

NO: 67060-3-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

In re the Matter of:

BRYAN HENRY SHADEL

Appellant

v.

JENNIFER ANNE NAULING

Respondent

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR SNOHOMISH COUNTY

The Honorable Judge Ronald L. Castleberry

APPELLANT'S BRIEF

Bryan Henry Shadel, Pro Se
14751 N. Kelsey Street Suite 105 #232
Monroe, Washington 98272
(253) 561-959

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P.2d 674 (1995) (quoting State v. Ladenburg, 67 Wash.

Identification of Appellants

Appellant, Bryan Henry Shadel, Pro Se, presents this appellant's brief on appeal to the Washington Court of Appeals, Division One.

Assignment of Error

1. The trial court erred in abusing its discretion when it awarded custody and primary care of the parties' minor son to the Respondent/Mother.
2. The trial court erred in requiring an evaluation by an obviously, inexperienced evaluator, ignoring Appellants and GAL recommendation, unbiased and well-founded suggestion for a different evaluator.
3. The court erred in taking away Appellant's right to own and possess firearms.
4. The court erred in depriving Appellant of the opportunity to be heard, in full, and demonstrating favoritism in benefit of Respondent and her legal counsel, in violation of due process requirements of United States Constitution and Washington State Constitution.
5. The court erred in denying Appellant's Constitutional Due Process Rights to a fair hearing by impartial tribunal as the actions of Judge Castleberry lacked impartiality and, further, exhibited bias and prejudice toward Appellant, even in light of the facts presented to it by Appellant, the court record and the exhibits.
6. The court erred in failing to correct the courts previous decisions in violating Appellant's Bankruptcy Stay pursuant

to Title 11 of the United States Code at Sections 362(a)(22), 362(a)(23), 362(l) and 362(m) [*Bankruptcy Code The informal name for title 11 of the United States Code (11 U.S.C. §§ 101 - 1330), the federal bankruptcy law*].

Issues Pertaining to Assignment of Error

1. Did the trial court err in abusing its discretion when it awarded custody and primary care of the parties' minor son to the Respondent/Mother?
2. Did the trial court err in requiring an evaluation by an, obviously, inexperienced evaluator, ignoring Appellants and GAL recommendation, unbiased and well-founded suggestion for a different evaluator?
3. Did the trial court err in temporarily taking away Appellant's right to own and possess firearms?
4. Did the trial court err in depriving Appellant of the opportunity to be heard, in full, demonstrating favoritism in benefit of Respondent and her legal counsel, in violation of due process requirements of United States Constitution and Washington State Constitution?
5. Did the trial court err in denying Appellant's Constitutional Due Process Rights to a fair hearing by impartial tribunal as the actions of Judge Castleberry lacked impartiality and exhibited bias and prejudice toward Appellant, even in light of the facts presented to it by Appellant, the court record and the exhibits?
6. Did the trial court err in failing to correct the courts previous decisions in violating Appellant's Bankruptcy Stay pursuant

to Title 11 of the United States Code at Sections 362(a)(22), 362(a)(23), 362(l) and 362(m)? [*Bankruptcy Code The informal name for title 11 of the United States Code (11 U.S.C. §§ 101 - 1330), the federal bankruptcy law*]

Standard of Appellate Review

A trial court abuses its discretion if its decision is manifestly unreasonable or based on untenable grounds or untenable reasons. A court necessarily abuses its discretion if its decision is based on an erroneous view of law. The appearance of fairness doctrine applies to judicial and quasi-judicial decision makers. In family law matters the trial court is obliged to dispose of the property and liability of the parties in a manner that shall "appear just and equitable after considering all the factors.

Statement of the Case-Procedural History

On January 28, 2011 the honorable Judge Ronald L. Castleberry of the Snohomish County Superior Court entered orders finding that the parties had a meretricious relationship, granting custody the parties' minor child to the Respondent/Mother, ordered reintegration therapy, ordered child support and an order restricting Appellant's right to own firearms; inter alia. [**Verbatim Transcript Of Proceedings Dated 1/29/11 Pages 1-30**] [**Decree Of Dissolution Meretricious Relationship Pages 33-40**] [**Parenting Plan Pages 24-32**] [**Order of Child Support Pages 3-23**]

