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STATE OF WASHINGTON

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COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON

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THOMAS A. OLSON,

Appellant,

v.

SANDRA LYNN KRAUSE-OLSON,

Respondent.

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BRIEF OF RESPONDENT

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ORIGINAL

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I. RESPONDENT'S RESTATEMENT OF THE ISSUES

Issue No. 1. Did the trial court abuse its discretion in imposing terms for discovery abuse by Mr. Olson in this case?

Issue No. 2. Did the trial court abuse its discretion in awarding attorneys fees to Ms. Krause for the trial?

Issue No. 3. Did the trial court abuse its discretion in determining that each party should be awarded a portion of the value of the Neomedia stock?

Issue No. 4. Did the trial court abuse its discretion in finding that Mr. Olson had \$16,000 of household goods in his possession?

II. RESPONDENT'S STATEMENT OF THE CASE

When they first met in 1996, Thomas Olson ("Mr. Olson") was a Trooper with the Washington State Patrol and Sandra Krause ("Ms. Krause") was an elementary school teacher with the Franklin Pierce School District (RP 72, 62). Ms. Krause and Mr. Olson were married on August 14, 1999, and separated at the end of June, 2004 (RP 52). The Decree of Dissolution which is the primary subject of this appeal was filed November 10, 2005 (CP 68).

During the course of the marriage, Mr. Olson took on the primary responsibility for managing the couple's finances (RP 53, 175-76). On occasions when Ms. Krause would inquire about the state of the family's financial affairs, Mr. Olson rebuffed her inquiries and discouraged further questions (RP 176). Because she wanted to be supportive of her husband, Ms. Olson chose not to press her concerns (RP 176).

In 2003, while remaining with the Washington State Patrol, Mr. Olson created a security consulting company called Icon Corporate Consultants (“Icon”) (RP 73, 303-304). He became a consultant to Machu Picchu Gold Mining Corporation, and began funneling large amounts of money into that venture and to one of its principals, Douglas Ashworth, without his wife’s consent or approval (RP 85-89, 130-134, 192-194). Mr. Olson has acknowledged that Ms. Krause was not aware of all of his loans to Machu Picchu Gold Mining Corporation (RP 358).<sup>1</sup>

Mr. Olson also invested community assets in a variety of penny stocks, including the stock of a company known as Neomedia (RP 128). Mr. Olson sold the Neomedia stock in 2004 for a total of \$15,236, which was reported as a capital gain of \$12,709 on the couple’s 2004 income tax return. *See* Trial Exhibit 6.<sup>2</sup> At trial, Mr. Olson claimed that \$10,000 from the sale of the Neomedia stock was re-invested in the stock of Quatro Records, but he produced no documentary evidence to support this claim (RP 348). Ms. Krause was unaware of the purported disposition of the Neomedia stock until shortly before trial (RP 129).

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<sup>1</sup> As of the date of trial in this action, Mr. Olson was under investigation by the State Department of Financial Institutions for securities act violations involving Machu Picchu Gold Mining Corporation. (RP 289, 295-296). DFI was seeking \$30,000 in fines against Mr. Olson. *Id.*

<sup>2</sup> Trial Exhibits 4, 6, 24, 25, 26, and 30 were designated on August 22, 2006 as part of Respondent’s Supplemental Designation of Clerk’s Papers and Exhibits, but as of the time of filing of Respondent’s Brief have not yet been paginated by the Clerk of the Pierce County Superior Court.

When the parties separated in the summer of 2004, Ms. Krause had access to the community home for several weeks, but during this period she did not know that Mr. Olson was intending to demand a divorce (RP 56-57).<sup>3</sup> While Ms. Krause was gone on vacation in early August, Mr. Olson sent her an email informing her he was locking her out of the home (RP 56). As a result, Ms. Krause had no option but to set up her own new household, and made approximately \$8,000 in expenditures in order to do so (RP 58, 123). At trial, Ms. Krause testified that she had made expenditures necessary to outfit a 900 square foot home, whereas her husband retained furnishings sufficient to outfit a home twice as large (RP 150).

During discovery prior to the trial, Ms. Krause filed two Motions to Compel and an Order to Show Cause on Contempt and for Terms because Mr. Olson refused to fulfill his discovery obligations (CP 7-8).<sup>4</sup> On May 20, 2005, the trial court found that Mr. Olson was intransigent

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<sup>3</sup> A more detailed account of the events surrounding the separation is included in the Declaration of Sandra Krause-Olson in Support of Motion for Temporary Orders, which was listed in Respondent's Supplemental Designation of Clerk's Papers and Exhibits, filed August 22, 2006. As of the date of submission of this Brief, the Clerk of the Pierce County Superior Court has not yet paginated the supplemental clerk's papers.

<sup>4</sup> See Motion and Declaration to Compel Answers to Interrogatories and Requests for Production of Documents, Second Motion and Declaration to Compel Answers to Interrogatories and Requests for Production of Documents, and Order to Show Cause Re: Contempt, all listed in Respondent's Supplemental Designation of Clerk's Papers and Exhibits, filed August 22, 2006.

and acting in bad faith, and ordered him to pay Ms. Krause \$2,000 in attorneys fees (CP 7-8).

Ms. Krause also had to file two motions in response to untimely and improper discovery requests from Mr. Olson (CP 9-12; RP 7-16). On September 23, 2005, the trial court issued an Order of Protection stopping a deposition noted by Mr. Olson and quashing a subpoena duces tecum (CP 38-40). Then, on the first day of trial, the trial court quashed a renewed subpoena duces tecum, which covered essentially the same material as the previously quashed subpoena (RP 7-16). In addition, the trial court ordered Mr. Olson to pay \$2,700 in fees to cover Ms. Krause's expenses in dealing with the two subpoenas (RP 15).

At the conclusion of the trial in this matter, the trial court indicated it would make an award of attorney's fees to Ms. Krause and requested counsel for Ms. Krause to submit an accounting in support of a fee award (RP 442-43). Counsel for Ms. Krause subsequently filed an Attorney's Fee Affidavit that provided the factual basis for an award of fees and set forth the legal justifications for such an award. A copy of the Attorneys Fees Affidavit is attached to this Brief.<sup>5</sup> In the subsequent presentation hearing, the trial court considered extensive oral argument concerning a

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<sup>5</sup> The Attorney's Fee Affidavit of Csilla Muhl, filed with the trial court on November 8, 2006, was not included in Petitioner's Designation of Clerk's Papers. Respondent filed a Supplemental Designation of Clerk's Papers and Exhibits on August 22, 2006 which includes the Attorneys Fee Affidavit, but the pagination of the Affidavit had not been established as of the filing of this brief.

fee award and its basis in both the relative need and ability to pay of the parties and Mr. Olson's intransigence (RP 486-491). At the conclusion of this argument, the trial court stated that "the peculiar facts of this scenario warrant an award and what I am going to award is \$15,000 toward attorneys fees" (RP 492). The award of \$15,000 in attorney's fees is memorialized in both the Findings of Fact and the Decree of Dissolution (CP 60, 70).

