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No. 63603-1-I

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COURT OF APPEALS, DIVISION I  
OF THE STATE OF WASHINGTON

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In Re the Marriage of  
KIMBERLY KRISTEN MELE,  
Respondent,  
v.  
JOHN PETER MELE,  
Appellant.

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**BRIEF OF APPELLANT**

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## I. INTRODUCTION

Washington's domestic relations laws are focused on serving the best interests of the children in any relationship. To that end, Washington law recognizes the fundamental importance of the parent-child relationship to the welfare of a child, and that residential time and financial support are equally important components of parenting arrangements. *See* RCW 26.09.002.

Consistent with these principles, Washington law requires that *all* resources of the parents, both community and separate, be considered in a dissolution proceeding. Particularly in circumstances where children have significant post-dissolution residential time with both parents, a court's consideration of all resources enables it to make decisions on matters such as property division and child support that leave *both* parents with the ability to provide for the best interests of their children. Accordingly, Washington's appellate courts have consistently recognized that financial decisions which result in a patent disparity between the economic circumstances of parents are a manifest abuse of the trial court's discretion and must be reversed.

Despite the policies underlying Washington's domestic relations law, the specific requirements of statutory law, and the clear mandate of Washington appellate decisions, the trial court in this matter repeatedly

and inexplicably ignored its obligations and abused its discretion. For example, the trial court failed to consider all the parties' community and separate property and liabilities in making its property division, and that failure combined with other errors, produced indisputably disparate economic circumstances favoring Respondent. The trial court's failure to consider the parties' respective resources and the impact of its property division, combined with other errors, similarly produced indefensible awards of child support favoring Respondent.

In the end, the trial court's decisions did not merely violate Washington statutory and case law. By unjustly and inequitably favoring Respondent and disadvantaging Appellant, the trial court's decisions ultimately failed to serve the best interests of the parties' children and must therefore be reversed.

## **II. ASSIGNMENTS OF ERROR**

### **A. Assignments of Error.**

1. The trial court erred in entering the Decree of Dissolution.
2. The trial court erred in entering Finding of Fact 2.8 in the Findings of Fact and Conclusions of Law.
3. The trial court erred in entering Finding of Fact 2.9 in the Findings of Fact and Conclusions of Law.

4. The trial court erred in entering Finding of Fact 2.10 in the Findings of Fact and Conclusions of Law.

5. The trial court erred in entering Finding of Fact 2.11 in the Findings of Fact and Conclusions of Law.

6. The trial court erred in entering Finding of Fact 2.12 in the Findings of Fact and Conclusions of Law.

7. The trial court erred in entering Finding of Fact 2.19 in the Findings of Fact and Conclusions of Law.

8. The trial court erred in entering Finding of Fact 2.20 in the Findings of Fact and Conclusions of Law.

9. The trial court erred in entering Conclusion of Law 3.4 in the Findings of Fact and Conclusions of Law.

10. The trial court erred in entering the Parenting Plan Final.

11. The trial court erred in entering the Order of Child Support Final Order.

12. The trial court erred in entering its April 15, 2009 written decision.

13. The trial court erred in entering its Order on Kim's Motion for Reconsideration and/or Amendment of Judgment Pursuant to CR 59.

14. The trial court erred in entering the October 9, 2009 Order on Show Cause re Contempt/Judgment.

15. The trial court erred in entering the November 18, 2009 Judgment and Order on Petitioner's Motion to Enforce and Clarify Decree and Request for Attorney Fees.

**B. Issues Pertaining to Assignments of Error**

1. Whether the trial court erred when it failed to make a just and equitable property division? (Assignments of Error Nos. 1, 2, 3, 4, 5, 6, 7, 9, 12, 13, 15)

2. Whether the trial court erred when it failed to take into consideration the parties' post-dissolution economic situation as a result of its property division? (Assignments of Error Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15)

3. Whether the trial court erred when it made a property division that resulted in a patent disparity in the parties' economic circumstances? (Assignments of Error Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 12, 13, 15)

4. Whether the trial court erred when it failed to take into consideration all community and separate property and all community and separate liabilities in making its property division? (Assignments of Error Nos. 1, 2, 3, 4, 5, 6, 12, 13, 15)

5. Whether the trial court erred when it made a property division that failed to consider Kim's Exemption Trust, which was valued

at \$423,356 at the time of trial? (Assignments of Error Nos. 1, 2, 3, 6, 9, 12, 13)

6. Whether the trial court erred when it valued the Costco stock options awarded to Kim at \$32,352? (Assignments of Error Nos. 1, 2, 9, 12, 13)

7. Whether the trial court erred in valuing three “pre-distributed” assets allocated to John at \$302,938? (Assignments of Error Nos. 1, 2, 3, 4, 5, 6, 9, 12, 13, 15)

8. Whether the trial court erred when it found that John had “dissipated” the retirement account awarded to him? (Assignments of Error Nos. 1, 2, 9, 12, 13, 15)

9. Whether the trial court erred when it valued the parties’ personal property at \$2? (Assignments of Error Nos. 1, 2, 9, 12, 13)

10. Whether the trial court erred when it included two purported liabilities of Kim in its division of property? (Assignments of Error Nos. 1, 2, 3, 4, 5, 6, 9, 12, 13)

11. Whether the trial court erred when it failed to require Kim to refinance or sell the home awarded to her, or to take some other action that would eliminate John’s continuing personal liability for the debts secured by the home? (Assignments of Error Nos. 1, 9, 12, 13, 15)

12. Whether the trial court erred when it determined that John was not entitled to access a line of credit still in his name and still his personal liability that was not distributed in the dissolution decree? (Assignments of Error Nos. 1, 9, 15)

13. Whether the trial court erred when it awarded Kim “back child support” of \$4,766 calculated by retroactively extending and retroactively increasing John’s pre-trial child support obligation? (Assignments of Error Nos. 1, 8, 9, 12)

14. Whether the trial court erred when it awarded Kim a right to reimbursement for certain pre-trial child related expenses that retroactively extended and retroactively increased John’s pre-trial reimbursement obligation? (Assignments of Error Nos. 1, 8, 11, 12, 13, 14)

15. Whether the trial court erred when it failed to consider all of Kim’s income and the parties’ assets and liabilities in making its child support calculation? (Assignments of Error Nos. 1, 8, 11, 12, 13, 14)

16. Whether the trial court erred when it determined the income imputed to John in making its child support calculation? (Assignments of Error Nos. 1, 8, 11, 12, 13, 14)

17. Whether the trial court erred when it awarded a prospective right to reimbursement for additional child expenses without evidence or

findings to support its award? (Assignments of Error Nos. 1, 8, 11, 12, 13, 15)

18. Whether the trial court erred when it required John to maintain Kim as the sole beneficiary on his life insurance policy? (Assignment of Error No. 1)

19. Whether the trial court erred when it granted sole-decision making authority to Kim over “major decisions” involving the parties’ children? (Assignments of Error Nos. 1, 7, 10, 12)

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

Appellant John Peter Mele (“John”) and Respondent Kimberly Kristen Mele (“Kim”) were married on October 6, 1990. During their marriage, the parties had three children; Samantha (age 16 as of the final orders in this case), Jake (age 13 as of the final orders) and Trevor (age 9 as of the final orders). CP 618, 622. The parties separated in April 2007, and Kim filed a petition for dissolution on February 18, 2008. CP 1-7, 618.

Trial in this matter began on January 27, 2009, and was conducted over nine days spread through January, February and March 2009. The trial court made its oral ruling on March 17, 2009. RP 1222-42. On April 15, 2008, the trial court entered its Findings of Fact and Conclusions of Law (CP 617-26; attached as Appendix 1), Decree of Dissolution

(CP 627-36; attached as Appendix 2), Order of Child Support (CP 637-51; attached as Appendix 3), Parenting Plan Final (CP 662-72; attached as Appendix 4), and a written decision (CP 652-61; attached as Appendix 5).

As of the entry of the final orders, Kim was employed as an attorney for Costco, and her earnings from Costco combined with partial disability benefits and money she earned from a side business totaled more than \$103,000 per year. RP 1142-43; Ex. 148. In contrast, John was attending school full-time and was part way through completing the Master of Education/Secondary Teacher Certification program at the UW Bothell. RP 711-12. John had previously worked as an attorney but was no longer able to practice law as a result of his 2008 disbarment. RP 714, 1034-35. In addition, the start-up business John co-founded in September 2005 after leaving private practice had ran out of operating capital in October 2007 and was defunct at the time of trial. RP 782, 828-29.

The trial court's property and child support award to Kim included the following: (1) the parties' home, (2) all the personal property in the parties' home, (3) all of Kim's retirement benefits, (4) all of Kim's disability insurance benefits, (5) all the parties' Costco stock options, (6) all the parties' investment account, (7) all of Kim's Exemption Trust Fund, which was valued at \$423,356 at the time of trial, (8) two judgments against John totaling \$105,252, (9) the tax exemptions for all three of the

parties' children, (10) a right to child support from John of \$812.15 per month, and (11) a right to reimbursement from John for 36.6% of every child-related medical, school and extra-curricular expenditure Kim made. CP 617-26 (Appendix 1), 627-36 (Appendix 2), 637-51 (Appendix 3);

Although the court's parenting plan scheduled the majority of the residential time for the parties' three children with Kim, John was awarded significant residential time as well: except for specified holidays and school breaks, each child spends at least one overnight weekday with John, and all three children spend every other weekend with him. CP 662-72 (Appendix 4). Nevertheless, the court's parenting plan give Kim sole decision-making authority for the children over the following "major decisions": (1) education decisions, (2) non-emergency health care, (3) religious upbringing, (4) extracurricular activities, (5) high risk activity, (6) trips without parents, and (7) tattoos, piercings, hair coloring, and head shaving. CP 668-69 (Appendix 4, pp. 7-8).

And despite giving John significant residential time with his children, the trial court's property award left him in dire economic circumstances. The only existing assets awarded to John with any appreciable value were his IRA, which had a balance of only \$25,589 at the time of trial, and a comic book collection the court valued at \$30,000. CP 626 (Appendix 1, Ex. A); RP 817-18, Ex. 140. And in addition to

judgments of \$105,562 against him in favor of Kim and his ongoing support and reimbursement obligations, the court also assigned debts to John totaling more than \$27,000 and left him jointly liable for the \$541,270 still owing on the mortgage and home equity loan taken on the house awarded to Kim. CP 627-36 (Appendix 2); RP 848, 1092; Ex. 137. As a result, John was forced to drop out of school, move in with his mother in her two-bedroom condominium, and immediately start looking for work in the middle of the worst economy in 25 years. CP 596-607.

Following the entry of the final orders, John filed a motion for reconsideration on April 27, 2009. CP 608-15. The trial court denied John's motion by order dated May 6, 2009. CP 673-74. Kim subsequently filed two motions against John seeking to enforce various provisions in the final order and to clarify others. CP 997-1002, 1172-77. The first motion resulted in an Order on Show Cause re Contempt/Judgment entered on October 9, 2009. CP 1134-41. The second motion resulted in a Judgment and Order on Petitioner's Motion to Clarify and Enforce Decree and Request for Attorney's Fees entered on November 18, 2009. CP 1220-22.

## V. ARGUMENT

**A. The trial court's division of property was unjust and inequitable, and resulted in a patent disparity in the parties' economic circumstances.**

1. Legal standard and standard of review.

The division of property in a dissolution proceeding is governed by

RCW 26.09.080:

In a proceeding for dissolution of the marriage or domestic partnership . . . the court shall, without regard to misconduct, make such disposition of the property and the liabilities of the parties, either community or separate, as shall appear just and equitable after considering all relevant factors including, but not limited to:

(1) The nature and extent of the community property;

(2) The nature and extent of the separate property;

(3) The duration of the marriage or domestic partnership; and

(4) The economic circumstances of each spouse or domestic partner at the time the division of property is to become effective, including the desirability of awarding the family home or the right to live therein for reasonable periods to a spouse or domestic partner with whom the children reside the majority of the time.

As the court observed in *In re Washburn*, 101 Wn.2d 168, 677 P.2d 152 (1984), the division of property and liabilities under RCW 26.09.080 "is controlled *not* by their character as separate or community, but rather by what is just and equitable, taking into account

the economic circumstances of the parties. All relevant factors *must* be considered by the trial court in its attempt to achieve an equitable distribution.” *In re Washburn*, 101 Wn.2d at 177 (emphasis added).

Washington courts have repeatedly recognized the long-standing rule that in dividing property in a dissolution proceeding, the trial court’s “paramount” concern must be the economic condition of each spouse as a result of the division. *See, e.g., In re Washburn*, 101 Wn.2d at 181; *see also In re Marriage of Dessauer*, 97 Wn.2d 831, 839, 650 P.2d 1099 (1982); *DeRuwe v. DeRuwe*, 72 Wn.2d 404, 408, 433 P.2d 209 (1967); *In re Urbana v. Urbana*, 147 Wn. App. 1, 11, 195 P.3d 959 (2008); *In re Marriage of Gillespie*, 89 Wn. App. 390, 399, 948 P.2d 1338 (1997); *In re Marriage of Williams*, 84 Wn. App. 263, 268, 927 P.2d 679 (1996); RCW 26.09.080(4).

Generally speaking, a trial court’s division a property division made during the dissolution of a marriage will be reversed on appeal only if there is a manifest abuse of discretion. *In re Marriage of Muhammad*, 153 Wn.2d 795, 803, 108 P.3d 779 (2005). A trial court abuses its discretion if its decision is manifestly unreasonable, based on untenable grounds, or based on untenable reasons. *In re Marriage of Littlefield*, 133 Wn.2d 39, 46-47, 940 P.2d 1362 (1997). A court’s decision is manifestly unreasonable if it is outside the range of acceptable choices, given the

facts and the applicable legal standard; it is based on untenable grounds if the factual findings are unsupported by the record; it is based on untenable reasons if it is based on an incorrect standard or the facts do not meet the requirements of the correct standard. *In re Marriage of Littlefield*, 133 Wn.2d at 47.

Given the “paramount” concern for the parties’ respective economic conditions at the time the decree is entered, a trial court’s discretion in making a division of property is not unlimited. While a trial court is not required to divide community property equally, if a dissolution decree “results in a patent disparity in the parties’ economic circumstances, a manifest abuse of discretion has occurred” and the court has therefore committed reversible error. *In re Marriage of Rockwell*, 141 Wn. App. 235, 243, 170 P.3d 572 (2007), *review denied* 163 Wn.2d 1055 (2008); *see also In re Urbana v. Urbana*, 147 Wn. App. at 10; *In re Marriage of Pea*, 17 Wn. App. 728, 731, 566 P.2d 212 (1977).

2. The trial court abused its discretion by making a property division that awarded 60% of the community property to Kim and 40% to John.

The trial court abused its discretion by making a property division that awarded 60% of what it categorized and valued as the parties’ community property to Kim and 40% to John. Significantly, the court did not enter any findings in support of its disparate division of the property

nor did it offer any explanation for the division in its oral ruling or written decision. Instead, it merely repeated its conclusory belief that such a division was “equitable” without indicating what, if any, of the factors in RCW 26.09.080 it considered, or what other rationale it had for the division. *See* RP 1227; CP 658 (Appendix 5, p. 7).

Washington courts recognize that a disproportionate division of community property is not an abuse of discretion where it is part of an overall result that places the parties in equitably similar post-dissolution financial situations. Thus in *In re Marriage of Davison*, 112 Wn. App. 251, 48 P.3d 358 (2002), the appellate court affirmed a 75/25 division of community property in favor of the former wife because the division of the entire marital estate (community and separate assets and liabilities) was actually 45.7% to the former wife and 54.3% to the former husband. And in *In re Marriage of Tower*, 55 Wn. App. 697, 780 P.2d 863 (1989), the appellate court affirmed a 63/37 division of community property in favor of the former husband because it preserved the former wife’s ability to receive disability Social Security benefits and was balanced by maintenance and child support payments to her that meant “the parties will probably have approximately equal monthly disposable incomes, at least until the youngest child is emancipated.” *In re Marriage of Tower*, 55 Wn. App. at 701.

Just as significantly, the appellate court in *In re Marriage of Irwin*, 64 Wn. App. 38, 822 P.2d 797 (1992), specifically *rejected* an argument made by the former wife that she was “entitled to all of her separate property and at least half of the community property”:

This contention does not find support in the case law. As noted above, the standard is a "just and equitable" distribution. An examination of the trial court's analysis, contained in the oral decision, shows that the court was trying for an approximate 50-50 division of all assets, whether separate or community, based on the fact that this was a marriage of lengthy duration.

*In re Marriage of Irwin*, 64 Wn. App. at 48.

The evidence before the trial court was completely inconsistent with any notion that its 60/40 community property split in favor of Kim produced an “equitable” result. In fact, the evidence in this matter only supports the exact opposite conclusion.

At the time the final orders were entered, for example, Kim was employed as a lawyer and earned over \$103,000 per year. RP 1142-43; Ex. 148. In addition to the community property and child support she was granted, Kim was awarded all of her separate property, including her fully vested Exemption Trust. CP 620 (Appendix 1, p. 4). As of December 2007, the Exemption Trust was valued at \$783,883. Ex. 103. Due to a downturn in the stock market, the Exemption Trust was valued at

\$464,159 as of December 2008. Ex. 15. During trial, the value of the Exemption Trust was \$423,356. RP 1138; Ex. 147.

John, on the other hand, was attending school full-time and was part way through completing the Master of Education/Secondary Teacher Certification program at the UW Bothell at the time of the final orders. RP 711-12. John had worked as an attorney for nearly 20 years, first in private practice, and then as COO and General Counsel for his own start-up business. However, John was no longer able to practice law as a result of his 2008 disbarment, and the start-up business he co-founded in September 2005 had ran out of operating capital in October 2007 and was defunct at the time of trial. RP 714, 782, 828-29, 1034-35; Ex. 125. As a result, John had been forced to live off his IRA retirement account while he trained for a new career. A Master in Education would have enabled John to transition from teaching to administration and return to earning more than \$100,000 per year. RP 722-23.

Even assuming the trial court properly categorized and valued what it deemed to be the parties' community property, its 60/40 split of that property in favor of Kim produced a drastically inequitable result. To grant Kim a 60% share of the community property, the court not only awarded her the parties' home, all the personal property in the home, all her retirement and disability insurance benefits, and all the parties' Costco

stock options and investment accounts, it also entered a judgment against John for \$100,486 which accrued interest at 12% per year. Kim also received all of her separate property, including her Exemption Trust. Even when the lowest valuation of her Exemption Trust is used, the 60/40 split of community property meant that in addition to her annual income of more than \$100,000, Kim was awarded more than \$660,000 in existing net assets plus the \$100,486 judgment against John.

John, on the other hand, not only had a judgment for \$100,486 entered against him, but the court's 60/40 community property split resulted in an award to him of less than \$30,000 in existing net assets. Left without appreciable income or assets, and unable to work at the only profession he was trained for, John was immediately forced to drop out of school, move in with his mother in her two bedroom condominium, and seek any available work to support himself and his children.

Rather than leave the parties in equitably similar post-dissolution financial situations, the trial court's disproportionate community property split in Kim's combined with its award to Kim of all of her separate property resulted in a patent disparity. Unlike the circumstances in *Davison*, *Tower* and *Irwin*, the trial court's disproportionate division of community property was a manifest abuse of discretion that must be reversed.

3. The trial court committed reversible error by failing to account for Kim's Exemption Trust in its division of property.

As RCW 26.09.080 makes clear, in order to make a “just and equitable” division of property as required by Washington law, a trial court *must* consider *all* of the parties’ community *and* separate property. Although the trial court listed Kim’s Exemption Trust as one of her items of separate property in Finding of Fact No. 2.9, it did not account for the Trust in the spreadsheet attached to the Findings and Conclusions, in its division of the parties’ community property, or in its decision to divide the property 60/40 in favor of Kim. CP 620, 626 (Appendix 1, pp. 4, 10).

As noted above, the omission of the Exemption Trust from the court’s calculation produced a division of property that included a judgment against John of \$100,486 in order to achieve a 60/40 split. If the Exemption Trust is included in the court’s property spreadsheet at the *lowest* of the three values presented at trial (\$423,356), and nothing else about the court’s division is altered, then the value of Kim’s share of the parties’ community *and* separate property is actually 76.83% (\$766,048 to Kim, \$231,013 to John). *See* Appendix 6, p. 1. Notably, if the Exemption Trust is included in the court’s calculation and the judgment against John is eliminated, Kim’s share of the parties’ property is still 66.75%. *See* Appendix 6, p. 2. In fact, if the Exemption Trust is included in the court’s

calculation, the only way to achieve a 60/40 split in favor of Kim would be to include a judgment against *Kim* and in favor of *John* for \$67,325. See Appendix 6, p. 3.

The trial court did not include a rationalization for its omission of the Exemption Trust in its oral ruling, the Findings of Fact and Conclusions of Law, or the Decree of Dissolution. The closest the court came to explaining its decision was in the written decision it issued the same day it signed the Decree and related documents. According to the court's written decision:

The mother's father established two trusts as part of his estate planning: 1) Marital trust for his wife. The petitioner in this case is a co-trustee [-] she has no control unless the wife dies or becomes incapacitated. None of the money in that trust comes to the petitioner unless the wife dies; 2) Medical Trust – created to provide an ongoing stream of funding to address the petitioners [sic] medical needs. Petitioner is the executor of the trust but may only draw \$21,000 per year to cover medical expenses. That trust is valued at over \$400,000. But the petitioner's access to it and ability to utilize the funds is limited to the specific terms of the trust. Kims [sic] suggestions during trial that as Executor of the Medical Trust and co-executor on the Marital Trust the petitioner could simply invade the trust to provide for her ongoing living expenses is not only untenable, it is a breach of her fiduciary duty and quite possibly illegal.

. . . The Medical Trust is the mother's separate property. However it's [sic] use is proscribed by the terms of the Trust. It is specifically designed to address the anticipated increases in the petitioners [sic] medical costs as her health deteriorates.

CP 659-60 (Appendix 5, pp. 8-9).

The court's characterizations of the trusts left by Kim's father, particularly Kim's Exemption Trust (mistakenly referred to by the court as her "Medical Trust"), are erroneous. Regarding the Marital Trust established by Kim's father for his wife, for example, that Trust terminates upon his wife's death or re-marriage (*not* merely if she "dies" or if she "dies or becomes incapacitated"). *See* Ex. 106 (Revocable Living Trust Agreement, § 7.4).

As for the Exemption Trust, Kim is the sole trustee (*not* "executor") and sole beneficiary of the Trust. Ex. 106 (Revocable Living Trust Agreement, § 7.2). Moreover, the Exemption Trust was *not* created "solely" to address Kim's medical needs, and Kim's access to Exemption Trust funds are *not* limited to "\$21,000 per year to cover medical expenses." Instead, the Exemption Trust (1) obligates Kim to pay out all net income of the Trust on an annual basis, (2) allows Kim to withdraw up to 5% of the Trust principal on an annual basis for her "medical needs", and (3) allows Kim to withdraw an *additional* amount of up to 5% of the Trust principal each January. Ex. 106 (Revocable Living Trust Agreement, §§ 7.2, 7.3).

In addition, the Exemption Trust allows Kim to borrow an unlimited amount of funds from the Trust at her discretion so long as it is in the form of loan is made at “reasonable rate of interest and for adequate security”. Ex. 106 (Revocable Living Trust Agreement, § 10.1.2). At trial, Kim testified that she had previously borrowed \$12,137 from the Exemption Trust at 7% interest to pay for the parties’ 2005 income tax obligation. RP 558. Given Kim’s right to withdraw up to 5% of the Trust principal each January without regard to her medical expenses, and her ability to borrow against trust funds, Kim’s discretionary access to Trust funds cannot possibly be considered “a breach of her fiduciary duty” or “quite possibly illegal.”

Not only are the court’s characterizations of the Marital Trust and Exemption Trust unsupported by any evidence in the record, but the court’s written decision also fails to provide any legal rationalization for its exclusion of Exemption Trust from the division of property. Far from a “mere expectancy”, the Exemption Trust is fully vested, and within the guidelines of the Trust, Kim has significant discretionary power over the disbursement and investment of the Trust. Once the testator of a will dies, a bequest becomes a “vested interest”, and while the bequest may be the beneficiary’s separate property, “it *must* be considered nevertheless in

making a property division.” *In re Marriage of Hurd*, 69 Wn. App. 38, 49, 848 P.2d 185 (1993) (emphasis added).

The court’s omission of the Exemption Trust resulted in a patently disparate division of the parties’ property that not only failed to consider all of the parties’ community and separate property, but also failed to recognize their respective economic circumstances. As a result the trial court’s division of the parties’ property was a manifest abuse of discretion.

4. The trial court committed reversible error by valuing the Costco stock options awarded to Kim at \$32,352.

The trial court’s error in omitting Kim’s Exemption Trust was compounded by its decision to value the parties’ Costco stock options at \$32,352. The valuation was not only based on an erroneously admitted trial exhibit, but even if the value had been based on some form of judicial notice, the court committed a manifest abuse of discretion by choosing the lowest of the multiple valuations for the options presented at trial while setting values for other properties at different dates and higher values. The trial court breached its paramount obligation to consider the economic circumstances of the parties in making its division and further widened the disparity between the parties’ financial situations.

At trial, multiple valuations for the parties’ Costco stock options were offered. As of December 30, 2007, the options were worth

\$510,450. Ex. 17. As of December 27, 2008, the options had a value of \$171,854. RP 833, Ex. 107. And as of January 29, 2009, Kim testified that the options had a value of \$113,895. RP 550; Exs. 48, 66.

Rather than rely on any of those valuations, the trial court based its decision on the purported value of the options on March 2, 2009 that was included in Exhibit 86. CP 619 (Appendix 1, p. 3); RP 1237-40. Exhibit 86 consisted of a page appearing to be a print-out from a website showing Costco stock at \$40.84 per share on March 2, 2009, and a page calculating the value of Kim's options at \$32,352. Exhibit 86 was offered by Kim's counsel during the cross-examination of John. John did not prepare Exhibit 86, and he was only able to testify about what the exhibit *appeared* to show. RP 914-15.

When Kim's counsel offered Exhibit 86 for admission, John's attorney objected based on lack of foundation, noting that John was only able to testify as to what the exhibit appeared to show. RP 917. The court erroneously admitted Exhibit 86. RP 917. The *only* evidence offered at trial to support a valuation of the Costco options at \$32,252 was Exhibit 86.

Following the trial court's oral ruling, John's attorney asked for clarification regarding the court's valuation of the Costco options, noting the discrepancy between Exhibit 66 (valuing the options at \$113,895) and

chart utilized by Kim's counsel in her closing argument (valuing the options at \$32,352). RP 1237-38. Rather than resolve the issue raised by John's attorney, the trial court simply directed the parties' to submit their proposed orders. RP 1240. The Final Decree signed by the Court valued the options at \$32,352.

The trial court abused its discretion by admitting Exhibit 86, and by relying on the valuation included in that exhibit. Not only was there a lack of foundation for Exhibit 86 (contrary to ER 901), but the cross-examination testimony elicited from John was not based on his personal knowledge (contrary to ER 602). In fact, no competent evidence in the record supports the valuation of the options made by the court.

In addition, even if the trial court could have arguably exercised judicial notice in order to value the Costco options as of March 2, 2009 (*see, e.g., Rogstad v. Rogstad*, 74 Wn.2d 736, 738, 446 P.2d 340 (1968)), it should have made a similar present value adjustment for all of the assets, including John's IRA retirement account. Instead, the Court chose to value John's IRA as of December 2007 (its highest value), Kim's retirement accounts as of December 2008, and the Costco options as of March 2, 2009 (their lowest value). Given the stock market conditions at the time of trial, and the fact that John had been forced to live off his retirement during the past year while he pursued retraining, the valuation

made by the court magnified the disparity between the parties' economic circumstances.

If the Kim's Exemption Trust is included in the court's property spreadsheet, and if the Costco options are valued according to admissible evidence, then without making any other alterations to the court's figures, a 60/40 community property split results in a distribution to Kim of at least 78.58% of the parties' property, at least 69.27% of the parties' property if the judgment against John is eliminated, and a judgment against Kim for at least \$99,943 in order to actually achieve a 60/40 split of the parties' property in her favor. *See* Appendix 6, pp. 4-6. This is true even if John's IRA account is valued as of December 2007 instead of trial.

The trial court's valuation of the Costco stock options resulted in an even more egregious disparity between the parties' economic circumstances and must therefore be reversed.

5. The trial court committed reversible error by valuing three "pre-distributed" assets allocated to John at \$302,938.

The court's errors in omitting the Exemption Trust and valuing the Costco stock options at \$32,352 were further exacerbated by its erroneous decision to value three assets "pre-distributed" to John at \$302,928. By valuing the assets as of the dates they were purportedly "distributed" to

John in 2007, the court inexplicably ignored the fact that only \$25,589 of the assets actually remained as of the entry of the Decree.

As part of its property distribution, the trial court allocated three “pre-distributed” assets to John: (a) his “Charles Schwab IRA”<sup>1</sup> valued at \$274,607 and “pre-distributed to husband in 12/07”; (b) a “2006 Tax Refund valued at \$23,321 and “pre-distributed to husband in 10/07”; and (c) “\$5,000 from Joint Charles Schwab brokerage account . . . distributed to husband in 07/07”. CP 619 (Appendix 1, p. 3). The court included all three assets in the community property it purported to divide between the parties, and relied on the “pre-distributed” values of the assets in making its property division. CP 626 (Appendix 1, Ex. A). Notwithstanding the values assigned to the assets by the court, however, it was undisputed that only \$25,589 of the IRA funds remained in the account at the time of trial. RP 817-18, Ex. 140.

