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COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON

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IN RE THE PARENTAGE OF A.D.

MARTIN DOMINGUEZ

Appellant

and

ANNA MARIE DEAN

Respondent.

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REPLY BRIEF OF APPELLANT

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Attempting to obtain an order for post-secondary support, Ms. Dean, Respondent, filed a Petition to Modify Child Support Order on June 14, 2017, several months after her child had passed her 18<sup>th</sup> birthday. In her scramble to circumvent the fact her child was emancipated before she sought post-secondary support, Ms. Dean now makes the absurd claim, not raised below, that by selecting in her Petition for Parenting Plan filed in 2006, CP 2, a disregarded prayer for relief<sup>1</sup> requesting child support and insurance, CP 5, she preserved the issue of child support. She claims that prayer for relief now allows her, over 11 years later, to renew her “request” for child support, “Reply Brief of Resident/Appellee” (hereinafter, “RBrief”) at 9—notwithstanding her explicit language in that 2006 Petition that she was not seeking child support, CP 4, and despite—in keeping with the allegations of the 2006 Petition—that a CR 2A agreement was entered that did not address child support, with which the parties abided and on which they relied for over 11 years.

- 1. The intent of the parties in the 2006 Petition (and the case) was clear, notwithstanding several general provisions with conflicting language.**

As noted in both the Appellant’s and Respondent’s briefs, the “Petition for Parenting Plan,” CP 2–6, the Joinder of Appellant, Mr.

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<sup>1</sup> Though other relief was prayed for in the Petition, CP 4, the unqualified term “prayer for relief” herein refers to the prayer set forth at page 9, *infra*.

Dominguez, CP 1, and the Agreed Temporary Parenting Plan were all filed on December 14, 2006. After noting correctly the petition was entitled “Petition for Parenting Plan,” the Respondent stated:

Substantively, the body of the Petition requested that the court address both a parenting plan *and* child support, although the Petition contains some conflicting language on the issue of support.

RBrief, 9 (emphasis in original). Contrary, however, to Ms. Dean’s claim, the “body” of the petition contains just the opposite, an explicit allegation in paragraph 1.6, CP 4, that the court *not* address support and insurance. Ms Dean is incorrect in calling that paragraph “conflicting language”. Rather, the actual conflicting language is not in the body of the 2006 Petition nor is it substantive, it is boilerplate language in the prayer for relief.

a. The intent of the 2006 Petition is clear.

Notwithstanding conflicting language,<sup>2</sup> a comparison of the 2006 Petition and the pattern form from which it was drafted, entitled “Pet for Par

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<sup>2</sup> Though not noted by Ms. Dean, the footer of the Petition also states “Pet for Par Plan & Child Support”. Though her attorney in 2006 did remove some language from the footer, he did not remove the language “[and] Child Support”. The reason for that is not clear, except perhaps it was an oversight. The undersigned suspects the document was initially drafted by the attorney to include a request for child support until the Petitioner indicated she was content with the administrative support order; but, when making the necessary substantive changes, the attorney was likely not careful to remove all language related to the support aspects of the form. Footers in particular can be easily overlooked.

Plan & Child Support, WPF PS 15.0100 (6/2005) RCW 26.26.375”, see Appendix B,<sup>3</sup> CP 2–6, shows that the clear intent of the parties was to not address child support in the 2006 Petition for Parenting Plan.

RCW 26.26.065 mandated the use of approved forms “as provided in RCW 26.18.220”, which allowed deletion of unnecessary portions of the forms. By making affirmative deletions, Ms. Dean chose specific provisions in the Petition—and Mr. Dominguez agreed with her.

A petition and joinder is an agreement of the parties and should thus be construed as a contract.<sup>4</sup> Courts give greater weight to specific and exact terms than general language. *Adler v. Fred Lind Manor*, 153 Wn.2d 331, 354, 103 P.3d 773 (2004). “Where the contract provides a general and a specific term, the specific controls over the general.” *Diamond B Constructors, Inc. v. Granite Falls Sch., Dist.*, 117 Wn. App. 157, 165, 70 P.3d 966 (2003).

**i. The statute does not require a custody petitioner to request support.**

RCW 26.26.375, listed in the pattern form footer, stated in 2006 :

(1) [A] parent executing an acknowledgment of paternity of the child named therein may commence a judicial proceeding for:

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<sup>3</sup> Appendix A is attached to Brief of Appellant.

<sup>4</sup> General rules of construction applicable to statutes and contracts also apply to ambiguous court documents. *In re Marriage of Thompson*, 97 Wn. App. 873, 878, 988 P.2d 499 (1999).

(a) Making residential provisions or a parenting plan with regard to the minor child on the same basis as provided in chapter 26.09 RCW; *or*

(b) Establishing a child support obligation under chapter 26.19 RCW and maintaining health insurance coverage under RCW 26.09.105.

(Emphasis added.) The law did not require Ms. Dean to request support.

**ii. The pattern form gave Ms. Dean an option in the title and she chose to exclude a request for support.**

The caption of pattern form, Appendix B, page 1, reflects the statute on which it is based in that it provides optional selections in the title:

PETITION FOR  
 RESIDENTIAL SCHEDULE/  
PARENTING PLAN  
 CHILD SUPPORT

Ms. Dean's attorney availed himself of the option to delete unnecessary portions of the foregoing, leaving "PETITION FOR PARENTING PLAN" as the title of the Petition. In other words, the attorney affirmatively deleted mention of child support (clarifying also it was not a residential schedule).

**iii. Ms. Dean chose to modify the title of the proceeding to clarify that the proceeding concerned only parenting.**

In addition, though RCW 26.26.375(2) required the proceeding to be entitled "In re the parenting and support of....", Ms. Dean's attorney also affirmatively clarified that the proceeding was not one regarding child support by amending the proceeding title to say "In re the Parentage of:"

**iv. The pattern form in 2006 gave Ms. Dean an option in paragraph 1.6 and she affirmatively chose to exclude a request for support.**

Ms. Dean pointed out that the language of Paragraph 1.6 of the 2006 Petition was “boilerplate.” RBrief, 2. Ms. Dean then later speculates that the presence of paragraph 1.6 could

just as easily have been the mother’s oversight in not removing that provision, or it could be construed as language the mother perceived as a mere recitation of facts (e.g. there was, in fact, an existing administrative support order).

