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**Court of Appeals for the
STATE OF WASHINGTON
Division III**

Division III No. 372308

Jeanette Poindexter (fka Sirianni), Appellant

v.

Warren Sirianni, Respondent

OPENING BRIEF OF APPELLANT

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Issue No. 1.2: Is there substantial evidence to support the trial court's findings in support of a 50/50 parenting plan? *Answer:* No. If the trial court is found to have applied the correct legal standard, then there is insufficient substantial evidence to support the order, as even under a rebuttal presumption of a 50/50 plan (see Appendix) the facts only support Jeanette having primary placement of the children.

Issue No. 1.3: On the facts of this case, was the trial court's parenting plan decision manifestly unreasonable? *Answer:* Yes.

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Issue No. 2.2: Is there substantial evidence to support the trial court's denial of a DVP on the facts as presented in this case? *Answer:* No. There is substantial evidence to support issuing a DVPO, and on these facts it was manifestly unreasonable to deny a DVPO.

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Issue No. 2.4: On the facts of this case, did the trial court make an error of law regarding attorney-client privilege and materially limit Jeanette’s testimony at trial, prejudicing her DVP request? *Answer:* Yes.

Issue No. 2.5: On the facts of this case, was the trial court’s refusal to issue a DVP manifestly unreasonable? *Answer:* Yes.

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Issue 3.2: Did the trial court properly apply the law to the facts? *Answer:* No. The court made errors of law, to be explicated below and incorporated herein.

Issue 3.3: On the facts of this case, were the trial court’s child support and daycare decisions manifestly unreasonable? *Answer:* Yes. The financial burdens imposed upon the mother are unreasonable, and the refusal to allow grandparents to care for the children for free (compelling paid daycare, was manifestly unreasonable and had no evidentiary basis).

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I. INTRODUCTION

In this case, Jeanette Poindexter (fka Sirianni) was a stay-at-home mother who shaped her eventual return to work around their two young children, and she was still working part-time to this end when the divorce began in August of 2018, as Jeanette continued to shape her life around the children's school hours, and around her role as mother and primary caregiver.

The husband, Warren Sirianni, by his own trial testimony left for work each day before the children woke up, and returned home around 4:30p.m. to 5:30p.m., except when he worked overtime, which was about 200 to 300 hours per year. The children had about a 7p.m. bedtime.

At the first temporary order hearing on 10/3/18 a commissioner imposed a 50/50 plan on temporary orders. Upon an immediate motion for revision, on 10/11/18, the trial Judge, Ellen Clark, revised the commissioner and specifically found "no evidence" to support a 50/50 plan.

When trial occurred in July of 2019, the originally-assigned trial judge, Ellen Clark, had been replaced for the trial by the newly-appointed Judge Fennessy, who ordered the 50/50 parenting plan after trial. That 50/50 plan is now on appeal in this case, as it remains true, as Judge Clark found, that *no evidence* supports a 50/50 parenting plan.

As legal context, the legislature continues to reject changes in the statutory scheme to create a rebuttal presumption of equal time (50/50) parenting plans. For example, in 2019, the legislature refused to pass Senate Bill 6023 (see Appendix), which would have created a rebuttable assumption of 50/50 parenting plans as the baseline assumption for the courts. Despite repeated legislative rejection of a 50/50 presumption for parenting plans, some judges and commissioners are judicially presuming a 50/50 parenting plan, without regard to the statutory scheme regarding primary bonds and primary performance of parenting functions contained in the statutes that are still in place. E.g., RCW 26.09.002/.004/.187.

A recent example -- presented under GR 14.1 as an unpublished case, not presented as binding authority -- is *Marriage of Branning & Branning*, in which the trial court adopted a 50/50 plan without sufficient evidence to support such a plan. Division III reversed the trial court and remanded for more fact-finding. As in the current case, the mother (“Laura”) appealed in *Branning*:

Laura contends the trial court abused its discretion by adopting a parenting plan without sufficiently considering the statutory residential factors. We agree.

Marriage of Branning & Branning, No. 35735-0-III, 2019 WL 6611613, at *2 (Wash. Ct. App. Dec. 5, 2019).

A distinction between *Marriage of Branning* and this present (Sirianni) case, is that in the Sirianni matter, the only rational inference from overwhelming facts is that Jeanette Poindexter should have been granted primary placement of the children.

The Sirianni trial court had no evidence to support a 50/50 plan, thus the order of a 50/50 plan had no substantial evidence, and that order was an abuse of discretion. Alternatively, the trial court applied the wrong legal standard -- a presumption of a 50/50 parenting plan -- and thereby the Sirianni trial court abused its discretion in ordering a 50/50 parenting plan on the facts of this case.

As was stated above, and as will be cited to trial testimony, Jeanette had been a stay-at-home mother by mutual agreement for the entire lives of the children (now 7 and 8), until they started school. Then once the children began school, Jeanette worked part-time around their school schedules. The father, Warren, cared for the children some on the weekends, but he left for work before the children got up on the weekday mornings, and saw them only briefly in the evenings. The parenting behavior was “traditional,” as will be detailed when the trial testimony is reviewed, and the children’s primary bond was with the mother. These facts are not indicative of a 50/50 parenting plan without a revolution in

the statutory scheme that should come from the legislature, not from the judiciary.

Under the existing parenting plan statutes, there is no substantial evidence in this case to support a 50/50 plan, and it is manifestly unreasonable for the trial court to have ordered a 50/50 plan on the facts of this case.

II. ISSUES ON APPEAL

A. Assignment of Error No.1: Parenting Plan -- Ordering a 50/50 parenting plan on the facts of this case is an abuse of discretion.

Issue No. 1.1: Did the trial court apply the correct legal standard in formulating the ordered parenting plan? *Answer:* No, the trial court did not apply the applicable statutes to the facts of this case, or it could not have ordered a 50/50 parenting plan, and a legal error is an abuse of discretion.

Issue No. 1.2: Is there substantial evidence to support the trial court's findings in support of a 50/50 parenting plan? *Answer:* No. If the trial court is found to have applied the correct legal standard, then there is insufficient substantial evidence to support the order, as even under a rebuttal presumption of a 50/50 plan (see Appendix) the facts only support Jeanette having primary placement of the children.

Issue No. 1.3: On the facts of this case, was the trial court's parenting plan decision manifestly unreasonable? *Answer:* Yes.

B. Assignment of Error No. 2: A DV Protection Order should have issued against Warren Sirianni

Issue No. 2.1: Did the trial court apply the correct legal standard in denying a DV protection order? *Answer:* No, the trial court did not apply the applicable statutes to the facts of this case, and a legal error is an abuse of discretion.

Issue No. 2.2: Is there substantial evidence to support the trial court's denial of a DVP on the facts as presented in this case? *Answer:* No. There is substantial evidence to support issuing a DVPO, and on these facts it was manifestly unreasonable to deny a DVPO.

Issue No. 2.3: Did the court make prejudicial evidentiary error in its interpretation and application of ER 1101? *Answer:* Yes. The trial court did not understand ER 1101 (error of law) or did not properly apply it (error of fact and law), which is an abuse of discretion.

Issue No. 2.4: On the facts of this case, did the trial court make an error of law regarding attorney-client privilege and materially limit Jeanette's testimony at trial, prejudicing her DVP request? *Answer:* Yes.

Issue No. 2.5: On the facts of this case, was the trial court's refusal to issue a DVP manifestly unreasonable? *Answer:* Yes.

C. Assignment of Error No. 3: The Deviation of Child Support was made without proper findings or legal basis

Issue 3.1: Does substantial evidence support the court's deviation of child support? *Answer:* No. The court did not make the proper and necessary findings.

Issue 3.2: Did the trial court properly apply the law to the facts? *Answer:* No. The court made errors of law, to be explicated below and incorporated herein.

Issue 3.3: On the facts of this case, were the trial court's child support and daycare decisions manifestly unreasonable? *Answer:* Yes. The financial burdens imposed upon the mother are unreasonable, and the refusal to allow grandparents to care for the children for free (compelling paid daycare, was manifestly unreasonable and had no evidentiary basis).

NOTE: Jeanette Poindexter (fka Sirianni) and Warren Sirianni will be addressed using first names, below, for ease of communication.

III. STATEMENT OF THE CASE

A. Pre-Trial Procedural History

Jeanette filed a Petition to Dissolve her marriage on 8/14/18. CP:1-6.

Jeanette had been under threats of harassment and violence from Warren, and so she had moved out of the home with the children (J.S. and

A.S.). CP:43. Although she had moved out, Jeanette was the person running the farm, and she asked to be restored to it in her motion for Temporary Orders. CP:39-47 and 229-32.

Jeanette's first attorney had advised Jeanette to move out to protect herself from domestic violence, and had promised to immediately file for a DV Protection Order (DVP). CP:43.

However, that Petition was never filed, nor were any other motions filed. CP:43. Jeanette then hired Mr. Mason on 9/18/18. Id.

In the spring of 2016, when Nikita Ledbetter was visiting the Sirianni home, Warren told Nikita that if he and Jeanette ever divorced it would be a "nasty fight" and he "wouldn't lose." 9/28/18 Declaration of Nikita Ledbetter, CP:96-104 at 97. Warren was abusive and controlling of Jeanette. CP:97-98. Furthermore, after Warren was served with the divorce on 8/23/18, Nikita personally heard Warren say to Jeanette on the phone, "Wait until you see what I do to you." CP:99.

Prior to the temporary order hearing of 10/3/18, many diverse witnesses declared Warren's problematic behaviors and declared that Jeanette was clearly the primary parent of the children. CP:109-115 (Catherine Lyle); CP:86-87 (Clay and Melinda Poindexter); CP:77-81 (Jennifer Fees); CP:88-89 (Kelly Verdel); CP:90-91 (Lavada Smith); CP:92-95 (Michelle Kynel); CP:82-85 (Stacey Carpenter); and Shane

Carpenter, retired military, discussing Warren threatening his father with a gun. CP:105-106.

