

FILED

JAN 02 2015

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

NO. 325415-III

**COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION III**

SIERRA BEATSON

Petitioner/Respondent

v.

KELLY BEATSON

Respondent/Appellant

PETITIONER/RESPONDENT'S RESPONSE BRIEF

Jacquelyn High-Edward
Counsel for Appellant
WSBA #37065

Kerry Summers
Counsel for Appellant
WSBA #36755

Northwest Justice Project
1702 W. Broadway
Spokane, WA 99201
(509) 324-9128

Northwest Justice Project
132 W. 1st Avenue
Colville, WA 99114
(509) 684-7652

TABLE OF CONTENTS

	Pages Cited
I. INTRODUCTION -----	1
II. STATEMENT OF THE CASE -----	2
III. ARGUMENT -----	5
A. MR. BEATSON WAIVED HIS RIGHT TO TIMELY NOTICE BY FAILING TO OBJECT, DECLINING THE COURT'S OFFER OF CONTINUANCE AND PROCEEDING WITH THE HEARING.-----	6
1. The Procedural Rules Under the DVPA are Not Inconsistent with the Civil Rules Where the DVPA is Silent Regarding the Ability to Waive Notice Under RCW 26.50.050.-----	7
2. Mr. Beatson Unequivocally and Intentionally Waived His Right to Notice by Failing to Raise the Issue of Notice, Declining the Court's Offer of Continuance and Proceeding with the Hearing.-----	10
B. WAIVER OF NOTICE IN A PROCEEDING UNDER THE DVPA DOES NOT VIOLATE DUE PROCESS.-----	13
1. A Waiver of Notice Under the DVPA Does Not Violate Due Process Where the Procedures Provided Mr. Beatson with Adequate Protections.-----	16
2. Due Process Does Not Require the Court to Engage in a More Stringent Colloquy Before Accepting Mr. Beatson's Waiver.-----	19

C. IF SUCCESSFUL, MS. BEATSON IS
ENTITLED TO ATTORNEY FEES PURSUANT
TO RCW 26.50.060(g) AND RAP 18.1. -----20

IV. CONCLUSION -----20

TABLE OF AUTHORITIES

**Pages
Cited**

U.S. SUPREME COURT CASES

Mathews v. Eldridge,
424 U.S. 319, 333, 96 S. Ct. 893, 47 L. Ed. 2d 19 (1976) ----- 14

WASHINGTON CASES

Callecod v. Washington State Patrol,
84 Wn. App. 663, 673, 929 P.2d 510 *rev. denied*, 132 Wn.2d
1004 (1997)----- 7

Danny v. Laidlaw Transit Serv., Inc.,
165 Wn.2d 200, 209, 193 P.3d 128 (2008) citing Laws of
1992, Ch. 111 § 1 ----- 8

Eagle Sys. Inc. v. State Employee Sec. Dep't.,
181 Wn. App. 455, 459, 326 P.3d 764 (2014)----- 14

Gourley v. Gourley,
158 Wn.2d 460, 467, 145 P.3d 1185 (2006)----- 7, 13, 14, 15, 16

In re the Marriage of Stewart,
133 Wn. App. 545, 552, 137 P.3d 25 (2006) ----- 8

In the Welfare of H.S.,
94 Wn. App. 511, 526, 973 P.2d 474 (1999) *rev. denied*,
160 Wn.2d 1011 (2002) ----- 8

Midtown Ltd. P'ship v. Preston,
69 Wn. App. 227, 233, 848 P.2d 1268 (1993), *rev. denied*,
122 Wn.2d 1006 (1993) ----- 10

Robb v. Kaufman,
81 Wn. App. 182, 186-187, 913 P.2d 828 (1996) ----- 8

Scheib v. Crosby,
160 Wn. App. 345, 352, 249 P.3d 184 (2011)----- 7, 20

<i>State v. Kejarlais</i> , 136 Wn. 2d 939, 944, 969 P.2d 90 (1998) (quoting Laws of 1992, Ch. 111 § 1) -----	15
---------------------------------------------------------------------------------------------------------------------	----