### III. SUMMARY OF THE ARGUMENT

Mr. Olson has failed to perform his responsibility under RAP 9.2(b) to "include in the record all evidence relevant to the disputed verdict or finding." Taking all of the evidence, including that indexed by Respondent's Supplemental Designation of Clerk's Papers and Exhibits, into account, it is clear that there is substantial evidence supporting the trial court's determinations that Mr. Olson had \$16,000 in household goods in his possession and that the parties should each be given part of the value of the Neomedia stock. Moreover, the trial court did not abuse its discretion in imposing terms on Mr. Olson for discovery abuse, nor did it err in awarding Ms. Krause \$15,000 in attorney's fees.

### IV. ARGUMENT

#### 1. Mr. Olson failed to perfect the record on appeal.

RAP 9.2(b) states that "[i]f the party seeking review intends to urge that a verdict or finding of fact is not supported by the evidence, the party should include in the record all evidence relevant to the disputed verdict or finding." *See also Rhinevault v. Rhinevault*, 91 Wn. App. 688,

692, 959 P.2d 687 (1998) (noting that “appellant bears the burden of . . . perfecting his record on appeal so the reviewing court has before it all the evidence relevant to deciding the issues before it”). If the appellant does not meet this burden, the reviewing court “may decline to reach the merits of an issue.” *Id.*

One of Mr. Olson’s assignments of error alleges that the trial court abused its discretion in making factual findings regarding the Neomedia stock. *See* Opening Brief of Appellant Thomas A. Olson (“Appellant’s Brief”), p. 1. A court abuses its discretion in making factual findings if there is no substantial evidence in support of the findings. *See, e.g., In re Marriage of Thomas*, 63 Wn. App. 658, 660, 821 P.2d 1227 (1991). Having called the sufficiency of the evidence into doubt, Mr. Olson bears the burden of perfecting the record on appeal pursuant to RAP 9.2(b) and Rhinevault.

Mr. Olson has failed to comply with RAP 9.2(b). First of all, Mr. Olson failed to include in Appellant’s Designation of Clerk’s Papers any of the trial exhibits, including exhibits bearing on the proper allocation of the Neomedia stock. *See* Appellant’s Designation of Clerk’s Papers (CP 77-80). *See also* Trial Exhibits 6 and 30, designated in Respondent’s Supplemental Designation of Clerk’s Papers, filed August 22, 2006. In addition, the Report of Proceedings appears to omit Mr. Olson’s testimony on direct examination concerning Neomedia (compare RP 305-315 with

RP 347-348).<sup>6</sup> Ms. Krause is now barred from objecting to the Report of Proceedings by the ten day period set forth in RAP 9.5(c), but this bar to objections does not release Mr. Olson from his burden under RAP 9.2(b). Because Mr. Olson has not presented for review all of the evidence bearing on the Neomedia stock issue, this Court should decline to reach the merits of that issue pursuant to Rhinevault.

2. Substantial evidence supports the trial court's finding regarding the Neomedia stock.

Should this Court reach the merits of the trial court's ruling with regard to the Neomedia stock, despite Mr. Olson's non-compliance with RAP 9.2(b), it should uphold the trial court. Trial court findings of fact are reviewed for abuse of discretion, and will be upheld if they are supported by substantial evidence. In re Marriage of Thomas, 63 Wn. App. 658, 660, 821 p.2d 1227 (1991). The trial court ruled that Ms. Krause was entitled to half of the capital gain from the sale of Neomedia stock, and this ruling was supported by substantial evidence.

The evidence before the trial court unambiguously establishes that the marital community owned 129,700 shares of Neomedia stock as of

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<sup>6</sup> In particular, RP 305 contains the first question to Mr. Olson about Neomedia ("Let's talk about Neomedia you Neomedia"), but further questioning was postponed as the Court took "a quick break" (RP 306). However, when the Report of Proceedings resumes, it is the following morning, and counsel for Mr. Olson has only three more questions, none of which concerns Neomedia (RP 310-315). Then, during the cross-examination of Mr. Olson, reference is made to Mr. Olson's previous testimony on the Neomedia issue, testimony which is not preserved in the Report of Proceedings (RP 347-48).

December 31, 2003. Trial Exhibit 6. The Neomedia stock was sold on January 14, 2004 and February 6, 2004 for a total price of \$15,236. Trial Exhibits 6 and 30. The revenue from the sale, adjusted by the original purchase price, gave rise to a total capital gain of \$12,709 as reported on the parties' 2004 income tax return. Trial Exhibit 30.

Ms. Krause testified that she was unaware of the sale and capital gain on the Neomedia stock until she was able to review the parties' tax return for 2004 shortly before trial (RP 129, 200-201, 267-68). She had no knowledge of how the proceeds from the stock sale were used. (RP 200-201). Mr. Olson, on the other hand, testified that \$10,000 of the \$12,709 capital gain from the sale of the stock was re-invested in the stock of another company named Quadrophonics. (RP 347-48). However, Mr. Olson presented no bank records or other documentary evidence to establish that the capital gain from the Neomedia stock was in fact rolled over into any other community asset (RP 348-49).

In the Decree of Dissolution, the trial court awarded Ms. Krause "1/2 of Neomedia Stock Sell Gain, in the amount of \$6,000" (CP 73). Mr. Olson was credited with the same amount. (CP 72). By so ruling, the Court implicitly found that Mr. Olson's testimony regarding what he had done with the capital gains from the stock sale was not credible. Credibility determinations are inherently the province of the finder of fact, and cannot be second-guessed on appeal. *See, e.g., State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990). Apart from Mr. Olson's testimony, there was no evidence that capital gains from sale of Neomedia stock had

been rolled over into other community assets, and therefore the Court properly allowed Ms. Krause's request for one half the value of the Neomedia stock.<sup>7</sup>

3. Substantial evidence supports the trial court's finding regarding the value of household furnishings.

As with the Neomedia stock issue, this Court reviews the trial court's factual finding that Mr. Olson was in possession of household furnishings valued at \$16,000 in household furnishings for abuse of discretion. The trial court's finding with regard to the household furnishings must be upheld because it is supported by substantial evidence.

