

COA No. 66656-8-I

COURT OF APPEALS, DIVISION I  
STATE OF WASHINGTON

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STATE OF WASHINGTON, Petitioner/Appellee,

vs.

FANTAHUEN M. HUSSEIN, Appellant/Plaintiff

Vs.

MARINA GLISIC, Respondent/Defendant.

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King County Superior Court the Honorable Judge Dean S. Lum

Cause Numbers **09-2-01102-8 SEA**

**Consolidated with 09-3-07867-3 SEA**

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OPENING BRIEF OF APPELLANT

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COURT OF APPEALS DIV I  
STATE OF WASHINGTON

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### Table of Cases

[Here list cases, alphabetically arranged, with citations complying with rule 10.4(g), and page numbers where each case appears in the brief. Washington cases may be first listed alphabetically with other cases following and listed alphabetically.]

### Constitutional Provisions

[Here list constitutional provisions in the order in which the provisions appear in the constitution with page numbers where each is referred to in the brief.]

### Statutes

[Here list statutes in the order in which they appear in RCW, U.S.C., etc., with page numbers where each is referred to in the brief. Common names of statutes may be used in addition to code numbers.]

### Regulations and Rules

[Here list regulations and court rules grouped in appropriate categories and listed in numerical order in each category with page numbers where each is referred to in the brief.]

### Other Authorities

[Here list other authorities with page numbers where each is referred to in the brief.]

Note: For form of citations generally, see sections 71 through 76 of F. Wiener, *Briefing and Arguing Federal Appeals* (1967).

## **I. ASSIGNMENT OF ERRORS**

A. Assignments of Error 1: Trial Court erred in granting respondent's petition for an order of protection since petitioner had failed to show at her own TRO hearing without showing good cause why court should continue TRO another two weeks.

Assignments of Error 2: By refusing to vacate the Order of Protection where party requesting same failed to appear at hearing and court granted not only continuance but it also reissued an order of restraint and no one was present to request reissuance of order exceeded the authority of the law.

Assignments of Error 3: By granting a restraining order against father and children based on petition filed by respondent wherein she failed to appear at prior hearings without authority of law nor any incident alleged against the party and the children in the petition meant court lacked jurisdiction over children and could not issue order for party where children were not subject to court's authority.

Assignment of Error 4: The trial court erred in failing to obtain jurisdiction over the petition for a protection order based on the matter for which appellant was arrested, tried and acquitted, and that was the basis for the petition for the protection filed and ultimately granted for respondent.

Assignment of Error: 5 The trial court erred in allowing the testimony offered by Mrs. Marina Glisic instead of the couple's family banker when Mrs. Glisic acknowledged she had taken over \$20,000 from appellant's separate settlement claims and placed it into a separate account where only she had access and usage and appellant got no use from any of those funds taken, and was not a certified public accountant, estate

attorney, business analysis manager or had any credentials to value the equitable interest for the parties and there was no indication the requirements of RCW 26.16.010 were considered.

Assignment of Error: 6 The trial court erred in failing to set for the appropriate findings in how it determined the value of appellant's settlement amount and any interest owed that was admittedly used by respondent Glisic and denying setoff against claimed back child support during the period when evidence showed both State of Washington and appellant were supporting the children at the same time.

Assignment of Error: 7 The trial court erred in considering appellant's interest in the separate bank accounts held by Mrs. Glisic where those funds were admittedly from appellant's various accounts when making a fair and equitable division of assets.

Assignment of Error: 8 The trial court erred in failing to properly characterize and value the family bank accounts and provide the basis for its determination that respondent would not be ordered to pay any moneys taken from appellant's separate funds:

(a) The trial court erred in failing to include and divide the bank account assets as part of the property division and instead retained the same for the benefit of the respondent or the children without allowing setoff for that percentage that would make such a decision equitable even if not equal; (b) The trial court erred in awarding protection order to respondent which included compelling appellant, living in a separate home, to vacate that home for the benefit of respondent who did not reside in the home or within 500 feet of the home, for her lifetime, obligating to pay costs of moving, credit and background

check, truck leasing, early termination of less penalty, relocation fees and a place so situated as to not ever be in any neighborhood that respondent may so choose to move, and then failing to include the value of the costs associated therewith in its final calculations for determining a fair and equitable division of property for the purpose of child support setoff and any back child support determined to be owed.