<i>State v. Karas</i> , 108 Wn. App. 692, 700, 32 P.3d 1016 (2001)-----	9, 7, 18
----------------------------------------------------------------------------	----------

STATUTES AND REGULATIONS

RCW 13.31A.191 -----	11
RCW 26.50 -----	9,16
RCW 26.50.020(1)(a)-----	9
RCW 26.50.030(1) -----	9
RCW 26.50.050 -----	7, 9, 16, 17
RCW 26.50.060(g) -----	20
RCW 26.50.060(2) -----	15

COURT RULES

CR 6(d) -----	17
CR 12(h)(1)-----	1, 5, 6, 8, 9, 10, 20
CR 65(b) -----	17
CR 81(a) -----	7
LCR 6 -----	17
LSPR 94.04 -----	17
RAP 18.1 -----	20
RAP 18.1(d)-----	20

I. INTRODUCTION

This appeal involves whether a party can: (1) waive his right to adequate notice in a proceeding under the Domestic Violence Prevention Act (DVPA), and if so, whether Mr. Beatson's waiver was intentional and unequivocal; and (2) whether a waiver under the DVPA violates due process, and if not, whether due process requires the court to engage in a more stringent colloquy before accepting a party's waiver of notice. Ms. Beatson asks this court to find that (1) the court did not err in finding that Mr. Beatson waived his right to adequate notice when CR 12(h)(1) applies to proceedings under the DVPA, Mr. Beatson failed to raise the issue of adequate notice and proceeded with the hearing by providing testimony and exhibits, and intentionally and unequivocally waived his right to adequate notice when he chose to proceed after being informed of the fact that he had not received adequate notice and could continue the hearing; and (2) the court did not violate due process by allowing Mr. Beatson to waive his right to adequate notice where the numerous procedural safeguards in the DVPA protected Mr. Beatson's private right, any infringement was

temporary in nature, and the state has a strong interest in preventing domestic violence.

II. STATEMENT OF THE CASE

On April 10, 2014, Sierra Beatson, then 16 years old, filed a petition for a domestic violence protection order (DVPO) against her father, Kelly Beatson. CP 1-8. In her petition, Ms. Beatson recounted a lifetime of witnessing significant domestic violence against her mother, until her mother eventually left. CP 5. After her mother left, Ms. Beatson recounts how the abuse shifted to her and her siblings. CP 5. She tells the court about a method of abuse that Mr. Beatson called "wall flowering." CP 5. This occurs when Mr. Beatson pins the children against the wall, slides them up the wall, and yells in their face. CP 5. Abuse also included excessive spanking that resulted in bruising and emotional abuse. CP 5. Eventually, Mr. Beatson moved to Florida and left Ms. Beatson in Kettle Falls, Washington. CP 5.

The petition also stated that Ms. Beatson was staying with a woman named Kimberly Evans and that she had filed a Child in Need of Services (CHINS) petition that was denied. CP 2, 6. The court issued a temporary order for protection and set the hearing for April 17, 2014, at 1:00 p.m. CP 17-20.

Mr. Beatson was served with the petition and temporary order the morning of the hearing. CP 21. The court called the case at 1:28 p.m. and recited the cause number. RP 4¹.

At the beginning of the hearing, the court confirmed that Mr. Beatson had just been served that day. RP 4. It also informed him that he did not have timely notice and asked him if he would like a continuance. RP 4. Mr. Beatson responded by telling the court that he had traveled 3200 miles for the hearing and that he only got into town at 2:00 a.m. RP 4. In response to the court's offer of a continuance, Mr. Beatson responded, ". . . I've done this before with my oldest daughter, I'm comfortable." RP 4.

The court then asked if he had read the allegations and if he was prepared. RP 4. Mr. Beatson answered in the affirmative to both questions. RP 4. However, when the court asked Mr. Beatson what his response to the allegations in the protection order was he stated, ". . . I'm a little confused there was a prior case first? Am I – am I getting something backwards?" CP 5. The court then informed Mr. Beatson that there were two cases involving the parties set for that day, the DVPO petition and an At-Risk-Youth

¹ There are two Report of Proceedings in this matter. The Report of Proceedings from the April 17, 2014 hearing on the merits will be referred to as "RP." The Report of Proceedings from the May 13, 2014 hearing on the motion to revise will be referred to as "RP2."

