COURT OF APPEALS
DIVISION II
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STATE OF WASHINGTON
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NO. 38421-3-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

BRIAN J. BLACKMON,

Appellant

and

TIFFANY D. BLACKMON,

Respondent.

BRIEF OF APPELLANT

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A. ASSIGNMENTS OF ERROR and ISSUES

Assignments of Error

1. The court erred in denying the respondent's motion for a jury trial.

2. The court erred in denying Mr. Blackmon's right to a hearing before a neutral fact-finder.

3. The court erred in denying Mr. Blackmon's request to present the testimony of Lori Harrison.

4. The court erred in granting the petition and entering the Order for Protection.

Issues Pertaining to Assignments of Error

1. Whether a party to a domestic violence petition pursuant to chapter 26.50 RCW has the right to a jury trial? AE 1

2. Whether Mr. Blackmon was denied his due process right to a neutral fact-finder. AE 2

3. Whether the hearing of a petition under 26.50 RCW is quasi-criminal in nature such that the clear and convincing standard applies? AE 4

4. Whether the court abused its discretion when it refused to reopen trial for the taking of further testimony when the parties were only given two business days notice of trial and when Mr. Blackmon's expert was not available on short notice? AE 3

B. STATEMENT OF THE CASE

Appellant Brian Blackmon is a member of the United States Army. On June 16, 2008, Respondent Tiffany Blackmon petitioned Thurston County Superior Court for an Order for Protection under chapter 26.50 RCW. CP 3–13 The court entered a Temporary Order for Protection, CP 14–16, which prevented contact with Mrs. Blackmon but also with their son Hunter. *Id.* The matter was continued a number of times with the agreement of the parties, resulting in reissuances and modifications of the Temporary Order for Protection. CP 17–21, 35–36

On September 3, Mr. Blackmon's attorney received a letter from Mrs. Blackmon's attorney stating that she would continue the hearing on Friday. Nevertheless, the court set the matter for trial on the following Tuesday. CP 39–40, CP 37

At a preliminary hearing on September 8, 2008, Mr. Blackmon's attorney indicated to the court he would be requesting a jury trial, and the court directed him to present a brief to the court. CP 52 Trial began September 9, at which time Mr. Blackmon submitted the motion for a jury trial along with a brief in support. CP 48–50 Judge Casey denied the motion. CP 53

At trial on September 9, 2008, Mr. Blackmon attempted to submit the opinion letter of Lori Harrison, who had done a parenting assessment

on Mr. Blackmon. CP 40–43. Ms. Harrison's letter stated that

> Mr. Blackmon does not fit the profile of a person who uses abusive behaviors as a means to control or resolve conflict. This therapist does not consider Mr. Blackmon to be a threat to his child.

CP 43 The motion was denied. Mr. Blackmon then filed on September 11 a Motion to Reopen trial to take the testimony of Ms. Harrison, but that motion was denied, CP 44, and an Order of Protection was entered on September 12, 2008, restricting his contact with Mrs. Blackmon. CP 44–47 The court also ordered supervised visitation with his son, which could be modified when Mr. Blackmon was engaged in treatment. CP 46

The Order also required Mr. Blackmon "to participate in treatment and counseling as follows: domestic violence perpetrator treatment program approved under RCW 26.50.150." The Order also stated that

> effective immediately, and continuing as long as this protection order is in effect, **the respondent may not possess a firearm or ammunition**. 18 U.S.C. § 922(g)(8). A violation of this federal firearms law carries a maximum possible penalty of 10 years in prison and a $250,000 fine. An exception exists for ... military personnel when carrying ... government-issued firearms.

CP 45 (Emphasis in original.)

This appeal timely followed.

C. SUMMARY OF ARGUMENT

The court denied Mr. Blackmon the right to a jury trial in an action under chapter 26.50 RCW, and it further abused its discretion in denying his request to present the testimony of an expert who had done a parenting assessment.

D. ARGUMENT

I. DENIAL OF THE RIGHT TO A JURY TRIAL ON ISSUES OF FACT IN ACTIONS UNDER CHAPTER 26.50 RCW CREATES INEQUITY AND PERPETUATES INJUSTICE .

Consider the following scenario: a family or household member in Washington, as defined in RCW 26.50.010, alleges that she was assaulted by another family or household member. She calls the police, who investigate the matter, leading to criminal charges being filed against the alleged perpetrator. The alleged victim also petitions for a domestic violence restraining order under chapter 26.50 RCW. The alleged victim also sues the alleged perpetrator in Superior Court.

As to the criminal charges, the alleged perpetrator has the right to have a jury determine the facts, because the Washington constitution states: "The right of trial by jury shall remain inviolate ..." article 1, section 21 The jury acquits the defendant, whose constitutional liberty interests are thus protected.

As to the civil trial, on the identical facts tried in the criminal case (though of course at the lower preponderance standard), the jury returns a defense verdict. The defendant's right to have a jury of his peers determine the facts has remained inviolate, and his assets have been protected.

As to the domestic violence petition, again on identical facts, a single judge finds that the alleged perpetrator committed domestic violence (again by the preponderance of evidence standard). The judge orders the respondent restrained from contacting the petitioner for a year. CP 45. The judge orders the respondent to participate in a domestic violence perpetrator treatment program approved under RCW 26.50.150, CP 46, which entails significant invasion of his privacy. *See*, WAC 388-60-145. (Excerpts of chapter 388-60 WAC, regarding requirements on domestic violence perpetrators, are attached.) The judge orders the respondent have only supervised contact with his child for a year, allowing him to request modification when he is "engaged in treatment". CP 46 The judge restrains the respondent from his home for a year and grants the petitioner exclusive possession of the home during that time. CP 45 The court order states that the respondent may not possess a firearm or ammunition during the pendency of the order (except for government-issued firearms to military or law enforcement personnel). *Id.*

His liberty has been infringed because he can no longer see his child nor enter his own home. His assets are affected because he is required to find another residence and to pay for treatment. He is disturbed in his private affairs. Wash. Const., article 1, section 7. His constitutional right to "to bear arms in defense of himself" is "impaired", *id.*, section 24. And his constitutional liberty right to the companionship of his child is limited. *Custody of Smith*, 137 Wn.2d 1, 969 P.2d 21 (1998). And his constitutional right to privacy is infringed as well. *See*, 388-60 WAC.

In the present case, there was no criminal action pursued nor has there been a tort case by Mrs. Blackmon. But all the rest has occurred.

