

FILED
Court of Appeals
Division II
State of Washington
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No. 51273-4-II

THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO

DANIEL J. BARRETT

Appellant,

v.

CARMELITA ESCARCEGA
(fka CARMELITA BARRETT),

Respondent.

REPLY BRIEF OF APPELLANT

DANIEL J. BARRETT
Appellant, Pro Se

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TABLE OF CONTENTS

TABLE OF CONTENTS i

TABLE OF AUTHORITIESiii - iii

A. INTRODUCTION: MORE CP's NEED DESIGNATION 1

B. REPLY ARGUMENT3

 a. Respondent NEVER RELIED on RCW 26.50. 3

 b. Trial court judge specifically stated OTHER reasons for awarding fees and they did INTO include RCW 26.503

 c. The RCW 26.50 mandate is only for ORIGINAL actions. 5

 d. The original judge, originally did NOT FIND any DV and was specifi that restrains were based upon 26.09.191(3)(d).....8

C. ATTORNEY FEES ARE INAPPROPRIATE.....9

D. SUMMARY: Back at “need and ability to pay”10

E. SINCE DAN SMITH WENT THERE, THE COURT SHOULD KNOW THIS 12

F. CR 11 SANCTIONS ARE WARRANTED12

TABLE OF AUTHORITIES

Federal Cases

<u>Cabell v. Petty</u> 810 F.2d 463 (4 th Cir. 1987)	17
<u>Thomas v. Capital Sec. Servs., Inc.</u> 836 F.2d 866 (5 th Cir. 1988)	17
<u>U.S. v. Thoreen</u> 653 F.2d 1332 (C.A. 1981).....	18

Washington Supreme Court Cases

<u>Biggs v. Vail</u> 124 Wn.2d 193, 876 P.2d 448 (1994)	13, 14
<u>Bryant v. Joseph Tree, Inc.</u> 119 Wn.2d 210, 829 P.2d 1099 (1992)	13, 14, 16
<u>WISPEA v. Fisons</u> 122 Wn.2d 299, 858 P.2d 1054 (1993)	13

Washington Court of Appeals Cases

<u>In re Marriage of Drlik</u> 121 Wn. App. 269, 87 P.3d 1192 (2004)	5
<u>In re Marriage of Pennamen</u> 135 Wn. App. 790, 146 P.3d 466 (06).....	8
<u>In re Marriage of Rockwell</u> 141 Wn. App. 235, 170 P.3d 572 (2007).....	9
<u>MacDonald v. Korum Ford</u> 80 Wn. App. 877, 912 P.2d 1052 (1996)	14

State v. Forrester
 21 Wn.App. 855, 587 P.2d 179 (1978)7

State v. Raymer
 61 Wn. App. 516, 810 P.2d 1383 5

Washington Statutes

RCW 26.09.060.....7

RCW 26.09.191.....5, 8

RCW 26.50.....3, 5, 6, 7

Washington State Court Rules

Admission to Practice Rule (APR) 5.....2, 15

Rule of Evidence (ER) 4022

Superior Court Civil Rule (CR) 1112, 14, 15, 16

Rule of Evidence (ER) 4032

Rule of Professional Conduct (RPC) 1.34

Rule of Professional Conduct (RPC) 3.315

Rule of Professional Conduct (RPC) 3.416

Rule of Professional Conduct (RPC) 8.415

A. INTRODUCTION: MORE CP's NEED DESIGNATION

The Respondent's attorney signed the Response Brief with Hillary Holmes' WSBA number and not his own.

Mr. Smith has 33 years' experience as a lawyer. Despite this, he wastes a great deal of time and violates basic, fundamental, elementary well known, age-old public policies in the Court of Appeals by trying to make up new facts on appeal.

I narrowly defined the issues on appeal. Mr. Smith expanded this narrow appeal and inserted new allegations, statements, narratives and findings that don't exist in the trial court. He committed a fraud upon the trial court, not just a "lack of candor" violation, when he doctored up and falsified the judge's 9/29/2017 order on page 2, line 11 and wrote a finding of "dismissed WITH prejudice". CP 57, line 11. The judge clearly stated "without" and the matter was corrected by her new order upon my Motion for Reconsideration. CP 110, lines 10 – 11.

Mr. Smith spends a great deal of time with irrelevant, moot, unnecessary diatribes and procedural history from other cases, in other courts, in other venues, wasting my and this court's time.

Therefore, I must designate more CP's to counter these waste of time claims, citings and arguments, all in order to avoid

being prejudiced by this specious, bad faith legal tactic. (He could have simply argued the merits of the narrowly defined issues on appeal regarding attorney fees). Because my appeal was on narrow issues, there was no need for the exhibits attached. But, now there is, now that Mr. Smith “took it there” (outside the scope of the appeal).

Mr. Smith is presumed to know better than this. Because of his insertion of new alleged facts and the bad-faith tactics to prejudice me with content that is inadmissible under ER 402, 403 and a violation of the APR 5(e) Oath of Attorney to not prejudice a party, even with facts. Because of all this, I am incurring extra costs. The court incurs needless time spent on this matter and the tax payers’ monies are allocated for work that’s totally needless, all because Mr. Smith did not use his 33-years of wisdom and insight to focus on the issue at hand. This is not a “free for all” as he ostensibly thought it to be in superior court when he doctored up a court’s order. He’s knows better. This tactic is done intentionally. He cannot be this ignorant of fundamental procedural basics such as the Rules of Evidence (ER).

B. REPLY ARGUMENT

1. Respondent's entire argument is misplaced, being founded on RCW 26.50, which is in apposite. "Need and ability to pay" governs this matter

This matter is not rooted in RCW 26.50. My terminated attorney was confused in flippantly referring to that statute in early proceedings but this is error. And error is error, no matter who brings in the error.

a. Respondent NEVER RELIED on RCW 26.50.

As stated in my original Brief of Appellant, attorney fee awards cannot be granted without citing authority. The court can do nothing without an authority. The Respondent NEVER mentioned her authority for asking for fees. It's nowhere on the record.

She is only clinging to 26.50 now on appeal, after the fact. Her attorney simply stated that he allegedly charged her for services rendered. Nothing more. RCW 26.50 is nowhere on the record, as being relied upon.

b. Trial court judge specifically stated OTHER reasons for awarding fees and they did NOT include RCW 26.50

This should be the end of the debate. Findings by trial court judge are verities on appeal. Respondent is trying to create a narrative that does not exist in the record.

The trial judge awarded fees specifically as she stated on the record. See RP from September 27, 2017 on p. 8, lines 12 – 18. She stated she was awarding them for this reason:

“..I am awarding the attorneys’ fees that are being requested. And ***this is because*** of wasted time from these continuances that have been ongoing and the failure to bring this forward to me in a timely manner as I requested three months ago when we started this. So I am awarding attorneys’ fees in the amount of \$3,972.71.”

She never said because of RCW 26.50. It was because of her personal frustrations with my attorney’s procrastination.

Comment #3 in the Rule of Professional Conduct (RPC) 1.3 states this is the most despised problem with members of the WSBA. It reads in pertinent part:

“Perhaps no professional shortcoming is more widely resented than procrastination. A client’s interests often can be adversely affected by the passage of time..”

The judge ruled in light of her resentment toward my attorney’s procrastination. That’s the basis. And that is not a legal basis for awarding attorney fees in a civil matter. This sets a bad precedent that when a judge is annoyed, then she can rule out of emotion, frustration and/or anger and not out of legal authority.

c. The RCW 26.50 mandate is only for ORIGINAL actions.

Respondent cites 26.50.060(1) for the first time on appeal. My request to terminate the Restraining Order was a motion to do away with a moot domestic / civil order, that was entered solely because of a factor under RCW 26.09.191(3)(d) – the impairment of the emotional ties between the children and their father.

Even if we pretended that Respondent raised 26.50.060(1) at trial, it would still be inapposite. Notice that Respondent’s own brief cites this law in pertinent part:

“Upon NOTICE and after hearing, the Court may provide relief as follows: ...(g) Require the respondent to pay...costs incurred in bringing the action, including attorneys’ fees.”

This court uses the plain, ordinary meaning of the language in any given statute. In re Marriage of Drlik , 121 Wn. App. 269 , 277, 87 P.3d 1192 (2004). State v. Raymer, 61 Wn. App. 516, 519, 810 P.2d 1383 (1991); State v. Forrester, 21 Wn. App. 855, 861, 587 P.2d 179 (1978).

The PLAIN language of the statute is an awarded of costs in bringing the ORIGINAL action, for the moving party who is requesting the original Domestic Violence Protection Order (DVPO). But, we don’t have a DVPO at all in this case. And this

matter was a motion to modify or terminate (a RESTRAINING ORDER that has no root in 26.50). There is no attorney fee award authorization for subsequent motions. Those must be governed by authorities in my Brief of Appellant, basically, “need and ability to pay”.

Now there are different types of restrictive orders that can subject a party to arrest even if that order is not a DVPO. Generic temporary restraining orders such as this court system’s form FL 150 actually have no language of RCW 26.50 as far as a section to make findings of domestic violence. FL 150 is attached. **Exhibit A**. But, if the order is violated, there are warnings that such a violation is a criminal offense under RCW 26.50. The court can even find a risk of potential harm in the future, while no actual domestic violence (DV) occurred.

The same thing goes for an Ex Parte Restraining Order or FL 222, attached as **Exhibit B**. The finding only need be “irreparable harm” in section #5, but the penalty for violating the order is an RCW 26.50 crime.

Similarly in this case, there is NO FINDING of (DV) in the restraining order at hand, but only a warning that any type of violation of the order would constitute a DV crime under RCW

26.50. The distinction is very clear. Mr. Smiths vague ambiguous reliance upon 26.50 is completely disingenuous and specious. The restraining order is not based upon 26.50, but if the order is violated, then and only then, is there a DV crime. Moreover, the Permanent Restraining Order (attached as **Exhibit C** and still yet to be designated) reads on page 1, Section II, lines 23 – 25:

“VIOLATION OF A RESTRAINING ORDER IN THIS PARAGRAPH WITH ACTUAL NOTICE OF ITS TERMS IS A CRIMINAL OFFENSE UNDER CHAPTER 26.09 RCW, AND WILL SUBJECT THE VIOLATOR TO ARREST. RCW 26.09.060(5).”

The order itself cites family law or “Dissolution Proceedings” chapter 26.09 and not 26.50.

The actual form to enter restraints against a DV perpetrator is WPF DV-3.015 which is attached as **Exhibit D**. Going up from the bottom on page 1, and counting the “check boxes”, above the fourth box from the bottom reads:

“Respondent committed domestic violence as defined in RCW 26.50.010.”

This is the mandatory finding for that order. There is no optional “check box”. If a judge finds DV, then the judge uses the DVPO forms that have long had this boilerplate, automatic finding in them. That’s not what we have in this case.

And Respondent wants to make new findings in a 16 year old order.

d. The original judge, originally did NOT FIND any DV and was specific that restraints were based upon 26.09.191(3)(d).

The original restraining order was solely based on lack of a bond between the father and children. Judge Chushcoff stated in his oral ruling, modifying a parenting plan and entering the restraining order:

“When one terminates or restricts the children’s access to a parent, it is an extremely serious matter, and one not easily undertaken. But I do think here that it is warranted. I come to that decisions reluctantly in some ways, because I do think, maybe in part, the reasons are not all Mr. Barrett’s fault. But there is no question but in the last several years he has not had any performance of parenting functions. That’s not entirely his fault. He has been restricted because of the criminal proceedings and the proceedings in this case. But that was a result of what happened at the time of the shooting...” (which this Appellant was vindicated and acquitted from, having defended himself).

“But I do think there is an absence or substantial impairment of emotional ties between each parent and each of these children, and that it is irreparable at this point, or at least within the time frame of the minority of these children. Because of that, Mr. Barrett’s residential time with the children should be restricted, to the extent that he shouldn’t have any. As I say, I don’t come to that easily, but I think it is what I have to do.”

See pages 10 to 12 of transcript of July 3, 2002 hearing (attached herewith as **Exhibit E**). I will be filing a designation of this transcript, which is on file in superior court.

C. ATTORNEY FEES ARE INAPPROPRIATE

Respondent requests attorney fees. Respondent lives off of social security and has retained Dan Smith since 2002. He must be working pro bono and incurs no costs because an indigent person would never have been able to afford his services and his \$5,000 retainers all these years and now.

I should be awarded all costs as a pro se litigant who cannot afford an attorney but only paralegal services. I have to look for a steep discount to even afford to be here and overcome the disingenuous bad-faith tactics of opposing counsel and come to this court to undo something that should have never been done in the first place, which is yet another waste of time, money, energy and resources in and of itself.

But for Mr. Smith and Respondent's disingenuousness and frivolous requests without using basic fundamental legal principles and common sense, as well as fraudulent activity, no one would be here.

D. SUMMARY: Back at “need and ability to pay”

Since the Respondent cannot rely upon their newly-discovered and newly-cited authority on appeal, we are back at “square one” legal authority.

“Need and ability to pay” is the requisite and it was the Respondent’s burden to demonstrate that and present evidence for need NOT ONLY with an attorney bill – that ONLY shows ALLEGED billing. But, NEED can be shown with the requirement of tax returns and pay stubs as required under RCW 26.19.071, along with a financial declaration.

There was never such an attempt.

Attorney fees were awarded, JUST BECAUSE THEY ASKED and because a judge was frustrated with my attorney’s procrastination(s). That’s not law.