Assignment of Error:   9   The trial court erred in awarding Mrs. Glisic all of the bank balances as of mid May, 2008, and failing to consider the benefits to appellant and the community in the spending down of the bank account prior to appellant leaving the home and before trial.

Assignment of Error:  10  The trial court erred in finding that appellant was not entitled to setoff against the amount of bail posted for respondent to bail bondsman, debts which Mrs. Glisic testified were incurred for the benefit of herself alone and incurred without for the benefit to the community, but served a community end and therefore a community obligation.

Assignment of Error:  11  The trial court erred in calculating the extent of community and separate property in rendering its decision regarding the transfer payments from appellant's accounts and the separate accounts respondent transferred those moneys into and in reaching a fair and equitable division of property.

Assignment of Error:  12  The trial court erred in obligating Appellant to pay costs associated with court ordered anger management, domestic violence counseling, supervised visitation, back child support to State of Washington for a period of time he clearly had been paying to maintain his children's living and was unaware that Mrs. Glisic had been getting assistance from the Department of Social and Health Services

through their Temporary Aide to Needy Families program and awarding Mrs. Gliic the costs of her health insurance.

Assignment of Error: 13 Trial court erred in awarding attorney's fees to public defender personally without considering RCW 2.52 and did not consider that appellant had been declared indigent whereas there is not order on record that respondent was indigent; ( a ) the trial court abuse its discretion under Washington case law and without consideration of the limitations of RCW 26.09.140 in awarding attorney's fees to respondent Glisic's attorney Kristofer Amblad, Northwest Justice Project.

Assignment of Error: 14 Trial court erred in granting ex parte communications in the form of a motion "that he be cut off from offering anymore exhibits at this point . . . I will allow you to call witnesses out of order ..." VRP, page 6, lines 10 thru 19 as appellant was unaware that defendant's case could move out of order and had no opportunity to offer objections or be heard.

## **II. ISSUES PERTINING TO ERRORS**

### Issues Pertaining to Assignments of Error

No. 1 \_\_\_ Whether court lacks jurisdiction once party that was properly before the court fails to appear at the next scheduled appearance and leaves court without authority to grant order in favor of party who has absented themselves from the court on their requested hearing day.

No. 2 \_\_\_ Whether such an act makes any judgment arising there from void as well as those it is used as grounds for further orders connected therewith and are likewise void.

No. 3 \_\_\_ Whether appellant's rights to due process were violated when he lost custody and control over his children, in essence, lost his parental rights and all decision making power because of an order of protection that could not be substantiated on its own merits but was rather done because City of Seattle had charged appellant with violation of "No Contact" order issued out of City of Seattle Municipal Court.

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

This started as a petition for an anti-harassment order filed by appellant, Fantahuen M. Hussein against Attiba Fleming, cause number #09-2-01084-6. [CP 219 -260]. Prior to that filing respondent Mrs. Glisic had made no reports nor had she filed any court papers with regard to any acts or conduct of appellant, Mr. Hussein, since the no contact order issued out of City of Seattle Vs. Fantahuen M. Hussein, Cause # 520274, [CP 585 – 591], which issued in May 2008.

The matter in City of Seattle Vs. Fantahuen M. Hussein is so intriguingly intertwined into the rulings and considerations of this instant matter that appellant must assert here as a part of the statement of this case the connection and show how it served as the nexus for the ruling of a protection, which is one of the judgments being appealed herein. In the matter of City of Seattle Vs. Hussein the parties had agreed to a Stipulated Order of Continuance, [CP 592 – 593]. In that order two things occurred. One, appellant waived