Petition (ARY). RP 5-6. Mr. Beatson informed the court that he was prepared for the ARY hearing and asked for a moment. RP 6. He then told the court, "I was ready for the other one . . . I'm sorry, hold on, I'm ready." RP 6. Mr. Beatson told the court that he remembered the allegations and when he was provided a second copy of the petition, he began reading it into the record. RP 7-8.

In response to the allegations, Mr. Beatson issued a general denial. RP 9. He then explained to the court that Ms. Beatson had filed the petition because she did not want to move to Alabama with him and because she was acting out. RP 9-11. He also provided the court with evidence of a dismissed domestic violence charge and unfounded Child Protective Services (CPS) reports. RP 11-13. Upon closer examination, the court discovered that the dismissed DV charge was actually due to a deferred sentence. RP 12.

The court found that Ms. Beatson had met her burden of proof and that Mr. Beatson had waived his right to adequate notice. RP 15. The court noted Mr. Beatson's extensive CPS and court history indicated that he had significant interpersonal difficulties. RP 15. The court ordered Ms. Beatson to remain living with Ms. Evans. RP 17. The court then reviewed the order with Mr. Beatson

and answered a number of questions he had about the order. RP 17-20.

Mr. Beatson filed a motion to revise the order. CP 28-29. At the hearing on revision, Mr. Beatson's counsel argued that he was not provided with the statutory five days' notice before the hearing on the DVPO petition. RP2 8. Mr. Beatson also argued that the court erred when it appointed a third party as custodian over Ms. Beatson. RP2 9. During this argument, counsel informed the court that Mr. Beatson filed the ARY petition after Ms. Beatson's CHINS petition was denied. RP2 9.

The court affirmed the DVPO finding that Mr. Beatson had waived his right to adequate notice, and that he had committed acts of domestic violence against Ms. Beatson. CP 54-58. Mr. Beatson timely filed this appeal. CP 59-68.

III. ARGUMENT

Mr. Beatson argues that the court erred in finding that he waived his right to adequate notice. Specifically, Mr. Beatson argues that he could not waive his right to adequate notice under Rules of Civil Procedure (civil rules) CR 12(h)(1) because the civil rules do not apply in special proceedings, that his waiver was not intentional and unequivocal where he was confused about what

hearing he was attending, that any waiver under the DVPA violates due process where the notice requirements are already stretched, and that due process required the court to engage in a more stringent colloquy before accepting his waiver. Ms. Beatson argues that the court did not err in finding that Mr. Beatson waived his right to adequate notice where CR 12(h)(1) applies to proceedings under the DVPA, Mr. Beatson was informed that he did not receive adequate notice and refused the court's offer to continue the hearing, he continued with the hearing and provided testimony and exhibits, and that a waiver under the DVPA does not violate the DVPA where there are adequate procedural safeguards and the state has an important interest in preventing domestic violence.

A. MR. BEATSON WAIVED HIS RIGHT TO TIMELY NOTICE BY FAILING TO OBJECT, DECLINING THE COURT'S OFFER OF CONTINUANCE, AND PROCEEDING WITH THE HEARING.

Mr. Beatson argues he cannot waive his right to adequate notice under the DVPA because (1) as a special proceeding, actions under the DVPA are not subject to the Rules of Civil Procedure (civil rules), in particular CR 12(h)(1); and (2) his waiver was not intentional and unequivocal where the record establishes that he thought he was waiving timely notice to the ARY petition.

