefrom, facts and legal opinions that both parties have
8 withheld from the court, and nothing in this document contains any confidences and secrets of
9 Mr. Sanchez, and nothing herein should constitute a waiver of any of Mr. Sanchez's RCP 1.6
privileges. While ER 411 would render some Emails inadmissible in a trial as negotiations, they
are relevant to the ethical issues I feel a duty to inform the court of here. Any issue of actual
innocence or the strength or weakness of the KMP case has no relation to this declaration and
none should be implied.

10 4. Just prior to Attorney Chang's noting this hearing, I asked him in writing to request oral
argument on the hearing on this motion, which this court has discretion to grant based on CR 7.

11 5. Via Email, Attorney Chang denied my request.
12

13 6. I then asked Attorney Chang to include this declaration as an appendix to his response to
14 KMP's reply to the motion to dismiss due at Noon on 6/3/19. As of this writing it is unclear
whether he will have time to review and include this in his response. I am Emailing this to him at
midnight 6/3/19.

15 7. The focus of this declaration is on the ethical issues that I believe have contaminated the
16 procedures and processes of this case and compromised the legal rights of all parties in this case
by omitting facts the court is entitled to know.
17

18 8. My role is as a licensed attorney who represents this party on another matter, an attorney who
19 had taken an oath to undertake the responsibility to uphold the integrity of my profession only to
the extent that it is not against my client's interest to do so.

20 9. While the court and parties may well find this information inappropriate and impertinent, that
21 is not for me to decide, since either way the court is entitled to access my information if it so
wishes.

22 10. CHRONOLOGY

23 A. In 1991, Mr. Sanchez was prosecuted for Murdering a 9 year old child. Facing Life
24 Without Parole, he entered an Alford plea. After serving about 14 years he was released. In April
of 2016, KMP disclosed that Mr. Sanchez had sexually assaulted her. Sanchez was arrested and,
25 faced with the alternative of life in prison, opted to enter another Alford plea to a crime that

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1 carried a sentence a few months beyond time served. Upon his release date the current King
2 County Prosecutor filed a S.V.P. petition against Sanchez, and I was shortly thereafter assigned
to represent Mr. Sanchez.

3 B. I work for the King County DPD (Department of Public Defense), a subcontractor for the
4 Washington State Department of Public Defense, who D.S.H.S. pays to represent RCW
71.09.050 detainees awaiting trial.

5 C. While the 71.09 practice is technically a civil practice, my practice does not require being
6 conversant with the Civil Rules on initiating a law suit and notice. 71.09.030 only requires a
7 clandestine filing of the S.V.P. petition to prevent flight. The "respondent" in said petition is
8 transferred from prison to the King County Jail for a "probable cause" hearing on the S.V.P.
petition, and then, to the S.C.C. on McNeil Island. The first month of post admission time on
McNeil Island is spent in limited contact with the outside world.

9 D. I am personally exposed to "access to justice" issues, having served many terms on a
10 board of five attorneys and D.O.C. officials who award contracts for prison representation
11 established by RCW 72.09.190. The legal representation that I help select from the R.F.P.'s
12 fulfill the constitutional requirements for "access to courts" that created said statute, which is a
13 separate and distinct right from "right to counsel" and which covers all cases, civil and criminal,
14 as it recognizes that incarcerated persons have no access to lawyers or courts, and are entitled to
15 access to legal advice, however minimal to explain pleadings sent to them. As is stated in
R.C.W. 72.09.190, the client is not entitled to representation, but is entitled to a lawyer to advise
him on which court to file papers in and how to communicate with the court when there is no
process for incarcerated persons to access the courts to respond to lawsuits. The S.C.C. had
abolished these legal services that said institution had hitherto provided to comply with rights to
"access to courts". This is based on my personal experience in the administration of this access to
courts program in Washington. It is not a legal argument.

16 E. It is unclear to me exactly the route the mailed notice of the intent to file a lawsuit took to
17 get to Mr. Sanchez, as I was not present as I can only presume that the letter had been delayed
18 and then forwarded from the prison that he was being or had been removed from at to the various
19 stops along the way. I could find no evidence in the KMP court file of any service other than an
20 affidavit of mailing but I could not find the address it was mailed to. I do know that it can take 1-
21 2 weeks for any mail to get to S.C.C. residents because the mail must be picked up first, opened
22 and inspected, and stops sometimes at Western State Hospital and it is then relayed by a barge to
23 McNeil Island that does not run daily. In addition, there is only proof of service in the KMP file
24 of two pleadings: 1. A pleading sent to a prison he was not living at at the time it was mailed,
and 2. A motion to change the plaintiff's name to the KMP initials. No other pleadings, including
responsive pleadings from KMP, B.B.B.S, Darla Tishman, notice of hearings or any other court
matter were attempted to have been served. This does not contradict KMP's attorney's pleading
from 5/31/19 that notes that Mr. Sanchez was aware of the fact that some pleading was mailed.
*"This was filed against me while I was in prison in Shelton, WA." Declaration of Michael Sanchez, Dkt. 57, ¶2. In
addition, Mr. Sanchez admits receiving "notice that a suit may be filed" and also receiving "a notice of plaintiff's
motion to use her initials." the latter of which was filed back in August 2017. Id. at ¶3."*

25
**DECLARATION OF KENNETH P. HENRIKSON
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WITHDRAWAL OF COUNSEL - 3**

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1 In my ignorance, I was not aware that a plaintiff need only serve a defendant by uncertified U.S.
2 mail, and even then, only via one letter, to the last "known" address he was being removed from,
3 with no other effort required, and then is not entitled to be sent any notice of any of the
4 proceedings in the case ever again if he fails to respond. I found the timing of that notice
interesting. The legal consequence of his failure to respond to the complaint raised the stakes of
the failure to respond to the initial pleading cited by KMP due to lack of access to courts.

5 F. What I did find out, however, only several months later, after stumbling upon the KMP
6 court file, that concurrent with the S.V.P. petition process, Plaintiff KMP had filed a civil suit
7 against Mr. Sanchez for sexual battery and against other co-defendants for negligent supervision
8 or babysitting. I happened to notice that K.M.P.'s attorneys on the pleading came from the firm
Lee and Lee, and Nelson Lee had earlier been a S.V.P. prosecutor on the same S.V.P. team that
filed the petition against Mr. Sanchez, from which I take no negative inferences.

9 G. In reviewing the pleadings from the ECR, it appeared doubtful that Mr. Sanchez would be
10 able to comprehend the legal words, as they were like a foreign language that needed an
11 interpreter (that's what a lawyer is) nor timely respond to without minimal access to court or
12 counsel, and which even I, a supposedly trained lawyer, failed to comprehend as described
above. It became clear that if Mr. Sanchez just did nothing, he would be subject to a default
judgment and many misleading assertions assumed by all the parties and the court would have
stood in the public court file, unchallenged.

13 I. My recollection from looking at the dates, however, was that objectively from my prior
14 letters and contacts with inmates, he would not have had access to this document at the time he
was being transported out. It would have to be forwarded.