E. SINCE DAN SMITH WENT THERE, THE COURT SHOULD KNOW THIS

Since Dan Smith is citing alleged facts, findings and procedures in unrelated, geographically and time-distant cases, I am behooved to tell this court that Dan Smith and the Respondent who alleges to fear me and our son Dan Jr. who allegedly fears me, all three of them pursued me and appeared at my Contempt Motion at which my second wife was found in contempt. **Exhibit F**

It is bewildering that they all appeared in my case, at a mere contempt motion hearing, which they have nothing to do with, in an entirely different county (King). The only explanation for their appearance and the other children voluntarily showing up repeatedly in Pierce County, would be a conspiracy to execute a vindictive vendetta. The alleged victims are not victims at all, but passive-aggressive abusers of the process. Mr. Smith surely did not get paid to appear in King County to watch my family law case. He has a personal vendetta in this matter that goes back, at least, to the time that I got full custody of the children in Pierce County on February 11, 2005. See Final Parenting Plan. **Exhibit G**.

It is impossible to believe that domestic violence victims and abused children would go out of their way to be around their alleged abuser multiple times, to no benefit of their own. The fact that they continually show up to be around me when they have no reason or obligation proves that they have no fear of me. The court at issue never restrained me because of any DV. Judge Chuschoff specifically stated in his oral ruling that he was entering a permanent restraining order because of the 7-month gap. And he obviously feels that no child/parent relationship can ever recover from being apart that long, even though we all know military families do it all the time and children come rushing to their parents as soon as they see them, even if they were deployed in another

hemisphere for 12 months.

But, the family who continues to pursue me and tries to see me in person, still claim they fear me and are traumatized by me and fight to have a restraining order in place so that we are guaranteed to never end up in the same place at the same time.

A passive-aggressive agenda to harm me is the only logical explanation for this behavior and the bizarre hypocritical antics surrounding this case. It is well-reported in scholarly and media articles and studies that restraining orders, DVPO's and allegations of DV are used as a weapon for control in family law matters and as a tool to inflict harm on an innocent party. See Bibliography of articles and scholarly works on abuse of the restraining order system for leverage. *Exhibit H*. And article by Seattle Weekly "Ripped Apart". *Exhibit I*.

F. CR 11 SANCTIONS ARE WARRANTED

Given the pattern of attempts to prejudice me, committing fraud upon the court (falsifying a court order) and not repenting of multiple RPC, CR 11 and Oath of Attorney violations, now sanctions are in order. The 33-year-veteran has no excuse for carrying on with irrelevant citings of other cases to "pile it one" to prejudice me.

He should be sanctioned \$1,000, payable to the court's registry and \$250 payable to me.

"The purposes of sanctions are to deter, punish, compensate, educate, and ensure that the wrongdoer does not profit from the wrong." Roberson v. Perez, 123 Wn. App. 320, 337, 96 P.3d 420 (2004) (citing WISPEA v. Fisons, 122 Wn.2d 299, 356, 858 P.2d 1054 (1993)).

"[T]he appropriate level of pre-filing investigation is . . . tested by 'inquiring what was reasonable to believe at the time the pleading, motion or legal memorandum was submitted.'" Biggs, 124 Wn.2d at 197 (quoting Bryant, 119 Wn.2d at 220).

The Respondent applied for and got an EXTENSION of time to file her Brief of Respondent.

Civil Rule 11 authorizes sanctions when a complaint lacks a factual or legal basis and the attorney who signed the complaint failed to conduct a reasonable inquiry into the factual and legal bases of the claims. Bryant v. Joseph Tree, Inc., 119 Wn.2d 210, 220, 829 P.2d 1099 (1992).

The reasonableness of the claim is evaluated by an objective standard, meaning that the court should ask whether a

reasonable attorney in similar circumstances could believe his or her actions were factually and legally justified. Bryant, at 220.

There is no justification for a narrow issue of attorney fees to “open the door” to the plethora of topics and issues brought in by Mr. Smith on behalf of Respondent.

Under CR 11, sanctions may be appropriate when merely some, but not all, of a party's claims are frivolous. See Biggs v. Vail, 119 Wn.2d 129, 137, 830 P.2d 350 (1992).

CR 11 requires attorneys do some work investigating a matter before it is brought. "The purpose behind CR 11 is to deter baseless filings and to curb abuses of the judicial system." Bryant v. Joseph Tree, Inc., 119 Wn.2d 210, 219, 829 P.2d 1099 (1992)

According to CR 11, a claim/pleading/filing is baseless if it is (1) not well grounded in fact, or (2) not warranted by existing law, or (3) a good faith argument for the alteration of existing law.

MacDonald v. Korum Ford, 80 Wn. App. 877, 883-84, 912 P.2d 1052 (1996).

CR 11 provides in part:

"(a)...The signature of ***a party or of an attorney*** constitutes a certificate by the party or attorney that the party or attorney has read the ...legal memorandum, and that to the best of the party's or

attorney's knowledge, information, and belief, formed **after an inquiry reasonable** under the circumstances: (1) it is **well grounded in fact**, (2) is warranted by **existing law** or a **good faith argument** for the extension, modification, or reversal of existing law or the establishment of new law; (3) it is **not** interposed for **any** improper purpose, such as **to harass** or **to cause unnecessary delay** or **needless increase in the cost of litigation...** If a pleading, motion, or legal memorandum is signed in **violation of this rule**, the court, upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or **both**, an **appropriate sanction...**"

Moreover, the Rules of Professional Conduct (RPC) require attorneys to abide by the following rules which require them to be above board, honest and act in good faith:

- (1) RPC 3.3 – Candor Toward the Tribunal;
- (2) RPC 8.4(c) – Misrepresentation; and
- (3) RPC 8.4(d) – Conduct Prejudicial to the Administration of Justice.

Petitioner and her attorney obviously thought that they would "railroad" this pro se and bring everything but the kitchen sink to court in order to make me look like some reprehensible person. Given the existence of CR 11, they are without excuse.

Another rule that the attorneys are well-acquainted with is Admission to Practice 5(e), which required said attorneys to swear:

"...7. I will abstain from **all** offensive personalities, and advance **no fact prejudicial** to the honor or reputation

of a party or witness unless required by the justice of the cause with which I am charged..."

RPC 3.4 reads:

"FAIRNESS TO OPPOSING PARTY AND COUNSEL

A lawyer shall not:

...(b) falsify evidence, counsel or ***assist a witness to testify falsely***, or offer an inducement to a witness that is prohibited by law;

...(e) in trial, ***allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue...***

Bryant v. Joseph Tree, 119 Wn.2d 210; 829 P.2d 1099 (1992)

provides as follows.

Both the federal rule and CR 11 were designed to reduce "delaying tactics, procedural harassment, and mounting legal costs." 3A L. Orland, Wash. Prac., Rules Practice § 5141 (3d ed. Supp. 1991).

CR 11 requires attorneys to "**stop, think and investigate more carefully before serving and filing papers.**"

See Fed. R. Civ. P. 11 advisory committee note, 97 F.R.D. 165, 192 (1983). "[R]ule 11 has raised the consciousness of lawyers to the need for a ***careful prefiling investigation of the facts*** and inquiry into the law." Commentary, Rule 11 Revisited, 101 Harv. L. Rev. 1013, 1014 (1988)

Bryant at 220-21: The court should inquire whether a **reasonable** attorney in like circumstances **could believe** his or her actions to be factually and legally justified. Cabell v. Petty, 810 F.2d 463, 466 (4th Cir. 1987). In making this determination, the court may consider such factors as: the time that was available to the signer, the extent of the attorney's reliance upon the client for factual support, whether a signing attorney accepted a case from another member of the bar or forwarding attorney, the complexity of the factual and legal issues, and the need for discovery to develop factual circumstances underlying a claim. Miller at 301-02 (citing Thomas v. Capital Sec. Servs., Inc., 836 F.2d 866, 875-76 (5th Cir. 1988)).

The Fundamental Principles of the Rules of Professional Conduct reads in part:

“The continued existence of a free and democratic society depends upon recognition of the concept that justice is based upon the rule of law grounded in respect for the dignity of the individual and the capacity through reason for enlightened self-government. Law so grounded makes justice possible, for only through such law does the dignity of the individual attain respect and protection. Without it, **individual rights become** subject to **unrestrained power**, respect for law is **destroyed**, and rational self-government is **impossible**.

Lawyers, as guardians of the law, **play a vital role in the preservation** of society. The fulfillment of this role requires an understanding by lawyers of their relationship with and function in our legal system. A consequent obligation of lawyers is to **maintain the highest standards** of ethical conduct.

In fulfilling professional responsibilities, a lawyer necessarily assumes various roles that require the performance of many difficult tasks. Not every situation which a lawyer may encounter can be foreseen, but ***fundamental ethical principles are always present as guidelines***. Within the framework of these principles, a lawyer must with courage and foresight be able and ready to shape the body of the law to the ever-changing relationships of society.

The Rules of Professional Conduct point the way to the aspiring lawyer and provide standards by which to judge the transgressor. Each lawyer must find within his or her own conscience the touchstone against which to test the extent to which his or her actions should rise above minimum standards. But in the last analysis it is the desire for the respect and confidence of the members of the legal profession and the society which the lawyer serves that should provide to a lawyer the incentive for the ***highest possible degree of ethical conduct***. The possible ***loss of that respect and confidence is the ultimate sanction***. So long as its practitioners ***are guided*** by these principles, the law will continue to be a noble profession. This is its greatness and its strength, which permit of no compromise.”

Discipline of an attorney

Making misrepresentations to the court not only may warrant finding counsel in contempt, but also in appropriate and unprofessional behavior under ethical standards. U.S. v. Thoreen, (C.A. 1981) 653 F.2d 1332, certiorari denied 102 S.Ct.1428, 455 U.S. 938, 71 L.Ed.2d 648.

Respectfully submitted this 19th day of July, 2018.

A handwritten signature in black ink, appearing to read "Dan Barrett". The signature is written in a cursive, flowing style with a large initial "D" and "B".

Daniel J. Barrett, Appellant, pro se

APPENDIX

EXHIBIT A	Washington Courts Form FL 150
EXHIBIT B.....	Washington Courts Form FL 222
EXHIBIT C.....	Pierce Co. #97-302158-7 Permanent Restraining Order dated August 9, 2002
EXHIBIT D.....	Washington Courts Form WPF DV-3.015
EXHIBIT E.....	Pierce Co. #97-3-02158-7 Oral Ruling of the Court dated September 25, 2002
EXHIBIT F.....	King Co. #02-3-01590-9 KNT Contempt Hearing Order Dated May 24, 2018
EXHIBIT G.....	Pierce Co. #97-3-02158-7 Final Parenting Plan dated February 11, 2005
EXHIBIT H.....	Bibliography re articles on abuse of restraining order systems
EXHIBIT I.....	Seattle Weekly January 17, 2012 article "Ripped Apart"

EXHIBIT A

Superior Court of Washington, County of _____

In re:

Petitioner/s *(person/s who started this case)*:

And Respondent/s *(other party/parties)*:

No. _____

Restraining Order

Temporary (TRO)

Final (RSTO)

Clerk's action required: 7

Restraining Order

This order replaces all earlier Restraining Orders restraining the same person signed in this case number. Use a separate order for each restrained person.

1. **This Order restrains (name):**

Restrained Party's Distinguishing Features:

Restrained Party's Identifiers

Sex	Race	Hair
Height	Weight	Eyes

Caution: Access to weapons: yes no unknown

2. **This Order protects (name/s):** _____
and the following children, who are under 18 (if any)

Child's name	Age	Child's name	Age
1.		4.	
2.		5.	
3.		6.	

3. **To the Restrained Person listed in 1:**

This Order starts immediately, and ends in 12 months or on (date): _____

Warning! You must obey this order. Violation of this order with actual notice of its terms is a **criminal offense** under Chapter 26.50 RCW and will subject the violator to arrest (RCW 26.09.060). This order is enforceable in all 50 U.S. states, the District of Columbia, and U.S. territories and tribal lands (18 U.S.C. § 2265).

4. Findings

Authority: The court has jurisdiction over the parties, the children listed in 2, and the subject matter.

Notice: The Restrained Person had reasonable notice and an opportunity to be heard. He/She was notified of the hearing by personal service service by mail allowed by the court service by publication allowed by the court
The Restrained Person was was not present at the hearing.
 The Restrained Person had actual notice of the hearing.
 other (*specify*): _____.

Credible Threat: The Restrained Person represents a credible threat to the physical safety of the Protected Person.

Intimate Partner: The Restrained Person is/was an intimate partner to the Protected Person (including current and former spouses and domestic partners, parents of a child-in-common, and people who lived together as part of a dating relationship).

Military: The (*check one*): Petitioner Respondent lives in the state of Washington, but was not able to go to the hearing because s/he is an active-duty member of the National Guard or Reserves (or a dependent of one). A failure to act despite the absence of the service member will result in a manifest injustice to the other party.

5. Court Orders to the Restrained Person listed in 1:

Warning! You **must** obey this order until it ends. If you know about this order but do not obey, you may be arrested and charged with a crime.

Do not disturb

The Restrained Person must not disturb the peace of the Protected Person or of any child listed in 2.

Stay away

The Restrained Person must not go onto the grounds of or enter the Protected Person's home, workplace, or school, or the daycare or school of any child listed in 2.