Questions regarding the interpretation of a court rule or statute are questions of law and are reviewed de novo. *Gourley v. Gourley*, 158 Wn.2d 460, 467, 145 P.3d 1185 (2006). The trial court's findings of fact are reviewed under the substantial evidence test. *Callecod v. Washington State Patrol*, 84 Wn. App. 663, 673, 929 P.2d 510, *rev. denied*, 132 Wn.2d 1004 (1997). A finding of fact is not supported by substantial evidence where there is not "a sufficient quantity of evidence to persuade a fair-minded person of the truth or correctness of the order." *Id.*

1. The Procedural Rules Under The DVPA Are Not Inconsistent With the Civil Rules Where the DVPA is Silent Regarding the Ability to Waive Notice Under RCW 26.50.050.

A Domestic Violence Protection Order (DVPO) entered under the DVPA is a special proceeding. *Scheib v. Crosby*, 160 Wn. App. 345, 352, 249 P.3d 184 (2011). In a special proceeding, procedural rules in the DVPA will usurp the civil rules where there is an inconsistency. CR 81(a). Trial courts also "retain the inherent authority and discretion" to determine the application of the civil rules to special proceedings. *Scheib*, 160 Wn. App. at 353. Therefore, unless the DVPA has an inconsistent rule regarding

waiver of notice, the civil rules, and in particular CR 12(h)(1), will apply at the discretion of the trial court.

Civil rule 12(h)(1) states that if a respondent does not assert the affirmative defense of lack of personal jurisdiction in a motion or in the responsive pleadings, the defense is waived. CR 12(h)(1). Case law has also found that litigants waive this defense where they appear and litigate the issue. *In re the Welfare of H.S.*, 94 Wn. App. 511, 526, 973 P.2d 474 (1999). Notice is a matter of personal jurisdiction and a "party cannot raise issues of personal jurisdiction after making a general appearance" and participating in the litigation. *Id.*; *Robb v. Kaufman*, 81 Wn. App. 182, 186-187, 913 P.2d 828 (1996).

Proceedings under the DVPA are intended to provide "easy, quick and effective access to the court system" that allow victims of domestic violence to increase their safety while holding batterers accountable. *In re the Marriage of Stewart*, 133 Wn. App. 545, 552, 137 P.3d 25 (2006), *rev. denied*, 160 Wn.2d 1011 (2002); *Danny v. Laidlaw Transit Serv., Inc.*, 165 Wn.2d 200, 209, 193 P.3d 128 (2008), citing Laws of 1992, Ch. 111 §1. As a result, there are a number of procedures under the DVPA that conflict with civil rules

in an effort to provide swift more efficient access. RCW 26.50 et. seq.

For instance, due to its quick and efficient nature, petitioners may commence an action by filing a petition alleging that he or she is a victim of domestic violence. RCW 26.50.020(1)(a). The petition must state, under oath, facts and circumstances that support a finding of domestic violence. RCW 26.50.020(1)(a); RCW 26.50.030(1). A hearing on the petition is expedited and may be held with five court days' notice to the Respondent. RCW 26.50.050. However, the respondent still must be served personally, or when appropriate, by alternative means. RCW 26.50.050. Also consistent with its quick and efficient nature, the respondent is not required to file a written response but instead may provide testimony and present evidence at the hearing. RCW 26.50 et. seq.; *State v. Karas*, 108 Wn. App. 692, 700, 32 P.3d 1016 (2001).

Despite all of the procedural rules in the DVPA, there is nothing in the statute that conflicts or is inconsistent with CR 12(h)(1). RCW 26.50 et. seq. Rather, the DVPA is silent as to whether timely notice can be waived. RCW 26.50 et. seq.

Therefore, CR 12(h)(1) may apply, at the discretion of the trial court, to actions commenced under the DVPA.

2. Mr. Beatson Unequivocally and Intentionally Waived His Right to Notice by Failing to Raise the Issue of Notice, Declining the Court's Offer to Continue the Hearing, and Proceeding With Hearing.

Waiver of a right is "the intentional abandonment and relinquishment of a known right. It must be shown by unequivocal acts or conduct showing an intent to waive, and the conduct must also be inconsistent with any intention other than to waive." *Midtown Ltd. P'ship v. Preston*, 69 Wn. App. 227, 233, 848 P.2d 1268 (1993), *rev. denied*, 122 Wn.2d 1006 (1993). Substantial evidence supports a finding that Mr. Beatson did not think he was waiving his right to the ARY hearing where he was either provided enough notice to allow him to travel and come to the hearing prepared or he was the petitioner in the ARY matter. In addition, Mr. Beatson's actions in the DVPO hearing included stating that he was ready, declining the court's offer to continue the hearing, and presenting testimony and evidence shows that his waiver of adequate notice was intentional and unequivocal.