15 MY ROLE IN THE KMP MATTER

16 11. In reading KMP's pleadings, it stated that Mr. Sanchez pled guilty to the Murder and the
17 KMP incident, and this implied he was convicted of the crime charged. In the KMP incident, he
18 was never convicted of the crime charged. He was convicted of a fictitious crime that the plea
19 form itself specified he was not guilty of but that the Alford language recites the "substantial
20 probability" (which Black's Law Dictionary defines as "more than nominal") of a jury convicting
on the crime not charged. I felt that the court, the public, the Defendant B.B.B.S. and
Codefendant Darla Tishman had been misled into thinking the question of guilt was either
legally or factually settled for any civil case, since it wasn't.

21 12. So I attempted to reach out to the co-defendants to see if they had understood the
22 circumstances, since misleading BBBS could have made them forfeit the more evidence-
23 supported arguments that the element of liability of Sanchez was (a) not res-judicata because it
24 was an Alford plea, (b) he had not deliberately ignored the lawsuit as a sign of guilt, and (c) if he
is innocent, then the Codefendants can't be negligent in failure to detect an event that never
happened, which, even if just a theory, reduces the probability of liability and influences the

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1 settlement. They did not respond to my Emails or voicemails. I determined that was due with the
2 fact that public mass hysteria is impenetrable.

3 13. As a member of the Washington State Bar with a particular concern in the area of "access to
4 justice" I found myself having been assigned Mr. Sanchez, a client who I believed had been
5 denied access to courts in his lawsuit at every turn. I could not just sit there and do nothing and
6 put up my Public Defender-mentality boundaries to let a client's life waste away so he could sit
7 there and do nothing to participate in a lawsuit he had not initiated. It affects his S.V.P. case
8 since the act of doing nothing perpetuates very prejudicial legal facts by letting them go
9 unchallenged, as well as contaminating the jury pool with these public records unchallenged.
10 I was unable to rationalize the 5th Amendment excuse for inaction.

11 14. The S.C.C. had administratively abolished what had been recognized in Washington as the
12 constitutional right to legal assistance to get "access to courts" (a separate right from legal
13 representation, as KMP's response correctly points out). Unable to give up, I located another
14 avenue of legal assistance funded by King County, which consisted of at least two King County
15 DPD funded attorneys budgeted to represent and assist clients on civil matters related to their
16 "criminal case". This envisioned things like getting records expunged, LFO's forgiven, collateral
17 consequences such as school suspensions and evictions.

18 15. TDA management directed me to Edward Klien, the assigned civil attorney to my division of
19 the DPD practice. He entered a NOA on behalf of Mr. Sanchez to participate in litigating and
20 receiving discovery. Around the same time, I had reviewed the 124 page document KMP filed
21 about KMP's special needs that put KMP on notice that a special Big Sister with mental health
22 expertise was required, and the subsequent pleadings on the CR 35 Psychiatric Evaluation.
23 Having spent the last 30 years litigating sex cases in Dependencies, Juvenile, Criminal, and
24 S.V.P., including representing victims and non-offending spouses, it occurred to me that perhaps
25 the victim in this case is being exploited. This is to put into context the vicious public attacks on
26 Mr. Sanchez's and my character in the pleadings suggesting my motive to participate in this
27 lawsuit to harass a small child out of spite, not only in the context of the public pleadings in this
28 lawsuit, but in Emails and phone calls to my managers upon whom my employment depends.

29 16. Simultaneously and immediately following Mr. Klien's notice of appearance for the purpose
30 of discovery, as reflected in KMP counsel's Emails directly to the court, a "pro-se" counterclaim
31 ghostwritten by me and a CR 41 motion to dismiss was filed on Mr. Sanchez's behalf. I believe
32 that both would have been filed anyway but the timing was almost simultaneous.

33 17. The counterclaim as predicted, resulted in many people getting angry at me, believing I was
34 acting insane. KMP's then attorneys, responded by telephoning and Emailing Ms. Kandewal,
35 King County DPD director, to warn them of how the King County Council would respond when
36 they find out how Ms. Kandewal is using public funds for this attorney assist a pro se client
37 harass an innocent child. That was their assignment of motives.

38 18. Thereafter, my managers directed the following:

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DECLARATION OF KENNETH P. HENRIKSON
IN SUPPORT OF DEFENDANT'S MOTION TO
CONTINUE TRIAL DATE AND MOTION FOR
WITHDRAWAL OF COUNSEL - 5

HART JARVIS MURRAY CHANG PLLC
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Tel: (206) 735-7474
Fax: (206) 260-2950

1 (1) Not ghostwrite anything, ever, in this case because that would be using King County funds
2 for unauthorized purposes, have nothing whatsoever with the KMP case. do not advise the client.
3 do not be the designated recipient of service for the client, even though without such a designee
4 he would never be able to respond to any pleadings due to his remote incarceration, and not
5 participate, or help him in any way except I was allowed to try to recruit him a new attorney to
6 help him on the case. I was still allowed to represent Mr. Sanchez on his SVP case as long as I
7 was willing to helplessly ignore his other case. I also refused to obey any order not to be the
8 client's agent on the case to receive pleadings until a new attorney could accept that
9 responsibility.

10 (2) That without notice or reason other than to avoid jeopardizing the civil representation
11 program, and, that I should have known that it was inappropriate to inquire about such services
12 in my office, and knowing that the supervisor who directed me to those resources would, of
13 course, deny that he did so, and, in violation of multiple R.P.C.'s and CR 71, the King County
14 DPD directed their employee, Attorney Klien to immediately withdraw.

15 *In re discipline of Pfefer, 182 Wn.2d 716, 344 P.3d 1200 (2015) which also applies to Atty Chang's withdrawal*
16 *motion.*

17 (3) Given the public political pressure KMP attorneys had put on the King County DPD, I
18 learned that only a rare attorney would accept the case at any price. Ken Chang agreed to take
19 the case and he put in a general notice of appearance. What limitations, if any, that Chang put on
20 the representation in scope or strategy, is a matter of attorney client privilege and irrelevant to
21 this declaration, as all retainers are private and dynamic. Based on the RPC authority cited
22 above, however, the general notice of appearance obligates attorney Chang to comply with all
23 court orders as long as he represents Sanchez. I have never heard of a retainer agreement where
24 the client agrees the attorney can ignore court orders. KMP's attorneys were entitled to rely on
25 this general notice of appearance in allocating their resources to this case, and were victims of
Chang's malignant neglect.

(4) Thereafter, the court issued a ruling that denied KMP's CR 41 motion to dismiss because of
the counterclaim. Objectively it would be presumptuous and prejudicial for the court to deny
KMP's CR 41 motion to dismiss because the court wouldn't know whether KMP would want to
keep their case alive to have another bite of the apple since if they establish liability, the
counterclaim would be dismissed. KMP's answer to the counterclaim was filed after Attorney
Chang entered his general NOA.