his right to speedy trial; and two, he surrendered himself to that court's jurisdiction beyond the statutory one year limit. During the entire period of time appellant attended anger management, domestic violence classes and fully participated in the program and with program staff. He did that for over 38 consecutive weeks. In addition, he paid all the fees required. However, and after over 38 weeks, but more importantly, after respondent, Mrs. Glisic, alleged a violation of the no contact order from Municipal Court of the City of Seattle and appellant was arrested, that conduct violated the Stipulated Order of Continuance's conditions for release. The City therefore moved to vacate the stipulated order of continuance and proceed to sentencing. At that time appellant argued that he wanted a full trial but only after the trial of the new charges under City of Seattle Vs. Fantahuen M. Hussein, Cause # 544652, [CP 585-591(Exhibit 62)]. If one is to make a fair and unbiased decision as to the imposition of domestic violence restrictions under RCW 26.09.191, then one must look to the "interest of the children" and not allegation made. In the matter that lead to the filing, and then subsequent civil order of protection, it was the respondent who interjected and used the court system to assist her live-in mate, Attiba Fleming, in avoiding being barred from coming near or around the parties' children. There was no incident upon which the court could have exercised jurisdiction to grant order of protection to party that fails to appear, as Ms. Glisic. [CP 515, 83-84, 510-514].

During the course of the many hearings had in the various courts, Office of Administrative Hearings, cause number: Docket # 2010-C-2321, DSHS # 2104098, [(Exhibit 23[clerk's papers location is unknown because appellant could not afford to pay

Clerk's Fees and was denied an order of indigency which would pay for the same)]CP 585-591].

In response to appellant filing his petition for an anti-harassment order against Mr. Fleming Ms. Glisic filed for a protection order against Mr. Hussein. It is at that time that Mr. Hussein learns that Ms. Glisic and Mr. Fleming are a serious relationship and proceeds to file a Petition for Marriage Dissolution with Children. In the petition Mr. Hussein took the position of a plaintiff because he was alleging malfeasance and moneys owed that had been wrongfully claimed, Garnishment[page 2 of 13 of exhibits matrix] under Superior Court of Washington Cause # 08-2-32570-9SEA, which was a complaint for Unlawful Detainer against the separate estate of Ms. Glisic. In fact, the judgment that issued granting money judgment against Mr. Hussein was vacated. [CP 585-591(exhibit matrix page 5 of 13)].

All pretrial motions for relief made by appellant with regard to custody, vacating temporary protection order, striking children from petition for order of protection filed September 29, 2009 by Ms. Glisic without due consideration for the rights of the parties instead court made its rulings based upon procedural failures claimed by counsel for Ms. Glisic Kristofer Amblad. Court granted all motions made with regard to denying appellant right to call witnesses, get subpoena issued, compel discovery and for continuance for the purpose of completing discovery. [CP 515, 532-536, 510-514, 83-84, 353-353, 507-507, 313-314, 508-509 and 571-583].

The case proceeded to trial over the objections of appellant. Court moved forward without interpreters being provided, when witnesses had not been subpoenaed that needed the same in order to be present and testify with regard to the parenting ability and

skills of the parties with relationship to the question of the residential time of the children involved. Appellant appealed to the trial court to grant him at least a separate hearing for his 60(b) motion with regard to the granting of the protection order and extending it to the children, even temporarily, was a violation of his constitutional rights and was a severe punishment within the meaning of the eighth amendment. The court denied the motion without a hearing. The court also granted sanction against Mr. Hussein based the allegations made by Kristofer Amblad that he did not receive notice of appellant's motion hearing for vacating TRO and other relief and the court granted sanctions. The record indicates that Mr. Amblad was not the attorney for any other matter than to assist Ms. Glisic in securing the protection order. The court did not find the record sufficient, and while it was and is clearly absent any Notice of Appearance until after the filings made by appellant court still granted sanctions to Mr. Amblad personally, and not the defender's association that Mr. Amblad worked out of.

The marriage dissolution proceeded to trial. The court granted a motion in limine suppressing all evidence and witnesses listed that Mr. Amblad said he did not receive before the discovery cutoff date. In essence, the court suppressed appellant's entire case and when appellant filed a CR 41 motion the court denied the motion and proceeded to render its judgments which appeal is taken herein.