Despite Mr. Beatson's argument to the contrary, it is not clear from the record that Mr. Beatson thought he was waiving his

right to notice in the ARY hearing. Rather, the record supports the fact that it appears that Mr. Beatson had either been given prior, adequate notice of the ARY hearing or that Mr. Beatson was actually the petitioner in the ARY petition. RP2 9.

Mr. Beatson must have had adequate notice of the ARY hearing because he informs the court that he traveled 3200 miles in order to appear at the hearing, and he came prepared for the hearing with exhibits. RP 4, 6. In addition, most likely it was Mr. Beatson who filed the ARY petition and set the hearing date. In fact, Mr. Beatson's counsel on revision states that it was Mr. Beatson who filed the ARY petition. RP2 9. Further, ARY petitions may only be filed by a parent with custody of a child. RCW 13.31A.191. It stands to reason that Mr. Beatson could not have thought he was waiving his right to timely notice under the ARY petition where he is either the petitioner in that matter or had notice adequate enough to allow him to travel a long distance and come prepared with exhibits.

Despite Mr. Beatson's confusion about what was initially happening in court, his statements and actions establish that his waiver of notice in the DVPO proceeding was intentional and unequivocal. It is indisputable that Mr. Beatson was not provided

five days' notice. CP 21-22. He was served the morning of the hearing, and had a matter of hours to review the petition and prepare for the hearing. CP 21-27. However, at the beginning of the hearing, the court informed Mr. Beatson that he was not timely served. RP 4. The court further asked Mr. Beatson if he was prepared to move forward or if he would like a continuance. RP 4. Mr. Beatson stated that he was prepared, that he had read the allegations in the petition, and that he was prepared to proceed. RP 4.

When it becomes apparent that Mr. Beatson was initially prepared for the ARY hearing, the court gives him time to shift gears and prepare for the DVPO hearing. RP 6. In response, Mr. Beatson tells the court, "I was ready for the other one, ma'am, I'm sorry, hold on, I'm ready." RP 6. He also informs the court that he remembers the allegations and is provided another copy of the petition. RP 6-7. He then begins reading portions of the petition into the record. RP 7-8. Mr. Beatson then generally denies the allegations and provides the court with significant testimony about why he believes Ms. Beatson filed the petition. RP 9-15. Mr. Beatson also responds to questioning from the court and produces exhibits that are considered by the court. RP 9-15.

Mr. Beatson had ample opportunity to assert his right to adequate notice when the court informed him that he was not timely served, or when the court offered to continue the hearing based on the untimely service, or when he became aware that the hearing was regarding the DVPO and not the ARY petition. However, his subsequent statements and actions show that his waiver to adequate notice was intentional and unequivocal.

B. WAIVER OF NOTICE IN A PROCEEDING UNDER THE DVPA DOES NOT VIOLATE DUE PROCESS.

Mr. Beatson argues that notice can never be waived under the DVPA without violating due process because as a special proceeding the boundaries of due process are already strained due to the emergent nature of the proceedings and the substantially shortened timelines. In the alternative, Mr. Beatson argues that due process mandates that the court engage in a more stringent colloquy before waiver of notice can be accepted.

Mr. Beatson does not argue that the DVPA is facially unconstitutional. Therefore, the court will only review whether Mr. Beatson's due process rights were violated within the context of this case. *Gourley*, 158 Wn.2d at 467.

“The fundamental requirement of due process is the opportunity to be heard ‘at a meaningful time and in a meaningful manner.’” *Gourley*, 158 Wn.2d at 467, citing, *Matthews v. Eldridge*, 424 U.S. 319, 333, 96 S. Ct. 893, 47 L.Ed.2d 19 (1976). Similarly, due process requires that a court may not obtain personal jurisdiction over a person unless that person has been provided adequate notice. *Eagle Sys. Inc. v. State Employee Sec. Dep’t.*, 181 Wn. App. 455, 459, 326 P.3d 764 (2014).

