

FILED  
Court of Appeals  
Division III  
State of Washington  
4/15/2019 1:42 PM

Division III, Case No. 365492

COURT OF APPEALS, DIVISION III,  
FOR THE STATE OF WASHINGTON

---

BRITA GULSETH, RESPONDENT

v.

ANDREW GULSETH, APPELLANT  
Craig A. Mason, Appellant in His Own Right re: Sanctions

---

OPENING BRIEF OF APPELLANT

---

Craig Mason, WSBA#32962  
Attorney for Respondent  
W. 1707 Broadway  
Spokane, WA 99201  
509-443-3681  
masonlawcraig@gmail.com

<b><u>TABLE OF CONTENTS</u></b>	<b><u>page</u></b>
<b>Table of Authorities</b>	<b>iv</b>
<b>I. INTRODUCTION</b>	<b>1</b>
<b>II. ASSIGNMENTS OF ERROR AND ISSUES ON APPEAL</b>	<b>3</b>
<b><u>Error #1:</u> Commissioner High-Edward erred to re-assign Commissioner Ressa’s case to herself on the basis of an un-written Notice of Disqualification process that occurred without any motion, without any record, and without any basis in law or written procedure (statewide or local); and it was error of Judge Ellen Clark to uphold this re-assignment on revision, without substantial evidence or sufficient legal basis in law or in written procedure.</b>	<b>4</b>
<b><i>Issue A related to Error #1:</i> May local rules contradict statewide rules, statewide statutes, or contradict statewide case law? (Answer: No.)</b>	<b>4</b>
<b><i>Issue B related to Error #1:</i> Does Washington law hold that there is no Affidavit of Prejudice/Notice of Disqualification procedure against commissioners because revision is always available? (Answer: Yes, the right of revision is the basis in case law for denying the right to disqualify a commissioner.)</b>	<b>4</b>
<b><i>Issue C related to Error #1:</i> Should the court have entertained the Declaration of Matthew Dudley when that declaration was not in the file at the time of the commissioner’s ruling that was subsequently at issue on revision? (Answer: No, if the record is to be expanded, the matter should have been remanded to the commissioner; Mr. Dudley’s declaration should have been stricken from consideration.)</b>	<b>4</b>
<b><i>Issue D related to Error #1:</i> Was there sufficient evidence in the record to support Judge Ellen Clark’s decision (or the commissioner’s ruling) regarding the reassignment of the commissioner? (Answer: No. There were no facts in the record properly before the court, other than those submitted by Mr. Gulseth by 11/28/18 – the date of the commissioner’s decision. All material factual determinations lack substantial evidence.)</b>	<b>5</b>

**TABLE OF CONTENTS, cont.** **page**

---

**Error #2:** Judge Ellen Clark erred to sanction Mr. Gulseth’s attorney, Craig A. Mason, for seeking the legal basis of the re-assignment. **5**

**Issue A related to Error #2:** Was it an error of law for Judge Ellen Clark’s decision to sanction Mr. Mason for seeking the legal basis of the reassignment of the commissioner? (Answer: Yes. No legal or factual basis for what the judge-on-revision described as a Notice of Disqualification process was provided for the removal of a commissioner for prejudice. See the separate “Factual Error” section, below.) **5**

**Issue B related to Error #2:** Did the court make an error of law to describe a Notice of Disqualification process and then to cast it as a purely administrative reassignment? (Answer: Yes. The commissioner was clearly re-assigned on the basis of presumed prejudice, and that process or basis is not available for the removal of commissioners.) **6**

**Issue C related to Error #2:** It is not conceded that commissioners may be disqualified for prejudice, but if a local procedure may grant parties this right, should the policy, procedure or rule be written and available to all, in order to conform to notice requirements and requirements of basis due process? (Answer: Yes. If a local rule or procedure allowing the disqualification of commissioners for prejudice is to be adopted, and if such a process may be adopted under the laws of this State, it must be written, published, and be generally available to all parties and to the public.) **6**

**Issue D related to Error #2:** Was there sufficient evidence in the record, or sufficient basis in law, to support Judge Ellen Clark’s decision to sanction Mr. Mason for seeking the legal basis of the reassignment of the commissioner, even if sanctions on revision were allowed by law (see Error #3, below)? (Answer: No. There were no facts in the record properly before the court, other than those submitted by Mr. Gulseth by 11/28/18. Each and every factual determination of Judge Clark – and those of the commissioner – is challenged in this appeal as lacking substantial evidence. See the separate “Factual Error” section, below.) **6**

<b><u>TABLE OF CONTENTS, cont.</u></b>	<b><u>page</u></b>
<b><u>Error #3 – Solely an Issue of Law:</u></b> Given that there is an absolute right to revision (if timely filed and served), is it ever appropriate to sanction a party for seeking a revision? (Answer: No. Exercising the statutory and constitutional right to revision should not be subject to penalty or sanction.)	7
<b>III. PROCEDURAL HISTORY AND FACTUAL BACKGROUND</b>	7
<b><u>Timeline Presentation and References to Clerk’s Papers:</u></b>	7
<b>IV. STANDARDS OF REVIEW AND APPLICATION OF LAW</b>	12
<b>A. Law of Review of Revisions: Judge’s Decision Is Reviewed</b>	13
<b>B. Legal Errors are Reviewed De Novo</b>	14
<b><u>Errors of Law of the Trial Court on 12/6/18:</u></b>	15
<b>B. 1 - <i>Error of Law #1 – Adding Facts to the File:</i></b>	15
<b>B.2 -- <i>Errors of Law #2 – Applying the Notice of Disqualification Process to Commissioners:</i></b>	15
<b>C. Abuse of Discretion Standard</b>	17
<b>1. Sanctions are Reviewed for An Abuse of Discretion</b>	17
<b>2. Sanctions Require Proper Findings</b>	18
<b>Application of <i>Biggs</i> and <i>Dexter</i>:</b>	19
<b>D. Are Revisions Sanctionable, Since One Has a RIGHT to Revise?</b>	20
<b>Conclusion on Right to Revision:</b>	21
<b>V. “FACTUAL FINDINGS” SPECIAL SECTION</b>	21
<b>VI. CONCLUSION AND RELIEF REQUESTED</b>	26
<b>APPENDIX</b>	27

**TABLE OF AUTHORITIES** **page**

---

***Washington State Constitution:***

Article IV, Section 23 of the State Constitution. 2, 20, 27

***Statutes:***

RCW 2.24.050 2, 4, 14, 20, 21

***Spokane County Local Rules:***

LAR 0.7

LSPR 94.04 1, 7, 9

***Cases:***

*Biggs v. Vail*, 124 Wash.2d 193, 876 P.2d 448 (1994). 18-19

*Chaffee v. Keller Rohrback LLP*, 200 Wash. App. 66, 401 P.3d 418 (2017) 17

*Council House, Inc. v. Hawk*, 136 Wash. App. 153, 147 P.3d 1305, 1307 (2006). 15

*Dexter v. Spokane Cty. Health Dist.*, 76 Wash. App. 372, 884 P.2d 1353 (1994). 18-19

*Eagle Point Condo. Owners Ass'n v. Coy*, 102 Wash. App. 697, 9 P.3d 898 (2000). 19-20

*Grieco v. Wilson*, 144 Wn. App. 865, 184 P.3d 668 (2008), 13-14  
*aff'd sub nom., In re Custody of E.A.T.W.*, 168 Wn.2d 335 (2010).