The commissioner granted a 50/50 parenting plan. CP:165-66. On revision, Judge Ellen Clark reduced Warren's time to every other weekend, and the Revision Order of 10/11/18 specifically found "no evidence" to support a 50/50 parenting plan. CP:222.

Warren sought no review or reconsideration of that finding.

Jeanette brought a motion for counseling for the children, filed 11/21/18. CP:306.

Right after that motion was filed, Warren chased Jeanette's vehicle, in which she was transporting the children, with his vehicle, including through a red light. CP:310-312. Jeanette brought a motion for restraints, and requested that Warren be ordered into counseling, and she asked to keep her new address confidential. CP:313.

The anger and aggression that Warren was expressing led Jeanette to file a DVP and an RCW 10.14 Anti-Harassment Petition. CP:314-319 and 320-27. Warren was deliberately seeking to intimidate Jeanette, and he was using the children against her, and he was abusive of the children. E.g., CP:316.

The Commissioner denied the restraining order request on 1/15/19. CP:379-80. On revision before a new Judge (Judge Fennessy replaced the

retiring Judge Ellen Clark), the restraining order requests were reserved for trial “without prejudice.” Order of 4/18/19 at CP:451-52.

The high conflict continued, including renewed motions to get previously-ordered counseling for the children to begin (e.g., CP:550-71), but the children never did get counseling prior to trial.

B. Trial Procedural and Substantive History

Trial testimony was taken on 7/23/19 and 7/24/19, as shown in the filed Report of Proceedings (RP).

The substantial pre-trial topic addressed was Warren’s attempt to remove the RCW 26.50 and RCW 10.14 issues from trial (RP: 8-13), and the trial court ruled that the Protection Order issues were properly reserved for trial. RP:13, based upon the Order of 4/18/19 at CP:451-52.

1. Parenting Plan Testimony

The RP witness index is at RP 3-4, and the relevant facts will be presented in that order for ease of reference. Warren Sirianni was the first witness, RP: 21-114 (and later at RP: 412-437).

a. Warren Sirianni on Parenting Issues: Warren conceded that they had agreed Jeanette would be a stay-at-home mother. RP:26. Warren stated that he usually started work at 6:30 a.m. the first three years of J.S.’s life, and was off work from 3p.m. to 5p.m. driving to and from their home in Colbert, WA. RP:27. He worked 200 to 300 hours per year of overtime.

RP:27. Warren later changed jobs and worked a “couple hundred” hours per year of overtime after that. RP:27-28.

Warren testified that Jeanette was a stay-at-home mother as indicated in her Information in Support of Parenting Plan, RP:29-30, and see CP:16-18. And once the children were school age, Jeanette started working, but “mainly her farm business,” according to Warren. RP:32. Warren then was asked if Jeanette scheduled her farm work around the children’s school schedule, and he said, “Well, naturally.” RP:33.

At RP:34, Warren testified that he was with the child, J.S. “in the morning from when I got up until I went to work....” On the same page Warren said of his departure time, “I leave for work a little bit before 6 o’clock in the morning.” (No evidence was presented the children were awake before Warren left for work.) Warren then said that he was “always home before six in the evening.” RP:34. And the latest he would get home after working overtime was, “I think around 11 or 12 o’clock at night.” RP:35.

Warren then said that Jeanette was home all the time on the first and second years of J.S.’s life. RP:35-36. (J.S. was born in 2011 and A.S. was born in 2013.) Warren then testified that his departure for work and return time from work, remained the, “Same as I’ve already described,” after A.S. was born. RP:36.

Warren and Jeanette began building her farm business in 2014. RP:37. He said that on the weekends, when he was off work, he watched the children about 60 percent of the time, as Jeanette took them with her on farm jobs about 30-40 percent of the time as the business grew. RP:33.

Warren also testified as to his opposition for ADHD medication for J.S. RP:38-39. And see the court questioning Warren at RP:99-102 on the same point, with the same answer. See also RP:427-28.

Warren defined being a “co-parent” as having equal time. RP:51. On cross-examination by his attorney, Warren testified that he and Jeanette had shared parenting on an “equal time” basis. RP:55. Warren then clarified that he was gone from the home about “ten hours” a day. RP:56, during which time he did not perform any parenting functions. RP:56-57. Bedtime for J.S. and A.S was 7p.m. or 8p.m. RP: 57. Warren then stated that he had roughly equal parenting time with Jeanette. RP:58. He added that it was more like “40 percent’ for him (60 percent for Jeanette) when the children were babies. RP:59-60. Warren reiterated that he wanted a 50/50 parenting plan. RP:89. Warren’s proposed 50/50 plan gave him every weekend. RP:111 (and Exhibit R-101, admitted for illustrative purposes only at RP:97).

After Warren returned to the stand at RP:412-37 it was mainly to rebut allegations to be addressed in the domestic violence section, below.

However, Warren, in later testimony, backed off wanting every weekend in his proposed parenting plan at RP:426.

b. Shane Carpenter on Parenting Issues: Shane Carpenter, a retired military major and neighbor of the Sirianni family, testified next. RP:115-135. As a neighbor with regular contact with Jeanette and Warren, he had a substantial basis of personal knowledge. Id.

Shane testified as to seeing the children enjoying doing farming activities with Jeanette. RP:119. He also noted how Jeanette was never angry with the children and never yelled at them, and that she was very active with the kids. RP:120. And see RP:130.

c. Stacey Carpenter on Parenting Issues: Stacey Carpenter, Shane's wife, followed. RP:136-46. Jeanette and the children came to her house often to "shear our animals, to give shots, to stitch up animals, things like that....and about 90 percent of the time she'd bring the kids. RP:139. Jeanette was a "very nurturing parent," who is always teaching her children new things. RP:140. She also said Warren was "standoffish," but a good parent. Id.

d. Catherine Lyle on Parenting Issues: Catherine Lyle next testified. RP:146-191. She is an EWU graduate who was, at the time of trial, enrolled in Claremont's School of Theology, doing a distance-learning MA in Divinity Studies. RP:148. Catherine had done grant-writing for

religious organizations, and at the time of trial, she was the Children's Ministry Director for Manito United Methodist Church. RP:149.

NOTE: Warren's use of guns will be addressed in the domestic violence section, below, but Warren pointing a gun at Catherine and "three little girls in dresses" who had come to visit, and her testimony about Warren keeping them from playing with his kids, is relevant to his parenting, and was presented at RP:152.

Warren would not agree to play dates for the children, generally. RP:154. And Warren was often angry and limiting to the children. RP:157-59. For example, when J.S. wanted to paint his nails like A.S. and Jeanette was allowing it, Warren got mad and stopped J.S. because he would turn out "gay or something." RP:159.

By contrast, Jeanette was a warm mother who was protective of her children. RP:159. Jeanette doesn't spank her children. RP:159. For example, once J.S. broke a chair, and J.S. panicked at the thought of Warren's anger, but Jeanette calmed him and fixed the chair. RP:160. Jeanette was always explaining things to the children. RP:160-61.

e. Nikita Ledbetter on Parenting Issues: Nikita Ledbetter testified next that she was 26 years old with one child and a stepson. RP:191 (Her testimony runs from RP:190-213.) Nikita met Jeanette and Warren in February of 2016, when buying goats from them. RP:191. She became

friends with Jeanette, RP:191-92, and she saw Jeanette “two or three times a month” before the separation, and “at least once to twice a week” thereafter. RP:193. Jeanette was “always” with her children. RP:193.

Jeanette was a very good mother who does a lot of activities with her children. RP: 194. Jeanette was very calm and mild in her discipline, and she was always explaining things to the children, using explanation for knowledge and for her mode of discipline. RP:194. Unless the children were at school, they were always with Jeanette. RP:200.

f. Jerry Ford on Parenting Issues: Jerry Ford was a 61 year-old woman who lives in Loon Lake, WA. RP:214. She is an animal care specialist with sons ages 40 and 34. RP:215. Jerry met Jeanette five years before trial, and she saw Jeanette off and on after that. RP:215-16.

Jeanette had her children with her every time Jerry saw her, except for two times. RP:216-17. Jerry said that Jeanette was a very caring mother, who was very patient with her children. RP:217. Jeanette’s discipline style was very calm, and Jerry said, “I’ve never seen her raise her voice to her children.” RP:217. Jerry also indicated that Jeanette and the children were deeply bonded to each other. RP:217-18.

g. Jennifer Feef on Parenting Issues: Jennifer Feef, age 54 at trial, was a public school teacher with a master’s degree in early childhood education.

RP:220-21. She is Jeanette's aunt, has been married over 30 years, with children aged 22 and 20 at the time of trial. RP:221-22.

Jeanette (age 34) had cared for Jennifer's children when they were young; Jeanette played with them, sometimes cooked for them, and was "just a wonderful role model" for them. RP:223. Both of Jeanette's parents are also educators. RP:224. Jeanette and her whole family use "positive parenting." RP:224. The children were well-bonded to Jeanette who is a "warm person," while "Warren comes off cold and unfriendly." RP:227. Jennifer also indicated that the children had the warmest relationship with Jeanette, compared to Warren at RP:226-27.

h. Melinda Poindexter on Parenting Issues: Melinda Poindexter, age 57, is Jeanette's mother, and mother of Jeanette's two other siblings, and Melinda teaches at Freeman Middle School. RP:232. (Her testimony ran from RP:231-40.) Melinda testified that if the children got hurt, they ran to Jeanette for comfort. RP:236. Jeanette is a very attentive parent who prepares good breakfasts, packs lunches for the children, packs their backpacks, and checks for things like the nap-blanket A.S. needs to take to school. RP:237. Jeanette did homework with the kids, and had fun with the kids. RP:237-38.

i. Jeanette Poindexter (fka Jeanette Sirianni) on Parenting Issues: Jeanette testified from RP:243-388. Her planned career was also in

education (as with her parents and aunt), so that her schedule would allow her more time with the children. RP:245 (and RP:315).

