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Court of Appeals
Division III
State of Washington
7/16/2020 9:56 AM

Court of Appeals, Division III No. 368149-III

Franklin County Superior Court No. 16-3-50269-11

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

ANDREA J. CLARE,

Respondent / Cross-Appellant.

v.

KEVIN P. CLARE,

Appellant / Cross-Respondent,

EXCERPTS TO BRIEF OF RESPONDENT / CROSS-APPELLANT

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APPENDIX “A”

FILED
Court of Appeals
Division III
State of Washington
6/19/2019 3:42 PM

FILED
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2016 AUG 11 PM 2:01
MICHAEL J. KILLIAN
BY MML DEPUTY

16-3-50269-11
PTDSS
Petition for Dissolution
513940

Superior Court of Washington, County of FRANKLIN

In re the marriage of: Petitioner: ANDREA J. CLARE And Respondent: KEVIN P. CLARE	Case No. Petition for Divorce (Dissolution) (PTDSS)

Petition for Divorce (Dissolution)

1. Information about the parties

Petitioner lives in BENTON, WA.

Respondent lives in FRANKLIN, WA.

2. Information about the marriage *(check all that apply):*

We were married on 6/25/2005 in Richland, WA.

We began living in separate households on February 6, 2016.

3. Request for divorce

This marriage is irretrievably broken. I ask the court to dissolve our marriage and find that our marital community ended on 2/6/2015, which is when one of us moved to a separate household.

4. Jurisdiction over the spouses

The court has jurisdiction over the marriage because at least one of the spouses lives in Washington State, or is stationed in this state as a member of the armed forces. (*Check one):*

The court **has** personal jurisdiction over the Respondent because *(check all that apply)*:

The Respondent lives in Washington State.

The Petitioner and Respondent lived in Washington State while they were married, and the Petitioner still lives in this state or is stationed in this state as a member of the armed forces.

The Petitioner and Respondent may have conceived a child together in this state.

5. Is one of the spouses pregnant?

No

6. Children of the marriage

My spouse and I have the following children together who are still dependent *(only list children you and your spouse have together, not children from other relationships)*:

Child's name	Age
1. KJC	7
2. CPC	6
3. CCC	2
4.	
5.	
6.	

a. Children's home/s

During the past 5 years have any of the children lived:

- on an Indian reservation,
- outside Washington state,
- in a foreign country, or
- with anyone who is not a party to this case?

No. *(Skip to **b.**)*

b. Other people with a legal right to spend time with a child

Do you know of anyone besides you and your spouse who has (or claims to have) a legal right to spend time with any of the children?

No. *(Skip to **c.**)*

c. Other court cases involving a child

Do you know of any court cases involving any of the children?

No.*(Skip to **7.**)*

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7. Jurisdiction over the children (RCW 26.27.201 – .221, .231, .261, .271)

The court **can** approve a *Parenting Plan* for the children my spouse and I have together because *(check all that apply; if a box applies to all of the children, you may write "the children" instead of listing names):*

Home state jurisdiction – Washington is the children's home state because:
The children lived in Washington with a parent or someone acting as a parent for at least the 6 months just before this case was filed, or if the children are less than 6 months old, they have lived in Washington with a parent or someone acting as a parent since birth.

The children do not have another home state.

8. Parenting Plan

I ask the court to order a *Parenting Plan* for the children my spouse and I have together. I will file and serve my proposed *Parenting Plan* (form FL All Family 140) *(Check one):*

[X] at the same time as this Petition.

9. Child Support

Court Order – I ask the court to order child support (including medical support) according to state law for the children my spouse and I have together. *(You can ask for a court order of child support even if DCS has already established an administrative order. The court order will replace the administrative order to the extent the court order is different.)*

I ask the court to order my spouse to pay his/her proportionate share of:

[X] Day care expenses

I ask the court to order that tax exemptions for our dependent children be divided as follows *(describe)*:

Tax exemptions for our dependent children be divided as follows *(describe)*:

Reserved

10. Children from other relationships

Neither spouse has children from other relationships who are still dependent.

11. Written Agreements

Have you and your spouse signed a prenuptial agreement, separation contract or community property agreement?

(Check one): [X] No. *(Skip to **12.**)*

12. **Real Property** (land or home)

I ask the court to divide the real property fairly (equitably), as the court determines:

13. **Personal Property** (possessions, assets or business interests of any kind)

We have already divided some of the personal property. There are additional items that need to be addressed.

I ask the court to divide the personal property fairly (equitably), as the court determines.

14. Debts

I ask the court to order each spouse to be responsible for the debts s/he incurred (made) after the date of separation.

I ask the court to make the following orders about debts *(check all that apply)*:

Each spouse is responsible for the debts that are now only in his/her own name.

Divide the debts fairly (equitably), as the court determines.

15. **Spousal Support** (maintenance/alimony)

Spousal support is **not** needed. Each party maintains a college or advanced degree and therefore each party has the ability to earn a living independent of the other.

16. Fees and Costs

No request.

17. Protection Order

Yes. *(You must file a Petition for Order for Protection, form DV-1.015 for domestic violence, or form UHST-02.0200 for harassment. You may file your Petition for Order for Protection using the same case number assigned to this case.)*

Important! *If you need protection **now**, ask the court clerk about getting a Temporary Order for Protection.*

18. Restraining Order

Do you want the court to issue a Restraining Order as part of the final orders in this case?

Yes. *Check the type of orders you want:*

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Do not disturb – Order the Respondent not to disturb my peace or the peace of any children listed in **6**, during my residential time.

Stay away – Order the Respondent:

Not knowingly to go or stay within 100 feet of my home, workplace, or school, or the daycare or school of any children listed in **6,** during my residential time.

Do not hurt or threaten – Order the Respondent:

- Not to assault, harass, stalk or communicate with me (other than for the children); and
- Not to use, try to use, or threaten to use physical force against me or the children that would reasonably be expected to cause bodily injury.

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

Important! *If you want a restraining order **now**, you must file a Motion for Temporary Family Law Order and Restraining Order (FL Divorce 223) or a Motion for Immediate Restraining Order (Ex Parte) (FL Divorce 221).*

19. Name change

No request.

20. Other requests, if any:

Order my spouse not to disparage me in the presence or vicinity of the children.
Order my spouse not to discuss any court matters with the children.

Petitioner fills out below:

I declare under penalty of perjury under the laws of the state of Washington that the facts I have provided on this form are true.

Signed at Richland, Washington on ~~July~~ Aug 11, 2016.

Petitioner signs here — ANDREA CLARE *Print name*

Petitioner's lawyer (if any) fills out below:

Petitioner's lawyer signs here — Andrea J. Clare 37889 *Print name and WSBA No.* — *Date*

Respondent fills out below if he/she agrees to join this Petition:

I, *(name):* KEVIN P. CLARE, agree to join this *Petition*. I understand that if I fill out and sign below, the court may approve the requests listed in this *Petition* unless I file and serve a *Response* before the court signs final orders. *(Check one):*

I ask the Petitioner to notify me about any hearings in this case. *(List an address where you agree to accept legal documents. This may be a lawyer's address or any other address.)*

1060 Jadwin Avenue, Suite 125	Richland	WA	99352
address	*city*	*state*	*zip*

*(If this address changes before the case ends, you **must** notify all parties and the court in writing. You may use the Notice of Address Change form (FL All Family 120). You must also update your Confidential Information Form (FL All Family 001) if this case involves parentage or child support.)*

_____	KEVIN P. CLARE	_____
Respondent signs here	*Print name*	*Date*

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MICHAEL J. KILLIAN
BY MML DEPUTY

16-3-50269-11
DCLR
Declaration/Affidavit
513960

Superior Court of Washington
County of FRANKLIN

In re the marriage of: Petitioner: ANDREA J. CLARE And Respondent: KEVIN P. CLARE	Case No. 16-3-50269-11 **DECLARATION OF ANDREA J. CLARE**

I, ANDREA J. CLARE, declare under penalty of perjury under the laws of the state of Washington that the following is true and correct:

1. I am the Petitioner in the above-captioned action, I am over the age of eighteen (18) and competent to testify based upon personal knowledge;

2. For the past 1.5 years, my husband has attempted to be a stay-at-home parent. It did not work well. He is all about himself. He had to be taken care of constantly. If he was upset (with me or just had a bad day with the kids), he demanded my time when I got home such that the kids didn't get attention until he felt better. He dominated our home life. Despite my efforts to promote structure and expectations, he refused to put the children on any kind of a schedule. He loathed commitments and preferred do things on the fly. If he was sick, he absolutely couldn't function. At the first sign of a sore throat/congestion I would go into work late and come home early so he could lie on the couch while I took care of him and the children. While I was at work he had his mother come over to help take care of him and the children. The children were

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not allowed to engage in activities. I pleaded with him to allow me to sign them up for various sports/activities over the years. He didn't want to be busy in the evenings with kid things because that was his time with me. Nevertheless, when they reached 3-4 years of age I enrolled them in swim lessons. I fought with him about it every session until they could sufficiently swim. I considered swimming a life skill. At some point, he made me do all the transporting since I was the one who committed. I had to leave work early, go home to get my son, get him ready, and take him to the lesson. Likewise, I signed our daughter up for piano lessons and purchased a piano. I researched and found a great instructor doing lessons out of her home. My husband refused to help her practice. I interfaced with the instructor to understand the assignments and encourage our daughter to learn an instrument. The entire time he complained we were wasting our money and time;

3. My husband controlled me. He would mentally and emotionally manipulate me in order to get his way. If he didn't like something he would get angry and lash out verbally towards me. He said horrible things no one should ever say, let alone to their spouse. Over time his control by manipulation worsened. He was also incredibly insecure. He struggled with my career in a male dominated industry. He allowed me to only have lunch with the men in my law office and only if he knew in advance. If I met a male client or another lawyer for lunch and he found out, he got angry. When he got angry or upset he would retaliate with verbal abuse especially when it came to his insecurity with other men. He would constantly go through my phone to observe all my communications (including my work email). The last few years he started tracking my phone so he would know where I was at any given moment. He checked on me by tracking my phone multiple times each day. When I was somewhere he didn't expect, he would text me and ask why. If I didn't answer fast enough, he would accuse me of cheating and berate me in repeated texts/voice messages and/or when I got home. If I left my phone at work, he would call the office, and if the receptionist couldn't confirm my whereabouts, he would load up all the children and drive by to see if my car was there. The fact that he *had* to do this caused

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his anger and resentment for me to grow. After I moved out, on one occasion he ask me why I got out of my co-worker's car and into mine after lunch. He had to be physically watching me (while taking care of our children at the same time). I was very uncomfortable when he confronted me about this as he was visibly upset and angry. The following day I asked how he knew this. He claimed an anonymous co-worker of his saw me and called him to report. He doesn't have any co-workers in his solo position nor have I met one. In the last few months, hoping to 'catch' me, he had someone follow me and my business partner around. My husband then personally delivered photographs of us (having coffee/lunch) to his wife at her place of professional employment. I understand he has done this on two occasions. I feel very threatened and unsafe knowing he is keeping me under surveillance after we have separated;

4. Given his behavior these last few months; I cannot adequately describe how he makes me feel in a declaration. I wanted to cease all contact with him so in April I stopped personally doing the exchanges. My mother has been doing all the pick-ups and drop-offs ever since. Since she is now out of town for a month, I have been using my friends and family members each week so I don't have to see him at all. I only communicate with him via text/email. In May, I hired a babysitter to provide child care during my weeks so as to minimize our exchanges/contact. When I informed him of this, he texted me "no", "this is not acceptable", and "God is watching;"

5. I wasn't able to appreciate his controlling behavior, emotional abuse, and deep seated insecurity until last year when I began seeing a counselor. As our marriage was failing, my counselor advised me to be more self-aware. She was highly concerned about my safety and the fact that I didn't appreciate my situation. Initially, I denied that he was capable of harming me, but she saw his actions as intentional, manipulative, and calculated. Just prior to my moving out, I observed the small room under the basement stairs (in which we used to store kid toys) had been transformed into a room that contained only photos of me covering the walls. The sight of this room concerned me and I reported it to my counselor. After I moved out, he

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came over to my apartment on 3 occasions in which he entered my residence by climbing up onto the hood of his suburban and opening the sliding glass door of my second story balcony. I was startled each time he was just there without me opening the door. One time when I went to pick up the children he and I were trying to discuss child support figures outside while the kids played inside. I showed him a worksheet I prepared on my phone. When I went inside to address a kid situation, he looked through my text messages and became enraged. As I came back out, he repeatedly started yelling at me: "get the fuck out of here right now." Before I could process what happened, he had gathered up all three children and threw them into my van. Since they were playing, none of them had shoes so I went inside to get their shoes. As I entered the house he yelled at me across the room: "I am so pissed right now I could pop you." For the first time and since I had been in counseling, I believed him. I immediately left frightened and shaking. The kids had never witnessed their dad so upset. They asked several questions I was unable to answer about their father's behavior;

6. My husband is not motivated to work and earn a living yet he is fully capable. Even after completing his Bachelors in Aeronautical Science (with a minor in air traffic control), he continued to work the night shift at PF Changs for years. Eventually he got a job as a crop duster and flew for 2 summers. He was fired in 2014 and he became severely depressed. He claims he can't take any medication for his mental health because of his pilot career. To assist him, I contacted a company he had mentioned before and inquired about openings. I acted like I was a pilot, found out they were hiring, and asked how to apply. I then told my husband, helped him with his resume/cover letter, and negotiate a salary after he was hired. He has worked for VDCI for the past 2 summers. Presently, he works 33 days per year, between April-August, but only a few hours each day he works. He recently boasted about the number of days he worked after checking his log book;

7. After I moved out, I told him he would have to support himself financially by finding full-time employment. Instead, he asked that I pay him what I would pay a babysitter so he could

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stay home. Since I do the finances I also told him we couldn't afford to keep the big house and pay my rent, utilities, and expenses. However, he really likes the $500,000 house. Though we only resided there for 1.5 years, he now thinks he is entitled to keep it. Before I left my apartment, we had agreed to sell the big home. We met with a realtor and had the carpets cleaned. My husband then changed his mind and refused to sign the listing agreement. He had earlier proposed one way for him to stay in the home would be to rent out a room and serve drinks night every other week. He will never be able to re-finance the home on his own. We have $130,000 in the home that if we sold, he could use to purchase a less expensive house. The current mortgage is $2,325/month and he only nets $2,000/month total from his current employment. His attorney told me a week ago that he was in agreement to sell the house again so I am seeking an order to make sure it happens.

8. My husband lacks accountability for his life and life choices. He believes he is a victim in everything. I made a difficult decision to move out and get away from him after being in a relationship for 19 years. Because he has 'lost' me his anger and contempt for me has increased exponentially. He has 'nothing to lose' as I have taken his comfortable life, his future, and everything he has ever known away. As a result, he seeks to punish me. He knew that Ben Dow and I have a horrible professional relationship (to put it lightly). My husband has heard me complain about Mr. Dow on numerous occasions. Hiring Mr. Dow was only done to send me a message. Worst of all, my husband started using our children to punish me. Using and manipulating our children to get to me shows he is willing to engage in a behavior pattern that constitutes emotional child abuse. He told my 5-year-old son that if I just moved back home, daddy wouldn't need to get a step-mommy. After moving from my apartment into a house, my son begged me to cancel my lease and come back to live with daddy. Later, my husband told our 5-year-old that we broke up because mommy doesn't love daddy more and that daddy has to get a step-mommy. Our older kids say that daddy has to start dating because he can't be alone. He goes on to tell them that he plans to have more kids with the new step-mommy and

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they will become their step-sisters/brothers. Most recently, my husband gave our 7-year-old daughter an old iphone with specific instructions to Facetime him. When I asked my daughter what the password was to access the phone, she told me that daddy told her not to tell mommy the password. At bedtime, I learned from both the older kids separately, that daddy wants them to Facetime him 4 times per day and anytime mommy has any visitors. When I asked why daddy needs to know who comes over, they reported that daddy just wants to make sure they are safe. I took the phone from my daughter and told her that mommy doesn't allow electronic devices, like a cell phone, in her home until they are 12 years old. The following day, my husband attended swim lessons (during my time) and had a private conversation with our daughter. I met my kids for lunch immediately after the lessons and our daughter said that daddy told her to find the phone so he could fix it such that she wouldn't need a Wi-Fi password from me to make it work. He also told her that she doesn't need to listen to me;

9. I want our children to have stability, structure, and expectations to ensure their future educational success and navigate through this difficult time. My husband is unable to provide structure or stability for them. He has proven this while he was home. During the marriage I was denied the ability to parent the way I desired. In the past 6 months my parenting as a single person has been very effective and rewarding. I have developed rules and boundaries that are respected in my home. The children know my expectations and willingly comply. They are thriving. I enforce bedtime by 8 pm, we have a routine, I require them to keep their rooms clean, put their dishes away, put dirty clothes where they belong, and I give them tasks which they perform. Last week my son told me that 'there are way more rules at mom's house than dad's house'. At their dad's house, I am aware that the kids stay up until 11 pm watching their Kindle Fires. Since their father never enforced rules or had expectations, the kids don't listen to him and he gets stressed. Last week I took the kids on a road trip to the Oregon coast. We had a great time. The children listened to me and got along very well. Several strangers commented how well behaved they were. In contrast, when my husband took them to

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Idaho for Spring Break, he called me in a melt down because the kids wouldn't listen to him or do anything he said.

10. Our daughter Kennedy especially, needs a routine, consistency with her school work/therapy, and a dedicated parent during this next school year. Last year her first grade teacher modified Kennedy's instruction in the classroom and provided several interventions (outside help) to assist Kennedy in learning to read. Her testing scores remained low and at our end-of-the-year parent/teacher conference she said she was 'severely concerned' about Kennedy's progress going into 2nd grade. They advised that Kennedy would require a Special Ed referral the following year. I inquired whether Kennedy should repeat 1st grade. The teacher said not unless she went to a different school because she was too socially and emotionally aware. After I moved into my home I emailed the teacher to see if she would recommend Kennedy attend the school in my new district and repeat 1st grade. Her response was that 'it would definitely not hurt her'; 'she may just need another foundational year'; and 'I think it would be something that definitely could benefit her'. Attached hereto is a true and accurate copy of the email. Kennedy has also been diagnosed with eye convergence issues which may contribute to her reading difficulties. I made arrangements to have her tested and met with the doctor who recommended 32 weeks of vison therapy. In addition to extra school support and perhaps a tutor, Kennedy will need to attend vision therapy each week this next school year. The home exercise program will require 5 days of 20-30 minute exercises. Indeed going back and forth on a weekly basis is not best for Kennedy.

11. Someday soon my husband will obtain full time regular employment. He will work for someone. He will not have the flexibility in his hours that I have in my position. I am an owner/partner in my business. If the children need anything, I have always been able to attend and participate, even on the fly. My office provides substantial support for me to be away with our electronic file system, the number of attorneys available, and the ability to alter my schedule at any time. For this reason, I should have primary residential placement.

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

DATED this 11 day of August, 2016.

TELQUIST ZIOBRO McMILLEN CLARE, PLLC

By: _____
ANDREA J. CLARE, WSBA #37889
Attorney/Petitioner

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16-3-50269-11
PPP
Proposed Parenting Plan
513967

Superior Court of Washington County of FRANKLIN

In re the marriage of: Petitioner: ANDREA J. CLARE And Respondent: KEVIN P. CLARE	Case No. Parenting Plan (PPP / PPT / PP) ☑ Clerk's action required: **1**.

Parenting Plan

1. This parenting plan is a *(check one):*

☒ **Proposal** (request) by a parent *(name/s):* Andrea Clare
It is not a signed court order. (PPP)

☐ **Court order** signed by a judge or commissioner. This is a *(check one)*:

☐ Temporary order. (PPT)

☐ Final order. (PP)

☐ This final parenting plan changes the last final parenting plan.

2. Children – This parenting plan is for the following children:

Child's name	Age	Child's name	Age
1. KJC	7	4.	
2. CPC	6	5.	
3. CCC	2	6.	

3. Reasons for putting limitations on a parent (under RCW 26.09.191)

a. **Abandonment, neglect, child abuse, domestic violence, assault, or sex offense.** *(If a parent has any of these problems, the court **must** limit that parent's contact with the children and right to make decisions for the children.)*

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☒ Neither parent has any of these problems. (*Skip to **3.b.***)

☐ A parent has one or more of these problems as follows *(check all that apply):*

☐ **Abandonment** – *(Parent's name):* _____ intentionally abandoned a child listed in **2** for an extended time.

☐ **Neglect** – *(Parent's name):* _____ substantially refused to perform his/her parenting duties for a child listed in **2**.

☐ **Child Abuse** – *(Parent's name):* _____ (or someone living in that parent's home) abused or threatened to abuse a child. The abuse was *(check all that apply):* ☐ physical ☐ sexual ☐ repeated emotional abuse.

☐ **Domestic Violence** – *(Parent's name):* _____ (or someone living in that parent's home) has a history of domestic violence as defined in RCW 26.50.010(1).

☐ **Assault** – *(Parent's name):* _____ (or someone living in that parent's home) has assaulted or sexually assaulted someone causing grievous physical harm or fear of such harm.

☐ **Sex Offense** –

☐ *(Parent's name):* _____ has been convicted of a sex offense as an adult.

☐ Someone living in *(parent's name):* _____*'s* home has been convicted as an adult or adjudicated as a juvenile of a sex offense.

b. Other problems that may harm the children's best interests. *(If a parent has any of these problems, the court **may** limit that parent's contact with the children and right to make decisions for the children.)*

☐ Neither parent has any of these problems. (*Skip to **4.***)

☐ A parent has one or more of these problems as follows *(check all that apply):*

☐ **Neglect** – *(Parent's name):* _____ neglected his/her parental duties towards a child listed in **2**.

☒ **Emotional or physical problem** – *(Parent's name): Kevin Clare* has a long-term emotional or physical problem that gets in the way of his/her ability to parent.

☐ **Substance Abuse** – *(Parent's name):* _____ has a long-term problem with drugs, alcohol, or other substances that gets in the way of his/her ability to parent.

☐ **Lack of emotional ties** – *(Parent's name):* _____ has few or no emotional ties with a child listed in **2**.

☒ **Abusive use of conflict** – *(Parent's name): Kevin Clare* uses conflict in a way that endangers or damages the psychological development of a child listed in **2**.

☐ **Withholding the child** – *(Parent's name):* _____ has kept the other parent away from a child listed in **2** for a long time, without a good reason.

☒ **Other** *(specify): Kevin Clare has engaged in a pattern of behavior that is emotionally abusive to our children. He has intentionally involved them in our*

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marital dispute by discussing inappropriate adult topics with them, using them in multiple attempts to manipulate the mother in returning to the marriage, using them to spy on their mother, requesting they remove items from her home, and telling them they don't have to follow the mother's rules at her home.

4. Limitations on a parent

☐ Does not apply. There are no reasons for limitations checked in **3.a. or 3.b.** above. *(Skip to **5**.)*

☐ **No limitations despite reasons** *(explain why there are no limitations on a parent even though there are reasons for limitations checked in **3a. or 3.b.** above)*: _____

☒ **The following limits or conditions apply to** *(parent's name)*: Kevin Clare *(check all that apply)*:

- ☐ No contact with the children.
- ☒ Limited contact as shown in the Parenting Time Schedule (sections **8 – 11**) below.
- ☐ Limited contact as follows *(specify schedule, list all contact here **instead** of in a Parenting Time Schedule, skip sections **8 – 11**)*: _____

- ☐ **Supervised contact.** All parenting time shall be supervised. Any costs of supervision must be paid by *(name)*: _____

  The supervisor shall be:
  - ☐ a professional supervisor *(name)*: _____
  - ☐ a non-professional supervisor *(name)*: _____

  The dates and times of supervised contact will be:
  - ☐ as shown in the Parenting Time Schedule (sections **8 – 11**) below.
  - ☐ as follows *(specify)*: _____

  (Specific rules for supervision, if any): _____

- ☒ Other limitations or conditions during parenting time *(specify)*: While the children are in Kevin's care, the court should order him to attend the daughter's vision therapy, order him not to disparage the mother in front of or in close proximity to the children and order him not to discuss court matters or other inappropriate adult topics with the children given their young age.

☐ **Evaluation or treatment required.** *(Name)*: _____ must:

- ☐ be evaluated for:
- ☐ start (or continue) and comply with treatment:
  - ☐ as recommended by the evaluation.

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☐ as follows *(specify kind of treatment and any other details):* _____

_____

_____

☐ provide a copy of the evaluation and compliance reports *(specify details):* _____

_____

If this parent does not follow the evaluation or treatment requirements above, then *(what happens):* _____

_____

5. Decision-making

When the children are with you, you are responsible for them. You can make day-to-day decisions for the children when they are with you, including decisions about safety and emergency health care. Major decisions must be made as follows.

a. Who can make major decisions about the children?

Type of Major Decision	Joint *(parents make these decisions together)*	Limited *(only the parent named below has authority to make these decisions)*
School / Educational	☐	☒ *(Name): Andrea Clare*
Health care (not emergency)	☒	☐ *(Name):*
Activities	☐	☒ *(Name):* Andrea Clare
Other:	☐	☐ *(Name):*
Other:	☐	☐ *(Name):*

b. Reasons for limits on major decision-making, if any:

☐ There are no reasons to limit major decision-making.

☐ Major decision-making **must** be limited because one of the parents has problems as described in **3.a.** above.

☐ Major decision-making **should** be limited because *(check all that apply)*:

- ☐ Both parents are against shared decision-making.
- ☒ One of the parents does not want to share decision-making and this is reasonable because of:
  - ☒ problems as described in **3.b.** above.
  - ☒ the history of each parent's participation in decision-making.
  - ☒ the parents' ability and desire to cooperate with each other in decision-making.
  - ☐ the distance between the parents' homes makes it hard to make timely decisions together.

6. Dispute Resolution – If you and the other parent disagree…

From time to time, the parents may have disagreements about shared decisions or about what parts of this parenting plan mean.

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a. To solve disagreements about this parenting plan, the parents will go to *(check one):*

☐ the dispute resolution provider below (before they may go to court):

☐ Mediation *(mediator or agency name):* _____

If there are domestic violence issues, you may only use mediation if the victim asks for mediation, mediation is a good fit for the situation, and the victim can bring a support person to mediation.

☐ Arbitration *(arbitrator or agency name):* _____

☐ Counseling *(counselor or agency name):* _____

If a dispute resolution provider is not named above, or if the named provider is no longer available, the parents may agree on a provider or ask the court to name one.

Important! Unless there is an emergency, the parents must participate in the dispute resolution process listed above in good faith, before going to court. This section does **not** apply to disagreements about money or support.

☒ Court (without having to go to mediation, arbitration, or counseling).
*(If you check this box, skip to section **7** below, do not fill out **6.b.**)*

b. If mediation, arbitration, or counseling is required, one parent must notify the other parent by *(check one):* ☐ certified mail ☐ other *(specify):* _____

7. Custodian

The custodian is *(name):* Andrea Clare solely for the purpose of all state and federal statutes which require a designation or determination of custody. Even though one parent is called the custodian, this does not change the parenting rights and responsibilities described in this plan.

(Washington law generally refers to parenting time and decision-making, rather than custody. However, some state and federal laws require that one person be named the custodian. The custodian is the person with whom the children are scheduled to spend more of their time.)

➢ *Parenting Time Schedule (Residential Provisions)*

Check one:

☐ ***Skip** the parenting time schedule in sections **8** - **11** if one parent has no contact with the children other than what is described in section **4** – Limitations.*

The children live with *(name):* _____ except as described in section **4**.

☒ ***Complete** the parenting time schedule in sections **8** - **11**.*

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8. School Schedule

a. Children under School-Age

☐ Does not apply. All children are school-age.

☒ The schedule for children under school-age is the same as for school-age children.

☐ Children under school-age are scheduled to live with *(name):* _____,

b. School-Age Children

This schedule will apply when *(check one):* ☐ the youngest child ☐ the oldest child ☐ each child begins:

(check one): ☐ Kindergarten ☐ 1st grade ☒ Other: immediately_____

The children are scheduled to live with *(name): Andrea Clare*, except when they are scheduled to live with *(name): Kevin Clare* on *(check all that apply):*

☒ WEEKENDS: ☐ every week ☒ every other week ☐ other *(specify):* _____

from (day) Thursday after school to (day) Monday at: 6:30 pm.

from (day) _____ at ___:___ __.m. to (day) _____ at ___:___ __.m.

☐ WEEKDAYS: ☐ every week ☐ every other week ☐ other *(specify):* _____

from (day) _____ at ___:___ __.m. to (day) _____ at ___:___ __.m.

from (day) _____ at ___:___ __.m. to (day) _____ at ___:___ __.m.

☐ OTHER *(specify)*: _____

_____

☐ Other *(specify)*: _____

9. Summer Schedule

Summer begins and ends ☒ according to the school calendar. ☐ as follows: _____

_____.

☐ The Summer Schedule is the **same** as the School Schedule. *(Skip to **10**.)*

☐ The Summer Schedule is the **same** as the School Schedule **except** that each parent shall spend _____ weeks of uninterrupted vacation time with the children each summer. The parents shall confirm their vacation schedules in writing by the end of *(date)* _____ each year. *(Skip to **10**.)*

☒ The Summer Schedule is **different** than the School Schedule. The Summer Schedule will begin the summer before:
(check one): ☐ the youngest child ☐ the oldest child ☐ each child
begins *(check one):* ☐ Kindergarten ☐ 1st grade ☒ Other: immediately

During the summer the children are scheduled to live with *(name): Andrea Clare*, except when they are scheduled to live with *(name): Kevin Clare* on *(check all that apply):*

☐ WEEKENDS: ☐ every week ☐ every other week ☒ other *(specify):* TBD based upon Kevin's employment schedule next year.

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from (day) _____ at ___:___ __.m. to (day) _____ at ___:___ __.m.

from (day) _____ at ___:___ __.m. to (day) _____ at ___:___ __.m.

☐ WEEKDAYS: ☐ every week ☐ every other week ☐ other *(specify)*: _____

from (day) _____ at ___:___ __.m. to (day) _____ at ___:___ __.m.

from (day) _____ at ___:___ __.m. to (day) _____ at ___:___ __.m.

☐ OTHER *(specify)*: TBD based upon Kevin's employment schedule next year. ____

_____

_____

10. Holiday Schedule (includes school breaks)

☐ The Holiday Schedule is the **same** as the School and Summer Schedules above for all holidays and school breaks. *(Skip to **11**.)*

☐ This is the Holiday Schedule for ☒ all children ☐ school-age children only:
(Put one parent's name in each column and fill out when the children will be with that parent for holidays and school breaks.)

Holiday	Children with *(name)*: Andrea	Children with *(name)*: Kevin
Martin Luther King Jr. Day	☐ Odd Years ☐ Even Years ☐ Every Yr. Begin day/time: _____ End day/time:	☐ Odd Years ☐ Even Years ☐ Every Yr. Begin day/time: _____ End day/time:
	☒ With the parent who has the children for the attached weekend ☐ Other plan:	
Presidents' Day	☐ Odd Years ☐ Even Years ☐ Every Yr. Begin day/time: _____ End day/time:	☐ Odd Years ☐ Even Years ☐ Every Yr. Begin day/time: _____ End day/time:
	☒ With the parent who has the children for the attached weekend ☐ Other plan:	
Mid-winter Break	☐ Odd Years ☒ Even Years ☐ Every Yr. Begin day/time: 12/26 at 4 pm End day/time: The day before school resumes at 4 pm	☐ Odd Years ☒ Even Years ☐ Every Yr. Begin day/time: School release End day/time: 12/26 at 4 pm
	☐ Each parent has the children for the half of break attached to his/her weekend. The children must be exchanged on Wednesday at *(time)*: _____. ☒ Other addition: The parent that does not have Christmas day shall have Christmas Eve from noon to 8 pm to celebrate the holiday. The reverse shall be true in odd years.	

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Holiday	Children with *(name)*: *Andrea*	Children with *(name)*: *Kevin*
Spring Break	☒ Odd Years ☐ Even Years ☐ Every Yr. Begin day/time: School release End day/time: Day before school resumes at 6:00 pm	☐ Odd Years ☒ Even Years ☐ Every Yr. Begin day/time: School release End day/time: Day before school resumes at 6:00 pm
	☐ Each parent has the children for the half of break attached to his/her weekend. The children must be exchanged on Wednesday at *(time)*: _____. ☐ Other plan:	
Mother's Day	☐ Odd Years ☐ Even Years ☒ Every Yr. Begin day/time: 9:00 am End day/time: 6:00 pm	☐ Odd Years ☐ Even Years ☐ Every Yr. Begin day/time: End day/time:
	☐ Other plan:	
Memorial Day	☐ Odd Years ☐ Even Years ☐ Every Yr. Begin day/time: End day/time:	☐ Odd Years ☐ Even Years ☐ Every Yr. Begin day/time: End day/time:
	☒ With the parent who has the children for the attached weekend ☐ Other plan:	
Father's Day	☐ Odd Years ☐ Even Years ☐ Every Yr. Begin day/time: End day/time:	☐ Odd Years ☐ Even Years ☒ Every Yr. Begin day/time: 9:00 am End day/time: 6:00 pm
	☐ Other plan:	
Fourth of July	☐ Odd Years ☐ Even Years ☐ Every Yr. Begin day/time: End day/time:	☐ Odd Years ☐ Even Years ☐ Every Yr. Begin day/time: End day/time:
	☒ Follow the Summer Schedule in section **9.** ☐ Other plan:	
Labor Day	☐ Odd Years ☐ Even Years ☐ Every Yr. Begin day/time: End day/time:	☐ Odd Years ☐ Even Years ☐ Every Yr. Begin day/time: End day/time:
	☒ With the parent who has the children for the attached weekend ☐ Other plan:	

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Holiday	Children with *(name)*: *Andrea*	Children with *(name)*: *Kevin*
Thanksgiving Day / Break	☐ Odd Years ☒ Even Years ☐ Every Yr. Begin day/time: School release End day/time: Saturday 9:00 am	☒ Odd Years ☐ Even Years ☐ Every Yr. Begin day/time: School release End day/time: The day before school resumes at 4 pm
	☒ Other plan: In even years, Kevin shall have the children from Saturday at 9 am to Sunday at 6 pm.	
Winter Break	☐ Odd Years ☐ Even Years ☐ Every Yr. Begin day/time: End day/time:	☐ Odd Years ☐ Even Years ☐ Every Yr. Begin day/time: End day/time:
	☒ Other plan: N/A; see mid-winter break	
Christmas Eve	☐ Odd Years ☐ Even Years ☐ Every Yr. Begin day/time: End day/time:	☐ Odd Years ☐ Even Years ☐ Every Yr. Begin day/time: End day/time:
	☒ Follow the mid-Winter Break schedule above. ☐ Other plan:	
Christmas Day	☐ Odd Years ☐ Even Years ☐ Every Yr. Begin day/time: End day/time:	☐ Odd Years ☐ Even Years ☐ Every Yr. Begin day/time: End day/time:
	☒ Follow the mid-Winter Break schedule above. ☐ Other plan:	
New Year's Eve / New Year's Day *(odd/even is based on New Year's Day)*	☐ Odd Years ☐ Even Years ☐ Every Yr. Begin day/time: End day/time:	☐ Odd Years ☐ Even Years ☐ Every Yr. Begin day/time: End day/time:
	☒ Follow the mid-Winter Break schedule above. ☐ Other plan:	

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Holiday	Children with *(name)*: *Andrea*	Children with *(name)*: *Kevin*
Children's Birthdays	☐ Odd Years ☐ Even Years ☐ Every Yr. Begin day/time: _____ End day/time:	☐ Odd Years ☐ Even Years ☐ Every Yr. Begin day/time: _____ End day/time:
	☒ Other plan: As agreed	
All three-day weekends not listed elsewhere	*(Federal holidays, school in-service days, etc.)* ☒ The children shall spend any unspecified holiday or non-school day with the parent who has them for the attached weekend. ☐ Other plan:	
Other occasion important to the family: _____	☐ Odd Years ☐ Even Years ☐ Every Yr. Begin day/time: _____ End day/time:	☐ Odd Years ☐ Even Years ☐ Every Yr. Begin day/time: _____ End day/time:
	☐ Other plan:	
Other occasion important to the family: _____	☐ Odd Years ☐ Even Years ☐ Every Yr. Begin day/time: _____ End day/time:	☐ Odd Years ☐ Even Years ☐ Every Yr. Begin day/time: _____ End day/time:
	☐ Other plan:	

11. Conflicts in Scheduling

The Holiday Schedule must be observed over all other schedules. If there are conflicts within the Holiday Schedule *(check all that apply)*:

☒ Named holidays shall be followed before school breaks.

☐ Children's birthdays shall be followed before named holidays and school breaks.

☐ Other *(specify)*: _____

12. Transportation Arrangements

The children will be exchanged for parenting time (picked up and dropped off) at:

☐ each parent's home

☐ school or day care when in session

☒ other location *(specify)*: as agreed

Who is responsible for arranging transportation?

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☐ The **picking up** parent – The parent who is about to **start** parenting time with the children must arrange to have the children picked up.

☒ The **dropping off** parent – The parent whose parenting time is **ending** must arrange to have the children dropped off.

Other details (if any): _____

_____

13. Moving with the Children (Relocation)

If the custodian plans to move, s/he **must notify** every person who has court-ordered time with the children.

Move to a different school district

If the move is to a different school district, the custodian must complete the form *Notice of Intent to Move with Children* (FL Relocate 701) and deliver it at least **60 days** before the intended move.

Exceptions:

- If the custodian could not reasonably have known enough information to complete the form in time to give 60 days' notice, the custodian must give notice within **5 days** after learning the information.
- If the custodian is relocating to a domestic violence shelter or moving to avoid a clear, immediate and unreasonable risk to health or safety, notice may be delayed **21 days**.
- If information is protected under a court order or the address confidentiality program, it may be withheld from the notice.
- A custodian who believes that giving notice would put her/himself or a child at unreasonable risk of harm, may ask the court for permission to leave things out of the notice or to be allowed to move without giving notice. Use form *Motion to Limit Notice of Intent to Move with Children (Ex Parte)* (FL Relocate 702).

The *Notice of Intent to Move with Children* can be delivered by having someone personally serve the other party or by any form of mail that requires a return receipt.

If the custodian wants to change the *Parenting Plan* because of the move, s/he must deliver a proposed *Parenting Plan* together with the *Notice*.

Move within the same school district

If the move is within the *same* school district, the custodian still has to let the other parent know. However, the notice does not have to be served personally or by mail with a return receipt. Notice to the other party can be made in any reasonable way. No specific form is required.

Warning! If you do not notify...

A custodian who does not give the required notice may be found in contempt of court. If that happens the court can impose sanctions. Sanctions can include requiring the custodian to bring the children back if the move has already happened, and ordering the custodian to pay the other side's costs and lawyer's fees.

Right to object

A person who has court-ordered time with the children can object to a move to a different school district and/or to the custodian's proposed *Parenting Plan*. If the move is within the same school district, the other party doesn't have the right to object to the move, but s/he may ask to change the *Parenting Plan* if there are adequate reasons under the modification law (RCW 26.09.260).

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An objection is made by filing the *Objection about Moving with Children and Petition about Changing a Parenting/Custody Order (Relocation)* (form FL Relocate 721). File your *Objection* with the court and serve a copy on the custodian and anyone else who has court-ordered time with the children. Service of the *Objection* must be by personal service or by mailing a copy to each person by any form of mail that requires a return receipt. The *Objection* must be filed and served no later than **30 days** after the *Notice of Intent to Move with Children* was received.

Right to move

During the 30 days after the *Notice* was served, the custodian may not move to a different school district with the children unless s/he has a court order allowing the move.

After the 30 days, if no *Objection* is filed, the custodian may move with the children without getting a court order allowing the move.

After the 30 days, if an *Objection* has been filed, the custodian may move with the children **pending** the final hearing on the *Objection* **unless**:

- The other party gets a court order saying the children cannot move, or
- The other party has scheduled a hearing to take place no more than 15 days after the date the *Objection* was served on the custodian. (However, the custodian may ask the court for an order allowing the move even though a hearing is pending if the custodian believes that s/he or a child is at unreasonable risk of harm.)

The court may make a different decision about the move at a final hearing on the *Objection*.

Parenting Plan after move

If the custodian served a proposed *Parenting Plan* with the *Notice*, **and** if no *Objection* is filed within 30 days after the *Notice* was served (or if the parties agree):

- Both parties may follow that proposed plan without being held in contempt of the *Parenting Plan* that was in place before the move. However, the proposed plan cannot be enforced by contempt unless it has been approved by a court.
- Either party may ask the court to approve the proposed plan. Use form *Ex Parte Motion for Final Order Changing Parenting Plan – No Objection to Moving with Children* (FL Relocate 706).

Forms

You can find forms about moving with children at:

- The Washington State Courts' website: *www.courts.wa.gov/forms*,
- The Administrative Office of the Courts – call: (360) 705-5328,
- Washington LawHelp: *www.washingtonlawhelp.org*, or
- The Superior Court Clerk's office or county law library (for a fee).

(This is a summary of the law. The complete law is in RCW 26.09.430 through 26.09.480.)

14. Other

_____

_____

15. Proposal

☐ Does not apply. This is a court order.

☒ This is a **proposed** (requested) parenting plan. (*The parent/s requesting this plan must*

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read and sign below.)

I declare under penalty of perjury under the laws of the state of Washington that this plan was proposed in good faith and that the information in section **3** above is true.

▶ [signature]	Richland, WA
Parent requesting plan signs here	Signed at *(city and state)*
▶	
Other parent requesting plan (if agreed) signs here	Signed at *(city and state)*

16. Court Order

☐ Does not apply. This is a proposal.

☐ This is a court order (if signed by a judge or commissioner below).

Findings of Fact – Based on the pleadings and any other evidence considered:

The Court adopts the statements in section **3** (Reasons for putting limitations on a parent) as its findings.

☐ The Court makes additional findings which are:

- ☐ contained in an order or findings of fact entered at the same time as this *Parenting Plan*.
- ☐ attached as Exhibit A as part of this *Parenting Plan*.
- ☐ other: _____

Conclusions of Law – This *Parenting Plan* is in the best interest of the children.

☐ Other: _____

Order – The parties must follow this *Parenting Plan*.

_____	▶ _____
Date	*Judge or Commissioner signs here*

> ***Warning!*** If you don't follow this *Parenting Plan*, the court may find you in contempt (RCW 26.09.160). You still have to follow this *Parenting Plan* even if the other parent doesn't.
>
> Violation of **residential** provisions of this order with actual knowledge of its terms is punishable by contempt of court and may be a criminal offense under RCW 9A.40.060(2) or 9A.40.070(2). Violation of this order may subject a violator to arrest.

If this is a court order, the parties and/or their lawyers (and any GAL) sign below.

This order *(check any that apply):*	This order *(check any that apply):*
☐ is an agreement of the parties.	☐ is an agreement of the parties.
☐ is presented by me.	☐ is presented by me.
☐ may be signed by the court without notice to me.	☐ may be signed by the court without notice to me.
▶ _____	▶ _____
*Petitioner signs here **or** lawyer signs here + WSBA #*	*Respondent signs here **or** lawyer signs here + WSBA #*

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Print Name *Date*	*Print Name* *Date*
This order *(check any that apply):* ☐ is an agreement of the parties. ☐ is presented by me. ☐ may be signed by the court without notice to me.	This order *(check any that apply):* ☐ is an agreement of the parties. ☐ is presented by me. ☐ may be signed by the court without notice to me.
▶ _____ *Other party signs here* ***or*** *lawyer signs here + WSBA #*	▶ _____ *Other party* ***or*** *Guardian ad Litem signs here*
_____ *Print Name* *Date*	_____ *Print Name* *Date*

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MICHAEL J. KILLIAN
BY ML DEPUTY

16-3-50269-11
PT 270
Petition
3293326

Superior Court of Washington
County of FRANKLIN

In re: Petitioner: ANDREA J. CLARE And Respondent: KEVIN P. CLARE	Case No. 16-3-50269-11 **Petition for an Order for Protection** ☒ **Harassment** (PTORAH) **and/or** ☒ **Stalking** (PTORSTK)

➢ This is a Petition for an Order for Protection against Harassment and/or Stalking as checked in the caption.

I believe:

☒ I am a victim of stalking.
☒ ANDREA J. CLARE is the victim of stalking and she is a vulnerable adult.
The respondent has been
- stalking the victim either in person or cyber stalking, **and**
- repeatedly contacting the victim or attempting to contact or monitor the victim for no lawful purpose and his/her actions caused the victim to feel intimidated, frightened or threatened.

☒ I am a victim of unlawful harassment.
☐ _____ (name) is a victim of unlawful harassment and he/she is a minor.
The respondent's actions toward the victim have seriously alarmed, annoyed or harassed the victim, or are detrimental to the victim and serve no legitimate or lawful purpose. The respondent's actions have caused substantial emotional distress to the victim or caused me to fear for the well-being of my child.

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ORIGINAL

How do the victim and respondent know each other? Spouses, going through a divorce

I have given a detailed explanation below.

1. Who is the petitioner?

My name is ANDREA J. CLARE. I am the petitioner.

☒ I am 18 or older and I am petitioning on my own behalf.
☐ I am 16 or 17 and I am petitioning on my own behalf.
☐ I am the parent or guardian of child/ren under age 18 and I am petitioning on their behalf:

Children's Name/s (First, Middle Initial, Last)	Age

☐ I am not the parent or guardian, but the child/ren live/s with me; and I am petitioning on their behalf; and the respondent is not a parent.

Children's Name/s (First, Middle Initial, Last)	Age

☐ I am filing this petition on behalf of petitioner, (name) _____, a vulnerable adult as defined in RCW 74.34.020, who is a victim of stalking. I am an interested person as defined in RCW 74.34.020(10). My relationship to this petitioner is _____.

2. Is the respondent 18 years of age or older?

☒ Yes ☐ No

(If no, use the Petition for Order for Protection Harassment/Stalking Respondent Under Age 18, instead of this petition.)

3. Where do the parties live?

Petitioner lives in Benton County. Respondent lives in Franklin County.

Did the petitioner leave their residence because of stalking conduct and that is the county of their new residence?

☐ Yes ☒ No

Children named above live in _____ county.

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4. Where did the Conduct take place?

The conduct took place in Franklin County.

- **Statement describing the victim/s need for protection from the respondent**

- Write clearly. If you need more space below, attach additional page/s. Do not write on the back.

5. Describe what the Respondent did or said that you think is harassment or stalking.

- You must describe what the respondent actually said.
- You must describe what the respondent actually did.

The respondent has committed acts of harassment or stalking as follows:

A. Describe the most recent incident of harassment or stalking.

Date and time (on or around): _____

Location: _____

What did the respondent do or say that you believe to be harassing or stalking behavior?

I previously submitted declarations to the court concerning the Respondent's surveilling/stalking type behavior towards me during the marriage as well as his conduct/comments with the children after I moved out. For those reasons I initially sought and was granted an order of protection. Since then, I have often wondered during the pendency of this action how the Respondent had certain information concerning my whereabouts and work schedule. For instance, last summer I attended a wedding in Hawaii and asked him to keep the children for two of my regular visitation days as I would be 'out of town'. He agreed. I did not tell him or the children I went to Hawaii and my family does not communicate with him concerning my travel plans. However, when I returned from my trip and first delivered the children to him, he flashed a 'hang-ten' sign with his hands and told my youngest child to say good-bye to his mother. It was strange at the time but I interpreted it as a subtle way of letting me know that the Respondent knew where I went. To ensure I got the hint, he later referenced in a text that we were 'even' after he kept the kids during my 'trip to Hawaii'. His most recent declaration (filed 3/14) shows that he was aware of my attending a "GAL CLE in Olympia". He knew about that business related trip because he has been accessing my email/calendar at work. I used my credentials to establish my Microsoft exchange work email/calendar account on our ipad when we resided together during the marriage. Electronic devices such as an ipad store all credentials/passwords used on the device. I learned he used my stored credentials to gain access to my private work exchange account and has been viewing my emails and work

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calendar for the past two years. Indeed I have been able to piece information he has divulged throughout this proceeding with various communications inter-office underscoring the extent of this invasion. Incredibly and most importantly, the respondent and his attorney have maintained access to all my email communication with my attorney(s) herein – I exclusively communicate with Mr. Pickett via email. Words cannot express how deeply troubled I am by this new discovery. I feel violated all over again. I sit and think about all the communications I have had with so many people and all the conversations Mr. Clare and Ben Dow have been secretly watching. It makes me ill. In one of Mr. Clare's declarations he states that "at trial the wonderful web she has spun will be revealed" – clearly he intends to ambush and confront me on the stand with items and information he obtained by monitoring my private communications as I would not be able to ask where they got it and/or how they knew. In large part I left the marriage because I was afforded no expectation of privacy. He believed he was entitled to view and explore anything of mine at any time. I hated it and repeatedly asked him to stop. The respondent went to great lengths to track me and intercept my text and email messages while we resided together. He consistently used that information to intimidate and control me. I thought that after I left the home and got a new phone with a different cellular company the stalking, monitoring, tracking/surveillance behavior would finally stop as he would have no access. I forgot all about that ipad. Learning that he has been accessing my email/calendar for over 2 years and using information gathered therefrom to provide him an advantage in this proceeding sickens and disturbs me greatly. His breach into office communications impacts my business and our confidence that we are able to keep our client communications private from third party access. I am at a complete loss.

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How did the respondent make these statements? ☒ in person ☐ mail/written notes
☐ e-mail ☐ text ☐ phone ☐ social media (such as facebook and twitter)
☒ other (describe): ___Declaration_____.

B. Describe other incidents of harassment or stalking. For each incident, include the date, time (on or about), location, what was said, how statements were made, and what was done to a victim.

See above

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6. How did the incidents you describe above make you, the minor, or the vulnerable adult feel?

See above

7. Has the respondent used, displayed, or threatened to use a firearm or other dangerous weapon in a felony? Please describe:

No.

8. Has the respondent previously committed an offense that makes him or her ineligible to possess a firearm under the provisions of RCW 9.41.040? Please describe:

No.

9. Does possession of a firearm or other dangerous weapon by the respondent present a serious and imminent threat to public health or safety, or to the health or safety of a victim? Please describe:

No.

10. Do you have any evidence of the harassment or stalking conduct other than testimony?

- ☐ No
- ☒ Yes. I have attached the following evidence:
  - ☐ Copy of mail or written notes
  - ☐ Copy of text messages
  - ☐ Copy of emailed messages
  - ☐ Copy of social media messages
  - ☐ Police report

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☐ Declaration or Affidavit from the following witness: _____

☒ Other (describe): attached Complaint filed in Eastern Washington Federal District Court _____

11. Has/have the **victim/s or the respondent** ever requested or obtained protection from the other person in a restraining order, civil protection order, or criminal no-contact order? If yes, list the type of order, the name of the court and the approximate date, and whether the request was granted:

Yes, I was granted a restraining order against the respondent on August 11, 2016. At that time, I alleged stalking type behavior.

12. Is there any other litigation between the victim/s and the respondent? This includes all matters - pending or past - such as parenting plans, landlord-tenant disputes, employment disputes, or property disputes. If yes, provide case number/s if known, type of case, and name of court:

Yes, this dissolution

➢ Requests

13. I ask the Court for an order approving the following requests for protection:

I Request an **Order for Protection** following a hearing that will:

☐ **No-Contact**: restrain the respondent from making any attempts or having any contact, including nonphysical contact, with the person/s to be protected, directly, indirectly, or through third parties regardless of whether those third parties know of the order, except for mailing of court documents.
☒ **Surveillance:** prohibit or restrain the respondent from making any attempt to keep or from keeping the person/s to be protected under surveillance, including electronic surveillance.
☒ **Exclude from places**: exclude the respondent from the ☒ residence ☒ workplace ☐ school ☐ day care of the person/s to be protected.
☒ **Stay Away**: Prohibit or restrain the respondent from entering or being within, or from knowingly coming within, or knowingly remaining within __100 ft_____ (distance) of the ☒ residence ☒ workplace ☐ school ☐ day care of the person/s to be protected. ☐ other locations:_____.
☐ **Other**:

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☒ **Evaluation**: Order the respondent to have a ☒ mental health ☐ chemical dependency evaluation.
☐ other: _____.

☐ **Pay Fees and Costs:** Require the respondent to pay fees and costs of this action, which may include administrative court costs and service fees and petitioner's costs including attorneys' fees.

☐ **Surrender Firearms**: Require the respondent to surrender any firearm or other dangerous weapon, or any concealed pistol license and prohibit the respondent from obtaining or possessing a firearm or other dangerous weapon, or a concealed pistol license.

☐ **Duration**: Remain effective longer than one year because respondent is likely to resume acts of unlawful harassment or stalking conduct against the persons to be protected if the order expires in a year.

Emergency temporary protection (up to 14 days) until the court hearing:

☐ An emergency exists as described below. I request that a **Temporary Protection Order** granting the relief I requested above for a no-contact, surveillance, exclude from places, or stay away order be issued immediately, without prior notice to the respondent, to be effective until the hearing.

☐ I also request a temporary surrender of a firearm or other dangerous weapon without notice to the other party because irreparable injury could result if an order is not issued until the hearing.

What irreparable harm would result if an order is not issued immediately without prior notice to the respondent?

_____

_____

_____

_____

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

Dated: 3/21/18 at Richland Washington.

Andrea Clare
Petitioner

Andrea Clare
Print or type name

I agree to receive legal documents at this address:

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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF WASHINGTON

TELQUIST McMILLEN CLARE, PLLC, a Washington Professional Limited Liability Company, and ANDREA J. CLARE, individually, Plaintiffs, vs. KEVIN P. CLARE, individually, and BENJAMIN DOW, individually, Defendants.	Cause No. **COMPLAINT FOR VIOLATION OF ELECTRONIC COMMUNICATIONS PRIVACY ACT (FEDERAL) AND FOR VIOLATING RIGHT OF PRIVACY (WASHINGTON STATE 9.73 RCW)**

COME NOW the Plaintiffs, collectively, and hereby allege:

I. JURISDICTION AND VENUE

1.1 18 U.S.C. §2511 makes it illegal to intercept and disclose wire, oral or electronic communications.

EXHIBIT 1

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1.2 18 U.S.C. §2520 allows for a civil cause of action and recovery of the civil damages for violation of the electronic communications privacy act, Chapter 119 ("Title 3"), 18 U.S.C. §2510 through §2522.

1.3 Pursuant to 28 U.S.C. §1331 this Court has jurisdiction as there is a federal question at issue and in dispute.

1.4 All acts and conduct alleged in this Complaint occurred in the State of Washington in and for the Eastern District.

II. PARTIES

2.1 Telquist McMillen Clare, PLLC ("TMC") is a professional limited liability company authorized to conduct business in and for the State of Washington.

2.2 TMC, by way of its business, provides legal services in and for the State of Washington.

2.3 Andrea J. Clare ("Andrea") has at all times relevant hereto been a resident of the Eastern District of the State of Washington. She is licensed to practice law in the State of Washington. Andrea is a member of TMC.

2.4 Kevin P. Clare ("Kevin") is the estranged spouse of Andrea. Kevin, at all times relevant hereto, has been a resident of the Eastern District of the State of

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Washington. Andrea moved from the family residence on February 6, 2016. She has not resided in the family home since February 6, 2016.

2.5 On May 12, 2016, Andrea filed a Petition for Dissolution in Walla Walla County, State of Washington, under Cause No. 16-3-00106-2. Kevin, by and through his attorneys, moved to change venue. On or about August 11, 2016, venue was changed to Franklin County, State of Washington, under Cause No. 16-3-50269-11.

2.6 Benjamin Dow ("Ben") has at all times relevant hereto been a licensed attorney in and for the State of Washington. At all times relevant hereto, Ben has represented Kevin in the dissolution action with Andrea. At all times relevant hereto, Ben's conduct and actions have occurred in the Eastern District of the State of Washington.

III. FACTS

3.1 During the term of residency together and up to February 6, 2016, Kevin insisted upon access to Andrea's personal email, telephone and text messaging.

3.2 Upon leaving the residence on February 6, 2016, Andrea was desirous of having privacy and to not allow Kevin access to her personal information. To

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effectuate this, Andrea purchased a new cellular telephone and changed accounts from AT&T to Verizon.

3.3 In April 2016, while exchanging the children at the family residence, Kevin went through, observed, and intercepted text messages on Andrea's cellular phone without her permission. Upon observing text messages of Andrea, he became irate, threatened her, and insisted that she and the children leave immediately. He physically placed the children in the vehicle while yelling and screaming at Andrea.

3.4 Andrea had access remotely to a Microsoft Exchange email account owned by TMC. TMC, at all times relevant hereto, is the owner of all email with the domain of tzmlaw.com, tzmclaw.com, and tmc.law.

3.5 Since February 6, 2016, Kevin has not been authorized to use, observe, intercept, or otherwise view Andrea's cellular telephone, personal email, or work email.

3.6 At no time was Kevin an authorized user of the Microsoft Exchange email accounts owned by TMC.

3.7 At no time was Kevin given permission to view, intercept, or otherwise access any of the Microsoft Exchange email accounts owned by TMC.

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3.8 Any and all emails sent from any of the Microsoft Exchange email accounts owned by TMC specifically read as follows:

> Confidentiality Note: This e-mail message (including any attachments) may contain information that is confidential, protected by applicable legal provisions, or constitute non-public information. It is intended to be conveyed only to the designated recipient(s). If you are not an intended recipient of this message, please notify the sender by replying to this message and then delete it from your system. Use, dissemination, distribution or reproduction of this message by unintended recipients is strictly prohibited. Thank you.

3.9 As early as 2015 and continuing through January 2018, Kevin, using Andrea's email credentials, made repeated and constant contact and gained access to the Microsoft Exchange email accounts owned by TMC. Kevin used his access to the email account owned by TMC to learn of the whereabouts and plans of Andrea by reviewing her emails and daily calendar. Kevin used his access to the TMC email domains to intercept and view email exchanges that Andrea had with her attorneys of record in her dissolution case against Kevin.

3.10 It is upon information and belief that Kevin has reviewed Andrea's private and confidential communication between herself and her attorneys.

3.11 Kevin used his access to TMC's Microsoft Exchange email accounts to view email exchanges between the partners at TMC Law, to view email exchanges between the partners at TMC Law and their business associates/staff, to

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view email exchanges between Andrea and opposing counsel in claims not related to the divorce, and to view email exchanges between Andrea and existing clients not parties to the divorce.

3.12 Kevin willfully, recklessly and wantonly continued to access the TMC email without TMC's permission or as an authorized user.

3.13 It is well known within the local legal community that Ben dislikes and has disdain for Andrea.

3.14 It is well known within the local legal community that Ben dislikes and has disdain for TMC.

3.15 Ben agreed to represent Kevin in the dissolution from Andrea for the sole purpose of attempting to impact Andrea professionally and personally.

3.16 Kevin told Ben that he had access to TMC's Microsoft Exchange email account, to include all of the email domains identified herein.

3.17 Kevin provided information to Ben to advance his position in the dissolution using information obtained from the improper use and access to the TMC Microsoft Exchange email account.

3.18 Ben knew, at all times, that Kevin had obtained this information without authorization or the express consent of TMC or Andrea.

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3.19 Kevin had adequate discovery mechanisms available to him for purposes of obtaining information within the dissolution case under the laws and the civil rules of the State of Washington.

3.20 At all times hereto, Ben has acted willfully, wantonly and recklessly towards TMC and Andrea.

3.21 TMC and Andrea discovered and learned that Kevin was, without authority, accessing the TMC email on March 19, 2018.

IV. CAUSES OF ACTION

A. Violation of Federal Law

4.1 Kevin intentionally intercepted, or endeavored to intercept, a wire, oral, or electronic communication without authority owned by TMC.

4.2 Kevin intentionally disclosed to Ben the contents of the wire, oral, or electronic communication, knowing or having reasons to know, that the information he obtained through the interception of the wire, oral, or electronic communication was in violation of the Electronic Communications Privacy Act ("Act") under 18 U.S.C. § 2510-22.

4.3 Kevin intentionally used or endeavored to use, the contents of the wire, oral, or electronic communications, knowing or having reason to know, that the information was obtained in violation of the Act.

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4.4 Ben intentionally procured Kevin to intercept, or endeavor to intercept, a wire, oral, or electronic communication in violation of the Act.

4.5 Ben intentionally disclosed, or endeavored to disclose, contents of the wire, oral, or electronic communication knowing or having reason to know, that the information was obtained through the interception of a wire, oral, or electronic communication in violation of the Act.

B. Violation of State Law

4.6 Kevin violated the Washington State Right of Privacy Act, 9.73 RCW.

4.7 Kevin unlawfully intercepted private communications of TMC and Andrea without first obtaining the consent of the participants in the communication.

V. INJUNTIVE RELIEF

5.1 The Federal Electronic Communications Privacy Act as alleged herein, authorizes the Court to render injunctive relief at the request of the Plaintiff.

5.2 The Court, in addition to the damages stated in Section VI below, should enter injunctive relief, to include but not be limited to, as follows:

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a) Order Kevin to cease and desist in the continued electronic monitoring, surveillance or following of Andrea and/or TMC;

b) Declare that Kevin shall disclose to this Court and the state court dissolution cause of action (Franklin County Cause No. 16-3-50269-11), all information he has viewed, obtained, copied, forwarded, or otherwise had access to since February 6, 2016;

c) The Court should order, restrict and prohibit Kevin from altering, changing, deleting, or otherwise disposing of any device, telephone, tablet, computer, or other equipment that can be used for storage of electronic information that he has possessed since February 6, 2016;

d) Declare that Ben shall disclose any and all information he received from Kevin since February 6, 2016, the source of the information, what he knew to be the source of the information, and any and all advice he gave Kevin about the Electronic Communications Privacy Act and the Washington State Privacy act and any violations thereof;

e) Order Ben to submit all data, communications, electronic hardware, showing any and all electronic communications or information received by Kevin since February 6, 2016;

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5.3 The Electronic Communications Privacy Act declares that any and all evidence obtained in violation to the act is inadmissible in any other proceeding or trial;

5.4 The Court should further render any and all information that was potentially obtained in violation of the act to be inadmissible in Franklin County Cause of action under Cause No. 16-3-50269-11.

VI. DAMAGES

WHEREFORE, the Plaintiffs pray for the following relief:

6.1 Injunctive relief as stated above in paragraph V.

6.2 For actual damages as allowed under 18 U.S.C. §2520 to include, but not be limited to, the following:

a) Preliminary or other equitable or declaratory relief as may be appropriate (see paragraph V);

b) Actual damages pursuant to 18 U.S.C. §2520(c)(A);

6.3 For a finding that Kevin acted willfully, wantonly, or recklessly and awarding punitive damages;

6.4 For attorney's fees and costs reasonably incurred;

6.5 For a finding that Ben acted willfully, wantonly, or recklessly and awarding punitive damages;

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6.6 For damages against Kevin as allowed pursuant to RCW 9.73.060, to include but not be limited to, the following:

a) Actual damages suffered by TMC and Andrea;

b) For mental and emotional distress damages as allowed under 9.73 RCW on behalf of Andrea or, alternatively, liquidated damages; and

c) Reasonable attorney's fees and costs;

6.7 For damages against Ben as allowed pursuant to RCW 9.73.060, to include but not be limited to, the following:

a) Actual damages suffered by TMC and Andrea;

b) For mental and emotional distress damages as allowed under RCW 9.73 on behalf of Andrea or, alternatively, liquidated damages; and

c) Reasonable attorney's fees and costs.

DATED this 21st day of March, 2018.

/s/ GEORGE E. TELQUIST
George E. Telquist, #27203
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Attorneys for Plaintiffs
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george@tmc.law

CERTIFICATE OF FILING

I hereby certify that on March 21, 2018, the undersigned electronically filed Plaintiffs' Complaint for Violation of Electronic Communications Privacy Act and for Violating Right of Privacy with the clerk of the court.

DATED this 21st day of March, 2018.

/s/ Kristi L. Flyg

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16-3-50269-11
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Motion
3420864

FILED
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2018 JUL -6 AM 10:43
MICHAEL J. KILLIAN
BY JZ DEPUTY

Superior Court of Washington
County of FRANKLIN

In re: Petitioner: ANDREA J. CLARE And Respondent: KEVIN P. CLARE	Case No. 16-3-50269-11 **MOTION FOR PROTECTIVE ORDER**

Motion for Protective Order

To both parties:

Deadline! Your papers must be filed and served by the deadline in your county's Local Court Rules, or by the State Court Rules if there is no local rule. Court Rules and forms are online at www.courts.wa.gov.

If you want the court to consider your side, you **must**:

- File your original documents with the Superior Court Clerk; AND
- Give the Judge/Commissioner a copy of your papers (if required by your county's Local Court Rules); AND
- Have a copy of your papers served on all other parties or their lawyers; AND
- Go to the hearing.

The court may not allow you to testify at the motion hearing. Read your county's Local Court Rules, if any.

Bring proposed orders to the hearing.

To the person filing this motion:

You must schedule a hearing on this motion. You may use the *Notice of Hearing* (form FL All Family 185) unless your county's Local Court Rules require a different form. Contact the court for scheduling information.

To the person receiving this motion:

If you do not agree with the requests in this motion, file a statement (using form FL All Family 135, *Declaration*) explaining why the court should not approve those requests. You may file other written proof supporting your side.

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1. **Relief Requested**

My name is Andrea Clare. I ask the court to approve the following orders:

Entry of a Protective Order regarding the Deposition of Andrea Clare.

2. **Statement of Issues**

I ask the court to decide the following issues:

Whether or not the court will enter a Protective Order in this matter.

3. **Statement of Facts/Grounds**

These facts support my request:

Please see the Declarations filed by the parties.

4. **Evidence Relied Upon**

I ask the court to consider this evidence:

All Declarations previously filed by the parties.

5. **Legal Authority**

I have the right to ask for these orders according to the law:

This Motion is made pursuant to CR 26 and CR 30.

6. A Proposed Order is **not** attached to this *Motion*.

Person making this motion fills out below

I declare under penalty of perjury under the laws of the state of Washington that the facts I have provided on this form are true.

Signed at Richland, Washington Date: July 6, 2018

_____ ANDREA J. CLARE

Person making this motion signs here *Print name here*

I agree to accept legal papers for this case at my lawyer's address, listed below.

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Lawyer fills out below

Lawyer signs here	George E. Telquist 27203 *Print name and WSBA No.*	7/6/2018 *Date*

1321 Columbia Park Trail	Richland	WA	99352
Lawyer's address	*city*	*state*	*zip*

Email: george@tmc.law

Warning! Documents filed with the court are available for anyone to see unless they are sealed. Financial, medical, and confidential reports, as described in General Rule 22, **must** be sealed so they can only be seen by the court, the other party, and the lawyers in your case. Seal those documents by filing them separately, using a *Sealed* cover sheet (form FL All Family 011, 012, or 013). You may ask for an order to seal other documents.

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BY ML DEPUTY

16-3-50269-11
PT 270
Petition
3293326

Superior Court of Washington
County of FRANKLIN

In re: Petitioner: ANDREA J. CLARE And Respondent: KEVIN P. CLARE	Case No. 16-3-50269-11 **Petition for an Order for Protection** ☒ **Harassment** (PTORAH) **and/or** ☒ **Stalking** (PTORSTK)

➢ This is a Petition for an Order for Protection against Harassment and/or Stalking as checked in the caption.

I believe:

☒ I am a victim of stalking.
☒ ANDREA J. CLARE is the victim of stalking and she is a vulnerable adult.
The respondent has been
- stalking the victim either in person or cyber stalking, **and**
- repeatedly contacting the victim or attempting to contact or monitor the victim for no lawful purpose and his/her actions caused the victim to feel intimidated, frightened or threatened.

☒ I am a victim of unlawful harassment.
☐ _____ (name) is a victim of unlawful harassment and he/she is a minor.
The respondent's actions toward the victim have seriously alarmed, annoyed or harassed the victim, or are detrimental to the victim and serve no legitimate or lawful purpose. The respondent's actions have caused substantial emotional distress to the victim or caused me to fear for the well-being of my child.

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ORIGINAL

How do the victim and respondent know each other? Spouses, going through a divorce

I have given a detailed explanation below.

1. Who is the petitioner?

My name is ANDREA J. CLARE. I am the petitioner.

☒ I am 18 or older and I am petitioning on my own behalf.
☐ I am 16 or 17 and I am petitioning on my own behalf.
☐ I am the parent or guardian of child/ren under age 18 and I am petitioning on their behalf:

Children's Name/s (First, Middle Initial, Last)	Age

☐ I am not the parent or guardian, but the child/ren live/s with me; and I am petitioning on their behalf; and the respondent is not a parent.

Children's Name/s (First, Middle Initial, Last)	Age

☐ I am filing this petition on behalf of petitioner, (name) _____, a vulnerable adult as defined in RCW 74.34.020, who is a victim of stalking. I am an interested person as defined in RCW 74.34.020(10). My relationship to this petitioner is _____.

2. Is the respondent 18 years of age or older?

☒ Yes ☐ No

(If no, use the Petition for Order for Protection Harassment/Stalking Respondent Under Age 18, instead of this petition.)

3. Where do the parties live?

Petitioner lives in Benton County. Respondent lives in Franklin County.

Did the petitioner leave their residence because of stalking conduct and that is the county of their new residence?

☐ Yes ☒ No

Children named above live in _____ county.

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4. Where did the Conduct take place?

The conduct took place in Franklin County.

- **Statement describing the victim/s need for protection from the respondent**

- Write clearly. If you need more space below, attach additional page/s. Do not write on the back.

5. Describe what the Respondent did or said that you think is harassment or stalking.

- You must describe what the respondent actually said.
- You must describe what the respondent actually did.

The respondent has committed acts of harassment or stalking as follows:

A. Describe the most recent incident of harassment or stalking.

Date and time (on or around): _____

Location: _____

What did the respondent do or say that you believe to be harassing or stalking behavior?

I previously submitted declarations to the court concerning the Respondent's surveilling/stalking type behavior towards me during the marriage as well as his conduct/comments with the children after I moved out. For those reasons I initially sought and was granted an order of protection. Since then, I have often wondered during the pendency of this action how the Respondent had certain information concerning my whereabouts and work schedule. For instance, last summer I attended a wedding in Hawaii and asked him to keep the children for two of my regular visitation days as I would be 'out of town'. He agreed. I did not tell him or the children I went to Hawaii and my family does not communicate with him concerning my travel plans. However, when I returned from my trip and first delivered the children to him, he flashed a 'hang-ten' sign with his hands and told my youngest child to say good-bye to his mother. It was strange at the time but I interpreted it as a subtle way of letting me know that the Respondent knew where I went. To ensure I got the hint, he later referenced in a text that we were 'even' after he kept the kids during my 'trip to Hawaii'. His most recent declaration (filed 3/14) shows that he was aware of my attending a "GAL CLE in Olympia". He knew about that business related trip because he has been accessing my email/calendar at work. I used my credentials to establish my Microsoft exchange work email/calendar account on our ipad when we resided together during the marriage. Electronic devices such as an ipad store all credentials/passwords used on the device. I learned he used my stored credentials to gain access to my private work exchange account and has been viewing my emails and work

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calendar for the past two years. Indeed I have been able to piece information he has divulged throughout this proceeding with various communications inter-office underscoring the extent of this invasion. Incredibly and most importantly, the respondent and his attorney have maintained access to all my email communication with my attorney(s) herein – I exclusively communicate with Mr. Pickett via email. Words cannot express how deeply troubled I am by this new discovery. I feel violated all over again. I sit and think about all the communications I have had with so many people and all the conversations Mr. Clare and Ben Dow have been secretly watching. It makes me ill. In one of Mr. Clare's declarations he states that "at trial the wonderful web she has spun will be revealed" – clearly he intends to ambush and confront me on the stand with items and information he obtained by monitoring my private communications as I would not be able to ask where they got it and/or how they knew. In large part I left the marriage because I was afforded no expectation of privacy. He believed he was entitled to view and explore anything of mine at any time. I hated it and repeatedly asked him to stop. The respondent went to great lengths to track me and intercept my text and email messages while we resided together. He consistently used that information to intimidate and control me. I thought that after I left the home and got a new phone with a different cellular company the stalking, monitoring, tracking/surveillance behavior would finally stop as he would have no access. I forgot all about that ipad. Learning that he has been accessing my email/calendar for over 2 years and using information gathered therefrom to provide him an advantage in this proceeding sickens and disturbs me greatly. His breach into office communications impacts my business and our confidence that we are able to keep our client communications private from third party access. I am at a complete loss.

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How did the respondent make these statements? ☒ in person ☐ mail/written notes
☐ e-mail ☐ text ☐ phone ☐ social media (such as facebook and twitter)
☒ other (describe): ___Declaration_____.

B. Describe other incidents of harassment or stalking. For each incident, include the date, time (on or about), location, what was said, how statements were made, and what was done to a victim.

See above

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6. How did the incidents you describe above make you, the minor, or the vulnerable adult feel?

See above

7. Has the respondent used, displayed, or threatened to use a firearm or other dangerous weapon in a felony? Please describe:

No.

8. Has the respondent previously committed an offense that makes him or her ineligible to possess a firearm under the provisions of RCW 9.41.040? Please describe:

No.

9. Does possession of a firearm or other dangerous weapon by the respondent present a serious and imminent threat to public health or safety, or to the health or safety of a victim? Please describe:

No.

10. Do you have any evidence of the harassment or stalking conduct other than testimony?

- ☐ No
- ☒ Yes. I have attached the following evidence:
  - ☐ Copy of mail or written notes
  - ☐ Copy of text messages
  - ☐ Copy of emailed messages
  - ☐ Copy of social media messages
  - ☐ Police report

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☐ Declaration or Affidavit from the following witness: _____
☒ Other (describe): attached Complaint filed in Eastern Washington Federal District Court _____

11. Has/have the **victim/s or the respondent** ever requested or obtained protection from the other person in a restraining order, civil protection order, or criminal no-contact order? If yes, list the type of order, the name of the court and the approximate date, and whether the request was granted:

Yes, I was granted a restraining order against the respondent on August 11, 2016. At that time, I alleged stalking type behavior.

12. Is there any other litigation between the victim/s and the respondent? This includes all matters - pending or past - such as parenting plans, landlord-tenant disputes, employment disputes, or property disputes. If yes, provide case number/s if known, type of case, and name of court:

Yes, this dissolution

➢ Requests

13. I ask the Court for an order approving the following requests for protection:

I Request an **Order for Protection** following a hearing that will:

☐ **No-Contact**: restrain the respondent from making any attempts or having any contact, including nonphysical contact, with the person/s to be protected, directly, indirectly, or through third parties regardless of whether those third parties know of the order, except for mailing of court documents.
☒ **Surveillance:** prohibit or restrain the respondent from making any attempt to keep or from keeping the person/s to be protected under surveillance, including electronic surveillance.
☒ **Exclude from places**: exclude the respondent from the ☒ residence ☒ workplace ☐ school ☐ day care of the person/s to be protected.
☒ **Stay Away**: Prohibit or restrain the respondent from entering or being within, or from knowingly coming within, or knowingly remaining within __100 ft_____ (distance) of the ☒ residence ☒ workplace ☐ school ☐ day care of the person/s to be protected. ☐ other locations:_____.
☐ **Other**:

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☒ **Evaluation**: Order the respondent to have a ☒ mental health ☐ chemical dependency evaluation.
☐ other: _____.

☐ **Pay Fees and Costs:** Require the respondent to pay fees and costs of this action, which may include administrative court costs and service fees and petitioner's costs including attorneys' fees.

☐ **Surrender Firearms**: Require the respondent to surrender any firearm or other dangerous weapon, or any concealed pistol license and prohibit the respondent from obtaining or possessing a firearm or other dangerous weapon, or a concealed pistol license.

☐ **Duration**: Remain effective longer than one year because respondent is likely to resume acts of unlawful harassment or stalking conduct against the persons to be protected if the order expires in a year.

Emergency temporary protection (up to 14 days) until the court hearing:

☐ An emergency exists as described below. I request that a **Temporary Protection Order** granting the relief I requested above for a no-contact, surveillance, exclude from places, or stay away order be issued immediately, without prior notice to the respondent, to be effective until the hearing.

☐ I also request a temporary surrender of a firearm or other dangerous weapon without notice to the other party because irreparable injury could result if an order is not issued until the hearing.

What irreparable harm would result if an order is not issued immediately without prior notice to the respondent?

_____

_____

_____

_____

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

Dated: 3/21/18 at Richland Washington.

Petitioner

Andrea Clare
Print or type name

I agree to receive legal documents at this address:

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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF WASHINGTON

TELQUIST McMILLEN CLARE, PLLC, a Washington Professional Limited Liability Company, and ANDREA J. CLARE, individually, Plaintiffs, vs. KEVIN P. CLARE, individually, and BENJAMIN DOW, individually, Defendants.	Cause No. **COMPLAINT FOR VIOLATION OF ELECTRONIC COMMUNICATIONS PRIVACY ACT (FEDERAL) AND FOR VIOLATING RIGHT OF PRIVACY (WASHINGTON STATE 9.73 RCW)**

COME NOW the Plaintiffs, collectively, and hereby allege:

I. JURISDICTION AND VENUE

1.1 18 U.S.C. §2511 makes it illegal to intercept and disclose wire, oral or electronic communications.

EXHIBIT 1

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1.2 18 U.S.C. §2520 allows for a civil cause of action and recovery of the civil damages for violation of the electronic communications privacy act, Chapter 119 ("Title 3"), 18 U.S.C. §2510 through §2522.

1.3 Pursuant to 28 U.S.C. §1331 this Court has jurisdiction as there is a federal question at issue and in dispute.

1.4 All acts and conduct alleged in this Complaint occurred in the State of Washington in and for the Eastern District.

II. PARTIES

2.1 Telquist McMillen Clare, PLLC ("TMC") is a professional limited liability company authorized to conduct business in and for the State of Washington.

2.2 TMC, by way of its business, provides legal services in and for the State of Washington.

2.3 Andrea J. Clare ("Andrea") has at all times relevant hereto been a resident of the Eastern District of the State of Washington. She is licensed to practice law in the State of Washington. Andrea is a member of TMC.

2.4 Kevin P. Clare ("Kevin") is the estranged spouse of Andrea. Kevin, at all times relevant hereto, has been a resident of the Eastern District of the State of

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Washington. Andrea moved from the family residence on February 6, 2016. She has not resided in the family home since February 6, 2016.

2.5 On May 12, 2016, Andrea filed a Petition for Dissolution in Walla Walla County, State of Washington, under Cause No. 16-3-00106-2. Kevin, by and through his attorneys, moved to change venue. On or about August 11, 2016, venue was changed to Franklin County, State of Washington, under Cause No. 16-3-50269-11.

2.6 Benjamin Dow ("Ben") has at all times relevant hereto been a licensed attorney in and for the State of Washington. At all times relevant hereto, Ben has represented Kevin in the dissolution action with Andrea. At all times relevant hereto, Ben's conduct and actions have occurred in the Eastern District of the State of Washington.

III. FACTS

3.1 During the term of residency together and up to February 6, 2016, Kevin insisted upon access to Andrea's personal email, telephone and text messaging.

3.2 Upon leaving the residence on February 6, 2016, Andrea was desirous of having privacy and to not allow Kevin access to her personal information. To

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effectuate this, Andrea purchased a new cellular telephone and changed accounts from AT&T to Verizon.

3.3 In April 2016, while exchanging the children at the family residence, Kevin went through, observed, and intercepted text messages on Andrea's cellular phone without her permission. Upon observing text messages of Andrea, he became irate, threatened her, and insisted that she and the children leave immediately. He physically placed the children in the vehicle while yelling and screaming at Andrea.

3.4 Andrea had access remotely to a Microsoft Exchange email account owned by TMC. TMC, at all times relevant hereto, is the owner of all email with the domain of tzmlaw.com, tzmclaw.com, and tmc.law.

3.5 Since February 6, 2016, Kevin has not been authorized to use, observe, intercept, or otherwise view Andrea's cellular telephone, personal email, or work email.

3.6 At no time was Kevin an authorized user of the Microsoft Exchange email accounts owned by TMC.

3.7 At no time was Kevin given permission to view, intercept, or otherwise access any of the Microsoft Exchange email accounts owned by TMC.

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3.8 Any and all emails sent from any of the Microsoft Exchange email accounts owned by TMC specifically read as follows:

> Confidentiality Note: This e-mail message (including any attachments) may contain information that is confidential, protected by applicable legal provisions, or constitute non-public information. It is intended to be conveyed only to the designated recipient(s). If you are not an intended recipient of this message, please notify the sender by replying to this message and then delete it from your system. Use, dissemination, distribution or reproduction of this message by unintended recipients is strictly prohibited. Thank you.

3.9 As early as 2015 and continuing through January 2018, Kevin, using Andrea's email credentials, made repeated and constant contact and gained access to the Microsoft Exchange email accounts owned by TMC. Kevin used his access to the email account owned by TMC to learn of the whereabouts and plans of Andrea by reviewing her emails and daily calendar. Kevin used his access to the TMC email domains to intercept and view email exchanges that Andrea had with her attorneys of record in her dissolution case against Kevin.

3.10 It is upon information and belief that Kevin has reviewed Andrea's private and confidential communication between herself and her attorneys.

3.11 Kevin used his access to TMC's Microsoft Exchange email accounts to view email exchanges between the partners at TMC Law, to view email exchanges between the partners at TMC Law and their business associates/staff, to

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view email exchanges between Andrea and opposing counsel in claims not related to the divorce, and to view email exchanges between Andrea and existing clients not parties to the divorce.

3.12 Kevin willfully, recklessly and wantonly continued to access the TMC email without TMC's permission or as an authorized user.

3.13 It is well known within the local legal community that Ben dislikes and has disdain for Andrea.

3.14 It is well known within the local legal community that Ben dislikes and has disdain for TMC.

3.15 Ben agreed to represent Kevin in the dissolution from Andrea for the sole purpose of attempting to impact Andrea professionally and personally.

3.16 Kevin told Ben that he had access to TMC's Microsoft Exchange email account, to include all of the email domains identified herein.

3.17 Kevin provided information to Ben to advance his position in the dissolution using information obtained from the improper use and access to the TMC Microsoft Exchange email account.

3.18 Ben knew, at all times, that Kevin had obtained this information without authorization or the express consent of TMC or Andrea.

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3.19 Kevin had adequate discovery mechanisms available to him for purposes of obtaining information within the dissolution case under the laws and the civil rules of the State of Washington.

3.20 At all times hereto, Ben has acted willfully, wantonly and recklessly towards TMC and Andrea.

3.21 TMC and Andrea discovered and learned that Kevin was, without authority, accessing the TMC email on March 19, 2018.

IV. CAUSES OF ACTION

A. Violation of Federal Law

4.1 Kevin intentionally intercepted, or endeavored to intercept, a wire, oral, or electronic communication without authority owned by TMC.

4.2 Kevin intentionally disclosed to Ben the contents of the wire, oral, or electronic communication, knowing or having reasons to know, that the information he obtained through the interception of the wire, oral, or electronic communication was in violation of the Electronic Communications Privacy Act ("Act") under 18 U.S.C. § 2510-22.

4.3 Kevin intentionally used or endeavored to use, the contents of the wire, oral, or electronic communications, knowing or having reason to know, that the information was obtained in violation of the Act.

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4.4 Ben intentionally procured Kevin to intercept, or endeavor to intercept, a wire, oral, or electronic communication in violation of the Act.

4.5 Ben intentionally disclosed, or endeavored to disclose, contents of the wire, oral, or electronic communication knowing or having reason to know, that the information was obtained through the interception of a wire, oral, or electronic communication in violation of the Act.

B. Violation of State Law

4.6 Kevin violated the Washington State Right of Privacy Act, 9.73 RCW.

4.7 Kevin unlawfully intercepted private communications of TMC and Andrea without first obtaining the consent of the participants in the communication.

V. INJUNTIVE RELIEF

5.1 The Federal Electronic Communications Privacy Act as alleged herein, authorizes the Court to render injunctive relief at the request of the Plaintiff.

5.2 The Court, in addition to the damages stated in Section VI below, should enter injunctive relief, to include but not be limited to, as follows:

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a) Order Kevin to cease and desist in the continued electronic monitoring, surveillance or following of Andrea and/or TMC;

b) Declare that Kevin shall disclose to this Court and the state court dissolution cause of action (Franklin County Cause No. 16-3-50269-11), all information he has viewed, obtained, copied, forwarded, or otherwise had access to since February 6, 2016;

c) The Court should order, restrict and prohibit Kevin from altering, changing, deleting, or otherwise disposing of any device, telephone, tablet, computer, or other equipment that can be used for storage of electronic information that he has possessed since February 6, 2016;

d) Declare that Ben shall disclose any and all information he received from Kevin since February 6, 2016, the source of the information, what he knew to be the source of the information, and any and all advice he gave Kevin about the Electronic Communications Privacy Act and the Washington State Privacy act and any violations thereof;

e) Order Ben to submit all data, communications, electronic hardware, showing any and all electronic communications or information received by Kevin since February 6, 2016;

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5.3 The Electronic Communications Privacy Act declares that any and all evidence obtained in violation to the act is inadmissible in any other proceeding or trial;

5.4 The Court should further render any and all information that was potentially obtained in violation of the act to be inadmissible in Franklin County Cause of action under Cause No. 16-3-50269-11.

VI. DAMAGES

WHEREFORE, the Plaintiffs pray for the following relief:

6.1 Injunctive relief as stated above in paragraph V.

6.2 For actual damages as allowed under 18 U.S.C. §2520 to include, but not be limited to, the following:

a) Preliminary or other equitable or declaratory relief as may be appropriate (see paragraph V);

b) Actual damages pursuant to 18 U.S.C. §2520(c)(A);

6.3 For a finding that Kevin acted willfully, wantonly, or recklessly and awarding punitive damages;

6.4 For attorney's fees and costs reasonably incurred;

6.5 For a finding that Ben acted willfully, wantonly, or recklessly and awarding punitive damages;

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6.6 For damages against Kevin as allowed pursuant to RCW 9.73.060, to include but not be limited to, the following:

a) Actual damages suffered by TMC and Andrea;

b) For mental and emotional distress damages as allowed under 9.73 RCW on behalf of Andrea or, alternatively, liquidated damages; and

c) Reasonable attorney's fees and costs;

6.7 For damages against Ben as allowed pursuant to RCW 9.73.060, to include but not be limited to, the following:

a) Actual damages suffered by TMC and Andrea;

b) For mental and emotional distress damages as allowed under RCW 9.73 on behalf of Andrea or, alternatively, liquidated damages; and

c) Reasonable attorney's fees and costs.

DATED this 21st day of March, 2018.

/s/ GEORGE E. TELQUIST
George E. Telquist, #27203
TELQUIST McMILLEN CLARE, PLLC
Attorneys for Plaintiffs
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(509) 737-9500 fax
george@tmc.law

CERTIFICATE OF FILING

I hereby certify that on March 21, 2018, the undersigned electronically filed Plaintiffs' Complaint for Violation of Electronic Communications Privacy Act and for Violating Right of Privacy with the clerk of the court.

DATED this 21st day of March, 2018.

/s/ Kristi L. Flyg

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16-3-50269-11
ORAH 358
Order for Protection From Civil Harassment
3604072

FILED
FRANKLIN CO CLERK
2018 AUG -6 PM 1:57
MICHAEL J. KILLIAN
BY ML DEPUTY

Superior Court of Washington For Franklin County	
Andrew Clare, Petitioner, (DOB)	No. 16-3-50269-11
vs.	**Order for Protection - Harassment** (ORAH)
Kevin Clare, Respondent. (DOB)	Court Address:
	Telephone Number: ( )
	(Clerk's action required)

Warning to the Respondent: Violation of the provisions of this order with actual notice of its terms is a criminal offense under RCW 10.14 and will subject a violator to arrest. Willful disobedience of the terms of this order may also be contempt of court and subject you to penalties under RCW 7.21.

1. Full Faith and Credit: The court has jurisdiction over the parties, the minors and the subject matter. This order is issued in accordance with the Full Faith and Credit provisions of VAWA.18 U.S.C. § 2265.

2. Notice of this hearing was served on the respondent by ☒ personal service ☐ service by publication pursuant to court order ☐ other_____.

3. Minors addressed in this order:

Name (First, Middle Initial, Last)	Age	Race	Sex

Based upon the petition, testimony, and case record, the court finds that the respondent committed unlawful harassment, as defined in RCW 10.14.080, and was not acting pursuant to any statutory authority, and **it is therefore ordered that**:

☒ **No-Contact**: Respondent is **restrained** from making any attempts to contact Petitioner and any minors named in the table above.

☒ **Surveillance**: Respondent is **restrained** from making any attempts to keep under surveillance Petitioner and any minors named in the table above.

☒ **Stay Away**: Respondent is **restrained** from entering or being within 50 (distance) of Petitioner's ☒ residence ☒ place of employment ☐ other:

☒ The address is confidential. ☐ Petitioner waives confidentiality of the address which is:

☒ **Other**: Email communication permitted

☐ **Pay Fees and Costs**: judgment is granted against Respondent in favor of _____ in the amount of $ _____ for costs incurred in bringing the action and $ _____ for attorneys' fees.

Notice: **Petitioner, you must fill out and file a completed form WPF UH 04.0700, Judgment Summary**.

The court has granted judgment against the respondent in the amount of $_____ for administrative court costs and service fees. A Judgment Summary, form WPF UH 04.0700, must be completed and filed.

☐ **Prohibit Weapons and Order Surrender**

The Respondent must:

- not possess or obtain any firearms, other dangerous weapons, or concealed pistol license; and
- comply with the ***Order to Surrender Weapons*** filed separately.

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

☐ **must** issue the orders referred to above because the court finds by clear and convincing evidence that the respondent has:

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

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

☐ **may** issue the orders referred to above because the court finds by a preponderance of evidence, the respondent:

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

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

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

Washington Crime Information Center (WACIC) Data Entry

It is further ordered that the clerk of court shall forward a copy of this order on or before the next judicial day to Richland ☐ County Sheriff's Office ☒ Police Department, **where Petitioner lives** and shall enter it into WACIC.

Service

☐ The clerk of court ☐ Petitioner shall forward a copy of this order on or before the next judicial day to:

☐ _____ County Sheriff's Office,

☐ _____ Police Department,

where Respondent lives which shall personally serve the respondent with a copy of this order and shall promptly complete and return to this court proof of service.

Or ☐ Petitioner has made private arrangements for service of this order.

Or ☐ Respondent appeared; further service is not required.

Or ☐ Respondent did not appear. The restraint provisions in this order are the same as those in the temporary order. The court is satisfied that the respondent was personally served with the temporary order. Further service is not required.

This Antiharassment protection order expires on Further Order of the Court.

If the duration of this order exceeds one year, the court finds that Respondent is likely to resume unlawful harassment of the petitioner when the order expires.

Next hearing - will be within 14 days

Other: _____

Dated 8/6/2018 at 1:52 ~~a.m.~~/p.m.

Judge/~~Court Commissioner~~

I acknowledge receipt of a copy of this Order:

Signature of Respondent/Lawyer WSBA No. — Kevin Clare — Print Name — 8/6/18 — Date

Signature of Petitioner/Lawyer WSBA No. — Andrea Clare — Print Name — 8/6/18 — Date

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

16-3-50269-11
CTD 517
Courts Decision
5254582

ORIGINAL FILED
APR - 1 2019 F.C
MICHAEL J. KILLIAN
FRANKLIN COUNTY CLERK

WALLA WALLA COUNTY SUPERIOR COURT

Judge John W. Lohrmann

315 West Main Street Fl 3
PO Box 836
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March 29, 2019

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RE: In re the Marriage of Andrea J. Clare and Kevin P. Clare -- Decision Letter
Franklin County Cause No. 16-3-50269-11

Dear Counsel:

Please accept this as my decision supplementing the Findings of Fact and Conclusions of Law entered together herewith.

The parties married on June 25, 2005, in Richland, Washington. They have 3 children: daughter Kennedy, age 9, son Canon, age 8, and son Cruz, age 5. The parties separated on February 6, 2016. The issues for trial included parenting and residential time, identification and division of assets and debts, child support, request for protection order, attorney fees, and GAL fees.