RBrief, 8. Ms. Dean’s speculation can be seen as incorrect when the entire language of pattern form paragraph 1.6 is taken into account.<sup>5</sup> It states:

**1.6 CHILD SUPPORT.**

**Support and health insurance coverage for the minor child:**

has been determined administratively by the Division of Child Support and the petitioner  does  does not want the court to address child support.

has not been determined administratively by the Division of Child Support and the petitioner  does  does not want the court to address child support.

Again, Ms. Dean, affirmatively rejected her option to have the court determine support (and health insurance), available even given the existence of an administrative order. Her attorney affirmatively deleted the language “[ ] does [ ]” so as to have the paragraph say Ms. Dean “does not want the

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<sup>5</sup> Given inexplicable contradictory language, Appellant acknowledges speculating about the footer, see note 2 at page 2. Ms. Dean’s speculation about substantive language she affirmatively modified, however, is qualitatively different.

court to address child support” or health insurance.<sup>6</sup> In other words, Ms. Dean had the clear opportunity to have the court supersede the administrative order. She had the choice and once again gave clear evidence of her intent. Her speculation is not well taken.

- b. The court file shows the parties did not intend the prayer for relief to have any viability.

Mr. Dominguez has submitted a Supplemental Designation of Clerk’s Papers, among which are documents indicating or suggesting the parties never intended support to be part of the case.

**i. Letter from Court dated April 27, 2007.**

The court staff attorney sent the parties a letter advising them that they needed to provide additional documents. It is obviously a form letter (stating “In re the Marriage . . .”) and the staff attorney had obviously not carefully read the Petition that was not requesting support. But he did indicate the file contained no “Order of Child Support” and, more importantly, no “Child Support Worksheets.” Since Ms. Dean had not selected that provision of the title of the Petition regarding child support, her attorney would not have filed the unnecessary worksheets or proposed order of support.

**ii. Dismissal and vacation of dismissal.**

Contrary to Ms. Dean’s statement that “the case sat dormant for more than two years” until the settlement conference February 9, 2009, RBrief, 3,

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<sup>6</sup> She also of course deleted the wholly inapplicable second paragraph.

the case was in fact dismissed May 25, 2007 for failure to appear to finalize the case. Ms. Dean filed a Motion for Order re Vacate Order of Dismissal on July 18, 2007, requesting the court to “re-open my case regarding the parenting plan that was filed Dec. 14, 2006. I was unaware of the previous order of the Parenting Plan was temporary”. The court—without notice to Mr. Dominguez or with him present—vacated the dismissal that day.

A year and a half passed before the court again ordered the parties to court at which date, November 26, 2008, the court ordered a settlement conference because no final parenting plan had been entered.

**iii. Final Parenting Plan was entered February 9, 2009.**

At the settlement conference, the parties entered a CR 2A Agreement, signed by them and the court and stating that the attached Temporary Parenting Plan was adopted as the Final Parenting Plan. Mr. Dominguez also filed the same day an updated residence address. Child Support and insurance was not an issue at the settlement conference. The Temporary Parenting Plan was not in fact attached to the CR 2A Agreement, but the parties abided by and recognized it as the court-ordered Parenting Plan throughout the remainder of the minority of their children. No further papers<sup>7</sup> were filed for over nine years until Ms. Dean filed her Petition to Modify Child Support Order on June 14, 2017.

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<sup>7</sup> Judicial notice request: Appendix C is an Odyssey screenshot showing no filings in the case after February 9, 2009 until June 14, 2017.

**iv. The court treated the CR 2A Agreement as the Final Parenting Plan.**

Unlike the Temporary Parenting Plan, which was insufficient to prevent the court from dismissing the case, and was insufficient to preclude the need for a settlement conference, the CR 2A Agreement served to stop further court involvement. After the CR 2A Agreement was signed by the settlement judge and entered in the record on February 9, 2009, the court never again bothered with the case. It sent no letter that documents needed to be filed. It required no further appearance in court. In short, the court, like the parties, considered the CR 2A Agreement to be the end of the case. And though the Temporary Parenting Plan was not attached to the agreement as it stated, there was nevertheless a parenting plan in the file which, in conjunction with the CR 2A Agreement, was in fact the Final Parenting Plan.

Contrary to Ms. Dean's claim that she filed her 2017 Petition "into an open and unresolved case," RBrief, 7, 9, any viability of a purported request for support, that may have existed as of February 2009 as a result of the prayer for relief, was cut off by the final settlement which did not include any provision, mention or hint of child support.

- c. Errors in the 2006 Petition do not create an ambiguity in the intention of the parties.

In the prayer for relief, Ms. Dean selected several boilerplate requests, the first of which stated the court was requested to enter an order that:

Determines support for the dependent child pursuant to the Washington State Support Schedule and either or both parents be ordered to maintain or provide health insurance coverage for the child and pay extraordinary uninsured costs proportionate to their income.

CP 5. (Though other relief was prayed for in the Petition, the unqualified term “prayer for relief” herein refers to the foregoing quoted language.)

In light of the fact that Ms. Dean had explicitly rejected support and insurance in paragraph 1.6, the irreconcilable conflict between the two provisions is best resolved by considering the identified prayer for relief as a scrivener’s error. Ms. Dean’s attorney drafted the Petition, and in light of the clear and explicit statements that the Petition was not seeking support, the inclusion of the above-quoted prayer for relief cannot be seen as anything but a mistake by Ms. Dean’s attorney or a scrivener’s error.

The general rule in Washington is that an inadequate legal description is not subject to reformation. See, e.g., *Snyder v. Peterson*, 62 Wn. App. 522, 525-26, 814 P.2d 1204 (1991). Reformation is available, however, in circumstances where the inadequate description resulted from a scrivener’s error or because of a mutual mistake.

*Halbert v. Forney*, 88 Wn. App. 669, 673, 945 P.2d 1137 (1997). *Halbert* stated that the *Snyder* case involved “an inadvertent omission by the attorney who drafted the deed.” In the present case, there can be no explanation in light of the entire Petition but that the identified prayer for relief was an inadvertent *inclusion* by Ms. Dean’s attorney. The fact that the language is

boilerplate means the attorney did not even need to modify the language already there in the 2006 form. The prayer for relief should be disregarded.