Also, the Restrained Person must not knowingly go or stay within _____ feet of the Protected Person's home, workplace, or school, or the daycare or school of any child listed in 2.

Do not hurt or threaten

The Restrained Person must not:

- Assault, harass, stalk or molest the Protected Person or any child listed in 2; or
- Use, try to use, or threaten to use physical force against the Protected Person or children that would reasonably be expected to cause bodily injury.

Warning! If the court checks this box, the court must consider if weapons restrictions are required by state law; federal law may also prohibit the Restrained Person from possessing firearms or ammunition.

Prohibit weapons and order surrender

The Restrained Person must:

- not possess or obtain any firearms, other dangerous weapons, or concealed pistol license; and
- follow the **Order to Surrender Weapons** (form All Cases 02-050), signed by the court and filed separately.

Findings – The court (*check all that apply*):

must issue the above orders about weapons because:

the “*Do not hurt or threaten*” restraints are ordered above, and the court found in section 4 that the Restrained Person had *actual notice*, represented a *credible threat*, and was an *intimate partner*. RCW 9.41.800.

the court finds by clear and convincing evidence that the restrained person has:

used, displayed, or threatened to use a firearm or other dangerous weapon in a felony; or

previously committed an offense making him or her ineligible to possess a firearm under RCW 9.41.040.

may issue the above orders about weapons because the court finds by a preponderance of evidence that the Restrained Party:

presents a serious and imminent threat to public health or safety, or the health or safety of any individual by possessing a firearm or other dangerous weapon; or

has used, displayed or threatened to use a firearm or other dangerous weapon in a felony; or

previously committed an offense making him or her ineligible to possess a firearm under RCW 9.41.040.

Other restraining orders: _____

6. **Service:**

Fill out a *Law Enforcement Information Sheet* (form All Cases 01.0400) and give it to the clerk.

(*Check one*):

The other party must be served.

You have a right to have law enforcement serve this order free of charge.

The clerk of the court shall forward a copy of this order on or before the next judicial day to _____ County Sheriff's Office City Police Department *where the restrained person lives* which shall personally serve the restrained person with a copy of this order and shall promptly complete and return to this court proof of service.

The protected person shall give a copy of this order to law enforcement for service free of charge.

The protected person **waives free service** by law enforcement and shall make private arrangements for service of this order. Do not serve the *Law Enforcement Information Sheet* on the Restrained person – it is only for law enforcement.

After serving, the server fills out a *Proof of Personal Service* (form FL All Family 101) and gives it to you. File the original *Proof of Personal Service* with the court clerk, and give a copy to the law enforcement agency listed below.

The other party does not have to be served because the other party or his/her lawyer signed this order or was at the hearing when this order was made.

7. To the clerk:

Provide a copy of this Order and the *Law Enforcement Information Sheet* to the agency listed below within one court day. The law enforcement agency must enter this Order into the state's database.

Name of law enforcement agency where the Protected Person lives: _____.

The restrained person's information will be removed from the state's database when this Order ends unless the court signs a new Order or extends the end date of this Order.

Ordered.

_____  _____
Date *Time* *Judge or Commissioner*

Petitioner and Respondent or their lawyers fill out below.

This order (*check any that apply*):

- is an agreement of the parties
- is presented by me
- may be signed by the court without notice to me

This order (*check any that apply*):

- is an agreement of the parties
- is presented by me
- may be signed by the court without notice to me

 _____
Petitioner signs here or lawyer signs here + WSBA #

 _____
Respondent signs here or lawyer signs here + WSBA #

Print Name *Date*

Print Name *Date*

EXHIBIT B

Superior Court of Washington, County of _____

In re the marriage / domestic partnership of:

Petitioner (person who started this case):

And Respondent (other spouse / partner):

No. _____

Immediate Restraining Order (Ex Parte)
and Hearing Notice
(TPROTSC / ORTSC)

Clerk's action required: 2, 15

Immediate Restraining Order (Ex Parte)
and Hearing Notice

Use this form in marriage/domestic partner cases only. For parentage cases, use form FL Parentage 322. For non-parent custody cases, use form FL Non-Parent 422.

- This Order starts immediately and ends after the hearing listed below.**
- Hearing Notice** – The court will consider extending this order and the other requests made by the protected person at a court hearing:



on: _____ at: _____ a.m. p.m.
date *time*

at: _____, _____
court's address *room or department*

docket / calendar or judge / commissioner's name

Warning! If you do not go to the hearing, the court may make orders against you without hearing your side.

- This Order restrains (name):** _____

Warning! You must obey this order or you may be jailed.

- Violation [of sections 6-8] of this order with actual notice of its terms is a criminal offense under Chapter 26.50 RCW and will subject a violator to arrest.
- Violation of **any** part of this order may result in financial penalties or contempt of court.
- This order is enforceable in all 50 U.S. states, the District of Columbia, and U.S. territories and tribal lands (18 U.S.C. § 2265).

4. This Order protects (name/s): _____ and the following children, who are under 18 (if any)

Child's name	Age	Child's name	Age
1.		4.	
2.		5.	
3.		6.	

5. Findings

The court has reviewed the *Motion for Immediate Restraining Order*, supporting documents, and any other evidence considered on the record, including _____.

The court finds there would be irreparable harm as described in the *Motion* if this order is not granted.

If hearing date is more than 14 days away – There is good cause to keep this order in effect until the hearing date (which is between 14 and 28 days after this order is issued) because *(describe the good cause)*:

Other findings: _____

➤ **Court Orders to the Restrained Person listed in 3:**

6. Do not disturb

- Does not apply.
- The Restrained Person must not disturb the peace of the Protected Person or of any child listed in 4.

7. Stay away

- Does not apply.
- The Restrained Person must not go onto the grounds of or enter the Protected Person's home, workplace, or school, and the daycare or school of any child listed in 4.
- The Restrained Person must not knowingly go or stay within _____ feet of the Protected Person's home, workplace, or school, or the daycare or school of any child listed in 4.

8. Do not hurt or threaten

- Does not apply.
- The Restrained Person must not:
 - Assault, harass, stalk or molest the Protected Person or any child listed in 4; or
 - Use, try to use, or threaten to use physical force against the Protected Person or children that would reasonably be expected to cause bodily injury.

9. Surrender weapons

- Does not apply.
- The Restrained Person must follow the **Order to Surrender Weapons Issued Without Notice** (form All Cases 2-030) signed by the court and filed separately.

Findings – The court finds irreparable injury could result if this order is not issued until the time for response has elapsed.

10. Protect children

- The (*check one or both*): Petitioner Respondent must not take the children listed in 4 out of Washington state.
- Until the hearing, the children listed in 4 will live with the (*check one*): Petitioner Respondent.
- Other: _____

11. Protect property

- Does not apply.
- The (*check one or both*): Petitioner Respondent must not move, take, hide, damage, borrow against, sell or try to sell, or get rid of any property, unless it is a usual business practice or to pay for basic needs. Both spouses/domestic partners must notify the other about any expenses that are out of the ordinary.

12. Do not change insurance

- Does not apply.
- The (*check one or both*): Petitioner Respondent must not make changes to any medical, health, life, property, or auto insurance policy that covers either spouse/domestic partner or any child named in 4. That means s/he must not transfer, cancel, borrow against, let expire, or change the beneficiary of any policy.

13. Bond

- No bond or security is required.
- The Petitioner Respondent must file a bond or post security. Amount: \$_____

14. Other immediate orders

Does not apply.

15. To the Clerk: Provide a copy of this order and the *Law Enforcement Information Sheet* to the agency listed below within one court day. The law enforcement agency must enter this order into the state’s database.

Name of law enforcement agency where the protected person lives: _____

Ordered.

_____  _____
Date *Time* *Judge or Commissioner*

Presented by: Petitioner Respondent

 _____
Sign here *Print name (if lawyer, also list WSBA #)* *Date*

To the Protected Person:

Warning! You must have this order served on the Restrained Person before it can be enforced.

1. Fill out a *Law Enforcement Information Sheet* (form All Cases 01.0400) and give it to the clerk.
2. You must have this Order, and the paperwork you filed with the court to get this Order, personally served on the Restrained Person by someone 18 or older who is not a party to this case. (Do not serve the *Law Enforcement Information Sheet* on the Restrained person – it is only for law enforcement.)
3. After serving, the server fills out a *Proof of Personal Service* (FL All Family 101) and gives it to you. Then:
 - File the original *Proof of Personal Service* with the court clerk.
 - Give a copy of the *Proof of Personal Service* to the law enforcement agency listed above.
 - Go to the hearing.
 - Bring proposed orders to the hearing.

EXHIBIT C

8/9/02

8/13/2002 5:33:00 PM



97-3-02158-7 17125808 RSTO UB-12-02



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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
CARMELITA BARRETT,
Petitioner,
and
DANIEL BARRETT,
Respondent.

NO. 97-3-02158-7
**PERMANENT RESTRAINING
ORDER**

I. JUDGMENT/ORDER SUMMARY

Restraining Order Summary is set forth below:

Name of person restrained: Daniel Barrett
Name of person protected: Carmelita Barrett

**VIOLATION OF A RESTRAINING ORDER IN PARAGRAPH 3.1 WITH
ACTUAL NOTICE OF ITS TERMS IS A CRIMINAL OFFENSE UNDER
CHAPTER 26.50 RCW, AND WILL SUBJECT THE VIOLATOR TO ARREST.
RCW 26.09.060.**

II. RESTRAINTS

**VIOLATION OF A RESTRAINING ORDER IN THIS PARAGRAPH WITH
ACTUAL NOTICE OF ITS TERMS IS A CRIMINAL OFFENSE UNDER CHAPTER
26.09 RCW, AND WILL SUBJECT THE VIOLATOR TO ARREST. RCW
26.09.060(5).**

The respondent, Daniel Barrett, is hereby restrained from molesting or disturbing the peace of the petitioner, Carmelita Barrett, or of any child of the parties.

ORIGINAL

1 The respondent, Daniel Barrett, is hereby restrained from entering the home of the
2 petitioner, Carmelita Barrett.

3 The respondent, Daniel Barrett, is hereby restrained from removing any of the children
4 from the State of Washington.

5 The respondent, Daniel Barrett, is hereby restrained from causing the petitioner,
6 Carmelita Barrett, physical harm, bodily injury, assault, including sexual assault, and from
7 molesting, harassing, threatening, or stalking petitioner, Carmelita Barrett, or any of the
8 minor children of the parties.

9 The respondent, Daniel Barrett, is hereby restrained from coming near and from
10 having any contact whatsoever, in person or through others, directly or indirectly, through
11 mail, e-mail, facsimile, pager, phone, or any means, with petitioner, Carmelita Barrett, or any
12 of the minor children of the parties.

13 The respondent, Daniel Barrett, is hereby restrained from coming to or entering the
14 petitioner, Carmelita Barrett's, place of employment or the children's school.

15 The respondent, Daniel Barrett, is hereby restrained from interfering with petitioner,
16 Carmelita Barrett's, physical or legal custody of the minor children of the parties.

17 **III. CLERK'S ACTION/LAW ENFORCEMENT ACTION.**

18 The clerk of the court shall forward a copy of this order, on or before the next judicial
19 day, to the Pierce County Sheriff's Office LESA or Police Department where petitioner,
20 Carmelita Barrett, lives which shall enter it in a computer-based criminal intelligence system
21 available in this state used by law enforcement to list outstanding warrants.

22 The clerk of the court shall forward a copy of this order, on or before the next judicial
23 day, to the Pierce County Sheriff's Office LESA or Police Department where respondent,
24 Daniel Barrett, lives which shall personally serve the respondent, Daniel Barrett, with a copy
25 of this order and shall promptly complete and return to this court proof of service.

26 A law enforcement information sheet must be completed before this order will be
entered into the computer system.

IV. EXPIRATION

This restraining order is permanent and shall not be removed from the computer-based criminal intelligence system available in this state used by law enforcement agencies to list outstanding warrants, unless a new order is issued.

V. WARNINGS TO THE RESPONDENT

Violation of the provisions of this order with actual notice of its terms is a criminal offense under chapter 26.50 RCW and RCW 10.31.100 and will subject a violator to arrest.

Any assault that is a violation of this order and that does not amount to assault in the first degree or second degree under RCW 9A.36.011 is a class C felony. Any conduct in violation of this order that is reckless and creates a substantial risk of death or serious physical injury to another person is a class C felony.

YOU CAN BE ARRESTED EVEN IF THE PERSON OR PERSONS WHO OBTAINED THE ORDER INVITE OR ALLOW YOU TO VIOLATE THE ORDER'S PROHIBITIONS. YOU HAVE THE SOLE RESPONSIBILITY TO AVOID OR REFRAIN FROM VIOLATING THE ORDER'S PROVISIONS. ONLY THE COURT CAN CHANGE THE ORDER UPON WRITTEN APPLICATION.

Dated: August 9, 2002

[Signature]
Judge/Commissioner

Presented by:
[Signature]
Daniel W. Smith, WSBA #15206
Attorney for Petitioner

Approved for entry:
Notice of presentation waived:
[Signature]
John Mills, WSBA #15847
Attorney for Respondent

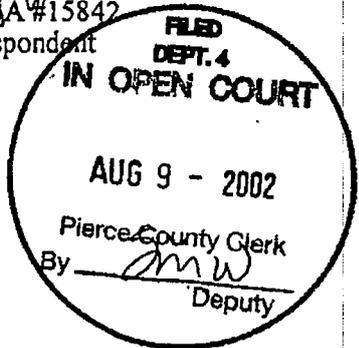


EXHIBIT D

For Court of Washington

Order for Protection

No.