As the court noted in *In re Marriage of White*, 105 Wn. App. 545, 20 P.3d 481 (2001):

A trial court has broad discretion when distributing property in a dissolution case. Under appropriate circumstances, it need not divide community property equally, and it need not award separate property to its

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<sup>1</sup> The Charles Schwab IRA allocated to Appellant was valued at \$274,476 in Finding of Fact 2.8 (CP 619; Appendix 1, p. 3) but the spreadsheet utilized by the court (CP 626; Appendix 1, Ex. A) valued the IRA at \$274,607.

owner. According to RCW 26.09.080, the court need only “make such disposition of the property and the liabilities of the parties, either community or separate, as shall appear just and equitable after considering all relevant factors[.]”

When exercising this broad discretion, a trial court focuses on the assets then before it, *i.e.*, on the Parties' assets at the time of trial. *If one or both parties disposed of an asset before trial, the court simply has no ability to distribute that asset at trial.*

*In re Marriage of White*, 105 Wn. App. at 549 (footnotes omitted, emphasis added); *see also In re Marriage of Kaseburg*, 126 Wn. App. 546, 556, 108 P.3d 1278 (2005) (trial court could not include family home in property division when it had been lost due to foreclosure prior to trial); *In re Marriage of Pea*, 17 Wn. App. at 730-31 (\$8,500 that wife took at separation could not be considered an offset to husband's pension at trial because the money had been spent prior to trial).

The trial court committed reversible error by purporting to distribute assets to John that no longer existed. The trial court's fictional valuation of the “pre-distributed” assets also enabled it to make a grossly misleading property division. By distributing assets that no longer existed, the court's judgment against John for \$100,486 appeared to create a potentially defensible 60/40 split of their community property. CP 626 (Appendix 1, Ex. A). Without making any other alterations to the court's calculations, however, if pre-distributed asserts are valued as of the time of trial, the result is a distribution to Kim of *115.63%* of the parties'

existing property. *See* Appendix 6, p. 7. Eliminating the judgment to Kim from the court's calculation still results in a distribution of 81.73% to Kim. *See* Appendix 6, p. 8. The only way to create a 60/40 split of the parties' property when the actual values of the pre-distributed assets are used is to award a judgment to John for \$64,386. *See* Appendix 6, p. 9. The consequence of the court's 2007 valuation is no less extreme when the Exemption Trust is included in the property division and the Costco stock options are given an appropriate valuation. *See* Appendix 6, pp. 10-12.

The trial court did not provide a legal basis for its decision to value the "pre-distributed" assets as of 2007. Instead, it made the following statement in its oral ruling:

And I turn to the mother's asset sheet because one of the biggest things that happens is that the \$274,000 will be in the husband's column as a predistribution. That money was withdrawn from the community, expended for his own purposes, and that will be in his column.

RP 1227-28.

In denying John's request for maintenance in Finding of Fact 2.12, the court also made the following statement:

Maintenance should not be ordered because:

The husband has not demonstrated a need for maintenance as he is highly educated and experienced, with an impressive resume. He was voluntarily underemployed since November 2007 and then voluntarily underemployed beginning in June 2008. In a little over a year he dissipated \$274,000+ in community assets which could have been

spent on establishing himself in a new profession, but instead were spent on lavish purchases, such as a brand new Nissan Xterra, plasma televisions, i-pods and several hundred dollars each month on comic books and related items.

CP 622 (Appendix 1, p. 6). The court made a similar statement in its written decision:

. . . John unilaterally liquidated the marital community's largest asset, the Ryan Swanson 401(k). He withdrew \$274,000 and spent of [sic] the funds in a year's time. The evidence is unclear as to how he spent the money but it is clear that he did not spend it to support the community. Without gainful employment, he has still be able to purchase a 2008 Nissan SUV with a payment of \$600 per month, a new iphone, spend hundreds per month on comic books and related expenses, and live in an apartment. He unilaterally stopped paying child support or any money toward maintaining the community. In addition he withdrew \$30,000 from community funds and used it for his own purposes.

After considering all the evidence presented it is clear to the court that the mother [sic] proposed allocation of the debts and liabilities is the most equitable result. The \$274,000 and the \$30,000 dollars [sic] the father withdrew from community funds is characterized as his pre-distribution of assets.

CP 657-58 (Appendix 5, pp. 6-7).

It is impossible to tell from the court's various pronouncements whether its belief that John somehow "dissipated" the "pre-distributed" assets was (a) a basis for its decision to value the assets as of 2007, (b) a basis for any of its other valuations, (c) a basis for its decision to split the parties' community property 60/40 in favor of Kim, or (d) a basis some

combination of those decisions or none of them. To the extent the court's belief had any impact on any of its decisions, however, the court committed a manifest abuse of discretion.

Like its characterization of the Exemption Trust, the court's findings relating to John's use of the "pre-distributed" funds are demonstrably false. As of December 2007, for example, John's IRA was far from "the marital community's largest asset"; at the time, Kim's Costco stock options were worth \$510,450, almost twice the value of the IRA. Ex. 17.

And contrary to the court's claim, it was not "unclear" how the funds from John's IRA or from any of the other "pre-distributed" assets were utilized, nor was it "clear" that none of the funds were spent to "support the community." Instead, the undisputed evidence at trial was that after October 2007 (a) \$46,421 of the IRA funds was used to pay federal income taxes on early distributions from the IRA, (b) \$6,445 was spent on the community's obligation for the dues, utilities and mortgage on their Tacoma investment property, (c) \$7,363 was spent on the community's obligation for the dues and loan payments on their Whistler timeshare, (d) \$1,428 was spent on the community's storage unit, (e) \$8,016 was spent on child support and expense reimbursement under the court's Temporary Order of Child Support, and (f) \$20,081 was spent

on the mortgage and security monitoring for the parties' home. RP 816-18, 945-50; Exs. 108, 109, 137-140.

In addition, the undisputed evidence at trial was that \$19,451 of the IRA was lost due to the downturn in the stock market (the same downturn that affected the value of Kim's Costco options and Exemption Trust), \$10,000 was spent on John's education expenses, and at least \$25,000 was spent on John's attorney fees. RP 814-15; Exs. 139, 140. John testified that he used funds from the IRA to pay for his living expenses, expert costs, career counseling, health expenses, expenditures for his children, payments on debts assigned to him by the court, car insurance for Kim's vehicles, and utilities for the house awarded to Kim. RP 945-50, Ex. 137. In fact, determining the expenditures from John's converted IRA was not difficult because every single one of his bank statements from December 2007 on, and every relevant record for his IRA were admitted as trial exhibits. Exs. 28, 29, 91, 92, 108, 109, 113.

Similarly, there was no evidence at trial to support the trial court's belief that John spent "\$274,000+ in community assets" on "lavish purchases", or that John spent any of the "pre-distributed" funds on "plasma televisions", "i-pods" or a "new iphone". John did purchase a new Nissan Xterra in December 2007 on pre-approved credit after the lease on his vehicle was up and Kim refused to allow him to use the

parties' Ford Expedition. RP 1042. Rather than constituting a "lavish" purchase, however, Kim's contention was that John should have spent a lump sum of \$5,000 on a used car instead of \$603 per month toward the purchase of the Xterra. RP 1043.

As for comic book expenditures, the evidence was that John spent a total of \$2,661 on comic books and related items for the period from January to June 2008. Ex. 94. These purchases added to the value of John's comic book collection, which the court valued at the highest possible amount (\$30,000) and awarded to John. The trial court therefore counted the expenditure against John twice when it also valued his IRA at \$274,607.

To the extent the court relied on its belief that John "dissipated" the assets, its reliance was is not grounded in the law. There is simply no Washington authority for the proposition behind the court's statements, *i.e.*, that *any* post-separation expenditure from a community asset constitutes wrongful "dissipation" of that asset.

The general standard in Washington was described by the court in *In re Marriage of Williams*:

Washington courts recognize that consideration of each party's responsibility for creating or dissipating marital assets is relevant to the just and equitable distribution of property. *In re Steadman*, 63 Wn. App. 523, 527, 821 P.2d 59 (1991); *In re Clark*, 13 Wn. App. 805

808-09, 538 P.2d 145, *review denied*, 86 Wn.2d 1001 (1975). The trial court has discretion to consider whose “negatively productive conduct” depleted the couple's assets and to apportion a higher debt load or fewer assets to the wasteful marital partner. *Clark*, 13 Wn. App. at 809.

*In re Marriage of Williams*, 84 Wn. App. at 270.

Significantly, Washington courts have never explicitly defined what constitutes the type of wrongful “dissipation” of a marital asset that may appropriately be considered in making a property division. Various decisions, however, have described such conduct as “unusually significant . . . wasting” (*In re Marriage of White*, 105 Wn. App. at 551), “gross fiscal improvidence”, “squandering” (*In re Steadman*, 63 Wn. App. 523, 528, 821 P.2d 59 (1991) (involving “the deliberate and unnecessary incurring of tax liabilities”)), and spending on a “profligate life style” (*In re Clark*, 13 Wn. App. 805, 808-09, 538 P.2d 145 (1975) (involving the waste of assets due to the husband’s alcoholism). None of those characterizations apply in this case.

The evidence at trial not only belies the court’s belief that the “pre-distributed” assets were “dissipated” by “lavish purchases”, it conclusively establishes that John’s expenditures were instead made “in the usual course of business” and “for the necessities of life”, including the support of the wife and children, as allowed in the Temporary Order. CP 193. Ironically, in Finding of Fact 2.12, the court faulted John for spending

IRA funds on “lavish purchases” when those funds “could have been spent on establishing himself in a new profession.” CP 622 (Appendix 1, p. 6). The record at trial demonstrates that John did in fact use funds from the assets to establish himself in a new profession; John investigated his job options through testing and consultation with career counselors beginning in December 2007, was admitted into the Master of Education/Secondary Teacher Certification program at the University of Washington Bothell in April 2008, and began a full-time schedule of classes in June 2008. RP 711-12, 715-17, 724-26.

John was *not* able to complete his education and establish himself as a public school teacher and administrator precisely because of the trial court’s inexcusable abuses of discretion. *See, e.g.*, RP 715. By excluding the Exemption Trust, valuing the stock options based on inadmissible evidence, and including IRA funds that no longer existed, the court created a patent disparity between the parties’ economic circumstances and must be reversed.

6. The trial court committed reversible error by valuing the parties’ personal at \$2, failing to include all of John’s assigned separate liabilities, and including two purported liabilities of Kim in its property division.

The trial court also abused its discretion in making its division of property by valuing the parties’ personal property at \$2, failing to include

all of John's assigned separate liabilities, and including two purported liabilities of Kim in its division.

There was, for example, no evidence whatsoever in the record to support the court's valuation of the personal property at \$2, nor did the court enter any findings or conclusions explaining its decision. CP 617-26 (Appendix 1). When Kim was asked at trial about the \$2 valuation for the property she had included on her own property spreadsheet, she could not offer any evidence to support it:

Q: . . . And then looking at your Exhibit No. 66, the very last section there in personal property. And you valued the personal property at \$2. Can you explain that.

A: I actually can't. I don't know what that is.

RP 645.

The court was, however, provided with Kim's list of the major pieces of furniture and other personal property in the parties' home. Ex. 121. The only evidence valuing the personal property was the testimony of John, who valued the property in the home at "considerably more than \$10,000", but put a figure of \$10,000 for it in his spreadsheet that he thought was fair. RP 842-43.

The trial court also abused its discretion when it failed to consider all the liabilities listed in Finding of Fact 2.11 (CP 620-21; Appendix 1, pp. 4-5) and assigned to John in the Decree of Dissolution (CP 630-31;

Appendix 2, pp. 4-5). Notwithstanding its obligation under RCW 26.09.080 to consider *all* community and separate property and liabilities, the spreadsheet utilized by the court to calculate its property division did *not* include John's liability for the Electric Hendrix, LLC credit card (a debt of approximately \$9,000 at the time of trial incurred during the marriage; RP 1092), the Chase Mastercard ending in 2039 (a debt of \$6,227 at the time of separation, Ex. 137), or the Washington State Bar Association debt (a debt of approximately \$9,400 at the time of trial, incurred due to events that occurred during the marriage; RP 848). CP 626 (Appendix 1, Ex. A). At no point did the court provide any explanation for its designation of these liabilities as "separate", or for its failure to consider these liabilities when it made its property division.

As with its omission of Kim's Exemption Trust, the court committed a manifest abuse of discretion by omitting more than \$24,000 in arguable community liabilities assigned to John from its property division calculation, and by failing to consider the impact of those liabilities on John's post-Decree economic circumstances.

Finally, the court committed reversible error by including two of Kim's purported liabilities in its property spreadsheet despite concluding that neither should be part of the division. In its oral ruling, the trial court specifically ruled that two of the items on Kim's proposed division

(Ex. 66) were not appropriately considered community or separate liabilities, and that both should therefore be eliminated from any property division:

However, the \$29,640 and the \$14,049 owed to the maternal grandfather are not going to be included in this distribution. You just need to remove those numbers.

Regardless of the testimony that we heard here, it is clear that those monies if paid back--it's clear that the person who could claim those monies is not here in this court. That would have been the marital trust of the mother's stepmother, and she's not here. So that issue is not going to be resolved, so it will be removed from the chart.

RP 1228.

Consistent with the court's ruling, the \$29,640 "house loan" purportedly owed to Leon Moraski was not included in the separate liabilities listed in Finding of Fact 2.11. CP 620-21 (Appendix 1, pp. 4-5). However, the \$14,407 "Loan for 2005 taxes owed to Leon Moraski Exemption Trust" was listed. CP 621 (Appendix 1, p. 5). Moreover, the court's property division spreadsheet included both amounts as separate liabilities assigned to Kim. CP 626 (Appendix 1, Ex. A).

7. The trial court committed reversible error by failing to require Kim to refinance or sell the parties' home.

At trial, the evidence was undisputed that John and Kim were jointly and severally liable for two loans secured by their home, and that the amounts owing on those loans at the time of trial was a combined

\$541,270. RP 620. In the Decree of Dissolution, the home was awarded to Kim in Section 3.3, and under Section 3.5, the court stated that Kim “shall pay . . . WAMU Home Mortgage . . . Bank of America Home Equity Line of Credit”. CP 629, 631 (Appendix 2, pp. 3, 5).

In its written decision, the court stated that “[t]he home is to be sold and the proceeds to the mother.” CP 656 (Appendix 5, p. 5). Notwithstanding the court’s statement, no requirement to sell the home was included in the Decree or any of the other final orders. CP 617-71. Instead, the Decree included a “hold harmless” provision in Section 3.6. Under that provision, “[e]ach party shall hold the other party harmless from any collection action relating to separate or community liabilities set forth above, including reasonable attorney’s fees and costs incurred in defending against any attempts to collect on an obligation of the other party.” CP 632 (Appendix 2, p. 6).

By failing to include a requirement that Kim sell the parties’ former home or refinance the mortgage and home equity loan, the trial court again failed to consider the economic circumstances of the parties. Because the mortgage and home equity loan were community obligations, John and Kim remain jointly and severally liable for those debts from the perspective of the lenders regardless of the court’s “assignment” of the debts to Kim and regardless of the “hold harmless” provision in the

Decree. Because the parties' former home was assigned to Kim, she can continue to rely on that asset and any increase in its value to counterbalance the debts, and thus Kim's net worth and ability to obtain additional credit remain positive.

John, on the other hand, is still jointly liable for the \$541,270 loans secured by the home, but retains no interest in the home itself. When those still outstanding liabilities are added to the judgments received by Kim in this action and the other debts assigned to him in the Decree, John's net worth as a result of the court's property division was more than *negative \$300,000* even assuming the fictitious value assigned to his "pre-distributed" assets. If the actual remaining values of the "pre-distributed" assets are considered, then as a result of the court's property division, John's net worth was more than *negative \$550,000*.

The court's failure to include a requirement that Kim sell or refinance the parties' home was an untenable magnification of the already patent disparity in the parties' economic circumstances. The court not only stripped John of nearly all the parties' assets, it effectively eliminated his ability to obtain credit on his own. The trial court therefore abused its discretion, and its decision must be reversed.

8. The trial court committed reversible error by refusing to allow John to access available but unassigned credit on a line of credit.

The trial court's assignment of assets and liabilities did not account for all of the parties' property. In particular, the court did not assign the right to access the \$49,155 in available credit on the parties' Bank of America home equity line of credit. The jointly-held available credit was not addressed in the Decree or any of the other final orders (CP 617-71), was never mentioned in the court's oral ruling (RP 1222-42), and was not addressed in the court's written decision (CP 652-61). Moreover, the right to access the jointly-held available credit was not part of the initial Petition for Dissolution, never mentioned in Kim's Trial Brief, and was never addressed at trial. *See, e.g.*, CP 1-7, 310-43.

Instead, the only references to the line of credit were made in the context of assigning responsibility for the then-existing \$49,125 debt on the line of credit to Kim. According to Section 3.5 of the Decree, for example, the "liabilities" to be paid by Kim include the "Bank of America Home Equity Line of Credit." CP 631 (Appendix 2, p. 4). That liability, however, was identified and valued as the amount of the then-existing debt in Finding of Fact 2.10. CP 620 (Appendix 1, p. 4).

Because the Decree did not require Kim to sell the parties' home or refinance the line of credit, John was still a jointly liable "borrower" on

the line of credit, and thus retained the right to “request and receive credit advances” on his signature alone. In addition, nothing in the line of credit agreement conditioned either parties’ future right to access available credit on joint ownership of the parties’ home. CP 1041-1101.

Under Washington law, community property not disposed of in a decree of dissolution is held by the parties as tenants in common, and the adjudication of rights not disposed of in a dissolution decree requires an independent action for partition. *In re Marriage of Monaghan*, 78 Wn. App. 918, 929, 899 P.2d 841 (1995). Given the court’s failure to assign the right to access the available credit on the account, John retained the right as a tenant in common to utilize that available credit.

When John accessed \$10,000 of the available credit in November 2009, however, Kim obtained a temporary restraining order freezing John’s bank accounts. The trial court subsequently entered a judgment and order requiring John to return the funds, restraining John from future access to the line of credit, and awarding attorney fees of \$2,990 against John. CP 1178-80, 1220-22. Notably, the court did not in any way restrict Kim’s right to access any of the remaining credit on the line of credit.

The trial court’s refusal to allow John to access any of the unassigned but available credit on the still jointly-held line of credit was not only contrary to Washington law, it potentially worsens the already

patent disparity in the parties' economic circumstances. As a result of the court's division of property and failure to require Kim to sell or refinance the parties' former home, John was saddled with crushing debt, a negative net worth of more than \$550,000, and an inability to obtain individual credit. The post-trial decision to bar access to the unassigned credit by John but not Kim not only prevents John from utilizing the only significant credit left to him, it gives Kim the unilateral right to *increase* John's joint and several liability and *worsen* his negative net worth. As such, the trial court abused its discretion, and the Judgment and Order on Petitioner's Motion to Clarify and Enforce Decree and Request for Attorney's Fees must also be reversed.

**B. The trial court abused its discretion in awarding "back child support" to Kim and in setting the parties' prospective child support obligations.**

1. Legal standard and standard of review.

Child support decisions are reviewed on appeal using the same "abuse of discretion" standard utilized in reviewing a court's division of property. *See, e.g., In re Marriage of Fiorito*, 112 Wn. App. 657, 663-64, 50 P.3d 298 (2002).

The amount of child support rests in the sound discretion of the trial court. This court will not substitute its own judgment for that of the trial court where the record shows that the trial court considered all relevant factors and the award is not unreasonable under the circumstances.

*In re Marriage of Fiorito*, 112 Wn. App. at 664.

When setting child support, a court is obligated to consider “all income and resources of each parent’s household”. RCW 26.19.071(1).<sup>2</sup> “A trial court's failure to include all sources of income not excluded by statute is reversible error.” *In re Marriage of Bucklin*, 70 Wn. App. 837, 840, 855 P.2d 1197 (1993). Pursuant to RCW 26.19.035(4), a trial court is required to use the state’s mandatory child support worksheets in calculating child support awards.

Once each parent’s net monthly income is computed, the trial court determines the “standard calculation” basic child support level from the tables in RCW 26.19.020.<sup>3</sup> RCW 26.19.020 (1998) sets out the presumptive level of child support for combined monthly net incomes up to and including five thousand dollars. According to the statute:

When combined monthly net income exceeds seven thousand dollars, the court may set support at an advisory amount of support set for combined monthly net incomes between five thousand and seven thousand dollars or the court may exceed the advisory amount of support set for

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<sup>2</sup> RCW 26.19.071 was amended effective October 1, 2009. RCW 26.19.071(1) was not altered by the 2009 amendment.

<sup>3</sup> RCW 26.19.020 was amended effective October 1, 2009, and now sets the presumptive support obligations for incomes up to \$12,000 per month. This matter was decided under former RCW 26.19.020 (1998), a copy of which is attached as Appendix 8.

combined monthly net incomes of seven thousand dollars upon written findings of fact.

Under RCW 26.19.075<sup>4</sup>, a court may elect to deviate from the standard calculation and require more or less than the “presumptive amount of support.” *See* RCW 26.19.075(2). The reasons for deviation may include “sources of income” such as “possession of wealth”, “nonrecurring income”, “debt and high expenses” and “residential schedule”. *See* RCW 26.19.075(1).

Under RCW 26.19.080<sup>5</sup>, a court may also deviate from the “basic support obligation derived from the economic table” (RCW 26.19.080(1)) by ordering parents to share in particular “extraordinary health care expenses” (former RCW 26.19.080(2) (1996)) and/or “day care and special child rearing expenses (RCW 26.19.080(3)).

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<sup>4</sup> RCW 26.19.075 was amended effective October 1, 2009. The current statute includes an additional ground for deviation under RCW 26.19.075(1)(a)(ix) for income “that has been excluded under RCW 26.19.071(4)(h)” but is otherwise identical to former RCW 26.19.075 (1997).

<sup>5</sup> RCW 26.19.080 was amended effective October 2, 2009. The current statute changes the terminology of former RCW 26.19.080(2) (1996) by using the term “health care costs” instead of “extraordinary health care expenses,” eliminating the 5% threshold for shared expenses, and including a non-exclusive list of health care costs. The remainder of the former statute was not altered by the 2009 amendment.

In making any award of child support, the trial court is required to enter “written findings of fact” supporting its decision. According to RCW 26.19.035(2):

An order for child support shall be supported by written findings of fact upon which the support determination is based and shall include reasons for any deviation from the standard calculation and reasons for denial of a party's request for deviation from the standard calculation. The court shall enter written findings of fact in all cases whether or not the court: (a) Sets the support at the presumptive amount, for combined monthly net incomes below five thousand dollars; (b) sets the support at an advisory amount, for combined monthly net incomes between five thousand and seven thousand dollars; or (c) deviates from the presumptive or advisory amounts.

Written findings of fact are similarly required for any deviation from a parent's basic support obligation. According to RCW 26.19.075(2):

The presumptive amount of support shall be determined according to the child support schedule. Unless specific reasons for deviation are set forth in the written findings of fact and are supported by the evidence, the court shall order each parent to pay the amount of support determined by using the standard calculation.

Written findings are also required by RCW 26.19.075(3):

The court shall enter findings that specify reasons for any deviation or any denial of a party's request for any deviation from the standard calculation made by the court. The court shall not consider reasons for deviation until the court determines the standard calculation for each parent.

*See also* former RCW 26.19.020 (1998) (“[T]he court may exceed the advisory amount of support set for combined monthly net incomes of seven thousand dollars upon written findings of fact.”)

The failure to make written findings of fact in support of a child support award is reversible error. *See, e.g., In re Marriage of McCausland*, 159 Wn.2d 607, 620, 152 P.3d 1013 (2007) (“Although cursory findings of fact and the trial record might appear to justify awarding a child support amount that exceeds the economic table, only the entry of written findings of fact demonstrate that the trial court *properly exercised its discretion* in making the award.”) (emphasis in original); *see also In re Marriage of Choate*, 143 Wn. App. 235, 243, 177 P.3d 175 (2008) (“An unsupported deviation is also an abuse of discretion.”)

2. The trial court committed reversible error by awarding Kim “back child support” calculated by retroactively extending and increasing John’s pre-trial child support obligation.

As part of its final Order of Child Support, the trial court awarded Kim a judgment for “back child support” totaling \$4,766, despite the fact that Kim never requested “back child support” or a modification of the Temporary Order of Child Support in effect prior to and during the trial in any of her trial pleadings or at any time during the course of the trial. *See, e.g., CP 310-43*. According to the Order of Child Support, the judgment was calculated by retroactively applying the \$812.15 support obligation

set in the final Order to the period beginning March 1, 2008; charging John \$812.15 per month for March, April, May and June 2008 even though no Order of Child Support had been in place at that time; and then charging John the difference \$812.15 and the child support payments he made under the Temporary Order for Child Support for each month from July 2008 to March 2009. CP 638 (Appendix 3, p. 2). This is an impermissible retroactive modification of child support.

Contrary to RCW 26.19.035(2), no written findings of fact supporting the “back child support” award were included in the Order of Child Support, the Decree of Dissolution, or the Findings of Fact and Conclusions of Law. CP 617-71. In fact, the Order of Child Support does not include any findings whatsoever; in Section 3 of the Order of Child Support, under the heading “Findings and Order”, the trial court began the section with the phrase “It Is Ordered” followed by 22 different orders regarding the payment of child support. CP 638-44 (Appendix 3, pp. 2-8). In addition, an award for “back child support” was never mentioned in the court’s oral ruling. RP 1222-42.

The *only* arguable justification for the award appeared in the trial court’s written decision, which included the following statement:

The father stopped paying his court ordered child support in March of 2008. Judgment will be entered

against the father for \$4766 for back support for the period from 3/1/08 – 3/31/09.

CP 655 (Appendix 5, p. 4).

The court's award of "back child support" is another egregious abuse of discretion that must be reversed. First, even assuming the statement in the court's oral ruling could be construed as a requisite finding of fact, no rational trier of fact could possibly find that John "stopped paying his court ordered child support in March of 2008" *because no child support order existed as of March 1, 2008, or any time prior to that.* In fact, no child support order existed until the court entered a Temporary Order of Child Support on July 17, 2008. Under the Temporary Order, John was obligated to pay child support effective July 1, 2008. CP 181; Ex. 131. The Temporary Order also included a specific finding that "[n]o back child support is owed at this time." CP 183; Ex. 132. Moreover, it was undisputed that John made *all* of the "court ordered child support" payments required under the Temporary Order; *the calculation of "back child support" was based on John's prior payments under the Temporary Order.*

Second, the trial court's award was also an abuse of discretion because it was plainly impermissible under Washington law. Under RCW 26.09.170, once a support order has been entered, any change to a

party's support obligation can only be applied *prospectively*. According to RCW 26.09.170(1):

Except as otherwise provided in subsection (7) of RCW 26.09.070, the provisions of any decree respecting maintenance or support may be modified: (a) *Only* as to installments accruing *subsequent* to the petition for modification or motion for adjustment except motions to compel court-ordered adjustments; and, (b) except as otherwise provided in subsections (5), (6), (9), and (10) of this section, only upon a showing of a substantial change of circumstances.

(emphasis added). Notably, the referenced exception in RCW 26.09.070(7) only applies to the modification of support agreed to as part of a separation contract.

The statutory prohibition against the retroactive imposition of child support obligations is part of well-settled Washington law. As the court succinctly observed in *In re Marriage of Scanlon*, 109 Wn. App. 167, 178-79, 34 P.3d 877 (2001), “[a] court may not make a retroactive award of support.” See also *In re Marriage of Shoemaker*, 128 Wn.2d 116, 121, 904 P.2d 1150 (1995) (RCW 26.09.170(1) “reflects long-settled law in this state that a modification of child support may not operate retroactively.”).

The court decision to award Kim “back child support” by retroactively extending and increasing John’s obligation under the

Temporary Order of Child Support is impermissible and was a manifest abuse of discretion that must be reversed.

3. The court committed reversible error by retroactively extending and increasing John's obligation to reimburse Kim for child-related expenses.

Under the Temporary Order of Child Support, the parties' were obligated to reimburse each other for their proportional share of certain child-related expenses incurred after June 1, 2008. CP 182-83. John's share of child-related expenses under the Temporary Order was set at 29%.

In Section 3.20 of the final Order of Child Support, the trial court retroactively extended and increased John's reimbursement obligation:

The father was required to pay his proportionate share of extra-curricular and medical expenses under a temporary order of child support with a lesser percentage share calculated. The father, however, has resisted payment of these expenses. For expenses which have, in fact, been reimbursed by the father under the temporary order, there shall not be a retroactive increase, however expenses for which no reimbursement has yet been made shall be paid at the rate of 36.6% by the father. If the father does not pay his share of child related expenses owed for the period from 3/1/08-3/1/09, the mother may seek enforcement of the same through the Division of Child Support. If the father disputes these expenses, he shall have to provide a detailed explanation of the disputed amounts and shall not be allowed to offset the amounts (but must make his own request for reimbursement for any-child related expenses paid by him).

CP 644 (Appendix 3, p. 8). As noted above, none of the trial court's final orders include any written findings of fact supporting an award of back child support.

More than four months after the entry of the final Order of Child Support, Kim filed a motion for contempt against John, seeking a judgment for the "back" reimbursement imposed by the Order and for expenses incurred after entry of the Order. CP 997-1002. On October 9, 2009, the court entered an Order which included a finding that John "failed to pay any of his share of the children's expenses for the following time periods: 3/01/08 through 3/31/09 and upon entry of the Final Order 4/09 – 9/09." The Order also found John in contempt for his "failure" to pay, entered a judgment against him which included \$2,286 for "unpaid" expenses from March 1, 2008 to March 31, 2009, and order that the finding of contempt could only be purged if John paid \$100 per month for nine months towards his "past due debt" and stayed "current and timely with support obligations going forward." CP 1134-41.