Following trial, the Court invited each side to present proposed findings in electronically editable form. The Final Findings of Fact and Conclusions of Law entered separately are supplemented by this decision letter which is incorporated therein by reference. The Court has reviewed and

accepted some if not most of the findings presented by the parties as compiled therein; however, the parties are cautioned to review them carefully as they have been much edited by the Court for both grammar and syntax to make them suitable for entry. Significant substantive changes were also made to conform the findings to the Court's own observations and determination of the facts proven at trial. The Court deleted findings and portions of findings which the Court found to be irrelevant or otherwise unnecessary to its decision. Negative findings were also deleted. The Court retained each parties' numbering for ease of comparison and reference. Paragraphs deleted in their entirety are so noted.

Parenting Plan.

It is necessary to enter a residential schedule for Kennedy, Canon, and Cruz. The unresolved issue for trial was who will serve as their primary custodian, or whether custody should be shared jointly. At the time of filing of this case in 2016 it was the position of the Petitioner that custody should be joint. It was the position of the Respondent that he should have primary custody because by virtue of the sporadic and seasonal nature of his job as a spray pilot he had previously spent more time with the children as opposed to the Petitioner, a fully employed and engaged attorney at law.

Over the course of the litigation the parties' respective positions changed on the issue. After the separation the Petitioner began to perceive that the Respondent's aggressiveness in litigation and his insistent behavior in dealing with the children and in other issues following separation mirrored the controlling behavior that characterized their relationship during the marriage, as described in the Findings. Her position at trial was that she should have primary custody and sole decision-making because of his ongoing abusive behavior characterized by stalking and coercive control.

On the other hand, the Respondent's position that he should have primary custody remained the same until shortly before trial. Faced with the possibility that his insistence on primary custody perhaps might not put him in the best light, at trial he requested that the parties have equal residential time. He also asked that decision-making regarding the children be divided such that he would control educational decisions, and the Petitioner would control health care decisions.

The legislative intent on child custody is set forth at RCW 26.09.002, which states generally that:

> … The best interests of the child are served by a parenting arrangement that best maintains a child's emotional growth, health and stability, and physical care. Further, the best interest of the child is ordinarily served when the existing pattern of interaction between a parent and child is altered only to the extent necessitated by the changed relationship of the parents….

and more specifically at RCW 26.09.187(3):

> The court shall make residential provisions for each child which encourage each parent to maintain a loving, stable, and nurturing relationship with the child,

> consistent with the child's developmental level and the family's social and economic circumstances.

The Court must consider the language of that statute in conjunction with the factors in RCW 26.09.191. *Leegwater v. Leegwater*, 131 Wn. App. 1036 (2006). S*ee also In re Marriage of Burrill,* 113 Wn.App. 863, 868, 56 P.3d 993 (2002). RCW 26.09.187(3)(a) expressly says, "The child's residential schedule shall be consistent with RCW 26.09.191."

In turn, RCW 26.09.191 specifies that:

> (1) The permanent parenting plan shall not require a mutual decision-making… If it is found that a parent has engaged in any of the following conduct:… (b) physical, sexual, or a pattern of emotional abuse of a child; or (c) a history of acts of domestic violence as defined in RCW 26.50.010 (3) or an assault… that causes grievous bodily harm or the fear of such harm….
>
> …
>
> (3) A parent's involvement or conduct may have an adverse effect on the child's best interests, and the court may preclude or limit any provisions of the parenting plan, if any of the following factors exist:
>
> ...
>
> (b) A long-term emotional or physical impairment which interferes with the parent's performance of parenting functions as defined in RCW 26.09.004;
>
> ...
>
> (e) The abusive use of conflict by the parent which creates the danger of serious damage to the child's psychological development.

As the Court remarked to counsel during trial, superior court judges in Washington received considerable training in issues surrounding domestic violence. Rarely is there a judicial conference offered that does not include some training or education in the recognition of domestic violence and its consequences. Much literature and resources are made available to courts on the subject. See, e.g., *Court Review, Journal of the American Judges Association*, Volume 53, Issue 1, "Special Issue on Handling Domestic-Violence Cases" (2017). This training and education provide a good foundation of knowledge to supplement the expert testimony on the subject such as presented in this case by Mr. Derry, Ms. Mechanic, and Ms. Milner.

Nevertheless, notwithstanding the assistance of experts it is still a challenge to discern whether there is conduct or a pattern of conduct that constitutes domestic violence under RCW 26.09.191. In this case there is testimony that the Respondent pushed the Petitioner during the event in 2013 described by witness Gary Register. The Petitioner testified that she was placed in fear of bodily harm on that occasion. There is a dearth of testimony regarding more recent or recurring acts of physical violence on the part of the Respondent. However, the Petitioner testified as to other occasions where there was no actual physical assault but where physical body language, body

positioning, and menacing facial expressions added to her fear for her personal safety. The Respondent entered her home after separation on more than one occasion without express permission to do so; he says he thought consent was implied by the circumstances.

Adding to the mix is the fact that neither of the psychologists who examined the Respondent found any diagnosable psychological condition, though both acknowledged that a domestic violence perpetrator does not necessarily present with any diagnosable medical or psychological condition. Instead, such person may still have behavioral traits which may be characteristic of an abuser. The Court finds that the Respondent does so exhibit traits of coercive and controlling behavior to such an extent that it is abusive. The Respondent is indeed guilty of abusive conduct toward the Petitioner both during their marriage and afterwards. The rules of conduct that he imposed following her disclosure of her affair prior to their marriage, his need to know always where she was and what she was doing, his use of the "Find my iPhone" app, his unreasonable examination of her panties for evidence of an extramarital affair, his unauthorized reading of her text messages and/or emails, his questioning of the children and third parties regarding her activities and whereabouts -- all these mitigate toward a finding of coercive control which in turn could be defined as stalking under RCW 26.50.010(3)(c) and RCW 9A.46.110.

The Court does not find it necessary to its final decision on residential time and decision-making to find that intimate partner violence (referenced as "IPV" by witnesses at trial) or domestic violence as defined in RCW 26.50.010 occurred during this marriage. However, the Court does find that the exhibited abusive behavior should be taken into consideration together with the factors described in RCW 26.09.187(3). The factors are now discussed in turn:

(i) The relative strength, nature, and stability of the child's relationship with each parent.

The three children are strongly bonded with each of the parents. Between his periods of seasonal work, the father was able to be a stay-at-home dad while the mother was better able by reason of her education and employment to be the primary "breadwinner" for the family. This did not detract from the strength or depth of her relationship with the children; it was simply a reality of their daily living roles as they lived those roles in proximity to their children.

The case commenced with a joint custody arrangement. However, during the litigation serious concerns arose regarding the Respondent's stalking behavior and controlling conduct which raised the question of and potential need for a psychological evaluation and possible treatment as a domestic violence perpetrator. As described in the Findings, as a result of these concerns the Petitioner was temporarily given primary custody and sole decision-making pending a psychological evaluation together with any suggested treatment. Thus, at first after the separation the Petitioner was immediately more actively involved in parenting and in sharing residential time. And in recent months she has served as primary custodian and sole decisionmaker. With the use of Family Wizard (a computer application by which to communicate with the other parent) starting in early August 2018 she has been able to involve the Respondent in a more cooperative and cordial decision-making approach to parenting. The Respondent continues to be actively involved in the lives of his children and makes full use of his residential time with them.

Although the first factor in RCW 26.09.187(3) should be given the greatest weight, the statute "did not intend to create a presumption in favor of the primary caregiver but, to the contrary, intended to reject any such presumption." *In re Marriage of Kovacs,* 121 Wn.2d 795, 809, 854 P.2d 629 (1993).

As discussed above the Court has a continuing concern that the Respondent's past desire to monitor and follow the conduct and activities of the Petitioner and to enlist the children in this process is abusive and puts at risk the children's good relationship with her mother.

(ii) The agreements of the parties provided they were entered into knowingly and voluntarily.

There are no agreements.

(iii) Each parent's past and potential for future performance of parenting functions as defined in RCW 26.09.004(3), including whether a parent has taken greater responsibility for performing parenting functions relating to the daily needs of the child.

The guardian ad litem noted that child care providers were utilized throughout the marriage. While the Respondent and his family members indicated that he was the primary care provider prior to separation, there was also testimony that when both parents were around both parented equally.

The Court finds that until the date of separation the Respondent had the greater responsibility for performing parenting functions relating to the daily needs of the children. After separation both parents have been regularly engaged in parenting functions, almost to the point of competition between them. The Respondent successfully parented the children as a stay-at-home dad prior to separation; the Petitioner has successfully parented as primary custodian of the children and sole decisionmaker since such order was entered in September 2018. The Petitioner has made a conscious effort to involve the Respondent in decision-making regarding the children notwithstanding that she has had sole decision-making authority for several months prior to trial. Both are fit parents and can perform future parenting functions.

(iv) The emotional needs and developmental level of the child.

Kennedy is 9 years old and is developing normally. She has engaged in counseling for depression and anxiety. She has been significantly behind academically but has improved and her grades are better. Canon is 8 years old and currently has no learning issues he has had some growth and development concerns which have caused conflict between his parents regarding advice as to how the condition should be treated medically. Like his sister Canon has engaged in counseling for depression and anxiety, but as of trial he was doing much better. The third child, Cruz, is 5 years old and is developing normally. Their actual development appears normal for their ages. The Court's overall impression of the testimony is that while the children have

suffered as a result of the parents' separation and pending dissolution, they are resilient and doing well under the circumstances.

Both parents can meet the emotional and developmental needs of their children.

(v) The child's relationship with siblings and with other significant adults, as well as the child's involvement with his or her physical surroundings, school, or other significant activities.

In her report, the guardian ad litem summarized the children's relationships as follows:

> The children do not have any step siblings or half siblings at either of their parents' homes.
>
> While at the mother's home Kennedy and Canon are in Boys and Girls Club, piano lessons, Canon is in golf lessons and Cruz attends daycare/preschool. On occasion, Kennedy attends an art class. The children have cousins which they enjoy spending time with. This includes sleepovers at their cousins home, sleep overs at their home, barbecues and fun activities. *[sic]* The children are bonded to their Aunt Kimberly and Aunt Elecia and spend a significant amount of time with both aunts. The children share a significant bond with her grandparents, Linda Hovland and Allen Hovland. Linda Hovland provided childcare for both Kennedy and Canon for approximately 2.5 years.
>
> While at the father's home the children spend most of their time at the home and they have a few neighborhood children they play with. They have cousins which reside outside the country that visit on a yearly basis. They also attend church at Bethel. The children share a significant bond with Cynthia and Larry Schatz and Jonathan Allen.

Exhibit 1 at P00173. The Court finds that ample resources, activities and opportunities, both educational and otherwise, are available to these children in either of the parents' communities which are located only about 10 miles apart.

(vi) The wishes of the parents and the wishes of a child who is sufficiently mature to express reasoned and independent preferences as to his or her residential schedule.

At trial the Petitioner requests that she be named the primary residential parent with sole decision-making. This contrasts with her initial position that residential time and decision-making should be shared equally.

At trial the Respondent's position was that they should have equal residential time and that decision-making responsibilities be allocated between them, with educational decisions made by the respondent and medical decisions made by the Petitioner. This contrasts with in his initial position that he should be named the primary residential parent with joint decision-making.

The children are not sufficiently mature to express reasoned and independent preferences as to their residential schedule, nor were such preferences offered or solicited at trial.

(vii) Each parent's employment schedule, and... accommodations consistent with those schedules.

Neither parent's employment schedule is an impediment to parenting of these children. Each of the parents have jobs that at times can be demanding and rigid. This is true of the respondent in his job as spray pilot because such duties must be done precisely when the time is right for application. If he digresses into employment as a passenger pilot for a commercial airline, there would certainly be even more rigid scheduling demands upon his time. The petitioner has herself experienced the insistent pull of a law practice which sometimes involves long hours and insistent needs and demands of staff, clients, partners, court rules, and judges.

Considering all the above factors and giving factor (i) the greatest weight as required, the Court finds that the mother should be designated as the primary residential parent.

The Court must further allocate the decision-making responsibilities of the parties under RCW 26.09.184 "consistent with the criteria in RCW 26.09.187 and 26.09.191. Subsection (c) instructs that the court should do so in a way to "minimize the child's exposure to harmful parental conflict." While the Petitioner and the Respondent may each make decisions regarding the day-to-day care and control of the children while they are residing with that parent, the Court will allocate sole decision-making authority to the Petitioner regarding the children's education, health care, and religious upbringing. The father's residential time shall be as set forth in the Parenting Plan proposed by the Petitioner and entered contemporaneously with this opinion.

While the Court has not made an affirmative finding of domestic violence, and neither of the examining psychologists have made any diagnosis of a recognized psychological or mental health condition, the Court remains concerned about the Respondent's controlling behavior and is satisfied that joint decision-making is not in the best interest of the children. In order to allay the Court's concern about the Respondent's controlling and stalking behavior, the Respondent is directed to enroll in and successfully complete the DV-MRT educational program offered by the Walla Walla District Court Probation Office. The Court contemplates that, with the enrollment and successful participation by the Respondent in that program as well as completion of the "Incredible Years" parenting class specified in the Parenting Plan, the children's residential time with Respondent can be increased as well as increasing his involvement in decision-making regarding the children. The parties shall continue to use Family Wizard to communicate regarding the children.

The Court will retain jurisdiction over the parties for a period of nine (9) months to make minor adjustments or modifications that may be appropriate, and if the Respondent has successfully completed the above-described programs. During this period of time such modification proceedings may be brought to the Court by either party by motion without the need to show a substantial change in circumstances.

Order for Protection.

Based upon the findings made herein the Court find that an Order for Protection should be entered, effective until March 31, 2021.

Child Support.

In September 2018, the Court entered a temporary child support order. At that time, it appeared that the Petitioner's law firm had provided her with a rent-free house. The Court for purposes of income assumed that the free housing benefit was additional income and added that to her wage information. However, with the benefit of trial testimony it appears that the acquisition of the house for the petitioner by her law firm was part of her remuneration for the Hawkins case, and as such it should be considered as property before the Court for allocation and distribution.

In her proposed worksheet the Petitioner averaged her income for the past five years, and the Court finds this to be a reasonable approach under the circumstances of this case. The Respondent utilized his actual income figures as did the Court in its November 21, 2018 temporary order. The Court accepts the Petitioner's proposed worksheet and child support order. The Court agrees with the parties' proposals that the payment of Cruz's school/daycare should be removed from the worksheet and that, rather than specifying expenses, each parent will pay their respective percentage of agreed extraordinary/extracurricular expenses as mandated by Washington law. The Petitioner's proposed worksheet adopted by the Court is consistent therewith and will be entered.

The Respondent claimed two exemptions in 2017. The Court finds that the confusion regarding who could claim two exemptions in 2017 was a product of exactly that: confusion and misunderstanding. The Petitioner should have two exemptions for 2018. Going forward the parents will alternate the exemptions in a consistent pattern. The Respondent will be able to claim the exemption or exemptions on the condition that he is current in his child support payments as of December 31st of the year for which the exemption or exemptions are sought.

Property and Debt Division.

The statutory framework basis for a division of assets and debts is set forth in RCW 26.09.080 as follows:

> In a proceeding for dissolution of the marriage or domestic partnership, legal separation, declaration of invalidity, or in a proceeding for disposition of property following dissolution of the marriage or the domestic partnership by a Court which lacked personal jurisdiction over the absent spouse or absent domestic partner or lacked jurisdiction to dispose of the property, the Court shall, without regard to misconduct, make such disposition of the property and the liabilities of the parties, either community or separate, as shall appear just and equitable after considering all relevant factors including, but not limited to:

(1) The nature and extent of the community property;
(2) The nature and extent of the separate property;
(3) The duration of the marriage or domestic partnership; and
(4) The economic circumstances of each spouse or domestic partner at the time the division of property is to become effective, including the desirability of awarding the family home or the right to live therein for reasonable periods to a spouse or domestic partner with whom the children reside the majority of the time.

The factors listed in RCW 26.09.080 are not exclusive. In addition to the statutory factors, courts may also consider the parties' relative health, age, education, work history, and employability. *In re Marriage of Mathews*, 70 Wn. App. 116, 121, review denied, 122 Wn.2d 1021 (1993); *In re Marriage of Nuss*, 65 Wn. App. 334, 342 (1992); *In re Marriage of Olivares*, 69 Wn. App. 324, 329 (1993).

In a dissolution action, all property, both community and separate, is before the Court for distribution. *Friedlander v. Friedlander*, 80 Wn.2d 293, 305 (1972); *In re Olivares*, 69 Wn. App. at 328-29 (1993). The trial court has a duty to distribute all property brought to its attention and the parties have a right to have their property interests definitively determined. *Shaffer v. Shaffer*, 43 Wn.2d 629, 630-31 (1953); *In re Marriage of Sedlock*, 69 Wn. App. 484 at 498.

Property acquired before marriage is presumptively separate property. RCW 26.16.010. Property acquired after marriage is presumptively community property per RCW 26.16.030; however, this presumption can be overcome by clear and convincing evidence to the contrary. *In re Estate of Smith*, 73 Wn.2d 629, 631 (1968).

Property distributions need not be equal to be just and equitable. *In re Marriage of Tower*, 55 Wn. App. 697, 700 (1989). Depending on the facts of the case, even a disproportionate award of community property may not be an abuse of discretion. *In re Marriage of Davison*, 112 Wn. App. 251, 258-59 (2002); *In re Marriage of Mathews*, 70 Wn. App. 116, review denied, 122 Wn.2d 1021 (1993); *In re Marriage of Zier*, 136 Wn. App. 40 (2006).

Case law on the relevant principles which may apply to this case was nicely summarized by Division III of the Court of Appeals in an unpublished decision, *In re Marriage of Shapiro*, 175 Wn. App. 1007 (2013):

- The character of the property is established at the time of its acquisition. *In re Estate of Borghi,* 41 Wn. App. 294 (2007), *aff'd,* 167 Wn.2d 480 (2009).
- Once evidence shows that the property is separate in character, it maintains its distinction until the party challenging the asset's character provides direct and positive evidence that proves otherwise. *In re Estate of Dewey,* 13 Wn.2d 220, 226-27 (1942) (quoting *Guye v. Guye*, 63 Wash. 340, 352 (1911)). The term "direct and positive evidence" equates to a "clear and convincing evidence" standard. *Borghi,* 167 Wn.2d 480, 484-85 n. 4.
- Where real property is at issue, an acknowledged writing is generally required to change the separate status of the real property to community property. *In re Estate of Verbeek*, 2 Wn. App. 144, 156-58 (1970).

- Notwithstanding the characterization of property as separate, if a spouse presents direct and positive evidence that the increase in value of separate property was attributable in part to community funds or labor, the community has a right of reimbursement and the court may impose a lien for its contribution to the separate property. *In re Marriage of Elam*, 97 Wn.2d 811 (1982).

The Court may establish the date of separation as the appropriate time for valuation of the property to be characterized and divided. The evidence is that the parties separated February 6, 2016. A few weeks later they made a brief effort to reset their relationship. That effort failed and did not affect the reality of their earlier separation. In this case the Court accepts the stated date for valuation purposes.

Personal Property.

Each party has submitted a proposal for the valuation and division of their household goods and furnishings. Most of the division has already occurred. Attached to the Findings is a schedule of personal property containing the court's determinations regarding the valuation and distribution of all such items based on the testimony. Those items distributed to the Respondent are valued at $7225, and those distributed to the Petitioner are valued at $4530.

Vehicles

The 2005 Chevy Suburban is assigned a value of $3500 and is awarded to the Respondent.

The 2005 Toyota Sienna was previously distributed to the Petitioner and sold by her for its assigned value of $1000.

The 2011 Lexus was previously sold by court order, with the proceeds of $18,877.56 deposited into the trust account of Defoe Pickett Law Office. $4000 of these community funds were paid to the Guardian ad litem, leaving $14,877.56 to be divided as community property. The Petitioner's share of $7438.78 was subsumed in the prior $7500 distribution to Respondent to cover accrued child support owed by the Petitioner. The remaining $7377.56 remaining in trust should be paid to the Respondent to equalize, understanding that the Petitioner still owes him the shortfall of $61.22. As discussed below in the section regarding guardian ad litem fees, any balance owed by the Respondent to the GAL shall be satisfied prior to final distribution to him from the trust account.

Real Property

Whether the real estate owned by the parties is characterized as separate or community property is a threshold question of law. While not necessarily dispositive, such characterization is necessary to the just and equitable disposition of the parties' property and liabilities. In *re Marriage of Griswold*, 112 Wn. App. 333, 339 (2002).

The Court finds that the family home located at 9015 Sunset Trail, Pasco Washington, is community property and should be valued at $534,500, subject to a mortgage balance of

$332,436.64. The mortgage has been paid solely by the Respondent since separation. The property together with its mortgage should be distributed to him together with the equity of $202,063.36.

The Respondent shall refinance the mortgage in his name solely within 90 days from the date of entry hereof. If he fails to do so or is not able to qualify for refinancing, then the parties shall cooperate to promptly place the property for sale through a realtor determined by the Petitioner. The initial offering shall be at a price set not less than $534,500, and subsequent reductions may be made only upon recommendation of the realtor involved.

The residential real property purchased solely for the benefit of the Petitioner by the law firm of Telquist McMillan Clare, PLLC was acquired after separation and as partial payment for services rendered and any interest that the Petitioner has in said real estate should be considered as the Petitioner's sole and separate after-acquired property.

Petitioner's interest in TMC and Professional Goodwill

The existence and valuation of goodwill of a professional is a question of fact and must be supported by substantial evidence. The trial court must take into consideration the practitioner's age, health, past earning power, reputation, skill, knowledge and success, and should apply an accepted accounting or appraisal method appropriate to the proof, making allowances for special circumstances. *Marriage of Hall*, 103 Wn.2d 236, 692 P.2nd 175 (1984).

The Petitioner joined the law firm of Leavy Schultz Davis & Fearing in January 2007, becoming a partner in 2011. She testified that because of some uncomfortable relationships at that firm after the departure of Mr. Fearing as well as her desire to associate with other energetic and attorneys more similar in age, she left Leavy Schultz to join Telquist Ziobro McMillan Clare, PLLC (hereinafter "TMC") as a partner in June 2014. This was during her marriage to the Respondent.

The Operating Agreement of her new firm was dated July 1, 2014. Mr. Ziobro left the firm in May 2017. An Amended Operating Agreement was signed by the three remaining partners effective October 24, 2017. The agreement between the partners provided for equal distribution of profits. The firm's case mix was 60 - 70% personal injury, 10% family law, and 20% other miscellaneous areas of law. The petitioner primarily worked on contingency fee cases. The firm's income varied from time to time based on its success or failure in settling such cases or winning them at trial. Mr. McMillan resigned from the firm abruptly in January 2019, just prior to trial in this cause.

Beginning during her partnership at the Leavy Schultz firm and continuing through 2017 the Petitioner was primarily responsible for a major contingency fee personal injury case which had originated with her. This case was referred to at trial and is referred to herein as "Hawkins." The case settled in November 2017 and resulted in a large contingency fee. The fee was distributed generally in the following manner: first, a settlement following litigation had to be made so that the Leavy Schultz firm was paid for its share earned prior to her departure; next, the TMC law firm repaid its line of credit including out-of-pocket costs of $143,000; next, bonuses were paid

to the TMC staff; next, the partners paid for tenant improvements to their building and also paid off the company car; next the three partners that remained each received $800,000.

For TMC the Hawkins case was -- as described -- both a blessing and a curse. While recovery on behalf of the client was ultimately successful, liability was in doubt throughout the litigation. While the Petitioner and other partners also worked in other cases with mixed results as might be expected, the concurrent work on this major case was stressful. And required intensive and concentrated work. The result was: a substantial strain meeting the law firm's sizable large overhead; reduced cash flow; engendered mistrust by the partners of the Petitioner for her time spent with Mr. Telquist during expert investigation and discovery depositions out of town; reduced draws such that an associate made more money than the partners; neglect of associate attorney management; and the added strain of litigation with the Petitioner's prior firm regarding the division of the Hawkins attorney fees. At one point the TMC partners simply were not talking to each other, and Mr. Telquist threatened his own resignation. Sometime after receiving his share of the Hawkins fee, Mr. McMillan did resign on January 22, 2019.

The above narrative is important and germane to the Court's decision in considering which methodology is appropriate to use to determine the Petitioner's professional goodwill in the TMC firm. The Court finds that the asset approach utilized by Mr. Tom Sawatzki, a forensic CPA called by the Petitioner, is most appropriate and should be adopted as opposed to the income approach utilized by Mr. Scott Martin who testified on behalf of the Respondent. Neither of these experts used the market approach which would have examined sales of comparable businesses. These witnesses agreed that a significant difference between their conclusions would be determining the fair compensation rate for purposes of an income approach. The asset approach was based on the actual performance of the firm and the partners involved (Exhibit 20); the income approach involves deducting from average net income an annual salary of an average employee practitioner with like experience, then multiplying the remaining amount by a fixed capitalization rate to determine the goodwill. While neither approach is entirely satisfactory, the Court considered the income approach the more awkward one considering the unique nature of the facts in this case. The Petitioner was in the TMC firm for less than two years when her marital separation from the Respondent occurred. Natural fluctuations in business were then compounded by the comings and goings of partners and by the episodic nature of her workload and the litigation successes and failures that ensued.

The other significant difference between the approaches was the valuation date. Given that the parties separated on February 6, 2016, the Court finds that the date of valuation used by Mr. Sawatzki, December 31, 2015, is appropriate, understanding that the impact of such date of valuation -- as opposed to Mr. Martin's use of December 31, 2017 based on that date's proximity to the August 2016 date of the Petitioner's filing of her petition in Franklin County -- is that the percentage of the Petitioner's ownership in TMC would be 25% instead of 33 1/3%. As another alternative, using the trial date for valuation purposes would be even more problematic with Mr. McMillan's late departure.

The Court finds that the value of the Clare interest in the TMC Law firm as of December 31, 2015, was $71,564.02. Added to this figure should be the Clare community interest in the Hawkins fee recovery, calculated by Mr. Sawatzki to be $31,281.80. This latter figure is

unchallenged by Mr. Martin. The total of the Clare community interest under the asset approach is $102,845.82. This asset is of course distributed to the Petitioner.

In addition to the Clares' community interest in the TMC law firm, the community also had an interest in TMClaw, Inc., also known as TMC Richland. This is the corporate entity owned by the TMC partners as shareholders. TMC Richland in turn owned the office building occupied by the law firm. When she became a partner at TMC the Petitioner was required to pay $45,000 for her share in TMC Richland. To do this she used community funds from the Leavy Schultz buy-out of her interest in that firm's office building. *Marriage of Hall* instructs that the use of a buy/sell agreement by reliance on an existing option or contractual formula should be viewed with caution as it might be influenced by other factors. The Court here is satisfied that the buy/sell agreement was entered into as an arms-length transaction. It provided that any partner leaving the firm within five years would simply be repaid their $45,000 contribution. This was the amount thus repaid to Mr. Ziobro by promissory note upon his departure. Given the relatively short amount of time between the community's acquisition of the interest in TMC Richland in 2014 and the date of separation of the parties in 2016 the amount does not seem unreasonable. Moreover, the Court notes that while the market valuation of the property effective in March 2016 was $1,650,000, given the substantial mortgage on the property the owner's equity was not particularly significant notwithstanding that the mortgage payments were being made by income taxable to the shareholders. The Court finds that the community's interest in TMC Richland as of the date of separation remained $45,000, which interest will be distributed to the Petitioner.

Retirement accounts

The Respondent is awarded his Massachusetts Mutual retirement account valued at $10,208 as of the date of separation (Exhibit 309). The petitioner is awarded her 401(k) with TMC having a value of $23,173 (Exhibit 311), and her 401(k) with Leavy Schultz valued at $136,482 (Exhibit 310).

Debts

Except for the mortgage on the family home located on Sunset Trail as discussed above there are no remaining community debts. Each debt incurred by the parties respectively since the date of separation on February 6, 2015, is the separate responsibility of the party incurring same.

Equalization

The above distributions are itemized as follows:

Asset	Distribution to Respondent	Distribution to Petitioner
Sunset Trail House	$202,063.36	
Business/Goodwill		$102,845.82
TMC Richland		45,000.00
Retirement – Vector	10,208.00	
TMC 401(k)		23,173.00

Leavy Schultz 401(k)		136,482.00
Suburban	3500.00	
Sienna		1000.00
Personal Property	7225.00	4530.00
TOTAL	$222,996.36	$313,030.82
Equalization Payment	$45,017.23	<$45,017.23>
Equalized Distribution	$268,013.59	$268,013.59
Final Lexus accounting	61.22	<61.22>

Payment owing from Petitioner to Respondent: $45,078.45

The Petitioner's payment to the Respondent should be paid in full within 30 days from the date hereof. If it is not, upon motion judgment will be entered. The Court declines the Petitioner's proposal that equalization be made by means of a division of the Leavy Schultz 401(k).

Under the circumstances of this case, the above division of property and debts is found to be fair, just, and equitable.

Attorney fees.

The findings of facts support the Court's determination that both parties have engaged in the conduct during litigation that can be described as intransigence. The Court does not intend by the following remarks to pass judgment upon the merits of the various legal positions rightly or wrongly taken by the parties but does intend to point out the activities as abuses of conflict that substantially added to the cost of this litigation.

The Petitioner prior to the litigation apparently had little or no concern about the Respondent's use of alcohol and/or marijuana as she assisted him in the application process for his aviation license through the FAA; however, during the litigation she made a point to direct the attention of the guardian ad litem to this possible illegal conduct and non-disclosure thereof to the FAA. This prompted contacts by the guardian ad litem with the FAA and in fact further prompted the Respondent to self-report his prior conduct to the FAA out of an abundance of caution that his continuing to not report might result in worse consequences than initiating the belated disclosure himself. Regardless of what was right or wrong about the reporting or obligation to report, the Petitioner acted during litigation in a way that was inconsistent with her prior position and which may yet jeopardize Respondent's employment. The Petitioner also initiated separate litigation in federal court against both the respondent and his attorney. While she certainly had the right and option to do so, the impact on this litigation was significant. While the federal case was dismissed, the litigation regarding breach of privacy and electronic stalking continues in Superior Court. While only the Respondent is now named, the added litigation caused the Respondent's original attorneys in this case to become disqualified, increasing costs and causing a delay in the trial.

The Respondent, too, engaged in unreasonable and intransigent conduct consistently and persistently in this litigation. The use of conflict ranged from relatively minor but irritating acts such as retaining an attorney whom the Respondent knew to be personally antagonistic to the Petitioner; opposition to venue in Walla Walla County; and sending out a letter soliciting preferential support for his parenting from approximately thirty of their mutual friends and acquaintances. Inconsistent positions were taken with respect the sale of the family home. He twice disregarded the Court's explicit instruction as to how to engage with a psychologist for examination purposes. The Respondent initially wanted a full guardian ad litem investigation on all issues pertaining to parenting, then did not fully engage with the GAL in a timely manner and also refused to make payment when asked to do so, potentially skewing the results of her investigation by his lack of cooperation and adversarial attitude. The Respondent routinely disagreed with the Petitioner regarding the children's schooling and extracurricular activities and, regarding Canon's growth condition, with decisions about his medical treatment.

Both parties were dilatory in responding to each other's interrogatories and other discovery in a complete and timely manner. The Court previously in oral rulings found offsetting attorney fees were incurred. There will be no net award to either side for discovery sanctions or attorney fees.

In summary, the intransigence of both parties is why the attorney fees on each side of this case have approached $200,000. Under these offsetting circumstances the court declines to grant attorney fees to either party which might otherwise be available on equitable grounds. *See Marriage of Greenlee*, 65 Wn. App. 703, 708 (1992); *Marriage of Morrow*, 53 Wn. App. 579, 590 (1989). Attorney fees are likewise denied based on need under RCW 26.09.140, as both parties have adequate sources of income and have substantial home equity together with cash assets that have some liquidity.

Guardian ad litem fees.

An Order Appointing Family Court Investigator or Guardian ad litem was entered on February 9, 2018. While the parties at times disagreed about the scope of her investigation, the order as originally presented contemplated a report for the court concerning "residential placement provisions consistent with the child(ren)'s best interest and the provisions of RCW 26.09.187 and 26.09.191." In her reports she consistently recommended shared residential time except to the extent that she had concerns regarding the Respondent's controlling and potentially abusive behavior, which in turn eventually led to her recommendation that the Petitioner be given primary residential custody pending a psychological evaluation and follow-up with recommended treatment. Neither psychologist made any specific psychological diagnosis; in her view, the late evaluation performed by Dr. Cole was done without full and adequate information and was not in compliance with the Order entered December 7, 2018. Given the uncertainties regarding these evaluations and their conclusions the GAL felt unable to make a final recommendation to the Court.

Nevertheless, the GAL's work was duly authorized by the Court and by the parties. Her total fee illustrated in Exhibit 25 was $15,961.77. Said fees are found to be reasonable. Of this amount, $4000 was paid by the community from the proceeds of the sale of the Lexus automobile. The

balance of $11,961.77 should be paid by the parties in a manner proportionate to their respective incomes as shown in the child support worksheets, that is, 56.4%, or $6746.44 should be paid by the Petitioner, and 43.6%, or $5215.33 should be paid by the Respondent. It appears that $6000 had been paid by the Petitioner by the end of trial, so she owes the GAL an additional $746.44. This should be paid to the GAL within 30 days. It appears that $1926 had been paid by the Respondent by the end of trial, so he owes the GAL an additional $3289.33.

In order that the remaining GAL fees are paid in an expedient manner, the Court directs that the Respondent's remainder be subtracted and paid directly to the GAL from the Defoe Pickett Law Office trust account balance allocated to him above.

Sincerely,

WALLA WALLA COUNTY SUPERIOR COURT

John W. Lohrmann, Judge

cc: GAL

FILED
FRANKLIN CO CLERK
2019 APR -1 PM 1:14
MICHAEL J. KILLIAN
BY F.C DEPUTY

Superior Court of Washington
County of FRANKLIN

In re the marriage of: ANDREA J. CLARE Petitioner, KEVIN P. CLARE Respondent.	Case No. 16-3-50269-11 **Order for Protection - Stalking** Clerk's action required: Para 9

No-Contact Order

1. **Protected Person's Identifiers**:

Andrea J. Clare
Name (First, Middle, Last)
05/07/1980 Female Cau c
DOB Gender Race

If a minor, use initials instead of name, provide other info., and complete a Law Enforcement Information Sheet (LEIS).

Respondent's Identifiers

Date of Birth	
08/11/1980	
Gender	Race
Male	Cauc.

2. **Respondent**:

A. do not cause, attempt, or threaten to cause bodily injury to, assault, sexually assault, harass, stalk, or keep under surveillance the protected person.

B. do not contact the protected person, directly, indirectly, in person or through others, by phone, mail, or electronic means, except for mailing or service of process of court documents through a third party, or contact by the respondent's lawyers.

C. do not knowingly enter, remain, or come **within 50 feet of the protected person's residence, school, workplace,** other: _____.

D. Other: As an exception to the above requirements, Respondent may have contact with Protected person using Family Wizard for purposes of communicating and exchanging information relating to the children. Respondent shall use his best efforts to reasonably maintain a distance of 50 feet while attending children's school events, shared activities, and exchanges.

No contact provisions begin on the next page.

This Order for Protection – Stalking is effective until: March 31, 2021

Based upon the petition, testimony, and case record, the court finds that the respondent committed stalking conduct. **It is ordered that**:

☒ **No-Contact**: respondent is ***restrained*** from having any contact, including nonphysical contact, with the protected person/s directly, indirectly, or through third parties regardless of whether those third parties know of the order, except for mailing or service of process of court documents by a 3rd party or contact by respondent's lawyer/s.
☒ **Surveillance**: respondent is ***prohibited*** from keeping the protected person/s under surveillance, including electronic surveillance.
☒ **Excluded from places**: respondent is ***excluded*** from the protected person/s' ☒ residence ☒ workplace ☐ school ☐ day care.
☒ **Stay Away**: respondent is ***prohibited*** from knowingly coming within or knowingly remaining within _____50'_____ (distance) of protected person/s' ☒ residence ☒ workplace ☐ school ☐ day care. ☐ other: ☒ The address is confidential ☐ Petitioner waives confidentiality of the protected person/s' address which is:

Warning to the Respondent: A knowing violation of this stalking protection order is a criminal offense under chapter 26.50 RCW and will subject a violator to arrest. ***You can be arrested even if any person protected by the order invites or allows you to violate the order's prohibitions***. You have the sole responsibility to avoid or refrain from violating the order's provisions. Only the court can change the order.

A knowing violation of this order is punishable under RCW 26.50.110.

Full Faith and Credit: The court has jurisdiction over the parties, the minors and the subject matter. This order is issued in accordance with the Full Faith and Credit provisions of VAWA. 18 U.S.C. § 2265.

Washington Crime Information Center (WACIC) Data Entry

It is ordered that the clerk of court shall forward a copy of this order on or before the next judicial day to ___X___Franklin County Sheriff's Office
☐ Police Department, ***where Petitioner lives*** and shall enter it into WACIC.

Service

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

Or ☐ Petitioner has made private arrangements for service of this order.

Or ☐ Respondent appeared; further service is not required.

Or ☐ Petitioner shall serve this order by ☐ mail ☐ publication as previously ordered.

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

If the duration of this order exceeds one year, the court finds that Respondent is likely to resume stalking of the petitioner when the order expires.

Other: _____.

Dated: MAR 29 2019 at 3:00 ~~a.m.~~/p.m.

Judge/~~Court Commissioner~~

I acknowledge receipt of a copy of this Order:

➢ _____ _____

Signature of Respondent/ Lawyer WSBA No. Print Name

➢ _____ _____

Signature of Petitioner/ Lawyer WSBA No. Print Name

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

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Superior Court of Washington, County Franklin

In re: Petitioner: ANDREA J. CLARE And Respondent: KEVIN P. CLARE	No. 16-3-50269-11 Final Parenting Plan (PPP/PPT/PP) [X] Clerk's action required: **1**.

Parenting Plan

1. This parenting plan is a **Court Order** signed by a judge or commissioner. This is a Final order (PP).

2. **Children** - This parenting plan is for the following children:

Child's name	Age
1. Kennedy Clare	9
2. Canon Clare	8
3. Cruz Clare	5

3. **Reasons for putting limitations on a parent** (under RCW 26.09.191)

a. Abandonment, neglect, child abuse, domestic violence, assault, or sex offense.

A parent has one or more of these problems as follows:

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~~**Child Abuse** - Kevin Clare abused or threatened to abuse a child. The abuse was: - repeated emotional abuse~~.

~~**Domestic Violence** - Kevin Clare has a history of domestic violence as defined in RCW 26.50.010(1)~~.

b. Other problems that may harm the children's best interests:

A parent has one or more of these problems as follows:

Emotional or physical problem –Kevin Clare has a long-term emotional or physical problem that gets in the way of his/her ability to parent. Mr. Clare has exhibited concerning behaviors including but not limited to: 1) controlling behaviors (both mother and children); 2) abusive use of conflict; 3) ~~alienation of the mother from the children; 4)~~ excessive questioning of the children regarding the mother's home. Treatment is required before visitation is increased.

Abusive use of conflict - Kevin Clare uses conflict in a way that endangers or damages the psychological development of a child listed in **2.**

4. Limitations on a parent

The following limits or conditions apply to Kevin Clare.

Limited contact as shown in the Parenting Time Schedule below.

Evaluation or treatment required before visitation increased.

Kevin Clare must successfully complete the 'Incredible Years' parenting course and the DV-MRT Walla Walla treatment program. Upon filing the completion certificates with the court and providing copies to the Petitioner, Mr. Clare's visitation shall increase to allow additional visitation during the summer and potentially attached three-day weekends (See Holidays Section 10).

Increased visitation shall consist of two-week rotations in the summer so as to minimize contact/exchanges and allow the parents to exercise any desired vacation time. The father's first regular weekend after school releases on Friday shall commence the two-week intervals. Exchanges shall occur Fridays at 4 pm. The summer schedule shall end the Friday before school resumes at 4 pm. The regular schedule shall begin with the father having the first weekend after school starts.

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5. Decision-making

When the children are with you, you are responsible for them. You can make day-to-day decisions for the children when they are with you, including decisions about safety and emergency health care. Major decisions must be made as follows.

a. Who can make major decisions about the children?

Type of Major Decision	Joint *(parents make these decisions together)*	Limited *(only the parent named below has authority to make these decisions)*
School / Educational		Andrea Clare
Health care (not emergency)		Andrea Clare
Other: Activities		Andrea Clare

b. Reasons for limits on major decision-making, if any:

~~Major decision-making must be limited because one of the parents has problems as described in 3.a. above.~~

Major decision-making **should** be limited because:

One of the parents does not want to share decisions-making and this is reasonable because of problems as described in **3.b.** above.

6. Dispute Resolution - If you and the other parent disagree:

From time to time, the parents may have disagreements about shared decisions or about what parts of this parenting plan mean. To solve disagreements about this parenting plan, the parents will go to a dispute resolution provider or court. The court may only require a dispute resolution provider if there are no limitations in **3a**.

a. The parents will go to Court (without having to go to mediation, arbitration, or counseling).

This provision may be modified by the Court if increased visitation becomes appropriate under paragraph 4 above. Mediation may then be required before going to court.

7. Custodian

The custodian is Andrea Clare solely for the purpose of all state and federal statutes which require a designation of determination of custody. Even though one parent is called the

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custodian, this does not change the parenting rights and responsibilities described in this plan.

(Washington law generally refers to parenting time and decision-making, rather than custody. However, some state and federal laws require that one person be named the custodian. The custodian is the person with whom the children are scheduled to reside a majority of their time.)

Parenting Time Schedule *(Residential Provisions)*

Complete *the parenting time schedule in sections* ***8*** *-* ***11****.*

8. School Schedule

a. Children under School-Age

The schedule for children under school-age is the same as for school-age children.

b. School-Age Children

The regular schedule:

The children shall reside with the mother except the father shall have visitation from Friday at 9:00 a.m. to Sunday at 6:00 p.m. every other week. He shall also have visitation every other Wednesday from school release to Thursday when school commences. The Wednesday visit shall be in the week that the father does not have the weekend visit.

Exchanges shall occur at the Elementary School when school is in session; otherwise the Walgreens on Leslie and Gage.

9. Summer Schedule

Summer begins and ends according to the school calendar.

The Summer Schedule is the **same** as the School Schedule unless the father has complied with Section 4 herein.

10. Holiday Schedule (includes school breaks)

This is the Holiday Schedule for all children

Holiday	Children with: Andrea Clare	Children with: Kevin Clare
Martin Luther King Jr. Day	Begin day/time: _____ End day/time: _____	Begin day/time: _____ End day/time: _____

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Holiday	Children with: Andrea Clare	Children with: Kevin Clare
	If the father completes Section 4, then he may have the children only if he has them for the attached weekend. The holiday shall expire upon drop off at school.	
Presidents' Day	Begin day/time: _____ End day/time:	Begin day/time: _____ End day/time:
	Other plan: If the father completes Section 4, then he may have the children only if he has them for the attached weekend. The holiday shall expire upon drop off at school.	
•Spring Break	Begin day/time: _____ End day/time:	Begin day/time: _____ End day/time:
	Other plan: The parent who has the children the first weekend of spring break shall continue to have the children until Wednesday at 6:00 pm. The other parent shall have the children the remaining portion of spring break until Sunday at 6:00 pm.	
•Mother's Day	Every Yr. Begin day/time: 9:00 am _____ End day/time: 6:00 pm	Begin day/time: _____ End day/time:
•Memorial Day	Begin day/time: _____ End day/time:	Begin day/time: _____ End day/time:
	Other plan: If the father completes Section 4, then he may have the children only if he has them for the attached weekend. The holiday shall expire upon drop off at school.	
•Father's Day	Begin day/time: _____ End day/time:	Every Yr. Begin day/time: 9:00 am _____ End day/time: 6:00 pm.
•Fourth of July	Begin day/time: _____ End day/time:	Begin day/time: _____ End day/time:
	Other plan: Follow the summer schedule	

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Holiday	Children with: Andrea Clare	Children with: Kevin Clare
•Labor Day	Begin day/time: _____ End day/time:	Begin day/time: _____ End day/time:
	Other plan: If the father completes Section 4, then he may have the children only if he has them for the attached weekend. The holiday shall expire upon drop off at school.	
•Thanksgiving Day / Break	Odd Years Begin day/time: _____ End day/time:	Even Years Begin day/time: _____ End day/time:
	Other plan: Thanksgiving begins the day school releases and ends the morning school resumes. Mother shall have odd years and the father having even years.	
•Winter Break	Begin day/time: _____ End day/time:	Begin day/time: _____ End day/time:
	Other plan: The days allotted for the winter break shall be added together and divided to allow equal time for the parents. The time calculated shall begin the day after school release and include the Sunday before school resumes. The mother shall have the first half of the winter break days in the even years and the father shall have the second half. The reverse shall apply in odd years. The first half begins the day after school releases and ends at noon on the day designated as the middle day between the parties' time for transfer. The winter break shall end Sunday at 4:00 pm before school resumes. The regular schedule will resume with the parent who did not have the children the weekend prior to the winter break having the first weekend and so on.	
•New Year's Eve / New Year's Day *(odd/even is based on New Year's Day)*	Begin day/time: _____ End day/time:	Begin day/time: _____ End day/time:
	Follow the Winter Break schedule above.	
•Children's Birthdays	Begin day/time: _____ End day/time:	Begin day/time: _____ End day/time:

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Holiday	Children with: Andrea Clare	Children with: Kevin Clare
	Other plan: children's birthdays shall be alternated between parents with odd to mother and even to father. Visitation should be noon to 6 pm. unless the child is in school in which the visit shall be school release until 7:00 pm. All the children shall remain together for the birthday visit schedule.	
•All three-day weekends not listed elsewhere	*(Federal holidays, school in-service days, etc.)* Other plan: If the father completes Section 4, then he may have the children only if he has them for the attached weekend. The holiday shall expire upon drop off at school. School in service days during the week shall follow the regular schedule.	
•Other occasion important to the family: •Mom/Dad birthdays	Begin day/time: _____ End day/time:	Begin day/time: _____ End day/time:
	Other plan: Each parent may celebrate their respective birthday with the children starting at 9am to 6pm unless the birthday falls upon a school day, then visitation shall be from school release until 7:00 pm.	
•Other occasion important to the family: • Easter	Begin day/time: _____ End day/time:	Begin day/time: _____ End day/time:
	The father shall have every Easter from noon on Easter to the following day at 9am.	
•Halloween	The mother shall have every Halloween from noon on Halloween to the following day at 9am	

11. Conflicts in Scheduling

The Holiday Schedule must be observed over all other schedules.

12. Transportation Arrangements

The children will be exchanged for parenting time (picked up and dropped off) at other location:

See locations identified in regular schedule

Other details:

Both parties are responsible for exchanging the children or making arrangements to have them exchanged. The parties may agree to deviate with exchanges (location/times) so long

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as the agreement is in writing.

13. Moving with the Children (Relocation)

If the person with whom the children are scheduled to reside a majority of their time plans to move (relocating person), s/he **must notify** every person who has court-ordered time with the children.

Move to a different school district

If the move is to a different school district, the relocating person must complete the form *Notice of Intent to Move with Children* (FL Relocate 701) and deliver it at least **60 days** before the intended move.

Exceptions:

- If the relocating person could not reasonably have known enough information to complete the form in time to give 60 days' notice, s/he must give notice within **5 days** after learning the information.
- If the relocating person is relocating to a domestic violence shelter or moving to avoid a clear, immediate and unreasonable risk to health or safety, notice may be delayed **21 days**.
- If information is protected under a court order or the address confidentiality program, it may be withheld from the notice.
- A relocating person who believes that giving notice would put her/himself or a child at unreasonable risk of harm, may ask the court for permission to leave things out of the notice or to be allowed to move without giving notice. Use form *Motion to Limit Notice of Intent to Move with Children (Ex Parte)* (FL Relocate 702).

The *Notice of Intent to Move with Children* can be delivered by having someone personally serve the other party or by any form of mail that requires a return receipt.

If the relocating person wants to change the *Parenting Plan* because of the move, s/he must deliver a proposed *Parenting Plan* together with the *Notice.*

Move within the same school district

If the move is within the *same* school district, the relocating person still has to let the other parent know. However, the notice does not have to be served personally or by mail with a return receipt. Notice to the other party can be made in any reasonable way. No specific form is required.

Warning! If you do not notify...

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A relocating person who does not give the required notice may be found in contempt of court. If that happens the court can impose sanctions. Sanctions can include requiring the relocating person to bring the children back if the move has already happened, and ordering the relocating person to pay the other side's costs and lawyer's fees.

Right to object

A person who has court-ordered time with the children can object to a move to a different school district and/or to the relocating person's proposed *Parenting Plan*. If the move is within the same school district, the other party doesn't have the right to object to the move but s/he may ask to change the *Parenting Plan* if there are adequate reasons under the modification law (RCW 26.09.260).

An objection is made by filing the *Objection about Moving with children and Petition about Changing a Parenting/Custody Order (Relocation)* (form FL Relocate 721). File your Objection with the court and serve a copy on the relocating person and anyone else who has court-ordered time with the children. Service of the *Objection* must be by personal service or by mailing a copy to each person by any form of mail that requires a return receipt. The *Objection* must be filed and served no later than **30 days** after the *Notice of intent to Move with Children* was received.

Right to move

During the 30 days after the *Notice* was served, the relocating person may not move to a different school district with the children unless s/he has a court order allowing the move.

After the 30 days, if no *Objection* is filed, the relocating person may move with the children without getting a court order allowing the move.

After the 30 days, if an *Objection* has been filed, the relocating person may move with the children **pending** the final hearing on the *Objection* **unless**:

- The other party gets a court order saying the children cannot move, or
- The other party has scheduled a hearing to take place no more than 15 days after the date the *Objection* was served on the relocating person. (However, the relocating person may ask the court for an order allowing the move even though a hearing is pending if the relocating person believes that s/he or a child is at unreasonable risk of harm.)
- the court may make a different decision about the move at a final hearing on the *Objection*.

Parenting Plan after move

If the relocating person served a proposed *Parenting Plan* with the *Notice*, **and** if no *Objection* is filed within 30 days after the *Notice* was served (or if the parties agree):

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- Both parties may follow that proposed plan without being held in contempt of the *Parenting Plan* that was in place before the move. However, the proposed plan cannot be enforced by contempt unless it has been approved by a court.
- Either party may ask the court to approve the proposed plan. Use form *Ex Parte Motion for Final Order Changing Parenting Plan – No Objection to Moving with Children* (FL Relocate 706).

Forms

You can find forms about moving with children at:

- The Washington State Courts' website: *www.courts.wa.gov/forms*,
- The Administrative Office of the Courts - call: (360) 705-5328,
- Washington LawHelp: *www.washingtonlawhelp.org*, or
- The Superior Court Clerk's office or county law library (for a fee).

(This is a summary of the law. The complete law is in RCW 26.09.430 through 26.09.480.)

14. Other

DEROGATORY COMMENTS: Neither parent shall make derogatory comments about the other parent or allow anyone else to do the same in the child's presence. Neither parent shall allow or encourage the child to make derogatory comments about the other parent.

SCHOOL: Each parent shall have the right and responsibility to ensure that each child attend school and other scheduled activities while in the parent's care. Activities shall not be scheduled to unreasonably interfere with the other parent's residential time with the child.

HONOR STYLE: Each parent shall honor one another's parenting style, privacy, and authority. Along these lines, neither parent shall question the children about the other parent's home or lifestyle.

CHILD ISSUE WITH PARENT: Each parent shall encourage the child to discuss his or her grievance against a parent directly with the parent in question. It should be the intent of both parents to encourage a direct parent-child bond and communication.

16. Proposal

Does not apply. This is a court order.

17. Court Order

This is a court order (if signed by a judge or commissioner below).

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Findings of Fact - Based on the pleadings and any other evidence considered:

The Court adopts the statements in section **3.** (Reasons for putting limitations on a parent) as its findings.

The Court also adopts the statements contained in the Findings of Fact and Conclusions of Law and in the Decision Letter of the Court filed contemporaneously herewith.

Conclusions of Law - This *Parenting Plan* is in the best interest of the children.

Order - The parties must follow this *Parenting Plan.*

MAR 29 2019
Date

Judge ~~or Commissioner~~ signs here

Warning! If you don't follow this *Parenting Plan*, the court may find you in contempt (RCW 26.09.160). You still have to follow this *Parenting Plan* even if the other parent doesn't.

Violation of **residential** provisions of this order with actual knowledge of its terms is punishable by contempt of court and may be a criminal offense under RCW 9A.40.060(2) or 9A.40.070(2). Violation of this order may subject a violator to arrest.

If this is a court order, the parties and/or their lawyers (and any GAL) sign below.

This order:
Is an agreement of the parties.
Is presented by me.

27818
Petitioner signs here **or** *lawyer signs here + WSBA #*

Mason Pickett
Print Name *Date*

This order:
May be signed by the court without notice to me.

This order:
Is an agreement of the parties.
May be signed by the court without notice to me.

Respondent signs here **or** *lawyer signs here + WSBA #*

Jane Brown
Print Name *Date*

This order:
May be signed by the court without notice to me.

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Other party signs here ***or*** *lawyer signs here + WSBA #*

Andrea Clare
Print Name *Date*

Other party ***or*** *Guardian ad Litem signs here*

Kevin Clare
Print Name *Date*

Laura Vaughn, GAL

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APPENDIX “B”

1 **A.** I think she had the typical role of working parent.
2 **Q.** You didn't answer my question. Typical role of a working
3 parent. What I asked you was you said that Andrea was an
4 uninvolved mother, didn't you?
5 **A.** In a declaration?
6 **Q.** At any time.
7 **A.** I think she was uninvolved in certain circumstances, yes.
8 **Q.** Now you were quite upset with Andrea because she filed and
9 obtained a temporary restraining order against you, were you
10 not?
11 **A.** I was more hurt than upset. I wasn't upset.
12 MR. PICKETT: If I may approach, your Honor? This
13 is proposed exhibit 12.
14 THE COURT: Go ahead.
15 **Q.** Do you recognize this, sir?
16 **A.** Yeah.
17 **Q.** Not putting one over you but.
18 **A.** I recognize this document.
19 **Q.** What is it?
20 **A.** It's a letter of Ben Dow provided to me on March 17th,
21 2016.
22 **Q.** Is that a true and accurate copy of the letter that Ben
23 gave you, Mr. Dow?
24 **A.** Yes.
25 MR. PICKETT: I'd ask your Honor for admission of

1 proposed number 12.
2 THE COURT: Any objection?
3 MS. BROWN: No, your Honor.
4 THE COURT: 12 is admitted.
5 MR. PICKETT: I do have a bench copy as well, your
6 Honor.
7 THE COURT: All right.
8 Q. Now, Mr. Clare, there's been some allegations or
9 insinuations that Mrs. Clare all of a sudden made up a bunch
10 of stuff about you in March of 18. That was very poorly
11 worded by me, but would you agree that there's been people
12 questioning the timing of her disclosures?
13 A. Yes.
14 Q. When you received the restraining order paperwork from
15 Andrea in August of 2016, do you remember what allegations
16 she was making against you?
17 A. I remember that she was stating that I psychologically
18 abuse the children and that I was -- posed a physical threat
19 to her.
20 Q. And in looking at Mr. Dow's letter, he has some bullet
21 points about accusations that she's making against you. Do
22 you agree those were the allegations that she was making
23 against you?
24 A. That first set of bullet points?
25 Q. Yes.

1 **A.** Yes.
2 **Q.** What's different about the allegations she's making
3 against you today than what is listed in this letter?
4 **A.** I would just say that the difference may be with respect
5 to either stalking or harassing her there's been specific
6 instances she alleges that were after this date wherein she's
7 attempting to qualify that behavior. And then I would say as
8 well that the children, she's added more allegations to
9 qualify that I'm psychologically abusing them.
10 **Q.** When did you tell Andrea that you had a journal?
11 **A.** I think at a bus stop one day I just said, "I'll write
12 that down."
13 **Q.** And I recognize this case has been going on for a long
14 time, but can you give me a general time frame when you
15 mentioned this, that you'd write it down?
16 **A.** It may have been the fall of 2016 when we were attempting
17 to discuss something and she was going to do it her way, and
18 I said, "OK I'll write that down."
19 **Q.** So go back with you. On exhibit number 12 Mr. Dow gave
20 you this letter. How many people did you give it to?
21 **A.** The number, the number's been 30 that everyone's saying,
22 so I think it's around that.
23 **Q.** Is it possibly more than 30?
24 **A.** It -- more than 30, less than 35.
25 **Q.** Now you I assume you gave it to family members?

1 A. Yes.
2 Q. How about close personal friends?
3 A. Some, some but not all.
4 Q. Why did you fail to give one to Ryan Trulson?
5 A. Ryan Trulson is being represented by Andrea in a family
6 law matter, and I did not want to make him conflicted and his
7 two friends, so I chose not to.
8 Q. So your closest friend did not receive one?
9 A. No. I didn't want her to stop representing him.
10 Q. Do you know when Andrea found out about this letter?
11 A. I think found out when my mother was deposed in 2017.
12 Q. And that would have been like March sometime in 2017?
13 A. Maybe.
14 Q. Sound at least close?
15 A. Close, yes, sir.
16 Q. Did you give it to people who were attendees at Bethel
17 Church?
18 A. Not to my recollection. We had kind of fallen away from
19 attending church, and our small group was disbanded. So I
20 attempted to give it to everyone who had been in -- seen us
21 interacting as a family in the past year.
22 Q. Did you give it to neighbors?
23 A. Yes. They had seen us interacting in the past year.
24 Q. Old teachers?
25 A. Two old preschool teachers, yes.

1 they had been in close -- my understanding, may be
2 inaccurate, but that they were on relatively good terms, but
3 they were close. And then, yes, he did access that.
4 **Q.** Controlling what your partner can do, who they can see,
5 are those patterns of behavior consistent with IPV?
6 **A.** Generally. You think about it that way, yeah.
7 **Q.** Limiting your contact with family and friends outside of
8 his presence?
9 **A.** Again as opposed to coercive control, yes, so is this part
10 of coercive control, yes.
11 **Q.** And coercive control again is part of IPV, right?
12 **A.** Well, it could be a part of interpersonal violence, but
13 it's specifically part of being a batterer, yes.
14 **Q.** And do you disagree with Dr. Mechanic and/or Mr. Derry by
15 saying that psychological evaluations don't necessarily
16 identify IPV batterers or perpetrators, accusers, abusers,
17 whatever you want to call it?
18 **A.** There are -- there is no one profile for any victim or for
19 any perpetrator. So what psychological evaluations do is
20 give us a broader context of an individual and their
21 psychological processes and abilities to interact with others
22 and their views of the world and their views and
23 interpersonal relationships. There is no profile, even on an
24 MMPI.
25 **Q.** I know you took issue with the Duluth Model again, but

1 generally speaking the Duluth wheel, domestic violence wheel,
2 do you generally support and agree with that?
3 **A.** For batterers, yeah.
4 **Q.** So again I just want to confirm the Duluth Model your
5 biggest issue is treatment?
6 **A.** No. Oh. My biggest issue is that the Duluth Model from
7 what I'm hearing in reading the testimony was that that was
8 how this case is to be viewed, through that model and that
9 control wheel. And what I'm saying is that is not the
10 standard of care within family law cases of how you evaluate
11 interpersonal violence. It is much broader than that wheel.
12 That is my issue. My other issue, secondarily, is just based
13 on statistics is using a pure Duluth Model in treatment of
14 those going through those treatment services. It's only
15 50/50. That's all.
16 **Q.** The final question I have is about timing. The longer the
17 period, does that mean the more the concern about future
18 behaviors? If I've engaged in behaviors for ten minutes
19 versus ten hours versus ten days, does that temporal range
20 have impact on your clinical assessment of behavior?
21 **A.** The temporal range is more an outlet -- more a concern if
22 it happened let's say only at the point of separation, didn't
23 happen before in the marriage, hasn't happened after they've
24 completely separated, I'm much less concerned. If it
25 happened all throughout the marriage but then it didn't

1 you? It should be.
2 **A.** It says declaration -- oh, OK. Yes, I see here. So you
3 want me to walk through this rather lengthy list of records?
4 **Q.** Yes, please.
5 **A.** Well, there's declaration by Andrea Clare dated April 6,
6 2016, email correspondence between Miss Clare and Ms. Alexia
7 Humphreys dated May 6, 2016. Do you really want me to go
8 through all this?
9 **Q.** No, Dr. Cole. Do you recall who provided the majority of
10 this information for your review?
11 **A.** George Telquist I believe is who provided the information.
12 **Q.** Dr. Cole, do you recall reviewing the guardian ad litem
13 report in this matter?
14 **A.** No, I did not review the guardian ad litem report. It was
15 not provided to me.
16 **Q.** Would you have liked to see it?
17 **A.** Not particularly. Not for what the scope of the
18 evaluation I was asked to do did not require that.
19 **Q.** What did the scope of the investigation you were asked to
20 do require you to do in terms of testing?
21 **A.** Psychological testing focused on the referral question.
22 **Q.** Would you explain why you used each of the tests that are
23 listed at the top of your report?
24 **A.** Sure. There was an allegation of intimate partner
25 violence or coercive control, and one of the methods were

1 family friends, and my brother is married to Kevin's sister.
2 **Q.** And how long have they been married?
3 **A.** Eighteen years?
4 **Q.** What kind of relationship did you have with the parties
5 while they were still together?
6 **A.** We'd see each other occasionally at birthday parties. We
7 share nieces and nephews. So once a year I'd see Kevin and
8 Andrea at my niece's birthday at Christmastime, or.
9 **Q.** What is your current relationship with Mr. Clare?
10 **A.** We are in a relationship. We hope for a future after his
11 divorce.
12 **Q.** Have you technically engaged? Or do you have a wedding
13 date or anything planned for future marriage?
14 **A.** No.
15 **Q.** How long have you and Kevin been in a dating relationship?
16 **A.** We're not technically dating. Don't go out in public, but
17 we have expressed feelings for each other since August of
18 2016.
19 **Q.** Now you mentioned not technically dating. Is your
20 definition of dating that you don't go out in public
21 together? That's the extent of the limitation of your
22 relationship to not be dating?
23 **A.** That there's -- he's not free to have a full relationship
24 with me until the end can be met, which would be marriage.
25 And so he's not divorced yet. So we can't begin.

1 **Q.** I don't want to get into details of your personal life, so
2 I'm sorry if I'm kind of dancing around this. May not be
3 together in a biblical sense?
4 **A.** Right.
5 **Q.** But since April or excuse me since August of 2016 your
6 relationship has been more than just being friendly?
7 **A.** Yes. We share feelings for each other.
8 **Q.** Now you knew the Clare children before you and Kevin
9 started sharing feelings in August 2016?
10 **A.** Yes.
11 **Q.** Before you started sharing your feelings with Mr. Clare,
12 how frequently were you around the children after he and
13 Andrea split up?
14 **A.** I began caring for them in May during his custodial time,
15 May of 2016. So I was around the children when he worked
16 that summer during his custodial time.
17 **Q.** So off and on, at least from May of 2016 to the present,
18 you provided some form of child care for Kevin at various
19 times?
20 **A.** Every summer, yes.
21 **Q.** What do you do for a living?
22 **A.** I'm a flight attendant.
23 **Q.** And I assume that requires some of what a sporadic work
24 schedule? Is that correct?
25 **A.** It's variable. I choose my hours.

1 **Q.** From what you understand, Mr. Clare, do you think he's
2 justified in the way he treated Mrs. Clare throughout the
3 marriage because of his concerns about her being allegedly
4 unfaithful?
5 **A.** How did he treat her?
6 **Q.** So you don't know of any treatment or behaviors in
7 particular that you would disagree with?
8 **A.** You haven't said anything.
9 **Q.** Are you and Kevin somehow trying to protect these children
10 from Mr. Telquist?
11 **A.** No. I'm trying to protect them from the ugliness of
12 divorce.
13 **Q.** And so if either one of these parents could have put a
14 stop to this a long time ago, we need to be critical of that
15 person, don't we?
16 **A.** Put stop to what? The ugliness of this divorce?
17 **Q.** All of the divorce, period.
18 **A.** I don't know what you're asking.
19 **Q.** Do you know how many times from August of 16 when this was
20 filed until today how many times Mrs. Clare offered Mr. Clare
21 an agreement to resolve the parenting plan dispute in this
22 case? Do you know how many times she did that?
23 **A.** A couple? But not with anything that didn't put the
24 children in a disfavorable position in Mr. Clare's opinion.
25 **Q.** So equal time with Mrs. Clare was disfavorable according

1 to Mr. Clare?
2 **A.** Because she put children in child care when he was fully
3 available. And the standard of care for their older two
4 should be brought down to their third child, and that wasn't
5 offered their third child.
6 **Q.** Did Mr. Clare tell you he also gave this letter from Mr.
7 Dow's office to preschool teachers, former neighbors?
8 **A.** I would assume he would give it to anyone that had seen
9 them married and seen how they both parent and who was
10 around. I cannot know the number of people that attested to
11 seeing them and their parenting styles.
12 **Q.** When did Mr. Clare tell you that he was concerned about
13 Andrea taking one of the children on a high-speed ride in a
14 car?
15 **A.** When it happened? Or when he was told about it I guess.
16 **Q.** And there's a few other examples of Kevin saying negative
17 things or Kevin having concerns that he thinks are negligent
18 with Andrea. Did he share all of those in real time with
19 you, too?
20 **A.** Yes.
21 **Q.** Did he ever explain why he never shared it with Andrea,
22 any of those concerns?
23 **A.** Well, there were accusations against him, and he can't say
24 anything to her without it coming out negatively.
25 **Q.** So that was his excuse?

1 call Kim Snowden, S-n-o-w-d-e-n.

2 KIMBERLY L. SNOWDEN

3 (Witness sworn to testify.)

4 DIRECT EXAMINATION

5 BY MR. PICKETT:

6 **Q.** Ma'am, would you please state your full name for the

7 record? And I just spelled your last name, so you don't have

8 to do that.

9 **A.** OK. Kimberly L. Snowden.

10 **Q.** And how do you know the parties?

11 **A.** Andrea is my sister, well, technically stepsister, but

12 sister. And Kevin was my brother-in-law or is my

13 brother-in-law currently. Well.

14 **Q.** And, Kim, is it OK if I call you Kim?

15 **A.** Yes.

16 **Q.** You mentioned stepsister. How long have you known Andrea

17 then?

18 **A.** I have known Andrea since I was seven. So 32 years?

19 **Q.** Where do you currently reside?

20 **A.** In West Richland.

21 **Q.** Are you currently -- do have you children of your own?

22 **A.** I do.

23 **Q.** How old are your children?

24 **A.** I have a son who is going to be 15 in February, and I have

25 a daughter who's seven.

1 **Q.** When you approached Kevin about this, did he show any
2 interest or share any interest with you that he'd be willing
3 to consider such an arrangement?
4 **A.** At that time, no.
5 **Q.** Is that the only time that you ever approached Kevin, the
6 first time to see if you could perhaps help keep the peace?
7 **A.** We probably had a couple conversations after that.
8 **Q.** And were those conversations initiated by request of
9 Andrea Clare? Or were they done just on your own accord?
10 **A.** On my own accord.
11 **Q.** When was the last time you ever had any such discussion
12 with Kevin?
13 **A.** About that?
14 **Q.** Of just about this dissolution and perhaps trying to
15 broker a deal between of both of them to get them to finish
16 this?
17 **A.** It's been quite some time.
18 **Q.** When did Kevin ever tell you that he was OK with the idea
19 of a similar parenting arrangement that you have?
20 **A.** I don't remember.
21 **Q.** Can you give me a general timeline within the last couple
22 months? The last six months? Anything like that?
23 **A.** Probably the last six to eight, ten months I guess.
24 **Q.** And I'm sorry. Is that when Kevin said he wanted to make
25 peace and agree to an equal schedule?

1 **A.** She was married or was married to my son Kevin.
2 **Q.** And approximately how long have you known Mrs. Clare?
3 **A.** I believe that I first became acquainted with her when
4 they were in high school. So that would have been some 20
5 years ago. I think.
6 **Q.** When is the last time you had personal contact with Mrs.
7 Clare?
8 **A.** I've seen her delivering the children back and forth from
9 Kevin's to a drug store over in Richland. And then the last
10 time I recall any conversation so to speak might have been at
11 a soccer game or something like that several years ago.
12 **Q.** And, sir, you were -- you had to come sit down for
13 deposition where people asked you a bunch of questions. Do
14 you recall that?
15 **A.** Yes, I do.
16 **Q.** What is your opinion about what the final parenting plan
17 should be like in this case?
18 **A.** Well, my best understanding of this has changed as I
19 understand it many different times since this started, but I
20 recognize that the children need both mother and father. And
21 I would like to believe that there could be an equal amount
22 of time spent with their parents. With both parents I guess
23 is what I mean to say.
24 **Q.** I understand, sir, if you can't give me a specific date,
25 but when did you come to the conclusion that your grand kids

1 know, but you do know who specifically told your wife all
2 this information about Mrs. Clare and what she did for
3 travel?
4 A. Yes. Just a minute. I'm sorry. I can't remember the
5 name. I mean I know who she is, but I can't think of the
6 name right now.
7 Q. Now have you ever had safety concerns about your grand
8 kids around Mrs. Clare?
9 A. Safety?
10 Q. Yes.
11 A. Not personally, no.
12 Q. How about any safety concerns with Mr. Clare?
13 A. I've heard. I've heard of incidents that certainly
14 concern me about as you call safety incidents, yes.
15 Q. Can you tell me what those are, sir?
16 A. The one particular one that I recall was an incident where
17 Mrs. Clare or Andrea and someone else were experiencing the
18 thrill of a 100-mile-an-hour ride in her very expensive
19 Tesla.
20 Q. And when did you ever raise those safety concerns with
21 your daughter-in-law? When did you talk to Andrea about it?
22 A. I did not.
23 Q. Do you know how many months passed between when that
24 allegedly occurred and when Mr. Clare bought it to anybody's
25 attention involved in this case at least?

1 to and can be somewhat passive aggressive in dealing with
2 frustrations and difficulties in life.
3 Q. What do you mean by passive aggressive, Doctor?
4 A. Not real -- not a confrontational person that steps right
5 up and gets in someone's face and says, you know, "Stop doing
6 that." More with difficult uncooperative sort of behavior.
7 Q. And then what about the Mood Disorder Questionnaire?
8 A. No evidence of bipolar spectrum disorder.
9 Q. And the Parent/Child Relationship Inventory?
10 A. All within normal limits of what's to be expected of most
11 normal parents, except there was some slight indication,
12 again not clinically significant necessarily but noticeable
13 in something that maybe a clinician would want to explore,
14 was maybe little lack of interest in the children's
15 activities or what their daily lives are about.
16 Q. Nothing outside of the normal range, though?
17 A. Well, it was, like I said, it indicated there was some
18 abnormal amount of findings there.
19 Q. What about the parenting stress index?
20 A. All within normal parameters.
21 Q. And the Patient Health Questionnaire, what did you gain
22 from that?
23 A. Minimum levels of depression.
24 Q. And then the Personality Assessment Inventory?
25 A. Again as was profiled at the MCMI, someone who is less

1 inclined to be assertive in sort of an aggressive sort of way
2 but more along passive sort of way.
3 **Q.** And what about the State Trait Anger Expression Inventory?
4 **A.** Again it's somebody that's more or less controlled anger,
5 maybe overly controlled at times that does not express their
6 intense feelings in a, ah, in an outwardly obvious way, finds
7 other ways to express anger.
8 **Q.** And then let's turn to your summary of the assessment
9 findings on page 23, please. Based your testing and the
10 interview of Mr. Clare, what is your assessment of his
11 propensity for domestic violence or coercive control?
12 **A.** I didn't see any evidence based on the, the information
13 that was supplied to me by both sides. I didn't see any
14 overt evidence of intimate partner violence or coercive
15 control. There were elements that could suggest that, but
16 certainly it did not meet diagnostic criteria. It did not
17 sort of fall out of the realm of normal behavior under the
18 circumstances and the relationship dynamics that were
19 described in the collateral information.
20 **Q.** What did you conclude about his emotional status?
21 **A.** Ah, that he is adequately stable emotionally to parent his
22 children.
23 **Q.** And anger management?
24 **A.** Yeah, same, same situation. There's obviously some issues
25 that everybody can work on to improve, but nothing out of the

1 their own, be a huge benefit to their children.
2 **Q.** In the course of your review of collateral documents, you
3 reviewed both Dr. Mechanic's declaration and Mr. Deery's
4 declaration?
5 **A.** Yeah.
6 **Q.** What was your conclusion about each of those?
7 **A.** That was -- it was striking that, that neither of them had
8 talked to Mr. Clare and yet had come to some rather, ah,
9 onerous conclusions about his behavior and his character.
10 That's not considered the standard of care in our business.
11 **Q.** What is the standard of care in your business?
12 **A.** Well, if you're going make recommendations about somebody
13 or somebody's parenting or an evaluation of their character
14 or personality that you have at least talked to them and met
15 with them and done some sort of an assessment, whether that
16 -- doesn't even necessarily have to include psychological
17 tests, but it certainly should have some sort of structured
18 approach, and certainly an evaluation of that person face to
19 face is necessary.
20 **Q.** You also reviewed the report by Dr. Page I believe in your
21 collateral information. Are you in conflict with Dr. Page?
22 **A.** I don't think so. Just different styles of how to write
23 reports and interpretation. He's got an interesting approach
24 to things, and I thought he had some very insightful things
25 to add.

1 MS. BROWN: Your Honor, that's all I have. Thank
2 you very much, Dr. Cole.
3 MR. PICKETT:
4 THE COURT: Mr. Pickett.
5 MR. PICKETT: Thank you, your Honor.
6 CROSS-EXAMINATION
7 BY MR. PICKETT:
8 Q. You just were critical of Ms. Mechanic and Mr. Deery
9 because they failed to talk to Kevin Clare, correct?
10 A. Right.
11 Q. Did you talk to Andrea Clare?
12 A. Ah, no, no, I didn't.
13 Q. Now, Doctor, what is the typical timeline for you to do
14 one of these evaluations? I mean how much time are you
15 ordinarily given in order to complete it?
16 A. I usually ask about a month to do those.
17 Q. How much time were you given in this case?
18 A. About a week, yeah.
19 Q. Do you know when Kevin was ordered to submit to a
20 psychological evaluation?
21 A. No. I don't know that exactly, un-uh.
22 Q. Would it surprise you if I told you it was many, at least
23 three months before you actually did the evaluation?
24 A. No, I guess I wouldn't be surprised by that.
25 Q. Now the evaluation techniques and tactics and testing that

1 evaluated?
2 **A.** I'm sure that's one of the reasons why we use different
3 tools to test them.
4 **Q.** And so how much of the testing that Dr. Page conducted did
5 you rely on?
6 **A.** None. I do my initial interpretation of individual scores
7 before I review any of the collateral information. So I
8 don't have my opinions skewed by someone else's opinion.
9 **Q.** Now you testified about the materials you were provided.
10 And I'm looking. Do you have the exhibit in front of you? I
11 think it's exhibit 363 is the number, but do you have that as
12 the guardian ad litem report with your evaluation attached?
13 **A.** Yes. Yes, I do.
14 **Q.** And I'm sorry. I was trying to do too many things at
15 once. How many of these materials were provided by Mr.
16 Clare?
17 **A.** You know, I don't know that I broke that down that way. I
18 would say about a third, just based on size of the stack of
19 stuff. There was a lot of overlap.
20 **Q.** Do you know if the guardian ad litem report was supposed
21 to have been provided to you?
22 **A.** No, I did see that there was a motion by you sometime in
23 early November requesting that it be shared with both
24 counselor and the evaluator that was not named specifically,
25 but it was never, I never saw anything else in the records

1 I was asked to do, and -- and in fact initially when I was
2 first contacted by Mr. Telquist, I sent him an email which I
3 have a copy of in Mr. Clare's chart highly recommending that
4 this not be a single-person assessment, that this looks like
5 it needs a parenting evaluation, which I'm very familiar
6 with. I've seen one of those before. And otherwise I'm
7 precluded from making comments on any of the sort of the
8 relationship dysfunction that's going on between these two
9 people, because I'm only evaluating one person. So I'm not
10 able to ethically make comments about who should parent and
11 who's the better parent, how much time each child should
12 spend, whether supervision is required. Those are all
13 outside the purview of this assessment, so it doesn't really
14 matter what the guardian ad litem's report had to say. It
15 doesn't affect the evaluation of Mr. Clare.
16 **Q.** Would you agree with me domestic batterers, IPV abusers,
17 there is a laundry list of behaviors that people who are
18 clinically batterers, abusers, etcetera, they engage in?
19 There's common behaviors?
20 **A.** Sure, yeah.
21 **Q.** Some of those common behaviors are things like stalking
22 behaviors?
23 **A.** That's right, stalking behavior, but everything's done
24 with purpose of controlling the other person. There's plenty
25 of times when people investigate other peoples' behavior to

1 hold them accountable for, you know, promises or commitments
2 that they have made. And so, you know, it's a spectrum.
3 It's not just because someone does some checking up on
4 somebody and try to hold them accountable. It doesn't
5 necessarily mean that they're doing it for purpose of
6 coercive control. It's a number of things a person has to be
7 engaged in in order to qualify as, you know, being labeled as
8 a domestic batterer or intimate partner violent offender.
9 It's not just one or two behaviors. It's a pattern of
10 behavior.
11 **Q.** And typically pattern behavior over a long period of time?
12 **A.** Right.
13 **Q.** Do you know if there was ever any physical violence in the
14 relationship between these parties?
15 **A.** I didn't see anything reported in the documentation I
16 received.
17 **Q.** That would be clinically significant, wouldn't it?
18 **A.** Ah, yeah, I guess it would be if it was documented from a
19 reliable source.
20 **Q.** Regardless if it's documented, if it's true, it's
21 clinically significant?
22 **A.** If true, yes.
23 **Q.** And you would agree with me that wouldn't matter if it
24 happened yesterday, five years ago, ten years ago. Violent
25 behavior in the course of a relationship is violent behavior?

1 evident.
2 **Q.** Now Mr. Clara accused Mrs. Clare of being an unfaithful
3 spouse?
4 **A.** I saw that in the paperwork.
5 **Q.** Let's assume that that's true. Would that influence your
6 evaluation of Mr. Clare?
7 **A.** It would possibly be background for explanation of
8 behaviors, that sort of thing.
9 **Q.** Explanation or justification of behaviors?
10 **A.** Well, it's not my job to justify but to explain and to
11 describe.
12 **Q.** You said that there were some behaviors of Mr. Clare's
13 that, I apologize, I don't recall the word that you used.
14 Not diagnosed it, but it was consistent with. What behaviors
15 are you talking about?
16 **A.** There were incidences where he looked on her phone and
17 double checked to see what, you know, to see conversations
18 that she was having with another person. That could be
19 construed as controlling, invasive behavior. Could also be
20 common behavior for people who were feeling like they were
21 not being told the truth and were double checking to hold
22 someone accountable.
23 **Q.** Would it be clinically significant to you if Mr. Clare
24 continued to monitor Mrs. Clare's whereabouts even when she
25 did not have her children?

1 **A.** Well, certainly indicates a severe dysfunction in the
2 relationship, yeah.
3 **Q.** I'm talking after they separated.
4 **A.** Yeah, yeah. I mean they're still, they're still
5 co-parenting. They still have children they have to parent
6 together, so it's dysfunctional. It's not helpful. It's not
7 making things better for their children.
8 **Q.** Now you have experience. You actually are a PETP
9 certified evaluator, are you not?
10 **A.** That's correct.
11 **Q.** And have been from at least our case together at least ten
12 years ago, at least for that amount of time?
13 **A.** Yes.
14 **Q.** You also teach parent classes, don't you?
15 **A.** I do.
16 **Q.** Did you see Mr. Clare's journals?
17 **A.** No, I don't think so. I don't think that was included in
18 the information I received.
19 **Q.** What is, given your training and experience, are parents
20 supposed to use the children to keep tabs on the other
21 parent?
22 **A.** No. That's inappropriate and damaging to children.
23 **Q.** And the parenting class I refer to, you teach the standard
24 four-hour parenting seminar, do you not?
25 **A.** Right.

1 **Q.** And do you teach additional parenting classes above and
2 beyond that as well?
3 **A.** No, that's only thing I do.
4 **Q.** Are you aware that people in Benton and Franklin counties
5 are mandated to take the parenting class that you teach or
6 similar classes?
7 **A.** Yes, they are mandated as part of the divorce process.
8 **Q.** What do you teach people about when it comes to using kids
9 to keep tabs on the other parent or questioning the children
10 about the other parents's conduct?
11 **A.** I teach that children are not collateral sources of
12 information, that a lot of times they engage in what's called
13 "confabulation" which is they fill in the blanks of what they
14 think that particular person in authority wants to hear,
15 whether it's a parent or some other authority figure. So
16 that's one thing. So I teach them not to take what the
17 children are saying at face value but to always get secondary
18 confirmation before they leap to the conclusion that
19 whatever's being reported by the children is happening. But
20 also that using their children as a conduit to pass
21 information back and forth is damaging to children. As is,
22 ah, trying to think of the other whatever other factors might
23 be involved in that. Certainly saying negative things about
24 the other parent in front of the other children is damaging
25 to the child's self esteem and their ego development. A

1 that type of behaviors clinically significant?
2 **A.** In terms of doing a psychological evaluation?
3 **Q.** Yes.
4 **A.** Ah, yeah, I think it's consistent with what the findings
5 were. Things weren't passive aggressive. There were these
6 other means instead of directed confrontation.
7 **Q.** And the passive aggressive personality disorder, that's
8 been abandoned by the DSM now, hasn't it?
9 **A.** Yeah, a long time ago, but it's still characteristic of
10 other behaviors.
11 **Q.** It's clinically significant, even if it's not an official
12 diagnosis? Fair enough?
13 **A.** Right.
14 **Q.** And generally speaking with all of the training you have
15 about parenting and parenting evaluations, are people who
16 have passive aggressive personality disorders type behaviors,
17 what is that? Is an indicator of how they're going to be as
18 co-parents going forward?
19 **A.** Well, yeah. I mean again I want to be careful here and
20 not make specific --
21 **Q.** I understand.
22 **A.** -- suggestions about it but hypothetically, yeah, they
23 could use assistance in developing new strategies, more
24 appropriate strategy, more effective strategies than even
25 what they're currently using. A co-parent counselor would

1 come in handy in that situation.
2 **Q.** In the context of parenting evaluations or in evaluating
3 people in divorce cases, behaviors that are temporary, are
4 they as clinically significant as pervasive patterns of
5 behavior that have gone on for years?
6 **A.** No. Conceivably no. I mean there's always exceptions. I
7 mean if somebody suddenly gets enraged and starts beating
8 people and shooting, yeah, that's very significant.
9 Pervasive personality characteristics are significant and to
10 keep in mind, yeah, and may be more difficult to correct than
11 more transitory symptoms.
12 **Q.** Now you were asked about this Danger Assessment on page
13 13. It talks about 15 questions. This is on page 13 of your
14 report.
15 **A.** Yeah.
16 **Q.** Fifteen questions composing the Danger Assessment are
17 designed to measure a woman's risk in an abusive
18 relationship.
19 **A.** Right.
20 **Q.** Did you ask those 15 questions to Mrs. Clare?
21 **A.** No, I gleaned those from the information that was provided
22 to me.
23 **Q.** So this wasn't Mr. Clare answering the questions for Mrs.
24 Clare?
25 **A.** No. No, in most risk assessments or domestic violence

1 evaluations are conducted along those, those lines. You
2 check the record for evidence of past behavior.
3 **Q.** I just want to add. You said you reviewed, and I'm
4 looking on page 2 of your report, the declaration of Andrea
5 Clare from August of 2016, the fourth one down.
6 **A.** OK.
7 **Q.** Do you recall whether that declaration contained
8 allegations of stalking, harassment, parental alienation,
9 etcetera?
10 **A.** I'd have to look. I don't remember.
11 **Q.** As you sit here today, can you recall whether you read
12 allegations Mrs. Clare was levying against Mr. Clare that he
13 was engaging in those behaviors?
14 **A.** They're not labeled in that way. I mean she may have
15 talked about the phone issue at that time, but I don't
16 remember seeing her use the phrase he's "stalking me" or
17 anything along those lines.
18 **Q.** But are you aware as you sit here today that she sought a
19 restraining order when this case was filed back in August of
20 2016?
21 **A.** Do I realize that that's when she filed for a restraining
22 order?
23 **Q.** No, are you aware whether she filed for a restraining
24 order?
25 **A.** I don't recall that, no.

1 **Q.** That's something that's clinically significant, isn't it?
2 **A.** Not necessarily. I mean people request restraining orders
3 that maybe are not justifiable all the time. I can't
4 necessarily go by somebody else's accusations and use that as
5 part of clinical evaluation of somebody that I'm working
6 with. These are not people that are qualified mental health
7 professionals that are making these judgments. And so just
8 because someone feels like they're being stalked doesn't mean
9 they are necessarily being stalked. I don't know. I'd have
10 to do an evaluation of that. Again that sort of falls
11 outside of the purview of this evaluation.
12 **Q.** But as you sat down to write this report or prepare this
13 report, you did not consider the fact or you were not aware
14 of the fact that Mrs. Clare sought restraints against Mr.
15 Clare?
16 **A.** Not on -- I don't think in 2016. I thought it was more
17 recent than that. There was a change to the parenting plan
18 made more recently. That's when I thought that, I guess, I
19 thought that these issues came up then, but again falls
20 outside the purview of the assessment I was asked to do.
21 **Q.** I apologize. You said falls outside the purview of your
22 assessment, but you just told me you looked at the
23 documentation provided to make the finding that no aggressive
24 IPV type behavior was occurring. Is that what you said?
25 **A.** That is what I said, but whether it's a legitimate

1 complaint or whether it's something that applies to the
2 personality, report of the personality structure of Mr.
3 Clare, it would not necessarily be a part of that analysis.
4 **Q.** Now you've talked about Mr. Clare in terms of him being --
5 just a second. I can't remember the wording exactly that you
6 used, that he's kind of, wants to conform, wants to follow
7 the rules. I know that's probably worded poorly, but do you
8 recall that conclusion?
9 **A.** That's a pretty good description. I mean somebody is
10 attentive to authority figures and wants to please them and
11 wants to follow the rules and not be seen as somebody who's a
12 troublemaker or recalcitrant individual.
13 **Q.** If Mr. Clare's been dishonoring court orders, is that
14 consistent with your conclusion that he's a conformist?
15 **A.** Ah, I think it could be, yeah. I think it could fit for,
16 you know, goes against the sort of passive/aggressive
17 manners. Whether he defiantly stood on the steps of the
18 courthouse and refused to do what he was told to do or
19 whether he just drug his feet, I think that more fits the
20 profile.
21 THE COURT: We're going to take our morning recess
22 at this time. We'll be on break for 15 minutes.
23 (recess)
24 **Q.** Doctor, are you aware that there is a I think a current
25 restraint that requires Mr. Clare to stay 50 feet away from

1 Mrs. Clare? Does that restraining order, if extended,
2 interfere with their ability to go to co-parent counseling?
3 **A.** Yeah, I think so.
4 **Q.** Do you agree with me that co-parenting counseling is only
5 effective if both people are amenable to cooperation and
6 compromise?
7 **A.** Sure. Absolutely.
8 **Q.** So there's allegations that Mr. Clare is uncompromising
9 when comes to co-parenting with Mrs. Clare. Is co-parenting
10 counseling going to solve that problem for Mr. Clare if that,
11 in fact, is the case?
12 **A.** If it's court ordered and there are, you know, some teeth
13 involved that the Court has put in place, it could make a
14 difference, yeah.
15 **Q.** Now you saw Dr. Page's report, but are you aware that the
16 guardian ad litem had telephone interview with him that was
17 summarized in a report that was filed with this Court I think
18 in November of 20 --
19 **A.** With Dr. Page?
20 **Q.** -- 18. Yes.
21 **A.** No, I didn't know.
22 **Q.** Now there's some things that were not in Dr. Page's report
23 that were shared with him by Ms. Vaughn and that he found
24 clinically significant. Now Mrs. Clare alleged that Mr.
25 Clare actually smelled her underwear when she came home from

1 trips on at least one occasion during the marriage. Is that
2 clinically significant to you?
3 **A.** I don't know that it would change the outcome of my
4 evaluation, if that's your question. Is it something -- and
5 again, you know, you're asking clinically significant
6 questions, yeah, if you're in the right context, but the
7 context of a psychological evaluation of an individual, these
8 are relationship issues that you're bringing out. Wouldn't
9 necessarily change the, ah, the outcome of the psychological
10 evaluation. You still fit the behavior that's described.
11 **Q.** From your psychological evaluation of Mr. Clare, does he
12 have any type of pathologies where he may be behaving
13 subconsciously without knowing what he's doing? Is there
14 anything in the testing that you've done that would address
15 that?
16 **A.** No.
17 **Q.** Is there really a test other than some delusional --
18 **A.** Projection tests purport to evaluate that sort of
19 behavior. Rorschach exams, TATs, a thematic perception test.
20 Those are so difficult to -- they have so many reliability
21 issues that they're rarely used in forensic context.
22 **Q.** Something that may try to identify schizophrenia or
23 something wouldn't be part of your evaluation?
24 **A.** Well, sure that would be part of the personality
25 inventories. They're specific scales that measure that, that

1 sort of thing. You were talking about subconscious drivers
2 or subconscious urges that a person might have but not be
3 aware of. That's different than schizophrenia.
4 **Q.** Dr. Page did indicate that had there -- if the passive
5 aggressive personality disorder still existed that he may
6 have diagnosed Mr. Clare with that. Would you agree with
7 that or disagree with that?
8 **A.** Repeat that, please.
9 **Q.** Dr. Page's testimony was that if passive aggressive
10 personality disorder still existed that he may be able to
11 reach a diagnosis of that.
12 **A.** Maybe. OK.
13 **Q.** Would you agree that that was -- the testing indicates
14 that Mr. Clare could be behaving that way?
15 **A.** Well, yeah, maybe. Again there is no criteria by which to
16 measure something, it's hard to know whether it would meet
17 criteria that doesn't exist.
18 **Q.** Dr. Page also said that Mr. Clare doesn't believe that he
19 needs to be treated and therefore wouldn't benefit treatment.
20 MS. BROWN: Objection, your Honor. I let the last
21 one go. Probably shouldn't have. We're repeating hearsay
22 that the GAL submitted to this Court. Dr. Cole has no
23 ability to opine on hearsay, your Honor.
24 MR. PICKETT: No, I'm asking -- I'll ask him a
25 different way.

1 **Q.** If Mr. Clare doesn't think that anything is wrong with
2 him, what treatment will benefit him?
3 **A.** Well, certainly that's something that would be a barrier
4 to success, initially at least. Something was clearly
5 needing to be addressed, it would be through the process.
6 Denial is part of the process, treatment process. Frequently
7 deal with people that don't feel like they have any problems,
8 and it makes it more difficult, but it's not impossible.
9 **Q.** Is there a specific clinical diagnosis for IPV?
10 **A.** No.
11 **Q.** There's a lot of literature. There's lot of opinions and
12 theories, but there really isn't any testing for it? Would
13 you agree with me on that?
14 **A.** There's no measure. There's no gold standard that's been
15 established that this is the measure that everybody's using
16 so we're all speaking the same language. So, yeah, it makes
17 it difficult.
18 **Q.** It's legally, again looking at behaviors that somebody's
19 engaged in, and I guess coming to an opinion based upon
20 behaviors versus pathology, fair enough?
21 **A.** Pathological behavior, yeah, and so but that's true for
22 virtually every mental health issue.
23 **Q.** Do IPV abusers typically have clinical diagnoses?
24 **A.** I don't know the answer to that. My sense is that yes,
25 because part of the behavior pattern or long-term maladaptive

1 Mrs. Clare? Does that restraining order, if extended,
2 interfere with their ability to go to co-parent counseling?
3 **A.** Yeah, I think so.
4 **Q.** Do you agree with me that co-parenting counseling is only
5 effective if both people are amenable to cooperation and
6 compromise?
7 **A.** Sure. Absolutely.
8 **Q.** So there's allegations that Mr. Clare is uncompromising
9 when comes to co-parenting with Mrs. Clare. Is co-parenting
10 counseling going to solve that problem for Mr. Clare if that,
11 in fact, is the case?
12 **A.** If it's court ordered and there are, you know, some teeth
13 involved that the Court has put in place, it could make a
14 difference, yeah.
15 **Q.** Now you saw Dr. Page's report, but are you aware that the
16 guardian ad litem had telephone interview with him that was
17 summarized in a report that was filed with this Court I think
18 in November of 20 --
19 **A.** With Dr. Page?
20 **Q.** -- 18. Yes.
21 **A.** No, I didn't know.
22 **Q.** Now there's some things that were not in Dr. Page's report
23 that were shared with him by Ms. Vaughn and that he found
24 clinically significant. Now Mrs. Clare alleged that Mr.
25 Clare actually smelled her underwear when she came home from

1 something like that involved where she was going with George
2 to do business in other states and one thing and another.
3 That's all I know.
4 **Q.** Kevin was doing a journal for quite some time in this
5 case. Did he ever talk to you about keeping a journal on
6 Andre's misconduct?
7 **A.** No.
8 **Q.** Did he ever share with you concerns other than the Tesla
9 incident that you talked about earlier?
10 **A.** I heard something about, and I clarify I don't know how
11 recent it was, but I recall a discussion where they were in a
12 parking lot or something, and I don't know exactly how, how
13 it all worked out or what the particulars were other than the
14 fact that Kevin was looking for, looking for Kennedy's
15 glasses, eyeglasses, and he was looking under her car. And I
16 think that the point was made that he was trying to do
17 something dangerous to the car or something, which was
18 ridiculous.
19 **Q.** And do you have a general time frame, sir, that you think
20 that occurred?
21 **A.** I'm sorry. I don't know exactly when that was. It would
22 be in the summertime maybe? I'm not sure. It was in a
23 parking lot of a grocery store or hardware store. I don't
24 know.
25 **Q.** Was it maybe at a counselor's office?