“Due process is a flexible concept in which varying situations can demand differing levels of procedural protection.” *Gourley*, 158 Wn.2d at 467-468. To determine the level of protection required, the court must balance the private interest at stake, the likelihood that this interest will be erroneously infringed upon if the current procedures are used, and the state interest. *Matthews*, 424 U.S. at 335. In determining the private interest to be protected, the court must also consider the length of time the interest will be deprived under the current procedures. *Gourley*, 158 Wn.2d at 468.

Mr. Beatson argues that his private interest is the right to adequate notice and to have the matter heard at meaningful time and in a meaningful manner. He asserts that failure to provide adequate notice violated due process because it resulted in him

being unprepared for the hearing, therefore, depriving him a meaningful hearing.

It must be noted that any deprivation of Mr. Beatson's interest is temporary in nature. By statute, a DVPO that prohibits contact with a person's children is limited to one year. RCW 26.50.060(2). Therefore, on its face, the DVPO and any subsequent deprivation, is temporary. CP 23, RCW 26.50.060(2).

There is no doubt that the state has a significant interest in preventing domestic violence. *Gourley*, 158 Wn.2d at 468. In enacting the DVPA, the legislature stated:

Domestic violence is a problem of immense proportions affecting individuals as well as communities. Domestic violence has long been recognized as being at the core of other major social problems: [c]hild abuse, other crimes of violence against person or property, juvenile delinquency, and alcohol and drug abuse. Domestic violence costs millions of dollars each year in the state of Washington for health care, absence from work, services to children, and more.

State v. Dejarlais, 136 Wn.2d 939, 944, 969 P.2d 90 (1998) (quoting Laws of 1992, Ch. 111, § 1).

When balancing Mr. Beatson's interest with the State's interest, the court must examine the processes employed during an action under the DVPA to determine if due process has been violated. *Gourley*, 158 Wn.2d at 468. Under the DVPA,

respondents are entitled to the following procedural safeguards: (1) petition made under oath that contain the factual basis for the requested DVPO; (2) notice by personal service with five days' notice; (3) a hearing by an impartial judge where the parties can provide testimony; (4) a written order; (5) an opportunity to move for revision; (6) an opportunity to file a petition to modify or terminate the order; (7) an opportunity to file an appeal; and (8) a one-year time limit on the duration of the order. RCW 26.50 et. seq.; *Gourley*, 158 Wn.2d 469. In addition, as offered in this case, if timely service cannot be provided the court will continue the hearing. RCW 26.50.050.

1. A Waiver of Notice Under the DVPA Does Not Violate Due Process Where the Procedures Provided Mr. Beatson With Adequate Protections.

With the exception of receiving five days' notice, Mr. Beatson received all of these procedural protections. In addition, his argument that the DPVA's significantly shortened timelines requires that the five days' notice that cannot be waived without violating due process is misplaced.

First, providing only five days' notice is not a substantially shortened timeline. In fact, the notice provision in the DVPA requiring five days' notice is consistent with the civil rules on motion

hearings or ex parte emergency temporary restraining orders. RCW 26.50.050; CR 6(d), CR 65(b). Specifically, under the civil rules, a motion may be heard with five days' notice. CR 6(d). Local rules in Stevens, Ferry, and Pend Oreille Counties require only six court days' notice for a motion to be heard in a civil matter. LCR 6. Similarly, local rules in Spokane County related to family law actions require ten days' notice, but only allow five days to file a written response. LSPR 94.04. Under CR 65(b), the court may enter an ex parte temporary restraining order without notice and schedule a hearing at the "earliest possible time" which by practice is generally heard within fourteen days. CR 65(b). Like the DVPO, relief awarded under these rules is temporary in nature. Therefore, the five-day notice provision in the DVPA is not a significant reduction in time to have a matter, temporary in nature, heard.