Respondent/defendant, MARINA GLISIC, and Petitioner/plaintiff, FANTAHUEN M. HUSSEIN, were wife and husband, a marital community under the both the laws of his religion and the State of Washington. In February 2008 the husband asked his wife a simple question; **“Where are the settlement checks that I got for my personal injury settlement?”** She refused to tell what she had done with them. The

husband departed the home in order to go to work and avoid further confrontation with his wife with regard to discovering what she had done with his checks and why. The wife alleges that while she was outside the home that her purpose was to stop husband from taking family car. A brief argument ensued. The gist of which appears not to be relevant throughout all the subsequent hearings, though it is relevant on appeal and was offered by husband as a defense to the charge of assault, was that husband was provoked into the actions that followed because wife wrongfully continued to withhold his property and to provoked husband into taking car keys.

In taking the car keys, and admitting that he did so, neighbors reported seeing husband “bear hug” his wife. Essentially, that is what the court later found, 1) constituted an act of DV, and 2) husband had waived his right to trial when he entered into a Stipulated Order of Continuance, which appears to be some creature of its own, though it appears to intend the same effect as a “deferred prosecution”, and 3) based upon the allegations leveled by wife, under Cause No. 544652, the Court found that the conduct described in the complaint, coupled with appellant’s refusal to admit guilt of the charge under 520274 number, that his SOC should be revoked and did so only on the basis of the SOC and found that appellant was guilty of Domestic Violence (DV) without a trial.

Digressing, in May 2008, some three months later, appellant received a summons to appear in the Seattle Municipal Court for arraignment on the charge of simple assault (DV), SMC 12.060. The charge stemmed from the facts stated above that respondent had refused to tell what she had done with plaintiff/petitioner’s settlement checks, amounting to over \$39,000, though no criminal trial was had on the charges, and in the dissolution trial the court granted a motion of public defender’s office on behalf of wife to not allow

any evidence submitted for which counsel 'claimed' he received after discovery cutoff schedule order and court agreed to sanction husband by granting the motion and husband could present no evidence or witnesses at the time of trial because he violated Civil Rules of Procedure for family law matters and discovery, albeit, unintentional, the court sanctioned him anyway.

Record indicates that plaintiff/petitioner sought to leave the home to go to work that February day after failing to get any cooperation from his wife. She admits that she did take the keys from his car because she thought he was leaving her without transportation. And those are the essential events of the February argument that lead to criminal prosecution, a quasi-deferred prosecution (Stipulated Order of Continuance is what the municipal attorney uses in place of deferred prosecution because there is no requisite to recite one's guilt before entering into this type of 'agreement' as is required under the statutes which authorizes "plea bargains"), No Contact Order, Orders to attend Anger Management and Domestic Violence program and four temporary order of protection and two permanent orders of protection, saying essentially the same and requiring, essentially, the same judgments against appellant. However, the respondent, after charging petitioner/plaintiff with a "new" charge; to wit, violation of a no contact order and new assault charges were filed by Seattle City Attorney, along with that, the State of Washington assigned a public defender for both parties, husband and wife.

In the case where the public defender was assigned to assist the husband, it was against the wife's charges, which were being prosecuted by the City of Seattle Attorney, while at the same time, being prosecuted by the public defender's office at a civil protection hearing and then eventually a divorce proceeding. In the divorce proceeding,

the subject of this appeal, the state provided counsel to the wife, though it had determined that the husband was, likewise, indigent and entitled to legal counsel at the expense of the public.

This became problematic in that the public defender's office would not assist husband in all matters and husband was required to hire paid counsel, though he could not afford it, because there was a conflict of interest of counsels in the public defender's office. However, that office did prove that petitioner husband was not guilty of the second charge and was fully acquitted by a jury trial. However, the public defender for the respondent wife was able to have that jury verdict nullified through some unknown maneuvers used in the dissolution of marriage and the divorce court judge refused to concede that under the circumstances where wife falsely accused husband that there was a wash between the two charges of the wife. She had falsely accused and charged husband in second incident and the facts determined that.

This is even more troubling when one recognizes that court at every juncture punished or sanctioned husband as pro se and did not sanction any of the many counsels, both public and private, that assisted husband. For example, husband had attorney of record in the dissolution matter during the time he was sanctioned with costs and had his hearings stricken on procedural grounds though the record indicates that husband's counsel was aware of the procedural deficiencies but did nothing to correct those deficiencies.

There is only one incidence of a domestic violence on record and that incident is being appealed and has not been heard at the time of this briefing, and the additional protection orders and TROs were not reasonable and contrary to the law because in all

those matters the court lacked personal jurisdiction over husband when wife failed to appear for several hearings and somehow was able to have matters continued without appearing to make a motion to continue.