1 **A.** Well, I've never been around it, and we don't do it, and I
2 think that was just a matter of understanding that that was
3 not what we do.
4 **Q.** I understand it's not what you would do, sir, and you may
5 not have seen it, but I thought you just told your son's
6 attorney that if you saw these kinds of things Kevin was
7 doing, you would try to put a stop to it. It was a
8 hypothetical.
9 **A.** Well, I suppose if we were there, if I was involved with
10 that. Maybe I would, because, you know, it's hard on those
11 children.
12 **Q.** Neither one of these parents should be talking bad about
13 each other in front of the kids or asking the kids a bunch of
14 questions? They shouldn't be doing that, should they?
15 **A.** I don't know. I hope not.
16 **Q.** I guess what's Kennedy now? Nine?
17 **A.** Yes.
18 **Q.** So for the nine years Andrea's been a parent, sir, have
19 you seen her being neglectful to her children?
20 **A.** No.
21 **Q.** Have you ever seen her be anything but loving to her
22 children?
23 **A.** Well, whenever we're around she is, yes.
24 **Q.** Now before this case ever started, you and Andrea had a
25 really good relationship as father and daughter-in-law,

1 **Q.** So the kids have not expressed Mr. Telquist being around.
2 Is it fair to say that you have spent more time around the
3 Clare children than he has since these two split up?
4 **A.** I would assume that, yes.
5 **Q.** Now you do not support the relationship between Andrea
6 Clare and George Telquist, do you?
7 **A.** It's none of my business.
8 **Q.** When did you and Kevin discuss for the first time keeping
9 the children unaware that you have shared feelings and had a
10 future together?
11 **A.** I told him from the beginning it's not appropriate until
12 he can finish, finish, which would be marriage, that I'd be
13 around the children, and I expressed that to him from the
14 beginning that until his divorce was final there was not
15 freedom for us to be in a relationship to cause any confusion
16 for them on -- should our relationship not work out, I would
17 not want to have them attached to me in a way that would hurt
18 them should we not work out.
19 **Q.** Now do you think that concealing the relationship that you
20 two had from the children was being dishonest with the
21 children?
22 **A.** Most appropriate. I think it was most appropriate.
23 **Q.** I'm not asking you if it's appropriate. There's a
24 difference between appropriate and dishonest.
25 **A.** No, it's not dishonest. You give children information at

1 professionals now how the best approach to take is, knowing
2 this divorce is going to be done hopefully very soon.
3 **A.** That's not how I understand children understand the world.
4 First of all, my relationship with Kevin will begin when the
5 divorce is final in an open sense. And then we can go from
6 there. And we will seek counseling I'm sure. I don't know.
7 I don't know what the best way to tell children is, and I
8 just know that it will start once the divorce is final.
9 **Q.** You obviously have strong religious convictions. What do
10 you think of Andrea for leaving this marriage?
11 **A.** I feel bad. I think she missed out. Kevin's a wonderful
12 man. And her children, it hasn't worked out well for them so
13 far.
14 **Q.** Now you've been around frequently. Have you seen anything
15 behavior-wise from Kevin that with benefit of hindsight maybe
16 he shouldn't have done?
17 **A.** I don't -- I wouldn't have set up my family as he and
18 Andrea agreed upon.
19 **Q.** I'm talking about what's happened after they split up.
20 You've been a regular fixture in Kevin's life since August of
21 16.
22 **A.** Yes.
23 **Q.** Would you agree with me this divorce has been pretty ugly?
24 **A.** Yes.
25 **Q.** And gone on far too long?

1 **A.** Yes.
2 **Q.** What, if anything, has Kevin done when it's comes to his
3 children that you think with the benefit of hindsight he
4 shouldn't have? Can you give me any examples?
5 **A.** No, I think he's been beat up by the system, and he's done
6 everything he knew how to do to the best of his ability. I
7 don't know if he would have been able to do anything
8 different, and I think the outcome still would have been the
9 same. Him getting beat up for just saying, "I'm available."
10 **Q.** So just want to make sure. You can't come up with one
11 critical thing for Kevin, not one?
12 **A.** He's a great dad.
13 **Q.** Did you have contact with Miss Vaughn?
14 **A.** No.
15 **Q.** Did Kevin ask you to contact her or have contact with her?
16 **A.** No.
17 **Q.** Now you've been around these children every day. Did you
18 and Kevin discuss that maybe you should talk with the
19 investigator who's going to make decisions about these
20 children?
21 **A.** The investigator knew about me from her first interaction
22 with Kevin, and she knew that we -- that I shouldn't even be
23 here . I'm not involved in his divorce. And it was her
24 choice not to contact me. I found it -- I found it odd that,
25 that she wouldn't want to, and still she, still my name was

1 thrown out in legal documents as engaged inaccurately and
2 then not even given; I wasn't given a chance to discuss my
3 relationship with the children or Kevin.
4 **Q.** So it's your impression that Mrs. Vaughn did not want to
5 speak with you?
6 **A.** Yes.
7 **Q.** And it's your position that Kevin supported and wanted you
8 to speak to Miss Vaughn?
9 **A.** No, Kevin didn't want me involved in his divorce. Miss
10 Vaughn used my name, not him. He told her we were going to,
11 we were going to start a future together, and she never, to
12 my knowledge, never asked to meet me but knew about me. And
13 I find out that my name's being used in legal documents as
14 being engaged, and I'd like a ring first.
15 **Q.** That's a fair request. Do you know whether Kevin got
16 upset with Miss Vaughn for even mentioning you?
17 **A.** Yeah, he was disappointed. He thought that was not fair.
18 I'm sorry. I think he even wrote her and told her that he
19 was disappointed, and he asked that I not be used, and she
20 said -- well, I don't know the words that she would have said
21 to him, but it's like, "Well, tough, tough luck."
22 **Q.** Have you reviewed any of the materials in this case, one
23 of these half-dozen binders of records, documents, etcetera?
24 **A.** I've read Kevin's declarations, Andrea's declarations.
25 Read lots of declarations.

1 **Q.** I'm sorry?
2 **A.** I've read lots of declarations. There's been a lot.
3 **Q.** How about any of the materials from Ms. Vaughn?
4 **A.** No, we just talked about her.
5 **Q.** Do you know why Kevin had to take psychological
6 evaluations?
7 **A.** Andrea was accusing him of abusing the children.
8 **Q.** Who told you that?
9 **A.** Kevin.
10 THE COURT: All right. We're going to take our noon
11 recess at this time. We'll reconvene at 1:30.
12 (noon recess)
13 THE COURT: Go ahead.
14 MR. PICKETT: Thank you, your Honor.
15 **Q.** I think we left off so Kevin has never said to you that
16 Andrea has abused the kids?
17 **A.** No.
18 **Q.** When did Kevin tell you for the first time that he thought
19 an equal parenting plan would be best for the Clare children?
20 **A.** As long as I've known -- since the beginning of the
21 divorce proceedings I've known Kevin's position to be that
22 he's more available for the children. So that's what, that's
23 what his position's always been.
24 **Q.** And do you know is that still the position he holds today?
25 **A.** The same.

1 **Q.** That he should have primary placement because he's got a
2 better work schedule?
3 **A.** I know that he wants the children to see Andrea, and if
4 that's what she wants, then equal would be appropriate.
5 **Q.** So if Andrea wants it, he's OK with it?
6 **A.** If she shows herself available, he would want that. That
7 hasn't been the situation the last three years.
8 **Q.** Do you know does Kevin have any concerns right now about
9 his ability to fly in the future? I don't want to get into
10 specifics. I just want to know if he's shared any concerns
11 with you about his ability to fly.
12 **A.** He's fully capable of flying.
13 **Q.** So he hasn't raised any concerns about whether his license
14 might be complicated?
15 **A.** Yes, he has raised those concerns.
16 **Q.** So how are the two of you going to be able to afford to
17 have you stay home and parent the Clare children if Mr. Clare
18 can't pursue his current occupation?
19 **A.** I think he would find another, another occupation, and
20 that's step by step. That's not the situation today, so I
21 can't speak for that.
22 **Q.** So you don't have a backup plan at this point?
23 **A.** As I said, until the divorce is final, we can't make any
24 plans.
25 **Q.** Are you aware that Andrea claimed that the children were

1 push, push, push, push hard against him until now he's in a
2 box.
3 **Q.** Can you understand why maybe that letter that was sent to
4 almost everybody she knew may have been damaging to her
5 reputation here in the community?
6 **A.** No, she left her husband for another man, and then she
7 said that her husband was doing things that he wasn't doing.
8 **Q.** I want to make sure. You agree with me, do you not, that
9 Miss Clare had a relationship before they ever got married
10 and then disclosed it to Mr. Clare after they got married?
11 **A.** As far as I know, yes.
12 **Q.** And that was back in the 2004 time frame, like 14 years
13 ago?
14 **A.** OK.
15 **Q.** And other than the relationship with Mr. Telquist what
16 other things, what other relationships did Andrea have? What
17 did Kevin share with you?
18 **A.** Some work relationships didn't seem appropriate to me.
19 **Q.** That's not what I'm asking you. I'm asking what Mr. Clare
20 told you.
21 **A.** That some workplace relationships were not appropriate for
22 a married woman.
23 **Q.** But she wasn't having affairs with these workplace
24 relationships. They were just inappropriate?
25 **A.** As far as he knows, correct.

1 THE WITNESS: Yes, you are.
2 ROBIN DAER
3 (Witness sworn to testify.)
4 DIRECT EXAMINATION
5 BY MR. PICKETT:
6 Q. Would you please state your full name for the record and
7 please spell your last name?
8 A. Robin Daer, D-a-e-r.
9 Q. And is it OK if I call you Robin?
10 A. Yes.
11 Q. Robin, how do you know the parties?
12 A. My sister and Andrea grew up together, and so I've been
13 around since I was probably, I don't know, fifth grade?
14 Q. Without trying to date you or guess your age here, is it
15 fair to say well over a decade?
16 A. Yes.
17 Q. How long have you known Mr. Clare, Kevin Clare?
18 A. Since high school, probably sophomore year.
19 Q. And how did you become acquainted with Mr. Clare?
20 A. Through my sister and Andrea.
21 Q. Were you around the parties when they started dating,
22 started dating relationship?
23 A. Not till later. Probably after high school.
24 Q. Now have you been or known the Clares obviously the whole
25 time they've been married?

1 **A.** Yes.
2 **Q.** How frequently in the couple of years prior to their
3 separation were you around Andrea and Kevin?
4 **A.** Couple times a month.
5 **Q.** And what were the typical types of contact you had with
6 them?
7 **A.** Play dates, playing with our kids, group functions, you
8 know, the adults getting together, Christmas parties with
9 their friends.
10 **Q.** Were these typically activities where both parents, both
11 Mr. and Mrs. Clare were present?
12 **A.** Yes.
13 **Q.** Kind of family gatherings, social involvements?
14 **A.** Yes.
15 **Q.** Who do you have a closer relationship between these two?
16 **A.** Andrea.
17 **Q.** What was your relationship can Kevin like before they
18 split up?
19 **A.** Well, we both stayed home, so we hung out every once in a
20 while, usually for maybe an hour before Andrea would come
21 home.
22 **Q.** If you were hanging out with Kevin before Andrea got home,
23 typically how did that meeting, that gathering, whatever you
24 want to call it, how did that typically get scheduled?
25 **A.** Usually just a text or, "Hey, I'm coming over. You got

1 anything going on?"
2 **Q.** So during that time when you were coming over and spending
3 time with Kevin it sounds like there was many times that you
4 were around Kevin without Andrea present.
5 **A.** Probably maybe five or six.
6 **Q.** How would you describe your relationship with Kevin during
7 this window of time in the year or two leading up to their
8 separation?
9 **A.** Good.
10 **Q.** What's your relationship with Kevin like now?
11 **A.** We don't really have one.
12 **Q.** When is the last time you've had conversation, actually
13 had a personal interaction with Kevin?
14 **A.** Probably last summer.
15 **Q.** And was that a scheduled meeting? Scheduled get together
16 or --
17 **A.** No, we were both going to a mutual friend's boat house.
18 **Q.** Again before the separation you said you and Kevin had a
19 decent relationship?
20 **A.** Yeah.
21 **Q.** You mentioned this social engagement this past summer.
22 Was there any other social engagements where you and Kevin
23 had crossed paths since that time?
24 **A.** Usually at a Christmas party, but they didn't have one
25 this year, so that would have been the year before.

1 **Q.** This interaction this past summer, anything noteworthy
2 about that?
3 **A.** Just doesn't acknowledge me.
4 **Q.** Did you have your kids with you at that?
5 **A.** Yes.
6 **Q.** How about Kevin? Did he have the Clare children with him?
7 **A.** With my kids?
8 **Q.** No, did Kevin have the Clare children with him at that
9 party or gathering?
10 **A.** No.
11 **Q.** Have you ever tried to reach out to Kevin and find out why
12 he may not feel as close to you as he used to be?
13 **A.** Un-uh.
14 **Q.** Sorry. I apologize for being transcribed you have to say
15 --
16 **A.** Sorry. No.
17 **Q.** Sorry. You've obviously discussed this situation at least
18 in general terms with Andrea, have you not?
19 **A.** Yes.
20 **Q.** Are you aware that Kevin's made some allegations that
21 Andrea was not interested in being an active and involved
22 parent?
23 **A.** Yes.
24 **Q.** What do you think of that allegation?
25 **A.** That's not true.

1 **Q.** Can you kind of elaborate on that? What kind of things
2 that she did? What did she show that would demonstrate to
3 you that she was interested and active and involved as a
4 parent?
5 **A.** Playing with them, and anytime they were getting into
6 something or coming to her for something, she would parent
7 them.
8 **Q.** Before the parties separated did you ever hear Kevin make
9 statements about Andrea being uninvolved or disinterested as
10 a parent?
11 **A.** No.
12 **Q.** Were there ever any occasions where you saw the Clares
13 parent together where they may have been a dispute between
14 the two of them how a parenting function should be performed?
15 **A.** He might come over if she was parenting them. He might
16 come over and step in. And then she would step back,
17 obviously not to fight in front of the kids.
18 **Q.** Was this something that you saw regularly where Kevin
19 would come over during Andrea parenting?
20 **A.** Well, yeah, but I didn't really think anything of it,
21 because I kind of did the same thing when I stayed at home.
22 I was the one who mainly disciplined.
23 **Q.** I was going to ask you about that. What kind of general
24 parenting functions did Kevin intervene? You mentioned
25 disciplining kids is something that you did, for example?

1 **A.** Well, when they were doing something they weren't supposed
2 to, they obviously tried to stop them.
3 **Q.** Did you ever get the sense that Kevin was interested in
4 equal parenting with Andrea when they were married?
5 **A.** Not really.
6 **Q.** Why would you think that?
7 **A.** 'Cause he mostly did it.
8 **Q.** Now in a general sense Kevin's personality type, when you
9 were around him socially, how would you describe Kevin in a
10 social setting? How would he typically behave?
11 **A.** Normal.
12 **Q.** Is he an outgoing guy? Social?
13 **A.** Not extremely outgoing, but social.
14 **Q.** Have you ever seen him act like a jerk in public?
15 **A.** Well, everyone has.
16 **Q.** Was that a common thin know, though?
17 **A.** Yes -- well, not common, no.
18 **Q.** Did you ever see Kevin lash out at anybody, Andrea or
19 anybody else for that matter?
20 **A.** I saw them getting into it.
21 **Q.** Do recall the last time that occurred before they split
22 up?
23 **A.** No, not off the top of my head.
24 **Q.** And can you give me a brief description of what you saw,
25 what would be a typical one of these events that you just

1 talked about?
2 A. Normally when she would come home it was kind of he wanted
3 her attention, but I mean. I can't pinpoint any one thing.
4 It was just -- uncomfortable I guess. You could feel
5 tension.
6 Q. And you mentioned children. How many do you have, and how
7 old are they?
8 A. I have two. I have a nine year old and a six year old.
9 Q. So very close in age to the two older Clares?
10 A. Yes.
11 Q. What kind of relationship do you have with the children
12 versus before these two split up in December '15 or so?
13 A. We get together still a couple times a month.
14 Q. And you've been around the children a couple times a month
15 or so over the last three or four months?
16 A. Uh-huh.
17 Q. Do you notice anything different with the kids good, bad
18 or otherwise?
19 A. They seem to be doing good. Cruzy kind of is a little
20 stand offish sometimes, but.
21 Q. And how is Andrea? How does her personality, how does her
22 effect seem, now that she's --
23 A. Well, seems like she has a better relationship with her
24 kids, because now she -- they take her seriously instead of
25 when she says something them going to dad.

1 appreciate her being excused from the courtroom.
2 THE COURT: Miss Vaughn, I'm going excuse you from
3 the courtroom.
4 RYAN TRULSON
5 (Witness sworn to testify.)
6 DIRECT EXAMINATION
7 BY MR. PICKETT:
8 Q. Good afternoon, sir. Would you please state your full
9 name for the record, and then would you spell your last name?
10 A. Bryan McKinley Trulson, T-r-u-l-s-o-n.
11 Q. And, Mr. Trulson, how are you acquainted with the parties?
12 A. Been friends since childhood I guess.
13 Q. Friends since childhood, are you talking with one party or
14 both parties?
15 A. Both.
16 Q. How would you describe your friendships specifically with
17 Mr. Clare?
18 A. He's my best friend.
19 Q. Did your friendship with Mrs. Clare develop because of
20 your friendship with Mr. Clare?
21 A. No.
22 Q. Why or when did you develop your friendship or start your
23 friendship with her?
24 A. I don't remember exactly, but somewhere end of middle
25 school, beginning of high school.

1 **A.** Probably once a week.
2 **Q.** And what was the typical context of your contacts with
3 them?
4 **A.** Just social visits.
5 **Q.** Where would these social visits typically take place?
6 **A.** Either their house or my house. We lived very close to
7 each other for a period of time.
8 **Q.** Do you have any children yourself?
9 **A.** I do.
10 **Q.** And what do you have and how old?
11 **A.** I have a daughter. She's eight.
12 **Q.** And are you and her mother still together?
13 **A.** No.
14 **Q.** How long have you two been apart?
15 **A.** A year now, a little over a year.
16 **Q.** What is your current parenting arrangement?
17 **A.** I have a 50/50 custody.
18 **Q.** And how did you come about ending up with that parenting
19 plan? Was it something that was contested? Cooperated?
20 **A.** Cooperated.
21 **Q.** And how have you liked the arrangement of sharing time
22 equally?
23 **A.** Well, I don't think anyone likes sharing their child, but
24 as much as it can be, it's good.
25 **Q.** Since these two have separated how frequently have you had

1 contact with Mr. Clare?
2 **A.** Probably about the same. I think at times with my work
3 schedule and his work schedule it goes for a couple of weeks
4 before we talk to each other, but once or twice week.
5 **Q.** And same question regarding Andrea Clare. How frequently
6 have you been around her post separation?
7 **A.** Not often at all.
8 **Q.** Have there been any times when you've been at the same
9 place at the same time by design? Have you met up with
10 Andrea, had play dates, done anything like that?
11 **A.** No.
12 **Q.** Did Andrea ever reach out to you after Kevin and Andrea
13 separated to ask you to make peace, for lack of a better way
14 to put it?
15 **A.** Yes.
16 **Q.** And do you remember about when she did that?
17 **A.** Probably, gosh, I don't remember exactly, no, I don't.
18 **Q.** Can you give me a general idea?
19 **A.** Somewhere in that February of 2017 maybe.
20 **Q.** And so when she approached you what did she ask that you
21 do?
22 **A.** I'm kind of uniquely positioned between the two of them
23 being friends for so long. So she just asked me to speak
24 with Kevin and hopefully help come to a quick and easy finish
25 to this.

1 **A.** Yes.
2 **Q.** When this case started back in August of 2016 did Kevin
3 approach you or did Kevin ever send you a letter from his
4 attorney Ben Dow and ask that you write a statement for him?
5 **A.** No.
6 **Q.** Are you familiar? Do you know what the letter is that I'm
7 referring to?
8 **A.** I think I kind of do.
9 **Q.** Do you recall whether you were given something like that
10 to review at your deposition?
11 **A.** No.
12 **Q.** You don't recall the part of your deposition where you
13 were given that to review or follow?
14 **A.** Oh, I do remember reviewing that form at the deposition,
15 yes.
16 **Q.** And prior to that, so that deposition was like a couple
17 months ago or something, wasn't it?
18 **A.** It was just a couple weeks ago I think.
19 **Q.** And prior to that time had you ever seen that letter?
20 **A.** No, sir.
21 **Q.** Do you have any idea or had you ever heard of that letter
22 beforehand?
23 **A.** No.
24 **Q.** Do you have any idea how many people Kevin passed that
25 letter to?

1 **A.** No.
2 **Q.** What's Kevin told you about Andrea's allegations in this
3 case? Let me back up. Sorry. You know that the Court
4 changed the visitation schedule back in August?
5 **A.** Yes.
6 **Q.** What did Kevin tell you led up to that?
7 **A.** He wasn't very specific with anything in particular.
8 **Q.** Have you ever looked at any documents, either by choice or
9 by request, from this case?
10 **A.** No.
11 **Q.** How much do you want to be sitting up there right now?
12 **A.** Not much at all.
13 **Q.** Now the social circles that -- you and Andrea were
14 friends. Did you maintain for the most part a similar social
15 circle when they were married?
16 **A.** Yes and no. Some friends we had in common that we hang
17 out with, and then others no.
18 **Q.** And since they split up, have you been in any social
19 engagements with Andrea Clare in almost the three years
20 they've been separated?
21 **A.** Our high school reunion, I saw her there.
22 **Q.** Your interactions when you interacted with Andrea there,
23 did anything of note occur?
24 **A.** No, sir.
25 **Q.** Did she treat you any differently than she would have

1 normally treated you?
2 **A.** No. We said hi to each other and gave each other a hug,
3 and that was about it.
4 **Q.** Basically the same way that you would treat one another,
5 even before all this mess, wasn't it?
6 **A.** Correct.
7 **Q.** Now when Mr. Clare told you that he did not want to share
8 time equally, what was his reasoning?
9 **A.** Mainly his work schedule.
10 **Q.** And can you please elaborate, if you can?
11 **A.** Him having so much time off in the wintertime and not
12 being at work, he felt that he should have his kids during
13 that time.
14 **Q.** Do you have any idea what Kevin's work schedule has been
15 since the spring of 17?
16 **A.** I don't know exactly, no, but I know he works somewhere
17 around five months out of the year and then has the rest off.
18 **Q.** And just confirming. Have you seen or been around Andrea
19 and the children at any time from February of 16 until now?
20 **A.** No.
21 **Q.** Now Andrea we established approached you about hopefully
22 trying to make peace and broker a deal, does she ever raise
23 concerns with you about Kevin?
24 **A.** No.
25 **Q.** She never asked you how Kevin was doing?

1 discuss the detriments of his work schedule during the
2 summertime, at least or during his busy season?
3 **A.** No.
4 **Q.** Now did Kevin tell you that he was OK with them sharing
5 custody over the summer months?
6 **A.** Yes.
7 **Q.** Given what you've seen of your two friends here, what are
8 the chances of them walking out of this courtroom today and
9 going to do something together for their children?
10 **A.** Slim to none.
11 **Q.** Do you ever tell your friend Kevin that you thought he
12 needed to approach things differently in this case than he
13 had been?
14 **A.** Not particularly, no.
15 **Q.** Did Kevin ever explain to you why he solicited all of
16 these supporting witnesses but didn't ask you, his best
17 friend?
18 **A.** No.
19 **Q.** Have you ever reported Andrea's whereabouts if she was
20 with Mr. Telquist to Kevin?
21 **A.** Yes.
22 **Q.** When was the first time you did that?
23 **A.** Summer of 16 or 17. I don't remember. There was two
24 incidences. One where I saw them at their law firm getting
25 into the same vehicle at the same time. And then another

1 incidence at downtown Kennewick at a restaurant.
2 **Q.** So if those events would have occurred after her and Kevin
3 were already split up, right?
4 **A.** Correct.
5 **Q.** Why did you feel it was noteworthy or appropriate to
6 contact Kevin about what Andrea was doing?
7 **A.** Just because of everything that was going on.
8 **Q.** You knew their relationship and their marriage was already
9 over, didn't you?
10 **A.** Yes.
11 **Q.** So why was it important for then to share information
12 about Andrea's -- let me back up. The kids were not with Mr.
13 Telquist and Mrs. Clare, were they?
14 **A.** No.
15 **Q.** One was a work event, and one was a lunch or something.
16 And what's Ice Harbor, by the way?
17 **A.** Ice Harbor Brewing Company, it's in downtown Kennewick.
18 **Q.** It's a restaurant, isn't it?
19 **A.** It's a brewery and a restaurant.
20 **Q.** When you told Mr. Clare these observations of Mrs. Clare
21 and Mr. Telquist, what was his response to it?
22 **A.** He didn't much care, to be honest with you.
23 **Q.** Did he ask you not to do it anymore?
24 **A.** No.
25 **Q.** Have you been put in the position, at least in your own

1 or talk to the kids, Kevin always seemed to be right there
2 and then would just kind of steer it or basically take over.
3 And it wasn't anything that jumped out to me or seemed odd at
4 the time, but now that I think about it, it's bothersome.
5 **Q.** And just for clarification purposes, who is an Addie?
6 **A.** Oh, Addie is my sister Andrea. Sorry. That's what I
7 called her.
8 **Q.** Did you ever see the two of them, Andrea and Kevin, have a
9 dispute over differences in parenting in your presence?
10 **A.** I would see them. It was never really a dispute. It was
11 always more an uncomfortableness or a look or a shake of a
12 head, or it was just very subtle. But, yes, I did notice
13 that there were more and more times of tension as it came to
14 be at the end of their marriage.
15 **Q.** Did your sister ever talk to you about Kevin's rules?
16 **A.** Yes.
17 **Q.** And do you recall when was the first time you discussed
18 with Addie or with Andrea, excuse me, the rules, Kevin's
19 rules?
20 **A.** I probably mentioned them to her earlier when my kids were
21 young, very young. They had certain ways that they were
22 raising their kids that I guess was different than the way
23 that we were raised. You know, if we acted up too much, we
24 got a swat on the butt. It was not abnormal. They didn't do
25 that. They may use time out, or you may need to go stand

1 house. I go over to their house quite often. We went over
2 to their house and swam at least once a week over the summer.
3 Just as much as we can be around each other, yes.
4 **Q.** When they were still together, did your children, did your
5 daughter have like play dates with the Clare kids?
6 **A.** She did. Most of them were when we went over for family
7 functions at their house, but as my daughter and Kennedy are
8 very close. I mean she's close with the boys, too, but
9 they're peas in a pod those two. And I would say that if we
10 were to ask for Kennedy to come and stay over night, I don't
11 recall her ever staying at my house prior to them splitting.
12 Maybe once. But my daughter stayed at their house I wouldn't
13 say quite often but as often she could.
14 **Q.** Did Andrea ever tell about you the claim she's making that
15 Kevin kept her under surveillance?
16 **A.** She did tell me after they split.
17 **Q.** And you recall approximately when you guys had that
18 conversation?
19 **A.** The first, the first time that we really talked about it
20 was she called me one night and it was probably 9:30, which
21 was kind of weird. And it was after she had gotten into the
22 condo, and she said, "Hey, do you think this is weird? I was
23 giving kids a bath upstairs, and all of a sudden Kevin was
24 there." And I said, "Well, what do you mean all of a sudden
25 he was there?" And she said, "Well, I locked the doors, and

1 we'd gone upstairs to play and read, and I was giving the
2 kids a bath, and then he was in the house." And I said,
3 "Well, if you locked the door how did he get in?" And she
4 said, "Well he, he had to crawl over the balcony." And I
5 said, "Your balcony is on the second floor. How would he do
6 that?" And so that was the first time that we kind of had
7 that discussion. And I said, I told her I thought that was
8 bothersome. And she said, "Well, you know, he was worried
9 because I didn't answer the phone or text for a while." And
10 then I, I was bothered by it. I said, "You know, you guys
11 are separated for reason. So, yes, I do think that's
12 strange." And from there we had more and more discussions
13 about it. And just she would open up more and more as time
14 went on, tell me how he would look at her phone or check her
15 email, things like that.
16 **Q.** How about checking her underwear?
17 **A.** She did tell me that later also. And my reaction was that
18 that was extremely odd to me.
19 **Q.** Fair enough. You haven't had a chance to ask or discuss
20 any of these allegations that she's made about Kevin with
21 Kevin?
22 **A.** No.
23 **Q.** What did your sister tell you she wanted as a resolution
24 in this case from the beginning?
25 **A.** At the beginning she just wanted to be split with Kevin.

1 statement as Mr. Page is saying he suspects, I do agree with
2 the statement that I was strongly opinionated, but I don't
3 agree with the fact that I had a problem detaching from
4 Andrea Clare. As I stated before, Miss Smiley and I have
5 been in relationship since August of 16. So I was detached
6 for sure. And with respect to her home life, I never brought
7 up or asked what they did at their mother's home life. My
8 kids would just would tell me, and I would ask general
9 questions like, "How was your time? Did you have fun?"
10 **Q.** At the bottom of that same paragraph you said
11 unfortunately -- it's about three lines, four lines from the
12 bottom. "Just as he may lack insight concerning the impact
13 of his self-perceived conscientiousness on Mrs. Clare and
14 others, he may also lack appreciation as to how the
15 competition between these parents also has been a stressor to
16 varying degree with the children." Now do you agree that
17 that's a fair assessment of you?
18 **A.** Sure, he's assessing. He could see that I may lack
19 insight on certain things when you're forced to the truth of
20 the situation.
21 **Q.** I'm sorry? I didn't hear that part.
22 **A.** I would agree that, excuse me, that where he says I may
23 lack insight concerning the impact. He's the clinical
24 psychologist.
25 **Q.** When you read that, what did you do to try to gain insight

1 **Q.** So your daughter at least is close in age then to Canon?
2 **A.** Yes.
3 **Q.** And how long have you known Kevin?
4 **A.** For 25 years.
5 **Q.** And how did you come to meet Kevin?
6 **A.** I met him through my sister just hanging out when we were
7 young, I think eighth grade. And my dad also taught at his
8 middle school. So my dad knew him also.
9 **Q.** During the time Kevin and Andrea were together, about how
10 frequently did you see them say in the last couple years of
11 their marriage?
12 **A.** In the last couple of years not as often, maybe once every
13 few months, depending on if we went to their house normally.
14 **Q.** And you mentioned not as often. Not as often relative to
15 what? Before or after then?
16 **A.** Before. When I first -- well, even before I moved over
17 here I spent most of my time while I was here visiting with
18 Kevin and Andrea and that and/or just Kevin and/or just
19 Andrea. I would say I was probably closest with Andrea my
20 sister. So I spent most of my time with her, and then
21 throughout the time that they dated and got married and when
22 they were first married I was with them quite a bit.
23 **Q.** And your relationship with Kevin, was there anything
24 noteworthy about it? Did you get along? Did you not get
25 along?

1 **A.** I considered Kevin one of my very best friends for a very
2 long time.
3 **Q.** And do you still feel that way today?
4 **A.** No, no. I feel like I don't know this Kevin.
5 **Q.** And when did that shift in your feelings occur?
6 **A.** I noticed some, some differences probably mostly the last
7 year of their marriage, and then since they've not been
8 married I've noticed a lot of differences.
9 **Q.** How frequently have you been around Kevin since they
10 separated?
11 **A.** I probably was only around Kevin every great once in a
12 while January and February after they separated, and then I
13 haven't seen him probably at all.
14 **Q.** How frequently since they've split up have you seen Andrea
15 and the kids?
16 **A.** Weekly, if not several times a week.
17 **Q.** When did that change occur?
18 **A.** I started seeing Andrea more once she moved out of the
19 main house. I helped her move some of her stuff and get her
20 organized, and that was when she started to open up to me
21 about what was going on, and I felt like I was finally
22 getting my sister back. So I took advantage of that, and we
23 got very close again, and I couldn't be happier about that.
24 **Q.** Now has Andrea discussed with you or have you become aware
25 of the allegations Kevin's made against her?

1 we'd gone upstairs to play and read, and I was giving the
2 kids a bath, and then he was in the house." And I said,
3 "Well, if you locked the door how did he get in?" And she
4 said, "Well he, he had to crawl over the balcony." And I
5 said, "Your balcony is on the second floor. How would he do
6 that?" And so that was the first time that we kind of had
7 that discussion. And I said, I told her I thought that was
8 bothersome. And she said, "Well, you know, he was worried
9 because I didn't answer the phone or text for a while." And
10 then I, I was bothered by it. I said, "You know, you guys
11 are separated for reason. So, yes, I do think that's
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13 about it. And just she would open up more and more as time
14 went on, tell me how he would look at her phone or check her
15 email, things like that.
16 **Q.** How about checking her underwear?
17 **A.** She did tell me that later also. And my reaction was that
18 that was extremely odd to me.
19 **Q.** Fair enough. You haven't had a chance to ask or discuss
20 any of these allegations that she's made about Kevin with
21 Kevin?
22 **A.** No.
23 **Q.** What did your sister tell you she wanted as a resolution
24 in this case from the beginning?
25 **A.** At the beginning she just wanted to be split with Kevin.

1 She's like everything 50/50. "Our kids need both of us," and
2 as time went on and as things changed, and I could tell that
3 she was growing more and more uncomfortable and as she opened
4 up more, I could see that she was more concerned with making
5 sure that the kids grew up well and had a stable home and
6 that she could be the biggest part of that that she could be.
7 **Q.** The children that you see when you go to visit or they
8 come to visit you, they seem to be in a better place or a
9 worse place than they were when these two split up?
10 **A.** I think they're in a far better place.
11 **Q.** At any point since this case started have you seen any or
12 did -- has Andrea shared any fears with you about Kevin,
13 concerns about Kevin going forward?
14 **A.** Yes, especially when things would happen in changes such
15 as with the Court. I've gone and stayed with her several
16 times. In fact my husband and I both have. She's expressed
17 that she's, you know -- sorry. She's been -- she's had
18 thoughts of worried about being the next Date Line. About --
19 **Q.** What do you mean --
20 **A.** Thing happening.
21 **Q.** Sorry.
22 **A.** Things happening where Kevin like would like try to kill
23 her or hurt her in some way.
24 **Q.** Now have you ever seen Kevin hurt Andrea?
25 **A.** They would play around, but they would play around with

1 fearful or concerned if she believes that you're stalking
2 her? Is that reasonable?
3 A. Not on -- not on the facts, no, it's not reasonable that
4 she feel that way.
5 Q. How about on the allegations? You would never do those
6 things that Andrea has accused you of, right?
7 A. No.
8 Q. And can you appreciate that if you had done those things
9 to a reasonable person like Andrea that she is going to
10 suffer and fear harm because of that?
11 A. That is reasonable, yes.
12 Q. Any reasonable person would?
13 A. Yes.
14 Q. I hate to bounce back and forth with you, but sometimes
15 chronology doesn't always work. When is the first time after
16 you and Andrea split up where you had a dispute or
17 disagreement over what activities your children should engage
18 in?
19 A. With respect to engaging or not I think it would be soccer
20 in the fall.
21 Q. That would be in the fall of 2016?
22 A. Yes.
23 Q. And two of the three children played?
24 A. At that time, yes, two.
25 Q. Who told the other they wanted soccer?

1 A. Yes.
2 Q. How about close personal friends?
3 A. Some, some but not all.
4 Q. Why did you fail to give one to Ryan Trulson?
5 A. Ryan Trulson is being represented by Andrea in a family
6 law matter, and I did not want to make him conflicted and his
7 two friends, so I chose not to.
8 Q. So your closest friend did not receive one?
9 A. No. I didn't want her to stop representing him.
10 Q. Do you know when Andrea found out about this letter?
11 A. I think found out when my mother was deposed in 2017.
12 Q. And that would have been like March sometime in 2017?
13 A. Maybe.
14 Q. Sound at least close?
15 A. Close, yes, sir.
16 Q. Did you give it to people who were attendees at Bethel
17 Church?
18 A. Not to my recollection. We had kind of fallen away from
19 attending church, and our small group was disbanded. So I
20 attempted to give it to everyone who had been in -- seen us
21 interacting as a family in the past year.
22 Q. Did you give it to neighbors?
23 A. Yes. They had seen us interacting in the past year.
24 Q. Old teachers?
25 A. Two old preschool teachers, yes.

1 Sunday was a -- a day of rest when we wanted to rest, and we
2 were pressured or at least reminded by my parents weekly of
3 how good the sermon was. "Too bad you weren't there." And
4 we both would, would tell them, "We still have Jesus and just
5 this is a busy time in our life. We don't plan on never
6 going back."
7 **Q.** So if Andrea said your family did not attend church
8 because it was inconvenient and you wanted to spend family
9 time instead, Andrea was mistaken?
10 **A.** I think that was a decision we made together.
11 **Q.** You talk about making decisions together. Did Andrea say,
12 "Yes, that's fine. I don't want to go to church"? Did you
13 ever hear her mutter such words?
14 **A.** I don't recall.
15 **Q.** When was it that you decided that it was appropriate to
16 start a journal?
17 **A.** I had started a journal in January of 16 and had disposed
18 of it, and I think I may have started again after I was
19 "hired" by Ben Dow.
20 **Q.** What was your purpose for doing that?
21 **A.** Ben explained to me that with family law cases that have
22 children they can last longer than the standard, which is six
23 or nine months, and it's important to have correct dates, "So
24 if things happen, write them down."
25 **Q.** Basically to remind yourself of important things in case

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2 were pressured or at least reminded by my parents weekly of
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22 children they can last longer than the standard, which is six
23 or nine months, and it's important to have correct dates, "So
24 if things happen, write them down."
25 **Q.** Basically to remind yourself of important things in case

1 you needed to write declarations, testify, etcetera?
2 A. Yeah.
3 Q. And you gave this journal to Mrs. Vaughn, the guardian ad
4 litem, when?
5 A. In the spring of 2018.
6 Q. Sorry?
7 A. In the spring of 2018.
8 Q. She was appointed in late February or so, 2018. And so
9 right after that?
10 A. Yes.
11 Q. Now would you agree with me that you've been criticized
12 for this journal, especially its contents? There's been more
13 than one person who has been critical of you for what you put
14 here?
15 A. Miss Vaughn and Andrea, yes, sir.
16 Q. As you sit here today based on what other people, issues
17 other people raised, do you see anything wrong with what
18 you've been doing?
19 A. I think I attempted to follow the instructions of my
20 attorney.
21 Q. So your attorney's advice is what was the precipitator of
22 this, the contents of this journal?
23 A. Yes.
24 Q. And I'm asking your attorney may have told you to do it,
25 but the complaints that you've heard from people like Ms.

1 Vaughn, Mr. Derry, us, do you have, and with benefit of
2 hindsight, any appreciation for things that may not be so
3 good in this is? Is there anything wrong with this
4 journaling in your eyes as you sit here today?
5 **A.** I certainly don't like having to write negative things
6 about Miss Clare. No, I don't.
7 **Q.** So you don't enjoy it, but that's not what I asked you. I
8 asked you in retrospect do you think that anything that
9 you've done in terms of creating this journal or what you
10 claim that you've done in this journal that maybe you should,
11 maybe you should not have done it? Is there any remorse?
12 **A.** For writing the journal?
13 **Q.** Yes.
14 **A.** To the extent it hurt her feelings, yes. To the extent of
15 having facts and instances where the children say things to
16 me, no.
17 **Q.** Your purpose here was to document things about the
18 children? Is that correct?
19 **A.** Abnormalities, yes.
20 **Q.** Why was it important to you to document your wife's
21 comings and goings?
22 **A.** Could you be more specific?
23 **Q.** Yeah. Why was it important to you that she went to
24 Ireland or she went to Hawaii or she went any other place for
25 that matter?

1 **A.** I think that was with respect to first right of refusal
2 aspect of it.
3 **Q.** Would you agree with me it was none of your business what
4 Mrs. Clare did if it did not involve your children?
5 **A.** It was none of my business. I agree with you.
6 **Q.** Have you ever been stalked before?
7 **A.** Um, not to my knowledge, no.
8 **Q.** Have you ever felt like people were following you without
9 your consent, keeping tabs on your whereabouts? You ever
10 felt that way?
11 **A.** No.
12 **Q.** Now Mrs. Clare has accused you of behaving like that
13 towards her, has she not?
14 **A.** She has accused me.
15 **Q.** And if you're checking her private communications,
16 tracking her whereabouts with electronic devices, can you see
17 why she may feel that you're invading her privacy? Can you
18 at least be sympathetic toward her feelings?
19 **A.** Not after January of 2016 I wasn't doing.
20 **Q.** That's not the question I asked you. The question I asked
21 you is can you understand how Mrs. Clare might feel or feel
22 badly about this? Concerned about this? Afraid? Can you
23 understand why she may feel that way?
24 **A.** Based upon what's happened, no, but if she feels that way
25 I feel, feel definitely bad about that.

1 **Q.** If Andrea was tracking your whereabouts and accessing your
2 intimate private communications and interfering with your
3 relationship with Mary Lin, how would that make you feel?
4 **A.** It would -- I don't think it in context she wouldn't be.
5 We're not together.
6 **Q.** I'm not asking you whether Miss Clare would do it. I
7 asked you what the effect on you would be?
8 **A.** If I was still with Miss Clare and we were living
9 together?
10 **Q.** With or without. I'll put it a different way. You became
11 upset by the very thought that Mary Lin was going to be
12 involved in the guardian ad litem's investigation? Is that
13 correct?
14 **A.** I was concerned about it, yes.
15 **Q.** That she should be protected from this case; she shouldn't
16 be drug into it?
17 **A.** Yes. It's the children and about my divorce.
18 **Q.** And even though this is your significant other who is
19 going to be -- who has been around your children and will be
20 around your children, you still didn't like the fact that she
21 was being pulled into this, right?
22 **A.** If she were to be interviewed, that would be appropriate.
23 That's why I informed the GAL of her.
24 **Q.** Why did you tell the guardian ad litem to keep it private?
25 **A.** I didn't tell her to keep it private. I asked her not to

1 parade that information to the Court.
2 **Q.** I just wanted to make sure we're on the same page here.
3 You deny many of Andrea's allegations. I'm saying to you
4 would you access her emails right now? If you could?
5 **A.** No.
6 **Q.** Would you ask people to keep tabs on her whereabouts right
7 now?
8 **A.** No.
9 **Q.** Would you ask people to keep tabs on her significant
10 other?
11 **A.** No.
12 **Q.** Would you ask people to keep tabs on things related to her
13 business?
14 **A.** No.
15 **Q.** Would you agree with me that none of those behaviors
16 should be acceptable to this Court or to anybody else?
17 **A.** No.
18 **Q.** And can you understand, whether it's true or not, Andrea
19 believes you've done those things?
20 **A.** I can't understand how she would believe it. If she does,
21 I feel bad.
22 **Q.** At least she represents she believes it?
23 **A.** She represents, yeah. If that's --.
24 **Q.** So if she represents that she believes them, can you
25 understand? Do you think it's reasonable that she may be

1 fearful or concerned if she believes that you're stalking
2 her? Is that reasonable?
3 A. Not on -- not on the facts, no, it's not reasonable that
4 she feel that way.
5 Q. How about on the allegations? You would never do those
6 things that Andrea has accused you of, right?
7 A. No.
8 Q. And can you appreciate that if you had done those things
9 to a reasonable person like Andrea that she is going to
10 suffer and fear harm because of that?
11 A. That is reasonable, yes.
12 Q. Any reasonable person would?
13 A. Yes.
14 Q. I hate to bounce back and forth with you, but sometimes
15 chronology doesn't always work. When is the first time after
16 you and Andrea split up where you had a dispute or
17 disagreement over what activities your children should engage
18 in?
19 A. With respect to engaging or not I think it would be soccer
20 in the fall.
21 Q. That would be in the fall of 2016?
22 A. Yes.
23 Q. And two of the three children played?
24 A. At that time, yes, two.
25 Q. Who told the other they wanted soccer?

1 **A.** I had mentioned it to her, "We're going to sign them up
2 again."
3 **Q.** And did you receive any resistance at all?
4 **A.** I received a email response of -- from Miss Clare.
5 **Q.** Saying fine?
6 **A.** It said, "You're doing this just to look good."
7 **Q.** Did she say no?
8 **A.** No, she said yes.
9 **Q.** That reminds me. Did you and Andrea have regular disputes
10 over the activities that your children participated in when
11 you were together as a married couple?
12 **A.** I don't believe we had regular disputes. They all
13 concerned the initial start process of piano and swim and
14 soccer. So getting kids started in something was there was
15 discussion each time. It was with back and forth, and once
16 they were in it, they were in it. So.
17 **Q.** Andrea wanted the kids in more activities than you did,
18 correct?
19 **A.** She started the -- the adding of activities, yes.
20 **Q.** And you had a rule that you didn't want the kids in
21 activities anymore than one at a time?
22 **A.** I didn't have a rule. I said as a stay-at-home parent
23 with three children, it was logistically hard to turn into a
24 taxi driver, whereas before they were all at home, and naps
25 and meals were done accordingly. Now we start throwing in

1 this appointment on Monday and this appointment on Thursday.
2 That disrupted the routines for other children. So as a way
3 to make it all balance, I did suggest that lets do one at a
4 time with respect to most sports.
5 **Q.** And if Andrea had wanted them to do more than you wanted
6 them to do, then she needed to be responsible for getting
7 them there? Wasn't that also one of the rules?
8 **A.** That reference was after a few seasons of swim lessons she
9 wanted to enroll the kids again during the winter, and I did
10 not like bringing a six-month-old baby out into the cold and
11 snow during the winter at 5 o'clock to the swim lessons. So
12 there were a few times where she would pick up and drop of or
13 show up to help corral the other two while one was taking
14 lessons.
15 **Q.** Yeah, when you were married and Andrea wanted them to do
16 more than you wanted them to do, then she would have to be
17 responsible for getting them to the activities?
18 **A.** She would definitely help out.
19 **Q.** That was the condition of her being able to put them in,
20 wasn't it?
21 **A.** No, it was n't a contingent. It was me requesting help
22 and assistance in taking three children to swim lessons.
23 **Q.** Now back in May of 16 your daughter Kennedy was struggling
24 right around the same time you were separating, was she not?
25 Struggling in school in particular?

1 **A.** The teacher thought she might have an issue with her eyes,
2 asked to see her eyes checked.
3 **Q.** So again the question I asked you was she was struggling
4 and having trouble in school? Yes or no?
5 **A.** Yes.
6 **Q.** And one of the reasons that was referenced or mentioned
7 was potential vision issues?
8 **A.** Yes.
9 **Q.** And another thing that was discussed is with the
10 possibility of holding her back a grade?
11 **A.** Not at that time, no.
12 **Q.** You don't recall ever having any discussions with the
13 teachers about possibility of holding her back?
14 **A.** No. Pasco school teachers don't, don't recommend that.
15 It's not in their --
16 **Q.** Who took responsibility for getting the eye exams done,
17 the vision therapy set up? Who did that?
18 **A.** The initial eye exam's done in Pasco, and I don't know who
19 made that appointment.
20 **Q.** Who set up the vision therapy?
21 **A.** I believe Andrea set it up with a Richland firm.
22 **Q.** And did you support the vision therapy?
23 **A.** Yes.
24 **Q.** How much did you financially contribute?
25 **A.** I think we had an agent say $4 or $5,000 initially

1 supported the first three or four months of it in September
2 of 18, and we had split our finances in May of 16. So when
3 that vision therapy started in September, it was my
4 understanding that $700 a month would come from that has
5 which had between $4 and $5,000 in it.
6 Q. So the answer is the joint has account paid for it or
7 Andrea did? That's the answer, isn't it? You paid nothing?
8 A. Well, the joint has was part of our marriage, so I assumed
9 we were both paying for it at the time.
10 Q. How checks did Kevin Clare write to vision therapy?
11 A. I think I wrote one or two in the spring of or winter of
12 17.
13 Q. When you were ordered by the Court to do so to pay the
14 rest of it?
15 A. Yes, sir.
16 Q. Now was that in retrospect a positive or a good decision
17 to get her into vision therapy?
18 A. Yes.
19 Q. Now Andrea and you disputed or disagreed about possibly
20 changing her to Richland schools so she could be held back a
21 grade?
22 A. We never had a conversation about it.
23 Q. According to your journal she said, "Why won't you let me
24 make a decision?" I said, "Because it's about where you
25 decided to move. You left, not me." That's not a

1 discussion?
2 **A.** Well, that was three years ago. What happened is I found
3 out the same day I was served divorce papers. I was given an
4 email by Andrea, and she texted and said, "Please look at the
5 email and get back to me." The email was a letter was to
6 Miss Humphreys suggesting she move schools. And then I -- we
7 did have that discussion. I asked if she -- she had already
8 enrolled the kids in a new school without ever discussing it
9 with me and filing divorce papers. So there was a lot of
10 emotion going on that day. I thought it was unfair for her
11 to unilaterally choose a new school based upon an email and
12 serve me divorce papers in the same day.
13 **Q.** So unilateral parenting decisions in the context of
14 separated parents, do you think that's unfair?
15 **A.** I think considering the context and the time frame and the
16 big change in schools, yeah I thought that was unfair.
17 **Q.** So but there are other times you think making unilateral
18 decisions instead of co-parenting is not unfair? Is that
19 what you're saying?
20 **A.** It depends upon the context, Mr. Pickett.
21 **Q.** So it depends who's make the decision?
22 **A.** And the time that that parent's going to spend with them.
23 **Q.** Andrea complained that you make unilateral decisions about
24 your children without consultation with her. She's
25 complained about that, has she not?

1 **A.** Are you talking about this last summer?
2 **Q.** Period. You've heard Andrea complain more than once, have
3 you not, that you make decisions without discussing them with
4 her first.
5 **A.** The first time that was brought to my attention was issues
6 concerning 2018, summer of 2018.
7 **Q.** So when you're documenting in May of 2016 that Andrea is
8 complaining about you not letting her make a decision, you
9 don't think that she gave notice to you until 2018?
10 **A.** No, I think in reality she wanted to move the kids to
11 Cottonwood because that's where Mr. Telquist's kids were, and
12 I thought that she probably had dreams and aspirations of him
13 leaving his wife and them starting a new life and that would
14 make it easier for her.
15 **Q.** Do you have anything at all to back up your conclusion
16 that somehow she's motivated to move out and get married?
17 **A.** The only thing have, this is back then, the only thing I
18 have is the fact that she spoke with the teacher before
19 speaking with me about moving the kids entirely and holding
20 our oldest back.
21 **Q.** Do you have the guardian ad litem book, the big one, in
22 front of you?
23 **A.** Yes.
24 **Q.** I'd like to talk to you about your journal. If you can
25 grab it. Look at page 00184. This journal contains several

1 entries about things that you find to be safety concerns for
2 the children or potential safety concerns. Would you agree
3 with that?
4 **A.** Yes.
5 **Q.** You have an entry here on May 13th where you said that
6 Andrea had been drinking and came to pick up the kids.
7 **A.** Yes, I remember that day.
8 **Q.** Did you report this to anybody before you gave this
9 journal to Laura? Miss Vaughn?
10 **A.** No, because I drove her after this -- that same day I
11 proceeded to bring the kids to another friend's house while
12 she followed in her car and appropriate amount of time I
13 think passed, two or three hours, and I felt it was safe
14 enough for her to take them home. So I didn't report that,
15 no.
16 **Q.** Here on May 15th you talk about, this is you calling her
17 and texting her repeatedly, isn't it?
18 **A.** Yeah, it appears there was phone calls from me concerning
19 exchange of the children.
20 **Q.** Now you justified calling your wife when you're together
21 repeatedly because needing to know. Don't you think it's
22 excessive and harassing to call her multiple times when
23 you're not together?
24 **A.** Just give me a second to read this, Mr. Pickett.
25 I think it was in the context of clarification. This

1 week was an odd week where a car was not in place that
2 normally was, and our exchange may be different. So looks
3 like at 3:30 I sought verification for a 4 o'clock exchange,
4 and I wasn't receiving a response. I don't think that's out
5 of the ordinary to try to find out, "Hey, where do want me?
6 And where are we are doing this as far as the exchange of the
7 children?"
8 **Q.** Now if you look at page 186. You have simple journal
9 entries. Has anybody chastised you for making simple notes
10 like that?
11 **A.** What day?
12 **Q.** I'm just looking at page 186. It's May, a couple days in
13 May. The proper, the appropriate journal entries. These
14 were noteworthy events, were they not?
15 **A.** I generally thought so.
16 **Q.** Now you've been accused of questioning the children about
17 their mother, either her whereabouts, her behavior, who she's
18 with, etcetera. People have accused you of that, have they
19 not?
20 **A.** They have accused me of that, yes.
21 **Q.** Now during the times that Andrea had residential time with
22 the children, you knew and at least in the summer of 2016 she
23 was not OK with you FaceTiming with them every day they were
24 with her? You knew that, didn't you?
25 **A.** No. As I had said earlier, the parameters of our 50/50

1 had changed. Now instead of letting me watch them, she was
2 having day care for them while she was working.
3 **Q.** Are you saying there's multiple entries here where you
4 talked about contacting her repeatedly because she won't let
5 the kids FaceTime with you?
6 **A.** Yeah. I was -- up until that point I was the primary
7 parent. I hadn't seen my children, and I just wanted to talk
8 to them, and so I asked multiple times and multiple days if I
9 could at least talk to them. Our relationship had changed
10 dramatically with just in my day-to-day of seeing them. I
11 don't see them for seven days in a row now.
12 **Q.** Again you talk about things that justify your behavior.
13 I'm talking about your behavior.
14 **A.** I'm not trying to justify it.
15 **Q.** You would repeatedly text or call Andrea knowing she
16 didn't want to talk to you. And that's not the only time or
17 only subject matter, is it?
18 **A.** Are you talking in the context of this, this June journal
19 --
20 **Q.** In any context. Have there been times when you have
21 called and texted Andrea repeatedly when you knew she did not
22 want to talk to you or didn't want to communicate with you?
23 How many times did you do that?
24 **A.** I don't know if I -- after the divorce concerning
25 communication with her, I did not attempt to communicate with

1 her when she did not want to communicate with me. But when
2 it came to the children, I did attempt to communicate with
3 her so I could communicate with the children.
4 **Q.** You and Andrea were getting a divorce on June 22nd, 2016,
5 were you not?
6 **A.** She filed before then, yeah.
7 **Q.** So when you sent and made multiple text and calls and she
8 would not allow you to FaceTime or talk to the kids, that was
9 after you divorced or after you started this divorce?
10 MS. BROWN: Objection, your Honor. Mr. Clare didn't
11 start the divorce.
12 **Q.** The parties, Mrs. Clare, the court, whatever you want to
13 say.
14 **A.** Could you ask the question again, Mr. Pickett?
15 **Q.** On June 22nd, 2016 you noted that you sent and made
16 multiple texts and calls to Andrea because she wouldn't
17 answer you about FaceTiming the kids, right?
18 **A.** Yes.
19 **Q.** And that was after Andrea filed for divorce?
20 **A.** Yes.
21 **Q.** And you knew unequivocally she did not want to speak to
22 you, did not want to communicate with you, right?
23 **A.** No, I did not know that. In emails she did agree to let
24 me talk to them. And then when it came time to actually talk
25 to them, I wasn't allowed. So I journaled that.

1 **Q.** You also journaled that you yourself were making multiple
2 phone calls and texts. My question to you is if Andrea
3 called you and texted you repeatedly and you didn't want to
4 talk to her, wouldn't that feel like she was harassing you?
5 **A.** If she had responded with, "I'm not taking calls or
6 texts," I would have stopped.
7 **Q.** That's not the question I asked you.
8 **A.** OK. Sorry.
9 **Q.** If she calls you and texts you repeatedly when she knows
10 you don't want to have contact with her, that's harassing
11 behavior, isn't it? Regardless of your reasons. Or her
12 reasons I should say in this hypothetical.
13 **A.** Sure, I could see how that would be annoying to her.
14 **Q.** In July here you are documenting that Canon talked to you
15 about a Ouija board. You said "wedge board" but I assume
16 it's Ouija board.
17 **A.** OK. What day was that?
18 **Q.** The 14th.
19 **A.** OK.
20 **Q.** Oh, sorry. Canon and Kennedy told you about that.
21 **A.** Uh-huh.
22 **Q.** This is one of those occasions you said you don't feel
23 like you asked the kids about anything.
24 **A.** I didn't ask the kids about it. They brought it up, a new
25 game they played.

1 **Q.** On this July 17th one Kennedy told you about her mother
2 taking her phone, but what I'm interested in is the last part
3 of this. Andrea contacted you and told you she did not want
4 you attending swim lessons during her time. She made that
5 clear to you, did she not?
6 **A.** When she found out I was attending them, she asked me not
7 to go.
8 **Q.** And what did you do in response to that request?
9 **A.** I informed her that, "I just want to see the kids, and
10 since you're not going to them, what's the harm in me going?"
11 **Q.** So the answer is you went anyway?
12 **A.** OK, I did go anyway, and at that time she showed up and
13 asked me to leave, and I obliged.
14 **Q.** And that was an awkward and uncomfortable situation for
15 all involved? Would you agree?
16 **A.** It was unfortunate. Just wanted to see the kids swim.
17 **Q.** Do you agree that there are other occasions when Andrea
18 told you she did not want you attending or going to something
19 that was occurring during her residential time and you went
20 anyway?
21 **A.** That swim lesson is the occurrence that rings in my head.
22 I can't think of another one.
23 **Q.** Well, how about counseling appointments? Andrea made it
24 clear to you that she did not want to attend counseling
25 appointments with you, did she not?

1 **A.** She asked if I would stop attending because we had already
2 done the first two or three, and I replied that because it's
3 a dental or medical or mental appointment that I would like
4 to go.
5 **Q.** That's nonresponsive to my question. Andrea told you she
6 did not want you coming to counseling appointments on her
7 residential time, did she not?
8 **A.** I think she asked me not to go.
9 **Q.** And in spite of that request you did anyway?
10 **A.** I did show up pre or post to talk to the counselor.
11 **Q.** Now you mentioned writing this journal for future
12 reference. Why is your critical personal feelings about Miss
13 Clare important to document here?
14 MS. BROWN: Your Honor can we specify which entry
15 we're looking at here?
16 MR. PICKETT: Valid question.
17 **Q.** April 13 -- excuse me, April 15.
18 THE COURT: Page?
19 MR. PICKETT: 189, your Honor.
20 **Q.** You said, "Brunch and Easter egg hunt at the country club
21 was more important than soccer." That's your personal
22 opinion about Andrea's conduct, is it not?
23 **A.** I wrote that because she had agreed to --
24 **Q.** I didn't ask you --
25 **A.** -- soccer.

1 **Q.** I asked you is your comment is your own personal opinion
2 about Andrea's conduct, is it not? Yes or no?
3 **A.** That is my opinion of what she chose to do that day.
4 **Q.** Why didn't you respect her wishes and that she take the
5 kids to something that she feels is important like a brunch,
6 an Easter egg hunt?
7 **A.** I don't believe I was being unrespectful, but I was
8 sitting at a soccer field with my children not there and not
9 knowing why. So I had to go backwards and say, "Hey, are we
10 doing soccer today?" And maybe I -- maybe I wouldn't have
11 wrote it, and I'd gotten a text saying, "We won't be there
12 this Saturday," because she was at least communicating and
13 co-parenting on that level.
14 **Q.** On April 16th you are critical of her because I think she
15 was unwilling to share some time on her Sunday she had. What
16 did you offer her in return?
17 **A.** What did I offer her in return for that time?
18 **Q.** Yes.
19 **A.** I don't believe anything, unless she asked for something
20 in return.
21 **Q.** You ask for things, but you don't offer things in return?
22 **A.** I offer the kids to her when I'm not around, and I
23 accommodate a wish if she wanted to do something or in a
24 particular amount of time doing something.
25 **Q.** On April 20th Andrea asked or contacted you to ask to move

1 the vision therapy appointments from a Thursday to a Friday
2 so she could attend also, right?
3 **A.** Yes. She had attended the form for 28.
4 **Q.** So that was on your residential time when the visitation
5 schedule changed?
6 **A.** Correct. I didn't have an issue with her showing up to
7 that appointments.
8 **Q.** Why did not you just accommodate a simple request and move
9 it one day?
10 **A.** She ended up moving it anyway.
11 **Q.** I'm not asking you what she did. I'm asking you why
12 didn't you just accommodate it? Why didn't you just
13 cooperate? What was so bad about her moving it one day?
14 **A.** It may have been because of soccer or another arrangements
15 that were organized in the children's life and my life. I
16 didn't clarify I guess.
17 **Q.** You write lengthy summaries about a lot of things. Why
18 would a conflict in the schedule like soccer not be something
19 in this?
20 **A.** I don't know.
21 **Q.** You don't have an answer for that, do you?
22 **A.** No, concerning this, no.
23 **Q.** Now here's an event on April 21st where you said there's a
24 cursing rant. You talk about you asked Andrea for something,
25 the ability to take the kids to Doughnuts For Dads, or

1 whatever it's called, right?
2 A. Yeah.
3 Q. And she accommodated you and said yes?
4 A. Yes.
5 Q. Then she had a client emergency and asked for a little
6 accommodation from you about meeting I believe at a gas
7 station to exchange the children? That's the request that
8 she made, was it not?
9 A. I'm reading. Sorry.
10 Yes, it appears that she asked to meet at a gas station.
11 Q. And you interpreted that request to be that she wanted you
12 to exchange the children like luggage?
13 A. There's -- there's some things really --
14 Q. That's your words, isn't it?
15 A. Yeah, yeah. I don't like exchanging children at a gas
16 station.
17 Q. And then you offer your opinion here that her client
18 emergency took precedent over the emotional well being of the
19 children because she wanted to meet you at a gas station?
20 A. Yeah. I think in context, too, it was the Saturday
21 morning emergency I was -- who has an emergency at 7 in the
22 morning with respect to a lawyer? Yeah.
23 Q. Now as you sit here today reading that, do you believe
24 maybe you behaved inappropriately there? Oh, let me back up.
25 Sorry. Before I ask you that question. Where did you agree

1 to meet Andrea?
2 A. At the school.
3 Q. You might want to take quick look, a better look, sir.
4 A. Oh, wait. The plan was to take Cruz to McDonald's and
5 bring him back to the school at 8:30 when the event was done.
6 So line 5 it says, "Plan was to meet at 8 o'clock at the
7 school."
8 Q. Are you saying there that you would meet her across the
9 street from the gas station at a bank?
10 A. Is that further down than that --
11 Q. Yeah.
12 A. -- sentence? I agreed to meet her across from the gas
13 station at a bank.
14 Q. Can you maybe understand, Mr. Clare, why Mrs. Clare
15 doesn't want to give you favors or accommodations when this
16 is the kind of thing that you give to her in response? After
17 reading that, aren't you at least the slightest bit upset
18 with yourself for how you behaved?
19 A. I think these are logistical issues we can work out.
20 Q. I'm sorry? I didn't hear that.
21 A. I said I think these are logistical issues we're both
22 obviously going through as trying to parent our children.
23 Q. You have not responded to my question. I asked you are
24 you remorseful or are you critical of yourself for what you
25 did there? If that's your answer then I interpret that to

1 mean no. Is that a fair interpretation?
2 **A.** I'm remorseful that it, this interaction, had to take
3 place.
4 **Q.** I'm not asking you if remorseful about the interaction.
5 I'm asking if you're remorseful about your role in it?
6 **A.** Specifically not wanting to meet her at a gas station?
7 **Q.** The whole thing. You don't see anything wrong with
8 anything you did there?
9 **A.** Maybe some prior planning would have prevented that.
10 **Q.** How about if you could do it differently, would you
11 consider just meeting her at the gas station without any
12 difficulty? Was that maybe a better solution to what your
13 response was?
14 I understand you need a pause in this. Is this really
15 difficult? Is my question not understandable?
16 **A.** Well, it seems you can take any situation and say, "Is
17 there a better way to do it?" If Andrea had a problem
18 meeting at the gas station, I would conform and try to meet
19 her somewhere else, and I didn't want to meet there, and she
20 said, "Let's do it across the street."
21 **Q.** There's been people who have identified you as being
22 rigid, uncompromising. People said that about you, haven't
23 they?
24 **A.** I guess in the context of this divorce, yes.
25 **Q.** And do you agree with me sometimes people may misbehave

1 during the divorce and get better after the divorce is over?
2 **A.** I think people have time to process and calm down and move
3 on and have -- not be so hypersensitive or critical of the
4 other parent.
5 THE COURT: We're going to take our noon recess at
6 this time. We'll resume at 1:30.
7 (noon recess)
8 MR. PICKETT: Good afternoon, your Honor.
9 THE COURT: Good afternoon. Go ahead, Mr. Pickett.
10 **Q.** Now, Mr. Clare, you see that large black binder, exhibit
11 number 1 up there? The one we were looking at earlier today?
12 **A.** Yes.
13 **Q.** Would you mind turning that to page 189? This is
14 continuation of your journal. I think we left off a couple
15 ones prior. I apologize. I was off on a few pages. You
16 talk about how Andrea's mother was delinquent because on
17 April 27th -- this is page 190. Because Kennedy was not in a
18 child seat or booster seat. Is Kennedy required to be in one
19 of those?
20 **A.** What day are you on, sir?
21 **Q.** April 27th.
22 **A.** OK. The question, is Kennedy required to be in a booster
23 seat?
24 **Q.** Yes.
25 **A.** When she was nine. I believe some type of booster seat,

1 yes.
2 **Q.** Would you agree with me if she was not required to be,
3 then that's not a very fair criticism of Mrs. Clare or her
4 mother?
5 **A.** I'm sorry. I'm reading this, Mr. Pickett. Yes, if
6 there's no law requiring a booster seat of the child, then I
7 was mistaken in that.
8 **Q.** And if you were to contact Andrea accusing her of some
9 type of misconduct when she hadn't engaged in it, should you
10 expect a response from her? Is that reasonable to expect her
11 to respond if you are off base?
12 **A.** I don't know if it's reasonable or not. You'd have to ask
13 her that.
14 **Q.** Now April 27th, April 26th time frame, that is around the
15 same time the court changed the visitation schedule from two
16 days, two days, five days? Is that correct?
17 **A.** They had moved to a two/two/five schedule, yes.
18 **Q.** And you were unhappy with that, were you not? You didn't
19 want that change, did you?
20 **A.** I wanted the divorce to be over.
21 **Q.** Mr. Clare, we're going get through this a lot quicker if
22 you actually answer the questions I ask you. My question to
23 you was --
24 **A.** I was not petitioning for that particular custody
25 arrangement, no.

1 **Q.** You were unhappy with the Court's ruling that changed the
2 visitation schedule, correct?
3 **A.** I accepted it.
4 **Q.** And that's not the question I asked. Again we're going to
5 have some trouble here if you don't answer my questions.
6 You were not happy when the Court changed the visitation
7 schedule?
8 MS. BROWN: Objection your Honor. Mr. Clare isn't
9 required to let Mr. Pickett put words in his mouth. If he
10 doesn't agree that he was unhappy, then he doesn't have to
11 say that he was.
12 THE COURT: I agree. Move on.
13 **Q.** Now I think this is April 27 of 2017. I want to make sure
14 we're in the correct years. Now in the next entry you talk
15 about Andrea driving a new Tesla. How do you know she showed
16 up to school in the new Tesla?
17 **A.** I would imagine I saw her show up in a Tesla, or maybe a
18 teacher or someone made mention of that. I'm not sure.
19 **Q.** How would you find out Andre purchased a Tesla?
20 **A.** Does it say in the text here the context of May 1st? I'm
21 guessing I either saw her in it or my recollection is maybe,
22 maybe a teacher said, "I think Andrea got a new car," and I
23 was unaware. And then sometime after I saw her in that new
24 car.
25 **Q.** And then what you did after that was to go do some

1 sleuthing to find who she brought it from, how much it was
2 worth, etcetera?
3 **A.** No, actually I told my parents about it, and my dad as a
4 regular reader of Excalibur's advertisements in the paper and
5 just said, "I saw a Tesla for 109,000 the other day," and
6 shows me the ad, and I said, "It looks just like that," and
7 we put two and two together, suggesting that because Andrea's
8 friend and landlord and car dealer were the same person that
9 maybe that's the car she has.
10 **Q.** From the period of May 1st through May 8th, you reference
11 several things about the children in terms of their
12 schooling.
13 **A.** OK.
14 **Q.** What about those entries were noteworthy to you, at least
15 in regards to what Andrea did wrong?
16 **A.** May 1st through what, sir?
17 **Q.** May 8th.
18 **A.** I'll take a minute to read it.
19 So your question was what, if anything, did Andrea do
20 wrong? I think I don't know if it's wrong or not, but she
21 showed up late when on the first day to school. That's all I
22 see. The rest is just happenings with the children with the
23 changing schedule and issues with school.
24 **Q.** On May 9th you have a very brief one. Looks like a text
25 exchange back and forth between you and Andrea. Do you see

1 that one?
2 **A.** May 9th?
3 **Q.** Is that the kind of communication Andrea wants to have
4 with you or wanted to have with you?
5 **A.** What's the question, Mr. Pickett?
6 **Q.** Is this the kind of thing Andrea tried to communicate with
7 you?
8 **A.** It's an example of communication between us.
9 **Q.** Would you agree it's a positive example?
10 **A.** Sure.
11 **Q.** So what did you note it for then? What was the concern
12 that made it journal worthy? And if you don't recall, you
13 don't recall.
14 **A.** I don't recall.
15 **Q.** Is it because she had to pick them up at a different time
16 than normal? Is that noteworthy?
17 **A.** It could have been.
18 **Q.** As you sit here today, and again, if you don't recall, you
19 don't recall. But as you sit here today, you don't think
20 there's anything noteworthy about this particular journal
21 entry?
22 **A.** If I put it in there, it may have been because it was
23 another changed prior approved plan morning of to do
24 something different. But that's all I can recall on the
25 significance.

1 **Q.** Do you take issue with Andrea in the past asking you to
2 move times or locations other than what we already talked
3 about today?
4 **A.** I think it was the number of times it became. It's been
5 difficult to process.
6 **Q.** And have you ever needed to alter the visitation schedule
7 yourself?
8 **A.** I think I've asked every December when I leave town or to
9 watch the kids, yes.
10 **Q.** Has she accommodated your requests?
11 **A.** Yes.
12 **Q.** Now this May 12th episode, if you can read this one to
13 yourself, and then let me know when you're ready, because
14 this one's a little bit different.
15 **A.** I'm ready.
16 **Q.** As you sit here today after reading that and contemplating
17 what you did then, is there something would you have done
18 differently? Or is there something that you see that's a
19 concern about how you behaved?
20 **A.** I think the children addressed a word in a song they --
21 they know is inappropriate and asked about it and looked to
22 me for guidance, and I gave them the guidance, and I stand by
23 that guidance.
24 **Q.** My question to you was in retrospect would you -- do you
25 recognize that maybe you should have done anything different

1 here? And so based upon your answer am I to assume that no,
2 you don't? You were simply responding to your children? I
3 don't want to misinterpret your answer.
4 **A.** And I think I responded appropriately to that situation.
5 **Q.** So your daughter says, identifies her mother's favorite
6 song, and you respond by telling her God does not like songs
7 like their mother's favorite Song?
8 **A.** No, I said -- let me read the journal. I said, I told
9 Kennedy, "God does not like words or songs like that."
10 **Q.** You don't see how perhaps you were implying to your
11 children that their mother was ungodly because she liked a
12 song with the B word in it?
13 **A.** No, I wasn't talking about their mother. I was talking
14 about -- the sentence is quite plain.
15 **Q.** And then you waited three days later to bring it up again?
16 **A.** Yeah, I did not see Canon, and that song is a recurring
17 theme through their conversation, and it was, it was because
18 that song was being sung again or talked about again, and
19 this is an age where kids start to explore saying bad words
20 and wanted to get away with it, and it was an issue I thought
21 worth addressing with Canon.
22 **Q.** There have been some who have criticized you for how you
23 handled that. Do you think that criticism is unfair?
24 **A.** I think people are entitled to their opinions, and I
25 should be entitled to my opinion.

1 **Q.** So your response is that you're entitled to your opinion.
2 You don't have any concerns about your behavior? I don't
3 want to put words if your mouth.
4 **A.** My response is I'm entitled to my opinion. If someone has
5 a different opinion about the situation, they're certainly
6 allowed to have that.
7 **Q.** And you're also critical of Miss Clare because she didn't
8 take the children to soccer. Instead she got family
9 pictures. Which child was in soccer?
10 **A.** That would be Kennedy and Cruz.
11 **Q.** How would you find out she went to family pictures?
12 **A.** I believe she texted me morning of and let me know.
13 Unless it says it in here. Let me know that she wouldn't be
14 attending because she has family pictures that day.
15 **Q.** So she told you?
16 **A.** Uh-huh.
17 **Q.** This, it doesn't talk about May 15th. Again apparently a
18 school issue. And then something else. There's a reference
19 to a principal informing you about a game Kennedy was playing
20 showing body parts. That's a pretty concerning for an eight
21 year old to be doing, isn't it?
22 **A.** Yes.
23 **Q.** And are you in some way by noting this implying that Mrs.
24 Clare had something to do with this? Or is it just a concern
25 that you noted?

1 **A.** I try to note their behavior and their changing behavior
2 and the things that they are experiencing and/or doing that
3 are out of the norm. So that's probably why I wrote this.
4 **Q.** So after Andrea's five-day custody period your daughter is
5 playing games showing body parts?
6 **A.** I think the purpose of doing that is to know where they
7 were, and when rather than having to go back and look at May
8 15th at a calendar and saying where were they then. It
9 wasn't a slight against Andrea. It's just a reference in
10 time to know where they were and when.
11 **Q.** So you're not blaming it on Andrea?
12 **A.** No, sir.
13 **Q.** Now there's this Tesla incident about a hundred miles an
14 hour?
15 **A.** Yes.
16 **Q.** Now if you look, the section starts with after the exam or
17 on the drive home. Please read that.
18 **A.** What day, Mr. Pickett? What day?
19 **Q.** May 15th. Same day as the incident "show body parts."
20 Sixth line from the bottom.
21 **A.** OK.
22 **Q.** Do you see anything wrong with the way you addressed that
23 situation?
24 **A.** No, not off hand.
25 **Q.** Excuse me?

1 **A.** No, not off hand reading it right now.
2 **Q.** When did you bring this incident to Andrea's attention?
3 **A.** I don't know if I did.
4 **Q.** Do you know whether Andrea learned about this when she
5 found out about your journal?
6 **A.** I think maybe I read it in a declaration that she learned
7 about it through, through Mike after I called Mike somehow.
8 **Q.** Why didn't you contact Andrea about this incident?
9 **A.** My recollection, I'm looking to see if this is indeed
10 correct, but Cruz had been -- Cruz had a red bottom, was
11 complaining of pain. I looked at his bottom, and he had what
12 I thought could have been he was spanked. When I informed
13 Andrea of that and also women in my life to try to find out
14 what was going on, with the following day we just so happened
15 to have a counseling appointment. I did talk to the
16 counselor about it, and when we were both in the waiting room
17 Andrea said, "Nothing's wrong with Cruz. If you've got a
18 problem, file a report with CPS." So the last time I brought
19 up an issue to the table to try to co-parent or at least get
20 some input with Andrea was I believe that issue. So going to
21 her and saying, "You're doing this; why are you doing this?"
22 I think would only warrant a defensive response and be not
23 productive with our current relationship.
24 **Q.** So I asked you about the hundred-mile-an-hour issue.
25 **A.** Yes. I didn't go talk to her about it, because when I

1 bring stuff up to her, she gets mad, and, "You don't get to
2 tell me what to do." So I get to a point where, "You're
3 right. I don't get to tell you what to do, so I'm not going
4 to tell you that that's inappropriate. I'm going to write it
5 down. But who am I to tell you what to do?" But it was the
6 recurrent theme when I would bring stuff to her attention.
7 So at some point I stopped.
8 **Q.** Again this was May of 2017 before everything blew up in
9 2018, right?
10 **A.** Yeah, correct.
11 **Q.** So your concern about Andrea blowing up at you is the
12 reason you didn't raise a concern about something you
13 considered to be a safety hazard? Is that an accurate
14 summary?
15 **A.** No. It was a collective reason. One, it would turn into
16 an argument, which I didn't want to have with her. Two, it,
17 it appears from her perspective that I'm pointing the finger
18 at her, which I didn't want to have to deal with the backlash
19 of that. And three, it's not going to change behavior. So
20 what would be the point in doing that? And alternatively
21 what would be the point in calling CPS on the mother of my
22 children? I don't want to get her in trouble. I don't want
23 her to have, to deal with that level of, you know, authority
24 and having to -- so I wrote it down.
25 **Q.** Her comment about CPS had to do with you reporting to day

1 care. Had nothing to do with reporting her, did it?
2 **A.** They brought up CPS in depositions where Miss Vaughn and
3 Andrea agreed if I had a problem with the Tesla I should have
4 called CPS as well. And why didn't I call CPS was the
5 response to the GAL. And at the time when this did occur,
6 the person who I did feel confident speaking about it was Mr.
7 Dow my attorney, who said, "You should have called CPS," and
8 I thought -- I didn't talk to Mr. Dow daily. It was a week
9 or two later, and he said, "You should have called CPS." But
10 again I'm not trying to get my former best friend in trouble.
11 **Q.** You say "former best friend" as if you still have some
12 affinity for her.
13 **A.** She's the mother of my children. I'll always love her in
14 that regard.
15 **Q.** And generally speaking, the way you've treated her during
16 this process, is that how you treat your friends?
17 **A.** Excuse me?
18 **Q.** The way that you've treated Andrea from the day she moved
19 out of your house, is that how you treat your friends?
20 **A.** I think we've had some issues on both sides of our
21 relationship.
22 **Q.** That's not the question I asked you.
23 **A.** I think I've treated her appropriately. I certainly
24 haven't done all of the things that have been alleged of me.
25 **Q.** So even the things that you've admitted to, is that the

1 way that you treat a friend?
2 **A.** Be specific on after she failed filed for divorce.
3 **Q.** There's a laundry list of things you admitted to, isn't
4 there?
5 **A.** Name one.
6 **Q.** You think the way Andrea has been treated by you is how a
7 friend should treat a friend?
8 **A.** Well, we certainly don't have a friendship relationship
9 anymore. We have a co-parenting relationship, and that's
10 changed as of May 14th, 2016, and I've tried to act the best
11 in that relationship since then moving forward.
12 **Q.** On May 16 why are you report that Andrea went to Mr.
13 Eric's building? First of all, who is Mr. Eric?
14 **A.** He was her landlord and friend and client at the time.
15 **Q.** He owns Excalibur, does he not?
16 **A.** Yes.
17 **Q.** Excalibur Auto Sales, something like that?
18 **A.** Yes, sir.
19 **Q.** Whey was this a noteworthy event?
20 **A.** Well, at least the first three or four sentences it's
21 noteworthy, because maybe that car is considered a smart car
22 and too smart. And Canon, seven year old in the car, was
23 left in there and wanted out and could not get out and was
24 hitting the door and the window to get out. That's why I
25 wrote that in there.

1 **Q.** And as you sit here today, do you have any regrets about
2 the way that you handled that situation in regards to talking
3 to Cruz about this -- or talking to Canon, excuse me?
4 **A.** I'm going to read what I said.
5 I think this is, a lot of it's just plain you recording
6 what the children are saying. So asking me if I feel bad
7 about it, do I feel bad about writing it down? No.
8 **Q.** On May 16th there's another entry where you reference the
9 fact that Megan Brantley, the children's teacher, is a,
10 quote, "female fill-in giving Canon extra attention and
11 nurturing." What did you mean by that?
12 **A.** I think what I meant by that is, you know, in 2016, 17,
13 and 18, even though custody's changed a number of times,
14 given our respective custody appropriations, I'm still around
15 more, and I know that Andrea has to work and has to provide
16 day care for them and her. I would assume her time is still
17 around the same as far as evenings, mornings and weekends,
18 and Canon and Kennedy had a real affinity for Miss Brantley,
19 most likely because she was around them at school all the
20 time. She wasn't authoritative figure, not like a parent
21 where they are just a different dynamic. So to me I felt
22 like they were getting an extra dose of motherly love, even
23 though she wasn't their mother.
24 **Q.** Can you see how maybe Andrea could interpret this to be
25 you don't think she's providing enough female role modeling,

1 female love and support? That's not what you meant, is it?
2 **A.** No. Originally my representation is she's absent because
3 of work and not because she doesn't love her children or want
4 to love her children.
5 **Q.** That would be quite cruel to imply that she somehow wasn't
6 bonded to her children, don't you think?
7 **A.** Yeah, yeah.
8 **Q.** May 17th Andrea reached out to you about what to do with
9 preschool for Cruz four months down the road?
10 **A.** Uh-huh.
11 **Q.** Is that correct?
12 **A.** Yes.
13 **Q.** May, she asked you May of 17, he would start the preschool
14 in what? September of 17?
15 **A.** Correct.
16 **Q.** And she specifically asked you if you were OK with it and
17 discussed with you possibly splitting the costs?
18 **A.** Yes.
19 **Q.** Now this is the same preschool where the other children
20 have gone before you separated with Andrea and afterwards,
21 right?
22 **A.** Would that be Jacks? Are we talking about --
23 **Q.** They're your kids, sir. I'm not sure. If I had to
24 venture a guess I would say yes, it was Jacks.
25 **A.** OK, yes.

1 **Q.** So you talk about courtesy responses. You would not even
2 respond to Miss Clare when she asked you to about
3 co-parenting and scheduling preschool. You didn't even
4 respond to her, did you?
5 **A.** Yeah, I didn't respond, because I didn't think the custody
6 was going to be the same in September. I don't know if I
7 didn't respond at all or I would think giving me the custody.
8 I don't think custody's going to be the same, so let's table
9 it.
10 **Q.** Now on the same day she contacts, contacted you about
11 helping to shift the time of exchange, and you were kind
12 enough at least to respond to that, weren't you?
13 **A.** Yes. I responded on May 17th.
14 **Q.** Why didn't you at least say "We'll see," or anything on
15 the preschool?
16 **A.** I don't know if I -- I could have not responded at all or
17 I could have said that's far down the road and not addressed
18 the issue. I could have responded in reference to that
19 issue.
20 **Q.** Now you have complained that Andrea has not made the
21 children available to you when she has not been able to care
22 for the children herself, have you not?
23 **A.** At times.
24 **Q.** And here on May 17th she contacted about you taking the
25 children on Thursday because she had to move.

1 **A.** OK.
2 **Q.** And she also said, did she not I believe, that her mother
3 could have them that night if you could not?
4 **A.** Yes.
5 **Q.** And if you turn to page 193. Why did have you respond the
6 way that you did?
7 **A.** Let me read it and I'll tell you.
8 I responded that way because I want to say it's 12 to 15
9 miles out in the country is where her mother lives, and it's,
10 they call it the Kahlotus 500. It's a pretty busy two-lane
11 highway, and my thought process was, "Does your mother have a
12 car seat for Kennedy?" Because if she would have said yes, I
13 would have left it alone or probably changed my plans to able
14 to watch the kids. I'm sure I had plans that night, but I
15 was thinking in the context of the next morning when the kids
16 come to town will she be in a car seat for that, for that
17 55-mile-an-hour area?
18 **Q.** And again we established that maybe she didn't even need
19 to have a car seat at that time. Do you remember sending
20 anything else to her after she said never mind?
21 **A.** I may have in a text.
22 **Q.** Something like, "I'll log it"?
23 **A.** Maybe.
24 **Q.** And if you sent that text, what did that mean, "I'll log
25 it," if you send a text to Andrea? What is that meant to

1 convey?
2 **A.** That I'm going to write it down.
3 **Q.** And what purpose would you have for writing it down?
4 **A.** Because as I'm going through this divorce process, I also
5 don't know what's entirely inappropriate or appropriate with
6 respect to children and car seats and everything else, and if
7 I deem it as something that might be on the border, I'll
8 write it down. And we were at a point in our post-marriage
9 relationship where we had a lot of short texts about things.
10 And she essentially asked me to watch the kids and then
11 pulled out the request because I asked a question about the
12 child safety coming to town the next day.
13 **Q.** So she reached out to you like you wanted. And you don't
14 see how your response to her offer caused an unnecessary risk
15 -- rift between the two of you?
16 **A.** My acceptance or response to her request wasn't
17 conditional. I just asked. I'm thinking about being asked
18 if I can watch a child. I most likely had plans that night
19 or had plans or was out of town or something going on. And I
20 thought, "If they don't have a car seat, I'll change
21 everything I've got going on so I can have the kids that
22 night so they don't have to make that trip into town." If
23 she would have said no, I would have changed my plans. If
24 she would have said yes, I would have said, "I have something
25 and I can't make it that night."

1 **Q.** So as you sit here that's what you intended to convey on
2 this night?
3 **A.** Yeah, yes.
4 **Q.** Now May 23rd Andrea again contacts you because she's
5 concerned how the visitation exchanges are affecting your
6 youngest child Cruz. Correct me if I'm wrong. When you
7 would meet for exchanges, it would be at the big kids' school
8 before Cruz would go to day care or preschool?
9 **A.** Yes.
10 **Q.** And so Andrea was telling you that she'd pick him up; he'd
11 be over emotional because he hadn't seen her for at least a
12 few days, and then she'd have to turn around and drop him
13 back off at school.
14 **A.** OK. I see that, yes.
15 **Q.** And she recommended or asked that you consider just
16 dropping them off directly to preschool to avoid him
17 suffering unnecessarily.
18 **A.** She asked if we would skip that transition; I would just
19 take him to school directly, yes.
20 **Q.** What was wrong with that request?
21 **A.** Well, what I've noticed throughout the transitions in
22 child custody arrangements, there's initially a set-forth
23 plan on how to do things, and then when Andrea gets what she
24 asks for, then she wants to modify it. And this is one of
25 the situations where I saw, "OK, now you want me to go do

1 this for you. You were the one that wants this. You wanted
2 the day care, and you wanted the school." So I'm guessing
3 that's how I replied.
4 **Q.** And you don't see anything wrong with the way you handled
5 that situation?
6 **A.** I'm sure I could have been more accommodating and taking
7 Cruz, but in my mind she requested the situation. And if you
8 request it, you should abide by it.
9 **Q.** So if your son being exposed to suffering, unnecessary
10 suffering, is a result of Andrea wanting something, you're
11 not interested in avoiding that? Why did your son have to
12 suffer because you were upset with her for getting what she
13 wanted?
14 **A.** I'm sorry. I'm reading. I'll answer your question.
15 This is a two/two/five situation, and I'm trying to
16 understand the day in which -- the general day this is
17 happening is a Friday or on a Wednesday that we normally
18 transition. So that's what I'm looking at, Mr. Pickett.
19 **Q.** So again because Andrea wanted to change things, she
20 should suffer the consequences?
21 **A.** No, she -- Cruz shouldn't suffer, either. I mean --
22 **Q.** But that's the net effect of what you did, isn't it? The
23 net result of you refusing to accommodate her request is that
24 your son would suffer more than he should have, is it not?
25 **A.** I want to say that we did go to that transition where if

1 you took the big kids to school you take Cruz after as well.
2 So I think that actually happened. But there's no journaling
3 of it. So it's hard to rail.
4 Q. Again with the benefit of hindsight, punishing Andrea if
5 it results in harming Cruz is probably something you
6 shouldn't do? Would you agree?
7 MS. BROWN: Objection, your Honor. Again Mr.
8 Pickett is testifying.
9 THE COURT: Well, I'll sustain. It's argumentative.
10 Q. Now in June of 2017 there was Andrea reached out to you
11 about making some changes to the parenting plan, some
12 temporary changes, a little give and take, correct?
13 A. Is this June 5th, sir?
14 Q. Yes.
15 A. OK.
16 Q. And as you recall and look back on this June 5th, 2017,
17 would you agree with me Andrea asked you for an accommodation
18 and offered you makeup in return?
19 A. I'll have to read it, if you give me a second.
20 OK. I'm ready, Mr. Pickett.
21 Q. Do you feel that Andrea should have handled this
22 differently?
23 A. I think we had a miscommunication on trading of days and
24 what those parameters were.
25 Q. Were you ultimately able to resolve it between the two of

1 you?
2 **A.** It happened. I don't think there was any retribution in
3 any way. We've traded days since, so I would say yes.
4 **Q.** Now on June 30th, you claim your son Canon came to you and
5 said that he had to tell you about mom and Kennedy and him
6 listening to bad music. This is the same thing that happened
7 on May 12th, isn't it? Same song?
8 **A.** It may have been.
9 **Q.** Now you actually went to the trouble of getting the lyrics
10 to the song The Devil Went Down To Georgia?
11 **A.** I think I would have, because it was a recurrent thing
12 that keeps coming up in the children's conversations without
13 prompting. So, sure, I was finally curious enough to see
14 what's this song all about?
15 **Q.** After May 12th when I had this lengthy discussion about
16 bad words and the B word, your son comes to you six to eight
17 weeks late and says, "I have to tell you something," can you
18 understand how that may lead a reasonable person to believe
19 that your children are feeling compelled to report to you?
20 **A.** No. That was his birthday, and I took him to IHOP, and he
21 had a pancake, and we had one-on-one time. He brought it up,
22 not me. That was not on the agenda for the day to talk about
23 songs.
24 **Q.** And there's one curse word in the entire song. Isn't
25 there?

1 **A.** If you say so I'll tyke your word for it.
2 **Q.** Now if you look at page 196. On July 14 so Andrea calls
3 you and asked you to have the kids. And the way you view
4 that is Andrea choosing to go to Hawaii with her boyfriend
5 over spending time with her kids.
6 **A.** Ah, yeah. I don't think she was originally intending to
7 go to that. Miss Britt decided to go on that trip, and it
8 changed.
9 **Q.** And how did you find that out?
10 **A.** Miss Britt told me, filled in the hole.
11 **Q.** And when was that?
12 **A.** On the spring of 18.
13 **Q.** Is that spring of 18?
14 **A.** Yeah, yeah.
15 **Q.** How do you know she went to Hawaii? And why was that a
16 concern of yours?
17 **A.** It wasn't a concern. It was stating that when given
18 custody she will leave rather than keep her custody. How I
19 found out was my mom asked me if I knew where she was, and I
20 did not know where she was. And then it was Mrs. Carrie that
21 --
22 **Q.** The lady from church that your mom mentioned the other
23 day?
24 **A.** The lady from church, yeah.
25 **Q.** Can you understand why Andrea may be concerned if you

1 think her whereabouts when she does not have the children are
2 a consequence to you? Can you understand why she thinks that
3 is something that may be invasive?
4 **A.** I certainly didn't mean it to be invasive, because I
5 didn't seek out where she was. It was information given to
6 me. So I feel bad if that's what she thinks.
7 **Q.** Would you agree with me there's quite a distinction
8 between falling into the information and actively seeking out
9 the information?
10 **A.** Yes, there's a big difference yes.
11 **Q.** Why did you make the hang low or whatever it is signal to
12 her?
13 **A.** I think after it was proposed that she might be there,
14 again after I was told I still didn't know. And the next
15 time you after I did see her, Kennedy had a flower dress from
16 Gap, which Miss Mary Lin informed me that it was probably
17 from this Gap at this island, and Andrea was also wearing an
18 island dress, and Andrea was tanned, and it wasn't an
19 indication of "I know what you did." It was that they're
20 both in Hawaiian dresses.
21 **Q.** Did you indicate to Andrea that you -- I mean did you
22 imply that you knew where Andrea was?
23 **A.** Based upon what they were wearing it looks lake they were
24 both in Hawaii. I didn't intend it to be a "I know where you
25 are" situation.