*Henrickson v. State*, 92 Wash. App. 856, 965 P.2d 1126 (1998), 17-18  
*aff'd sub nom. Det. of Henrickson v. State*, 140 Wash. 2d 686, 2 P.3d 473 (2000)

<b><u>TABLE OF AUTHORITIES cont. (Cases)</u></b>	<b><u>page</u></b>
<i>In re Dependency of B.S.S.</i> , 56 Wash.App. 169, 782 P.2d 1100 (1989).	13
<i>In re Marriage of Balcom &amp; Fritchle</i> , 101 Wash. App. 56, 1 P.3d 1174 (2000), <i>publication ordered</i> (June 20, 2000)	15-16, 21-22
<i>Maldonado v. Maldonado</i> , 197 Wash. App. 779, 391 P.3d 546 (2017).	14
<i>Malted Mousse, Inc. v. Steinmetz</i> , 150 Wash.2d 518, 79 P.3d 1154 (2003).	15
<i>Matter of Marriage of Lyle</i> , 199 Wash. App. 629, 398 P.3d 1225 (Div. 3 2017).	16, 20, 24
<i>Perez v. Garcia</i> , 148 Wash. App. 131, 198 P.3d 539 (2009).	12-13, 15, 21
<i>State v. Espinoza</i> , 112 Wash. 2d 819, 774 P.2d 1177 (1989).	16
<i>State v. Griffiths</i> , 137 Wash. 448, 242 P. 969 (1926).	21
<i>State v. Haney</i> , 125 Wash. App. 118, 104 P.3d 36 (2005).	15
<i>Williams &amp; Mauseth Ins. Brokers, Inc. v. Chapple</i> , 11 Wash. App. 623, 524 P.2d 431 (1974) (a judge has no right to recuse himself or herself in the absence of a valid reason).	16
<i>Williams v. Williams (Marriage of Williams)</i> , 156 Wash. App. 22, 232 P.3d 573 (2010).	13-14, 16

## **I. INTRODUCTION**

Andrew Gulseth was not served with the Case Assignment (which indicates the assigned commissioner), despite an affidavit of service to the contrary. Andrew Gulseth was served with a motion for temporary orders, not on the assigned commissioner's day, which violates Spokane County Local Rule, LSPR 94.04 (2)(a).

Upon retaining counsel, Mr. Gulseth's counsel retrieved the Case Assignment sheet from the court file, and sought to remedy the mis-setting of the hearing, without avail. Fewer than 48 hours before the mis-set hearing, Mr. Gulseth's case was re-assigned to another commissioner without basis in law or fact, and then Mr. Gulseth's mis-set hearing suddenly was deemed properly set on less than 48 hours' notice, and the hearing proceeded over objection, and to the prejudice of Mr. Gulseth.

Andrew Gulseth's counsel, Craig A. Mason, was sanctioned for filing a revision that asked the court for the legal basis of an un-written, un-filed, "Notice of Disqualification" (fka Affidavit of Prejudice) of the assigned commissioner in Mr. Gulseth's case, and for seeking evidence supporting the "finding" of conflict of interest, which led to this last-minute re-assignment without notice. That last-minute reassignment without notice then led to a mis-noted hearing proceeding to an untimely

hearing (on shortened-time without motion or notice), to the prejudice of Mr. Gulseth, whose filings were stricken as “late.”

As sanction orders are final orders, this appeal timely followed.

This raises three categories of issues:

(1) ***Sanctions***: Is it ever proper to be sanctioned for seeking a revision, as it is a statutory and constitutional right, and if so, was it proper to issue sanctions on these facts? (Answer: No. The right to a revision under RCW 2.24.050 is also a constitutional right under Article IV, Section 23 of the State Constitution.)

(2) ***Disqualification of Commissioner***: Is it ever proper to remove a commissioner for alleged prejudice, and if so, is it proper to do so by an un-written policy or procedure, not available to all, especially when the exercise of the un-written procedure prejudiced the Appellant? (Answer: No.)

*NOTE*: This is distinct from a recusal of the commissioner, not present here, which still must have a sufficient basis in law (see below).

(3) ***Retroactive Timelines as to Mis-noted Hearing***: When a hearing has been set incorrectly, is it proper to retroactively “correct” the hearing setting without sufficient notice to the prejudiced party? (Answer: No.)

The last-moment reassignment of the commissioner – two days before a mis-noted hearing -- made an incorrectly-noted hearing suddenly

correctly noted to the correct commissioner, but it was still not timely, and Andrew Gulseth was prejudiced by this irregularity as his filings were stricken as suddenly “untimely,” despite no showing of prejudice to Brita Gulseth (the opposing party) from (a) the filings, or (b) a continuance.

It was an abuse of discretion for the court to change the assigned commissioner; it was an abuse of discretion to retroactively “cure” the mis-noted hearing to the prejudice of Mr. Gulseth; and it was an abuse of discretion to strike Andrew’s filings without a showing of prejudice to Ms. Gulseth.

The main issue on this appeal, is whether the affidavit of prejudice/notice of disqualification process is available regarding commissioners, and if such a process is to be allowed, if there must be a record of the process, and if it should be generally available by some kind of publicly available, written and published, account of this local procedure or local rule.

## **II. ASSIGNMENTS OF ERROR AND ISSUES ON APPEAL**

Although some substantive events in the family law temporary order hearing are incidentally addressed as context, there are only really two decisions on appeal: (a) The 11/28/18 re-assignment of the commissioner by a procedure that the trial judge found to be essentially a “Notice of Disqualification” process, done at the last-moment, unilaterally

or ex parte, without any basis in the record, and without any public rule or record by which others could use the same rule, process, or procedure, and (b) sanctions against Mr. Mason for seeking the legal basis of the 11/28/18 reassignment on a motion to revise under RCW 2.24.050.

**Error #1:** Commissioner High-Edward erred to re-assign Commissioner Ressa's case to herself on the basis of an un-written Notice of Disqualification process that occurred without any motion, without any record, and without any basis in law or written procedure (statewide or local); and it was error of Judge Ellen Clark to uphold this re-assignment on revision, without substantial evidence or sufficient legal basis in law or in written procedure.

**Issue A related to Error #1:** May local rules contradict statewide rules, statewide statutes, or contradict statewide case law? (Answer: No.)

**Issue B related to Error #1:** Does Washington law hold that there is no Affidavit of Prejudice/Notice of Disqualification procedure against commissioners because revision is always available? (Answer: Yes, the right of revision is the basis in case law for denying the right to disqualify a commissioner.)

**Issue C related to Error #1:** Should the court have entertained the Declaration of Matthew Dudley when that declaration was not in the file at the time of the commissioner's ruling that was subsequently at issue on

revision? (Answer: No, if the record is to be expanded, the matter should have been remanded to the commissioner; Mr. Dudley's declaration should have been stricken from consideration.)

Issue D related to Error #1: Was there sufficient evidence in the record to support Judge Ellen Clark's decision (or the commissioner's ruling) regarding the reassignment of the commissioner? (Answer: No. There were no facts in the record properly before the court, other than those submitted by Mr. Gulseth by 11/28/18 – the date of the commissioner's decision. Each and every factual determination of Judge Clark made on 12/6/18 – and of the commissioner on 11/28/18 – is challenged in this appeal as lacking substantial evidence. See the separate "Factual Error" section, below.)

**Error #2:** Judge Ellen Clark erred to sanction Mr. Gulseth's attorney, Craig A. Mason, for seeking the legal basis of the re-assignment.

Issue A related to Error #2: Was it an error of law for Judge Ellen Clark's decision to sanction Mr. Mason for seeking the legal basis of the reassignment of the commissioner? (Answer: Yes. No legal or factual basis for what the judge-on-revision described as a Notice of Disqualification process was provided for the removal of a commissioner for prejudice. See the separate "Factual Error" section, below.)

Issue B related to Error #2: Did the court make an error of law to describe a Notice of Disqualification process and then to cast it as a purely administrative reassignment? (Answer: Yes. The commissioner was clearly re-assigned on the basis of presumed prejudice, and that process or basis is not available for the removal of commissioners.)

Issue C related to Error #2: It is not conceded that commissioners may be disqualified for prejudice, but if a local procedure may grant parties this right, should the policy, procedure or rule be written and available to all, in order to conform to notice requirements and requirements of basis due process? (Answer: Yes. If a local rule or procedure allowing the disqualification of commissioners for prejudice is to be adopted, and if such a process may be adopted under the laws of this State, it must be written, published, and be generally available to all parties and to the public.)

Issue D related to Error #2: Was there sufficient evidence in the record, or sufficient basis in law, to support Judge Ellen Clark's decision to sanction Mr. Mason for seeking the legal basis of the reassignment of the commissioner, even if sanctions on revision were allowed by law (see Error #3, below)? (Answer: No. There were no facts in the record properly before the court, other than those submitted by Mr. Gulseth by 11/28/18. Each and every factual determination of Judge Clark – and those of the

commissioner – is challenged in this appeal as lacking substantial evidence. See the separate “Factual Error” section, below.)

**Error #3 – Solely an Issue of Law:** Given that there is an absolute right to revision (if timely filed and served), is it ever appropriate to sanction a party for seeking a revision? (Answer: No. Exercising the statutory and constitutional right to revision should not be subject to penalty or sanction.)

### **III. PROCEDURAL HISTORY AND FACTUAL BACKGROUND**

**Timeline Presentation:** The procedural history and references to clerk’s papers are presented in the following timeline:

***10/22/18:*** Brita Gulseth, through her attorney, Matthew Dudley, filed a Summons and Petition for Dissolution. (CP: 1-6)

***10/22/18:*** The court issued a case assignment notice, assigning Commissioner Ressa to the case (CP: 10-11), whose hearings were held on Thursdays in the Fall of 2018.