A. <u>The right to trial by jury is now and has long been fundamental to our legal system</u>.

1. The right to a jury trial must be protected from assaults.

As already noted above, article 21, section 1 of the Washington constitution states: "The right of trial by jury shall remain inviolate ..." The Washington Supreme Court has stated regarding this language:

> Finally, the plain language of article 1, section 21 provides the most fundamental guidance: The right of trial by jury shall remain inviolate". The term "inviolate" connotes deserving of the highest protection. *Webster's Third New International Dictionary* 1190 (1976), defines "inviolate" as "free from change or blemish: pure, unbroken . . . free from assault or trespass: untouched, intact . . ." Applied to the right to trial by jury, this language indicates that the right must remain the essential component of our legal system that it has always been. For such a right to remain inviolate, it must not diminish over time and must be protected from all assaults to its essential guaranties.

Sofie v. Fibreboard Corp., 112 Wn.2d 636, 656, 771 P.2d 711 (1989).

2. The primary purpose of the jury is to determine facts.

Though the *Sofie* court made clear that analysis of the right to jury trial is analyzed under the state constitution, the court looked to *Dimick v. Schiedt*, 293 U.S. 474, 55 S. Ct. 296, 79 L. Ed. 603 (1935) to provide material for its analysis. *Sofie*, 112 Wn.2d at 662. *Dimick* stated:

> The right of trial by jury is of ancient origin, characterized by Blackstone as "the glory of the English law" and "the most transcendent privilege which any subject can enjoy" (Bk. 3, p. 379); and, as Justice Story said (2 Story on the Constitution, § 1779), ". . . the Constitution would have been justly obnoxious to the most conclusive objection if it had not recognized and confirmed it in the most solemn terms." With, perhaps, some exceptions, trial by jury has always been, and still is, generally regarded as the normal and preferable mode of disposing of issues of fact in civil cases at law as well as in criminal cases. *Maintenance of the jury as a fact-finding body is of such importance and occupies so firm a place in our history and jurisprudence that any seeming curtailment of the right to a jury trial should be scrutinized with the utmost care.*
>
> The controlling distinction between the power of the court and that of the jury is that the former is the power to determine the law and the latter to determine the facts. In dealing with questions like the one now under consideration, that distinction must be borne steadily in mind.

293 U.S. at 486 (emphasis added). *See also*, *Sofie*, *id.* at 645; *Auburn Mechanical v. Lydig Constr.*, 89 Wn. App. 893, 897, 951 P.2d 311 (1998).

3. The history of the right to a jury trial includes the principle that fact-finding by a jury was a protection against the biases of an individual judge.

Blackstone, quoted by *Dimick*, *supra*, spoke at length of the "glory" of the right to trial by jury. And in particular, he recognized that the

danger of having one judge—rather than twelve jurors—determine facts would give "partiality and injustice ... an ample field to range in : either by boldly asserting that to be proved which is not so, or by more artfully suppressing some circumstances, stretching and warping others, and distinguishing away the remainder." Though lengthy, the following excerpt shows clearly the great importance Blackstone placed upon the right to a jury trial.

> Upon these accounts the trial by jury ever has been, and I trust ever will be, looked upon as the glory of the English law. And, if it has so great an advantage over others in regulating civil property, how much must that advantage be heightened, when it is applied to criminal cases. But this we must refer to the ensuing book of these commentaries : only observing for the present, that it is the most transcendant privilege which any subject can enjoy, or wish for, that he cannot be affected either in his property, his liberty, or his person, but by the unanimous consent of twelve of his neighbours and equals. A constitution, that I may venture to affirm has, under providence, secured the just liberties of this nation for a long succession of ages. And therefore a celebrated French writer [Montesquieu], who concludes, that because Rome, Sparta, and Carthage have lost their liberties, therefore those of England, in time must perish, should have recollected that Rome, Sparta, and Carthage, at the time when their liberties were lost, were strangers to the trial by jury.
>
> Great as this eulogium may seem, it is no more than this admirable constitution, when traced to it's principles, will be found in sober reason to deserve. The impartial administration of justice, which secure both our persons and our properties, is the great end of civil society. *But if that be entirely intrusted to the magistracy, a select body of men, and those generally selected by the prince or such as enjoy the highest offices in the state, their decisions, in spite of their own natural integrity, will have frequently an involuntary bias towards those of their own rank and dignity ; it is not to be expected from human nature, that the few should be always attentive to the interests and good of the*

many. On the other hand, if the power of judicature were placed at random in the hands of the multitude, their decisions would be wild and capricious, and a new rule of action would be every day established in our courts. It is wisely therefore ordered, that the principles and axioms of law, which are general propositions, flowing from abstracted reason, and not accommodated to times or to men, should be deposited in the breasts of the judges, to be occasionally applied to such facts as come properly ascertained before them. For here partiality can have little scope : the law is well known, and is the same for all ranks and degrees; it follows as a regular conclusion from the premises of fact pre-established. *But in settling and adjusting a question of fact, when intrusted to any single magistrate, partiality and injustice have an ample field to range in : either by boldly asserting that to be proved which is not so, or by more artfully suppressing some circumstances, stretching and warping others, and distinguishing away the remainder.* Here therefore a competent number of sensible and upright jurymen, chosen by lot from among those of the middle rank, will be found the best investigators of truth, and the surest guardians of public justice. For the most powerful individual in the state will be cautious of committing any flagrant invasion of another's right, when he knows that the fact of his oppression must be examined and decided by twelve indifferent men, not appointed till the hour of trial; and that, when once the fact is ascertained, the law must of course redress it. This therefore preserves in the hands of the people that share, which they ought to have in the administration of public justice, and prevents the encroachments of the more powerful and wealthy citizens. *Every new tribunal, erected for the decision of facts, without the intervention of a jury, (whether composed of justices of the peace, commissioners of the revenue, judges of a court of conscience, or any other standing magistrates) is a step towards establishing aristocracy; the most oppressive of absolute governments.* ... And in every country on the continent, as the trial by the peers has been gradually disused, so the nobles have increased in power, till the state has been torn to pieces by rival factions, and oligarchy in effect has been established, though under the shadow of regal government ; unless where the miserable commons have taken shelter under absolute monarchy, as the lighter evil of the two. And, particularly, it is a circumstance well worthy an Englishman's observation, that in Sweden the trial by jury, that bulwark of northern liberty, which

> continued in it's full vigour so lately as the middle of the last century, is now fallen into disuse; and that there, though the regal power is in no country so closely limited, yet the liberties of the commons are extinguished, and the government is degenerated into a mere aristocracy. It is therefore upon the whole, a duty which every man owes to his country, his friends, his posterity, and himself, to maintain to the utmost of his power this valuable constitution in all it's rights ; to restore it to it's antient dignity, if at all impaired by the different value of property, or otherwise deviated from it's first institution ; to amend it, wherever it is defective ; and above all, to guard with the most jealous circumspection against the introduction of new and arbitrary methods of trial, which, tinder a variety of plausible pretences, may in time imperceptibly undermine this best preservative of English liberty.