1 **Q.** You would agree with me that's something that she may find
2 -- that if that was your intent that that could be upsetting
3 to her?
4 **A.** If she's angry with me, if she's just a co-parent, why
5 would she care if I knew that or not?
6 **Q.** You knew she didn't tell you. She didn't volunteer that
7 information to you?
8 **A.** And I didn't seek it out as well. You're right.
9 **Q.** July 27th, Andrea was apparently was -- there was
10 something wrong with her bringing all three kids to the
11 vision evaluation?
12 **A.** Yeah, they have a very small waiting room, and also when
13 we go into the doctor's room the lights are off, and
14 Kennedy's required to focus. And it's intense but short test
15 that happens, and I wanted her to perform as well as possible
16 on that test without distractions, and the two boys were of
17 the age that they were distractions during that performance
18 test of her vision.
19 **Q.** Now you took Kennedy to the prior evaluation, right?
20 **A.** Yes.
21 **Q.** Why didn't you tell Andrea, "Don't bring the younger boys;
22 Kennedy needs to be by herself"?
23 **A.** I don't get to tell her what to do.
24 **Q.** Why didn't you recommend it?
25 **A.** I don't get to recommend to her what to do. She's her own

1 parent. I don't get to do that.
2 **Q.** And so when something's important to the children, you're
3 not going to share that information?
4 **A.** I've had extreme blow back from that, so I don't do that.
5 **Q.** So in the future you will not be sharing information
6 important about the children with Andrea?
7 **A.** I didn't do that in the past, but what I don't get to do
8 is tell her how she should, ah, appropriate her children when
9 one has an appointment.
10 **Q.** Now August 13th, when did you first tell Andrea your
11 concerns about her having the children ride in the front
12 seat?
13 **A.** Again I don't know if I brought that to her attention.
14 **Q.** Is it an important safety concern? Doesn't it make sense
15 to put her on notice that you know she's doing it?
16 **A.** I don't get to tell her how to parent.
17 **Q.** I'm not asking whether or not you tell her how to parent.
18 That's not the question I asked you.
19 **A.** I don't get to tell her where she can put or not put the
20 children in a car when they're in her custody. The law does
21 that, but it's up to her to follow that.
22 **Q.** And you don't see just from the summary here that you may
23 have been questioning the children more than you should have
24 been?
25 **A.** From August 13th, sir?

1 **Q.** Yes.
2 **A.** It looks like I asked one question. Kennedy also informed
3 me at some point she had to duck when a police officer drove
4 past, and I said, "Why would you duck?" And she said,
5 "Because my head doesn't look like a grownup's." I don't
6 feel like -- Miss Vaughn and everyone else can testify to the
7 kids just randomly saying stuff, but when they randomly say
8 stuff to their father who they're around a lot, all of a
9 sudden I'm questioning them. I'm not doing it. I do ask
10 qualifiers, but it seems like a normal occurrence to me.
11 **Q.** And my apologies as for that particular date I would agree
12 with you. I was actually looking at August 31st.
13 **A.** OK.
14 **Q.** And I need you to look at it and tell me whether you think
15 you went too far.
16 **A.** Can you ask the question again?
17 **Q.** Do you think you questioned too far based just upon your
18 summary on August 31st, 2017?
19 **A.** No, I think the kids are questioning the validity of
20 riding in the front seat, and I'm letting them know, "I don't
21 know. I'll look it up." And they're informing me of new
22 news that I didn't know, and again I asked a qualifying
23 question, not a detective type or a deposition type question
24 of, "Tell me now." It was conversation.
25 **Q.** And you were upset with Andrea because on September 4th

1 because she went to Spokane with the kids. How did you know
2 she went to Spokane?
3 **A.** Let me take a second to read it. I'm sorry.
4 The journal entry, the middle two sentences it says, "The
5 kids told me they didn't go to school Friday, but they went
6 to Spokane," so I found out from them.
7 **Q.** Did you find out what they were doing up there?
8 **A.** No.
9 **Q.** Did you ever ask Andrea what the arrangements were why she
10 took the kids out of school?
11 **A.** I think later on in this journal I did bring it up. I did
12 bring up the concern. She asked me to make her aware if the
13 kids aren't going to school on a certain day. And I said,
14 "OK, now if we're doing that, could you --" This happened
15 earlier in the year. "Could you do the same?" She was
16 pointing out she wanted some type of reporting if I wasn't,
17 if the kids were not going to school, and I recollected that
18 day, and I shared the same sentiment. OK, so they missed
19 school that day, and that wasn't shared but, yeah, I'll let
20 you know.
21 **Q.** If you flip on to the next page, 197. Why did you think
22 it was important to write in there that she may be
23 sacrificing time to with her children with her boyfriend like
24 she did on July 14th this summer?
25 **A.** I think because there was a self-professed "I want to be

1 around my kids. I'll sacrifice work and do all these things
2 for them," and then and actually working out of it, I wasn't
3 seeing it. I was seeing the kids being shifted around in
4 order to accommodate something other than work.
5 **Q.** Now September 6 of 2017 why did you become upset when you
6 found out Andrea was using the Boys And Girls Club on her
7 residential time?
8 **A.** I'm reading.
9 I think I actually explained in the journal that in a
10 previous motion she had foreseen the ability to adjust her
11 time on two-two-five schedule and work on weekends and be
12 available for Wednesdays and Thursdays, and that wasn't
13 happening. They were being put in Boys And Girls Club, and
14 it kind of hurts when you're a mile down the road and you
15 can't be around your kids, so that was of note to me.
16 **Q.** Were there ever concerns raised, this school year prior,
17 about any of your kids having difficulty socializing, making
18 friends, etcetera?
19 **A.** A specific child you're speaking?
20 **Q.** Any of the three.
21 **A.** I would -- you said the previous year so that would be 16?
22 **Q.** Uh-huh.
23 **A.** Canon was doing well in preschool. That was Kennedy's 1st
24 grade year. So I don't think she was having issues
25 socializing other than the norm that most kids go through,

1 you know, the angst stuff.
2 **Q.** Did you ever discuss with Andrea if she had motives other
3 than just to punish you, keep you from seeing the kids?
4 Actually let me back up. Do you think Andrea was putting
5 them in child care at the YMCA to spite you or to keep them
6 from you.
7 **A.** I think that she would rather they be in child care during
8 her time than be with me. I don't know if -- I wouldn't say
9 spite. I don't think she was doing spite things, but she
10 would rather them be in that program than be at my house.
11 **Q.** Now you and Andrea have had difficulty in the past
12 scheduling even simple medical or health care-related
13 appointments. Would you agree with that?
14 **A.** I think we've had issues rescheduling, not necessarily
15 initial scheduling.
16 **Q.** You have been critical of Andrea for scheduling
17 appointments during your residential time, correct?
18 **A.** I have been, yes.
19 **Q.** And you've been critical of her scheduling it on her
20 residential time without checking with you first?
21 **A.** Do you see that in here somewhere?
22 **Q.** No, I'm just asking.
23 **A.** No, I don't think I'm critical of her scheduling
24 appointments on her time.
25 **Q.** So you would not have a problem with her scheduling

1 appointments on her residential time without discussing it
2 with you first?
3 **A.** No. And following through with the appointment, getting
4 it done? To qualify, if the issue is the appointment's
5 scheduled on her time and it has to be rescheduled and now
6 it's on my time and I have to change something because of
7 that, that may be the issue, but if she schedules an
8 appointment on her time and the box gets checked that it's
9 done, I wouldn't have a problem with that at all.
10 **Q.** So as long as it gets done, you don't have a problem with
11 her scheduling it on her time?
12 **A.** No, I think the qualifier here is the rescheduling of
13 appointments after. You know, if the doctor and two parents
14 clear their schedule to be available, and one parent can't
15 make it but wants to be there, so she wants you to change the
16 schedule so she can be there at a different tame, I just want
17 the appointment to get done. I now have to rearrange my
18 schedule when I originally had done that the first time. So
19 I think in the future we would -- the way to prevent that
20 would be if you make the appointment, whether it's dental or
21 medical six months out, you're responsible for taking that
22 child. And if you have to reschedule, you need to reschedule
23 during your custody time to get that done, unless there's
24 other arrangements made.
25 **Q.** You know Andrea does not want to be at the same

1 appointment with you at the same time. What's your proposal
2 to deal with that?
3 **A.** She said that during the counseling issue, but then she
4 showed up to Kennedy's medical appointment in June of this
5 year, which I find odd, because if she doesn't want me there
6 it's OK, but when she wants to show up during my custody time
7 with a medical appointment, that seems to be all right. The
8 only reason it's all right is I don't have a problem with it.
9 So she gets to work both sides of the coin, which is
10 frustrating to me. I am not rude. I do not speak out, lash
11 out, give looks. I am completely appropriate at all of the
12 children's appointments. And she is allowed to come to mine,
13 and I do not raise my hand and get upset, but what happens
14 when she comes to the June 18th appointment of Kennedy is we
15 meet at that appointment and she says, "Kennedy needs
16 counseling again." She had just been signed off by the
17 counselor, and all of a sudden now that she saw mom and dad
18 together and suggested we kiss, something's wrong with our
19 daughter. So I'll follow any rule that's outlined, but what
20 I don't want is to -- Miss Clare to be able to play both
21 sides of the coin. I'll play the game, whatever the game is,
22 but the rules change, and rules don't accommodate me, and
23 it's just, well, what I'm doing wrong. And I don't put down
24 her, you know, because it's not appropriate. So I think
25 we're both adults, and we can both sit through a medical,

1 dental, vision, or mental health appointment for our child
2 and be appropriate. We've done that thus far.
3 **Q.** Would you agree with me since the beginning of this year
4 Andrea has tried to include you or give you notice about any
5 important things going on with your kids?
6 **A.** Beginning of?
7 **Q.** 2018 school year.
8 **A.** I would disagree with that. She has denied me to go to
9 donuts with dad. She has denied me to go to the job-a-thon.
10 As a result of that report of Dr. Cole's session, it's true
11 reporting, so it says that I'm uninterested in my children
12 when that's not the case. I'm just not involved anymore. I
13 can't go to the school because during her residential time I
14 can't go to lunch. I can't be involved in any of the school
15 processes, and it's a situation of don't poke the bear; just
16 get through this.
17 **Q.** Andrea simply asked you about the status of you seeking
18 professional help. That was her hang-up with making things
19 that would go contrary to the court order, was it not?
20 **A.** Well, she's acting as if -- shouldn't that come from you,
21 Mr. Pickett? You're the lawyer. Why should that come from
22 her? Why should she get to talk to me about a court-ordered
23 psychological evaluation? Is that crossing appropriate line?
24 I think it is. I want the lawyers to talk. She doesn't get
25 to hold that over me and lord that over me. I was doing the

1 best I could to gets an appointment and get it done. I got
2 it done on a Friday, and that same day my lawyer bailed on
3 me. So where is the report going? Will it go to my lawyer
4 who's leaving me whenever it gets to him? And what am I
5 supposed to say of o report I've never seen? Yeah, it's
6 done, only to find out, "Oh, you did it the wrong way."
7 **Q.** The question that I asked you was wasn't her hang-up the
8 fact that you didn't -- she didn't know you took an
9 evaluation yet? That's why she was saying we can't deviate
10 from the court order, was it not?
11 **A.** I don't know. You have to ask her.
12 **Q.** You don't remember having a conversation with her about
13 that?
14 **A.** I remember asking to go to doughnuts with dads and her
15 saying, "Because you haven't had an evaluation yet, no."
16 **Q.** Has there been one appointment about your about your son's
17 growth hormone treatment that you have not been aware of?
18 **A.** Could you ask the question again? I'm sorry.
19 **Q.** Has there been any appointments with your son Canon and
20 his growth hormone therapy treatment where Mrs. Clare did not
21 keep you notified about?
22 **A.** She would have put in on Family Wizard.
23 **Q.** That's not the question I asked. Has there been any
24 appointment?
25 **A.** There may be. You have to ask her. I don't know, sir.

1 **Q.** You have had ready access to Dr. Wannarachue have you not?
2 **A.** The issue is I'm not allowed to go to the appointments
3 because there's a restraining order that's been granted by
4 the Court but not filed, so I don't know how to navigate
5 that. I don't know how to be concerned for my son and go to
6 an appointment when there's a restraining order. So I have
7 gone one time when the results were in to discuss the results
8 with Dr. Wannarachue at an extra price because I'm not
9 allowed to be there. So that's a new venture we're embarking
10 on as far as trying to attend separate appointments.
11 **Q.** We come back to even again to the question I asked you.
12 Are you aware of any appointments where Andrea did not keep
13 you informed? Yes or no?
14 **A.** She has not kept me informed of the insurance denied.
15 **Q.** Again that's not the question.
16 **A.** That's not the appointment? I'm sorry.
17 **Q.** Has Andrea failed to notify you about any appointment
18 related to growth hormone treatment?
19 **A.** Not that I'm aware of.
20 **Q.** And when there was an issue at Dr. Wannarachue's office
21 about you receive or being entitled to access and
22 information, did she not immediately contact Dr. Wannarachue
23 to make sure they didn't prevent you from having access?
24 **A.** You'll have to ask her that.
25 **Q.** You've seen the reports and evaluations, have you not?

1 A. Of Laura Vaughn's?
2 Q. Yes.
3 A. I get the gist, but I don't think I've seen the last two
4 or three.
5 Q. Do you agree with me that you received some basic
6 resistance at the beginning from Dr. Wannarachue's office
7 about getting information?
8 A. In the billing side I guess.
9 Q. But not from the treatment side?
10 A. Not from the treatment side.
11 Q. And when Andrea became aware of the resistance with the
12 billing part of it, she took immediate action, didn't she?
13 If you don't know --
14 A. I don't know.
15 Q. Were you able ultimately to get billing information from
16 Dr. Wannarachue?
17 A. We were able to get billing information from Dr.
18 Wannarachue, yes.
19 Q. Since Andrea has had sole decision making, have your
20 children been to the dentist?
21 A. I believe Cruz's appointment was rescheduled due to this
22 trial, and Canon went during my custody time over the winter
23 break.
24 Q. Over winter break you said?
25 A. Uh-huh.

1 **Q.** Were there any appointments, dental appointments, prior to
2 that time?
3 **A.** Kennedy had a tooth extraction September.
4 **Q.** And did Andrea make you aware of all of that?
5 **A.** She made me aware that Kennedy was having a tooth issue
6 and made me aware that the said extraction was going to take
7 place.
8 **Q.** And did she make sure that the dentist's office would
9 share information with you upon request?
10 **A.** Yes.
11 **Q.** And did the dentist ever deny you access to information of
12 any kind?
13 **A.** No.
14 **Q.** Now currently who are your children seeing for counselors?
15 **A.** Dr. Whitehead is Canon's counselor. To my knowledge he's
16 seen Canon once, and I believe Andrea chose a new counselor
17 for Kennedy, and there's an appointment this month for her.
18 **Q.** And did she notify you in advance when she made the
19 decision to change counselors?
20 **A.** Either she did -- I think she did in August stating that
21 -- I didn't know she was going to change Kennedy's counselor,
22 but I did know that she was going to seek someone different
23 for Canon.
24 **Q.** Sara Reeve was counseling both your children at various
25 times throughout there process, was she not?

1 **A.** Yes.
2 **Q.** Would you agree with me that on at least one occasion she
3 released Kennedy and/or Canon from counseling saying they
4 were doing well?
5 **A.** She released Kennedy in the spring of 18, yes.
6 **Q.** And would you agree there was some sibling rivalry between
7 the two of them because they have the same counselor?
8 **A.** I didn't see that.
9 **Q.** You didn't. Kennedy was not upset because of Canon seeing
10 her counselor or vice versa?
11 **A.** I think they were more upset with the play time they would
12 get at counseling and the toy or, you know, prize they would
13 get at the end.
14 **Q.** Do you know how Michael Whitehead was located by Andrea?
15 Did she ever explain to you how she found Michael Whitehead?
16 **A.** I think through Dr. Raekes. Her husband's a psychologist,
17 and he's in the same firm as Dr. Whitehead.
18 **Q.** As you sit here today do you take issue with her decision
19 with Michael Whitehead?
20 **A.** No.
21 **Q.** Have you had an opportunity to discuss things with Michael
22 Whitehead and receive information and share information both?
23 **A.** Yes.
24 **Q.** Did Andrea make sure that that occurred?
25 **A.** Believe that's the protocol to be in his program, yes.

1 **Q.** And do you agree that Michael Whitehead needs to be the
2 children's counselor or your son's counselor, not a parenting
3 coach for the two of you?
4 **A.** I believe that was his initial reasoning, and I think
5 that's fine.
6 **Q.** Miss Vaughn had recommended that perhaps Dr. Whitehead
7 could share information with the court to come up with an
8 idea that may make things better between you and Andrea. Do
9 you remember that?
10 **A.** Vaguely. Mr. Whitehead represented to me that we both
11 need to be involved with his counseling whenever he sees fit
12 in order for it to go well, and ultimately his sentiment was
13 if the parents are getting along and co-parenting well, then
14 the children or Canon will thrive. And then if they're not,
15 it's evident that he -- he said that the best thing you can
16 do for Canon is co-parent well with your spouse.
17 **Q.** And the counselor she selected for Kennedy, do you know
18 whether it's male or female?
19 **A.** All I saw was an appointment on Family Wizard, and I think
20 it's a female.
21 **Q.** And do you know which office she's with?
22 **A.** The same as Dr. Whitehead I believe.
23 **Q.** And given your interactions with that office and Dr.
24 Whitehead, do you take issue with Andrea selecting a female
25 counselor from the same office?

1 **A.** No, it's she has the authority to do that right now.
2 That's fine.
3 **Q.** I'm saying but are you OK with the decision? Do you
4 support the decision she made to pick that particular
5 counselor?
6 **A.** Yeah, that's fine.
7 THE COURT: We'll take a 15-minute recess.
8 (recess)
9 **Q.** Mr. Clare, was there an issue this -- over the fall of 17
10 about Kennedy's school work and whether you and/or Andrea
11 were handling things properly?
12 **A.** Are you being specific to the journal or just a general
13 question here?
14 **Q.** Just a normal question.
15 **A.** I think in the fail of 17 Andrea wanted Kennedy tested, or
16 it may have been 16 actually. I think it was 16, so I don't
17 know. I don't know what you're referring to.
18 **Q.** You were upset with Andrea because she didn't sign
19 journals or sign daily homework sheets. Do you remember that
20 line of questioning or that you had that line of discussion
21 with Miss Vaughn?
22 **A.** Yes.
23 **Q.** And you were upset for what reason?
24 **A.** I think if I recall, I don't know if it was the fall of 17
25 or spring of 18, but every day the child has to do some math,

1 some spelling, some reading. And the parent verifies that
2 was done by their signature at the bottom that day.
3 **Q.** And when you noticed that Andrea was not signing it as
4 frequently as maybe you thought she should, did you pick up
5 the phone and call Andrea and ask her what was going on?
6 **A.** I believe I did email her in the fall, November of 17, and
7 asked about it. And the response was, "She is on the same
8 page with the teacher." And I responded saying, "OK, I'll
9 ask the teacher what "the same page" means as far as if
10 there's a different approach she's taking.
11 **Q.** When she said that she was on the same page with the
12 teacher and you said you were going to contact the teacher to
13 confirm that, can you understand how maybe she interpreted
14 that as you questioning her yet again about something?
15 **A.** No, I wasn't questioning her about -- I asked her a direct
16 question on why it wasn't done, and her response was, "I've
17 talked to the teacher about it. We're on the same page."
18 And as a parent who's involved with Kennedy, I'd like to be
19 on the same page, too. She didn't offer that, and I didn't;
20 I didn't ask her to qualify what that meant. I said, "OK,
21 I'll ask the teacher," which I did.
22 **Q.** And that was sometime -- am I correct about the date on
23 that? I'm looking at the September 22nd, 2017 entry on 197.
24 Is that the same subject matter that we just, you and I, have
25 been discussing?

1 **A.** This specific instance is different. I think the instance
2 I'm referring to is late November early December of 17, which
3 I don't know if it's in here or not. Just recalling emails.
4 **Q.** And as you sit here today, are you still concerned with
5 how Andrea handled homework in this particular circumstance?
6 **A.** I think I was concerned at the time just because we were
7 both with new children and new 1st, 2nd, 3rd grade process.
8 Every school has a different approach. The school they go to
9 now there is no homework, so it's a hands-off approach. At
10 the time my concern was not to make sure Andrea is doing her
11 job. It's so we didn't have our children falling behind, and
12 if they weren't doing their homework that could be a
13 possibility. As you recall the year before Andrea wanted
14 Kennedy tested in 2016 as maybe having some type of slow
15 learning process or have some special need of some sort. And
16 so it was important to me that we do all of her homework with
17 her and try to keep her abreast as well as we could. So we
18 were checking the parent homework box, and so that's why I
19 brought that up to Andrea. If I could go back without
20 knowing what I know now or knowing what I know now, we would
21 probably do the same thing. The school requires 10 minutes
22 of this, 20 minutes of this, and your job is to verify the
23 child has done it. I would want that done for a child who's
24 struggling or a child who's doing well.
25 **Q.** You specifically discussed this exact same subject matter

1 with Miss Vaughn, didn't you?
2 A. I'm sure I brought it up in the spring, yeah.
3 Q. And that would have been sometime in the spring or later
4 of 2018?
5 A. Would have been the spring of 18 I think.
6 Q. Now Mrs. Vaughn testified about and also summarized
7 conversation she had with you about home work. Do you
8 remember that?
9 A. I remember the conversation, yeah.
10 Q. And correct me if I'm wrong, but you told Ms. Vaughn you
11 were concerned because Andrea was not signing homework
12 sheets, correct?
13 A. Yes.
14 Q. And then she said, "Well, Andrea has been emailing the
15 teacher, and the teacher is fine with that." Do you remember
16 that part of the conversation? And if I'm mis-paraphrasing,
17 please tell me.
18 A. I think you might be mis-paraphrasing. I think the
19 conclusion, as it was explained to me by Miss Vaughn through
20 her investigation, the conclusion she came to is that Miss
21 Clare was taking the approach with the children that, "If you
22 want your homework to get done, you're going to have to do
23 it. I'm not in charge of telling you when to do it or how to
24 do it. I will help you if necessary, but I'm not going to
25 get your binder and set it on the counter and tell you it's

1 time to do your homework." So it was a different approach is
2 how it was explained to me.
3 **Q.** Did you say the things that she accused you of saying how
4 you told her you were never going to do homework again? Did
5 you do all those things?
6 **A.** I did say that -- I did almost have a throw-my-arms-in-
7 the-air moment and say, "What's the point?" If I'm trying
8 diligently on my custody days to get homework done for a
9 daughter who Miss Clare thinks is struggling in school, the
10 teacher says she is behind in reading, and I put forth a
11 great amount of effort and time with her, only to find the
12 other side has this hands-off, do what you want approach,
13 what am I -- yeah, I did have that, that moment where I was
14 like, "Well, I guess I don't need to do homework, because it
15 won't matter if she's only getting half the help she needs.
16 I was animated about it and at a loss.
17 **Q.** In retrospect would you have handled the situation the
18 same if given the opportunity?
19 **A.** I think so, because it's 3rd grade homework, but when you
20 want your child to succeed and, well, well, one parent wants
21 to the child to succeed by spending time and checking the
22 boxes and the other one wants them to succeed by saying, "If
23 you don't make the cut now, it's only going to get worse," we
24 just had a difference of style at the time. More importantly
25 I want Kennedy to succeed, and I didn't see the effort being

1 put forth for that.
2 **Q.** The effort by Mrs. Clare? Is that what you're talking
3 about?
4 **A.** In the homework assignments and the signatures, yes.
5 **Q.** Would you please turn to page 198 real fast? I'll try to
6 move through this a little quicker. So please, if I'm going
7 too quick, tell me to slow down.
8 **A.** OK.
9 **Q.** Your son on September 26 volunteers to you that his mom
10 did not show up to the bus stop, that a year ago his mom left
11 in the car and went to a gas station. Those are two things
12 that your son disclosed to you spontaneously?
13 **A.** Yes, as random as it sounds. That's, that's what's turned
14 against me is when they say something out of context out of
15 nowhere. I wrote it down here.
16 **Q.** I can't remember who brought this up, but the idea of
17 questioning is frowned upon. Do you remember that line of
18 questioning? I think it was Miss Vaughn, that you shouldn't
19 question the children about the other parent. Do you
20 remember that line of questioning?
21 **A.** I remember hearing that, yeah.
22 **Q.** Because sometimes it can create this like the children
23 feeling like they're compelled to report on the other parent.
24 Do you remember that?
25 **A.** I don't remember that there was a -- a child would feel

1 compelled or -- I don't remember that. Was that in the
2 testimony?
3 **Q.** So if you don't recall hearing the testimony.
4 **A.** I don't recall hearing the testimony.
5 **Q.** Now in looking back after everything you've seen, heard,
6 and read, do your children's, ah, spontaneous disclosures
7 about bad stuff their mom do, does it cause you any concern
8 at all based on everything that you've heard?
9 **A.** The children's spontaneous disclosures of things happen
10 because just out of chance of being with them, and because I
11 have larger chunks of time with them, I think it would be
12 appropriate to suggest that they most likely say more things
13 to me because I'm around them for a longer periods of time.
14 That has certainly changed since the mother or Miss Clare has
15 informed them not to talk about her house. And I see them
16 restraining ways or one child try to restrain the other and
17 talking about a normal situation, and I don't have any
18 reaction to it anymore. I don't -- I don't -- I'm letting
19 them behave the way they're behaving, and I can't, I can't
20 unwind something like that. So they do have moments of
21 resignation when one child wants to talk about something with
22 mom and the other doesn't. I don't address that with them.
23 **Q.** So am I understanding correctly in the past the kids
24 wanted to come talk to you about bad stuff that was going on
25 at their mom's?

1 **A.** I don't think they saw it as bad. They're happenings to
2 children. I mean this is a new world to them. They're eight
3 years old, and seven years old. They don't have a moral
4 compass of a grownup, so they say things that happen in their
5 life and ask questions concerning things that happen in their
6 lives. I would certainly suspect that they ask their mother
7 about things that happen at dad's house as well.
8 **Q.** There's some reference to counseling appointment on
9 October 4th and payment for day care on October 5th. Was
10 there some issue with payment of day care? I don't want to
11 go into much detail, because this is not the financial part
12 of the case. Why spend half a page on whether or not you
13 paid or she paid the day care?
14 **A.** That I don't know. You know, we had agreed to split day
15 care that year, and there's a monthly payment due between the
16 1st and the 5th, and I did not want to have to remember that
17 $80 a month payment. So I decided on the second month of
18 October to just pay for the year, because I have funds at the
19 time. And it looks like there's a back-and-forth of Andrea
20 asking how much I paid, and I think I tried to be explanative
21 enough saying it's 80 bucks a enough, so 160 total. And she
22 said, "I don't want to be sideways. Did you pay?" And I
23 said, "Your portion's 80. I have paid." And she comes back
24 and says, "Well, you didn't tell me you paid the whole
25 amount." And there was nothing. That was just a

1 miscommunication. I wasn't trying to -- I was trying to
2 inform her what the monthly payment was for her half.
3 **Q.** There's on October. This is one of the positive entries
4 you have. There wasn't any school, and Andrea called and
5 said, "Would you like to have the kids?" So at least this is
6 an example of where you actually reported something positive
7 in your journal, wouldn't you agree?
8 **A.** It's a happening. I call it journal entries.
9 **Q.** Well, what would be noteworthy about it if it wasn't
10 positive -- if it wasn't negative?
11 **A.** I wasn't requested to report only negative things on Miss
12 Clare. I was requested to report happenings. And if we have
13 a shared moment of first right of refusal, I think that's
14 noteworthy to show a trend or to show a -- not only for
15 myself but for my lawyer.
16 **Q.** Now you took issue with Andrea's parenting decision to buy
17 concert tickets for your kids, did you not?
18 **A.** I didn't take issue with it with her. I wrote it in the
19 journal.
20 **Q.** And artist or performer was singer Pink?
21 **A.** Yes.
22 **Q.** And you said you didn't take issue with it. You referred
23 to her as an inappropriate influence in the lives of your
24 children based upon their age?
25 **A.** For a seven and eight years old, yes. Have you seen Pink?

1 **Q.** So you do take issue with Pink and Andrea's decision to
2 take the children there?
3 **A.** It's my opinion it's not appropriate. I did not approach
4 Andrea concerning this issue.
5 **Q.** No, instead you started asking the children questions
6 about going to the concert?
7 **A.** It's something that's going to happen in their life. Is
8 there something wrong with me -- did I tell them they
9 couldn't go? Did I tell them it's wrong to go there? I
10 didn't say that. The mother can choose to take them. It's
11 allowed. They can do that. They just wanted to share that
12 they were going to a concert. Am I supposed to sound
13 uninterested and not respond to them and say, "Yeah, fun"? I
14 mean these are -- these are little children who just wanted
15 to talk to their parent.
16 **Q.** And when they talk to you, your response -- so do you
17 understand that maybe you're sending a message to your
18 children by body language, demeanor, whatever when you're
19 asking them questions about their mom -- let me back up. How
20 many times have you asked your kids questions about their
21 mother that was in a positive context? Can you give me one
22 example?
23 **A.** It's frequent.
24 **Q.** Give me one example, please.
25 **A.** About the -- I asked how it was at mom's at Christmas?

1 "Did you have a good time at Christmas?" That's as general
2 as I can get, because if I'm specific, I get shot down. So I
3 just said, "Did you have a good Christmas at your mom's?" I
4 didn't ask where they went. I didn't ask if they saw their
5 grandparents. I did ask them if they had a good time. I
6 hope that's a appropriate.
7 **Q.** So you're talking about occasions after the Court changed
8 things based upon concerns about your behavior?
9 **A.** No, you told me to give the most recent. That's the most
10 recent.
11 **Q.** How about the same time when you were asking the children
12 multiple questions about Pink concerts? Can you remember
13 having any positive question and answers with the kids about
14 things then?
15 **A.** Are you speaking to this specific entry?
16 **Q.** I'm talking about the general time frame.
17 **A.** I'm sure I did. "Did you have fun at mom's?" If she took
18 them somewhere, on a trip, "Did you have fun in Montana?"
19 **Q.** Do you really not understand why some people think your
20 questioning behavior with your children is a negative thing
21 for the kids? Can you understand at least the concept of
22 what people are saying?
23 **A.** The people are you. And usually if I ask qualifiers, it's
24 with respect to their safety or things that I don't think are
25 appropriate for seven and eight year olds such as cusswords.

1 I think children would be concerned if they share information
2 with their parent in general and their parent doesn't
3 respond. And I have no interest in --
4 **Q.** If I may stop you, sir, that's not responsive to my
5 question.
6 **A.** Oh, I'm sorry. I'm sorry.
7 **Q.** My question was can you understand why some people think
8 your questioning of the children can be detrimental to the
9 children? Can you see why some may think that's a bad thing
10 to do to their kids?
11 **A.** In the context. This journal, no, I don't think so.
12 **Q.** So there's no entries in this journal that you feel, with
13 the benefit of hindsight, "Gosh, darn it. I shouldn't have
14 done that"?
15 **A.** Oh, I'm sure there's something in there that I can go back
16 and say, "Oh, yeah, that may not have been appropriate." It
17 wasn't -- it was always brought up by them in some regard and
18 qualified by me. And.
19 **Q.** But none of the entries, at least in regard to you
20 questioning your children, you don't see any concerns at
21 least with those?
22 **A.** It depends upon the context of what's happening with each
23 entry, Mr. Pickett.
24 **Q.** Now on the 17th and 18th of October of 2017 there was
25 actually some -- appears to be communication back between you

1 and Andrea that was positive form of communication. Would
2 you agree with that?
3 **A.** Yes.
4 **Q.** 17, she told you about or discussed and brought up agreed
5 on Christmas, and then she told her mother would be the one
6 picking up the kids because she had to work?
7 **A.** On the 18th?
8 **Q.** Yeah.
9 **A.** OK, yes.
10 **Q.** And I know you mentioned sometimes this is just to log it,
11 but there's nothing negative about either one of those, is
12 there?
13 **A.** I don't think so, no.
14 **Q.** Now on the 23rd of October, you and Andrea had a
15 discussion about counseling appointments and attendance at
16 those counseling appointments.
17 **A.** OK.
18 **Q.** Again did you take issue? You said it here that Sara
19 misinformed you about making an appointment for Kennedy. Did
20 you take issue with her making the appointment? Or did you
21 take issue with something else?
22 **A.** Oh, I think that is in reference to when they had both
23 started out. Kennedy had started out in the fall of 17 and
24 Canon maybe late November, December, but when we would
25 complete an appointment we would usually schedule a few out,

1 and it was to accommodate our schedules just because it was
2 the beginning, and we were trying to I guess lay a foundation
3 for Miss Reeve and let her know, get her feedback as the
4 parents. So I think I asked, "If you're going to make future
5 appointments, it would be nice if I knew what they were so I
6 could accommodate." Typically when I make an appointment for
7 a doctor or anybody I take a picture of the appointment card,
8 and I send it to Andrea. So I found out through it looks
9 like through the counselor, not through Andrea. It was just
10 a request.
11 Q. Are you concerned that Andrea was going to somehow
12 improperly influence the counselor or anything like that?
13 A. No.
14 Q. November 6 your son apparently had nine or ten cavities,
15 your son Cruz. I thought I saw there was reference somewhere
16 to cavities, real cavities versus quote/unquote "blotches" I
17 think it was referred to. Did your son literally have nine
18 or ten cavities?
19 A. I think in January when he had his surgery done it was
20 nine cavities and one crown.
21 Q. OK. Again you claim in here that the children reported to
22 you that they did not have to floss at their mother's.
23 That's what you reported, is it not?
24 A. Yes.
25 Q. And then you think the fact that a visitation and custody

1 arrangements were changed in April 2013 were responsible for
2 the nine to ten cavities?
3 **A.** I thought that might have an influence, yes, or were a
4 result of.
5 **Q.** Now we talk about the issue over payment of preschool.
6 You refused to pay for any day care, didn't you? Andrea
7 wanted to have some day care through Jacks, and you didn't
8 want to pay for it?
9 **A.** It was during her custody time, and I offered to take the
10 kids, and she didn't want that, so I -- I said, "You have to
11 pay for that."
12 **Q.** Do you recall there being some discussions between the
13 folks at preschool and Cruz, or excuse me, Cruz's preschool
14 and Ms. Vaughn?
15 **A.** In reference to what?
16 **Q.** Their recommendation that he perhaps needed a little more
17 socialization, he was bullying kids, not really behaving
18 appropriately all the time?
19 **A.** I think that recommendation was typical standard
20 recommendation that preschool teachers make at the end of the
21 year concerning their, their students.
22 **Q.** Andrea wanted him to have more socialization with kids of
23 his own age, did she not?
24 **A.** I think we both did.
25 **Q.** But when she wanted him to stay longer at this location,

1 you accused her of trying to pawn the kids off on other
2 people to raise them. Isn't that how you interpreted Andre's
3 conduct?
4 **A.** I didn't accuse her of pawning the kids off. I just said,
5 my initial response was, "I'm available to see them." And I
6 think at his age level of four it was appropriate to have
7 three or four hours of school and then be at home. And I
8 didn't think eight hours was appropriate for his age level.
9 And that's most likely because Kennedy and Canon had the
10 same, were afforded the same type of schooling, and I think
11 that's why I wanted that for that Cruz.
12 **Q.** So then on November 15th you document that there was some
13 disagreements. Then on the 21st all of a sudden you report
14 that your son doesn't want to go anymore.
15 **A.** Well, if you look at the month, it's two, two and a half
16 months in, and he's -- not only has he never gone to
17 preschool, but now there's some days he's in there for a long
18 time. And he grew up not in day care. So it's an adjustment
19 period for him. And I'm guessing if this lasted a month,
20 that was his adjustment period on having those extended days.
21 But they noted just because an adjustment period.
22 **Q.** Now you've been critical of Andrea for telling the
23 children or allegedly telling the children that you keep a
24 journal on her and her behavior.
25 **A.** I've been critical of -- can you ask the question again,

1 sir?
2 **Q.** Sure. You've been critical of Andrea because you believe
3 she told the children about you having a journal?
4 **A.** Yeah, I found out of the -- that in a declaration she made
5 to the Court. So I am critical of her telling the children
6 about something that's not for a child to know. Adult
7 issues.
8 **Q.** I want to make sure that the kids all of a sudden just
9 volunteered this information to you, correct?
10 **A.** Yes, we were driving home one night and they, as they
11 normally do, chose to inform me that, that, "Mom said you
12 keep a journal about her."
13 **Q.** So the fact that you keep a journal about their mother and
14 ask them questions about their mother is not the problem.
15 The problem I think you said earlier today was that she told
16 them that you were doing that?
17 MS. BROWN: Objection, your Honor. Compound
18 question.
19 MR. PICKETT: Agree that's about seven questions in
20 one, and counsel's well taken there.
21 THE COURT: Rephrase.
22 **Q.** You just testified earlier today that Andrea telling the
23 children about your journal was harming them?
24 **A.** I think that puts them at odds between two parents, yes.
25 **Q.** And so there's problems related to the contents of your

1 journal. Is it your opinion then that Andrea is responsible
2 for those problems?
3 **A.** There's happenings in the journal. Why am I -- are you
4 asking me to -- I don't think I understand the question, Mr.
5 Pickett.
6 **Q.** I'll move on. I asked you a little earlier about the
7 independence, and "I'll never do homework again" episode. On
8 November 29th there's a reference in there to there's a bit
9 more structure, and children are expected to be independent
10 in 1st grade. I'm trying to date some things. Is that, does
11 that help refresh your recollection. Is that what we were
12 talking about earlier, the same incident?
13 **A.** No. I mean when I was speaking to Laura Vaughn in
14 reference to I guess they don't have to do homework anymore,
15 that was in the spring of 18. This is in November of 17.
16 **Q.** There's a reference in here that Canon's teacher was
17 concerned about his social growth.
18 **A.** OK.
19 **Q.** Since you found out about that in November of 2017, do you
20 think you've been as persistent as Andrea has been about
21 increasing social interactions?
22 **A.** I think Canon has a lot of social interactions, and this
23 was a period of time where, you know, he was now seven years
24 old and --
25 **Q.** Sir, I don't mean to stop you. My question was do you

1 think that Andrea has tried to take steps to increase the
2 social growth, increase socialization for Canon?
3 **A.** Other than school?
4 **Q.** Yes, other than school.
5 **A.** I would not know that.
6 **Q.** Extracurricular activities, Boys And Girls Club, are those
7 situations where he may be having additional socialization
8 and social interaction?
9 **A.** Ah, yeah.
10 **Q.** I'm saying was Andrea pursuing that area of social growth?
11 **A.** I don't think she was pursuing Boys And Girls Club as a
12 social growth tool for Canon. I think she was using it, as
13 most parents do, as a form of filling that gap from school
14 being out until 5 o'clock to pick up your child.
15 **Q.** Do you think that Miss Brantley, Megan Brantley, has been
16 quite literally a surrogate mother to Canon?
17 **A.** Now I think the definition of "surrogate" was brought up
18 in my deposition, and maybe that was an ill-used word or
19 wrong type of word. I think she's been a positive influence
20 in their life, and they are benefitted from her being
21 involved.
22 **Q.** Why did you go to your children's counselors with
23 complaints about Andrea?
24 **A.** I think just navigating the divorce and not knowing. This
25 is my first and last rodeo. So and as things would come up

1 that were concerning of safety to the children, those are the
2 things I brought to the counselor. I didn't bring to the
3 counselor that homework wasn't being done or hair wasn't
4 being combed. They were concerns with respect to safety, and
5 I guess it was on somewhat ignorance not knowing that that
6 wasn't her role, and there was not much she could do about
7 that, unless there was direct threat to their life.
8 **Q.** And you also went to Kennedy's counselor about concerns of
9 the other children as well, did you not?
10 **A.** I didn't ask her about the -- when Cruz had a serious red,
11 red bottom. That was concerning for me, Mr. Pickett, because
12 on the flip side of that, had Cruz gone home in two days and
13 that turned into a bruise, I'm sure that would have been
14 alleged that I did that. So all alarms were ringing in my
15 head when I saw that, because not only did I want to find out
16 what it could be, I didn't want to get accused for it because
17 I get accused for a lot of things throughout this process.
18 **Q.** "They need a mother's nurturing, a mother's time, a
19 mother's concern, but they don't get it."
20 **A.** What line are you looking --
21 **Q.** What did you mean by that?
22 **A.** What line? Where're we at?
23 **Q.** One, two, three, four, five from the bottom. That was
24 your opinion of Andrea back on November 29th of 2017?
25 **A.** Yes, it was, but also context. This was to be given to my

1 lawyer, and the fact that he asked me to give it to the GAL
2 was his decision. Did I ever think I would be going line by
3 line in a trial concerning this? No. Did I want there to be
4 on an open record somewhere? No. This was to be given to
5 appropriate people in my camp, and my lawyer chose to give it
6 to the GAL. So.
7 Q. And you felt the substitute for your responsibilities as a
8 caretaker were the Boys And Girls Club, day care, piano
9 lessons, and art lessons. Those are all things that Andrea
10 had the children doing, was it not?
11 A. At the time, yes.
12 Q. Do you still feel that way today?
13 A. I think there's a balance between filling a child's
14 schedule, and I think we differed on that.
15 Q. Do you still think the children are starving for a
16 mother's nurturing or whatever words you used?
17 A. I don't know. We've been apart for so long. I don't know
18 her schedule, and I don't know. I don't know.
19 Q. You know your kids, don't you?
20 A. I do.
21 Q. Are they are showing signs of lack of mothering nurturing?
22 A. I know that they are very -- I know they are very touchy
23 feely when they come over. They want to be around and
24 directly next to, and when women are around they want the
25 same. I see that.

1 **Q.** Look at the next page. Who told you that the partners and
2 associate of your wife's law firm were leaving because of the
3 affair Andrea and a partner started. Who told you that?
4 **A.** Can I explain or do --
5 **Q.** Who told you? I want to know who told you first.
6 **A.** No one told me.
7 **Q.** Then where did you come up with that?
8 **A.** Over the course of two years their letterhead started out
9 with eight lawyers, four partners and four associates, and
10 every three months a name would disappear. It was my
11 conclusion that people were leaving a toxic environment.
12 **Q.** So that was just your own opinion? That didn't come --
13 **A.** It was my own opinion.
14 **Q.** It didn't come with support behind it?
15 **A.** It was my own opinion.
16 **Q.** Do you understand that spreading rumors about Andrea's
17 affair breaking up a law firm could damage the reputation of
18 a law firm?
19 **A.** This is in the context of a journal. I don't print this
20 and hand out copies, Mr. Pickett.
21 **Q.** This is certainly not the kind of thing you should be
22 talking about publicly? Wouldn't you agree?
23 **A.** Correct.
24 **Q.** Now when the two of you decided that Canon needed
25 counseling, did Andrea offer you, offer a solution to you

1 where she would give you a bunch of dates and you would pick
2 one?
3 **A.** I don't recall.
4 **Q.** Look at December 1st entry on page 2024.
5 **A.** OK.
6 **Q.** This is good example where you and Andrea actually came to
7 an agreement on how to schedule your counsel or your son's
8 appointments, your son and daughter's appointments. Is there
9 something negative in here that I'm missing? I just want to
10 make sure. I want to point out the positive things in your
11 journal as well.
12 **A.** Sure. It's a happening.
13 **Q.** But nothing negative there that I can see. Am I missing
14 something?
15 **A.** Well, you could say that if I'm Mason Pickett I could say
16 that because I don't believe Canon. I text Andrea. I
17 respect that she considers that Canon is not the center of
18 her household, but I do not believe that's the case when the
19 children are under my care. I guess you could pick that
20 sentence apart and say I'm --
21 **Q.** Now you were critical of her for leaving a piano recital
22 after your son was done with his performance.
23 **A.** I was disappointed for the kids, yeah.
24 **Q.** But luckily, if we believe your journal, your son didn't
25 even notice that his mom wasn't there?

1 **A.** Yeah, it's a happening.
2 **Q.** Now here on December 3rd you're talking to John Schultz,
3 Andrea's former partner?
4 **A.** Yes.
5 **Q.** Why'd you take the time to discuss your divorce with him?
6 **A.** I don't believe I would have brought that up to a lawyer.
7 I think we were at a Starbuck's, and he may have said
8 something. I don't bring up my divorce to people that are
9 acquaintances.
10 **Q.** This is the same lawyer who sued your wife and your wife's
11 firm at some point over dispute, a fee dispute, right?
12 **A.** Yes.
13 **Q.** And getting back to the whole "I'll never look at homework
14 again," will you agree December 5th is really the date that
15 occurs? Would you agree with me on that?
16 **A.** I think we're getting time was confused. That was a
17 happening concerning homework, but when I spoke to the GAL in
18 the spring of 18, I believe I had given her past month's
19 homework sheets with missing signatures, and then she
20 followed up and said Andrea has an agreement with the
21 teachers. It doesn't get signed, it doesn't matter.
22 **Q.** This is again you're talking in this December 5th
23 specifically about homework sign-in sheets. You took a
24 picture of it and sent it to Andrea. Right? And Andrea said
25 in response, "I spoke to her teacher. We're on the same

1 page." That's the same incident, is it not?
2 A. That's an incident that occurred in December 5th. When I
3 spoke with Laura it wasn't about this December 5th incident.
4 It was -- my recall it was homework in general. I can't say
5 that I spoke to Laura Vaughn specifically about this
6 incident. I don't recall.
7 Q. It appears to me here you did reach out to the teacher,
8 and the teacher basically should have at least alleviated
9 your concerns. Fair enough?
10 A. Fair enough.
11 Q. Now the December 8 incident, I want -- you correct me if
12 I'm wrong, took a video of your then four-year-old son so you
13 could send it to his mom to confirm what he said. Am I
14 correct?
15 A. That's not why I took the video, no.
16 Q. This is something -- OK. Why did you take the video then?
17 A. I was blown away at what he said.
18 Q. Because he said that George said the F word, and he said
19 it to Rob.
20 A. That's a random statement for child to make.
21 Q. You said -- you failed to note in your report that you
22 took this video. When's the last time you've seen that
23 video? It'll be an exhibit here eventually. So when's the
24 last time you've seen it?
25 A. Probably around that time.

1 **Q.** Looking back on it, do you question your judgment at all
2 about making your son be an actor in a video over the F word?
3 **A.** He didn't say -- he said that exactly, "the F word." I
4 don't question me asking him to. It was a benign comment to
5 him.
6 **Q.** I'm not talking about you asking about the comment. I'm
7 saying the decision you made to make your son pose in the
8 video. Looking back on that decision as you sit here today,
9 do you have any regrets about what you put him through?
10 **A.** I don't think he was harmed by, by that video.
11 **Q.** So the answer is, no, you don't have any regrets?
12 **A.** I don't think he was harmed.
13 **Q.** Again so you don't have any regrets, and you would do the
14 same thing over if the situation presented itself?
15 **A.** I wouldn't do it over.
16 **Q.** Now I asked you about bringing concerns regarding Andrea
17 to the counselors. And you went to the counselors to tell
18 them, to tell Miss Reeve that Andrea said you were
19 journaling. That's what you went and told her, was it not?
20 **A.** I was concerned that she -- the term, I don't know if I
21 used "poisoning the well," but I was concerned she was
22 poisoning the well and making them question each parent by
23 that time.
24 **Q.** Now when did you tell Andrea you didn't appreciate her
25 discussing you journaling things? When did you have that

1 discussion with her?
2 **A.** I don't know. I don't know if I did tell her.
3 **Q.** Andrea found out about your journal through some source
4 other than you. Wouldn't you agree?
5 **A.** Well, in earlier testimony when I said I'll log that, that
6 was an indication to her that I'm going to write that down.
7 So I believe she did know I was keeping a journal. If she
8 found out another way, I don't know.
9 **Q.** Now you made it a point to tell her when you were logging
10 things and that would make the list?
11 **A.** I may have said it twice, because I didn't know how to
12 handle the situation when we would have conflict and I would
13 get told, "You don't get to tell me what to do," I would say,
14 "OK, well, right now I don't know what to do, but I'll write
15 it down."
16 **Q.** Now you noted here on the 22nd of December that Andrea
17 canceled a counseling appointment. Now you've seen, have you
18 not, the counselor's interview with Miss Vaughn about
19 rescheduling and cancellations?
20 **A.** I've only heard Miss Vaughn testify about it. I haven't
21 seen the interview.
22 **Q.** Miss Vaughn asked the counselor specifically about it, and
23 she said, "It's not great, but it's nothing too big, nothing
24 to be concerned about."
25 **A.** OK.

1 **Q.** Isn't that what the counselor said?
2 **A.** I think that's what Miss Vaughn reported she said, yes.
3 **Q.** So would you agree with me now at least the concern you
4 had back then on the 22nd about excessive rescheduling
5 shouldn't be a concern, at least in regards to Ms. Reeves?
6 **A.** Well, that was only one prong of the kids' situation.
7 They also had medical appointments and dental appointments,
8 and when you add all of those clustered together, it becomes
9 an issue. If it's just counseling alone, maybe it wasn't.
10 Maybe it was only five times, but five times in medical, five
11 times in dental, and five times in counseling, that's 15
12 scheduled appointments.
13 **Q.** So has there been 15 rescheduled appointments this year?
14 **A.** Since August 22nd it has not been my role as the parent,
15 so I don't know.
16 **Q.** So on Christmas Eve of 2017 Andrea got your children watch
17 phones, and they were able to call you from their mother's
18 car, correct?
19 **A.** Yes.
20 **Q.** And in spite of all the things that were happening between
21 and you Andrea, did you ever thank her for making sure the
22 kids could call you on their watches?
23 **A.** She made a choice to buy them that gift. I didn't discuss
24 positive or negative from that gift.
25 **Q.** That's not the question I asked you. You complained at

1 the beginning of your separation because Andrea took a phone
2 from Kennedy that you wanted her to call.
3 **A.** Uh-huh.
4 **Q.** So when your children called you with new watches, new
5 phones where they could reach you directly, it never occurred
6 to you that maybe you should thank Andrea?
7 **A.** I didn't think Andrea, because we had a back-and-forth,
8 and she would pull me off their phone. Andrea had the
9 ability to add and take away numbers as she saw fit. So
10 within a week of them receiving the phone she took me off. I
11 politely asked to be put back on, and she agreed. At last
12 check in August of 2018 the only name in the phone was
13 George, mom's boyfriend. I wasn't in the phone, or at least
14 I wasn't the last time checked. So I saw it used as she can
15 add me when she wants to, or she can take it away. If the
16 kids want to call me from it, they can, but I didn't take
17 issue with the phones whether they were good, bad, or
18 indifferent.
19 **Q.** When the kids got these new exciting phones and called you
20 on them, obviously with their mother's consent, you chose to
21 take it as an opportunity to ask several questions about what
22 was going on in the parking lot while their mother was in the
23 store. That's what you did when you had the chance to speak
24 to your children on Christmas Eve?
25 **A.** When any kid calls you, the first thing you say is, "How's

1 it going? What are you doing?" And that's typical. And
2 when the kids called Andrea two weeks ago, that's the first
3 thing she said. "How's it going? "What are you doing?
4 Where are you?" Talk about the context, where you're at.
5 Eight and nine year olds don't have intellectual
6 conversations with adults. They have conversations about
7 where they are and how school was. So you have a small
8 framework when you're talking to a child, and the easiest one
9 is, "Where are you at? What are you going to do?" That's
10 what I asked. I had no idea they were in a parking lot
11 unattended on Christmas Eve.
12 **Q.** How many phone calls had they made on phone watches from
13 your house to their mother's?
14 **A.** The phones are an accessory, and the kids are responsible
15 for wearing them. So sometimes they have them, and sometimes
16 they don't. I've never put a restriction on them, and I
17 don't know if they've called their mom.
18 **Q.** So that's the answer? You don't know if they've ever
19 called their mother?
20 **A.** I don't know.
21 **Q.** Have you ever taken the watches away from them during your
22 residential time?
23 **A.** I have never taken away their watches from them during
24 their residential time in my house.
25 **Q.** You said at your house. Are there other places that you

1 have?
2 **A.** I have never taken their watches away from them during my
3 residential time.
4 **Q.** Now Andrea approached you in December of 17 about trying
5 to resolve your divorce. She reached out to you again
6 saying, "Can't we settle this?" Right?
7 **A.** I believe we had an email where she had talked to Mr.
8 Schultz, and she said, "If you want to get this going, order
9 a GAL and schedule it." That was one communication he had,
10 and I believe she also through your office gave Mr. Dow a
11 letter of some sort asking for some type of resolution.
12 **Q.** We offered partial resolution. We'd agree on the
13 parenting plan, and we could argue about money. We could
14 agree on the house, and we could argue about everything else.
15 We made several proposals to you, didn't we?
16 **A.** In that one month?
17 **Q.** Yes.
18 **A.** In that one letter.
19 **Q.** In early December, either through Miss Clare directly to
20 you or through my office to Mr. Dow?
21 **A.** Again I'm getting resolution from Miss Clare and a
22 resolution coming from you to Mr. Dow. In situations like
23 that, I look to my attorney who I paid a great deal of money
24 to help me navigate that situation. So that's what I did
25 back then. "What do we do?"

1 **Q.** Did you say something to the effect to Andrea that, "Some
2 people just need to trial"?
3 **A.** I thought we did, because we attempted mediation, and it
4 didn't go anywhere. I showed up to mediation with schedules,
5 work schedules, proposed parenting plan schedules and spent
6 $400 for an hour and a half of nothing. And I felt I came
7 prepared to mediation, and if I didn't -- was willing to
8 accept when she had, then we don't need to be here.
9 **Q.** Did Andrea tell you about the consequences if you have a
10 trial what's going to happen between you and her and your
11 future relationship?
12 **A.** She did mention, either in email or court documents that
13 our relationship moving forward will be forever poor. And I
14 didn't understand at the time, but after 12 months of, of the
15 shoveling of the assault on me, I now understand why she
16 thought that. She was attempting to let me out and say,
17 "Let's do it my way, and if you don't, you're going to get
18 it," and here we go. I didn't comply, and I have three
19 lawsuits, and I have the possibility of losing my job. I'm
20 certainly going to lose my house, and I don't have my
21 children. So, yeah. I had no idea what I was getting into,
22 Mr. Pickett.
23 **Q.** And you had options to resolve this case as recently as
24 June of 2018. Do you remember that?
25 **A.** I do not remember that. Would you like to refresh my

1 memory?
2 **Q.** You don't recall us reaching out to you guys shortly
3 before the trial extending an olive branch and asking if we
4 can resolve that? You don't remember that?
5 **A.** I remember a letter the night before proposed trial of
6 July 31st that was sent out to Mr. Dow, and he forwarded it
7 to me, and I asked, "What does this mean?" And he walked me
8 through that letter, but I don't remember anything in June,
9 sir.
10 **Q.** So this idea that you spent a year fighting about this and
11 it's not -- I mean you've had an opportunity to put a stop to
12 this multiple tiles, haven't you?
13 **A.** I don't think I have, no. Once the federal suit was filed
14 and stipulations were put in place on how and when I can
15 communicate with Andrea with George as the middle man, that
16 started to make everything a lot more convoluted and
17 difficult and just with respect of parenting the children and
18 trying to find time frames and logistics of the summer
19 schedule. I thought that Mr. Riseborough was working on the
20 side and trying to get me through this, but I've learned
21 through the legal process that when one lawsuit is put at bay
22 for lack of facts, another one can be brought just because it
23 can. So but there's no way I could have stopped this train
24 once March hit.
25 **Q.** I want to make sure I'm clear about this. There was never

1 any discussion about, from us, about settling your divorce
2 and other things at the same time, correct?
3 **A.** Not to my knowledge. The --
4 **Q.** Those were two different things entirely?
5 **A.** Unless the lawyers talked, yeah.
6 **Q.** If we can go back to January of 2018, page 204, it's where
7 Andrea told you she did not want to attend counseling
8 appointments with you again. Do you remember that?
9 **A.** I'm sorry, sir? What day?
10 **Q.** 204.
11 **A.** January 16th? 9th? Which?
12 **Q.** January 8th, 2018.
13 **A.** Sorry.
14 **Q.** Andrea tried too set it up so you and she could take turns
15 taking the kids to counseling, right?
16 **A.** I just need to read this if that's all right. All right.
17 **Q.** Andrea tried to make arguments so you could take turns and
18 equally take the children to their counseling appointments,
19 correct? For the sake of this question here, sir, I'm not
20 asking you whether that's what it said in your journal. I'm
21 asking you whether that occurred. So the contents of your
22 journal should be irrelevant to that question.
23 **A.** I think what we were doing in that time is I had come back
24 early from a ski trip to attend, and she said, "No, you don't
25 have to go."

1 **Q.** The question I have, did Andrea try to set it up so you
2 could take the children half the time and she could take the
3 children half the time?
4 **A.** She, she may have at that point, yeah.
5 **Q.** And you refused to do that. You insisted on being at
6 every appointment, regardless of whose residential time it
7 was?
8 **A.** I didn't refuse, but if it would have come from the
9 counselor as a suggestion, like if Mr. Dr. Whitehead would
10 suggest that, now I would certainly have taken that into
11 consideration and abide by the counselor's decision. It's
12 not something Sara requested. It's something Andrea
13 requested and just like on December, January of 2018 she
14 doesn't want me to attend counseling, but June of that same
15 year she thinks it's appropriate to show up to Kennedy's
16 medical appointment, when I'm the custodial parent taking
17 Kennedy to the appointment. So you don't get it both ways.
18 We both wanted to be there for our children. The interaction
19 between us during pre and post counseling session was none.
20 We would sit in the room, or one of us would leave. All we
21 would do is show up to talk to the counselor about how the
22 child was doing that week. There was no tense moments or
23 hours sitting in a waiting room with Miss Clare. One of us
24 would leave. So I failed to see why she was -- I wanted to
25 be there for my child. I was not trying to be obstructive or

1 not agreeable to Miss Clare's request. I just wanted to be
2 there for my child. That's what I was trying to do.
3 **Q.** On February, excuse me, January 19th you document the
4 conversation with counselor about the same things. And again
5 the way that you interpreted what the counselor said was,
6 "You can attend anything you want." That's a summary, but
7 that's pretty much what you -- that's your position, is it
8 not?
9 **A.** The counselor had told me that Andrea had made the
10 request, not the counselor. And when I was speaking to
11 Andrea, Andrea informed me that maybe the counselor suggested
12 this. So I went to the source. I asked the counselor, "Did
13 you suggest this?" The counselor said, "I did not. You're
14 allowed to go. Your wife did." I said to the counselor, "If
15 you don't want me to go, I won't go," and the counselor said,
16 "You're allowed to attend, Kevin," and I said OK.
17 **Q.** Here we are February 11th you're listening to Cruz when
18 you told him you can do all the brushing and flossing and
19 mouthwash you want at his mothers's house?
20 **A.** Is there a question sir?
21 **Q.** Yeah. Do you understand that you're taking the word of a
22 four year old?
23 **A.** Like I said these are happenings. These are a journal. I
24 did not expect this to be at trial like going line by line.
25 My lawyer asked me to prepare this.

1 **Q.** Do you agree with me, sir, that at some point you have to
2 take responsibility for the actions that you've engaged in?
3 **A.** I think everyone has to take responsibility for the
4 actions they engage in.
5 **Q.** Page 206 you asked your daughter about a ski trip that she
6 took with her mother. How did you know she went on a ski
7 trip?
8 **A.** At that time I think in March or winter of that year
9 Andrea shared skis. So she purchased, rented skis for Canon,
10 and I purchased skis for Kennedy, and we would trade. I
11 would give her the skis when she would take Kennedy, and she
12 would give me the skis. So I knew that they had most likely
13 taken a trip. And again I asked a very generic question,
14 "How was the ski trip?"
15 **Q.** And again you bring up here that Kennedy asks if you still
16 take notes about their mother, and you said no. Are you
17 critical of Andrea at some point of another because she
18 wanted you to assist her in some white lies with the kids?
19 Do you remember that critical line of thinking or line of
20 thinking? Or this is my question. Do you remember when
21 Andrea asked you to back her up and say that the two of you
22 agreed to the visitation schedule change?
23 **A.** Yes.
24 **Q.** Do you remember that? And do you agree with me, after
25 saying you would do that, you did not do that?

1 **A.** No, I did do that.
2 **Q.** Did you at some point you change your tack and not
3 perpetrate or perpetuate the lie?
4 **A.** I did not change my tact. I did have a conversation with
5 my son that was not in that same context where a different
6 response was required.
7 **Q.** Now how do you know Andrea was at a guardian ad litem
8 appointment -- or excuse me, at a guardian ad litem seminar?
9 **A.** I think she had some text exchange with Miss Megan
10 Brantley, and Megan had mentioned, asked if I had the kids,
11 because she knew Andrea was out of town. And Megan regularly
12 stopped by with her dogs, and I replied that I did not have
13 the kids, and sometime later she may have said that Andrea
14 was at a CLE, which is seminar.
15 **Q.** So Megan Brantley is the only way you found out about it?
16 **A.** Yes, sir.
17 **Q.** March 16th you are documenting the fact that Andrea is out
18 at a local hockey game with George.
19 **A.** Yes, sir.
20 **Q.** Is her dating schedule any business of yours?
21 **A.** No. No.
22 **Q.** And again this is where you take editorial license and
23 comment how she is doing something again with her boyfriend,
24 not spending time with her kids, right?
25 **A.** Yeah, meant for my lawyer's eyes.

1 **Q.** And this is over two years removed when you separated?
2 **A.** Yes.
3 **Q.** Right?
4 **A.** Yes.
5 **Q.** And March 19th you're having a conversation with your
6 daughter about her riding in the front seat of the car?
7 **A.** Starts out Kennedy informed me that she sits in the front
8 seat of her mother's car. So she started the conversation,
9 yes.
10 **Q.** OK, and she talked to you about airbag lights on the
11 passenger side?
12 **A.** Yeah, she brought that up. I wouldn't know. I don't have
13 a car that has airbag lights.
14 **Q.** Again on the same incident you're saying your son is
15 asking you about why you're following his mother?
16 **A.** Yes.
17 **Q.** But there was no questioning by you. This is just the
18 kids volunteering information making these negative
19 statements about their mother?
20 **A.** I don't think they're negative. I think they're parroting
21 what their mother's telling them. I don't know how they
22 would come up with a question: Why am I following mom? I
23 would never say that, because I'm not. So who in their life
24 would tell them that? Or where would they overhear that in a
25 conversation Miss Clare might be having?

1 any discussion about, from us, about settling your divorce
2 and other things at the same time, correct?
3 **A.** Not to my knowledge. The --
4 **Q.** Those were two different things entirely?
5 **A.** Unless the lawyers talked, yeah.
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18 equally take the children to their counseling appointments,
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22 journal should be irrelevant to that question.
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24 early from a ski trip to attend, and she said, "No, you don't
25 have to go."

1 **Q.** The question I have, did Andrea try to set it up so you
2 could take the children half the time and she could take the
3 children half the time?
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5 **Q.** And you refused to do that. You insisted on being at
6 every appointment, regardless of whose residential time it
7 was?
8 **A.** I didn't refuse, but if it would have come from the
9 counselor as a suggestion, like if Mr. Dr. Whitehead would
10 suggest that, now I would certainly have taken that into
11 consideration and abide by the counselor's decision. It's
12 not something Sara requested. It's something Andrea
13 requested and just like on December, January of 2018 she
14 doesn't want me to attend counseling, but June of that same
15 year she thinks it's appropriate to show up to Kennedy's
16 medical appointment, when I'm the custodial parent taking
17 Kennedy to the appointment. So you don't get it both ways.
18 We both wanted to be there for our children. The interaction
19 between us during pre and post counseling session was none.
20 We would sit in the room, or one of us would leave. All we
21 would do is show up to talk to the counselor about how the
22 child was doing that week. There was no tense moments or
23 hours sitting in a waiting room with Miss Clare. One of us
24 would leave. So I failed to see why she was -- I wanted to
25 be there for my child. I was not trying to be obstructive or

1 have any sources for finding that out. I didn't know who
2 Julie Ridgeway was before speaking with Amy Britt.
3 **Q.** That's kind of information that would be kind of internal
4 business of the firm? Wouldn't you agree?
5 **A.** Connected to the firm in some way?
6 **Q.** Who's Jason DeBeer?
7 **A.** That might be another one of their friends from the
8 watering hole.
9 **Q.** How did you come to find his name?
10 **A.** Again through conversations with Amy Britt.
11 **Q.** Now were these conversations typical people sitting down
12 chatting? Or was this a focused conversation about getting
13 information for you for this case?
14 **A.** It was just talking about, ah, chatting on the phone. I
15 never met with Amy Britt in public. We just spoke on the
16 phone. So I would say under a dozen, over six times in the
17 spring into the summer.
18 **Q.** Who is Kevin Cobb?
19 **A.** Another teacher, friend of Mr. Telquist.
20 **Q.** Have you ever met this gentleman?
21 **A.** No.
22 **Q.** Are you aware if Kevin Cobb even exists in the context of
23 this case?
24 **A.** No. Again that was Mr. Dow, and I didn't talk extensively
25 about how many witnesses and how they were all going to work

1 and who was going to be a witness list. So those were all
2 just potential names I gave, and he chose to list them. That
3 wasn't a conversation he had in depth at all.
4 **Q.** Who's Lance Hannebur?
5 **A.** A friend.
6 **Q.** Friend of whom?
7 **A.** Andrea and George or a person who frequented Ice Harbor
8 with them.
9 **Q.** And again where did you get his name?
10 **A.** That would be Amy Britt.
11 **Q.** Who's Jillian Harlington?
12 **A.** Former associate of TMC.
13 **Q.** Associate attorney with the firm?
14 **A.** Yes, sir.
15 **Q.** When did you first meet her?
16 **A.** When she was hired I believe it was 2015.
17 **Q.** And what was the purpose of her being listed as a witness?
18 **A.** I think in general what I'd heard is she left the firm due
19 to just the same reasons others had left the firm.
20 **Q.** And what was that reason again?
21 **A.** Just toxic environment and getting shoved briefs late in
22 the day to do cleanup work for George and Andrea when they
23 would leave and go about their personal life, and she'd be
24 stuck with, you know, one sentence of a brief and have to
25 write the whole brief.

1 **Q.** And again all the specifics about Miss Harlington, did you
2 speak to her about all of these things?
3 **A.** No.
4 **Q.** So who did?
5 **A.** I think that was just a general consensus. My lawyer my
6 have been down to corroborate that. I don't know if he did
7 or not.
8 **Q.** Who's Amber Peters?
9 **A.** George Telquist's former assistant.
10 **Q.** Now why did you list her as a witness?
11 **A.** I think she was another disgruntled employee or employee
12 that didn't want to be associated with the firm anymore.
13 **Q.** And again did you ever peak to her personally?
14 **A.** No, I did not.
15 **Q.** Why was she listed as a witness then?
16 **A.** She was in the same group of the former people you named,
17 provided by Amy Britt.
18 **Q.** Now would you agree with me that you don't have any
19 first-hand knowledge about communications or issues between
20 any of those former employees I just mentioned and George and
21 Andrea?
22 **A.** Correct.
23 **Q.** Julie Reykjavik, who's that?
24 **A.** That name is -- I don't recall that name.
25 **Q.** How about Maxine Parham?

1 **A.** I think Maxine's their current bookkeeper/office manager.
2 **Q.** How do you know that?
3 **A.** It's told to me, you know, the spring of 18 by Amy Britt.
4 **Q.** So in the spring of 18 Amy Britt knew who the bookkeeper
5 was at TMZ, or excuse me, then TMC?
6 **A.** I don't know if she was in the current time, but that's
7 what Amy Britt told me. I think Julie Reykjavik that's
8 ringing a bell. I think she was George's assistant who's
9 worked in Minnesota for number of years doing dictation,
10 other things for him.
11 **Q.** How about Jamie Fernandez Cruz? Who is that?
12 **A.** I believe that's the first assistant George had after
13 Amber Peters.
14 **Q.** So to the best of your knowledge have any of those people,
15 with the exception of John Ziobro, been around an Andrea or
16 your kids at any point?
17 **A.** I wouldn't know that.
18 **Q.** So why did you then list all these people from Andrea's
19 firm who left on bad terms if they don't have anything to
20 offer about parenting?
21 MS. BROWN: Objection, your Honor. This has gone on
22 long enough. There are two sides to this case. One of them
23 is financial. I'd appreciate it if counsel would demonstrate
24 the relevance of going through all of these witnesses other
25 than to establish that fact.

1 have more than equal time?
2 **A.** I can't say I was processing that in the month of August.
3 I can't take a snapshot and say that's what I thought then.
4 **Q.** This trial is not the first time you've had to be
5 subjected to my questioning? Would you agree?
6 **A.** Yes, we had a deposition August 2nd.
7 **Q.** Of August?
8 **A.** Yeah.
9 **Q.** And would you correct me if I'm wrong? You were still
10 insisting that you should have residential placement and
11 Andrea should have visitation?
12 **A.** If I said that in the deposition, that's how I thought at
13 that time.
14 **Q.** I just want to confirm the i-Phone App when you first
15 started using that, that was without discussion or consent
16 from Andrea?
17 **A.** We had it on our phones and tablets.
18 **Q.** But you neither spoke to her nor got her permission to
19 track her whereabouts without her consent, did you?
20 **A.** I don't believe I did that first time, no.
21 **Q.** Specifically you were tracking her phone because you had
22 concerns about her possibly being unfaithful?
23 **A.** No, that was never the purpose of tracking her phone. The
24 first time I did it I explained yesterday in testimony, and
25 as some progressed in 15 and she would not be responsive

1 concerns and your fears?
2 **A.** She wanted to.
3 **Q.** Going back at least briefly, Amy Britt apparently has
4 provided you a substantial amount of information about Mr.
5 Telquist, your wife, and the particulars of their business.
6 Is that correct?
7 **A.** It came up in conversation, but as you said earlier,
8 there's no proof to anything, just conversation with her.
9 **Q.** And you basically, the two of you, struck up a friendship
10 during the course of this sharing of information, didn't you?
11 **A.** I wouldn't say a friendship. I'd say we had lunch through
12 this process and filling in the swiss cheese and the holes of
13 our former marriages.
14 **Q.** I asked you, "You and Mrs. Britt have communicated
15 frequently since your separation, have you not?" Your answer
16 was, "We have become friends, yeah." Are you still checking
17 in with Mrs. Britt to get information or George?
18 **A.** I haven't talked with Mrs. Britt since May or June of 18.
19 **Q.** As you sit here today do you still think an Andrea is
20 neglectful as parent?
21 **A.** I haven't been around Andrea in a number of years to
22 observe anything, Mr. Pickett. I know she loves her kids.
23 **Q.** So as you sit here today you have no concerns or at least
24 no information or evidence about neglect?
25 **A.** That's correct.

1 **Q.** You accused her of not being a nurturing mom?
2 **A.** Early on in declarations I may have said that or in a
3 deposition, if that's what you're referring to.
4 **Q.** As you stand here today, do you still feel that way?
5 **A.** I, you know, through reflection of Dr. Page's evaluation,
6 I've realized that it's -- I may have been hypercritical of
7 her parenting skills and her availability for the children,
8 and I realized that she was a working mother, and so I worked
9 to adjust my perceptions of that.
10 **Q.** I know I probably asked this already, and I apologize if I
11 have, but every time your children reported something
12 concerning to you during the period of time you were
13 journaling, you put it in your journal?
14 **A.** Not every time.
15 **Q.** If it was concerning then?
16 **A.** If it concerned me, yeah. As we went through yesterday, I
17 put in things that weren't concerning as well.
18 **Q.** One of the things Andrea and her supporters have been
19 critical of you about has been your unwillingness to
20 recognize that things that you've done were improper. Would
21 you agree with that general theme that's what Andrea and
22 others on our side are saying about you?
23 **A.** Could you be specific about those things?
24 **Q.** Do you remember me asking you back in early August of 2018
25 if you had the chance to go back in time and redo things or

1 about specifically?
2 **A.** I didn't. Those were, like I said, names shared to me by
3 Amy Britt, and I thought if they came up in conversation with
4 my attorney at the time, we would cross that bridge when we
5 got there. I know that, that that's what I was thinking of
6 when I gave those names to Mr. Dow.
7 **Q.** Did you ever accuse Andrea of having extreme paranoia and
8 substance abuse?
9 **A.** I may have in declarations because of allegations that are
10 made against me, yeah, and Amy Britt and I shared the same
11 sentiment. She said that George was certainly paranoid
12 before they ultimately -- he ultimately filed for divorce, he
13 was paranoid about emails within his own work and the people
14 under his staff. So he asked his, his network provider to
15 give him access to their emails. So she shared the same, the
16 same type of paranoid behavior.
17 **Q.** Well, my question was did you say that about Andrea? And
18 your response was to go off on a tangent about Mr. --
19 **A.** I think I did share that in a declaration that she's
20 paranoid and nothing's happening. It's just collection of
21 thoughts that are continuing to be fed.
22 **Q.** Now Dr. Page, you scheduled your evaluation with Dr. Page
23 after the Court changed residential placement of the children
24 and placed them with Andrea? Is that correct?
25 **A.** Correct.

1 **Q.** Your position that you wanted to have a trial, as you sit
2 here today, do you perhaps regret that?
3 **A.** Certainly after the last 12 months of what's happened,
4 yeah.
5 **Q.** And what is the catalyst for your regret?
6 **A.** Oh, I think because I was unwilling to negotiate. Like I
7 said before, just the campaign of "Let's take everything he's
8 got. If he doesn't want to give it to us, we'll take it from
9 him, and we'll take his money and his job and everything else
10 he has."
11 **Q.** While I'm looking for Dr. Page's report I'll ask you a
12 couple questions about it. He indicated in his report, or at
13 least his discussion with Ms. Vaughn, that you don't think
14 you need any treatment, so you wouldn't be amenable or
15 benefit from treatment. Do you remember that? Seeing that
16 statement?
17 **A.** I do not, no.
18 **Q.** Do you think you need treatment?
19 **A.** No, sir, I don't. I would certainly welcome and
20 appreciate a co-parent facilitator moving forward until we
21 can let the stress from this process settle out. And so if
22 there are any snags in the next 12 months that we have
23 someone to go to that's not the court or more lawyers.
24 MR. PICKETT: My apologies, your Honor, for not
25 being able to find something.

1 have enough money for me to go live separately, which is what
2 I wanted to do.
3 **Q.** Did you recommend to him that he seek some legal advice
4 from anybody?
5 **A.** Yeah, I said as time went on, we talked, right, and so
6 sometimes I'd think we're getting or making an agreement.
7 Other times we'd fight and go backwards. And we talked
8 about, you know, what to do with the kids, OK, we handle the
9 kids. What are we going to do with, you know, he wasn't
10 making much money at that point. We were, you know, trying
11 to support two households, and so what do we have to figure
12 for child support maintenance. And I told him I'm a lawyer,
13 so I would encourage him to go talk to somebody about it and
14 make sure it's reasonable and fair and not asking him to rely
15 just on my word. It would be a negotiation is what I would
16 anticipate. I wasn't trying to make it all one sided. I was
17 trying to make it fair, and I wanted it to be amicable and
18 quick and definitely not this.
19 **Q.** And when this process was starting what point do you
20 remember or what attorney did he contact, or what attorney
21 contacted you on his behalf?
22 **A.** I heard it was John Maxwell. He kind of started to be
23 more private. And, you know, he said he and his dad went
24 down to Yakima to talk to somebody. And I told him, "Look, I
25 don't want to file this in Franklin County, you know.

1 There's other places we can file it, and if we reach an
2 agreement, then it doesn't really matter where." I said,
3 "The two closest counties are Yakima and Walla Walla, so we
4 could file there." So that was my expectation, and he agreed
5 with me at that time, that he didn't, he too did not want it
6 in my backyard or having it be in the county in case there
7 were issues we need to have a hearing like what child support
8 should be, that kind of thing.
9 **Q.** Did you explain to Kevin why being out of county was
10 important?
11 **A.** Yeah, he understood.
12 **Q.** Did you discuss at all with him that if he stayed in
13 county what effect it may have on you professionally?
14 **A.** No, at that point it wasn't, it wasn't seen that it was
15 going to be this. It was not going to be contested. I had
16 understood we were going to share the kids. There might be
17 some financial issues that need to get resolved, but and I
18 thought he agreed that we would do it somewhere out of county
19 and we'd litigate the issues. It can't be here, because the
20 judges will all recuse themselves, so we'd just go somewhere
21 else and handle it anyway, and, "Yeah, I guess you're right.
22 It somebody, was a visiting judge and people in my
23 community."
24 **Q.** When did the amicability come to a halt? I should say
25 what led to the end of the amicability between the two of

1 you?
2 **A.** If I had to pinpoint a day, it would be the April incident
3 at the house.
4 **Q.** What was that incident?
5 **A.** When he'd already seen Maxwell. He sent me, you know,
6 kind of a bulleted page of, you know, proposal, and we were
7 working off that, and I thought several points were
8 reasonable. I had been tweaking numbers to try to figure out
9 how we would do child support. And you know, that would be
10 how much I pay for spousal support and my income and what
11 not. And so I would have the assistant work on a child
12 support worksheet, and I had gotten a new phone since I had
13 moved out so that the tracking would stop. And I had a
14 larger iPhone 6 and I was showing him. We were outside.
15 So I came to the house to pick up the kids, and I was
16 showing him the worksheet. And typically the way it would
17 work is whoever's residential time it was would deal with the
18 issues. So the kids were having an issue. The kids were
19 outside, and we were outside having a beer having a
20 cigarette, and the kids were inside, and someone was crying
21 and needed help. And since it was my time I went to into the
22 house to deal with that, and thinking nothing of it, you
23 know. We've been working together, and I'd come out, and he
24 lashed out.
25 **Q.** What did he say to you?

1 **A.** "Get the fuck out. Get the fuck out right now. You and
2 the kids can get the fuck out right now." Many times.
3 Screaming. And I'm like what? What? I was confused. I
4 didn't know what happened. And he, he was really angry. I
5 don't think I've ever seen him this angry. And he went in,
6 and he scooped up the kids very quickly. I mean he was very
7 quickly and aggressively putting them in the van that I would
8 be taking to go home. And I was still just kind of shocked,
9 and everything's happening so quickly.
10 I recognized that he doesn't have the shoes on the kids,
11 so I went back in the house to get shoes on the kids, and he
12 came running in again saying what he was saying, and that's
13 when he, he said, "I'm so pissed right now I could pop
14 George." And then he went and sat on the chair as I was
15 gathering up the stuff and, and he was there with his phone
16 saying, "I'm going to text Amy." And I didn't say anything,
17 and that's when he said, "I'm so pissed I could pop you right
18 now," and I left, and the kids were crying. I don't even
19 think I was home before he called and apologized. Because
20 you don't really want that, that outcome at that point. So I
21 would say it kind of started to kind of unravel then.
22 **Q.** And what was it that set him off?
23 **A.** I don't know. I don't know. I was looking through text
24 messages, because I'm assuming it was he went to immediately
25 wanting to know about the status of my relationship with

1 George, and so he went to the text, and I actually remember
2 sitting in the driveway or in the garage there. You know,
3 I'd shut the door. He's inside stewing, and I'm outside with
4 the kids crying, and I'm looking through the text message to
5 see what set him off, and I didn't see anything that would
6 have. So, but the kids were really upset, and I had to
7 explain to them that everything was fine.
8 **Q.** To his credit at least he apologized for the incident.
9 What was the apology about?
10 **A.** I don't recall. That he misconstrued something and he,
11 you know, lost his temper, and he didn't mean to react like
12 that in front of the kids. Along those lines. I think he
13 wanted to come over to my house after that.
14 **Q.** This was you new phone. Did you give him consent?
15 **A.** No, other than I was showing him the worksheet. Now had I
16 stayed out there, had we never had a kid issue, maybe that
17 wouldn't have happened. He, he looked as soon as I turned my
18 back, so obviously he knew I didn't want him in my phone or
19 have consent to get into my phone.
20 **Q.** Did things, your relationship with Kevin at that point
21 change permanently? Did you -- are you able to have
22 continuing amicable type of discussions?
23 **A.** I think maybe he started understanding where I was at. I
24 can't say it was pinpointed. We continued to try to have
25 dialog, because I was continuing to try to work on an

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22 continuing amicable type of discussions?
23 **A.** I think maybe he started understanding where I was at. I
24 can't say it was pinpointed. We continued to try to have
25 dialog, because I was continuing to try to work on an

1 password, and I took the phone, and told her, "We'll figure
2 this out later. Don't need to do this right now."
3 **Q.** Did she convey to you any instructions that her dad gave
4 her with the phone?
5 **A.** Did she what?
6 **Q.** Did she convey to you what instructions her dad had given
7 to her?
8 **A.** Yes.
9 **Q.** What were those?
10 **A.** Put in the wi-fi password and they can Face Time, so that
11 way he can contact the kids through the kids. And I took it
12 away, and the next week they came back, or at some point he
13 must have communicated he wants his phone back.
14 **Q.** During that summer were there activities that the kids
15 were engaging in during your residential time where you asked
16 Kevin not to come to those activities?
17 **A.** Yes.
18 **Q.** And what activity in question?
19 **A.** Those swim lessons.
20 **Q.** Why was it an issue for you that he come to swim lessons?
21 **A.** He was coming to the swim lessons, and he was talking with
22 the kids, telling them things, you know, about the phone
23 about what they could do. I think at one point he told them
24 to hide the phone from me or go find it so that he can get it
25 back. So he was saying inappropriate things to the kids, and

1 I just didn't want him around on my time. And so.
2 **Q.** What was his attitude when you told him that you didn't
3 want him to come?
4 **A.** Like he's entitled to be there on my time. And I showed
5 up with another man so that he would -- for protection so
6 that I could tell him he can't be here. I showed up with
7 Eric, and he was upset that he had to leave, and I told him,
8 you know, "Let's not make a scene, but can you just leave and
9 not come on my time?" And before he left he took Kennedy up
10 to the clubhouse to go get a hot cocoa and talk to her, and
11 that's when later after, after swim lessons I took Kennedy
12 out for lunch, I already planned to do that, and she
13 disclosed to me what her dad had told her, that she didn't
14 have to follow my rules.
15 **Q.** How do you respond to a kid that tells you that? How did
16 you respond?
17 **A.** "That's not true. Mom's got her rules, and dad has his
18 rules, and you know, you're going to follow dad's rules at
19 dad's house and mom's rules at mom's house." I think she
20 also said that her dad was going to get her a phone that
21 wouldn't require wi-fi so she wouldn't have to get my
22 password so she could use it at my house. And then there was
23 more issues with the phone that I learned later about because
24 it was such a big issue. I remember it was made such big
25 issue. She talked about the phone that she was told to call

1 **A.** You look at the communications. You look at how they
2 communicate, look at how they resolve issues. You look at
3 the mental health of each individual, look at mental health
4 of the kids. Also their involvement in activities and
5 engagement in their own lives individually and also with the
6 kids.
7 **Q.** Dr. Milner, what was the scope of your assignment in this
8 case?
9 **A.** So I was asked to review the GAL's findings and
10 methodology, you know, so the entirety of this sort of
11 investigative process that she had.
12 **Q.** And what materials have you reviewed to conduct that
13 evaluation?
14 **A.** So there is a very long list at the end of my declaration,
15 which I was given all, to my knowledge, all of the readings,
16 and then I realize there is a typo actually on number 1. It
17 should be I think 2016. With all the pleadings, and I
18 received all of the orders I believe in this case. I
19 received, looked at the deposition of the parties, also the
20 GAL reports. I didn't get the GAL file.
21 **Q.** Dr. Milner, have you reviewed any additional materials
22 since that time?
23 **A.** I have. So since this declaration went out I've looked at
24 Dr. Page's evaluation, Dr. Cole's evaluation. I think there
25 was a supplemental GAL report. I think that was it.

1 on Mrs. Clare's whereabouts and movements?
2 **A.** I do not.
3 **Q.** Do you know whether that behavior occurred after they
4 separated?
5 **A.** I do not have data on that.
6 **Q.** Do you know whether Mr. Clare asked the children about
7 their mother's whereabouts?
8 **A.** That was not in the GAL reports, and, no, I don't have
9 data on that.
10 **Q.** Are you aware that Mr. Clare had specific individuals at
11 certain locations keeping tabs on Mrs. Clare?
12 **A.** That was not defined in the GAL reports or the data set
13 that I reviewed, so I don't have information on that.
14 **Q.** So your opinions about all of this are limited to
15 materials that you reviewed?
16 **A.** Correct.
17 **Q.** Now would these things be clinically significant to you to
18 find out that Mr. Clare may have been doing these things to
19 his wife?
20 **A.** Are you asking me a hypothetical?
21 **Q.** Yes?
22 **A.** So hypothetically if the Court finds that there is a
23 finding that somebody has been stalking, has been following,
24 has been doing those things, yes, I do find that clinically
25 significant.

1 he's really in a better position to provide that, wouldn't
2 you agree?
3 **A.** No, because you're saying IPV abuser, and you're
4 simultaneously saying batterer in your question, and that is
5 not the case, because there was not an IPV investigation.
6 You're basically stating that Mr. Clare is a batterer, and
7 basically there is -- what I'm saying is I don't see data to
8 support such an analysis.
9 **Q.** I didn't ask you or mention Mr. Clare whatsoever. Just in
10 terms of treatment of an IPV abuser or batterer, who has more
11 experience? You or Mr. Derry?
12 **A.** I can't answer -- well, wait. I kind of answered that,
13 but what you're equating is IPV with battering, and that I
14 can't condone. So versus battering, absolutely he
15 absolutely. Well, anybody would have more treatment. I
16 haven't done treatment. So of course he has more treatment
17 experience, but in terms of IPV abusers, that does not equate
18 to a batterer. So does he have experience working with
19 people who are not batterers? That I don't know. It wasn't
20 clear on his web site, and he didn't testify to that.
21 **Q.** You took issue with him in your opinion diagnosing Mr.
22 Clare? Your issue with Mr. Derry was his diagnosis of Mr.
23 Clare, was it not?
24 **A.** I think he made a number of statements that attributed
25 some -- yeah, he basically said he did it with men. He's

1 you agree generally with the things that she said that those
2 behaviors, that the person who engages in them is consistent
3 with an IPV abuser?
4 **A.** You'd have to be more specific as to which statements
5 you're referring to.
6 **Q.** Basically keeping her under surveillance.
7 **A.** So hypothetically if that was an accurate statement that
8 there was data to support that Mr. Clare did, because I don't
9 know whether he did or he did not, if somebody's keeping
10 somebody else under surveillance, that would be generally
11 consistent with a coercive controlling type of an individual.
12 **Q.** Tracking her, tracking your partner's whereabouts,
13 monitoring calls or text messages without consent, those are
14 behaviors that are consistent with IPV?
15 **A.** Again if there is data to support that that is factual,
16 yes.
17 **Q.** And did you see anything in the record that you reviewed
18 that Mr. Clare had engaged in those exact things?
19 **A.** There's dispute about some of those things, so I don't.
20 **Q.** Did he dispute that he accessed her phone or her emails on
21 more than one occasion without her consent?
22 **A.** On two occasions, correct.
23 **Q.** Are you aware one of those occurred well after they
24 separated?
25 **A.** I don't think it was well after. I think it was after

1 cause of isolation. Has that person been isolated? I talk
2 to family. I talk to friends. I look at their patterns of
3 behavior. I look at their jobs. Are they able to go work?
4 Are they able to switch jobs? Are they able to engage? Are
5 they are able to go out after work? Are they able to meet up
6 with a friend for coffee? Financial control comes in there,
7 too. Who runs the finances? Who has access to finances? Am
8 I allotted only $10 a week to do whatever you need to do? I
9 do look at, you know, obviously the following and the acting,
10 and if there's data to support that of surveillance, I think
11 that's a concern that came up, or that was raised by counsel.
12 So I do look at that as well. I'm sure there's more that I
13 look at right now.
14 **Q.** What considerations would you look at in evaluating
15 someone's job? For example, if someone has a professional
16 job if they interact with people in their office, what kinds
17 of things count in the analysis as to whether someone's
18 isolated or not?
19 **A.** In terms of the work force, were they able to choose the
20 job and the place that they are working to choose to change
21 jobs, choose to -- if there are socialization opportunities
22 with people from that employment, to do that or not do that.
23 Who do they go to lunch with? I mean are they -- do they
24 take a lunch at their desk? Or are they free to, you know,
25 do whatever they want to do for lunch? If they want to take

1 **A.** Well, certainly indicates a severe dysfunction in the
2 relationship, yeah.
3 **Q.** I'm talking after they separated.
4 **A.** Yeah, yeah. I mean they're still, they're still
5 co-parenting. They still have children they have to parent
6 together, so it's dysfunctional. It's not helpful. It's not
7 making things better for their children.
8 **Q.** Now you have experience. You actually are a PETP
9 certified evaluator, are you not?
10 **A.** That's correct.
11 **Q.** And have been from at least our case together at least ten
12 years ago, at least for that amount of time?
13 **A.** Yes.
14 **Q.** You also teach parent classes, don't you?
15 **A.** I do.
16 **Q.** Did you see Mr. Clare's journals?
17 **A.** No, I don't think so. I don't think that was included in
18 the information I received.
19 **Q.** What is, given your training and experience, are parents
20 supposed to use the children to keep tabs on the other
21 parent?
22 **A.** No. That's inappropriate and damaging to children.
23 **Q.** And the parenting class I refer to, you teach the standard
24 four-hour parenting seminar, do you not?
25 **A.** Right.

1 can't get their billing information. I was trying to come
2 to, you know, that my interpretation of the initial emails
3 was mom's made some sort of attempt to keep the dad from
4 getting information about the children's medical treatment,
5 those types things. So had I known it was just this
6 information, I probably wouldn't have even delved this far
7 into it, because it's not really -- whether or not dad gets a
8 bill doesn't affect whether or not he can, you know, it
9 doesn't affect the child. Mom's trying to keep dad from,
10 knowing about medical treatment. That's two different
11 things.
12 **Q.** After contacting and speaking to all of these people, are
13 you satisfied that Mrs. Clare did not attempt to block access
14 to information? Or is that still an issue that the Court
15 should decide?
16 **A.** There was some sort of comment I think at hearing that
17 maybe, maybe they felt that I had misinterpreted that. I
18 guess the Court can take it whatever credibility the Court
19 wants to take it at. I know what was said to me, and I know
20 what my interpretation of the interview was, and I know that
21 he got the records shortly thereafter.
22 **Q.** The psychological evaluation that was ordered, do you
23 remember when that was ordered that Mr. Clare submit to a
24 psychological evaluation?
25 **A.** I believe it was August 22nd. Again it was a few weeks

1 later. It was actually in writing.
2 **Q.** If you would do me a favor, please. Page 570 you start
3 your summary of contacts with Dr. Page. When was the first
4 time you learned that Mr. Clare was going to be evaluated by
5 Dr. Page?
6 **A.** There was some discovery issues early in the year. As far
7 as mom asking for an independent medical evaluation. And so
8 there was that. And then there was subsequently some letters
9 that he wasn't going to be.
10 As far as me finding out prior to Dr. Page, doing the
11 psych eval, I was not. I was aware of prior to receiving the
12 psych eval. I was made aware that there was a psychological
13 evaluation out there that may be forthcoming, but I did not
14 know what the results of it were or what the context or what
15 the date of it was.
16 **Q.** Do you know generally the time frame that you were told
17 that there would be a report forthcoming?
18 **A.** If I could. It might have been October 24th, 25th, in
19 that time range. I'd have to look at the emails between
20 myself and Miss Brown. There was communications. It was I
21 had sent the email requesting the consent to communicate,
22 that she asked to speak with me, and I spoke with her the
23 following day. And I addressed the psychological evaluation
24 issue with her, and she had said, "Just to let you know, it
25 has been done." And I hadn't seen anything. I had seen

1 communications on Family Wizard with, "Why am I not getting
2 the three names?" And she said it had been done, and she
3 said it's going to be forthcoming, but don't quote me on
4 that. And I just kind of sat on it and waited for it to
5 come. But it would have been, I know it was prior to
6 billing, so it would have been prior to October 30th. And so
7 it was probably maybe a ten-day time frame from the time I
8 found out there was actually an evaluation floating around
9 out there to the time that I saw it, and that's a rough
10 estimate.
11 **Q.** And just if you would, please, if you would take a quick
12 few at page 683. It's the first page of the report. Prior
13 to Miss Brown sharing with you that there had been an
14 evaluation, had anybody else told about you this evaluation?
15 **A.** No.
16 **Q.** And if you look on the report on that page 683, apparently
17 it's dated 9-28-18?
18 **A.** Yes.
19 **Q.** And your report date is November 15th, 2018. So it had to
20 be sometime between the it 28th of September and November
21 15th?
22 **A.** What would have to be between? What had to be between
23 them? I don't understand.
24 **Q.** Oh, the receipt of the report. I'm just trying to nail
25 down when you got the report.