Like the court's "back child support" award, its retroactive extension and increase of John's reimbursement obligation is a manifest abuse of discretion that must be reversed. Contrary to RCW 26.19.035(1) and RCW 26.19.075(2) and (3), the court failed to make any written findings of fact in support of its order. Even assuming Section 3.20 of the

Order of Child Support could be construed as a finding, it is based on untenable grounds. Because no obligation to reimburse Kim for expenses incurred prior to June 1, 2008 existed, for example, John could not possibly have “resisted” paying for them. As for expenses subject to reimbursement under the Temporary Order of Child Support, the evidence at trial was that John had paid \$2,528 to Kim, and that there was an unresolved dispute between the parties over offsets against Kim’s last request for \$749.11 in reimbursements. Ex. 63.

As before, the court’s retroactive increase of John’s share of child-related expenses is contrary to Washington law. An obligation to pay for health care costs and other “special child rearing expenses” is part of parent’s child support obligation under RCW 26.19.080, and is therefore subject to the prohibition against retroactivity specified in RCW 26.09.170(1). Accordingly, the court’s retroactive extension and increase of John’s reimbursement obligation, and the subsequent contempt order enforcing that extension and increase, must both be reversed.

4. The court committed reversible error by failing to consider all of Kim’s income and the parties’ assets and liabilities in setting child support.

In determining child support obligations, a trial court is statutorily obligated to consider *all* sources of income from *any* source for each parties. RCW 26.19.071(1). According to RCW 26.19.071(3)(j), a party’s

gross monthly income includes “trust income” as well as salaries, wages and disability benefits.

In setting child support in this case, however, the trial court did not consider all of Kim’s income. The gross monthly income listed for Kim on the child support schedule worksheet was \$8,516.24, which consisted of Kim’s salary from Costco, her combined disability benefits, and \$100 per month from her self-employment as a photographer. CP 646 (Appendix 3 Worksheet, p. 1); RP 1143. At trial, however, Kim also testified that she received approximately \$500 per month from her Exemption Trust to pay for some of her medical expenses. RP 660-61; Ex. 73. In addition, Kim conceded that she had the sole discretion to withdraw up to 5% of the Exemption Trust principal each year for her medical expenses, and up to an additional 5% of the Exemption Trust each January for her discretionary use. RP 272. At the time of trial, Kim valued the Exemption Trust at \$423,356. RP 1138.

Although Kim chose not to take a distribution from the Exemption Trust in January 2008 (RP 625-26), she retains the discretion to supplement her annual income using the Exemption Trust for the foreseeable future. The trial court’s unexplained failure to make any accounting for the Exemption Trust in its child support calculation is a manifest abuse of discretion. The court should have either included

additional gross monthly from the Exemption Trust or deviated from the standard calculation of child support to account for Kim's "[p]ossession of wealth", particularly as compared to Kim. *See* RCW 26.19.075(1)(a)(vi). The court's failure to do either is reversible error. *In re Marriage of Bucklin, supra*.

The court's error was compounded by its failure to complete the mandatory Child Support Schedule Worksheets in violation of RCW 26.19.035(4). Had the court completed Part VI of the Worksheets, for example, it would have been forced to explicitly consider the evidence at trial of each parent's respective "household assets", "household debts", "other household income" and "non-recurring income". CP 648-49 (Appendix 3, pp. 12-13). As noted in the instructions for Part VI of the Worksheets, "[p]ursuant to INCOME STANDARD #1: Consideration of all income, "all income and resources of each parent's household shall be disclosed and considered by the court when the court determines the child support obligation of each parent." *See* Appendix 7 (Instructions for Worksheets, p. 5).<sup>6</sup>

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<sup>6</sup> Appendix 7 is a copy of the Washington State Child Support Schedule definitions and standards, instructions, economic table and worksheets in effect at the time of trial in this matter.

The court's failure to account for Kim's Exemption Trust and to consider all the parties' assets and liabilities in setting child support was therefore reversible error.

5. The court committed reversible error in setting the amount of income imputed to John and/or in failing to deviate downward to account for his circumstances.

According to former RCW 26.19.071(6) (1997)<sup>7</sup>, "In the absence of information to the contrary, a parent's imputed income shall be based on the median income of year-round full-time workers as derived from the United States bureau of census, current populations reports, or such replacement report as published by the bureau of census." In order to impute income different from the statutorily mandated "median income", therefore, a court must therefore have sufficient evidence in the record to support the basis for its imputed income.

The court did not enter any written findings of fact or conclusions of law in any of its final orders in support of its decision to impute monthly gross income of \$5,000 to John. The only justifications for the court's decision were included in its oral ruling and written decision. In its oral ruling, the court stated:

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<sup>7</sup> The 2009 amendment to RCW 26.19.071(6) retained the quoted language from former RCW 26.19.071(6) (1997), but included it as the fifth of five prioritized grounds for setting imputed income.

Mom wants his income imputed at \$10,000 a month. That too is unrealistic. He's lost his job. That's not out there any more. But the choices that he has made are also not realistic. So all the court could think to do was to look at his education, to look at his age and look at his capabilities, and I'm going to set his income at half of what the mother wanted and more than what he wanted, so I'm setting his income at \$5,000 a month.

RP 1230. In its written decision, the court provided a different rationale for the income imputed to John:

He is deemed to be voluntarily under employed and his income will be imputed at \$5,000 since he failed to provide evidence of his actual income. This is 1/2 of his prior monthly earnings.

CP 655 (Appendix 5, p. 4)

The trial court abused its discretion by imputing income to John at \$5,000 per month instead of the default median income figure pursuant to former RCW 26.19.071(6) (1997). To the extent the court's decision was based on arbitrarily cutting Kim's request in half, it was not based on any evidence at all. To the extent it was based on the "1/2 of [John's] prior monthly earnings", it is similarly faulty. The evidence at trial was that after leaving private practice, John worked for his own start-up company from September 2005 to October 2007. For the period from September 2005 though May 2006, John did not receive any income at all from his company. RP 974, 1105. For the period from June 2006 to January 2007, John received a "guaranteed payment" from his company of \$7,500 per

month. And for the period from February 2007 to October 2007, John received a “guaranteed payment” from his company totaling \$10,000 per month. Exs. 92, 97. Taken over the 26 month period of his self-employment, therefore, the most John could be said to have earned at his prior employment was an average of \$5,770 per month. Moreover, the evidence at trial was that a significant factor in his income from self-employment was his ability to provide legal services, a skill he could no longer rely on following his disbarment. RP 1038-39.

Even if the Court had a arguable factual basis for imputing a gross monthly income of \$5,000 to John, John was attending school full-time at the time of trial in order to retrain for a new career, that he would complete his education a little more than year later, and that while he reasonably anticipated earning more than \$100,000 per year within another one or two years, his income in the interim would be much less. RP 711-28.

In light of his education schedule, John requested a downward deviation in his child support obligation until he was able to obtain his degree and certification and begin teaching. The trial court rejected John’s request without making any written findings. Instead, the trial court merely included a conclusory statement in Section 3.8 of the Order of Child Support that “no good reason exists to justify deviation.” CP 640

(Appendix 3, p. 4). Pursuant to RCW 26.19.075(3), however, written findings are *required* if a court denies a request for deviation from the standard calculation.

The requisite “information to the contrary” to support the trial court’s decision to impute income of \$5,000 per month to John instead of using the median income table simply did not exist. Given the evidence at trial and the trial court’s proffered rationale, the court abused its discretion in imputing income to John in excess of the statutorily mandated “median income” and in its decision to deny the father’s request for a downward deviation. The decision must be reversed.

6. The court committed reversible error in awarding a prospective right to reimbursement for additional child expenses.

As noted above, a trial court may add to a parents’ “basic support obligation” by ordering parents to share “extraordinary health care expenses” (former RCW 26.19.080(2) (1996)) and/or “day care and special child rearing expenses (RCW 26.19.080(3)). Because such awards result in a deviation from the basic obligation, a court is obligated to enter written findings of fact in support of any additional obligations. RCW 26.19.075(2), (3).

In particular, a court imposing support obligations that exceed the basic support obligation “should consider, at a minimum, the parents’

standard of living and the children's special medical, educational, or financial needs." *In re Marriage of Krieger*, 147 Wn. App. 952, 960, 199 P.3d 450 (2008).

[The] factors [to be considered] were set forth in *In re Marriage of Daubert* and *In re Marriage of Rusch*. In *Daubert*, the court held that findings in support of an award above the advisory amount "must explain why the amount of support ordered is both necessary and reasonable." The court explained that to determine whether the support is necessary, courts should consider "the special medical, educational and financial needs of the children," and to determine whether the support is reasonable, courts should consider the parents' income, resources, and standard of living.

*In re Marriage of Krieger*, 147 Wn. App. at 960-61 (footnotes omitted).

In Section 3.15 of the Order of Child Support, the trial court prospectively imposed additional support obligations for "[e]ducational expenses", "[e]xtracurricular activities" including sports, dance and school trips, and "auto insurance for the children." CP 641-42 (Appendix 3, pp. 5-6). In Section 3.19 of the Order of Child Support, the court also imposed an additional support obligation for "extraordinary health care expenses." CP 643-44 (Appendix 3, pp. 7-8).

At no point did the trial court enter written findings or otherwise indicate that it had considered the costs, necessity or reasonableness of any of the additional support obligations, or that it had considered either of the parent's income, resources or standard of living. Moreover, there was no

evidence in the record that would have enabled the court to determine the costs or financial impact of the additional support obligations. The court abused its discretion in imposing a prospective right to reimbursement for additional child expenses, and its decision must be reversed.

**C. The trial court abused its discretion by requiring John to maintain Kim as the sole beneficiary on his life insurance policy.**

The final paragraph of Section 3.15 of the Decree of Dissolution requires John to maintain Kim as the sole beneficiary on his life insurance policy:

The husband shall pay the premium on and maintain the wife as beneficiary on his current life insurance policy and on any subsequent policies purchased to replace the current life insurance policy until such time as there is no obligation for child support or post-secondary support payable for the children. The husband shall direct the insurance provider in writing that they shall notify the wife is [sic] the policy lapses, is in danger of lapsing or has been cancelled and provide wife with a copy of such notice.

CP 635 (Appendix 1, p. 9). The undisputed evidence at trial was that John had a term life insurance policy with coverage of \$1,050,000 that named Kim as the sole beneficiary. RP 840; Ex. 138.

The trial court abused its discretion by imposing an unlimited obligation on John to maintain Kim as the sole beneficiary on his life insurance policy, and to seemingly obligate John to hold life insurance with her as the sole beneficiary until such time as he no longer owes child

support. While a court may exercise its discretion to require maintenance of a life insurance policy to secure child support payments, the court's discretion is limited to the amount needed to secure unpaid and/or foreseeable child support obligations. *See In re Marriage of Sager*, 71 Wn. App. 855, 861, 863 P.2d 106 (1993); *Riser v. Riser*, 7 Wn. App. 647, 650, 501 P.2d 1069 (1972).

The insurance obligation imposed by the trial court must be reversed, with instructions to limit John's obligation to maintain Kim as the beneficiary on his insurance policy for whatever amount is determined to be his foreseeable total support obligation.

**D. The trial court abused its discretion by granting Kim sole decision-making authority over "major decisions" involving the parties' children in the Parenting Plan.**

A parent's right to participate in decision-making under a parenting plan may only be limited in certain specific situations.

According to RCW 26.09.187(2)(b):

The court shall order sole decision-making to one parent when it finds that:

(i) A limitation on the other parent's decision-making authority is mandated by RCW 26.09.191;

(ii) Both parents are opposed to mutual decision making;

(iii) One parent is opposed to mutual decision making, and such opposition is reasonable based on the criteria in (c) of this subsection.

And according to RCW 26.09.187(2)(c):

Except as provided in (a) and (b) of this subsection, the court shall consider the following criteria in allocating decision-making authority:

(i) The existence of a limitation under RCW 26.09.191;

(ii) The history of participation of each parent in decision making in each of the areas in RCW 26.09.184(5)(a);

(iii) Whether the parents have a demonstrated ability and desire to cooperate with one another in decision making in each of the areas in RCW 26.09.184(5)(a); and

(iv) The parents' geographic proximity to one another, to the extent that it affects their ability to make timely mutual decisions

In Section 4.2 of the Parenting Plan Final, the trial court ordered that Kim was to have sole decision-making authority over the following “major decisions” involving the parties’ children: education decisions, non-emergency health care, religious upbringing, extracurricular activities, high risk activity, trips without parents, and “[t]attoos, piercings, hair coloring, head shaving, etc.” CP 668-69 (Appendix 4, pp. 7-8).

The only place the court expressed a basis for its decision was in its oral ruling:

[T]he parties’ inability to make a decision together does at this point in time justify putting sole decision making in the hands of the mother.

As I have looked at the history of this from the beginning to the end, there has not been an ability for these parties to make decisions. And it’s cost money because of the delays in getting those decisions made.

parties to make decisions. And it's cost money because of the delays in getting those decisions made.

RP 1233. To the extent the trial court's oral ruling can be considered a "finding", it does not meet the criteria set out in RCW 26.19.187(2), and does not explain the expansive list of child-related decisions awarded to Kim. In fact, not only did the trial court fail to find that any of the four of the grounds listed in RCW 26.19.187(2)(c) justified a restriction on John's participation in decision-making, it made up its own ground.

The court based its decision on its belief that "the parties' inability to make a decision together" following their separation has "cost money." Other than the costs associated with their dissolution, however, there were no other costs that were connected to any purported lack of mutual decision-making between the parties. It seems the trial court based its decision to restrict John's parental rights on the fact that the parties had engaged in a costly divorce proceeding.

The trial court abused its discretion in granting sole-decision-making authority to Kim. Given the absence of findings as well as the absence of evidence supporting any of the criteria in RCW 26.09.187(2)(c), the trial court's decision must be reversed.

**E. John is entitled to an award of attorney's fees and costs on appeal.**

Pursuant to RCW 26.09.140, a court "after considering the financial resources of both parties" may order a party to pay a reasonable amount for the costs and attorney's fees incurred in a dissolution proceeding. The statute further provides that an appellate court has the discretion to "order a party to pay for the cost to the other party of maintaining the appeal and attorney's fees in addition to statutory costs." *See also* RAP 18.1(c).

In light of the multiple reversible errors by the trial court, the significantly disparate financial circumstances of the parties, and the substantial resources available to Kim but not John, this court should exercise its discretion under RCW 26.09.140 and award reasonable attorney's fees and costs on appeal to John. Pursuant to RAP 18.1(c), John will file a timely amended financial declaration with the Court in support of this request.

## **VI. CONCLUSION**

For the reasons stated above, this Court must:

(1) Reverse the Decree of Dissolution, Findings of Fact and Conclusions of Law, Parenting Plan Final, Order of Child Support Final Order, Order on Kim's Motion for Reconsideration and/or Amendment of

Judgment Pursuant to CR 59, Order on Show Cause re Contempt/Judgment, and Judgment and Order on Petitioner's Motion to Enforce and Clarify Decree and Request for Attorney Fees;

(2) Remand for valuation and division of the parties' community and separate assets and liabilities consistent with Washington law;

(3) Remand for determination of child support and expense reimbursements consistent with Washington law;

(4) Remand for modification of the Decree of Dissolution to limit any requirement that John maintain Kim as a beneficiary on his life insurance policy to her right to receive an amount representing his foreseeable total support obligation;

(5) Remand for modification of the Parenting Plan Final to grant joint decision-making rights to the parties; and

(6) Award reasonable attorney's fees and costs on appeal to John.

DATED this 17<sup>th</sup> day of December, 2009

RHE E. ZINNECKER, PLLC

By   
Rhe E. Zinnecker  
WSBA No. 24535  
Attorney for Appellant

# **APPENDIX 1**

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**FILED**  
KING COUNTY, WASHINGTON

APR 16 2009

SUPERIOR COURT CLERK  
DAVID WITTEN  
DEPUTY

Superior Court of Washington  
County of King

In re the Marriage of:

KIMBERLY KRISTEN MELE

Petitioner,

and

JOHN PETER MELE

Respondent.

No. 08-3-01695-5 SEA

Findings of Fact and  
Conclusions of Law  
(FNFCL)

**I. Basis for Findings**

The findings are based on trial. The following people attended:

Kimberly Mele and her lawyer, Patricia Baugher.  
John Mele and his lawyer, Rhe Zinnecker.  
Dr. Melanie English, Ph. D.  
Dr. Dianne DeWitt, Ph. D.  
Jack Wall, Real Estate Appraiser  
Donald Jury, Real Estate Appraiser  
Lara Weed, MA  
Richard Moraski  
Noel Voorheis  
Jay Tihinen

**II. Findings of Fact**

Upon the basis of the court record, the court  *Finds*:

1     **2.1     Residency of Petitioner**

2             The Petitioner is a resident of the State of Washington.

3  
4     **2.2     Notice to the Respondent**

5             The respondent appeared, responded or joined in the petition.

6     **2.3     Basis of Personal Jurisdiction Over the Respondent**

7             The facts below establish personal jurisdiction over the respondent.

8                     The respondent is presently residing in Washington.

9     **2.4     Date and Place of Marriage**

10             The parties were married on October 6, 1990 at King County, WA.

11     **2.5     Status of the Parties**

12             Husband and wife separated on April 20, 2007.

13     **2.6     Status of Marriage**

14             The marriage is irretrievably broken and at least 90 days have elapsed since the date the  
15             petition was filed and since the date the summons was served or the respondent joined.

16     **2.7     Separation Contract or Prenuptial Agreement**

17             There is no written separation contract or prenuptial agreement.

18     **2.8     Community Property**

19             The parties have the following real or personal community property (asset values are as  
20             shown on **Exhibit A**, which is approved by the court and incorporated herein):

21             Family home located at 5752 159<sup>th</sup> Place S.E., Bellevue, Washington, 98006 and legally  
22             described as:

23                     LOT 14, LAKEMONT HIGHLANDS DIVISION 2, ACCORDING TO THE PLAT THEREOF  
24                     RECORDED IN VOLUME 171 OF PLATS, PAGES 32 THROUGH 38, INCLUSIVE, IN KING  
                      COUNTY, WASHINGTON.

25             Tacoma Condominium, value unknown, located at 1120 Cliff Avenue, #307, Tacoma,  
                      Washington, 98402 and legally described as:

1  
2 UNIT 307 CLIFF STREET LOFTS, A CONDOMINIUM, ACCORDING TO THE DECLARATION  
3 THEREOF RECORDED UNDER PIERCE COUNTY RECORDING NUMBER 200405040443, AND  
4 ANY AMENDMENTS THERETO; SAID UNIT IS DENOTED ON THE SURVEY MAP AND PLANS FILED  
UNDER RECORDING NUMBER 20005045002, RECORDS OF PIERCE COUNTY, WASHINGTON.

5 Whistler Timeshare (one third owned by Estate of Leon K. Moraski; two-thirds owned by  
6 the community)

7 Hawaii Timeshare (one third owned by Estate of Leon K. Moraski; two-thirds owned by  
8 the community)

9 Community portion of Wife's Costco 401(k)

10 Wife's Charles Schwab IRA Account XXXX-5267

11 Wife Costco Stock Option Grants valued on 3/2/09 based on Trial Exhibit #86 admitted  
12 into evidence on 3/5/09 showing the value of Costco Stock at \$40.84 per share.

13 Charles Schwab Brokerage Account XXXX-3771

14 Bank of America Account # 78224151

15 2000 Ford Expedition

16 **Pre-distributed community property:**

17 **To the husband:**

18 Husband's WAMU Account (valued at separation at \$3,194)

19 Husband's Charles Schwab IRA valued at \$274,476 (pre-distributed to husband in  
20 12/07)

21 2006 Tax Refund (pre-distributed to husband in 10/07) of \$23,321

22 \$5000 from Joint Charles Schwab brokerage account XXXX3771 (distributed to  
23 husband in 07/07)

24 Comic book collection in husband's possession valued at approximately \$30,000

25 **To the wife:**

Wife's Bank of America Accounts (valued at separation at \$14,832)

1  
2           Wife's Costco Stock Options (gross amount received: \$15,975)

3           \$1870 community lien against wife's 2007 VW Beetle

4           Camera equipment valued at \$4000

5  
6       **2.9    Separate Property**

7       The husband has no real or personal separate property.

8           The wife has the following real or personal separate property:

9           \$3750 from Charles Schwab Brokerage Account XXXX-3771

10          Charles Schwab Brokerage Account XXXX-6441

11          Charles Schwab Brokerage Account XXXX-5419 - the Leon K. Moraski  
12          Exemption Trust account

13          2007 VW Beetle

14          Post-Separation contributions to Costco 401(k) of \$8,795

15       **2.10   Community Liabilities**

16       The parties have incurred the following community liabilities:

17          WAMU Home Mortgage of approximately \$492,145

18          Bank of America Home Equity Line of Credit of \$49,125

19          American Express Credit Card ending in -2005 balance of \$13,140 at separation

20          WSECU Credit Card ending in -5475 balance of \$1978 at separation

21          Loan to Animadoodle owed to Richard Moraski balance of \$5292 (including principal  
22          and interest)

23       **2.11   Separate Liabilities**

24       **The husband has incurred the following separate liabilities:**

1 Bank of America Credit Card ending in 4584 used for Electric Hendrix LLC which  
2 husband testified was cancelled by the company one year prior to the parties' separation  
3 which did not appear on the husband's credit report in admitted Trial Exhibit 89 and  
4 which he solely agreed to assume responsibility for after separation and contrary to the  
Electric Hendrix LLC Agreement in admitted Trial Exhibit 87.

5 American Express Credit Card Account ending in 3-21006

6 Chase Mastercard Credit Card Account ending in 2039

7 Any other credit cards in the name of the husband only

8 Liability for joint 2006 federal income tax (if any)

9 Liability for his own 2007 federal income tax (if any)

10 Liability for the fine levied against him by the Washington State Bar Association

11 Liability for any legal fees associated with the Washington State Bar Association hearing  
12 and disbarment

13 Liability for any motor vehicle accidents for which he is at fault including the Dollar  
14 rent-a car dispute

15 Liability for any monies owed to Thomas Shulich in connection with an unrefunded  
16 damage deposit for the Tacoma Condominium which he unilaterally withheld from the  
renter.

17 Any late fees, or cost of lien removal associated with the Tacoma condo homeowner's  
18 dues.

19 Any late fees incurred since separation on community debt for which the court assigned  
him responsibility

20 Any other debt or liability, whether liquidated or unliquidated, accrued by him since  
21 separation

22 **The wife has incurred the following separate liabilities:**

23 Bank of America Credit Card ending in 6666

24 Loan for 2005 taxes owed to Leon Moraski Exemption Trust balance of \$14,047  
25 (including principal and interest)

Any debt accrued by her since separation

1  
2  
3 **2.12 Maintenance**

4 Maintenance should not be ordered because:

5  
6 The husband has not demonstrated a need for maintenance as he is highly educated and  
7 experienced, with an impressive resume. He was voluntarily unemployed since  
8 November 2007 and then voluntarily underemployed beginning in June 2008. In a little  
9 over a year he dissipated \$274,000+ in community assets which could have been spent  
10 establishing himself in a new profession, but instead were spent on lavish purchases, such  
11 as a brand new Nissan Xterra, plasma televisions, i-pods and several hundreds of dollars  
12 each month on comic books and related items.

13  
14 The wife does not have the ability to pay maintenance: the wife has multiple sclerosis and  
15 is currently permanently partially disabled, and is able to work only three days per week  
16 at most. There have been two periods in the past where she has been temporarily totally  
17 disabled and unable to work at all for many months in a row.

18 Other: \_\_\_\_\_  
19 \_\_\_\_\_  
20 \_\_\_\_\_  
21 \_\_\_\_\_

22 **2.13 Continuing Restraining Order**

23 Does not apply.

24 **2.14 Protection Order**

25 Does not apply.

**2.15 Fees and Costs**

Other: There is evidence of intransigence by the father which contributed to the high  
attorneys' fees in this case. There are, however, no funds from which to award attorneys'  
fees.

**2.16 Pregnancy**

The wife is not pregnant.

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4 **2.17 Dependant Children**

The children listed below are dependent upon either or both spouses.

Name of Child	Age	Mother's/Father's Names
Samantha Grace	16	Kimberly Mele / John Mele
John Arthur (Jake)	13	Kimberly Mele / John Mele
Trevor James	9	Kimberly Mele / John Mele

9 **2.18 Jurisdiction Over the Children**

10 This court has jurisdiction over the children for the reasons set forth below:

11 This state is the home state of the children because the children lived in  
12 Washington with a parent or a person acting as a parent for at least six  
13 consecutive months immediately preceding the commencement of this  
proceeding.

14 **2.19 Parenting Plan**

15 The parenting plan signed by the court on this date is approved and incorporated as part  
16 of these findings.

17 **2.20 Child Support**

18 There are children in need of support and child support should be set pursuant to the  
19 Washington State Child Support Schedule. The Order of Child Support signed by the  
20 court on this date and the child support worksheet, which has been approved by the court,  
are incorporated by reference in these findings.

21 Other: \_\_\_\_\_  
22 \_\_\_\_\_  
23 \_\_\_\_\_

24 **2.21 Other:**

25 Does not apply.

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**III. Conclusions of Law**

The court makes the following conclusions of law from the foregoing findings of fact:

**3.1 Jurisdiction**

The court has jurisdiction to enter a decree in this matter.

**3.2 Granting a Decree**

The parties should be granted a decree.

**3.3 Pregnancy**

Does not apply.

**3.4 Disposition**

The court should determine the marital status of the parties, make provision for a parenting plan for any minor children of the marriage, make provision for the support of any minor children of the marriage entitled to support, consider or approve provision for maintenance of either spouse, make provision for the disposition of property and liabilities of the parties, make provision for the allocation of the children as federal tax exemptions, make provision for any necessary continuing restraining orders, and make provision for the change of name of any party. The distribution of property and liabilities as set forth in the decree is fair and equitable.

**3.5 Continuing Restraining Order**

Does not apply.

**3.6 Protection Order**

Does not apply.

**3.7 Attorney Fees and Costs**

Each party should be responsible for their own attorneys' fees and costs.

**3.8 Other**

Does not apply.



Marriage of Mele

ASSETS & DEBTS	Valuation Date	Gross Value	Liens & Encumbrances	NET VALUE	TO WIFE		TO HUSBAND	
					COMM	SEPARATE	COMM	SEPARATE
1 Family Home		665,000	541,270	123,730	123,730	0	0	
2 Tacoma Condominium	N/A	0		0	0	0	0	
3 Hawaii Timeshare	N/A	0		0	0	0	0	
4 Whistler Timeshare	N/A	0		0	0	0	0	
5 Husband's Pre-Distribution (401k)	12/20/2007	274,607		274,607	0	274,607	0	
6 Husband's Pre-Distribution (IRS)	10/15/2007	23,321		23,321	0	23,321	0	
7 Husband's Pre-Distribution (CS 377)	8/3/2007	5,000		5,000	0	5,000	0	
8 Wife's Pre-Distribution (Options)	4/7/2008	15,975		15,975	15,975	0	0	
9 Husband's Pre-Distribution (WAMU)	4/19/2007	3,194		3,194	0	3,194	0	
10 Wife's Pre-Distribution (B of A)	4/19/2007	14,832		14,832	14,832	0	0	
11 Husband's Pre-Distribution (Comics)	N/A	30,000		30,000	0	30,000	0	
12 Wife's Camera Equipment	3/4/2009	4,000		4,000	4,000	0	0	
13 Wife's Costco 401(k)	12/29/2008	58,983		58,983	50,247	8,736	0	
14 Wife's Schwab IRA (CS 5267)	12/29/2008	8,734		8,734	8,734	0	0	
15 Wife's Stock Options	3/2/2009	32,352		32,352	32,352	0	0	
16 Schwab Brokerage (CS 3771)	12/29/2008	11,116		11,116	7,366	3,750	0	
17 Schwab (Wife) (CS 6441)	12/29/2008	26,053		26,053	0	26,053	0	
18 Wife VW Beetle	12/29/2008	1,870		1,870	1,870	0	0	
19 Wife's Expedition	12/29/2008	4,035		4,035	4,035	0	0	
20 House Loan (Leon Moraski)	12/29/2008	-29,640		-29,640		-29,640	0	
21 Loan for 2005 taxes (Exemption Tru)	12/29/2008	-14,049		-14,049		-14,049	0	
22 Loan for Richard Moraski	12/29/2008	-5,292		-5,292		-5,292	0	
23 Joint American Express (XX2005)	4/20/2007	-13,140		-13,140	-13,140	0	-2,646	
24 Husband's WSECU (5475)	4/10/2007	-1,978		-1,978		-1,978	0	
Personal property		2		2	1		1	
<b>TOTALS - ALL COLUMNS</b>		1,149,788	541,270	608,518	250,002	358,516	334,145	
<b>TOTALS - COMMUNITY ONLY</b>					250,002	358,516	334,145	

**MARITAL LIEN >**  
 Each party's total dollars  
 Each party's percentage

Wife's percentage (entered by user) 60.0%  
 Husband's percentage (automatic) 40.0%

## **APPENDIX 2**

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**FILED**  
KING COUNTY, WASHINGTON

APR 16 2009

SUPERIOR COURT CLERK  
DAVID WITTEN  
DEPUTY

Judge Patricia H. Clark  
Department 39

APR 08 2008

RECEIVED

Superior Court of Washington  
County of King

In re the Marriage of:

KIMBERLY KRISTEN MELE

Petitioner,

and

JOHN PETER MELE

Respondent.