At trial, Ms. Krause offered direct evidence as to the value of the household goods, but the trial court declined to admit Trial Exhibit No. 4 on the grounds that Ms. Krause did not have any expertise at establishing

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<sup>7</sup> Technically, the proper issue with regard to the Neomedia stock was the disposition of the total revenue from the sale, not the disposition of the capital gain. To illustrate, if a marital community purchases \$100,000 of stock, and then sells it for \$90,000 shortly before dissolution, it could report a capital loss of \$10,000 on its tax returns, but would still have \$90,000 in community property from the proceeds of the stock sale that would need to be accounted for upon dissolution. Here, the undisputed evidence contained in Trial Exhibit 6 shows that the Neomedia stock sold for \$15,236. This number, and not the \$12,709 capital gain, is what should have been accounted for in the dissolution proceeding. Neither party raised this issue to the trial court, and thus it is not preserved for appeal under RAP 2.5(a). However, if the Neomedia issue is remanded for clarification of the basis for the trial court's ruling, Ms. Krause would expect to receive more than she received under the Decree of Dissolution.

the depreciation of household items (RP 111-123), (Trial Exhibit 4). However, Ms. Krause also testified, without objection, that she had to spend \$8,000 to set up a new household (RP 123-124), and that “my husband kept the majority of the household goods to fit a 1800 square foot house . . . . [while] I bought items to fit a 900 square foot house” (RP 150). The trial court could properly infer from this testimony that the household furnishings in Mr. Olson’s possession were twice as valuable as those purchased by Ms. Krause, and were thus worth approximately \$16,000. The trial court could also properly credit this testimony and inference over any opposing testimony by Mr. Olson, particularly since Mr. Olson acknowledged he could only “speculate” that he had only \$3,000 in household furnishings than Ms. Krause (RP 313). The trial court’s finding with regard to the value of household furnishings in Mr. Olson’s possession is supported by substantial evidence, and should be upheld.

4. The Trial Court did not abuse its discretion in imposing terms for Mr. Olson’s discovery abuse.

The discovery cutoff set by the trial court in this matter was August 22, 2005.<sup>8</sup> When Mr. Olson noted Ms. Krause’s deposition and issued a subpoena duces tecum seeking a large volume of Ms. Krause’s records after the discovery cutoff, the trial court issued a protective order

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<sup>8</sup>The Order Setting Case Schedule was listed in Respondent’s Supplemental Designation of Clerk’s Papers and Exhibits, filed August 22, 2006. However, as of the date of the filing of this Brief, the Clerk for the Pierce County Superior Court had not yet paginated the Supplemental Clerk’s Papers.

and quashed the subpoena (CP 30-40). Ms. Krause also sought an award of fees for opposing the untimely discovery, but this was denied by the trial court (RP 16).

Only two working days after the trial court issued its protective order, Mr. Olson served Ms. Krause with a second subpoena, seeking essentially the same information, but styled as a “trial subpoena.” (RP 8-16). The trial court granted Ms. Krause’s second motion to quash, and this time awarded \$2,7000 in fees to cover Ms. Krause’s expenses for both motions to quash, finding that “it’s very apparent that [untimely] discovery is being attempted here through the back door” (RP 15).

“A trial court has broad discretion as to the choice of sanctions for violation of a discovery order.” Burnett v. Spokane Ambulance, 131 Wn.2d 484, 494, 933 P.2d 1036 (1997). A trial court’s discretionary determination to impose a sanction for discovery abuse “should not be disturbed on appeal except on a clear showing of abuse of discretion.” Id. Here, the trial court in no way abused its discretion by awarding \$2,700 in fees to Ms. Olson for having to oppose two late discovery requests, the second of which was in blatant disregard of a protective order issued merely days before.

Mr. Olson’s contention that a “trial subpoena” to Ms. Olson was proper, despite coming weeks after the court’s discovery cutoff (and hard on the heels of the trial court’s protective order), is unsupported by any authority. “When a subpoena is used to compel a party to produce documents, the subpoena must comply with the requirements of CR 34,

which allow the party 30 days to respond to document request and to impose objections to the request.” David E. Breskin, 10 Wash. Prac. § 45.1 (emphasis added). Mr. Olson’s “trial subpoena” to Ms. Krause was in violation of the trial court’s scheduling order, CR 34, and the trial court’s protective order of September 23, 2005. The trial court did not abuse its discretion in awarding fees to cover Ms. Krause’s expenses for quashing both subpoenas and to sanction Mr. Olson for ignoring its prior orders (RP 16).

5. The trial court did not abuse its discretion in awarding Ms. Krause \$15,000 in attorney’s fees.

The allowance and amount of attorney fees in a marital dissolution proceeding under RCW Title 26 “rests in the discretion of the court, and an appellate court will only interfere with an award where there is proof that the trial court’s decision was manifestly unreasonable or clearly untenable.” In re Marriage of Sanborn, 55 Wn. App. 124, 130, 777 P.2d 4 (1989).

At the conclusion of the trial in this matter, the trial court indicated it would make an award of attorney’s fees to Ms. Krause and requested counsel for Ms. Krause to submit an accounting in support of a fee award (RP 442-43). Both the Attorney’s Fee Affidavit and oral argument subsequently submitted by Ms. Krause’s counsel emphasized that an

award of fees was justified by the relative need and ability to pay of the parties, as well as by Mr. Olson's intransigence (RP 486-491).<sup>9</sup>

In making its oral ruling to grant Ms. Krause \$15,000 in attorneys fees, the court stated in pertinent part as follows: "the peculiar facts of this scenario warrant an award and what I am going to award is \$15,000 in attorneys fees" (RP 492). The context provided by oral argument by counsel and by the Attorney's Fee Affidavit establishes that the trial court's award of fees was based on both the need and ability to pay of the parties and Mr. Olson's intransigence.

a. Ms. Krause's need and Mr. Olson's ability to pay.

Pursuant to RCWA 26.09.140, a trial court has discretion to award attorney fees and other costs of litigation when one party has a financial need for the award and the other party has the ability to pay. Mosher v. Mosher, 25 Wn.2d 778, 790, 172 P.2d 259 (1946).

What constitutes "need" in the context of an attorney's fee award is a question of fact. The mere fact that the requesting spouse has some funds and some property is not determinative. Indeed, a spouse need not become a pauper or sell assets to obtain the cash necessary for the litigation, nor should a spouse have to choose between paying living

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<sup>9</sup> The Attorney's Fee Affidavit of Csilla Muhl, filed November 8, 2005, was listed in Respondent's Supplemental Designation of Clerk's Papers and Exhibits, filed August 22, 2006. As of the date of the filing of this Brief, the Clerk for the Pierce County Superior Court had not yet paginated the Supplemental Clerk's Papers.

expenses or paying litigation expenses. Stibbs v. Stibbs, 38 Wn.2d 565, 231 P.2d 310 (1951).