In Appellant's trial brief [**Trial Court Brief Appellant Pages 361-377**] the Appellant stated the extreme intransigence that he experienced from the Respondent/Mother and her Attorney Ms. Herber and prejudice and error at the hands of family court, upon De Novo Revisions [**Revision**

Pages 451-461] [Order Denying Motion To Revision Page 450] the and on numerous motions at the trial court level. **[Order Denying Motion To Vacate Page 449]** Appellant was literally thrown out of his home in violation of a Bankruptcy “Stay”, fought false allegations throughout the pendency of the case, threatened with arrest if he didn’t leave his home in favor of the Respondent’s *illegal* occupation thereof, was kept from any and all meaningful access to his son, was impoverished as result of having to fight outrageous and unconscionable allegations perpetrated by the Respondent/Mother and Ms. Herber, his personal assets including his business and its assets were lost or destroyed by Respondent and her legal counsel and he was denied discovery because of Ms. Herber’s complete refusal to cooperate.

Appellant, throughout the entire case, did everything in his power to reach an amicable settlement with the Respondent/Mother both on financial issues, parenting, and even upon property settlement, though Appellant never agreed with the position regarding the trial matter being a meretricious relationship and her addition to the title on his home was in dispute and considered to be fabricated. Nothing could be further from the truth and the Respondent stated herself that the only reason she even claimed a meretricious relationship was because a judge told her that it would be the only way she could be awarded temporary possession of his home.

In August of 2007, unable to take anymore physical and mental abuse, which continues to this very day, Appellant filed for primary custody of his son, Mason Bryan Shadel, and obtained a domestic violence restraining order against the Respondent/Mother while Appellant was

represented by the firm of Goldberg and Jones. At this point, the Respondents attorney and Appellant's attorney agreed between them to void the domestic violence restraining order and put in place a restraining order which prevent the parties from contacting each other. Although Appellant disagreed with this at the time, he eventually agreed to show good faith in an attempt to resolve the situation amicably. At the first court appearance the Mother's attorney, Ms. Julie Herber, didn't honor the agreement and, unprofessionally, vowed in the courtroom to come after Appellant for everything she could. This held up to certainly be the truth throughout the case as Ms. Herber saw to it that Appellant never saw his son, gauged Appellant for exceedingly high child support which has and continues to be grossly overpaid and was totally intransigent throughout the case, *on every level*.

The court ordered that Appellant would have his son every other weekend from 12-5 Saturday and Sunday and that a Guardian Ad Litem would be appointed immediately with a court date for review set for November 2007. Prior to this time, Appellant had been a daily part of his son's life and couldn't take that much of a separation. Appellant wrote the Mother on numerous occasions pleading with her to allow more time; but, everything was ignored or Appellant was told "no" in no uncertain terms--without good reason.

Over the next couple of months, Ms. Herber did everything in her power to delay and frustrate settlement between, prevent amicable settlement and purposely denied giving Appellant the much needed discovery. Further and most flagrantly Ms. Herber helped to violate the then existing Bankruptcy protection and, quite literally, had Appellant thrown out of his

own house in favor of her client moving in with her boyfriend which in turn forced Appellant to convert a chapter 13 bankruptcy to a chapter 7 causing further losses to his business and personal assets. ¹

Due to Ms. Herber's lack of cooperation and the Mothers' intransigence, Appellant was forced to go back to court for relief in having Ms. Herber sign the order for the appointment of a Guardian Ad Litem and to enforce access to his son; however, Appellant was pointed in a false light to the court as being unnecessarily litigious when Ms. Herber and the Respondent/Mother were the *proximate cause* of the false perception of Appellant. Said false perceptions, as outlined in the transcript, caused Appellant to be the recipient of *prejudicial treatment* by the court and resulted in Appellant not being able to see his son, Mason. **[Verbatim Transcripts of Proceedings Page 8, Line 8 – Page 9, Line 9] [Verbatim Transcripts of Proceedings Page 13, Lines 4 – 13] [Verbatim Transcripts of Proceedings Page 14, Line 16 – 22]**

As outlined above, Appellant was *illegally* thrown out of his home which resulted in Appellant not having a stable place with which to be with his son. **[Verbatim Transcripts of Proceedings Page 14, Line 20 – 22]** Further, the Respondent/Mother never did make the court ordered payments on mortgage arrearages and Respondent allowed said home to go into foreclosure. **[Verbatim Transcripts of Proceedings Page 4, Lines 9-13]**