1 malice here. What concerns, if any, do you have going
2 forward that Mr. Clare's capable of change? Or actually let
3 me back up here.
4 Did Dr. Page's report satisfy your concerns about the
5 psychological evaluation and potential causes of what Mr.
6 Clare had been doing?
7 **A.** I'm going to quote Dr. Page's phrase. I'll probably be a
8 little dogmatic about it. I've been hopeful that we could
9 find some sort of way to say Kevin Clare can be treated. He
10 can figure out, you know, how to communicate, how to not
11 question the children. So I recall making a specific point
12 to Dr. Page, but I feel like he punched me in the gut. You
13 know, you can't tell me this is, this is unchangeable. And
14 this is where he came down to this sledgehammer comment.
15 You'd have to have significant consequences for him to
16 change. So that's kind of where that led with me, because to
17 me I'm going if there's, there's nothing there and you're
18 telling me he doesn't know he's doing it, he's been made
19 aware now that he was doing it, but when I spoke to him,
20 there's -- I don't remember. I them maybe nine, ten pages in
21 this report, and out of the entire report the only thing, he
22 didn't get that he was controlling. He didn't get that he
23 was insecure. He doesn't get any of these things that are
24 said in there. None of that is addressed. What he points
25 out is that he was, you know, just hypersensitive to mom in

1 her parenting role. That's the only thing that she's gotten
2 from this, that and that he's capable of parenting, out of
3 all of these pages. So how do we get to the point where if
4 he doesn't -- he didn't -- he picked out what he wanted out
5 of this whole entire thing. And there's no diagnosis. How
6 do we treat him? I don't know.
7 It's kind of, at this point this kind of set me back
8 again. We've got dueling experts. That's why at this point
9 I just said the Court's going to have to sort it out, because
10 I don't know what to do at this point. I just can't honestly
11 say sitting up here today how do we make this better? I know
12 I asked Mr. Clare, "Did you take this report to a counselor
13 and say, 'Here it is. What can we do?'" And he had some
14 reasons why he not had not. He had been busy. He had not
15 done that.
16 **Q.** If you look at line 14, what did Dr. Page, tell you about
17 the benefits of treatment for Mr. Clare?
18 **A.** At line 14?
19 **Q.** Yes, and that's page 572.
20 **A.** Where you've got the squiggly line?
21 **Q.** Yes.
22 **A.** Mr. Clare doesn't believe that he needs to be treated, and
23 therefore he wouldn't benefit from treatment.
24 **Q.** On a positive side of things, Mr. Clare, Dr. Page did
25 share with you the positive conclusions about Mr. Clare as a

1 be, that, that maybe. And again I kind of I think we had
2 Chuck Derry who said maybe a batterer's prevention program
3 would help.
4 I initially said, "Well, let's try this parenting class
5 to try and help. Trying to -- even though Dr. Cole says it's
6 not your job to fix the parents. It's my job to try and make
7 sure the children are in a healthy environment. And I do it
8 all the time where I say, "OK, somebody needs to go to drug
9 or alcohol therapy." We need to find some way to fix these
10 things. And he's just basically telling me unless he has a
11 reason to change and believes that he's wrong, he's not going
12 to change, is what he's -- no matter how much I tried to
13 dissuade him from that is what he said.
14 **Q.** Dr. Page talked to you also or discussed with you the
15 concept of victim blaming. Do you recall that line of
16 discussion you had with him?
17 **A.** I do. I'm not sure exactly when it is in here.
18 **Q.** If you just look down, please, at line 19.
19 **A.** Yes.
20 **Q.** According to this apparently Mr. Clare was capable of
21 volunteering other peoples' perspectives. Did Dr. Page say
22 why that notion is clinically significant? Or was that a
23 statement just made in the context of a conversation?
24 **A.** Just a statement made in the context of the conversation,
25 and I don't even know how it applied to victim blaming other

1 than to say, you know, he can look at other peoples' sides
2 and presents them to them.
3 **Q.** One of the suggestions that Dr. Page made was, as you
4 mentioned earlier, is this sledge hammer type of consequence.
5 Did he elaborate on what type of consequence that could be?
6 **A.** He goes on to say there has to be some sort of
7 consequence. Put him in step program with no wiggle room but
8 the sledge-hammer type consequence. I have done something
9 like that in the past where I said, "We have step 1, step 2,
10 step 3, step 4, 5. And if you give them step 1 and you get
11 through a certain period of time, you go to step 2. But if
12 you fail at step 2, you go back to step 1 and so far down
13 through step 5. And however many steps you need to go
14 through where there's this correction. What that concerns me
15 here is there has been so many changes for the Clare
16 children. To put a step process in at this point would be to
17 say to the kids, "We're going to do this, and if there's
18 you're going to be rewarded. And if there's a failure on
19 dad's side, you're going to be pulled back." So to me I get
20 where he's coming from on that. I get what he's saying. But
21 to me you're telling the Clare children, "Your stability is
22 based on whether dad can follow this step program. So I have
23 a little concern with that. It may be great for what he
24 believes is good for Mr. Clare, but as far as the children,
25 if the children are not affected by it and you get through so

1 many steps and maybe one of the steps is to -- again I'm
2 going to just strike that. I don't know. The Court's going
3 to have to. I just can't come to it. I just can't come to
4 an understanding of how we do that without affecting the
5 Clare children negatively.
6 **Q.** Dr. Page's suggestion was basically use the kids as the
7 carrot?
8 **A.** Yeah. I'm sorry. Yes.
9 THE COURT: Let's call it a day here. Mr. Pickett,
10 how we doing in terms of your anticipated schedule?
11 MR. PICKETT: I believe, your Honor, that I would be
12 finished in my portion with Ms. Vaughn tomorrow an afternoon
13 at the very latest, but we do have Mr. Derry flying in from
14 Minnesota tonight, and so I may be asking for some of the
15 Court's accommodation to make sure that he is able to testify
16 tomorrow. I know it's unfair to counsel and to Mr. Clare to
17 interrupt, or Miss Vaughn, but I would ask the Court at least
18 sleep on that, and if counsel would as well. If the roles
19 were reversed, I wouldn't be very happy about it, either. So
20 I don't fault counsel, but at the same time I think your
21 Honor can deal with stopping and starting, whereas a jury may
22 have a different feeling.
23 THE COURT: All right. Well. I usually don't have
24 a problem with taking witnesses out of order to accommodate
25 schedules. Do you have a problem with that, Miss Brown?

1 MS. BROWN: Your Honor, I don't. We've already
2 asked the Court to accommodate Dr. Cole and Dr. Milner on the
3 10th and 11th. So I'm happy to return the favor.
4 THE COURT: I guess my other question is are we
5 making progress in accordance with trying to get done?
6 MR. PICKETT: Yes, your Honor. This report from
7 November is finished, and then there's the last report, and
8 it's all fresh information. So a little of it's summarizing
9 prior stuff, so I don't expect that to take much time.
10 THE COURT: OK. See you in the morning.
11 (evening recess)
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1 that our client is not going have enough time to put on his
2 case.
3 THE COURT: Mr. Pickett, first why do we need to
4 take a fact witness out of order?
5 MR. PICKETT: Your Honor, because the fact witness
6 is important for the testimony of our expert Mr. Derry. His
7 name is Gary Register. He was disclosed back in July. I
8 understand that was well before counsel's time, so I can
9 appreciate the bind that she's in. I'm not going to pretend
10 that the world is going to come to an end if we don't call
11 him first, but he's a relatively narrow point, and it seems
12 to me more economical to have him. He is present today. If
13 your Honor wants him to come back next week, I'm not going to
14 pretend like our case is going to fall apart because of that,
15 but he isn't a long witness, and it's something that Mr.
16 Deery, he has spoken to this gentleman, and it's has
17 influenced his opinions. I got on the downside I could
18 appreciate counsel's concerns but the concern is about having
19 opportunity to have a better chance of cross examining Mr.
20 Register based upon what transpires, we could not release him
21 from his subpoena, and he could be made available if and when
22 they feel they need to have him.
23 THE COURT: How long would his testimony take on
24 direct?
25 MR. PICKETT: I would expect about five or ten

1 stayed in the garden department, my wife and I, and they
2 worked their way back into the garden department, and I could
3 tell they were still having conversation between them, and it
4 was very tense. They were murmuring back and forth. She was
5 distraught. Once she saw us, rather than be open and
6 flamboyant and talkative like she always has been, she was
7 very quiet, very subdued. I mean that's the demeanor I got
8 from her.
9 **Q.** When was the next time after that incident where you had
10 contact with Miss Clare, either in person, phone, text or
11 otherwise?
12 **A.** Well, it was years later when I met her in Richland. I
13 think -- I don't know if she was doing a case or what you
14 were doing in Richland at the courthouse, but we were there,
15 and we just happened to bump into her. "Oh, hey, how you
16 doing?"
17 **Q.** How did the discussion about what you witnessed in the
18 past, how did that happen? Did Miss Clare contact you, or
19 did you contact her?
20 **A.** She contacted me and asked me did I remember anything like
21 that? Did I remember that incident at the time? And I told
22 her I did.
23 MR. PICKETT: I have no further questions. Thank
24 you.
25 THE COURT: Miss Brown.

1 **Q.** And you received training, I think you mentioned a few
2 different groups that you presented to in the past. Now but
3 your role with your current position, is it a paid position?
4 Or are you just volunteering your time and services?
5 **A.** It's paid. And I also volunteer quite a bit of time and
6 services as well.
7 **Q.** When you presented at the National Family Law Judges
8 Association, how did you come about getting to the point of
9 presenting to that group?
10 **A.** Well, the Battered Women's Justice Project had a group,
11 small group of maybe 10 or 12 judges meeting in Saint Paul,
12 and they wanted to have a number of us, three of us come and
13 do some short presentations to the judges around the dynamics
14 of domestic violence. And I said I would be happy to do
15 that, and I thought that one thing that was very pertinent
16 was the benefits of violence and people understanding how
17 functional the violence was, because people a lot of times
18 think it's a dysfunction, but it's actually very functional.
19 It harms people, but it's very functional. And when I did
20 that, the judges had never seen that before, and they were
21 quite impressed with it, and it kind of shifted how they were
22 thinking about domestic violence. And so from that short
23 20-minute presentation they came and asked me to do a hour
24 and a half, two hour presentation with another facilitating
25 judge with me to talk about domestic violence and talk about

1 who the offender was and what are they thinking, what are
2 their intents, and what is the impact of that behavior for
3 the offender.
4 **Q.** As you sit here, let me ask you this. How many times have
5 you been retained as an expert witness for a court
6 proceeding?
7 **A.** Most of the time it would occur when I was doing batterers
8 programing. And so a man is 16 weeks in a 24-week program,
9 he's still blaming her for his behavior, I would dismiss him,
10 and I knew that the courts had our backs. So I'd send him
11 back to the probation, and probation would do a violation of
12 probation, and the judges, I knew the judges had our back,
13 and the judges would give him three to ten days in jail. And
14 then we recommended that they do that and then also send them
15 back to the same group so that he couldn't manipulate a new
16 facilitator. And they had come back to the same group, and
17 then they'd change. And about week four or five I'd say, you
18 know, "Gary, you're a lot, you're not, I mean last time you
19 were here you were really blaming her, and now I'm seeing you
20 taking responsibility, and what's going on? What's
21 different?" "I don't want to go to jail." Oh. OK. And I
22 heard that from man after man after man in ten years, the
23 importance of the consequences, and this is something that's
24 useful for people in the system to understand.
25 **Q.** So on that subject matter how many different court systems

1 **A.** If you say so I'll tyke your word for it.
2 **Q.** Now if you look at page 196. On July 14 so Andrea calls
3 you and asked you to have the kids. And the way you view
4 that is Andrea choosing to go to Hawaii with her boyfriend
5 over spending time with her kids.
6 **A.** Ah, yeah. I don't think she was originally intending to
7 go to that. Miss Britt decided to go on that trip, and it
8 changed.
9 **Q.** And how did you find that out?
10 **A.** Miss Britt told me, filled in the hole.
11 **Q.** And when was that?
12 **A.** On the spring of 18.
13 **Q.** Is that spring of 18?
14 **A.** Yeah, yeah.
15 **Q.** How do you know she went to Hawaii? And why was that a
16 concern of yours?
17 **A.** It wasn't a concern. It was stating that when given
18 custody she will leave rather than keep her custody. How I
19 found out was my mom asked me if I knew where she was, and I
20 did not know where she was. And then it was Mrs. Carrie that
21 --
22 **Q.** The lady from church that your mom mentioned the other
23 day?
24 **A.** The lady from church, yeah.
25 **Q.** Can you understand why Andrea may be concerned if you

1 think her whereabouts when she does not have the children are
2 a consequence to you? Can you understand why she thinks that
3 is something that may be invasive?
4 **A.** I certainly didn't mean it to be invasive, because I
5 didn't seek out where she was. It was information given to
6 me. So I feel bad if that's what she thinks.
7 **Q.** Would you agree with me there's quite a distinction
8 between falling into the information and actively seeking out
9 the information?
10 **A.** Yes, there's a big difference yes.
11 **Q.** Why did you make the hang low or whatever it is signal to
12 her?
13 **A.** I think after it was proposed that she might be there,
14 again after I was told I still didn't know. And the next
15 time you after I did see her, Kennedy had a flower dress from
16 Gap, which Miss Mary Lin informed me that it was probably
17 from this Gap at this island, and Andrea was also wearing an
18 island dress, and Andrea was tanned, and it wasn't an
19 indication of "I know what you did." It was that they're
20 both in Hawaiian dresses.
21 **Q.** Did you indicate to Andrea that you -- I mean did you
22 imply that you knew where Andrea was?
23 **A.** Based upon what they were wearing it looks lake they were
24 both in Hawaii. I didn't intend it to be a "I know where you
25 are" situation.

1 think they're doing really good.
2 **Q.** And how about your friend Andrea? How did she seem to be
3 now that she is hopefully getting this divorce finalized
4 sometime soon?
5 **A.** Happy. If you'd known Andrea back when I did when we were
6 young, it's kind of like to have her back. It's the happiest
7 I've seen her in a really long time. To do a story with,
8 with that as my husband, Andrea maybe didn't always see eye
9 to eye. And after they split she came over with the kids and
10 just hung out, and she left and my husband's standing in the
11 kitchen with a weird look on his face. And he was like,
12 "I've never seen her like that." And I'm like, "Like what?"
13 "Happy and relaxed." He was the one who made me notice.
14 MR. PICKETT: I have no further questions. Thank
15 you. I was going to make a smart remark about Andrea, your
16 Honor, but maybe you wouldn't appreciate it.
17 THE COURT: Miss Brown?
18 MS. BROWN: Thank you, your Honor.
19 CROSS-EXAMINATION
20 BY MS. BROWN:
21 **Q.** Miss Sell, during the time before the parties separated
22 did you ever see Andrea deviate from something she chose just
23 because she got a phone call from Mr. Clare? Did she go home
24 from a bar after work because he called her and demanded she
25 come home?

1 **A.** No, but I never was at the bars with her. So.
2 **Q.** But you never saw that happen?
3 **A.** No.
4 MS. BROWN: That's all, your Honor.
5 EXAMINATION
6 BY THE COURT:
7 **Q.** I have a question. I think you mentioned that his
8 behavior at times was passive aggressive. Can you describe
9 what you mean by passive aggressive?
10 **A.** I'm trying to think of an example. Like there's two
11 different kinds of fighting. If you're upset with somebody,
12 you're mad and you work it out or you don't, and you're mad
13 and you kind of just keep bringing up sly remarks, and it's
14 never going away. And trying to think of the incident that's
15 not coming to mind because I'm more nervous up here. But
16 there was times where you seen it where if he wasn't happy
17 with her, it -- it wouldn't be that, you know, they would
18 yell and scream or get in a fight, but it would just keep
19 coming up. It would come up like -- like even the point he
20 brought up with the relationship that he did before they were
21 married and he found out. I mean it never got dropped. For
22 the rest of her marriage she had to deal with something. I
23 mean it never, ever went away.
24 **Q.** So a little bearing a grudge for a while?
25 **A.** Yes.

1 **Q.** And when did the two of you start dating?
2 **A.** We started dating freshman year in college over the
3 Thanksgiving break, so that would be 1998.
4 **Q.** And where were you both going to college?
5 **A.** She was attending CBC down here, and I was up at WSU in
6 Pullman.
7 **Q.** And from 1998 until you separated before this case was
8 filed did you remain in the relationship with Miss Clare?
9 **A.** Yes.
10 **Q.** And you mentioned that you were living in two different
11 places when you started dating. Where did you go after WSU?
12 **A.** I attended Spokane Falls Community College for a few
13 years.
14 **Q.** And where was Andrea during the times you were in Spokane?
15 **A.** She had finished her two years at CBC and had started
16 attending Eastern in Cheney, Washington.
17 **Q.** And after you spent time at Spokane Falls, where did you
18 go after that?
19 **A.** I transferred to the University of North Dakota in Grand
20 Forks, North Dakota.
21 **Q.** And approximately how long did it take you to finish your
22 schooling in Grand Forks?
23 **A.** I moved home in January of 2004 and received my diploma in
24 May of 2004.
25 **Q.** Why did you have to go from WSU to Spokane Falls to Grand

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21 **Q.** And approximately how long did it take you to finish your
22 schooling in Grand Forks?
23 **A.** I moved home in January of 2004 and received my diploma in
24 May of 2004.
25 **Q.** Why did you have to go from WSU to Spokane Falls to Grand

1 Forks?
2 **A.** At WSU I didn't have a clear career path, and I had taken
3 some flight, on career day senior year, and my father was up
4 in Spokane and saw that they were offering a flight course
5 through a satellite school of University of North Dakota's,
6 and he presented that to me, and it seemed like a good fit
7 for me.
8 **Q.** And during the time you were in Grand Forks, where was
9 Andrea? When you came back to the Tri-Cities in January of
10 2004 where was Andrea?
11 **A.** Andrea was attending Gonzaga at the time.
12 **Q.** Gonzaga Law School?
13 **A.** Yes.
14 **Q.** And when did you and Andrea become engaged?
15 **A.** If I recall correctly, it was the year of 2004.
16 **Q.** When did you and Andrea marry?
17 **A.** June 25th, 2005.
18 **Q.** And where was Andrea living at the time you were married?
19 **A.** When we were married I believe she had graduated in 05 and
20 was up in Spokane studying for the LSAT, or not the LSAT, the
21 bar. Apologies.
22 **Q.** And so when did Andrea return to the Tri-Cities?
23 **A.** She returned home I would recall in 2006, and I believe
24 she began working at the prosecutor's office -- oh, correct,
25 maybe she, oh, OK. Let me back up. I think she took the bar

1 that she was having in her heart guilt from that and she --
2 that was starting to surface. So it took her some time to
3 bring that to the table and tell me about it.
4 **Q.** Was that disclosure made before Kennedy was conceived?
5 **A.** Yes, sir.
6 **Q.** What, if any, professional services did the two of you
7 seek out to try to get through that?
8 **A.** I believe we saw Chris Kristofferson. He was a counselor
9 at Bethel Church in Richland, and we sought counseling with
10 him. Andrea attended first, and then I was brought in at
11 some point after.
12 **Q.** Other than that relationship did Mrs. Clare have an extra-
13 marital relationship with anybody else before 2015?
14 **A.** Not to my knowledge, no.
15 **Q.** After Andrea disclosed that, why did you continue with the
16 marriage if you were so concerned about her going forward?
17 **A.** I was -- I took that into serious consideration. I was
18 considering backing out of the marriage. That was certainly
19 a period of time after being told that I was considering
20 leaving the marriage. Part of, part of the decision-making
21 process was wondering why she didn't tell me right before we
22 were married, because I most certainly wouldn't marry her,
23 and she told me she was having an affair up until our
24 marriage. So but I loved her and I wanted to make it work,
25 and she, she was my best friend, and people make mistakes.

1 because of work?
2 **A.** The last four months in 2015 when they were working on a
3 case that required weekends and travel to the east and west
4 coast, that was the next time I saw her work for an extended
5 period of time. Although, like I said hindsight, I don't
6 know how much of that was work and how much of that was just
7 getting together with Mr. Telquist.
8 **Q.** So when you expressed your displeasure with Andrea, did
9 you accuse her of being unfaithful to you?
10 **A.** I accused her of being unfaithful to me in August of 2015,
11 yes, sir.
12 **Q.** Prior to August of 2015 did you accuse her any other time
13 of that behavior since she joined TMZ, now TMC?
14 **A.** No.
15 **Q.** This lawsuit, Wenatchee lawsuit, I guess I'm not
16 understanding. You felt you were concerned about her being
17 unfaithful with this guy because he walked away and her
18 behavior changed, but you didn't talk to her about it?
19 **A.** No, like I said this is a hindsight issue. So she had
20 shared with me in 2015 in December of 2015 that on that, on
21 that case that's where George took a liking to her, and she
22 noticed it, and he noticed it, and they discussed it. So
23 when you work your way back and you start to notice the
24 pattern and behavioral changes from that time, that's where
25 I'm getting that from. That's information she provided to me

1 from our discussions.
2 **Q.** So you confronted her in August of 2015?
3 **A.** I did, yes.
4 **Q.** And what were the circumstances surrounding that?
5 **A.** She had left town to go to Sandpoint and was working with
6 an associate of the firms's. I believe his name is Chip.
7 And that was the second or third trip in August where she had
8 left town. And her typical course would be to call
9 FaceTiming the kids shows her hotel room, shows her view, and
10 talk. And that month when trips were taken she was
11 noncommunicative and nonresponsive on those overnights, and
12 with men of suspect who I don't know, I was concerned. And
13 her general behavior was starting to fade in respect to a
14 marital relationship. So.
15 **Q.** Have you ever met Chip?
16 **A.** Yes, I have. He's a nice guy.
17 **Q.** Does he really strike you as a ladies man type?
18 **A.** He's a cowboy. He's tall, dark, and handsome. So.
19 **Q.** So Andrea in the past used to go and then FaceTime with
20 you and the kids and show everything around. Was that ever
21 something you wanted her to do, asked her to do?
22 **A.** No, the kids liked it. That's something she did on her
23 own accord, and they became accustomed to that when she would
24 leave town.
25 **Q.** So Andrea was never under marching orders to contact you

1 and report her whereabouts?
2 **A.** No.
3 **Q.** Those weren't her marching orders. Why did you get upset
4 when she did not do so?
5 **A.** I just noticed a change in behavior. Again I'm a stay-at-
6 home spouse, Mr. Pickett, and I have three children at home,
7 and my other half is out of town. And in a normal, healthy
8 relationship those people want to make a connection at least
9 one time during the day when the other person's out of town,
10 and I noticed that behavior changed.
11 **Q.** Did you punish Andrea when she didn't communicate with you
12 on these trips?
13 **A.** I would get upset with her.
14 **Q.** Would you consider your response to be punitive in any
15 way?
16 **A.** I don't know how to punitively punish her.
17 **Q.** Withhold affection from her?
18 **A.** No. I've always wanted affection in our marriage.
19 **Q.** Give her the silent treatment?
20 **A.** No, I would always allow her to talk to me afterwards and
21 walk me through it.
22 **Q.** Pout?
23 **A.** We would communicate afterwards. I would certainly say,
24 "Here we go again. You're not, not communicating, not
25 responding." And it would be, "My phone died," or, "Sorry,

1 I'm busy," or --.
2 **Q.** Now did it ever occur to you that she may get offended or
3 upset because you continually accused her of misconduct?
4 Wasn't that something that was a consideration for you?
5 **A.** Yeah, but it was, it was a real concern of mine. I was --
6 it was in the context of our marriage and seeing behavior
7 that was not, not normal. And as Dr. Cole said, I was --
8 those behaviors I did were to find out if reporting was true
9 or not. It wasn't, it wasn't a -- anything other than that.
10 **Q.** So because of her behavior you were justified in yours?
11 That's what you're saying, isn't it?
12 **A.** I'm not saying I was justified or unjustified. I'm saying
13 that was the reaction I had to a concern of an outside
14 relationship that -- that shouldn't exist in a marriage.
15 **Q.** And the outside relationship you're talking about is one
16 during the marriage or the one before the marriage?
17 **A.** If we're talking about -- we were just talking about the
18 August of 2015 incident. It could -- that instance, I know
19 Mr. Telquist was in Spokane during that time as well, and she
20 met up with him after her and Chip left Sandpoint. So, you
21 know, it just became a noticeable difference in behavior.
22 **Q.** So are you implying that maybe there was something
23 untoward happening between her and Mr. Telquist in August of
24 2015? Is that what you're saying now?
25 **A.** I think I've had lot of time to think about this, and I

1 think that they certainly, whether they shared it with each
2 other or not, they certainly had some type of connection that
3 was ill defined at that time.
4 **Q.** Did Andrea tell you during that time she was staying with
5 her grandmother, wasn't she?
6 **A.** She was up there for that case with her grandmother, yes.
7 **Q.** Where did her grandmother live?
8 **A.** I think at that time she lived in Troy, Montana.
9 **Q.** Troy, Montana to Sandpoint is not all that close, is it?
10 **A.** I'm not sure.
11 **Q.** Did you insist that she put her grandmother on the phone
12 so that you could confirm her whereabouts?
13 **A.** I may have done that.
14 **Q.** Did you insist that she pan around to make sure that you
15 knew that she was at her grandmother's house?
16 **A.** No, it was a phone call. I may have heard her grandmother
17 wake up, but I don't recall saying put her grandma on the
18 phone, but I may have heard her grandma.
19 **Q.** Looking back, do you think that was maybe the best way to
20 handle the situation with Andrea?
21 **A.** I think anyone looking back can see a better way to handle
22 a situation.
23 **Q.** I'm asking a point-blank question, and I can appreciate
24 what others do. Looking back, do you think that demanding
25 that she put her grandmother on the phone so that you could

1 could put the dog away so the dog doesn't bark and wake up
2 the kids, and that was the first night I was gone in
3 December.
4 **Q.** So backing up a little bit on the counseling, who did
5 Andrea continue to see after Sara Ellingson?
6 **A.** She went to Theresa Cobb I believe.
7 **Q.** Other than Sara Ellingson did you counsel with anybody?
8 **A.** No, sir.
9 **Q.** When did you access Andrea's phone for the first time?
10 **A.** December 23rd I believe in 2015.
11 **Q.** Where were you when you did this?
12 **A.** It was in our home.
13 **Q.** What time of day was it?
14 **A.** I think it was at like around 1 in the morning.
15 **Q.** Did Andrea give you permission to go through her phone?
16 **A.** She was asleep, and I took it off the night stand.
17 **Q.** So you did not request permission to search her phone?
18 **A.** That night, no.
19 **Q.** And the emails in question that you read, were they a
20 private email account or her work email account?
21 **A.** I believe they were her work email.
22 **Q.** In addition to reading them, what else did you do?
23 **A.** I forwarded them to myself.
24 **Q.** How many emails did you read?
25 **A.** I think around 15.

1 you become aware that it was on Andrea's phone?
2 **A.** After I'd lost two phones.
3 **Q.** Can you give me at least a year? Was it in 2015?
4 **A.** Maybe. Could have been 14.
5 **Q.** When did you start monitoring Andrea's location by using
6 the Find My iPhone App on her phone?
7 **A.** I started using it after she had joined this new firm of
8 hers.
9 **Q.** I'm sorry. I didn't hear that past last part.
10 **A.** I started using it after she joined her current firm.
11 **Q.** Do you know how long after? A few weeks, a few months?
12 **A.** I think one of the first times I used it I had needed her
13 opinion on something concerning the children, and I had
14 attempted to call her on her phone, and she was
15 nonresponsive. I called her work, and they said, "She's not
16 here." They informed me that she was not in court, and I was
17 wondering where she was. I needed a response, a joint
18 response from us to I believe a physician. And I looked at
19 it at that time. That was one of the first times I remember
20 looking.
21 **Q.** So you looked at it because she was not responding to your
22 contacts, and wanted to know where she was?
23 **A.** Yes.
24 **Q.** Did you tell her in advance that you were doing that?
25 **A.** I told her that day that I had looked. She had called

1 **Q.** How do you know that?
2 **A.** I went to their wedding in California with Andrea and my
3 family.
4 **Q.** OK. Go ahead. Sorry for interrupting you.
5 **A.** Then I know that in 2017 she was -- received at least
6 papers for divorce from George, and I believe in March of 18
7 divorce was final.
8 **Q.** So when you found out there was something going on between
9 your wife and Mr. Telquist, did and you Ms. Britt
10 communicate?
11 **A.** Yes.
12 **Q.** When did you have your first communication about George
13 and Andrea being together?
14 **A.** I believe I went to her home in January 16.
15 **Q.** 2016?
16 **A.** Uh-huh.
17 **Q.** Who initiated that contact?
18 **A.** I did. I drove over to her house.
19 **Q.** I mean who set up the meeting in the first place?
20 **A.** There wasn't a meeting. I just drove over to her house.
21 **Q.** What was the purpose of that?
22 **A.** To let her know that both of our respective spouses are in
23 a relationship.
24 **Q.** So she didn't solicit you? You just volunteered that
25 information to her?

1 A. Yes.
2 Q. What was the purpose of that?
3 A. Because if I was a spouse I would want to know.
4 Q. Just a courtesy to Dr. Britt?
5 A. Yes.
6 Q. From that point forward how frequently did you and Dr.
7 Britt have contact about the comings and goings of Mr.
8 Telquist or your wife or both?
9 A. We didn't speak until last spring 2018.
10 Q. 2018?
11 A. Uh-huh.
12 THE COURT: We're going to take our morning recess.
13 Recess for 15 minutes.
14 (recess)
15 THE COURT: You may continue, Mr. Pickett.
16 MR. PICKETT: Thank you, your Honor.
17 Q. Now, Mr. Clare, I think we left off talking about Dr.
18 Britt. Now Dr. Britt's office notified you recently, did she
19 not, that they were no lodger going to have your family as
20 patients?
21 A. Yes, I received letters.
22 Q. And do you know approximately how long ago that was?
23 A. It was in mid December I want to say.
24 Q. Do you recall did your side you and your attorneys have
25 Dr. Britt come testify at a deposition?

1 **A.** I listed her as a witness. I think your side called her
2 in a deposition.
3 **Q.** Did she not want to be involved as your family's doctor
4 before or after that deposition?
5 **A.** Before she was OK with us continuing to be seen at her
6 firm. It's my conclusion that after that deposition she
7 decided it would be better to sever any relationship with our
8 family and her practice.
9 **Q.** And do you know if she still going to be testifying in
10 this trial as far as you know?
11 **A.** She's a witness.
12 **Q.** So you approached her in January of 16 to share what
13 Andrea and George were doing. What did you expect the result
14 of that disclosure was going to be?
15 **A.** I did not have an expectation. I just thought it was fair
16 to -- it's a heavy level of betrayal, and me now keeping a
17 secret from another innocent spouse felt like I was, I was
18 continuing in the betrayal, so I just wanted to let her be in
19 the know.
20 **Q.** So you felt it was a moral obligation?
21 **A.** Ah, yes.
22 **Q.** Did it ever cross your mind it was likely going to cause
23 some problems between Mr. Telquist and Dr. Britt?
24 **A.** I thought she had a right to know over his right to
25 secrecy concerning the marriage.

1 Kevin to go and seek counsel from somebody through the
2 church? Was that ever a discussion?
3 **A.** He, he resisted counseling, and it wasn't until after the
4 Chip incident that I got him to go, and that was to Sara
5 Ellingson.
6 **Q.** Throughout your marriage did Kevin make it a point to
7 protect your public image, the at family's image? Was that
8 something that was important to him?
9 **A.** How do you mean? Just what it looked like?
10 **Q.** Yes. Did he care what people thought of you as a couple?
11 **A.** Yeah. Yeah, like I said, our relationship was not what it
12 looked like. It was like my sister said. It looked very
13 good from the outside. A lot of people saw us that way. And
14 you could imagine, you know, how he's able to tell what it is
15 now. At one point after I left he told me that, you know, to
16 see what it looks like, "You left your kids, you know, and
17 basically how I wouldn't be able to explain that to people."
18 He told a lot of people. So the first when I disclosed that
19 relationship before marriage, you know, and we were in that,
20 that counseling session where it was going to be private
21 between us, too, but because he was mad about it, he was
22 entitled to go tell whoever he wanted. And he told all of
23 his friends, all the guys that were in our wedding two years
24 ago or two years prior to that, that what I did. He told his
25 father, and he told his sister.

1 And that was significant to me, because that probably,
2 you know, I came to him and told him something that I felt
3 really bad about, and he had no problem taking that
4 information and sharing it with whomever he wanted. And then
5 he proceeded to tell me what they all said. You know, he
6 said that his sister said that he has grounds to leave me,
7 which severely impacted my relationship with her for a number
8 of years. His dad in Arizona told him to stay, you know,
9 "Stay with Addie." I think he said Ryan Morales did, too.
10 Then it became awkward, these people that he told, wanted him
11 to, you know, divorce me or leave me. It was weird with them
12 after that. Yeah. So he did that again later.
13 **Q.** Since you left Kevin, have you had any continuing
14 connection to Bethel Church, your church for the length of
15 your marriage?
16 **A.** Did I have any relationship with them now? No.
17 **Q.** Why not?
18 **A.** Well, it turns out I learned Christians are actually
19 judgmental.
20 **Q.** Did you share your family business with members of the
21 church?
22 **A.** No. No. He, after I left, he contacted, there was a
23 couple pastors that reached out to me by email wanting to
24 talk to me. You know, his mom and sister would text me Bible
25 verses that had to do with unfaithfulness and why I should be

1 staying in the relationship. The small group that we hadn't
2 really associated with, you know, I didn't know who all he
3 went to, but I didn't know who all he told, and so I stayed
4 away.
5 **Q.** The December 2015, how did the lid get blown off of things
6 in December of 15?
7 **A.** How's that?
8 **Q.** How did the lid get blown off of the situation and things
9 turn in 2015, December?
10 **A.** We went on a family vacation and at the beginning of
11 November, and, you know, with a friend who was there also,
12 and a guy who later wrote a declaration, but we went down
13 there and, you know, on a family vacation. And it was just,
14 it was just really chilly. Kevin and I did not have a very
15 good relationship. And as we left that vacation, I had a --
16 I had a drink in the -- he had a beer. I had a Margarita in
17 the airport, and something was wrong with my Margarita. It
18 had some bad alcohol in it or something, and so we got on the
19 plane, and I -- I threw up. We had three kids. It was kind
20 of crazy. And when I came to, I was on the floor in the back
21 of the airplane and somebody was handing me ginger ale. I
22 had a nice sweater, and it was gone, and I was asking Kevin,
23 "What's going on? Where is Kevin and Cruz's clothes and why
24 is my sweater -- or where is my sweater?" And he was really
25 mad. "Shut up and we'll talk about it later." I was,

1 "What's going on?" And so we traveled all the way from
2 Mexico with him being upset. I don't feel well, but I still
3 don't understand what's going on. He had to contact his
4 parents, because by the time we got to Pasco I was still
5 feeling ill, and I was still throwing up. And, you know,
6 he's feeling like he's maintaining all the kids. I think
7 Cruz was a year and a half. And we get back. And Ryan came
8 over at like 1 o'clock in the morning, I couldn't keep
9 anything down, and I had to catch a flight to go down to LA
10 and argue in the Central District of California. I was the
11 only one who knew that case, and so I had to go down, and I
12 was sick. So I went to the hospital or the ER, and they
13 fixed me up and gave me some medication so I could fly down
14 the next morning. I go down the next morning to LA, and my
15 hearing got canceled as soon as I landed. And I'd had the
16 big, the curse case, and George had changed the route so that
17 we could visit with a doctor down there, a neonatologist, and
18 we met with her and spent the night and flew up to San
19 Francisco and met with a pharmacologist there and spent the
20 night and then went home. And then the week -- then we had a
21 week break, and there was a week that we went over to the
22 east coast, and I asked that we could bill in an extra day,
23 because I hadn't been there to go see Washington, DC, and so
24 we did. And we spent a lot of time together in New York and
25 DC, and it was nice. And we got back, and I started

1 **A.** Well, we tried not to make it that way, but I wouldn't, I
2 wouldn't go in front of his parents. I didn't want to see
3 his family what they knew. He kind of let it out of the bag.
4 There's no way you could put it right back in. They were
5 going to judge me. They were going to be upset with me. So
6 I told him that I think he could have taken the kids over
7 there and I stay home. But I mean.
8 **Q.** Kevin accessed your emails. That's your work email, am I
9 correct?
10 **A.** Yes.
11 **Q.** And do you know how he got access to them?
12 **A.** My phone.
13 **Q.** How was he able to get past any password security in your
14 phone?
15 **A.** At that point he'd previously been able to, you know, we
16 knew each other's passwords, so he could access my phone.
17 And I was afraid if I changed it that he would be suspicious:
18 "Why did you change it?" So I changed it, and I kept it
19 close to me during that time period. So the only way he
20 would be able to access it was through my phone.
21 **Q.** Through thumbprint access?
22 **A.** Yes.
23 **Q.** Can you understand that? Play devil's advocate. He just
24 finds that his wife may be having an affair with somebody
25 else. Can you understand why Kevin may be upset?

1 session. And, you know, we do intakes, and then they would
2 have to go through the 24-hour session. And a lot of the
3 session was about, well, it was about the psychology. It was
4 about their behaviors and about their beliefs and about their
5 intents. And so it was a place where men would be challenged
6 and also supported to change. But because there's so much
7 denial, there was a lot of work in respectfully challenging
8 their beliefs and behaviors and what they were speaking and
9 how they were relaying the story.
10 **Q.** You mentioned "criminal justice system" multiple times.
11 Do people that report, participants in your groups and
12 sessions, were any of them not there for criminal justice
13 purposes?
14 **A.** About half of them were through criminal justice. Well,
15 let's say two thirds were either one third criminal justice,
16 one third civil court through orders for protection, and
17 maybe a third, 25%, were voluntary.
18 **Q.** And can you please explain the curriculum of these
19 classes? What specific things you were doing to help, try to
20 help or treat, for lack of a better --
21 **A.** You know, it was very interesting, because we began. We
22 began in 83, and there was very few curriculums and examples.
23 And we began thinking this was an anger management problem.
24 This is again 83, late 83 into 84. And we started using the
25 cycle of violence theory that there's a build up and he

1 explodes, and there's a honeymoon period where he's a nice
2 guy, and then just keeps going. Explodes, goes down,
3 explodes. And because we thought maybe he was just not in
4 control of himself. And so he had to pay attention what are
5 those quote/unquote trigger moments? What are the things
6 that happen? And take time out. And what started happening
7 is we started seeing guys utilizing the time in another way
8 to control his wife, the children. She'd have some
9 complaint, or she'd have some concern, and he'd immediately
10 say, "I need time out." And this is really reflective of
11 what he would do all the time with her. Only now he was
12 using the tools we were teaching him to get a little bit
13 better at it. He'd say, "My counselor said I should take
14 time out," and she'd see him walking away when he had
15 concerns. We also were teaching life skills, because we
16 thought he just didn't know any better because he didn't have
17 the skills. And we found again what happened is, for
18 instance, I do assertiveness. We do assertiveness. OK.
19 Rather than aggressive responses, do assertive responses.
20 And I'd send him home, practice it with your wife. OK so
21 when something comes up, here's how we want you to act, not
22 aggressively. Assertively. And he'd come back next week and
23 I'd ask them, "How did it go?" "Didn't work. "Why not?"
24 "Well, I wanted her to do something, and she wouldn't do it.
25 So I tried your assertiveness, and it still didn't work."

1 **A.** So it wasn't treatment, because it's not treatment. This
2 is not psychologically related, and we know that. And
3 research, we found that out in the mid 80s. Actually so I'll
4 come back to, and I'll answer. In the mid 80s when men first
5 came to our program, we did psych evals all the time. Every
6 intake included a psychological evaluation, and they came out
7 great. They basically reflected the general population to a
8 level of mental health issues. Now the victims, the women,
9 didn't come out very good, because they were dealing with the
10 trauma. So they'd come up with depression, anxiety, and
11 those kind of things. And what happens, the men would start
12 taking the psych evals to court on custody cases where the
13 women are trying to leave them, and they'd say, "here's my
14 eval. I'm fine." And here's her eval, and she's done. So
15 when we saw how they were manipulating the system that way,
16 and we saw that the psych evals had no correlation to
17 decision making, then we stopped doing psych evals. And
18 technically it was research in 94, excuse me, early/mid 90 s
19 there was research that clarifies that it's not a
20 psychological issue. It's not medical. It's about
21 behaviors. It's about intents. It's about culturally
22 inclined. And so again I worked for ten years with about
23 2,000 men, that time period coordinating the program for
24 about six years and then started the Gender Violence
25 Institute in 1993.

1 MR. PICKETT: I'd ask to admit number 8.
2 THE COURT: Any objection?
3 MS. BROWN: No, please admit it, your Honor.
4 THE COURT: 8 is admitted.
5 **Q.** You mentioned doing trainings. Have you ever done any
6 trainings for members of the legal system, the court system
7 other than the criminal justice portion of it?
8 **A.** Yeah, judges trainings. Actually a couple years ago I did
9 a training at the NCJFCJ, National Council of Juvenile and
10 Family Court Judges annual conferences about domestic
11 violence, and understanding that men are conscious of
12 behavior and don't lose control of themselves, they're very
13 conscious of it.
14 **Q.** Have you ever worked with anybody in the social services
15 area?
16 **A.** Yeah, child protection. I trained child protection
17 extensively in the past as well. So and like I said, helped
18 write some guidelines. What is the unique aspects of
19 domestic violence?
20 **Q.** Would you agree with me there's lot of reference to
21 domestic violence that domestic violence has many meanings,
22 depending where and when it's being discussed? Would you
23 agree with that?
24 **A.** Yes.
25 **Q.** So could you please? What does the term "gender violence"

1 did you work with in the role of basically monitoring
2 offenders, participation in your classes?
3 **A.** At that time? Well, Saint Cloud is in the middle of three
4 counties, so probably three, four, five counties.
5 Predominantly Benton County, Stearns County, predominantly
6 those two, and some in Sherburne County, and work with
7 prosecutors, and, well, all of law enforcement.
8 MR. PICKETT: Your Honor, I'd ask your Honor to
9 identify him find that he is an expert in the field of gender
10 violence and domestic violence, and he should be able to
11 testify and provide opinions accordingly.
12 MS. BROWN: We renew our objection your Honor.
13 There is no foundation laid as to his connection to this
14 case.
15 THE COURT: All right. I'll find that he is an
16 expert as described by Mr. Pickett. However, I am concerned
17 about his opinions in this case, because we need some
18 foundation in that regard.
19 MR. PICKETT: Certainly.
20 THE COURT: So I would allow you to ask hypothetical
21 questions. I'm not going to allow him to testify on the
22 basis of conversation he had last night with somebody. So
23 you're going to have to develop a foundation for the opinions
24 that he gives based on the testimony in court. He didn't
25 hear the testimony of Mr. Register, but that you can ask him

1 starts swearing at her and waving his arms right next to her
2 face. And this is something I've seen men who batter do
3 quite often. If it's right next to your face, this is about
4 intimidation. And then she said she left. She said, "I'm
5 getting out of here." And I asked her last night why? What
6 were you worried about? And she said she was scared about
7 what would happen. And she went downstairs, and she ended up
8 she didn't leave just 15 minutes, half hour to let him calm
9 down. No, she left for the evening because of the danger,
10 the concern that she had, and she went and stayed with
11 somebody that she had just met, with my understanding, that
12 she had just met in the bar. And the next morning, of
13 course, the next morning she has to come back, and the way
14 she appeases and stay safe, key word "stay safe" is by
15 apologizing and saying, "I'm sorry. I'm sorry I didn't see
16 you giving me your look."
17 And he's got a look. And no one else can recognize it.
18 And working with men who batter, they always talk about the
19 look. I've got a look. I've had guys tell me stories of
20 being at parties with a room this size, and their wife is
21 over there talking to somebody that the guy doesn't want her
22 talking to, and he's talking to somebody here, and all he
23 does is he looks up at her and goes like this. And 45
24 seconds later she's right here right next to him. Now the
25 person she's talking to had no idea what's going on, and the

1 person he's talking to had no idea what's going on, but she
2 knew that just that look just like that, she didn't get her
3 butt right over here right now, she was going to get hurt.
4 And so I've noted that Andrea had mentioned that he had a
5 look of that. And then and coming back, she's the one who
6 has to say "I'm sorry" even though he's the one who crashed
7 through the door, intimidating to the point where she leaves,
8 and they're on vacation. They're playing. They're on
9 vacation. And to appease him she has to say, "I'm sorry.
10 I'm sorry. It was me, and I'm sorry," until he's appeased.
11 This is very common. I've seen this time and time and time
12 and time.
13 **Q.** The incident she described in the parking lot, are you
14 aware that happened quite some time ago, several years ago?
15 **A.** Uh-huh. Uh-huh.
16 **Q.** Why is it still significant today if it was a remote-in-
17 time incident?
18 **A.** It's really interesting. A lot of the men that came to
19 our group, they're volunteers, and it's either their wife had
20 left or they were going through divorce and a custody thing
21 going on, and as soon as the wife came back they would quit
22 the group six or eight weeks, but so many would say, "I
23 wasn't physically abusive. Some of the stuff maybe I did,
24 but I wasn't physically abusive." And then I'd ask them more
25 questions more in depth, and then I found out they had been,

1 at least once, and usually more than once. And what happens
2 is even if that abuse happened five years ago, it lays this
3 foundation. It gives her the message loud and clear: "You
4 don't do what I want, and all else fails I've always got
5 this." Violence is very functional. Violence is very
6 effective means of controlling someone. We know this
7 historically, individually and collectively. So once this is
8 in place, all he has to do is remind her.
9 Now some men will be violent very often, you know, three,
10 four, five times a week. And some men will be violent not as
11 often. So this case happened five years ago, but that
12 doesn't leave the woman's head, especially when he stands in
13 the door when she wants to leave. Her independence, he's
14 lock blocking her independence. He's a tracking her. He's
15 stalking her, right. All these things continue to relate,
16 "No, I'm the captain of the ship. You're the first mate.
17 I'm the king of the castle. I, I'm the head here." So it's
18 hierarchical. It's not co, co-captain thing.
19 **Q.** You mentioned the captain and the first mate. Where does
20 that analogy come from?
21 **A.** Well, that came out of declarations that I read. I read
22 all the declarations.
23 **Q.** If you please have the wheel in front of you. Let's talk
24 about a few of these quadrants. Excuse me. Not quadrants.
25 Pie-shaped things. Using intimidation. You mentioned acts

1 people who -- part of a congregation, family, friends, to
2 write declarations to the Court, over 30. This is extreme.
3 Isolating her, keeping her off, and then presenting her as an
4 uncaring mother, more concerned about her job than caring and
5 maybe drinking and caring about the children. And had all
6 these people write declarations, which they were all very
7 similar, so obviously they had a template from his attorney.
8 But again it costs women to bring this forward. It costs
9 them a great deal, especially a professional woman an
10 attorney in a small community. Wow. "I'm a battered woman."
11 You know what people think about battered women? They think
12 about weak women, low self esteem, curled up in a ball, and
13 that's not who they are. That's who I thought they were
14 before I started to doing this work. They're strong. They
15 are amazing. And it's incredible the brilliance they have in
16 protecting themselves and their children from their abuser,
17 because we cannot give them a 24-hour seven-day-a-week guard.
18 We can't, and they know that. So every interaction they have
19 with the system is a threat. Is a risk. And so for them to
20 take that risk and have limited support, especially if the
21 abuser has portrayed her, as in this case, as a -- infidelity
22 and uncaring about the kids and heavy drinker and works late,
23 and he's the caring father. People are buying that, because
24 men who batter will often portray themselves publicly as very
25 nice, kind, caring, loving individuals, and privately that

1 **A.** About when the behavior becomes public? Well, it kind of
2 depends how they play it public. So they present themselves
3 as a really well-meaning good dad, loving husband, who is
4 just a victim of the person they victimized, right. And then
5 it's comes out the evidence suggests that's, not, that's not
6 true, that's false, they'll usually go somewhere else.
7 They'll go to other communities, or they'll go to other
8 congregations, or they'll go -- depends what their circle is.
9 They'll go to somewhere else and restarts the story, because
10 it hard. You know, when that story comes out, a lot of
11 people will buy the idea that he, you know, has got anger
12 management issues, or he lost control, or she's done
13 something and it justifies his behaviors, whatever they are
14 on the wheel. And people will buy that, people in the system
15 and people in the culture, so it really entraps. Men can use
16 the system and use the culture as a way to further control
17 her.
18 **Q.** You mentioned, you know, portrays his self as good parent,
19 good whatever. In your experience are these batterers
20 typically bad parents?
21 **A.** Well, typically they use the children to harm the mother.
22 And so consequently it has a very negative impact on the
23 children, and both whether they're together or separate, and
24 it doesn't stop after a divorce. That continues. When we do
25 risk assessments of battered women we go to two, two, 20.

1 Two months, two years, and 20 years, because as long as those
2 children, children's children become adults, they have this
3 connection. He has this connection to her and will
4 manipulate that connection as best he can and will push the
5 boundaries of any kind of court order, etcetera, etcetera, to
6 eliminate those boundaries so that he has more opportunity to
7 control her. It's through using the children. So not that
8 men who batter don't love their children. Some don't care
9 much about their children. Some care quite a lot about their
10 children, but in many cases they care more about controlling
11 the children's mother and the child than the impact of their
12 behaviors on the children and on their mother. In fact they
13 care about the impact. The impact is conscious. "I want
14 this to hurt them. I want this to confuse them. I want them
15 to think that their mother doesn't care about them. I want
16 to show them that their mother doesn't have authority to
17 discipline you. I decide. I'm the king of the castle. Not
18 her. I want you to listen to me." And they'll do it through
19 negative aspects and positive. They'll do nice, beautiful
20 things with their children, and sometimes in the context of
21 sabotaging a relationship with the mother. The mother
22 promises the child something, and then the dad does it before
23 the mother can. So it takes away that powerful connection.
24 **Q.** In general terms, what is your experience with abusers in
25 terms of interactions between you and them? I mean guy to

1 partner in different kinds of methods. And so some of the
2 methods of which Miss Clare has shared, those are familiar.
3 Although they are quite extreme I must say.
4 **Q.** There's also some allegations of isolating her from
5 significant other, or excuse me, I'll move on from that one.
6 Have you seen or heard of examples of Mr. Clare's or
7 allegations about Mr. Clare's behaviors involving the
8 children and the dynamics of intimate partner abuse?
9 **A.** Yes.
10 **Q.** What are some of the examples that you can recall of
11 behaviors that, if true, would be of concern to you?
12 **A.** Regarding the children? Or in general?
13 **Q.** Regarding the children.
14 **A.** Oh, a number of things. Questions involving, "What's mom
15 doing?" You know, kind of having them as spies to some
16 degree. Calling them when they're with mom to find out what
17 mom's doing, because mom's not going to answer the phone
18 anymore, right? Undermining, you know, kind of letting them
19 know that mom doesn't quite care. I mean one of the things
20 that I was -- about the doing the same way I do. I thought
21 it was really interesting. I mean I just found out last
22 night about this thing that happened last week, and Mr. Clare
23 had the children over the holidays, and apparently Kennedy
24 had just completed a reading assignment or reading class
25 successfully. And my understanding is that her mother said,

1 **Q.** Did Mrs. Clare ever threaten to turn in Mr. Clare over to
2 the FAA?
3 **A.** Not to me, no.
4 **Q.** I'm looking at page 25. You confronted Mr. Clare about
5 some medical records, and ultimately I think you indicated he
6 denied ever saying this. Did he ever elaborate on why the
7 records would do this at the same time? I'm sorry. Did he
8 ever try to explain to you why there may have been a
9 discrepancy between his memory and what the reports say?
10 **A.** No. I can say that he did say there was a different
11 reason for the anxiety and his issues other than the
12 children, but he did not say why it would be different from
13 the report and what he recalled.
14 **Q.** Did Mr. Clare attempt to shift blame about his failure to
15 report to the FAA on anybody?
16 **A.** Yes.
17 **Q.** Who was the culprit in his eyes?
18 **A.** Miss Clare and mostly Miss Clare, and then there was an
19 attorney in Seattle that he consulted about whether he should
20 or should not report to the FAA.
21 **Q.** Now do you know whether Mr. Clare's filed a lawsuit
22 against Mrs. Clare?
23 **A.** Yes.
24 **Q.** Do you know whether Mr. Clare has filed a lawsuit against
25 this nameless faceless aviation attorney in Seattle?

1 later. It was actually in writing.
2 **Q.** If you would do me a favor, please. Page 570 you start
3 your summary of contacts with Dr. Page. When was the first
4 time you learned that Mr. Clare was going to be evaluated by
5 Dr. Page?
6 **A.** There was some discovery issues early in the year. As far
7 as mom asking for an independent medical evaluation. And so
8 there was that. And then there was subsequently some letters
9 that he wasn't going to be.
10 As far as me finding out prior to Dr. Page, doing the
11 psych eval, I was not. I was aware of prior to receiving the
12 psych eval. I was made aware that there was a psychological
13 evaluation out there that may be forthcoming, but I did not
14 know what the results of it were or what the context or what
15 the date of it was.
16 **Q.** Do you know generally the time frame that you were told
17 that there would be a report forthcoming?
18 **A.** If I could. It might have been October 24th, 25th, in
19 that time range. I'd have to look at the emails between
20 myself and Miss Brown. There was communications. It was I
21 had sent the email requesting the consent to communicate,
22 that she asked to speak with me, and I spoke with her the
23 following day. And I addressed the psychological evaluation
24 issue with her, and she had said, "Just to let you know, it
25 has been done." And I hadn't seen anything. I had seen

1 communications on Family Wizard with, "Why am I not getting
2 the three names?" And she said it had been done, and she
3 said it's going to be forthcoming, but don't quote me on
4 that. And I just kind of sat on it and waited for it to
5 come. But it would have been, I know it was prior to
6 billing, so it would have been prior to October 30th. And so
7 it was probably maybe a ten-day time frame from the time I
8 found out there was actually an evaluation floating around
9 out there to the time that I saw it, and that's a rough
10 estimate.
11 **Q.** And just if you would, please, if you would take a quick
12 few at page 683. It's the first page of the report. Prior
13 to Miss Brown sharing with you that there had been an
14 evaluation, had anybody else told about you this evaluation?
15 **A.** No.
16 **Q.** And if you look on the report on that page 683, apparently
17 it's dated 9-28-18?
18 **A.** Yes.
19 **Q.** And your report date is November 15th, 2018. So it had to
20 be sometime between the it 28th of September and November
21 15th?
22 **A.** What would have to be between? What had to be between
23 them? I don't understand.
24 **Q.** Oh, the receipt of the report. I'm just trying to nail
25 down when you got the report.

1 comment to me. I told her, you know, at some point I need
2 to, I'd asked her about recording interviews with the
3 children, and she said that was OK. But Cruz, my intent
4 going there was to see if he randomly made a comment
5 regarding this, and he did not. And I'm again not going to
6 try to elicit a response from him or any other child to try
7 and corroborate a statement made to me by a parent. If a
8 child doesn't say it, the child doesn't say it.
9 **Q.** There's a reference if you look at page 559 line 18.
10 THE COURT: Which page, Counsel?
11 MR. PICKETT: I'm sorry, your Honor. Page 559.
12 **Q.** And I'm talking about Miss Smart apparently discussed with
13 one of Cruz's comments about wanting to go to his other
14 school?
15 **A.** Yes.
16 **Q.** And did you ever yourself hear Cruz make any such
17 statements?
18 **A.** He did in that interview. He made the comment that it was
19 really a twisted interview. He was very back and forth. And
20 he didn't like Jacks last year because they made him take
21 naps, and there was a time when dad actually went to the
22 school during mom's time and took him out because he didn't
23 like nap time, took him out, and mom found out subsequently.
24 So when asked, you know, "Do you like this school?" He
25 didn't like the school. He liked the old school better. The

1 new school makes him nap. The old school didn't make him
2 nap. If you remember the old school he was at dad's house
3 all day playing on an iPad. And that when she made this
4 comment about, "Any kid would prefer to be at a house where
5 they're playing on an iPad all day instead of going to the
6 school."
7 **Q.** You mentioned having an interview with Cruz himself. I'm
8 asking please look at page 560 and line 8 it starts. You had
9 the interview at the school itself. Is that where it
10 occurred?
11 **A.** Yes.
12 **Q.** And coming back to these Pop Tarts again. How many times
13 have you heard Pop Tarts part of the investigation in this
14 case?
15 **A.** I cannot count. This is the first time that I'd heard it
16 come from one of the children. But Mr. Clare hammered on a
17 few times. His mom, his step dad, his sister, there was
18 quite a bit of mention of Pop Tart, and of course I had to
19 follow up with all mom's collaterals. "Do you see the
20 children eat Pop Tarts all the time?" But this is the first
21 time I heard a child say it.
22 **Q.** If you'll please look at line 16. Appears you had a
23 discussion with Cruz about the school. And would you please
24 look at lines 16 through 19? Were any of these things Cruz
25 told you about his school accurate, at least according to the

1 here today?
2 A. I believe that someone from the TCM office contacted the
3 Battered Women's Justice Project, who's a national trainer
4 and on domestic violence that is particularly related to
5 custody issues, and asked them for a reference for an expert
6 witness, and they shared my name.
7 Q. And you know approximately when that was?
8 A. Oh, let's see. I want to say early 2018, but I'd have to
9 look at my notes to be sure.
10 Q. But sometime within the last year?
11 A. Yes, yeah.
12 Q. And where did you currently reside?
13 A. In Clearwater, Minnesota.
14 Q. Just for reference point, how close is that to Minneapolis
15 or one of the other major --
16 A. It's about, it's about an hour, hour and a half north,
17 northwest of Minneapolis and a little bit south of Saint
18 Cloud, Minnesota.
19 Q. Mr. Deery, what do you do?
20 A. I'm a consultant on sexual and domestic violence and
21 violence against women.
22 Q. Are you employed by a particular agency or company?
23 A. I'm in a partnership with Rose Thelen Gender Violence
24 Institute.
25 Q. And where is the gender violence institute?

1 **A.** It's in Clearwater. It's the home office. It's just the
2 two of us as consultants and trainers.
3 **Q.** When did you first become involved in the field of
4 domestic violence or things related to intimate partner
5 conflict?
6 **A.** In 1983. I was 27 years old, and I was actually doing
7 construction work at the time, and it really wasn't my --
8 wasn't what I was interested in doing. And my wife at the
9 time had been working as an advocate at a battered women's
10 shelter, children's advocate, and we moved from metro area to
11 Saint Cloud, and I had some friends, friends of friends in
12 83, a woman who had been an advocate at the shelter and went
13 up to Duluth, Minnesota. And they had just, just developed
14 the domestic abuse court response model dealing with criminal
15 justice system to arrest men who were beating, raping their
16 wives and children and prosecuting them, hold them
17 accountable. And came down to Minnesota and put that model
18 into effect in Saint Cloud, and they wanted to hire somebody
19 to work with men who batter, and so I was hired to do that.
20 Now the interesting thing, this was 83, and so people
21 were just starting to work with men who batter, and the bar
22 was fairly low as far as the interview, because the last guy
23 they interviewed, they asked him, "What do you think about
24 sexism?" And he said, "Well, sex is good. I like sex." No.
25 Right. So I knew what "sexism" was. So one of the reasons I

1 remember saying that?
2 A. No, I don't. That I told her that he would only do
3 something if he was provoked? I'm sorry. Could you repeat
4 that?
5 Q. I asked if you said your son doesn't do anything until
6 he's provoked?
7 A. I don't remember saying that.
8 Q. You said you don't remember --
9 A. I don't remember saying that.
10 Q. Now, ma'am, did you ever have a conversation with somebody
11 from your church about Andrea taking a trip to Hawaii?
12 A. Yes, but the conversation was not initiated by me.
13 Q. And you actually wrote a statement for your son that was
14 filed in this case. Do you remember doing that?
15 A. Yes, I do.
16 Q. Does May of 2018 sound about right timeline-wise for you?
17 A. I was thinking it was in the summer, but.
18 Q. You are correct, ma'am, that according to your declaration
19 on Sunday July 23rd of 2017 you had this conversation?
20 A. Correct. Well, yeah, yes.
21 Q. And you identified there a Lorene Carrie?
22 A. Laurie, uh-huh, Carrie.
23 Q. And from what I understand she's a friend of Mr.
24 Telquist's former mother-in-law?
25 A. Correct.

1 **Q.** And this is not Amy Britt, George's ex-wife. It's his
2 first ex-wife.
3 **A.** First ex-wife.
4 **Q.** And according to what I've read in here, she is the one
5 who told up after church that Andrea was in Hawaii?
6 **A.** She asked me if I knew where she was, and I said, "No, I
7 don't know where she is."
8 **Q.** Lorene stated that George and his children had been in
9 Hawaii or were in Hawaii?
10 **A.** That's what she told me.
11 **Q.** And then you told that to Kevin, because Kevin was
12 actually baby sitting -- or not baby sitting. He had their
13 children while he was gone?
14 **A.** Yes.
15 **Q.** Why was it important for you to discuss Mrs. Clare's
16 whereabouts with anybody?
17 **A.** It wasn't. She asked me a question, and I said to Kevin,
18 "Is Andrea in Hawaii?" And he said, "I don't know where she
19 is."
20 **Q.** That's my point. You weren't actively asking people what
21 was going on with Andrea?
22 **A.** No, absolutely not. I never wondered where she was or
23 what she was doing.
24 **Q.** But you also, Kevin, you said Kevin told you that Andrea
25 and their daughter Kennedy were wearing Hawaiian dresses.

1 **Q.** So how long did it take for you to get over these trust
2 issues?
3 **A.** I think forgiveness took around a year. Certainly there
4 was you hurt and trying and wanting to forgive. And Kennedy
5 and Andrea, being pregnant with Kennedy and having Kennedy
6 was a new focus and a new direction in our life, and that
7 helped. We both had, were very grateful for her birth, and
8 14 short months later Canon came along. So we felt blessed,
9 and we had a new focus, and I think a solid year to at least
10 get over it so it wasn't in the back of my mind.
11 **Q.** So after the first year after the disclosure, you don't
12 think that you were still harboring any bad feelings over
13 that? You were over it, to use your terms?
14 **A.** I was over it, yeah. It came back to surface in 2011
15 after Canon was born. Andrea had a client who owned a rock
16 crushing business out of Portland, and it was a long case,
17 and after that case was over, that client would still pass
18 through town, and she would meet him for coffee or lunch, and
19 I found about it in a nonchalant way. Either she told me or
20 someone had told me they'd seen her in a restaurant and I got
21 the same feeling I did in March of 2008, and I certainly
22 wasn't mad. I was hurt, and I felt wounded again. And after
23 discussions with her, she certainly felt bad that I felt bad,
24 and after discussing what to do about this, we both came up
25 with, "Hey, let's, let's try this. If you were going to go

1 **Q.** Is that done for some improper purpose?
2 **A.** It's in case I lose my job and my occupation as a pilot.
3 **Q.** When you and Andrea separated back in early 2016, did you
4 ever enter her apartment from a second-floor balcony?
5 **A.** Yes, sir.
6 **Q.** How many times did you do that?
7 **A.** There's been a -- there's been it's been said twice or
8 three times, and I think as I sit here today the
9 clarification would be that there were three occurrences
10 where the balcony was used, one of which was with Jonathan
11 Allen and two of which were myself.
12 **Q.** Now the apartment that you entered of Andrea's, were you
13 on the lease?
14 **A.** No.
15 **Q.** Were you entitled to have access to that home or to that
16 apartment?
17 **A.** During the times of those entrances, two of the times
18 Andrea was there and in company as we, um, as we got on the
19 balcony and entered the apartment. And the third time I was
20 invited over for dinner.
21 **Q.** And you took a dinner invitation to mean you could go jump
22 on top of a Suburban, climb onto a balcony, and enter without
23 an invitation?
24 **A.** No, that's exactly the opposite. I had received an
25 invitation, and her front door is on a busy street where no

1 upsetting." And so, so I didn't, and two years into the
2 marriage my friend that I went to church with thought, "I
3 think you need to tell somebody." She suggested I not rely
4 on just her, and so I went to see a counselor at the church
5 and asked him what his thoughts were on this relationship
6 that I had prior to marriage.
7 **Q.** And what ultimately led you to just to tell Kevin about
8 this?
9 **A.** It was biblical counseling you want to keep everything in
10 the open. It's a good idea. I thought it's really going to
11 hurt his feelings. I don't want to -- I didn't want to do
12 that. And he said, "Well, you know, it can be a bonding
13 experience as you go through something like that." So he
14 suggested it was a good idea. I was concerned about telling
15 him. Scared to tell him. And we'd come up with a plan as to
16 how that would work, and so we basically set an appointment
17 for Kevin and I to go back into the counselor's office, and I
18 would tell him the night before, and we would have an
19 appointment with the counselor the next morning.
20 **Q.** And where did you ultimately tell him?
21 **A.** At Applebee's in Pasco.
22 **Q.** Prior to the time of you telling him that, what was the
23 relationship dynamics between you and Kevin when it came to
24 independence, dependence, trust, mistrust, that sort of
25 thing?

1 **A.** At that point in our relationship Kevin had -- and so we
2 dated for eight years, and his previous relationships had
3 ended in, you know, somebody cheating he said. And so he was
4 very insecure. And my comment was, "I'm certainly not going
5 to have that and only make it worse." But it was only a few
6 years into marriage it wasn't near what it came to be later.
7 **Q.** After you told him what was his reaction?
8 **A.** Mad.
9 **Q.** What did you do after in you were in a public setting?
10 Where did you go after that?
11 **A.** Home.
12 **Q.** And did you have any discussions with him when you got
13 home?
14 **A.** You know, at that, at that time you asked me about how our
15 relationship was. I was concerned about him lashing out at
16 me, and so that's why we went to a public place. You know, I
17 started crying, and I tell him, "I need to tell you something
18 that I had a relationship before we got married, and, you
19 know, I'm sorry about that, but I wanted you to know. And he
20 was mad. He -- it was outside. We had a couple cigarettes,
21 and I remember sitting on the steps crying, and he's like, "I
22 just want to go home. I want to go home." We went home, and
23 I didn't know exactly what was going to happen. We went
24 home, and he told me to sleep on the couch.
25 **Q.** Was that the end of the discussion for the night?

1 **A.** Well, I don't know what we did. I don't remember anymore
2 talking.
3 **Q.** Now I want to -- I don't meant to sound harsh, but what
4 did you think he was going to do? How did you think he was
5 going to react to this news?
6 **A.** I just didn't want him to lash out at me.
7 **Q.** Wouldn't you agree that he'd have kind of a pretty good
8 reason to, given the circumstances?
9 **A.** I -- I don't know. I mean you could be upset, but he had
10 a tendency to be horrible, and I was there, you know,
11 apologizing. I was sorry, and I just wanted to go to
12 counseling, and the counselor was to -- and the counselor was
13 telling him, "You should be at least appreciative that she
14 became honest and she told you. She isn't trying to keep
15 this secret, and so that counts. She want to have a good
16 relationship with you and be open and honest, but you can't
17 be mean to her. You can't, you can't punish her, you know."
18 And did. So.
19 **Q.** So the night he told you to sleep on the couch, what
20 followed up on that? You were out on the couch. What
21 happens?
22 **A.** You know, I was really emotional, and I didn't know what
23 was going to happen, and we get home, and he tells me I'm
24 going to sleep on the couch, and it's about this big. And
25 within like five minutes he comes out to the couch, and he

1 sits with me. And I kind of thought. You know, the next day
2 my friend asked me, "So how did it go?" And I'm like, "You
3 know, we made love, so maybe it's all OK." You know.
4 **Q.** And in relation to time, how long prior to you choosing to
5 have Kennedy or choosing not to avoid having Kennedy did this
6 disclosure occur?
7 **A.** He, like I said, he was really, he was really upset, and
8 over the course of the next few months wasn't sure he wanted
9 to stay married. Had he known, he wouldn't have married me.
10 He claimed, you know, I used false pretenses to get him to
11 marry me. So we waited for a while before we -- you know, I
12 thought, "Well, before we have kids we should probably decide
13 if we wanted to stay married."
14 **Q.** And did things eventually improve over time?
15 **A.** Well, yes, because it was in 2007 that I told him, and a
16 year later we decided to have children and got pregnant right
17 away.
18 **Q.** And after Kennedy was born or the time Kennedy was
19 conceived, where were you working? Where was Kevin?
20 **A.** I was at Leavy Schultz, and he was doing the pilot
21 training or instructing and at the restaurant still.
22 **Q.** When you realized you were going to have a child and a
23 family, did you and Kevin discuss employment, finances,
24 financial issues going forward and expectation of having the
25 baby?

1 ask permission, but I need to know before it happens, not
2 after." And then again, you know, several years later I
3 would think, OK, maybe the rules are a little more relaxed,
4 and he'd just get madder. I remember lots of times, but he
5 would say, you know, "Why did you forget the fucking rules?
6 Those are the rules. You're supposed to be really smart, and
7 you're a lawyer. Why can't you remember? They're easy."
8 **Q.** What kinds of things would trigger those behaviors from
9 Mr. Clare?
10 **A.** All sorts of things. He was incredibly insecure, and
11 apparently it was my problem for working in a male-dominated
12 industry. I'm working around a lot of men and, you know, and
13 I'm a lawyer, and I'm attack attractive, and it's not me.
14 Sometimes it's not my fault. Sometimes it's them who are
15 after you. And so it changed all the time. That came up a
16 lot.
17 **Q.** A little bit of a side note. What's the highest court
18 you've been in front of in your professional career?
19 **A.** Well, which level? I've been to the 9th Circuit a couple
20 of times and the State Supreme Court.
21 **Q.** So you could handle our State Supreme Court or Federal
22 Court of Appeals. Why didn't you stand up to what was
23 happening to go you?
24 **A.** Yeah, so I felt guilty. I felt a lot of guilt for what I
25 did. And Kevin convinced me his reactions were because of

1 what I did. So anytime it'd come up and he'd lash out, and
2 I'd say, "That's, that's not nice. You're being mean, you
3 know, and you said some really mean things." You know, he'd
4 say, "Look, Andrea. I only get upset 'cause you hurt my
5 feelings, and so if you don't hurt my feelings, I don't get
6 upset." If that makes any sense. I felt a lot of guilt for
7 years, and so every time this came up I would cry. I'd
8 apologize. I took it on. It was me and until he resolved
9 it. I was religious. I don't know if that's the right word,
10 but I would submit to him. I know that seems
11 counterintuitive, and all those people out there probably
12 think so, but just because I'm a lawyer and I can be tough in
13 the courtroom doesn't mean I go home and get my way.
14 **Q.** What other long-term relationships have you had other than
15 Kevin?
16 **A.** It's just Kevin.
17 **Q.** And you guys have been dating or together since you were
18 how old?
19 **A.** Eighteen.
20 **Q.** Now with the birth of Kennedy, the start of your family,
21 did things with Kevin improve?
22 **A.** In terms -- well, in that way no. No. Other than I just
23 had a baby, so I'm not very attractive, and then I got
24 pregnant again, and that made us really busy. It was after I
25 think Kennedy or Canon that I remember thinking I'm just -- I

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24 pregnant again, and that made us really busy. It was after I
25 think Kennedy or Canon that I remember thinking I'm just -- I

1 you have Cruz. How was the dynamics in the marriage then?
2 What were the status of the rules at that time?
3 **A.** After Cruz?
4 **Q.** Yes.
5 **A.** The rules were the same, except when I changed firms the
6 rules, well, the rules didn't change. It was those guys in
7 my firm. So now I couldn't see any of the people from Leavy
8 Schultz without telling him beforehand, and I can hang out
9 with and have lunch with guys from my new firm.
10 **Q.** Now there was some discussion about Beau Ruff. Who is
11 Beau?
12 **A.** My former law partner.
13 **Q.** At Leavy Schultz?
14 **A.** Yes.
15 **Q.** What prompted you to share his inappropriateness with
16 Kevin?
17 **A.** I shared everything with him. I certainly didn't want him
18 to find out later. He was never concerned about Beau. The
19 Beau stuff started a long, you know, while I was at the
20 office. And is he just never was concerned about Beau. My
21 opinion, he didn't, he wasn't threat bind Beau.
22 **Q.** But you mentioned changing law firms. How did changing
23 the law firm decision get made?
24 **A.** It's as he talked about. George had left the firm and
25 three months after I started in 2007. He was the one that I

1 **A.** Bryan Davis, he's a high school friend, and his wife.
2 **Q.** And was Rich was a former associate, an attorney?
3 **A.** Yes. And John and his wife and I think Beau and Diana
4 came over. I don't recall whether they had a baby sitter,
5 because it it seemed like it was all adults. And a client
6 that I had become friends with, I'd represented him in his
7 divorce, and he was a friend of us, and he came over. And I
8 could tell Kevin thought I was talking to him too much.
9 Kevin has the ability to give me a specific look. And I knew
10 exactly what that means. And so I was getting that look, but
11 trying to play it off so it wasn't weird. And, you know,
12 after the party I got to address that with him. And
13 sometimes it would be, you know, we had a discussion, and
14 other times it would be he would just ignore me.
15 **Q.** In this particular instance what did he do?
16 **A.** I can't recall exactly, but I remember him get upset about
17 Chad, and later he, few months later he got more upset about
18 Chad.
19 THE COURT: About who?
20 THE WITNESS: About Chad.
21 **Q.** I'm sorry. What's Chad's last name?
22 **A.** Langford.
23 **Q.** So you said a couple months later he got mad again. Why'd
24 he get mad again?
25 **A.** Yeah, I think he never got over the fact that I was

1 talking to him too much. I took him out to the shop and
2 showed him the shop and showed him around the house, and
3 eventually Chad left and we continued on. I didn't think
4 much of it, and then in the spring of 2014 I recall going to
5 work early like at 7, not that early, but he just said I
6 didn't say goodbye to him. I don't know that that was the
7 case, but I just went to work at 7. I had a client coming at
8 8, and so I wanted to prepare, so I got to the office at 7.
9 She came in at 8, and then we were supposed to we were going
10 over to go to the accountant's office next door, and so I
11 just walked next door. And then like at 10 George Telquist
12 and I were going back up to Waterville for some post-trial
13 motions. And I left my phone on my desk, and Kevin was
14 trying to communicate with me, and I didn't answer or respond
15 to his texts fast enough. He then called the office, and
16 Laurie said, you know, "She's not here. Her car's here, but
17 she's not here." And that would cause Kevin to become more
18 suspicious and concerned. And I came back over, and I saw my
19 phone and all the texts and calls that he had made, and I
20 tried to respond back to him, and I did not get a chance to
21 actually physically talk to him because George was ready to
22 go. So we got in the car, and I didn't want to talk to Kevin
23 -- Kevin was having -- an episode of some sort. He was
24 suspicious and thought something was going on. And this was
25 typical. And George had to -- we stopped along the way. He

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23 -- Kevin was having -- an episode of some sort. He was
24 suspicious and thought something was going on. And this was
25 typical. And George had to -- we stopped along the way. He

1 got out of the car and went to use -- it was at a rest stop,
2 and I tried to call Kevin, and he was yelling at me about
3 where I was and why I did not respond quickly enough, and I
4 told him that I was at -- like what had happened. "I da-da
5 this, and da-da that." And he said, "Well, your phone was
6 pinging at the office," and I said, "I know, because I left
7 my phone at the desk." "Well, the front receptionist said
8 you weren't there," and I said, "I know," and he was upset.
9 **Q.** When you said "pinging" what do you mean by that?
10 **A.** It was my iPhone app.
11 **Q.** When did Kevin start using the iPhone App so he would know
12 where you were?
13 **A.** I don't know.
14 **Q.** When was the first time he told you about doing it?
15 **A.** Well, it was before then. It wasn't to determine when I
16 was coming home for dinner. It wasn't that at all. He had
17 spun up in his head about where I am. At one point he -- I
18 remember him telling me that he checked it multiple times a
19 day to make sure I was at where I was at, and then he'd be
20 fine. So like if I don't respond to a text and he pings it
21 and he called the office, then the front room receptionist
22 should be able to confirm that. I remember at one point
23 telling a friend that lives out of town that Kevin does this,
24 that he's very insecure and he's been pinging my phone to
25 find out where I'm at, and her comment was like, "That's so

1 sad, because imagine what it must be like in his mind to feel
2 that way to compel him to check multiple times day."
3 So and again this is here we are several years later this
4 is what makes him feel better. I wasn't doing anything
5 wrong. So I don't remember how many times he'd do it. It
6 wasn't an option. He didn't ask me. It got to a point
7 towards the end of 15 that I thought I just don't like being
8 -- I felt like a rat, like a mouse, like I was tracked. You
9 know, he'd know everywhere I would go. And at one point he
10 showed me my phone, and there's a setting because he knew all
11 about it. There's a setting in there that he could find out
12 exactly where you go at every hour of the day. So if you're
13 not pinging my phone, you could actually get access in the
14 phone and figure out exactly where I went, where I've been.
15 **Q.** Did you ever ask him to stop this?
16 **A.** Yeah, and it was again it's part of his process. He gets
17 to do this. I have to be an open book. I'm told if I didn't
18 like it, I was not aware I could just turn it off. If I
19 turned it off, then he's going to be suspicious as to why I
20 turned it off and what I'm doing. That time that he drove by
21 the office he picked -- you know, he took all the kids. And
22 it was before -- you know, Cruz was at home. Before Kennedy
23 went to school, he loaded up all three kids before school and
24 took them to my office to see if I was there, because my
25 phone was pinging there. The receptionist said I wasn't

1 there. My car was there, and the explanation he was
2 compelled to do that. And later when I had a chance to talk
3 about it I said, "Who do you think I'm having a relationship
4 with? Is there someone you think I'm having sex with?" And
5 he said yeah. I said who? He said Chad. And, you know, as
6 a lawyer I'm like, "You understand there's no evidence that,
7 that I have a relationship with Chad that way, so why are you
8 allowing yourself to get so compelled to why you're driving
9 by my office?" But it was my problem.
10 **Q.** So this issue with Chad started when you have a house-
11 warming party, and it was still an issue months and months
12 later?
13 **A.** I honestly think he never really cared for Chad. He
14 probably thought Chad was too nice to me. There was a lot.
15 Do you want to know one of them? Apparently not Beau. I
16 don't know why, but a lot of different lawyers.
17 **Q.** Did you ever ask Kevin to go to counseling or --
18 **A.** Yeah.
19 **Q.** -- do anything about this? What happened there?
20 **A.** He can't go to counseling because of the FAA.
21 **Q.** What does the FAA have to do with anything?
22 **A.** He couldn't get any mental health treatment. He couldn't
23 go to counseling. He was concerned if he did that that it
24 would get, that it would get reported or he'd have to report
25 or something like that. So I was -- he didn't work in the

1 asked about, you know -- I'll just leave it at that. So that
2 night, you know, we're in bed and I'm crying. You know, like
3 it happened so many times, I was sorry for what I did.
4 Q. Andrea, I don't mean to interrupt you. I apologize. You
5 have your hand over your mouth. I can't hear you.
6 A. I apologized for what I did to him.
7 Q. You apologize for that sequence of events?
8 A. No, I was apologizing for that relationship that long ago
9 that he's still upset by it, and I still feel guilty for it,
10 and I can't like, you know, I can forgive myself, but until
11 he lets it go I mean I have to deal with it. So.
12 The next day, obviously Chip came home later, and the
13 next morning he was, he was completely rude to Chip.
14 Wouldn't acknowledge him. Another guy in our house and he
15 wouldn't acknowledge him. He just ignored him. And Chip is
16 interacting with the kids and made it really uncomfortable,
17 and all this guy did was help me out, help out my
18 grandmother, and he found the keys in the sink, and he left
19 and after that.
20 I said, "We need to go to counseling, and we are going to
21 talk about how you lash out at me and you say horrible things
22 to me. And this insecurity thing, we've got to get through
23 that." And he said, "The only reason, the only way I'm going
24 to go is if we get to talk about the history."
25 Q. That whole Chip incident, when did you get an apology from

1 Kevin.
2 **A.** I didn't.
3 **Q.** Did he ever bring that issue with him up again to try to
4 discuss that issue with you again?
5 **A.** The Chip incident? No. It was resolved in his mind. You
6 know, I think if he needed me to feel guilty as to why he did
7 it, that he was still not happy with Chip, but I mean I was
8 OK.
9 **Q.** And so you make arrangements to see Miss Ellingson. Did
10 you agree to his ground rules for counseling that he got to
11 bring up?
12 **A.** Oh, yeah, fine, fine. Let's just go then.
13 **Q.** And at that time, you'd been married for about what? Nine
14 years, ten years, something like that?
15 **A.** Yeah, ten years.
16 **Q.** How many counseling appointments did you have with Miss
17 Ellingson?
18 **A.** Three.
19 **Q.** And would you please explain what happened during those
20 sessions?
21 **A.** We went in the first time, and she says, you know, "Why
22 are you guys here?" And I told her Kevin lashes out, and he
23 says really mean things, and once they're out, they're out.
24 And, you know, and I've asked that he not do that or that he
25 have a filter and before he says those rule things that he

1 **A.** No, that was not the motion for summary judgment. In his
2 answers to interrogatory responses he listed all these people
3 who were going to testify I think under one-seven, and we --
4 I can't remember. We moved for summary judgment, but Ben
5 basically stipulated and said that, yes, it was a typo. And
6 I can't recall the specifics, but.
7 **Q.** Do you recall at the end of May Mr. Clare filing a
8 declaration stating that he knew of your whereabouts in
9 Hawaii and the GAL because of his conversations with his
10 mother and Megan Brantley?
11 **A.** I recall that.
12 **Q.** Did that relieve any of your concerns?
13 **A.** Early my concern for the GAL situation, Hawaii is still,
14 is still not clear to me. I was looking through my text
15 messages, and he specifically texted me that I was in Maui.
16 And nothing about a Hawaiian dress, which I don't have.
17 Nothing about a comment at church would have suggested
18 "Hawaiian" meant Maui. So I do know that I had emailed, you
19 know, itinerary and purchased tickets, and that would have
20 been through my email. So he would have been aware of Maui
21 specifically only by seeing my email, which is consistent
22 with all my other concerns. So, no, it did not relieve my
23 concerns at the time.
24 **Q.** And do you recall Ben Dow saying in a declaration that he
25 never accessed your emails?

1 **A.** Right. It's not like, it's not lie I see him. I'm
2 concerned he's got like eyes out there, reporters. He's got
3 Megan Brantley, Ryan Trulson, you know, somebody at Ice
4 Harbor, a teacher. Just some of these people I have no clue
5 who they are. People that, just seem to want to keep tabs on
6 me and what I do. And the fact that Bryan Trulson is
7 reporting to Kevin that he sees me and George. So what? Why
8 do these third parties feel compelled to tell Kevin where I'm
9 at and where I go? Again how does he know about Maui? These
10 are the questions that I have. So am I worried about him?
11 Not necessarily. It's the people I don't know that he has
12 watching me.
13 **Q.** This is a very small town, isn't it, Miss Clare?
14 **A.** I think it's got 150,000.
15 **Q.** Relatively small town?
16 **A.** It seems to be a really small community. I'm surprised
17 how often we all run into each other.
18 **Q.** But you haven't seen Kevin turn up anywhere unexpected in
19 public other than at a children's event?
20 **A.** No, if that's the analysis, no, I don't see him. I just
21 feel like he's watching. And he loves to tell me that he
22 knows, which is really concerning. If he, even if he wants
23 to know, keep it to yourself. Why does it come up? Why does
24 he have to tell me? "Say goodbye to your mom, Cruz." That's
25 just to tell me he knows where I'm at. It's creepy.

1 of the settlement and the value, despite having done it, no
2 discovery. The fact that Kevin has suggested that he has
3 reason to believe that John Ziobro was paid more, but like he
4 testified, he just guessed, is inaccurate. There's emails
5 where Mr. Ziobro had demanded more from our office, and there
6 was no response. So I can see why Mr. Clare thinks that
7 there may be more that he was paid, but he doesn't want to
8 disclose where he learned that. The trip to Maui doesn't
9 make any sense. Mr. Clare suggested that the Hawaiian dress
10 that I don't own, we went on July 14, and the July 14 when we
11 went to Hawaii is when he journaled it. It wasn't a
12 conversation in church. It wasn't that I wore a dress or
13 that Kennedy wore a dress. I was dressed to work when I
14 delivered them. It makes no sense why he needed to use
15 Mahollow. He texted me later to make sure I knew that he
16 knew where I was at when he mentioned Maui. How does he know
17 about Maui if he wasn't privy to my email communications? He
18 does he know about Julian Harlington, whom I fired, without
19 email communication? How does he know about Jamie Cruz, who
20 was an assistant, who had no information on 187 factors or on
21 any financials, but he listed her. How did he know all about
22 Amber Peters? Or Julie Ridgeway? We went down there to
23 depose her in regards to income being reduced to paper, and
24 there was an email on that. That's why that came up. He's
25 never talked to her. He's never talked to any of these

1 her that long.
2 **Q.** So prior to seeing her this morning when is the last time
3 you've seen Miss Clare?
4 **A.** Ah, I believe I saw you a couple years ago. You were at
5 court in Richland.
6 **Q.** And what interactions did you have with her at that time?
7 **A.** We just talked for a couple minutes.
8 **Q.** I'll jump back in the past. Have you ever witnessed any
9 disputes or conflict between Mrs. Clare and her husband Kevin
10 Clare?
11 **A.** I have.
12 **Q.** Can you give me a general time frame? When did this, when
13 did you witness a confrontation between the two of them?
14 **A.** It was in 2013 in a parking lot in Pasco at Lowe's parking
15 lot.
16 **Q.** And can you please explain how you came to notice them?
17 **A.** My wife and I were shopping for some garden supplies for
18 our yard. We pulled into the parking lot. We had parked way
19 out by the street, way in the back. We noticed a car pull
20 in, a young couple in the car. At first I thought they were
21 playing, because it was like banter back and forth, but as we
22 were watching we could see they were arguing.
23 **Q.** At that point, do you recognize Andrea at that point?
24 **A.** I did not. I just knew that it was serious, because he
25 was putting his hands on her in the car. He was reaching

1 across from the driver's seat and grab her by the shoulder
2 and the arm, and I could tell that this was a serious
3 conversation they were having, quite abrupt.
4 **Q.** And were there other -- were any other people around?
5 **A.** Oh, no. We were way away from all the other vehicles.
6 Everybody parked in the parking lot always parks up close so
7 they don't have to walk so far, and my wife and I usually do
8 the same. We just parked way out by the street because we
9 lived in the general area, and we were waiting for a school
10 bus to come by with our children we didn't want to miss.
11 **Q.** And once you saw this dispute going on in the car what
12 happened next?
13 **A.** He got out of the car, the man did, and then the woman in
14 the car was fixing her face, so to speak, wiping her face and
15 making herself presentable. She climbed out of the car. She
16 made it to the back of the car right at the corner where the
17 taillight is. The driver of the car, he made it all the way
18 around and met her at that corner and shoved her with his
19 arm.
20 **Q.** He shoved her. Can you kind of elaborate? Was this a two
21 handed?
22 **A.** This was a single-handed puffed-up chest shove, and it
23 knocked the girl off of her balance.
24 **Q.** What did you do after you witnessed that?
25 **A.** Once I seen Andrea step out of the car I recognized her

1 immediately. He pushed her, and I jumped out at that point.
2 I jumped out of the car, and I yelled "Hey." And it was more
3 like a "Hey." And his demeanor changed so quickly I almost
4 couldn't believe. He went from puffed up to like shoulder
5 down and chest in and his head down. He just reacted so
6 quick it was amazingly fast.
7 **Q.** Did you notice anything in particular about Andrea?
8 **A.** I could tell she was upset. I could tell.
9 **Q.** After you made your presence known did anything happen
10 after that?
11 **A.** You know, I approached both of them, and Andrea recognized
12 me, and I'd tried to lighten the mood. I could tell it was
13 very tense. So I introduced myself and my wife. She
14 introduced us to her husband, and as we started to turn,
15 'cause he wouldn't get close to me. You know, he wouldn't
16 like come up and shake my hand or anything. He kind of kept
17 a little bit of a distance, and it was very, very awkward,
18 and I said, "Yeah, I noticed your little spat in the car,"
19 and Andrea replied, "Oh, you saw it? I'm so embarrassed."
20 And she said it rather low. She kept her head down. She
21 didn't make a lot of eye contact. And we then all proceeded
22 towards the store. They walked about 20 paces ahead of us.
23 **Q.** Did anything of note happen after that conversation then
24 when you headed towards the store?
25 **A.** Once they got in the store they went their own way and we

1 **A.** I didn't have glasses five years ago.
2 THE COURT: Wait for the question.
3 **Q.** Did you have your glasses on at that point?
4 **A.** No, I didn't wear glasses.
5 **Q.** When you did you begin to wear glasses?
6 **A.** I was in an accident in 2016.
7 **Q.** How was your vision before that?
8 **A.** Better than 20/20.
9 **Q.** When was the last time you had it checked?
10 **A.** Every two years.
11 **Q.** Mr. Register, did you contact Mr. Clare after that?
12 **A.** No.
13 **Q.** And you saw no reason to bring it up to anyone?
14 **A.** No -- yeah, as a matter of fact I think I talked to Linda
15 about it.
16 **Q.** Linda who?
17 **A.** Ah, your last name still Hovland? Linda Hovland.
18 **Q.** Miss Clare's mother?
19 **A.** Yes.
20 **Q.** Mr. Register, your testimony was that Miss Clare was
21 upset. Why did you conclude that?
22 **A.** When we had pulled up in the car, they pulled up after us.
23 So we could see in their window from the front window of our
24 car that they were in an argument. We could see that he was
25 yelling and she was yelling back, that his hands were going

1 to her, and she was fending off, so to speak, her hands. He
2 would reach out. She would put her hands up, like that.
3 **Q.** You said at first you understood that was play?
4 **A.** No, what I said at first was I thought it was play.
5 **Q.** That was your first understanding?
6 **A.** Yes.
7 MS. BROWN: Thank you. No further questions. Your
8 Honor, one, another matter. Since we're taking witnesses out
9 of order and Mr. Deery intends to rely on this testimony, I
10 would appreciate a chance for Mr. Clare to rebut this point
11 specifically.
12 MR. PICKETT: I have no objection. Accommodation
13 deserves accommodation. Just a couple quick questions, your
14 Honor.
15 REDIRECT EXAMINATION
16 BY MR. PICKETT:
17 **Q.** Sir, you pointed out the gentleman back there. Can you
18 give me a quick guesstimate what that distance is?
19 **A.** Well, in the parking lot they have the rows where you park
20 your cars. So they had parked backwards here. One row over
21 is where we were parked in that front space right behind it,
22 so the distance could be even closer than that gentleman.
23 MR. PICKETT: I don't have any further questions.
24 Thank you.
25 THE COURT: Well, I have a question.