3 Blackstone's Commentaries, 379–81 (Tucker Edition [1803], Volume IV) (footnotes omitted) (emphasis added).

B. <u>The court should have allowed a jury trial in the present case.</u>

1. It would appear a chapter 26.50 petition is at least in part an equitable action.

The petitioner herein sought in part injunctive relief under chapter 26.50 RCW.[1] Nowhere in that chapter is a party denied the right to a jury trial. Injunctions are addressed to the equitable powers of the court. *Tyler Pipe Indus. v. State*, 96 Wn.2d 785, 792, 638 P.2d 1213 (1982). In addition, one who seeks equity must come with clean hands.

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[1] In fact, an argument could be made that the legislature has created a civil-criminal hybrid where the sanctions placed upon the "perpetrator" of domestic violence are, except for the one exception of incarceration and perhaps of custody of his children, entirely to be found in a criminal judgment and sentence for domestic violence. See discussion of quasi-criminal nature of a chapter 26.50 RCW petition, *infra* at 19.

> ... 'unclean hands', within the meaning of the maxim of equity, is a figurative description of a class of suitors to whom a Court of Equity as a court of conscience will not even listen, because the conduct of such suitors is unconscionable, i.e. morally reprehensible as to known facts ...

J. L. Cooper & Co. v. Anchor Sec. Co., 9 Wn.2d 45, 72, 113 P.2d 845 (1941). Mrs. Blackmon does not come to court with clean hands in this matter because Mr. Blackmon awoke to find her standing over him with a gun and a cell phone. Thus, the court, if it were to follow traditional rules or maxims of equity, should not have heard Mrs. Blackmon's petition.

2. Actions in equity have not normally been accorded jury trials.

> The basic rule in interpreting article I, section 21 of the Washington Constitution is to look to the right as it existed at the time the constitution was adopted in 1889. We look both to the scope of the right and the nature of the action to which it applies. Thus, our constitution has been held to guarantee a right to a jury trial where the civil action is purely legal in nature, but not where the action is purely equitable in nature.

Auburn Mechanical v. Lydig Constr., 89 Wn. App. 893, 897, 951 P.2d 311 (1998). The present action under chapter 26.50 RCW did not exist at the time the Washington constitution was ratified. But assault actions did exist at that time as actions at law, and a 26.50 petition therefore would have some elements of an action at law. The equitable aspect of a chapter 26.50 petition is that the remedy sought by the petitioner is injunctive.

The problem with treating a matter as one in equity, without the right to a jury trial, is that regardless of the remedies sought, the determination

of facts giving rise to equitable relief must still be done. Thus, the primary purpose of the jury as fact-finder would still be important. See *Dimick, supra,* at 7; Blackstone, *supra*, at 8.

3. Blackstone states that English equity courts recognized and allowed for the need for a jury in equitable matters.

Blackstone wrote of a fictional ruse, called a "feigned issue"—a wager on key point of fact—that would be the basis for a legal action to be submitted to a jury.

> The Chancellor's decree is either *interlocutory* or final. It very seldom happens that the first decree can be final or conclude the cause; for, if any matter of fact is strongly controverted, this court is so sensible of the deficiency of trial by written depositions, that it will not bind the parties thereby, but usually directs the matter to be tried by jury; especially such important facts as the validity of a will, or whether A is the heir at law to B, or the existence of a *modus decimandi* or real and immemorial composition for tithes. But, as no jury can be summoned to attend this court, the fact is usually directed to be tried at the bar of the court of king's bench or at the assises, upon *a feigned issue.* For, (in order to bring it there, and have the point in dispute, and that only, put in issue) an action is brought, wherein the plaintiff by a fiction declares that he laid a wager of *5l.* with the defendant, that A was heir at law to B; and then avers that he is so; and therefore demands the *5l.* The defendant admits the feigned wager, but avers that A is not the heir to B; and thereupon that issue is joined, which is directed out of chancery to be tried: and thus the verdict of the jurors at law determines the fact in the court of equity.

Blackstone, *id.* at 452. In other words, it has long been the case in equity that the determination of critical facts is done by a jury at law. Thus does the jury trial remain the "glory of the English law".

4. Washington law also recognizes the need to have critical facts put before a jury, even though there may be equitable remedies in issue.

As *Auburn Mechanical v. Lydig Constr.*, 89 Wn. App. at 898, stated:

> Where an action is neither purely legal nor purely equitable in nature, the trial court must determine whether it is primarily legal or equitable in nature, and has wide discretion in this exercise. Any doubt should be resolved in favor of a jury trial, in deference to the constitutional nature of the right.

(Footnotes omitted.) *Auburn Mechanical*, *id.*, also quoted *Brown v. Safeway Stores, Inc.*, 94 Wn.2d 359, 368, 617 P.2d 704 (1980), which followed a non-exclusive, seven-part test set out in *Scavenius v. Manchester Port District*, 2 Wn. App. 126, 129-30, 467 P.2d 372 (1970). The plaintiff in *Brown* raised a legal question—the construction of a lease—but relief that was "almost exclusively equitable in nature." 94 Wn.2d at 366. So, too, in the present case, petitioner sought almost exclusively equitable relief—yet which was based on the legal factual ground of assault. In determining the "primary character" of an action, *Auburn Mechanical* indicated the court should consider at least, but not necessarily limited to, the following factors:

> (1) who seeks the equitable relief; (2) is the person seeking the equitable relief also demanding trial of the issues to the jury; (3) are the main issues primarily legal or equitable in their nature; (4) do the equitable issues present complexities in the trial which will affect the orderly determination of such issues by a jury; (5) are the equitable and legal issues easily separable; (6) in the exercise of such discretion, great weight should be given to the constitutional right of trial by jury and if the nature of the action

> is doubtful, a jury trial should be allowed; (7) the trial court should go beyond the pleadings to ascertain the real issues in dispute before making the determination as to whether or not a jury trial should be granted on all or part of such issues.