Moreover, language is to be construed against the drafter. *Queen City Sav. & Loan Ass'n v. Mannhalt*, 111 Wn.2d 503, 513, 760 P.2d 350 (1988). And Mr. Dominguez signing the joinder shows there was mutual mistake as to the prayer for relief. In light of the strong language that Ms. Dean was not seeking support, it is probable that had the mistakenly included prayer been brought to the attention of the parties, they would have stricken the language.

d. Ms. Dean committed perjury if the prayer for relief is viable.

In proposing her theory that the prayer for relief creates a kind of “springing” presence of child support in the Petition, Ms. Dean would have to acknowledge she committed perjury when she signed the Petition. Under penalty of Perjury she declared in part:

I have made the allegations contained in the petition based upon my first hand knowledge and therefore believe that they are true.

CP 6. It is noteworthy she did not declare the prayer for relief to be true. But she did declare the “allegations” true, which of course included paragraph 1.6—that “the Petitioner does not want the court to address child support.”

e. Analogous rules of construction for contradictory provisions indicate the prayer for relief should be of no effect.

Probably the best analogies for dealing with the prayer for relief are found in the following case:

Where provisions of the same transaction are clear but conflicting, the operative provisions prevail over the recitals. *First Nat'l Bank & Trust Co. v. United States Trust Co.*, 184 Wash. 212, 50 P.2d 904 (1935); *Brackett v. Schafer*, 41 Wn.2d 828, 252 P.2d 294 (1953). Moreover, written or typed provisions prevail over conflicting printed clauses. *Creditors Ass'n v. Fry*, 179 Wash. 339, 37 P.2d 688 (1934).

*Green River Valley Found., Inc. v. Foster*, 78 Wn.2d 245, 249, 473 P.2d 844 (1970). In the same way, even though the language was all in the form, paragraph 1.6 should prevail over the conflicting prayer for relief. In fact, the present situation could be seen as “typed” provision prevailing over “printed” language. Ms. Dean’s attorney, in drafting paragraph 1.6 was required to essentially “type” the language because (a) he had to select the first paragraph and delete the second paragraph, (b) he had to delete the “[ ] does [ ]”, and (c) he modified the formatting of the remaining language to read as a complete sentence without check boxes. The prayer for relief, however, required no language selection or reformatting except to remove the checkbox at the beginning solely for formatting purposes.

f. Equitable principles preclude the mother from now claiming the 2006 Petition for Parenting Plan was also a petition for child support.

**i. Estoppel and reliance supports Mr. Dominguez.**

In the unlikely event that Ms. Dean’s affirmative declination of requesting child support is deemed to be a petition of child support due to the prayer for relief, she should nevertheless be estopped from now so claiming

because Mr. Dominguez relied upon the Petition and the CR 2A Agreement to his detriment.

The elements of equitable estoppel are: (1) a party's admission, statement or act inconsistent with its later claim; (2) action by another party in reliance on the first party's act, statement or admission; and (3) injury that would result to the relying party from allowing the first party to contradict or repudiate the prior act, statement or admission.<sup>1</sup>

<sup>1</sup> In addition to satisfying each of these elements, the party asserting the doctrine must be free from fault in the transaction at issue. . . .

*Kramarevcky v. Dep't of Soc. & Health Servs.*, 122 Wn.2d 738, 743, 863 P.2d 535 (1993). Ms. Dean's declaration under penalty of perjury that the allegations in the 2006 Petition, including paragraph 1.6, were true meets the first element. Mr. Dominguez' joinder and payment of child support for 11 years according to the administrative support order meets the second element. He was entitled to rely on the clear language of paragraph 1.6.

Mr. Dominguez also meets the third element and was also free from fault in as to the child support. He had owned a restaurant for nine years and had begun a deli within the prior two years. The result of starting a second business had an impact upon his income because he had to invest profits from the restaurant into the ongoing operation of the deli. CP 74. This constituted the detrimental change of position to support the third "injury" element. *Kramarevcky, id.* at 747.

**ii. Laches denies Ms. Dean the right to support.**

Again, in the unlikely event Ms. Dean's 2006 remains viable as a petition for child support due to the prayer for relief, laches would prevent her from prevailing. Mr. Dominguez would have the burden to prove that:

(1) [Ms. Dean] had knowledge of the facts constituting a cause of action or a reasonable opportunity to discover such facts; (2) there was an unreasonable delay in commencing the action; and (3) there is damage to [Mr. Dominguez] resulting from the delay.

*Hunter v. Hunter*, 52 Wn. App. 265, 270, 758 P.2d 1019 (1988). Though addressing the elements of laches reveals the absurdity of Ms. Dean's claim, Ms. Dean knew of her "sleeper" petition for support as of December 14, 2006. CP 2. Eleven years is certainly an unreasonable delay to suddenly activate her "sleeper" petition for support, especially since she waited until after the child in question turned 18. And as in estoppel and reliance, "there [was] also an intervening change of position on the part of [Mr. Dominguez], making it inequitable to enforce the claim." *Id.*

**2. The form used by Ms. Dean in 2017, Petition to Modify Child Support Order, FL Modify 501,<sup>8</sup> put her on notice her claim was not well taken.**

As in 2006, Ms. Dean declared in 2017 under penalty of perjury that the facts she provided in the Petition to Modify Child Support Order, CP

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<sup>8</sup> Blank form FL Modify 501 is attached as Appendix D.

35–39, were true. CP 38–39. Several statements in the Petition, however, were false, specifically regarding one of the primary issues in this case—that the court could only modify a *court* order but *not* an administrative order. In so doing Ms. Dean obfuscated the matter for the court. And while Mr. Dominguez agrees with Ms. Dean that misuse of a form is not likely to affect the substance of Ms. Dean’s 2017 Petition,<sup>9</sup> the fact she was willing to make false statements in using the form language is concerning. She could have at least changed the language to ensure her statements were true. Doing so might have raised the question in her own mind that something wasn’t quite right in her Petition. The false statements are:

a. Preliminary instruction. CP 35.

“If you’re filing this Petition in: • *the same case number as the current Child Support Order*, the person who is listed as the Petitioner in the current order will stay Petitioner, even if s/he is not the person asking to modify the order now.”