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22 so the distance could be even closer than that gentleman.
23 MR. PICKETT: I don't have any further questions.
24 Thank you.
25 THE COURT: Well, I have a question.

1 EXAMINATION
2 BY THE COURT:
3 Q. What's your estimate of that distance in feet?
4 A. I'm going to say 20 feet.
5 Q. So you think that gentleman is 20 feet away?
6 A. No, he's probably -- yeah, he's about 20 feet.
7 THE COURT: OK. Any other questions from either?
8 MR. PICKETT: No, thank you, your Honor.
9 THE COURT: May this witness be excused?
10 MR. PICKETT: Yes, your Honor.
11 MS. BROWN: Certainly, your Honor.
12 THE COURT: You may step down. You're free to go.
13 MS. BROWN: Your Honor, I call Mr. Clare to the
14 stand, please.
15 THE COURT: All right.
16 KEVIN CLARE
17 (Witness sworn to testify.)
18 DIRECT EXAMINATION
19 BY MS. BROWN:
20 Q. Good morning, Mr. Clare. This will be limited only to the
21 incident just described. Mr. Clare, when was the first time
22 that you met Mr. Register?
23 A. I believe we met him in a public place in passing, and I
24 was introduced to him, and it was represented that he used to
25 be a neighbor of Andrea's.

1 **Q.** Do you remember the time frame of that incident?
2 **A.** I don't. It was so long ago.
3 **Q.** Do you remember the place of the incident?
4 **A.** I do not. I think it might have been a public place.
5 **Q.** What happened from your perspective concerning this
6 incident just described by Mr. Register?
7 **A.** My recollection was that we were exiting Lowe's, and I had
8 -- we were in playful banter, but I don't know if I picked
9 her up or if I had shoulder bumped her as, you know, you're
10 going back and forth. And I heard a "Hey." And I looked
11 over, and I did not recognize who this was, and Andrea
12 recognized right away, and he did have kind of a big-brother
13 attitude like, "And what's going on?" And Andrea quickly
14 heard him and said. "Nothing. You thought you saw
15 something. You didn't." He was far enough away not to hear
16 our conversation and not to know what we were actually
17 talking about, but I don't recollect any arguing in the car
18 or any, any banter in the car. It was all outside of the
19 car. She did some, you know, normal: "How's it going? How
20 are the kids?" And we moved on with our day. After getting
21 in the car, I did, I did say that was a big, big guy, you
22 know, and that was it. Haven't thought of that incident
23 since.
24 **Q.** Why was it remarkable that he was a big guy?
25 **A.** Just because he was tall. He seems shorter now, but he

1 **A.** I think what I did is I changed it to -- the only, I
2 changed it to mom would have custody pending this evaluation
3 and the results. But whether we can find out if this is
4 Kevin Clare choosing to act this way or if there's some sort
5 of mental health issue that's causing him to act this way. I
6 mean can and won't are two different things. Can or can't
7 would say to me maybe Kevin can't see what he's doing, and
8 maybe he doesn't understand it, and maybe there's some sort
9 of mental health issue to cause him not to be able to see or
10 won't where he knows what he's doing and/or didn't understand
11 and he chooses to do it. So that was kind of where I came at
12 in that was that.
13 I think there was Mindy Mechanic. I put a report in
14 there for her, and Chuck Derry, I didn't change my
15 recommendations based on what they'd said. The only thing I
16 changed was the -- and I don't know if it was on this or the
17 next report. That the psych eval should include intimate
18 violence and course of control and again I base a lot of that
19 to what was in the deposition the admissions to him in the
20 deposition. Typically in my role I look at domestic violence
21 as limiting factor if, you know, if there's some type of
22 abuse the children witness it, it affects them. So I did not
23 go back and say I think that Kevin Clare committed domestic
24 violence, committed partner violence, coercive control. The
25 only thing I changed about my recommendation was to switch it

1 to let's get the psych eval first. Let's see if there's
2 something we can fix here. And then I added the IP V and
3 course of control, just based on what I witnessed, and if
4 it's a question, if you're already going to do a psych eval,
5 why not take care that? I mean Chuck Derry from the other
6 side of the country saying, "I believe Kevin Clare chooses to
7 do this," without ever seeing him, it doesn't ring true to
8 me. I mean we have Dr. Page who says he's committing
9 parental alienation and didn't know he's doing it, and he
10 actually saw him. But then when I ask him, even him, I can't
11 say that definitively. But we have Chuck Derry from the
12 other side of the country who can say that, it didn't make a
13 lot of sense to me. So my recommendations, their expert
14 witnesses, they're given the credit that they get. They're
15 hired by one side to represent one side of the situation.
16 The only thing that I changed, like I said, was the IPV. I
17 didn't change any recommendations based on those. I changed
18 the IPV and the coercive control based on Mr. Clare's
19 deposition and his admissions in his deposition.
20 **Q.** As mentioned there's been a lot of he said/she said in
21 this case. That's a normal thing in a family law matter,
22 isn't it?
23 **A.** Yes. And if I have an admission on one side and somebody
24 else to confirm it, if the Court wants to address the he
25 said/she said and make credibility, then I'll leave it in the

1 Court's hands. If there's a totality and there's a group of
2 people that can corroborate, then I'll look at the he
3 said/she said. And like I say, this is the first Mr. Clare
4 just flat out just admitted to all this behavior that I had
5 seen.
6 Q. That's the question I was asking you before this when you
7 actually sat down with Mr. Clare, you never saw him
8 personally address a lot of what I asked him about? Is that
9 correct?
10 A. Yes.
11 Q. Now you do cite in this report, and I'm looking at page
12 442, both Mindy Mechanic, the person hired by us, as well as
13 Mr. Derry, and I think if you're looking at the middle of
14 page 442, talks about a conversation, or excuse me, your
15 receipt of a report from Miss Mechanic.
16 A. Yes.
17 Q. Did Mr. Miss Mechanic or Mr. Deery's opinions, etcetera
18 influence your findings or influence what you are
19 recommending Mr. Clare be evaluated for?
20 A. Again I didn't go back and go through and change my
21 findings to say that there was domestic violence, coercive
22 control. There was already a restriction in there. Actually
23 it was reserved on whether or not there was a mental health
24 issue causing this behavior. The only thing I did was adopt
25 this recommendation that maybe IPV and coercive control

1 the accountant, and at least Mr. McMillen when it comes to
2 the business side of things.
3 THE COURT: I'll check and get the latest list.
4 MR. PICKETT: Your Honor, at this time could we
5 please call Andrea Sell?
6 ANDREA K. SELL
7 (Witness sworn to testify.)
8 DIRECT EXAMINATION
9 BY MR. PICKETT:
10 Q. Good morning, ma'am. Would you please state your full
11 name for the record and spell your last name?
12 A. Andrea K. Sell, S-e-l-l.
13 Q. And, Andrea, how do you know the parties?
14 A. Andrea I've known for 30 years, and Kevin I've probably
15 known about 19, 20 years.
16 Q. And what's your relationship to the two of them?
17 A. Well, Andrea's probably one of my closest friends, close
18 to probably family. Kevin, you know, was her husband, and I
19 haven't had much contact since they split, and I knew him
20 pretty well when they lived together.
21 MR. PICKETT: Your Honor, housekeeping. I believe
22 there was one more lay witness scheduled to come in the
23 morning, Kimberly Snowden. I'm sorry to break up the witness
24 testimony, and your Honor, I crossed off the ones that are
25 done and circled a few that I believe that are left. Thank

1 parent when they were married. From your interactions with
2 Andrea and the children, did you ever see that?
3 **A.** That's a little bit of a harder question. See Kevin was a
4 stay-at-home dad, and Andrea worked. When I was around, I
5 would see Andrea wanting to be involved, but Kevin kind of
6 took on the role and was very strong in it to put it nicely.
7 I wouldn't say that Andrea was ever disconnected ever from
8 her kids. It was just the different role.
9 **Q.** Now what kind of parent do you see Andrea as today when
10 Kevin's not around?
11 **A.** Amazing. It's actually, it's actually the coolest thing
12 ever to see her become such a good mom. She's active. She
13 just wants to enjoy her kids. She's always planning
14 activities and having memories with them. Even if I call her
15 and have the kids and want to do something with her, and she
16 won't. She's always like, "I have my kids." It's a really
17 neat thing. She cares pretty strongly about their well
18 being. You can tell. Education, anything that's going on.
19 **Q.** Now you mentioned that Andrea, trying to parent and Kevin
20 kind of stepping in. Can you give me some examples of how
21 she was trying to take some initiative and Kevin for whatever
22 reason stopped it?
23 **A.** Disciplining, you know, if she came and disciplined, he
24 kind of came in and took over, a little bit of the stronger.
25 You know what I mean? He would go in there. You know, a lot

1 of things are kind of hindsight you see. You know, when they
2 were married you don't look into peoples' relationships. You
3 know what I mean? Or how they're parenting? You don't
4 judge. It's looking back at it like, "Oh, you know. Does
5 that make sense?"
6 **Q.** Yes. Basically observations then have explanations now?
7 **A.** Yes.
8 **Q.** You have not seen Kevin parent at all since?
9 **A.** No.
10 **Q.** Did you see disputes kind of flare up between Andrea and
11 Kevin over parenting issues whenever you were around them
12 during the marriage?
13 **A.** Yeah, you know, on occasion. I mean marriages are always
14 going to have disagreements or flare ups. I wouldn't -- I
15 wouldn't know how to explain it, because these are all my
16 personal opinions, but Kevin's not aggressive, or he's not
17 going to come out and fight like that. It's more of a
18 passive aggressive thing, if that makes sense. You know, if
19 he was upset about something, he wasn't going to let it go,
20 not that he was going to --
21 **Q.** So he's not screaming in your face?
22 **A.** No, I've never seen him like that, you know.
23 **Q.** How would you say your relationship with Kevin was when
24 the two of them were still together?
25 **A.** Good, you know. I never -- you know what I mean? I never

1 thought anything bad of it.
2 **Q.** That's how, you know, his demeanor, his affect, whatever
3 you want to call it, how was he?
4 **A.** It was kind of his way or the highway. I mean that was
5 the best way to describe it.
6 **Q.** Now you mentioned some passive behaviors from Kevin. Did
7 you ever see him lash out at Andrea?
8 **A.** No.
9 **Q.** Did Andrea over the course of your relationship with you
10 ever complain about Kevin to you?
11 **A.** You know, a little. Little things. I think she didn't
12 talk about a lot of it, but, you know, I know she wanted to
13 be a more involved mom. We did talk about that. You know,
14 and I don't know. A lot of it you find out afterwards. You
15 know, we talked more since they split than during the
16 marriage.
17 **Q.** And are you aware that there's some, that Andrea had a
18 relationship before Kevin and her got married, literally
19 2004?
20 **A.** Did I know about it before they got married or did I know
21 about it sometime before the marriage?
22 **Q.** Did you know about it sometime during the marriage?
23 **A.** Yes.
24 **Q.** Do you know did Andrea ever discuss with you the kinds of
25 things that Kevin expected of her because she had done that?

1 **A.** Yes.
2 **Q.** What kinds of things did she share with you that she had
3 issues with?
4 **A.** Well, the trust wasn't there. He, you know, I believe
5 could track her phone, you know, read her texts, could pretty
6 much control where she was at or where she went.
7 **Q.** Is that something you discussed with her before they ever
8 split up?
9 **A.** Yes, I know about that before.
10 **Q.** And do you know how long prior to her separation did she
11 complain about that? When's the first time you recall
12 hearing about?
13 **A.** Probably about a year or so after finding out about the
14 incident.
15 **Q.** Now with you and your kids, are you around the Clare
16 children and Andrea much more than you were before?
17 **A.** Yes.
18 **Q.** And how has your relationship as a family friend with the
19 Clare children changed at all?
20 **A.** Well, it's great. We get to see them. They know us.
21 They know where we live. Our kids get along really well.
22 **Q.** Now have you noticed any differences in the Clare children
23 today as opposed to before Andrea and Kevin separated?
24 **A.** I think they're doing really good right now. I think they
25 had some bumpy roads during the split, but as of the moment I

1 think they're doing really good.
2 **Q.** And how about your friend Andrea? How did she seem to be
3 now that she is hopefully getting this divorce finalized
4 sometime soon?
5 **A.** Happy. If you'd known Andrea back when I did when we were
6 young, it's kind of like to have her back. It's the happiest
7 I've seen her in a really long time. To do a story with,
8 with that as my husband, Andrea maybe didn't always see eye
9 to eye. And after they split she came over with the kids and
10 just hung out, and she left and my husband's standing in the
11 kitchen with a weird look on his face. And he was like,
12 "I've never seen her like that." And I'm like, "Like what?"
13 "Happy and relaxed." He was the one who made me notice.
14 MR. PICKETT: I have no further questions. Thank
15 you. I was going to make a smart remark about Andrea, your
16 Honor, but maybe you wouldn't appreciate it.
17 THE COURT: Miss Brown?
18 MS. BROWN: Thank you, your Honor.
19 CROSS-EXAMINATION
20 BY MS. BROWN:
21 **Q.** Miss Sell, during the time before the parties separated
22 did you ever see Andrea deviate from something she chose just
23 because she got a phone call from Mr. Clare? Did she go home
24 from a bar after work because he called her and demanded she
25 come home?

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23 because she got a phone call from Mr. Clare? Did she go home
24 from a bar after work because he called her and demanded she
25 come home?

1 **A.** No, but I never was at the bars with her. So.
2 **Q.** But you never saw that happen?
3 **A.** No.
4 MS. BROWN: That's all, your Honor.
5 EXAMINATION
6 BY THE COURT:
7 **Q.** I have a question. I think you mentioned that his
8 behavior at times was passive aggressive. Can you describe
9 what you mean by passive aggressive?
10 **A.** I'm trying to think of an example. Like there's two
11 different kinds of fighting. If you're upset with somebody,
12 you're mad and you work it out or you don't, and you're mad
13 and you kind of just keep bringing up sly remarks, and it's
14 never going away. And trying to think of the incident that's
15 not coming to mind because I'm more nervous up here. But
16 there was times where you seen it where if he wasn't happy
17 with her, it -- it wouldn't be that, you know, they would
18 yell and scream or get in a fight, but it would just keep
19 coming up. It would come up like -- like even the point he
20 brought up with the relationship that he did before they were
21 married and he found out. I mean it never got dropped. For
22 the rest of her marriage she had to deal with something. I
23 mean it never, ever went away.
24 **Q.** So a little bearing a grudge for a while?
25 **A.** Yes.

1 **Q.** Showing it?
2 **A.** Yes.
3 **Q.** Did Andrea ever confide to you about any, oh, force? Or
4 stronger, strong-arm tactics that he would use?
5 **A.** Like physically?
6 **Q.** Sure.
7 **A.** No.
8 THE COURT: OK. Anything else? Any followup?
9 REDIRECT EXAMINATION
10 BY MR. PICKETT:
11 **Q.** Just a couple quick ones. Counsel asked you if you ever
12 saw Andrea leave, change whatever she was doing because of
13 Kevin. How many times in say the last five years of their
14 marriage did you see Andrea in a social or outside setting
15 where Kevin was not there?
16 **A.** I can't think of any.
17 **Q.** Do you happen to know Gary Register?
18 **A.** Yes.
19 **Q.** And the final thing. The Judge was asking you about the
20 passive aggressive behavior. Harboring a grudge was the
21 phrase used. Was that something consistent with Mr. Clare
22 and Mrs. Clare? Consistent's not the right word. Was that
23 something that was common that you'd see that?
24 **A.** See the --
25 **Q.** This kind of --

1 **A.** No, but I never was at the bars with her. So.
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22 the rest of her marriage she had to deal with something. I
23 mean it never, ever went away.
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20 passive aggressive behavior. Harboring a grudge was the
21 phrase used. Was that something consistent with Mr. Clare
22 and Mrs. Clare? Consistent's not the right word. Was that
23 something that was common that you'd see that?
24 **A.** See the --
25 **Q.** This kind of --

1 house. I go over to their house quite often. We went over
2 to their house and swam at least once a week over the summer.
3 Just as much as we can be around each other, yes.
4 **Q.** When they were still together, did your children, did your
5 daughter have like play dates with the Clare kids?
6 **A.** She did. Most of them were when we went over for family
7 functions at their house, but as my daughter and Kennedy are
8 very close. I mean she's close with the boys, too, but
9 they're peas in a pod those two. And I would say that if we
10 were to ask for Kennedy to come and stay over night, I don't
11 recall her ever staying at my house prior to them splitting.
12 Maybe once. But my daughter stayed at their house I wouldn't
13 say quite often but as often she could.
14 **Q.** Did Andrea ever tell about you the claim she's making that
15 Kevin kept her under surveillance?
16 **A.** She did tell me after they split.
17 **Q.** And you recall approximately when you guys had that
18 conversation?
19 **A.** The first, the first time that we really talked about it
20 was she called me one night and it was probably 9:30, which
21 was kind of weird. And it was after she had gotten into the
22 condo, and she said, "Hey, do you think this is weird? I was
23 giving kids a bath upstairs, and all of a sudden Kevin was
24 there." And I said, "Well, what do you mean all of a sudden
25 he was there?" And she said, "Well, I locked the doors, and

1 we'd gone upstairs to play and read, and I was giving the
2 kids a bath, and then he was in the house." And I said,
3 "Well, if you locked the door how did he get in?" And she
4 said, "Well he, he had to crawl over the balcony." And I
5 said, "Your balcony is on the second floor. How would he do
6 that?" And so that was the first time that we kind of had
7 that discussion. And I said, I told her I thought that was
8 bothersome. And she said, "Well, you know, he was worried
9 because I didn't answer the phone or text for a while." And
10 then I, I was bothered by it. I said, "You know, you guys
11 are separated for reason. So, yes, I do think that's
12 strange." And from there we had more and more discussions
13 about it. And just she would open up more and more as time
14 went on, tell me how he would look at her phone or check her
15 email, things like that.
16 **Q.** How about checking her underwear?
17 **A.** She did tell me that later also. And my reaction was that
18 that was extremely odd to me.
19 **Q.** Fair enough. You haven't had a chance to ask or discuss
20 any of these allegations that she's made about Kevin with
21 Kevin?
22 **A.** No.
23 **Q.** What did your sister tell you she wanted as a resolution
24 in this case from the beginning?
25 **A.** At the beginning she just wanted to be split with Kevin.

1 She's like everything 50/50. "Our kids need both of us," and
2 as time went on and as things changed, and I could tell that
3 she was growing more and more uncomfortable and as she opened
4 up more, I could see that she was more concerned with making
5 sure that the kids grew up well and had a stable home and
6 that she could be the biggest part of that that she could be.
7 **Q.** The children that you see when you go to visit or they
8 come to visit you, they seem to be in a better place or a
9 worse place than they were when these two split up?
10 **A.** I think they're in a far better place.
11 **Q.** At any point since this case started have you seen any or
12 did -- has Andrea shared any fears with you about Kevin,
13 concerns about Kevin going forward?
14 **A.** Yes, especially when things would happen in changes such
15 as with the Court. I've gone and stayed with her several
16 times. In fact my husband and I both have. She's expressed
17 that she's, you know -- sorry. She's been -- she's had
18 thoughts of worried about being the next Date Line. About --
19 **Q.** What do you mean --
20 **A.** Thing happening.
21 **Q.** Sorry.
22 **A.** Things happening where Kevin like would like try to kill
23 her or hurt her in some way.
24 **Q.** Now have you ever seen Kevin hurt Andrea?
25 **A.** They would play around, but they would play around with

1 THE COURT: Yes, and that was going to be a concern
2 of mine as well, because I can see that there would be. It's
3 not going to preclude you from addressing those overlaps
4 later. All right. Well, let's go ahead then. Do you have
5 another witness?
6 MR. DeFOE: Thank you, your Honor.
7 MR. PICKETT: Your Honor, at this time you if I may,
8 I'll call respondent Kevin Clare.
9 THE COURT: Mr. Clare, step forward.
10 THE CLERK: Petitioner's identification number 12
11 has been premarked.
12 MR. PICKETT: And, your Honor, for the record
13 proposed exhibit 12 is a letter from Mr. Dow's office to the
14 general audience.
15 KEVIN P. CLARE
16 (Witness sworn to testify.)
17 DIRECT EXAMINATION
18 BY MR. PICKETT:
19 Q. Good morning, Mr. Clare. What is your full name?
20 A. Kevin Patrick Clare.
21 Q. And how old are you right now, Kevin?
22 A. I'm 38 years.
23 Q. I don't want to spend a bunch of time on ancient history,
24 but when did you and Andrea meet?
25 A. We met in high school in sophomore year, 96.

1 exam the summer of 05 and came home in September/October of
2 05 and started working for the prosecutor's office, Franklin
3 County.
4 **Q.** So she had taken and passed the bar before she moved back?
5 **A.** If I recall right, yeah.
6 **Q.** Once you began living together, how long was it before you
7 decided to have children?
8 **A.** We -- typically our situation is that we were not, not
9 actively trying and not actively not trying, but she went off
10 of birth control in 2008 I believe, and she got pregnant
11 shortly thereafter that summer of 2008.
12 **Q.** And when was Kennedy born?
13 **A.** April of 2009.
14 **Q.** I'm not the world's greatest at math, but that would put
15 conception date sometime in the summer of 2008?
16 **A.** Correct.
17 **Q.** I know this is sensitive subject, so I'll try to be
18 sensitive about it. At what time did Andrea tell you that
19 she'd been in a relationship with somebody else before you
20 two got married?
21 **A.** March 25th of 2008.
22 **Q.** Would you please explain the circumstances surrounding
23 that disclosure?
24 **A.** We had taken a mission trip to China in November before
25 that, so that would be 2007, and I think my best guess is

1 that she was having in her heart guilt from that and she --
2 that was starting to surface. So it took her some time to
3 bring that to the table and tell me about it.
4 **Q.** Was that disclosure made before Kennedy was conceived?
5 **A.** Yes, sir.
6 **Q.** What, if any, professional services did the two of you
7 seek out to try to get through that?
8 **A.** I believe we saw Chris Kristofferson. He was a counselor
9 at Bethel Church in Richland, and we sought counseling with
10 him. Andrea attended first, and then I was brought in at
11 some point after.
12 **Q.** Other than that relationship did Mrs. Clare have an extra-
13 marital relationship with anybody else before 2015?
14 **A.** Not to my knowledge, no.
15 **Q.** After Andrea disclosed that, why did you continue with the
16 marriage if you were so concerned about her going forward?
17 **A.** I was -- I took that into serious consideration. I was
18 considering backing out of the marriage. That was certainly
19 a period of time after being told that I was considering
20 leaving the marriage. Part of, part of the decision-making
21 process was wondering why she didn't tell me right before we
22 were married, because I most certainly wouldn't marry her,
23 and she told me she was having an affair up until our
24 marriage. So but I loved her and I wanted to make it work,
25 and she, she was my best friend, and people make mistakes.

1 because of work?
2 **A.** The last four months in 2015 when they were working on a
3 case that required weekends and travel to the east and west
4 coast, that was the next time I saw her work for an extended
5 period of time. Although, like I said hindsight, I don't
6 know how much of that was work and how much of that was just
7 getting together with Mr. Telquist.
8 **Q.** So when you expressed your displeasure with Andrea, did
9 you accuse her of being unfaithful to you?
10 **A.** I accused her of being unfaithful to me in August of 2015,
11 yes, sir.
12 **Q.** Prior to August of 2015 did you accuse her any other time
13 of that behavior since she joined TMZ, now TMC?
14 **A.** No.
15 **Q.** This lawsuit, Wenatchee lawsuit, I guess I'm not
16 understanding. You felt you were concerned about her being
17 unfaithful with this guy because he walked away and her
18 behavior changed, but you didn't talk to her about it?
19 **A.** No, like I said this is a hindsight issue. So she had
20 shared with me in 2015 in December of 2015 that on that, on
21 that case that's where George took a liking to her, and she
22 noticed it, and he noticed it, and they discussed it. So
23 when you work your way back and you start to notice the
24 pattern and behavioral changes from that time, that's where
25 I'm getting that from. That's information she provided to me

1 from our discussions.
2 **Q.** So you confronted her in August of 2015?
3 **A.** I did, yes.
4 **Q.** And what were the circumstances surrounding that?
5 **A.** She had left town to go to Sandpoint and was working with
6 an associate of the firms's. I believe his name is Chip.
7 And that was the second or third trip in August where she had
8 left town. And her typical course would be to call
9 FaceTiming the kids shows her hotel room, shows her view, and
10 talk. And that month when trips were taken she was
11 noncommunicative and nonresponsive on those overnights, and
12 with men of suspect who I don't know, I was concerned. And
13 her general behavior was starting to fade in respect to a
14 marital relationship. So.
15 **Q.** Have you ever met Chip?
16 **A.** Yes, I have. He's a nice guy.
17 **Q.** Does he really strike you as a ladies man type?
18 **A.** He's a cowboy. He's tall, dark, and handsome. So.
19 **Q.** So Andrea in the past used to go and then FaceTime with
20 you and the kids and show everything around. Was that ever
21 something you wanted her to do, asked her to do?
22 **A.** No, the kids liked it. That's something she did on her
23 own accord, and they became accustomed to that when she would
24 leave town.
25 **Q.** So Andrea was never under marching orders to contact you

1 and report her whereabouts?
2 **A.** No.
3 **Q.** Those weren't her marching orders. Why did you get upset
4 when she did not do so?
5 **A.** I just noticed a change in behavior. Again I'm a stay-at-
6 home spouse, Mr. Pickett, and I have three children at home,
7 and my other half is out of town. And in a normal, healthy
8 relationship those people want to make a connection at least
9 one time during the day when the other person's out of town,
10 and I noticed that behavior changed.
11 **Q.** Did you punish Andrea when she didn't communicate with you
12 on these trips?
13 **A.** I would get upset with her.
14 **Q.** Would you consider your response to be punitive in any
15 way?
16 **A.** I don't know how to punitively punish her.
17 **Q.** Withhold affection from her?
18 **A.** No. I've always wanted affection in our marriage.
19 **Q.** Give her the silent treatment?
20 **A.** No, I would always allow her to talk to me afterwards and
21 walk me through it.
22 **Q.** Pout?
23 **A.** We would communicate afterwards. I would certainly say,
24 "Here we go again. You're not, not communicating, not
25 responding." And it would be, "My phone died," or, "Sorry,

1 I'm busy," or --.
2 **Q.** Now did it ever occur to you that she may get offended or
3 upset because you continually accused her of misconduct?
4 Wasn't that something that was a consideration for you?
5 **A.** Yeah, but it was, it was a real concern of mine. I was --
6 it was in the context of our marriage and seeing behavior
7 that was not, not normal. And as Dr. Cole said, I was --
8 those behaviors I did were to find out if reporting was true
9 or not. It wasn't, it wasn't a -- anything other than that.
10 **Q.** So because of her behavior you were justified in yours?
11 That's what you're saying, isn't it?
12 **A.** I'm not saying I was justified or unjustified. I'm saying
13 that was the reaction I had to a concern of an outside
14 relationship that -- that shouldn't exist in a marriage.
15 **Q.** And the outside relationship you're talking about is one
16 during the marriage or the one before the marriage?
17 **A.** If we're talking about -- we were just talking about the
18 August of 2015 incident. It could -- that instance, I know
19 Mr. Telquist was in Spokane during that time as well, and she
20 met up with him after her and Chip left Sandpoint. So, you
21 know, it just became a noticeable difference in behavior.
22 **Q.** So are you implying that maybe there was something
23 untoward happening between her and Mr. Telquist in August of
24 2015? Is that what you're saying now?
25 **A.** I think I've had lot of time to think about this, and I

1 think that they certainly, whether they shared it with each
2 other or not, they certainly had some type of connection that
3 was ill defined at that time.
4 **Q.** Did Andrea tell you during that time she was staying with
5 her grandmother, wasn't she?
6 **A.** She was up there for that case with her grandmother, yes.
7 **Q.** Where did her grandmother live?
8 **A.** I think at that time she lived in Troy, Montana.
9 **Q.** Troy, Montana to Sandpoint is not all that close, is it?
10 **A.** I'm not sure.
11 **Q.** Did you insist that she put her grandmother on the phone
12 so that you could confirm her whereabouts?
13 **A.** I may have done that.
14 **Q.** Did you insist that she pan around to make sure that you
15 knew that she was at her grandmother's house?
16 **A.** No, it was a phone call. I may have heard her grandmother
17 wake up, but I don't recall saying put her grandma on the
18 phone, but I may have heard her grandma.
19 **Q.** Looking back, do you think that was maybe the best way to
20 handle the situation with Andrea?
21 **A.** I think anyone looking back can see a better way to handle
22 a situation.
23 **Q.** I'm asking a point-blank question, and I can appreciate
24 what others do. Looking back, do you think that demanding
25 that she put her grandmother on the phone so that you could

1 **Q.** Well, what did she tell you about how she felt over that
2 whole incident?
3 **A.** I remember that she said that her phone had died and she
4 was up late and that she didn't appreciate having to -- me
5 call her at 3 a.m. in her hotel room.
6 **Q.** Did she tell you it was embarrassing?
7 **A.** I don't recall.
8 **Q.** Humiliating? Do you remember any of those words?
9 **A.** I don't recall, no.
10 **Q.** Now when she got home from this trip where you made her
11 have grandma call, what did you do when she got home?
12 **A.** I looked at her, through her -- she put her travel clothes
13 in the hamper.
14 **Q.** And what did you do to her garments?
15 **A.** I checked her underwear.
16 **Q.** And this was after a 3 o'clock phone call with grandma?
17 **A.** Uh-huh.
18 **Q.** Why did you check her underwear?
19 **A.** Because I didn't believe her.
20 **Q.** Now after this incident -- I'm sorry. Did Andrea ever
21 express to you her feelings about your behavior?
22 **A.** After that incident she suggested we go to counseling.
23 **Q.** Now Andrea's behaviors are a justification for some of
24 your behaviors historically? Isn't that correct? Isn't that
25 what you said?

1 could put the dog away so the dog doesn't bark and wake up
2 the kids, and that was the first night I was gone in
3 December.
4 **Q.** So backing up a little bit on the counseling, who did
5 Andrea continue to see after Sara Ellingson?
6 **A.** She went to Theresa Cobb I believe.
7 **Q.** Other than Sara Ellingson did you counsel with anybody?
8 **A.** No, sir.
9 **Q.** When did you access Andrea's phone for the first time?
10 **A.** December 23rd I believe in 2015.
11 **Q.** Where were you when you did this?
12 **A.** It was in our home.
13 **Q.** What time of day was it?
14 **A.** I think it was at like around 1 in the morning.
15 **Q.** Did Andrea give you permission to go through her phone?
16 **A.** She was asleep, and I took it off the night stand.
17 **Q.** So you did not request permission to search her phone?
18 **A.** That night, no.
19 **Q.** And the emails in question that you read, were they a
20 private email account or her work email account?
21 **A.** I believe they were her work email.
22 **Q.** In addition to reading them, what else did you do?
23 **A.** I forwarded them to myself.
24 **Q.** How many emails did you read?
25 **A.** I think around 15.

1 you ever print them.
2 A. No. Well, I printed them for my attorneys in the federal
3 case.
4 Q. Would you agree with me Andrea never consented to you
5 doing what you did?
6 A. To finding out about the affair, probably not. I don't
7 think most people want to be found out.
8 Q. To doing the physical act of invading her work email and
9 reading those mails, emails?
10 A. I would say no.
11 Q. When you and Andrea were together, or I'm sorry. After
12 you and Andrea broke up, did you ever write her an apology?
13 A. Broke up? When she moved out you mean?
14 Q. Excuse me. I apologize. Poor choice of words. Yes.
15 A. I believe I did, yes.
16 MR. PICKETT: If I may approach, your Honor?
17 THE COURT: Yes.
18 Q. This is page 301 of exhibit 1, the guardian ad litem
19 report, original report. Did you write that letter?
20 A. Yes.
21 Q. Is that an honest expression of how you feel or how you
22 felt at the time?
23 A. Do you mind if I --
24 Q. Please do.
25 THE COURT: What are you referencing, Counsel?

1 work. And I think that there's parts of this letter that I
2 certainly still agree with, but it's, it's difficult when,
3 you know, my perspective wasn't being taken into account in
4 this letter. This was just me saying, "Look, everything I've
5 done, I'm sorry."
6 **Q.** So let's go I guess be a little bit more specific going
7 through it. Would you agree with me this generally speaking
8 it's you saying you misbehaved and misbehaved badly at
9 various times?
10 **A.** Yes. I would say that I misbehaved or at least hurt her
11 feelings in ways that weren't fully understood at the time,
12 and for that I'm sorry.
13 **Q.** And you used the phrase "insecurities." You were insecure
14 about Andrea and her being around other men. So you use the
15 word "horribly" in terms of your description how you
16 responded to that. Do you still feel that way today that
17 your behavior was horrible because of your insecurities and
18 the way you treated Andrea during your marriage?
19 **A.** I think there were certain instances in which I felt there
20 was some boundaries being pressed against where I -- I failed
21 to respond appropriately.
22 **Q.** Got an example for me?
23 **A.** Let me think. We had instances where the -- we went to
24 Mexico on a trip, and she -- we were trying to retire for the
25 night. I was trying to get her to come with me, and she was

1 discussed that I had a greater earning potential. So while
2 our kids are young he stays at home in the wintertime, given
3 his seasonal job. Neither one of us were a stay-at-home
4 parent. He does refer to himself like that, but all
5 throughout our 20-year relationship we supported each other
6 in our careers. It was never considered that one of us would
7 stay home and the other -- both of our parents were working
8 parents.
9 Q. I want to get this out of the way. Kevin's used your
10 premarital behavior as a justification for the dynamics of
11 your relationship. Other than the one person before you ever
12 got married, how many relationships have you had other than
13 Kevin?
14 A. Prior to moving out?
15 Q. Yes.
16 A. Relationships?
17 Q. Or partners for that matter?
18 A. I didn't have any other partners.
19 Q. How frequently after you shared this with Kevin -- I'm
20 sorry, you shared this with Kevin, how long did it take
21 before it seemed like things were improving, that maybe Kevin
22 was getting past it?
23 A. He never got past it.
24 Q. Did his treatment of you change, consistently change after
25 you shared with them what you did?

1 **A.** What's that?
2 **Q.** Did his treatment of you change from how he'd been to you
3 before, after you told him about what you'd done?
4 **A.** Yeah, he got worse. He got a lot worse. It was after I
5 told him at some point after I told him, he told me what the
6 rules were.
7 **Q.** And what were those rules?
8 **A.** The rules were that I could not have lunch or coffee or
9 any meeting with any male client, friend otherwise, unless
10 they were a member of my office.
11 **Q.** And can you explain the circumstances of getting these
12 rules from Kevin? How did this come up?
13 **A.** I don't know exactly how the conversation started. I just
14 -- those were the rules. And as we progressed, you know,
15 like three years later I would, you know, go meet somebody or
16 have coffee or whatever and Kevin, you know, Kevin finds out
17 about it, or then I'd mention it later, and he would get very
18 upset and lash out at me and call me stupid.
19 **Q.** Were these rules given to you before you decided to have
20 Kennedy?
21 **A.** I can't remember the genesis of my -- they've just been
22 here as long as I can remember.
23 **Q.** When after he imposed these rules, why didn't you consider
24 leaving him? People have been critical of Kevin, said if he
25 didn't like what you did, he could have left you. Doesn't

1 the shoe fit on the other foot, too?
2 **A.** I never even contemplated that I'd leave for that. You
3 know, the counselor had said that, "You got to be open. You
4 got to be honest," and so now he's able to check my phone at
5 any time because, you know, to know that there's nothing
6 going on. In turn I, you know, I give him more -- I don't
7 know, notice or more just disclose everything. I don't know
8 how to describe it, but I never considered leaving. I told
9 him thinking this, you know, come clean and we'll have a
10 stronger relationship and trust each other more.
11 Unfortunately there was never any trust in our relationship
12 at all.
13 **Q.** How long did you expect to have to follow these rules?
14 **A.** He told me so -- I can't dictate his process. He gets to
15 process. And when I would say, "Come on. It's been, you
16 know, three, four years, is the process done?" And he would
17 get angry and tell me I don't get to dictate his process. He
18 gets to take his time in deciding how long his insecurities
19 are going to impact us and how long I'm going to continue to
20 disclose whenever I see a guy. And he, he would find out.
21 It was innocuous. I met somebody for coffee, or I went to
22 lunch with another attorney. And he would get upset and tell
23 me I lied. He found out, and I said -- I would say things
24 like, "Well, you know, I need to ask for permission? It
25 needs to be before?" And he would say, "You don't have to

1 ask permission, but I need to know before it happens, not
2 after." And then again, you know, several years later I
3 would think, OK, maybe the rules are a little more relaxed,
4 and he'd just get madder. I remember lots of times, but he
5 would say, you know, "Why did you forget the fucking rules?
6 Those are the rules. You're supposed to be really smart, and
7 you're a lawyer. Why can't you remember? They're easy."
8 **Q.** What kinds of things would trigger those behaviors from
9 Mr. Clare?
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11 apparently it was my problem for working in a male-dominated
12 industry. I'm working around a lot of men and, you know, and
13 I'm a lawyer, and I'm attack attractive, and it's not me.
14 Sometimes it's not my fault. Sometimes it's them who are
15 after you. And so it changed all the time. That came up a
16 lot.
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9 it. I was religious. I don't know if that's the right word,
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23 had a baby, so I'm not very attractive, and then I got
24 pregnant again, and that made us really busy. It was after I
25 think Kennedy or Canon that I remember thinking I'm just -- I

1 should be happier having kids, having babies, and I know it's
2 a lot of work, but I just -- that was the first time I
3 thought, everything's going right in my life. I just don't
4 understand why I'm not happy, not more fulfilled."
5 **Q.** Did you bring up the possibility of counseling with Kevin
6 at any point?
7 **A.** Yeah, many times.
8 **Q.** And how receptive was going to counseling for Kevin?
9 **A.** We saw that guy a couple times after I -- after my
10 disclosure.
11 **Q.** I'm sorry. That guy who? Who are you talking about?
12 **A.** I think his last name is Christofferson at Bethel. We saw
13 him a couple times, and he moved, so he was gone.
14 **Q.** When you have this counseling appointment with him, what
15 kinds of things were being discussed?
16 **A.** Oh, just how our relationship can improve from this
17 disclosure, how Kevin needs to be -- appreciate that I told
18 and not be mean and that we needed to work on our
19 communication and make it more than just surface level. We
20 needed to engage in that type of communication with each
21 other.
22 **Q.** What were you counseled that you should do about this
23 situation?
24 **A.** Get up and book.
25 **Q.** And so as your marriage progressed. You have Canon and

1 you have Cruz. How was the dynamics in the marriage then?
2 What were the status of the rules at that time?
3 **A.** After Cruz?
4 **Q.** Yes.
5 **A.** The rules were the same, except when I changed firms the
6 rules, well, the rules didn't change. It was those guys in
7 my firm. So now I couldn't see any of the people from Leavy
8 Schultz without telling him beforehand, and I can hang out
9 with and have lunch with guys from my new firm.
10 **Q.** Now there was some discussion about Beau Ruff. Who is
11 Beau?
12 **A.** My former law partner.
13 **Q.** At Leavy Schultz?
14 **A.** Yes.
15 **Q.** What prompted you to share his inappropriateness with
16 Kevin?
17 **A.** I shared everything with him. I certainly didn't want him
18 to find out later. He was never concerned about Beau. The
19 Beau stuff started a long, you know, while I was at the
20 office. And is he just never was concerned about Beau. My
21 opinion, he didn't, he wasn't threat bind Beau.
22 **Q.** But you mentioned changing law firms. How did changing
23 the law firm decision get made?
24 **A.** It's as he talked about. George had left the firm and
25 three months after I started in 2007. He was the one that I

1 worked with when I was interning. And he left and said that
2 he would have taken me with him, but he was going to go. Him
3 and Kennewick city attorney were going to go start a practice
4 together and that they'd get kind of settled, and then I
5 would come over. I liked the idea. I always liked the idea
6 of working in a younger office so that I could be able to
7 work my career. I loved John Schultz, and he was a great
8 mentor, but he's not going to last forever and so knowing
9 that --
10 **Q.** I think he would beg to differ.
11 THE COURT: He definitely would.
12 **A.** Well, it's definitely not throughout my career. And so
13 it's just different business issues. We were in a different
14 spot. I was young, and as John Schultz said running baby
15 shoes, and there were partners that they basically owned the
16 building, and they didn't want to do like new improvements.
17 They were only invested in it, and Beau and I were looking at
18 having 20 years of practice, and we wanted different things
19 than the older partners wanted.
20 **Q.** How did you approach Kevin about that decision?
21 **A.** He'd always been supportive of going with George.
22 Whenever it would work actually. And so I got pregnant with
23 Kennedy, and I was still an associate. I didn't like the way
24 they handled my maternity leave and started talking to George
25 in 2009 about making the transition. So when I went on

1 maternity leave. I think they gave me like four weeks; then
2 I would make that transition. I kind of geared my case load
3 down so I could leave for maternity leave or have other
4 people handle it and make the transition so I could come back
5 after maternity leave. However, the day before I left,
6 Kevin's parents decided to show up, and so we decided to wait
7 until the later.
8 **Q.** So that possibility of leaving was tabled until when?
9 **A.** Whenever. And so after, after Canon was born, you know
10 I'd go have lunch with George or with John, and the rules
11 still applied. I had to tell or let him know, and he never
12 had any problem with it because he understood that the talks
13 were to have secure future and employment at some point. And
14 then I became a partner, and I was doing well there, and I
15 was working with Fearing, and he and I were trying cases, and
16 John Schultz and I were trying cases. And Fearing ended up
17 getting the position on the bench, so he left, and there was
18 an associate there who was bound to be a partner who I didn't
19 get long with, so it made sense to make the transition then.
20 So I like I said, we met with at that time I think it was
21 George and John and Sperline and Raekes, and so we met with
22 them a couple tames to make sure it was good fit. It was
23 important at that firm that the spouse be included and
24 everybody get along. And then they broke up again, and they
25 got into the new building, and that's when I joined in July

1 of 14.
2 Q. And Jeff Sperline and John Raekes are the two you're
3 talking about?
4 A. Yeah, and there was a split, and they went off on their
5 own. And so again that tabled it for a bit, and it wasn't
6 until July of 14 that I made the switch.
7 Q. Was this decision to do this, was it a marital decision?
8 Or is this something that was made by you independently?
9 A. I think it was mutual. I mean we always supported each
10 other's careers.
11 Q. And he was actually in on discussions about it, was he
12 not?
13 A. Yeah. Not I mean not all the details. I'd go home and
14 share those with him in terms of how I was coming in. At
15 first it was discussed as maybe an associate, and I wasn't
16 comfortable going backwards, and so those types of
17 discussions that I would come in as a partner. He'd
18 obviously support it.
19 Q. And when you made the transition to your new firm I think
20 you said the rules changed only because of who you were now
21 allowed to go out with?
22 A. I guess it's the same rule. It's whoever is in your firm,
23 but Beau had difficult time with me leaving. So he and I
24 would meet up, and once again that one didn't seem to bother
25 Kevin. It wasn't until the comment he made that concerned

1 Kevin and ended our relationship.
2 **Q.** And we don't need the particular comment, but Mr. Ruff was
3 making insinuation or behaviors that certainly any husband
4 would not be happy if somebody was saying it to their wife?
5 **A.** Correct.
6 **Q.** And you told Kevin about it, and did you suffer any
7 repercussions for telling him about it?
8 **A.** No.
9 **Q.** This going back. In the last couple years of your
10 marriage how frequently was there a blow up or a dispute
11 between you and Kevin about whatever you did to violate the
12 rules? I mean was this something that happened daily.
13 Weekly? Monthly?
14 **A.** It just depended. It got really bad in 2015; I would say
15 14 and 15.
16 **Q.** How long after you made the transition to the new practice
17 did there start to be problems or did Kevin have issues with
18 what you were doing?
19 **A.** Well, after I started in July or November one thing I can
20 remember is we had a house-warming party and Ziobro came
21 over. Some other people came over. I think that was the
22 only one from my office. No, Rich and his wife came over,
23 Bryan Davis came over. So we were having a home-warming
24 party.
25 **Q.** Who's Bryan Davis?

1 ask permission, but I need to know before it happens, not
2 after." And then again, you know, several years later I
3 would think, OK, maybe the rules are a little more relaxed,
4 and he'd just get madder. I remember lots of times, but he
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24 pregnant again, and that made us really busy. It was after I
25 think Kennedy or Canon that I remember thinking I'm just -- I

1 **A.** Bryan Davis, he's a high school friend, and his wife.
2 **Q.** And was Rich was a former associate, an attorney?
3 **A.** Yes. And John and his wife and I think Beau and Diana
4 came over. I don't recall whether they had a baby sitter,
5 because it it seemed like it was all adults. And a client
6 that I had become friends with, I'd represented him in his
7 divorce, and he was a friend of us, and he came over. And I
8 could tell Kevin thought I was talking to him too much.
9 Kevin has the ability to give me a specific look. And I knew
10 exactly what that means. And so I was getting that look, but
11 trying to play it off so it wasn't weird. And, you know,
12 after the party I got to address that with him. And
13 sometimes it would be, you know, we had a discussion, and
14 other times it would be he would just ignore me.
15 **Q.** In this particular instance what did he do?
16 **A.** I can't recall exactly, but I remember him get upset about
17 Chad, and later he, few months later he got more upset about
18 Chad.
19 THE COURT: About who?
20 THE WITNESS: About Chad.
21 **Q.** I'm sorry. What's Chad's last name?
22 **A.** Langford.
23 **Q.** So you said a couple months later he got mad again. Why'd
24 he get mad again?
25 **A.** Yeah, I think he never got over the fact that I was

1 **Q.** I think we left off talking about Sara Ellison. How was
2 Sara Ellingson selected as the person to counsel?
3 **A.** Can you move the microphone down?
4 **Q.** Yes. How was Sara Ellingson selected?
5 **A.** I found her. She was recommended to me, and so I
6 contacted her office after Kevin agreed to do marital
7 counseling after the Chip incident.
8 **Q.** When you told Kevin you wanted to attend counseling with
9 Miss Ellingson what did they will you the rules were?
10 **A.** So after the Chip incident I demanded that we do
11 counseling if -- it's time. We talk about it, and he'd
12 refuse, and I told him it's something we needed to do and I
13 found her, and he said, "OK, Addie, but the condition will be
14 we're going to talk about the history," my history, my
15 relationship before we were married, and this is eight years
16 after.
17 **Q.** To digress, at least briefly, you said the Chip incident.
18 What are you talking about? First of all who's Chip?
19 **A.** Chip Giles. He was the associate, a former associate at
20 TMC before I arrived there. He and I were opposing counsel
21 at some point and had become friends. He's nice guy. He'd
22 moved to Idaho, and my grandmother was going through a
23 divorce. Her husband had went into the nursing home, and her
24 husband's daughter decided to divorce, have him divorce my
25 grandmother. And she's pretty old, and so although she lived

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7 counseling after the Chip incident.
8 **Q.** When you told Kevin you wanted to attend counseling with
9 Miss Ellingson what did they will you the rules were?
10 **A.** So after the Chip incident I demanded that we do
11 counseling if -- it's time. We talk about it, and he'd
12 refuse, and I told him it's something we needed to do and I
13 found her, and he said, "OK, Addie, but the condition will be
14 we're going to talk about the history," my history, my
15 relationship before we were married, and this is eight years
16 after.
17 **Q.** To digress, at least briefly, you said the Chip incident.
18 What are you talking about? First of all who's Chip?
19 **A.** Chip Giles. He was the associate, a former associate at
20 TMC before I arrived there. He and I were opposing counsel
21 at some point and had become friends. He's nice guy. He'd
22 moved to Idaho, and my grandmother was going through a
23 divorce. Her husband had went into the nursing home, and her
24 husband's daughter decided to divorce, have him divorce my
25 grandmother. And she's pretty old, and so although she lived

1 in Montana, his nursing home was in Idaho. So the divorce
2 was filed in Idaho, and I'm the only attorney in the family.
3 I'm not licensed in Idaho, so I reached out to chip, and this
4 is when I was at TMC, and I asked Chip if he would assist me.
5 I could do pro hoc vice and take on as much of the weight as
6 possible in terms of pursuing the case, but I would need his
7 assistance in arguing, and he agreed.
8 And there was a couple trips that I went to Sandpoint for
9 court, and the one time I'm talking about was a mediation,
10 and Chip had come to the Tri-Cities. Since he was helping my
11 grandmother, he stayed at our house. Hey stayed in the spare
12 room. And he spent the first night, and then the second day
13 we'd woken up, and I drove my car up to Sandpoint. Do you
14 want the whole incident?
15 **Q.** Yeah, that's fine.
16 **A.** We drove up to Sandpoint and mediated. It took all day,
17 and we were able to reach a resolution. And Chip, my
18 grandmother took him and I out to dinner. My grandmother had
19 a hotel room, and so I was just going to stay with her
20 because we didn't know how long the mediation would take;
21 give me some time with my grandmother, and then Chip and I
22 would drive back the next day. And Chip had a friend he was
23 going to be staying with at Sandpoint. And about dinnertime,
24 my phone had been doing weird things, black out, and it had
25 been charged, and I didn't know what was going on with it. I

1 attempted to contact Kevin, and at dinner time it came on,
2 and I told him, "I'm having dinner, and I'll call you later."
3 My grandmother decided after dinner to go home and go to bed,
4 and we finished dinner, and Chip's friend came over, and we
5 went out for drinks, and I went back to my room about
6 midnight, and my phone had been dead, and the phone rang, and
7 it was Kevin. So I answered it, and it was Kevin. And he
8 started screaming at me for not being available and what it's
9 like to be the spouse at home when your wife is going out
10 with guys you don't know and staying out till midnight and
11 how horrible I was for doing that.
12 And I can't remember if he asked to talk to grandma. I
13 think he did. He did not believe that I was there. And
14 grandma, she woke up as soon as we started talking, so we
15 were sharing a bed. And so I handed the phone to her, and
16 she talked to him, got off the phone, and she says, "O Honey,
17 he's insecure, isn't he?" And I said, "Yeah, grandma." And
18 it didn't solve the problem, because although he knew where I
19 was at or at least that I was home safe, it didn't solve his
20 problem that I should not have been out with dudes he doesn't
21 know out of town. And so we drove back and he wouldn't
22 answer my calls the whole way back.
23 We got back into town and what he typically would do to
24 show me he's angry is passive aggressiveness is it just take
25 the kids and go so I'm coming home to an empty house. I've

1 been gone, and this is how I get punished. "You didn't do
2 what I wanted you to do, and so I'm taking the kids out of
3 the house." I didn't answer the phone. I didn't do
4 anything. And I assumed it was summertime that he would be
5 maybe at Meadow Springs swimming and I was able to just go
6 there and find him and, you know, I know he's angry. I know
7 what the issue is. I know exactly what the issue is, and the
8 kids were around, and so I'm attempting to go about the day.
9 Chip was planning on spending that extra night, or at
10 least because he had lost his keys. He had forgotten where
11 he'd put them. And so Chip had went off with Rich up in the
12 clubhouse or something, and he was going to get a ride home
13 with him, and we got home. And we were giving the kids a
14 bath. And he had that look on his face that like I've done
15 something. And this is different. Not that I was out but I
16 had done something to him. Like mad.
17 And we're giving the kids a bath, and he says, "Why is
18 Chip's bed tossed?" And I told him, "Well, 'cause he was
19 looking for his keys. As soon as we got home we were looking
20 for his keys, 'cause he can't get out of here unless we find
21 his keys." And that didn't solve his issue. And then he
22 told me that he had looked in the laundry. And I -- I tried
23 to kind of keep it light, you know, kind of laughing like --
24 THE COURT: Take your time.
25 **A.** Sorry. I don't want to talk about this. Anyway just he

1 asked about, you know -- I'll just leave it at that. So that
2 night, you know, we're in bed and I'm crying. You know, like
3 it happened so many times, I was sorry for what I did.
4 Q. Andrea, I don't mean to interrupt you. I apologize. You
5 have your hand over your mouth. I can't hear you.
6 A. I apologized for what I did to him.
7 Q. You apologize for that sequence of events?
8 A. No, I was apologizing for that relationship that long ago
9 that he's still upset by it, and I still feel guilty for it,
10 and I can't like, you know, I can forgive myself, but until
11 he lets it go I mean I have to deal with it. So.
12 The next day, obviously Chip came home later, and the
13 next morning he was, he was completely rude to Chip.
14 Wouldn't acknowledge him. Another guy in our house and he
15 wouldn't acknowledge him. He just ignored him. And Chip is
16 interacting with the kids and made it really uncomfortable,
17 and all this guy did was help me out, help out my
18 grandmother, and he found the keys in the sink, and he left
19 and after that.
20 I said, "We need to go to counseling, and we are going to
21 talk about how you lash out at me and you say horrible things
22 to me. And this insecurity thing, we've got to get through
23 that." And he said, "The only reason, the only way I'm going
24 to go is if we get to talk about the history."
25 Q. That whole Chip incident, when did you get an apology from

1 Kevin.
2 **A.** I didn't.
3 **Q.** Did he ever bring that issue with him up again to try to
4 discuss that issue with you again?
5 **A.** The Chip incident? No. It was resolved in his mind. You
6 know, I think if he needed me to feel guilty as to why he did
7 it, that he was still not happy with Chip, but I mean I was
8 OK.
9 **Q.** And so you make arrangements to see Miss Ellingson. Did
10 you agree to his ground rules for counseling that he got to
11 bring up?
12 **A.** Oh, yeah, fine, fine. Let's just go then.
13 **Q.** And at that time, you'd been married for about what? Nine
14 years, ten years, something like that?
15 **A.** Yeah, ten years.
16 **Q.** How many counseling appointments did you have with Miss
17 Ellingson?
18 **A.** Three.
19 **Q.** And would you please explain what happened during those
20 sessions?
21 **A.** We went in the first time, and she says, you know, "Why
22 are you guys here?" And I told her Kevin lashes out, and he
23 says really mean things, and once they're out, they're out.
24 And, you know, and I've asked that he not do that or that he
25 have a filter and before he says those rule things that he

1 stop, and that hasn't happened. So he lashes out. And his
2 insecurities." And I didn't explain the Chip incident. I
3 got about that far, and she asked us a little bit of
4 introductory stuff. And Kevin started in with the history
5 and he went further about, you know, not just the first time,
6 you know, this premarital relationship, but she talks
7 inappropriately to this guy or she has coffee with this guy.
8 And as to why he would be -- and then I lie. I lie. Because
9 I didn't follow the rules.
10 **Q.** After that disclosure by Kevin, were you able to address
11 your concerns in any significant way?
12 **A.** No, we went three times and it was, it was clear I was
13 being called to explain why and how that would make Kevin
14 feel if I was talking to this person or talking to that
15 person. And so I, I didn't think we were going anywhere with
16 it. So.
17 **Q.** So the focus was on what you could do to make Kevin
18 happier? Is that a fair way to put it?
19 **A.** Yeah. I don't know. It just like just justified the way,
20 the way I'm treated and he behaves. I found myself just I
21 had -- I was the one defending myself, even though I was the
22 reason we were there and hoping to address his issues, but we
23 first had to go through my history.
24 **Q.** So during the counseling sessions was there ever any
25 apology, contrition, anything like that from Kevin to you?

1 Was there any recognition of what he was doing to you?
2 **A.** No, it was clear that Sara had perceived I was the
3 problem.
4 **Q.** Because of 10 years ago or nine years ago?
5 **A.** And the lying to him. I had to explain it wasn't lying or
6 I didn't think I needed to tell him. So you have to
7 understand after all these years I'm thinking the rules at
8 some point lax where I can be trusted. I'm not doing
9 anything that you're accusing me of. You know, at this point
10 he tracks me. He's says horrible things to me, and I'm
11 always the problem. And you know, and of course it doesn't
12 -- our relationship was not what it looked like to everybody
13 else. I'm a strong lawyer, but I did not wear the pants in
14 our relationship. OK? Despite what people would think.
15 **Q.** After you left counseling with Sara Ellingson did Kevin
16 keep seeing her?
17 **A.** He did.
18 **Q.** Did Kevin ever share with you what he was trying to work
19 on during any sessions?
20 **A.** No.
21 **Q.** Did you notice any difference in his behavior or his
22 treatment of you after he counseled with Sara Ellingson?
23 **A.** Well, I mean he continued counseling, and additional
24 things had occurred so, so it kind of changed, the dynamic.
25 I don't know that I could attribute it to the counseling or

1 had to talk to you about?
2 **A.** I don't remember the specifics. But this is how we would
3 find out that I, you know, met with somebody. And then I'd
4 have to discuss it with him, and then I'd be accused of lying
5 because I didn't follow the rules and tell him in advance,
6 stuff like that.
7 **Q.** You use the phrase "accused of lying." Whose words are
8 those?
9 **A.** His.
10 **Q.** So if you didn't follow his rules, that meant you were a
11 liar? Didn't matter what you said. If you didn't follow the
12 rules, you were a liar?
13 **A.** Yeah, if I didn't follow the rules. There were times --
14 like I said at some point I thought the rules would, would
15 lessen, so I didn't tell him. So because he's monitoring my
16 communications, he sets me up and he says, "Did you ever meet
17 with so and so?" "I don't remember, no." And like and then
18 he would tell me that he saw it, you know, "You had an
19 email," or, "You deleted this communication. You know,
20 you're lying." And it got worse and worse, because I didn't
21 think I needed that kind of reporting. I thought we've got
22 -- we've given -- I have three kids. I come home every
23 night. I don't understand. And these little tiny things
24 would accumulate, and therefore I'm a liar, and his conduct
25 is now justified because I -- I'm not this open book. Yeah.

1 **Q.** So what were the rules about you spending time outside of
2 work or home without Kevin and/or the kids?
3 **A.** There weren't any rules for that. It just got to where we
4 did everything together. So we'd go grocery shopping all
5 together. If we were to go anyplace it would be all
6 together. There was very little autonomy for me to do my own
7 thing. You know, if I had plans to go, and I'm talking, I'm
8 kind of thinking, especially toward the end.
9 This is most memorable, but I had these plans to go to a
10 little clothing party or something, jewelry party or
11 something at my friend's house, and I had this plan for like
12 a month. And Kevin would have an issue about something or be
13 upset about something or pick a fight about something, and I
14 wouldn't go. And my friends accused me of being flaky
15 because I would say I'd go and I wouldn't show up. I didn't
16 -- we didn't go to my family's house very often.
17 **Q.** Why not? Your family in particular?
18 **A.** What's that?
19 **Q.** What about your family? Why didn't you go see your family
20 much?
21 **A.** Honestly he didn't really care for them, and one reason
22 would be, you know, well, if we have a family function he
23 didn't feel like going all the way out there. A kid was
24 sick, or it would always be something. If we did go out
25 there, it would be a for a short time.

1 because of work?
2 **A.** The last four months in 2015 when they were working on a
3 case that required weekends and travel to the east and west
4 coast, that was the next time I saw her work for an extended
5 period of time. Although, like I said hindsight, I don't
6 know how much of that was work and how much of that was just
7 getting together with Mr. Telquist.
8 **Q.** So when you expressed your displeasure with Andrea, did
9 you accuse her of being unfaithful to you?
10 **A.** I accused her of being unfaithful to me in August of 2015,
11 yes, sir.
12 **Q.** Prior to August of 2015 did you accuse her any other time
13 of that behavior since she joined TMZ, now TMC?
14 **A.** No.
15 **Q.** This lawsuit, Wenatchee lawsuit, I guess I'm not
16 understanding. You felt you were concerned about her being
17 unfaithful with this guy because he walked away and her
18 behavior changed, but you didn't talk to her about it?
19 **A.** No, like I said this is a hindsight issue. So she had
20 shared with me in 2015 in December of 2015 that on that, on
21 that case that's where George took a liking to her, and she
22 noticed it, and he noticed it, and they discussed it. So
23 when you work your way back and you start to notice the
24 pattern and behavioral changes from that time, that's where
25 I'm getting that from. That's information she provided to me

1 you agree you handled that situation poorly?
2 **A.** Yes.
3 **Q.** Now you said to Andrea, "I would constantly reiterate what
4 you were doing wrong, what you owed me, what I needed, when
5 really it was a problem in my heart." Now Andrea has accused
6 you throughout these proceedings of behaving like that
7 towards her, has she not? She has accused you of that, has
8 she not.
9 **A.** Can you be more specific?
10 **Q.** Andrea has accused you of treating her by complaining
11 about everything she was doing was wrong, that she owed you
12 transparency and owed you all these obligations about rules,
13 what you needed, blah blah blah. Andrea has accused you of
14 mistreating her during your marriage, has she not? She's
15 accused you of that. I'm not saying you're acknowledging you
16 have, but she's accused you of that, right?
17 **A.** Sure, yes.
18 **Q.** And she's accused you of that from the very beginning,
19 hasn't she?
20 **A.** Beginning of this divorce?
21 **Q.** Yes.
22 **A.** Are you speaking like in declaration form?
23 **Q.** I'm talking about not during the period of time when you
24 two were trying to negotiate a deal in early to mid 2016.
25 I'm talking about when this divorce started in August of

1 you become aware that it was on Andrea's phone?
2 **A.** After I'd lost two phones.
3 **Q.** Can you give me at least a year? Was it in 2015?
4 **A.** Maybe. Could have been 14.
5 **Q.** When did you start monitoring Andrea's location by using
6 the Find My iPhone App on her phone?
7 **A.** I started using it after she had joined this new firm of
8 hers.
9 **Q.** I'm sorry. I didn't hear that past last part.
10 **A.** I started using it after she joined her current firm.
11 **Q.** Do you know how long after? A few weeks, a few months?
12 **A.** I think one of the first times I used it I had needed her
13 opinion on something concerning the children, and I had
14 attempted to call her on her phone, and she was
15 nonresponsive. I called her work, and they said, "She's not
16 here." They informed me that she was not in court, and I was
17 wondering where she was. I needed a response, a joint
18 response from us to I believe a physician. And I looked at
19 it at that time. That was one of the first times I remember
20 looking.
21 **Q.** So you looked at it because she was not responding to your
22 contacts, and wanted to know where she was?
23 **A.** Yes.
24 **Q.** Did you tell her in advance that you were doing that?
25 **A.** I told her that day that I had looked. She had called

1 later. I had to make the decision, and she called later, and
2 I said, "I was looking for you. I needed your advice on
3 this, and you weren't talking." And she says, "I was in
4 court," and I stopped her and said, "Well, when I looked at
5 it you were at the bar." And she said, "I'm sorry. I don't
6 know why I lied." And I said OK. And we spoke about that
7 night, and that was the first time.
8 **Q.** In the past when Andrea was not responsive when you wanted
9 her to be, and/or doing something you did not want her to do,
10 what kind of reception does she get from you when she comes
11 home?
12 **A.** In the past she was typically responsive. At her former
13 firm. And even this new firm they would typically head to
14 the bar at 3:30 or 4 so they could have their social time,
15 and she would be on her way home between 5 and 5:30. So it
16 was only I think the last eight months of her living in the
17 home where it became more frequent later in the day, and I
18 had, took issue with it.
19 **Q.** How many times total did you to track your wife's
20 whereabouts using the iPhone App on her phone?
21 **A.** I don't know.
22 **Q.** Can you give me a ballpark?
23 **A.** Couple of dozen probably.
24 **Q.** Couple of dozen?
25 **A.** Yeah. They were typically the nights that she was going

1 kids. And I did everything I could to provide her kids when
2 she needed them during that time. It was explained to me
3 that it was a process of figuring out what she wanted to do
4 going forward with our relationship, and this was a moving
5 out and deciding about what was going to happen next.
6 **Q.** Miss Clare made it clear to you that she was not
7 necessarily committed to remaining in the marriage?
8 **A.** She wasn't in our out. She was needing time to decide.
9 That was her.
10 **Q.** And the two of you agreed it was appropriate that they
11 spend I believe a week with you and a week with her?
12 **A.** Yes.
13 **Q.** And during the weeks that she had them you would come over
14 and care for them during the day?
15 **A.** I would either watch them after school until she would get
16 off work and come get them, and then typically in a five-day
17 period I would be invited over one or two times to have
18 dinner and hang out with them before they were put down.
19 **Q.** When did you and Andrea start discussing specifically
20 divorce and possible resolutions?
21 **A.** I think late April of -- the straw that kind of broke the
22 camel's back was when I did look at her phone again she had
23 told me --
24 **Q.** Understand. That's not responsive.
25 **A.** April, late April.

1 an email requesting that if this is in fact what she wants to
2 do that she please file so we can get on with it, because
3 it's heart wrenching, and this period of waiting was a
4 difficult process.
5 **Q.** So even after you had this blowup over the text messages,
6 you and Andrea still shared residential placement equally,
7 did you not?
8 **A.** Yes.
9 **Q.** That was by agreement? There was no court orders?
10 **A.** Yes.
11 **Q.** Then Andrea filed a case in May. Why were you upset that
12 she filed it in Walla Walla County?
13 **A.** I wasn't upset. I -- my conclusion was that she had known
14 that I had seen a lawyer in Yakima, and rather than choosing
15 to file in Yakima and 45 minutes in the opposite direction of
16 the Tri-Cities, that that would only incur more costs for me
17 to have to Yakima attorney travel twice the distance to Walla
18 Walla.
19 **Q.** And do you remember when she filed in Yakima?
20 **A.** She never filed in Yakima, sir.
21 **Q.** Excuse me, Walla Walla. I apologize. How long was it
22 from the date she filed that she filed it until the date you
23 hired Mr. Dow?
24 **A.** I was served on May 14th I think of 16, and I believe I
25 hired him the following Monday, the 18th.

1 **Q.** Now Andrea made it clear during your marriage, did she
2 not, that she and Mr. Dow did not like one another?
3 **A.** I knew that they had problems in the courtroom together
4 and did not like working together.
5 **Q.** Would you agree with me the problems were a lot more than
6 your average litigant versus litigant, or excuse me,
7 litigator versus litigator relationship? You knew that she
8 pretty much despised Mr. Dow?
9 **A.** I knew she didn't like Mr. Dow. There were other
10 attorneys she didn't like as well, but I would say he would
11 be the -- he was certainly one that would come up because
12 they had cases.
13 **Q.** And Mr. Dow actually tried to dissuade you from hiring him
14 because of that fact, didn't he?
15 **A.** He suggested I seek other representation before coming
16 back to him and hiring him.
17 **Q.** Now originally Andrea was her own lawyer when she filed in
18 Walla Walla, was she not?
19 **A.** I think so, yeah.
20 **Q.** And when you hired Mr. Dow, he notified her in writing
21 that she was not allowed to speak to you because it would be
22 a violation of the rules of ethics for her to communicate
23 with another litigant without going through the attorney. Do
24 you remember that?
25 **A.** I do remember that.

1 **Q.** How do you know that?
2 **A.** I went to their wedding in California with Andrea and my
3 family.
4 **Q.** OK. Go ahead. Sorry for interrupting you.
5 **A.** Then I know that in 2017 she was -- received at least
6 papers for divorce from George, and I believe in March of 18
7 divorce was final.
8 **Q.** So when you found out there was something going on between
9 your wife and Mr. Telquist, did and you Ms. Britt
10 communicate?
11 **A.** Yes.
12 **Q.** When did you have your first communication about George
13 and Andrea being together?
14 **A.** I believe I went to her home in January 16.
15 **Q.** 2016?
16 **A.** Uh-huh.
17 **Q.** Who initiated that contact?
18 **A.** I did. I drove over to her house.
19 **Q.** I mean who set up the meeting in the first place?
20 **A.** There wasn't a meeting. I just drove over to her house.
21 **Q.** What was the purpose of that?
22 **A.** To let her know that both of our respective spouses are in
23 a relationship.
24 **Q.** So she didn't solicit you? You just volunteered that
25 information to her?

1 A. Yes.
2 Q. What was the purpose of that?
3 A. Because if I was a spouse I would want to know.
4 Q. Just a courtesy to Dr. Britt?
5 A. Yes.
6 Q. From that point forward how frequently did you and Dr.
7 Britt have contact about the comings and goings of Mr.
8 Telquist or your wife or both?
9 A. We didn't speak until last spring 2018.
10 Q. 2018?
11 A. Uh-huh.
12 THE COURT: We're going to take our morning recess.
13 Recess for 15 minutes.
14 (recess)
15 THE COURT: You may continue, Mr. Pickett.
16 MR. PICKETT: Thank you, your Honor.
17 Q. Now, Mr. Clare, I think we left off talking about Dr.
18 Britt. Now Dr. Britt's office notified you recently, did she
19 not, that they were no lodger going to have your family as
20 patients?
21 A. Yes, I received letters.
22 Q. And do you know approximately how long ago that was?
23 A. It was in mid December I want to say.
24 Q. Do you recall did your side you and your attorneys have
25 Dr. Britt come testify at a deposition?

1 **A.** I listed her as a witness. I think your side called her
2 in a deposition.
3 **Q.** Did she not want to be involved as your family's doctor
4 before or after that deposition?
5 **A.** Before she was OK with us continuing to be seen at her
6 firm. It's my conclusion that after that deposition she
7 decided it would be better to sever any relationship with our
8 family and her practice.
9 **Q.** And do you know if she still going to be testifying in
10 this trial as far as you know?
11 **A.** She's a witness.
12 **Q.** So you approached her in January of 16 to share what
13 Andrea and George were doing. What did you expect the result
14 of that disclosure was going to be?
15 **A.** I did not have an expectation. I just thought it was fair
16 to -- it's a heavy level of betrayal, and me now keeping a
17 secret from another innocent spouse felt like I was, I was
18 continuing in the betrayal, so I just wanted to let her be in
19 the know.
20 **Q.** So you felt it was a moral obligation?
21 **A.** Ah, yes.
22 **Q.** Did it ever cross your mind it was likely going to cause
23 some problems between Mr. Telquist and Dr. Britt?
24 **A.** I thought she had a right to know over his right to
25 secrecy concerning the marriage.

1 having too much fun and refused. And I left without her,
2 waited for a time, and was concerned because of where we were
3 in Mexico and went back to look for her. And when I had come
4 back to the room, she was there, and I yelled at her, and she
5 yelled at me, and she left, and I could have handled that
6 much better.
7 **Q.** And that's the incident where you slammed the door when
8 she walked in, right? Or you slammed the door open when you
9 came in?
10 **A.** I don't know if I -- I don't remember slamming the door.
11 I could have. It could have happened.
12 **Q.** And Andrea had to end up staying someplace other than her
13 own room that night?
14 **A.** Someone in the wedding party, yeah, she went and stayed
15 with.
16 **Q.** And did you tell her you hoped she didn't get raped?
17 **A.** Yeah, that was my concern. We were at a, at a, a resort
18 in Mexico that was not -- it was nice, but my concerns was
19 for her safety, and I wanted her to come back to the room,
20 and she was severely inebriated, more than myself, and would
21 not listen to me, and it was hard to, to get her to see that
22 it's time to retire and need to go home, and she wanted to
23 continue past 2 a.m.
24 **Q.** So you just went on to describe the negative behavior she
25 engaged in. So let's get back to the beginning of it. Do

1 was there with a moving van. The other time she had come and
2 taken a Father's Day present she had given me, and I found
3 that it was gone, so I assumed it happened in that time
4 frame.
5 Q. She is a co-owner of the home?
6 A. Yes.
7 Q. She chose to leave the home in February?
8 A. Yes, sir.
9 Q. You still wanted to reconcile and have her come back?
10 A. In February?
11 Q. During the times that you said she came into the house?
12 A. The time concerning the moving van, yes. The time that
13 she -- the other two times were in June of 16 after filing
14 and September of 16. So that would be a no.
15 Q. You mentioned the accessing her email in December of 2015.
16 A. Uh-huh.
17 Q. When was the next time you accessed her emails or other
18 private communications?
19 A. The next time was in April of 2016 I looked at her phone
20 and texts and emails with Mr. Telquist.
21 Q. On that occasion she had run some child support
22 worksheets, correct?
23 A. Yes. I had seen Mr. Maxwell.
24 Q. Let me ask. She had child support worksheets, and she
25 wanted to show you?

1 A. Yes.
2 Q. And she gave you her phone to look at?
3 A. Yes.
4 Q. Did she give you invitation to go snooping on her phone?
5 A. No, sir.
6 Q. Did you think she would be OK with you going and checking
7 her text messages?
8 A. No.
9 Q. Yet you checked her messages anyway, did you not?
10 A. I did check them, yes.
11 Q. So we have you nonconsensual access in December,
12 nonconsensual access. When was this text message in April?
13 A. April 16.
14 Q. Who's Amy Britt?
15 A. She is George Telquist's ex-wife.
16 Q. How long have you known that she's been George's wife or
17 ex-wife?
18 A. I believe I found out the spring of 2018.
19 Q. 2018?
20 A. Yeah.
21 Q. You found out that Amy Britt was George Telquist's former
22 wife or wife on April 2018?
23 A. Let me back up. Amy Britt I found out, she was our former
24 pediatrician, and she did marry George in June of 2014, and
25 --

1 **Q.** And during that time you sought out some legal assistance
2 from John Maxwell, an attorney out of Yakima?
3 **A.** Yes.
4 **Q.** And without getting into specifics about the offers back
5 and forth, did you exchange offers back and forth with
6 Andrea? Did the two of you discuss a permanent financial and
7 parenting plan resolution?
8 **A.** We discussed. We had shared a financial worksheets
9 between each other.
10 **Q.** And you actually handed a summary list of your proposal to
11 Andrea? You actually presented that to Andrea, did you not?
12 **A.** I think Mr. Maxwell helped me. He examined the list, the
13 schedule she provided me, and he gave me pointers and gave me
14 a bullet point list of some things to go over.
15 **Q.** And would you agree with me about that time you guys
16 actually had it pretty close to being resolved, didn't you?
17 You were down to talking about child support, weren't you?
18 **A.** Because this is my first divorce, I don't know what was
19 all -- needs at the time. We were going through the throes
20 of that. I don't know if we were anywhere to an ending
21 point.
22 **Q.** But you didn't just pick John Maxwell out of the phone
23 book, did you?
24 **A.** I believe he was recommended. He didn't do divorces with
25 children, which I found out after I had gone to see him, but

1 he was recommended through one of my father's former
2 attorneys.
3 **Q.** He's an experienced family law lawyer?
4 **A.** He is, yeah.
5 **Q.** And would you agree with me it appeared that things were
6 going well towards an amicable resolution until you saw the
7 emails from Mr. Telquist or the texts, excuse me?
8 **A.** I can't, I can't say if it was amicable or not. Andrea
9 and I were both pretty timid, and it was a hard discussion to
10 talk about divorce stuff. So when we shared it, we shared it
11 quickly, and then we let the other person kind of process.
12 If you're talking on a timeline, time frame, I would say we
13 were in the first 10% of discussing.
14 **Q.** You knew once you had Mr. Maxwell involved that your
15 marriage was going to a divorce, right?
16 **A.** I didn't know that at the time.
17 **Q.** So you were exchanging divorce proposals back and forth,
18 but you didn't think you were getting divorced?
19 **A.** Well, the reason I was doing that is Andrea had requested
20 that she handle the divorce, and she can do the paperwork
21 because she's the lawyer, and I had urging from family and
22 friends to maybe seek counsel in order to protect myself and
23 not be, you know, just led by her. So that's what I --
24 that's what I had done. But even as it was happening I -- I
25 informed Andrea I was not going to file for divorce, because

1 stop, and that hasn't happened. So he lashes out. And his
2 insecurities." And I didn't explain the Chip incident. I
3 got about that far, and she asked us a little bit of
4 introductory stuff. And Kevin started in with the history
5 and he went further about, you know, not just the first time,
6 you know, this premarital relationship, but she talks
7 inappropriately to this guy or she has coffee with this guy.
8 And as to why he would be -- and then I lie. I lie. Because
9 I didn't follow the rules.
10 **Q.** After that disclosure by Kevin, were you able to address
11 your concerns in any significant way?
12 **A.** No, we went three times and it was, it was clear I was
13 being called to explain why and how that would make Kevin
14 feel if I was talking to this person or talking to that
15 person. And so I, I didn't think we were going anywhere with
16 it. So.
17 **Q.** So the focus was on what you could do to make Kevin
18 happier? Is that a fair way to put it?
19 **A.** Yeah. I don't know. It just like just justified the way,
20 the way I'm treated and he behaves. I found myself just I
21 had -- I was the one defending myself, even though I was the
22 reason we were there and hoping to address his issues, but we
23 first had to go through my history.
24 **Q.** So during the counseling sessions was there ever any
25 apology, contrition, anything like that from Kevin to you?

1 **A.** I think maybe with the new friendship with George Telquist
2 she takes a lot that he has to say as gospel. And if he had
3 a problem with it, that would certainly raise concerns, but
4 that wasn't shared with me until after this divorce
5 proceeding started.
6 **Q.** You said this divorce proceeding. Would you agree with me
7 there was several dates that involve the eventual breakup of
8 the marriage? In December of 2015 there was something
9 causing angst in the marriage between the two of you?
10 **A.** Correct.
11 **Q.** And that was because you found out she was communicating,
12 which you felt was inappropriate way, with Mr. Telquist?
13 **A.** Correct.
14 **Q.** And then in February of 2016 she wanted to move out, and
15 you both agreed to do that?
16 **A.** Correct.
17 **Q.** And then May of 16 you saw Mr. Maxwell, the attorney from
18 Yakima?
19 **A.** Early May, correct.
20 **Q.** And then Andrea filed a case down in Walla Walla County,
21 and you got Mr. Dow?
22 **A.** After she filed that, correct.
23 **Q.** Then we talk about when you separated. Which one of those
24 dates do you think is the date you separated? What do you
25 consider the date of separation?

1 out in public with someone who's not a current client or a
2 partner, you should tell me about it." It wasn't a -- it
3 wasn't a permission thing. It was just let me know. And in
4 walking through that, we certainly had our, our learning
5 process where I would find out a day later or a week later
6 she'd gone out with a guy that wasn't a client or a partner,
7 and we would readdress it like, "Maybe you should tell me
8 before," a simple text. I don't need permission. I just --
9 it's nice to know. That settles my heart and my own
10 insecurities and rebuilding trust. And I think that, that
11 incident is where that condition that we both came up with to
12 regain trust. That's where that came from.
13 **Q.** Did Andrea ever complain to you about these things that
14 you wanted her to do?
15 **A.** No. At first she was certainly -- wanted to put my mind
16 and my heart at ease. That was, that was her, her service as
17 a wife to not let me worry. If there was something that I
18 was doing that was worrying her, I would do the same.
19 **Q.** You said service as a wife? Is that what -- did I hear
20 you correctly?
21 **A.** Yeah. When you enter into the most important contract of
22 your life with somebody, you are there for them and you
23 become one, and if they have an issue, you want to satisfy
24 that issue, and if they have concerns, you want to put those
25 at bay as best you can.

1 **Q.** And when was Cruz born?
2 **A.** Cruz was born August 31st, 2013.
3 **Q.** And where were you working then?
4 **A.** At Air Trac.
5 **Q.** And where was Andrea at that point?
6 **A.** Andrea was now at or still at Leavy Schultz Davis &
7 Fearing.
8 **Q.** When Andrea worked at Leavy Schultz Davis & Fearing, did
9 you have any rules about who she could go socialize with,
10 when she could socialize?
11 **A.** No. At the time the same I guess conditions still
12 existed. She didn't spend time with her partners outside of
13 work. There was no after-hour hangout. So the same general
14 condition of, "Hey, Andrea, if you're you going to go out
15 with someone that's not a partner or client, it would be nice
16 to know."
17 **Q.** Did Andrea always honor these conditions that you had?
18 Did she always tell you where she was going to be and who she
19 was going to be with?
20 **A.** I think for the most part. Sometimes she would forget,
21 and we would readdress that, but I would have to you assume
22 yes. I didn't have any way to fact check her. So.
23 **Q.** What were the consequences if she failed to follow the
24 rules when she was with Leavy Schultz?
25 **A.** Just discussion. I didn't have any consequences for her.

APPENDIX “C”

1992 Wash. Legis. Serv. Ch. 111 (S.S.B. 6347) (WEST)

WASHINGTON 1992 LEGISLATIVE SERVICE

52nd Legislature, 1992 Regular Session

Additions are indicated by <<+ Text +>>

Deletions by <<- Text ->>

Changes in tables are made but not highlighted. Vetoed provisions

within tabular material are not displayed.

CHAPTER 111

S.S.B. No. 6347
DOMESTIC VIOLENCE—PROTECTION PROCEEDINGS—FORMS, INSTRUCTIONS

AN ACT Relating to domestic violence; amending RCW 26.50.030, 26.50.035, 26.50.060, 10.99.030, 26.50.010, 26.50.020, 4.08.050, 12.04.140, 12.04.150, and 26.28.015; and creating new sections.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. Sec. 1. The legislature finds that:

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: Child 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. The crisis is growing.

While the existing protection order process can be a valuable tool to increase safety for victims and to hold batterers accountable, specific problems in its use have become evident. Victims have difficulty completing the paperwork required particularly if they have limited English proficiency; model forms have been modified to be inconsistent with statutory language; different forms create confusion for law enforcement agencies about the contents and enforceability of orders. Refinements are needed so that victims have the easy, quick, and effective access to the court system envisioned at the time the protection order process was first created.

When courts issue mutual protection orders without the filing of separate written petitions, notice to each respondent, and hearing on each petition, the original petitioner is deprived of due process. Mutual protection orders label both parties as violent and treat both as being equally at fault: Batterers conclude that the violence is excusable or provoked and victims who are not violent are confused and stigmatized. Enforcement may be ineffective and mutual orders may be used in other proceedings as evidence that the victim is equally at fault.

Valuable information about the reported incidents of domestic violence in the state of Washington is unobtainable without gathering data from all law enforcement agencies; without this information, it is difficult for policymakers, funders, and service providers to plan for the resources and services needed to address the issue.

Domestic violence must be addressed more widely and more effectively in our state: Greater knowledge by professionals who deal frequently with domestic violence is essential to enforce existing laws, to intervene in domestic violence situations that do not come to the attention of the law enforcement or judicial systems, and to reduce and prevent domestic violence by intervening before the violence becomes severe.

Adolescent dating violence is occurring at increasingly high rates: Preventing and confronting adolescent violence is important in preventing potential violence in future adult relationships.

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Sec. 2. RCW 26.50.030 and 1985 c 303 s 2 are each amended to read as follows:

<< WA ST 26.50.030 >>

There shall exist an action known as a petition for an order for protection in cases of domestic violence.

(1) A petition for relief shall allege the existence of domestic violence, and shall be accompanied by an affidavit made under oath stating the specific facts and circumstances from which relief is sought.

(2) A petition for relief may be made regardless of whether or not there is a pending lawsuit, complaint, petition, or other action between the parties except in cases where the court realigns petitioner and respondent in accordance with RCW 26.50.060(3).

(3) <<+Within ninety days of receipt of the master copy from the administrator for the courts, a+>>ll court clerk's offices shall make available <<-simplified->> <<+the standardized+>> forms<<+, instructions,+>> and <<-instructional->> <<+informational+>> brochures <<+required by RCW 26.50.035 and shall fill in and keep current specific program names and telephone numbers for community resources+>>. Any assistance or information provided by clerks under this section does not constitute the practice of law and clerks are not responsible for incorrect information contained in a petition.

(4) A filing fee of twenty dollars shall be charged for proceedings under this section. No filing fee may be charged for: (a) A petition filed in an existing action or under an existing cause number brought under this chapter in the jurisdiction where the relief is sought; or (b) the transfer of a case from district or municipal court to superior court under RCW 26.50.020(2). Forms and instructional brochures shall be provided free of charge.

(5) A person is not required to post a bond to obtain relief in any proceeding under this section.

Section 3 was vetoed by the Governor

<<VETOED MATERIALSec. 3. RCW 26.50.035 and 1985 c. 303 s 3 are each amended to read as follows:VETOED MATERIAL>>

<<VETOED MATERIAL<<+By January 1, 1993, t+>>he administrator for the courts shall develop and prepare, in consultation with interested persons<<+, to include a representative of the state domestic violence coalition, judges, and law enforcement personnel+>>, <<-the forms->> <<+instructions+>> and <<-instructional->> <<+informational+>> brochures required under RCW 26.50.030(3)<<+, standard petition and order for protection forms that must be used after April 15, 1993, for all petitions filed and orders issued under this chapter, and a court staff handbook on domestic violence and the protection order process. The instructions shall be designed to assist petitioners in completing the petition. The informational brochure shall describe the use of and the process for obtaining a protection order, a no contact order as provided by RCW 10.99.040, a restraining order as provided by RCW 26.09.060, and an antiharassment protection order as provided by chapter 10.14 RCW, along with a list of local community resources. The community resources shall be in the form of a list that includes law enforcement agencies, domestic violence agencies, sexual assault agencies, legal assistance programs, interpreters, multicultural programs, and batterers' treatment programs, which shall contain the names and telephone numbers of programs serving the community in which the court is located. Court staff shall obtain the community resource list from a domestic violence program as defined in RCW 70.123.020 serving the county in which the court is located. The order for protection form shall include, in a conspicuous location, notice of criminal penalties resulting from violation of the order, notice that the petitioner may not waive any provisions of the order, and notice that it is the sole responsibility of the respondent to avoid or refrain from violating the provisions of the order+>>. The administrator for the courts shall distribute a master copy of the <<+petition and order+>> forms <<-and instructional->><<+, instructions, and informational+>> brochures to <<-all court clerks->> <<+the staff of all courts and shall distribute a master copy of the order forms to all superior, district, and municipal courts. +>>VETOED MATERIAL>>

<<VETOED MATERIAL<<+The administrator for the courts shall arrange for translation of the instructions and informational brochures into Spanish, Vietnamese, Laotian, Cambodian, and Chinese and shall distribute a master

copy of the translated instructions and informational brochures to all court clerks by March 1, 1993.+>>VETOED MATERIAL>>

<<VETOED MATERIAL<<+The administrator for the courts shall, in consultation with interested parties to include a representative of the state domestic violence coalition, judges, law enforcement personnel, and staff from multicultural programs, determine by June 30, 1993, whether translation of the petition and standard order forms would substantially improve access to the protection order process for those with limited English proficiency. If so, the administrator for the courts shall arrange for the translation of the petition and standard order forms into Spanish, Vietnamese, Laotian, Cambodian, and Chinese, and shall distribute a master copy of the translated petition and standard order forms to all court staff by September 1, 1993, along with any necessary instructions or explanations for use of the translated petition and standard order forms+>>.VETOED MATERIAL>>

Sec. 4. RCW 26.50.060 and 1989 c 411 s 1 are each amended to read as follows:

<< WA ST 26.50.060 >>

(1) Upon notice and after hearing, the court may provide relief as follows:

(a) Restrain <<-a party->> <<+the respondent+>> from committing acts of domestic violence;

(b) Exclude the respondent from the dwelling which the parties share or from the residence of the petitioner;

(c) On the same basis as is provided in chapter 26.09 RCW, the court shall make residential provision with regard to minor children of the parties. However, parenting plans as specified in chapter 26.09 RCW shall not be required under this chapter;

(d) Order the respondent to participate in <<+batterers'+>> treatment <<-or counseling services->>;

(e) Order other relief as it deems necessary for the protection of <<- a->> <<+the petitioner and other+>> family or household member<<+s sought to be protected+>>, including orders or directives to a peace officer, as allowed under this chapter;

(f) Require the respondent to pay the filing fee and court costs, including service fees, and to reimburse the petitioner for costs incurred in bringing the action, including a reasonable attorney's fee. If the petitioner has been granted leave to proceed in forma pauperis, the court may require the respondent to pay the filing fee and costs, including services fees, to the county or municipality incurring the expense; and

(g) Restrain <<-any party->> <<+the respondent+>> from having any contact with the victim of domestic violence or the victim's children or members of the victim's household.

(2) Any relief granted by the order for protection, other than a judgment for costs, shall be for a fixed period not to exceed one year.

(3) In providing relief under this chapter, the court may realign the designation of the parties as “petitioner” and “respondent” where the court finds that the original petitioner is the abuser and the original respondent is the victim of domestic violence <<+and may issue an ex parte temporary order for protection in accordance with RCW 26.50.070 on behalf of the victim until the victim is able to prepare a petition for an order for protection in accordance with RCW 26.50.030.+>>

<<+(4) Except as provided in subsection (3) of this section, no order for protection shall grant relief to any party except upon notice to the respondent and hearing pursuant to a petition or counter-petition filed and served by the party seeking relief in accordance with RCW 26.50.050+>>.

Section 5 was vetoed by the Governor

<<VETOED MATERIALSec. 5. RCW 10.99.030 and 1984 c 263 s 21 are each amended to read as follows:VETOED MATERIAL>>

<<VETOED MATERIAL(1) All training relating to the handling of domestic violence complaints by law enforcement officers shall stress enforcement of criminal laws in domestic situations, availability of community resources, and protection of the victim. Law enforcement agencies and community organizations with expertise in the issue of domestic violence shall cooperate in all aspects of such training.VETOED MATERIAL>>

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<<VETOED MATERIAL(2) The primary duty of peace officers, when responding to a domestic violence situation, is to enforce the laws allegedly violated and to protect the complaining party.VETOED MATERIAL>>

<<VETOED MATERIAL(3)(a) When a peace officer responds to a domestic violence call and has probable cause to believe that a crime has been committed, the peace officer shall exercise arrest powers with reference to the criteria in RCW 10.31.100. The officer shall notify the victim of the victim's right to initiate a criminal proceeding in all cases where the officer has not exercised arrest powers or decided to initiate criminal proceedings by citation or otherwise. The parties in such cases shall also be advised of the importance of preserving evidence.VETOED MATERIAL>>

<<VETOED MATERIAL(b) A peace officer responding to a domestic violence call shall take a complete offense report including the officer's disposition of the case.VETOED MATERIAL>>

<<VETOED MATERIAL(4) When a peace officer responds to a domestic violence call, the officer shall advise victims of all reasonable means to prevent further abuse, including advising each person of the availability of a shelter or other services in the community, and giving each person immediate notice of the legal rights and remedies available. The notice shall include handing each person a copy of the following statement:VETOED MATERIAL>>

<<VETOED MATERIAL"IF YOU ARE THE VICTIM OF DOMESTIC VIOLENCE, you can ask the city or county prosecuting attorney to file a criminal complaint. You also have the right to file a petition in superior, district, or municipal court requesting an order for protection from domestic abuse which could include any of the following: (a) An order restraining your abuser from further acts of abuse; (b) an order directing your abuser to leave your household; (c) an order preventing your abuser from entering your residence, school, business, or place of employment; (d) an order awarding you or the other parent custody of or visitation with your minor child or children; and (e) an order restraining your abuser from molesting or interfering with minor children in your custody. The forms you need to obtain a protection order are available in any municipal, district, or superior court.VETOED MATERIAL>>

<<VETOED MATERIALInformation about shelters and alternatives to domestic violence is available from a state-wide twenty-four-hour toll-free hotline at 1–800–562–6025. The battered women's shelter and other resources in your area are ___ (include local information)"VETOED MATERIAL>>

<<VETOED MATERIAL(5) The peace officer may offer, arrange, or facilitate transportation for the victim to a hospital for treatment of injuries or to a place of safety or shelter.VETOED MATERIAL>>

<<VETOED MATERIAL(6) The law enforcement agency shall forward the offense report to the appropriate prosecutor within ten days of making such report if there is probable cause to believe that an offense has been committed, unless the case is under active investigation.VETOED MATERIAL>>

<<VETOED MATERIAL(7) Each law enforcement agency shall make as soon as practicable a written record and shall maintain records of all incidents of domestic violence reported to it.VETOED MATERIAL>>

<<VETOED MATERIAL(8) Records kept pursuant to subsections (3) and (7) of this section shall be made identifiable by means of a departmental code for domestic violence.VETOED MATERIAL>>

<<VETOED MATERIAL<<+(9) Commencing January 1, 1993, records of incidents of domestic violence shall be submitted, in accordance with procedures described in this subsection, to the Washington association of sheriffs and police chiefs by all law enforcement agencies. The Washington criminal justice training commission shall amend its contract for collection of state-wide crime data with the Washington association of sheriffs and police chiefs: (a) To require the compilation, presentation, and inclusion of domestic violence incidents in the annual report of crime in Washington produced by the Washington association of sheriffs and police chiefs pursuant to such contract; and (b) to require that, in consultation with interested persons, the Washington association of sheriffs and police chiefs prepare and disseminate procedures to all law enforcement agencies in the state as to how such agencies shall code and report domestic violence incidents to the Washington association of sheriffs and police chiefs.+>>VETOED MATERIAL>>

NEW SECTION. Sec. 6. The departments of social and health services, community development, and health; the administrator for the courts; and the criminal justice training commission, in cooperation with each other and with

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the department of social and health services as lead agency shall, in consultation with interested parties, conduct a review of and issue a report on the current level of domestic violence education in the state of Washington, including higher education curricula and continuing professional education for individuals working in positions that involve duties to, or contact with, those affected by domestic violence. Professions for which education levels should be determined include, but are not limited to, health care, mental health, and substance abuse professionals licensed or certified by the state and pastoral counselors, employee assistance counselors, police and law enforcement officers, prosecutors, judges, court administrators, court clerks, probation officers, parole officers, child protective service workers, school counselors, teachers, and clergy. The analysis shall include suggested approaches of how to achieve any needed additional education, and an evaluation of whether there is a need for additional domestic violence education for some or all of these professions, either as part of their higher education curricula or through continuing education or both. The department of social and health services shall report to the house of representatives judiciary and senate law and justice committees regarding its findings and recommendations by September 1, 1992.