***11/8/18:*** Brita Gulseth filed a Motion for Temporary Orders (CP: 12-18), and on 11/15/18 she set the matter for Friday, 11/30/18 (CP: 21).

LSPR 94.04(2)(a) requires that family law motions be set on the “assigned commissioner’s” day and docket. See LSPR 94.04 in Appendix.

Friday was not Commissioner Ressa's assigned family law motions day (Commissioner Ressa's day for the 8:30 Family Law Motion Docket was Thursday in the Fall of 2018).

*11/14/18*: Andrew Gulseth accepted service of the Summons, Petition, and a Motion for Temporary Orders from Brita Gulseth's counsel, Matthew Dudley. Matthew Dudley's Affidavit of Service indicated that Mr. Gulseth received the Case Assignment Notice, assigning Commissioner Ressa as the assigned commissioner of the case. (CP: 19-20)

However, in fact, Mr. Gulseth had received no Case Assignment Notice from Mr. Dudley. (CP: 25) This sworn statement of Mr. Gulseth in this regard was not rebutted in the declaration subsequently filed by Mr. Dudley. (CP: 57-60)

Andrew Gulseth later learned of the Case Assignment Notice after hiring Mr. Mason who retrieved it from the court file, and then Mr. Gulseth filed his 11/19/18 declaration (CP: 26) that he was not served with the case assignment notice.

As was noted, above, Mr. Dudley's later declaration (CP: 57-60) did not rebut those facts from Mr. Gulseth's 11/19/18 declaration.

*NOTE:* Contrary to Mr. Dudley's affidavit of service (CP: 19-20), Mr. Gulseth was also not given the court's automatic temporary restraining order, but that document is not at issue on this appeal. (CP: 25)

**11/15/18:** As was noted, above, Brita Gulseth, through Mr. Dudley, on 11/15/18, set the temporary order hearing for Friday, 11/30/18 (CP: 21), which meant the hearing was not properly noted under LSPR 94.04(2)(a).

**11/19/18:** Andrew Gulseth filed his 11/19/18 declaration, noted above (CP: 25), and Andrew filed an objection to the mis-set hearing in that same document. To repeat, under LSPR 94.04(2)(a) the temporary order hearing should have been set on Commissioner Ressa's day, a Thursday, and not on a Friday. (If there had been a local procedure for a Notice of Disqualification, this 11/19/18 objection would have been Mr. Dudley's notice to invoke that process, or at least use LSPR 94.04(2)(c).)

**11/20/18:** Mr. Gulseth filed a memo with the case law that there is no right to affidavit a commissioner (no right to remove them by notice of disqualification) (CP: 26-29).

**11/28/18:** Mr. Gulseth filed further objection and legal authority to oppose any future change of commissioner that had no proper basis in law or fact. *Objection to Any Change of Commissioner without Motion, Notice or Hearing*, filed on 11/28/19 (CP: 31-32), prior to the re-assignment, as is plain from the text of the objection that no reassigned commissioner was

indicated in the objection. A copy was also sent to the family law department.

**11/28/18:** After filing and serving the foregoing legal authorities (two days before the mis-set hearing) on 11/28/18, Commissioner High-Edward re-assigned the case to herself, without motion in the file, and without basis in fact or law. (CP: 30) The putative reason, without motion or basis in the file, was some nameless “conflict of interest.” (CP: 30)

At no point did Commissioner Ressa recuse herself. The Order of 11/28/18 was not Commissioner Ressa’s decision.

To reiterate, the “finding” in the Order of Re-assignment at CP:30 included a finding of “conflict of interest,” with no motion, no evidence, no notice to Mr. Gulseth, and no opportunity to be heard regarding these alleged facts of conflict of interest, or to be heard regarding the law.

**11/28/19:** On 11/28/19, Mr. Gulseth file a motion to revise this finding and reassignment, and the revision hearing was set on 12/6/18. (CP: 33-34)

**11/29/18:** Mr. Gulseth filed his memorandum, *Additional Authorities: No Right to File an Affidavit of Prejudice Against a Commissioner, etc., filed 11/19/18.* (CP: 36-37)

**11/29/18:** Suddenly faced with a hearing on less than two-days’ notice, Mr. Gulseth filed responsive documents on 11/29/18, as the mis-noted

hearing was now on the Friday docket for 11/30/18, and Mr. Gulseth had responded within 24 hours to this less than 48 hour notice. Mis-noted hearings are always re-noted to the proper day, and that allows at least a week for response. (CP: 115, lines 10 to 14 and CP: 116, lines 8 to 10)

**11/30/18:** Prior to hearing on 11/30/18, at a “bench conference,” the commissioner who re-assigned the case to herself “struck” Andrew Gulseth’s filings, leaving him bereft for the hearing on Temporary Orders (only able to rely upon his Response to the Petition, at CP 22-24). (CP: 107-116)

Ms. Gulseth had shown no prejudice from the late-filed responses, nor from a continuance of one-week for her to properly re-set the hearing. *NOTE:* The decision to strike the responsive filings was also addressed at the revision held on 12/6/18. (CP: 83-98)

**12/3/18:** Andrew Gulseth filed additional legal authorities about the necessary bases for recusal, if somehow the un-written process that had been followed was seen as a recusal. See *Limitations on Recusals: Legal Authorities – A reasonable basis require even for self-recusal*, filed 12/3/18. (CP: 51-56)

**12/3/18:** On 12/3/18 Brita Gulseth’s counsel, Mr. Dudley, filed a declaration (CP: 57-60, titled *Motion for Order denying motion to deny and for imposition of sanctions against Craig Mason*, filed 12/3/18).

In his declaration, Mr. Dudley added alleged facts into the court file that were not before the commissioner when the commissioner made her 11/28/18 decision, and which therefore should not have been before the judge at the revision hearing. (Andrew Gulseth objected at the revision hearing of 12/6/18 to additional facts being before the judge that were not before the commissioner.) If facts are to be added to the record, remand is required. See, e.g., *Perez v. Garcia*, 148 Wash. App. 131, 138, 198 P.3d 539, 542–43 (2009).

**12/6/18:** The revision judge denied revision and sanctioned Mr. Gulseth's counsel, Craig A. Mason, \$300 for asking for the legal basis of the foregoing procedural irregularities. (CP: 81) Appeal timely followed.

#### **IV. STANDARDS OF REVIEW AND APPLICATION OF LAW**

In this case, the trial judge denied revision on the reassignment, but the trial judge applied a sanction.

Clearly the trial judge's findings and conclusions of law on the sanction are on review for that decision. Also, normally, on the denial of revision as to the re-assignment decision, the judge's decision is under review. Here, there is the odd situation that there had been no facts before the commissioner, and the trial judge accepted new facts, contrary to *Perez v. Garcia*, supra, from Mr. Dudley, filed for the revision hearing, that were not before the commissioner.

### **A. Law of Review of Revisions: Judge's Decision Is Reviewed**

Here, the commissioner's sole finding was without evidence that there was a "conflict of interest" that justified essentially a Notice of Disqualification (previously known as Affidavit of Prejudice) process to remove Commissioner Ressa from the case.

That absence of a record, and an absence of a remand for fact-finding under *Perez v. Garcia*, makes the following law of revision impossible to apply:

A revision denial constitutes an adoption of the commissioner's decision and the court is not required to enter separate findings and conclusions. *In re Dependency of B.S.S.*, 56 Wash.App. 169, 171, 782 P.2d 1100 (1989). The commissioner's oral findings adopted by the revision court are sufficient for review.

*Williams v. Williams*, 156 Wash. App. 22, 27–28, 232 P.3d 573, 575 (2010) (emphasis added).

When a party appeals a trial court order denying revision of a commissioner's decision, the appellate court generally reviews the trial court's decision, not the commissioner's, and that must be applied in this instance, as the commissioner had no facts to find on 11/28/18. See *In re Marriage of Williams*, 156 Wn. App. 22, 27, 232 P.3d 573 (2010), and see:

If the [trial] court simply denies the motion to revise the commissioner's findings or conclusions, [appellate courts] have

held that the court then adopts the commissioner's findings, conclusions, and rulings as its own...But when the court makes independent findings and conclusions, the court's revision order then supersedes the commissioner's decision.