There was no current child support order<sup>10</sup> in the “same case number.” Nor do the instructions address current administrative orders. See Appendix D.

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<sup>9</sup> Mr. Dominguez has no argument with *In re Marriage of Morris*, 176 Wn. App. 893, 309 P.3d 767 (2013) for the proposition that an incorrect form would be harmless error. RBrief, 10–11. But *Morris* is inapposite because there the incorrect form that was used to modify a support order was timely filed under the terms of that order. That begs the question here where the issue is that the court has no authority to modify an administrative order or to establish post-secondary child support after the child has turned 18.

<sup>10</sup> It must be kept in mind that the existing administrative support order was in effect at the most for only two days after the 2017 Petition was filed.

b. Paragraph 3. Jurisdiction to Modify Order. CP 36.

“The court has authority to modify the current Child Support Order because it was issued by a **Washington** state court.”

Not only did Ms. Dean falsely state that the existing order was a court order, none of the other options under this paragraph of the form, Appendix D, even suggest an administrative support order could be modified by use of the form.

c. Paragraph 5. Current Child Support Order. CP 36.

“The Child Support Order I want to modify was signed by DCS officer on 10/11/2006 in Thurston, WA.”

First, the final support order, CP 24–30, was not actually signed. CP 28. Nor is there any indication it was “signed” in Thurston County. More likely it issued from DCS in Tacoma. *Id.* In addition, Ms. Dean had to change the form language because the only options in the form were for court orders and not DCS administrative orders. *Cf.* Appendix D.

d. Paragraph 8. Should the court modify post-secondary educational support? CP 37.

“The current order says post-secondary support is not required.”

This use of form language is also false because the administrative order says *nothing* about post-secondary support, let alone that “it is not required.”. Rather, the administrative order says it terminates after high school. (Nor does the administrative agency even have the jurisdiction to order post-secondary support. *See*, RCW 74.20A.010, .059(2)(c); CP 28; RBrief, 7.)

**3. Washington jurisprudence regarding post-majority or post-secondary support arose out of whether the court had authority to modify a final court order for that purpose.**

In compelling situations where post-majority support was not originally granted, courts have the power to modify the decree upon a showing of a substantial change of conditions. RCW 26.09.170

*In re Marriage of Gimlett*, 95 Wn.2d 699, 702, 704, 629 P.2d 450 (1981).

This authority has been codified by the legislature for child support orders in RCW 26.09.170. To modify a support order to add post-majority support through high school, the only requirement is that a year has past since the support order was entered. RCW 26.09.170(6)(c). But to modify a support order to add post-secondary support, the petitioner must show substantial change of circumstances. RCW 26.09.170(5)(a).<sup>11</sup>

**4. Whether or not RCW 26.09.170(3) is applicable to this case, the child's emancipation foreclosed Ms. Dean's opportunity to seek post-secondary support.**

Ms. Dean accurately points out, RBrief, 12, that Mr. Dominguez stated in his brief that RCW 26.09.170(3) "does not quite apply in this case

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<sup>11</sup> Even had Ms. Dean sought to modify a court support order, it is doubtful whether she even alleged substantial change of circumstances. Her claim in that regard was that the child wanted to become a nurse. CP 10–11. The child was 8 years old when the "final parenting plan" was entered on February 9, 2009. CP 7. Yet Ms. Dean said the child wanted to be a nurse since she was 6 years old when she helped her mother care for elderly patients. CP 10, This was thus known to the parties when Ms. Dean filed her 2006 Petition and agreed to a final parenting plan in 2009. There were thus no substantial change of circumstances when she filed her 2017 Petition. CP 35.

because there never was a court order of child support.”, ABrief, 14.<sup>12</sup>

(3) Unless otherwise agreed in writing or expressly provided in the decree, provisions for the support of a child are terminated by emancipation of the child . . .

RCW 26.09.170(3). Ms. Dean also agrees “the statute” does not apply in this case, RBrief, 12 (though it is unclear if Ms. Dean means all of RCW 26.09.170 is inapplicable or just subsection (3)).

a. Absent court order or agreement, the parents’ support obligation exists during the child’s minority.

The primary point of RCW 26.09.170(3), however, is not the whether a court order exists but the fact that a support obligation does not extend beyond the child’s emancipation—unless by agreement or express provision in the prior court order. The absence of a prior support order does not change the fact that Mr. Dominguez was liable for support of his children during their minority. The court has held that

whether or not there is a provision in the original divorce decree for the maintenance and welfare of a minor child, the divorce court retains continuing subject matter jurisdiction over the question of custody and support of *minor* children of the marriage.

*Hughes v. Hughes*, 11 Wn. App. 454, 459, 524 P.2d 472 (1974) (emphasis added). And the fact that the parents were not married is immaterial to the parents’ obligation of support due a “minor child”. *Kaur v. Singh Chawla*, 11

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<sup>12</sup> Ms. Dean mistakenly referred to Brief of Appellant (“ABrief”), 13.

Wn. App. 362, 363, 522 P.2d 1198 (1974). The fact is, there was no basis in this case upon which support could be imposed after the child turned 18.

- b. The parties agreed Mr. Dominguez' support obligation would terminate when the child finished high school.

While there was no support sought or ordered in this case, there was an agreement to address Mr. Dominguez' obligation to support their children through the means of the administrative process. That agreement, CP 4, included support only through the sooner of meeting the "requirements to finish" high school or until age 19, whichever was sooner, after which the child would no longer considered dependent. WAC 388-14A-3810, CP 28. The parties cemented their agreement on February 9, 2009 when they established the "final parenting plan" by a CR 2A Agreement, CP 7, at which time they concluded Ms. Dean's 2006 Petition; and they implicitly continued to address child support administratively but not through judicial means, complying with that agreement through the minority of all three children.

- c. Mr. Dominguez relied on the fact that the administrative order ended no later than June 16, 2017.

Ms. Dean claims without authority that the administrative order determined when the child was emancipated. RBrief, 12. The law in Washington, however does not support that assertion.

Emancipation occurs by law when a child reaches the age of majority, or earlier if some event terminates the child's economic dependence. *In re Marriage of Gimlett*, 95 Wn.2d

699, 702, 704, 629 P.2d 450 (1981). The statutory age of majority is now 18. RCW 26.28.010.