Moreover, wife was allowed to simply call the court whenever she didn't appear and was not sanctioned or required to offer proof of good cause why she did not appear nor was she denied the ability to present any evidence as appellant was, and he did call into the court himself, and gave a doctor's note upon return, all unlike that of Mr. Glisic.

However, the trial court having issued an order of protection relied on its own order of protections to cite as grounds justifying that appellant was a person with a Domestic Violence history and therefore and indeed, should be restricted under RCW 26.09.191, which, while allowing some type of restrictions, does not allow for the restrictions as found in the order granting a continued protection for an additional five years with regard to seeing his children, who were never a valid part of any protection order and generally, courts accept that the dissolution decree would serve to sever the relationship permanent whereas a domestic violence protection order issues because the parties will get back together at the end of the term of punishment or injunction and restriction of liberty upon the party so enjoined the child visitation restrictions portion requiring supervised visitation and attending and paying for additional DV court ordered classes which were directly related to the Domestic Violence conviction in Seattle Municipal Court, under Cause No. 520274, which were already attended by appellant for over 38 weeks prior to the new imposition of the same judgment order issued previously under the cause number 09-2-01102-8. The court went on with its imposition on Mr. Hussein liberty, though this was not a criminal trial and in fact appellant was denied his

request for a jury trial, thereby, that appellant is enjoined from going to his own home which is over 500 feet away from alleged protected person's (alleged because the judgment is void, but no determination or hearing has been had with regard to appellant's claims that the judgment is void) residence and to stay the portion that represents that appellant is not to go to the parks in the City of Seattle and Stay enforcement of the entire judgment pending appeal.

#### **IV Summary of Argument**

Appellant is entitled to a reversal of the judgments granting respondent an order of protection, restricting visitation with children and being denied setoff for separate debts paid through court order, garnishment, on behalf of respondent Glisic in separate other civil litigations that did not involve appellant and for which appellant received no benefit nor was there any benefit to his children based upon the government's violations appellant rights under the laws, including but not limited to, the equal protection clauses and due process clauses of the laws of both Husband and Wife's Act, as well as the two constitutional protections at the clauses, phrases, sections and paragraphs that prohibit governmental authority to be exercised. This is especially so since there is no expressed right of government allowing congress or any other branch of government to impinge upon rights conferred under our written instruments of granting authority and then giving priority as to the order in which one is higher or lower than the other the Law expressed in the Constitution for the United States of America, at Article VI, mandates to the "judges in every state" that they are to be bound by the constitution and "any laws to the contrary notwithstanding". Additionally, and to assure that government would not

become a “tyrant” the constitution forbade “enforcement” of laws which “abridged” the rights “endowed by our creator” are laws which once made by a state legislature that can not lawfully be enforced and thereby entitling appellant to a reversal of the judgments requiring him to move, liberty interest, surrender his parental rights, .191 restrictions takes away his right to make any decisions with regard to his children’s upbringing and religion or culture. In the case at bar appellant asserts the rights that are “the supreme law of the land” and that such right are not to denied. Of those rights not expressed in writing and called laws but rather is expressed as “Endowed by our Creator” and contained within the Declaration of Independence, whose authority and position appellant relies on for a ruling of reversal and remand to correct the record.. In the absence of a crime punishment is not to be meted out by a court where there is no rehabilitative quality and is only done solely to punish. In this instant matter, this case became one of attorney versus pro se litigant. Court do not give a pro se a fair chance to bring there case forward, nor can a pro se bring their case properly before a court where that court refuses to issue the necessary subpoena and other orders, such as order to compel discovery and to share discovery materials that may tend to exculpate the party.

Appellants’ due process right were violated when the court granted an order to a party that had failed to appear. Moreover, when a jury of appellant’s and respondents’ peers heard the allegations of violation of no contact order they did not find that respondent was truthful and that appellant was. So, for the Superior Court to over rule the jury in that court is tantamount to usurpation of the jury system in favor of avoiding appeal and due process and the letter of the law. All of those actions of the court lead to the biases and prejudices that kept Mr. Hussein from having a fair trial and the process that he was due.