(5) I expected Ken Chang to understand his minimum basic professional obligations that a 2nd
year law student would, including to comply with any discovery scheduling order to get
discovery, and respond to and correct any misleading pleadings, and if possible settle the case
short of trial since no trial can occur without mandatory ADR. KMP's attorneys expected Ken
Chang to do the same as I expected. I was wrong. The Rules of Professional Conduct are not
protected by attorney client privilege. Neither are the discovery scheduling orders Chang signed.

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1 (6) The only thing that Ken Chang has disclosed to the court so far was that he inadvertently
2 forgot to calendar the trial date, and then asked the court and parties to believe how that, in itself
3 somehow constituted a conflict that requires him to withdraw and continue the trial date.
4 Understandably, in his 5/31/19 reply brief, KMP's counsel Anderson responded with appropriate
5 arguments based on only the facts that had been disclosed to him, which is to point out the
6 weakness of the nexus between the forgetfulness and good cause to continue the case.

7 (7) Despite that I had repeatedly asked Chang to admit that at least from March 22nd onward,
8 and probably long before, his case obligations and my offer to help him in any way I could
9 despite being ordered not to, he became disqualified, via RPC 1.7 from functioning on the case
10 as "independent counsel" and the ne needed to disclose this to the court ASAP, and that it was in
11 his client's interest to disclose the conflict to the court (at least ex parte in chambers or on the
12 record). He refused to either understand or admit that he understood the conflict. Chang's interest
13 in protecting his career and his license to practice law were materially limited by his duties to the
14 client.

15 (8) Accordingly, in his reply to Chang's opposition to his motion to amend KMP's response to
16 Sanchez's counterclaim, KMP's attorney, drew logical inferences from incomplete facts that
17 unintentionally misled the court as follows when it told the court this:

18 *Defendant has attempted to characterize a remark made in a declaration as a discovery request*
19 *(Decl. of Michael Sanchez, Dkt. 57; see also, Att. B. to Defendant Sanchez's Response to*
20 *Plaintiffs' Motion for Leave to Amend), and further suggests that Plaintiffs' ignorance of this*
21 *characterization is evidence of the Plaintiffs' intention to deny the Defendant discovery. This*
22 *suggestion is incredulous as it would be tantamount to malpractice for Defendant's counsel to*
23 *allow that request to remain outstanding for nearly a year without requesting a CR 26(i)*
24 *conference or following up with a motion to compel discovery. Moreover, this "outstanding"*
25 *request was not mentioned by Defendant's counsel to the undersigned during a meeting on*
March 22, 2019, while acknowledging that he had not yet reviewed the police report or any
other discovery in the case. Decl. of Richard Anderson, ¶2. An impartial observer might wonder
if this discovery "request" I was concocted to demonstrate prejudice related to this motion to
amend where there is none. (KMP reply brief p. 3 5/6/19).

(9) After predicting this response and then reading the above, I made several attempts to
persuade attorney Chang to correct this inference and admit to the conflict since he had
malpracticed exactly as Attorney Anderson described; the very malpractice that Anderson
regarded as "incredulous" that it could happen, but all he did was refuse and blame shift.

(10) It was only in the motion to continue that he was finally willing to admit to the malpractice,
while minimizing it as a simple calendaring clerical error that lasted a year, but not the conflict,
nor the extent of the gross negligence in this case. He was unable to comprehend the prejudice
his neglect objectively inflicted on his client.

(11) Chang's inability to comprehend the prejudice he inflicted on his client was the result of his
malpractice having clouded his professional judgment necessary to function on this case.

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1 Once Attorney Chang realized he had committed gross malpractice (although I believe his denial
2 mechanism obscured its true magnitude), KMP's counsel provided the only "out" possible to
3 forestall any damages to his career: which would be acceptance of KMP's offer of a voluntary
4 dismissal of both KMP's claim and Sanchez's counterclaim in exchange for the client avoiding a
5 slam-dunk \$10,000 SLAP fine and possibly hundreds of thousands in attorney fees that the client
6 would be ultimately liable to pay based on RCW 4.24.510. Only with an agreed dismissal could
7 Chang avoid any record of prejudice to the client, which was in his pecuniary and career interest
8 to procure. Chang then proceeded to demonstrate the degree his professional judgment had been
9 materially limited by this life-preserver that KMP's counsel had thrown him as follows: (I am not
10 alleging KMP's counsel acted in bad faith).

11 (a) Chang immediately notified me that he had to withdraw immediately and accept KMP's offer
12 to dismiss. Only when I questioned him on the timing, he asked KMP's counsel for more time to
13 decide which he granted. That allowed me to check up on the validity of his assertions which, I
14 would not have "checked up on" had I believed it was the emergency he had portrayed it as.

15 (b) I then did my own research and discovered that the 4.24.510 issue is not as clear cut as had
16 been represented to me by clouded judgment, as a pertinent part had been struck down by the
17 Supreme Court.

18 (c) I advised Chang that he was disqualified from functioning on the case due to his conflict of
19 interest, which he denied having and refused to disclose since he expressed that his malpractice
20 was moot by this slam dunk SLAP motion and CR 11 sanctions for filing a frivolous claim.
21 Importantly to me, he frequently reminded me that I could never find anyone else to represent
22 him anyway. It was concerning to me that it seemed relevant to his professional responsibilities.
23 After consulting with former WSBA disciplinary counsel, doing some ethical research,
24 combined with my career ethical experience in similar situations, and what I had learned from
25 my own work on a WSBA panel adjudicating reinstatement petitions from disbarred attorneys, I
strongly advised Chang to disclose to his own firm what he had done and get independent
counsel to advise the client on the SLAP issue who could give objective advice rather than the
only advice that would avoid major malpractice liability and licensure issues. Chang refused and
denied there was a conflict.

(d) Every civil attorney I consulted with had at least a preliminary opinion consistent with my
own extensive research on 4.24.510. That opinion was that appearing on the KMP case and
pursuing the counterclaim may not be successful but certainly did not rise anywhere near the
standards of bad faith or frivolous claims for CR 11 sanctions. Other research also confirmed my
view that reasonable minds can differ as to the viability of the SLAP defense propounded.

(12) After Chang finally agreed to seek a continuance for new counsel, I found a new counsel
willing to take the case contingent on that continuance. But that counsel changed his mind and
delayed his decision within hours after talking to KMP's counsel, who informed me that KMP's
counsel noted the possibility of CR 11 Sanctions which would, objectively, jeopardize one's bar
card, a \$10,000 fine and attorneys' fees just for representing Mr. Sanchez. Faced with that, the
planned motion to continue to a specific date with a new retained attorney suddenly lost the facts

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1 needed to give that motion the merit it deserved. (Note: This does not imply that anything KMP's
2 counsel had told the potential new counsel was said in bad faith with intent to interfere with the
3 potential lawyer-client relationship, but just that it was a highly inaccurate (albeit presumably
4 good faith) legal assessment given to Sanchez's new attorney that did in fact interfere with the
5 lawyer-client relationship. Here, access to justice is the pertinent part of this information, and not
6 whether KMP's attorney acted with intent or even unreasonably which I see no evidence of.)