Auburn Mechanical v. Lydig Constr., 89 Wn. App. at 897. In this way, Washington law recognizes what Blackstone understood centuries before—that equity must at times turn to law for the determination of facts. This is also recognized in CR 38 and 39. *Brown*, 94 Wn.2d 367 (quoting *Scavenius*, 2 Wn. App. 129).

5. Application of the *Auburn Mechanical* factors to the case at hand leads to the conclusion that Mr. Blackmon should have been granted a jury trial.

In *Scavenius*, the court reversed the striking of the jury trial and remanded for consideration of the seven factors. 2 Wn. App. at 130. In *Brown*, the court applied the factors and sustained the trial court's denial of a jury trial.[2] 94 Wn.2d at 368.

a. Who seeks the equitable relief?.

In *Brown*, it was the appellant who sought equitable relief. Here, it was Mr. Blackman, the appellant, who sought to have a jury try the facts.

b. Is the person seeking equitable relief also demanding trial of the issues to the jury?

Again, unlike the appellant in *Brown*, it is appellant Mr. Blackmon,

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[2] The appellant in *Auburn Mechanical* had the right to a jury trial on remand because there was no equitable issue before the court after withdrawal of the equitable claim. 89 Wn.App. at 905.

rather that Mrs. Blackman who sought equitable relief below, who requested a jury try the facts.

c. *Are the main issues primarily legal or equitable in their nature?*

In this case, as in most cases under chapter 26.50, the issues of assault are primarily if not wholly legal in nature. And it does not appear that, in order to find the existence or non-existence of domestic violence, the jury would have to consider *any* equitable issues.

d. *Do the equitable issues present complexities in the trial which will affect the orderly determination of such issues by a jury?*

It is only the remedies which are equitable, and those need not be placed before the jury. For example, a jury in a criminal trial on the same facts might convict, but it would be the sentencing judge who would issue the restraining order against contacting the victim. In the same way in the present case, if a jury had found the existence of assault, the judge could have imposed restraints. Nevertheless, there is no reason the question of a restraining order could not be put before the jury because the equitable remedies present no complexities.[3]

e. *Are the equitable and legal issues easily separable?*

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[3] In fact, it is this writer's experience in chapter 26.50 actions, and which a wider inquiry would likely confirm, that the judge rather automatically imposes equitable remedies/sanctions.

This factor absolutely mitigates in Mr. Blackmon's favor. The legal issues and equitable remedies are very discrete, and a jury in this action would do the identical considering, deliberating and determining as the criminal or tort jury.

> *f. In the exercise of such discretion, great weight should be given to the constitutional right of trial by jury and if the nature of the action is doubtful, a jury trial should be allowed*?

"Inviolate" is a very strong word. This is especially true in light of the direct effect, as noted above at page 5, a finding of domestic violence has had upon Mr. Blackmon's *constitutional* rights—of liberty in his relationship with his son; of property in being excluded from his own home; of his right to privacy regarding his medical, as well as any mental health and substance-related records; of liberty in the burden of a time-consuming and demanding submission to treatment under chapter 388-60 WAC; of his right to bear arms in defense of himself and others in matters unrelated to his military work. Because the results in Mr. Blackmon's life, and because the presence of legal facts make the nature of the action doubtful, this court should err on the side of upholding the constitutional right.

> *g. The trial court should go beyond the pleadings to ascertain the real issues in dispute before making the determination as to whether or not a jury trial should be granted on all or part of such issues.*

The real issues in dispute are whether Mr. Blackmon (or to be equitable in the matter, Mrs. Blackmon as well) committed domestic violence. One need not go beyond the petition to realize that fact, and the Protection Order should be reversed and the matter should be remanded for a jury trial. The trial court abused its discretion in denying Mr. Blackmon's right to a jury trial. As to the remedies upon a jury's finding of domestic violence, those could be left to the trial judge (though not necessarily).

II. MR. BLACKMON WAS DENIED DUE PROCESS BECAUSE HE DID NOT HAVE A NEUTRAL FACT-FINDER AND BECAUSE HE WAS NOT GIVEN THE ADDITIONAL PROTECTIONS AFFORDED A RESPONDENT IN A QUASI-CRIMINAL MATTER.

A. A necessary part of the right to due process is the opportunity to be heard by a neutral decision maker.

The provisions of chapter 26.50 "satisfy the two fundamental requirements of due process--notice and a meaningful opportunity to be heard by a neutral decision maker." *State v. Karas*, 108 Wn. App. 692, 699, 32 P.3d 1016 (2001).

B. Judge Casey was not a neutral decision maker in matters regarding domestic violence.

This point is dependent upon the court granting the Appellant's motion to take judicial notice of facts suggesting bias—or at least the absence of the appearance of fairness—on the part of Judge Casey in

regard to matters of domestic violence. As the Supreme Court has stated:

> Evidence of a judge's actual or potential bias must be shown before an appearance of fairness claim will succeed. *State v. Post*, 118 Wn.2d 596, 619, 826 P.2d 172, 837 P.2d 599 (1992). Under the CJC, which is designed to provide guidance to judges and candidates for judicial office, "[j]udges should disqualify themselves in a proceeding in which their impartiality might reasonably be questioned ... ." CJC Canon 3(D)(1); *see also State v. Dominguez*, 81 Wn. App. 325, 328, 914 P.2d 141 (1996) (judge must disqualify self if "his impartiality may reasonably be questioned").

State v. Chamberlin, 161 Wn.2d 30, 37, 162 P.3d 389 (2007). *See also*, *In re Johnston*, 99 Wn.2d 466, 475-476, 663 P.2d 457 (1983). Judge Casey's bias or lack of appearance of impartiality can be seen in her allowing certain posters to remain in the courthouse halls until a complaint was made. One of the posters said: "How can such a God-fearing man have such a husband-fearing wife?" Another features a pregnant woman and reads, "Her child will be a first generation American and quite likely a third generation wife beater." Though she ordered the posters taken down upon hearing of the complaint, her reaction to the KING5 reporter belies her actual bias:

> It was my opinion that *even though it probably represents reality* it may feel, make some people feel uncomfortable; and so it's just best that we not post it since we want to be inviting and make sure everyone feels they're heard and they're treated fairly when they come to the court.

(Emphasis added.) The KING5 video report, as well as the newspaper article and KING5 internet article, showed that two men felt the posters

showed bias in the courthouse.