Petitioner (First, Middle, Last Name) **DOB**
vs.

Court Address _____

Respondent (First, Middle, Last Name) **DOB**

Telephone Number:(____) _____
(Clerk's Action Required) (ORPRT)

Names of Minors: No Minors Involved

Respondent Identifiers

(List first, middle and last name/s and age/s)

Sex	Race	Hair
Height	Weight	Eyes

Respondent's Distinguishing Features:

Caution: Access to weapons: yes no
 unknown

-

The Court Finds Based Upon the Court Record:

The court has jurisdiction over the parties, the minors, and the subject matter. Respondent had reasonable notice and an opportunity to be heard. Notice of this hearing was served on the respondent by personal service service by mail pursuant to court order service by publication pursuant to court order other _____.

Respondent received actual notice of the hearing.
Respondent was was not present at the hearing.

This order is issued in accordance with the Full Faith and Credit provisions of VAWA: 18 U.S.C. § 2265.

Respondent's relationship to the victim is:

- spouse or former spouse current or former dating relationship in-law parent or child
- parent of a child in common stepparent or stepchild blood relation other than parent or child
- current or former domestic partner current or former cohabitant as roommate
- current or former cohabitant as part of a dating relationship

Respondent committed domestic violence as defined in RCW 26.50.010.

Respondent represents a credible threat to the physical safety of the protected person/s.
Additional findings may be found below. The court concludes that the relief below shall be granted.

Court Order Summary (additional provisions are listed on the following pages):

- Respondent is restrained from committing acts of abuse as listed in provisions 1 and 2, on page 2.
- No-contact provisions apply as set forth on the following pages.
- Prohibition and surrender of weapons apply.

This order is effective immediately and for one year from today's date, unless stated otherwise here (date):

It is Ordered:

1. Respondent is **restrained** from causing physical harm, bodily injury, assault, including sexual assault, and from molesting, harassing, threatening, or stalking petitioner the minors named in the table above these minors only:

(Respondent: If the petitioner is your spouse or former spouse, current or former domestic partner, the parent of a child in common, or a current or former cohabitant as part of a dating relationship, you will not be able to own or possess a firearm, other dangerous weapon, ammunition, or concealed pistol license under state or federal law for the duration of the order.)

2. Respondent is **restrained** from harassing, following, keeping under physical or electronic surveillance, cyberstalking as defined in RCW 9.61.260, and using telephonic, audiovisual, or other electronic means to monitor the actions, locations, or wire or electronic communication of petitioner the minors named in the table above only the minors listed below members of the victim's household listed below the victim's adult children listed below:

3. Respondent is **restrained** from coming near and from having any contact whatsoever, in person or through others, by phone, mail, or any means, directly or indirectly, except for mailing or service of process of court documents by a 3rd party or contact by Respondent's lawyer(s) with petitioner the minors named in the table above these minors only:

If both parties are in the same location, respondent shall leave.

4. Respondent is **excluded** from petitioner's residence workplace school; the day care or school of the minors named in the table above these minors only:

Other

Petitioner's address is confidential. Petitioner waives confidentiality of the address which is:

5. Petitioner shall have exclusive right to the residence that petitioner and respondent share. The respondent shall immediately **vacate** the residence. The respondent may take respondent's personal clothing and tools of trade from the residence while a law enforcement officer is present.

This address is confidential. Petitioner waives confidentiality of this address which is:

6. Respondent is **prohibited** from knowingly coming within, or knowingly remaining within _____ (distance) of: petitioner's residence workplace school; the day care or school of the minors named in the table on page one these minors only:

Other:

<input type="checkbox"/> 7. Petitioner shall have possession of essential personal belongings, including the following:
<input type="checkbox"/> 8. Petitioner is granted use of the following vehicle: Year, Make & Model _____ License No. _____
<input type="checkbox"/> 9. Other:
Protection for minors: This state <input type="checkbox"/> has exclusive continuing jurisdiction; <input type="checkbox"/> is the home state; <input type="checkbox"/> has temporary emergency jurisdiction <input type="checkbox"/> that may become final jurisdiction under RCW 26.27.231(2); <input type="checkbox"/> other: _____
<input type="checkbox"/> 10. Petitioner is granted the temporary care, custody, and control of <input type="checkbox"/> the minors named in the table above <input type="checkbox"/> these minors only:
<input type="checkbox"/> The respondent will be allowed visitations as follows: _____ _____ _____ _____ _____
Petitioner may request modification of visitation if respondent fails to comply with treatment or counseling as ordered by the court.
If the person with whom the child resides a majority of the time plans to relocate the child, that person must comply with the notice requirements of the Child Relocation Act. Persons entitled to time with the child under a court order may object to the proposed relocation. See RCW 26.09, RCW 26.10 or RCW 26.26 for more information.
<input type="checkbox"/> 11. Respondent is restrained from interfering with petitioner's physical or legal custody of <input type="checkbox"/> the minors named in the table above <input type="checkbox"/> these minors only:
<input type="checkbox"/> 12. Respondent is restrained from removing from the state <input type="checkbox"/> the minors named in the table above <input type="checkbox"/> these minors only:
Additional requests:
<input type="checkbox"/> 13. Respondent shall participate in treatment and counseling as follows: <ul style="list-style-type: none"> <input type="checkbox"/> domestic violence perpetrator treatment program approved under RCW 26.50.150 or counseling at: _____ <input type="checkbox"/> parenting classes at: _____ <input type="checkbox"/> drug/alcohol treatment at: _____ <input type="checkbox"/> other: _____

<input type="checkbox"/> 14. Petitioner is granted judgment against respondent as provided in the Judgment, WPF DV 3.030.
<input type="checkbox"/> 15. Parties shall return to court on _____, at _____ .m. for review.
Protection for pets:
<input type="checkbox"/> 16. Petitioner shall have exclusive custody and control of the following pet(s) owned, possessed, leased, kept, or held by petitioner, respondent, or a minor child residing with either the petitioner or the respondent. (Specify name of pet and type of animal): _____.
<input type="checkbox"/> 17. Respondent is prohibited from interfering with the protected person's efforts to remove the pet(s) named above.
<input type="checkbox"/> 18. Respondent is prohibited from knowingly coming within, or knowingly remaining within _____ (distance) of the following locations where the pet(s) are regularly found: <input type="checkbox"/> petitioner's residence (You have a right to keep your residential address confidential.) <input type="checkbox"/> _____ Park <input type="checkbox"/> other: _____

<input type="checkbox"/> Prohibit Weapons and Order Surrender The Respondent must: <ul style="list-style-type: none"> ▪ not possess or obtain any firearms, other dangerous weapons, or concealed pistol license; and ▪ comply with the Order to Surrender Weapons filed separately. Findings – The court (check all that apply): <input type="checkbox"/> must issue the orders referred to above because: <ul style="list-style-type: none"> <input type="checkbox"/> the first restraint provision is ordered above, and the court found on page one that the Respondent had <i>actual notice</i>, represented a <i>credible threat</i>, and was an <i>intimate partner</i>. Respondent: If the court checked this box, then effective immediately, and continuing as long as this protection order is in effect, you may not possess a firearm under state law. Violation is a felony. RCW 9.41.040(2). <input type="checkbox"/> the court finds by clear and convincing evidence that the restrained person has: <ul style="list-style-type: none"> <input type="checkbox"/> used, displayed, or threatened to use a firearm or other dangerous weapon in a felony; or <input type="checkbox"/> previously committed an offense making him or her ineligible to possess a firearm under RCW 9.41.040. <input type="checkbox"/> may issue the orders referred to above because the court finds by a preponderance of evidence, the Respondent: <ul style="list-style-type: none"> <input type="checkbox"/> presents a serious and imminent threat to public health or safety, or the health or safety of any individual by possessing a firearm or other dangerous weapon; or
--

- has used, displayed or threatened to use a firearm or other dangerous weapon in a felony; or
- previously committed an offense making him or her ineligible to possess a firearm under RCW 9.41.040.

Warnings to the Respondent: A violation of provisions 1 through 6 of this order with actual notice of its terms is a criminal offense under chapter 26.50 RCW and will subject you to arrest. If the violation of the protection order involves travel across a state line or the boundary of a tribal jurisdiction, or involves conduct within the special maritime and territorial jurisdiction of the United States, which includes tribal lands, you may be subject to criminal prosecution in federal court under 18 U.S.C. §§ 2261, 2261A, or 2262.

A violation of provisions 1 through 6, 17, or 18 of this order is a gross misdemeanor unless one of the following conditions apply: Any assault that is a violation of this order and that does not amount to assault in the first degree or second degree under RCW 9A.36.011 or 9A.36.021 is a class C felony. Any conduct in violation of this order that is reckless and creates a substantial risk of death or serious physical injury to another person is a class C felony. Also, a violation of this order is a class C felony if you have at least two previous convictions for violating a protection order issued under Titles 7, 10, 26 or 74 RCW.

If your relationship to the victim is as intimate partner, then effective immediately, and continuing as long as this protection order is in effect, **you may not possess a firearm or ammunition under federal law**. 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.

If you are convicted of an offense of domestic violence, you will be forbidden for life from possessing a firearm or ammunition. 18 U.S.C. § 922(g)(9); RCW 9.41.040.

You Can Be Arrested Even if the Person or Persons Who Obtained the Order Invite or Allow You to Violate the Order's Prohibitions. You have the sole responsibility to avoid or refrain from violating the order's provisions. Only the court can change the order upon written application.

Pursuant to 18 U.S.C. § 2265, a court in any of the 50 states, the District of Columbia, Puerto Rico, any United States territory, and any tribal land within the United States shall accord full faith and credit to the order.

Warning: A person may be guilty of custodial interference in the second degree if they violate provisions 10, 11, or 12.

Washington Crime Information Center (WACIC) Data Entry

It is further ordered that the clerk of the court shall forward a copy of this order on or before the next judicial day to _____ County Sheriff's Office City Police Department **where petitioner lives** which shall enter it into WACIC.

Service

- The clerk of the court shall also forward a copy of this order on or before the next judicial day to _____ County Sheriff's Office City Police Department **where respondent lives** which shall personally serve the respondent with a copy of this order and shall promptly complete and return to this court proof of service.
- Petitioner shall serve this order by mail publication.
- Petitioner shall make private arrangements for service of this order.
- Respondent appeared and was informed of the order by the court; further service is not required.

Law Enforcement Assistance

- Law enforcement shall assist petitioner in obtaining:
 - Possession of petitioner's residence personal belongings located at: the shared residence respondent's residence other: _____
 - Custody of the above-named minors, including taking physical custody for delivery to petitioner.
 - Possession of the vehicle designated in paragraph 7, above.
 - Other: _____
- Other: _____

This order is in effect until the expiration date on page one.

If the duration of this order exceeds one year, the court finds that an order of one year or less will be insufficient to prevent further acts of domestic violence.

Other: _____

Dated: _____ at _____ a.m./p.m.

Judge/Commissioner

I acknowledge receipt of a copy of this Order:

➤ _____	_____
Signature of Respondent/Lawyer WSBA No.	Print Name

➤ _____	_____
Signature of Petitioner/Lawyer WSBA No.	Print Name

Petitioner or Petitioner's Lawyer must complete a Law Enforcement Information Sheet (LEIS).

EXHIBIT E

1 They were separated for another couple of years before
2 that. When Mr. Barrett was living with them on a
3 regular basis, they were all pretty young.

4 In conclusion, there is no question that on
5 Mr. Barrett's petition for modification seeking custody,
6 the statutory factors have not been borne out. There
7 has not been a substantial change of circumstances. The
8 best interests of the children do not militate for that.
9 If they are having difficulties in life with their
10 Mother, given how strongly they feel about going with
11 Mr. Barrett, there is no reason to suspect that that
12 would actually get better. I have no idea why they are
13 having the difficulties they're having. Maybe, as
14 Mr. Smith suggests, it is because of the chaos and
15 confusion and doubt and anxiety created by these
16 proceedings and by Mr. Barrett's maintaining them.
17 That's possible. It could be that this was the
18 trajectory in life they were going to follow anyway. I
19 don't know.

20 The explanations about why Jobe has dropped out of
21 school are completely consistent, to me, with somebody
22 who is not particularly education-motivated but is
23 job-motivated. He's now 16, 17 years old, and he says,
24 Why don't I get on with it? Why don't I get into my job
25 track and get on with it? Not an unreasonable position

1 to take. If he gets into school, if stays in school, I
2 will be glad to hear it, but it doesn't mean that he's a
3 failure in life necessarily. It may mean that he's
4 simply precocious about what his own interests truly are
5 and how to get there.

6 So, on Mr. Barrett's petition, I'll deny that. I
7 will deny it.

8 On Ms. Barrett's counter-petition to restrict his
9 visitation permanently, this is a more difficult issue,
10 of course. I agree -- you know, "agree" is maybe not
11 the right word. Mr. Hills says that if the court
12 terminates Mr. Barrett's visitation with these children,
13 the court will have decided that they shouldn't have a
14 father. I'm not deciding that. If that's what has to
15 happen here, it is not because of my doing anything
16 except recognizing the reality of the situation.