*Grieco v. Wilson*, 144 Wn. App. 865, 877, 184 P.3d 668 (2008), *aff'd sub nom.*, *In re Custody of E.A.T.W.*, 168 Wn.2d 335 (2010). Also see the following:

Under RCW 2.24.050, the findings and orders of a court commissioner not successfully revised become the orders and findings of the superior court. A revision denial constitutes an adoption of the commissioner's decision, and the court is not required to enter separate findings and conclusions. *In re Marriage of Williams*, 156 Wash.App. 22, 27-28, 232 P.3d 573 (2010). On appeal, this court reviews the superior court's ruling, not the commissioner's. *Stewart*, 133 Wash.App. at 550, 137 P.3d 25.

*Maldonado v. Maldonado*, 197 Wash. App. 779, 789, 391 P.3d 546, 552 (2017).

**Conclusion as to Findings of Fact Under Review:** The findings of Judge Ellen Clark are under review; however, the findings of the commissioner may be deemed to have been incorporated into the denial of revision of the reassignment. Judge Clarks' Order of 12/6/18 is at CP: 81, and the transcript of 12/6/18 is at CP: 83-97.

#### **B. Legal Errors are Reviewed De Novo**

Any legal errors of the revising judge are subject to de novo review:

The standard of review in the instant case is not abuse of discretion. We do not review errors of law for an abuse of discretion; our review of the application of the law to the facts is de novo. *See Malted Mousse, Inc. v. Steinmetz*, 150 Wash.2d 518, 525, 79 P.3d 1154 (2003).

*State v. Haney*, 125 Wash. App. 118, 123, 104 P.3d 36, 39 (2005).

Another way the appellate courts have stated it, is that errors of law are always an abuse of discretion:

A trial court abuses its discretion when its decision or order is manifestly unreasonable, exercised on untenable grounds, or exercised for untenable reasons.<sup>9</sup> Untenable reasons include errors of law.<sup>10</sup>

*Council House, Inc. v. Hawk*, 136 Wash. App. 153, 159, 147 P.3d 1305, 1307 (2006). This appeal addresses errors of law, as well as errors of fact.

**Errors of Law of the Trial Court on 12/6/18:**

**B. 1 - Error of Law #1 – Adding Facts to the File:** None of the facts were before the court commissioner on 11/28/18, and therefore the 12/3/18 declaration of Mr. Dudley (CP: 57-60) should have been stricken as to factual allegations and limited to its legal arguments. The revising judge does not have the option to add facts to the file on revision. *Perez v. Garcia*, 148 Wash. App. 131, 138, 198 P.3d 539, 542–43 (2009), and see *Marriage of Balcom & Fritchle*:

“Generally, a superior court judge's review of a court commissioner's ruling, pursuant to a motion for revision, is limited to the evidence and issues presented to the commissioner.” *Id.* at 993, 976 P.2d 1240. The superior court has

the authority to review the records of the case, and the findings of fact and conclusions of law entered by the court commissioner. RCW 2.24.050. “In an appropriate case, the superior court judge may determine that remand to the commissioner for further proceedings is necessary.” *Moody*, 137 Wash.2d at 992, 976 P.2d 1240.

The superior court erred by considering additional evidence. We reverse and remand to permit the superior court to conduct a review limited to the evidence before the commissioner. The superior court has the authority to issue a decision based on the evidence before the commissioner or, if appropriate, may remand this matter to the commissioner for further proceedings.

*In re Marriage of Balcom & Fritchle*, 101 Wash. App. 56, 59–60, 1 P.3d 1174, 1176 (2000), *publication ordered* (June 20, 2000) (emphasis added).

## **B.2 – Errors of Law #2 – Applying the Notice of Disqualification**

**Process to Commissioners:** There is no right to disqualify a commissioner, as the right of revision is the proper relief. *State v. Espinoza*, 112 Wash. 2d 819, 774 P.2d 1177 (1989); *Matter of Marriage of Lyle*, 199 Wash. App. 629, 398 P.3d 1225 (Div. 3 2017). The revision judge, on 12/6/18, described a “standing Notice of Disqualification” procedure, rooted in no rule or publicly available document.

If there is some un-written, standing recusal order based upon some alleged conflict of interest, there needs to be a sufficient basis in evidence. *Williams & Mauser Ins. Brokers, Inc. v. Chapple*, 11 Wash. App. 623, 626–27, 524 P.2d 431, 434 (1974) (a judge has no right to recuse himself or herself in the absence of a valid reason).

No properly-admitted basis in law or fact exists for reassigning the commissioner in this case, nor for sanctioning inquiry into the reassignment.

Even if there is some unwritten local rule that allows a Notice of Disqualification of Commissioners, local rules may not contradict state rules and statutes. *Chaffee v. Keller Rohrback LLP*, 200 Wash. App. 66, 75–77, 401 P.3d 418, 423–24 (2017)

### **C. Abuse of Discretion Standard**

There are two decisions under review here: (a) The re-assignment of the commissioner by an un-written local procedure that the trial judge found, on revision, to be essentially a “Notice of Disqualification” process, and (b) sanctions were granted against Mr. Mason for seeking the legal basis of the 11/28/18 reassignment on revision. Sanctions are addressed first.

#### **1. Sanctions are Reviewed for An Abuse of Discretion**

The standard for reviewing the sanctions against Mr. Mason is abuse of discretion:

Decisions to impose sanctions are reviewed for abuse of discretion.<sup>17</sup> It is important that sanctions not be used to impair the defendant's presentation of evidence when a liberty interest is at issue.<sup>18</sup> But a trial court may exclude testimony where there is a showing of intentional or tactical nondisclosure, willful violation of a court order, or other unconscionable conduct.<sup>19</sup>

*Henrickson v. State*, 92 Wash. App. 856, 865, 965 P.2d 1126, 1131 (1998), *aff'd sub nom. Det. of Henrickson v. State*, 140 Wash. 2d 686, 2 P.3d 473 (2000) (emphasis added, footnotes omitted).

## 2. Sanctions Require Proper Findings

An award of sanctions requires proper findings of facts and a legal basis for the sanctions. *Biggs v. Vail*, 124 Wash.2d 193, 197, 876 P.2d 448 (1994). As the *Biggs* court stated:

Finally, in imposing CR 11 sanctions, it is incumbent upon the court to specify the sanctionable conduct in its order. The court must make a finding that either the claim is *not* grounded in fact or law and the attorney or party failed to make a reasonable inquiry into the law or facts, *or* the paper was filed for an improper purpose. CR 11. *See also Bryant*, at 219–20, 829 P.2d 1099. In this case, there were no such findings.

Accordingly, we must remand this case once again to the trial court to: (1) make explicit findings as to which filings violated CR 11, if any, as well as how such pleadings constituted a violation and (2) impose an appropriate sanction for any such violation, which *may* include the amount of Vail's attorney fees incurred in responding specifically to the sanctionable conduct.<sup>3</sup> The burden is on the movant to justify the request for sanctions.

*Biggs v. Vail*, 124 Wash. 2d 193, 201–02, 876 P.2d 448, 453–54 (1994).

In reversing a fee award, Division III wrote, in *Dexter v. Spokane Cty. Health Dist.*:

A decision to impose CR 11 sanctions is discretionary. *Biggs*, 124 Wash.2d at 197, 876 P.2d 448. If an appellate panel cannot ascertain what reasons prompted a trial court's ruling, it is impossible to determine whether the ruling is based on tenable grounds or is manifestly

unreasonable. See *Coggle*, 56 Wash.App. at 508, 784 P.2d 554; *Doe*, 55 Wash.App. at 112, 780 P.2d 853. The order imposing sanctions recites only that fees are awarded as a sanction. The order does not even reference CR 11, although the parties agree this is the predicate relied upon. More than one theory might arguably support the award. This court must know which one was relied upon to effectively review the decision.<sup>3</sup> *Biggs*, 124 Wash.2d at 201, 876 P.2d 448; *Doe*, 55 Wash.App. at 111-12, 780 P.2d 853.

*Dexter v. Spokane Cty. Health Dist.*, 76 Wash. App. 372, 377, 884 P.2d 1353, 1356 (1994). And in Footnote 3 to the decision, this portion of *Biggs* was stated for emphasis:

... *Biggs* is explicit in stating “it is incumbent upon the court to specify the sanctionable conduct in its *order*.” (Italics ours.) 124 Wash.2d at 201, 876 P.2d 448.

*Dexter v. Spokane Cty. Health Dist.*, 76 Wash. App. 372, 377, 884 P.2d 1353, 1356 (footnote 3) (1994) (emphasis in the original).