As for “ability” to pay attorneys fees, this is determined by an examination of the income and other resources, and expenses and debts, of the spouse being requested to pay at the time the proceedings are concluded. In re Marriage of Fernau, 39 Wn. App. 695, 708, 694 P.2d 1092, 1100 (1984). The primary considerations for the award of fees in a dissolution action are equitable. In re: Marriage of Van Camp, 82 Wn. App. 339, 342, 918 P.2d 509, 511 (1996).

The evidence presented at trial clearly establishes both Ms. Krause’s need for assistance with her attorney’s fees and Mr. Olson’s ability to pay. Ms. Krause’s attorneys fees at trial in this matter approximately equaled an entire year of her salary as an elementary school teacher (\$47,856.50 in fees vs. \$49,000 annual salary) ( RP 83, 491). Ms. Krause’s salary as a school teacher is substantially lower than Mr. Olson’s annual income from his salary as a sergeant in the Washington State Patrol and other sources (RP 83, Trial Exhibit 30). Furthermore, the division of the assets and debts of the marital community ordered by the trial court yielded \$11,410.81 more for Mr. Olson. *See Exhibit C to Attorney’s Fee Affidavit of Csilla Muhl.*<sup>10</sup> As a consequence, there is substantial

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<sup>10</sup> The Attorney’s Fee Affidavit of Csilla Muhl was listed in Respondent’s Supplemental Designation of Clerk’s Papers and Exhibits, filed on August 22, 2006.

evidence supporting an award of \$15,000 in fees to Ms. Krause based on the parties' relative financial need and ability to pay.

b. Mr. Olson's intransigence

Ms. Krause also presented the trial court with substantial evidence of Mr. Olson's ongoing intransigence. As a matter of law, a trial court may consider whether the intransigence or other conduct of a spouse caused the other spouse to incur additional attorney fees, professional services, and other costs of litigation. In re: Marriage of Sievers, 78 Wn. App. 287, 897 P.2d 388 (1995). If intransigence is established, the financial resources of the spouse seeking fees are irrelevant. In re: Marriage of Crosetto, 82 Wn. App. 545, 563-64, 918 P.2d 954, 962 (1996).

Mr. Olson's actions and tactics throughout the trial court proceedings unnecessarily and unreasonably drove up Ms. Krause's litigation costs. Mr. Olson was twice found by the trial court to have abused the discovery process, first on a Motion to Compel (CP 7-8), and second with regard to the two subpoena's issued after the discovery cutoff on the eve of trial. Mr. Olson failed to cooperate in the presentation of a Joint Statement of Evidence, and otherwise took actions that unreasonably drove up Ms. Krause's costs. *See* Attorney's Fee Affidavit of Csilla Muhl. Finally, Ms. Krause testified that Mr. Olson did not make a good faith effort to resolve the case short of trial (RP 149-150, 228-229). There is substantial evidence supporting an award of \$15,000 in fees to Ms. Krause based on Mr. Olson's intransigence.

- c. If the trial court failed to properly indicate the basis for its award, the proper remedy is remand to the trial court for reconsideration.

Ms. Olson believes that the trial court properly based its award on both the financial need and ability to pay of the parties and on Mr. Olson's intransigence. The trial court indicated as such by referring to "the peculiar facts of this scenario" in justifying its award of fees, immediately after having received argument on both relative need and intransigence (RP 492). If this Court nonetheless concludes that the trial court failed to make an adequate record of the basis for its attorney's fee award, the proper course of action is to remand the question of fees to the trial court for reconsideration. *See, e.g., In re Marriage of Sanborn*, 55 Wn. App. 124, 130, 777 P.2d 4 (1989).

V. MS. KRAUSE'S REQUEST FOR FEES ON APPEAL

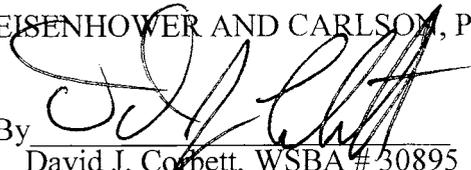
RCW 26.09.140 provides in pertinent part that "[u]pon any appeal, the appellate court may, in its discretion, order a party to pay for the cost to the other party of maintaining the appeal and attorney's fees in addition to statutory costs." Ms. Krause hereby requests an award of her reasonable fees and costs incurred for this appeal, based on her financial need and Mr. Olson's ability to pay. Pursuant to RAP 18.1(c), Ms. Krause will serve and file an affidavit of financial need no later than ten days before this case is set for hearing.

VI. CONCLUSION

Mr. Olson has failed to perform his responsibility under RAP 9.2(b) to “include in the record all evidence relevant to the disputed verdict or finding” with regard to the Neomedia stock issue, and this Court should accordingly decline to reach the merits of that issue. However, it is clear that all of the trial court’s factual findings—including its findings with regard to the Neomedia stock and the value of household furnishings retained by Mr. Olson—are supported by substantial evidence. Moreover, the trial court did not abuse its discretion in imposing terms on Mr. Olson for a trial subpoena, nor did it err in awarding Ms. Krause \$15,000 in attorney’s fees. This Court should affirm the trial court’s ruling on all issues identified by Mr. Olson, and award Ms. Krause her fees on appeal pursuant to RCW 26.09.140 and the affidavit of financial need that will be filed by Ms. Krause prior to the hearing of this matter.

DATED at Tacoma, Washington, this 28<sup>th</sup> day of August, 2006.

EISENHOWER AND CARLSON, PLLC

By 

David J. Corbett, WSBA # 30895  
Attorneys for Sandra Krause

**ATTACHMENT TO RESPONDENT'S BRIEF**

November 08 2005 2:53 PM

KEVIN STOCK  
COUNTY CLERK

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

In re the Marriage of:

SANDRA LYNN KRAUSE-OLSON,  
Petitioner,

vs.

THOMAS A. OLSON,  
Respondent.

NO. 04-3-03094-2

**ATTORNEY'S FEE AFFIDAVIT**

STATE OF WASHINGTON )  
County of Pierce ) ss.

**CSILLA MUHL**, being first duly sworn upon oath, deposes and says:

1. I am an attorney representing Petitioner in this matter. I am competent to testify and I have personal knowledge of the matters set forth herein based upon my representation of Petitioner in this matter.