17 I think that having a good relationship with one's
18 parent, if not the most important psychological dynamic,
19 is the second-most important psychological dynamic after
20 perhaps one's relationship with one's siblings. And so
21 I do not lightly think that Mr. Barrett's contact with
22 his children should be terminated, or impeded, even.
23 These children, at one point in their life, and maybe
24 sooner rather than later, and for a long time, are going
25 to wonder, because of their strained relationship with

1 their father, what is really going on there. They're
2 going to have problems with attachment with other
3 people. They are going to have emotional insecurities,
4 in my opinion. They are going to have guilt about the
5 relationship with their father: To what extent is it
6 their fault that this thing hasn't worked out?

7 When one terminates or restricts the children's
8 access to a parent, it is an extremely serious matter,
9 and one not easily undertaken. But I do think here that
10 it is warranted. I come to that decision reluctantly in
11 some ways, because I do think, maybe in part, the
12 reasons are not all Mr. Barrett's fault. But there is
13 no question but in the last several years he has not had
14 any performance of parenting functions. That's not
15 entirely his fault. He has been restricted because of
16 the criminal proceedings and the proceedings in this
17 case. But that was a result of what happened at the
18 time of the shooting, when Mr. Hubble was so seriously
19 injured. That may have been the result of, as I say,
20 self-defense. I don't know. I don't know whether
21 there's been an abusive use of conflict. Mr. Smith
22 would suggest that just filing this petition constitutes
23 that. I'm not sure I can go that far. But I do think
24 there is an absence or a substantial impairment of
25 emotional ties between the parent and each of these

1 children, and that it is irreparable at this point, or
2 at least within the time frame of the minority of these
3 children. Because of that, Mr. Barrett's residential
4 time with the children should be restricted, to the
5 extent that he shouldn't have any. As I say, I don't
6 come to that easily, but I think it is what I have to
7 do.

8 Now, as for support. I have received the proposed
9 order of support that Mr. Smith has suggested.
10 Mr. Mills, have you got that in front of you?

11 MR. MILLS: Yeah, I do, as a matter of
12 fact.

13 THE COURT: Let's look at this, one page
14 at a time. Is there anything inaccurate about any of it
15 or in dispute given the court's order or ruling?

16 MR. MILLS: I wonder about Jobe. He's not
17 in school. He's apparently off on his own.

18 THE COURT: It is my understanding he is
19 still living at home and intending to go back to school
20 this summer and next. The question is whether or not
21 he's actually emancipated. I think that's what you're
22 asking me. It doesn't look like he is yet. Although if
23 he doesn't go back to school and moves out of the house
24 this fall, that may be the case in a couple of months.

25 MR. MILLS: I don't think there's any

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THE COURT: You guys come up with an
agreed order. I will be right back here in chambers.

(End of Proceedings)

July 3, 2002

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REPORTER'S CERTIFICATE

I, CARLA HOLCOMB, do hereby certify that the foregoing proceeding was taken stenographically by me in the above-entitled cause on July 3, 2002; and by way of computer-assisted transcription was rendered into a Verbatim Report of Proceedings, by me, after being requested to do so by MR. DANIEL BARRETT, the Respondent in the above-entitled action.

I further certify that I am in no wise interested in the outcome of said litigation, and that the foregoing proceeding was transcribed by me to the best of my skill and ability.

DATED this 24th day of September, 2002.



Carla Holcomb, Official Court Reporter
Dept. 4, Pierce County Superior Court
CSR #HOLCOCL541P1 COA #82132

EXHIBIT F

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Superior Court of Washington, County of KING

In re:	No. 02-3-01590-9 KNT
Petitioner:	<u>Contempt Hearing Order</u> (ORCN)
NOELLE LYNN BARRETT (NKA WOIT)	[] Clerk's action required: 1, 8, 12
And Respondent:	
DANIEL J. BARRETT	

Contempt Hearing Order

1. Money Judgment Summary

[] No money judgment is ordered.

[X] Summarize any money judgment from section 8 in the table below.

Judgment for	Debtor's name (person who must pay money)	Creditor's name (person who must be paid)	Amount	Interest
Past due child support from to			\$	\$
Past due medical support from to			\$	\$
Past due children's expenses from to			\$	\$
Past due spousal support from to			\$	\$
Civil penalty	<i>Noelle Lynn Barrett</i>	<i>Daniel Barrett</i>	\$	\$
Lawyer fees and costs	Daneil Barrett	Noelle Woitt	\$ 150	\$

Other:		\$	\$
Yearly Interest Rate for child support, medical support, and children's expenses: 12% .			
For other judgments: % (12% unless otherwise listed)			
Lawyer (name): Gregg E. Bradshaw represents (name): Noelle Voit			
Lawyer (name): Pro Se represents (name):			

2. The court has considered the *Motion for Contempt Hearing* and any supporting documents, response from the other party, reply, and other documents from the court record identified by the court. A contempt hearing was held on (date): May 24, 2018.

This judgment shall be offset by any amounts the Respondent owes the Plaintiff.

The Court Finds:

3. Support Payments (child support, medical support, children's expenses, spousal support)

Does not apply. This contempt hearing did not cover support issues.

Support orders were obeyed. No support payments are past due.

Support orders were **not** obeyed. (Name): _____ did **not** obey the following order(s) signed by the court on (date): _____ (check all that apply):

The child support order to (check all parts of the order that were not obeyed):

Pay the monthly child support payment.

Provide or pay for medical support for the children (health insurance or health care costs not covered by insurance).

Pay for the children's day care, education, transportation, and other expenses.

The spousal support (maintenance) order.

This person did not pay the other party support payments required by court order in the amounts and for the dates described in the Money Judgment in section 8 below.

a. Ability to follow orders in the past – This person (check one):

was able to follow the order/s checked above. The failure to follow the order/s was intentional.

was **not** able to follow the order/s checked above. The failure to follow the order/s was not intentional.

Explain:

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b. **Ability to follow orders now** – This person

(check one): is is **not able** to follow the orders now.

(check one): is is **not willing** to follow the orders.

Explain:

Other findings:

4. **Parenting Plan, Residential Schedule, or Custody Order**

Does not apply. This contempt hearing did not cover parenting/custody issues.

The parenting/custody order was obeyed.

The parenting/custody order was **not** obeyed. (Name): Noelle Woitt did **not** obey the following parts of the parenting/custody order signed by the court on (date): April 7, 2018 (check all that apply):

Parenting Time Schedule (residential provisions).

Decision-Making

Dispute Resolution (Mediation, Counseling, or Arbitration requirement for disagreements)

Other parts of the parenting/custody orders

The parenting/custody order was not obeyed as follows (check one):

As described in the *Motion for Contempt Hearing*.

(Describe how the order was not obeyed, including dates and times):

a. **Ability to follow orders in the past** – This person (check one):

was able to follow the parenting/custody order. The failure to follow the order was intentional.

[] was **not** able to follow the parenting/custody order. The failure to follow the order was not intentional.

Explain:

b. Bad faith – When this person did **not** obey the parenting/custody order, s/he:

(check one): [] acted in bad faith. [X] did **not** act in bad faith.

Explain:

c. Ability to follow orders now – This person

(check one): [X] is [] is **not able** to follow the parenting/custody order now.

(check one): [X] is [] is **not willing** to follow the parenting/custody order.

Explain:

[X] Other findings: 1. As per the July 22, 2011 Order of Judge Davis, the mother's weekend was April 7+8. The father had visitation on March 24+25, AND EASTER WEEKEND ON MARCH 30+31 to SPRING BREAK FROM March APR 1 6, 2018. SEE P.8.

5. Restraining Order or Other Order

[X] Does not apply. This contempt hearing did not cover any restraining order or other orders.

[] The (check all that apply): [] restraining order [] other order (specify): was obeyed.

[] (Name): did **not** obey the following order signed by the court on (date):

(specify order):

This order was not obeyed as follows (check one):

1 [] As described in the *Motion for Contempt Hearing*.

2 [] (*Describe how the order was not obeyed, including dates and times*):

3
4 a. **Ability to follow order in the past** – This person (*check one*):

5 [] **was** able to follow this order. The failure to follow this order was intentional.

6 [] **was not** able to follow this order. The failure to follow this order was not
7 intentional.

8 *Explain:*

9
10 b. **Ability to follow orders now** – This person

11 (*check one*): [] **is** [] **is not able** to follow this order now.

12 (*check one*): [] **is** [] **is not willing** to follow this order.

13 *Explain:*

14 [] Other findings:

15
16 **6. Lawyer fees and costs**

17 Does not apply.

18 The lawyer fees and costs listed in the Money Judgment in section **8** below were
19 incurred and are reasonable.

20 [] Other findings:

The Court Orders:

7. Contempt

(Name): Noelle Voit

(check one): is in contempt. is not in contempt. *for the weekend of March 30, 31, 2018 or for the travel to the Sports Medicine Camp.*

8. Money Judgment

Does not apply. No money judgment is ordered.

The court orders the following money judgment (summarized in section 1 above):

Judgment for	Debtor's name (person who must pay money)	Creditor's name (person who must be paid)	Amount	Interest
<input type="checkbox"/> Past due child support from _____ to _____			\$	\$
<input type="checkbox"/> Past due medical support (health insurance & health care costs not covered by ins.) from _____ to _____			\$	\$
<input type="checkbox"/> Past due children's expenses for: <input type="checkbox"/> day care <input type="checkbox"/> education <input type="checkbox"/> long-distance transp <input type="checkbox"/> other from _____ to _____			\$	\$
<input type="checkbox"/> Past due spousal support from _____ to _____		Noelle (nka voit)	\$	\$
<input checked="" type="checkbox"/> Civil penalty (At least \$100 for 1 st violation of a parenting/custody order; at least \$250 for 2 nd violation within 3 years.)	Noelle Voit	Daniel Barrett	\$ 150	\$
<input checked="" type="checkbox"/> Lawyer fees and costs	Daniel Barrett	Noelle Voit	\$	\$
<input type="checkbox"/> Other (specify):			\$	\$

** this shall be offset from the monies that Daniel Barrett owes Noelle Voit and is considered paid.*

1 The **interest rate** for child support, medical support, and children's expenses is 12%.
2 The interest rate for other judgments is 12% unless another amount is listed below.

3 [] The Interest rate for other judgments is % because (*explain*):

4
5 [] Other:

6
7 **9. Make-up parenting time**

8 Does not apply.

9 (Name): Daniel Barrett will have make-up parenting time as follows (*specify dates*
10 *and times*): June 8, 9, + 10, 2018.

11
12 **10. Jail time**

13 Does not apply.

14 [] (Name): Noelle Voit must serve (number): days in the (name of
15 county): County Jail.

16 [] Jail time is suspended (postponed) under these conditions:

17 The court will review compliance with these conditions at the review hearing set in
18 section **12** below.

19 [] Jail time starts (*check one*): [] immediately [] on (*date*): S/He must
20 report to the jail on this date. The detainee must be released from jail as soon as
s/he satisfies the conditions listed in section **11** below.

21 **11. Contempt can be corrected (purged) if:**

22 Does not apply.

23 [] (Name): Noelle Voit does the following (*specify*):

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12. Court review

Does not apply.

The court will review this case on (date): _____ at (time): _____ [] a.m. [] p.m.
in (Court, Room/Dept.): _____
(If you check this box, also check the "Clerk's action required" box on page 1.)

13. Other orders (if any)

Ordered.

5-24-18



Date

Judge or Commissioner

MARK J. HILLMAN

Petitioner and Respondent or their lawyers fill out below.

This document (check any that apply):

- is an agreement of the parties
 is presented by me
 may be signed by the court without notice to me

This document (check any that apply):

- is an agreement of the parties
 is presented by me
 may be signed by the court without notice to me

 21299
Petitioner signs here or lawyer signs here + WSBA #

Gregg. E. Bradshaw
Print Name

5.24.18
Date


Respondent signs here or lawyer signs here + WSBA #

Daniel Barrett
Print Name

Date

The court finds that this is the only way to read the court order, otherwise the party gets 3 weeks in a row.
2. the court finds no contempt for the weekend of March 30+31. the mother did make reasonable efforts to get Anna to attend and met the requirements of Rideout
3. the court finds that the sports medicine camp is ~~not~~ educational but rather is extracurricular and does not require joint decision making. the mother is not in contempt for the travel to the sports medicine camp.

EXHIBIT G



97-3-02158-7 22549877 PP 02-14-05

FILED
IN COUNTY CLERK'S OFFICE

A.M. FEB 11 2005 P.M.

PIERCE COUNTY, WASHINGTON
KEVIN STOCK, COUNTY CLERK
BY _____ DEPUTY

**SUPERIOR COURT OF WASHINGTON
COUNTY OF PIERCE**

In re the Marriage of:

CARMELITA BARRETT

Petitioner,

And

DANIEL BARRETT

Respondent.

NO. 97-3-02158-7

PARENTING PLAN

PROPOSED (PPP)

TEMPORARY (PPT)

FINAL ORDER (PP)

This parenting plan is:

A final parenting plan, modifying a prior plan, entered pursuant to an order of default.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

I. GENERAL INFORMATION

This parenting plan applies to the following children:

<u>Name</u>	<u>Birthdate</u>
Brittany Barrett	05/25/90
Blake Barrett	06/23/92

II. BASIS FOR RESTRICTIONS

2.1 PARENTAL CONDUCT (RCW 26.09.191(1), (2)).

Does not apply.

2.2 OTHER FACTORS (RCW 26.09.191(3)).

The mother's involvement or conduct may have an adverse effect on the children's best interests because of the existence of the factors which follow.

Mother has abandoned the children to the care of Danny Barrett.