*Balch v. Balch*, 75 Wn. App. 776, 779, 880 P.2d 78 (1994). *Gimlett*, correcting dicta regarding the meaning of “emancipation” in *Childers v. Childers*, 89 Wn.2d 592, 575 P.2d 201(1978) (first case allowing post-secondary support), stated:

[A]s used in RCW 26.09.170, “emancipation” occurs upon reaching the age of majority or emancipation in fact whichever event first occurs.

*Marriage of Gimlett*, 95 Wn.2d at 704. The child was emancipated at her 18<sup>th</sup> birthday in April 2017.

The administrative order ended when she finished high school. And as noted, ABrief, 10, a superior court had no authority to modify an administrative order. Thus, Ms. Dean is incorrect that Mr. Dominguez was on notice that post-secondary support could be ordered because of the existence of the administrative order. RBrief, 16. On the contrary, Mr. Dominguez was on notice that the administrative agency had no authority to order support for the child, assuming she graduated before she was 19, beyond her completing high school. CP 28.

**5. Mr. Dominguez was not properly served with the 2017 Petition.**

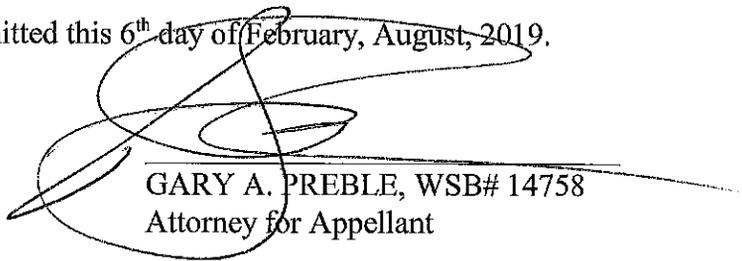
Ms. Dean acknowledges service by mail was proper under RCW 26.09.175(2) *only if* the administrative order is deemed a decree, but she

presents no authority for deeming the administrative order a decree. RBrief, 17. Moreover, she did not mail to his address on record. Supp CP \_\_. Ms. Dean also appears to implicitly acknowledge that the administrative proceeding was not an “action” when she relies on her claim that her 2006 Petition began an ongoing action for child support. RBrief, 18. That claim has been thoroughly addressed, supra, pages 1–13. She was thus required to personally serve Mr. Dominguez, RCW 26.09.175(2), which she did not do.

**6. Conclusion.**

Based on the foregoing, Mr. Dominguez renews his request for the appellate court to reverse all orders entered below, order the mother to pay his attorneys fees, and remand the matter to superior court for an order of attorney fees and for reimbursement of all fees paid pursuant to the child support order, CP 141.

Respectfully submitted this 6<sup>th</sup> day of February, August, 2019.



GARY A. PREBLE, WSB# 14758  
Attorney for Appellant

# Appendix B

Form WPF PS 15.0100 (6/2005)

Petition for Residential Schedule/Parenting  
Plan and Child Support

**SUPERIOR COURT OF WASHINGTON  
COUNTY OF**

In re the Parenting and Support of:

Child(ren),

Petitioner,

and

Respondent.

**NO.**

**PETITION FOR**

**RESIDENTIAL SCHEDULE/  
PARENTING PLAN**

**CHILD SUPPORT  
(PT)**

**I. BASIS**

**1.1 CAUSE OF ACTION.**

This action is brought pursuant to RCW 26.26.375 by \_\_\_\_\_ [Name],  
petitioner, for a

residential schedule/parenting plan

child support order

for

\_\_\_\_\_[Name], \_\_\_\_\_ [Age], residing with  
\_\_\_\_\_[Name] in \_\_\_\_\_ County, Washington.

\_\_\_\_\_[Name], \_\_\_\_\_ [Age], residing with  
\_\_\_\_\_[Name] in \_\_\_\_\_ County, Washington.

\_\_\_\_\_[Name], \_\_\_\_\_ [Age], residing with  
\_\_\_\_\_[Name] in \_\_\_\_\_ County, Washington.

1.2 ACKNOWLEDGMENT OF PATERNITY AND DENIAL OF PATERNITY.

\_\_\_\_\_ [Name] is the child's acknowledged father and \_\_\_\_\_ [Name] is the mother of the child. Both parents signed the Acknowledgment of Paternity, which was filed with the Washington State Registrar of Vital Statistics on \_\_\_\_\_ [Date].

A copy of the Acknowledgment of Paternity is filed with this petition.

\_\_\_\_\_ [Name] signed a Denial of Paternity, which was filed with the Washington State Registrar of Vital Statistics on \_\_\_\_\_ [Date].

A copy of the Denial of Paternity is filed with this petition.

1.3 JURISDICTION.

The court has jurisdiction over the parties because more than 60 days have passed since the effective date of the acknowledgment of paternity and [check all that apply]:

- The mother and acknowledged father engaged in sexual intercourse in the state of Washington as a result of which the child was conceived.
- Respondent was personally served with summons and petition within this state.
- Respondent submits to jurisdiction of this state by consent as evidenced by joinder or consent to jurisdiction signed by respondent.
- Respondent resided with the child in this state.
- Respondent resided in this state and provided prenatal expenses or support for the child.
- The child resides in this state as a result of the acts or directives of the respondent.
- Other:

and the following parties are presently residing in the state of Washington:

- Mother.
- Acknowledged Father.

1.4 PERIOD FOR CHALLENGE TO THE ACKNOWLEDGMENT OR DENIAL OF PATERNITY.  
(Pick only one.)

- A period of two years or more has passed since the date the acknowledgment  and denial of paternity was filed with the Washington State Registrar of Vital Statistics.
- Less than two years has passed since the date the acknowledgment  or denial of paternity was filed with the Washington State Registrar of Vital Statistics, and petitioner specifically alleges:
  - a) No man other than the acknowledged father is the father of the child; and
  - b) No proceeding to adjudicate the parentage of the child is currently pending; and
  - c) No other man is an adjudicated father of the child; and
  - d) Notice of this proceeding has been provided to all other men who have claimed parentage of the child.

1.5 JURISDICTION OVER THE CHILD.

This court has jurisdiction over the child for the reasons set forth below.