Sec. 7. RCW 26.50.010 and 1991 c 301 s 8 are each amended to read as follows:

<< WA ST 26.50.010 >>

As used in this chapter, the following terms shall have the meanings given them:

(1) "Domestic violence" means: (a) Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault, between family or household members; or (b) sexual assault of one family or household member by another.

(2) "Family or household members" means spouses, former spouses, persons who have a child in common regardless of whether they have been married or have lived together at any time, adult persons related by blood or marriage, <<- and->> adult persons who are presently residing together or who have resided together in the past<<+, persons sixteen years of age or older who are presently residing together or who have resided together in the past and who have or have had a dating relationship, persons sixteen years of age or older with whom a respondent sixteen years of age or older has or has had a dating relationship, and persons who have a biological or legal parent-child relationship, including stepparents and stepchildren and grandparents and grandchildren+>>.

(3) <<+"Dating relationship" means a social relationship of a romantic nature. Factors that the court may consider in making this determination include: (a) The length of time the relationship has existed; (b) the nature of the relationship; and (c) the frequency of interaction between the parties.+>>

<<+(4)+>> "Court" includes the superior, district, and municipal courts of the state of Washington.

<<-(4)->><<+(5)+>> "Judicial day" does not include Saturdays, Sundays, or legal holidays.

Sec. 8. RCW 26.50.020 and 1989 c 375 s 28 are each amended to read as follows:

<< WA ST 26.50.020 >>

(1) Any person may seek relief under this chapter by filing a petition with a court alleging that the person has been the victim of domestic violence committed by the respondent. The person may petition for relief on behalf of himself or herself and on behalf of minor family or household members.

(2) <<+A person under eighteen years of age who is sixteen years of age or older may seek relief under this chapter and is not required to seek relief by a guardian or next friend.+>>

<<+(3) No guardian or guardian ad litem need be appointed on behalf of a respondent to an action under this chapter who is under eighteen years of age if such respondent is sixteen years of age or older.+>>

<<+(4) The court may, if it deems necessary, appoint a guardian ad litem for a petitioner or respondent who is a party to an action under this chapter.+>>

<<+(5)+>> The courts defined in RCW 26.50.010(3) have jurisdiction over proceedings under this chapter. The jurisdiction of district and municipal courts under this chapter shall be limited to enforcement of RCW 26.50.110(1), or the equivalent municipal ordinance, and the issuance and enforcement of temporary orders for protection provided for in RCW 26.50.070 if: (a) A superior court has exercised or is exercising jurisdiction over a

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proceeding under this title or chapter 13.34 RCW involving the parties; (b) the petition for relief under this chapter presents issues of residential schedule of and contact with children of the parties; or (c) the petition for relief under this chapter requests the court to exclude a party from the dwelling which the parties share. When the jurisdiction of a district or municipal court is limited to the issuance and enforcement of a temporary order, the district or municipal court shall set the full hearing provided for in RCW 26.50.050 in superior court and transfer the case. If the notice and order are not served on the respondent in time for the full hearing, the issuing court shall have concurrent jurisdiction with the superior court to extend the order for protection.

<<-(3)->><<+(6)+>> An action under this chapter shall be filed in the county or the municipality where the petitioner resides, unless the petitioner has left the residence or household to avoid abuse. In that case, the petitioner may bring an action in the county or municipality of the previous or the new household or residence.

<<-(4)->><<+(7)+>> A person's right to petition for relief under this chapter is not affected by the person leaving the residence or household to avoid abuse.

Sec. 9. RCW 4.08.050 and 1891 c 30 s 1 are each amended to read as follows:

<< WA ST 4.08.050 >>

<<+Except as provided under RCW 26.50.020, w+>>hen an infant is a party he <<+or she+>> shall appear by guardian, or if he <<+or she+>> has no guardian, or in the opinion of the court the guardian is an improper person, the court shall appoint one to act. Said guardian shall be appointed as follows:

(1) When the infant is plaintiff, upon the application of the infant, if he <<+or she+>> be of the age of fourteen years, or if under that age, upon the application of a relative or friend of the infant.

(2) When the infant is defendant, upon the application of the infant, if he <<+or she+>> be of the age of fourteen years, and applies within thirty days after the service of the summons; if he <<+or she+>> be under the age of fourteen, or neglects to apply, then upon the application of any other party to the action, or of a relative or friend of the infant.

Sec. 10. RCW 12.04.140 and 1971 ex.s. c 292 s 75 are each amended to read as follows:

<< WA ST 12.04.140 >>

<<+Except as provided under RCW 26.50.020, n+>>o action shall be commenced by any person under the age of eighteen years, except by his guardian, or until a next friend for such a person shall have been appointed. Whenever requested, the justice shall appoint some suitable person, who shall consent thereto in writing, to be named by such plaintiff, to act as his <<+or her+>> next friend in such action, who shall be responsible for the costs therein.

Sec. 11. RCW 12.04.150 and 1971 ex. s. c 292 s 76 are each amended to read as follows:

<< WA ST 12.04.150 >>

After service and return of process against a defendant under the age of eighteen years, the action shall not be further prosecuted, until a guardian for such defendant shall have been appointed<<+, except as provided under RCW 26.50.020+>>. Upon the request of such defendant, the justice shall appoint some person who shall consent thereto in writing, to be guardian of the defendant in defense of the action; and if the defendant shall not appear on the return day of the process, or if he <<+or she+>> neglect or refuse to nominate such guardian, the justice may, at the request of the plaintiff, appoint any discreet person as such guardian. The consent of the guardian or next friend shall be filed with the justice; and such guardian for the defendant shall not be liable for any costs in the action.

Sec. 12. RCW 26.28.015 and 1971 ex. s. c 292 s 2 are each amended to read as follows:

<< WA ST 26.28.015 >>

Notwithstanding any other provision of law, <<+and except as provided under RCW 26.50.020,+>> all persons shall be deemed and taken to be of full age for the specific purposes hereafter enumerated at the age of eighteen years:

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(1) To enter into any marriage contract without parental consent if otherwise qualified by law;
(2) To execute a will for the disposition of both real and personal property if otherwise qualified by law;
(3) To vote in any election if authorized by the Constitution and otherwise qualified by law;
(4) To enter into any legal contractual obligation and to be legally bound thereby to the full extent as any other adult person;
(5) To make decisions in regard to their own body and the body of their lawful issue whether natural born to or adopted by such person to the full extent allowed to any other adult person including but not limited to consent to surgical operations;
(6) To sue and be sued on any action to the full extent as any other adult person in any of the courts of this state, without the necessity for a guardian ad litem.

Section 13 was vetoed by the Governor

<<VETOED MATERIALNEW SECTION. Sec. 13. (1) If specific funding for the purposes of sections 2 and 3 of this act, referencing sections 2 and 3 of this act by bill and section number, is not provided by June 30, 1992, in the omnibus appropriations act, sections 2 and 3 of this act shall be null and void.VETOED MATERIAL>>
<<VETOED MATERIAL(2) If specific funding for the purposes of section 5 of this act, referencing section 5 of this act by bill and section number, is not provided by June 30, 1992, in the omnibus appropriations act, section 5 of this act shall be null and void.VETOED MATERIAL>>
NEW SECTION. Sec. 14. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Approved March 31, 1992.

Effective June 11, 1992, 90 days after date of adjournment.

Sections 3, 5 and 13 were vetoed by the Governor

WA LEGIS 111 (1992)

End of Document

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2019 Wash. Legis. Serv. Ch. 263 (S.S.H.B. 1517) (WEST)

WASHINGTON 2019 LEGISLATIVE SERVICE

66th Legislature, 2019 Regular Session

Additions are indicated by **Text**; deletions by
~~Text~~ .
Vetoes are indicated by ~~Text~~ ;
stricken material by ~~**Text**~~ .

CHAPTER 263
S.S.H.B. No. 1517
DOMESTIC VIOLENCE

AN ACT Relating to domestic violence; amending RCW 10.99.020, 26.50.020, 9.95.210, 10.99.050, 9.94A.500, 9.94A.660, 9.94A.662, 9.94A.664, 9.94A.704, 9.94A.722, 10.05.010, 10.05.015, 10.05.020, 10.05.030, 10.05.120, 10.05.140, 10.05.160, 26.50.035, 26.50.110, 26.50.160, and 36.28A.410; amending 2017 c 272 ss 7 and 8 (uncodified); reenacting and amending RCW 26.50.010 and 10.31.100; adding a new section to chapter 10.01 RCW; adding a new section to chapter 9.94A RCW; adding a new section to chapter 10.05 RCW; adding a new chapter to Title 26 RCW; creating new sections; prescribing penalties; providing effective dates; providing expiration dates; and declaring an emergency.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

PART I—LEGISLATIVE FINDINGS

NEW SECTION. **Sec. 101.** The legislature recognizes that domestic violence treatment has been the most common, and sometimes only, legal response in domestic violence cases. There is a growing concern about the "one size fits all" approach for domestic violence misdemeanors, felonies, and other cases. In 2012, the legislature directed the Washington state institute for public policy to update its analysis of the scientific literature on domestic violence treatment. The institute found traditional domestic violence treatment to be ineffective. Treatment needs to be differentiated and grounded in science, risk, and long-term evaluation. The institute's findings coincided with a wave of federal, state, and local reports highlighting concerns with the efficacy of traditional domestic violence treatment. A new approach was needed to reduce recidivism by domestic violence offenders, provide both victims and offenders with meaningful answers about what works, and close critical safety gaps. Subsequently, the legislature directed the gender and justice commission to establish work groups and make recommendations to improve domestic violence treatment and risk assessments. The work group recommended establishing sentencing alternatives for domestic violence offenders, integrated systems response, and domestic violence risk assessments. During this time, the department of social and health services repealed the administrative codes for domestic violence treatment, and issued new codes grounded in a differentiated approach and evidence-based practice. There is no easy answer to what works to reduce domestic violence recidivism, and offenders often present with co-occurring substance abuse and mental health issues, but new administrative codes and work group recommendations reflect the best available evidence in how best to respond and treat domestic violence criminal offenders.

Improving rehabilitation and treatment of domestic violence offenders, and those offenders with co-occurring substance and mental health issues, is critical, given how often practitioners and courts use treatment as the primary, and sometimes only, intervention for domestic violence. Given the pervasiveness of domestic violence

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and because of the link between domestic violence and many community issues including violent recidivism, victims and offenders are owed effective treatment and courts need better tools. State studies have found domestic violence crimes to be the most predictive of future violent crime.

The legislature intends to modify sentencing alternatives and other sentencing practices to require use of a validated risk assessment tool and domestic violence treatment certified under the Washington Administrative Code. These new practices should be consistently used when criminal conduct is based on domestic violence behavioral problems.

PART II—DEFINITION OF DOMESTIC VIOLENCE

NEW SECTION. **Sec. 201.** The legislature intends to distinguish between intimate partner violence and other categories of domestic violence to facilitate discrete data analysis regarding domestic violence by judicial, criminal justice, and advocacy entities. The legislature does not intend for these modifications to definitions to substantively change the prosecution of, or penalties for, domestic violence, or the remedies available to potential petitioners under the current statutory scheme.

NEW SECTION. **Sec. 202.** A new section is added to chapter 10.01 RCW to read as follows:

<< WA ST 10.01 >>

Whenever a prosecutor, or the attorney general or assistants acting pursuant to RCW 10.01.190, institutes or conducts a criminal proceeding involving domestic violence as defined in RCW 10.99.020, the prosecutor, or attorney general or assistants, shall specify whether the victim and defendant are intimate partners or family or household members within the meaning of RCW 26.50.010.

Sec. 203. RCW 10.99.020 and 2004 c 18 s 2 are each amended to read as follows:

<< WA ST 10.99.020 >>

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Agency" means a general authority Washington law enforcement agency as defined in RCW 10.93.020.

(2) "Association" means the Washington association of sheriffs and police chiefs.

(3) "Family or household members" means ~~spouses, former spouses, persons who have a child in common regardless of whether they have been married or have lived together at any time, adult persons related by blood or marriage, adult persons who are presently residing together or who have resided together in the past, persons sixteen years of age or older who are presently residing together or who have resided together in the past and who have or have had a dating relationship, persons sixteen years of age or older with whom a person sixteen years of age or older has or has had a dating relationship, and persons who have a biological or legal parent-child relationship, including stepparents and stepchildren and grandparents and grandchildren~~ **the same as in RCW 26.50.010.**

(4) "Dating relationship" has the same meaning as in RCW 26.50.010.

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(5) "Domestic violence" includes but is not limited to any of the following crimes when committed **either** by **(a)** one family or household member against another **family or household member, or (b) one intimate partner against another intimate partner**:

~~(a)~~ **(i)** Assault in the first degree (RCW 9A.36.011);

~~(b)~~ **(ii)** Assault in the second degree (RCW 9A.36.021);

~~(c)~~ **(iii)** Assault in the third degree (RCW 9A.36.031);

~~(d)~~ **(iv)** Assault in the fourth degree (RCW 9A.36.041);

~~(e)~~ **(v)** Drive-by shooting (RCW 9A.36.045);

~~(f)~~ **(vi)** Reckless endangerment (RCW 9A.36.050);

~~(g)~~ **(vii)** Coercion (RCW 9A.36.070);

~~(h)~~ **(viii)** Burglary in the first degree (RCW 9A.52.020);

~~(i)~~ **(ix)** Burglary in the second degree (RCW 9A.52.030);

~~(j)~~ **(x)** Criminal trespass in the first degree (RCW 9A.52.070);

~~(k)~~ **(xi)** Criminal trespass in the second degree (RCW 9A.52.080);

~~(l)~~ **(xii)** Malicious mischief in the first degree (RCW 9A.48.070);

~~(m)~~ **(xiii)** Malicious mischief in the second degree (RCW 9A.48.080);

~~(n)~~ **(xiv)** Malicious mischief in the third degree (RCW 9A.48.090);

~~(o)~~ **(xv)** Kidnapping in the first degree (RCW 9A.40.020);

~~(p)~~ **(xvi)** Kidnapping in the second degree (RCW 9A.40.030);

~~(q)~~ **(xvii)** Unlawful imprisonment (RCW 9A.40.040);

~~(r)~~ **(xviii)** Violation of the provisions of a restraining order, no-contact order, or protection order restraining or enjoining the person or restraining the person from going onto the grounds of or entering a residence, workplace, school, or day care, or prohibiting the person from knowingly coming within, or knowingly remaining within, a specified distance of a location (RCW 10.99.040, 10.99.050, 26.09.300, 26.10.220, ~~26.26.138~~ **26.26B.050**, 26.44.063, 26.44.150, 26.50.060, 26.50.070, 26.50.130, 26.52.070, or 74.34.145);

~~(s)~~ **(xix)** Rape in the first degree (RCW 9A.44.040);

~~(t)~~ **(xx)** Rape in the second degree (RCW 9A.44.050);

~~(u)~~ **(xxi)** Residential burglary (RCW 9A.52.025);

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~~(v)~~ **(xxii)** Stalking (RCW 9A.46.110); and

~~(w)~~ **(xxiii)** Interference with the reporting of domestic violence (RCW 9A.36.150).

(6) "Employee" means any person currently employed with an agency.

(7) **"Intimate partners" means the same as in RCW 26.50.010.**

(8) "Sworn employee" means a general authority Washington peace officer as defined in RCW 10.93.020, any person appointed under RCW 35.21.333, and any person appointed or elected to carry out the duties of the sheriff under chapter 36.28 RCW.

~~(8)~~ **(9)** "Victim" means a family or household member **or an intimate partner** who has been subjected to domestic violence.

Sec. 204. RCW 26.50.010 and 2015 c 287 s 8 are each reenacted and amended to read as follows:

<< WA ST 26.50.010 >>

As used in this chapter, the following terms shall have the meanings given them:

(1) "Court" includes the superior, district, and municipal courts of the state of Washington.

(2) "Dating relationship" means a social relationship of a romantic nature. Factors that the court may consider in making this determination include: (a) The length of time the relationship has existed; (b) the nature of the relationship; and (c) the frequency of interaction between the parties.

(3) "Domestic violence" means: (a) Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault, ~~between family or household members; (b)~~ sexual assault ~~of one family or household member by another;~~ **,** or ~~(c)~~ stalking as defined in RCW 9A.46.110 of one **intimate partner by another intimate partner; or (b) physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault, sexual assault, or stalking as defined in RCW 9A.46.110 of one** family or household member by another family or household member.

(4) "Electronic monitoring" has the same meaning as in RCW 9.94A.030.

(5) "Essential personal effects" means those items necessary for a person's immediate health, welfare, and livelihood. "Essential personal effects" includes but is not limited to clothing, cribs, bedding, documents, medications, and personal hygiene items.

(6) "Family or household members" means ~~spouses, domestic partners, former spouses, former domestic partners, persons who have a child in common regardless of whether they have been married or have lived together at any time,~~ **: (a) A**dult persons related by blood or marriage~~,~~ **; (b)** adult persons who are presently residing together or who have resided together in the past~~, persons sixteen years of age or older who are presently residing together or who have resided together in the past and who have or have had a dating relationship, persons sixteen years of age or older with whom a person sixteen years of age or older has or has had a dating relationship,~~ **;** and **(c)** persons who have a biological or legal parent-child relationship, including stepparents and stepchildren and grandparents and grandchildren.

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(7) **"Intimate partner" means: (a) Spouses, or domestic partners; (b) former spouses, or former domestic partners; (c) persons who have a child in common regardless of whether they have been married or have lived together at any time; (d) adult persons presently or previously residing together who have or have had a dating relationship; (e) persons sixteen years of age or older who are presently residing together or who have resided together in the past and who have or have had a dating relationship; and (f) persons sixteen years of age or older with whom a person sixteen years of age or older has or has had a dating relationship.**

(8) "Judicial day" does not include Saturdays, Sundays, or legal holidays.

Sec. 205. RCW 26.50.020 and 2010 c 274 s 302 are each amended to read as follows:

<< WA ST 26.50.020 >>

(1)(a) Any person may seek relief under this chapter by filing a petition with a court alleging that the person has been the victim of domestic violence committed by the respondent. The person may petition for relief on behalf of himself or herself and on behalf of minor family or household members.

(b) Any person thirteen years of age or older may seek relief under this chapter by filing a petition with a court alleging that he or she has been the victim of violence in a dating relationship and the respondent is sixteen years of age or older.

(2)(a) A person under eighteen years of age who is sixteen years of age or older may seek relief under this chapter and is not required to seek relief by a guardian or next friend.

(b) A person under sixteen years of age who is seeking relief under subsection (1)(b) of this section is required to seek relief by a parent, guardian, guardian ad litem, or next friend.

(3) No guardian or guardian ad litem need be appointed on behalf of a respondent to an action under this chapter who is under eighteen years of age if such respondent is sixteen years of age or older.

(4) The court may, if it deems necessary, appoint a guardian ad litem for a petitioner or respondent who is a party to an action under this chapter.

(5) **Any petition filed under this chapter must specify whether the victim and respondent of the alleged domestic violence are intimate partners or family or household members within the meaning of RCW 26.50.010.**

(6) The courts defined in RCW 26.50.010~~(4)~~ have jurisdiction over proceedings under this chapter. The jurisdiction of district and municipal courts under this chapter shall be limited to enforcement of RCW 26.50.110(1), or the equivalent municipal ordinance, and the issuance and enforcement of temporary orders for protection provided for in RCW 26.50.070 if: (a) A superior court has exercised or is exercising jurisdiction over a proceeding under this title or chapter 13.34 RCW involving the parties; (b) the petition for relief under this chapter presents issues of residential schedule of and contact with children of the parties; or (c) the petition for relief under this chapter requests the court to exclude a party from the dwelling which the parties share. When the jurisdiction of a district or municipal court is limited to the issuance and enforcement of a temporary order, the district or municipal court shall set the full hearing provided for in RCW 26.50.050 in superior court and transfer the case. If the notice and order are not served on the respondent in time for the full hearing, the issuing court shall have concurrent jurisdiction with the superior court to extend the order for protection.

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~~(6)~~ **(7)** An action under this chapter shall be filed in the county or the municipality where the petitioner resides, unless the petitioner has left the residence or household to avoid abuse. In that case, the petitioner may bring an action in the county or municipality of the previous or the new household or residence.

~~(7)~~ **(8)** A person's right to petition for relief under this chapter is not affected by the person leaving the residence or household to avoid abuse.

~~(8)~~ **(9)** For the purposes of this section "next friend" means any competent individual, over eighteen years of age, chosen by the minor and who is capable of pursuing the minor's stated interest in the action.

PART III—CRIMINAL NO–CONTACT ORDERS

NEW SECTION. **Sec. 301.** (1) The legislature believes the existing language of RCW 10.99.050 has always authorized courts to issue domestic violence no-contact orders in adult and juvenile cases that last up to the adult statutory maximum in felony cases and up to the maximum period for which an adult sentence can be suspended or deferred in nonfelony cases. However, in *State v. Granath*, 200 Wn. App. 26, 401 P.3d 405 (2017), aff'd, 190 Wn.2d 548, 415 P.3d 1179 (2018), the court of appeals and supreme court recently interpreted this provision to limit domestic violence no-contact orders in nonfelony sentences to the duration of the defendant's conditions of sentence. The legislature finds that this interpretation inadequately protects victims of domestic violence. The legislature intends to clarify the trial courts' authority to issue no-contact orders that remain in place in adult and juvenile nonfelony cases for the maximum period of time that an adult sentence could be suspended, and in adult and juvenile felony cases for the adult statutory maximum.

(2) The legislature further finds that there is a discrepancy in which sentences for nonfelony domestic violence offenses can be suspended for up to five years in district and municipal courts, but only for up to two years in superior courts in most cases, creating inconsistent protection for victims. The legislature intends to rectify this discrepancy to allow nonfelony domestic violence sentences to be suspended for up to five years in all courts.

Sec. 302. RCW 9.95.210 and 2012 1st sp.s. c 6 s 10 are each amended to read as follows:

<< WA ST 9.95.210 >>

(1)(a) Except as provided in (b) of this subsection in granting probation, the superior court may suspend the imposition or the execution of the sentence and may direct that the suspension may continue upon such conditions and for such time as it shall designate, not exceeding the maximum term of sentence or two years, whichever is longer.

(b) For a defendant sentenced **for a domestic violence offense, or** under RCW 46.61.5055, the superior court may suspend the imposition or the execution of the sentence and may direct that the suspension continue upon such conditions and for such time as the court shall designate, not to exceed five years. The court shall have continuing jurisdiction and authority to suspend the execution of all or any part of the sentence upon stated terms, including installment payment of fines. A defendant who has been sentenced, and who then fails to appear for any hearing to address the defendant's compliance with the terms of probation when ordered to do so by the court shall have the term of probation tolled until such time as the defendant makes his or her presence known to the court on the record. Any time before entering an order terminating probation, the court may modify or revoke its order suspending the imposition or execution of the sentence if the defendant violates or fails to carry out any of the conditions of the suspended sentence.

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(2) In the order granting probation and as a condition thereof, the superior court may in its discretion imprison the defendant in the county jail for a period not exceeding one year and may fine the defendant any sum not exceeding the statutory limit for the offense committed, and court costs. As a condition of probation, the superior court shall require the payment of the penalty assessment required by RCW 7.68.035. The superior court may also require the defendant to make such monetary payments, on such terms as it deems appropriate under the circumstances, as are necessary: (a) To comply with any order of the court for the payment of family support; (b) to make restitution to any person or persons who may have suffered loss or damage by reason of the commission of the crime in question or when the offender pleads guilty to a lesser offense or fewer offenses and agrees with the prosecutor's recommendation that the offender be required to pay restitution to a victim of an offense or offenses which are not prosecuted pursuant to a plea agreement; (c) to pay such fine as may be imposed and court costs, including reimbursement of the state for costs of extradition if return to this state by extradition was required; (d) following consideration of the financial condition of the person subject to possible electronic monitoring, to pay for the costs of electronic monitoring if that monitoring was required by the court as a condition of release from custody or as a condition of probation; (e) to contribute to a county or interlocal drug fund; and (f) to make restitution to a public agency for the costs of an emergency response under RCW 38.52.430, and may require bonds for the faithful observance of any and all conditions imposed in the probation.

(3) The superior court shall order restitution in all cases where the victim is entitled to benefits under the crime victims' compensation act, chapter 7.68 RCW. If the superior court does not order restitution and the victim of the crime has been determined to be entitled to benefits under the crime victims' compensation act, the department of labor and industries, as administrator of the crime victims' compensation program, may petition the superior court within one year of imposition of the sentence for entry of a restitution order. Upon receipt of a petition from the department of labor and industries, the superior court shall hold a restitution hearing and shall enter a restitution order.

(4) In granting probation, the superior court may order the probationer to report to the secretary of corrections or such officer as the secretary may designate and as a condition of the probation to follow the instructions of the secretary for up to twelve months. If the county legislative authority has elected to assume responsibility for the supervision of superior court misdemeanant probationers within its jurisdiction, the superior court misdemeanant probationer shall report to a probation officer employed or contracted for by the county. In cases where a superior court misdemeanant probationer is sentenced in one county, but resides within another county, there must be provisions for the probationer to report to the agency having supervision responsibility for the probationer's county of residence.

(5) If the probationer has been ordered to make restitution and the superior court has ordered supervision, the officer supervising the probationer shall make a reasonable effort to ascertain whether restitution has been made. If the superior court has ordered supervision and restitution has not been made as ordered, the officer shall inform the prosecutor of that violation of the terms of probation not less than three months prior to the termination of the probation period. The secretary of corrections will promulgate rules and regulations for the conduct of the person during the term of probation. For defendants found guilty in district court, like functions as the secretary performs in regard to probation may be performed by probation officers employed for that purpose by the county legislative authority of the county wherein the court is located.

(6) The provisions of RCW 9.94A.501 and 9.94A.5011 apply to sentences imposed under this section.

(7) For purposes of this section, “domestic violence” means the same as in RCW 10.99.020.

Sec. 303. RCW 10.99.050 and 2000 c 119 s 20 are each amended to read as follows:

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<< WA ST 10.99.050 >>

(1) When a defendant is found guilty of a crime and a condition of the sentence restricts the defendant's ability to have contact with the victim, such condition shall be recorded and a written certified copy of that order shall be provided to the victim.

(2)(a) Willful violation of a court order issued under this section is punishable under RCW 26.50.110.

(b) The written order shall contain the court's directives and shall bear the legend: Violation of this order is a criminal offense under chapter 26.50 RCW and will subject a violator to arrest; any assault, drive-by shooting, or reckless endangerment that is a violation of this order is a felony.

(c) An order issued pursuant to this section in conjunction with a misdemeanor or gross misdemeanor sentence or juvenile disposition remains in effect for a fixed period of time determined by the court, which may not exceed five years from the date of sentencing or disposition.

(d) An order issued pursuant to this section in conjunction with a felony sentence or juvenile disposition remains in effect for a fixed period of time determined by the court, which may not exceed the adult maximum sentence established in RCW 9A.20.021.

(3) Whenever an order prohibiting contact is issued pursuant to this section, the clerk of the court shall forward a copy of the order on or before the next judicial day to the appropriate law enforcement agency specified in the order. Upon receipt of the copy of the order the law enforcement agency shall enter the order for one year or until the expiration date specified on the order into any computer-based criminal intelligence information system available in this state used by law enforcement agencies to list outstanding warrants. Entry into the computer-based criminal intelligence information system constitutes notice to all law enforcement agencies of the existence of the order. The order is fully enforceable in any jurisdiction in the state.

(4) If an order prohibiting contact issued pursuant to this section is modified or terminated, the clerk of the court shall notify the law enforcement agency specified in the order on or before the next judicial day. Upon receipt of notice that an order has been terminated, the law enforcement agency shall remove the order from any computer-based criminal intelligence system.

PART IV—RISK ASSESSMENT

NEW SECTION. **Sec. 401.** A new section is added to chapter 9.94A RCW to read as follows:

<< WA ST 9.94A >>

(1) The Washington State University department of criminal justice shall develop a tool to be used in conjunction with the Washington one risk assessment that would specifically predict whether the offender will commit domestic violence in the future. The domestic violence tool may incorporate relevant court records into the prediction modeling, if practical within the resources allocated. The tool will be used by the department as part of the current risk, needs, and responsivity assessment process.

(2) The Washington State University department of criminal justice shall make the domestic violence risk assessment tool available for use by the department no later than July 1, 2020. Subject to funds appropriated for this specific purpose, the department shall start to implement the domestic violence risk assessment tool by July 1, 2020, and by July 1, 2021, the department shall use the domestic violence risk assessment tool when conducting

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a Washington one risk assessment for an offender with a current conviction where domestic violence was pleaded and proven.

(3) The harborview center for sexual assault and traumatic stress shall develop a training curriculum for domestic violence perpetrator treatment providers that incorporates evidence-based practices and treatment modalities consistent with the Washington Administrative Code provisions adopted by the department of social and health services. The harborview center for sexual assault and traumatic stress shall complete the training curriculum and make it available for provider training no later than June 30, 2020.

PART V—SENTENCING

Sec. 501. RCW 9.94A.500 and 2013 c 200 s 33 are each amended to read as follows:

<< WA ST 9.94A.500 >>

(1) Before imposing a sentence upon a defendant, the court shall conduct a sentencing hearing. The sentencing hearing shall be held within forty court days following conviction. Upon the motion of either party for good cause shown, or on its own motion, the court may extend the time period for conducting the sentencing hearing.

Except in cases where the defendant shall be sentenced to a term of total confinement for life without the possibility of release or, when authorized by RCW 10.95.030 for the crime of aggravated murder in the first degree, sentenced to death, the court may order the department to complete a risk assessment report. If available before sentencing, the report shall be provided to the court.

Unless specifically waived by the court, the court shall order the department to complete a chemical dependency screening report before imposing a sentence upon a defendant who has been convicted of a violation of the uniform controlled substances act under chapter 69.50 RCW, a criminal solicitation to commit such a violation under chapter 9A.28 RCW, or any felony where the court finds that the offender has a chemical dependency that has contributed to his or her offense. In addition, the court shall, at the time of plea or conviction, order the department to complete a presentence report before imposing a sentence upon a defendant who has been convicted of a felony sexual offense. The department of corrections shall give priority to presentence investigations for sexual offenders. If the court determines that the defendant may be a mentally ill person as defined in RCW 71.24.025, although the defendant has not established that at the time of the crime he or she lacked the capacity to commit the crime, was incompetent to commit the crime, or was insane at the time of the crime, the court shall order the department to complete a presentence report before imposing a sentence.

Unless specifically waived by the court, the court shall order the department to complete a presentence investigation before imposing a drug offender sentencing alternative upon a defendant who has been convicted of a felony offense where domestic violence has been pleaded and proven.

The court shall consider the risk assessment report and presentence reports, if any, including any victim impact statement and criminal history, and allow arguments from the prosecutor, the defense counsel, the offender, the victim, the survivor of the victim, or a representative of the victim or survivor, and an investigative law enforcement officer as to the sentence to be imposed.

A criminal history summary relating to the defendant from the prosecuting authority or from a state, federal, or foreign governmental agency shall be prima facie evidence of the existence and validity of the convictions listed therein. If the court is satisfied by a preponderance of the evidence that the defendant has a criminal history, the court shall specify the convictions it has found to exist. All of this information shall be part of the record. Copies

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of all risk assessment reports and presentence reports presented to the sentencing court and all written findings of facts and conclusions of law as to sentencing entered by the court shall be sent to the department by the clerk of the court at the conclusion of the sentencing and shall accompany the offender if the offender is committed to the custody of the department. Court clerks shall provide, without charge, certified copies of documents relating to criminal convictions requested by prosecuting attorneys.

(2) To prevent wrongful disclosure of information and records related to mental health services, as described in RCW 71.05.445 and 70.02.250, a court may take only those steps necessary during a sentencing hearing or any hearing in which the department presents information related to mental health services to the court. The steps may be taken on motion of the defendant, the prosecuting attorney, or on the court's own motion. The court may seal the portion of the record relating to information relating to mental health services, exclude the public from the hearing during presentation or discussion of information and records relating to mental health services, or grant other relief to achieve the result intended by this subsection, but nothing in this subsection shall be construed to prevent the subsequent release of information and records related to mental health services as authorized by RCW 71.05.445, 70.02.250, or 72.09.585. Any person who otherwise is permitted to attend any hearing pursuant to chapter 7.69 or 7.69A RCW shall not be excluded from the hearing solely because the department intends to disclose or discloses information related to mental health services.

Sec. 502. RCW 9.94A.660 and 2016 sp.s. c 29 s 524 are each amended to read as follows:

<< WA ST 9.94A.660 >>

(1) An offender is eligible for the special drug offender sentencing alternative if:

(a) The offender is convicted of a felony that is not a violent offense or sex offense and the violation does not involve a sentence enhancement under RCW 9.94A.533 (3) or (4);

(b) The offender is convicted of a felony that is not a felony driving while under the influence of intoxicating liquor or any drug under RCW 46.61.502(6) or felony physical control of a vehicle while under the influence of intoxicating liquor or any drug under RCW 46.61.504(6);

(c) The offender has no current or prior convictions for a sex offense at any time or violent offense within ten years before conviction of the current offense, in this state, another state, or the United States;

(d) For a violation of the Uniform Controlled Substances Act under chapter 69.50 RCW or a criminal solicitation to commit such a violation under chapter 9A.28 RCW, the offense involved only a small quantity of the particular controlled substance as determined by the judge upon consideration of such factors as the weight, purity, packaging, sale price, and street value of the controlled substance;

(e) The offender has not been found by the United States attorney general to be subject to a deportation detainer or order and does not become subject to a deportation order during the period of the sentence;

(f) The end of the standard sentence range for the current offense is greater than one year; and

(g) The offender has not received a drug offender sentencing alternative more than once in the prior ten years before the current offense.

(2) A motion for a special drug offender sentencing alternative may be made by the court, the offender, or the state.

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(3) If the sentencing court determines that the offender is eligible for an alternative sentence under this section and that the alternative sentence is appropriate, the court shall waive imposition of a sentence within the standard sentence range and impose a sentence consisting of either a prison-based alternative under RCW 9.94A.662 or a residential chemical dependency treatment-based alternative under RCW 9.94A.664. The residential chemical dependency treatment-based alternative is only available if the midpoint of the standard range is twenty-four months or less.

(4)**(a)** To assist the court in making its determination, the court may order the department to complete either or both a risk assessment report and a chemical dependency screening report as provided in RCW 9.94A.500.

(b) To assist the court in making its determination in domestic violence cases, the court shall order the department to complete a presentence investigation and a chemical dependency screening report as provided in RCW 9.94A.500, unless otherwise specifically waived by the court.

(5)(a) If the court is considering imposing a sentence under the residential chemical dependency treatment-based alternative, the court may order an examination of the offender by the department. The examination shall, at a minimum, address the following issues:

(i) Whether the offender suffers from drug addiction;

(ii) Whether the addiction is such that there is a probability that criminal behavior will occur in the future;

(iii) Whether effective treatment for the offender's addiction is available from a provider that has been licensed or certified by the department of ~~social and health services~~ **health, and where applicable, whether effective domestic violence perpetrator treatment is available from a state-certified domestic violence treatment provider pursuant to chapter 26.50 RCW**; and

(iv) Whether the offender and the community will benefit from the use of the alternative.

(b) The examination report must contain:

(i) A proposed monitoring plan, including any requirements regarding living conditions, lifestyle requirements, and monitoring by family members and others; and

(ii) Recommended crime-related prohibitions and affirmative conditions.

(6) When a court imposes a sentence of community custody under this section:

(a) The court may impose conditions as provided in RCW 9.94A.703 and may impose other affirmative conditions as the court considers appropriate. In addition, an offender may be required to pay thirty dollars per month while on community custody to offset the cost of monitoring for alcohol or controlled substances**, or in cases of domestic violence for monitoring with global positioning system technology for compliance with a no-contact order**.

(b) The department may impose conditions and sanctions as authorized in RCW 9.94A.704 and 9.94A.737.

(7)(a) The court may bring any offender sentenced under this section back into court at any time on its own initiative to evaluate the offender's progress in treatment or to determine if any violations of the conditions of the sentence have occurred.

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(b) If the offender is brought back to court, the court may modify the conditions of the community custody or impose sanctions under (c) of this subsection.

(c) The court may order the offender to serve a term of total confinement within the standard range of the offender's current offense at any time during the period of community custody if the offender violates the conditions or requirements of the sentence or if the offender is failing to make satisfactory progress in treatment.

(d) An offender ordered to serve a term of total confinement under (c) of this subsection shall receive credit for any time previously served under this section.

(8) In serving a term of community custody imposed upon failure to complete, or administrative termination from, the special drug offender sentencing alternative program, the offender shall receive no credit for time served in community custody prior to termination of the offender's participation in the program.

(9) An offender sentenced under this section shall be subject to all rules relating to earned release time with respect to any period served in total confinement.

(10) Costs of examinations and preparing treatment plans under a special drug offender sentencing alternative may be paid, at the option of the county, from funds provided to the county from the criminal justice treatment account under RCW 71.24.580.

Sec. 503. RCW 9.94A.662 and 2009 c 389 s 4 are each amended to read as follows:

<< WA ST 9.94A.662 >>

(1) A sentence for a prison-based special drug offender sentencing alternative shall include:

(a) A period of total confinement in a state facility for one-half the midpoint of the standard sentence range or twelve months, whichever is greater;

(b) One-half the midpoint of the standard sentence range as a term of community custody, which must include appropriate substance abuse treatment in a program that has been approved by the division of alcohol and substance abuse of the department of social and health services**, and for co-occurring drug and domestic violence cases, must also include an appropriate domestic violence treatment program by a state-certified domestic violence treatment provider pursuant to chapter 26.50 RCW**;

(c) Crime-related prohibitions, including a condition not to use illegal controlled substances;

(d) A requirement to submit to urinalysis or other testing to monitor that status; and

(e) A term of community custody pursuant to RCW 9.94A.701 to be imposed upon the failure to complete or administrative termination from the special drug offender sentencing alternative program.

(2)**(a)** During incarceration in the state facility, offenders sentenced under this section shall undergo a comprehensive substance abuse assessment and receive, within available resources, treatment services appropriate for the offender. The **substance abuse** treatment services shall be designed by the division of alcohol and substance abuse of the department of social and health services, in cooperation with the department of corrections.

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(b) When applicable for cases involving domestic violence, domestic violence treatment must be provided by a state-certified domestic violence treatment provider pursuant to chapter 26.50 RCW during the term of community custody.

(3) If the department finds that conditions of community custody have been willfully violated, the offender may be reclassified to serve the remaining balance of the original sentence. An offender who fails to complete the program or who is administratively terminated from the program shall be reclassified to serve the unexpired term of his or her sentence as ordered by the sentencing court.

(4) If an offender sentenced to the prison-based alternative under this section is found by the United States attorney general to be subject to a deportation order, a hearing shall be held by the department unless waived by the offender, and, if the department finds that the offender is subject to a valid deportation order, the department may administratively terminate the offender from the program and reclassify the offender to serve the remaining balance of the original sentence.

Sec. 504. RCW 9.94A.664 and 2009 c 389 s 5 are each amended to read as follows:

<< WA ST 9.94A.664 >>

(1) A sentence for a residential chemical dependency treatment-based alternative shall include a term of community custody equal to one-half the midpoint of the standard sentence range or two years, whichever is greater, conditioned on the offender entering and remaining in residential chemical dependency treatment certified under chapter 70.96A RCW for a period set by the court between three and six months.

(2)(a) The court shall impose, as conditions of community custody, treatment and other conditions as proposed in the examination report completed pursuant to RCW 9.94A.660.

(b) If the court imposes a term of community custody, the department shall, within available resources, make chemical dependency assessment and treatment services available to the offender during the term of community custody**, and within available resources, make domestic violence treatment services available to a domestic violence offender during the term of community custody**.

(3)(a) If the court imposes a sentence under this section, the treatment provider must send the treatment plan to the court within thirty days of the offender's arrival to the residential chemical dependency treatment program **and, when applicable, the domestic violence treatment program**.

(b) Upon receipt of the plan, the court shall schedule a progress hearing during the period of ~~residential chemical dependency~~ treatment, and schedule a treatment termination hearing for three months before the expiration of the term of community custody.

(c) Before the progress hearing and treatment termination hearing, the treatment provider and the department shall submit written reports to the court and parties regarding the offender's compliance with treatment and monitoring requirements, and recommendations regarding termination from treatment.

(4) At a progress hearing or treatment termination hearing, the court may:

(a) Authorize the department to terminate the offender's community custody status on the expiration date determined under subsection (1) of this section;

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(b) Continue the hearing to a date before the expiration date of community custody, with or without modifying the conditions of community custody; or

(c) Impose a term of total confinement equal to one-half the midpoint of the standard sentence range, followed by a term of community custody under RCW 9.94A.701.

(5) If the court imposes a term of total confinement, the department shall, within available resources, make chemical dependency assessment and treatment services available to the offender during the term of total confinement and subsequent term of community custody.

PART VI—COMMUNITY CUSTODY AND REENTRY

Sec. 601. RCW 9.94A.704 and 2016 c 108 s 1 are each amended to read as follows:

<< WA ST 9.94A.704 >>

(1) Every person who is sentenced to a period of community custody shall report to and be placed under the supervision of the department, subject to RCW 9.94A.501.

(2)(a) The department shall assess the offender's risk of reoffense and may establish and modify additional conditions of community custody based upon the risk to community safety.

(b) Within the funds available for community custody, the department shall determine conditions on the basis of risk to community safety, and shall supervise offenders during community custody on the basis of risk to community safety and conditions imposed by the court. The secretary shall adopt rules to implement the provisions of this subsection (2)(b).

(3) If the offender is supervised by the department, the department shall at a minimum instruct the offender to:

(a) Report as directed to a community corrections officer;

(b) Remain within prescribed geographical boundaries;

(c) Notify the community corrections officer of any change in the offender's address or employment;

(d) Pay the supervision fee assessment; and

(e) Disclose the fact of supervision to any mental health ~~or~~ **,** chemical dependency**, or domestic violence** treatment provider, as required by RCW 9.94A.722.

(4) The department may require the offender to participate in rehabilitative programs, or otherwise perform affirmative conduct, and to obey all laws.

(5) If the offender was sentenced pursuant to a conviction for a sex offense **or domestic violence**, the department may:

(a) Require the offender to refrain from direct or indirect contact with the victim of the crime or immediate family member of the victim of the crime. If a victim or an immediate family member of a victim has requested that the offender not contact him or her after notice as provided in RCW 72.09.340, the department shall require the

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offender to refrain from contact with the requestor. Where the victim is a minor, the parent or guardian of the victim may make a request on the victim's behalf. This subsection is not intended to reduce the preexisting authority of the department to impose no-contact conditions regardless of the offender's crime and regardless of who is protected by the no-contact condition, where such condition is based on risk to community safety.

(b) Impose electronic monitoring. Within the resources made available by the department for this purpose, the department shall carry out any electronic monitoring using the most appropriate technology given the individual circumstances of the offender. As used in this section, “electronic monitoring” has the same meaning as in RCW 9.94A.030.

(6) The department may not impose conditions that are contrary to those ordered by the court and may not contravene or decrease court-imposed conditions.

(7)(a) The department shall notify the offender in writing of any additional conditions or modifications.

(b) By the close of the next business day after receiving notice of a condition imposed or modified by the department, an offender may request an administrative review under rules adopted by the department. The condition shall remain in effect unless the reviewing officer finds that it is not reasonably related to the crime of conviction, the offender's risk of reoffending, or the safety of the community.

(8) The department shall notify the offender in writing upon community custody intake of the department's violation process.

(9) The department may require offenders to pay for special services rendered including electronic monitoring, day reporting, and telephone reporting, dependent on the offender's ability to pay. The department may pay for these services for offenders who are not able to pay.

(10)(a) When an offender on community custody is under the authority of the board, the department shall assess the offender's risk of recidivism and shall recommend to the board any additional or modified conditions based upon the offender's risk to community safety and may recommend affirmative conduct or electronic monitoring consistent with subsections (4) through (6) of this section.

(b) The board may impose conditions in addition to court-ordered conditions. The board must consider and may impose department-recommended conditions. The board must impose a condition requiring the offender to refrain from contact with the victim or immediate family member of the victim as provided in subsection (5)(a) of this section.

(c) By the close of the next business day, after receiving notice of a condition imposed by the board or the department, an offender may request an administrative hearing under rules adopted by the board. The condition shall remain in effect unless the hearing examiner finds that it is not reasonably related to any of the following:

(i) The crime of conviction;

(ii) The offender's risk of reoffending;

(iii) The safety of the community**;**

(iv) The offender's risk of domestic violence reoffense.

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(d) If the department finds that an emergency exists requiring the immediate imposition of additional conditions in order to prevent the offender from committing a crime, the department may impose such conditions. The department may not impose conditions that are contrary to those set by the board or the court and may not contravene or decrease court-imposed or board-imposed conditions. Conditions imposed under this subsection shall take effect immediately after notice to the offender by personal service, but shall not remain in effect longer than seven working days unless approved by the board.

(11) In setting, modifying, and enforcing conditions of community custody, the department shall be deemed to be performing a quasi-judicial function.

Sec. 602. RCW 9.94A.722 and 2004 c 166 s 9 are each amended to read as follows:

<< WA ST 9.94A.722 >>

When an offender receiving court-ordered mental health ~~or~~ **,** chemical dependency**, or domestic violence** treatment or treatment ordered by the department of corrections presents for treatment from a mental health or chemical dependency treatment provider, the offender must disclose to the mental health ~~or~~ **,** chemical dependency**, or domestic violence** treatment provider whether he or she is subject to supervision by the department of corrections. If an offender has received relief from disclosure pursuant to RCW 9.94A.562, 70.96A.155, or 71.05.132, the offender must provide the mental health ~~or~~ **,** chemical dependency**, or domestic violence** treatment provider with a copy of the order granting the relief.

PART VII—DEFERRED PROSECUTIONS

Sec. 701. RCW 10.05.010 and 2008 c 282 s 15 are each amended to read as follows:

<< WA ST 10.05.010 >>

(1) In a court of limited jurisdiction a person charged with a misdemeanor or gross misdemeanor may petition the court to be considered for a deferred prosecution program. The petition shall be filed with the court at least seven days before the date set for trial but, upon a written motion and affidavit establishing good cause for the delay and failure to comply with this section, the court may waive this requirement subject to the defendant's reimbursement to the court of the witness fees and expenses due for subpoenaed witnesses who have appeared on the date set for trial.

(2) A person charged with a traffic infraction, misdemeanor, or gross misdemeanor under Title 46 RCW**, or a misdemeanor or gross misdemeanor domestic violence offense,** shall not be eligible for a deferred prosecution program unless the court makes specific findings pursuant to RCW 10.05.020 ~~or section 18 of this act. Such person shall not be eligible for a deferred prosecution program more than once; and cannot receive a deferred prosecution under both RCW 10.05.020 and section 18 of this act~~ . **A person may not participate in a deferred prosecution program for a traffic infraction, misdemeanor, or gross misdemeanor under Title 46 RCW if he or she has participated in a deferred prosecution program for a prior traffic infraction, misdemeanor, or gross misdemeanor under Title 46 RCW, and a person may not participate in a deferred prosecution program for a misdemeanor or gross misdemeanor domestic violence offense if he or she has participated in a deferred prosecution program for a prior domestic violence offense.** Separate offenses committed more than seven days apart may not be consolidated in a single program.

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(3) A person charged with a misdemeanor or a gross misdemeanor under chapter 9A.42 RCW shall not be eligible for a deferred prosecution program unless the court makes specific findings pursuant to RCW 10.05.020. Such person shall not be eligible for a deferred prosecution program more than once.

(4) A person is not eligible for a deferred prosecution program if the misdemeanor or gross misdemeanor domestic violence offense was originally charged as a felony offense in superior court.

Sec. 702. RCW 10.05.015 and 1985 c 352 s 5 are each amended to read as follows:

<< WA ST 10.05.015 >>

At the time of arraignment a person charged with a violation of RCW 46.61.502 or 46.61.504 **or a misdemeanor or gross misdemeanor domestic violence offense** may be given a statement by the court that explains the availability, operation, and effects of the deferred prosecution program.

Sec. 703. RCW 10.05.020 and 2016 sp.s. c 29 s 525 are each amended to read as follows:

<< WA ST 10.05.020 >>

(1) Except as provided in subsection (2) of this section, the petitioner shall allege under oath in the petition that the wrongful conduct charged is the result of or caused by substance use disorders or mental problems **or domestic violence behavior problems** for which the person is in need of treatment and unless treated the probability of future recurrence is great, along with a statement that the person agrees to pay the cost of a diagnosis and treatment of the alleged problem or problems if financially able to do so. The petition shall also contain a case history and written assessment prepared by an approved substance use disorder treatment program as designated in chapter 71.24 RCW if the petition alleges a substance use disorder ~~or~~ **,** by an approved mental health center if the petition alleges a mental problem**, or by a state-certified domestic violence treatment provider pursuant to chapter 26.50 RCW if the petition alleges a domestic violence behavior problem.**

(2) In the case of a petitioner charged with a misdemeanor or gross misdemeanor under chapter 9A.42 RCW, the petitioner shall allege under oath in the petition that the petitioner is the natural or adoptive parent of the alleged victim; that the wrongful conduct charged is the result of parenting problems for which the petitioner is in need of services; that the petitioner is in need of child welfare services under chapter 74.13 RCW to improve his or her parenting skills in order to better provide his or her child or children with the basic necessities of life; that the petitioner wants to correct his or her conduct to reduce the likelihood of harm to his or her minor children; that in the absence of child welfare services the petitioner may be unable to reduce the likelihood of harm to his or her minor children; and that the petitioner has cooperated with the department of social and health services to develop a plan to receive appropriate child welfare services; along with a statement that the person agrees to pay the cost of the services if he or she is financially able to do so. The petition shall also contain a case history and a written service plan from the department of social and health services.

(3) Before entry of an order deferring prosecution, a petitioner shall be advised of his or her rights as an accused and execute, as a condition of receiving treatment, a statement that contains: (a) An acknowledgment of his or her rights; (b) an acknowledgment and waiver of the right to testify, the right to a speedy trial, the right to call witnesses to testify, the right to present evidence in his or her defense, and the right to a jury trial; (c) a stipulation to the admissibility and sufficiency of the facts contained in the written police report; and (d) an acknowledgment that the statement will be entered and used to support a finding of guilty if the court finds cause to revoke the order granting deferred prosecution. The petitioner shall also be advised that he or she may, if he or she proceeds to trial and is found guilty, be allowed to seek suspension of some or all of the fines and incarceration that may

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be ordered upon the condition that he or she seek treatment and, further, that he or she may seek treatment from public and private agencies at any time without regard to whether or not he or she is found guilty of the offense charged. He or she shall also be advised that the court will not accept a petition for deferred prosecution from a person who: (i) Sincerely believes that he or she is innocent of the charges; (ii) sincerely believes that he or she does not, in fact, suffer from alcoholism, drug addiction, ~~or~~ mental problems**, or domestic violence behavior problems**; or (iii) in the case of a petitioner charged under chapter 9A.42 RCW, sincerely believes that he or she does not need child welfare services.

(4) Before entering an order deferring prosecution, the court shall make specific findings that: (a) The petitioner has stipulated to the admissibility and sufficiency of the facts as contained in the written police report; (b) the petitioner has acknowledged the admissibility of the stipulated facts in any criminal hearing on the underlying offense or offenses held subsequent to revocation of the order granting deferred prosecution; (c) the petitioner has acknowledged and waived the right to testify, the right to a speedy trial, the right to call witnesses to testify, the right to present evidence in his or her defense, and the right to a jury trial; and (d) the petitioner's statements were made knowingly and voluntarily. Such findings shall be included in the order granting deferred prosecution.

Sec. 704. RCW 10.05.030 and 2016 sp.s. c 29 s 526 are each amended to read as follows:

<< WA ST 10.05.030 >>

The arraigning judge upon consideration of the petition and with the concurrence of the prosecuting attorney may continue the arraignment and refer such person for a diagnostic investigation and evaluation to**:**

(1) An approved substance use disorder treatment program as designated in chapter 71.24 RCW~~,~~ if the petition alleges a substance use disorder~~, to~~ **;**

(2) An approved mental health center~~,~~ if the petition alleges a mental problem~~, or~~ **;**

(3) The department of social and health services if the petition is brought under RCW 10.05.020(2)**; or**

(4) An approved state-certified domestic violence treatment provider pursuant to chapter 26.50 RCW if the petition alleges a domestic violence behavior problem.

Sec. 705. RCW 10.05.120 and 2003 c 220 s 1 are each amended to read as follows:

<< WA ST 10.05.120 >>

(1) Three years after receiving proof of successful completion of the two-year treatment program, and following proof to the court that the petitioner has complied with the conditions imposed by the court following successful completion of the two-year treatment program, but not before five years following entry of the order of deferred prosecution pursuant to a petition brought under RCW 10.05.020(1), the court shall dismiss the charges pending against the petitioner.

(2) When a deferred prosecution is ordered pursuant to a petition brought under RCW 10.05.020(2) and the court has received proof that the petitioner has successfully completed the child welfare service plan, or the plan has been terminated because the alleged victim has reached his or her majority and there are no other minor children in the home, the court shall dismiss the charges pending against the petitioner: PROVIDED, That in any case where the petitioner's parental rights have been terminated with regard to the alleged victim due to abuse or neglect

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that occurred during the pendency of the deferred prosecution, the termination shall be per se evidence that the petitioner did not successfully complete the child welfare service plan.

(3) When a deferred prosecution is ordered for a petition brought under RCW 10.05.020(1) involving a domestic violence behavior problem and the court has received proof that the petitioner has successfully completed the domestic violence treatment plan, the court shall dismiss the charges pending against the petitioner.

Sec. 706. RCW 10.05.140 and 2016 c 203 s 11 are each amended to read as follows:

<< WA ST 10.05.140 >>

(1) As a condition of granting a deferred prosecution petition, the court shall order that the petitioner shall not operate a motor vehicle upon the public highways without a valid operator's license and proof of liability insurance. The amount of liability insurance shall be established by the court at not less than that established by RCW 46.29.490. As a condition of granting a deferred prosecution petition on any alcohol-dependency based case, the court shall also order the installation of an ignition interlock under RCW 46.20.720. The required periods of use of the interlock shall be not less than the periods provided for in RCW 46.20.720. As a condition of granting a deferred prosecution petition, the court may order the petitioner to make restitution and to pay costs as defined in RCW 10.01.160. To help ensure continued sobriety and reduce the likelihood of reoffense, the court may order reasonable conditions during the period of the deferred prosecution including, but not limited to, attendance at self-help recovery support groups for alcoholism or drugs, complete abstinence from alcohol and all nonprescribed mind-altering drugs, periodic urinalysis or breath analysis, and maintaining law-abiding behavior. The court may terminate the deferred prosecution program upon violation of the deferred prosecution order.

(2) As a condition of granting a deferred prosecution petition for a case involving a domestic violence behavior problem:

(a) The court shall order the petitioner not to possess firearms and order the petitioner to surrender firearms under RCW 9.41.800; and

(b) The court may order the petitioner to make restitution and to pay costs as defined in RCW 10.01.160. In addition, to help ensure continued sobriety and reduce the likelihood of reoffense in co-occurring domestic violence and substance abuse or mental health cases, the court may order reasonable conditions during the period of the deferred prosecution including, but not limited to, attendance at self-help recovery support groups for alcoholism or drugs, complete abstinence from alcohol and all nonprescribed mind-altering drugs, periodic urinalysis or breath analysis, and maintaining law-abiding behavior. The court may terminate the deferred prosecution program upon violation of the deferred prosecution order.

Sec. 707. RCW 10.05.160 and 2010 c 269 s 11 are each amended to read as follows:

<< WA ST 10.05.160 >>

The prosecutor may appeal an order granting deferred prosecution on any or all of the following grounds:

(1) Prior deferred prosecution has been granted to the defendant;

(2) **For a present petition alleging a domestic violence behavior problem, a prior stipulated order of continuance has been granted to the defendant;**

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(3) Failure of the court to obtain proof of insurance or a treatment plan conforming to the requirements of this chapter;

~~(3)~~ **(4)** Failure of the court to comply with the requirements of RCW 10.05.100;

~~(4)~~ **(5)** Failure of the evaluation facility to provide the information required in RCW 10.05.040 and 10.05.050, if the defendant has been referred to the facility for treatment. If an appeal on such basis is successful, the trial court may consider the use of another treatment program;

~~(5)~~ **(6)** Failure of the court to order the installation of an ignition interlock or other device under RCW 10.05.140.

NEW SECTION. **Sec. 708.** A new section is added to chapter 10.05 RCW to read as follows:

<< WA ST 10.05 >>

A deferred prosecution program for domestic violence behavior, or domestic violence co-occurring with substance abuse or mental health, must include, but is not limited to, the following requirements:

(1) Completion of a risk assessment;

(2) Participation in the level of treatment recommended by the program as outlined in the current treatment plan;

(3) Compliance with the contract for treatment;

(4) Participation in any ancillary or co-occurring treatments that are determined to be necessary for the successful completion of the domestic violence intervention treatment including, but not limited to, mental health or substance use treatment;

(5) Domestic violence intervention treatment within the purview of this section to be completed with a state-certified domestic violence intervention treatment program;

(6) Signature of the petitioner agreeing to the terms and conditions of the treatment program;

(7) Proof of compliance with any active order to surrender weapons issued in this program or related civil protection orders or no-contact orders.

PART VIII—DOMESTIC VIOLENCE WORK GROUPS

NEW SECTION. **Sec. 801.** In 2017 the legislature established two work groups managed by the Washington state supreme court gender and justice commission to study domestic violence treatment and domestic violence risk. The work groups successfully pulled together stakeholders from across the state and published two reports with groundbreaking recommendations. The legislature finds that there is a need to continue the work groups. The work groups shall review best practices for alternatives to mandatory arrest in cases of domestic violence, and the work groups shall monitor implementation of prior recommendations for the purpose of promoting effective strategies to reduce domestic violence homicides, serious injuries, and recidivism.

Sec. 802. 2017 c 272 s 7 (uncodified) is amended to read as follows:

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(1) The administrative office of the courts shall, through the Washington state gender and justice commission of the supreme court, convene a work group to address the issue of domestic violence perpetrator treatment and the role of certified perpetrator treatment programs in holding domestic violence perpetrators accountable.

(2) The work group must include a representative for each of the following organizations or interests: Superior court judges, district court judges, municipal court judges, court probation officers, prosecuting attorneys, defense attorneys, civil legal aid attorneys, domestic violence victim advocates, domestic violence perpetrator treatment providers, the department of social and health services, the department of corrections, the Washington state institute for public policy, and the University of Washington evidence based practice institute. At least two domestic violence perpetrator treatment providers must be represented as members of the work group.

(3)**(a) For its initial report in 2018, t**he work group shall: ~~(a)~~ **(i)** Review laws, regulations, and court and agency practices pertaining to domestic violence perpetrator treatment used in civil and criminal contexts, including criminal domestic violence felony and misdemeanor offenses, family law, child welfare, and protection orders; ~~(b)~~ **(ii)** consider the development of a universal diagnostic evaluation tool to be used by treatment providers and the department of corrections to assess the treatment needs of domestic violence perpetrators; and ~~(c)~~ **(iii)** develop recommendations on changes to existing laws, regulations, and court and agency practices to improve victim safety, decrease recidivism, advance treatment outcomes, and increase the courts' confidence in domestic violence perpetrator treatment.

~~(4)~~ **(b)** The work group shall report its recommendations to the affected entities and the appropriate committees of the legislature no later than June 30, 2018.

(4)(a) For its report in 2019, the work group shall:

(i) Provide guidance and additional recommendations with respect to how prior recommendations of the work group should be implemented for the purpose of promoting effective strategies to reduce domestic violence in Washington state;

(ii) Monitor, evaluate, and provide recommendations for the implementation of the newly established domestic violence treatment administrative codes;

(iii) Monitor, evaluate, and provide recommendations on the implementation and supervision of domestic violence sentencing alternatives in different counties to promote consistency; and

(iv) Provide recommendations on other items deemed appropriate by the work group.

(b) The work group shall report its recommendations to the affected entities and the appropriate committees of the legislature no later than June 30, 2020.

(5) The work group must operate within existing funds.

(6) This section expires June 30, ~~2019~~ **2021**.

Sec. 803. 2017 c 272 s 8 (uncodified) is amended to read as follows:

(1) ~~The legislature finds that Washington state has a serious problem with domestic violence offender recidivism and lethality. The Washington state institute for public policy studied domestic violence offenders finding not just high rates of domestic violence recidivism but among the highest rates of general criminal and violent~~

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~~recidivism. The Washington state coalition against domestic violence has issued fatality reviews of domestic violence homicides in Washington under chapter 43.235 RCW for over fifteen years. These fatality reviews demonstrate the significant impact of domestic violence on our communities as well as the barriers and high rates of lethality faced by victims. The legislature further notes there have been several high profile domestic violence homicides with multiple prior domestic violence incidents not accounted for in the legal response. Many jurisdictions nationally have encountered the same challenges as Washington and now utilize risk assessment as a best practice to assist in the response to domestic violence.~~

The Washington domestic violence risk assessment work group is established to study how and when risk assessment can best be used to improve the response to domestic violence offenders and victims and find effective strategies to reduce domestic violence homicides, serious injuries, and recidivism that are a result of domestic violence incidents in Washington state.

(2)(a) The Washington state gender and justice commission, in collaboration with the Washington state coalition against domestic violence and the Washington State University criminal justice program, shall coordinate the work group and provide staff support.

(b) The work group must include a representative from each of the following organizations:

(i) The Washington state gender and justice commission;

(ii) The department of corrections;

(iii) The department of social and health services;

(iv) The Washington association of sheriffs and police chiefs;

(v) The superior court judges' association;

(vi) The district and municipal court judges' association;

(vii) The Washington state association of counties;

(viii) The Washington association of prosecuting attorneys;

(ix) The Washington defender association;

(x) The Washington association of criminal defense lawyers;

(xi) The Washington state association of cities;

(xii) The Washington state coalition against domestic violence;

(xiii) The Washington state office of civil legal aid; and

(xiv) The family law section of the Washington state bar association.

(c) The work group must additionally include representation from:

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(i) Treatment providers;

(ii) City law enforcement;

(iii) County law enforcement;

(iv) Court administrators; and

(v) Domestic violence victims or family members of a victim.

(3)~~At a minimum,~~ **(a) For its initial report in 2018,** the work group shall research, review, and make recommendations on the following:

~~(a)~~ **(i)** How to best develop and use risk assessment in domestic violence response utilizing available research and Washington state data;

~~(b)~~ **(ii)** Providing effective strategies for incorporating risk assessment in domestic violence response to reduce deaths, serious injuries, and recidivism due to domestic violence;

~~(c)~~ **(iii)** Promoting access to domestic violence risk assessment for advocates, police, prosecutors, corrections, and courts to improve domestic violence response;

~~(d)~~ **(iv)** Whether or how risk assessment could be used as an alternative to mandatory arrest in domestic violence;

~~(e)~~ **(v)** Whether or how risk assessment could be used in bail determinations in domestic violence cases, and in civil protection order hearings;

~~(f)~~ **(vi)** Whether or how offender risk, needs, and responsivity could be used in determining eligibility for diversion, sentencing alternatives, and treatment options;

~~(g)~~ **(vii)** Whether or how victim risk, needs, and responsivity could be used in improving domestic violence response;

~~(h)~~ **(viii)** Whether or how risk assessment can improve prosecution and encourage prosecutors to aggressively enforce domestic violence laws; and

~~(i)~~ **(ix)** Encouraging private sector collaboration.

~~(4)~~ **(b)** The work group shall compile its findings and recommendations into ~~a final~~ **an initial** report and provide its report to the appropriate committees of the legislature and governor by June 30, 2018.

(4)(a) For its report in 2019, the work group shall:

(i) Research, review, and make recommendations on whether laws mandating arrest in cases of domestic violence should be amended and whether alternative arrest statutes should incorporate domestic violence risk assessment in domestic violence response to improve the response to domestic violence, and what training for law enforcement would be needed to implement an alternative to mandatory arrest;

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(ii) Research, review, and make recommendations on how prior recommendations of the work group should be implemented in order to promote effective strategies to reduce domestic violence in Washington state;

(iii) Monitor, evaluate, and provide recommendations on the development and use of the risk assessment tool under section 401 of this act; and

(iv) Provide recommendations on other items deemed appropriate by the work group.

(b) The work group shall compile its findings and recommendations into a final report and provide its report to the appropriate committees of the legislature and governor by June 30, 2020.

(5) The work group must operate within existing funds.

(6) This section expires June 30, ~~2019~~ **2021**.

PART IX—UNIFORM RECOGNITION AND ENFORCEMENT OF CANADIAN DOMESTIC VIOLENCE PROTECTION ORDERS

<< WA ST 26 >>

NEW SECTION. **Sec. 901.** SHORT TITLE. This chapter may be cited as the uniform recognition and enforcement of Canadian domestic violence protection orders act.

<< WA ST 26 >>

NEW SECTION. **Sec. 902.** DEFINITIONS. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Canadian domestic violence protection order" means a judgment or part of a judgment or order issued in a civil proceeding by a court of Canada under law of the issuing jurisdiction which relates to domestic violence and prohibits a respondent from:

(a) Being in physical proximity to a protected individual or following a protected individual;

(b) Directly or indirectly contacting or communicating with a protected individual or other individual described in the order;

(c) Being within a certain distance of a specified place or location associated with a protected individual; or

(d) Molesting, annoying, harassing, or engaging in threatening conduct directed at a protected individual.

(2) "Domestic protection order" means an injunction or other order issued by a tribunal which relates to domestic or family violence laws to prevent an individual from engaging in violent or threatening acts against, harassment of, direct or indirect contact or communication with, or being in physical proximity to another individual.

(3) "Issuing court" means the court that issues a Canadian domestic violence protection order.

(4) "Law enforcement officer" means an individual authorized by law of this state other than this chapter to enforce a domestic protection order.

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(5) "Person" means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or other legal entity.

(6) "Protected individual" means an individual protected by a Canadian domestic violence protection order.

(7) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(8) "Respondent" means an individual against whom a Canadian domestic violence protection order is issued.

(9) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes a federally recognized Indian tribe.

(10) "Tribunal" means a court, agency, or other entity authorized by law of this state other than this chapter to establish, enforce, or modify a domestic protection order.

<< WA ST 26 >>

NEW SECTION. **Sec. 903.** ENFORCEMENT OF CANADIAN DOMESTIC VIOLENCE PROTECTION ORDER BY LAW ENFORCEMENT OFFICER. (1) If a law enforcement officer determines under subsection (2) or (3) of this section that there is probable cause to believe a valid Canadian domestic violence protection order exists and the order has been violated, the officer shall enforce the terms of the Canadian domestic violence protection order as if the terms were in an order of a tribunal. Presentation to a law enforcement officer of a certified copy of a Canadian domestic violence protection order is not required for enforcement.

(2) Presentation to a law enforcement officer of a record of a Canadian domestic violence protection order that identifies both a protected individual and a respondent and on its face is in effect constitutes probable cause to believe that a valid order exists.

(3) If a record of a Canadian domestic violence protection order is not presented as provided in subsection (2) of this section, a law enforcement officer may consider other information in determining whether there is probable cause to believe that a valid Canadian domestic violence protection order exists.

(4) If a law enforcement officer determines that an otherwise valid Canadian domestic violence protection order cannot be enforced because the respondent has not been notified of or served with the order, the officer shall notify the protected individual that the officer will make reasonable efforts to contact the respondent, consistent with the safety of the protected individual. After notice to the protected individual and consistent with the safety of the individual, the officer shall make a reasonable effort to inform the respondent of the order, notify the respondent of the terms of the order, provide a record of the order, if available, to the respondent, and allow the respondent a reasonable opportunity to comply with the order before the officer enforces the order.

(5) If a law enforcement officer determines that an individual is a protected individual, the officer shall inform the individual of available local victim services.

<< WA ST 26 >>

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NEW SECTION. **Sec. 904.** ENFORCEMENT OF CANADIAN DOMESTIC VIOLENCE PROTECTION ORDER BY TRIBUNAL. (1) A tribunal may issue an order enforcing or refusing to enforce a Canadian domestic violence protection order on application of:

(a) A person authorized by law of this state other than this chapter to seek enforcement of a domestic protection order; or

(b) A respondent.

(2) In a proceeding under subsection (1) of this section, the tribunal shall follow the procedures of this state for enforcement of a domestic protection order. An order entered under this section is limited to the enforcement of the terms of the Canadian domestic violence protection order as defined in section 902 of this act.

(3) A Canadian domestic violence protection order is enforceable under this section if:

(a) The order identifies a protected individual and a respondent;

(b) The order is valid and in effect;

(c) The issuing court had jurisdiction over the parties and the subject matter under law applicable in the issuing court; and

(d) The order was issued after:

(i) The respondent was given reasonable notice and had an opportunity to be heard before the court issued the order; or

(ii) In the case of an ex parte order, the respondent was given reasonable notice and had or will have an opportunity to be heard within a reasonable time after the order was issued, in a manner consistent with the right of the respondent to due process.

(4) A Canadian domestic violence protection order valid on its face is prima facie evidence of its enforceability under this section.

(5) A claim that a Canadian domestic violence protection order does not comply with subsection (3) of this section is an affirmative defense in a proceeding seeking enforcement of the order. If the tribunal determines that the order is not enforceable, the tribunal shall issue an order that the Canadian domestic violence protection order is not enforceable under this section and section 903 of this act and may not be registered under section 905 of this act.

<< WA ST 26 >>

NEW SECTION. **Sec. 905.** REGISTRATION OF CANADIAN DOMESTIC VIOLENCE PROTECTION ORDER. (1) A person entitled to protection who has a valid Canadian domestic violence protection order may file that order by presenting a certified, authenticated, or exemplified copy of the Canadian domestic violence protection order to a clerk of the court of a Washington court in which the person entitled to protection resides or to a clerk of the court of a Washington court where the person entitled to protection believes enforcement may be necessary. Any out-of-state department, agency, or court responsible for maintaining protection order records, may by facsimile or electronic transmission send a reproduction of the foreign protection order to the clerk of

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the court of Washington as long as it contains a facsimile or digital signature by any person authorized to make such transmission.

(2) On receipt of a certified copy of a Canadian domestic violence protection order, the clerk of the court shall register the order in accordance with this section.

(3) An individual registering a Canadian domestic violence protection order under this section shall file an affidavit stating that, to the best of the individual's knowledge, the order is valid and in effect.

(4) After a Canadian domestic violence protection order is registered under this section, the clerk of the court shall provide the individual registering the order a certified copy of the registered order.

(5) A Canadian domestic violence protection order registered under this section may be entered in a state or federal registry of protection orders in accordance with law.

(6) An inaccurate, expired, or unenforceable Canadian domestic violence protection order may be corrected or removed from the registry of protection orders maintained in this state in accordance with law of this state other than this chapter.

(7) A fee may not be charged for the registration of a Canadian domestic violence protection order under this section.

(8) Registration in this state or filing under law of this state other than this chapter of a Canadian domestic violence protection order is not required for its enforcement under this chapter.

<< WA ST 26 >>

NEW SECTION. **Sec. 906.** IMMUNITY. The state, state agency, local governmental agency, law enforcement officer, prosecuting attorney, clerk of court, and state or local governmental official acting in an official capacity are immune from civil and criminal liability for an act or omission arising out of the registration or enforcement of a Canadian domestic violence protection order or the detention or arrest of an alleged violator of a Canadian domestic violence protection order if the act or omission was a good faith effort to comply with this chapter.

<< WA ST 26 >>

NEW SECTION. **Sec. 907.** OTHER REMEDIES. An individual who seeks a remedy under this chapter may seek other legal or equitable remedies.

<< WA ST 26 >>

NEW SECTION. **Sec. 908.** UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

<< WA ST 26 >>

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NEW SECTION. **Sec. 909.** RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This chapter modifies, limits, or supersedes the electronic signatures in global and national commerce act, 15 U.S.C. Sec. 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Sec. 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Sec. 7003(b).

<< WA ST 26 >>

NEW SECTION. **Sec. 910.** TRANSITION. This chapter applies to a Canadian domestic violence protection order issued before, on, or after the effective date of this section and to a continuing action for enforcement of a Canadian domestic violence protection order commenced before, on, or after the effective date of this section. A request for enforcement of a Canadian domestic violence protection order made on or after the effective date of this section for a violation of the order occurring before, on, or after the effective date of this section is governed by this chapter.

Sec. 911. RCW 10.31.100 and 2017 c 336 s 3 and 2017 c 223 s 1 are each reenacted and amended to read as follows:

<< WA ST 10.31.100 >>

A police officer having probable cause to believe that a person has committed or is committing a felony shall have the authority to arrest the person without a warrant. A police officer may arrest a person without a warrant for committing a misdemeanor or gross misdemeanor only when the offense is committed in the presence of an officer, except as provided in subsections (1) through (11) of this section.

(1) Any police officer having probable cause to believe that a person has committed or is committing a misdemeanor or gross misdemeanor, involving physical harm or threats of harm to any person or property or the unlawful taking of property or involving the use or possession of cannabis, or involving the acquisition, possession, or consumption of alcohol by a person under the age of twenty-one years under RCW 66.44.270, or involving criminal trespass under RCW 9A.52.070 or 9A.52.080, shall have the authority to arrest the person.

(2) A police officer shall arrest and take into custody, pending release on bail, personal recognizance, or court order, a person without a warrant when the officer has probable cause to believe that:

(a) An order has been issued of which the person has knowledge under RCW 26.44.063, or chapter 7.92, 7.90, 9A.46, 10.99, 26.09, 26.10, ~~26.26~~ **26.26A, 26.26B**, 26.50, or 74.34 RCW restraining the person and the person has violated the terms of the order restraining the person from acts or threats of violence, or restraining the person from going onto the grounds of or entering a residence, workplace, school, or day care, or prohibiting the person from knowingly coming within, or knowingly remaining within, a specified distance of a location or, in the case of an order issued under RCW 26.44.063, imposing any other restrictions or conditions upon the person; or

(b) A foreign protection order, as defined in RCW 26.52.010, **or a Canadian domestic violence protection order, as defined in section 902 of this act,** has been issued of which the person under restraint has knowledge and the person under restraint has violated a provision of the foreign protection order **or the Canadian domestic violence protection order** prohibiting the person under restraint from contacting or communicating with another person, or excluding the person under restraint from a residence, workplace, school, or day care, or prohibiting the person from knowingly coming within, or knowingly remaining within, a specified distance of a location, or a violation of any provision for which the foreign protection order **or the Canadian domestic violence protection order** specifically indicates that a violation will be a crime; or

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(c) The person is eighteen years or older and within the preceding four hours has assaulted a family or household member as defined in RCW 10.99.020 and the officer believes: (i) A felonious assault has occurred; (ii) an assault has occurred which has resulted in bodily injury to the victim, whether the injury is observable by the responding officer or not; or (iii) that any physical action has occurred which was intended to cause another person reasonably to fear imminent serious bodily injury or death. Bodily injury means physical pain, illness, or an impairment of physical condition. When the officer has probable cause to believe that family or household members have assaulted each other, the officer is not required to arrest both persons. The officer shall arrest the person whom the officer believes to be the primary physical aggressor. In making this determination, the officer shall make every reasonable effort to consider: (A) The intent to protect victims of domestic violence under RCW 10.99.010; (B) the comparative extent of injuries inflicted or serious threats creating fear of physical injury; and (C) the history of domestic violence of each person involved, including whether the conduct was part of an ongoing pattern of abuse.

(3) Any police officer having probable cause to believe that a person has committed or is committing a violation of any of the following traffic laws shall have the authority to arrest the person:

(a) RCW 46.52.010, relating to duty on striking an unattended car or other property;

(b) RCW 46.52.020, relating to duty in case of injury to or death of a person or damage to an attended vehicle;

(c) RCW 46.61.500 or 46.61.530, relating to reckless driving or racing of vehicles;

(d) RCW 46.61.502 or 46.61.504, relating to persons under the influence of intoxicating liquor or drugs;

(e) RCW 46.61.503 or 46.25.110, relating to persons having alcohol or THC in their system;

(f) RCW 46.20.342, relating to driving a motor vehicle while operator's license is suspended or revoked;

(g) RCW 46.61.5249, relating to operating a motor vehicle in a negligent manner.

(4) A law enforcement officer investigating at the scene of a motor vehicle accident may arrest the driver of a motor vehicle involved in the accident if the officer has probable cause to believe that the driver has committed in connection with the accident a violation of any traffic law or regulation.

(5)(a) A law enforcement officer investigating at the scene of a motor vessel accident may arrest the operator of a motor vessel involved in the accident if the officer has probable cause to believe that the operator has committed, in connection with the accident, a criminal violation of chapter 79A.60 RCW.

(b) A law enforcement officer investigating at the scene of a motor vessel accident may issue a citation for an infraction to the operator of a motor vessel involved in the accident if the officer has probable cause to believe that the operator has committed, in connection with the accident, a violation of any boating safety law of chapter 79A.60 RCW.

(6) Any police officer having probable cause to believe that a person has committed or is committing a violation of RCW 79A.60.040 shall have the authority to arrest the person.

(7) An officer may act upon the request of a law enforcement officer in whose presence a traffic infraction was committed, to stop, detain, arrest, or issue a notice of traffic infraction to the driver who is believed to have committed the infraction. The request by the witnessing officer shall give an officer the authority to take appropriate action under the laws of the state of Washington.

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(8) Any police officer having probable cause to believe that a person has committed or is committing any act of indecent exposure, as defined in RCW 9A.88.010, may arrest the person.

(9) A police officer may arrest and take into custody, pending release on bail, personal recognizance, or court order, a person without a warrant when the officer has probable cause to believe that an order has been issued of which the person has knowledge under chapter 10.14 RCW and the person has violated the terms of that order.

(10) Any police officer having probable cause to believe that a person has, within twenty-four hours of the alleged violation, committed a violation of RCW 9A.50.020 may arrest such person.

(11) A police officer having probable cause to believe that a person illegally possesses or illegally has possessed a firearm or other dangerous weapon on private or public elementary or secondary school premises shall have the authority to arrest the person.

For purposes of this subsection, the term "firearm" has the meaning defined in RCW 9.41.010 and the term "dangerous weapon" has the meaning defined in RCW 9.41.250 and 9.41.280(1) (c) through (e).

(12) A law enforcement officer having probable cause to believe that a person has committed a violation under RCW 77.15.160~~(4)~~ **(5)** may issue a citation for an infraction to the person in connection with the violation.

(13) A law enforcement officer having probable cause to believe that a person has committed a criminal violation under RCW 77.15.809 or 77.15.811 may arrest the person in connection with the violation.

(14) Except as specifically provided in subsections (2), (3), (4), and (7) of this section, nothing in this section extends or otherwise affects the powers of arrest prescribed in Title 46 RCW.

(15) No police officer may be held criminally or civilly liable for making an arrest pursuant to subsection (2) or (9) of this section if the police officer acts in good faith and without malice.

(16)(a) Except as provided in (b) of this subsection, a police officer shall arrest and keep in custody, until release by a judicial officer on bail, personal recognizance, or court order, a person without a warrant when the officer has probable cause to believe that the person has violated RCW 46.61.502 or 46.61.504 or an equivalent local ordinance and the police officer: (i) Has knowledge that the person has a prior offense as defined in RCW 46.61.5055 within ten years; or (ii) has knowledge, based on a review of the information available to the officer at the time of arrest, that the person is charged with or is awaiting arraignment for an offense that would qualify as a prior offense as defined in RCW 46.61.5055 if it were a conviction.

(b) A police officer is not required to keep in custody a person under (a) of this subsection if the person requires immediate medical attention and is admitted to a hospital.

Sec. 912. RCW 26.50.035 and 2005 c 282 s 40 are each amended to read as follows:

<< WA ST 26.50.035 >>

(1) The administrative office of the courts shall develop and prepare instructions and informational brochures required under RCW 26.50.030(4), standard petition and order for protection forms, and a court staff handbook on domestic violence and the protection order process. The standard petition and order for protection forms must be used after September 1, 1994, for all petitions filed and orders issued under this chapter. The

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instructions, brochures, forms, and handbook shall be prepared in consultation with interested persons, including a representative of the state domestic violence coalition, judges, and law enforcement personnel.

(a) The instructions shall be designed to assist petitioners in completing the petition, and shall include a sample of standard petition and order for protection forms.

(b) The informational brochure shall describe the use of and the process for obtaining, modifying, and terminating a domestic violence protection order as provided under this chapter, an antiharassment no-contact order as provided under chapter 9A.46 RCW, a domestic violence no-contact order as provided under chapter 10.99 RCW, a restraining order as provided under chapters 26.09, 26.10, ~~26.26~~ **26.26A, 26.26B**, and 26.44 RCW, an antiharassment protection order as provided by chapter 10.14 RCW, ~~and~~ a foreign protection order as defined in chapter 26.52 RCW**, and a Canadian domestic violence protection order as defined in section 902 of this act**.

(c) The order for protection form shall include, in a conspicuous location, notice of criminal penalties resulting from violation of the order, and the following statement: "You can be arrested even if the person or persons who obtained the order invite or allow you to violate the order's prohibitions. The respondent has the sole responsibility to avoid or refrain from violating the order's provisions. Only the court can change the order upon written application."

(d) The court staff handbook shall allow for the addition of a community resource list by the court clerk.

(2) All court clerks shall obtain a community resource list from a domestic violence program, defined in RCW 70.123.020, serving the county in which the court is located. The community resource list shall include the names and telephone numbers of domestic violence programs serving the community in which the court is located, including law enforcement agencies, domestic violence agencies, sexual assault agencies, legal assistance programs, interpreters, multicultural programs, and batterers' treatment programs. The court shall make the community resource list available as part of or in addition to the informational brochures described in subsection (1) of this section.

(3) The administrative office of the courts shall distribute a master copy of the petition and order forms, instructions, and informational brochures to all court clerks and shall distribute a master copy of the petition and order forms to all superior, district, and municipal courts.

(4) For purposes of this section, "court clerks" means court administrators in courts of limited jurisdiction and elected court clerks.

(5) The administrative office of the courts shall determine the significant non-English-speaking or limited English-speaking populations in the state. The administrator shall then arrange for translation of the instructions and informational brochures required by this section, which shall contain a sample of the standard petition and order for protection forms, into the languages spoken by those significant non-English-speaking populations and shall distribute a master copy of the translated instructions and informational brochures to all court clerks by January 1, 1997.

(6) The administrative office of the courts shall update the instructions, brochures, standard petition and order for protection forms, and court staff handbook when changes in the law make an update necessary.

Sec. 913. RCW 26.50.110 and 2017 c 230 s 9 are each amended to read as follows:

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<< WA ST 26.50.110 >>

(1)(a) Whenever an order is granted under this chapter, chapter 7.92, 7.90, 9A.40, 9A.46, 9A.88, 9.94A, 10.99, 26.09, 26.10, ~~26.26~~ **26.26A, 26.26B**, or 74.34 RCW, any temporary order for protection **is** granted under chapter 7.40 RCW pursuant to chapter 74.34 RCW, ~~or~~ there is a valid foreign protection order as defined in RCW 26.52.020, **or there is a valid Canadian domestic violence protection order as defined in section 902 of this act,** and the respondent or person to be restrained knows of the order, a violation of any of the following provisions of the order is a gross misdemeanor, except as provided in subsections (4) and (5) of this section:

(i) The restraint provisions prohibiting acts or threats of violence against, or stalking of, a protected party, or restraint provisions prohibiting contact with a protected party;

(ii) A provision excluding the person from a residence, workplace, school, or day care;

(iii) A provision prohibiting a person from knowingly coming within, or knowingly remaining within, a specified distance of a location;

(iv) A provision prohibiting interfering with the protected party's efforts to remove a pet owned, possessed, leased, kept, or held by the petitioner, respondent, or a minor child residing with either the petitioner or the respondent; or

(v) A provision of a foreign protection order **or a Canadian domestic violence protection order** specifically indicating that a violation will be a crime.

(b) Upon conviction, and in addition to any other penalties provided by law, the court:

(i) May require that the respondent submit to electronic monitoring. The court shall specify who shall provide the electronic monitoring services, and the terms under which the monitoring shall be performed. The order also may include a requirement that the respondent pay the costs of the monitoring. The court shall consider the ability of the convicted person to pay for electronic monitoring.

(ii) Shall impose a fine of fifteen dollars, in addition to any penalty or fine imposed, for a violation of a domestic violence protection order issued under this chapter. Revenue from the fifteen dollar fine must be remitted monthly to the state treasury for deposit in the domestic violence prevention account.

(2) A peace officer shall arrest without a warrant and take into custody a person whom the peace officer has probable cause to believe has violated an order issued under this chapter, chapter 7.92, 7.90, 9A.40, 9A.46, 9A.88, 9.94A, 10.99, 26.09, 26.10, ~~26.26~~ **26.26A, 26.26B**, or 74.34 RCW, any temporary order for protection granted under chapter 7.40 RCW pursuant to chapter 74.34 RCW, ~~or~~ a valid foreign protection order as defined in RCW 26.52.020, **or a valid Canadian domestic violence protection order as defined in section 902 of this act,** that restrains the person or excludes the person from a residence, workplace, school, or day care, or prohibits the person from knowingly coming within, or knowingly remaining within, a specified distance of a location, if the person restrained knows of the order. Presence of the order in the law enforcement computer-based criminal intelligence information system is not the only means of establishing knowledge of the order.

(3) A violation of an order issued under this chapter, chapter 7.92, 7.90, 9A.40, 9A.46, 9A.88, 9.94A, 10.99, 26.09, 26.10, ~~26.26~~ **26.26A, 26.26B**, or 74.34 RCW, ~~or of~~ a valid foreign protection order as defined in RCW 26.52.020, **or a valid Canadian domestic violence protection order as defined in section 902 of this act,** shall also constitute contempt of court, and is subject to the penalties prescribed by law.

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(4) Any assault that is a violation of an order issued under this chapter, chapter 7.92, 7.90, 9A.40, 9A.46, 9A.88, 9.94A, 10.99, 26.09, 26.10, ~~26.26~~ **26.26A, 26.26B**, or 74.34 RCW, ~~or of~~ a valid foreign protection order as defined in RCW 26.52.020, **or a valid Canadian domestic violence protection order as defined in section 902 of this act,** and that does not amount to assault in the first or second degree under RCW 9A.36.011 or 9A.36.021 is a class C felony, and any conduct in violation of such an order that is reckless and creates a substantial risk of death or serious physical injury to another person is a class C felony.

(5) A violation of a court order issued under this chapter, chapter 7.92, 7.90, 9A.40, 9A.46, 9A.88, 9.94A, 10.99, 26.09, 26.10, ~~26.26~~ **26.26A, 26.26B**, or 74.34 RCW, ~~or of~~ a valid foreign protection order as defined in RCW 26.52.020, **or a valid Canadian domestic violence protection order as defined in section 902 of this act,** is a class C felony if the offender has at least two previous convictions for violating the provisions of an order issued under this chapter, chapter 7.90, 9A.40, 9A.46, 9A.88, 9.94A, 10.99, 26.09, 26.10, ~~26.26~~ **26.26A, 26.26B**, or 74.34 RCW, ~~or~~ a valid foreign protection order as defined in RCW 26.52.020 **or a valid Canadian domestic violence protection order as defined in section 902 of this act**. The previous convictions may involve the same victim or other victims specifically protected by the orders the offender violated.

(6) Upon the filing of an affidavit by the petitioner or any peace officer alleging that the respondent has violated an order granted under this chapter, chapter 7.92, 7.90, 9A.40, 9A.46, 9A.88, 9.94A, 10.99, 26.09, 26.10, ~~26.26~~ **26.26A, 26.26B**, or 74.34 RCW, ~~or~~ a valid foreign protection order as defined in RCW 26.52.020, **or a valid Canadian domestic violence protection order as defined in section 902 of this act,** the court may issue an order to the respondent, requiring the respondent to appear and show cause within fourteen days why the respondent should not be found in contempt of court and punished accordingly. The hearing may be held in the court of any county or municipality in which the petitioner or respondent temporarily or permanently resides at the time of the alleged violation.

Sec. 914. RCW 26.50.160 and 2017 3rd sp.s. c 6 s 335 are each amended to read as follows:

<< WA ST 26.50.160 >>

To prevent the issuance of competing protection orders in different courts and to give courts needed information for issuance of orders, the judicial information system shall be available in each district, municipal, and superior court by July 1, 1997, and shall include a database containing the following information:

(1) The names of the parties and the cause number for every order of protection issued under this title, every sexual assault protection order issued under chapter 7.90 RCW, every criminal no-contact order issued under chapters 9A.46 and 10.99 RCW, every antiharassment order issued under chapter 10.14 RCW, every dissolution action under chapter 26.09 RCW, every third-party custody action under chapter 26.10 RCW, every parentage action under chapter ~~26.26~~ **26.26A or 26.26B** RCW, every restraining order issued on behalf of an abused child or adult dependent person under chapter 26.44 RCW, every foreign protection order filed under chapter 26.52 RCW, **every Canadian domestic violence protection order filed under chapter 26.— RCW (the new chapter created in section 1001 of this act),** and every order for protection of a vulnerable adult under chapter 74.34 RCW. When a guardian or the department of social and health services or department of children, youth, and families has petitioned for relief on behalf of an abused child, adult dependent person, or vulnerable adult, the name of the person on whose behalf relief was sought shall be included in the database as a party rather than the guardian or appropriate department;

(2) A criminal history of the parties; and

(3) Other relevant information necessary to assist courts in issuing orders under this chapter as determined by the judicial information system committee.

Sec. 915. RCW 36.28A.410 and 2017 c 261 s 5 are each amended to read as follows:

<< WA ST 36.28A.410 >>

(1)(a) Subject to the availability of amounts appropriated for this specific purpose, the Washington association of sheriffs and police chiefs shall create and operate a statewide automated protected person notification system to automatically notify a registered person via the registered person's choice of telephone or email when a respondent subject to a court order specified in (b) of this subsection has attempted to purchase or acquire a firearm and been denied based on a background check or completed and submitted firearm purchase or transfer application that indicates the respondent is ineligible to possess a firearm under state or federal law. The system must permit a person to register for notification, or a registered person to update the person's registration information, for the statewide automated protected person notification system by calling a toll-free telephone number or by accessing a public web site.

(b) The notification requirements of this section apply to any court order issued under chapter 7.92 RCW and RCW 7.90.090, 9A.46.080, 10.14.080, 10.99.040, 10.99.045, 26.09.050, 26.09.060, 26.10.040, 26.10.115, ~~26.26.130, 26.26.590~~ **26.26B.020**, 26.50.060, or 26.50.070, ~~and~~ any foreign protection order filed with a Washington court pursuant to chapter 26.52 RCW, **and any Canadian domestic violence protection order filed with a Washington court pursuant to chapter 26.— RCW (the new chapter created in section 1001 of this act),** where the order prohibits the respondent from possessing firearms or where by operation of law the respondent is ineligible to possess firearms during the term of the order. The notification requirements of this section apply even if the respondent has notified the Washington state patrol that he or she has appealed a background check denial under RCW 43.43.823.