Thus, Judge Casey's expression on the TV news that the posters accurately represent reality strongly suggest a lack of neutrality on her part. The fact that the posters had been on the courthouse walls on her watch for four years, and the fact that they were removed immediately, and the fact that another judge considered the posters inappropriate for the courthouse walls, only underscores the explicit statement of Judge Casey.

C. Domestic violence petitions under chapter 26.50 RCW are quasi-criminal in nature and therefore a respondent is entitled to greater protection in hearings.

The essence of the quasi-criminal aspect is that there are punitive elements and the protection of the public is in issue.

> A protection order issued under chapter 26.50 RCW "does not protect merely the 'private right' of the person named as petitioner in the order." *State v. Dejarlais*, 136 Wn.2d 939, 944, 969 P.2d 90 (1998). Rather, the Act reflects the legislative determination that the public has an interest in preventing domestic violence.

State v. Karas, 32 P.3d 1016, 1020, 32 P.3d 1016 (2001). Allowing a jury trial would meet Mr. Blackmon's due process needs in a quasi-criminal proceeding. In addition, due process in a quasi-criminal matter requires that the burden of proof be the clear and convincing standard. *Nguyen v. Dep't of Health*, 144 Wn.2d 516, 529, 29 P.3d 689 (2001) (quasi-criminal proceedings or where the proceedings threaten the individual involved with a significant deprivation of liberty or with a stigma).

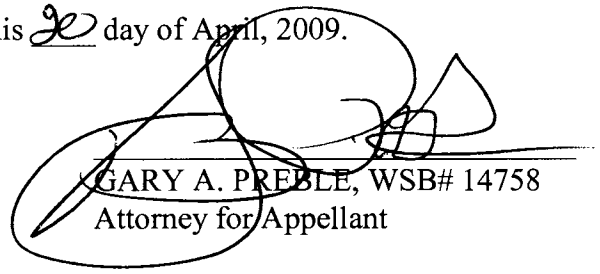
III. DENYING MR. BLACKMON'S EXPERT WITNESS WAS AN ABUSE OF DISCRETION.

The hearing was set on very short notice even though opposing counsel had agreed to a continuance. CP 40 The needs of the petitioner could have been met by a continuing order and still allowed time for Lori Harrison to have testified.

E. CONCLUSION

Based on the foregoing, Mr. Blackmon requests the matter be reversed and remanded to the Superior Court for a jury trial.

Respectfully submitted this 20 day of April, 2009.



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APPENDIX A

Chapter 388-60 WAC **Last Update: 3/30/01**
Domestic violence perpetrator treatment program standards

WAC Sections

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388-60-0245 What topics must the treatment program include in the educational curriculum?

388-60-0255 What is the minimum treatment period for program participants?

388-60-0265 What criteria must be satisfied for completion of treatment?

388-60-0275 What must the treatment program do when a participant satisfactorily completes treatment?

388-60-0285 Must a treatment program have policies regarding any reoffenses during treatment?

388-60-0295 Does a program need guidelines for discharging participants who do not complete treatment?

388-60-0305 Who must the program notify when the program discharges a participant because of failure to complete treatment?

388-60-0015
What definitions apply to this chapter?

The following definitions are important to understand these rules:

"Corrective action" means the denial or suspension or revocation of certification, or the issuance of a written warning.

"Department" or **"DSHS"** means the department of social and health services.

"Participant" or **"perpetrator"** means the client enrolled in the domestic violence perpetrator treatment program. This client may be court-ordered to attend treatment or someone who chooses to voluntarily attend treatment.

"Program" or **"treatment program"** means a domestic violence perpetrator treatment program.

[Statutory Authority: RCW 26.50.150. 01-08-046, § 388-60-0015, filed 3/30/01, effective 4/30/01.]

388-60-0025
What is the purpose of this chapter?

(1) This chapter establishes minimum standards for programs that treat perpetrators of domestic violence.

(2) These standards apply to any program that:

(a) Advertises that it provides domestic violence perpetrator treatment; or

(b) Defines its services as meeting court orders that require enrollment in and/or completion of domestic violence perpetrator treatment.

(3) These programs provide treatment only to perpetrators of domestic violence, including clients who are self-referred or those who are court-ordered to attend treatment.

(4) An agency may administer other service programs in addition to domestic violence perpetrator treatment services; however, the domestic violence perpetrator treatment program must be considered a separate and distinct program from all other services the agency provides.

[Statutory Authority: RCW 26.50.150. 01-08-046, § 388-60-0025, filed 3/30/01, effective 4/30/01.]

388-60-0035
Must domestic violence perpetrator treatment programs be certified?

All programs providing domestic violence perpetrator treatment services must:

(1) Be certified by the department; and

(2) Comply with the standards outlined in this chapter.

(b) Inform victims of specific outreach, advocacy, emergency and safety planning services offered by a domestic violence victim program in the victim's community;

(c) Encourage victims to make plans to protect themselves and their children;

(d) Give victims a brief description of the domestic violence perpetrator treatment program, including the fact that the victim is not expected to do anything to help the perpetrator complete any treatment program requirements; and

(e) Inform victims of the limitations of perpetrator treatment.

(3) The program must document in writing the program's efforts to notify the victim of the above requirements.

(4) The program cannot invite or require the victims of participants to attend perpetrator treatment program counseling sessions or education groups which the program requires participants to attend as a condition of their contracts.

[Statutory Authority: RCW 26.50.150. 01-08-046, § 388-60-0065, filed 3/30/01, effective 4/30/01.]

388-60-0075
What must a treatment program require of its participants?

(1) All participants must attend consecutive, weekly group treatment sessions. A program may develop policies which allow excused absences to be made up with the program director's approval.

Exception: Another type of intervention may be approved for certain documented clinical reasons, such as psychosis or other conditions that make the individual not amenable to treatment in a group setting.

(2) The program must assign each participant to a home group and the participant must be required to attend the same scheduled group each week. The program's director must authorize any exceptions to this requirement and document the reason for the exception.

(3) Each participant must sign all releases of information required by the treatment program, including those specified in WAC 388-60-0145.

(4) Each participant must sign a contract for services with the treatment program.

[Statutory Authority: RCW 26.50.150. 01-08-046, § 388-60-0075, filed 3/30/01, effective 4/30/01.]

388-60-0085
What requirements apply to group treatment sessions?

(1) The group sessions must be single gender.

(2) The group size is limited to a maximum of twelve participants, and a minimum of two

participants.

(3) Group sessions must be at least ninety minutes in length.