2. The timekeepers who worked on this matter are Csilla Muhl, attorney, James M. Hushagen, attorney, P. Craig Beetham, attorney, Julie Worrell, paralegal, Lisa Britton, paralegal, Lorene M. Zander, paralegal, and Barbara L. Zimmerman, paralegal. I was responsible for this matter from start to finish and reviewed and approved all billing entries for the timekeepers.

3. The rates charged for the timekeepers were the standard rates charged by my firm at the time the entries were made. My billing rate is \$190.00 per hour, James M. Hushagen's time rate is \$230.00 per hour, P. Craig Beetham's rate is \$210.00 per hour, Lorene M. Zander's

**EISENHOWER & CARLSON, PLLC**

ATTORNEY'S FEE AFFIDAVIT - 1

**ORIGINAL**

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1 rate at \$100.00 per hour, Paralegal, Julie Worrell's rate is \$100.00 per hour, Paralegal, Lisa  
2 Britton's rate is \$90.00 per hour and Paralegal Barbara Zimmerman's rate is \$90.00 per hour.

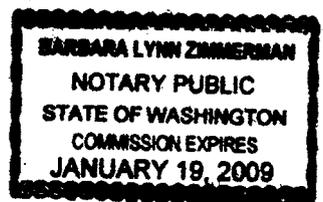
3 4. I recorded a total of 213.90 hours; James M. Hushagen recorded a total of 1.0  
4 hour and P. Craig Beetham recorded a total of .30 in preparing said case from beginning to the  
5 end of trial through October 31, 2005, for a total of \$40,483.00 in attorney fees. My paralegals  
6 recorded a total of 79.65 hours in preparation of the file for a total of \$7,373.50 in paralegal fees.  
7 The total hours recorded for this matter by each timekeeper and the value of those hours at  
8 standard rates is \$47,856.50. See attached **Exhibit A**.

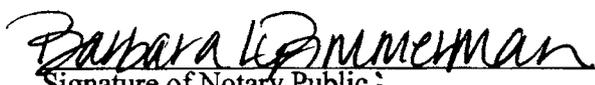
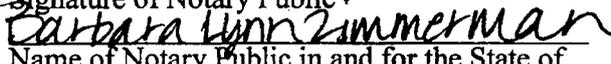
9 5. The legal and factual basis for granting additional attorney's fees to Petitioner is  
10 outlined in her Trial Brief submitted to this court before the October 11<sup>th</sup> trial and is attached  
11 hereto for additional reference at **Exhibit B**.

12 6. Attached hereto as **Exhibit C** is Judge Beverly Grant's summary of her oral  
13 ruling after trial on October 17, 2005, showing a disparity in the division of the parties'  
14 debts/assets. This demonstrates an additional need and basis for an award of reasonable  
15 attorney's fees to Petitioner for having to expend significant sums in litigation, primarily due to  
16 Husband's intransigence and failure to make any reasonable offers of settlement.

17  
18   
19 \_\_\_\_\_  
20 CSILLA MUHL, WSBA #24461  
21 Attorney for Petitioner

20 SIGNED AND SWORN to before me on this 9<sup>th</sup> day of November, 2005 by Csilla  
21 Muhl.



22   
23 Signature of Notary Public:  
24   
25 Name of Notary Public in and for the State of  
26 Washington, County of Pierce  
My Commission expires on: 9-19-09

TR8523 11/07/05  
X2 14:55:39

CLIENT TIME HISTORY

PAGE 1

FROM 7/23/04 THRU 10/28/05

CLIENT/ MATTER	N A M E / DESCRIPTION	HOURS	VALUE AT RATE	VALUE AT STANDARD
-----				
11498	Krause-Olson, Sandra			
1	Dissolution	13.90	1,390.00	1,390.00
	BLZ Zimmerman, Barbara L.	213.90	40,190.00	40,190.00
	CM Muhl, Csilla	1.00	230.00	230.00
	JMH Hushagen, James M.	20.55	1,911.50	1,911.50
	JW Worrell, Julie M.	44.80	4,032.00	4,032.00
	LKB Britton, Lisa K.	.40	40.00	40.00
	LMZ Zander, Lorene M.	.30	63.00	63.00
	PCB Beetham, P. Craig			
	MATTER TOTAL	294.85	47,856.50	47,856.50
	FIRM TOTAL	294.85	47,856.50	47,856.50

**EXHIBIT** A

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

In re the Marriage of:

SANDRA KRAUSE-OLSON,  
Petitioner,

vs.

THOMAS OLSON,  
Respondent.

NO. 04-3-03094-2

**PETITIONER'S TRIAL BRIEF**

Date of Trial: October 11, 2005

**I. INTRODUCTION**

COMES NOW Petitioner, Sandra Krause-Olson (hereinafter "Petitioner", "Sandra" or "Wife") by and through her attorneys, Eisenhower & Carlson and Csilla Muhl, and submits herewith Petitioner's Trial Brief.

**II. FACTUAL BACKGROUND**

Ms. Sandra Krause met Thomas Olson in September of 1996. Their courtship proceeded slowly with getting to know each other and their respective friends and family. At that time, Husband was a Trooper with the Washington State Patrol and Sandra was a fourth grade teacher in the Franklin Pierce School District. Sandra was planning to apply to teach overseas, but Husband encouraged her to put that dream on hold and pursue a relationship with him and his daughter.

After his divorce from a previous wife, Tom felt that he needed to live with Sandra before he got married again. At his invitation, Sandra moved into his home in Eatonville in June of 1997. She shared the household expenses and cared for his daughter (her step-daughter) while

1 he worked both regular and overtime shifts. The parties were married two years later, on August  
2 14, 1999. Thus, the parties have been married 6 years, shared a total of 8 years together before  
3 separation and 9 years as of today.

4 In 2003, Tom began a security consulting company called Icon Corporate Consultants  
5 and began traveling to Houston, Texas and Lima, Peru on a regular basis. He became a  
6 consultant to Machu Picchu Gold Mining Corporation, and was funneling a large portion of the  
7 parties' community assets into that venture, without Wife's consent or approval. From January  
8 2003 to August 2004 alone, there were over \$94,000 worth of deposits into the parties' joint  
9 checking account from unknown sources. Tom claims these sums were invested back into the  
10 Machu Picchu Corporation. See Declaration of Sandra Krause-Olson, filed with this Court.

11 In mid 2004, Sandra found out that Tom had been having an extramarital affair and  
12 discovered that he had grossly mismanaged community funds and got the parties into major debt  
13 of over \$80,000 (credit cards and home equity loan). On or about June 20, 2004, the parties  
14 separated and Sandra had no choice but to move out of the community home. She established  
15 her own residence in a rental home, but had to incur about \$8,000 of debt to make this transition  
16 (furniture, washer and dryer, rent, deposit, etc.). To this day, Tom has kept the majority of the  
17 community household furnishings, with a fair market value of \$16,664.00.