¹ Title 11 of the United States Code at Sections 362(a)(22), 362(a)(23), 362(l) and 362(m)? [*Bankruptcy Code The informal name for title 11 of the United States Code (11 U.S.C. §§ 101 - 1330), the federal bankruptcy law*]

Respondent has not complied with any court orders and did as she pleased throughout the pendency of the case; even violating a bankruptcy “stay” just so that she could get her hands on Appellant’s home. To add insult to injury, after being thrown out of his house against a Bankruptcy “stay” the Respondent/Mother put all of Appellant’s household items and personal possessions in storage and stopped paying the bill violating not only bankruptcy orders but state court orders; resulting in Appellant losing access to same. Bankruptcy Code clearly precluded these actions. Upon pointing this out to the bankruptcy trustee, Appellant was informed that the Mother, Ms. Herber and the court *illegally* violated the stay and Appellant’s rights, Appellant was told, “It’s not the job of the trustee’s office to keep you in your house.” The trustee went on to state that “yes” it is illegal for them to have Appellant vacated while Appellant was in bankruptcy but it was up to Appellant to file a motion or proper claim in court to protect himself. In Appellant’s opinion, the Bankruptcy Trustee also failed to do her job as Appellant could not further afford his bankruptcy attorney.

At trial, matters started off fine. The judge was seemingly being very kind with Appellant and understood that Appellant wasn’t an attorney and was having trouble with trial/court processes. The court was also made well aware of Appellant’s hearing loss by Appellant and by Dr. Schau. The court seemed to be accommodating.

Appellant had 5 witnesses take the stand throughout the three-day trial; **[Witness List of Appellant Pages 331-349]** the all reporting the same threats and signs of abuse by not only the Respondent/Mother but by Ms.

Herber. One witness saw the Respondent/Mother lose her temper in the courthouse with Judge Castleberry responding, "So she has a temper, so what." "That doesn't make her a bad Mother". Throughout the trial, Jennifer and her attorney were caught by the court in several lies regarding her income, her work history, daycare costs and expenses and her account of monies paid towards Appellant's house. It honestly seemed as though everything was going in line with the law and also in Appellant's favor.

During the oral ruling, the judge came down on both parties for "putting Mason in the middle of this". The court actually claimed it was Appellant's fault that he hadn't seen his son in so long. The court also ruled that this was a meretricious relationship, that Respondent receives the house and all debt attached to it and that, basically, Appellant receives nothing except a path to reunification with his son which was a faulty path. Nothing stated about Respondent's intransigence and Ms. Herber's unprofessional attitude and intransigence. Walking out of the court room that day, Ms. Herber ran down the hall and hugged Commissioner Lester Stewart thanking him for his help and stating "I haven't seen you in a while." Commissioner Stewart ordered Appellant to vacate his home turning temporary possession over to the Respondent/Mother while Appellant was under bankruptcy protection. Quite obviously, there was some *skullduggery* going on with Ms. Herber, and, perhaps, Commissioner Stewart because the respondent's name NEVER appeared on the mortgage, the title or any other documents and there were never any joint assets. The respondent filed the lawsuit claiming a meretricious relationship 2 years after separation from Appellant and 2 weeks after he had filed for chapter 13 bankruptcy protection. The respondent also made clear in court documents that she only filed this lawsuit because a judge

told her it was the ONLY way she could be awarded temporary possession of Appellants home.

At the presentation hearing, the judge acted in an extremely unprofessional, prejudicial and accusatory manner against Appellant; faulting Appellant for *everything*. The court would not give Appellant ample time to go through the orders. Judge Castleberry then mocked appellants hearing loss, forced the court orders that attorney Herber had written upon him, with Appellant being placed in a room with Attorney Herber. Ms. Herber threatened Appellant with arrest if he didn't sign the orders the way she wanted him to. [*Appellant attempted to sign the documents "As To Form Only"*] This is clearly a violation of due process and a violation of Appellant's constitutionally protected rights. Simply put, Appellant was *not* listened to and Ms. Herber and Respondent were believed in every instance completely ignoring all witnesses and factual evidence. The court, having started out seemingly impartial ended up acting quite prejudicial in violation of court rules and both our state and federal constitutions.