(4) Group sessions must be closed to all persons other than participants, group facilitators, and others specifically invited by the group leaders. Others specifically invited by group leaders may include:

(a) Professionals in related fields;

(b) Persons offering interpretation services for the deaf and/or hearing impaired or language translation/interpretation; and

(c) Others bringing specific information critical to the group.

[Statutory Authority: RCW 26.50.150. 01-08-046, § 388-60-0085, filed 3/30/01, effective 4/30/01.]

388-60-0095
May a participant be involved in more than one type of treatment while enrolled in a domestic violence perpetrator treatment program?

(1) A program may allow a client to participate in other types of therapy during the same period the client is participating in the required weekly group treatment sessions.

(2) Any other type of therapy must support the goal of victim safety by facilitating change in the participant's abusive behavior without blaming the victim for the perpetrator's abuse.

(3) The program must determine that the participant is stable in the participant's other treatments before allowing the participant to participate in treatment for domestic violence.

(4) Other therapies including the following list may not be substituted for the required domestic violence perpetrator treatment sessions:

(a) Individual therapy;

(b) Marital or couples' therapy;

(c) Family therapy;

(d) Substance abuse evaluations or treatment; or

(e) Anger management.

(5) A program may recommend marital or couples' therapy only after:

(a) The participant has completed at least six months of domestic violence perpetrator treatment services; and

(b) The victim has reported that the participant has ceased engaging in violent and/or controlling behaviors. However, this therapy may not take the place of domestic violence perpetrator treatment session.

[Statutory Authority: RCW 26.50.150. 01-08-046, § 388-60-0095, filed 3/30/01, effective 4/30/01.]

388-60-0105
What requirements does the department have for treatment programs regarding nondiscrimination?

(1) A domestic violence perpetrator treatment program may not discriminate against any participant based on:

(a) Race;

(b) Age;

(c) Gender;

(d) Disability;

(e) Religion;

(f) Marital status or living arrangements;

(g) Political affiliation;

(h) Educational attainment;

(i) Socio-economic status;

(j) Ethnicity;

(k) National origin; or

(l) Sexual orientation.

(2) Program materials, publications, and audio-visual materials must be culturally sensitive and nondiscriminatory.

[Statutory Authority: RCW 26.50.150. 01-08-046, § 388-60-0105, filed 3/30/01, effective 4/30/01.]

388-60-0115
Does a program have the authority to screen referrals?

(1) A treatment program has the authority to accept or reject any referral for its program.

(2) The program must base acceptance and rejection of a client on written criteria the program has developed to screen potential participants.

(3) A treatment program may impose any conditions on participants that the program deems appropriate for the success of treatment.

[Statutory Authority: RCW 26.50.150. 01-08-046, § 388-60-0115, filed 3/30/01, effective 4/30/01.]

388-60-0125
What rights do participants in a treatment program have?

(1) A treatment program must provide each participant with the highest quality of service.

(2) Treatment program staff must establish a climate where all relationships with colleagues and participants are respectful.

(3) Each participant enrolled in a program must have the assurance that the program staff will conduct themselves professionally, as specified in RCW 18.130.180.

(4) Staff, board members, and volunteers working for a treatment program must not engage in or tolerate sexual harassment or exploitation of an employee, a program participant, or a victim of any program participant.

(5) Each participant must have a written contract signed by the participant and the treatment program staff which specifies the participant's rights and responsibilities while enrolled in the program.

[Statutory Authority: RCW 26.50.150. 01-08-046, § 388-60-0125, filed 3/30/01, effective 4/30/01.]

388-60-0135
What information about the participant must the treatment program keep confidential?

(1) Treatment programs must follow the confidentiality requirements contained in chapter 18.19 RCW for registered counselors and certified professionals.

(2) All program participants and guests must agree in writing not to disclose the identity of group participants or personal information about the participants.

(3) A treatment program must keep all communications between the participant and direct treatment staff confidential unless:

(a) The participant has signed a release of information; or

(b) The program is legally required to release the information.

(4) The treatment program may audio or video tape group sessions only when all participants grant written consent that gives details about the specific uses for the tape. The program must obtain an additional consent statement from each participant to permit use of the tape for any purpose other than the purposes specified in the original consent.

[Statutory Authority: RCW 26.50.150. 01-08-046, § 388-60-0135, filed 3/30/01, effective 4/30/01.]

388-60-0145
What releases must a program require a participant to sign?

For a treatment program to conduct case monitoring and periodic safety checks, the program must require all participants to sign the following releases which must remain in effect for the duration of the client's treatment:

(1) A release allowing the treatment program to notify the victim and/or the victim's community and/or legal advocates that the perpetrator has been accepted or rejected for treatment;

(2) A release allowing the program to provide the victim with periodic reports about the perpetrator's participation in the program;

(3) A release allowing the current domestic violence perpetrator treatment program access to information held by all prior and concurrent treatment agencies, including domestic violence perpetrator treatment programs, mental health agencies, and drug and alcohol treatment programs;

(4) A release allowing the treatment program to provide relevant information regarding the participant to each of the following entities:

(a) Lawyers, including prosecutors;

(b) Courts;

(c) Parole officers;

(d) Probation officers;

(e) Child protective services, child welfare services, and other DSHS programs;

(f) Court-appointed guardians ad litem;

(g) DSHS certifying authorities; and

(h) Former treatment programs that the participant has attended.

(5) A release for the program to notify any person whose safety appears to be at risk due to the participant's potential for violence and lethality. This includes, but is not limited to:

(a) The victim;

(b) Any children;

(c) Significant others;

(d) The victim's community and legal advocates; or

(e) Police.

[Statutory Authority: RCW 26.50.150. 01-08-046, § 388-60-0145, filed 3/30/01, effective 4/30/01.]

388-60-0155
Must a treatment program keep information provided by or about the victim confidential?

(1) A treatment program must treat all information the victim provides to the program as confidential unless the victim gives written permission for the program to release the information.

(2) Information must be kept separate from any files for perpetrators.

(3) If a victim tells the treatment program that the participant has committed a new offense, the treatment program must encourage the victim to contact:

(a) Appropriate law enforcement agency; and

(b) The local domestic violence victim's program.

[Statutory Authority: RCW 26.50.150. 01-08-046, § 388-60-0155, filed 3/30/01, effective 4/30/01.]

388-60-0165
What information must the treatment program collect and discuss with the client during the intake process or assessment interview?