18 Husband's main employment is with Washington State Patrol, where he earns  
19 approximately \$5,700 per month, translating to \$68,882.03 per year, according to the parties'  
20 2004 Tax Return and W-2 Wage and Tax Statement. This amount may have very well increased  
21 over the past year and since his last Financial Declaration was filed in early 2005. He also earns  
22 extra income of \$659.10 through the Air Force Reserve. Third, he works sporadically for Puget  
23 Sound Executive Services, earning about \$1,462.50 per year. Thus, his last known total earnings  
24 were **\$71,003.63**. Respondent also has his separate business called Icon Corporate Consultants  
25 but claims to derive no earnings from this business. Nevertheless, Husband travels extensively  
26 to Peru on business trips.

1 Wife recently left the Franklin Pierce School District where she had been working since  
2 April of 1990, and has switched jobs to the Snohomish School District, to hopefully begin a new  
3 life. Her 2004 W-2 reflects she grossed \$58,294.36 per year at her old job. However, she will  
4 only gross **\$49,437.00** with the Snohomish School District.

5 Mr. Olson currently has a Summary Order to Cease and Desist and Notice of Intent to  
6 Impose Fines and Recover Costs, pending with the Department of Financial Institutions, dated  
7 May 18, 2005. According to this Order, Husband and his company, Icon Corporate Consultants,  
8 are to cease and desist from offering or selling securities for Machu Picchu Gold Mining  
9 Corporation. The Securities Division is also attempting to impose \$30,000 in fines against Tom  
10 Olson, for violations of RCW 21.20.010, the anti-fraud section of the Securities Act and RCW  
11 21.20.040, the section of the Securities Act that requires registration of securities salespersons  
12 and broker-dealers. Wife is not liable for any of Husband's separate debt and/or separate  
13 intentional torts.

14 Husband is still living in the community home, which has approximately \$50,000 worth  
15 of equity tied up in it. Wife obtained the home appraisal in May of 2004, but by now that is  
16 somewhat outdated. The home likely has equity in excess of \$50,000. She requests that the  
17 home be sold immediately and that the equity be split equally, with Husband to pay for the entire  
18 \$25,000 Home Equity Loan out of his half of the proceeds (spent on his Harley Davidson  
19 motorcycle, approx. \$6,000 of upgrades to Harley and business loan to Douglas Ashworth).

20 **III. PROCEDURAL BACKGROUND**

21 Wife filed her Petition for Dissolution on September 14, 2004. Both parties propounded  
22 Interrogatories and Requests for Production. Wife has had to file two Motions to Compel and an  
23 Order to Show Cause on Contempt and for Terms because Husband failed to comply with  
24 discovery. On May 20, 2005, Judge Beverly Grant found the husband to be intransigent and  
25 committing deliberate bad faith, thus he was ordered to pay \$2,000.00 in attorney's fees.  
26

1 Husband finally paid the fees and produced additional discovery, but not until after Wife was  
2 forced to file her Motion and Order to Show Cause for Contempt on July 20, 2005.

3 Wife has also had to file two motions in response to receiving untimely and improper  
4 discovery requests from Husband. First, she had to respond to an untimely Notice to Deposition  
5 with a voluminous subjoined Subpoena Duces Tecum, which was sent after the discovery cutoff  
6 of August 22, 2005. On September 23, 2005, Judge Grant signed an Order of Protection for the  
7 deposition and quashed the Subpoena Duces Tecum. She found that the Husband's request was  
8 untimely and an abuse of process and discovery. Nevertheless, merely two work days later, on  
9 September 27, 2005, Petitioner's counsel received a second improper Duces Tecum, which was  
10 identical to the one just quashed by this Court. Respondent was again proposing to do  
11 inappropriate, last-minute discovery, now via a back-door attempt, by asking Petitioner to bring  
12 with her volumes of documents to the actual trial date. Petitioner's counsel had to file a Second  
13 Motion and Declaration to Quash, with accompanying Affidavit of Attorney's Fees, detailing all  
14 the time spent on Respondent's discovery abuses. The Affidavit corroborates that a minimum of  
15 \$2,707.00 was spent on having to respond to Husband's frivolous and abusive motions, just in  
16 September of 2005 alone. This does not include time spent prior to that on Motions to Compel,  
17 which were only partially compensated by this court for one motion only.

18 Petitioner timely filed her disclosure of Primary Witnesses on May 16, 2005.

19 Respondent has utterly failed to file his Primary Witness List, which was due on June 13, 2005.  
20 Therefore, all testimony by any undisclosed witnesses should be excluded at trial.

21 Petitioner filed a Joint Statement of Evidence on September 27, 2005, to which she  
22 finally received a response from Respondent the afternoon before trial, on October 10, 2005, by  
23 facsimile, at 2:07 p.m. She also filed her ER 904 submissions on September 27, 2005, after it  
24 was apparent that parties would not settle. Husband has done nothing. Therefore, he should not  
25 be allowed to use any exhibits at trial that were not previously disclosed and Respondent's 11<sup>th</sup>  
26 hour objections to Joint Statement of Evidence should be ruled untimely or be disregarded.

1 **IV. ISSUES BEFORE THE COURT**

- 2 I. How should the Court equitably divide the marital community property?  
3 II. Is Wife entitled to a reasonable award of Attorney Fees and Costs from Husband?

4 **V. ANALYSIS**

5 Petitioner's Joint Statement of Evidence and ER 904 submissions verify that the parties  
6 have the following, debts, assets and community loans:

7 **A. List of Community Assets**

8 Equity in Community Home at 21008 52<sup>nd</sup> Avenue East, Spanaway  
9 (appraised at \$252,000.00, owe approx. \$202,000) \$ 50,000.00+

10 Harley Davidson Road King Motorcycle (with upgrades) \$ 21,710.00

11 Household Goods \$ 16,664.00

12 Quattrophonic Records Stock \$ 10,000.00

13 Neomedia Stock – gain in 2004 (sold 01/14/04) \$ 12,000.00

14 25,000 Shares of Loch Energy, Inc. (12/05/01) Unknown

15 Arkansas Properties (2 lots) \$ 1,200.00

16 Husband's Deferred Compensation Account (06/01/05) \$ 64,944.00

17 Husband's Retirement WSPRS Plan (\$64,819.49 as of 06/30/04) \$ 23,717.86

18 2003 Tax Return Refund \$ 2,433.00

19 2004 Tax Return Refund (To be determined) \$ \_\_\_\_\_

20 Loans to Douglas Ashworth & Machu Picchu Gold Mining Corporation \$ 30,978.63<sup>1</sup>

21 <sup>1</sup> Detail Of Community Loans To Doug Ashworth & Machu Picchu Gold Mining, Corp.