In fact, a fair trial with a fair tribunal is a basic requirement of due process.² Every procedure which would offer a possible temptation to the average man as a judge not to hold the balance nice, clear, and true upon denies the person due process of law.³ The law goes further than requiring an impartial judge; it also requires that the judge appears to be impartial.⁴

² *State v. Madry*, 8 Wash.App. 61,68,504 P.2d 1156 (1972)

³ citing *Tumey v. State of Ohio*, 273 U.S. 510,532,47 S.Ct. 437,444,71 L.Ed. 749 (1972).

⁴ *State v. Post*, 118 Wash.2d 596,618,826 P.2d 172 (1992) (Citing *State v. Madry*, 8 Wash.App. 61,70,504 P.2d 1156 (1972).

Past decisions of Washington State Courts have applied the appearance of fairness doctrine when decision-making procedures have created an appearance of unfairness.⁵ The doctrine seeks to prevent "the evil of a biased or potentially interested judge,⁶ A judicial proceeding is valid only if it has an appearance of impartiality, such that a reasonably prudent and disinterested person would conclude that all parties obtained a fair, impartial, and neutral hearing.⁷ In case at hand, from the record, it appears that Appellant's faith was predetermined by the Superior Court Judge before conclusion of the case because of actions of the Judge and his attitude. **[Verbatim Transcripts of Proceedings Page 9, Lines 10 – 13]**
[Verbatim Transcripts of Proceedings Page 11, Line 23 – Page 12, Line 4] **[Verbatim Transcripts of Proceedings Page 12, Line 15]**
[Verbatim Transcripts of Proceedings Page 14, Lines 8 – 15]

Appellant believes that the damage caused to him is irreparable regarding the treatment of the court regarding his home and when the court ignored all the recommendations made by the GAL in the case and ignored the psychological evaluation completely by Dr. Schau. The court, sua sponte, came up with rulings based upon its prejudicial perception. **[Verbatim Transcript Of Proceedings Dated 1/29/11 Page 9, Line 14 – 25 and Page 10 Lines 1-5]** **[Verbatim Transcripts of Proceedings Page 13, Lines 4 – 13]**

⁵ *Smith v. Skagit Cy.*, 75 Wash.2d 715, 453 P.2d 832 (1969).

⁶ *State v. Finch*, 137 Wash.2d 792,808,975 P.2d 967 (1999).

⁷ *State v. Ra*, 144 Wash.App. 688, 705, 175 P.3d 609 (2008) citing *State v. Bilal*, 77 Wash.App. 720,722,893 P.2d 674 (1995) (quoting *State v. Ladenburg*, 67 Wash.App. 749, 754-55, 840 P.2d 228 (1992)).

Argument

1. Did the trial court err in abusing its discretion when it awarded custody and primary care of the parties' minor son to the Respondent/Mother?

The trial court's ruling was an abuse of discretion, manifestly unreasonable and should be overturned.⁸ Based on the trial court's comments and colloquy at the hearing, its failure to take into consideration the Guardian Ad Litem report [**Guardian Ad Litem Report Pages 388-390**] the and/or recommendations and its failure to consider Dr. Schau's psychological report make it appear as though it either misunderstood the law or disregarded it. "For the trial court to actually state that it was Appellant's fault that he had not seen his child and ignore reports that Appellant struggled to pay for, is not only shocking, it indicates the trial court's failure to review the facts and law applicable to this matter. "A trial court would necessarily abuse its discretion if it based its ruling on an erroneous view of the law."⁹ "A decision is based on untenable grounds or for untenable reasons if the trial court applies the wrong legal standard or relies on unsupported facts."¹⁰ Therefore, the trial court's ruling was an abuse of discretion, manifestly unreasonable and must be overturned.¹¹

[Verbatim Transcripts of Proceedings Page 9, Lines 10 – 13]

⁸ In re Marriage of Ziegler, 69 Wn. App. 602, 849 P.2d 695 (1993); In re Custody of Salerno, 66 Wn. App. 923, 833 P.2d 470 (1992).

⁹ Wash. State Phys.Ins.Exch&Assn v Fisons, 122 Wn. 2d 299, 339, 858P. 2d1054 (1993).

¹⁰ Mayer v. Sto Indus.! Inc., 156 Wn.2d 677,684,132 P.3d 115 (2006).