(13) The fact of KMP's counsel not intend any tortious interference with his opponent's lawyer
client relationship, the interference with Defendant's access to justice created the facts that were
part of KMP's reasons to oppose the continuance when he told the court this:

*It is absolutely prejudicial to Plaintiffs to prolong this litigation. and there is no guarantee that Defendant would
be successful in finding replacement counsel, potentially prolonging the litigation further. (Pp. 9-10 KMP's reply
brief 5/31/19).*

8 Despite KMP's above assertion, plaintiff had, in fact, found such counsel ready to enter a
9 "guarantee" in the form of a NOA but was delayed and deterred by plaintiff's communications.
10 To be fair, I note that it was defendant's prospective counsel who initiated the contact with
KMP's counsel to alert him to the ethical issues in taking the case.

11 (14) Following the above events that threatened the motion for CR 11 sanctions which are not
12 just economic but implicate an attorney's license and reputation, I found it significant that,
13 consistent with my own research and that of every civil practitioner I had consulted with,
14 Plaintiff's May 24th motions failed to seek relief under the CR 11 sanctions or the \$10,000 fine
15 or attorney fees (there are none since KMP's counsel is acting Pro Bono), the very deterrent that
16 Chang had warned would happen. KMP's May 24th pleadings confirmed to me that the fears
17 existing in the mind of anyone willing to represent Mr. Sanchez were ill founded, and Mr.
18 Sanchez should not be blamed for these delays. Had Mr. Sanchez had competent counsel, the
case would have ended long ago, probably in a settlement without a trial, which one objectively
expects, like most trials after A.D.R. Thus the concept that a delay is prejudicial to any party is
false except it is prejudicial to the bar card of Sanchez's counsel. Because of this, I do not want
Sanchez's counsel to benefit from the denial of the continuance to get proper counsel. That is
another reason why the court must be informed of the facts herein.

19 (15) I am writing this declaration and submitting it to court because I believe it is relevant to the
20 court's discretion in determining the equities that are part of the discretion to grant or deny the
21 continuance, as well as my (possibly misplaced) belief that whatever integrity our profession
may have is worthy of propping up, and I have a duty to my client and the profession to mitigate
the damages to the client of gross malpractice by supplying the missing information to the court.

22 (16) Facts related to the "prejudice" of prolonging the case for a month or two for a continuance
23 are also based on incomplete information. With the exception of an attorney's need to cover up
24 his gross malpractice and save his career by making my client into his human-sacrifice, I will not
25 speculate on anyone's motives nor discuss my "motives" or "agenda" that supposedly drive my
position as Mr. Sanchez's SVP attorney as I believe they are irrelevant to the KMP case and Mr.

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1 Sanchez's right to access the courts for redress in a private matter. There are no ethical standards
or rules that require a waiver of due process based on the direct or ancillary goals of litigation.

2 (17) I therefore decline to respond to the concepts about motives, such as the counterclaim is a
3 gimmick to get discovery in this case, nor that the counterclaim was a gimmick to keep the case
alive to harass an innocent child.

4 (18) On the issue of the subject matter of the July trial date and whether the counterclaim has
5 been dismissed or not, to me that is a matter of court's jurisdiction rather than what counsels
6 informally agreed with each other. Certain actions are jurisdictional and the parties cannot
7 execute these actions that are the province of the court, especially when communication and
compliance with court orders is minimal.

8 (19) My client's counsel Chang's neglect of his professional obligations to this client on this case
9 are so profound that he not only misleads and withholds from the court favorable information in
his client's motion to withdraw and continue, he disconnects himself from his responsibilities on
the withdrawal. As KMP's attorney correctly notes:

10 *See, Sect. 4.3., fn. 1. In addition, defense counsel did not follow the procedure to withdraw prescribed by the Civil*
11 *Rules. Pursuant to CR 71, a Notice of Intent to Withdraw "shall specify a date when the attorney intends to*
12 *withdraw, which date shall be at least 10 days after the service of the Notice of Intent To Withdraw." Furthermore,*
there is no evidence that Mr. Sanchez has been served a copy of the Notice of Intent to Withdraw, or has been
provided an opportunity to object if he so chooses. (ID at p. 10).

13 In regards to the import of a general NOA and failure to comply with scheduling orders and failure to
14 keep the client informed about these missed deadlines, my ethical consultants told me to review: In re
discipline of Pfefer, 182 Wn.2d 716, 344 P.3d 1200 (2015)

15 (20) The following section of KMP's brief offers no objection to a continuance as long as the
16 trial date is not continued. However, prior to the trial date, a proper Summary Judgement hearing
17 is needed with a retained attorney who will not "sandbag" the hearing in order to salvage his
18 career and his license to practice law. The hearing wouldn't pass the "farce" test of competent
19 representation with such an attorney who has more to lose from winning MSJ hearing than even
the plaintiff does. I believe this court is entitled to have this information if it denies the motion to
withdraw and possibly allows a MSJ hearing with an attorney who would give the defendant
clearly motivated to provide worse representation than no attorney at all, or inflict upon the
parties the inconvenience of a pro se defendant.

20 (21) A relatively short continuance or stay for a new attorney to appear and explain to the court
21 in a hearing the time he needs would be sufficient to bring in the first Defendant's attorney who
22 is not disqualified to represent the defendant, and a new scheduling order, would put into effect
23 all of the usual discovery and ADR processes necessary to end this case without a trial as almost
all civil trials end. Thus the prejudice to both parties is actually aggravated by forcing a trial that
would otherwise be far less likely to happen.

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1 (22) Based on RPC 4.2, orders my orders from my superiors, the fact that I am not a party, and
2 other social norms, I have no standing to suggest relief from this court. However, I suggest the
following anyway:

3 Based on paragraph (21) above, the correct path for the court to take for all parties would be to
4 stay the case and set a hearing for withdrawal and substitution and planning.

5 (23) Because Attorney Chang's interest may materially limit his ability to argue the following, I
shall bring certain legal concepts to the tribunal as follows:

6 (a) It is true that in a personal injury civil case such as this, there is no direct State action seeking
7 deprivation of liberty (although the fact that the initiator of the case was a SVP prosecutor as the
8 current attorney was a SAU King County Prosecutor working pro bono may color that separation
9 if they are in contact with each other), and counsel correctly observes no right to court-appointed
10 attorney in the post-Gideon world in a civil case. But the court should not confuse State action to
11 deprive a person of liberty (As with the Grove case KMP cited) with the State action that
maintains the private civil litigation apparatus that underpins the right to retain counsel at the
litigant's expense, which includes pro bono. The right to counsel is not, as in criminal cases,
determined by 6th Amendment Strickland performance standards, but the right to "independent"
counsel with the benchmark of RPC 1.7, does inhere in the right to counsel in private civil case.