22

7/17/03	\$2,500.00
8/18/03	\$5,000.00
11/6/03	\$1,000.00
5/04	\$5,873.88
6/17/04	\$1,200.00
6/19/04	\$ 477.00
6/21/04	\$1,500.00
<b>TOTAL</b>	<b>\$17,550.88</b>
Machu Picchu loan admitted in Interrogatories	<b>+\$13,427.75</b>
<b>GRAND TOTAL</b>	<b>\$30,978.63</b>

26

PETITIONER'S TRIAL BRIEF - 5

00314279.DOC

**EISENHOWER**  
EISENHOWER & CARLSON, PLLC

1200 Wells Fargo Plaza  
1201 Pacific Avenue  
Tacoma, WA 98402  
Tel: 253.572.4500  
Fax: 253.272.5732

1	Wife's Retirement TRS Plan III	\$ 20,044.99
2	Wife's Oppenheimer Task Sheltered Annuity	\$ 1,886.24
3	<b><u>GRAND TOTAL OF ASSETS</u></b>	<b><u>\$255,578.72</u></b>

4           **B.     List Of Community Debts**

5	AT & T Universal (statement date: 5/6/04 – 6/4/04)	\$16,487.53
6	World Perks VISA (statement date: 6/7/04)	\$20,192.75
7	Husband's WESCU VISA (statement date: 6/17/04)	\$ 7,054.93
8	Wife's Bank One VISA (statement date: 6/15/04-7/15/04)	\$ 5,419.11
9	Home Equity Loan	\$20,665.12
10	1999 Lexus RX 300 (debt owed minus Kelley Blue Book value)	\$9,376.67
11	Net Loss on Toyota trade-in for 1997 Jeep Cherokee	<u>\$1,300.00</u>
12	<b><u>GRAND TOTAL OF DEBTS</u></b>	<b><u>\$80,496.11</u></b>

13

14           **C.     Analysis of Property Division**

15           Based on the foregoing, the community should be split, as follows:

16           **\$255,578.72 (assets) – \$80,496.11 (debts) = \$175,082.61**

17           Thus, each party should receive **\$87,541.30** in assets, after debts are paid off. A table of  
18 how Wife proposes to split the community property is attached hereto as **Exhibit A**. Wife  
19 requests that Husband cash her out at the time the dissolution is finalized, so that they may both  
20 move on with their lives, without further entanglements. Respondent is able to come up with this  
21 sum by liquidating his Deferred Compensation, selling or refinancing the home, selling stock,  
22 selling the Harley Motorcycle or borrowing money.

23           However, in determining what is equitable, Petitioner also urges this Court to consider  
24 that Wife earns nearly \$22,000 per year *less* than Husband. This is even presuming she accepts  
25 his assertion that he earns *no* income from his Icon Corporate Consulting business.  
26

1 Petitioner's other miscellaneous requests include:

2 • Wife requests reimbursement of 50% of the cost of the property appraisal that  
3 determined the value of the home, in the amount of **\$200.00**.

4 • Wife requests one-half of the 2004 IRS tax refund.

5 • Wife requests the Lexis title transferred into her name only.

6  
7 **D. Wife is Entitled to an Award of Her Reasonable Attorney's Fees and Costs.**

8 ***1. Need and Ability.***

9 Pursuant to RCWA 26.09.140, the court has discretion to award attorney fees and other  
10 costs of litigation when one party has a financial need for the award and the other party has the  
11 ability to pay. Mosher v. Mosher, 25 Wn.2d 778, 790, 172 P.2d 259 (1946).

12 What constitutes *need* is a question of fact. The mere fact that the requesting spouse has  
13 some funds and some property is not determinative. Indeed, it has been said that a spouse need  
14 not become a pauper or sell assets to obtain the cash necessary for the litigation, nor should a  
15 spouse have to choose between paying living expenses or paying litigation expenses. Stibbs v.  
16 Stibbs, 38 Wn.2d 565, 231 P.2d 310 (1951).

17 The burden of proof as to need and the amount of fees and expenses is upon the party  
18 seeking the award, and the failure of the requesting party to provide the need for the award  
19 precludes an order requiring the other spouse to pay attorney fees and litigation expenses. Koon  
20 v. Koon, 50 Wn.2d 577, 582, 313 P.2d 369, 372 (1957); In re Marriage of Young, 18 Wn. App.  
21 462, 466, 569 P.2d 70,73 (1977).

22 The decision about the ability of a spouse to pay the fees of the other spouse is generally  
23 one of examination of the income and other resources, and expenses and debts, of the spouse  
24 being requested to pay at the time the proceedings are concluded. In re Marriage of Fernau, 39  
25 Wn.App. 695, 708, 694 P.2d 1092, 1100 (1984). The primary considerations for the award of  
26

1 fees in a dissolution action are equitable. In re: Marriage of Van Camp, 82 Wn.App. 339, 342,  
2 918 P.2d 509, 511 (1996).

3 In addition to need and ability, in calculating the basis for a reasonable fee, the court  
4 should consider the difficulty of the case, such as the factual and legal issues involved, the time  
5 involved in the preparation of the case and its presentation to the court, and the amount and  
6 character of property involved. In re Marriage of Knight, 75 Wn.App. 721, 730, 880 P.2d 71, 76  
7 (1994); In re Marriage of Morrow, 53 Wn.App. 579, 591, 770 P.2d 197, 203 (1989); In re:  
8 Marriage of Van Camp, 82 Wn.App. 339, 918 P.2d 509 (1996). The court then appraises these  
9 factors in light of the equities of the proceeding and the statutory authority. Van Camp, supra.

10 **2. *Husband's intransigence***

11 In addition to the statutory factors of need and ability, the court may consider whether the  
12 intransigence or other conduct of a spouse caused the other spouse to incur additional attorney  
13 fees, professional services, and other costs of litigation. In re: Marriage of Sievers, 78 Wn.App.  
14 287, 897 P.2d 388 (1995). Even if a requesting spouse has the ability to pay fees and litigation  
15 expenses, the intransigent conduct of the other spouse may bring about an award of fees and  
16 litigation expenses. [If intransigence is established, financial resources of spouse seeking fees is  
17 irrelevant.] In re: Marriage of Crosetto, 82 Wn. App. 545, 563-64, 918 P.2d 954, 962 (1996).  
18 The award, however, should be limited to the amount needed to compensate the opposing party  
19 for the intransigence. In re: Marriage of Lilly, 75 Wn.App. 715, 880 P.2d 40 (1994). When  
20 attorney fees are ordered on this basis, the court may require that the obligor pay the fee before  
21 participating in further proceedings. Lilly, supra.