(1) Treatment programs must conduct an individual, complete clinical intake and assessment interview with each perpetrator who has been accepted into the treatment program. The program staff must meet face-to-face with the program participant to conduct this intake and interview.

(2) During the intake interview, program staff must obtain the following information, at a minimum:

(a) Current and past violence history;

(b) A complete diagnostic evaluation;

(c) A substance abuse screening;

(d) History of treatment from past domestic violence perpetrator treatment programs;

(e) History of threats of homicide or suicide;

(f) History of ideation of homicide or suicide;

(g) History of stalking;

(h) Data to develop a lethality risk assessment;

(i) Possession of, access to, plans to obtain, or a history of use of weapons;

(j) Degree of obsessiveness and dependency on the perpetrator's victim;

(k) History of episodes of rage;

(l) History of depression and other mental health problems;

(m) History of having sexually abused the battered victim or others;

(m) History of having sexually abused the battered victim or others;

(n) History of the perpetrator's domestic violence victimization and/or sexual abuse victimization;

(o) Access to the battered victim;

(p) Criminal history and law enforcement incident reports;

(q) Reports of abuse of children, elderly persons, or animals;

(r) Assessment of cultural issues;

(s) Assessment of learning disabilities, literacy, and special language needs; and

(t) Review of other diagnostic evaluations of the participant.

(3) If the program cannot obtain the above information, the program client file must include documentation of the program's reasonable efforts to obtain the information.

[Statutory Authority: RCW 26.50.150. 01-08-046, § 388-60-0165, filed 3/30/01, effective 4/30/01.]

388-60-0175
Who may complete the intake process or conduct the assessment interview?

(1) Only treatment staff who meet the minimum qualifications for direct treatment staff stated in chapter 388-60 WAC may complete the intake process or conduct the assessment interview.

(2) A trainee may not have sole responsibility for conducting an intake or assessment. If the staff conducting the intake/assessment is a trainee, the trainee must work in conjunction with additional staff in their program, and the trainee's program supervisor must review and sign off on the trainee's work.

[Statutory Authority: RCW 26.50.150. 01-08-046, § 388-60-0175, filed 3/30/01, effective 4/30/01.]

388-60-0185
Must the program compile a written document based on information gathered in the intake/assessment process?

The program must compile a written document, which includes the information required to be gathered in the intake/assessment process.

[Statutory Authority: RCW 26.50.150. 01-08-046, § 388-60-0185, filed 3/30/01, effective 4/30/01.]

388-60-0195

Must the treatment program develop an individual treatment plan for each participant?

(1) The treatment program must develop a written treatment plan for each participant who is accepted into the domestic perpetrator treatment program.

(2) The treatment program must base the participant's treatment on the clinical intake/assessment which the program completed for the client.

(3) The treatment plan must adequately and appropriately address the needs of the individual participant.

[Statutory Authority: RCW 26.50.150. 01-08-046, § 388-60-0195, filed 3/30/01, effective 4/30/01.]

388-60-0205
What must a treatment program consider when developing an individual treatment plan for a participant?

(1) A treatment program must:

(a) Assess whether a participant should be required to engage in drug and alcohol, mental health, or other treatment services while they are participating in the treatment program;

(b) Decide which treatment gets priority for the participant if more than one treatment service is recommended;

(c) Determine the sequence of other services if concurrent treatment is not clinically appropriate; and

(d) Make appropriate referrals to outside agencies.

(2) A treatment program must consider issues relating to a participant's prior victimization when designing each treatment plan.

The program must consider the appropriateness of domestic violence victim services in lieu of perpetrator treatment for a participant who presents an extensive history of prior victimization.

[Statutory Authority: RCW 26.50.150. 01-08-046, § 388-60-0205, filed 3/30/01, effective 4/30/01.]

388-60-0215
Must a program require a participant to sign a contract for services with the treatment program?

A treatment program must require each participant to sign a formal contract for services.

[Statutory Authority: RCW 26.50.150. 01-08-046, § 388-60-0215, filed 3/30/01, effective 4/30/01.]

388-60-0225
What must the treatment program include in the contract for each participant's treatment?

The contract between each participant and the treatment program must include the following elements:

(1) A statement regarding the treatment program's philosophy that:

(a) The victim may not be blamed for the participant's abuse;

(b) The perpetrator must stop all forms of abuse;

(c) An abuser is to be held accountable for the abusers actions; and

(d) The program's primary concern is for the safety of victims.

(2) A statement requiring the participant to:

(a) Cooperate with all program rules;

(b) Stop violent and threatening behaviors;

(c) Be nonabusive and noncontrolling in relationships;

(d) Develop and adhere to a responsibility plan;

(e) Comply with all court orders;

(f) Cooperate with the rules for group participation; and

(g) Sign all required releases of information.

(3) A policy on attendance and consequences for inadequate attendance;

(4) A requirement that the perpetrator must actively participate in treatment, including sharing personal experiences, values, and attitudes, as well as completing all group activities and assignments;

(5) A policy regarding other program expectations, such as completion of written exams, concurrent treatment requirements, and possession of weapons as described under chapters 388-861 and 388-875 WAC;

(6) Written criteria for completion of treatment;

(7) A statement that group members must honor the confidentiality of all participants;

(8) A statement that the treatment program has the duty to warn and protect victims, law enforcement, and third parties of any risk of serious harm the program determines the participant poses to them;

(9) Requirements that the participant must either:

(a) Provide the program with the participant's arrest records, criminal history, and any information regarding treatment services previously received; or

(b) Identify the existence of and location of all service records, and authorize release of all such records to the domestic violence treatment program.

(10) The program's policy regarding the use of drugs and alcohol, including a provision that the participant must attend treatment sessions free of drugs and alcohol; and

(11) Fees and methods of payment for treatment.

[Statutory Authority: RCW 26.50.150. 01-08-046, § 388-60-0225, filed 3/30/01, effective 4/30/01.]

388-60-0235
Must a treatment program follow an educational curriculum for each participant?

A treatment program must follow a specific educational curriculum for all participants in the program.

[Statutory Authority: RCW 26.50.150. 01-08-046, § 388-60-0235, filed 3/30/01, effective 4/30/01.]

388-60-0245
What topics must the treatment program include in the educational curriculum?