**Application of *Biggs* and *Dexter*:** The sole statement of the court on the record was that Mr. Mason was to pay Mr. Dudley \$300 “for having to be here today.” (CP: 96 at line 24 to CP: 97 at line 1)

In fact, any fee award requires a sufficient basis in fact and law, not just sanctions, as the court said in *Eagle Point Condo. Owners Ass'n v. Coy*:

To withstand appeal, a fee award must be accompanied by findings of fact and conclusions of law to establish a record adequate for review. *Mahler v. Szucs*, 135 Wash.2d 398, 433–35, 957 P.2d 632 (1998); see also *Brand*, 139 Wash.2d at 664, 674,

989 P.2d 1111. On this topic the court's findings and conclusions in this case are entirely conclusory.

*Eagle Point Condo. Owners Ass'n v. Coy*, 102 Wash. App. 697, 715, 9 P.3d 898, 909 (2000).

**D. Are Revisions Sanctionable, Since One Has a RIGHT to Revise?**

Is it an error of law to sanction a party for seeking a revision that is a right under the law? (Answer: Yes.)

As has already been noted, the reason that there is no right to a Notice of Disqualification of a commissioner is that there is a right of revision under RCW 2.24.050. *Matter of Marriage of Lyle*, 199 Wash. App. 629, 398 P.3d 1225 (Div. 3 2017).

Present counsel can find no legal authority that allows for sanctions for exercising the right of revision. It would be odd that exercising a statutory right under RCW 2.24.050 could be subject to sanctions, especially as that right of revision has its origins in the State Constitution, as the court stated in 1926:

Section 23 of article 4 of the Constitution provides:

‘There may be appointed in each county, by the judge of the superior court having jurisdiction therein, one or more court commissioners, not exceeding three in number, who shall have authority to perform like duties as a judge of the superior court at chambers, subject to revision by said judge, to take depositions and to perform such other business connected with the administration of justice as may be prescribed by law.’

It will be observed that by this section of the Constitution the court commissioner has power to perform the same duties as a judge of the superior court at chambers, 'subject to revision by said judge' who had referred the case to him.

*State v. Griffiths*, 137 Wash. 448, 449–50, 242 P. 969, 969 (1926).

**Conclusion on Right to Revision:** There is no legal authority that sanctions are appropriate on a motion to revise a commissioner's decision, and if some case law to that effect could be found, it would violate the Washington State Constitution, and be contrary to RCW 2.24.050.

#### V. "FACTUAL FINDINGS" SPECIAL SECTION

It is odd to list objections to Judge Ellen Clark's findings of fact as no additional facts were properly before her beyond the conclusory "conflict of interest" statement in the commissioner's 11/28/18 order (CP: 30). Any additional facts must come into the judge on revision by first being remanded to the commissioner to gather those facts. See *Perez v. Garcia*, 148 Wash. App. 131, 138, 198 P.3d 539, 542–43 (2009), and see *Marriage of Balcom & Fritchle*:

"Generally, a superior court judge's review of a court commissioner's ruling, pursuant to a motion for revision, is limited to the evidence and issues presented to the commissioner." *Id.* at 993, 976 P.2d 1240. The superior court has the authority to review the records of the case, and the findings of fact and conclusions of law entered by the court commissioner. RCW 2.24.050. "In an appropriate case, the superior court judge may determine that remand to the commissioner for further proceedings is necessary." *Moody*, 137 Wash.2d at 992, 976 P.2d 1240.

The superior court erred by considering additional evidence. We reverse and remand to permit the superior court to conduct a review limited to the evidence before the commissioner. The superior court has the authority to issue a decision based on the evidence before the commissioner or, if appropriate, may remand this matter to the commissioner for further proceedings.

*In re Marriage of Balcom & Fritchle*, 101 Wash. App. 56, 59–60, 1 P.3d 1174, 1176 (2000), *publication ordered* (June 20, 2000) (emphasis added).

It was an error of law for the trial court to consider additional facts on 12/6/18, including the facts in the 12/3/18 declaration of Matthew Dudley (CP: 57-60).

That said, to avoid “unchallenged facts” being verities on appeal, the following factual findings of the court in the transcript of 12/6/18 (CP: 89-97) are challenged:

Before argument of counsel, the trial judge issued a ruling that Commissioner Ressa would not be reassigned to the case (CP: 85-86), and to that extent, revision was denied before oral argument. This was reiterated at CP: 92 at lines 24-25 through CP: 93 at lines 1-5.

The trial court’s findings of fact and conclusions of law are addressed page-by-page:

CP 85: Lines 10-15: The court presents a proper conclusion of law that one cannot apply a Notice of Disqualification to a commissioner.

CP: 85: Lines 16-19: The court makes a factual statement in error: “Mr. Dudley did not seek reassignment of a commissioner.” There is no basis in the record for this statement. Or, if Mr. Dudley’s declaration is accepted into the record in violation of case law, he asserts a conflict of interest as his reason for seeking reassignment. However, many conflicts of interest exist between commissioners and former partners, former clients, etc., and re-assignment is not routine, and there is no articulated rule or process by which motions may be made and a record of the basis of re-assignment created.

CP: 85, lines 20-23: Although this fact was not in the file, it is not challenged when Judge Clark states that commissioners are randomly assigned at filing. This is done to prevent “commissioner shopping.”

NOTE: The random assignment was made on 10/22/18 (CP: 10-11), when Mr. Dudley filed the Petition (CP: 1-6). No re-assignment was immediately made, as the now-alleged “conflict of interest” apparently existed on that date (10/22/18). No reassignment was made when the objection to the mis-set hearing was made on 11/19/18 (CP: 25). Only nine more days later was the case re-assigned, after the *Objection to Any Change of Commissioner without Motion, Notice or Hearing* was filed and served on 11/28/19 (CP: 31-32). That is why Commissioner High-Edward is not mentioned in the Objection, as Mr. Gulseth was unaware of the re-

assignment at that time, except from the emerging context of Mr. Dudley refusing to properly note his hearing on the assigned commissioner's day. CP: 85 line 24 to CP: 86 line 13: Error is assigned to these findings as there is no evidence in the file to support this act. There is no basis in law for this act. There is nothing unique about Mr. Dudley's conflicts compare to those of other attorney's and commissioners, or there should at least be a procedure articulated in the rules by which all parties could seek to remove commissioners for conflicts. There is no evidence that this act was a recusal, as Commissioner Ressa could have recused herself.

There are eight family law commissioners, and this process should be made formally available to all, if it is allowable under *Matter of Marriage of Lyle*, 199 Wash. App. 629, 398 P.3d 1225 (Div. 3 2017), and the other cases cited, above.

CP: 91, line 2-3: The trial judge makes an implicit finding of notice of Commissioner Ressa's recusal, saying, when addressing Andrew Gulseth's filings of 11/29/18, that those were filed (says the court): "Even though you knew at that point that there was already a recusal." *Two assignments of error of fact* are made here: One, there is no evidence of a recusal, as that would be an order signed by Commissioner Ressa recusing herself. Two, the "already knew" erroneously implies notice of fewer than

24 hours, from 11/28 to 11/29, and erroneously implies knowledge of a “recusal” when there is no evidence of a recusal.

CP: 92, lines 5-7: First, there is an error of law as the trial court continues to describe allegations appropriate to a Notice of Disqualification of a Judge, and second, the court then references it as a recusal when there is no evidence of a recusal. The reassignment of the commissioner continues to be referenced as a substantive act based upon the equivalent of affidavit of prejudice/notice of disqualification facts.

NOTE: At CP: 95, lines 7 to 21, Mr. Dudley also presents a Notice of Disqualification rationale for his legal argument about why cases should be reassigned from Commissioner Ressa to another commissioner, and he states that he should not have to bring such a motion on each case.

However, bringing the motion would (a) provide a basis in law and fact if such a local procedure of disqualification of commissioners could be harmonized with state law, and (b) provide notice to the other party as to when hearings were like to be set, and/or that a re-assignment of commissioner was pending. Also, such motions of disqualifications of commissioners (c) should be available to all parties, and should therefore be a written rule and procedure knowable by all, and open to use by all.

CP: 96 at lines 5-18: The trial court finds that “nobody filed an affidavit of prejudice,” and yet the arguments by both the court and Mr. Dudley are

fully akin to the Notice of Disqualification procedure. This backdoor factual finding is contradicted by the court's own rationale.

CP: 96-97: Fees were ordered with no basis in law or fact.