No. 08-3-01695-5 SEA

Decree of Dissolution (DCD)

I. Judgment/Order Summaries

1.1 Restraining Order Summary:

Does not apply.

1.2 Real Property Judgment Summary:

Real Property Judgment Summary is set forth below:

Assessor's property tax parcel or account number: 413966-0140-08

1 **1.3 Money Judgment Summary:**

2 Judgment Summary is set forth below:

- 3 A. Judgment Creditor Kimberly Mele
- 4 B. Judgment Debtor John Mele
- 5 C. Principal judgment amount \$100,486.00
- 6 D. Interest to date of Judgment \$
- 7 E. Attorney fees \$
- 8 F. Costs \$
- 9 G. Other recovery amount \$
- 10 H. Principal judgment shall bear interest at 12% per annum
- 11 I. Attorney fees, costs and other recovery amounts shall bear interest at % per annum
- 12 J. Attorney for Judgment Creditor Patricia Baugher
- 13 K. Attorney for Judgment Debtor Rhe Zinnecker
- 14 L. Other: This judgment is based on the allocation of asset and debt shown in Exhibit A, which is approved by the court and incorporated by reference herein. The judgment amount shown is non-dischargeable in bankruptcy pursuant to Federal bankruptcy law.

*Handwritten initials/signature*

15 Repayment terms: The judgment will be paid in monthly installments, with interest, over a period of ten years along with the husband's percentages of proceeds from the sale of assets, if any, as set forth herein.

16 *End of Summaries*

17 **II. Basis**

18 Findings of Fact and Conclusions of Law have been entered in this case.

19 **III. Decree**

20 *It Is Decreed* that:

21 **3.1 Status of the Marriage**

22 The marriage of the parties is dissolved.

23 **3.2 Property to be Awarded the Husband**

24 **The husband is awarded as his separate property the following property:**

25 Proceeds remaining from all community assets pre-distributed to him on Exhibit A.

1 2008 Nissan Xterra

2 His comic book and action figure collections valued at approximately \$30,000

3 All household goods and furnishings in husband's possession.

4 All bank accounts, credit union, savings and loan accounts or other depositories where  
5 the account is presently solely in the name of the husband.

6 All rights be virtue of the husband's present, past or future employment, including but not  
7 limited to pension, retirement, profit sharing, reserved vacation or sick leave, insurance  
8 coverage, social security benefits and the like.

9 All other personal effects in the husband's possession.

10 Stock from Animadoodle in storage unit.

*Same as*

11 **3.3 Property to be Awarded to the Wife**

12 **The wife is awarded as her separate property the following property:**

13 Proceeds remaining from all community assets pre-distributed to her on **Exhibit A.**

14 Family home located at 5752 159<sup>th</sup> Place S.E., Bellevue, Washington, 98006 valued at  
15 \$665,000 and legally described as:

16 LOT 14, LAKEMONT HIGHLANDS DIVISION 2, ACCORDING TO THE PLAT THEREOF  
17 RECORDED IN VOLUME 171 OF PLATS, PAGES 32 THROUGH 38, INCLUSIVE, IN KING  
COUNTY, WASHINGTON.

18 The husband shall execute a quit-claim deed and other documents necessary to  
19 effectuate the transfer of the property to the wife within 10 days of the entry of  
this order.

20 Wife's Charles Schwab IRA Account XXXX-5267

21 Wife's Costco 401(k)

22 Wife Costco Stock Option Grants

23 Charles Schwab Joint Brokerage Account XXXX-3771

24 Charles Schwab Account in wife's name only XXXX-6441

1  
2 Charles Schwab Brokerage Account XXXX-5419 - the Leon K. Moraski Exemption  
3 Trust account

4 Bank of America Account # 78224151

5 2000 Ford Expedition

6 2007 VW Beetle

7 Her Snappy Chicks business and camera equipment

8 All household goods and furnishings in wife's possession.

9 All bank accounts, credit union, savings and loan accounts or other depositories where  
10 the account is presently solely in the name of the wife.

11 All rights be virtue of the wife's present, past or future employment, including but not  
12 limited to pension, retirement, profit sharing, reserved vacation or sick leave, insurance  
coverage, social security benefits and the like.

13 All other personal effects in the wife's possession.

14 **3.4 Liabilities to be Paid by the Husband**

15 The husband shall pay the following community or separate liabilities:

16 A judgment shall be entered against the husband and in favor of the wife in the amount of  
17 \$100,486.00 pursuant to **Exhibit A**, which is approved by the court and incorporated  
herein.

18 \$2646 as one-half loan to Animadoodle owed to Richard Moraski (total principal and  
19 interest owed is \$5292) to be paid to Richard Moraski within 30 days of entry of this  
20 order.

21 Rent on storage unit containing Animadoodle property.

22 WSECU Visa Credit Card Account ending in 8601

23 American Express Credit Card Account ending in 3-21006

24 Chase Mastercard Credit Card Account ending in 2039

25 Bank of America Visa Credit Card Account ending in 4584

1  
2 Liability for any other credit cards in the name of the husband only

3 Liability for joint 2005, and 2006 federal income tax (if any)

4 Liability for his own 2007 federal income tax (if any)

5 Liability for the fine levied against him by the Washington State Bar Association

6 Liability for any legal fees and costs associated with the Washington State Bar  
7 Association hearing and disbarment

8 Liability for any motor vehicle accidents for which he is at fault (~~regardless of whose~~  
9 ~~name the vehicle he was driving was titled or rented under and including the Dollar rent-~~  
10 ~~a-car dispute~~) *AK*

11 ~~Liability for any monies owed to Thomas Shulich in connection with an unrefunded~~  
12 ~~damage deposit and claim filed in King County Small Claims Court~~ *Not argued at*

13 ~~Any unpaid liabilities or late fees incurred since separation on community debt for which~~  
14 ~~the court assigned him responsibility for under temporary orders, including maintenance~~  
15 ~~fee, plus late penalties on Whistler Timeshare, which shall be paid within 30 days of this~~  
16 ~~order.~~ *Wife to pay late fees & maintenance on all 3*

17 ~~Any unpaid liabilities or late fees incurred since separation on community debt for which~~  
18 ~~the court assigned him responsibility for under temporary orders, including maintenance~~  
19 ~~fee, plus late penalties on Tacoma Condominium, which shall be paid within 30 days of~~  
20 ~~the entry of this order or taken solely from the husband's share of any sales proceeds.~~

21 ~~Liability for any motor vehicle accidents for which he is at fault.~~ *properties all sold. She may recover 50% of*

22 Unless otherwise provided herein, the husband shall pay all liabilities incurred by him  
23 since the date of separation.

24 **3.5 Liabilities to be Paid by the Wife**

25 The wife shall pay the following community or separate liabilities:

WAMU Home Mortgage

Bank of America Home Equity Line of Credit

American Express Credit Card ending in -2005

1 Bank of America Credit Card ending in 6666

2  
3 Liabilities and costs associated with the Tacoma Condo, Whistler and Hawaii Timeshares  
4 incurred after the date of this order, until sold (excluding 2008 maintenance fee, dues and  
5 utilities owed by husband). Wife shall have access to rental income from the Tacoma  
6 condo for payment of expenses on that property. See below for reimbursement of these  
7 expenses to the wife.

8 Liability for <sup>ML</sup>his own 2008 federal income tax (if any) <sup>MLR</sup>

9 Loan for house owed to Estate of Leon Moraski balance of \$29,667 (including principal  
10 and interest)

11 Loan for 2005 joint taxes owed to Exemption Trust balance of \$14,047 (including  
12 principal and interest)

13 \$2646 as one-half loan to Animadoodle owed to Richard Moraski (total principal and  
14 interest owed is \$5292) to be paid to Richard Moraski within 30 days of entry of this  
15 order.

16 Unless otherwise provided herein, the wife shall pay all liabilities incurred by her since  
17 the date of separation.

18 **3.6 Hold Harmless Provision**

19 Each party shall hold the other party harmless from any collection action relating to  
20 separate or community liabilities set forth above, including reasonable attorney's fees and  
21 costs incurred in defending against any attempts to collect an obligation of the other  
22 party.

23 **3.7 Spousal Maintenance**

24 Spousal maintenance shall not be ordered.

25 **3.8 Continuing Restraining Order**

Does not apply.

**3.9 Protection Order**

Does not apply.

**3.10 Jurisdiction Over the Children**

1 The court has jurisdiction over the children as set forth in the Findings of Fact and  
2 Conclusions of Law.

3 **3.11 Parenting Plan**

4 The parties shall comply with the Parenting Plan signed by the court on this date. The  
5 Parenting Plan signed by the court is approved and incorporated as part of this decree.

6 **3.12 Child Support**

7 Child support shall be paid in accordance with the order of child support signed by the  
8 court on this date. This order is incorporated as part of this decree.

9 **3.13 Attorney Fees, Other Professional Fees and Costs**

10 Attorney fees, other professional fees and costs shall be paid as follows:

11 Each party shall pay their own attorneys' fees and costs.

12 **3.14 Name Changes**

13 Does not apply.

14 **3.15 Other**

15 The parties shall list for sale the Tacoma Condominium located at 1120 Cliff Avenue,  
16 #307, Tacoma, Washington, 98402 and legally described as:

17 UNIT 307 CLIFF STREET LOFTS, A CONDOMINIUM, ACCORDING TO THE DECLARATION  
18 THEREOF RECORDED UNDER PIERCE COUNTY RECORDING NUMBER 200405040443, AND  
19 ANY AMENDMENTS THERETO; SAID UNIT IS DENOTED ON THE SURVEY MAP AND PLANS FILED  
UNDER RECORDING NUMBER 20005045002, RECORDS OF PIERCE COUNTY, WASHINGTON

20 The Tacoma condo shall be listed for sale by the wife within <sup>30</sup>20 days of the entry of this  
21 order. If the parties cannot agree to a listing agent within <sup>30</sup>20 days of the entry of this  
22 order, their proposed listing agents shall choose a third agent to list the property. The  
23 parties shall agree to a listing price; if they are unable to agree, they shall accept the  
24 recommendation of the listing agent at a price determined to facilitate a quick sale of the  
25 property. The parties shall accept any reasonable offer to purchase the property. If the  
parties are unable to agree as to a reasonable offer, the issue shall be submitted to  
arbitration by the first available arbitrator at Bartlett, Pollock and Besk to be decided  
before the purchase offer expires with the arbitrator's fees to be shared equally, however,  
if the arbitrator determines that one parties' position with respect to an offer is  
unreasonable they may allocate the cost of the arbitration solely to that party. *PKC*

1  
2 The proceeds of the sale of the Tacoma condo shall be distributed as follows: Each party  
3 will receive one-half the proceeds of the sale after satisfaction of the mortgages and liens  
4 and after deduction of costs, fees and taxes related to the sale. If there are insufficient  
5 proceeds to repay the mortgage and any liens on the condominium and costs, fees and  
6 taxes related to the sale, each party will be responsible for repayment of one-half any  
7 remaining liability. The wife shall receive the husband's one-half share and he shall be  
8 credited the same amount against the judgment entered herein.

9 The wife shall also list for sale the Hawaii and Whistler Timeshares within 21 days of the  
10 entry of this order. The parties shall jointly determine whether the timeshares should be  
11 listed by an agency or "by owner" and, if so, shall jointly choose the agency and/or  
12 website(s) for listing the timeshares. The sales price shall be according to the  
13 recommendations of the agency (if any) at a price determined to facilitate a quick sale of  
14 each property; if there is no such recommendation available and the parties are otherwise  
15 unable to agree, the issue shall be submitted to arbitration with the first available  
16 arbitrator at Bartlett, Pollock and Besk. The parties shall accept all reasonable offers to  
17 purchase the properties. If the parties are unable to agree as to a reasonable offer, the  
18 issue shall be submitted to arbitration by the first available arbitrator at Bartlett, Pollock  
19 and Besk to be decided before the purchase offer expires. The arbitrator's fees are to be  
20 shared equally, however, if the arbitrator determines that one parties' position with  
21 respect to an selling price or purchase offer is unreasonable they may allocate the cost of  
22 the arbitration solely to that party.

23 The proceeds of the Hawaii timeshare shall be distributed and allocated as follows: One-  
24 third of the proceeds of the sale shall be paid to the Estate of Leon K. Moraski and one-  
25 third to each party. The wife shall receive the husband's share of the proceeds and he  
shall be credited the same amount against the judgment entered herein.

The proceeds of sale of the Whistler time share shall be distributed and allocated as  
follows: One-third of: the sales price less fees costs and taxes to the Estate of Leon K.  
Moraski (to make him whole as one-third owner of the investment without liability for  
repayment of the loan to which only husband and wife are a party); and one-half the  
remaining proceeds to each party after repayment of the parties' loan with the Royal  
Bank of Canada taken by them to purchase the property. The wife shall receive the  
husband's share of the proceeds and he shall be credited the same amount against the  
judgment entered herein.

The wife shall be responsible for all payments of loan, fees and costs associated with the  
Tacoma condominium, and the Hawaii and Whistler timeshares (except for the 2008  
maintenance fee, and homeowner's fees owed by the husband under temporary orders)  
until they are sold. She shall be reimbursed dollar-for-dollar for any and all expenses  
paid by her (less rents received) from the total proceeds of the sale of the properties (i.e.  
if there are not sufficient proceeds from the sale of a property to reimburse the wife for



# Marriage of Mele

ASSETS & DEBITS	Valuation Date	Gross Value	Liens & Encumbrances	NET VALUE	TO WIFE		TO HUSBAND	
					COMM	SEPARATE	COMM	SEPARATE
1 Family Home		665,000	541,270	123,730	123,730	0	0	
2 Tacoma Condominium	N/A	0		0	0	0	0	
3 Hawaii Timeshare	N/A	0		0	0	0	0	
4 Whistler Timeshare	N/A	0		0	0	0	0	
5 Husband's Pre-Distribution (401k)	12/20/2007	274,607		274,607	0	274,607	0	
6 Husband's Pre-Distribution (IRS)	10/15/2007	23,321		23,321	0	23,321	0	
7 Husband's Pre-Distribution (CS 377)	8/3/2007	5,000		5,000	0	5,000	0	
8 Wife's Pre-Distribution (Options)	4/7/2008	15,975		15,975	15,975	0	0	
9 Husband's Pre-Distribution (WAMU)	4/19/2007	3,194		3,194	0	3,194	0	
10 Wife's Pre-Distribution (B of A)	4/19/2007	14,832		14,832	14,832	0	0	
11 Husband's Pre-Distribution (Comics)	N/A	30,000		30,000	0	30,000	0	
12 Wife's Camera Equipment	3/4/2009	4,000		4,000	4,000	0	0	
13 Wife's Costco 401(k)	12/29/2008	58,983		58,983	50,247	8,736	0	
14 Wife's Schwab IRA (CS 5267)	12/29/2008	8,734		8,734	8,734	0	0	
15 Wife's Stock Options	3/2/2009	32,352		32,352	32,352	0	0	
16 Schwab Brokerage (CS 3771)	12/29/2008	11,116		11,116	7,366	3,750	0	
17 Schwab (Wife) (CS 6441)	12/29/2008	26,053		26,053	0	26,053	0	
18 Wife VW Beetle	12/29/2008	1,870		1,870	1,870	0	0	
19 Wife's Expedition	12/29/2008	4,035		4,035	4,035	0	0	
20 House Loan (Leon Moraski)	12/29/2008	-29,640		-29,640		-29,640	0	
21 Loan for 2005 taxes (Exemption Tru)	12/29/2008	-14,049		-14,049		-14,049	0	
22 Loan for Richard Moraski	12/29/2008	-5,292		-5,292		-5,292	0	
23 Joint American Express (XX2005)	4/20/2007	-13,140		-13,140	-13,140	0	-2,646	
24 Husband's WSECU (5475)	4/10/2007	-1,978		-1,978		-1,978	0	
Personal property		2		2	1	1	0	
<b>TOTALS - ALL COLUMNS</b>		1,114,975	541,270	573,705	260,002	313,703	334,145	
<b>TOTALS - COMMUNITY ONLY</b>				587,137	260,002	326,135	334,145	

**MARITAL LIEN >**  
 Each party's total dollars  
 Each party's percentage

Wife's percentage (entered by user) 60.0%  
 Husband's percentage (automatic) 40.0%

**APPENDIX 3**

**FILED**  
KING COUNTY, WASHINGTON

APR 16 2009

SUPERIOR COURT CLERK  
DAVID WITTEN  
DEPUTY

Superior Court of Washington  
County of King

KIMBERLY KRISTEN MELE

Petitioner,

and

JOHN PETER MELE

Respondent.

No. 08-3-01695-5 SEA

Order of Child Support

Final Order (ORS)

Clerk's Action Required

**I. Judgment Summary**

The judgment summary:

- A. Judgment Creditor Kimberly Mele
- B. Judgment Debtor John Mele
- C. Principal judgment amount (back child support) \$4766.  
from 3/1/08 to 3/31/09
- D. Interest to date of Judgment \$N/A
- E. Attorney fees \$
- F. Costs \$
- G. Other recovery amount \$
- H. Principal judgment shall bear interest at 12% per annum
- I. Attorney fees, costs and other recovery amounts shall bear interest at 12% per annum
- J. Attorney for Judgment Creditor Patricia Baugher
- K. Attorney for Judgment Debtor Rhe Zinnecker
- L. Other: This judgment is not dischargeable in bankruptcy.

**ORIGINAL**

1 Judgment for back support includes \$812.15 per month from 3/1/08 through 6/30/08 and  
2 \$168.64 per month from 7/1/08 - 3/31/09. The judgment for back child support does not  
3 include reimbursement owed to the mother for child expenses, which are covered under  
4 Paragraph 3.20.

## 5 II. Basis

### 6 2.1 Type of Proceeding

7 This order is entered under a petition for dissolution of marriage and a decree of  
8 dissolution.

### 9 2.2 Child Support Worksheet

10 The child support worksheet which has been approved by the court is attached to this  
11 order and is incorporated by reference or has been initialed and filed separately and is  
12 incorporated by reference.

### 13 2.3 Other.

14 Does not apply.

## 15 III. Findings and Order

### 16 *It Is Ordered:*

#### 17 3.1 Children for Whom Support is Required

18 Name:	19 Age
20 Samantha Grace Mele	21 16
22 John Arthur (Jake) Mele	23 13
24 Trevor James Mele	25 9

#### 3.2 Person Paying Support (Obligor)

26 Name: John Mele  
27 Birth date: 8/31/61  
28 Service Address: 18305 SE Newport Way, Apt. M104  
29 Issaquah, WA 98027-7834

30 *The Obligor Parent Must Immediately File With the Court and the Washington State  
31 Child Support Registry, and Update as Necessary, the Confidential Information Form  
32 Required by RCW 26.23.050.*

1 ***The Obligor Parent Shall Update the Information Required by Paragraph 3.2 Promptly***  
2 ***After any Change in the Information. The Duty to Update the Information Continues***  
3 ***as long as any Support Debt Remains due Under This Order.***

4 Monthly Net Income: \$3,880

5 The income of the obligor is imputed at \$5000 because the obligor's income is unknown  
6 and the obligor is voluntarily underemployed.

7 **3.3 Person Receiving Support [Obligee]**

8 Name: Kimberly Mele  
9 Birth date: 04/29/64  
10 Service Address: 5752 159th Place SE  
11 Bellevue, WA 98006

12 ***The Obligee Must Immediately File With the Court and the Washington State Child***  
13 ***Support Registry and Update as Necessary the Confidential Information Form***  
14 ***Required by RCW 26.23.050.***

15 ***The Obligee Shall Update the Information Required by Paragraph 3.3 Promptly After***  
16 ***any Change in the Information. The Duty to Update the Information Continues as***  
17 ***Long as any Monthly Support Remains Due or any Unpaid Support Debt Remains Due***  
18 ***Under This Order.***

19 Monthly Net Income: \$6,726

20 The obligor may be able to seek reimbursement for day care or special child rearing  
21 expenses not actually incurred. RCW 26.19.080.

22 **3.4 Service of Process**

23 ***Service of Process on the Obligor at the Address Required by Paragraph 3.2 or any***  
24 ***Updated Address, or on the Obligee at the Address Required by Paragraph 3.3 or any***  
25 ***Updated Address, may Be Allowed or Accepted as Adequate in any Proceeding to***  
***Establish, Enforce or Modify a Child Support Order Between the Parties by Delivery of***  
***Written Notice to the Obligor or Obligee at the Last Address Provided.***

**3.5 Transfer Payment**

The obligor parent shall pay the following amounts per month for the following children:

Name	Amount
Samantha Grace Mele	\$289.14

1 John Arthur (Jake) Mele \$289.14  
2 Trevor James Mele \$233.87  
3 **Total Monthly Transfer Amount** \$812.15

4 *The Obligor Parent's Privileges to Obtain or Maintain a License, Certificate,*  
5 *Registration, Permit, Approval, or Other Similar Document Issued by a Licensing*  
6 *Entity Evidencing Admission to or Granting Authority to Engage in a Profession,*  
7 *Occupation, Business, Industry, Recreational Pursuit, or the Operation of a Motor*  
8 *Vehicle may Be Denied or may Be Suspended if the Obligor Parent is not in*  
9 *Compliance With This Support Order as Provided in Chapter 74.20A Revised Code of*  
10 *Washington.*

11 **3.6 Standard Calculation**

12 \$812 per month. (See Worksheet line 15.)

13 **3.7 Reasons for Deviation From Standard Calculation**

14 The child support amount ordered in paragraph 3.5 does not deviate from the standard  
15 calculation.

16 **3.8 Reasons why Request for Deviation Was Denied**

17 The deviation sought by the obligor was denied because no good reason exists to justify  
18 deviation.

19 **3.9 Starting Date and Day to Be Paid**

20 Starting Date: March 1, 2008

21 Day of the month  
22 support is due: 1st

23 **3.10 Incremental Payments**

24 Does not apply.

25 **3.11 How Support Payments Shall Be Made**

Select Enforcement and Collection, Payment Services Only, or Direct Payment:

Enforcement and collection: The Division of Child Support (DCS) provides support  
enforcement services for this case because: this is a case in which a parent has requested  
services from DCS, Support payments shall be made to:

1 Washington State Support Registry  
2 P.O. Box 45868  
3 Olympia, WA 98504  
4 Phone: 1-800-922-4306  
5 or 1-800-442-5437

6 A party required to make payments to the Washington State Support Registry will not  
7 receive credit for a payment made to any other party or entity. The obligor parent shall  
8 keep the registry informed whether he or she has access to health insurance coverage at  
9 reasonable cost and, if so, to provide the health insurance policy information.

10 **3.12 Wage Withholding Action**

11 Withholding action may be taken against wages, earnings, assets, or benefits, and liens  
12 enforced against real and personal property under the child support statutes of this or any  
13 other state, without further notice to the obligor parent at any time after entry of this order  
14 unless an alternative provision is made below:

15 [If the court orders immediate wage withholding in a case where Division of Child  
16 Support does not provide support enforcement services, a mandatory wage assignment  
17 under Chapter 26.18 RCW must be entered and support payments must be made to the  
18 Support Registry.]

19 **3.13 Termination of Support**

20 Support shall be paid until the children reach the age of 18, or as long as the children  
21 remain(s) enrolled in high school, whichever occurs last, except as otherwise provided  
22 below in Paragraph 3.14.

23 **3.14 Post Secondary Educational Support**

24 The right to petition for post secondary support is reserved, provided that the right is  
25 exercised before support terminates as set forth in paragraph 3.13.

**3.15 Payment for Expenses not Included in the Transfer Payment**

The petitioner shall pay 63.4% and the respondent 36.6% (each parent's proportional  
share of income from the Child Support Schedule Worksheet, line 6) of the following  
expenses incurred on behalf of the children listed in Paragraph 3.1:

Educational expenses.

Other: Extracurricular activities, including soccer, wrestling and baseball  
expenses for boys, Dance and cheer expenses for Samantha, and school trips

1 Auto insurance for the children

2 Payments shall be made to the parent who paid the child-related expense as follows:

3 a) Each parent is required to bring a "stand-alone" request for reimbursement of expenses  
4 which may be owed to that parent and there shall be no "off setting" for expenses a  
5 parent believes may be owed to them. This is to facilitate accounting for actual payment  
6 of reimbursement requests (i.e. a request for reimbursement of \$69.19 by one parent  
should be traceable to a payment of \$69.19 made by the other parent).

7 b) On a prospective basis as of the date of dissolution, the parent seeking reimbursement  
8 shall present via e-mail to the other parent proof of the expense (receipt, cancelled check,  
9 bank or credit card statement shall suffice) within 60 days of incurring the expense. The  
other parent shall immediately confirm receipt of the e-mail. The other parent shall  
reimburse the paying parent within 10 days of receiving the request for reimbursement.

10 c) If the reimbursing parent fails to pay an expense presented by the paying parent within  
11 30 days of the request, the paying parent may submit the expense to the Division of Child  
12 Support to for enforcement and collection for the parent from whom reimbursement is  
owed.

13 **3.16 Periodic Adjustment**

14 Does not apply.

15 **3.17 Income Tax Exemptions**

16 Tax exemptions for the children shall be allocated as follows:

17 To the mother every year.

18 **3.18 Medical Insurance for the Children Listed in Paragraph 3.1**

19 Unless one or more of the alternatives below are checked, each parent shall maintain or  
20 provide health insurance coverage if:

21 (a) Coverage that can be extended to cover the children is or becomes available to each  
22 parent through employment or is union-related; and

23 (b) The cost of such coverage for the petitioner does not exceed \$352 (25 percent of  
24 petitioner's basic child support obligation on Worksheet line 7), and the cost of such  
coverage for the respondent does not exceed \$203 (25 percent of respondent's basic child  
support obligation on Worksheet Line 7).

25 The parent(s) shall maintain health insurance coverage, if available for the children listed

1 in paragraph 3.1, until further order of the court or until health insurance is no longer  
2 available through the parents' employer or union and no conversion privileges exist to  
3 continue coverage following termination of employment.

4 A parent who is required under this order to provide health insurance coverage is liable  
5 for any covered health care costs for which that parent receives direct payment from an  
6 insurer.

7 A parent who is required under this order to provide health insurance coverage shall  
8 provide proof that such coverage is available or not available within twenty days of the  
9 entry of this order to the physical custodian or the Washington State Support Registry if  
10 the parent has been notified or ordered to make payments to the Washington State  
11 Support Registry.

12 If proof that health insurance coverage is available or not available is not provided within  
13 20 days, the parent seeking enforcement or the Department of Social and Health Services  
14 may seek direct enforcement of the coverage through the other parent's employer or  
15 union without further notice to the other parent as provided under Chapter 26.18 RCW.

### 12 3.19 Extraordinary Health Care Expenses

13 Unless specifically ordered otherwise, the person receiving support is responsible  
14 for ordinary health care expenses of the children. However, both parents have an  
15 obligation to pay their share of extraordinary health care expenses. Extraordinary  
16 health care expenses mean those monthly medical, dental or orthodontia expenses  
17 that exceed 5% of the basic support obligation from the Child Support Schedule  
18 Worksheet, Line 5.

19 The mother's payment of the children's health insurance premiums (currently  
20 \$84.50) shall apply toward the 5% ordinary monthly health care expenses. She  
21 shall inform the father if that amount increases or decreases, and the new amount  
22 shall be applied toward the 5% ordinary monthly health care expenses.

23 The petitioner shall pay 63.4% of extraordinary health care expenses (unless stated  
24 otherwise, the petitioner's proportional share of income from the Worksheet, line 6) and  
25 the respondent shall pay 36.6% of extraordinary health care expenses (unless stated  
otherwise, the respondent's proportional share of income from the Worksheet, line 6).

Medical expenses shall be reimbursed as follows:

a) Each parent is required to bring a "stand-alone" request for reimbursement of expenses  
which may be owed to that parent and there shall be no "off setting" for expenses a  
parent believes may be owed to them. This is to facilitate accounting for actual payment  
of reimbursement requests (i.e. a request for reimbursement of \$69.19 by one parent  
should be traceable to a payment of \$69.19 made by the other parent).

1  
2 b) The parent seeking reimbursement shall present via e-mail to the other parent proof of  
3 the expense (receipt, cancelled check, bank or credit card statement shall suffice) within  
4 60 days of incurring the expense (although this may be tolled if there is a delay in  
5 determining the amount of an underlying expense covered by health insurance). The  
6 other parent shall immediately confirm receipt of the e-mail. The other parent shall  
7 reimburse the paying parent within 10 days of receiving the request for reimbursement.

8  
9 c) If the reimbursing parent fails to pay an expense presented by the paying parent within  
10 30 days of he request, the paying parent may submit the expense to the Division of Child  
11 Support to for enforcement and collection for the parent from whom reimbursement is  
12 owed.

13  
14 **3.20 Back Child Support**

15 The obligee parent is awarded a judgment against the obligor parent in the amount of  
16 \$4766 for back child support for the period from 3/1/08 to 3/31/09.

17 Other: The father was required to pay his proportionate share of extra-curricular and  
18 medical expenses under a temporary order of child support with a lesser  
19 percentage share calculated. The father, however, has resisted payment of these  
20 expenses. For expenses which have, in fact, been reimbursed by the father under  
21 the temporary order, there shall not be a retroactive increase, however, expenses  
22 for which no reimbursement has yet been made shall be paid at the rate of 36.6%  
23 by the father. If the father does not pay his share of the child-related expenses  
24 owed for the period of 3/1/08 – 3/31/09, the mother may seek enforcement of the  
25 same through the Division of Child Support. If the father disputes these expenses,  
he shall have to provide a detailed explanation of the disputed amounts and shall  
not be allowed to offset the amounts (but must make his own request for  
reimbursement for any child-related expenses paid by him).