Jeanette got involved with Warren when she was 25 (RP:246) and he was eighteen years older than she was. RP:247. They got married because Jeanette got pregnant while they were dating. RP:246.

J.S. was born on 9/13/11, after which Jeanette was a stay-at-home mother. RP:248. During that time, Warren would leave for work “before 6a.m.” and get home around 4:30 or 5p.m. if he was not working overtime. RP:248. Jeanette did the majority of childcare. Id. After J.S. was born, Jeanette did not do any work away from the Sirianni farm. RP:249.

A.S. was born on 2/19/13. RP:249. Jeanette continued to do the majority of the childcare, and she breast-fed A.S. RP:250. Jeanette continued in the stay-at-home role by mutual agreement. RP:250. She did very little animal care in 2013 and 2014. RP:251.

Warren continued to leave for work before 6a.m. and was home around 4:30 or 5p.m. after changing jobs, but, as Warren testified, above, he worked less overtime (Warren stated 200 instead of 300 hours of overtime, above). RP:252. The children’s bedtime was 7p.m. Id.

In 2015, Jeanette did more things like shearing sheep, but the jobs were short (RP:253-54), and the children were usually with her. RP:255.

Jeanette continued to be a stay-at-home mother, who did all the cooking, cleaning, and childcare (RP:254). This was the same in 2016 (RP:255-56), and it was the same in 2017 (RP:256-57), except she would leave the children with Warren about half the time when he was home. Id. This pattern continued into 2018. RP:257. The children's bedtime remained 7p.m.

Toward the time of filing her divorce Petition, Jeanette did stay away when Warren was home, to avoid his hostility. RP:258. Warren had taken the position that by going back to college, even around the children's schedule, Jeanette "did not deserve to have the kids." RP:258.

Warren's opposition to ADHD medications and treatment were discussed at RP:275-79. (And in cross-examination at RP:331-40.) Jeanette preferred to follow medical recommendations. Id. See also, RP:374. Testimony from Jeanette about Warren's anger, abusive use of conflict, and other related matters, will be referenced in the DV (domestic violence) section, below. E.g. RP:280-94, RP:318, and en passim on cross examination.

There was a substantial disagreement at trial (and also considered by Judge Ellen Clark before her determination that no evidence supported a 50/50 parenting plan, supra) over the meaning of a text message in which Jeanette referred to Warren's "week" as to whether the weekend

was implied or whether a 50/50 plan by agreement was implied. RP:327-28. Jeanette explained she just meant “his weekend.” Id.

Jeanette, on cross-examination, also explained that she wanted the children to have a good relationship with Warren, but that Warren sought to obstruct her relationship with the children, which was something Jeanette did not do; she remained encouraging of the children’s relationship with Warren. RP:353.

After Jeanette’s testimony concluded, the court heard an objection to Warren’s witnesses due to a failure to disclose them until the trial management report a few days before trial (RP:388-95), and the court ruling allowed Susan Babinsky (Warren’s sister) and her husband, Uwe Babinsky, to testify. They were residents of Port Orchard, WA, and supported Warren’s parenting. RP:396-412, on limited personal knowledge.

j. Warren Sirianni’s Rebuttal Testimony: Warren Sirianni revisited all topics, above, from his opening testimony, and he addressed the DV, to be presented, below, in rebuttal. RP:412-37.

Trial concluded at RP:437, followed by closing arguments which began on RP:438.

This Statement of the Case will next review the DV testimony.

2. Domestic Violence Testimony

As was stated, above, Jeanette filed RCW 10.14 and RCW 26.50 Petitions on 12/5/18 (RP:13), and the assigned commissioner denied the restraining order request on 1/15/19. CP:379-80. On revision Judge Fennessy – who had replaced Judge Ellen Clark -- reserved the two Petitions for trial, “without prejudice.” See Order of 4/18/19 at CP:451-52.

The 7/23/19 trial transcript (RP:8-13) begins with Warren Sirianni arguing that the RCW 26.50 and RCW 10.14 issues had not been reserved for trial, at which point Judge Fennessy reiterated that the Order of 4/18/19 (CP:451-52) had reserved the issues for trial. RP:13.

a. Testimony of Warren Sirianni: Warren consistently denied any abusive or threatening behaviors. RP:21-114 and 412-435. See, e.g., RP:39, RP:75 & RP:106.

b. Testimony of Shane Carpenter: Shane testified that on 4/7/18, when he was delivering a load of hay to the Sirianni residence, which he had done many times before, his father with dementia was with him. RP:120. His father wandered off looking for a bathroom. RP:121. Warren used an AR-15 “in the ready position” to bring Shane’s father back to him. Id.

Shane, as a retired major (RP:116), believed that Warren had over-reacted, and that Warren had misbehaved with the weapon in being so threatening to an old man. RP:121-23 & RP:132-135.

c. Testimony of Catherine Lyle: Warren met Catherine and her little girls with a shotgun at his door at Christmas time. RP:152 & RP:170-71. Jeanette and Jeanette's son feared Warren. RP:163. Warren was very controlling, texting Jeanette every ten minutes at times she was away from Warren. RP:165 & RP:187-88.

Catherine had her MA in biomedical ethics (RP:148) and she had also worked in a domestic violence shelter. RP:173. Catherine was concerned that Warren was isolating Jeanette in an abusive manner. RP:173 & 178.

On the court's inquiry, Catherine explained how in fear for Jeanette's safety the DV advisors in a woman's shelter had sent them to Jeanette's first attorney (Gina Costello). RP:186-87.

d. Testimony of Nikita Ledbetter: Nikita testified that Warren often belittled Jeanette. RP:195-96. After Warren was served with the dissolution, Nikita overheard Warren threaten Jeanette on the phone. RP:196-98. Warren said, "Wait and see what I do to you." RP:197. Nikita tried to get Jeanette to leave the home, but Jeanette wanted to follow legal advice (Gina Costello at that time) to make sure her custody of the children was not jeopardized. RP:197-98.

Warren had previously interjected into a "small-talk" conversation, "God forbid Jeanette and I ever get divorced, it would be nasty. But I'm

not – I’m not going to lose.” RP:199. Nikita testified that it was awkward and inappropriate to the conversation. Id.

Warren was controlling in other ways, such as making Jeanette refold the laundry. RP:199. Warren behaved in other ways to isolate Jeanette. RP:201-04. On cross-examination these behaviors were explored again. RP:205-6.

e. Appellate Issue of ER 1101(c)(4): The waiver of the rules of evidence under ER 1101(c)(4) is an issue throughout the testimony, and an example of excluded DV testimony can be found at RP:227, during the testimony of Jennifer Feef. This issue will be given a separate section in this Opening Brief.

f. Testimony of Melinda Poindexter: Melinda presented her testimony of Warren making Melinda and her husband feel more and more unwelcome. RP:233-37. The court proposed that the lack of welcome might have been due to the large age difference (18 years) between Jeanette and Warren and the fact that they married because Jeanette was pregnant. RP:239-40. Melinda answered, “Possibly.” RP:240.

g. Testimony of Jeanette Sirianni: Shortly before the divorce was filed on 8/14/18, Warren was telling Jeanette that she was “very selfish” for wanting to pursue an education and that she “did not deserve to have the kids.” RP:258. After more of Warren’s threats, Jeanette went to a

woman's shelter, and staff there recommended Jeanette's first attorney (Gina Costello) and Gina filed the divorce for Jeanette, and Warren got more angry once he found out she had filed for divorce. RP:259. For example, Jeanette had been sleeping on the couch, and she would find Warren in the middle of the night just standing in the doorway and staring at her. RP:259.

Jeanette had previously declared that Ms. Costello had told her to move out and said that she [Costello] would immediately file for a DVP; however, that DVP was never filed – see CP:43 at point 6.

As the next two Notes point out, Jeanette was precluded from presenting this evidence at trial. For some of the precluded evidence, see CP:55-62 and 39-47 for Jeanette's initial requests for restraints, and see CP:320-327, and CP:99-107 for her December, 2018, protection order requests.

NOTE on Court's Ruling on Attorney-Client Privilege: On RP:260 the court interrupted Jeanette's testimony to say that if Jeanette testified about any confidential communications with Gina Costello the court would also waive attorney-client privilege not just waive all communications with Ms. Costello, but by doing so Jeanette also would waive privilege regarding all communications with Mr. Mason, her trial counsel. After Mr. Mason raised issues of scope of waiver on RP:260-61, the court ruled

that waiver would apply to the entire divorce proceeding (including all attorney-client privilege between Mr. Mason and Jeanette). RP:261.

NOTE on Court's Ruling on ER 1101(c)(4): Mr. Mason then used the break in the testimony to request ER 1101(c)(4) waiver of the rules of evidence regarding the RCW 26.50 and RCW 10.14 Petitions. RP:261-67. The court ruled that it would not waive the rules of evidence for the presentment of DV and Anti-harassment testimony in this case. RP:267. Jeanette's now-limited testimony resumed on RP:267.

Warren wanted Jeanette to be a stay-at-home mother, and wanted Jeanette to not have much contact with other people. RP:268. Warren never trusted her, monitored Jeanette closely, and Warren got upset if she was in an area without phone service. RP:269. Jeanette feared for her physical safety. RP:270. Warren had regularly talked about wanting to kill people he was angry with. Id. Jeanette testified, "I feared for my life." RP:280.

Warren had begun regularly calling Jeanette a "f**king bitch." RP:281. He would say that in front of the children. Id. Once, when Jeanette laughed at Warren, he said that Jeanette, "won't think it's so funny when he f**ks [her] up." RP:281.