¹¹ In re Marriage of Ziegler, 69 Wn. App. 602, 849 P.2d 695 (1993); In re Custody of Salerno, 66 Wn. App. 923, 833 P.2d 470 (1992).

[Verbatim Transcripts of Proceedings Page 11, Line 23 – Page 12, Line 4] [Verbatim Transcripts of Proceedings Page 12, Line 15] [Verbatim Transcripts of Proceedings Page 14, Lines 8 – 15]

- 2. Did the trial court err in requiring an evaluation by an, obviously, inexperienced evaluator, ignoring Appellants and GAL recommendation, unbiased and well-founded suggestion for a different evaluator?**

Reunification counseling was to begin immediately; however, it did not. Shortly after the trial, Ms. Herber disputed the use of Don Layton as the reunification counselor even though the GAL already agreed to this. The judge wanted to use Mary Peterson and stated that if she is unavailable that Appellant was to contact Karen Glassman the Guardian Ad Litem and she will make two other recommendations. The newly appointed counselor will, then, make a recommendation to the court on what visitation should be ordered.

Appellant and the GAL, Karen Glassman, warned the court that Don Layton would do the best job and that any other counselor, especially those recommended by Ms. Herber would only protract matters. Further, no parenting plan should have been signed by the court without a recommendation by the reunification counselor, yet the court signed a plan proposed by Ms. Herber.

The court, once again, went along with Ms. Herber in ordering a plan and another evaluator rather than Don Layton [*who was very familiar with the case*] The court abused its discretion in this regard and Appellant fears

have come to fruition. i.e. that in August of 2011, Appellant is no closer to unsupervised visitation than he was the preceding January. In fact, the current counselor is at a *loss* as to what the court wants, in what to do and is including the Respondent/Mother in a reunification process that should *only* involve the Father and son.

3. Did the trial court err in temporarily taking away Appellant's right to own and possess firearms?

The court erred in ordering that Appellant temporarily cannot possess firearms. [Verbatim Transcripts of Proceedings Page 18, Lines 4-10] Article 1 Section 24 of the Washington State Constitution¹² states, in part, "*The right of the individual citizen to bear arms in defense of himself, or the state, shall not be impaired, but nothing in this section shall be construed as authorizing individuals or corporations to organize, maintain or employ an armed body of men.*"

Appellant has done *nothing* to cause the court to make such an order, yet, the court, *sua sponte* made such an order based upon a statement that was taken totally out of context [Verbatim Transcripts of Proceedings Page 18, Lines 8-10] here have been *no* domestic violence findings against Appellant nor a report written by any therapist indicating that Appellant is a threat to anyone. There is "only" a mutually agreed-to retraining order. This should be immediately reversed in favor of Appellant. Appellant should be allowed to own and possess firearms like any other citizen. Appellant finds it interesting that the court found that Respondent and her

¹² <http://www.leg.wa.gov/lawsandagencyrules/pages/constitution.aspx>

husband “can” own guns but cannot have them at there residence, yet, orders Appellant “not” to own guns at all. [**Verbatim Transcripts of Proceedings Page 18, Line 4-25 With Emphasis!**] This is clearly prejudicial treatment.

4. Did the trial court err in depriving Appellant of the opportunity to be heard, in full, on demonstrating favoritism in benefit of Respondent and her legal counsel, in violation of due process requirements of United States Constitution and Washington State Constitution?

Appellant was deprived of the opportunity to be heard in violation of due process requirements of Untied States Constitution and Washington State Constitution. The due process requirement of an "opportunity to be heard" which must be "tailored to the capacities and circumstances of those who are to be heard" has strict demands. It is a fundamental axiom of our system of jurisprudence that due process of law includes the right to participate in the proceedings.¹³ It is very clear from the record in the case at hand that the Superior Court Judge abused his discretion when he denied Appellant an interpreter, the opportunity to properly review proposed orders upon presentation and throughout the pendency of the case. Literally, *nothing* the Appellant proposed [**Proposed Parenting Plan Pages 350-360**] [**Proposed Parenting Plan Pages 179-190**] the was considered. In fact, Appellant felt intimidated by the court rather than have

¹³ *Yellen v. Baez*, 177 Misc. 2d 332, at 335; 676 N.Y.S.2d 724; 1997 N.Y. Misc. LEXIS 715 (1997).

the feeling that the court was *impartial*.