3.21 **Back Interest**

No back interest is owed at this time.

3.22 **Other**

Does not apply.

Dated: \_\_\_\_\_

4/15/09



Judge/Commissioner

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Presented by:

Approved for entry:  
Notice of presentation waived:

Patricia Baugher 31447

Patricia Baugher  
Signature of Party or Lawyer/WSBA No.

\_\_\_\_\_ 24535

Rhe Zinnecker  
Signature of Party or Lawyer/WSBA No.

I apply for full support enforcement services from the DSHS' Division of Child Support.

Patricia Baugher for Kimberly Mele  
KIMBERLY MELE

## Washington State Child Support Schedule Worksheets

Proposed by  Mother  Father  State of WA  Other (CSWP)  
 Or,  Signed by the Judicial/Reviewing Officer. (CSW)  
**Mother:** Kimberly Kristen Mele                      **Father:** John Peter Mele  
**County:** King    **Superior Court/OAH Case No.:** 08-3-01695-5 SEA

### Child Support Order Summary Report

A. The order <input type="checkbox"/> does <input type="checkbox"/> does not replace a prior court or administrative order.
B. The <b>Standard Calculation</b> listed on line 15e of the Worksheet for the paying parent is: \$812.15.
C. The <b>Transfer Amount</b> ordered by the Court from the Order of Child Support is: \$812.15 to be paid by <input type="checkbox"/> mother <input checked="" type="checkbox"/> father.
D. The Court deviated (changed) from the <b>Standard Calculation</b> for the following reasons: <input checked="" type="checkbox"/> Does not apply <input type="checkbox"/> Nonrecurring income <input type="checkbox"/> Sources of income and tax planning <input type="checkbox"/> Split custody <input type="checkbox"/> Residential schedule (including shared custody) <input type="checkbox"/> Children from other relationships for whom the parent owes support <input type="checkbox"/> High debt not voluntarily incurred and high expenses for the child(ren) <input type="checkbox"/> Other (please describe):
E. Income for the Father is <input checked="" type="checkbox"/> imputed <input type="checkbox"/> actual income. Income for the Mother is <input type="checkbox"/> imputed <input checked="" type="checkbox"/> actual income.
F. If applicable: <input type="checkbox"/> All health care, day care and special child rearing expenses are included in the worksheets in Part II.

### Worksheets

<b>Children and Ages:</b> Samantha Grace Mele, 16; John Arthur (Jake) Mele, 13; Trevor James Mele, 9		
<b>Part I: Basic Child Support Obligation</b> (See Instructions, Page 1)		
1. Gross Monthly Income	<b>Father</b>	<b>Mother</b>
a. Wages and Salaries (Imputed for Father)	<b>\$5,000.00</b>	<b>\$6,126.58</b>
b. Interest and Dividend Income	-	-
c. Business Income	-	-
d. Maintenance Received	-	-
e. Other Income	-	<b>\$2,389.66</b>
f. Total Gross Monthly Income (add lines 1a through 1e)	<b>\$5,000.00</b>	<b>\$8,516.24</b>

2. Monthly Deductions from Gross Income	Father	Mother
a. Income Taxes (Federal and State) Tax Year: 2009	\$737.50	\$971.98
b. FICA (Soc.Sec.+Medicare)/Self-Employment Taxes	\$382.50	\$651.49
c. State Industrial Insurance Deductions	-	-
d. Mandatory Union/Professional Dues	-	-
e. Pension Plan Payments	-	\$167.00
f. Maintenance Paid	-	-
g. Normal Business Expenses	-	-
h. Total Deductions from Gross Income (add lines 2a through 2g)	\$1,120.00	\$1,790.47
3. Monthly Net Income (line 1f minus 2h)	\$3,880.00	\$6,725.77
4. Combined Monthly Net Income (Line 3 amounts combined) (If line 4 is less than \$600, skip to line 7.)		\$10,605.77
5. BASIC CHILD SUPPORT OBLIGATION: Combined <input type="checkbox"/> Samantha Grace Mele \$790.00 John Arthur (Jake) Mele \$790.00 Trevor James Mele \$639.00 -		\$2219.00
6. Proportional Share of Income (Each parent's net income from line 3 divided by line 4)	.366	.634
7. Each Parent's Basic Child Support Obligation (Multiply each number on line 6 by line 5) (If line 4 is less than \$600, enter each parent's support obligation of \$25 per child. Number of children: 3 (Skip to line 15a and enter this amount.)	\$812.15	\$1406.85
<b>Part II: Health Care, Day Care, and Special Child Rearing Expenses (See Instructions, Page 3)</b>		
8. Health Care Expenses		
a. Children's Monthly Health Insurance	-	\$84.50
b. Children's Uninsured Monthly Health Care	-	-
c. Total Monthly Health Care Expenses (line 8a plus line 8b)	-	\$84.50
d. Combined Monthly Health Care Expenses (add father's and mother's totals from line 8c)		\$84.50
e. Maximum Ordinary Monthly Health Care (multiply line 5 times .05)		\$110.95
f. Extraordinary Monthly Health Care Expenses (line 8d minus line 8e., if "0" or negative, enter "0")		-
9. Day Care and Special Child Rearing Expenses		
a. Day Care Expenses	-	-
b. Education Expenses	-	-
c. Long Distance Transportation Expenses	-	-
d. Other Special Expenses (describe)	-	-
	-	-
	-	-
e. Total Day Care and Special Expenses (Add lines 9a through 9d)	-	-
10. Combined Monthly Total Day Care and Special Expenses (Combine amounts on line 9e)		-

11. Total Extraordinary Health Care, Day Care, and Special Expenses (line 8f plus line 10)		
	<b>Father</b>	<b>Mother</b>
12. Each Parent's Obligation for Extraordinary Health Care, Day Care, and Special Expenses (Multiply each number on line 6 by line 11)	-	-
<b>Part III: Gross Child Support Obligation</b>		
13. Gross Child Support Obligation (line 7 plus line 12)	<b>\$812.15</b>	<b>\$1406.85</b>
<b>Part IV: Child Support Credits (See Instructions, Page 3)</b>		
14. Child Support Credits		
a. Monthly Health Care Expenses Credit	-	<b>\$84.50</b>
b. Day Care and Special Expenses Credit	-	-
c. Other Ordinary Expenses Credit (describe)	-	-
	-	-
	-	-
d. Total Support Credits (add lines 14a through 14c)	-	<b>\$84.50</b>
<b>Part V: Standard Calculation/Presumptive Transfer Payment (See Instructions, Page 4)</b>		
15. Standard Calculation	<b>Father</b>	<b>Mother</b>
a. Amount from line 7 if line 4 is below \$600. Skip to Part VI.	-	-
b. Line 13 minus line 14d, if line 4 is over \$600 (see below if appl.)	<b>\$812.15</b>	<b>\$1322.35</b>
Limitation standards adjustments		
c. Amount on line 15b adjusted to meet 45% net income limitation	-	-
d. Amount on line 15b adjusted to meet need standard limitation Need Standard Year: 2009	-	-
e. Enter the lowest amount of lines 15b, 15c or 15d:	<b>\$812.15</b>	<b>\$1322.35</b>
<b>Part VI: Additional Factors for Consideration (See Instructions, Page 4)</b>		
16. Household Assets (List the Present estimated value of all major household assets.)	<b>Father's Household</b>	<b>Mother's Household</b>
a. Real Estate	-	-
b. Stocks and Bonds	-	-
c. Vehicles	-	-
d. Boats	-	-
e. Pensions/IRAs/Bank Accounts	-	-
f. Cash	-	-
g. Insurance Plans	-	-
h. Other.	-	-
	-	-
	-	-
	-	-
17. Household Debt (List liens against household assets, extraordinary debt.)		
a.	-	-
b.	-	-
c.	-	-

(Household Debt continued)	Father's Household	Mother's Household
d.	-	-
e.	-	-
f.	-	-
<b>18. Other Household Income</b>		
a. Income Of Current Spouse or Domestic Partner (if not the other parent of this action)		
Name	-	-
Name	-	-
b. Income of Other Adults in Household		
Name	-	-
Name	-	-
c. Income of Children (if considered extraordinary)		
Name	-	-
Name	-	-
d. Income from Child Support		
Name	-	-
Name	-	-
e. Income From Assistance Programs		
Program	-	-
Program	-	-
f. Other Income (describe)		
	-	-
	-	-
	-	-
<b>19. Non-Recurring Income (describe)</b>		
	-	-
	-	-
	-	-
<b>20. Child Support Paid For Other Children</b>		
Name/age:	-	-
Name/age:	-	-
Name/age:	-	-
<b>21. Other Children Living In Each Household (First names and ages)</b>		

22. Other Factors For Consideration

**Signature and Dates**

I declare, under penalty of perjury under the laws of the State of Washington, the information contained in these Worksheets is complete, true, and correct.

\_\_\_\_\_  
Mother's Signature

\_\_\_\_\_  
Father's Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
City

\_\_\_\_\_  
Date

\_\_\_\_\_  
City

  
Judge/Reviewing Officer

4/15/09  
Date

**Worksheet certified by the State of Washington Administrative Office of the Courts.  
Photocopying of the worksheet is permitted.**

c:\state templates\waworksheet.dtf c:\vnele, kim\vnele, kim[10].scp 03/24/2009 11:55 am

## **APPENDIX 4**

**FILED**  
KING COUNTY, WASHINGTON

APR 20 2009

SUPERIOR COURT CLERK  
~~DAVID WITTEIN~~  
DEPUTY

*Debra Bailey Tranter*

Superior Court of Washington  
County King

In re the Marriage of:

KIMBERLY KRISTEN MELE

Petitioner,

and

JOHN PETER MELE

Respondent.

No. 08-3-01695-5 SEA

Parenting Plan  
Final (PP)

This parenting plan is the final parenting plan signed by the court pursuant to a decree of dissolution entered on ~~March 31, 2009~~ *April 15, 2009 PHC*

It Is Ordered, Adjudged and Decreed:

I. General Information

This parenting plan applies to the following children:

Name:	Age
Samantha Grace Mele	16
John Arthur (Jake) Mele	13
Trevor James Mele	9

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2 **II. Basis for Restrictions**

3 *Under certain circumstances, as outlined below, the court may limit or prohibit a parent's*  
4 *contact with the children and the right to make decisions for the children.*

5 **2.1 Parental Conduct (RCW 26.09.191(1), (2))**

6 Does not apply.

7 **2.2 Other Factors (RCW 26.09.191(3))**

8 Does not apply.

9 **III. Residential Schedule**

10 *The residential schedule must set forth where the children shall reside each day of the year,*  
11 *including provisions for holidays, birthdays of family members, vacations, and other special*  
12 *occasions, and what contact the children shall have with each parent. Parents are encouraged*  
13 *to create a residential schedule that meets the developmental needs of the children and*  
14 *individual needs of their family. Paragraphs 3.1 through 3.9 are one way to write your*  
15 *residential schedule. If you do not use these paragraphs, write in your own schedule in*  
16 *Paragraph 3.13.*

17 **3.1 Schedule for Children Under School Age**

18 There are no children under school age.

19 **3.2 School Schedule**

20 Upon enrollment in school, the children shall reside with the mother, except for the  
21 following days and times when the children will reside with or be with the other parent:

22 Weekly: Samantha: from 6 p.m. Wednesday until start of school (or 10 a.m.) on  
23 Thursday.

24 Trevor and Jake: from 6 pm Monday until start of school (or 10 a.m.) on  
Tuesday.

Every other week (all three children): From Friday 6 p.m. until start of school (or 10  
a.m.) on Monday.

On the first Thursday of each month that does not coincide with the father's weekend,  
Jake shall reside with the father from 6 p.m. until start of school (or 10 a.m.) on Friday  
morning.

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2 On the second Thursday of each month that does not coincide with the father's weekend,  
3 Trevor shall reside with the father from 6 p.m. until start of school (or 10 a.m.) on Friday  
4 morning.

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13 **3.3 Schedule for Winter Vacation**

The children shall reside with the mother during winter vacation, except for the following days and times when the children will reside with or be with the other parent:

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Odd years: The children shall reside with the mother from 6 p.m. the day school lets out until 9 a.m. on Christmas Day and with the father from 9 a.m. Christmas Day until 6 p.m. the day before school begins.

Even years: The children shall reside with the father from 6 p.m. the day school lets out until 9 a.m. on Christmas Day and with the mother from 9 a.m. Christmas Day until 6 p.m. the day before school begins.

The children shall spend the first weekend after school commences from winter break with the parent who had the first half of winter break.

**3.4 Schedule for Other School Breaks**

The children shall reside with the mother during other school breaks, except for the following days and times when the children will reside with or be with the other parent:

Mid-Winter Break, if any, is defined according to the school district calendar.

Spring Break is defined as Monday - Friday that school is out.

Mid-Winter Break, if any: With the mother in even years; with the father in odd years.

Spring Break: With the mother in odd years; With the father in even years .

**3.5 Summer Schedule**

Upon completion of the school year, the children shall reside with the mother, except for the following days and times when the children will reside with or be with the other parent:

Same as school year schedule, except as provided for in Paragraph 3.6.

1 **3.6 Vacation With Parents**

2 The schedule for vacation with parents is as follows:

3  
4 The parents may each have extended time with each parent for the purpose of actually  
5 vacationing with the children during summer vacation. The parents shall exchange their  
6 proposed vacations dates by May 1 each year (and shall coordinate with the plan for the  
7 children's summer activities/day care). If plans are not made by May 1, the parents agree,  
8 if possible, to provide the other with 30 days notice of any planned vacation that would  
9 usurp the other parent's time. In the event that there is a disagreement the parties are  
10 otherwise unable to resolve, the mother's proposed schedule shall prevail in odd years  
11 and the father in even years.

12 **3.7 Schedule for Holidays**

13 The residential schedule for the children for the holidays listed below is as follows:

	<u>With Mother</u>	<u>With Father</u>
New Year's Eve/Day		See Paragraph 3.3
Martin Luther King Day	Every *	
Presidents' Day		Every **
Memorial Day	With Parent	With Adjoining Weekend
July 4 <sup>th</sup>	Odd	Even
Labor Day	With Parent	With Adjoining Weekend
Veterans' Day		See Paragraph 3.2
Thanksgiving Day <sup>1</sup>	Odd	Even
Christmas Eve		See Paragraph 3.3
Christmas Day		See Paragraph 3.3
Easter <sup>2</sup>	Even	Odd
Halloween		See Paragraph 3.2

14 \*Mother has day off from work

15 \*\*Mother does not have day off from work

16 <sup>1</sup> Thanksgiving shall begin at 6 p.m. on Wednesday and end at 6 p.m. on Sunday.

17 <sup>2</sup> Easter shall begin at 10 am on Sunday and end at 6 pm.

18 **3.8 Schedule for Special Occasions**

19 The residential schedule for the children for the following special occasions is as follows:

With Mother

With Father

Mother's Day

Every

Father's Day

Every

Mother's Birthday

Every

Father's Birthday

Every

Children's Birthdays Children's birthdays shall be celebrated on a parent's regularly scheduled residential time.

Mother's Day and Father's shall begin at 6 p.m. on Saturday and end at 6 p.m. on Sunday.

Parent's Birthdays shall begin at 9 a.m. (or after school) and shall end at 9 a.m. (or return to school) the following day.

**3.9 Priorities Under the Residential Schedule**

If the residential schedule, paragraphs 3.1 - 3.8, results in a conflict where the children are scheduled to be with both parents at the same time, the conflict shall be resolved by priority being given as follows:

Rank the order of priority, with 1 being given the highest priority:

- 4 school schedule (3.1, 3.2)
- 4 winter vacation (3.3)
- 4 school break(s) (3.4)
- 4 summer schedule (3.5)
- 3 vacation with parents (3.6)
- 2 holidays (3.7)
- 1 special occasions (3.8)

**3.10 Restrictions**

The parents should only communicate by email. It is the expectation that each parent will check their email every 24 hours and also reply to the other parents' request/question within that 24 hours (unless there is any emergency).

The father should have a ~~minimum of 30 individual therapy sessions~~ <sup>therapy</sup> with a master's or doctoral level therapist and should provide a copy of the parenting evaluation report to that provider. *evaluation to address the issues raised in the parenting*

The father should contact his primary care physician and set up an appointment to review his medication *within 60 days of this order.*

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**3.11 Transportation Arrangements**

Transportation costs are included in the Child Support Worksheets and/or the Order of Child Support and should not be included here.

Transportation arrangements for the children between parents shall be as follows:

The receiving parent shall provide transportation, except that each parent has the responsibility for transporting the children to school on their residential time.

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**3.12 Designation of Custodian**

The children named in this parenting plan are scheduled to reside the majority of the time with the mother. This parent is designated the custodian of the children solely for purposes of all other state and federal statutes which require a designation or determination of custody. This designation shall not affect either parent's rights and responsibilities under this parenting plan.

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**3.13 Other**

Does not apply.

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**3.14 Summary of RCW 26.09.430 - .480, Regarding Relocation of a Child**

This is a summary only. For the full text, please see RCW 26.09.430 through 26.09.480.

If the person with whom the children resides a majority of the time plans to move, that person shall give notice to every person entitled to court ordered time with the children.

If the move is outside the children's school district, the relocating person must give notice by personal service or by mail requiring a return receipt. This notice must be at least 60 days before the intended move. If the relocating person could not have known about the move in time to give 60 days' notice, that person must give notice within 5 days after learning of the move. The notice must contain the information required in RCW 26.09.440. See also form DRPSCU 07.0500, (Notice of Intended Relocation of A Child).

If the move is within the same school district, the relocating person must provide actual notice by any reasonable means. A person entitled to time with the children may not object to the move but may ask for modification under RCW 26.09.260.

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Notice may be delayed for 21 days if the relocating person is entering a domestic violence shelter or is moving to avoid a clear, immediate and unreasonable risk to health and safety.

1 If information is protected under a court order or the address confidentiality program, it  
2 may be withheld from the notice.

3 A relocating person may ask the court to waive any notice requirements that may put the  
4 health and safety of a person or a children at risk.

5 Failure to give the required notice may be grounds for sanctions, including contempt.

6 **If no objection is filed within 30 days after service of the notice of intended  
7 relocation, the relocation will be permitted and the proposed revised residential  
8 schedule may be confirmed.**

9 A person entitled to time with the children under a court order can file an objection to the  
10 children's relocation whether or not he or she received proper notice.

11 An objection may be filed by using the mandatory pattern form WPF DRPSCU 07.0700,  
12 [Objection to Relocation/Petition for Modification of Custody Decree/Parenting  
13 Plan/Residential Schedule]. The objection must be served on all persons entitled to time  
14 with the children.

15 The relocating person shall not move the children during the time for objection unless: (a)  
16 the delayed notice provisions apply; or (b) a court order allows the move.

17 If the objecting person schedules a hearing for a date within 15 days of timely service of  
18 the objection, the relocating person shall not move the children before the hearing unless  
19 there is a clear, immediate and unreasonable risk to the health or safety of a person or a  
20 children.

#### 21 **IV. Decision Making**

##### 22 **4.1 Day-to-Day Decisions**

23 Each parent shall make decisions regarding the day-to-day care and control of each  
24 children while the children is residing with that parent. Regardless of the allocation of  
decision making in this parenting plan, either parent may make emergency decisions  
affecting the health or safety of the children.

##### 25 **4.2 Major Decisions**

26 Major decisions regarding each child shall be made as follows:

27 Education decisions (including whether a child should be removed from school for non-  
28 illness or non-emergency reasons): mother

Non-emergency health care: mother

1  
2 Religious upbringing: mother

3 Extracurricular Activities: mother

4 High Risk Activity (skydiving, racing, bungee jumping, etc.): mother

5 Trips without parents: mother

6 Tattoos, piercings, hair coloring, head shaving, etc: mother

7 Mother shall give notice to the father of her intent to exercise her decision-making  
8 authority above.

9 **4.3 Restrictions in Decision Making**

10 Does not apply because there are no limiting factors in paragraphs 2.1 and 2.2 above.

11 **V. Dispute Resolution**

12 *The purpose of this dispute resolution process is to resolve disagreements about carrying out this*  
13 *parenting plan. This dispute resolution process may, and under some local court rules or the*  
14 *provisions of this plan must, be used before filing a petition to modify the plan or a motion for*  
15 *contempt for failing to follow the plan.*

16 Disputes between the parties, other than child support disputes, shall be submitted to:  
17 arbitration by mutually agreed to arbitrator

18 The cost of this process shall be allocated between the parties as follows:

19 Equally to each party, subject to reallocation by the arbitrator.

20 The dispute resolution process shall be commenced by notifying the other party by  
21 written request, including e-mail.

22 In the dispute resolution process:

- 23 (a) Preference shall be given to carrying out this Parenting Plan.  
24 (b) Unless an emergency exists, the parents shall use the designated process to  
resolve disputes relating to implementation of the plan, except those related to  
financial support.

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- (c) A written record shall be prepared of any agreement reached in counseling or mediation and of each arbitration award and shall be provided to each party.
  - (d) If the court finds that a parent has used or frustrated the dispute resolution process without good reason, the court shall award attorneys' fees and financial sanctions to the other parent.
  - (e) The parties have the right of review from the dispute resolution process to the superior court.

7

8

## VI. Other Provisions

9 There are the following other provisions:

10 6.1 Each parent shall have equal and independent authority to confer with school,  
11 child care and other program personnel regarding child's progress and each parent shall  
12 have full and equal access to the education and health care records (except mental health  
13 records) of the child absent a court order to the contrary. Neither parent may veto the  
14 access requested by the other parent. Education records are limited to academic,  
15 attendance, and disciplinary records of public and private schools in all grades,  
16 kindergarten through twelve, and any form of alternative school for all periods for which  
17 child support is paid or the child is the dependent in fact of the parent requesting access  
18 to the records. Education records of post-secondary educational institutions are limited to  
19 enrollment and academic records necessary to determine, establish, or continue support.

20 6.2 Each parent should have unrestricted telephone and email access to the children,  
21 and the children should have unrestricted telephone and email contact with the parents.

22 6.3 Neither parent, nor any other adult in their presence, shall make any disparaging  
23 remarks about the other in the presence of the children.

24 6.4 Each parent shall inform the other when that parent plans be to be away from his or  
her residence with the children overnight to avoid mishaps or unsupervised children at their  
family home. If either parent travels overnight without plans to take the children, the  
parents should have email, written or telephone contact to alert the parent of the  
accommodations for the child.

6.5 Each parent shall exert every reasonable effort to maintain free access and  
unhampered contact and communication between the children and the other parent, and  
to promote the emotions and affection, love and respect between the children and the  
other parent. Each parent agrees to refrain from words or conduct, and further agrees to  
discourage other persons from uttering words or engaging in conduct, which would have a  
tendency to estrange the children from the other parent, to damage the opinion of the

1 children as to the other parent, or to impair the natural development of the children's love  
2 and respect for the other parent.

3 6.6 Each parent shall honor the other parent's parenting style, privacy and authority.  
4 Neither parent shall interfere in the parenting style of the other nor shall either parent make  
5 plans or arrangements that would impinge upon the other parent's authority or time with  
6 the children, without the express agreement of the other parent. Each parent shall  
7 encourage the children to discuss his or her grievance against a parent directly with the  
8 parent in question. It is the intent of both parents to encourage a direct parent-child bond  
9 and communication.

10 6.8 Neither parent shall encourage the children to change their primary residence and  
11 neither parent shall advise the children of any child support or other legal matters.

12 6.9 Neither parent shall use the children, directly or indirectly, to gather information  
13 about the other parent or take verbal messages to the other parent.

#### 14 VII. Declaration for Proposed Parenting Plan

15 Does not apply.

#### 16 VIII. Order by the Court

17 It is ordered, adjudged and decreed that the parenting plan set forth above is adopted and  
18 approved as an order of this court.

19 **WARNING:** Violation of residential provisions of this order with actual knowledge of its terms  
20 is punishable by contempt of court and may be a criminal offense under RCW 9A.40.060(2) or  
21 9A.40.070(2). Violation of this order may subject a violator to arrest.

22 If a parent fails to comply with a provision of this plan, the other parent's obligations under the  
23 plan are not affected.

24 Before signing the final parenting plan, the court consulted the judicial information  
system and databases, if available, to determine the existence of any information and  
proceedings that are relevant to the placement of the children.

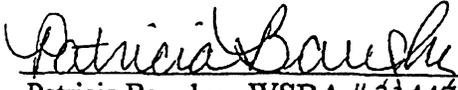
Dated: 4/15/09

  
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Judge/Commissioner

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Presented by:

Approved for entry:

  
Patricia Baugher, WSBA # 31447  
Attorney for Petitioner

\_\_\_\_\_  
Rhe Zinnecker, WSBA # 24535  
Attorney for Respondent

# **APPENDIX 5**

**FILED**  
KING COUNTY, WASHINGTON

**APR 16 2009**

**SUPERIOR COURT CLERK  
DAVID WITTEN  
DEPUTY**

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MELEE V MELEE

08-3-01695-5 SEA

This case came before the court for a 9 day trial. On March 17, 2009 the court rendered it oral opinion. The parties and the court then arranged a date for presentation of final documents on April 4, 2009. At the hearing only petitioner presented documents. The respondent argued that they had not received the other parties documents in sufficient time to respond and then proposed that we take the time to go through the proposed documents line by line. The court declined to engage in a retrial of the case and took responsibility for reviewing the presented documents (giving respondents counsel an opportunity to present their proposed paperwork) and issuing a written opinion and the court's final documents in this case. The court did not entertain any additional declarations or ex-parte communication from either party.

**Court' Opinion:**

The parties come before the court for dissolution of their 19 year marriage. They were married on October 6, 1990 and have three

24 children, Samantha age 16, Jake age 13, and Trevor age 9. One  
25 gets a flavor of the 2 week trial from the opening statements. The  
26 mother, in opening, maintains that this is simple case with few  
27 issues. On the other hand the father, in opening, asserts that this is  
28 a difficult case with a myriad of issues. After taking testimony  
29 from 10 witnesses and reviewing 148 exhibits, the court  
30 determines that the issues are as follows:

- 31     ➤ Parenting plan
- 32     ➤ Child Support
- 33     ➤ Reimbursement for funds expended by the father to “aid” the  
34         community
- 35         ➤ Characterization of the marital assets and liabilities
- 36         ➤ Division of property

37  
38 Both parents are lawyers by training. Mother (Kim age 44) is  
39 in-house counsel for Costco, she has Multiple Sclerosis which has  
40 caused her to be on disability status working at best part time for  
41 the past several years. Her disease is recurrent, remittent and will  
42 escalate at any time. She experiences regular numbness on one side  
43 of her body, severe leg pain, optic neuritis, and incredible fatigue,  
44 migraines, and recently narcolepsy. She is currently on permanent  
45 long term disability. When she works part time her salary is  
46 adjusted re the level of disability pay. Her current income is

47 \$8,516.24 (combined COSTCO and disability payments). Neither  
48 party alleged that her parenting skills were impacted by the  
49 disease.

50

51           The Father (John age 47) was a partner at the Ryan  
52 Swanson law firm. He left the firm to work for “Electric Hendrix”  
53 a “start-up company”. The father was disbarred and shortly  
54 thereafter terminated his employment at Electric Hendrix. The  
55 company is defunct. It was disclosed during trial that the company  
56 lost its efforts to defend against a copyright infringement case and  
57 has been ordered to pay 3 million dollars to the family of Jimmy  
58 Hendrix. It was unclear, if John faces any future liability for those  
59 damages. John has decided that his next career option is to return  
60 to college to obtain the credentials to become a public school  
61 teacher and eventually an administrator. At present his is attending  
62 school and tutoring. He testified to locating this job from a sign he  
63 saw posted on the street. He maintains that he is earning \$17  
64 dollars per hour on a very part time basis. He is asking that he be  
65 found to be involuntarily under employed and that his salary be set  
66 at the current income he is receiving for tutoring. Consequently,  
67 he wants to pay no child support and receive maintenance from the  
68 mother until he completes his college education. It should be  
69 noted that his decision to return to college in lieu of seeking

70 employment was made post separation and without consultation  
71 with the mother. He has not made any attempt to locate  
72 employment consistent with his training and background – to  
73 include not exploring the opportunities to teach at private schools  
74 which do not require “certifications”. He is deemed to be  
75 voluntarily under employed and his income will be imputed at  
76 \$5,000 since he failed to provide evidence of his actual income.  
77 This is ½ of his prior monthly earnings.

78 Child support is calculated based on the above determined  
79 income figures. See the Order of Child Support and the  
80 Worksheets attached.

81 The father stopped paying his court ordered child support in  
82 March of 2008. Judgment will be entered against the father for  
83 \$4766 for back support for the period from 3/1/08 -3/31/09.

84

#### 85 PROPERTY

86 This is a 19 year marriage. There was no testimony that  
87 either party brought separate property into the marriage. Therefore  
88 all the property, excluding the Trusts which will be dealt with  
89 separately, is presumptively community property. The wife was  
90 able to establish that \$8,736.00 of her Costco 401(k) are her  
91 separate property contributed post separation.