## **VI. CONCLUSION AND RELIEF REQUESTED**

The court is asked to re-assign Commissioner Ressa to Mr. Gulseth's case. The court is asked to determine if a local rule could institute a Disqualification of Commissioner procedure under state law. The court is asked to require that any such procedure of disqualification require a written rule and findings on the record to apply such a procedure. And the court is asked to reverse the sanctions against Mr. Mason, as not well-grounded in fact or law, and because sanctions may not be granted for exercising the right to revision.

Respectfully submitted on 4/16/19,



---

Craig A. Mason, WSBA#32962  
Attorney for Andrew Gulseth, and  
On His Own Behalf

W. 1707 Broadway, Spokane, WA 99201  
509-443-4681  
[masonlawcraig@gmail.com](mailto:masonlawcraig@gmail.com)

Appendix begins next page:

**APPENDIX:**

**Article IV, Section 23 of the Washington State Constitution:**

There may be appointed in each county, by the judge of the superior court having jurisdiction therein, one or more court commissioners, not exceeding three in number, who shall have authority to perform like duties as a judge of the superior court at chambers, subject to revision by said judge, to take depositions and to perform such other business connected with the administration of justice as may be prescribed by law.

**RCW 2.24.050:**

**Revision by court.** All of the acts and proceedings of court commissioners hereunder shall be subject to revision by the superior court. Any party in interest may have such revision upon demand made by written motion, filed with the clerk of the superior court, within ten days after the entry of any order or judgment of the court commissioner. Such revision shall be upon the records of the case, and the findings of fact and conclusions of law entered by the court commissioner, and unless a demand for revision is made within ten days from the entry of the order or judgment of the court commissioner, the orders and judgments shall be and become the orders and judgments of the superior court, and appellate review thereof may be sought in the same fashion as review of like orders and judgments entered by the judge.

**Spokane County Local Rule, LAR 0.7:**

***LAR 0.7 REVISION OF COURT COMMISSIONER'S ORDER OR JUDGMENT***

(a) Revision by Motion and Notice. A revision motion shall be filed on a form approved by the Court, with the Clerk of the Court within 10 days after entry of the order or judgment as provided in RCW 2.24.050. The motion must specify each portion of the Order for which revision is sought. The motion shall designate a hearing date approved by the court no later than 30 days after the filing of the motion. The Motion for Revision shall also be noted in accordance with Civil Rules 6 and 7. A copy of the motion for revision shall be served upon the other parties, or their counsel, if represented, within 10 days after the entry of the order or

judgment and at least five court days before the hearing date. An additional three days notice shall be required if service is by mail.

*Amended effective 09/02/14 Amended effective 6/29/17*

(b) **Transcript Required.** At least two days prior to the hearing on the motion, the moving party shall file a transcript of the oral ruling of the Court Commissioner. The moving party shall obtain the transcript at their expense. A copy of the transcript shall, at least two days before the hearing, also be served upon the other parties and furnished to the Judge who will hear the motion. A transcript will not be required if the matter was decided by letter decision, or if no oral decision was rendered. The transcript shall be double spaced in at least eleven point type. The person preparing the transcript shall comply with GR 35 and be listed on the transcriptionist list approved by the court.

*Amended effective 09/02/14 Amended effective 6/29/17*

(c) **Assignment and Procedure.** Revision motions in cases that have been assigned will be heard by the assigned judge. Family Law revision hearings involving non-assigned cases will be heard by the Chief Family Law Judge. Non-Family law revision hearings will be heard by the Presiding Judge. The Juvenile Judge will hear all Juvenile Court revision hearings. A Judge required by this rule to conduct the revision hearing, may, in the efficient administration of justice, assign the matter to another Judge.

*Amended effective 9/1/12*

(d) **Bench copies.** The moving party shall provide a copy of the motion to revise to the Judge hearing the motion when the motion is filed. For a Family Law matter, the moving party shall also, no later than noon two days prior to the hearing, provide to the Judge copies of all pleadings and materials considered by the Court Commissioner as set forth on the Motion Status Report submitted at the time of the Court Commissioner's hearings. If the moving party believes that the Court Commissioner considered any pleadings or materials in addition to those noted on the Motion Status Report, the moving party must also provide those pleadings and materials to the Judge by noon two days prior to the hearing. If the non-moving party believes the Court Commissioner considered pleadings or materials in addition to those noted on the Motion Status Report which have not been provided by the moving party, the non-moving party must provide copies of those materials to the Judge by noon on the day prior to the hearing.

If no Motion Status Report was submitted at the time of the Court Commissioner's hearing, the moving party shall provide copies of all pleadings and materials considered by the Court Commissioner to the Judge no later than two days prior to the hearing. If the non-moving party believes the Court Commissioner considered additional materials which have not been provided, the non-moving party shall provide copies of those materials to the judge by noon on the day prior to the hearing.

The Judge will consider the bench copies provided, and may decline to review any pleadings or materials which were not provided.

*Effective 06/29/17*

(e) Hearing Procedure. Hearings before the Family Law Judges shall be scheduled at 1:30 p.m. on Thursdays. Hearings before other judges shall be set pursuant to motion procedures for each department. The Juvenile Judge shall determine the setting of motions in that Court.

The hearing will be on the factual record made before the Commissioner. Argument will be up to 10 minutes per side.

The moving party shall notify the Judicial Assistant to the Judge by noon, two days before the hearing date, as to the ready status of the motion. The moving party shall notify the other parties by noon two days prior to the hearing that they have called the motion ready for hearing to the Court. Failure to comply with this rule will result in the motion being stricken and the Court Commissioner's order will stand, unless the Judge hearing the motion finds good cause to allow the motion to be rescheduled. The non-moving parties may be granted sanctions if they appear at the time set for hearing and the matter is stricken due to non-compliance with the rule by the moving party.

If the non-moving party has any objection to the hearing or will be seeking a continuance, that party must notify the assigned Judge and all other parties of that request in writing by noon the day before the hearing.

The Judge scheduled to conduct the hearing shall consider any requests for continuance. If the moving party fails to appear at the time set for hearing, the Court may enter an order denying the motion. Absent good cause, a party seeking revision shall be deemed to have abandoned the motion if they fail to calendar the case and obtain a hearing within 60 days of the filing of the motion. Multiple orders of continuance

shall not be freely granted. The agreement of the parties, standing alone, may not be deemed sufficient basis for a continuance.

*Amended effective 09/02/14 Amended effective 6/29/17*

(f) Emergency Motions. If a party can demonstrate exigent circumstances, an emergency motion may be presented to the Presiding Judge, upon reasonable notice to the opposing parties, without the necessity of meeting the requirements set forth in the above sections of this rule. The Presiding Judge may determine that exigent circumstances do not justify an emergency hearing. In that event, the moving party shall follow the procedures set forth above.

*Amended effective 09/02/14 Amended effective 6/29/17*

(g) Stay. The filing of a Motion for Revision does not stay the Court Commissioner's order. The moving party may seek a stay of the order from the Judge expected to conduct the revision hearing as set forth in this rule. A request for stay may also be addressed to the Court Commissioner who issued the judgment or order.

#### **Spokane County Local Rule, LSPR 94.04:**

##### **LSPR 94.04 - Family Law Action**

(a) Deleted

Amended Effective 06/28/18

(1) Applicability

(1) These rules apply to matters filed under RCWs 26.09, 26.10, 26.12, 26.16, 26.18, 26.19, 26.21, 26.21A, 26.23, 26.26, 26.27 and 26.34 and replaces former LSPR 94.04

(2) For further guidance on policies and procedures for family law cases in Spokane County Superior Court, please the court's website at <http://www.spokanecounty.org/1397/Family-Court> and visit the Family Law Center in Room 200 of the Spokane County Superior Court.