12 *Although there do not appear to be any civil cases on this point, the Supreme Court has indicated in its criminal*
13 *decisions that the right to retain counsel in civil litigation is implicit in the concept of fifth amendment due process.*
14 *See, e. g., Powell v. Alabama, 287 U.S. 45, 69, 53 S.Ct. 55, 77 L.Ed. 158 (1932); Cooke v. United States, 267 U.S.*
15 *317, 53, 45 S.Ct. 390, 69 L.Ed. 367 (1925). The right develops out of the principle that notice and hearing are*
16 *preliminary *1118 steps essential to the passing of an enforceable judgment and that they constitute basic elements*
17 *of the constitutional requirement of due process of law. Mullane v. Central Hanover Bank & Trust Co., 339 U.S.*
18 *306, 313, 70 S.Ct. 652, 94 L.Ed. 865 (1950); Powell v. Alabama, 287 U.S. 45, 68, 53 S.Ct. 55, 77 L.Ed. 158 (1932).*
Historically and in practice, the right to a hearing has always included the right to the aid of counsel when desired
and provided by the party asserting the right. Powell v. Alabama, 287 U.S. 45, 68, 53 S.Ct. 55, 77 L.Ed. 158 (1932);
"If in any case, civil or criminal, a state or federal court were arbitrarily to refuse to hear a party by counsel,
employed by and appearing for him, it reasonably may not be doubted that such a refusal would be a denial of a
hearing, and, therefore, of due process in the constitutional sense." 287 U.S. at 69, 53 S.Ct. at 64 (emphasis added).
Accord, Roberts v. Anderson, 66 F.2d 874 (10th Cir. 1933); Rex Investigative and Patrol Agency, Inc. v. Collura,
329 F.Supp. 696, 699 (E.D.N.Y.1971).

19 *13 Recognizing that a civil litigant has a constitutional right to retain hired counsel, we hold that Judge Hand's rule*
prohibiting a litigant from consulting with his attorney during breaks and recesses in the litigant's testimony
impinges upon that right. We draw our support from Geders v. United States, 425 U.S. 80, 96 S.Ct. 1330, 47
L.Ed.2d 592 (1976). In Geders a trial court order prevented the defendant in a federal criminal prosecution from
consulting his attorney "about anything" during a seventeen hour overnight recess in the trial between his direct
and cross-examination. The Supreme Court held that the trial court order impinged upon defendant's sixth
amendment right to the assistance of counsel. 425 U.S. at 91, 96 S.Ct. 1330.

20 *16 We note at the outset that certain distinctions can be made between the rights of civil litigants and those of*
criminal defendants. A criminal defendant's right to counsel arises out of the sixth amendment, and includes the
right to appointed counsel when necessary. See, e. g., Argersinger v. Hamlin, 407 U.S. 25, 92 S.Ct. 2006, 32 L.Ed.2d
520 (1972); Gideon v. Wainwright, 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed.2d 799 (1963); Powell v. Alabama, 287 U.S.
45, 53 S.Ct. 55 (1932). A civil litigant's right to retain counsel is rooted in fifth amendment notions of due process:
the right does not require the government to provide lawyers for litigants in civil matters. Hallam v. Byrrows, 266
F.2d 547 (6th Cir.), Cert. denied, 361 U.S. 919, 80 S.Ct. 262, 4 L.Ed.2d 187 (1959); McCaughy v. Gardner, 296
F.Supp. 33, 36 (E.D.La.1967). A criminal defendant faced with a potential loss of his personal liberty has much

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1 *more at stake than a civil litigant asserting or contesting a claim for damages, and for this reason the law affords*
2 *greater protection to the criminal defendant's rights. Potashnick v. Port Cirv Const. Co. 609 F.2d 1101, 5th*
3 *Cir.(Ala.), Jan. 15, 1980*

3 (b) I believe that Mr. Sanchez is entitled to but was never afforded the above described
4 "independent counsel". This means "independent" counsel. A RCP 1.7 disqualified attorney does
5 not comply with this due process right to retain counsel so long as an attorney is retainable who
6 is a qualified attorney. Denying the continuance that may be necessary to accommodate
7 independent counsel's schedule is a denial of the right to retained counsel in a civil case at the
8 litigant's expense. This is a fact I am bringing to the court's attention because KMP's own factual
9 assertions in opposing the continuance are based on KMP's express but false assumptions about
10 Attorney Chang's actions on this case as "strategy". Yet the malpractice, and the client's
11 helplessness in finding a willing attorney until recently is due to no fault of his own, but by
12 forces over which he has no control. The facts averred herein are thus relevant to the court's
13 decision on the motion to withdraw or continue, including whether a continuance will prejudice
14 either party when it will in my opinion, have the opposite effect.

10 See article: "*THE LAWYER'S DUTY TO INFORM HIS CLIENT OF HIS OWN MALPRACTICE*", 61 BLRLR 174

11 It was not until March 22nd that a reasonable person in Attorney Chang's position would have
12 sufficient information to recognize he was disqualified from representing Mr. Sanchez, and via
13 the principle of the foxes guarding the chickens, Chang's client had no reasonable notice of the
14 conflict, even though Chang's statements and actions were different from other attorneys whose
15 judgement was not limited by that conflict.

14 (24) As a non-party I recognize I have no authority from the client to file this nor do I have a
15 right to be heard. I have made every effort to get Attorney Chang to convey to the court the
16 information provided herein, but I have failed. This constitutes my effort to assist in compliance
17 with candor towards the tribunal.

17 (25) My attempts to communicate to attorney Chang the gravity and urgency of the situation as
18 soon as I learned of the SLAP issue as soon as he informed me around 3/21/19, included the
19 following analysis of both the SLAP issue and this conflict analysis partially reprinted below as
20 it reflects nothing but this objective fact and legal analysis and public records without any
21 privileged client communications express or implied:

20 **You have a conflict of interest that impairs your ability to advise the client or make decisions.**

21 Your interest is to erase evidence of your RPC violations by the only avenue where it is possible for you to do so:
22 Namely ending the case and terminating all further litigation. While this may or may not be the wisest course, the
23 RPC's forbid you to be or remain in the position to judge whether your advice to your client was either (1) legally
24 sound, or (2) weighing the pros and cons, was in his interest in the SVP case. as per your retainer agreement was
25 your primary duty. because to terminate the KMP litigation is in your interest, and it is a compelling, even
26 existential interest.

24 RPC 1.7
25 CONFLICT OF INTEREST: CURRENT CLIENTS

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1 (a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

2 (1) the representation of one client will be directly adverse to another client; or

3 (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

4
5 (b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

6 (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;

7 (2) the representation is not prohibited by law;

8 (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and

9
10 (4) each affected client gives informed consent, confirmed in writing (following authorization from the other client to make any required disclosures).

11 Applying RPC 1.7, Mr. Sanchez is an "affected client". You cannot continue to advise him about the 4.24. motion (which is really another 12(b)(6) unless you inform him of the conflict and he signs a written waiver. I do not believe this is an arguable question).