92           The family home is community. The court heard testimony  
93 from two real estate appraiser who offered very different  
94 assessments of the value of the property. The mother's appraisal  
95 is \$665,000. While the father's appraisal sets the value of home at  
96 \$775,000. The court heard considerable testimony on the current  
97 state of the market and the condition of the home, being in need of  
98 \$45,000 to \$50,000 in repairs to make it salable in today's market.  
99 Although the father testified that he could make the repairs himself  
100 for much less, there was no testimony that he had any skills or  
101 training in this area. This court finds that the more credible and  
102 realistic appraisal for this home is \$665.000 in it's "as is"  
103 condition. There is a \$47,463.00 Home Equity Line of Credit.  
104 The addition of the cottage was in 2006 – although the funds used  
105 to build the cottage came from the mothers separate account it was  
106 during the marriage and prior to separation. The appraisal of the  
107 property included the value of the cottage in setting the price.  
108 There are encumbrances of \$541,270.against the home. The home  
109 is to be sold and the proceeds to the mother.

110           Neither side provided appraisals for the Tacoma Condo, the  
111 Whistler timeshare, or the Hawaii timeshare. The parties asserted a  
112 lack of funds to obtain the appraisals. In the alternative they  
113 provided appraisals from adjacent properties and online property  
114 listings. In that absence of hard evidence the court will set a value

115 at zero dollars and divide the property based on the limited  
116 evidence at hand. The Tacoma Condo will be sold and the  
117 proceeds if any will be divided evenly between the parties. The  
118 mother is responsible for maintaining the property and paying the  
119 mortgage until the property is sold. She is to recoup 100% of those  
120 expenditures from the proceeds of the sale before the remainder is  
121 divided. (The respondent failed to pay those costs as ordered by the  
122 court in the temporary orders. His failure cannot be allowed to  
123 dissipate another community asset). If sale of the property does  
124 not result in satisfying the underlying mortgage the parties shall  
125 each be responsible for 50% of the remaining indebtedness. The  
126 Whistler and Hawaii timeshares are to be listed within 30 days and  
127 the proceeds are to be divided with 1/3 to the respondent, 1/3 to the  
128 mother and 1/3 to the marital trust.

129

130 The parties separated in mid-April 2007. Shortly there after  
131 the parties engaged in the “collaborative process” in the hopes of  
132 avoiding litigation. During this time, John unilaterally liquidated  
133 the marital community’s largest asset, the Ryan Swanson 401(k).  
134 He withdrew \$274,000 and spent of the funds in a year’s time.  
135 The evidence is unclear as how he spent the money but it is clear  
136 that he did not spend it to support the community. Without  
137 gainful employment he has still been able to purchase a 2008

138 Nissan SUV with payment of \$600 per month, a new iphone,  
139 spend hundreds per month on comic books and related expenses;  
140 and live in an apartment. He unilaterally stopped paying child  
141 support or any money toward maintaining the community. In  
142 addition he withdrew \$30,000.00 from community funds and used  
143 it for his own purposes.

144 After considering all the evidence presented it is clear to the  
145 court that the mother proposed allocation of the debts and  
146 liabilities is the most equitable result. The \$274,000.00 and the  
147 \$30,000 dollars the father withdrew from community funds is  
148 characterized as his pre-distribution of assets.

149 The mother will be awarded 60% of the community property.  
150 The comics are valued at \$30,000 and put in the father's column.  
151 The mother receives credit for \$13,140 she borrowed to pay off the  
152 joint American Express card. . She will also receive credit for  
153 paying off the \$29,667 and \$14,049 loans owing to the mother's  
154 deceased father's estate. The testimony was clear that the debt was  
155 community and the community had continued to pay monthly  
156 installments to the petitioner's father

157

158 Trusts:

159

160 The mother's father established two trusts as a part of his estate  
161 planning: 1) Marital trust for his wife. The petitioner in this case is  
162 a co-trustee she has no control unless the wife dies or becomes  
163 incapacitated. None of the money in that trust comes to the  
164 petitioner unless the wife dies; 2) Medical Trust – created to  
165 provide an ongoing stream of funding to address the petitioners  
166 medical needs. Petitioner is the executor of the trust but may only  
167 draw \$21,000 per year to cover medical expenses. That trust is  
168 valued at over \$400,000. But the petitioner's access to and ability  
169 to utilize the funds is limited to the specific terms of the trust.  
170 Respondents suggestions during trial that as Executor of the  
171 Medical Trust and co-executor on the Marital Trust the petitioner  
172 could simply invade the trust to provide for her ongoing living  
173 expenses is not only untenable, it is a breach of her fiduciary duty  
174 and quite possibly illegal.

175

176 The mother has only a "mere expectancy" of interest in the marital  
177 trust, this interest is not property and therefore not before the court  
178 for division. In Re Marriage of Leland, 69 Wn. App. 57, 63,  
179 review denied, 121 Wn. 2d 1033 (1993). The Medical Trust is the  
180 mother's separate property. However it's use is proscribed by the  
181 terms of the Trust. It is specifically designed to address the

182 anticipated increases in the petitioners medical costs as her health  
183 deteriorates.

184

#### 185 Parenting Plan

186 The parties have three children ages, 16, 13, and 9. The mother  
187 has always been the primary caregiver and will continue to be the  
188 primary residential parent. The Parenting Plan presented by the  
189 mother's attorney accurately reflects the court oral ruling in this  
190 case and will we entered as the final plan. This plan is in the best  
191 interest of the children and appears to address their individual  
192 needs.

193

#### 194 Attorney Fees

195 This litigation has been extraordinarily expensive in large  
196 part due to the respondents "intransigence". In most circumstances  
197 the court would order him to pay the petitioners attorney fees. In  
198 this care that is not feasible. There are no funds from which to  
199 award fees. Therefore, each party will be responsible for their own  
200 attorney fees and costs.

201

#### 202 Other Liabilities

203 The respondent is responsible for fines levied against him by  
204 the Washington State Bar hearing and disbarment.

205 He is responsible for any liability incurred for any motor vehicle  
206 accidents for which he is at fault.

207 The petitioner shall pay any late fees and maintenance costs on the  
208 3 properties. She may recoup those expenditures from the  
209 proceeds of the sales prior to division.

210 The court is signing the Degree of Dissolution (with  
211 modifications); Findings and Conclusions; Parenting Plan, and  
212 Child Support Order attached to this opinion.

213

214

215

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

216 Judge Patricia Clark

April 15 2009

## **APPENDIX 6**

**Division of Community and Separate Assets and Liabilities  
Including Trust**

Assets & Liabilities	Net Value	Community Property		Separate Property	To Wife		To Husband	
		Community Property	Separate Property		Community	Separate	Community	Separate
1. Family Home	\$123,730	\$123,730	\$0	\$0	\$123,730	\$0	\$0	\$0
2. Tacoma Condominium	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
3. Hawaii Timeshare	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
4. Whistler Timeshare	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
5. Husband's Pre-Dist 401K	\$274,607	\$274,607	\$0	\$0	\$0	\$274,607	\$0	\$0
6. Husband's Pre-Dist IRS	\$23,321	\$23,321	\$0	\$0	\$0	\$23,321	\$0	\$0
7. Husband's Pre-Dist CS	\$5,000	\$5,000	\$0	\$0	\$0	\$5,000	\$0	\$0
8. Wife's Pre-Dist Options	\$15,975	\$15,975	\$0	\$0	\$15,975	\$0	\$0	\$0
9. Husband's Pre-Dist Wamu	\$3,194	\$3,194	\$0	\$0	\$0	\$3,194	\$0	\$0
10. Wife's Pre-Dist BoA	\$14,832	\$14,832	\$0	\$0	\$14,832	\$0	\$0	\$0
11. Husband's Pre-Dist Comics	\$30,000	\$30,000	\$0	\$0	\$0	\$30,000	\$0	\$0
12. Wife's Camera Equipment	\$4,000	\$4,000	\$0	\$0	\$4,000	\$0	\$0	\$0
13. Wife's Costco 401K	\$58,983	\$50,247	\$8,736	\$8,736	\$50,247	\$8,736	\$0	\$0
14. Wife's Schwab IRA	\$8,734	\$8,734	\$0	\$0	\$8,734	\$0	\$0	\$0
15. Wife's Stock Options	\$32,352	\$32,352	\$0	\$0	\$32,352	\$0	\$0	\$0
16. Schwab Brokerage	\$11,116	\$7,366	\$3,750	\$3,750	\$7,366	\$3,750	\$0	\$0
17. Schwab Wife	\$26,053	\$0	\$26,053	\$26,053	\$0	\$26,053	\$0	\$0
18. Wife's VW Beetle	\$1,870	\$1,870	\$0	\$0	\$1,870	\$0	\$0	\$0
19. Wife's Expedition	\$4,035	\$4,035	\$0	\$0	\$4,035	\$0	\$0	\$0
20. House Loan (Leon Moraski)	-\$29,640	\$0	-\$29,640	-\$29,640	\$0	-\$29,640	\$0	\$0
21. Loan for Taxes (Trust)	-\$14,049	\$0	-\$14,049	-\$14,049	\$0	-\$14,049	\$0	\$0
22. Loan for Richard Moraski	-\$5,292	\$0	-\$5,292	-\$5,292	\$0	-\$2,646	\$0	-\$2,646
23. Joint American Express	-\$13,140	-\$13,140	\$0	\$0	-\$13,140	\$0	\$0	\$0
24. Husband's WSECU	-\$1,978	-\$1,978	\$0	\$0	\$0	\$0	-\$1,978	\$0
25. Personal Property	\$2	\$2	\$0	\$0	\$1	\$1	\$1	\$0
26. Wife's Exemption Trust	\$423,356	\$0	\$423,356	\$423,356	\$0	\$423,356	\$0	\$0
<b>Totals</b>	<b>\$997,061</b>	<b>\$584,147</b>	<b>\$412,914</b>	<b>\$423,356</b>	<b>\$250,002</b>	<b>\$415,560</b>	<b>\$334,145</b>	<b>-\$2,646</b>

<b>Judgment for Wife</b>	<b>\$100,486</b>								
<b>Community and Separate Property Totals</b>	<b>\$350,488</b>					<b>\$415,560</b>			<b>-\$2,646</b>
<b>Total Property Division</b>	<b>\$766,048</b>						<b>\$231,013</b>		
<b>Property Distribution Percentage</b>	<b>76.83%</b>						<b>23.17%</b>		

Note: All changes from Exhibit A to Decree of Dissolution highlighted in grey

**Division of Community and Separate Assets and Liabilities  
Including Trust, excluding Judgment for Wife**

Assets & Liabilities	Net Value	Community Property		Separate Property	To Wife		To Husband	
		Community Property	Separate Property		Community	Separate	Community	Separate
1. Family Home	\$123,730	\$123,730	\$0	\$0	\$123,730	\$0	\$0	\$0
2. Tacoma Condominium	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
3. Hawaii Timeshare	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
4. Whistler Timeshare	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
5. Husband's Pre-Dist 401K	\$274,607	\$274,607	\$0	\$0	\$0	\$274,607	\$0	\$0
6. Husband's Pre-Dist IRS	\$23,321	\$23,321	\$0	\$0	\$0	\$23,321	\$0	\$0
7. Husband's Pre-Dist CS	\$5,000	\$5,000	\$0	\$0	\$0	\$5,000	\$0	\$0
8. Wife's Pre-Dist Options	\$15,975	\$15,975	\$0	\$0	\$15,975	\$0	\$0	\$0
9. Husband's Pre-Dist Wamu	\$3,194	\$3,194	\$0	\$0	\$0	\$3,194	\$0	\$0
10. Wife's Pre-Dist BoA	\$14,832	\$14,832	\$0	\$0	\$14,832	\$0	\$0	\$0
11. Husband's Pre-Dist Comics	\$30,000	\$30,000	\$0	\$0	\$0	\$30,000	\$0	\$0
12. Wife's Camera Equipment	\$4,000	\$4,000	\$0	\$0	\$4,000	\$0	\$0	\$0
13. Wife's Costco 401K	\$58,983	\$50,247	\$8,736	\$0	\$50,247	\$8,736	\$0	\$0
14. Wife's Schwab IRA	\$8,734	\$8,734	\$0	\$0	\$8,734	\$0	\$0	\$0
15. Wife's Stock Options	\$32,352	\$32,352	\$0	\$0	\$32,352	\$0	\$0	\$0
16. Schwab Brokerage	\$11,116	\$7,366	\$3,750	\$0	\$7,366	\$3,750	\$0	\$0
17. Schwab Wife	\$26,053	\$0	\$26,053	\$0	\$0	\$26,053	\$0	\$0
18. Wife's VW Beetle	\$1,870	\$1,870	\$0	\$0	\$1,870	\$0	\$0	\$0
19. Wife's Expedition	\$4,035	\$4,035	\$0	\$0	\$4,035	\$0	\$0	\$0
20. House Loan (Leon Moraski)	-\$29,640	\$0	-\$29,640	\$0	\$0	-\$29,640	\$0	\$0
21. Loan for Taxes (Trust)	-\$14,049	\$0	-\$14,049	\$0	\$0	-\$14,049	\$0	\$0
22. Loan for Richard Moraski	-\$5,292	\$0	-\$5,292	\$0	\$0	-\$2,646	-\$2,646	\$0
23. Joint American Express	-\$13,140	-\$13,140	\$0	\$0	-\$13,140	\$0	\$0	\$0
24. Husband's WSECU	-\$1,978	-\$1,978	\$0	\$0	\$0	-\$1,978	\$0	\$0
25. Personal Property	\$2	\$2	\$0	\$0	\$1	\$1	\$1	\$0
26. Wife's Exemption Trust	\$423,356	\$0	\$423,356	\$0	\$0	\$423,356	\$0	\$0
<b>Totals</b>	<b>\$997,061</b>	<b>\$584,147</b>	<b>\$412,914</b>	<b>\$0</b>	<b>\$250,002</b>	<b>\$415,560</b>	<b>\$334,145</b>	<b>-\$2,646</b>

Judgment for Wife		\$0
<b>Community and Separate Property Totals</b>		<b>\$250,002</b>
<b>Total Property Division</b>		<b>\$665,562</b>
<b>Property Distribution Percentage</b>		<b>66.75%</b>

Note: All changes from Exhibit A to Decree of Dissolution highlighted in grey

**Division of Community and Separate Assets and Liabilities  
including Trust, including Judgment for Husband**

Assets & Liabilities	Net Value	Community Property		Separate Property	To Wife		To Husband	
		Community Property	Separate Property		Community	Separate	Community	Separate
1. Family Home	\$123,730	\$123,730	\$0	\$0	\$123,730	\$0	\$0	\$0
2. Tacoma Condominium	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
3. Hawaii Timeshare	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
4. Whistler Timeshare	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
5. Husband's Pre-Dist 401K	\$274,607	\$274,607	\$0	\$0	\$0	\$274,607	\$0	\$0
6. Husband's Pre-Dist IRS	\$23,321	\$23,321	\$0	\$0	\$0	\$23,321	\$0	\$0
7. Husband's Pre-Dist CS	\$5,000	\$5,000	\$0	\$0	\$0	\$5,000	\$0	\$0
8. Wife's Pre-Dist Options	\$15,975	\$15,975	\$0	\$0	\$15,975	\$0	\$0	\$0
9. Husband's Pre-Dist Wamu	\$3,194	\$3,194	\$0	\$0	\$0	\$3,194	\$0	\$0
10. Wife's Pre-Dist BoA	\$14,832	\$14,832	\$0	\$0	\$14,832	\$0	\$0	\$0
11. Husband's Pre-Dist Comics	\$30,000	\$30,000	\$0	\$0	\$0	\$30,000	\$0	\$0
12. Wife's Camera Equipment	\$4,000	\$4,000	\$0	\$0	\$4,000	\$0	\$0	\$0
13. Wife's Costco 401K	\$58,983	\$50,247	\$8,736	\$8,736	\$50,247	\$8,736	\$0	\$0
14. Wife's Schwab IRA	\$8,734	\$8,734	\$0	\$0	\$8,734	\$0	\$0	\$0
15. Wife's Stock Options	\$32,352	\$32,352	\$0	\$0	\$32,352	\$0	\$0	\$0
16. Schwab Brokerage	\$11,116	\$7,366	\$3,750	\$3,750	\$7,366	\$3,750	\$0	\$0
17. Schwab Wife	\$26,053	\$0	\$26,053	\$26,053	\$0	\$26,053	\$0	\$0
18. Wife's VW Beetle	\$1,870	\$1,870	\$0	\$0	\$1,870	\$0	\$0	\$0
19. Wife's Expedition	\$4,035	\$4,035	\$0	\$0	\$4,035	\$0	\$0	\$0
20. House Loan (Leon Moraski)	-\$29,640	\$0	-\$29,640	-\$29,640	\$0	-\$29,640	\$0	\$0
21. Loan for Taxes (Trust)	-\$14,049	\$0	-\$14,049	-\$14,049	\$0	-\$14,049	\$0	\$0
22. Loan for Richard Moraski	-\$5,292	\$0	-\$5,292	-\$5,292	\$0	-\$2,646	\$0	-\$2,646
23. Joint American Express	-\$13,140	-\$13,140	\$0	\$0	-\$13,140	\$0	\$0	\$0
24. Husband's WSECU	-\$1,978	-\$1,978	\$0	\$0	\$0	-\$1,978	\$0	\$0
25. Personal Property	\$2	\$2	\$0	\$0	\$1	\$1	\$1	\$0
26. Wife's Exemption Trust	\$423,356	\$0	\$423,356	\$423,356	\$0	\$423,356	\$0	\$0
<b>Totals</b>	<b>\$997,061</b>	<b>\$584,147</b>	<b>\$412,914</b>	<b>\$412,914</b>	<b>\$250,002</b>	<b>\$415,560</b>	<b>\$334,145</b>	<b>-\$2,646</b>

<b>Judgment for Husband</b>	<b>-\$67,325</b>	<b>\$67,325</b>
<b>Community and Separate Property Totals</b>	<b>\$182,677</b>	<b>\$401,470</b>
<b>Total Property Division</b>	<b>\$598,237</b>	<b>\$398,824</b>
<b>Property Distribution Percentage</b>	<b>60.00%</b>	<b>40.00%</b>

Note: All changes from Exhibit A to Decree of Dissolution highlighted in grey

**Trial Court's Division of Community and Separate Assets and Liabilities  
including Trust, valuing Options per Ex. 48**

Assets & Liabilities	Net Value	Community Property		Separate Property	To Wife		To Husband	
		Community Property	Separate Property		Community	Separate	Community	Separate
1. Family Home	\$123,730	\$123,730	\$0	\$0	\$123,730	\$0	\$0	\$0
2. Tacoma Condominium	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
3. Hawaii Timeshare	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
4. Whistler Timeshare	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
5. Husband's Pre-Dist 401K	\$274,607	\$274,607	\$0	\$0	\$0	\$274,607	\$0	\$0
6. Husband's Pre-Dist IRS	\$23,321	\$23,321	\$0	\$0	\$0	\$23,321	\$0	\$0
7. Husband's Pre-Dist CS	\$5,000	\$5,000	\$0	\$0	\$0	\$5,000	\$0	\$0
8. Wife's Pre-Dist Options	\$15,975	\$15,975	\$0	\$0	\$15,975	\$0	\$0	\$0
9. Husband's Pre-Dist Wamu	\$3,194	\$3,194	\$0	\$0	\$0	\$3,194	\$0	\$0
10. Wife's Pre-Dist BoA	\$14,832	\$14,832	\$0	\$0	\$14,832	\$0	\$0	\$0
11. Husband's Pre-Dist Comics	\$30,000	\$30,000	\$0	\$0	\$0	\$30,000	\$0	\$0
12. Wife's Camera Equipment	\$4,000	\$4,000	\$0	\$0	\$4,000	\$0	\$0	\$0
13. Wife's Costco 401K	\$58,983	\$50,247	\$8,736	\$8,736	\$50,247	\$8,736	\$0	\$0
14. Wife's Schwab IRA	\$8,734	\$8,734	\$0	\$0	\$8,734	\$0	\$0	\$0
15. Wife's Stock Options	\$113,895	\$113,895	\$0	\$0	\$113,895	\$0	\$0	\$0
16. Schwab Brokerage	\$11,116	\$7,366	\$3,750	\$3,750	\$7,366	\$3,750	\$0	\$0
17. Schwab Wife	\$26,053	\$0	\$26,053	\$26,053	\$0	\$26,053	\$0	\$0
18. Wife's VW Beetle	\$1,870	\$1,870	\$0	\$0	\$1,870	\$0	\$0	\$0
19. Wife's Expedition	\$4,035	\$4,035	\$0	\$0	\$4,035	\$0	\$0	\$0
20. House Loan (Leon Moraski)	-\$29,640	\$0	-\$29,640	-\$29,640	\$0	-\$29,640	\$0	\$0
21. Loan for Taxes (Trust)	-\$14,049	\$0	-\$14,049	-\$14,049	\$0	-\$14,049	\$0	\$0
22. Loan for Richard Moraski	-\$5,292	\$0	-\$5,292	-\$5,292	\$0	-\$2,646	\$0	-\$2,646
23. Joint American Express	-\$13,140	-\$13,140	\$0	\$0	-\$13,140	\$0	\$0	\$0
24. Husband's WSECU	-\$1,978	-\$1,978	\$0	\$0	\$0	-\$1,978	\$0	\$0
25. Personal Property	\$2	\$2	\$0	\$0	\$1	\$1	\$0	\$0
26. Wife's Exemption Trust	\$423,356	\$0	\$423,356	\$423,356	\$0	\$423,356	\$0	\$0
<b>Totals</b>	<b>\$1,078,604</b>	<b>\$665,690</b>	<b>\$412,914</b>	<b>\$415,560</b>	<b>\$331,545</b>	<b>\$415,560</b>	<b>\$334,145</b>	<b>-\$2,646</b>
<b>Judgment for Wife</b>		<b>\$100,486</b>			<b>\$100,486</b>			
<b>Community and Separate Property Totals</b>		<b>\$432,031</b>			<b>\$432,031</b>	<b>\$415,560</b>	<b>\$233,659</b>	<b>-\$2,646</b>
<b>Total Property Division</b>					<b>\$847,591</b>		<b>\$231,013</b>	
<b>Property Distribution Percentage</b>					<b>78.58%</b>		<b>21.42%</b>	

Note: All changes from Exhibit A to Decree of Dissolution highlighted in grey

**Trial Court's Division of Community and Separate Assets and Liabilities and Liabilities including Trust, valuing Options per Ex. 48, excluding Judgment for Wife**

Assets & Liabilities	Net Value		Separate Property		To Wife		To Husband	
	Community Property	Separate Property	Community Property	Separate Property	Community	Separate	Community	Separate
1. Family Home	\$123,730	\$0	\$123,730	\$0	\$123,730	\$0	\$0	\$0
2. Tacoma Condominium	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
3. Hawaii Timeshare	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
4. Whistler Timeshare	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
5. Husband's Pre-Dist 401K	\$274,607	\$0	\$274,607	\$0	\$0	\$0	\$274,607	\$0
6. Husband's Pre-Dist IRS	\$23,321	\$0	\$23,321	\$0	\$0	\$0	\$23,321	\$0
7. Husband's Pre-Dist CS	\$5,000	\$0	\$5,000	\$0	\$0	\$0	\$5,000	\$0
8. Wife's Pre-Dist Options	\$15,975	\$0	\$15,975	\$0	\$15,975	\$0	\$0	\$0
9. Husband's Pre-Dist Wamu	\$3,194	\$0	\$3,194	\$0	\$0	\$0	\$3,194	\$0
10. Wife's Pre-Dist BoA	\$14,832	\$0	\$14,832	\$0	\$14,832	\$0	\$0	\$0
11. Husband's Pre-Dist Comics	\$30,000	\$0	\$30,000	\$0	\$0	\$0	\$30,000	\$0
12. Wife's Camera Equipment	\$4,000	\$0	\$4,000	\$0	\$4,000	\$0	\$0	\$0
13. Wife's Costco 401K	\$58,983	\$8,736	\$50,247	\$8,736	\$50,247	\$8,736	\$0	\$0
14. Wife's Schwab IRA	\$8,734	\$0	\$8,734	\$0	\$8,734	\$0	\$0	\$0
15. Wife's Stock Options	\$113,895	\$0	\$113,895	\$0	\$113,895	\$0	\$0	\$0
16. Schwab Brokerage	\$11,116	\$3,750	\$7,366	\$3,750	\$7,366	\$3,750	\$0	\$0
17. Schwab Wife	\$26,053	\$0	\$0	\$26,053	\$0	\$26,053	\$0	\$0
18. Wife's VW Beetle	\$1,870	\$0	\$1,870	\$0	\$1,870	\$0	\$0	\$0
19. Wife's Expedition	\$4,035	\$0	\$4,035	\$0	\$4,035	\$0	\$0	\$0
20. House Loan (Leon Moraski)	-\$29,640	\$0	\$0	-\$29,640	\$0	\$0	\$0	\$0
21. Loan for Taxes (Trust)	-\$14,049	\$0	\$0	-\$14,049	\$0	\$0	\$0	\$0
22. Loan for Richard Moraski	-\$5,292	\$0	\$0	-\$5,292	\$0	\$0	\$0	-\$2,646
23. Joint American Express	-\$13,140	\$0	-\$13,140	\$0	-\$13,140	\$0	\$0	\$0
24. Husband's WSECU	-\$1,978	\$0	-\$1,978	\$0	\$0	\$0	-\$1,978	\$0
25. Personal Property	\$2	\$0	\$2	\$0	\$1	\$1	\$1	\$0
26. Wife's Exemption Trust	\$423,356	\$423,356	\$0	\$423,356	\$0	\$423,356	\$0	\$0
<b>Totals</b>	<b>\$1,078,604</b>	<b>\$412,914</b>	<b>\$665,690</b>	<b>\$412,914</b>	<b>\$331,545</b>	<b>\$415,560</b>	<b>\$334,145</b>	<b>-\$2,646</b>

Judgment for Wife		\$0	\$0
Community and Separate Property Totals		\$331,545	\$415,560
Total Property Division		\$747,105	\$331,499
Property Distribution Percentage		69.27%	30.73%

Note: All changes from Exhibit A to Decree of Dissolution highlighted in grey

**Trial Court's Division of Community and Separate Assets and Liabilities and Liabilities including Trust, valuing Options per Ex. 48, including Judgment for Husband**

Assets & Liabilities	Net Value	Community Property		Separate Property	To Wife		To Husband	
		Community Property	Separate Property		Community	Separate	Community	Separate
1. Family Home	\$123,730	\$123,730	\$0	\$0	\$123,730	\$0	\$0	\$0
2. Tacoma Condominium	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
3. Hawaii Timeshare	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
4. Whistler Timeshare	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
5. Husband's Pre-Dist 401K	\$274,607	\$274,607	\$0	\$0	\$0	\$274,607	\$0	\$0
6. Husband's Pre-Dist IRS	\$23,321	\$23,321	\$0	\$0	\$0	\$23,321	\$0	\$0
7. Husband's Pre-Dist CS	\$5,000	\$5,000	\$0	\$0	\$0	\$5,000	\$0	\$0
8. Wife's Pre-Dist Options	\$15,975	\$15,975	\$0	\$0	\$15,975	\$0	\$0	\$0
9. Husband's Pre-Dist Wamu	\$3,194	\$3,194	\$0	\$0	\$0	\$3,194	\$0	\$0
10. Wife's Pre-Dist BoA	\$14,832	\$14,832	\$0	\$0	\$14,832	\$0	\$0	\$0
11. Husband's Pre-Dist Comics	\$30,000	\$30,000	\$0	\$0	\$0	\$30,000	\$0	\$0
12. Wife's Camera Equipment	\$4,000	\$4,000	\$0	\$0	\$4,000	\$0	\$0	\$0
13. Wife's Costco 401K	\$58,983	\$50,247	\$8,736	\$8,736	\$50,247	\$8,736	\$0	\$0
14. Wife's Schwab IRA	\$8,734	\$8,734	\$0	\$0	\$8,734	\$0	\$0	\$0
15. Wife's Stock Options	\$113,895	\$113,895	\$0	\$0	\$113,895	\$0	\$0	\$0
16. Schwab Brokerage	\$11,116	\$7,366	\$3,750	\$3,750	\$7,366	\$3,750	\$0	\$0
17. Schwab Wife	\$26,053	\$0	\$26,053	\$26,053	\$0	\$26,053	\$0	\$0
18. Wife's VW Beetle	\$1,870	\$1,870	\$0	\$0	\$1,870	\$0	\$0	\$0
19. Wife's Expedition	\$4,035	\$4,035	\$0	\$0	\$4,035	\$0	\$0	\$0
20. House Loan (Leon Moraski)	-\$29,640	\$0	-\$29,640	-\$29,640	\$0	-\$29,640	\$0	\$0
21. Loan for Taxes (Trust)	-\$14,049	\$0	-\$14,049	-\$14,049	\$0	-\$14,049	\$0	\$0
22. Loan for Richard Moraski	-\$5,292	\$0	-\$5,292	-\$5,292	\$0	-\$2,646	\$0	-\$2,646
23. Joint American Express	-\$13,140	-\$13,140	\$0	\$0	-\$13,140	\$0	\$0	\$0
24. Husband's WSECU	-\$1,978	-\$1,978	\$0	\$0	\$0	-\$1,978	\$0	\$0
25. Personal Property	\$2	\$2	\$0	\$0	\$1	\$1	\$1	\$0
26. Wife's Exemption Trust	\$423,356	\$0	\$423,356	\$423,356	\$0	\$423,356	\$0	\$0
<b>Totals</b>	<b>\$1,078,604</b>	<b>\$665,690</b>	<b>\$412,914</b>	<b>\$415,560</b>	<b>\$331,545</b>	<b>\$415,560</b>	<b>\$334,145</b>	<b>-\$2,646</b>
<b>Judgment for Husband</b>					<b>-\$99,943</b>		<b>\$99,943</b>	
<b>Community and Separate Property Totals</b>					<b>\$231,602</b>	<b>\$415,560</b>	<b>\$434,088</b>	<b>-\$2,646</b>
<b>Total Property Division</b>					<b>\$647,162</b>		<b>\$431,442</b>	
<b>Property Distribution Percentage</b>					<b>60.00%</b>		<b>40.00%</b>	