When J.S. put Warren on speaker phone during one of Warren's calls, Jeanette learned how nastily Warren had been speaking of her to the

kids, and Warren was telling the children to pick sides and that Jeanette had “abandoned” them. RP:282. Warren tailgated Jeanette and chased her through a red light trying to follow her -- leading to the DV and RCW 10.14 petitions at issue at trial. RP: 283. Warren continued to call Jeanette awful names in front of the children. RP:284.

Jeanette also testified that Warren did not like women generally, and Warren had said “...all American women are whores.” RP:293.

Further NOTE on Court’s Ruling on ER 1101(c)(4): The trial judge reviewed ER 1101(c)(4) during a break and had developed a clearer understanding of the rule, but the trial judge still did not waive the rules of evidence as to the DV and Anti-harassment Petitions at issue. RP: 294-95.

On cross-examination, Jeanette’s testimony on DV was reviewed by Warren’s counsel, Doug Hughes. RP: 307-10. The court, on its own questioning, reviewed some of Jeanette’s testimony, as well. RP:362-64. On cross-examination, Jeanette had been reminded by Mr. Hughes that she did not testify as to physical abuse by Warren. RP:307. On re-direct, Jeanette recounted physical abuse Warren had committed against her, and when asked why she had not mentioned it earlier at trial, Jeanette said, “Because it’s embarrassing.” RP:375.

When asked why it was embarrassing (RP:375), Jeanette testified: “I portray myself as a very strong person, and to allow somebody to treat me the way that I did, it’s just – it’s embarrassing.” RP:376.

Jeanette repeated her testimony that Warren monitored her, and she added that he frequently accused her of infidelity. RP:376.

NOTE on Post-Trial DV Allegations: The oral ruling on the trial issued on 9/6/19 (VRP at CP: 787-814). Before final orders were entered, as part of asking the court to re-open the taking of testimony, Jeanette filed her statement, and Cory Allen’s statements, alleging fresh DV behavior of Warren, including that Warren had tried to run Cory Allen off the road, that Warren had threatened to “gut” Jeanette’s father, and that despite saying he had no guns, firing fully automatic weapons on his property. Also, the real estate appraiser in this case, previously too frightened to testify, filed a declaration of Warren trying to intimidate her. See:

Declaration of Cory Allen on Warren’s Aggression toward him [running him off the road], filed 9/16/19. CP 716-20. *Declaration of Jeanette*

Sirianni on Warren’s Post-Trial DV, filed 9/16/19. CP:721-39.

Declaration of Kelly Verdel on Rapid-fire Gunshots on Warren’s

Property, filed 9/20/19. CP: 785. *Declaration of Amy Chitwood*

[appraiser, on Warren’s behavior], filed 9/20/19. CP:782-84.

Supplemental Declaration of Amy Chitwood, filed 10/11/19. CP: 912-15.

Declaration of Cory Allen on Not Immediately Calling the Police, filed 10/11/19. CP:925-28. *Declaration of Cory Allen Contradicting Warren Statements*, filed 10/23/19. CP: 959-60. *Declaration of Counsel Mason on Timing of Submitting New Evidence per Court's Query of 10/3/19*, filed 10/4/19. CP:874-80. *Declaration of Jeanette Sirianni re: Reconsideration, New Trial and Stay*, filed 10/11/19. CP:907-11.

All post-trial motions were denied. CP:961.

3. Child Support and Mandatory Paid Daycare

The courts' ruling after trial is at CP:787-814 (9/6/19 VRP). As to income and basic child support obligation, the court found, in the entirety of its child support findings in the oral ruling, at CP:810-11:

With regard to child support then, the Court. is using a combination of the proposed worksheets, I'm accepting Mr. Sirianni's wage and salary at 6108.74. For his total gross monthly income, I'm permitting his income tax deduction of 444.10 his, FICA 46.38, and his mandatory union dues of 28, as well as his mandatory pension plan payments of 614.50. I'm also accepting his imputation of full time, 13.5, times 40, times 4.3, for a total of \$2,322 for Ms. Sirianni's income. And I'm allowing her the FICA of 2008.

That should show up with a combine net monthly income of both parties \$6,521. That would compute to an \$853 per child, child support obligation. 1706 as the child support obligation, and that then is a 30 percent obligation to Ms. Sirianni and a 70 percent obligation to Mr. Sirianni.

The parties will have to reach some sort of an agreement to acknowledge the daycare expenses as well as the education expenses because that would be at 70/30 obligation. And of that 1706, Ms. Sirianni's obligation is \$546; Mr. Sirianni's obligation 1160. Because of the shared parenting, I'm going to make the

equalization payment -- or the child support transfer payment
pardon me, to be \$275 from Mr. Sirianni to Ms. Sirianni monthly.

The basis of “shared parenting” was the only basis in the post-trial
oral ruling for the deviation of child support from \$1160 to \$275.

Jeanette brought a motion on 9/16/19 to re-open the taking of
evidence and to reconsider some aspects of the oral ruling of 9/6/19.
CP:744-759. As to child support, she raised the issue of insufficient
evidence to justify a deviation. CP:757-58. The law requires evidence of
sufficient resources in the mother’s home before a deviation based upon
the residential schedule may be ordered. Id. At presentment on 10/4/19 the
court noted that it had intended to make the finding of sufficient resources
in the mother’s home. RP:4 of Vol.2 (Hereinafter RPv2).

The court also required that all non-parental child care be “paid
and licensed,” precluding Jeanette’s parents from continuing to care for
the children. CP:810, lines 7-9.

4. Post-Trial Motions

As the court broadly refused to re-open the taking of evidence, and
refused to revisit or reconsider any rulings, the post-trial motions will be
discussed in the argument sections, below. As preparation for the denied
post-trial motions, Ethics Professor Robert Aronson filed a declaration, on
9/19/19, and another on 10/11/18, opining that the court erred at trial in

holding that if Jeanette discussed her conversations with Gina Costello, offering a partial waiver of attorney-client privilege as to Ms. Costello, then Jeanette was waiving attorney-client privilege as to Mr. Mason. CP:760-77 & CP:916-924.

IV. SUMMARY OF THE ARGUMENT

There is no substantial evidence to support a 50/50 parenting plan, and the court abused its discretion by either imposing a 50/50 presumption plan (error of law) or lacked substantial evidence for its discretion.

There is substantial evidence of domestic violence by Warren against Jeanette, and the court committed material legal error in its ruling that Jeanette would waive her privilege with Mr. Mason if she discussed her communications with Ms. Costello. And the court abused its discretion in omitting material DV testimony regarding the impact of Warren's statements to the children. Substantial evidence of DV should have led the court to issue a protection order.

With a proper parenting plan, based upon the facts, there would be no basis for a deviation of child support. On the order and ruling in this case, there is no evidence that there are sufficient resources in the mother's home to justify a child support deviation, and no proper findings were made by the trial court.

/s/

V. ARGUMENT

A. Standard of Review -- Abuse of Discretion: Reasonableness, Substantial Evidence and Errors of Law Reviewed De Novo

All issues on this appeal, including parenting plans, are reviewed under an abuse of discretion standard. *In re Marriage of McDole*, 122 Wash. 2d 604, 610, 859 P.2d 1239, 1242 (1993). The same applies to child support orders, and in all cases an error of law is an abuse of discretion:

We review a trial court's order of child support for abuse of discretion. *In re Marriage of Booth*, 114 Wash.2d 772, 776, 791 P.2d 519 (1990). A trial court abuses its discretion if its decision rests on unreasonable or untenable grounds. *Dix v. ICT Grp., Inc.*, 160 Wash.2d 826, 833, 161 P.3d 1016 (2007). A trial court necessarily abuses its discretion if its ruling is based on an erroneous view of the law or involves incorrect legal analysis. *Id.*

In re Marriage of Schnurman, 178 Wash. App. 634, 638, 316 P.3d 514, 516 (2013).

Errors of law are reviewed *de novo*:

If, however, a pure question of law is presented....a de novo standard of review should be applied as to that question. *See Ang v. Martin*, 154 Wash.2d 477, 481, 114 P.3d 637 (2005) (questions of law are reviewed de novo); *Motor Contract Co. v. Van Der Volgen*, 162 Wash. 449, 454, 298 P. 705 (1931) (question whether a contract is against public policy is a question of law).

Dix v. ICT Grp., Inc., 160 Wash. 2d 826, 833–34, 161 P.3d 1016, 1020 (2007).

An appellate review of a DVP order is also under an abuse of discretion standard. *Scott v. Trans-Sys., Inc.*, 148 Wn.2d 701, 707–08, 64 P.3d 1 (2003); *Hecker v. Cortinas*, 110 Wn.App. 865, 869, 43 P.3d 50 (2002). “Substantial evidence is evidence that is sufficient to persuade a fair-minded person of the truth of the asserted premise.” *Snyder v. Haynes*, 152 Wn.App. 774, 779, 217 P.3d 787 (2009). A court abuses its discretion when its decision is “manifestly unreasonable, or based on untenable grounds.” *Mayer v. Sto Indus., Inc.*, 156 Wn.2d 677, 684, 132 P.3d 115 (2006).

Evidentiary rulings are also reviewed for an abuse of discretion. *State v. Vy Thang*, 145 Wash.2d 630, 642, 41 P.3d 1159 (2002).

B. Parenting Plan: There Is No Evidence to Support a 50/50 Plan

As Judge Ellen Clark specifically found on 10/11/18, in her Order revising the commissioner, there is “no evidence” to support a 50/50 parenting plan. CP:222. After trial testimony, there still was none.

The trial record (recited in the Statement of the Case) shows that Warren left for work before the children were up, and at most had a couple of hours in the evening to even be available for the children. Warren acknowledged that Jeanette had been a stay-at-home mother, and it was unchallenged that she did not go to work – beyond farm work with the

children – until the children started school. After the children started school, Jeanette continued to shape her schedule around their lives.