13 LAWYER'S PERSONAL INTEREST

14 Your apparent and actual interest is to protect yourself and your firm from liability. Evidence leaking out of your violating the RPCs on client obligations below would damage the reputation of your firm and expose you to discipline, probably suspension based on the ABA recommended sanctions schedule. This is an existential interest that is "apparent" whether you recognize it or not.

15 To give no other advice to your client to dismiss the claim and counterclaim advances this "personal interest of the lawyer". The nexus between this interest and the decision to terminate the litigation is too strong for a reasonable objective person to ignore. Your own Emails that say "I dropped the ball" together with your certainty of the need to dismiss the claim and counterclaim are part of that nexus.

17 Dismissing this is the only way to avoid the client finding out about your rule violations. Dismissing this is the only way you have to argue that your violations cause no harm to the client. That may turn out to be true, but you cannot be the one who decides that, since your judgment is part of your representation which is "materially limited" by your personal interest. (RPC 1.7). I am unable to formulate a rational counter-position to this.

19 Here are the rules that you violated and the resulting prejudice to your client.

20 RPC 1.3

DILIGENCE

21 A lawyer shall act with reasonable diligence and promptness in representing a client.

22 *3j Perhaps no professional shortcoming is more widely resented than procrastination. A client's interests often can be adversely affected by the passage of time or the change of conditions: in extreme instances, as*
23 *when a lawyer overlooks a statute of limitations, the client's legal position may be destroyed. Even when the client's interests are not affected in substance, however, unreasonable delay can cause a client needless anxiety*
24 *and undermine confidence in the lawyer's trustworthiness. A lawyer's duty to act with reasonable promptness, however, does not preclude the lawyer from agreeing to a reasonable request for postponement that will not*
25 *prejudice the lawyer's client.*

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1 [4] Unless the relationship is terminated as provided in Rule 1.16, a lawyer should carry through to conclusion all
2 matters undertaken for a client. If a lawyer's employment is limited to a specific matter, the relationship terminates
when the matter has been resolved.

3 You had 9 months from your Defamation Counterclaim, and the obligations undertaken was to get discovery.
4 "...carry through to conclusion all matters undertaken..." would entail discovery requests, discovery conference,
and, if needed, motion to compel, agreed protective orders, and matters in the possession of parties when still
parties, like BBBS and Darla Tishman. You did none of this, so you did not comply with this rule. Doing nothing
5 for 9 months is procrastination not reasonable diligence.

6 Observance of the discovery scheduling order was crucial to your duties to carry out the representation. That
scheduling order provided the following deadlines:

7 **The trial date is reset, and the Court amends the case schedule as shown below:**

8 Case Events	Amended Due Date
9 Disclosure of Possible Primary Witnesses	2/4/2019
10 Disclosure of Possible Additional Witnesses	3/18/2019
11 Change of Trial Date	4/1/2019
12 Filing Jury Demand	4/1/2019
13 Discovery Cutoff	5/20/2019
14 Deadline for Engaging in Alternative Dispute Resolution	6/10/2019

15 Based on the above order, you are already too late on witness disclosure and final witness disclosure deadlines. Had
16 you asked, I'd have provided that, but they were obvious from the records you had. I provide a list below of the
witnesses anyway.

17 These are the names of witnesses you should have provided:
18 *(Chang supplied them on 5/20)*

19 These obvious witnesses were never noted but were obvious witnesses based on your knowledge of this case.

20 3/18 was the deadline for "possible additional witnesses" passed too. Last day for trial date change and jury demand
21 was April 1st. Jury trial is constitutional right for this client. So your procrastination deprived your client of a
22 constitutional right. He needs a continuance for counsel without a conflict of interest. That deadline has also passed.
23 However, as you are probably aware, under Seattle vs. Williams, a jury trial can be requested late if not prejudicial
24 to the opposing party, due to it being a constitutional right, although that's not an excuse to miss the deadline. You
25 can mitigate this by filing a jury demand and asking for a continuance anyway. Discovery cutoff isn't for 7 weeks.
So where you get April 10th is beyond me. But your failure to undertake to comply with, or ask for an extension of
these simple easy deadlines that deprived the client of all this due process, for no reason, wouldn't be concerning had
you just admitted to making a mistake. There is still time to admit to these mistakes to mitigate these damages, even
though you wouldn't have to admit them if your client believed you when you told him very bad things would
happen almost immediately if you filed the discovery request and did not agree to dismiss within the deadline Rich
Anderson set. You told the client that he could get the discovery just as easy from the SVP case. This is not a true
statement. But if it is true then why does your clients retainer agreement specify that the purpose of the
representation was to obtain discovery to assist on the SVP case?

26 The potential magnitude of the damages to the client, if you don't mitigate them by other ways besides terminating
27 the case are as follows:

28 **DECLARATION OF KENNETH P. HENRIKSON**
29 **IN SUPPORT OF DEFENDANT'S MOTION TO**
30 **CONTINUE TRIAL DATE AND MOTION FOR**
31 **WITHDRAWAL OF COUNSEL - 14**

HART JARVIS MURRAY CHANG PLLC
155 N.E. 100th Street, Suite 210
Seattle, WA 98125
Tel: (206) 735-7474
Fax: (206) 260-2950

1 Loss of jury trial right, loss of ability to call witnesses, loss of right to request continuance so other counsel can take
2 over, and, of course, loss of right to all discovery because you failed to see "through to conclusion all matters
undertaken for a client) i.e. discovery.

3 The loss of these rights means Sanchez loses the following opportunities which would have had a
4 reasonable possibility of being successful. Therefore, the damages are great, the discipline would be
proportional, and since the only way to avoid any chance of discipline or embarrassment, you have to
advise the client of Rule 11 Sanctions, 10,000\$ fines, and attorney's fees and certain dismissal of the case
anyway.

5 The prejudice caused by your neglect reduces Sanchez's chances of success in getting released before he
6 dies as follows:

7 *(redacted as work product).*

8 The stage at which you are withdrawing and the concomitant events leads to the conclusion that Mr.
Sanchez is motivated by a need to harass a victim, when you could have simply filed these discovery
requests 9 months ago.

9 *(redacted as work product).*

10 ISSUES OF PREJUDICE-CAUSATION IN RPC 1.3 COMPLIANCE

11 The argument that your procrastination did not prejudice the client by depriving him of discovery, as it
merely postponed the inevitable dismissal on 12(b)6 grounds is problematic.

12 This argument makes no sense in reality because your clients would have gotten the discovery if you had
13 asked for it, since the Plaintiff's first 12(b)6 grounds included a general claim of immunity. While the
4.24 statute may pose an additional immunity argument, it is mere speculation that your timely discovery
14 request you could have made and followed up on last year, before Rich Anderson took over, would have
triggered yet another 12(b)6 motion to dismiss at that time. In fact, with all the parties and attorneys
15 present, the case could have been settled with you having the discovery.

16 The argument on Rule 11 Sanctions for your filing a frivolous claim or failing to agree to dismiss before
the Plaintiff even files a motion to dismiss is problematic.