Where there are due process violation there is no legal authority to exercise and the order of the trial court were without legal authority and should be reversed at the point of .191 restrictions and the granting of a permanent protection order on behalf of both Ms. Glisic and the two minor children of the dissolved marriage and no order of payment should have been made and is contrary to RCW 2.52, et seq. This is especially so where the court that issued the order of indigency then order the indigent to pay the attorney's fees to the attorney directly so as to avoid the laws requirement that no person shall repay the legal aid society for services it has delivered but it shall be paid out of the public treasury. None of the laws protections served Mr. Hussein or his children in this matter and he and the children are still suffering from the effects of the void judgment and other order stemming there from.

## V. ARGUMENT

Where the charge of assault is raised one so charged in normally allowed the defense of provocation. In general "It is a defense to the charge of assault that the force used was lawful by a person who reasonably believes that he is about to be injured and when the force is not more than is necessary" WPIC 2.04.01. In the event that a court does not conduct a trial, it is reasonable to infer that due process was lacking and that counsel's role was to put on a defense such a defense, and since his client insisted that he was not guilty of the charges then before the courts, a trier of facts (jury) could have inferred that the defense was indeed "*not more than the force necessary*" to retrieve property (keys to car, money, and checks belonging separately to husband that were taken wrongfully by wife who refused to surrender property or to allow husband to leave to go

to church/work as teacher of children activities). That is the issue ongoing in the Court of Appeals, Division One under SMC Cause #250 Moreover, there was never a claim of “*great bodily injury*” or any injury for that matter. Indeed, the matter was so old that there was no evidence upon which to go to trial, though husband, not understanding the legal ramifications of entering into a Stipulated Order of Continuance, he did so with the advice of counsel to his hurt and harm. The conduct of counsel falls squarely into the realm of “*ineffective assistance of counsel*” in violation of the Sixth Amendment to the Constitution for the United States of America, and within the meaning of STRICKLAND (Citation omitted). Unlike other entities, public defender’s office’s attempts to directly address Fantahuen's argument that he is entitled to counsel under Article I, § 10 of the Washington Constitution and RCW 2.52 et seq. The public defender does not begins by acknowledging that Article I, § 10 "addresses the availability of judicial processes, such as discovery, to all parties." In the court's and public defender’s view, however, the constitution is satisfied if these processes are "available" in name only, they need not be available in reality. It is unimaginable that the court or public defender’s office would argue, if the question were before the Court, that the Washington Constitution does not require counsel for indigent parents in terminations and dependencies, given his recognition that the consequences of the complete termination of parental rights are so "dramatic." And dramatic they are as the results to date have been. Moreover, it amounts to a punishment within the meaning of the eighth amendment of the constitution as well as the corollary within the state constitution and is meted out under extreme circumstances of crime. The fact that appellant has a DV conviction on appeal does not raise to sufficient evidence of “not in the best interest of the children” standard to deny his right to decision making and

a certain amount of custody and control over his children if they are to receive their birthrights to language, culture and familial bonding. All these are in the best interest of the child. Even if the court genuinely believes that the incident for which a jury acquitted Mr. Hussein is not the correct verdict, he has circumvented the process that Mr. Hussein was due and thereby violated his fundamental right to due process and is entitled to a reversal of the judgments issued therefrom and related thereto (the garnishment for separate debts of Ms. Glisic against Mr. Hussein are void and connected to this trial).

The court and the public defender, Kristofer Amblac misconstrued Fantahuen's argument as being nothing more than an argument that Fantahuen was entitled to a lawyer under the common law. The State chose not to address the question of indigent counsel and interpreter at all.

The Court's denial of discovery request and subpoena, but also the compulsory attendance of witnesses, the presentation of helpful evidence, the ability to keep inadmissible evidence from being admitted, and an impartial decision based on all relevant facts and evidence-were not available to Fantahuen in any meaningful way because he did not have a lawyer and was told on many occasions that he could not use Kevin Johnson as his paralegal or assistant. Fantahuen was "not . . . well served because she was pro se"; RP agreeing that Fantahuen was unable to have evidence admitted that a lawyer could have brought in and that Fantahuen failed to make objections that the court would have sustained if made; Fantahuen "was at a significant disadvantage". The access to the courts required by Article I, § 10 must be meaningful access, which failed to occur given Fantahuen's utter

inability to put on a case in the trial below and his language barrier plus having had three additional matters filed in different venues by public defender.