(2) An appointed or elected official, public employee, or public agency as defined in RCW 4.24.470, or combination of units of government and its employees, as provided in RCW 36.28A.010, are immune from civil liability for damages for any release of information or the failure to release information related to the statewide automated protected person notification system in this section, so long as the release or failure to release was without gross negligence. The immunity provided under this subsection applies to the release of relevant and necessary information to other public officials, public employees, or public agencies, and to the general public.

(3) Information and records prepared, owned, used, or retained by the Washington association of sheriffs and police chiefs pursuant to chapter 261, Laws of 2017, including information a person submits to register and participate in the statewide automated protected person notification system, are exempt from public inspection and copying under chapter 42.56 RCW.

PART X—MISCELLANEOUS

<< Note: WA ST 26 >>

NEW SECTION. **Sec. 1001.** Sections 901 through 910 of this act constitute a new chapter in Title 26 RCW.

NEW SECTION. **Sec. 1002.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

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<< Note: WA ST 10.31.100, 26.50.035, 26.50.110, 26.50.160, 36.28A.410 >>

<< Note: WA ST 26 >>

NEW SECTION. **Sec. 1003.** Sections 901 through 915, 1001, and 1002 of this act take effect January 1, 2020.

<< Note: WA ST 9.94A.500, 9.94A.660, 9.94A.662, 9.94A.664, 9.94A.704, 9.94A.722, 10.05.010, 10.05.015, 10.05.020, 10.05.030, 10.05.120, 10.05.140, 10.05.160 >>

<< Note: WA ST 10.05 >>

NEW SECTION. **Sec. 1004.** Sections 501 through 504, 601, 602, and 701 through 708 of this act take effect January 1, 2021.

NEW SECTION. **Sec. 1005.** Sections 801 through 803 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect June 30, 2019.

NEW SECTION. **Sec. 1006.** If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 2019, in the omnibus appropriations act, this act is null and void.

Approved May 7, 2019.
Effective July 28, 2019, except for sections 501 through 504, 601, 602, and 701 through 708, which become effective January 1, 2021; sections 801 through 803, which become effective June 30, 2019; and sections 901 through 915, 1001, and 1002, which become effective January 1, 2020.

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9 Wash.App.2d 1013

NOTE: UNPUBLISHED OPINION, SEE WA R GEN GR 14.1

Court of Appeals of Washington, Division 2.

In re the Marriage of:
Amy E. **COLE**, Appellant,
v.
Mark L. **COLE**, Respondent.

No. 51013-8-II
|
June 4, 2019

Appeal from Clark Superior Court, 12-3-02267-1, Suzan Clark, J.

Attorneys and Law Firms

Phillip Justin Haberthur, Landerholm, P.S., Po Box 1086, 805 Broadway St. Ste. 1000, Vancouver, WA, 98666-1086, for Appellant.

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UNPUBLISHED OPINION

Melnick, P.J.

***1** Following a petition to modify a final parenting plan, the trial court established a new one. In so doing, it ordered that Amy **Cole** and Mark **Cole**[1], her ex-husband, have joint decision-making over their three children. Amy appeals. She acknowledges that her appeal is timely only as to the denial of a meritless CR 60(b) motion and untimely as to all other issues in the case.

Because this case presents extraordinary circumstances resulting in a gross miscarriage of justice, we exercise our discretion under RAP 18.8 to decide Amy's argument that the trial court abused its discretion by ordering joint decision-making after it found that Mark engaged in a history of domestic violence. On that issue, we reverse. We otherwise affirm.

FACTS

Amy and Mark married in July 2005 and separated in August 2012. In 2014, when they dissolved their marriage, their three children were ages seven, three, and two.

At the conclusion of the dissolution trial, in March 2014, the court issued a final parenting plan which mandated: "A. Father shall meet with Dr. Landon Poppleton to address all issues of domestic violence. This must be completed prior to commencement of father's summer residential time. B. Father must have a certified evaluation from a Washington provider regarding domestic violence and follow through with any treatment recommendations." Clerk's Papers (CP) at 6.

As to decision-making for the children, the final parenting plan stated, "[t]he court is concerned about issues of domestic violence. Until the court hears from a domestic violence counselor/evaluator, mother will have sole decision-making." CP at 7. Once Mark completed his meeting with Poppleton and completed domestic violence treatment, the order stated "major decision-making shall become joint." CP at 7. The court that entered the plan stated it had given Mark "a break" by declining to restrict Mark's access to the children under RCW 26.09.191.[2], [3] CP at 424.

In August 2015, Amy alleged that Mark had committed ongoing physical abuse of the children. She petitioned to modify the final parenting plan. She alleged that Mark's abuse presented a substantial change of circumstances, causing the existing parenting plan to become detrimental to the children's physical, mental, or emotional health.

The court appointed Josephine Townsend as Guardian Ad Litem (GAL) in November. She interviewed a number of people, including Amy and Mark. She also observed how each parent interacted with the three children. Townsend filed her GAL report in April 2016. She concluded that both Amy and Mark were pleasant and cooperative and that they both provided a nurturing and loving environment to their children. Townsend recommended that all three children spend

equal residential time with both parents and that Amy and Mark have joint decision-making. In August 2016, the trial court entered a temporary parenting plan imposing equal residential time and joint decision-making on recommendation of the GAL.

***2** The case proceeded to trial. Townsend testified that she believed the temporary parenting plan was working and that her recommendation remained the same. She looked at her notes and testified she "remember[ed] specifically" speaking with Amy's domestic violence victim advocate, a family friend, and other people. Report of Proceedings (RP) (Feb. 13, 2017) at 38. She provided the dates of the interviews. Amy sought to call some of these witnesses in rebuttal to testify they had not talked to the GAL; however, the trial court would not allow the testimony. Nevertheless, the parties stipulated that, contrary to her testimony, Townsend had not talked to these individuals.

As to domestic violence committed by Mark since the 2014 final order, Townsend testified she was aware of a "thumbprint" found on one of the children. RP (Feb. 13, 2017) at 56. She said:

> There was a thumbprint that was found on [one of the children], I recall that, in 2014. And I know that it was being appealed by the father. That it was reported that—I believe, that they thought that it was, you know, from grabbing by the hand. I know that the—his wife was not interviewed. There was—there was a dispute over how it was investigated and how it came to be.

RP (Feb. 13, 2017) at 56. Townsend said she had heard it was a founded report of abuse from Amy and it did not change her recommendation. Townsend submitted an undated supplemental report acknowledging that Mark appealed the CPS "founded" finding of abuse. She added her opinion that no indications demonstrated that increased time with him would adversely affect the children. Other than Townsend's testimony on these points, no trial testimony or exhibit in the record on appeal suggests that Mark committed any act of violence against the children since the divorce and the findings in the 2014 parenting plan. [4]

After trial, the court found that the children had "two strong, nurturing and loving parents" and that they "appear[ed] to be thriving under the current residential schedule." CP at 497. As to the domestic violence issues, the court noted,

> In the past, [Amy] experienced significant domestic violence at the hands of [Mark] to the extent that the trial judge ordered him into treatment. The court does not take the concerns of a domestic violence survivor lightly, however the court is satisfied that [Mark] underwent sufficient counseling to address the situation.

CP at 498. The court concluded that the previously ordered temporary parenting plan was in the best interests of the children and adopted it as the final parenting plan. It entered a final order and parenting plan identical to the temporary plan, maintaining equal residential time and joint decision-making.

Several months after she testified, Townsend submitted a supplemental report to the court acknowledging an error in her testimony. She stated she had mistakenly read from notes she had received from a GAL who had been appointed prior to the original trial in 2013. Townsend attached the previous GAL's notes that she had been referencing and they clearly indicate that interactions with both Priebe and Carroll had taken place in spring of 2013, years before Townsend had been assigned to the case.

***3** Amy moved for reconsideration under CR 59 and for vacation of the judgment under CR 60(b). The trial court denied both motions and ordered Amy to pay Mark $ 500 in attorney fees. Within 30 days of the denial of her CR 60(b) motion, but more than 30 days

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after the denial of her motion for reconsideration, Amy appealed.

ANALYSIS

I. TIMELINESS OF APPEAL

Amy acknowledges that her appeal was untimely as to the substantive issues in this case. She seeks to use the timely appeal of the denial of her CR 60(b) motion to correct alleged "irregularities" in earlier proceedings. [5] We agree that the appeal was untimely as to the substantive issues in the case. However, we exercise our discretion under RAP 18.8 to consider Amy's arguments as to the trial court's joint decision-making order.

A party is allowed 30 days in which to file a notice of appeal. RAP 5.2(a). "This 30-day time limit can be extended due to some specific and narrowly defined circumstances." *Schaefco, Inc. v. Columbia River Gorge Comm'n*, 121 Wn.2d 366, 367, 849 P.2d 1225 (1993). Filing of certain post-trial motions, including motions for reconsideration, may extend this deadline. *Schaefco*, 121 Wn.2d at 367; RAP 5.2(e). Motions to vacate judgment under CR 60(b) are not among the list of motions that extend the deadline to appeal. RAP 5.2(e). Amy represented herself in the trial court. Trial courts "must hold pro se parties to the same standards to which [they] hold[ ] attorneys." *Edwards v. Le Duc*, 157 Wn. App. 455, 460, 238 P.3d 1187 (2010).

The court filed the final parenting plan, its final order in this case, on June 23, 2017. Amy filed a timely CR 59 motion for reconsideration, which the court denied on August 15. While her CR 59 motion was pending, Amy filed her CR 60(b) motion on July 7 and the trial court denied it on September 15. The 30-day window to file her notice of appeal from the parenting plan began running on August 15 when the trial court denied her motion for reconsideration. RAP 5.2.

Amy filed her notice of appeal on October 10, 2017, within 30 days of the denial of her CR 60(b) motion, but more than 30 days after the court denied her CR 59 motion for reconsideration. Amy's appeal is untimely as to each issue she raises in her brief. [6]

However, RAP 18.8(a) provides that this court may "on its own initiative or on motion of a party, waive or alter the provisions of any of these rules and enlarge or shorten the time within which an act must be done in a particular case in order to serve the ends of justice." "Our discretion is subject to RAP 18.8(b), which provides that we will 'only in extraordinary circumstances and to prevent a gross miscarriage of justice extend the time within which a party must file a notice of appeal.' " *In re Custody of Z.C.*, 191 Wn. App. 674, 698, 366 P.3d 439 (2015) (quoting RAP 18.8(b)). "The decision whether to extend time for appeal 'is determined by the appellate court to which the untimely notice, motion or petition is directed.' " *Z.C.*, 191 Wn. App. at 700 (quoting RAP 18.8(b)).

***4** In this case, the trial court ordered joint decision-making for Amy and Mark's three children, despite its express finding of a history of domestic violence. As discussed further below, the trial court's ruling is a clear violation of the mandates of RCW 26.09.191(1). Upholding this ruling because Amy, representing herself at the trial court, misunderstood which post-trial motions extend appellate deadlines would create a gross miscarriage of justice. We reject the rest of Amy's arguments as untimely, but we exercise our discretion under RAP 18.8 to consider her argument that the trial court abused its discretion by ordering joint decision-making. [7]

II. MODIFICATION OF PARENTING PLAN

Amy contends that the trial court abused its discretion by modifying the parenting plan to impose joint decision-making despite findings of domestic violence. [8] We agree.

"[C]hapter 26.09 RCW provides the process and standards for determining how residential time and decision-making for minor children will be allocated between parents in the event of separation or divorce." *In re Custody of T.L.*, 165 Wn. App. 268, 274, 268 P.3d 963 (2011). The best interests of the child is the standard by which the court should determine and allocate parental responsibilities. RCW 26.09.002. The court should "plac[e] the best interest of the

child above all other interests." *In re Marriage of Littlefield*, 133 Wn.2d 39, 61, 940 P.2d 1362 (1997).

A trial court wields broad discretion when fashioning a permanent parenting plan and we review a trial court's parenting plan for an abuse of discretion. *In re Marriage of Katare*, 175 Wn.2d 23, 35, 283 P.3d 546 (2012).

Restrictions on a parent's decision-making is mandatory if the trial court finds that the parent has "a history of acts of domestic violence." RCW 26.09.191(1); *In re Parenting and Support of L.H.*, 198 Wn. App. 190, 194, 391 P.3d 490 (2016). Domestic violence in this context means:

> (a) Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault, between family or household members; (b) sexual assault of one family or household member by another; or (c) stalking ... of one family or household member by another family or household member.

RCW 26.50.010(3). "Family or household member" includes spouses, former spouses, and persons who have a biological or legal parent-child relationship. RCW 26.50.010(6).

In *L.H.*, the trial court found that there "ha[d] been prior domestic violence [and that] there ha[d] been some other issues here" and ordered the father to complete a domestic violence assessment. 198 Wn. App. at 193. However, the court "declined to enter a finding that [the father] had a history of domestic violence" because it stated it would "almost hate to put [such findings] in there because [it would] hate to have this record follow him around like some ghost." *L.H.*, 198 Wn. App. at 193. The court told the parties to "[g]et past the [domestic violence]" because "once it gets in writing, as you can see with your prior record, you don't get to erase it." *L.H.*, 198 Wn. App. at 193.

***5** The court concluded that the trial court had abused its discretion by acknowledging the presence of domestic violence but refusing to enter a finding "to protect [the father] from collateral consequences." *L.H.*, 198 Wn. App. at 194-95. The court reversed and remanded "for entry of a finding of a history of domestic violence and a parenting plan that complies with RCW 26.09.191." *L.H.*, 198 Wn. App. at 195.

In this case, the trial court found that both Amy and Mark were "strong, nurturing and loving parents." CP at 497. However, it also found that, "[i]n the past, [Amy] experienced significant domestic violence at the hands of [Mark] to the extent that the trial judge ordered him into treatment."[9] CP at 498. Although it did "not take the concerns of a domestic violence survivor lightly," the court said it was "satisfied that [Mark] underwent sufficient counseling to address the situation." CP at 498. The court then ordered joint decision-making in the final parenting plan.

When a court finds a "history of domestic violence," limitations on a parent's decision-making and residential time are mandatory under RCW 26.09.191. *L.H.*, 198 Wn. App. at 194. The court in this case specifically found that Mark had a history of domestic violence, yet ordered joint decision-making with no limitations. If the court "expressly" found that contact between Mark and the children would not cause harm and the probability of harmful or abusive conduct was "so remote" that limitations would not be in the children's best interest, it may have declined to impose limitations on residential time. RCW 26.09.191(2)(n). Even in that case, RCW 26.09.191(1) would still have prohibited the trial court from ordering mutual decision-making. By imposing joint decision making in light of this finding, the court abused its discretion and we remand for the trial court to issue a parenting plan in compliance with RCW 26.09.191.

ATTORNEY FEES

Mark contends that Amy's appeal is frivolous and we should award him his reasonable attorney fees on appeal.

We may, on our own initiative or on motion of a party, order a party who files a frivolous appeal "to pay terms or compensatory damages to any other party who has been harmed." RAP 18.9(a). "Appropriate sanctions may include, as compensatory damages, an award of attorney fees and costs to the opposing party." *Yurtis v. Phipps*, 143 Wn. App. 680, 696, 181 P.3d 849 (2008). An appeal is frivolous where "it presents no debatable issues and is so devoid of merit that there is no reasonable possibility of reversal." *Carrillo v. City of Ocean Shores*, 122 Wn. App. 592, 619, 94 P.3d 961 (2004).

Because Amy has prevailed on one issue, her appeal is not frivolous and we decline Mark's request for attorney fees.

CONCLUSION

We reverse the trial court's parenting plan and remand for a new parenting plan compliant with RCW 26.09.191.

***6** A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

We concur:

Sutton, J.

Glasgow, J.

All Citations

Not Reported in Pac. Rptr., 9 Wash.App.2d 1013, 2019 WL 2357009

Footnotes

1 To avoid confusion, we refer to Amy and Mark by their first names. We intend no disrespect.

2 Since the trial court's decision in this case, the legislature has enacted substantial changes to many statutes in an effort to address domestic violence. LAWS OF 2019, ch. 263. These amendments impacted many statutes cited throughout this opinion, including RCW 26.09.191. We cite to the versions of the statutes in effect at the time of the trial court's decision.

3 RCW 26.09.191 provides both mandatory and discretionary guidance to trial courts for dealing with a parent's history of domestic violence when creating a parenting plan. We discuss its impacts on this case further below.

4 Our decision is based on the trial court's finding of a history of domestic violence by Mark against Amy. Inadequacies in our record make it difficult to determine the trial court's findings and conclusions as to the child abuse allegations in Amy's modification petition. To the extent Mark's ongoing violence against the children presents a substantial change of circumstances, our opinion does not preclude Amy from filing a new petition to modify the parenting plan.

5 Amy does not allege the trial court erred by denying any claim for relief raised in her CR 60(b) motion.

6 To the extent Amy contends the trial court abused its discretion by denying her CR 60(b) motion, her arguments are based on issues unrelated to the trial court denying that motion.

7 In exercising our discretion under RAP 18.8, we are also mindful that, in setting the original parenting plan, the court gave Mark "a break" by declining to impose formal restrictions on Mark's

access to the children even though it found a history of domestic violence and even though it ordered Mark into domestic violence treatment. CP at 424.

8 Amy also alleges that the trial court abused its discretion by failing to order restrictions on Mark's residential time despite its finding of a history of domestic violence. Where a trial court expressly finds that contact between a parent and child will not cause physical, sexual, or emotional abuse or harm to the child, and that the probability of the parent's harmful or abusive conduct is remote such that limiting residential time would not be in the child's best interests, it may choose not to limit residential time under RCW 26.09.191(2)(a). RCW 26.09.191(2)(n). A similar exception does not exist for RCW 26.09.191(1), which forbids the trial court from ordering joint decision-making given a finding of a history of domestic violence. We exercise our discretion under RAP 18.8 to consider only Amy's joint decision-making argument.

9 Mark contends that “a single act” of physically injuring a child does not constitute a “history of acts of” domestic violence under RCW 26.09.191. Br. of Resp't at 20. The trial court's order did not refer to any violent act against the children, but to the violence Mark committed against Amy. A finding that Amy “experienced significant domestic violence at the hands of” Mark is a finding of a history of domestic violence triggering the requirements of RCW 26.09.191. CP at 498.

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APPENDIX “D”

Addy,
You are in the process of searching your heart and mind and I feel I have to let you know where mine are. For the past seven years I have treated you horribly with respect to my own insecurities. You have been a loving faithful wife and I would constantly reiterate what you were doing wrong, what you owed me, what I needed, when really it was a problem in my heart. My problem, fuck of course it was my problem. The scales have fallen off. So I trade an acute emotional experience for a chronic emotional experience, wow is that fucking unfair. Its all been unfair. All of my requests, demands, "why do you forget", & "you have to call me's" have been unfair. You play a harder role in our family structure, and you have done so with grace. My heart was blinded and now it sees you. Its actually transformed, incapable of judgement on the most important person in my life. Its no longer harboring forgiveness and not allowing trust to enter. I want to spend the next two years making up for the last seven. You have my whole heart. I swear as god as my witness that I will never question your faithfulness. Let me love you with my whole heart, open, unguarded, unconditional, full of trust.

With hope + love
Kevin

May 2, 2016
Andrea did not want to file in Franklin County because she practices family law, so I told her I was going to see a Lawyer in Yakima to get a consult. I spent 2 hours with John Maxwell.

May 7, 2016 (8:30am)
I was getting the kids ready for soccer and I wanted the kids to wish their mom Happy birthday so I called and let all three talk to her. After they were done we spoke briefly and in closing she asked me to read an email she had sent and we would talk about it later. It was to Kennedys first grade teacher and it was asking her opinion on Kennedy being held back from 1st grade and going to a different school (Cottonwood, in Kennewick). Never had we discussed holding her back or taking her out of the school she was in (Livingston, in Pasco). Two Months prior we had a Parent/Teacher conference and her teacher was seriously concerned with her lack of progression in reading. It was suggested that we get an eye exam and a possible more extensive eye tracking exam. At the meeting Andrea did bring up the suggestion of holding her back a year and both her teacher and the reading teacher were not advocates of that route. Kennedy had her eye exam shortly after the parent/teacher conference and it was determined that she did need glasses. I met with Andrea later that day at a kids bday party and she asked if I would go out front with her to talk. She instantly brought up holding Kennedy back and taking her to a new school. I said there is no reason she needs to be held back because she has only had her glasses a little over a month, and I had been implementing the extra activities suggested by the teachers for her tactile connection. She said why won't you let me make a decision? I said because its about where you decided to move, you left, not me, you are making this about you and not Kennedy, she has not been evaluated on her progression yet. Our kids are not going to Cottonwood just because you decided to move there. At that point Andrea said are you ready to call your Lawyer because I'm coming after everything. I was shocked because we were talking about a kid in the first grade one second and lawyer up the next second.

May 13, 2016 (9:20am)
Kennedy had a more extensive eye tracking appointment on May 11th and it was determined she needed vision therapy. Andrea came over to drop off Cruz and proceeded to go over Kennedy's eye appointment. After discussing she said she was ok with Kennedy not repeating the 1st grade, she then said she registered both Kennedy and Canon at Cottonwood in Kennewick. She did this without discussing with me. I said you are not allowed to make unilateral decisions this big, I am not discussing this please leave. She pulled out a piece of paper from her purse and said, "this is the RCW's for spousal maintenance and I am not paying you a dime". She then left.

May 13, 2016 (6:45pm)
Andrea showed up to get the kids and I could tell she had been drinking. Her office held a "social" for washington judges after a CLE earlier in the day. She asked if I wanted to go with her to a kids bday party. I said yes, I am driving. From 7-9:15 she nursed a glass of wine and ate food. As we were getting ready to leave I asked if she was ok to drive, she scoffed and me and stormed off to leave. I had a friend come pick me up.

May 14, 2016 (9:00am)
I was served divorce papers at my house. After reading the papers I noticed she had not filed in Yakima like we had discussed but rather in Walla Walla. My thought was that she was making this harder for me because I had seen a lawyer in Yakima.

May 15, 2016
I picked up the kids for church at 8:55 and brought them back at 10:45. I had to wait 5-10 minutes for Andrea to get back from her run. Confirmed 4pm exchange. For the past 5 Sundays I have picked up the kids at 4pm. At 3:30 I asked if she was bringing the kids over at 4 because this week she did not leave her car keys with me to drive her car over (and bring back kids in the van). Called at 3:40 and 3:45, no answer. At 3:50 I went to her townhouse and she was not there. I text again saying Im here where are you. She then text me on way to your house. I called and said you need to communicate with me. She said she was at the park and left her phone in the car. After I drove back home and met her there we briefly discussed Kennedy's upcoming eye treatment. As she was leaving I had asked her why she filed in Walla Walla. She knew the counsel I had sought was in Yakima and we had discussed multiple times filing in Yakima. She said we are not talking about it and left.

May 16th, 2016
Andrea made no attempt to talk/facetime the kids

May 17, 2016
Andrea made no attempt to talk/facetime the kids

May 18, 2016
Andrea made no attempt to talk/facetime the kids

May 19, 2016
Andrea made no attempt to talk/facetime the kids

May 20, 2016
Andrea made no attempt to talk/facetime the kids

May 21, 2016 (11:30am)
I arrived home with the 3 children to find a moving van and our minivan being loaded up with household belongings. Andrea did not inform me she would be moving/coming by. As I approached the minivan I saw small household belongings had been loaded up which we had not discussed. The moving van was being loaded up with furniture we had discussed splitting. She remained at the house with the movers for another hour. When she left she took the minivan. Normally the minivan stays at the house so when she brings the kids over in the morning she can take her normal car to work. When she left she did not take her yorkie dog with her and did not mention she was leaving him. He had been out of the house for a month (living with her mom). Later in the day I text her telling her she took all of our daughters pajamas, underwear when she took the dresser, and she left her dog. I received no response.

May 22, 2016
I text Andrea around 1pm to see where she wanted to exchange the children, no response. I called at 2:30, no answer. Around 3:00 her mother text and said she would be by to pick up the children at 4:00. We have never exchanged the kids with a third party.

May 23, 2016
Andrea's mother dropped off our youngest Cruz in the morning, and picked up the three kids at 5pm. I had to work this day and was unable to see the two big kids but was able to facetime them at 7:45pm.

May 24, 2016
Andrea's mother dropped off all 3 children at 8:15am, I took Kennedy to school.

May 31 – June 3, 2016
Andrea makes no attempt to FT or talk to the kids.

June 6, 2016
Andrea does not bring the boys over as we have been doing since February. Andrea will not allow me to FT or talk to the children.

June 13 – 18th, 2016
Andrea made no attempt to FT or talk to the children

June 20th, 2016
Andrea allowed me to FT the children for one minute.

June 22nd, 2016
I sent and made multiple texts and calls, but Andrea would not allow me to FT or talk to the kids.

June 23rd, 2016 I emailed Andrea about the ability to FT the kids.
Because of our prior arrangement we had with the children where I was in contact with them 12 out of every 14 day period I felt it necessary to stay connected to them (by phone) because of the sudden change in May.

July 12th, 2016
I find out Andrea came into the house while I was not home and took an expensive Father's day present she bought me two years ago.

July 14th, 2016
Kennedy and Canon inform me about an activity they learned of at their mothers friends house. This activity is a wedge board and it is used to call upon dead spirits who can touch you. I told the children that it was not real and if it is brought out again to leave the room.

July 17, 2016
I sent the kids to their mothers with a clean iphone all set up to FT. The next day at swim lessons Kennedy informed me her mother took the phone and will not let her call me. I emailed Andrea that night asking her to give the phone to the sitter so I could get it back at swim lessons the following day. Andrea responded stating she did not want me attending their swim lessons and she would return the phone on an exchange day.

July 19th, 2016
I attend the kids swim lessons to find Andrea, the sitter, and her landlord at the pool. I walk over to Kennedy and give her a hug. I am quickly approached by Andrea. She asks me why I am at the pool. I respond, I am here to watch the kids. To break up that awkward moment I walk up with Kennedy to the clubhouse to get her a hot coco. I return with Kennedy and before I leave I walk over to our youngest and kiss him on the head. Andrea again tells me, this is her week and I cannot be her, I don't want to see you, why are you here. I respond that I am here to see the children. I state that she is only in attendance to prevent me for seeing the kids as this was her first appearance at swim lessons and came because I had informed her I had been attending. Andrea then tells me that if I am going to come to lessons on her week then she is going to cancel the next set of swim lessons. I respond saying I don't think that is what is best for the kids. I kiss Canon on the head and leave swim lessons. Total time there 15 minutes.

July 24th, 2016
I text Andrea around 2pm and let her know I will be at the house at 4pm to receive the kids. The kids do not show up at 4pm. I text Andrea at 4:12 with no response. At 4:43 Andrea texts that her friend is bringing the kids over. We have exchanged the kids at 4pm, 90% of the time and if not a call or a text is sent before hand.

August 26th, 2016
I meet Andrea at a park for our first exchange since the court order. When I went to put the youngest in her car I noticed no car seats for the 6 and 7 year old. I asked Andrea where the car seats were. Her response, at home. I told her I would take the 6/7 year olds in my car and follow her to her driveway (I was not allowed on her property). Andrea says, no I can take them. I said I do not want them riding without a car seat, I will follow you. The distance to Andreas house from the park was 5-7 miles with 45-50mph speed limit.

April 13th – Judge changes temporary order. I text Andrea and ask if she is going to act immediately on the judge's order as she did in August 2016. She does not respond. I call and she says, no we will start it next week. Someone who just went to court and argued the right for her time with her children does not even accept the order and come get her children.

April 15 – Andrea did not take Kennedy and Canon to their soccer games stating she had plans. Although she talks of how important it is for the kids to be in extracurricular activities Brunch/Easter egg hunt at the county club was more important.

April 16- I asked Andrea on April 10th if I could take the kids to church on Easter morning. Three days later she offered me time in the evening. She knows the importance of that day to me being a Christian. An easy request for one of two time-slots in which her children could go learn about Jesus was not given because of inconvenience to her or vindictiveness.

April 17th- The kids were dropped off late to school by Andrea. Later that day Andrea texted me and requested my mother have an appropriate car seat in her car when she was going to pick up our three year old. I responded that I thought she did. Andrea responded no it needs to be a five-point harness car seat. I went and looked at my mother's car seat and the information booklet stated it was appropriate for a 3 year old of Cruz's weight and height. I then went on the Washington state DOL website and the DMW website to verify the seat was indeed legal. I sent Andrea a text stating that the car seat for Cruz was legal siting my research and if she had any further concerns or disagreed to communicate that to me. Andrea did not respond.

April 20th- Andrea texted me asking to move Kennedy's vision therapy appointments from Thursday to Friday so we can both participate due to alternating Friday custody. I responded saying that I had taken Kennedy to 28 vision therapy sessions of the total 32. With Kennedy only having 4 left I requested that she not change the vision therapy appointment. Andrea responded that she changed Kennedy's appointment to Friday.

April 21st-Cursing rant (excessive use of the F word) within earshot of children.

There was an event at school called, "Donuts with Dad." I asked Andrea if she could bring the children early at 8:00am rather than our usual 9:00am in order for me to attend this with our two older children. I offered the youngest (Cruz 3yr) to come as well. Andrea said yes to the two big kids but said she would take Cruz to Mcdonalds and bring him back to the school at 8:30 when the event was done. The plan was to meet at 8:00 at the school. At 7:15 Andrea texted me and said that she had a client emergency and will need to bring me Cruz too and could I meet her not at the school but at a gas station closer in her direction. I am not ok exchanging our children like luggage at a gas station so I offered showing up 15 minutes early to the school. This upset her because she clearly wasn't going to be on time with her client without dropping her children off at a closer location. She called me on the phone, yelling and cussing as she's getting the children ready for school, saying she was doing me the favor for "donuts with dad". I don't think it appropriate to use profanity around children. Her client emergency took precedent over the emotional well-being of our children in her insistence on exchanging them at a new location outside of our agreed upon locations of school and the bus stop. I agreed to meet her across from the gas station at a bank. I failed to see how Andrea was doing me the favor when all of the sudden a client who had an emergency at 7:15am needed Andrea asap and her client took priority.

April 26th – Andrea called me and asked if I was going to make Kennedy's vision therapy payment. I responded saying I was not sure how the court actually ruled on that decision but if in fact it is my responsibility moving forward from the April 13th court date then yes. I reviewed Kennedy's vision therapy payments made to Washington Vision Therapy Center and noticed a February payment of $718 was skipped. I sent Andrea a text stating she missed a payment back in February. Andrea did not respond. I called the vision therapy billing department and confirmed the missed payment in February. On that day the balance was up to $1,012. I made a payment of $294 leaving a balance owed of $718 and let billing know it will get paid but that Andrea and I have a discrepancy on who should pay it and the court would most likely have to make a ruling on the missed payment back in February.

April 27th – Andrea's mother brought the kids to school and Kennedy was not in a child seat or a booster seat. I sent Andrea a text asking why Kennedy does not have ANY car seat in her mother's car. Andrea did not respond.

May 1st – After Andrea's first five day custody with the children she arrives to the school late and Kennedy does not want to go to school. Kennedy clung to me saying "I want you Dad, I don't want to go to school". I picked up Cruz (3yr) and proceeded to walk Kennedy to her class. As we get closer to the school some school duties try and help Kennedy to go with them to class. I follow with her to the front door and the duty has to pry Kennedy off me while she is flailing and crying for me. This was by far the worst experience I have ever encountered taking Kennedy to school. I promised Kennedy I would come visit her at lunch that day as I left. When I came back for lunch she seemed quiet and sad. Canon's teacher texted me at 9:30am stating she just had a very tearful visitor who came in for a hug and said she just wants her Dad. At 2:45pm Canon's teacher again sent me a text that she went in to Kennedy's classroom to check on her. She stated that Kennedy just had her head down and looked sad. Andrea also showed up to school in a 2016 Tesla. This exact car was advertised days before by her car dealer friend Eric for $107,480 (advertisement enclosed). I called my friend at a local car dealership who works in Finance and Insurance department. He looked up all Tesla model x cars that were sold at auctions on the west coast for the past two months and the cheapest Tesla model x sold at wholesale for $89,700. Andrea has been telling the court how she is lacking in money and yet she finds it necessary to trade in an Acura she bought a year ago for $40,000, and purchase a Tesla which at best was sold for cost at $89,700.

May2nd – I took the two big kids to school and Kennedy went without incident. Kennedy asked just before leaving if I would again come to see her at lunch and I agreed. When I showed up to the school for lunch I ran into Kennedy's teacher and she informed me of how difficult the previous day and current day have been for Kennedy. Kennedy was refusing to do work, and follow directions. Kennedy's teacher emailed Andrea and I that same day with her observations (email enclosed). Kennedy also had to go talk to the school counselor who talked with Kennedy and attempted to get her to go to art class. Kennedy refused and ended having to the office and wait until art was done. I also received a text from Canon's teacher stating Kennedy came into her classroom and that she was having a rough day. Andrea called me and asked me what I thought was happening. My response is that the primary caregiver (me) is no longer primary and she is having a hard time with it. Andrea disagreed and asked me to request an immediate session with Kennedy's counselor which I did.

May 5th – We normally exchange the 3 year old at the school but today Andrea asked me not to come to the school thinking it would distract Kennedy and cause/trigger the behavior she had been exhibiting. I agreed and waited at the bus stop for the 3 year old Cruz. When Andrea arrived with Cruz she stated that Kennedy was sad that I was not at the school and she had a rough time getting her to go into the school. Andrea asked if I would go have lunch with her at the school that day. *I said yes and went to visit* Kennedy for lunch.

May 8th – As I pulled into the school parking lot Kennedy kept repeating, "I want to stay with you Dad, I want to stay with you Dad". As I helped her out of the car while explaining how it is important she go to school so she can learn and play she again clung on to me and would not let go. Two school aides came over to help but Kennedy would not let go. One school aide offered to stay at the car and watch the 3 year old while I walked Kennedy to class. As we approached the class I again told Kennedy she would be fine and that I would come back for lunch. Kennedy would still not let go. The school aide had to pry Kennedy off of me while she was crying and yelling. At 9:35 that same school aide sent me a text that Kennedy went to the counselor's office. I sent the counselor an email stating the new custody arrangement and that Kennedy had been seeing a counselor outside of school. I also asked for any suggestions she may have. The counselor responded stating Kennedy has been struggling more at school over the last couple of weeks. She also stated she was concerned at the lack of school work Kennedy is completing in school (email enclosed). I returned to the school to have lunch with Kennedy.

May 9th- Andrea sends a text: I need to pick up Cruz at 8:30. Where can I get him? Alternatively you could drop him off at his school. Please advise.

I respond: All the children will be ready at the bus stop at 8:30

May 12th – I came to have lunch with Kennedy. During lunch Kennedy tells me her mom's favorite song says the "B" word. I respond, "oh, really what is the name of the song"? Kennedy says "devil something". Kennedy then says, "Canon said the "B" word in her car this morning when the song was playing". I told Kennedy God does not like words or songs like that. Kennedy responded with, "Mom says if you believe in God you can listen to any songs you want". I then changed the subject. Three days later when they returned to my custody I asked Canon if he in fact said the "B" word in his mother's car. He said he was repeating the word he heard not saying it. I then asked Canon if he knew what the name of the song was? Canon said he did not know but it talks about the devil. He then said he tries not to pay attention to the bad songs mom plays because they are not uplifting.

May 13 – Andrea does not bring the kids to the last weekend of soccer which is a Jamboree. She has had her purposed custody and the courts blessing for one month. She has had custody of the kids for three weekends of soccer and she is a no-show for two of the three weekends. That week the coaches of both teams where group texting and Andrea would respond that she would be bringing the kids. Friday night Andrea says she is not going to make the soccer games on Saturday because she has family pictures. Again Andrea says her priorities are extra-curricular activities for the kids but that's not the reality.

May 15th- After Andrea's second 5 day custody period she drops the kids off at school and I get a call at 9:46am from the principal who states Kennedy is having a hard time this morning and just would like to talk to me. The principal made a deal with Kennedy that if she gets to talk to me she will go back to class and participate. I was flying and missed the call. I return the call and speak to the principal and inform him I'll be in at 2pm to pick her up for a vision therapy exam. I arrive at 2pm to pick up Kennedy and was asked to come into the principal's office. The principal informed me Kennedy created a game with some classmates of showing body parts. Apparently Kennedy made the game up on her own. Kennedy then walked in and we discussed her punishment for her actions. I then took Kennedy to her vision therapy exam. After the exam on the drive home Kennedy informed me that a Tesla is the fastest car in the world. I said I did not know that. Kennedy then informed me she went over 100MPH in Mom's Tesla with Mr. Mike. I asked, are you sure? Yes, said Kennedy. Where your brothers there too? No, said Kennedy. Mike is a family friend of Andrea's and an acquaintance of mine so I felt it appropriate to call him and ask about this story. Mike confirmed he was driving Andrea's car over 100MPH, with Andrea and Kennedy in the car, and he apologized.

May 16th – At breakfast I notice Canon has some scratches on his knuckle and I ask what happened. Canon says Mom went to Mr. Eric's building (Car dealership guy) and left me in the car. Canon then said, because her car is special the engine turned off and locked the doors. Canon then said, I punched on the window because I was scared and by the time Mom came out I had this on my knuckles. Canon then told me about another time when Mom went in to Walgreens and left us in the car because she had to run in and buy a card. Canon said her car shut off that time too. That evening after dinner I was walking into the living room where Cruz and Canon were and I heard Cruz our 3 year old distinctly say the word "Fuck". I stopped in my tracks and asked Canon, what did he say. Canon said, he said the "F"word. I ask Canon when did he learn that word. Canon said, May 1st. I asked in disbelief how he knew it was May 1st. Canon said easy, that day I had just asked Mom what day it was and she told me May 1st, Cruz was playing my video game and he died in his game and then he said "Fuck".

May 16th – Canon's teacher Ms. Brantley tells me that Canon's behavior has been different and reserved the past few weeks. He is not his outgoing self and quiet. She asks if there is anything she can do to help his situation. My response was that she was already doing it. Canon absolutely loves Ms. Brantley and she in my eyes has been a female fill in giving Canon extra attention and nurturing.

May 17th – Andrea informs me she is signing up Cruz for preschool/daycare and the current school which she has him enrolled. Andreas asks if I am ok with that for preference and splitting the cost. Both of our older children went to a faith based pre-school and I want the same for Cruz. Because this temporary order is so backwards for child stabilization I can't see how a judge is going to make it permanent custody arrangement. I don't respond because I don't believe this is going to be the custody arrangement in September.

May 17th- Andrea sends a text at 8:00am: I need to get Cruz earlier or ask you to drop him off at his school. I was flying and asked my mother to take him and she agreed .

May 17th- In the evening Andrea sends me a text stating the kids are spending the night at her mother's Thursday night unless I would like to take the kids early on Thursday. Her reasoning was that she has

movers coming Friday morning to mover to her new place. Again I ask very plainly, does your mom have a car seat for Kennedy yet? Andrea says, never mind.

May 23rd- Andrea sends me a text: Cruz has a very difficult time with transition when he hasn't seen me in a few days. He cries for a long time when I have to leave him at his school and go to work. He is always excited to go to my house. Thinking that you dropping him off since he is used to seeing you is better for his transition. Thoughts?

My response: My thoughts are Cruz has a difficult time going to daycare from 9-5pm. This is what you signed him up for. This is what you want for him. This is not the situation I want Cruz in. I will be home all day and you would prefer that he spend time with strangers versus his own Father. He is going to cry if I take him too. My suggestion would be that you come early and spend some time with him before you drop him off. Andrea did not respond.

In April Andrea's declaration stated that she envisioned taking more time off on Wednesday/Thrusday and making that time up by working the weekends she does not have the kids. So far on Wednesdays she picks the two big kids up at 2 and takes them back to her office while leaving Cruz in daycare until 5.

June 5, 2017

Andrea sends me a text asking if we could switch my Monday for her Thursday the week of June 26th for a family reunion she wanted to attend with the kids. I responded that I was wanting to take the kids to a cabin and requested we trade a different day for me but yes she could have them that Monday. On June 26th at 9:48 am I text Andrea and ask that she give me Kennedys vision therapy bag tomorrow. I receive no response. That night at 6:28pm I text Andrea and ask to confirm 8am tomorrow? Vision Therapy bag? I receive no response. Andrea had asked for Monday, which was my day, and I said yes. I never said yes to Tuesday. On Tuesday morning I went to work and had our mutual babysitter Lindsay at the house by 8am for the children. By 9am the children had not shown up and Andrea was not responding to texts or phone calls. At around 11:30 Andrea did text me with the question "Meet you at my office at 2?" I text the babysitter to see if she could go pick the kids up at 2, and she said yes. I text Andrea yes to 2pm pickup and also told her that I had expected the children back that morning since I had said yes to Monday and Monday night but not yes to Tuesday. She responded with, " I believed we were trading days in proximity. Your Monday for my Wednesday night. I did not agree to trade for future unknown days. Likewise I will not be placed in a situation where I owe you my kid time. If you don't want Wednesday night that is your choice. I'm happy to have them always". I responded asking her to go back and look at her texts so she could see I clearly did not agree to what happened.

June 30, 2017

I took just Canon (7year old) out to breakfast for his birthday. During breakfast Canon said, "Dad I have to tell you something. Mom, Kennedy and Cruz all like and listen to this bad song called, The Devil down

in Georgia. It says bad things so I don't like it, but Mom does play other songs that I do like". My advice to Canon was that sometimes you can be around things you don't like and guard your heart and think of things you like. On July 11, while on our way home from swim lessons Cruz says out of nowhere, "I like bad words". I asked why do you like bad words? Cruz said "because I like bad words with the Devil down in Georgia". I explained to Cruz that bad words are not nice to say or repeat and that they are if you do say them then you will have to go to time out. At this point I was curious enough to look up the lyrics to the song. They are certainly not appropriate for an 8,7, and 3 year old with the curse word Son of a Bitch.

1. The Devil Went Down to Georgia

Charlie Daniels, The Charlie Daniels Band, The Charlie Daniels Band

The devil went down to Georgia
He was lookin' for a soul to steal
He was in a bind
'Cause he was way behind
And he was willin' to make a deal

When he came upon this young man
Sawin' on a fiddle and playin' it hot
And the devil jumped
Up on a hickory stump
And said, "boy, let me tell you what

I guess you didn't know it
But I'm a fiddle player too
And if you'd care to take a dare, I'll make a bet with you

Now you play a pretty good fiddle, boy
But give the devil his due
I'll bet a fiddle of gold
Against your soul
'Cause I think I'm better than you."

The boy said, "my name's Johnny
And it might be a sin
But I'll take your bet
And you're gonna regret
'Cause I'm the best there's ever been."

Johnny, rosin up your bow and play your fiddle hard
'Cause hell's broke loose in Georgia, and the devil deals the cards
And if you win, you get this shiny fiddle made of gold
But if you lose, the devil gets your soul

The devil opened up his case
And he said, "I'll start this show."

And fire flew from his fingertips
As he rosined up his bow

Then he pulled the bow across the strings
And it made an evil hiss
And a band of demons joined in
And it sounded something like this

When the devil finished
Johnny said, "well, you're pretty good, old son
But sit down in that chair right there
And let me show you how it's done."

He played Fire on the Mountain run boys, run
The devil's in the House of the Rising Sun
Chicken in a bread pan pickin' out dough
Granny, does your dog bite? No child, no

The devil bowed his head
Because he knew that he'd been beat
And he laid that golden fiddle
On the ground at Johnny's feet

Johnny said, "Devil, just come on back
If you ever want to try again
I done told you once you son of a bitch
I'm the best that's ever been."

He played Fire on the Mountain run boys, run
The devil's in the House of the Rising Sun
Chicken in a bread pan pickin' out dough
Granny, does your dog bite? No child, no

July 14th Andrea asked if I would like to have the children on July 19th and 20th and I agreed. Andrea chose to go to Hawaii with her boyfriend and his children for that week rather than be with her children.

July 27th, 2017

Kennedy had a second follow-up vision therapy evaluation and Andrea brought all three children. The evaluation requires concentration and focus by Kennedy and the boys were a constant distraction during the visit. The same situation happened in May when I had scheduled an evaluation for Kennedy on one of my days and had childcare provided for the boys. Andrea requested I cancel and reset on a day she could attend. I did and she brought the boys to that evaluation as well.

August 13, 2017

While returning from a camping trip Kennedy informed me that the previous weekend her and Canon both rode in their mothers front seat to Seattle and the Oregon Coast. Kennedy also informed me that at some point she had to duck when a police officer drove past. When I asked why she said because Mom said my head does not look like a grown-ups.

August 31, 2017

While driving home from dinner at Grandma and Grandpas Canon asks if its ok to ride in the front seat of a car. I tell Canon older vehicles without airbags maybe ok but I would have to double check online to confirm, which I did RCW 46.61.687. Just after I asked Canon why he asked and he replied, "Uh, no reason. Well actually Mom lets us ride in her front seat". I replied, well I heard that from Kennedy and that it was during a trip to Seattle and the Coast. Canon replied yes, but we ride in the front seat here too. I replied, "when do you ride in your Mothers front seat"? Canon said all the time. I asked Canon "you and Kennedy"? Canon said, yes.

September 4, 2017

The children arrived at 8:30am and were delivered by Andrea's mother. All of the children had bed head and were not ready for the day. Andrea's mother lives 17 miles away from me and I asked Kennedy if she was in a booster while in her grandmothers car (as she has not had a booster in the past). Kennedy said her grandma's car does not fit three car seats so she does not sit in one.)

The kids told me they did not go to school on Friday, but went up to Spokane. Andrea did not inform me she was pulling the kids from school.

Later in the day Kennedy told me that they spent that Sunday night (September 3rd, 2017) at her grandmothers and during the day they were watched by Hannah (a babysitter). I asked why and they said their mother told them she had to work. They also informed me Andrea's mother came to pick up the kids and babysitter and drop the sitter off Sunday evening.

So basically Andrea pulls the kids from school to take them out of town Friday/Satruday, then leaves them for a babysitter Sunday and her mother Sunday night stating she has to work, when Monday is a holiday. One of two things is happening. She is either sacrificing her time with her children in lieu of work (which does not make sense because she did not work Friday), or she is sacrificing time with her children for time with her boyfriend like she did on the week of July 14th this summer.

September 6, 2017

I went to the children's school office to inquire as to why I was not called when they missed school on Friday. As that issue was being handled Kennedy came running up to me and gave me a hug. I asked why are you still here at school. She said Canon and I are at boys and girls club. Boys and girls club is daycare after school. In April when the judge changed our temporary custody order Andrea stated in a declaration the she envisioned having more time on Wednesdays and Thursdays with her children and working on the weekends she does not have them. In reality she has changed nothing and all three children are in daycare programs now while I sit two miles away at home available for them.

September 14, 2017

After Canons annual checkup in early July (Andrea and I both attended) I made three appointments for all the children's next checkups. Before leaving the doctor's office I sent Andrea a picture text with all three appointment dates/times of each child. Andrea cancelled it once she received the auto call from the doctor's office the day before (September 14). Andrea did not inform me she had reset until I asked, on September 18th. I then had to ask her to text me the new time. The resetting of children appointments has been a recurring theme in the past year or so. Every time she acts as if it's no big deal, because she has something else going on. She fails to understand that others rearrange their schedule to accommodate these appointments in order to be there. One, two, three times in a year is no big deal but her rescheduling has exceeded that. Andrea rescheduled Cruz's appointment for November 29th (on her day).

September 22, 2017

When the children came home from school (Friday) I went through the routine of cleaning out school bags and found Kennedy had not done the previous night's homework. The teacher had notated at the top of two pages of homework "oops, forgot to finish this page". I took a picture of both pages and sent a text to Andrea asking, "Is there a reason you did not do homework with Kennedy"? I did not receive a response.

September 26, 2017

While putting Canon (7yr) to bed he tells me he is scared for tomorrow and I ask why. He says that one time Mom did not show up at the bus stop and he was scared. I asked how long? Did the bus driver leave? Canon said 2 minutes, and the bus driver stayed. I said Canon there is nothing to be scared of if that happens again, ask the bus driver to take you back to the school, if he says no, walk home with Dexter (neighbor kid) and ask his mother to call your mother. Canon said ok. Canon then said Dad do you remember when Mom lived in the three story house? I said yes. Canon said, Kennedy told me when Cruz and I were sleeping Mom went to the gas station. I said Canon that was a year ago why did you think of that just now? He said I don't know I just remembered it. I told him that even when his mother or I am not around God is always protecting him.

October 4th, 2017

Andrea did not bring Kennedy to her counseling appointment at 5:15pm. Around 5:30 the counselor called Andrea to see where she was at Andrea called back within 5 minutes and said she could bring Kennedy in. Andrea arrived at 5:45 with Kennedy and dropped her off. Kenney had a 30 minute session with the counselor and Andrea returned at 6:15 to pick her up. This was concerning to me because again we were having appointment issues and also because I am paying for these appointments.

October 5th, 2017

Andrea – Please advise me when you make payment to preschool and how much so I know how much to pay. It's due at the beginning of month. Thx

Kevin- I think it's 80 bucks a month for both of us. $160 total

Andrea- I don't want to be sideways with this place. Did you pay? If so how much?

Kevin- Your portion for October is $80, I have paid.

Andrea- Belle said you paid for the year. Why can't you communicate straight up with me concerning Cruz's school costs? I just want to know my share for the month. Not an unreasonable request? Are you playing games? Do I need to ask each month?

Kevin- Not trying to confuse

Cruz's monthly school = $160, divided by 2 = $80 per month per parent.

I realized today I did not pay yet. I don't want the monthly bother of $80 per month checks due on the first so I asked Michelle if I could pay October-May my portion of $80 per month times 8 months. I paid $640 today to satisfy my dues for the year.

Andrea- Thank you. Parent to parent I should be able to verify. Please just be straight on these things.

October 13th, 2017

There was no school on this day and I had asked Andrea if I could have the kids. Andrea agreed to that because she was working.

October 16th, 2017

Kennedy and Canon informed me that their mother was going to take them to a Pink Concert in April of next year. I asked where? They replied either in Portland of Seattle. I looked online and Pink does have concert dates in those cities during April of 2018. I personally don't think her language and provocative show are appropriate for a 7 and 8 year old. This is another example of their mother allowing inappropriate influence in their lives based upon age.

October 17th, 2017

Andrea and I exchange texts concerning the holidays. I proposed we just keep the same schedule as it was 7 nights each and Christmas eve/ Christmas day were split naturally. Andrea responded, "That sounds great for the holiday schedule. Easier for the kids too."

October 18th, 2017

Cruz was sick so I offered to take care of him that day (because it was Andrea's day). Andrea let me take care of Cruz that day and was supposed to come get him at 4pm. Andrea text and said she was stuck in mediation and that her mother would come pick up Cruz.

October 23rd, 2017

(Both older kids were not well over the weekend)

Andrea- Is Canon going to school today

Kevin – Canon and Kennedy are both staying home today. (8:38am)

Kevin- Ms. Sarah (Counselor) informed me that you made another appointment for Kennedy this Friday. I would like to be there for that appointment. I was planning on being out of town on Friday. Can you change the appointment to Wednesday of Thursday? In the future I think both of us need to know when appointments are made.

Andrea- I thought you said you were only attending the first few appointments on my days to make sure she was comfortable. Don't you think she is fine with Sarah?

Kevin- I think it is important to attend all of her appointments to discuss with Sarah Kennedy's actions, moods, concerns. I came home early on 9/29 from Coeur d'Alene because we had already made an appointment. I want to be there for her appointments.

Andrea- Sarah said she is willing to discuss therapy anytime. I can't move the appointment and don't want her to miss this week so I will take her Friday. In the future though I will let you know anytime I schedule an appointment on my weekend. Along these lines, I think if the kids will be missing school we should notify each other as soon as that decision is made.

Kevin- I agree. I did inform you as soon as I made the decision. Since you brought it up, what about pulling the kids from school on a Friday for Silverwood and leaving them Sunday to a sitter, and your moms for the night on Sunday? You took them out of school (did not tell me), and did not offer me to take them Sunday/Sunday night because of "work"

When I make appointments for the kids you get notification from me. I was bringing it to your attention that I deserve the same courtesy.

No response from Andrea.

October 26th, 2017

Both boys were sick and I asked Andrea if I could take care of them on the 26th. Andrea said she had them covered. I asked if Kennedy was well enough to go to school and Andrea said yes. That morning at 11:30am Andrea called me and said the school called stating Kennedy was sick and could I go get her because she could not leave work. I went and picked Kennedy up from school. When I picked Kennedy up from school she informed me the boys were out at Andrea's mother's house being watched.

October 31, 2017

Andrea met the children at myself at a mutual friend's house to go trick or treating. When she arrived the children and I were in the car and I informed her we were going to drive to another neighborhood to do the trick or treating which was approximately 1-2 miles away. Kennedy asked if she could ride with her mother I said yes. As we arrived in the neighborhood and I exited my car, Andrea pulled up with Kennedy in the front seat. The children had informed me that their mother had let them ride in the front seat before but this was the first time I had witnessed it. I was upset by seeing Kennedy in the front seat but did not want to create a scene right before trick or treating. After trick or treating was over and while heading home I had determined it best to address Kennedy and let her know that for safety and the law she should not ride in the front seat of any car. Canon then spoke up and said but mom lets us from her house to the country club. I'm not aware of the travel distance but Andrea lives on the golf course of the country club. Kennedy then replied, "please don't give mommy a bad compliment, she does not like that". I responded with, "what are you talking about"? Kennedy said, "Mommy does not like it when you give her a bad compliment". Andrea and I have had very little interaction concerning our parenting styles in the past 6 months. I have not been able to discuss our differing views due to the level of friction which arises quickly. They are allowed to watch/listen to different things at both households and when they bring up a difference in rules I explain why I have my rules but do not address their mother's rules. When asked, "but why does mom let us....", I respond with, "those are your Mothers rules". I then told Kennedy that her mother and I have different opinions but that I was not going to give her a bad compliment. I did not address Andrea on this issue, but asked the children to not ride in the front seat of any car because it was not safe and because it is against the law.

Kevin- I agree. I did inform you as soon as I made the decision. Since you brought it up, what about pulling the kids from school on a Friday for Silverwood and leaving them Sunday to a sitter, and your moms for the night on Sunday? You took them out of school (did not tell me), and did not offer me to take them Sunday/Sunday night because of "work"

When I make appointments for the kids you get notification from me. I was bringing it to your attention that I deserve the same courtesy.

No response from Andrea.

October 26th, 2017

Both boys were sick and I asked Andrea if I could take care of them on the 26th. Andrea said she had them covered. I asked if Kennedy was well enough to go to school and Andrea said yes. That morning at 11:30am Andrea called me and said the school called stating Kennedy was sick and could I go get her because she could not leave work. I went and picked Kennedy up from school. When I picked Kennedy up from school she informed me the boys were out at Andrea's mother's house being watched.

October 31, 2017

Andrea met the children at myself at a mutual friend's house to go trick or treating. When she arrived the children and I were in the car and I informed her we were going to drive to another neighborhood to do the trick or treating which was approximately 1-2 miles away. Kennedy asked if she could ride with her mother I said yes. As we arrived in the neighborhood and I exited my car, Andrea pulled up with Kennedy in the front seat. The children had informed me that their mother had let them ride in the front seat before but this was the first time I had witnessed it. I was upset by seeing Kennedy in the front seat but did not want to create a scene right before trick or treating. After trick or treating was over and while heading home I had determined it best to address Kennedy and let her know that for safety and the law she should not ride in the front seat of any car. Canon then spoke up and said but mom lets us from her house to the country club. I'm not aware of the travel distance but Andrea lives on the golf course of the country club. Kennedy then replied, "please don't give mommy a bad compliment, she does not like that". I responded with, "what are you talking about"? Kennedy said, "Mommy does not like it when you give her a bad compliment". Andrea and I have had very little interaction concerning our parenting styles in the past 6 months. I have not been able to discuss our differing views due to the level of friction which arises quickly. They are allowed to watch/listen to different things at both households and when they bring up a difference in rules I explain why I have my rules but do not address their mother's rules. When asked, "but why does mom let us....", I respond with, "those are your Mothers rules". I then told Kennedy that her mother and I have different opinions but that I was not going to give her a bad compliment. I did not address Andrea on this issue, but asked the children to not ride in the front seat of any car because it was not safe and because it is against the law.

November 6th, 2017

I took both boys to their dental appointment and it was discovered that Cruz had 9-10 cavities. His teeth have close contacts and flossing has always been encouraged by the dentist. I floss Cruz's teeth personally and make sure the big kids floss themselves with inspections by me when they are done. The two big kids have told me without inquiry that they don't have floss at their mothers. At Cruz's last appointment in May 2017 he was not found to have any cavities. The only significant difference in Cruz's life from May-November was a change in custody on April 13th. Prior to April 13th I had custody of the kids during the week and Andrea had custody every weekend.

November 15th, 2017

Cruz attends pre-school Wednesday,Thursday, and Friday 9am-12pm. When he is with his mother he attends preschool from 9-12 and then daycare in the same facility from 12-4/5pm. I requested this schedule so I could keep him home on my days, Monday and Tuesday. It seems it is starting to wear on him to be at a facility for 7-8 hours a day because he has started to repeat over and over that he did not want to go to school. It is my guess that the 3 hours of preschool are ok, but the second half of the day is harder for him because he is not used to it. When I took Cruz to school on the 15th he instantly wrapped on to me and started to cry as I made my way to the door. I knelt down and was trying to calm him down and encourage him to go be with his friends but his crying did not temper. His teacher offered me to take him home and bring him back at 11am. I agreed. I text Andrea and let her know. I brought him back two hours later and he was a bit better but the teacher had to hold him while I left.

November 21st, 2017

While sitting down for dinner tonight Canon asked why we all can't watch TV during dinner. I said dinner time is a special time of day where we all can be together to talk and catch up on how our day was. Canon said, "Oh like when Mom takes Cruz and me to Ice Harbor so she can catch up with George and Rob?" Canon when does this happen? When Kennedy goes to art class. I asked Canon how many time have you been, and he said too many to count.

November 22nd, 2017

Cruz repeatedly asked to not go to school, and I encouraged him all morning of how fun preschool would be. He kept saying, "it's too long". As I dropped him off that morning he had to be held by the teacher and was crying hysterically as I left. I am sad by this situation Cruz is in. He does not need to be in daycare when I am 2 miles away at home. His mother would rather him there than be under the care of a parent.

November 27th, 2017

Driving home from errands with the kids Kennedy said, "Canon, should we ask Dad about his journal"? I asked what journal? Kennedy said, "Mom says you keep a journal about all the bad things she does and you are going to show it to the judge". I was taken back by that comment and said ok, we will talk about

it after dinner. Both kids asked, is it true. I again said we will talk about it after dinner. Kennedy then said, "Mom said you would deny it". As a distraction I then said deny is a big kid word Kennedy, I don't think I have ever heard you say that word before. After dinner I sat down the kids and explained to them that Mom and Dad have different opinions on what we think is appropriate and best for them and that is going to stay between us. They asked do you love mom. Yes, I said I love your mother. They asked again do you have a journal. I said I am not going to discuss grown up issues with you guys, it is between your mother and I. I am sorry your mother is talking about grown up stuff to you but you do not need to worry.

November 28th, 2017

Andrea text asking if I would take could take Cruz to his doctor appointment on the 29th. This is the same appointment she rescheduled from September 14th. I said yes. This has become almost normal when appointments are scheduled on Andrea's time. I have made attempts to schedule all the children's routine appointments on my time in order to have them done in a timely manner. Andrea has made claims that she schedules, keeps, and attends all of the children's appointments and that was not true before our separation and is not true after our separation.

November 29th, 2017

I text Andrea about difficulties I have noticed with Cruz and taking him to preschool/daycare and I asked if I could go pick him up at 12pm to avoid him being in daycare. Andrea responded that Cruz is bonding with his caretakers and she is going to continue to have him in daycare.

We had both had parent teacher conferences independently this week with both of the children's teachers. Canons teacher was concerned about his social growth. He is liked by all but often seeks alone time. He also is clingy to his teacher in the morning and needs a few minutes of personal time with the teacher to set him up for the day. The teacher referenced Canons kindergarten teacher and how he was constantly by her side last year which was allowed because it was kindergarten. In first grade there is quite a bit more structure and children are expected to be independent. Canon is still vying for Mrs. Humphrey's time. This makes perfect sense to me because Ms. Brantley (Kindergarten teacher) was quite literally a surrogate mother to Canon last year and has maintained a close relationship with him. She lives close by and visits our house almost daily on her dog walks when the children are at my residence. It also makes sense to me because Canon is starting to display some of the behavior issues Kennedy was displaying last year. He is now at the age where he is internally dealing with this divorce. I had raised concern about Canons behavior to Kennedy's counselor back in September and mentioned that we may have Canon seen by her as well in the coming months. This meeting was confirmation that Canon should be put into counseling. Canons teacher also said she had applied for a program for Canon to be involved in which could help him with some of his social/confidence issues. I was concern heightned after meeting with Canons teacher. It's easy for me to see, but this is confirmation with a second child. They need a mothers nurturing, a mother's time, a mothers concern, but they don't get it. Work has always come first with Andrea even when we were a family unit. As a family unit her time with the children was after work until bedtime and on the weekends. Now that the family is split Andrea is still working as much as she did with a care taker at home supporting the other side of family life. The substitute for my responsibilities as the care taker are, boys and girls club, daycare, piano lessons, and

art lessons. She fills up all possible time when she has them so she does not have to parent and just "be" with them. Eight months ago she told the court she envisioned taking off early on Wednesdays and Thursdays to be with her kids and working on the weekends she does not have them to offset those times. Here we are eight months later and she is not doing it. She can't do it because partners and associates are leaving that firm because of the affair Andrea and a partner started and are continuing. So she messed up her personal life, then messed up her work life, and wants to continue to drag her kids along pretending she can do it all. She can't. They are suffering as a result.

When I had left the meeting with Mrs. Humphreys I had already received a text from Andrea suggesting we put Canon into counseling. I responded in agreement stating we could make an appointment for Canon at Kennedy's upcoming appointment on December 8th.

December 1st, 2017

Andrea text me with a few appointment slots for Canon's therapy and asked me to pick one. I picked an appointment time of 7pm for Canon. Kennedy had a 5pm appointment that same day, so I figured we could all grab a bite in between appointments. Andrea responded requesting a different day because Kennedy was not excited to "share" her counselor. I informed Andrea that there would be an hour break in between appointments and that I did not see an issue. Andrea responded that future appointments can be made same day but she prefer Canon be the focus on the day of his intake because he is never the center of our focus. I text Andrea that I respect that she believes that Canon is not the center of focus in her household, but I do not believe that is the case while the children are under my care. After the communication with Andrea I made the appointment for Canon on a separate day from his sister's appointment.

December 2nd, 2017

Canon had a Christmas piano recital which Andrea informed me of one month earlier. The children are with me this Saturday and I show up to the recital with all three. Andrea sits by us when she arrives. Canon then goes and sits in the front two rows with all of the other students. The students played songs in ascending order from youngest to oldest. Canon had his solo within the first 30 minutes. After Canon played his song took his bow and sat down Andrea stood up and left. The recital lasted another hour and thirty minutes and all I could think about was our 7 year old sitting up there, being patient, waiting for everyone to have their moment in the spotlight.....and what would he think when the recital was over as he rushes back to see his family congratulate him. As is turned out, Canon did not even ask, "Where's Mom". He did not notice she was gone.

December 3rd, 2017

Andrea text me that she had ran into John Schultz and that Mr. Schultz had shared a conversation he and I had about how long I thought this divorce process was taking. Andrea text, "since you are contesting split custody, the ball is in your court to get a GAL appointed and set it for trial, what are you waiting for?" I was confused by that text because everyone involved in this divorce is a lawyer with the

exception of myself. I assumed it was getting drawn out for strategic purposes by the other side. My lawyer has made many attempts to move this along but without success do to the unique situation.

December 5th, 2017

I was looking at Kennedy's homework packet from the week before and noticed Kennedy had not done homework on Wednesday and Thursday. I also noticed her low spelling test score which was 9 correct out of 18. English, Math, Reading, and Spelling are the four areas of homework Kennedy is to complete Monday through Thursday every week. Every night homework is done the parent is to sign for that days homework. I took a picture of the signature sheet and sent it to Andrea saying, "I am concerned with Kennedy's spelling test from last week. Her teacher did say she was on the upswing in school with room for improvement in spelling and writing. I noticed no homework was signed off last week by you and her spelling test was poor, 50%. Thoughts?" Andrea responded in text saying, "I spoke with Kennedy's teacher. We are on the same page." Because Andrea did not communicate and explanation I asked Kennedy's teacher about the homework. The teacher said that if the homework is not signed off for a long period of time (no time frame) she would reach out to the parents and inquire. Unfortunately Kennedy is in the lower end of all subjects and spelling and it is my belief that a lapse in homework causes her to backslide more than an average or above average student.

December 8th, 2017

I was at my parent's house with our 4 year old Cruz and he walked up to me randomly and said. George said the F word and he said it to Rob. The two men Cruz was talking about are Andrea's law partners. I am concerned that a 4 year old attends a bar with his mother and her law partners and is subject to their conversations which include profanity. When I text Andrea about this I received no response.

December 9th, 2017

Canon had his intake counseling appointment at 9:00 am and I spoke with the counselor privately about my concerns for Canon. I also asked the counselor to address an issue with Andrea. I felt it was poisoning the well when Andrea told the children I kept a bad journal about her. The counselor agreed and said she would speak to Andrea about the inappropriate topic. I spoke with the counselor at a later time and she informed me she did bring it up and Andrea agreed it was not appropriate to speak to the children about such things.

December 19th – January 2nd, 2017

I had found out through Andrea that she was going to put the children into Boys and Girls Club on her days during winter break. I asked if she would allow the children to be with me during the day on their winter break rather than Boys and Girls club and daycare. Andrea said no because I was contesting 50/50 custody.

December 22nd, 2017

Andrea cancelled Kennedy's counseling appointment due to Andrea's schedule.

December 24th, 2017

The children called me around 5-6pm and informed me they were calling from the new "watch phones". Andrea had purchased Canon and Kennedy each a watch phone that have the ability to text and make phone calls. When I asked where they were they said, "At Albertsons, in mom's car". I asked, where is your mother? They said, "She is in the store". I asked if all three of them were in the car, and they said yes. I told them Merry Christmas, thanks for the call, and to stay in the car. I don't think it is appropriate to leave a 4, 7, and 8 year old unattended in the car. It is also illegal in Washington State.

January 8th, 2018

My father had a heart attack and I traveled down to Arizona to transition him home from January 4th-7th. Andrea took both children to their counseling appointments on January 5th. The counselor called me on January 8th to discuss the children's appointments. After we discussed the children the counselor informed me that Andrea requested the children be seen on different days. Andrea also requested I be responsible for one child and their appointments and she be responsible for the other child and appointments. It was insinuated to the counselor by Andrea that I not attend the appointment that Andrea would be responsible for. The counselor said point blank, you are allowed to attend any and all appointments Kevin. I said I would be fine with each of us being responsible for one child's appointments but that I will most likely attend all appointments as I would a dental or medical appointment.

January 9th, 2018

I was eating French fries with Cruz my 4 year old and out of nowhere he says, "I get French fries all the time at Ice Harbor". I said, "When do you go to Ice Harbor?" Cruz said, "When Kennedy and Canon go to Piano class". I have heard this before from Canon. It seems that after daycare/boys and girls club, their mother takes them to the next activity for them and attends a bar to wait for them to finish. Again, I do not think it is appropriate my 4 year old attend Ice Harbor Brewery every Wednesday after a full day of Pre-school 9-12, and daycare 12-4.

January 16th, 2018

I took Kennedy to the dentist for her check-up and she was found to have 3 definite cavities and three possible cavities. The 3 possible cavities are adjacent to definite cavities and the dentist will not be able to determine if they need to be fixed until they are in her mouth fixing the definite cavities. It is my belief that Kennedy and Cruz are now getting cavities as a result of the custody switch in April 13th, 2017 to present. None of the children had a cavity prior to the temporary custody being changed to 50/50.

January 19th, 2018

I text Andrea and asked her what time was Canons counseling appointment that day. Andrea said the counselor recommended that I not attend when she is taking them to an appointment. I said that is not true and that both of us are allowed to attend Medical, Dental and Mental appointments concerning our children. Andrea again stated it was the counselors' idea that I not attend but that she may cancel it anyway because Canon was not feeling well. Andrea said she would see how he was feeling after school and let me know if she was going to cancel or not. I text Canon's Kindergarten teacher and asked if she could check on Canon and see if he is feeling well. She sent me a video of Canon saying, "I feel good today Dad, better than yesterday." Forty-five minutes before school got out Andrea text me that she cancelled Canons appointment and re-scheduled for the following morning at 8am.

February 11, 2018

While brushing Cruz's teeth tonight he told me that at Mom's he can brush, floss, and mouthwash his own teeth. I said you floss your own teeth. His answer was yes. This boy just had 10 cavities and one crown filled a month ago. I think it is entirely inappropriate for a parent to not floss for their children and then after their child had significant tooth decay as a result of that put it on the child to floss themselves.

February 19th, 2018

On February 10th Andrea, the counselor and I all sat with our calendars and scheduled out some appointments for the children. Two of those appointments were made by Andrea on 3/3/2018, Canon at 10am, and Kennedy at 11am. Nine days later Andrea Emails the counselor and I and requests a schedule change on that day she chose because she wants to take the kids skiing (weather prevented a prior ski trip). Andrea reschedules the children's appointments far too much and expects everyone including me to adjust their schedules to conform to her. The appointments were rescheduled on my time.

February 23rd, 2018

I found out that Canon had recently had two play dates with a friend during his mother's custody. These were both on a Thursday, Feb 15th/Feb 22nd. Canon went home with this boy on the bus after school. I found out that the person in charge of Canon and his friend was his friends brother who is in the 4th grade. I confirmed with Canon that there were no grown-ups at his friend's house and the 4th grader was in charge of Canon and his friend.

March 5, 2018

I asked Kennedy if she had fun on her ski trip and she lit up as if to tell me about it and then said, "I cant tell you about it". I asked, "you cant tell me how your ski trip was"? Kennedy said yes, Mom says I cannot tell you. Kennedy asks me do you still take notes about Mom. I say no.

I have not ever told the children that I have a journal about their mother. It is a narrative she started with them. In November when the children first brought this to my attention I said that it is grown up issues and between their mother and I. This is the second time it has been brought to my attention by a child.

March 9th, 2018

I was talking with Mrs. Brantley about the kids and activities for that week and it came up in conversation that Andrea was out of town that particular week at a GAL CLE in Olympia. I asked Kennedy where they stayed when their Mom was out of town. Kennedy said she stayed with Aunt Kimmy, Canon stayed with Aunt Elicia, and Cruz stayed with Grandma. That very day Andrea filed a declaration with the court asking for First right of Refusal on the mornings where I leave very early for work. It makes no sense to me why Andrea would ask the court for first right of refusal but not offer it.

March 16th, 2018

A friend of a friend saw Andrea at a local hockey game with her boyfriend on a Friday night without the children (on her weekend with the kids). This is one week asking for the court for first right of refusal. In her previous week declaration Andrea states she would love spending the mornings with the children on the days I have to leave for work very early. Yet on Friday night when she has custody/opportunity to spend time with them, a trivial local hockey game takes precedent.

March 19, 2018

Kennedy informed me today that she sits in the front seat of her mother's new car. She shifts her body weight to the left or right so the air bag light will go off on passenger side. Kennedy asked me not to tell her mother that she told me about this.

Dinner- Canon asked why am I having mom followed? I respond, I am not having your mom followed. What are you talking about? Canon said, you know were Mom was last week and you are following her somehow. I asked Canon who told you that? Canon said, Mom told me that. I assured Canon I am not following his mother and I am sorry she is saying that to you.

March 22, 2018

Andrea cancelled yet another appointment for one of the children. 5 hours before Canon's counseling appointment Andrea text the counselor to reset. The counselor did not have another opening the following week but only Canon's next pre-set appointment on April 2, 2018. In one month's time Andrea has cancelled three counseling appointments. All three of these appointments were not during the business hours of her law firm and should have been kept for the children's sake.

March 24, 2018

Out of nowhere at Breakfast Cruz blurts out Mom ran out gas on the freeway. Canon immediately says, "Mom told us not to tell anyone". I note this only because Andrea puts inappropriate communication boundaries on the children. They should not bear the emotional responsibility of withholding information from the two people in this world they should be completely open and honest with (father and mother). This reflects her lack of understanding of a "parent's role".

March 29, 2018

I receive a call from the school nurse (8:40am) stating that Kennedy is complaining about a hurt toe. I go to the school to check on Kennedy and when I walk in the nurses' room I notice her hair is a mess, she is not wearing her glasses. After speaking with the nurse and Kennedy I realize Andrea was out of town the night before and Kennedy spent the night at her Aunt Kimmy's house (which is where she hurt her foot). The nurse suggested Kennedy wear loose tennis shoes and attempt to go back to class. I came home and picked up tennis shoes, a brush, glasses, and Tylenol to take to Kennedy. After taking her to class I informed the nurse if she comes back I need to be called so I can take her to the doctor as her mother is out of town. Again I was not given the opportunity to have the children when Andrea was out of town. I believe I have done what if best for the children in offering them to their mother every time I leave town for work.

March 31, 2018

I receive a call from Urgent Care concerning Kennedy and a prescription for a walking boot for her foot. I am told by the nurse that Kennedy was seen and had x-rays on her foot. The x-rays were inconclusive and boot was prescribed until Kennedy could be seen by a specialist. That evening I receive an email stating the same information about Kennedy.

Ronald D. Page, PhD.

Walla Walla, WA 99362
(509) 529-3314

Psychological Report
Kevin Clare

9-28-18
DOB: 8-11-80

Reason for Referral:

Mr. Kevin Clare, a 38-year-old Caucasian, was self-referred for Psychological Evaluation at the behest of the guardian ad litem on behalf of his children, Kennedy (DOB: 4-7-09), Canon (DOB: 6-30-10), and Cruz (DOB: 8-31-13). Mrs. Clare moved from the marital home in February of 2016, and initially filed for divorce in May of 2016, beginning what has become a protracted divorce proceedings, with ongoing conflict and changes over custodial/visitational arrangements, healthcare decisions concerning the children, and other matters of routine child rearing and related discipline. Prior to meeting the patient, all of the propaedeutic information afforded to me was gleaned from the voluminous guardian ad litem files, which include documentation of her interviews with Mr. and Mrs. Clare, the children, various important others and friends, relevant court data, a copy of Mr. Clare's journaling concerning frustrations and differences of opinions concerning child rearing between these parents, school and medical records for the children, an initial dispositional report to the court from the GAL, psychometric testing from the school system on the children, numerous items of correspondence between the parents and the GAL and or between the parents, etc. Additionally, the GAL files included a second volume or addendum of more recent origin, including a GAL amendment from August 3, 2018, a GAL amendment from August 13, 2018, an expert letter/brief from Dr. Mechanic from July 30, 2018, a declaration from Chuck Derry from July 31, 2018, a declaration of Andrea Clare from July 31, 2018, and a declaration from Kevin Clare from august 8, 2018.

The current examination was suggested by both the GAL and Dr. Mechanic, prompted by presumable concerns about Mr. Clare's psychiatric stability, specifically his possible potential for domestic abuse and pathological control/stalking of his erstwhile spouse, with the added potential for victimization of the children or at least an increase in their stress level through the use of then to gain information about the mother's functioning or household, as well as alleged incidents in which he appears to have attempted to undermine the regimen or discipline in her home. Such concerns appear to have led to an amendment or change in the GAL's dispositional report, wherein custody was changed from a 50-50 arrangement to a more standard parenting plan with primary custody awarded to Mrs. Clare. Since August, the patient has had weekend

visitation, Wednesdays, and other options in keeping with that standard plan. Hence, today's examination focused on diagnosis and this man's presumable suitability for parenting, with consideration of associated risks and treatment recommendations.

Mental Status:

Mr. Clare arrived punctually for the examination, having ridden with a friend (romantic partner?) from his home in the Tri-Cities, Washington to my office in Walla Walla. This man stands 5' 11" at a slender 165 pounds, with no recent change of weight or appetite. He was cleanly dressed and groomed in a fairly conservative way, appearing his stated age. Mr. Clare ambulated and moved with seeming vigor and ease and showed no postural accommodation to discomfort during our session. He also maintained sound eye contact and positive affect throughout much of our encounter, without losing composure. Mr. Clare spoke with intensity throughout much of the session, in a mildly accelerated pace at normal volume, goal-oriented, without unreasonable tangentiality or circumstantiality. However, he tended to be expansive, psychologically sophisticated, appreciative of psychological dynamics in his work, family, and community relationships, but was not expressively egocentric or dogmatic, as one might come to expect based on aspects of the GAL file. Certainly, he has some firm convictions concerning discipline, family routines, and values, which determine his own behavior, and the record would suggest that he sometimes has been intrusive and insistent upon modifying conditions in the maternal home, yet he outwardly expresses a desire to accept what he cannot control. Indeed, all questions were answered with nuanced and obvious consideration of the motivations and practices of others, presented to me in a fairly even-handed fashion, even his commentary concerning litigious adversaries and Mrs. Clare's current heterosexual partner. The patient's fund of information may be above-average, yet his insight, despite positive intentions, appears to be partial. Mr. Clare was logical, coherent, well oriented, and displayed crisp intactness of recent and remote memory. On request, he remembered three of three words after several minutes, subtracted Serial 7's with accuracy at a moderate pace, and abstractly interpreted proverbs. No idea of reference or delusion was elicited, and he denied hallucinations.

According to the patient, he sleeps well without nightmares. He acknowledged situational unhappiness over recent deprivation from his children, just as he may have been significantly depressed during the first few weeks of separation from his spouse in 2016. Mr. Clare denied suicidal/assaultive ideation. He does not consider himself to be an especially anxious person and limned his temper to be more passive than expressive.

Throughout our lengthy interview and testing, this man was cooperative, friendly, and responsive as opposed to pressing his own agenda, yet his pressure of speech convincingly betrayed ongoing frustrations with the litigation process and his current predicament of related embranglement even beyond the divorce/custody issues to other recent suits/allegations brought against him and his attorney by Mrs. Clare and her attorney (also her heterosexual partner).

History:

Mr. Clare was born in San Diego, California, where he lived with his parents until their divorce when he was two years of age and then with his natural mother until her remarriage when the patient was around six or seven years of age, and they then moved to Benton City, Washington. He is the younger of two sisters in that home and has maintained contact with both his sister and his biological father, who relocated soon after the mother's move also to Washington state for proximity to the family, affording visitation and ongoing support from him as well. Mr. Clare lived in Pasco with his family from eighth grade onward and considers the Tri-Cities to be his home. His mother initially was employed as a nurse and then stayed at home with the children from the time of Mr. Clare's adolescence onward. The stepfather was an RV salesman and operated his own business in that respect. This man maintains close contact with his mother and stepfather, who remain in the Tri-Cities, as well as other extended family members, including his biological father in California. He does not consider himself to have been abused or neglected during formative years.

This man graduated from high school in Pasco in 1998 with no repeated year, enrolled in the regular curriculum, with extracurricular football and baseball. He was suspended during the fourth grade for a minor disciplinary incident but otherwise maintained sound deportment throughout his academic effort until graduation. Mr. Clare attended Washington State University between 1998 and 1999, living in a fraternity and following that lifestyle, yet achieving "good grades" by his report. Unfortunately, he was cited for a DUI in 1999, perhaps an outgrowth of that lifestyle, yet the related charge was dropped largely for insufficient cause. At that juncture, though the patient remained in sound standing at the university, he elected at the suggestion of his stepfather to attend flight school at Spokane Falls Community College, where he matriculated from 1999 through 2001 and then transferred to a university flight school program in North Dakota in there Aeronautical Science program between 2001 and 2004 at the University of North Dakota, with graduation in 2004. His time there was lengthened by a double major, including Air Traffic Control as well as basic flight school. While in Spokane and Grand Forks, the patient worked part-time as a server and bartender to partially support himself; he also received liberal assistance from his family.

After graduation, this man worked for a couple of years as a bookkeeper with his stepfather at the RV dealership in the Tri-Cities before returning to his chosen vocation as a flight instructor in the Tri-Cities area, working at both the airports in Kennewick and Richland on a part-time basis between 2006 and 2011, accruing perhaps 800 hours during that period. He also worked as a restaurant server on Sunday and Monday evenings to help support his family and supplementing the increasing responsibilities of staying at home to parent his children during off hours while his spouse worked full-time.

Mr. Clare began crop-dusting at a friend's business in 2011, initially doing ground loading for about a year and then transitioning to pilot. He worked two seasons in that capacity through 2014, when he obtained employment for a company that contracts to the Tri-Cities for mosquito control, working with that company five seasons, as well as two recent seasons with Grant

County in the same capacity, now within days of completing the current spray season. He operates an Ag truck type of Cessna at one location and flies a 550 Thrush in Moses Lake. The patient now has certifications including commercial, multi-engine, instrument, CFI, and II ratings. Since 2011, his routine has involved off-season child care emphasis, as he has been the stay-at-home parent.

Mr. Clare was not in trouble with the law as a juvenile and has no conviction as an adult. He used tobacco through smoking and chewing until cessation three years ago, at the same point when he discontinued recreational use of cannabis. Clearly, his Christian faith appears to have been part of his motivation to abstain, and he credits spirituality with his success. He continues to use alcohol at about one six-pack per week at non-problematic levels, while acknowledging heavier usage while in college in a declining pattern when he moved from Spokane to North Dakota, where the environment was less casual and more intensely academically oriented. He denies blackouts associated with his drinking and any significant problem per se, other than the above noted near DUI, as well as hangovers and probable indiscretions. He began using cannabis during his high school years and did so socially or recreationally again without self-perceived addiction or compromise. The patient has not been treated for chemical dependency, nor does he have a history of psychiatric care. This man's health is stable, and he takes no medication.

Mr. Clare had not cohabited heterosexually nor been married prior to his relationship with Mrs. Clare, which began in November of 1998, when he was a student at Washington State University and she was attending Columbia Basin College. They dated between 1998 and 2005, and then married. They were together without separation until she elected to leave the relationship in February of 2016, after he discovered that she was having an extramarital affair in late 2015. He acknowledges that his concerns or suspicions were confirmed when he surreptitiously accessed her cellular telephone and forwarded emails to his own device, which substantiated her involvement.

Between February and May of 2016, this couple shared custody of their children with weekly exchanges, and he informally had access to the children at other times and to Mrs. Clare's domicile, sometimes eating meals together and the like. After she filed for divorce and obtained a parenting plan in May of that year, the weekly exchanges continued but informal contacts were held to a minimum. Mr. Clare appears to have been working toward reconciliation in cross current with the desire of Mrs. Clare, who filed a restraining order in August of 2016, when the custodial schedule also changed to weekends with the children at her home and weekdays at his. In April of 2016 the visitation schedule again was changed to a 2/2/5 arrangement, which remained in place through June of 2018 and again constituted a 50-50 sharing of custody, allowing each parent to have both weekdays and weekends with the children for various functions/reasons, in part to allow Mr. Clare access to the children on Sunday's when he attends church. On August 22, 2018, the custodial arrangement was altered to allow Mrs. Clare primary custody and Mr. Clare a standard visitation routine, and another restraining order was put in place against the patient by Mrs. Claire in that context. Hence, Mr. Clare feels further stymied or

frustrated by deprivation from his children relative to his prior history with them , as well as the inefficiencies of communicating healthcare, school related, and other management decisions on behalf of the children through their respective attorneys.

For the past year Mr. Clare has been in a relationship with a 36-year-old flight attendant , his brother-in-law's sister. She had been offered as a source of childcare for the children during his working absences, and their relationship developed into a romantic one, yet he convincingly describes her as a "Christian woman," who will not be seen with him at public events and with whom dating/conjugal contacts are forestalled until Mr. Clare is legally divorced. They have attempted to keep their relationship secret from the children, yet the guardian ad litem files would suggest lack of success in that regard.

Test Interpretation:

Mr. Clare was administered the Child Abuse Potential Inventory Second Edition (CAPI), the Rotter Incomplete Sentences Blank, the Shipley Institute of Living Scale (SILS), and the Minnesota Multiphasic Personality Inventory-2 (MMPI-2). On the CAPI Mr. Clare scored slightly above the suggested cutoff for the Faking Good Index at a raw score of 9, above the suggested limit of 7 on the Lie scale. This result may not necessarily have invalidated the resultant scores, yet it raises the question of a positive response bias and possible minimizations and denial of various parts of this inventory. Among the common reasons for such a result, those that may reasonably apply to Mr. Clare might include concern with the consequences of revealing negative attitudes and feelings, excessive subscription to conventional societal norms and values (moralistic), and possible rigidity and a controlling personality. Lack of insight also may be a factor, with the suggestion of defensive reliance upon insight occluding defenses, such as suppression, repression, denial, etc. Not surprisingly, the abuse scales on this inventory all fell below suggested cutoffs for those respective scales, including a raw score of only 20 on the abuse scale per se, well below the suggested cutoff of 166, with item endorsements quite unlike those of known child abusers. By contrast, this man achieved a fairly high egostrength scale, suggesting self-perceived or self-represented ability to respond adequately to life's challenges and with underlying self-worth. The Loneliness raw score of 2 may be considered insignificant. As with the Faking Good Index, this man's Rigidity scale was somewhat elevated, yet below the suggested cutoff of 30 at a raw score of 19.

On the SILS Mr. Clare earned above average scores on both the Vocabulary and Abstraction sections, inconsistent with dementia, amentia, or concentration impairment. These scores are consistent with the patient's vocational/academic history and his demonstrated psychological sophistication and sound information pool during the interview. Certainly, he is entirely capable of child rearing from an intellectual standpoint and well prepared to understand his legal and situational dynamics.

On the Rotter Mr. Clare's responses were positive in tenor, emphasizing family and interpersonal relationships and generalized optimism. To a degree, relative to his intellectual adequacy and

psychological perceptiveness, aspects of the Rotter were more concrete and situational than one might expect. This may reflect a psychological bias toward repression or suppression, possibly with denial and even Pollyanna-like avoidance of negative introspection. Representative comments concerning his family attachments included, "the happiest time is with family, most women are fun to be around, my father is a good man, my greatest worry is being unable to fly and support my family," etc. His self-represented sanguinity and optimism was conveyed with comments such as, "I feel hopeful, the future is bright, I am best when I start out the day reading my bible, I love Jesus," etc. The only references to distress not surprisingly were centered around his current legal predicament, such as, "my nerves have been tested, I am very weary from our long divorce, I can't wait until my divorce is final," etc. Overall, this result is consistent with the patient's interview stance and inconsistent with a perspective of embitterment, resentment, or vengeful negativity, which might have been more consistent with the impression that he attempts to be volitionally controlling, punitive, or domestically abusive. The Rotter included no reference to his estranged spouse, either positive or negative.

As with the CAPI, this man approached the MMPI-2 with a positive response bias and seeming defensiveness, explainable in part through his atypical religiosity and somewhat moralistic embrace. The K to F Ratio was 9 to 1 in favor of K, and his S and L scales both were elevated, consistent with improbable virtuosity. Regardless, the resultant clinical profile may be a valid one and certainly is consistent with the patient's history and interview presentation, a result which I expected even before scoring the inventory. Persons with such scores may be markedly affiliative, somewhat dependent and affectionally oriented, and may be sensitive to rejection and criticism. The patient prides himself in skills of interpersonal communication and well may be capable of dissimulation, though he also likely is extroversive and values family and other attachments. Juxtaposed with some characterological elements, which bled through even his positive response bias, there may be passive-aggressive elements, and he certainly would be more prone to indirect expressions of hostility or disagreement than direct confrontation and-or aggression. Passive-aggression to a degree may explain some of the recurrent conflicts with his estranged spouse over child rearing issues. Hence, though this man presents well and shows a keen understanding of interpersonal nuances, his philosophical expression of acceptance and "grace," and his self-stated embrace of the "truth" may be tarnished a bit in the current context, as he both exercises damage control on his own behalf, and may characteristically occlude his own insight through denial, minimization, and possible suppression/repression. However, such personality features roughly fall within the nonpsychiatric range based on information available to me, though issues of dependency/attachment and passive-aggression would be more prominent in an intimate relationship, especially a conflictual or insecure one.

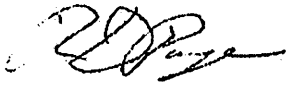
Impression:

There is nothing in Mr. Clare's history, interview presentation, or testing which rises to the level of diagnostic categorization, other than Adjustment reaction with depressed mood in 2016 after separation from his spouse, now in full remission. Despite the near DUI, there also has been no substantive issue with chemical dependency or misuse, as the patient appears to have been

concerning his role in that process, his value judgments, efforts to promote/enforce consistency, and difficulty allowing autonomy in Mrs. Clare's parental role have been sources of friction, frustration, and mistrust. From the history available to me in this examination, it would not surprise me to learn that Mr. Clare has been more insecure and hypervigilant in their relationship than he admits, as Mrs. Clare may have been a moving target to a degree from his perspective, as an attractive, professionally employed woman in a world of potentially charming men cohorts, who was unfaithful to their relationship at least in 2005 and again in 2015. Her business trips, habit of having a drink with her colleagues after work before returning home on some evenings, and perhaps other elements of her independence certainly may have been threatening to this man at least from time to time. His use of the IPhone Locating App, his surreptitious access to her cellular phone, and perhaps other undisclosed surveillance well may have betrayed such insecurities. Likewise, Mr. Clare's efforts to reconcile and repair their relationship for at least six months into the separation were an added source of frustration and invasiveness, which complicated the separation and exacerbated other situational conflicts between Mr. and Mrs. Clare over childrearing circumstances/practices. Though Mr. Clare well may have habituated to his loss by 2017 or so, I suspect he continued to be strongly opinionated and had difficulty comfortably detaching himself from matters in Mrs. Clare's home and life, by simply letting go and trusting in her competence/independence. His journal, questions to the GAL, attendance of counseling sessions for the children during Mrs. Clare's custodial time, and similar overstepping very likely have contributed to her defensiveness, the impatience expressed between the lines of the GAL report, and the current adversarial litigious environment with multiple layers of experts and attorneys. I do not believe Mr. Clare was intentionally attempting to alienate the children from their mother, nor was he conscious of potentially stressing the children through his attentiveness and inquiries. Unfortunately, just as he may lack insight concerning the impact of his self-perceived conscientiousness on Mrs. Clare and others, he also may lack a firm appreciation as to how the competition between these parents also has been a stressor to varying degrees with the children.

That said, I again emphasize that Mr. Clare should not be misrepresented as a self-interested abuser with current motivation to dominate and control Mrs. Clare, nor is he a probable danger to her, yet his history of responsible parenting has not included the decorous ability to give and take with Mrs. Clare concerning specifics of the children's academic, recreational, social, and disciplinary activities. I found no legitimate basis to assume this man would not be a suitable parent for primary or shared custody with Mrs. Clare, yet I certainly concede that, if the children have been stressed my mixed allegiances, Mr. Clare has been part of that dance, again beyond his level of insight, despite his considerable psychological sophistication. I have no idea to what extent Mrs. Clare has participated in creating stress for the children, as I have not examined her. My contacts with her were telephonic several months ago, and her aborted attempt to refer her husband for examination did not include her specific complaints or concerns. Unless there is compelling reason to change an established custodial arrangement, my bias generally is against such change. Obviously, I defer to the GAL and court concerning such disposition, yet I emphasize that determination should not be misled or unreasonably biased by an inappropriate pathologizing of the patient, Mr. Clare. One of the main issues seems to be this man's

overextended parental preferences and reluctance to hand off responsibilities when it is not his turn, yet without knowing Mrs. Clare's role in their recurrent conflict over minor matters, it is difficult for me to recommend a remedy. On the patient's part, he might benefit from some time limited counseling or psychotherapy to afford feedback and gentle confrontation concerning his stimulus value. Mediation and-or parent oriented couples therapy for Mr. and Mrs. Clare also might be a long shot possibility for engendering general closure and shared agreements within the therapeutic setting, which also would serve as a venue for resolving misunderstandings. The added layers of litigation and legal counsel, with consultative experts from various fields, also is a hindrance to more effective communication. Based on my laborious and time-consuming review of the GAL file, without access to other materials which obviously are a part of this case, it is abundantly obvious that further layers of testimony and documents likely will not be thoroughly read or incorporated into the gestalt by the court, where temporal constraints preclude it.



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