17 If the court, the plaintiff and you missed this issue of RCW 4.24 then are all of these officers of the court
subject to Rule 11 sanctions? Was the counterclaim attorney in the Hisey case assessed Rule 11 sanctions
18 for a frivolous claim when the court denied the motion to dismiss his "frivolous" claim?

19 The argument that you are not entitled to discovery anyway so you shouldn't have gotten it had you asked
for it 9 months ago, so you merely failed to exercise a right that Sanchez never had, is also problematic.

20 It is for KMP to assert the defense. It doesn't exist unless he asserts it, regardless of merit. Sanchez was
entitled to discovery during the 9 month window period you failed to act. This is not like "self defense"
21 which is an element of Assault and must be pled (lawful force) and proved. It may even be that the 4.24
immunity defense should be asserted in the response/answer to the initial claim. You might disagree but
22 your opinion is tainted by your conflict of interest.

23 DUTY TO MITIGATE

24 The above failure to tend to the discovery scheduling order requires mitigation of damages of being close to trial,
unable to obtain the discovery that could have been procured.

25
**DECLARATION OF KENNETH P. HENRIKSON
IN SUPPORT OF DEFENDANT'S MOTION TO
CONTINUE TRIAL DATE AND MOTION FOR
WITHDRAWAL OF COUNSEL - 15**

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Fax: (206) 260-2950

1 (d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a
2 client's interests, such as giving reasonable notice to the client, allowing time for employment of another legal
3 practitioner, surrendering papers and property to which the client is entitled and refunding any advance payment of
4 fee or expense that has not been earned or incurred. The lawyer may retain papers relating
5 to the client to the extent permitted by other law.

6 Mitigation of attorney lapses in this case requires the following action to protect the client interests:

7 A motion to stay the proceedings.

8 A prior 12(b)(6) motion to dismiss the counterclaim has failed. A prior motion to dismiss the battery claim against
9 Sanchez per CR 41 has failed. There can be no 4.24.525 motion to dismiss because Sanchez is entitled to litigate his
10 claim.

11 It is possible to file a Rule CR 11 sanctions motion for filing a frivolous counterclaim but that would fail because the
12 claim is not frivolous.

13 Under penalty of perjury of the laws of Washington, I declare the above to be true to the best of
14 my knowledge and belief, as of June 2nd, 2019.

15 *Kenneth Henrikson* (E-signed) 11:39 PM in Poulsbo, WA 98370

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17 Kenneth Henrikson #17592

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DECLARATION OF KENNETH P. HENRIKSON
IN SUPPORT OF DEFENDANT'S MOTION TO
CONTINUE TRIAL DATE AND MOTION FOR
WITHDRAWAL OF COUNSEL - 16

HART JARVIS MURRAY CHANG PLLC
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CERTIFICATE OF SERVICE

I, Kenneth M. Chang, certify under penalty of perjury under the laws of the State of Washington that I am the counsel for Respondent herein and that on 6/3/2019 I caused to be served on the person listed below in the manner shown.

DECLARATION OF KENNETH P. HENRIKSON IN SUPPORT OF DEFENDANT'S MOTION TO CONTINUE TRIAL DATE AND MOTION FOR WITHDRAWAL OF COUNSEL

Richard Anderson, WSBA No. 25115
Counsel for Plaintiffs
Schroeter, Goldmark & Bender
810 Third Ave. Suite 500
Seattle, WA 98104
Tel: 206-622-8000
Fax: 206-682-2305

- United States Mail, First Class
By E-Service June 3, 2019
By Facsimile
By Email Attachment June 3, 2019

Dated this 3rd day of June, 2019

/s/ Kenneth M. Chang
Kenneth M. Chang, WSBA No. 26737

DECLARATION OF KENNETH P. HENRIKSON IN SUPPORT OF DEFENDANT'S MOTION TO CONTINUE TRIAL DATE AND MOTION FOR WITHDRAWAL OF COUNSEL - 17

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APPENDICE 9

The Court of Appeals
of the
State of Washington

RICHARD D. JOHNSON,
Court Administrator/Clerk

DIVISION I
One Union Square
600 University Street
Seattle, WA
98101-4170
(206) 464-7750
TDD: (206) 587-5505

February 14, 2020

Peter Thomas Connick
Attorney At Law
12351 Lake City Way NE Ste 203
Seattle, WA 98125-5437
Peterconnick@gmail.com

Richard L. Anderson
Schroeter Goldmark Bender
810 3rd Ave Ste 500
Seattle, WA 98104-1657
anderson@sgb-law.com

CASE #: 80293-3-I

K.M.P., et ano. v. Big Brothers Big Sisters of Puget Sound, et al.

Counsel:

The following notation ruling by Commissioner Masako Kanazawa of the Court was entered on February 14, 2020, regarding Appellant's Motion and Declaration to Allow Appendices to Appellant's Opening Brief:

NOTATION RULING

K.M.P. v. Big Brothers Big Sisters, NO. 80293-3-I
February 14, 2020

Appellant (defendant below) Michael Sanchez appeals a summary judgment order entered against him in favor of respondent (plaintiff below) K.M.P. On February 4, 2020, Sanchez filed his opening brief with voluminous appendices. Sanchez then filed a motion and counsel's declaration to allow those appendices. The motion is granted in part and denied in part as follows.

Proposed appendix 2 (interview transcript) and portions of appendix 3 (deposition transcript) are not part of the record and may not be attached to the brief. See RAP 9.12 ("On review of an order granting or denying a motion for summary judgment the appellate court will consider only evidence and issues called to the attention of the trial court."). To the extent portions of the deposition transcript were made part of the summary judgment record below, they are already in the record on review and need not be attached to the brief. Those appendices are rejected.

Proposed appendices 1, 4, and 5 (transcript of the summary judgment hearing, photos, and minutes) are already in the record and need not be attached. Counsel shall refer to them as RP or CP with page numbers. These appendices are rejected.

No. 80293-3-I
Page 2 of 2

Proposed appendix 6 is the transcript of a sanctions hearing, which is not in the record on review. To supplement the record with the transcript, counsel shall promptly file a supplemental statement of arrangements in compliance with RAP 9.2. Counsel shall do so within 10 days of this ruling.

Proposed appendix 7 is a copy of an opinion of a federal district court. This appendix is appropriate and is allowed.

In light of this ruling, Sanchez's counsel shall file an amended brief with correct references to the record by March 6, 2020.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. Johnson', with a long horizontal flourish extending to the right.

Richard D. Johnson
Court Administrator/Clerk

LAM

APPENDICE 10

COURT OF APPEALS FOR THE STATE OF WASHINGTON
DIVISION I

K.M.P., and SARAH PINHO, et ano,

Plaintiffs-Appellees,

v.

BIG BROTHERS BIG SISTERS OF
PUGET SOUND, and MICHAEL
SANCHEZ,

Defendant-Appellant.