The curriculum of the treatment program must include the following topics:

(1) Belief systems that allow and support violence against women;

(2) Belief systems that allow and/or support the use or threat of violence to establish power and control over an intimate partner;

(3) Definitions of abuse, battering, and domestic violence;

(4) Forms of abuse, including:

(a) Physical abuse;

(b) Emotional and sexual abuse;

(c) Economic manipulation or domination;

(d) Physical force against property or pets;

(e) Stalking;

(f) Terrorizing someone or threatening him or her; and

(g) Acts that put the safety of battered partners, children, pets, other family members, or friends at risk.

(5) The impact of abuse and battering on children and the incompatibility of domestic violence and abuse with responsible parenting;

(6) The fact that a participant is solely responsible for the participant's violent behavior, and must acknowledge this fact;

(7) The need to avoid blaming a victim for the participant's abusive behavior;

(8) Techniques to be nonabusive and noncontrolling;

(9) Negative legal and social consequences for someone who commits domestic violence;

(10) Why it is necessary to meet financial and legal obligations to family members;

(11) Opportunities for a participant to develop a responsibility plan:

(a) The treatment program may assist the participant in developing the plan.

(b) In the plan, the participant must make a commitment to giving up power and control over the victim.

(12) Education regarding individual cultural and family dynamics of domestic violence; and

(13) Washington state laws and practices regarding domestic violence, as described in chapters 10.31, 10.99, and 26.50 RCW.

[Statutory Authority: RCW 26.50.150. 01-08-046, § 388-60-0245, filed 3/30/01, effective 4/30/01.]

388-60-0255
What is the minimum treatment period for program participants?

(1) The minimum treatment period is the time required for the participant to fulfill all conditions of treatment set by the treatment program. Satisfactory completion of treatment is not based solely on a perpetrator participating in the treatment program for a certain period of time or attending a certain number of sessions.

(2) The program must require participants to attend treatment and satisfy all treatment program requirements for at least twelve consecutive months.

(3) The program must require the participant to attend:

(a) A minimum of twenty-six consecutive weekly same gender group sessions, followed by:

(b) Monthly sessions with the treatment provider until the twelve-month period is complete. These sessions must be conducted face-to-face with the participant by program staff who meet the minimum qualifications set forth in this chapter.

[Statutory Authority: RCW 26.50.150. 01-08-046, § 388-60-0255, filed 3/30/01, effective 4/30/01.]

388-60-0265

What criteria must be satisfied for completion of treatment?

(1) A treatment program must have written criteria for satisfactory completion of treatment.

(2) A program must require a participant to meet all of the following conditions in order for the program to state that the participant has completed treatment:

(a) Attend treatment sessions for the minimum treatment period;

(b) Attend all other sessions required by the program;

(c) Cooperate with all group rules and program requirements throughout the duration of treatment services;

(d) Stop the use of all violent acts or threats of violence;

(e) Stop using abusive and controlling behavior;

(f) Adhere to the participant's responsibility plan;

(g) Comply with court orders; and

(h) Comply with other conditions of the contract for treatment services, such as chemical dependency treatment.

[Statutory Authority: RCW 26.50.150. 01-08-046, § 388-60-0265, filed 3/30/01, effective 4/30/01.]

388-60-0275
What must the treatment program do when a participant satisfactorily completes treatment?

(1) A treatment program must notify the following people when a participant satisfactorily completes treatment:

(a) The court having jurisdiction, if the participant has been court-mandated to attend treatment; and

(b) The victim, if feasible.

(2) The program must document in writing its efforts to contact the victim.

(3) The program may specify only that the perpetrator has completed treatment based on adequate compliance with the participant's contract with the treatment program and any court order.

[Statutory Authority: RCW 26.50.150. 01-08-046, § 388-60-0275, filed 3/30/01, effective 4/30/01.]

388-60-0285
Must a treatment program have policies regarding any reoffenses during treatment?

A treatment program must establish and implement written policies that include consequences if a

A treatment program must establish and implement written policies that include consequences if a perpetrator reoffends during treatment or does not comply with program requirements.

[Statutory Authority: RCW 26.50.150. 01-08-046, § 388-60-0285, filed 3/30/01, effective 4/30/01.]

388-60-0295
Does a program need guidelines for discharging participants who do not complete treatment?

(1) A treatment program must have guidelines for discharging participants who do not satisfactorily complete the program.

(a) Discharge decisions must be uniform and predictable.

(b) Discrimination may not occur against any participant.

(2) A program may terminate a participant from treatment prior to completion of the program if the participant has not complied with the requirements set forth in the participant's contract with the program.

(3) If a program discharges a participant who does not complete treatment, the treatment program must document in writing that the participant has not complied with:

(a) The participant's contract with the treatment program;

(b) A court order;

(c) A probation agreement; or

(d) Group rules.

(4) If a program chooses not to discharge a participant who has reoffended, committed other acts of violence or abuse, or has not complied with any of subsection (3)(a) through (d) of this section, the program must note the reoffense and/or noncompliance in the client's progress notes, reports to the court, and reports to the victim (if feasible).

(5) The program must state in the client's record the program's rationale for not terminating the participant, and state what corrective action was taken.

(6) A program may discharge a participant if the treatment program cannot provide adequate treatment services to the participant because of the treatment program's current development.

[Statutory Authority: RCW 26.50.150. 01-08-046, § 388-60-0295, filed 3/30/01, effective 4/30/01.]

388-60-0305
Who must the program notify when the program discharges a participant because of failure to complete treatment?

A treatment program must notify the following parties in writing when the program discharges a

A treatment program must notify the following parties in writing when the program discharges a participant from the program because of failure to complete treatment:

(1) The court having jurisdiction, if the participant has been court-mandated to attend treatment;

(2) The participant's probation officer, if any;

(3) The victim of the participant, if feasible; and

(4) The program must notify the above parties within three days of terminating the client.

[Statutory Authority: RCW 26.50.150. 01-08-046, § 388-60-0305, filed 3/30/01, effective 4/30/01.]

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STATE OF WASHINGTON
BY DEPUTY

IN THE COURT OF APPEALS
STATE OF WASHINGTON DIVISION II

TIFFANY D. BLACKMON, Petitioner, and, BRIAN J. BLACKMON, Respondent.	No. 38421-3-II DECLARATION OF SERVICE

DECLARATION OF SERVICE

I, Kayla M. Baker, state and declare that I am a the assistant to Gary A. Preble, the attorney for the Appellant for Preble Law Firm. On April 22, 2009 I sent a true copy of the Appellants Brief to Scott Douglas, attorney for Petitioner.

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

SIGNED at Olympia, Washington, on April 22, 2009.

KAYLA M. BAKER
Legal Assistant