Lack of counsel in a proceeding that is not adversarial, particularly for a nonparty against whom no relief will be entered, does not raise the same concerns of fairness, accuracy of decision-making, and appearance of impropriety that are raised when a party in an adversarial proceeding lacks counsel, has a language barrier, three other matters connected to this instant matter and was declared indigent for the purposes of determining his eligibility for legal aid services.

A non-Washington case cited , *In re Smiley*, 36 N.Y.2d 433, 330 N.E.2d 53, 369 N.Y.S.2d 87 (1975), actually supports Fantahuen. This case did not address a state constitutional provision like Article I, section 10, but instead relied on federal analysis. The issue in *In re Smiley* was whether counsel is required for indigent wives in **all** dissolution proceedings, whether or not children are involved. 330 N.E.2d at 55. Though the New York court rejected that argument, in doing so, it stated that counsel would be "essential" in "complicated matrimonial litigation," and noted that disputes over the custody of children would make a dissolution case complicated. *Id.* at 57;" as in this instant matter and appellant at every juncture requested both counsel and an interpreter that understood the dynamics of family law language and how it is used in context of a legal setting as opposed to a general setting and language usage.

#### **IV. THE COURT WAS REQUIRED TO APPOINT COUNSEL FOR FANTAHUEN BECAUSE OF THE COURT'S DUTY TO ADMINISTER JUSTICE IMPARTIALLY**

The courts' core judicial functions and powers are at the heart of our system of government. There is a long heritage of established principles regarding what

fairness means in adjudications. These principles are a source of guidance and can inform the Court's analysis of the requirements of Article I, section 10, discussed above. In addition, the courts' duties are a source of judicial power in their own right. See *Iverson v. Marine Bancorporation*, 83 Wn.2d 163, 167, 517 P.2d 197 (1973) (waiving filing fees because of court's duties to provide "fair and impartial administration of justice" and "to see that justice is done in the cases that come before the court"); *O'Connor v. Matzdor*- 76 Wn.2d 589,600,458 P.2d 154 (1969) (waiving filing fees because of court's duty to see that justice is done).

#### **FANTAHUEN HUSSEUB WAS ENTITLED TO COUNSEL AS A MATTER OF DUE PROCESS OF LAW**

The Court's analyzes due process are evident in its ruling that only in so far as it applies to Fantahuen's rights with respect to parenting his children. The court does not directly address Fantahuen's argument that his fundamental right of access to the courts is a separate right also protected by due process and that it requires the appointment of counsel.

The respondent's counsel will argue that terminations and parenting plans entered after dissolution trials are so fundamentally different from each other that the legal analysis applicable to the former is entirely inapplicable to the latter. But a parent has a liberty interest in the development of the parent-child relationship, not just its bare existence. See *Troxel v. Granville*, 530 U.S. 57, 65-66, 120 S. Ct. 2054, 147 L. Ed. 2d 49 (2000). Although terminations undeniably work a more extreme deprivation, parenting decisions in dissolution cases nonetheless place the parent at risk of losing a substantial part or nearly all of the care, custody, and companionship of the child and,

accordingly, parenting decisions are subject to strict due process constraints. *See In re Grove*, 127 Wn.2d at 237 (right to counsel extends to cases "where a fundamental liberty interest, similar to the parent-child relationship, is at rise") (emphasis added); *In re Marriage of Ebbighausen*, 42 Wn. App. 99, 103, 708 P.2d 1220 (1985) (Washington and federal due process prevented court from determining child's placement in dissolution action on basis of statements of lawyers in chambers outside the presence of the parents, rather than on evidence admitted in trial on the merits). As a Michigan court has explained: We agree that custody decisions and termination of parental rights are different situations, but find that both necessitate due process of law. While custody decisions are modifiable there is an important liberty interest in the development of the parent- child relationship. The loss of a parent's presence and contribution at each stage of a child's development cannot be compensated for after a modification of custody. Additionally, the standard of proof to be met in order to change an "established custodial environment" prevents change of custody except in the most compelling cases. *Molloy v. Molloy*, 247 Mich. App. 348, 637 N.W.2d 803, 806 (2001) (quoting Mich. Comp. Laws **S** 722.27(1)(c)) (citation and footnote omitted), *aff'd in part and vacated in nonrelevant part*, 466 Mich. 852,