NO. 80293-3-1

MOTION AND
DECLARATION TO
ALLOW APPENDICES
TO APPELLANT'S
OPENING BRIEF

[RAP 10.3]

I. MOTION

COMES NOW the Defendant MICHAEL SANCHEZ, by and through his appellate counsel of record, the Law Office of PETER T. CONNICK, PLLC, pursuant to RAP 10.3(a)(8) and other applicable rules allowing attachment of appendices particular filings, and moves the court for an order allowing the submission of the following appendices that attached to *Appellant's Opening Brief* in this matter:

MOTION TO PERMIT APPENDICES ATTACHED
TO APPELLANT'S OPENING BRIEF
PAGE 1

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peterconnick@gmail.com

- Appendix #1 - 06/21/19 transcript of summary proceeding with the trial court's oral ruling.
- Appendix #2 - 11/02/16 KMP Defense Interview by Attorney Zachary Wagnild.
- Appendix #3 - 05/21/19 Deposition of Michael Sanchez.
- Appendix #4 - copies of photos.
- Appendix #5 - 09/16/19 Minutes.
- Appendix #6 - 09/16/19 VRP - sanctions hearing.
- Appendix#7- *Hisey v. Ellis*, WL 7053653 (W.D. Wash., 11/28/17) (2 pages).

II. MEMORANDUM

RAP 10.3(a)(8) provides:

An appendix to the brief if deemed appropriate by the party submitting the brief. An appendix may not include materials not contained in the record on review without permission from the appellate court, except as provided in rule 10.4(c).

Some of the above items attached to Appellant's opening brief are not part of the record but rather supplement the record. For example, there are no written findings of fact or conclusions of law on summary judgment or statutory damages and attorney fees pursuant to RCW 4.24.510 and/or CR 11 sanctions, attorney fees and costs. Thus, Appendix #1 (06/21/19 VRP) was attached as well as well as Appendix #6 (09/16/19 VRP), which are transcripts of arguments and court rulings on those dates.

Appendix #2 (11/02/16 KMP Defense Interview by Attorney Zachary Wagnild) was not made part of the record on summary judgment motion below. It should have been made part of the record for a fair adjudication on

MOTION TO PERMIT APPENDICES ATTACHED
TO APPELLANT'S OPENING BRIEF
PAGE 2

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the elements of defamation such as "falsity", fault, negligence, privilege and damages.

Some pages of Appendix #3 (05/21/19 Deposition of Michael Sanchez), were made part of the record [i.e., 05/24/19 *Plaintiff's Motion for Summary Judgment* (CP 853), Sanchez deposition (CP 876-880) pages 22-25, 46-49, 50-53, 54-57 of deposition]. A complete transcript is needed to show the insistence and likelihood of Sanchez's denial of sexual assault, and evidence of falsity, fault, lack of privilege and damages in his defamation action. For example, Sanchez's denial of sexual misconduct on the dock (place of alleged sexual assault) and explanation of what happened with 20 other fishermen standing around gives corroboration to his denials. It also reflects on the alleged victim's aggravation with Sanchez and her motive to prevaricate. Appendix #3 provides the complete transcript. It is also needed for a fair adjudication of whether conflicted counsel failed in his representation of Sanchez when the trial court denied his motion to withdraw for conflict.

Appendix #4 (fishing photos) are part of the record. (CP 213-219 - 7 pages) and Appendix #5 - 09/16/19 Minutes (CP 1173-1174 - 2 pages) are part of the record. Those items are attached to *Appellant's Opening Brief* for convenience.

MOTION TO PERMIT APPENDICES ATTACHED
TO APPELLANT'S OPENING BRIEF
PAGE 3

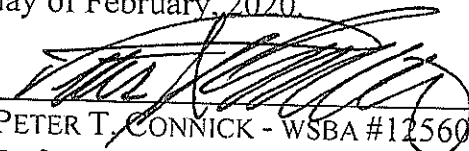
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Appendix #7 is a 2-page federal district court case that addresses issues regarding defamation and counterclaims specifically under RCW 4.24.510 the cases closely reflects the issues in Mr. Sanchez case. *Hisey v. Ellis*, WL 7053653 (W.D. Wash., 11/28/17) (2 pages). All appendices are submitted to achieve adequate review and substantial justice.

III. CONCLUSION

For the reasons and arguments made above, the Appellant respectfully requests that the Court of Appeals allow submission of the appendices attached to *Appellant's Opening Memorandum*.

DATED this 6th day of February, 2020.


PETER T. CONNICK - WSBA #12560
Defense Attorney

STATE OF WASHINGTON)
 ss
KING COUNTY)

DECLARATION OF APPELLATE
COUNSEL

I, PETER T. CONNICK, being first duly sworn deposes and states as follows:

1. I am appellate counsel of record for Michael Sanchez, the Defendant/Appellant in the above-entitled case.
2. On 06/21/19 this court granted plaintiff KMP's summary-judgment motion to dismiss defendant's counterclaims against plaintiff. I filed a *Notice of Appeal* on or about 07/22/19. KMP thereafter noted a hearing (but did not file a motion) on a motion for sanctions per RCW 4.24.510 and CR 11 for filing a counterclaim based on the assertion

MOTION TO PERMIT APPENDICES ATTACHED
TO APPELLANT'S OPENING BRIEF
PAGE 4

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that the sole basis of defendant's counterclaim was for RCW 4.24.510 protected communications with law enforcement. On 07/23/19, plaintiff filed its motion for sanctions which was granted at a hearing 09/16/19. I filed an *Amended Notice of Appeal* 10/02/19.

3. There was some delay and confusion in obtaining transcripts and designating record for transmittal from Superior Court to the Court of Appeals (transcripts for appeal were received 10/21/19 and the designated record 11/07/19). The record was larger than anticipated (1,279 pages of briefing with attachments). Certain items were found on further review and interview of defense counsel that were not included in the record.

4. *Appellant's Opening Brief* was filed 02/04/20. I have been proceeding diligently with this appeal. I now ask to Court of Appeals to supplement the record with the following appendices listed above for adequate review, fair adjudication of issues in *Appellant's Opening Brief* and in the interests of justice.

I swear under penalty of perjury under the laws of the State of Washington that the above statements are true and correct.

SIGNED at Seattle, WA this 6th day of February, 2020.



PETER T. CONNICK - WSBA #12560
Attorney for Respondent

LAW OFFICE OF PETER T. CONNICK, PLLC

April 15, 2021 - 11:00 AM

Transmittal Information

Filed with Court: Court of Appeals Division I
Appellate Court Case Number: 80293-3
Appellate Court Case Title: K.M.P., et ano. v. Big Brothers Big Sisters of Puget Sound, et al.

The following documents have been uploaded:

- 802933_Motion_20210415100036D1799505_5120.pdf
This File Contains:
Motion 1 - Discretionary Review
The Original File Name was Sanchez MDR w Appendices.pdf

A copy of the uploaded files will be sent to:

- anderson@sgb-law.com
- molina@sgb-law.com

Comments:

Sender Name: Peter Connick - Email: peterconnick@gmail.com
Address:
12351 LAKE CITY WAY NE STE 203
SEATTLE, WA, 98125-5437
Phone: 206-624-5958

Note: The Filing Id is 20210415100036D1799505