22 In the present case, Wife earns at least \$22,000 less per year than Husband. The  
23 underlying record, testimony and exhibits will reveal that Husband betrayed Wife and has  
24 depleted substantial marital community assets over the past 8 years, unbeknownst to Wife.

25 Equally important, Husband's actions and tactics throughout these proceedings have been  
26 unnecessary, intransigent and frivolous. Wife will testify to the funds she has spent on attorney

1 fees and costs just to discover some of Husband's financial misdeeds and side dealings over the  
2 past 8 years. There is also an Affidavit of Attorney's Fees on file with the Court, demonstrating  
3 the attorney's fees expended for just having to respond to Husband's untimely and frivolous  
4 discovery demands for a deposition and improper Subpoena Duces Tecum. He has been twice  
5 found to have abused the discovery process by this court: (1) the first time on a Motion to  
6 Compel (Petitioner had to file on 2 separate occasions due to ongoing intransigence); and (2) for  
7 Protective Order and two separate Motions to Quash a voluminous subpoena. In addition, there  
8 is still a pending pretrial Motion to Quash a trial subpoena duces tecum. Surely Petitioner has  
9 demonstrated Respondent's intransigence.

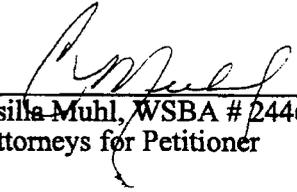
10 Further, Wife contends and will testify that Husband did not in good faith do anything to  
11 help to resolve this case short of trial.

12 **VI. CONCLUSION**

13 Based upon the foregoing, Wife respectfully requests that the Court equitably divide the  
14 debts and assets as set forth in Petitioner's Proposal at **Exhibit A** and award her reasonable  
15 attorney's fees for Husband's repeated intransigence, as well as for other reasons more fully  
16 described herein.

17 RESPECTFULLY SUBMITTED this 4<sup>th</sup> day of October, 2005.

18 EISENHOWER & CARLSON, PLLC

19  
20 By:   
21 Csilla Muhl, WSBA # 24461  
22 Attorneys for Petitioner  
23  
24  
25  
26

**KRAUSE-OLSON DIVISION OF DEBTS & ASSETS**

**JUDGE BEVERLY GRANT'S RULING**

October 17, 2005

**To WIFE**

**Assets**

½ of Equity in Home	\$25,000.00
½ Husband's Deferred Comp (accrued during marriage)	\$20,000.00
Wife's Tax Sheltered Annuity	\$ 1,886.24
Wife's TRS Plan III Retirement	\$20,044.99
Household goods (Husb. to pay in cash to W)	\$ 8,000.00
½ 2003 Tax Return Refund	\$ 1,216.50
½ 2004 Tax Return Refund	\$ 489.00
½ Loans to Ashworth & MPGMC (Husb. to pay in cash to W)	\$15,489.32
½ Neomedia Stock 2004 Sell Gain (Husb. to pay in cash to W)	\$ 6,000.00
1999 Lexus RX 300 (owe more than value)	

**TOTAL ASSETS TO WIFE \$98,126.05**

**Debts**

Wife's Bank One VISA	\$ 5,419.11
1999 Lexus RX 300 (debt owed minus Kelley Blue Book value)	\$ 9,376.67
½ of Bank One Home Equity Loan	\$10,330.00

**TOTAL DEBTS TO WIFE \$ 25,125.78**

**NET DIFFERENCE \$ 73,000.27**

**To HUSBAND**

**Assets**

½ of Equity in Home	\$25,000.00
½ Husband's Deferred Comp (accrued during marriage)	\$20,000.00
Husbands WSPRS Retirement	\$23,717.86
Island One Resorts Timeshare	\$ Unknown
Value of Household Goods	\$16,664.00
½ 2003 Tax Return Refund	\$ 1,216.50
½ 2004 Tax Return Refund	\$ 489.00
½ Loans to Ashworth & MPGMC	\$15,489.31
½ Neomedia Stock 2004 Sell Gain	\$ 6,000.00
Quattrophonic Stock	\$10,000.00
Arkansas Land	\$ 1,200.00
2004 Harley Davidson Motorcycle (took figure approx. between \$18,000 & \$21,710)	\$20,000.00
1997 Jeep Cherokee	\$ Unknown

**TOTAL ASSETS TO HUSBAND \$139,776.67**

**Debts**

Husband's WESCU VISA	\$ 7,054.93
AT & T Universal	\$16,487.53
World Perks VISA	\$20,192.75
½ Bank One Home Equity Loan	\$10,330.00
Net Loss on Toyota trade-in	\$ 1,300.00

**TOTAL DEBTS TO HUSBAND \$ 55,365.21**

**NET DIFFERENCE \$ 84,411.46**

**EXHIBIT C**

**ADDITIONAL RULINGS BY JUDGE GRANT**

October 17, 2005

**Attorney's Fees:** To Wife: to be determined at 11/10/05 hearing  
Court requires accounting from Wife

Affirm the pretrial award of \$2,707.00 to Wife

**Home Taxes:** Husband to pay because occupying home since separation.  
Will not split between parties

**Sale of Home:** Home to be sold ASAP  
To be placed on the market no later than November 15, 2005

Court to review in 4 months if not sold within that time frame

**State of Washington Claim:** Husband's full liability  
(securities fraud)

**Nov. 10, 2005 Hearing Issues:** Deferred Comp figures  
Attorney's Fees to Wife  
Presentation of Findings & Decree

I, Susan E. Alexander, declare as follows:

I am competent to be a witness in the above-entitled matter; on August 28, 2006, I delivered via ABC Legal Messenger Service a copy of the Brief of Respondent to the following, at the addresses stated, with proper postage affixed, as follows:

Larry Couture  
Tuell, Couture, Tuell & Young, P.S.  
1457 So. Union  
Tacoma, WA 98405

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

Dated at Tacoma, Washington this 28th day of August, 2006.

*Susan E. Alexander*  
\_\_\_\_\_  
SUSAN E. ALEXANDER

FILED  
COURT OF APPEALS  
06 AUG 28 PM 3:29  
STATE OF WASHINGTON  
BY *EMM*  
DEPUTY