Note: All changes from Exhibit A to Decree of Dissolution highlighted in grey

**Trial Court's Division of Community and Separate Assets and Liabilities  
valuing 401K, IRS and CS at entry of Decree**

Assets & Liabilities	Net Value	Community Property	Separate Property	To Wife		To Husband	
				Community	Separate	Community	Separate
1. Family Home	\$123,730	\$123,730	\$0	\$123,730	\$0	\$0	\$0
2. Tacoma Condominium	\$0	\$0	\$0	\$0	\$0	\$0	\$0
3. Hawaii Timeshare	\$0	\$0	\$0	\$0	\$0	\$0	\$0
4. Whistler Timeshare	\$0	\$0	\$0	\$0	\$0	\$0	\$0
5. Husband's Pre-Dist 401K	\$25,589	\$25,589	\$0	\$0	\$0	\$25,589	\$0
6. Husband's Pre-Dist IRS	\$0	\$0	\$0	\$0	\$0	\$0	\$0
7. Husband's Pre-Dist CS	\$0	\$0	\$0	\$0	\$0	\$0	\$0
8. Wife's Pre-Dist Options	\$15,975	\$15,975	\$0	\$15,975	\$0	\$0	\$0
9. Husband's Pre-Dist Wamu	\$3,194	\$3,194	\$0	\$0	\$0	\$3,194	\$0
10. Wife's Pre-Dist BoA	\$14,832	\$14,832	\$0	\$14,832	\$0	\$0	\$0
11. Husband's Pre-Dist Comics	\$30,000	\$30,000	\$0	\$0	\$0	\$30,000	\$0
12. Wife's Camera Equipment	\$4,000	\$4,000	\$0	\$4,000	\$0	\$0	\$0
13. Wife's Costco 401K	\$58,983	\$50,247	\$8,736	\$50,247	\$8,736	\$0	\$0
14. Wife's Schwab IRA	\$8,734	\$8,734	\$0	\$8,734	\$0	\$0	\$0
15. Wife's Stock Options	\$32,352	\$32,352	\$0	\$32,352	\$0	\$0	\$0
16. Schwab Brokerage	\$11,116	\$7,366	\$3,750	\$7,366	\$3,750	\$0	\$0
17. Schwab Wife	\$26,053	\$0	\$26,053	\$0	\$26,053	\$0	\$0
18. Wife's VW Beetle	\$1,870	\$1,870	\$0	\$1,870	\$0	\$0	\$0
19. Wife's Expedition	\$4,035	\$4,035	\$0	\$4,035	\$0	\$0	\$0
20. House Loan (Leon Moraski)	-\$29,640	\$0	-\$29,640	\$0	-\$29,640	\$0	\$0
21. Loan for Taxes (Trust)	-\$14,049	\$0	-\$14,049	\$0	-\$14,049	\$0	\$0
22. Loan for Richard Moraski	-\$5,292	\$0	-\$5,292	\$0	-\$2,646	\$0	-\$2,646
23. Joint American Express	-\$13,140	-\$13,140	\$0	-\$13,140	\$0	\$0	\$0
24. Husband's WSECU	-\$1,978	-\$1,978	\$0	\$0	\$0	-\$1,978	\$0
25. Personal Property	\$2	\$2	\$0	\$1	\$0	\$1	\$0
<b>Totals</b>	<b>\$296,366</b>	<b>\$306,808</b>	<b>-\$10,442</b>	<b>\$250,002</b>	<b>-\$7,796</b>	<b>\$56,806</b>	<b>-\$2,646</b>
<b>Judgment for Wife</b>							
		<b>\$100,486</b>		<b>\$100,486</b>		<b>-\$100,486</b>	
<b>Community and Separate Property Totals</b>		<b>\$350,488</b>		<b>\$350,488</b>	<b>-\$7,796</b>	<b>-\$43,680</b>	<b>-\$2,646</b>
<b>Total Property Division</b>				<b>\$342,692</b>		<b>-\$46,326</b>	
<b>Property Distribution Percentage</b>				<b>115.63%</b>		<b>-15.63%</b>	

Note: All changes from Exhibit A to Decree of Dissolution highlighted in grey

**Trial Court's Division of Community and Separate Assets and Liabilities  
valuing 401K, IRS and CS at entry of Decree, excluding Judgment for Wife**

Assets & Liabilities	Net Value	Community Property		Separate Property	To Wife		To Husband	
		Community Property	Separate Property		Community	Separate	Community	Separate
1. Family Home	\$123,730	\$123,730	\$0	\$0	\$123,730	\$0	\$0	\$0
2. Tacoma Condominium	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
3. Hawaii Timeshare	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
4. Whistler Timeshare	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
5. Husband's Pre-Dist 401K	\$25,589	\$25,589	\$0	\$0	\$0	\$25,589	\$0	\$0
6. Husband's Pre-Dist IRS	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
7. Husband's Pre-Dist CS	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
8. Wife's Pre-Dist Options	\$15,975	\$15,975	\$0	\$0	\$15,975	\$0	\$0	\$0
9. Husband's Pre-Dist Wamu	\$3,194	\$3,194	\$0	\$0	\$0	\$3,194	\$0	\$0
10. Wife's Pre-Dist BoA	\$14,832	\$14,832	\$0	\$0	\$14,832	\$0	\$0	\$0
11. Husband's Pre-Dist Comics	\$30,000	\$30,000	\$0	\$0	\$0	\$30,000	\$0	\$0
12. Wife's Camera Equipment	\$4,000	\$4,000	\$0	\$0	\$4,000	\$0	\$0	\$0
13. Wife's Costco 401K	\$58,983	\$50,247	\$8,736	\$0	\$50,247	\$8,736	\$0	\$0
14. Wife's Schwab IRA	\$8,734	\$8,734	\$0	\$0	\$8,734	\$0	\$0	\$0
15. Wife's Stock Options	\$32,352	\$32,352	\$0	\$0	\$32,352	\$0	\$0	\$0
16. Schwab Brokerage	\$11,116	\$7,366	\$3,750	\$0	\$7,366	\$3,750	\$0	\$0
17. Schwab Wife	\$26,053	\$0	\$26,053	\$0	\$0	\$26,053	\$0	\$0
18. Wife's VW Beetle	\$1,870	\$1,870	\$0	\$0	\$1,870	\$0	\$0	\$0
19. Wife's Expedition	\$4,035	\$4,035	\$0	\$0	\$4,035	\$0	\$0	\$0
20. House Loan (Leon Moraski)	-\$29,640	\$0	-\$29,640	\$0	\$0	-\$29,640	\$0	\$0
21. Loan for Taxes (Trust)	-\$14,049	\$0	-\$14,049	\$0	\$0	-\$14,049	\$0	\$0
22. Loan for Richard Moraski	-\$5,292	\$0	-\$5,292	\$0	\$0	-\$2,646	-\$2,646	\$0
23. Joint American Express	-\$13,140	-\$13,140	\$0	\$0	-\$13,140	\$0	\$0	\$0
24. Husband's WSECU	-\$1,978	-\$1,978	\$0	\$0	\$0	\$0	-\$1,978	\$0
25. Personal Property	\$2	\$2	\$0	\$0	\$1	\$0	\$1	\$0
<b>Totals</b>	<b>\$296,366</b>	<b>\$306,808</b>	<b>-\$10,442</b>	<b>-\$10,442</b>	<b>\$250,002</b>	<b>-\$7,796</b>	<b>\$56,806</b>	<b>-\$2,646</b>
<b>Judgment for Wife</b>					<b>\$0</b>			<b>\$0</b>
<b>Community and Separate Property Totals</b>		<b>\$250,002</b>			<b>\$250,002</b>	<b>-\$7,796</b>	<b>\$56,806</b>	<b>-\$2,646</b>
<b>Total Property Division</b>					<b>\$242,206</b>		<b>\$54,160</b>	
<b>Property Distribution Percentage</b>					<b>81.73%</b>		<b>18.27%</b>	

Note: All changes from Exhibit A to Decree of Dissolution highlighted in grey

**Trial Court's Division of Community and Separate Assets and Liabilities  
valuing 401K, IRS and CS at entry of Decree, including Judgment for Husband**

Assets & Liabilities	Net Value	Community Property		Separate Property	To Wife		To Husband	
		Community Property	Separate Property		Community	Separate	Community	Separate
1. Family Home	\$123,730	\$123,730	\$0	\$0	\$123,730	\$0	\$0	\$0
2. Tacoma Condominium	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
3. Hawaii Timeshare	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
4. Whistler Timeshare	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
5. Husband's Pre-Dist 401K	\$25,589	\$25,589	\$0	\$0	\$0	\$25,589	\$0	\$0
6. Husband's Pre-Dist IRS	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
7. Husband's Pre-Dist CS	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
8. Wife's Pre-Dist Options	\$15,975	\$15,975	\$0	\$0	\$15,975	\$0	\$0	\$0
9. Husband's Pre-Dist Wamu	\$3,194	\$3,194	\$0	\$0	\$0	\$3,194	\$0	\$0
10. Wife's Pre-Dist BoA	\$14,832	\$14,832	\$0	\$0	\$14,832	\$0	\$0	\$0
11. Husband's Pre-Dist Comics	\$30,000	\$30,000	\$0	\$0	\$0	\$30,000	\$0	\$0
12. Wife's Camera Equipment	\$4,000	\$4,000	\$0	\$0	\$4,000	\$0	\$0	\$0
13. Wife's Costco 401K	\$58,983	\$50,247	\$8,736	\$0	\$50,247	\$8,736	\$0	\$0
14. Wife's Schwab IRA	\$8,734	\$8,734	\$0	\$0	\$8,734	\$0	\$0	\$0
15. Wife's Stock Options	\$32,352	\$32,352	\$0	\$0	\$32,352	\$0	\$0	\$0
16. Schwab Brokerage	\$11,116	\$7,366	\$3,750	\$0	\$7,366	\$3,750	\$0	\$0
17. Schwab Wife	\$26,053	\$0	\$26,053	\$0	\$0	\$26,053	\$0	\$0
18. Wife's VW Beetle	\$1,870	\$1,870	\$0	\$0	\$1,870	\$0	\$0	\$0
19. Wife's Expedition	\$4,035	\$4,035	\$0	\$0	\$4,035	\$0	\$0	\$0
20. House Loan (Leon Moraski)	-\$29,640	\$0	-\$29,640	\$0	\$0	-\$29,640	\$0	\$0
21. Loan for Taxes (Trust)	-\$14,049	\$0	-\$14,049	\$0	\$0	-\$14,049	\$0	\$0
22. Loan for Richard Moraski	-\$5,292	\$0	-\$5,292	\$0	\$0	-\$2,646	-\$2,646	\$0
23. Joint American Express	-\$13,140	-\$13,140	\$0	\$0	-\$13,140	\$0	\$0	\$0
24. Husband's WSECU	-\$1,978	-\$1,978	\$0	\$0	\$0	-\$1,978	\$0	\$0
25. Personal Property	\$2	\$2	\$0	\$0	\$1	\$1	\$1	\$0
<b>Totals</b>	<b>\$296,366</b>	<b>\$306,808</b>	<b>-\$10,442</b>	<b>-\$10,442</b>	<b>\$250,002</b>	<b>-\$7,796</b>	<b>\$56,806</b>	<b>-\$2,646</b>
<b>Judgment for Wife</b>					<b>-\$64,386</b>		<b>\$64,386</b>	
<b>Community and Separate Property Totals</b>					<b>\$185,616</b>	<b>-\$7,796</b>	<b>\$121,192</b>	<b>-\$2,646</b>
<b>Total Property Division</b>					<b>\$177,820</b>		<b>\$118,546</b>	
<b>Property Distribution Percentage</b>					<b>60.00%</b>		<b>40.00%</b>	

Note: All changes from Exhibit A to Decree of Dissolution highlighted in grey

**Trial Court's Division of Community and Separate Assets and Liabilities and Liabilities  
including Trust, valuing Options per Ex. 48, valuing 401K, IRS and CS at entry of Decree**

Assets & Liabilities	Net Value	Community Property		Separate Property	To Wife		To Husband	
		Community Property	Separate Property		Community	Separate	Community	Separate
1. Family Home	\$123,730	\$123,730	\$0	\$0	\$123,730	\$0	\$0	\$0
2. Tacoma Condominium	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
3. Hawaii Timeshare	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
4. Whistler Timeshare	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
5. Husband's Pre-Dist 401K	\$25,589	\$25,589	\$0	\$0	\$0	\$25,589	\$0	\$0
6. Husband's Pre-Dist IRS	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
7. Husband's Pre-Dist CS	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
8. Wife's Pre-Dist Options	\$15,975	\$15,975	\$0	\$0	\$15,975	\$0	\$0	\$0
9. Husband's Pre-Dist Wamu	\$3,194	\$3,194	\$0	\$0	\$0	\$3,194	\$0	\$0
10. Wife's Pre-Dist BoA	\$14,832	\$14,832	\$0	\$0	\$14,832	\$0	\$0	\$0
11. Husband's Pre-Dist Comics	\$30,000	\$30,000	\$0	\$0	\$0	\$30,000	\$0	\$0
12. Wife's Camera Equipment	\$4,000	\$4,000	\$0	\$0	\$4,000	\$0	\$0	\$0
13. Wife's Costco 401K	\$58,983	\$50,247	\$8,736	\$8,736	\$50,247	\$8,736	\$0	\$0
14. Wife's Schwab IRA	\$8,734	\$8,734	\$0	\$0	\$8,734	\$0	\$0	\$0
15. Wife's Stock Options	\$113,895	\$113,895	\$0	\$0	\$113,895	\$0	\$0	\$0
16. Schwab Brokerage	\$11,116	\$7,366	\$3,750	\$3,750	\$7,366	\$3,750	\$0	\$0
17. Schwab Wife	\$26,053	\$0	\$26,053	\$26,053	\$0	\$26,053	\$0	\$0
18. Wife's VW Beetle	\$1,870	\$1,870	\$0	\$0	\$1,870	\$0	\$0	\$0
19. Wife's Expedition	\$4,035	\$4,035	\$0	\$0	\$4,035	\$0	\$0	\$0
20. House Loan (Leon Moraski)	-\$29,640	\$0	-\$29,640	-\$29,640	\$0	-\$29,640	\$0	\$0
21. Loan for Taxes (Trust)	-\$14,049	\$0	-\$14,049	-\$14,049	\$0	-\$14,049	\$0	\$0
22. Loan for Richard Moraski	-\$5,292	\$0	-\$5,292	-\$5,292	\$0	-\$2,646	\$0	-\$2,646
23. Joint American Express	-\$13,140	-\$13,140	\$0	\$0	-\$13,140	\$0	\$0	\$0
24. Husband's WSECU	-\$1,978	-\$1,978	\$0	\$0	\$0	-\$1,978	\$0	\$0
25. Personal Property	\$2	\$2	\$0	\$0	\$1	\$1	\$1	\$0
26. Wife's Exemption Trust	\$423,356	\$0	\$423,356	\$423,356	\$0	\$423,356	\$0	\$0
<b>Totals</b>	<b>\$801,265</b>	<b>\$388,351</b>	<b>\$412,914</b>	<b>\$412,914</b>	<b>\$331,545</b>	<b>\$415,560</b>	<b>\$56,806</b>	<b>-\$2,646</b>
<b>Judgment for Wife</b>		<b>\$100,486</b>			<b>\$100,486</b>		<b>-\$100,486</b>	
<b>Community and Separate Property Totals</b>		<b>\$432,031</b>		<b>\$415,560</b>	<b>\$432,031</b>	<b>\$415,560</b>	<b>-\$43,680</b>	<b>-\$2,646</b>
<b>Total Property Division</b>				<b>\$847,591</b>		<b>-\$46,326</b>		
<b>Property Distribution Percentage</b>				<b>105.78%</b>		<b>-5.78%</b>		

Note: All changes from Exhibit A to Decree of Dissolution highlighted in grey

**Trial Court's Division of Community and Separate Assets and Liabilities  
including Trust, valuing Options per Ex. 48, valuing 401K, IRS and CS at entry of Decree, excluding Judgment for Wife**

Assets & Liabilities	Net Value	Community Property		Separate Property	To Wife		To Husband	
		Community Property	Separate Property		Community	Separate	Community	Separate
1. Family Home	\$123,730	\$123,730	\$0	\$0	\$123,730	\$0	\$0	\$0
2. Tacoma Condominium	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
3. Hawaii Timeshare	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
4. Whistler Timeshare	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
5. Husband's Pre-Dist 401K	\$25,589	\$25,589	\$0	\$0	\$0	\$25,589	\$0	\$0
6. Husband's Pre-Dist IRS	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
7. Husband's Pre-Dist CS	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
8. Wife's Pre-Dist Options	\$15,975	\$15,975	\$0	\$0	\$15,975	\$0	\$0	\$0
9. Husband's Pre-Dist Wamu	\$3,194	\$3,194	\$0	\$0	\$0	\$3,194	\$0	\$0
10. Wife's Pre-Dist BoA	\$14,832	\$14,832	\$0	\$0	\$14,832	\$0	\$0	\$0
11. Husband's Pre-Dist Comics	\$30,000	\$30,000	\$0	\$0	\$0	\$30,000	\$0	\$0
12. Wife's Camera Equipment	\$4,000	\$4,000	\$0	\$0	\$4,000	\$0	\$0	\$0
13. Wife's Costco 401K	\$58,983	\$50,247	\$8,736	\$8,736	\$50,247	\$8,736	\$0	\$0
14. Wife's Schwab IRA	\$8,734	\$8,734	\$0	\$0	\$8,734	\$0	\$0	\$0
15. Wife's Stock Options	\$113,895	\$113,895	\$0	\$0	\$113,895	\$0	\$0	\$0
16. Schwab Brokerage	\$11,116	\$7,366	\$3,750	\$3,750	\$7,366	\$3,750	\$0	\$0
17. Schwab Wife	\$26,053	\$0	\$26,053	\$26,053	\$0	\$26,053	\$0	\$0
18. Wife's VW Beetle	\$1,870	\$1,870	\$0	\$0	\$1,870	\$0	\$0	\$0
19. Wife's Expedition	\$4,035	\$4,035	\$0	\$0	\$4,035	\$0	\$0	\$0
20. House Loan (Leon Moraski)	-\$29,640	\$0	-\$29,640	-\$29,640	\$0	-\$29,640	\$0	\$0
21. Loan for Taxes (Trust)	-\$14,049	\$0	-\$14,049	-\$14,049	\$0	-\$14,049	\$0	\$0
22. Loan for Richard Moraski	-\$5,292	\$0	-\$5,292	-\$5,292	\$0	-\$2,646	\$0	-\$2,646
23. Joint American Express	-\$13,140	-\$13,140	\$0	\$0	-\$13,140	\$0	\$0	\$0
24. Husband's WSECU	-\$1,978	-\$1,978	\$0	\$0	\$0	-\$1,978	\$0	\$0
25. Personal Property	\$2	\$2	\$0	\$0	\$1	\$1	\$1	\$0
26. Wife's Exemption Trust	\$423,356	\$0	\$423,356	\$423,356	\$0	\$423,356	\$0	\$0
<b>Totals</b>	<b>\$801,265</b>	<b>\$388,351</b>	<b>\$412,914</b>	<b>\$415,560</b>	<b>\$331,545</b>	<b>\$415,560</b>	<b>\$56,806</b>	<b>-\$2,646</b>

Judgment for Wife		\$0	\$0
Community and Separate Property Totals		\$331,545	\$415,560
Total Property Division		\$747,105	\$54,160
Property Distribution Percentage		93.24%	6.76%

Note: All changes from Exhibit A to Decree of Dissolution highlighted in grey

**Trial Court's Division of Community and Separate Assets and Liabilities and Liabilities  
including Trust, valuing Options per Ex. 48, valuing 401K, IRA and CS at entry of Decree, including Judgment for Husband**

Assets & Liabilities	Net Value		Separate Property		To Wife		To Husband	
	Community Property	Separate Property	Community	Separate	Community	Separate	Community	Separate
1. Family Home	\$123,730	\$0	\$123,730	\$0	\$123,730	\$0	\$0	\$0
2. Tacoma Condominium	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
3. Hawaii Timeshare	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
4. Whistler Timeshare	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
5. Husband's Pre-Dist 401K	\$25,589	\$0	\$25,589	\$0	\$0	\$25,589	\$0	\$0
6. Husband's Pre-Dist IRS	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
7. Husband's Pre-Dist CS	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
8. Wife's Pre-Dist Options	\$15,975	\$0	\$15,975	\$0	\$15,975	\$0	\$0	\$0
9. Husband's Pre-Dist Wamu	\$3,194	\$0	\$3,194	\$0	\$0	\$3,194	\$0	\$0
10. Wife's Pre-Dist BoA	\$14,832	\$0	\$14,832	\$0	\$14,832	\$0	\$0	\$0
11. Husband's Pre-Dist Comics	\$30,000	\$0	\$30,000	\$0	\$0	\$30,000	\$0	\$0
12. Wife's Camera Equipment	\$4,000	\$0	\$4,000	\$0	\$4,000	\$0	\$0	\$0
13. Wife's Costco 401K	\$58,983	\$8,736	\$50,247	\$8,736	\$50,247	\$8,736	\$0	\$0
14. Wife's Schwab IRA	\$8,734	\$0	\$8,734	\$0	\$8,734	\$0	\$0	\$0
15. Wife's Stock Options	\$113,895	\$0	\$113,895	\$0	\$113,895	\$0	\$0	\$0
16. Schwab Brokerage	\$11,116	\$3,750	\$7,366	\$3,750	\$7,366	\$3,750	\$0	\$0
17. Schwab Wife	\$26,053	\$26,053	\$0	\$26,053	\$0	\$26,053	\$0	\$0
18. Wife's VW Beetle	\$1,870	\$0	\$1,870	\$0	\$1,870	\$0	\$0	\$0
19. Wife's Expedition	\$4,035	\$0	\$4,035	\$0	\$4,035	\$0	\$0	\$0
20. House Loan (Leon Moraski)	-\$29,640	-\$29,640	\$0	-\$29,640	\$0	-\$29,640	\$0	\$0
21. Loan for Taxes (Trust)	-\$14,049	-\$14,049	\$0	-\$14,049	\$0	-\$14,049	\$0	\$0
22. Loan for Richard Moraski	-\$5,292	-\$5,292	\$0	-\$5,292	\$0	-\$2,646	\$0	-\$2,646
23. Joint American Express	-\$13,140	\$0	-\$13,140	\$0	-\$13,140	\$0	\$0	\$0
24. Husband's WSECU	-\$1,978	\$0	-\$1,978	\$0	\$0	-\$1,978	\$0	\$0
25. Personal Property	\$2	\$2	\$2	\$0	\$1	\$1	\$1	\$0
26. Wife's Exemption Trust	\$423,356	\$423,356	\$0	\$423,356	\$0	\$423,356	\$0	\$0
<b>Totals</b>	<b>\$801,265</b>	<b>\$412,914</b>	<b>\$388,351</b>	<b>\$412,914</b>	<b>\$331,545</b>	<b>\$415,560</b>	<b>\$56,806</b>	<b>-\$2,646</b>
<b>Judgment for Wife</b>					<b>-\$266,346</b>		<b>-\$266,346</b>	
<b>Community and Separate Property Totals</b>					<b>\$65,199</b>	<b>\$415,560</b>	<b>-\$209,540</b>	<b>-\$2,646</b>
<b>Total Property Division</b>					<b>\$480,759</b>		<b>-\$212,186</b>	
<b>Property Distribution Percentage</b>					<b>60.00%</b>		<b>-26.48%</b>	

Note: All changes from Exhibit A to Decree of Dissolution highlighted in grey

# **APPENDIX 7**

# WASHINGTON STATE CHILD SUPPORT SCHEDULE

Including:

- Definitions and Standards
- Instructions
- Economic Table
- Worksheets

Effective Dates:

Definitions & Standards	June 7, 2006
Instructions	September 1, 2000
Economic Table	September 1, 2000
Worksheets	September 1, 2000



WASHINGTON  
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ADMINISTRATIVE OFFICE OF THE COURTS

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**Child Support Hotline, State DSHS, 1 (800) 442-KIDS**

# WASHINGTON STATE CHILD SUPPORT SCHEDULE

## DEFINITIONS AND STANDARDS

### DEFINITIONS

Unless the context clearly requires otherwise, these definitions apply to the standards following this section.

**Basic child support obligation:** means the monthly child support obligation determined from the economic table based on the parties' combined monthly net income and the number of children for whom support is owed.

**Child support schedule:** means the standards, economic table, worksheets and instructions, as defined in chapter 26.19 RCW.

**Court:** means a superior court judge, court commissioner and presiding and reviewing officers who administratively determine or enforce child support orders.

**Deviation:** means a child support amount that differs from the standard calculation.

**Economic table:** means the child support table for the basic support obligation provided in RCW 26.19.020.

**Instructions:** means the instructions developed by the Office of the Administrator for the Courts pursuant to RCW 26.19.050 for use in completing the worksheets.

**Standards:** means the standards for determination of child support as provided in chapter 26.19 RCW.

**Standard calculation:** means the presumptive amount of child support owed as determined from the child support schedule before the court considers any reasons for deviation.

**Support transfer payment:** means the amount of money the court orders one parent to pay to another parent or custodian for child support after determination of the standard calculation and deviations. If certain expenses or credits are expected to fluctuate and the order states a formula or percentage to determine the additional amount or credit on an ongoing basis, the term "support transfer payment" does not mean the additional amount or credit.

**Worksheets:** means the forms developed by the Office of the Administrator for the Courts pursuant to RCW 26.19.050 for use in determining the amount of child support.

### APPLICATION STANDARDS

1. **Application of the support schedule:** The child support schedule shall be applied:
  - a. in each county of the state;
  - b. in judicial and administrative proceedings under titles 13, 26 and 74 RCW;
  - c. in all proceedings in which child support is determined or modified;
  - d. in setting temporary and permanent support;
  - e. in automatic modification provisions or decrees entered pursuant to RCW 26.09.100; and
  - f. in addition to proceedings in which child support is

determined for minors, to adult children who are dependent on their parents and for whom support is ordered pursuant to RCW 26.09.100.

The provisions of RCW 26.19 for determining child support and reasons for deviation from the standard calculation shall be applied in the same manner by the court, presiding officers and reviewing officers.

2. **Written findings of fact supported by the evidence:** An order for child support shall be supported by written findings of fact upon which the support determination is based and shall include reasons for any deviation from the standard calculation and reasons for denial of a party's request for deviation from the standard calculation. RCW 26.19.035(2).

3. **Completion of worksheets:** Worksheets in the form developed by the Office of the Administrator for the Courts shall be completed under penalty of perjury and filed in every proceeding in which child support is determined. The court shall not accept incomplete worksheets or worksheets that vary from the worksheets developed by the Office of the Administrator for the Courts.

4. **Court review of the worksheets and order:** The court shall review the worksheets and the order setting child support for the adequacy of the reasons set forth for any deviation or denial of any request for deviation and for the adequacy of the amount of support ordered. Each order shall state the amount of child support calculated using the standard calculation and the amount of child support actually ordered. Worksheets shall be attached to the decree or order or if filed separately, shall be initialed or signed by the judge and filed with the order.

### INCOME STANDARDS

1. **Consideration of all income:** All income and resources of each parent's household shall be disclosed and considered by the court when the court determines the child support obligation of each parent. Only the income of the parents of the children whose support is at issue shall be calculated for purposes of calculating the basic support obligation. Income and resources of any other person shall not be included in calculating the basic support obligation.

2. **Verification of income:** Tax returns for the preceding two years and current paystubs shall be provided to verify income and deductions. Other sufficient verification shall be required for income and deductions which do not appear on tax returns or paystubs.

3. **Income sources included in gross monthly income:** Monthly gross income shall include income from any source, including: salaries; wages; commissions; deferred compensation; overtime; contract-related benefits; income from second jobs; dividends; interest; trust income; severance pay; annuities; capital gains; pension retirement benefits; workers' compensation; unemployment benefits; spousal maintenance actually received; bonuses; social security benefits and disability insurance benefits.

Veterans' disability pensions: Veterans' disability pensions or regular compensation for disability incurred in or aggravated by service in the United States armed forces paid by the Veterans' Administration shall be disclosed to the court. The court may consider either type of compensation as disposable income for purposes of calculating the child support obligation.

4. Income sources excluded from gross monthly income: The following income and resources shall be disclosed but shall not be included in gross income: income of a new spouse or income of other adults in the household; child support received from other relationships; gifts and prizes; temporary assistance for needy families; Supplemental Security Income; general assistance and food stamps. Receipt of income and resources from temporary assistance for needy families, Supplemental Security Income, general assistance and food stamps shall not be a reason to deviate from the standard calculation.

VA aid and attendant care: Aid and attendant care payments to prevent hospitalization paid by the Veterans Administration solely to provide physical home care for a disabled veteran, and special compensation paid under 38 U.S.C. Sec. 314(k) through (r) to provide either special care or special aids, or both to assist with routine daily functions shall be disclosed. The court may not include either aid or attendant care or special medical compensation payments in gross income for purposes of calculating the child support obligation or for purposes of deviating from the standard calculation.