- This court has exclusive continuing jurisdiction. The court has previously made a child custody, parenting plan, residential schedule or visitation determination in this matter and retains jurisdiction under RCW 26.27.211.
- This state is the home state of the child because
  - the child lived in Washington with a parent or person acting as a parent for at least six consecutive months immediately preceding the commencement of this proceeding.
  - the child is less than six months old and has lived in Washington with a parent or a person acting as parent since birth.
  - any absences from Washington have only been temporary.
  - Washington was the home state of the child within six months before the commencement of this proceeding and the child is absent from the state but a parent or person acting as a parent continues to live in this state.
- The child and the parent or the child and at least one parent or person acting as a parent, have significant connection with the state other than mere physical presence; and substantial evidence is available in this state concerning the child's care, protection, training and personal relationships and
  - the child has no home state elsewhere.
  - the child's home state has declined to exercise jurisdiction on the ground that this state is the more appropriate forum under RCW 26.27.261 or .271.
- All courts in the child's home state have declined to exercise jurisdiction on the ground that a court of this state is the more appropriate forum to determine the custody of the child under RCW 26.27.261 or .271.
- No other state has jurisdiction.
- This court has temporary emergency jurisdiction over this proceeding because the child is present in this state and the child has been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child is subjected to or threatened with abuse. RCW 26.27.231.
  - There is a previous custody determination that is entitled to be enforced under this chapter or a child custody proceeding has been commenced in a court of a state having jurisdiction under RCW 26.27.201 through 26.27.221. The requirements of RCW 26.27.231(3) apply to this matter. This state's jurisdiction over the children shall last until \_\_\_\_\_ [Date].
  - There is no previous custody determination that is entitled to be enforced under this chapter and a child custody proceeding has not been commenced in a court of a state having jurisdiction under RCW 26.27.201 through 26.27.221. If an action is not filed in \_\_\_\_\_ [potential home state] by the time the child has been in Washington for six months, \_\_\_\_\_ [Date], then Washington's jurisdiction will be final and continuing.
- Other:

1.6 CHILD SUPPORT.

Support and health insurance coverage for the minor child:

- has been determined administratively by the Division of Child Support and the petitioner  does  does not want the court to address child support.
- has not been determined administratively by the Division of Child Support and the petitioner  does  does not want the court to address child support.

1.7 RESIDENTIAL PLACEMENT.

- Does not apply.
- It is in the child's best interests to enter the residential schedule/parenting plan proposed by \_\_\_\_\_ [Name].

If residential placement is requested:

During the last five years, the child has lived:

- in no place other than the state of Washington and with no person other than the declarant or a named party.
- in the following places with the following persons (list each place the child lived, including the state of Washington, the dates the child lived there and the names of the persons with whom the child lived. The present addresses of those persons must be listed in the required Confidential Information form.):

Claims to custody or visitation.

- I do not know of any person other than a named party who has physical custody of, or claims to have custody or visitation rights to the child.
- The following persons have physical custody of, or claim to have custody or visitation rights to the child (list their names and the child(ren) concerned below and list their present addresses in the Confidential Information Form. Do not list the responding party.):

Involvement in any other proceeding concerning the child:

- I have not been involved in any other proceeding regarding the child.
- I have been involved in the following proceedings regarding the child (list the court, the case number, and the date of the judgment or order):

Other legal proceedings concerning the child:

- I do not know of any other legal proceedings concerning the child.
- I know of the following legal proceedings which concern the child (list the child concerned, the court, case number and the kind of proceeding):

1.8 REIMBURSEMENT.

- Does not apply.
- The state of Washington or \_\_\_\_\_ [Name] is entitled to reimbursement for support or assistance provided to the child, for expenses incurred on behalf of the child.

1.9 CONTINUING RESTRAINING ORDER.

- Does not apply.
- A continuing restraining order should be entered which restrains or enjoins \_\_\_\_\_ [Name] from disturbing the peace of \_\_\_\_\_ [Name].
- A continuing restraining order should be entered which restrains or enjoins \_\_\_\_\_ [Name] from going onto the grounds of or entering the home, work place or school of \_\_\_\_\_ [Name] or the day care or school of the child.
- A continuing restraining order should be entered which restrains or enjoins \_\_\_\_\_ [Name] from knowingly coming within or knowingly remaining within \_\_\_\_\_ (distance) of the home, work place or school of \_\_\_\_\_ [Name] or the day care or school of the child.  
Other: \_\_\_\_\_
- A continuing restraining order should be entered which restrains or enjoins \_\_\_\_\_ [Name] from molesting, assaulting, harassing, or stalking \_\_\_\_\_ [Name]. (If the court orders this relief, the restrained person will be prohibited from possessing a firearm or ammunition under federal law for the duration of the order. An exception exists for law enforcement officers and military personnel when carrying department/government-issued firearms. 18 U.S.C. § 925(a)(1).)

1.10 PROTECTION ORDER.

- Does not apply.
- A domestic violence protection order should be entered protecting \_\_\_\_\_ [Name] from \_\_\_\_\_ [Name] because \_\_\_\_\_ [Name] has committed domestic violence as defined by 26.50 RCW against \_\_\_\_\_ [Name]. (If the court orders this relief, the restrained person will be prohibited from possessing a firearm or

ammunition under federal law for the duration of the order. An exception exists for law enforcement officers and military personnel when carrying department/government-issued firearms. 18 U.S.C. § 925(a)(1).)

**If you need immediate protection, contact the clerk/court for RCW 26.50 Domestic Violence forms.**

1.11 OTHER:

II. RELIEF REQUESTED

The court is requested to enter an order that:

- determines support for the dependent child pursuant to the Washington State Support Schedule and either or both parents be ordered to maintain or provide health insurance coverage for the child and pay extraordinary uninsured costs proportionate to their income.
- orders the  acknowledged father  mother to pay past support, medical, and other expenses incurred on behalf of the child.
- adopts the residential schedule/parenting plan for the child as proposed by petitioner.
- awards court costs, guardian ad litem, attorney, and other reasonable fees.
- makes provision for a domestic violence protection order.
- makes provision for a continuing restraining order.
- Other:

Dated: \_\_\_\_\_  
Petitioner or Lawyer for Petitioner/WSBA No.