In the latest rejected Washington State proposed legislation to establish a presumption of 50/50 parenting -- 2019 Senate Bill 6023 (see Appendix) -- the various proposed amendments to the current statutory scheme included a proposed amendment to RCW 26.09.002 to temper its effects in favor of 50/50 parenting plans. However, as the proposed bill again did not pass the legislature, current RCW 26.09.002 remains the law of Washington State and reads (emphasis added):

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 or as required to protect the child from physical, mental, or emotional harm.

A dogmatic imposition of a 50/50 parenting plan violates the Washington statutes. The “existing pattern” for the Sirianni children is one of Jeanette as their primary parent. There is no evidence to the contrary. None.

Under RCW 26.09.004(2), Jeanette has clearly been the parent to perform the majority of the parenting functions:

(2) "Parenting functions" means those aspects of the parent-child relationship in which the parent makes decisions and

performs functions necessary for the care and growth of the child. Parenting functions include:

(a) Maintaining a loving, stable, consistent, and nurturing relationship with the child;

(b) Attending to the daily needs of the child, such as feeding, clothing, physical care and grooming, supervision, health care, and day care, and engaging in other activities which are appropriate to the developmental level of the child and that are within the social and economic circumstances of the particular family;

(c) Attending to adequate education for the child, including remedial or other education essential to the best interests of the child;

(d) Assisting the child in developing and maintaining appropriate interpersonal relationships;

(e) Exercising appropriate judgment regarding the child's welfare, consistent with the child's developmental level and the family's social and economic circumstances; and

(f) Providing for the financial support of the child.

Warren chose the traditional role for himself of performing the one function of financial support under RCW 26.09.004(2)(f), and the rest of the parenting functions Warren left almost entirely to Jeanette.

Under RCW 26.09.187(3)(Residential Provisions) the court abused its discretion in not placing the children primarily with Jeanette:

(3) RESIDENTIAL PROVISIONS.

(a) 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 child's residential schedule shall be consistent with RCW 26.09.191. Where the limitations of RCW 26.09.191 are not dispositive of the child's residential schedule, the court shall consider the following factors:

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

- (ii) The agreements of the parties, provided they were entered into knowingly and voluntarily;
 - (iii) Each parent's past and potential for future performance of parenting functions as defined in RCW 26.09.004(3)[sic, should be (2)], including whether a parent has taken greater responsibility for performing parenting functions relating to the daily needs of the child;
 - (iv) The emotional needs and developmental level of the child;
 - (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;
 - (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; and
 - (vii) Each parent's employment schedule, and shall make accommodations consistent with those schedules.
- Factor (i) shall be given the greatest weight.

Once again, whether before trial on Judge Ellen Clark's 10/11/18 finding, or after trial, *there is no evidence to support a 50/50 parenting plan*. No new facts accrued between 10/11/18 and the July 2019 trial.

Jeanette has the warmer, deeper, and more stable relationships with the children; she meets their emotional and developmental needs. Jeanette was a stay-at-home mother by agreement, and she will continue to flex her schedule around the needs of the children. Jeanette took on the "greater responsibility for performing parenting functions relating to the daily needs of the child[ren]."

Even under the 2019 Senate Bill 6023 in the Appendix, it would have been an abuse of discretion to order a 50/50 plan after trial, as any

presumption in favor of a 50/50 plan was rebutted by the July 2019 trial testimony in the Sirianni case.

Jeanette's proposed parenting plan, giving Warren every other weekend, should be adopted upon reversal of the trial court on the parenting plan. See also Trial Exhibit P-19 [her proposed PP] and RP: 286-90 [testimony about her proposed PP].

C. Domestic Violence Protection Order

Jeanette faced an appalling insensitivity to her situation from the court commissioner and the trial judge. By contrast, Judge Ellen Clark could see the matter realistically. Jeanette reminded the court, in her filing of 5/2/19, Memorandum in Response to Warren's Motion to Modify the Parenting Plan (CP:514-22) that the various court policies and judicial manuals exhort the judiciary to appreciate the difficulties of an abused mother tied to the abuser through their children. Jeanette cited to the trial court, two months before trial, the following authorities, CP:514-522:

The court very explicitly recognized the ways in which victims of abuse tend to minimize the abuse, or try to placate the abuser:

As is reflected in the present case, victims of domestic violence often attempt to placate their abusers in an effort to avoid repeated violence, and often minimize the degree of violence when discussing it with others. *State v. Grant*, 83 Wash. App. 98, 106–09, 920 P.2d 609, 613–15 (1996).

The Washington Court website refers to these barriers to women leaving abusers:

Barriers to victims leaving

1. Perpetrator violence

Perpetrator's escalating violence and control.

2. Economic barriers

Lack of housing, loss of income for self and children, loss of health, transportation, or other resources.

3. Protection of the children

Connection to the perpetrator through the perpetrator's access to the children.

4. Lack of support

Religious, cultural, or family values that the family unit must be preserved at all costs; or victim blaming by service providers, law enforcement, or the courts.

5. Effects of trauma

Immobilization by psychological and physical trauma.

6. Inadequacy of court response

Failure of court to hold perpetrators accountable or protect victims.

<http://www.courts.wa.gov/dv/?fa=dv.guide#a9>

In her filings at hearings before trial, Jeanette went on to further remind the court of the words of its own website:

That same webpage on domestic violence also warns that danger increases when the abused seeks to separate from the abuser (underlining added):

Domestic Violence Information

Guidelines for Domestic Violence Protection and Antiharassment Orders

- Domestic violence is learned behavior.
- Domestic violence typically involves controlling behavior encompassing different types of abuse.
- It is the perpetrator not substance abuse, not the victim, not the relationship that causes domestic violence.
- Danger to the victim and children is likely to increase at the time of separation.
- The victim's behavior is often a way of ensuring survival.

Jeanette Sirianni has repeatedly told the court of the threats she suffered, of knowing that Warren had pointed guns at others, had damaged her property and released her animals, etc., and that

his threats escalated after he was served on 8/23/18. Jeanette's placating behavior in her initial court filings on 8/14/18 was "survival behavior" intended to protect her and the children from Warren getting angry. That effort failed, as once Warren was served on 8/23/18, the danger to her "increase[d] at the time of separation."

Jeanette then cited to the trial court the *Domestic Violence Manual for Judges* (still quoting from CP:514-522):

A. Domestic Violence Manual for Judges (Released 2016)

Court resources regarding domestic violence, include the *Domestic Violence Manual for Judges (Released 2016)*. See: <http://www.courts.wa.gov/index.cfm?fa=home.contentDisplay&location=manuals/domViol/index>

In Chapter Two of the *Domestic Violence Manual for Judges*, "coercive conduct" is defined:

Coercive conduct may also include controlling the victim's access to family resources: time, money, food, clothing, and shelter, as well as controlling the abused party's time and activities, etc. Whether or not there has been a finding of criminal conduct, evidence of such behaviors indicates a pattern of assaultive and abusive control that is considered domestic violence.

<http://www.courts.wa.gov/content/manuals/domViol/chapter2.pdf>

Jeanette Sirianni and her witnesses have described considerable "coercive conduct" by Warren Sirianni. The *Domestic Violence Manual for Judges* includes the following kinds of "psychological attacks":

d. Humiliation; emotional abuse: repeated attacks against victim's self-esteem and competence, forcing victims to do degrading things, humiliating victim in front of others, controlling victim's activities, controlling decision making, etc.

Domestic Violence Manual for Judges, at page 2-6. Jeanette and her witnesses have described such behavior by Warren.

Using children to control the victim includes:

c. Using children as hostages, using visitation with children to monitor adult victim or to send messages to victim through children, interrogating children about

victim's activities, being under- or over-engaged with children in order to control the victim, etc.;

d. Undermining parenting of adult victim, prolonged custody or visitation conflicts, seeking parenting plans that allow them to maintain control over the adult victim post separation or divorce, etc.;

Domestic Violence Manual for Judges, at page 2-7. This very proceeding is such an attempt by Warren Sirianni to punish and control Jeanette when she has clearly been the primary parent of the children all their lives.

Jeanette has testified that Warren threatened her animals, and had released them, and had made threats to do so. This is domestic abuse:

Attacks against others or property or pets to control the adult victim. a) Some of the acts may appear to be directed against or target children, other family members, friends, property, or pets when in fact the perpetrator is committing these acts to control or punish the intimate partner (e.g., physical attacks against a child, throwing furniture through a picture window, strangling the adult victim's pet cat). Often DV perpetrators will reference their violence elsewhere as a reminder to victims that they should comply. Although someone or something other than the abused party is physically damaged, that particular assault is actually part of the DV perpetrator's pattern of abuse directed at controlling the intimate partner.

DV Manual for Judges - 2015 (Updated 2.25.2016) at page 2-11. (Washington State Administrative Office of the Courts.)

The last quotation offered from the *Domestic Violence Manual for Judges* shows why this hearing has been called by Warren Sirianni as yet another attempt to control Jeanette (emphasis added):

5. Even after separation, batterers use the children as pawns to control the abused party. When the abused party and perpetrator are separated, the perpetrator's main vehicle for continued contact and control of the adult victim is through the children (whether they are the legal parents of the children or not). Consequently, batterers often seek out legal control of the children in order to maintain control over the adult victims. And

courts are often reluctant to set limits on parental access to children by the domestic violence perpetrator. When adult victims have separated from batterers without the batterers being held accountable for their abusive tactics, the batterers focus their control of the adult victims through the children. In these cases, the intent is to continue the abuse of the adult victim, with little regard for the damage to the children resulting from this controlling behavior. Consequently, separation may increase, rather than decrease, the children's exposure to abusive tactics. Examples include:

- Using lengthy custody battles as a way to continue control over the other parent (repeated challenges to parenting plans, visitation schedules, court-ordered parenting evaluations, domestic violence evaluations, etc.).