Other aid and attendant care: Payments from any source, other than veterans' aid and attendance allowance or special medical compensation paid under 38 U.S.C. Sec. 314(k) through (r) for services provided by an attendant in case of a disability when the disability necessitates the hiring of the services or an attendant shall be disclosed but shall not be included in gross income and shall not be a reason to deviate from the standard calculation.

5. Determination of net income: The following expenses shall be disclosed and deducted from gross monthly income to calculate net monthly income: federal and state income taxes (see the following paragraph); federal insurance contributions act deductions (FICA); mandatory pension plan payments; mandatory union or professional dues; state industrial insurance premiums; court-ordered spousal maintenance to the extent actually paid; up to two thousand dollars per year in voluntary pension payments actually made if the contributions were made for the two tax years preceding the earlier of the tax year in which the parties separated with intent to live separate and apart or the tax year in which the parties filed for dissolution; and normal business expenses and self-employment taxes for self-employed persons. Justification shall be required for any business expense deduction about which there is a disagreement. Items deducted from gross income shall not be a reason to deviate from the standard calculation.

Allocation of tax exemptions: The parties may agree which parent is entitled to claim the child or children as dependents for federal income tax exemptions. The court may award the exemption or exemptions and order a party to sign the federal income tax dependency exemption waiver. The court may divide the exemptions between the parties, alternate the exemptions between the parties or both.

6. Imputation of income: The court shall impute income to a parent when the parent is voluntarily unemployed or voluntarily underemployed. The court shall determine whether the parent is voluntarily underemployed or voluntarily unemployed based upon that parent's work history, education, health and age or any other relevant factors. A court shall not impute income to a parent who is gainfully employed on a full-time basis, unless the court finds that the parent is voluntarily underemployed and finds that the parent is purposely underemployed to reduce the parent's child support obligation. Income shall not be imputed for an unemployable parent. Income shall not be imputed to a parent to the extent the parent is unemployed or significantly underemployed due to the parent's efforts to comply with court-ordered reunification efforts under chapter 13.34 RCW or under a voluntary placement agreement with an agency supervising the child. In the absence of information to the contrary, a parent's imputed income shall be based on the median income of year-round full-time workers as derived from the United States Bureau of Census, current population reports, or such replacement report as published by the Bureau of Census. (See "Approximate Median Net Monthly Income" chart on page 5.)

#### ALLOCATION STANDARDS

1. Basic child support: The basic child support obligation derived from the economic table shall be allocated between the parents based on each parent's share of the combined monthly net income.
2. Health care expenses: Ordinary health care expenses are included in the economic table. Monthly health care expenses that exceed 5 percent of the basic support obligation shall be considered extraordinary health care expenses. Extraordinary health care expenses shall be shared by the parents in the same proportion as the basic support obligation.
3. Day care and special child rearing expenses: Day care and special child rearing expenses, such as tuition and long distance transportation costs to and from the parents for visitation purposes, are not included in the economic table. These expenses shall be shared by the parents in the same proportion as the basic child support obligation. RCW 26.19.080
4. The court may exercise its discretion to determine the necessity for and the reasonableness of all amounts ordered in excess of the basic child support obligation.

#### LIMITATIONS STANDARDS

1. Limit at 45 percent of a parent's net income: Neither parent's total child support obligation may exceed 45 percent of net income except for good cause shown. Good cause includes but is not limited to possession of substantial wealth, children with day care expenses, special medical need, educational need, psychological need and larger families.
2. Income below six hundred dollars: When combined monthly net income is less than six hundred dollars, a support order of not less than twenty-five dollars per child per month shall be entered for each parent unless the obligor parent establishes that it would be unjust or inappropriate to do so in that particular case. The decision whether there is a sufficient basis to go below the

presumptive minimum payment must take into consideration the best interests of the child and circumstances of each parent. Such circumstances can include comparative hardship to the affected households, assets or liabilities, and earning capacity.

**Basic subsistence limitation:** A parent's support obligation shall not reduce his or her net income below the need standard for one person established pursuant to RCW 74.04.770, except for the presumptive minimum payment of twenty-five dollars per child per month or in cases where the court finds reasons for deviation. This section shall not be construed to require monthly substantiation of income. (See the Need Standard for Cash Assistance, for one person (Assistance Unit Size of 1) at <http://apps.leg.wa.gov/WAC/default.aspx?cite=388-478-0015> or locate WAC 388-478-0015 at <http://apps.leg.wa.gov/wac/>.)

3. **Income above five thousand and seven thousand dollars:** In general setting support under this paragraph does not constitute a deviation. The economic table is presumptive for combined monthly net incomes up to and including five thousand dollars. When combined monthly net income exceeds five thousand dollars, support shall not be set at an amount lower than the presumptive amount of support set for combined monthly net incomes of five thousand dollars unless the court finds a reason to deviate below that amount. The economic table is advisory but not presumptive for combined monthly net income that exceeds five thousand dollars. When combined monthly net income exceeds seven thousand dollars, the court may set support at an advisory amount of support set for combined monthly net incomes between five thousand and seven thousand dollars or the court may exceed the advisory amount of support for combined monthly net income of seven thousand dollars upon written findings of fact.

#### DEVIATION STANDARDS

1. Reasons for deviation from the standard calculation include but are not limited to the following:

- a. **Sources of income and tax planning:** The court may deviate from the standard calculation after consideration of the following:
- Income of a new spouse if the parent who is married to the new spouse is asking for a deviation based on any other reason. Income of a new spouse is not, by itself, a sufficient reason for deviation;
  - Income of other adults in the household if the parent who is living with the other adult is asking for a deviation based on any other reason. Income of the other adults in the household is not, by itself, a sufficient reason for deviation;
  - Child support actually received from other relationships;
  - Gifts;
  - Prizes;
  - Possession of wealth, including but not limited to savings, investments, real estate holdings and business interests, vehicles, boats, pensions, bank accounts, insurance plans or other assets;
  - Extraordinary income of a child; or
  - Tax planning considerations. A deviation for tax planning may be granted only if the child would not receive a lesser economic benefit due to the tax planning.

- b. **Nonrecurring income:** The court may deviate from the standard calculation based on a finding that a particular source of income included in the calculation of the basic support obligation is not a recurring source of income. Depending on the circumstances, nonrecurring income may include overtime, contract-related benefits, bonuses or income from second jobs. Deviations for nonrecurring income shall be based on a review of the nonrecurring income received in the previous two calendar years.

- c. **Debt and high expenses:** The court may deviate from the standard calculation after consideration of the following expenses:

- Extraordinary debt not voluntarily incurred;
- A significant disparity in the living costs of the parents due to conditions beyond their control;
- Special needs of disabled children; or
- Special medical, educational or psychological needs of the children.
- Costs anticipated to be incurred by the parents in compliance with court-ordered reunification efforts under chapter 13.34 RCW or under a voluntary placement agreement with an agency supervising the child.

- d. **Residential schedule:** The court may deviate from the standard calculation if the child spends a significant amount of time with the parent who is obligated to make a support transfer payment. The court may not deviate on that basis if the deviation will result in insufficient funds in the household receiving the support to meet the basic needs of the child or if the child is receiving temporary assistance for needy families. When determining the amount of the deviation, the court shall consider evidence concerning the increased expenses to a parent making support transfer payments resulting from the significant amount of time spent with that parent and shall consider the decreased expenses, if any, to the party receiving the support resulting from the significant amount of time the child spends with the parent making the support transfer payment.

- e. **Children from other relationships:** The court may deviate from the standard calculation when either or both of the parents before the court have children from other relationships to whom the parent owes a duty of support.
- The child support schedule shall be applied to the mother, father and children of the family before the court to determine the presumptive amount of support.
  - Children from other relationships shall not be counted in the number of children for purposes of determining the basic support obligation and the standard calculation.
  - When considering a deviation from the standard calculation for children from other relationships, the court may consider only other children to whom the parent owes a duty of support. The court may consider court-ordered payments of child support for children from other relationships only to the extent that the support is actually paid.

- iv. When the court has determined that either or both parents have children from other relationships, deviations under this section shall be based on consideration of the total circumstances of both households. All child support obligations paid, received and owed for all children shall be disclosed and considered.
- 2. All income and resources of the parties before the court, new spouses, and other adults in the household shall be disclosed and considered as provided. The presumptive amount of support shall be determined according to the child support schedule. Unless specific reasons for deviation are set forth in the written findings of fact and are supported by the evidence, the court shall order each parent to pay the amount of support determined by using the standard calculation.
- 3. The court shall enter findings that specify reasons for any deviation or any denial of a party's request for any deviation from the standard calculation made by the court. The court shall not consider reasons for deviation until the court determines the standard calculation for each parent.
- 4. When reasons exist for deviation, the court shall exercise discretion in considering the extent to which the factors would affect the support obligation.
- 5. Agreement of the parties is not by itself adequate reason for any deviations from the standard calculations.

**POST-SECONDARY EDUCATION STANDARDS**

- 1. The child support schedule shall be advisory and not mandatory for post-secondary educational support.
- 2. When considering whether to order support for post-secondary educational expenses, the court shall determine whether the child is in fact dependent and is relying upon the parents for the reasonable necessities of life. The court shall exercise its

- discretion when determining whether and for how long to award post-secondary educational support based upon consideration of factors that include but are not limited to the following: age of the child; the child's needs; the expectations of the parties for their children when the parents were together; the child's prospects, desires, aptitudes, abilities or disabilities; the nature of the post-secondary education sought and the parent's level of education, standard of living and current and future resources. Also to be considered are the amount and type of support that the child would have been afforded if the parents had stayed together.
- 3. The child must enroll in an accredited academic or vocational school, must be actively pursuing a course of study commensurate with the child's vocational goals and must be in good academic standing as defined by the institution. The court-ordered post-secondary educational support shall be automatically suspended during the period or periods the child fails to comply with these conditions.
- 4. The child shall also make available all academic records and grades to both parents as a condition of receiving post-secondary educational support. Each parent shall have full and equal access to the post-secondary education records as provided by statute (RCW 26.09.225).
- 5. The court shall not order the payment of post-secondary educational expenses beyond the child's twenty-third birthday, except for exceptional circumstances, such as mental, physical or emotional disabilities.
- 6. The court shall direct that either or both parents' payments for post-secondary educational expenses are made directly to the educational institution if feasible. If direct payments are not feasible, then the court in its discretion may order that either or both parents' payments are made directly to the child if the child does not reside with either parent. If the child resides with one of the parents, the court may direct that the parent making the support transfer payments make the payments to the child or to the parent who has been receiving the support transfer payments.

# WASHINGTON STATE CHILD SUPPORT SCHEDULE INSTRUCTIONS FOR WORKSHEETS

Fill in the names and ages of only those children whose support is at issue.

## PART I: BASIC CHILD SUPPORT OBLIGATION

Pursuant to INCOME STANDARD #1: Consideration of all income, "only the income of the parents of the children whose support is at issue shall be calculated for purposes of calculating the basic support obligation." (See page 1.)

Pursuant to INCOME STANDARD #2: Verification of income, "tax returns for the preceding two years and current paystubs are required for income verification purposes. Other sufficient verification shall be required for income and deductions which do not appear on tax returns or paystubs." (See page 1.)

### **GROSS MONTHLY INCOME**

Gross monthly income is defined under INCOME STANDARD #3: Income sources included in gross monthly income. (See page 1.)

Income exclusions are defined under INCOME STANDARD #4: Income sources excluded from gross monthly income. (See page 2.) Excluded income must be disclosed and listed in Part VI of the worksheets.

Monthly Average of Income:

- If income varies during the year, divide the annual total of the income by 12.
- If paid weekly, multiply the weekly income by 52 and divide by 12.
- If paid every other week, multiply the two-week income by 26 and divide by 12.
- If paid twice a month (bi-monthly), multiply the bi-monthly income by 24 and divide by 12.

If a parent is unemployed, underemployed or the income of a parent is unknown, refer to "INCOME STANDARD #6: Imputation of income." (See page 2.)

In the absence of information to the contrary, a parent's imputed income shall be based on the following table.

### **Approximate Median Net Monthly Income**

<u>MALE</u>	<u>age</u>	<u>FEMALE</u>
\$1,363	15-24	\$1,222
\$2,154	25-34	\$1,807
\$2,610	35-44	\$1,957
\$2,846	45-54	\$2,051
\$2,880	55-64	\$1,904
\$2,828	65 +	\$1,940

U.S. Bureau of the Census, Money Income in the United States: 1998, Current Population Reports, Median Income of People by Selected Characteristics: 1998, Full-Time, Year-Round Workers, Table 7.

[Net income has been determined by subtracting FICA (7.65 percent) and the tax liability for a single person (one withholding allowance).]

**LINE 1a, Wages and Salaries:** Enter the average monthly total of all salaries, wages, contract-related benefits, income from second jobs and bonuses.

**LINE 1b, Interest and Dividend Income:** Enter the average monthly total of dividends and interest income.

**LINE 1c, Business Income:** Enter the average monthly income from self-employment.

**LINE 1d, Spousal Maintenance Received:** Enter the monthly amount of spousal maintenance actually received.

**LINE 1e, Other Income:** Enter the average monthly total of other income. (Other income includes, but is not limited to: trust income, severance pay, annuities, capital gains, pension retirement benefits, workers compensation, unemployment benefits, social security benefits and disability insurance benefits.)

**LINE 1f, Total Gross Monthly Income:** Add the monthly income amounts for each parent (lines 1a through 1e) and enter the totals on line 1f.

## MONTHLY DEDUCTIONS FROM GROSS INCOME

Allowable monthly deductions from gross income are defined under INCOME STANDARD #5: Determination of net income. (See page 2.)

Monthly Average of Deductions: If a deduction is annual or varies during the year, divide the annual total of the deduction by 12 to determine a monthly amount.

**LINE 2a, Income Taxes:** Enter the monthly amount actually owed for state and federal income taxes. (The amount of income tax withheld on a paycheck may not be the actual amount of income tax owed due to tax refund, etc. It is appropriate to consider tax returns from prior years as indicating the actual amount of income tax owed if income has not changed.)

**LINE 2b, FICA/Self Employment Taxes:** Enter the total monthly amount of FICA, Social Security, Medicare and Self-employment taxes owed.

**LINE 2c, State Industrial Insurance Deductions:** Enter the monthly amount of state industrial insurance deductions.

**LINE 2d, Mandatory Union/Professional Dues:** Enter the monthly cost of mandatory union or professional dues.

**LINE 2e, Pension Plan Payments:** Enter the monthly cost of pension plan payments. (For information regarding limitations on the allowable deduction of voluntary pension plan payments, refer to INCOME STANDARD #5: Determination of net income. See page 2.)

**LINE 2f, Spousal Maintenance Paid:** Enter the monthly amount of spousal maintenance actually paid pursuant to a court order.

**LINE 2g, Normal Business Expenses:** If self-employed, enter the amount of normal business expenses. (Pursuant to INCOME STANDARD #5: Determination of net income, "justification shall be required for any business expense deduction about which there is a disagreement." See page 2.)

**LINE 2h, Total Deductions From Gross Income:** Add the monthly deductions for each parent (lines 2a through 2g) and enter the totals on line 2h.

**LINE 3, Monthly Net Income:** For each parent subtract total deductions (line 2h) from total gross monthly income (line 1f) and enter these amounts on line 3.

**LINE 4, Combined Monthly Net Income:** Add the parents' monthly net incomes (line 3) and enter the total on line 4.

If the combined income on line 4 is less than \$600, skip to line 7.

**LINE 5, Basic Child Support Obligation:** In the work area provided on line 5, enter the basic support obligation amounts determined for each child. Add these amounts together and enter the total in the box on line 5. (To determine a per child basic support obligation, see the following economic table instructions.)

## ECONOMIC TABLE INSTRUCTIONS

To use the Economic Table to determine an individual support amount for each child:

- Locate in the left-hand column the combined monthly net income amount closest to the amount entered on line 4 of Worksheet (round up when the combined monthly net income falls halfway between the two amounts in the left-hand column);
- locate on the top row the family size for the number of children for whom child support is being determined (when determining family size for the required worksheets, do not include children from other relationships); and
- circle the two numbers in the columns listed below the family size that are across from the net income amount. The amount in the "A" column is the basic support amount for a child up to age 11. The amount in the "B" column is the basic support amount for a child 12 years of age or older.

**LINE 6, Proportional Share of Income:** Divide the monthly net income for each parent (line 3) by the combined monthly net income (line 4) and enter these amounts on line 6. (The entries on line 6 when added together should equal 1.00.)

**LINE 7, Each Parent's Basic Child Support Obligation:** Multiply the total basic child support obligation (amount in box on line 5) by the income share proportion for each parent (line 6) and enter these amounts on line 7. (The amounts entered on line 7 added together should equal the amount entered on line 5.)

If the combined monthly net income on line 4 is less than \$600, enter on line 7 each parent's support obligation, which is the presumptive minimum amount of \$25 multiplied by the number of children. Then skip to line 15(a) and enter the same amount.

**PART II: HEALTH CARE, DAY CARE, AND SPECIAL CHILD REARING EXPENSES**

Pursuant to ALLOCATION STANDARD #4: “the court may exercise its discretion to determine the necessity for and the reasonableness of all amounts ordered in excess of the basic child support obligation.” (See page 2.)

Pursuant to ALLOCATION STANDARD #2: Health care expenses and #3: Day care and special child rearing expenses, extraordinary health care, day care and special child rearing expenses shall be shared by the parents in the same proportion as the basic support obligation. (See page 2.) NOTE: The court order should reflect that extraordinary health care, day care and special child rearing expenses not listed should be apportioned by the same percentage as the basic child support obligation.

Monthly Average of Expenses: If a health care, day care, or special child rearing expense is annual or varies during the year, divide the annual total of the expense by 12 to determine a monthly amount.

**HEALTH CARE EXPENSES**

**LINE 8a, Monthly Health Insurance Premiums Paid For Child(ren):** List the monthly amount paid by each parent for health care insurance for the child(ren) of the relationship. (When determining an insurance premium amount, do not include the portion of the premium paid by an employer or other third party and/or the portion of the premium that covers the parent or other household members.)

**LINE 8b, Uninsured Monthly Health Care Expenses Paid For Child(ren):** List the monthly amount paid by each parent for the child(ren)’s health care expenses not reimbursed by insurance.

**LINE 8c, Total Monthly Health Care Expenses:** For each parent add the health insurance premium payments (line 8a) to the uninsured health care payments (line 8b) and enter these amounts on line 8c.

**LINE 8d, Combined Monthly Health Care Expenses:** Add the parents’ total health care payments (line 8c) and enter this amount on line 8d.

**LINE 8e, Maximum Ordinary Monthly Health Care:** Multiply the basic support obligation (line 5) times .05.

**LINE 8f, Extraordinary Monthly Health Care Expenses:** Subtract the maximum monthly health care deduction (line 8e) from the combined monthly health care payments (line 8d) and enter this amount on line 8f. (If

**DAY CARE AND SPECIAL CHILD REARING EXPENSES**

**LINE 9a, Day Care Expenses:** Enter average monthly day care costs.

**LINE 9b, Education Expenses:** Enter the average monthly costs of tuition and other related educational expenses.

**LINE 9c, Long Distance Transportation Expenses:** Enter the average monthly costs of long distance travel incurred pursuant to the residential or visitation schedule.

**LINE 9d, Other Special Expenses:** Identify any other special expenses and enter the average monthly cost of each.

**LINE 9e, Total Day Care and Special Expenses:** Add the monthly expenses for each parent (lines 9a through 9d) and enter these totals on line 9e.

**LINE 10, Combined Monthly Total of Day Care and Special Expenses:** Add the parents’ total expenses (line 9e) and enter this total on line 10.

**LINE 11, Total Extraordinary Health Care, Day Care and Special Expenses:** Add the extraordinary health care payments (line 8f) to the combined monthly total of day care and special expenses (line 10) and enter this amount on line 11.

**LINE 12, Each Parent’s Obligation For Extraordinary Health Care, Day Care And Special Expenses:** Multiply the total extraordinary health care, day care, and special expense amount (line 11) by the income proportion for each parent (line 6) and enter these amounts on line 12.

**PART III: GROSS CHILD SUPPORT OBLIGATION**

**LINE 13, Gross Child Support Obligation:** For each parent add the basic child support obligation (line 7) to the obligation for extraordinary health care, day care and special expenses (line 12). Enter these amounts on line 13.

**PART IV: CHILD SUPPORT CREDITS**

Child support credits are provided in cases where parents make direct payments to third parties for the cost of goods and services which are included in the standard calculation support obligation (e.g., payments to an insurance company or a day care provider).

the resulting answer is "0" or a negative number, enter a "0".)

**LINE 14a, Monthly Health Care Expenses Credit:** Enter the total monthly health care expenses amounts from line 8c for each parent.

**LINE 14b, Day Care And Special Expenses Credit:** Enter the total day care and special expenses amounts from line 9e for each parent.

**LINE 14c, Other Ordinary Expense Credit:** If approval of another ordinary expense credit is being requested, in the space provided, specify the expense and enter the average monthly cost in the column of the parent to receive the credit. (It is generally assumed that ordinary expenses are paid in accordance with the child's residence. If payment of a specific ordinary expense does not follow this assumption, the parent paying for this expense may request approval of an ordinary expense credit. This credit is discretionary with the court.)

**LINE 14d, Total Support Credits:** For each parent, add the entries on lines 14 a through c and enter the totals on line 14d.

**PART V: STANDARD CALCULATION/  
PRESUMPTIVE TRANSFER PAYMENT**

**LINE 15a,** if combined monthly income on line 4 is below \$600, for each parent enter the amount from line 7 on line 15a. If the court does not deviate from the standard calculation, the transfer payment should equal the amount in the paying person's column. Skip to Part VI.

**LINE 15b,** if combined income on line 4 is \$600 or more, for each parent subtract the total support credits (line 14d) from the gross child support obligation (line 13) and enter the resulting amounts on line 15b.

**LINE 15c,** Multiply line 3 by .45. If that amount is less than 15(b) enter that amount on line 15(c). If the amount is equal to or greater than line 15(b) leave line 15(c) blank. You do not qualify for the 45% net income limitation standard.

**LINE 15d,** Subtract the standard need amount (page 3, Basic subsistence limitation) from the amount on Line 3 for each parent. If that amount is less than Line 15(b) enter that amount or \$25 per child, whichever is greater, on line 15(d). If that amount is equal to or greater than line 15(b) leave line 15(d) blank. You do not qualify for a need standard limitation.

**LINE 15e,** Enter the lowest amount from lines 15(b), 15(c) and 15(d) on line 15(e). If the court does not deviate from the standard calculation, the transfer payment should equal the amount in the paying person's column.

**PART VI: ADDITIONAL FACTORS FOR  
CONSIDERATION**

Pursuant to INCOME STANDARD #1: Consideration of all income, "all income and resources of each parent's household shall be disclosed and considered by the court when the court determines the child support obligation of each parent." (See page 1.)

**LINE 16 a-h, Household Assets:** Enter the estimated present value of assets of the household.

**LINE 17, Household Debt:** Describe and enter the amount of liens against assets owned by the household and/or any extraordinary debt.

**OTHER HOUSEHOLD INCOME**

**LINE 18a, Income of Current Spouse:** If a parent is currently married to someone other than the parent of the child(ren) for whom support is being determined, list the name and enter the income of the present spouse.

**LINE 18b, Income of Other Adults In The Household:** List the names and enter the incomes of other adults residing in the household.

**LINE 18c, Income of Children:** If the amount is considered to be extraordinary, list the name and enter the income of children residing in the home.

**LINE 18d, Income from Child Support:** List the name of the child(ren) for whom support is received and enter the amount of the support income.

**LINE 18e, Income from Assistance Programs:** List the program and enter the amount of any income received from assistance programs. (Assistance programs include, but are not limited to: temporary assistance for needy families, SSI, general assistance, food stamps and aid and attendance allowances.)

**LINE 18f, Other Income:** Describe and enter the amount of any other income of the household. (Include income from gifts and prizes on this line.)

**LINE 19, Nonrecurring Income:** Describe and enter the amount of any income included in the calculation of gross income (LINE 1f) which is nonrecurring. (Pursuant to DEVIATION STANDARD #1b: Nonrecurring income, “depending on the circumstances, nonrecurring income may include overtime, contract-related benefits, bonuses or income from second jobs.” See page 3.)

**LINE 20, Child Support Paid for Other Children:** List the names and ages and enter the amount of child support paid for other children.

**LINE 21, Other Children Living in Each Household:** List the names and ages of children, other than those for whom support is being determined, who are living in each household.

**LINE 22, Other Factors For Consideration:** In the space provided list any other factors that should be considered in determining the child support obligation. (For information regarding other factors for consideration, refer to DEVIATION STANDARDS. See page 3.)

Nonparental Custody Cases: When the children do not reside with either parent, the household income and resources of the children’s custodian(s) should be listed on line 22.

**WASHINGTON STATE CHILD SUPPORT SCHEDULE**  
**ECONOMIC TABLE**  
**MONTHLY BASIC SUPPORT OBLIGATION PER CHILD**  
**(KEY: A = AGE 0-11 B = AGE 12-18)**

Combined Monthly Net Income	One Child Family		Two Children Family		Three Children Family		Four Children Family		Five Children Family	
	A	B	A	B	A	B	A	B	A	B
For income less than \$600, the obligation is based upon the resources and living expenses of each household. Minimum support shall not be less than \$25 per child per month except when allowed by RCW 26.19.065(2).										
600	133	164	103	127	86	106	73	90	63	78
700	155	191	120	148	100	124	85	105	74	91
800	177	218	137	170	115	142	97	120	84	104
900	199	246	154	191	129	159	109	135	95	118
1000	220	272	171	211	143	177	121	149	105	130
1100	242	299	188	232	157	194	133	164	116	143
1200	264	326	205	253	171	211	144	179	126	156
1300	285	352	221	274	185	228	156	193	136	168
1400	307	379	238	294	199	246	168	208	147	181
1500	327	404	254	313	212	262	179	221	156	193
1600	347	428	269	333	225	278	190	235	166	205
1700	367	453	285	352	238	294	201	248	175	217
1800	387	478	300	371	251	310	212	262	185	228
1900	407	503	316	390	264	326	223	275	194	240
2000	427	527	331	409	277	342	234	289	204	252
2100	447	552	347	429	289	358	245	303	213	264
2200	467	577	362	448	302	374	256	316	223	276
2300	487	601	378	467	315	390	267	330	233	288
2400	506	626	393	486	328	406	278	343	242	299
2500	526	650	408	505	341	421	288	356	251	311
2600	534	661	416	513	346	428	293	362	256	316
2700	542	670	421	520	351	435	298	368	259	321
2800	549	679	427	527	356	440	301	372	262	324
2900	556	686	431	533	360	445	305	376	266	328
3000	561	693	436	538	364	449	308	380	268	331
3100	566	699	439	543	367	453	310	383	270	334
3200	569	704	442	546	369	457	312	386	272	336
3300	573	708	445	549	371	459	314	388	273	339
3400	574	710	446	551	372	460	315	389	274	340
3500	575	711	447	552	373	461	316	390	275	341
3600	577	712	448	553	374	462	317	391	276	342
3700	578	713	449	554	375	463	318	392	277	343
3800	581	719	452	558	377	466	319	394	278	344
3900	596	736	463	572	386	477	326	404	284	352
4000	609	753	473	584	395	488	334	413	291	360
4100	623	770	484	598	404	500	341	422	298	368
4200	638	788	495	611	413	511	350	431	305	377
4300	651	805	506	625	422	522	357	441	311	385
4400	664	821	516	637	431	532	364	449	317	392
4500	677	836	525	649	438	542	371	458	323	400
4600	689	851	535	661	446	552	377	467	329	407
4700	701	866	545	673	455	562	384	475	335	414
4800	713	882	554	685	463	572	391	483	341	422
4900	726	897	564	697	470	581	398	491	347	429
5000	738	912	574	708	479	592	404	500	353	437
5100	751	928	584	720	487	602	411	509	359	443
5200	763	943	593	732	494	611	418	517	365	451
5300	776	959	602	744	503	621	425	525	371	458
5400	788	974	612	756	511	632	432	533	377	466
5500	800	989	622	768	518	641	439	542	383	473
5600	812	1004	632	779	527	651	446	551	389	480
5700	825	1019	641	791	535	661	452	559	395	488
5800	837	1035	650	803	543	671	459	567	401	495
5900	850	1050	660	815	551	681	466	575	407	502
6000	862	1065	670	827	559	691	473	584	413	509
6100	875	1081	680	839	567	701	479	593	418	517
6200	887	1096	689	851	575	710	486	601	424	524
6300	899	1112	699	863	583	721	493	609	430	532
6400	911	1127	709	875	591	731	500	617	436	539
6500	924	1142	718	887	599	740	506	626	442	546
6600	936	1157	728	899	607	750	513	635	448	554
6700	949	1172	737	911	615	761	520	643	454	561
6800	961	1188	747	923	623	770	527	651	460	568
6900	974	1203	757	935	631	780	533	659	466	575
7000	986	1218	767	946	639	790	540	668	472	583

In general setting support under this paragraph does not constitute a deviation. The economic table is presumptive for combined monthly net incomes up to and including five thousand dollars. When combined monthly net income exceeds five thousand dollars, support shall not be set at an amount lower than the presumptive amount of support set for combined monthly net income of five thousand dollars unless the court finds a reason to deviate below that amount. The economic table is advisory but not presumptive for combined monthly net income that exceeds five thousand dollars. When combined monthly net income exceeds seven thousand dollars, the court may set support at an advisory amount of support set for combined monthly net incomes between five thousand and seven thousand dollars or the court may exceed the advisory amount of support set for combined monthly net incomes of seven thousand dollars upon written findings of fact.