Regarding the State's interests, the public defender will argue, that the state has a strong interest in not expending funds to pay for counsel in actions, like dissolutions, that are commenced by private parties because the State has no ability to control whether or not the actions are brought and thus it cannot control the amount of funds it will have to expend on counsel. However, regardless of the State's financial interest, it is overly simplistic to view a marital dissolution as a purely private affair. Civil marriage is an

institution created, maintained, and controlled by the State to serve State interests.

*Andersen v. King County*, 158 Wn.2d 1, 86-87, 138 P.3d 963 (2006).

Just as the State controls access to marriage, it also controls dissolution, division of property, and placement of children after a marriage ends. See Ch. 26.09 RCW. Unlike another contract between private parties, spouses are powerless to end a marriage and resolve contested issues, including parenting issues, on their own. Even if divorcing spouses agree in every respect, their stipulations must be approved and entered by a court to have effect, and the court still must independently agree that the best interests of the child will be served by any plan proposed jointly by the parties. See RCW 26.09.002, .181, .184, .187.

That said, Fantahuen and his temporary paid counsel are mindful of the potential cost to the State if the constitutional right of an indigent litigant like Fantahuen is recognized by the Court. But there can be neither response to nor rebuttal to Fantahuen's argument that the appointment of counsel in a case such as his quite possibly would have saved the State money, due to efficiency and time saved.

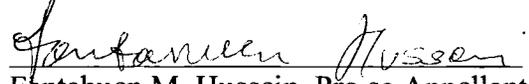
More broadly, neither the potential cost in some cases, nor the potential efficiencies and thus saving in others, should alone determine the outcome of the constitutional analysis. And, as emphasized in the opening and reply briefs, Fantahuen is not advocating for the provision of counsel in all dissolution cases raising parenting issues. Fantahuen tried but failed to find private counsel, this case was complex, and the parties were unevenly matched. It is only in such a case that counsel is constitutionally required.

In addition to those safeguards cited a handful of additional supposed safeguards to protect against an erroneous result in the absence of counsel. Many of these procedures were followed at least in letter in the trial below, but as the trial court concluded, Fantahuen was entirely disadvantaged and was unable to present his case effectively or adequately.

As to Fantahuen's argument that the guarantee of due process under Article I, section 3 of the Washington Constitution is broader than the federal constitution as well as his right under the aforementioned documents, then the court should have been mindful of appellant rights. An Analysis, of the six factors from State v. Gunwall, 106 Wn.2d 54, 720 P.2d 808 (1 986), comes up short. So, for all these reasons and the reason found in the record De Novo, appellant demands judgment reversing trial court and remanding ordering that both counsel be appointed and an interpreter be given that is able to interpret legal language into appellant's native tongue.

September 9, 2011

Respectfully submitted,

  
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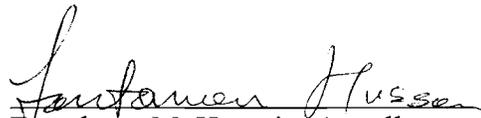
**CERTIFICATE OF SERVICE**

**Appellant's Opening Brief**

I, Fantahuen M. Hussein, pro se appellant, certify under penalty of perjury under the laws of the State of Washington that, on the date(s) stated below, I did the following:

On the 9<sup>th</sup> day of September, 2011, I hand-delivered a copy of the foregoing APPELLANT'S OPENING BRIEF to appellees, State of Washington, C/O King County Prosecuting Attorney's Office, Appellate Division, 516 Third Avenue South, Seattle, Washington 98104, and Respondent Marina Glisic C/O counsel, Kristofer Amblad, (the Attorney for respondent/defendant) at 401 2<sup>nd</sup> Avenue South, Seattle, Washington 98104 Northwest Defenders Association.

Dated this 9<sup>th</sup> day of September, 2011, in Seattle, Washington.

  
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