III. RESIDENTIAL SCHEDULE

These provisions set forth where the children shall reside each day of the year and what contact the children shall have with each parent.

3.1 SCHEDULE FOR CHILDREN UNDER SCHOOL AGE

There are no children under school age.

3.2 SCHOOL SCHEDULE.

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

The children shall reside with the mother from Friday at 5:00 pm until Sunday at 8:00 pm every other weekend.

The school schedule will start when each child begins kindergarten.

3.3 SCHEDULE FOR WINTER VACATION.

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

To be divided equally between the parents with the father having the first half of said vacation and the mother to have the second half of said vacation period.

3.4 SCHEDULE FOR SPRING VACATION.

The child shall reside with the father during spring vacation, except for the following days and times when the child will reside with or be with the other parent:

To be divided equally between the parents with the father having the first half of said vacation and the mother to have the second half of said vacation period.

3.5 SUMMER SCHEDULE.

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

The parties shall alternate two week periods of visitation with the children during their summer vacation period. The father shall have the first two weeks of the children's summer vacation from school.

3.6 VACATION WITH PARENTS.

Does not apply.

3.7 SCHEDULE FOR HOLIDAYS.

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

	With Mother (Specify Year <u>Odd/Even/Every</u>)	With Father (Specify Year <u>Odd/Even/Every</u>)
New Year's Day	EVEN	ODD
Martin Luther King Day	ODD	EVEN
Valentine's Day	EVEN	ODD
Presidents Day	ODD	EVEN
St. Patrick's Day	EVEN	ODD
Easter Sunday	ODD	EVEN
Memorial Day	EVEN	ODD
July 4th	ODD	EVEN
Labor Day	EVEN	ODD
Halloween	ODD	EVEN
Veterans Day	EVEN	ODD
Thanksgiving Day	ODD	EVEN
Christmas Eve	EVEN	ODD
Christmas Day	ODD	EVEN

For purposes of this parenting plan, a holiday shall begin and end as follows:
From 9:am the day of the holiday until 9pm the day of the holiday except as follows:

1. July 4 and Halloween are overnight visits.
2. Thanksgiving included the following Friday and weekend.

3.8 SCHEDULE FOR SPECIAL OCCASIONS.

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

	With Mother (Specify Year <u>Odd/Even/Every</u>)	With Father (Specify Year <u>Odd/Even/Every</u>)
Mothers Birthday	EVERY	NEVER
Fathers Birthday	NEVER	EVERY
Childrens Birthday	EVEN	ODD
Mothers Day	EVERY	NEVER
Fathers Day	NEVER	EVERY

3.9 PRIORITIES UNDER THE RESIDENTIAL SCHEDULE.

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

Special Occasions over Holidays, Holidays over Vacation, and Vacation over (pre)School.

3.10 RESTRICTIONS.

The mother's residential time with the children shall be limited because there are limiting factors in paragraphs 2.1 and 2.2. The following restrictions shall apply when the children spend time with this parent:

The restrictions are covered under VI OTHER PROVISIONS. These restrictions are to be adhered to by specifically by the mother.

3.11 TRANSPORTATION ARRANGEMENTS.

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

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

The parent beginning his/her residential time will pick up the children from the home or care provider of the parent ending his/her residential time. The parent ending his/her residential time shall have the children ready and willing for transfer on time.

3.12 DESIGNATION OF CUSTODIAN.

The children named in this parenting plan are scheduled to reside the majority of the time with the father. This parent is designated the custodian of the children solely for purposes of all other state and federal statutes which require a designation or determination of

custody. This designation shall not affect either parent's rights and responsibilities under this parenting plan.

3.13 OTHER:

3.14 SUMMARY OF Ch. 21 Laws 2000 §§5 - 10, RELOCATION OF A CHILD:

This is a summary only. For the full text, please see Ch. 21 Laws 2000.

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

If the move is outside the child's school district, the relocating person must give notice by personal service or by mail requiring a return receipt. This notice must be at least 60 days before the intended move. If the relocating person could not have known about the move in time to give 60 days' notice, that person must give notice within 5 days after learning of the move. The notice must contain the information required in Ch. 21 Laws 2000 § 6. See also form DR 07.0500 (Notice of Intended Relocation of A Child.)

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

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

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

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

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

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

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

An objection may be filed by using the mandatory pattern form WPF DR 07.0700, (Objection to Relocation/Motion for Modification of Custody Decree/parenting Plan/Residential Schedule (Relocation)). The objection must be served on all persons entitled to time with the child.

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

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

IV. DECISION MAKING

4.1 DAY-TO-DAY DECISIONS.

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

4.2 MAJOR DECISIONS.

Major decisions regarding each child shall be made as follows:

Education decisions	<input type="checkbox"/>	mother	<input type="checkbox"/>	father	<input checked="" type="checkbox"/>	joint
Non-emergency health care	<input type="checkbox"/>	mother	<input type="checkbox"/>	father	<input checked="" type="checkbox"/>	joint
Religious upbringing	<input type="checkbox"/>	mother	<input type="checkbox"/>	father	<input checked="" type="checkbox"/>	joint
Drivers License	<input type="checkbox"/>	mother	<input type="checkbox"/>	father	<input checked="" type="checkbox"/>	joint
Military Involvement	<input type="checkbox"/>	mother	<input type="checkbox"/>	father	<input checked="" type="checkbox"/>	joint
Social Activities	<input type="checkbox"/>	mother	<input type="checkbox"/>	father	<input checked="" type="checkbox"/>	joint
Marriage	<input type="checkbox"/>	mother	<input type="checkbox"/>	father	<input checked="" type="checkbox"/>	joint

“Joint decision making” means that the father will keep the mother advised of his thinking on the subjects set out in part IV 4.2. If the mother objects, she shall commence mediation according to the dispute resolution process. If the father refuses to participate in the mediation process or refuses to mediate in good faith, then the mother’s decision on the matter will be final and enforceable. If both parties participate in the mediation but cannot reach agreement through good faith mediation, then the mother may ask the court to intervene, but the father’s choice will prevail unless the court finds that her decision is clearly contrary to the best interests of the child.

4.3 RESTRICTIONS IN DECISION MAKING.

There are limiting factors in paragraph 2.2, but there are no restrictions on mutual decision making for the following reasons:

The decision making process is well defined and allows input by both parents.

V. DISPUTE RESOLUTION

Disputes between the parties, other than child support disputes, shall be submitted to:

mediation by Pierce County Dispute Resolution.

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

as determined in the dispute resolution process.

The mediation process shall be commenced by notifying the other party by certified mail as per mediation agency guidelines.

In the dispute resolution process:

- (a) Preference shall be given to carrying out this Parenting Plan.
- (b) Unless an emergency exists, the parents shall use the designated process to resolve disputes relating to implementation of the plan, except those related to financial support.
- (c) A written record shall be prepared of any agreement reached in counseling or mediation and of each arbitration award and shall be provided to each party.
- (d) If the court finds that a parent has used or frustrated the dispute resolution process without good reason, the court shall award attorneys' fees and financial sanctions to the other parent.
- (e) The parties have the right of review from the dispute resolution process to the superior court.

VI. OTHER PROVISIONS

[X] There are the following other provisions:

A. Neither parent shall move the children's residence from the State of Washington without the written consent of the other parent.

B. Neither parent shall speak in a derogatory manner about the other in the presence of either child, nor allow the other person to do so.

C. Each parent shall be entitled to reasonable telephone contact with the children at the calling parent's expense. All calls shall be made between 6:00 p.m. and 8:00 p.m. (time zone of children's location) Monday through Friday, and between 9:00 Am. and 8:00 p.m. on days school is recessed, school holidays, weekends, and during summer. Neither parent shall interfere with the other's exercise of his or her rights to telephone contact with the children. If a parent calls and no one is at home or the children are not available, the parent shall leave a message for the children if possible, and the other parent shall ensure that the children return the call as soon as possible after the message is left. No one shall listen in on a parent's telephone conversations with either child, except with the express agreement of the calling parent.

D. All mail and packages sent to either child by a parent shall be given directly to the child, and the parent with whom the child is residing shall assist the child as necessary in opening and reading any written communications to the child.

E. Neither parent shall use the children to request additional or altered time with the parent. The Parenting Plan shall be supported by both parents in the presence of the children. Neither parent shall use the children as go-betweens for communication with the other parent.

F. Each parent shall have the right to equal access to all the children's medical, psychological, psychiatric counseling, criminal, juvenile and educational records, and to any other information relevant to either child's best interest or welfare, including, but not limited to, any records being kept or maintained by the State of Washington, division of Social and Health Service, Child Protective Services, or equivalent agency, or any similar agency of any other state in which the children may reside. Any third party having or maintaining any such records is hereby authorized to release and all information upon presentation of a copy of this order by a named parent herein without the necessity of a court order or a subpoena duces tecum. Any person, including but not limited to, any physician, psychologist, counselor, or educator may seek candidly of or concerning either child named herein to either of the above-named parents without court order or subpoena authorizing the same, on presentation of a copy of this order.

G. The children's school shall be kept informed of both parents' addresses and home and work telephone numbers, and the school shall be requested to send information to both parents for such events as either parent requests.

H. Each parent shall keep the other apprised at all times of his or her current residence address and residence telephone number, and each shall provide the other with any changed information, within 24 hours after any such change takes place.

I. Each parent shall have equal and independent authority to confer with school, day care and other programs with regard to the children's progress, and each shall have free access to school, day care and other records. Each parent shall have authority to give parental consent to permission as may be required concerning school, day care or other programs for either child while either child is in his or her care.

J. Each parent shall have equal and independent authority to obtain information regarding the well-being of the children, including, but not limited to, copies of report cards, school meeting notices, vacation schedules, class programs, requests for conferences, results of standardized or diagnostic tests, notices of activities involving the child, samples of school work, order forms for school pictures, all communications from all schools, regular day care providers, and counselors.

K. Each parent shall have equal and independent authority to arrange routine medical, optical, and dental services for the children while either child is in his or her care and residence, and the parent doing so shall notify the other parent of said arrangement as soon as possible, together with the name, address and office telephone number of said care provider.

PARENTING PLAN

WPF DR 01.0400 (6/2000)

RCW 26.09.181; .187; .194

L. If a parent obtains emergency health care for either child, he or she shall notify the other parent as soon as possible of the fact that such care has been obtained, and the nature of the illness or injury to the child that necessitated the treatment.

M. Each parent has the duty to respect the parenting style and authority of the other parent, and neither parent shall attempt to undermine the authority of the other parent with either child. Neither parent will make plans or arrangements involving the children which would impinge upon the other parent's authority or time with the children, without express agreement of the other parent. Each parent must encourage the children to discuss their grievances with a parent directly with the parent to whom the grievance applies.

N. The parties may vary the provisions of this Parenting plan by written agreement, dated and signed by the parent against whom enforcement is sought.

O. A parent shall be preferred to a day care provider, babysitter, boyfriend or girlfriend or member of extended family. If a parent is away from a child for more than four hours at a time, the other parent shall be entitled to take responsibility for that child. The purpose of this provision is to maximize the parenting time by each parent and to prefer parental supervision over supervision by any other person.

P. Neither parent shall attempt to introduce a new spouse or friend as a surrogate father or mother and both parents will strive to recognize and encourage the children to recognize only the biological parents as "Father" or "Mother," "Mom" or "Dad" or the like. This paragraph is intended not only to simplify the children's life, but to preserve the special relationship currently enjoyed by her parents with the children and to discourage attempts to alienate the children from either biological parent.

VII. DECLARATION FOR PROPOSED PARENTING PLAN

Does not apply.

VIII. ORDER BY THE COURT

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

WARNING: Violation of residential provisions of this order with actual knowledge of its terms is punishable by contempt of court and may be a criminal offense under RCW 9A.040.060(2) or 9A.40.070(2). Violation of this order may subject a violator to arrest.

When mutual decision making is designated but cannot be achieved, the parties shall make a good faith effort to resolve the issue through the dispute resolution process.

*PARENTING PLAN
WPF DR 01.0400 (6/2000)
RCW 26.09.181; .187; .194*

EXHIBIT H

According to the Illinois Bar, restraining orders are abused and misused as “part of the gamesmanship” of custody litigation¹. Former president of the Massachusetts Bar Association and family law attorney Elaine Esptein said that restraining orders are often used for “tactical reasons” in family law cases involving children².

Professor Andrew Horwitz of the Roger Williams University of Law declares restraining orders are abused “in a **significant** percentage of cases².” Attorney Karen McDonough of Lowell, MA said that obtaining a restraining order is the "new trend" in family law, supplanting a strategy a decade ago where false claims of child abuse gave an upper hand².

The State Bar of California Family Law Section is concerned that "protective orders are increasingly being used in family law cases to help one side jockey for an advantage in child custody...it is troubling that they appear to be sought more and more frequently for **retaliation** and litigation purposes³.”

Family Law Attorney Lisa Scott writes

“The Justice Department's 1998 "Intimate Partner Violence" report reveals that 1/3 of total domestic violence murder victims are male. Further, less than one per cent of females (and males) are victimized each year. Hardly an epidemic justifying a monstrous government system. In today's domestic violence police state, it's expected the woman is the victim. All she has to do is call 911 and report her husband assaulted her. In many cases she conveniently fails to mention she slapped, punched, kicked or pummeled him to the point that he pushed her away. As a family law attorney for 17 years, I have experienced the DV system personally. Every example cited in this article has happened to one of my clients. The **stereotype** that the man **is always the abuser** ensures he has no chance of being believed when he says he is the victim...In fact, the accused is sometimes treated **more harshly** for having the **audacity to object**. Meanwhile, real victims must share crowded courtrooms with DV fakers.