Second, the court has determined that holding a hearing on a DVPO petition with only fourteen days' notice does not violate due process where the respondent was provided with notice and an opportunity to be heard. *Karas*, 108 Wn. App. 692, 699-700, 32 P.3d 1016 (2001). The *Karas* court rejected the respondent's argument that he could not marshal witnesses within fourteen days finding that the DVPO's "minor curtailment" of his liberty did not

outweigh the government's interest in preventing irreparable injury.
Id.

It is undeniable that Mr. Beatson was not provided with five days' notice. However, he was informed that he was not timely served and provided the opportunity to continue the hearing. RP 4. Even when he became confused about what hearing he was addressing, Mr. Beatson continued with the DVPO hearing. RP 4-15. He provided testimony and admitted evidence against the DVPO. RP 4-15.

Given the temporary nature of Mr. Beatson's deprivation and his decision to move forward with the hearing, the procedural safeguards employed in Mr. Beatson's case were sufficient to satisfy due process. Mr. Beatson had every right to waive notice and did so with the knowledge that he had not been timely served and was entitled to continue the hearing. Also, a finding that notice can never be waived in a DVPO proceeding leads to an absurd result where, despite inadequate notice, both parties are prepared to move forward with the hearing. Given the procedural safeguards employed under the DVPA, waiver of notice does not violate due process.

2. Due Process Does Not Require the Court to Engage in a More Stringent Colloquy Before Accepting Mr. Beatson's Waiver.

Mr. Beatson argues that due process required the court to engage in a more stringent and thorough colloquy before accepting his waiver. As stated above, Mr. Beatson's waiver was intentional and unequivocal, and the procedural safeguards employed in the DVPA do not require a more stringent colloquy.

Here, the court engaged in a thorough colloquy with Mr. Beatson regarding the notice issue. It informed him that he was not provided timely notice and asked Mr. Beatson if he wanted to continue the hearing. RP 4. The fact that the court did not tell Mr. Beatson that he was entitled to five days' notice does not violate due process where Mr. Beatson knew that he did not receive timely notice and had a right to continue the hearing. However, Mr. Beatson declined a continuance and proceeded with the hearing. RP 4.

Mr. Beatson, when realizing that he was addressing the allegations in the DVPO hearing, told the court, "I'm ready" and continued with the hearing by providing exhibits and testimony. RP 6-15. Mr. Beatson was afforded all of the procedural safeguards put in place to ensure he had a meaningful hearing at a meaningful

time. Due process does not require the court to inform Mr. Beatson a second time that he had not received timely notice and that the hearing could be continued, particularly given his intentional and unequivocal waiver of the right to notice.

C. IF SUCCESSFUL, MS. BEATSON IS ENTITLED TO ATTORNEY FEES PURSUANT TO RCW 26.50.060(g) AND RAP 18.1.

Pursuant to RAP 18.1, Ms. Beatson respectfully requests an award of attorney fees and costs in accordance with RCW 26.50.060(g). RCW 26.50.060(g), allows an award of costs and attorney fees to the petitioner. "If attorney fees are allowable at trial, the prevailing party may recover fees on appeal." *Scheib*, 160 Wn. App. at 353. If granted, Ms. Beatson will submit a cost bill within ten days of the decision in compliance with RAP 18.1(d).

IV. CONCLUSION

Ms. Beatson respectfully asks this court to affirm the trial court's decision and find that: (1) CR 12(h)(1) applies to special proceedings where the DVPA did not conflict with CR 12(h)(1); (2) Mr. Beatson's waiver of his right to adequate notice was intentional and unequivocal where he understood his right to adequate notice and to continue the hearing but chose to proceed with the hearing by providing testimony and evidence; (3) due

process is not violated by allowing parties to waive notice in a special proceeding; and (4) due process does not require the court to engage in a more stringent colloquy when accepting a parties' waiver of notice in a special proceeding. Ms. Beatson also requests an award of attorney fees.

Respectfully submitted this 2nd day of January, 2015.

NORTHWEST JUSTICE PROJECT


JACQUELYN HIGH-EDWARD
WSBA #37065
Counsel for Appellant