III. DECLARATION

I declare under penalty of perjury under the laws of the state of Washington that I am the petitioner hereinabove named, that I have made the allegations contained in this petition based upon my first hand knowledge, and therefore believe that they are true.

Signed at \_\_\_\_\_, [City] \_\_\_\_\_ [State] on \_\_\_\_\_ [Date].

\_\_\_\_\_  
Signature of Petitioner

\_\_\_\_\_  
Print or Type Name

JOINDER.

I, \_\_\_\_\_ [Name] join in the petition. I understand that by joining in the petition, a decree or judgment and order may be entered in accordance with the relief requested in the petition, unless prior to the entry of the decree or judgment and order a response is filed and served.

I waive notice of entry of the decree.

I demand notice of all further proceedings in this matter. Further notice should be sent to the following address: [You may list an address that is not your residential address where you agree to accept legal documents.]:

\_\_\_\_\_  
\_\_\_\_\_

Dated: \_\_\_\_\_

\_\_\_\_\_  
Signature of Joining Party

\_\_\_\_\_  
Print or Type Name

# Appendix C

Docket Excerpt

Thurston County Cause No. 06-3-01345-1

02/09/2009 Settlement Conference Hearing Held ▾

[View Document](#)

SETTLEMENT CONFERENCE\_HEARING HELD SETTLED NO HEARING

BRANDT CC BURKE

Comment

25: SETTLEMENT CONFERENCE/HEARING HELD; SETTLED NO HEARING  
BRANDT CC BURKE;

02/09/2009 Notice of Change of Address ▾

[View Document](#)

NOTICE OF ATTY CHANGE OF ADDRESS

Comment

26: NOTICE OF ATTY CHANGE OF ADDRESS;

02/09/2009 Order ▾

[View Document](#)

ORDER RE CR 2A AGREEMENT

Comment

27: ORDER RE CR 2A AGREEMENT;

06/14/2017 Declaration Affidavit ▾

[View Document](#)

Declaration/Affidavit

Comment

of Anna Moralez

06/14/2017 Report ▾

[View Document](#)

Report

Comment

Financial Planning Results from SPSCC

# Appendix D

Form FL Modify 501 (05/2016)

Petition to Modify Child Support Order

Superior Court of Washington, County of \_\_\_\_\_

In re:

Petitioner/s (see \* below):  
\_\_\_\_\_

And Respondent/s (other party/parties):  
\_\_\_\_\_

No. \_\_\_\_\_

Petition to Modify Child Support Order  
(PTMD)

\* If you're filing this Petition in:

- the same case number as the current Child Support Order, the person who is listed as the Petitioner in the current order will stay Petitioner, even if s/he is not the person asking to modify the order now.
- a different case number or county from where the current Child Support Order was filed, the person asking to modify the order may be the Petitioner.

To modify a Child Support Order from a sealed Parentage case, contact the Superior Court Clerk's office about who to list as Petitioner and if there is a new case number.

## Petition to Modify Child Support Order

1. My name is: \_\_\_\_\_ . I ask the court to modify a *Child Support Order*. I am filing and serving proposed *Child Support Schedule Worksheets* at the same time as this *Petition*.

**Important!** Check your county's Local Court Rules for other forms and information that must be filed.

2. **Correct County (Venue)**

This is the correct county for this case to be heard because:

- the children live in this county,
- the person who has the care, custody or control of the children lives in this county, or
- the current *Child Support Order* was issued in this county.

The children live in (county): \_\_\_\_\_, (state): \_\_\_\_\_.

The Petitioner (name): \_\_\_\_\_ lives in  
(county): \_\_\_\_\_, (state): \_\_\_\_\_.

The Respondent (name): \_\_\_\_\_ lives in  
(county): \_\_\_\_\_, (state): \_\_\_\_\_.

**3. Jurisdiction to modify order**

The court has authority to modify the current *Child Support Order* because it was issued by a (check one):

- Washington state court.
- Different state or jurisdiction, but has been registered in a Washington state court and (check one):
  - All parties in Washington now:
    - All the parties to the current order (other than a State party) now live in this state; and
    - The children do not live in the state or jurisdiction where the order was issued.
  - No one left in issuing state:
    - None of the children or parties to the current order (other than a State party) live in the state or jurisdiction where the order was issued;
    - The person asking to modify the order (Petitioner) lives outside of Washington; and
    - Washington has personal jurisdiction over the Respondent because s/he (check all that apply):
      - lives in this state now.
      - will be personally served in this state with a *Summons* and *Petition* for this case.
      - lived in this state with the children.
      - lived in this state and paid for pregnancy costs or support for the children.
      - did or said something that caused the children to live in this state.
      - had sex in this state, which may have produced the children.
      - signed an agreement to join this *Petition* or other document agreeing that the court can decide his or her rights in this case.
      - other (specify): \_\_\_\_\_
  - Parties have consented:
    - At least one child or party to the current order lives in Washington state now; and
    - Each party to the current order (other than a State party) has filed a consent with the court that issued the current order agreeing that a Washington court may modify the order and take continuing, exclusive jurisdiction.

**4. Is the state filing this Petition? (Check one):**

- No. This *Petition* is filed by a parent or non-parent custodian.
- Yes. The state Department of Social and Health Services (DSHS) is filing this *Petition* because (check all that apply):
  - the children receive public assistance.
  - the children do not receive public assistance, but one of the parties asked DSHS to review the order and DSHS decided the order should be modified.
  - another state or jurisdiction asked for this modification.

**5. Current Child Support Order**

The *Child Support Order* I want to modify was signed by the court on (date): \_\_\_\_\_  
in (county): \_\_\_\_\_, (state): \_\_\_\_\_.

That order says (name): \_\_\_\_\_ must pay  
(amount): \$ \_\_\_\_\_ each month for (children's names): \_\_\_\_\_.

*Important! Attach or file a certified copy of the current child support order that you want to change if it was issued in a different county or state.*

**6. Should the court modify the monthly child support amount?**

No.

**Yes.** I ask the court to order child support based on Washington state law. The monthly child support amount should be changed now because (check all that apply):

**Agreement** – The parties agree to the changes.

**1 year or more has passed** – The current order was signed at least one year ago and (check all that apply):

the current order causes severe financial hardship for me or the children.

a child has turned 12 and has the right to more support.