¹ June 2005 issue of the *Illinois Bar Journal*

² Tom Walsh “Restraining orders: Shield or Strategic Weapon...” *The Patriot Ledger* (Quincy, MA), Vol. 13-217, News Section, Nov. 30, 1999

³ Lynette Berg Robe and Melvyn Jay Ross, “Extending the Impact of Domestic Violence Protective Orders” *Family Law News*, Vol.27, Num.4 (2005)

In many cases, the accused is sent to "domestic violence perpetrator treatment," following an "assessment" with the foregone conclusion that he needs treatment. If he **admits** any abuse, it will **always be** used against him. **Denial** of abuse is punished **more severely** than actual abuse. Those who profess their innocence are often forcibly "re-educated" for two or even three years.”⁴

Some people have even obtained restraining orders against TV personalities.

“A Santa Fe, New Mexico judge recently granted a temporary restraining order against TV talk show host David Letterman for a woman who alleges that Letterman—who works in New York City and whom she has never met--has mentally harassed her through his TV broadcasts. The woman also claims that Letterman and fellow celebrities Regis Philbin and Kelsey Grammer have been conspiring against her...Letterman’s attorneys were able to get the order dropped, and the judge’s decision has made good fodder for gossip columns and news of the bizarre. However, the case also demonstrates a much larger though rarely discussed problem—it is far too easy to get a restraining order based on a false allegation.” -- Albuquerque Tribune (1/17/06)

WSBA member since 1991, Attorney Joshua Foreman writes:

“Many wives are starting the divorce process by having their husbands arrested for Domestic Violence Assault. Why? Because if the divorce court believes them, Mom automatically wins the custody fight. RCW 26.09.191.

The more likely it is that Dad will win custody, the more likely it is that he will have to defend against false accusations of domestic violence.

It doesn't matter if you are actually guilty or not; if a wife calls the police, her husband will almost certainly be arrested, and if he is convicted, he will have no chance in a custody fight -- and lots of other problems, of course!

If the police come to arrest you, they WILL arrest you. Don't think you can talk your way out of it! It isn't up to them to decide if you are guilty or innocent, but only if they have "probable cause" to arrest you, and her complaint is probable cause.

⁴ “Scream Queens Fuel Nightmarish VAWA System” http://www.thepriceofliberty.org/05/07/05/guest_scott.htm

I've represented a lot of cops in their divorces, including a high-ranking officer in a large local police force. I asked him if he had seen my website, and he said he had.

I asked him if he had read my advice about what to do when you're arrested for DV, and yes, he read what you just read.

I asked him if he liked what I wrote about cops and he said, 'no . . . but it was true.'⁵

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EXHIBIT I

Ripped Apart

Divorced dads, domestic violence, and the systemic bias against men in King County family court.

By Nina Shapiro Tue., Jan 17 2012 at 12:00AM

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Jim's first indication that his life was about to be turned upside down came the night he got home from work and was approached by an off-duty sheriff's deputy.

"Are you Jim?" the deputy asked.

"I am," he replied.

The deputy then informed him that not only was he no longer welcome inside his own house, he wasn't allowed even to collect his things. The officer handed him a suitcase his wife had packed and a \$3,000 check—also from his wife, who earned far more than he did.

"What are the grounds?" Jim asked.

"It's all in there," the deputy said, thrusting a sheaf of papers into his hand.

The papers informed him his wife was filing for divorce. Worse, she had requested, and been granted, a temporary protection order based on allegations of domestic violence. The order—issued at a hearing that took place without Jim—took effect immediately. It required him to vacate his house and refrain from "any contact whatsoever" with either his wife or his 3-year-old son.



In it, his wife wrote that she felt like she had to "walk on eggshells" around Jim due to his unpredictable temper. He would scream to such an extent that "veins in his neck were bulging" and "spittle from his lips was hitting me in the face." She also described him yelling at their dogs, roughly handling their cat, and driving aggressively and recklessly.

But there's one thing she never claimed—that Jim had ever hit her or their son. Nor did she accuse Jim of threatening either of them.

Jim, an insurance agent periodically unemployed, had at times performed more child-care duties than his wife, according to a court-assigned social worker hired to assess each spouse's parenting skills. Observing interactions between Jim and his son, and talking to friends, relatives, and neighbors, she called the bond between them "relatively strong, happy, interactive, comfortable, playful, and full of physical play and affection." Yet it would still take 15 months for Jim to be allowed to have normal visits with his son.

Had he been charged with domestic violence in criminal court, where guilt must be proved beyond a reasonable doubt and the standards of due process are high, this might not have happened. But Jim's fate was decided in a very different venue: family court.

It's a court like no other—a hugely busy and rancorous place where the most personal aspects of people's lives are not only on display, but judged and reshaped in proceedings that often last no longer than 20 minutes. Appointed commissioners, rather than elected judges, make many of the most crucial decisions. And the standard of evidence (known as "preponderance of the evidence") is the lowest allowed by law.

For years, dads'-rights groups have claimed that family court overwhelmingly favors women, particularly when it comes to custody. In former times, when dads generally did far less hands-on child-rearing than moms, those claims tended to be viewed as the ranting of bitter misogynists.

But parenting roles have changed. And the "judicial system," says veteran family-law attorney Deborah Bianco, "is way behind the culture." Bianco is one of a number of mainstream family-law attorneys—representing both women and men, and often female themselves—who now say they too see a bias against men.

Rhea Rolfe, an attorney who once taught a "women and the law" class at the University of Washington, recalls sitting with a male client in a commissioner's courtroom one day. There were maybe seven or eight cases heard. "She ruled against every single man," Rolfe recalls, "and two of them were unopposed."

"In any other arena, the evidence gets you the ruling," observes attorney Maya Trujillo Ringe. "But in this particular arena, the dad has a much bigger uphill battle." So much so, she says, that she and other attorneys often joke that "if you put a skirt on the dad, same facts," he'd win primary custody. "You can overcome the bias," Ringe adds, "but it takes a lot of work and a lot of resources."

Attorney Jennifer Forquer agrees, noting that "fathers will routinely be sent to parenting classes" by commissioners. "It doesn't matter if they took paternity leave, if they changed diapers. If a mother makes an allegation that a father's parenting is deficient, he ends up going." If a dad wants to make such an allegation about a mom, she says, "you have to be careful how you present that." Commissioners are not inclined to believe it, she says.

By far, though, the most damaging allegation—the one that can change everything in an instant—is domestic violence. That's why, Rolfe says, "there are attorneys who will advise a client to accuse the other party of domestic violence in order to gain an advantage."

The accusations may not constitute what the general public thinks of as domestic violence. "Frequently, it's not a big thing that you did, but the woman claims to be afraid," says Rolfe.

Yet commissioners—and what Bianco calls a "little cottage industry" of professionals used by the court to assess and treat domestic violence—tend to give those allegations credibility and see a man's denials as further proof of his guilt—the ultimate catch-22.

Rolfe calls herself "a very strong feminist." She believes domestic violence and male denial are big problems. Yet considering the way women can "use the system," she says, "It absolutely infuriates me."

"I have always seen gender bias," says Bianco, who has been practicing law for more than 20 years. "What's changed is that it's no longer gender bias against women—now it's against men."

Back in the day, she says, "the court would say to a 55-year-old homemaker who had never worked: 'You better go out and get a job.' You might have a husband earning, at that time, \$50,000 or \$70,000 and a wife who could earn \$12,000. I remember saying to women: 'If you can only work at Walmart, you might have to change your lifestyle.'" Changing attitudes, and court rulings, led to the notion that you can't leave one party in poverty after a divorce and another in wealth.

Similarly, she says the court's view of domestic violence used to be slanted against women. "I had to have clients testify they had done nothing to provoke their husbands. If they had been unfaithful, that was viewed as justification."

Yet as the courts started to shift toward a woman's point of view, men started to ask questions about an arena in which they had traditionally been marginalized: custody. A slew of dads'-rights groups, with names like Fathers for Equal Rights and Dads America, gained steam in the '80s and '90s. Hollywood offered its glossed-over version of the issue with films like *Kramer vs. Kramer* and *Mrs. Doubtfire*. And some lawmakers took up the cause as well. In Washington, the legislature passed a bill in 2007 that shifted the balance ever so slightly. It directed courts to stop taking into account which parent had in the past taken greater child-rearing responsibility—a factor that typically works in the mom's favor.

"But bias still exists," says Carol Bailey, a family-law attorney who also works as a "guardian ad litem," retained by courts to represent the best interests of children. "If you have a capable, interested father, it's very difficult for him to get meaningful access [to his children] if he wasn't the primary parent."

Of all the custody arrangements recorded by Washington courts between July 2009 and July 2010, nearly two-thirds had children spending more time with their mother than their father. To fully understand why—and how domestic-violence accusations work so effectively against dads—you have to understand how the system works.

Commissioners preside over hearings on what is called the family-law "motions calendar." Technically, the decisions reached—on custody, child support, maintenance (what used to be called alimony), and who gets the house—are temporary. Either a trial before a regular Superior Court judge or a settlement will yield the final decisions.

But, concedes James Doerty, assistant presiding judge for King County Superior Court, "Once the tank is moving in a certain direction, it's very hard to turn it." And even if it does turn, it takes a long time. The wait for a trial currently averages 14 months. What's more, the vast majority of cases never make it that far—one lawyer estimates that "95 percent" settle beforehand—meaning that the commissioners' rulings are often first and final.

This wouldn't be a problem if hearings in family court were comprehensive. But they're not. In a single morning, a commissioner might handle as many as 14 hearings—as did Les Ponomarchuk, the lead family-law commissioner, one day last month.

Consequently, King County imposes strict rules to keep these hearings short. Each side is only allotted five minutes to speak. There are no witnesses, beyond the parties themselves, and no allowed cross-examination. There are even limits on what kind of documents a party can submit before a trial to bolster their case. At a recent hearing, Commissioner Meg Sassaman fined an attorney two hours of his opposing counsel's time, a net loss that amounted to \$500, for writing too much in defense of his client.

In other words, the most precious relationships in people's lives—relationships that impact not only the adults standing before a commissioner but the unseen children used to being around both parents every day—are reconstituted according to whatever spin embittered spouses can put forward in the time it takes to walk around the block.

Some court systems treat family court more like a regular court. One lawyer who used to practice in Maryland says commissioners there held half-day trials, complete with cross-examinations. But King County Superior Court, which handles nearly 8,000 divorce cases a year and more than 17,000 requests for protection orders, has no such luxury, says Doerty. "They must be exceptionally well-funded to be able to do that."

Ponomarchuk says he recognizes that commissioners have access to limited information. "It makes it an extremely difficult situation to decide to what extent there should be limitations [on visits with children]."

"It's horrible," says Doerty, who spent five years as a commissioner before becoming a judge.

Both men say commissioners do the best they can under the circumstances. "I don't go 'If I sniff abuse, it's good enough for me,'" Ponomarchuk says. He adds that he has turned down protection-order requests.

But a number of family-law insiders say that other commissioners are not as discriminating. Some note that of the five family-law commissioners in King County—three in Seattle, two in Kent—all but Ponomarchuk are women.

A few have a reputation for being particularly harsh with men. Sassaman, for instance, prompted this anonymous comment on a website called RateTheCourts.com: "I have been a family law paralegal in King County for 24 years. I have never seen anyone as obviously biased and hateful towards men as this woman." (Sassaman did not return a request for comment.)

Statistically, there's no question that commissioners tend to side with women in domestic-violence cases. In 2010, of the roughly 1,900 protection-order petitions ruled on after a hearing, commissioners granted 80 percent.

Whatever bias may exist, there's another reason for the high percentage of granted orders, explains Bianco, who sometimes serves as a "pro-tem" or substitute commissioner. "No commissioner wants to deny an order of protection, and then have [the person who claimed abuse] injured or killed. You want to be very, very cautious. And if you make a mistake on the side of protecting somebody, what's the harm?"

One November day in 2008, an engineer we'll call Richard left town on a business trip. When he returned in the late afternoon five days later, neither his wife nor 4-year-old son were home. His wife had left him a voice mail saying she was out running errands, but when they weren't back by 11 p.m., he started calling hospitals. At midnight, he called 911 and was advised to file a missing-persons report, which he did.

The next day, police found his wife and son staying at a hotel, but she had no interest in coming home. The marriage had been rocky for years.

She hired a lawyer named Jan Dyer, the same lawyer who a couple of months later would file divorce proceedings on behalf of Jim's wife. Known as an aggressive—she says "zealous"—advocate, Dyer has on her website a picture of an Annie Oakley look-alike holding a gun pointed straight at the camera. "I get up in the morning, knowing I'm either being shot at, or I'm shooting," she tells Seattle Weekly.

Dyer calls domestic violence her "specialty," though she says many of her clients don't walk in the door thinking they've been victimized. "I try to educate," she says. Domestic violence sometimes "isn't the kind of horrific violence we all think about. It might be a shove or a head-butt." Or, she says, "when they're so close to you, you can see spit."

"You have to dig," she continues. "Most people don't want to admit that domestic violence has ever happened to them. When I identify blocking a doorway as domestic violence, they're shocked."