Domestic Violence Manual for Judges, at page 2-52.

B. Application of the Manuals and Case Law to 8/14/18

Jeanette should not have to keep telling the court that on 8/14/18 she did not say anything negative about Warren in her Information in Support of PP, because she was afraid of him. Then, on 8/23/18, after being served, Warren's behavior escalated. To protect herself and the children, Jeanette Sirianni left the family home on 8/28/18, expecting a DVP to be initiated by prior-counsel by 8/30/18, but which was not filed after all, requiring new counsel.

The foregoing was presented to the trial court by Jeanette at CP:514-522.

If these admonitions from and to the courts are to mean anything, they require the courts to see the intimate facts of domestic violence with which this case is riven. See, e.g., *Rodriguez v. Zavala*, 188 Wash. 2d 586, 598, 398 P.3d 1071, 1077 (2017) (for threats constituting DV and see the case for independent impacts of DV on parenting plans under RCW 26.09.191 factors). Nikita Ledbetter's testimony about Warren making

Jeanette refold the laundry is hair-raising in the overall context of the testimony. RP:199. Even without the excluded testimony, the case is riven with domestic violence as defined by *Rodriguez v. Zavala*.

D. Other Domestic Violence Issues

Although Jeanette is clearly the primary parent, domestic violence is an independent basis for parenting plan decisions (italics in original):

Wilson contends this reading of the protection order statute creates an “irreconcilable conflict” with the Parenting Act.¹⁹ But we discern no other possible reading of the protection order statute, and no conflict with the Parenting Act. Rather, the two are entirely consistent. RCW 26.09.191(2)(a) provides that in parenting plans, residential time with a child must be restricted where there is a pattern of emotional abuse of the child or a history of acts of domestic violence:

*The parent's residential time with the child shall be limited if it is found that the parent has engaged in any of the following conduct: (i) Willful abandonment that continues for an extended period of time or substantial refusal to perform parenting functions; (ii) physical, sexual, or a pattern of emotional abuse of a child; (iii) a history of acts of domestic violence as defined in RCW 26.50.010(1) or an assault or sexual assault which causes grievous bodily harm or the fear of such harm...*²⁰

This provision incorporates the definitions of domestic violence contained in the protection order statute. Authorizing the domestic violence protection order court to restrict contact is thus entirely congruent with the Parenting Act.

In re Marriage of Stewart, 133 Wash. App. 545, 553–54, 137 P.3d 25, 29–30 (2006), and see extension in *Rodriguez v. Zavala*, 188 Wash. 2d 586, 398 P.3d 1071 (2017).

1. ER 1101(c)(4)

Footnote 15 to the *Marriage of Stewart*, above, reiterates that hearsay may be admitted in DV cases under ER 1101(c)(4):

Gourley v. Gourley, 124 Wash.App. 52, 57, 98 P.3d 816 (2004) (rules of evidence need not be applied in protection order proceedings; hearsay may be considered), *review granted*, 154 Wash.2d 1012, 113 P.3d 1039 (2005); ER 1101(c)(4).

In re Marriage of Stewart, 133 Wash. App. 545, 552, 137 P.3d 25, 29 (2006) (quoting footnote 15).

There are no identified standards for when to waive the rules of evidence, apart from the policy of the courts and for the judiciary to address domestic violence, and the abuse of discretion standard. However, the policy pronouncements of the court invite Division III to provide ER 1101(c)(4) standards protective of victims of DV.

It was clear at trial that the court had not previously faced the rule (as a newly-appointed judge, and one not experienced in family law).
RP:261-67.

On these facts, it was error and an abuse of discretion not to admit Jeanette's hearsay (which of course Warren would have been allowed to rebut with his own hearsay, per recommended protocols of determining the existence of intimate violence). This was a material, harmful, error, that precluded Jeanette from presenting substantial evidence that would

have affected the outcome of her Petition for a Domestic Violence Protection Order (DVPO), as the facts in those petitions could not be presented, among others.

The court is asked to consider articulating additional guidelines on the application of ER 1101(c)(4), and to remand for re-trial on the DVP with a new judge.

2. Trial Ruling of Sweeping Waiver of Attorney-Client Privilege.

There is no legal authority to support the trial court's ruling that a narrow waiver of confidentiality of attorney-client communications between Gina Costello and Jeanette (regarding Gina promising to file, and then not filing, a DVP) is a waiver of all confidences with Jeanette's subsequent attorney (Craig Mason), as well.

In support of Jeanette's objection to this ruling, she submitted the declaration of Ethics Expert, Professor Rob Aronson, the essence of which was as follows (CP:760-77 & CP:916-924) (bold in original):

2. Even in the event that privilege was waived regarding communications with Ms. Costello, that would not waive attorney-client privilege as to any subsequent counsel, including Mr. Mason.
3. The very strong presumption in favor of the confidentiality of attorney-client communications is can only be offset by a clear waiver.
4. Any communications Mr. Mason may have subsequently had with his client, Ms. Sirianni, are totally *irrelevant* to the claims the client is making about what Ms. Costello led her to believe.

5. The strong presumption in favor of the confidentiality of attorney-client communications should never permit requiring disclosure of totally irrelevant confidential information, particularly with respect to an attorney who did not represent the client at any time relevant to the client's claims against a different attorney. Otherwise, every time a client sued a former attorney for malpractice, his or her confidentiality privilege would be deemed waived with respect to any attorneys representing him/her in the malpractice action. That has never been the case.

6. In short, no rule or case law would extend any waiver that might be found regarding Ms. Costello's and Ms. Sirianni's attorney-client communications to the attorney-client communications between Ms. Sirianni and Mr. Mason.

This attorney-client privilege error by the trial judge was not harmless error (it was harmful error) in that Jeanette was deprived of presenting testimony of her fear of Warren Sirianni in August of 2018, and it deprived Jeanette of testifying as to her reasons for leaving her farm, and prevented her from testifying as to the legal limbo in which she was left until she hired Mr. Mason in mid-September of 2018.

E. Child Support Deviation

The court made no findings (only a conclusory statement at presentment, cited above) that it was ordering a deviation of child support.

... a trial court is required to enter written findings of fact supported by the evidence when it enters an amount for support which deviates from the standard calculation. RCW 26.19.035(2); *In re Marriage of Sacco*, 114 Wash.2d 1, 4, 784 P.2d 1266 (1990). The failure to enter findings is an abuse of discretion and subject to reversal. *In re Marriage of Glass*, 67 Wash.App. 378, 384, 835 P.2d 1054 (1992).

State on Behalf of Sigler v. Sigler, 85 Wash. App. 329, 338, 932 P.2d 710, 714 (1997). NOTE: The court also minimized Warren's income; however, that was not as clear of an abuse of discretion as was ordering a deviation with no findings, and certainly without written findings.

It was legal error that there were simply no findings of any kind to support a child support deviation, and the deviation lacked substantial evidence to support it. The court abused its discretion under both prongs of the abuse of discretion standard. Division III is asked to reverse the deviation of child support, and to reverse the requirement of paid daycare, precluding Jeanette's parents from caring for the children.

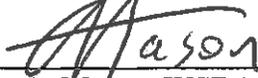
VI. CONCLUSION

Based upon the foregoing, the appellate court is asked:

- (1) to reverse the trial court on the parenting plan and to adopt Jeanette's parenting plan as the only reasonable plan given the testimony at trial;
- (2) to reverse the trial court's ruling on waiver of attorney-client privilege, to reverse the trial court on ER 1101(c)(4) and allow hearsay testimony, and remand the DVP and RCW 10.14 Petition for a new trial with a new judge; and
- (3) to reverse the deviation of child support, and modify the requirement that all daycare be paid professional daycare.

Respectfully submitted,

4/30/20



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APPENDIX: Senate Bill 6023, proposed to, but not passed by, the

Washington State Legislature in 2019.

Appendix

2019 Washington Senate Bill No. 6023, Washington..., 2019 Washington...

2019 Washington Senate Bill No. 6023, Washington Sixty-Sixth Legislature - 2019 Regular Session

WASHINGTON BILL TEXT

TITLE: Concerning parenting plans.

VERSION: Introduced

April 25, 2019

Zeiger, Wellman, Padden, Short, Mullet

 Image 1 within document in PDF format.

SUMMARY: AN ACT Relating to parenting plans; amending RCW 26.09.002, 26.09.015, 26.09.187, 26.09.197, 26.09.260, and 2.56.180; and reenacting and amending RCW 26.09.004.

TEXT:

S-1429.1

SENATE BILL 6023

State of Washington

66th Legislature

2019 Regular Session

By Senators Zeiger, Wellman, Padden, Short, and Mullet

AN ACT Relating to parenting plans; amending RCW 26.09.002, 26.09.015, 26.09.187, 26.09.197, 26.09.260, and 2.56.180; and reenacting and amending RCW 26.09.004.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

Sec. 1. RCW 26.09.002 and 2007 c 496 s 101 are each amended to read as follows:

Parents have the responsibility to make decisions and perform other parental functions necessary for the care and growth of their minor children. In any proceeding between parents under this chapter, the best interests of the child shall be the standard by which the court determines and allocates the parties' parental responsibilities. The state recognizes the fundamental importance of the parent-child relationship to the welfare of the child, and that the relationship between the child and each parent (~~should be fostered~~) **shall be protected** unless inconsistent with the child's best interests. Residential time and financial support are equally important components of parenting arrangements. 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 residential time is shared equally and** 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 , **to facilitate equal residential time** or as required to protect the child from physical, mental, or emotional harm.

Sec. 2. RCW 26.09.004 and 2009 c 502 s 1 are each reenacted and amended to read as follows:

The definitions in this section apply throughout this chapter.