Amended Effective 06/28/18

**(2) Unified Family Court - Upon the filing of a Petition for Dissolution/Invalidity/Legal Separation, Petition to Establish a Parenting Plan/Residential Schedule, a Petition for Non-Parental Custody, the Clerk will assign the matter to a Court Commissioner and a Superior Court Judge.**

**a. Parties are required to set all hearings before the assigned Judicial Officer(s).**

**b. If the matter needs to be reassigned due to conflict, recusal or unified family court principles, an order will be entered by the Court.**

**c. If a party is seeking reassignment of the Court Commissioner under (b) above, they must contact the Family Law Center for further instructions.**

**Amended Effective 06/28/18**

**(3) Mandatory Forms - Unless otherwise stated in these rules, court rules or statutes, the mandatory local and state family law forms shall be used. For a complete list of forms, please consult the court's website at <http://www.spokanecounty.org/1397/Family-Court> and the State's website at <http://www.courts.wa.gov>.**

**Amended Effective 06/28/18**

**(4) Automatic Temporary Orders - Court's Automatic Temporary Order. Upon the filing of a Petition for Dissolution/Legal Separation/Invalidity, Petition to Establish a Parenting Plan/Residential Schedule, and a Petition for Non-Parental Custody, the court on its own motion automatically issues a temporary order.**

**a. The court's automatic temporary order will not be entered in any law enforcement database.**

**b. This rule does not preclude any party from seeking any other restraining order(s) as may be authorized by law.**

**Amended Effective 06/28/18**

(5) Sharing the Children Seminar - Parties seeking a Parenting Plan or Residential Schedule shall follow LSPR 94.03.

Amended Effective 06/28/18

(6) Ex Parte - Parties and attorneys shall follow the court's ex parte policy.

a. The policy is available on the court's website and in the ex parte court.

b. Writs of Habeas Corpus form packets must be obtained in the ex parte court.

c. Final family law documents must be filled out completely and any needed JIS (Judicial Information System) check must be done at least 48 hours before submitting final documents to ex parte. Submission to ex parte is allowed only if permission from the assigned trial court is given.

d. See also Rule 19.

Amended Effective 06/28/18

(7) Family Law Motion Practice

a. This rule shall apply to all motions filed under the statutes listed in Local Rule 1, Applicability.

b. All filed documents shall be complete with GR 14.

c. If typed, documents shall be in 12 point or larger font.

d. Declarations by minors shall not be filed absent prior authorization from the court.

e. Motion time lines:

i. A responding party is entitled to 12 days notice of a motion hearing (including Saturdays, Sundays and legal holidays).

ii. The Response must be filed and served 7 days before the hearing (including Saturdays, Sundays and legal holidays).

iii. Any Reply must be filed and served 3 days before the hearing (excluding Saturdays, Sundays and legal holidays).

f. Page Limits

iv. Absent prior authorization from the court, the entirety of all declarations and affidavits in support of the motion(s), including reply, is limited to 15 total pages.

v. Absent prior authorization from the court, the entirety of all declarations and affidavits in response to the motion(s) is limited to 10 total pages.

vi. In Mandatory Forms that include declarations within the form, the declaration portion will count toward the page limits.

vii. Exhibits do not count toward the 15/10 page limit, but if the court is expected to review them, they do count toward whether the case must be called-in 2 days before the hearing per (g) below.

viii. Declarations and reports from Guardians ad litem and expert witnesses shall not count toward the page limits. If the court is expected to review them, they do count toward whether the case must be called-in 2 days before the hearing per (g) below.

ix. Page limits do not apply to Mandatory Forms without an included declaration, to the mandatory Financial Declaration, or legal memorandums/briefs that do not include a declaration.

x. If there is a written request to exceed the page limits, the parties must confer and schedule a time with the assigned Court Commissioner through the Family Law Coordinator. If the assigned Court Commissioner is not available, the Family Law Coordinator will inform the parties when and where to take their request.

xi. If more than one motion is to be heard at the same time, the page limits apply to the entire hearing not each individual motion.

**g. Extensive Reading and/or Time to Prepare Call-in Procedure:**

xii. If the total number of pages expected to be reviewed by the court equals or exceeds 20 pages (excluding Financial Declarations and Mandatory Forms without internal declarations and including legal memorandums/briefs and transcripts), the moving party shall notify the Family Law Center Main phone line and provide a copy of the signed mandatory local Joint Status Sheet by 4 p.m. 2 court days before the motion.

xiii. Each party shall provide bench copies of their pleadings to the court by the call-in deadline.

xiv. Failure to provide the phone notice, signed Joint Status Sheet and bench copies by 4 p.m., 2 court days before the motion, may result in the motion being stricken, continued, and/or sanctions ordered.

xv. Using this procedure does not guarantee that the motion will be heard on the date set if the court docket cannot accommodate it.

h. Absent prior authorization from the court, the parties shall not submit inappropriate or pornographic materials.

i. Motions shall be determined on written submissions only unless a prior motion to request oral testimony was granted.

j. Oral argument shall be limited to ten (10) minutes or less per party unless additional time is granted by the court.

k. Motions for temporary orders seeking both parenting and financial relief - even if under 20 pages – shall follow the "Time to Prepare" call in procedure under (g). Failure to do so may lead to the hearing being stricken, bifurcated or sanctions ordered.

l. A Joint Motion Status Sheet on the mandatory local form (available on the website and in the Family Law Center) shall be filled out completely and signed by all parties and submitted at the end of docket call. Failure to do so can result in the motion being stricken and/or sanctions to a party/attorney who refuses to sign or fails to cooperate with the signing. If a party is not cooperating with the filling out and signing of

the Joint Motion Status Sheet, the other party shall write on the form what the issue is and submit it to the court.

m. Each party shall provide bench copies of their documents to be considered by the court with the Joint Motion Status Sheet.

n. The court may assess terms, strike or continue motions, or may not consider pleadings if it finds a party has violated this rule.

o. Hearing times will be set by the court and the attorneys and parties shall follow the court's policy on appearance at hearings unless prior authorization is given.

Amended Effective 06/28/18

**(8) Paternity/Parentage**

a. All motions filed under Petition to Establish Parentage shall follow the motion procedure in Local Rule 7.

b. A trial court assignment shall be requested by filing the local Certificate of Readiness and Note for Paternity Trial Setting form together with proof of service. A copy shall be provided to the Family Law Center.

c. If no objection has been filed within 10 days (including Saturdays, Sundays and holidays), the Family Law Coordinator will assign the matter to a trial court or a Court Commissioner docket if the trial request can be accommodated on a Court Commissioner docket.

d. If an objection is filed, the court will notify the parties if there will be oral argument on the objection or they will receive notice that the matter has been assigned to a trial court or set for trial.

Amended Effective 06/28/18

**(9) Domestic Violence**

a. If there is pending family law action involving the same parties assigned to a Court Commissioner, effort will be made to schedule any RCW 26.50 hearing with that Court Commissioner. This can result in the

continuance of a hearing or the setting on a different docket. Parties shall inform any court reviewing a temporary order or setting a final hearing about the other action and about the Court Commissioner assignment.

b. If extensive reading is required, the court may have to continue a hearing if it does not have time to review the material. Using the procedure under Local Rule 7(g) is advisable.

Amended Effective 06/28/18

(10) Non-Parental Custody - Procedure

a. The mandatory local "Order on Non-Parental Custody" must be signed before final orders will be considered under a Petition for Non-Parental Custody or a Modification Petition requesting modification of a Non-Parental Custody Order.

b. An "Order on Non-Parental Custody" shall only be granted after the court has reviewed the CPS history, criminal history and JIS record or after a dependency court has placed the children in the care of the non-parental custody petitioner.

c. All parties must follow the policy and procedures for non-parental custody proceedings, including modifications, on the court's website. Instructions on the "Order on Non-Parental Custody" are included.

Amended Effective 06/28/18

(11) Financial Declarations - Any motion for financial relief and any response to a motion for financial relief requires the filing of a Financial Declaration on the mandatory state form.

a. Requesting a GAL or attorney fees, or responding to such a request, requires the filing of a Financial Declaration.

b. Failure to file financial documents for the motion hearing is a basis for the court to deny the request, continue the hearing, and/or impose sanctions.

Amended Effective 06/28/18

## (12) Trials

- a. Counsel and pro se parties must appear at a status conference with the assigned Judge, unless otherwise excused by the Court, with a completed Domestic Joint Case Status Report on the local mandatory form.
- b. If a case is not resolved by the time of the status conference, or if the status conference is not continued, a trial date will be set and a case scheduling order will be entered as long as all parties have been served and responded.
- c. In non-parental custody cases, a trial date will not be set unless an Order on Non-Parental Custody has been entered. See Rule 10.
- d. Sanctions can be imposed for a party or an attorney's failure to follow the court's scheduling order and its deadlines.
- e. Any request for financial relief, including but not limited to issues of attorney fees, GAL fees, spousal maintenance and child support, and any response to such request requires the submission of a completed and current Financial Declaration, on the mandatory state form, as an exhibit for trial. Failure to submit the financial declaration is a basis for the court to grant or deny the request, continue the trial and/or impose sanctions.
- f. Any request for a Parenting Plan or Residential Schedule or any response to such request requires the submission of a completed and current proposed Plan or Schedule, on the mandatory state forms, as an exhibit for trial.
- g. Any request for child support or a response to such request requires the submission of a completed and current proposed child support worksheet, on the mandatory state forms, as an exhibit for trial.
- h. Parties are required to submit the original and a bench copy of exhibit notebooks to the trial department no later than noon on the Wednesday before trial. A copy shall also be submitted to the opposing party or counsel.