With Dyer in her corner, Richard's wife filed not only for a divorce but a protection order. "I feel like I have been a prisoner in my home for longer than I can really remember," she wrote in her petition.

Richard had shoved her during one argument, his wife charged, and grabbed her arm so tightly during another that it left bruises. She alleged he also assailed her with "constant criticism"—remarks like "Well, you're gaining weight and it's getting embarrassing"—and insisted that chores be done in a certain way. He even controlled the thermostat, she said.

Richard, in his response filed with the court, declared himself "shocked" by her allegations. He denied shoving his wife, and said that the arm grab, which happened in the kitchen, was really an attempt to block her from throwing a fork in his direction. A knife had already once come precariously close as she threw it past him and into the sink, according to the document.

Richard also proffered a very different account of their marital life, describing her supposed irritability, depression, and tendency to follow him around "trying to bait" him into an argument. He also portrayed himself as their son's primary caretaker. As a co-worker testified in a declaration, Richard arranged his schedule so he could pick up his son from preschool in the late afternoon. On Fridays, when there was no preschool, he didn't work at all. (His wife countered that she was the main caretaker, in part because he traveled for work regularly.)

Even given such contradictory accounts, Commissioner Lori Kay Smith granted a temporary protection order. Still, she allowed Richard to see his son, on alternative weekends and one weeknight, unsupervised.

In that sense, he had something to be grateful for, as Jim could well tell him.

For the first three months of Jim's supervised visits, he couldn't even take his son back to his apartment. He was obliged to stay at the Madison Valley offices of the Indaba Center, the social-service organization that provides supervision services—at a cost to him of \$50 an hour.

Once, after he was allowed to take his son on outings, toting the supervisor along, he tried to squeeze in a trip to the aquarium as well as a visit with relatives who were in town. Jim didn't have time to feed the boy too, as his wife had requested, and that oversight, as well as the rushing, counted as a mark against him in the later parenting evaluation done for the court.

Given their extremely rushed proceedings, family-law commissioners often punt to such "expert" evaluations to make recommendations that can be heard in later hearings. Smith did that in Richard's case, ordering a "risk assessment" from a counselor who specializes in domestic violence.

Richard says he welcomed the assessment. "OK, great," he says he thought. "Now I'm going to go to somebody whose job it is to ferret out the truth." He says he didn't even mind paying the \$1,000-plus fee.

But when counselor Doug Bartholomew came out with his report a month later, Richard was even further in the hole. The counselor did say that he couldn't determine whether Richard had assaulted his wife. Yet Bartholomew still recommended that Richard attend a domestic-violence treatment program, as well as a class called "DV Dads."

Why? For one thing, he held out the possibility that Richard was dangerous. He attached extreme importance to the engineer's attempt to have the counselor look at a mental-health self-evaluation his wife had done. "Since submitting someone's private records against their will is so inherently antisocial, it raises the question of whether or not he's capable of similar 'stop at nothing' behavior," Bartholomew wrote.

Richard's personality and background were also suspect, according to Bartholomew. For one thing, he was successful. "The downside of success, and he's been very successful, is that we tend not to learn compassion, empathy, or insight." Richard, he wrote, "has never experienced tragedy."

Richard suffered from a "Puer complex," the condition of being an "eternal boy," in Bartholomew's estimation. The engineer was unable to describe his son in an "I-Thou manner," an apparent reference to philosopher Martin Buber's description of seeing other people as possessing distinct wants and needs. This seemed to account for Bartholomew's finding that Richard posed "some risk of further psychological abuse." As the counselor put it a year and a half later at trial, "the most conspicuous feature" of his evaluation was Richard's "indifference" to his wife's "feelings and needs."

"It was a huge blow," Richard says. "It just didn't make sense in my head."

Denial very well may be a reaction many batterers have. But other men seem genuinely confounded and disturbed by the label thrust upon them.

"There's really nothing worse than being told you're an abuser," says a dad we'll call Daniel, who was for a time subject to a protection order. Then a stay-at-home parent, the order stopped him from seeing his wife, not his child. But he faced a daunting legal fight for custody, one that eventually put him \$240,000 in debt, and could only be attempted because a law firm took pity on him and allowed him to pay off the money over time.

Eventually, Daniel did win custody after a trial that cleared him of domestic-violence allegations. But he says the ordeal was emotionally scarring. "I lost 55 pounds. I ate once a day—for two years. I used to go into a closet in my house and just cry and cry." He says he felt like he couldn't seek counseling or let anybody see his distress for fear that it might be held against him in court. "If you're a girl [and break down emotionally], the court kind of wraps its arms around you. But a guy has to be stable, strong, making a living." Or at least that's what he says he was told by his first attorney.

Meeting at his lawyer's office one day, he's practically sweating as he talks hesitantly about his case. He's still terrified that he might say or do something that would antagonize his ex (for that reason, both he and the other dads in this story asked that their identities not be revealed), and thus bring on new legal wrangling that could cost him his child. "I've never quite gotten back to where I was," he says.

As for Richard, he decided to live with Bartholomew's assessment and the protection orders that were subsequently renewed time after time. He says his attorney told him "Suck it up, go through the [domestic-violence treatment] program, see what happens."

It didn't go well. Enrolled in a group-therapy program at the agency now known as Wellspring Family Services, he says, "every single time you show up, you have to say what your most abusive behavior was during the past week."

"I'd have to make stuff up," he says. But that wasn't good enough. According to a form filled out by the agency, it judged him "out of compliance" for his denials of abuse, and dismissed him from the program.

Mark Adams, one of Wellspring's facilitators, says the weekly "check-ins" aren't done so much any more because other men in the program also have said they've made stuff up. But he says this weekly confessional, when used, is intended to get people thinking about even the subtlest ways they behave badly.

Adams adds that he finds it "unrealistic" to expect that the people sent to his program—already judged to be domestic-violence offenders—could "go through an entire week without saying or doing something that would come across as disrespectful."

And if people can't identify those behaviors, if they really don't see themselves as abusers, then, he says, they're not a good fit for the program. "They have perhaps more of a legal issue," he says. In other words, they need to get the "abuser" label lifted by going back to court—the very institution that, lacking adequate time and resources, looks to outside experts like him for guidance.

Dyer, the "zealous" attorney, noted Richard's dismissal from the program in her opening statement during the trial in the summer of 2010, as she did Bartholomew's "finding of domestic violence." (Though trials are extremely rare, all three men profiled in this article—Jim, Richard, and Daniel—were chosen in part because they managed to weather the wait, inconvenience, and expense of a later court date.) At stake was not only the protection order still in effect, but the custody ruling, lopsided in favor of the mom, that commissioners had accordingly granted and that had been in effect almost two years.

It was, in some ways, a highly unusual proceeding. Judge Michael Fox admonished Dyer on the record, something he said he rarely did. The judge said he felt compelled to do so because the attorney who said she held angry men accountable seemed herself to have an anger problem. Fox characterized Dyer's cross-examination of Richard as being "over the top"—characterized by "sarcasm, interrupting," and "a tone of voice that is hostile in the extreme."

Dyer, saying she couldn't understand the judge's reaction and describing herself as pained by it, asked the judge to recuse himself. He refused. She then asked to withdraw as her client's counsel, a motion Fox also turned down. "I just got an automatic right to appeal the whole case," she told her client—but, in spite of that attempt at positive spin, proceeded to sob through the next witness' testimony.

Such dramatics aside, much of the trial hinged on a fundamental question: How do you define domestic violence? Dyer called Bartholomew to the stand. After noting that he had worked in the field of domestic violence since 1982, providing both risk assessments and treatment, the counselor explained that he didn't have much use for the definition of domestic violence provided by state law.

The law, Bartholomew said, "is an extremely limiting definition in that basically you have to rape, assault, or kidnap someone, or stalk them. And that doesn't allow for addressing the bulk of domestic violence." Instead, he said he had used a "judges' manual" on the subject that is put out by the state Administrative Office of the Courts. That definition cites "a pattern of assault and coercive behaviors, including physical assaults, psychological attacks, and economic coercion."

Bartholomew is not alone in using an expansive concept of domestic violence, though there seems to be no one precise definition that is generally understood. Jim's risk assessment, by a now-retired therapist named Warland Wight, began by listing three definitions: the state law, that of the judges' manual, and a similar definition that takes into account both physical incidents and "control tactics."

"What the general public needs to understand is that domestic violence is more than just physical assault," says Commissioner Ponomarchuk. "It has to do with control . . . When you control the keys to the car and check [your wife's] cell phone to see if she's having an affair, that's control."

Judge Doerty offers other non-physical examples: "when you never, ever let your spouse have any money, or the wife is not allowed to go grocery shopping on her own." He allows, however, that deciding whether domestic violence has occurred can be "challenging." Even state law, considered so restrictive to Bartholomew, is ambiguous because it counts the "infliction of fear" as domestic violence, the judge explains. "It's very, very subjective. How is it possible to say 'No, you're not really afraid?'"

Judge Fox, however, evidently felt able to do so—or at least to say that the evidence did not point to a "reasonable" fear—after hearing testimony from Bartholomew, Richard, his wife, various acquaintances, and a parenting evaluator.

The engineer, opined the judge, "may have been the dominant partner in this marriage, he may lack a certain degree of introspection, he may be somewhat rigid, and he may not be as empathetic as we would all like, but there is no evidence that he has committed domestic violence as defined by state law."

Going even farther, the judge completely reversed the status quo, awarding Richard primary custody and his wife alternate weekend visits.

Explaining his decision, Fox said he had great regard for the "careful evidence-based analysis" of the parenting evaluator, which had taken more than a year. In that report, she had observed that of the two parents, Richard "appears to have a somewhat stronger, more positive, and more stable relationship" with their son. The mom "acknowledged a history of depression" and "feeling overwhelmed" that the social worker determined had impacted her relationship with the boy.

In contrast, the judge said he gave "no credence to the Bartholomew report." The assessment was rife with "bias," Fox said. The counselor had believed nothing Richard said and everything his wife said.

Bartholomew's logic was also "weak," according to the judge. Fox said he wasn't buying the counselor's notion that Richard's attempt to submit his wife's self-assessment was such a heinous act that it called into question the engineer's character.

The counselor hadn't even proofread the report, the judge noted. (At trial, it had come out that Bartholomew's dictation software had sometimes changed pronouns, and Richard's attorney

observed that some of the controlling behavior Richard had ascribed to his wife seemed to appear in the report as things "he" had allegedly done.)

"In my 22 years on the bench, I have never reviewed an expert report such as this," Fox declared.

Richard subsequently filed a complaint about Bartholomew with the Department of Health, the ninth lodged against the counselor. The DOH did not sustain eight of the complaints, but is currently investigating Richard's.

In an interview and follow-up e-mail, Bartholomew says that dads like Richard aren't the only ones being targeted, but that he too is a victim, calling his persecutors a "homegrown hate group of men . . . whose stated intention is to destroy the [domestic-violence] intervention system."

Turning to Richard's case, Bartholomew claims his report was misconstrued: "First of all, I said the guy didn't do any domestic violence." No matter that those words aren't in his report, that he referred to further psychological "abuse," and that the judge and the attorneys understood the exact opposite—the counselor points to his line saying that he couldn't determine whether Richard had assaulted his wife. Although at trial Bartholomew argued that assault is not a necessary component of domestic violence, he now says that it is.

Why then did he recommend that Richard undergo domestic-violence treatment? "A lot of people really benefit from that—especially people who haven't stepped over the line," Bartholomew says. "You learn about how to handle relationships."

"The attorneys on both sides were extremely difficult," he adds by way of explaining how his report was construed as a domestic-violence finding. "Each of them took it and ran with it."

At least Richard's wife's attorney—not Dyer, but a new lawyer—is still attempting to run with it, and has filed an appeal on behalf of her client. Some of the lawyer's arguments: The judge had improperly discounted an "expert" opinion that the father had engaged in domestic violence and "failed to complete" his recommended treatment.

The appeal is pending.

Meanwhile, the churn of family court goes on. One recent day, a dark-haired 31-year-old man, the father of a 17-month-old girl, presents himself before Commissioner Jacqueline Jeske. An unemployed construction manager, he says he has already maxed out on lawyer's bills. "The only thing I ask is to recognize the importance of a father in a girl's life," he tells the commissioner.

Like so many dads, his role has been cast in doubt by a domestic-violence allegation. (His wife claimed he bumped her with his chest and pinned her down on the bed during an argument.) At an earlier hearing, the commissioner had consigned him to supervised visits, but allowed his mother to act as the supervisor. This wasn't too practical, since the mom lived on an island near Tacoma and he lived in Seattle. So he left his job and moved to Tacoma.

Now he and his wife are back in court, each with complaints. He charges that his wife is not allowing him the full 24 hours with his daughter the court granted him once a week. The mom, who does have the benefit of counsel, insinuates that there must be something wrong with the visits since the toddler is taking a long time to "recover" afterward, as evidenced by too-long napping.

Jeske not only gives the dad's complaint no credence, she holds it against him. "It sounds suspiciously close to using the child as a control mechanism, which is a domestic- violence [behavior]," Jeske says.

In contrast, she takes the mom's complaint so seriously that she takes away one of the dad's monthly visits until a parenting evaluator can look into the prolonged-napping situation. Not only that, she orders the out-of-work and unrepresented dad to pay \$1,000 for his wife's attorney.

The dad sighs and looks down.

"It doesn't always go the way you think it might," the commissioner remarks, drawing the hearing to a close. "I'm trying to craft equity." She doesn't explain how.

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