I want to add a Periodic Adjustment provision according to RCW 26.09.100.

**2 years or more have passed** – The current order was signed at least two full years (24 months) ago and (check all that apply):

the parents' income has changed.

the economic table or standards in RCW 26.19 have changed.

*(Note – You may be able to use a Motion to Adjust Child Support Order (form FL Modify 521) instead of this Petition if 24 months have passed and the only reasons for your requests are that the parents' income has changed, or the economic table or standards have changed.)*

**Default or Past Agreement** – The current order was issued by default or agreement, without the court independently examining the evidence to decide a reasonable amount of support according to the law.

**Change of Circumstances** – There has been a substantial change in circumstances since the current order was signed. (Describe): \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**7. Should the court modify the end date for child support?**

No.

Yes. The end date should be modified because (check all that apply):

Agreement – The parties agree to the changes.

Finish High School – The current order was signed at least one year ago. (Child's name): \_\_\_\_\_ will still be in high school when s/he turns 18 and will need support until s/he finishes high school. I ask the court to order child support for this child to continue past his/her 18<sup>th</sup> birthday until he/she finishes high school.

Dependent Adult Child – The current order says support must be paid for each child until the child turns 18 or is no longer enrolled in high school, whichever happens last. Support should continue past this time for (child's name): \_\_\_\_\_ because this child will be unable to support him/herself and will remain dependent past the age of 18. This child's situation has changed substantially since the current order was signed. (Describe): \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Support for this child should continue until (check one):

this child is able to support him/herself and is no longer dependent on the parents.

other: \_\_\_\_\_

Default or Past Agreement – The current order was issued by default or agreement, without the court independently examining the evidence to decide a reasonable end date for support according to the law.

**8. Should the court modify post-secondary educational support?**

No.

Yes. Issue was reserved – The current order allows a parent or non-parent custodian to ask the court for post-secondary support at a later date without showing a substantial change of circumstances. I ask the court to order the parents to pay post-secondary support, and to set a specific post-secondary support amount or percentage of expenses for (Children's names): \_\_\_\_\_ These children depend on the parents for the reasonable necessities of life and will be ready to start a college or vocational program around (month/year): \_\_\_\_\_

Yes. Support was granted, need to set an amount – The current order says the parents must pay for the children's post-secondary support, but did not set a payment amount or percentage. I ask the court to order a specific post-secondary support amount or percentage of expenses for (children's names): \_\_\_\_\_ who will be ready to start a college or vocational program around (month/year): \_\_\_\_\_

**Yes. Modify** – I ask the court to *(check all that apply)*:

- Require** – The current order says post-secondary support is not required. I ask the court to change the order so that post-secondary support is required for *(Children's names)*: \_\_\_\_\_  
These children depend on the parents for the reasonable necessities of life and need support for college or vocational school.
- Cancel** – The current order says the parents must pay for the children's post-secondary (college or vocational school) support. I ask the court to change the order so that post-secondary support is no longer required.
- Change Amount** – The current order requires the parents to pay a specific amount or percentage of expenses for the children's post-secondary (college or vocational school) support. I ask the court to change the amount or percentage.

**These changes should be made because** *(check all that apply)*:

- Agreement** – The parties agree to the changes.
- Default or Past Agreement** – The current order was issued by default or agreement, without the court independently examining the evidence to decide these issues.
- Change of Circumstances** – There has been a substantial change in circumstances since the current order was signed. *(Describe)*: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**9. Should the court modify payment for children's expenses or tax exemptions?**

**No.**

**Yes.** I ask the court to order or change *(check all that apply)*:

- day care expenses.
- educational expenses.
- long-distance transportation expenses.
- other expenses.
- tax exemptions. Order that parties have the right to claim the children as their dependents on their tax forms in this way *(specify)*: \_\_\_\_\_  
\_\_\_\_\_

**These changes should be made because** *(check all that apply)*:

- Agreement** – The parties agree to the changes.
- 2 years or more have passed** – It has been at least two full years (24 months) since the order was signed and these requests are based only on changes in the parents' income or the economic table or standards in RCW 26.19.

*(Note – You may be able to use a Motion to Adjust Child Support Order (form FL Modify 521) instead of this Petition if 24 months have passed and the only reasons for your requests are that the parents' income has changed, or the economic table or standards have changed.)*

- Default or Past Agreement** – The current order was issued by default or agreement, without the court independently examining the evidence to decide these issues.
- Change of Circumstances** – There has been a substantial change in circumstances since the current order was signed. *(Describe):* \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**10. Should the court modify health insurance orders?**

- No.
- Yes. I ask the court to change the health insurance orders as follows:
  - Order one or both parents to provide or pay for health insurance coverage for the children if it is available through an employer or union for less than 25% of his/her basic support obligation (*Worksheets, line 19*), and order each parent to pay his/her share of the children's healthcare costs that are not covered by insurance.
  - Other (*specify*): \_\_\_\_\_  
 \_\_\_\_\_

**These changes should be made because** (*check all that apply*):

- Agreement** – The parties agree to the changes.
- 2 years or more have passed** – It has been at least two full years (24 months) since the order was signed and these requests are based only on changes in the parents' income or the economic table or standards in RCW 26.19.  
*Note – You may be able to use a Motion to Adjust Child Support Order (form FL Modify 521) instead of this Petition if 24 months have passed and the only reasons for your requests are that the parents' income has changed, or the economic table or standards have changed.*
- Default or Past Agreement** – The current order was issued by default or agreement, without the court independently examining the evidence to decide these issues.
- Change of Circumstances** – There has been a substantial change in circumstances since the current order was signed. *(Describe):* \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**11. When do you want the new order to start?**

I want the new *Child Support Order* to take effect:

- on the day this *Petition* is filed.
- other (*specify*): \_\_\_\_\_

If the changes to the *Child Support Order* cause an overpayment or an underpayment of support or other expenses, I ask the court to order payment or give credit for those amounts.



**PREBLE LAW FIRM, P.S.**

**February 06, 2019 - 7:58 PM**

**Transmittal Information**

**Filed with Court:** Court of Appeals Division II  
**Appellate Court Case Number:** 51490-7  
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