The case continued to conclusion without Appellant's ability to be heard properly throughout the case and, particularly, at presentation of final orders, clearly in violation of the Appellant's due process rights. The tribunal's primary purpose and role is to administer justice and not to convert official proceedings into "drive through type services." "A good judge should do nothing of his own arbitrary will, nor on the dictate of his personal wishes, but should decide according to law and justice."¹⁴

5. Did the trial court err in denying Appellant's Constitutional Due Process Rights to a fair hearing by impartial tribunal as the actions of Judge Castleberry lacked impartiality and exhibited bias and prejudice toward Appellant, even in light of the facts presented to it by Appellant, the court record and the exhibits?

A fair trial with a fair tribunal is a basic requirement of due process.¹⁵ Every procedure which would offer a possible temptation to the average man as a judge not to hold the balance nice, clear, and true upon denies the person due process of law.¹⁶ The law goes further than requiring an impartial judge; it also requires that the judge appears to be impartial.¹⁷ Past decisions of Washington State Courts have applied the appearance of

¹⁴ From *Legal Thesaurus*, by William C. Burton, p. 306(2nd Ed., Macmillian,1992).

¹⁵ *State v. Madry*, 8 Wash.App. 61,68,504 P.2d 1156 (1972)

¹⁶ citing *Tumey v. State a/Ohio*, 273 U.S. 510,532,47 S.Ct. 437,444,71 L.Ed. 749 (1972).

¹⁷ *State v. Post*, 118 Wash.2d 596,618,826 P.2d 172 (1992) (Citing *State v. Madry*, 8 Wash.App. 61,70,504 P.2d 1156 (1972).

fairness doctrine when decision-making procedures have created an appearance of unfairness.¹⁸ The doctrine seeks to prevent "the evil of a biased or potentially interested judge,"¹⁹ A judicial proceeding is valid only if it has an appearance of impartiality, such that a reasonably prudent and disinterested person would conclude that all parties obtained a fair, impartial, and neutral hearing.²⁰ In case at hand, from the record, it appears that Appellant's faith was predetermined by the Superior Court Judge before conclusion of the case because of actions of the Judge and his attitude.

6. Did the trial court err in failing to correct the courts previous decisions in violating Appellant's Bankruptcy Stay pursuant to Title 11 of the United States Code at Sections 362(a)(22), 362(a)(23), 362(l) and 362(m)? [*Bankruptcy Code The informal name for title 11 of the United States Code (11 U.S.C. §§ 101 - 1330), the federal bankruptcy law*]

Family court and upon De Novo review, a violation of Appellant's bankruptcy protection was upheld. Further, the trial court judge ruled in the same manner and did *nothing* to rectify the mistake of the prior decisions. Not only may the State of Washington, under the Respondents Superior Theory of Law, be liable, the trial court, on 3 occasions, violated Appellant's rights.

¹⁸ *Smith v. Skagit Cy.*, 75 Wash.2d 715, 453 P.2d 832 (1969).

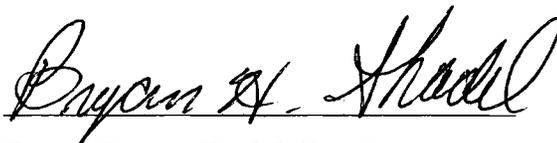
¹⁹ *State v. Finch*, 137 Wash.2d 792,808,975 P.2d 967 (1999).

²⁰ *State v. Ra*, 144 Wash.App. 688, 705, 175 P.3d 609 (2008) citing *State v. Bilal*, 77 Wash.App. 720,722,893 P.2d 674 (1995) (quoting *State v. Ladenburg*, 67 Wash.App. 749, 754-55, 840 P.2d 228 (1992)).

CONCLUSION

For the reasons set out above, Appellant requests that Washington State Court of Appeals Division I finds that the Snohomish County Superior Court Judge erred in making its findings and that decisions, as outlined above, be reversed. For the foregoing reasons, Appellant respectfully requests that this Court reverse the January 28, 2011 trial court orders.

DATED: 11-28-2011



Bryan Henry Shadel, Pro Se

14751 N. Kelsey Street Suite 105 #232

Monroe, Washington 98272

(253) 561-9590