(1) "Military duties potentially impacting parenting functions" means those obligations imposed, voluntarily or involuntarily, on a parent serving in the armed forces that may interfere with that parent's abilities to perform his or her parenting functions

under a temporary or permanent parenting plan. Military duties potentially impacting parenting functions include, but are not limited to:

(a) "Deployment," which means the temporary transfer of a service member serving in an active-duty status to another location in support of a military operation, to include any tour of duty classified by the member's branch of the armed forces as "remote" or "unaccompanied";

(b) "Activation" or "mobilization," which means the call-up of a national guard or reserve service member to extended active-duty status. For purposes of this definition, "mobilization" does not include national guard or reserve annual training, inactive duty days, or drill weekends; or

(c) "Temporary duty," which means the transfer of a service member from one military base or the service member's home to a different location, usually another base, for a limited period of time to accomplish training or to assist in the performance of a noncombat mission.

(2) "Parenting functions" means those aspects of the parent-child relationship in which the parent makes decisions and performs functions necessary for the care and growth of the child. Parenting functions include:

(a) Maintaining a loving, stable, consistent, and nurturing relationship with the child;

(b) Attending to the daily needs of the child, such as feeding, clothing, physical care and grooming, supervision, health care, and day care, and engaging in other activities which are appropriate to the developmental level of the child and that are within the social and economic circumstances of the particular family;

(c) Attending to adequate education for the child, including remedial or other education essential to the best interests of the child;

(d) Assisting the child in developing and maintaining appropriate interpersonal relationships;

(e) Exercising appropriate judgment regarding the child's welfare, consistent with the child's developmental level and the family's social and economic circumstances; and

(f) Providing for the financial support of the child.

(3) "Permanent parenting plan" means a plan for parenting the child, including allocation of parenting functions, which plan is incorporated in any final decree or decree of modification in an action for dissolution of marriage or domestic partnership, declaration of invalidity, or legal separation.

(4) **"Substantial change in circumstances" includes, but is not limited to, a significant change or changes in the family unit, employment or permanent residential location of either party, a stated preference by a child that is mature enough to make a reasonable and independent preference, and other circumstances that serve the best interest of the child as described in RCW 26.09.002.**

(5) "Temporary parenting plan" means a plan for parenting of the child pending final resolution of any action for dissolution of marriage or domestic partnership, declaration of invalidity, or legal separation which is incorporated in a temporary order.

Sec. 3. RCW 26.09.015 and 2008 c 6 s 1044 are each amended to read as follows:

(1) In any proceeding under this chapter, the matter may be set for mediation of the contested issues before or concurrent with the setting of the matter for hearing. The purpose of the mediation proceeding shall be to reduce acrimony which may exist between the parties and to develop an agreement assuring the child's close and continuing contact with both parents after the marriage or the domestic partnership is dissolved. The mediator shall use his or her best efforts to effect a settlement of the dispute.

(2)(a) Each superior court may make available a mediator. The court shall use the most cost-effective mediation services that are readily available unless there is good cause to access alternative providers. The mediator may be a member of the professional staff of a family court or mental health services agency, or may be any other person or agency designated by the court. In order to provide mediation services, the court is not required to institute a family court.

(b) In any proceeding involving issues relating to residential time or other matters governed by a parenting plan, the matter may be set for mediation of the contested issues before or concurrent with the setting of the matter for hearing. Counties may, and to the extent state funding is provided therefor counties shall, provide both predecree and postdecree mediation at reduced or waived fee to the parties within one year of the filing of the dissolution petition.

(3) Each superior court shall create and provide a mediation form that allows the parties to indicate the issue or issues on which mediation is being requested, the available times the parties are able to participate in mediation, and any issue or issues for which a party denies a request for mediation. A copy of the mediation form must be submitted to the court with the results of any mediation or upon filing a request for a court hearing.

(4)(a) Mediation proceedings under this chapter shall be governed in all respects by chapter 7.07 RCW, except as follows:

(i) Mediation communications in postdecree mediations mandated by a parenting plan are admissible in subsequent proceedings for the limited purpose of proving:

(A) Abuse, neglect, abandonment, exploitation, or unlawful harassment as defined in RCW 9A.46.020(1), of a child;

(B) Abuse or unlawful harassment as defined in RCW 9A.46.020(1), of a family or household member as defined in RCW 26.50.010(~~(2)~~); or

(C) That a parent used or frustrated the dispute resolution process without good reason for purposes of RCW 26.09.184(4)(d).

(ii) If a postdecree mediation-arbitration proceeding is required pursuant to a parenting plan and the same person acts as both mediator and arbitrator, mediation communications in the mediation phase of such a proceeding may be admitted during the arbitration phase, and shall be admissible in the judicial review of such a proceeding under RCW 26.09.184(4)(e) to the extent necessary for such review to be effective.

(b) None of the exceptions under (a)(i) and (ii) of this subsection shall subject a mediator to compulsory process to testify except by court order for good cause shown, taking into consideration the need for the mediator's testimony and the interest in the mediator maintaining an appearance of impartiality. If a mediation communication is not privileged under (a)(i) of this subsection or that portion of (a)(ii) of this subsection pertaining to judicial review, only the portion of the communication necessary for the application of the exception may be admitted, and such admission of evidence shall not render any other mediation communication discoverable or admissible except as may be provided in chapter 7.07 RCW.

~~((4))~~ (5) The mediator shall assess the needs and interests of the child or children involved in the controversy and may interview the child or children if the mediator deems such interview appropriate or necessary.

~~((5))~~ (6) Any agreement reached by the parties as a result of mediation shall be reported to the court and to counsel for the parties by the mediator on the day set for mediation or any time thereafter designated by the court.

Sec. 4. RCW 26.09.187 and 2007 c 496 s 603 are each amended to read as follows:

(1) DISPUTE RESOLUTION PROCESS. The court shall not order a dispute resolution process, except court action, when it finds that any limiting factor under RCW 26.09.191 applies, or when it finds that either parent is unable to afford the cost of the proposed dispute resolution process. If a dispute resolution process is not precluded or limited, then in designating such a process the court shall consider all relevant factors, including:

(a) Differences between the parents that would substantially inhibit their effective participation in any designated process;

(b) The parents' wishes or agreements and, if the parents have entered into agreements, whether the agreements were made knowingly and voluntarily; (~~and~~)

(c) Differences in the parents' financial circumstances that may affect their ability to participate fully in a given dispute resolution process ; **and**

(d) Whether there are any issues for which mediation should not be required based on a party's unwillingness to engage in mediation on the issue or issues.

(2) ALLOCATION OF DECISION-MAKING AUTHORITY.

(a) AGREEMENTS BETWEEN THE PARTIES. The court shall approve agreements of the parties allocating decision-making authority, or specifying rules in the areas listed in RCW 26.09.184(5)(a), when it finds that:

(i) The agreement is consistent with any limitations on a parent's decision-making authority mandated by RCW 26.09.191; and

(ii) The agreement is knowing and voluntary.

(b) SOLE DECISION-MAKING AUTHORITY. The court shall order sole decision-making to one parent when it finds that:

(i) A limitation on the other parent's decision-making authority is mandated by RCW 26.09.191;

(ii) Both parents are opposed to mutual decision making;

(iii) One parent is opposed to mutual decision making, and such opposition is reasonable based on the criteria in (c) of this subsection ; **or**

(iv) One parent knowingly and voluntarily agrees to concede decision-making authority to the other parent. The court shall verify that any voluntary concession of decision-making authority is of that parent's own volition.

(c) MUTUAL DECISION-MAKING AUTHORITY. Except as provided in (a) and (b) of this subsection, the court shall consider the following criteria in allocating decision-making authority:

(i) The existence of a limitation under RCW 26.09.191;

(ii) The history of participation of each parent in decision making in each of the areas in RCW 26.09.184(5)(a);

(iii) Whether (~~the parents have~~) **each parent has** a demonstrated ability , **interest**, and desire to cooperate with (~~one another~~) **the other parent** in decision making in each of the areas in RCW 26.09.184(5)(a); and

(iv) The parents' geographic proximity to one another, to the extent that it affects their ability to make timely mutual decisions.

(d) The court shall not presume that a parent, solely because of his or her sex or gender, is more or less qualified than the other parent to make decisions regarding the child's care, education, health care, and religious upbringing.

(e) The court shall enter written findings stating its reasons, including any facts and evidence considered to be true, supporting any finding that sole decision making is in the best interest of the child.

(3) RESIDENTIAL PROVISIONS.

(a) 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 shall not presume that a parent, solely because of his or her sex or gender, is more or less qualified than the other parent to engage in parenting functions or be provided with more or less residential time with the child.** The child's residential schedule shall be consistent with RCW 26.09.191. Where the limitations of RCW 26.09.191 are not dispositive of the child's residential schedule, the court shall consider the following factors:

- (i) The relative strength, nature, and stability of the child's relationship with each parent;
- (ii) The agreements of the parties, provided they were entered into knowingly and voluntarily;
- (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;
- (iv) The emotional needs and developmental level of the child;
- (v) The child's need for a frequent, continuing, and meaningful relationship with both parents and the ability and willingness of each parent to actively perform parent functions for the needs of the child;**
- (vi) 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;
- ~~(((vi)))~~ **(vii) 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; and**
- ~~(((vii)))~~ **(viii) Each parent's employment schedule, and shall make accommodations consistent with those schedules. A parent's employment schedule is not, by itself, a basis for limiting a parent's residential time with a child if the parent has other responsible persons approved by the court who can provide transportation or care for the child during schedule conflicts.**

Factor (i) shall be given the greatest weight.

~~(b) ((Where the limitations of RCW 26.09.191 are not dispositive, the court may order that a child frequently alternate his or her residence between the households of the parents for brief and substantially equal intervals of time if such provision is in the best interests of the child. In determining whether such an arrangement is in the best interests of the child, the court may consider the parties geographic proximity to the extent necessary to ensure the ability to share performance of the parenting functions.~~

~~(e))~~ **There is a presumption that it is in the best interests of the child to establish an equal residential schedule that provides each parent with equal time and contact with the child unless:**

(i) Factors present under RCW 26.09.191 require restrictions on the child's residential schedule; or

(ii) The parents have agreed on a parenting plan that allocates a greater share of residential time with one parent.