Amended Effective 06/28/18

(13) Child Support/Maintenance Modifications

a. Either party, after the filing of the response, completed worksheets (if applicable), an asset/liability list (if applicable) and financial declarations, may file a Request to Schedule a hearing using the mandatory local form. The form can be found on the court's website or purchased in the Spokane County Bar Association office.

i. A copy of the Request to Schedule must be given to the Family Law Coordinator.

ii. There must be proof of service of the request on the opposing party.

iii. If a party objects to the scheduling of the hearing, within 10 days of notice (including Saturday, Sundays and holidays) of the request, the objecting party must clearly set forth the objection and set a hearing in the ex parte Department with 5 days notice (excluding Saturdays, Sundays and holidays). If the objection is denied, an order directing the Family Law Coordinator to set the hearing will be issued.

b. If no objection has been filed within 10 days of notice of the Request to Schedule a hearing (including Saturdays, Sundays and holidays), the Family Law Coordinator will schedule the hearing and send notice of the date and time to the parties at the addresses provided in the court file.

c. The hearing shall be confirmed per the policy of the Family Law Center available on the court's website. Hearings not confirmed shall be stricken. Confirming a hearing certifies that the proposed worksheets (if applicable) and supporting documents have all been filed.

d. Hearings will be decided on declarations only, unless in the court's discretion, oral testimony is allowed.

e. If a party is seeking an Order Authorizing Oral Testimony, that motion shall be filed and scheduled in the ex parte Department with 5 days notice (excluding Saturdays, Sundays and holidays) and at least 10 days

(including Saturdays, Sundays and holidays) before the scheduled modification hearing. If the motion for Oral Testimony is granted, a copy of the Order must be delivered to the Family Law Coordinator. The court may continue the hearing if the original setting does not allow time for oral testimony.

f. Motions for temporary child support under this section will only be permitted if there is a change in obligor or if extraordinary circumstances justify temporary relief.

g. Page limit rules and extensive reading/time to prepare rules per Local Rule 7 apply to Child Support and Maintenance Modification hearings.

h. Each party shall provide bench copies of their documents to be considered by the court.

Effective 06/28/18

**(14) Modification of Parenting Plan/Residential Schedule/Custody - Adequate Cause Hearing**

a. Motions for adequate cause of a major modification shall follow the "Time to Prepare" call in procedure under Local Rule 7(g). Failure to do so may lead to the hearing being stricken, bifurcated or sanctions ordered.

b. If the court enters an Order Granting Adequate Cause on a Petition for Modification of a Parenting Plan/Residential Schedule or a Petition for Modification of a Non-Parental Custody Order, a copy of the Order must be given to the Family Law Coordinator by the prevailing party.

c. The Family Law Coordinator will assign a Major Parenting Plan/Residential Schedule Modification or Non-Parental Custody Modification case to a Family Law Judge upon the receipt of the adequate cause order only if there is a formal Response to the Petition for Modification.

d. If the court finds that there is adequate cause for a minor modification or an adjustment, the court will, in its discretion,

i. Order the case assigned to a Family Law Judge for trial if an evidentiary hearing with witnesses is necessary and/or the issues need more time than the family law motion docket can accommodate; or

ii. Order the case be concluded on the assigned Court Commissioner's family law motion docket on declarations only and set the final hearing date within the adequate cause order.

Effective 06/28/18

(15) Relocation -

a. Trial Court Assignment

iii. The party filing a Notice of or Objection to Relocation must provide a copy to the Family Law Coordinator.

iv. If final Orders on Relocation have not been entered within 30 days of filing the Notice or the Objection or the hearing on temporary relocation has been held, the matter shall be assigned to a Family Law Judge for trial.

b. Motions to permit or restrain a temporary relocation shall be set on the assigned Court Commissioner's family law docket.

c. Motions to permit or restrain a temporary relocation shall follow the "Time to Prepare" call in procedure under Local Rule 7(g). Failure to do so may lead to the hearing being stricken, bifurcated or sanctions ordered.

d. All motions to permit or restrain a temporary relocation shall be called in per the procedure in Rule 7 even if the total pages to be reviewed is less than 20 pages.

Effective 06/28/18

(16) Parenting Conference - Mandatory Parenting Conference

a. If a GAL has been appointed, the parties are required to attend a parenting conference that is scheduled by the Guardian Ad Litem.

b. Attendance at mediation satisfies this requirement if the GAL participated in the mediation.

c. The court can relieve the parties of this requirement per Local Rule 17(b).

Effective 06/28/18

(17) Mediation

a. All contested matters shall be mediated prior to trial. Parties shall follow the court's scheduling order deadlines or sanctions may be imposed.

b. A motion to be excused from mandatory mediation may be filed and set on the trial Judge's motion docket. The Judge may decline to require mediation if,

i. a domestic violence protection order, no-contact order or other restraining order involving the parties has been entered by a court;

ii. the court finds that domestic abuse has occurred between the parties and that such abuse would interfere with mediation; or

iii. for good cause otherwise shown.

c. The court may continue a trial on the basis of a party not mediating in good faith or refusing to attend mediation.

Effective 06/28/18

(18) Court Commissioner Reconsideration and Presentments - Any party or attorney seeking the reconsideration of a Court Commissioner's decision or a Presentment of order after a Court Commissioner's hearing, must provide a copy of the motion or Notice of Presentment to the Family Law Center.

a. No hearing will be set unless authorized by the Court Commissioner.

b. The Family Law Coordinator will send a letter to the opposing party at the address provided in the court file regarding timelines for a response.

c. Counsel shall refrain from arguing the motion in letter form. Any letters to the court must be filed in the court file by the attorney/party writing the letter.

d. The Court Commissioner will issue a written decision unless notice is sent that there will be a hearing.

e. If either party files a Motion for Revision from the same hearing, the Court Commissioner may decline to rule on a Motion for Reconsideration.

Effective 06/28/18

**(19) Non-Contested Dissolutions**

a. Final Orders may be presented for entry to the assigned Family Law Judge or to the ex parte Department, if the Judge allows.

b. Unless requested by the court, oral testimony will not be required provided the Findings of Fact are verified by a party.

c. Self-represented parties should utilize the non-contested dissolution docket and have their pleadings reviewed by the courthouse facilitator. Failure to do so can result in a delay in the court's ability to finalize the case.

Effective 06/28/18

**(20) Miscellaneous - Reserved**

Effective 06/28/18

Division III No. 365492

COURT OF APPEALS, DIVISION III  
OF THE STATE OF WASHINGTON

**Andrew Gulseth (and counsel), Appellant**

**v.**

**Brita Gulseth, Respondent**

---

**DECLARATION OF SERVICE**

---

I, Lori Mason, declare under penalty of perjury under the laws of the State of Washington, that on April 15, 2019, I provided, via electronic filing, a copy of Appellant's Brief to:

**Matthew J Dudley**      [mjdudley@cet.com](mailto:mjdudley@cet.com)

  
LORI MASON

MASON LAW  
Craig Mason  
1707 W. Broadway  
Spokane, WA 99201  
(509) 443-3681

# MASON LAW

April 15, 2019 - 1:42 PM

## Transmittal Information

**Filed with Court:** Court of Appeals Division III  
**Appellate Court Case Number:** 36549-2  
**Appellate Court Case Title:** In re the Marriage of: Brita Gulseth and Andrew Gulseth  
**Superior Court Case Number:** 18-3-02647-2

### The following documents have been uploaded:

- 365492\_Briefs\_20190415134129D3431991\_8523.pdf  
This File Contains:  
Briefs - Appellants  
*The Original File Name was Opening Brief.pdf*

### A copy of the uploaded files will be sent to:

- mjdudley@cet.com

### Comments:

---

Sender Name: Lori Mason - Email: masonlawlori@gmail.com

**Filing on Behalf of:** Craig A Mason - Email: masonlawcraig@gmail.com (Alternate Email: masonlawlori@gmail.com)

Address:  
W. 1707 Broadway Ave.  
SPOKANE, WA, 99201  
Phone: (509) 443-3681

**Note: The Filing Id is 20190415134129D3431991**