(c) A parent alleging that equal residential time and contact would not be in the best interest of the child has the burden of proof, which must be established by clear and convincing evidence.

(d) For parenting plans that involve a school-aged child, the court shall establish a residential schedule that provides consistency for the child through the school week.

(e) For any child, residential provisions may contain any reasonable terms or conditions that facilitate the orderly and meaningful exercise of residential time by a parent, including but not limited to requirements of reasonable notice when residential time will not occur.

(f) If the court does not enter a parenting plan providing for an equal residential schedule that provides each parent with equal time and contact with the child, the court shall enter written findings stating the reason or reasons, including the facts and evidence considered to be true that support the finding that an equal residential schedule is not in the best interest of the child.

(4) PERJURY. Any party who knowingly provides false information in their declarations or testimony regarding issues under the parenting plan is subject to prosecution for false swearing or perjury under chapter 9A.72 RCW.

Sec. 5. RCW 26.09.197 and 2007 c 496 s 604 are each amended to read as follows:

(1) After considering the affidavit required by RCW 26.09.194(1) and other relevant evidence presented, the court shall make a temporary parenting plan that is in the best interest of the child. In making this determination, the court shall give particular consideration to:

(((+))) (a) The presumption that it is in the best interest of the child to establish an equal residential schedule that provides each parent with equal time and contact with the child;

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

(((2))) (c) Which parenting arrangements will cause the least disruption to the child's emotional stability while the action is pending.

(2) The court shall also consider the factors used to determine residential provisions in the permanent parenting plan. **The court shall enter written findings stating its reasons, including the facts and evidence considered to be true supporting any finding that the temporary parenting plan is in the best interest of the child. The court shall verify that any temporary parenting plan that is knowingly and voluntarily agreed upon by both parties is made of their own volition.**

Sec. 6. RCW 26.09.260 and 2009 c 502 s 3 are each amended to read as follows:

(1) Except as otherwise provided in **this subsection (1) or in subsections (4), (5), (6), (8), and (10)** of this section, the court shall not modify a prior custody decree or a parenting plan unless it finds, upon the basis of facts that have arisen since the prior decree or plan or that were unknown to the court at the time of the prior decree or plan, that a substantial change **((has occurred))** in **((the))** circumstances **((of))** , **as defined in RCW 26.09.004, has occurred with the child or ((the nonmoving)) either party** and that the modification is in the best interest of the child and is necessary to serve the best interests of the child **as described in RCW 26.09.002.** The effect of a parent's military duties **or employment** potentially impacting parenting functions **or temporarily limiting their residential time** shall not, by itself, be a substantial change of circumstances justifying a permanent modification of a prior decree or plan.

(2) In applying these standards, the court shall retain the residential schedule established by the decree or parenting plan unless:

(a) The parents agree to the modification;

(b) The child has been integrated into the family of the petitioner with the consent of the other parent in substantial deviation from the parenting plan;

(c) The child's present environment is detrimental to the child's physical, mental, or emotional health and the harm likely to be caused by a change of environment is outweighed by the advantage of a change to the child; **((of))**

(d) **The court finds that the nonmoving parent has demonstrated an inability or unwillingness to allow the child frequent and meaningful contact with the other parent based on the nonmoving parent's violation, without good cause, of one or more provisions of the residential schedule of the parenting plan; or**

(e) The court has found the nonmoving parent in contempt of court at least twice within three years because the parent failed to comply with the residential time provisions in the court-ordered parenting plan, or the parent has been convicted of custodial interference in the first or second degree under RCW 9A.40.060 or 9A.40.070.

(3) A conviction of custodial interference in the first or second degree under RCW 9A.40.060 or 9A.40.070 shall constitute a substantial change of circumstances for the purposes of this section.

(4) The court may reduce or restrict contact between the child and the parent with whom the child does not reside a majority of the time if it finds that the reduction or restriction would serve and protect the best interests of the child using the criteria in RCW 26.09.191.

(5) The court may order adjustments to the residential aspects of a parenting plan upon a showing of a substantial change in circumstances of either parent or of the child, and without consideration of the factors set forth in subsection (2) of this section, if the proposed modification is only a minor modification in the residential schedule that does not change the residence the child is scheduled to reside in the majority of the time and:

(a) Does not exceed twenty-four full days in a calendar year; or

(b) Is based on a change of residence of the parent with whom the child does not reside the majority of the time or an involuntary change in work schedule by a parent which makes the residential schedule in the parenting plan impractical to follow; or

(c) Does not result in a schedule that exceeds ninety overnights per year in total, if the court finds that, at the time the petition for modification is filed, the decree of dissolution or parenting plan does not provide reasonable time with the parent with whom the child does not reside a majority of the time, and further, the court finds that it is in the best interests of the child to increase residential time with the parent in excess of the residential time period in (a) of this subsection. However, any motion under this subsection (5)(c) is subject to the factors established in subsection (2) of this section if the party bringing the petition has previously been granted a modification under this same subsection within twenty-four months of the current motion. Relief granted under this section shall not be the sole basis for adjusting or modifying child support.

(6) The court may order adjustments to the residential aspects of a parenting plan pursuant to a proceeding to permit or restrain a relocation of the child. The person objecting to the relocation of the child or the relocating person's proposed revised residential schedule may file a petition to modify the parenting plan, including a change of the residence in which the child resides the majority of the time, without a showing of adequate cause other than the proposed relocation itself. A hearing to determine adequate cause for modification shall not be required so long as the request for relocation of the child is being pursued. In making a determination of a modification pursuant to relocation of the child, the court shall first determine whether to permit or restrain the relocation of the child using the procedures and standards provided in RCW 26.09.405 through 26.09.560. Following that determination, the court shall determine what modification pursuant to relocation should be made, if any, to the parenting plan or custody order or visitation order.

(7) A parent with whom the child does not reside a majority of the time and whose residential time with the child is subject to limitations pursuant to RCW 26.09.191 (2) or (3) may not seek expansion of residential time under subsection (5)(c) of this section unless that parent demonstrates a substantial change in circumstances specifically related to the basis for the limitation.

(8)(a) If a parent with whom the child does not reside a majority of the time voluntarily fails to exercise residential time for an extended period, that is, one year or longer, the court upon proper motion may make adjustments to the parenting plan in keeping with the best interests of the minor child.

(b) For the purposes of determining whether the parent has failed to exercise residential time for one year or longer, the court may not count any time periods during which the parent did not exercise residential time due to the effect of the parent's military duties potentially impacting parenting functions.

(9) A parent with whom the child does not reside a majority of the time who is required by the existing parenting plan to complete evaluations, treatment, parenting, or other classes may not seek expansion of residential time under subsection (5)(c) of this section unless that parent has fully complied with such requirements.

(10) The court may order adjustments to any of the nonresidential aspects of a parenting plan upon a showing of a substantial change of circumstances of either parent or of a child, and the adjustment is in the best interest of the child. Adjustments ordered under this section may be made without consideration of the factors set forth in subsection (2) of this section.

(11) If the parent with whom the child resides a majority of the time receives temporary duty, deployment, activation, or mobilization orders from the military that involve moving a substantial distance away from the parent's residence or otherwise would have a material effect on the parent's ability to exercise parenting functions and primary placement responsibilities, then:

(a) Any temporary custody order for the child during the parent's absence shall end no later than ten days after the returning parent provides notice to the temporary custodian, but shall not impair the discretion of the court to conduct an expedited or emergency hearing for resolution of the child's residential placement upon return of the parent and within ten days of the filing of a motion alleging an immediate danger of irreparable harm to the child. If a motion alleging immediate danger has not been filed, the motion for an order restoring the previous residential schedule shall be granted; and

(b) The temporary duty, activation, mobilization, or deployment and the temporary disruption to the child's schedule shall not be a factor in a determination of change of circumstances if a motion is filed to transfer residential placement from the parent who is a military service member.

(12) If a parent receives military temporary duty, deployment, activation, or mobilization orders that involve moving a substantial distance away from the military parent's residence or otherwise have a material effect on the military parent's ability to exercise residential time or visitation rights, at the request of the military parent, the court may delegate the military parent's residential time or visitation rights, or a portion thereof, to a child's family member, including a stepparent, or another person other than a parent, with a close and substantial relationship to the minor child for the duration of the military parent's absence, if delegating residential time or visitation rights is in the child's best interest. The court may not permit the delegation of residential time or visitation rights to a person who would be subject to limitations on residential time under RCW 26.09.191. The parties shall attempt to resolve disputes regarding delegation of residential time or visitation rights through the dispute resolution process specified in their parenting plan, unless excused by the court for good cause shown. Such a court-ordered temporary delegation of a military parent's residential time or visitation rights does not create separate rights to residential time or visitation for a person other than a parent.

(13) If the court finds that a motion to modify a prior decree or parenting plan has been brought in bad faith, the court shall assess the attorney's fees and court costs of the nonmoving parent against the moving party.

(14) A parent may petition for review and modification of a parenting plan entered prior to the effective date of this section based on the revised standards governing the establishment of parenting plans provided under this act. A petition for rehearing and modification of a parenting plan under this section must be filed by July 31, 2020, and must set forth the specific provisions of this act that warrant a review and modification of the parenting plan.

Sec. 7. RCW 2.56.180 and 2007 c 496 s 202 are each amended to read as follows:

(1) The administrative office of the courts shall create a handbook explaining the sections of Washington law pertaining to the rights and responsibilities of marital partners to each other and to any children during a marriage and a dissolution of marriage. The handbook may also be provided in videotape or other electronic form **and must be made available and easily accessible on the administrative office of the courts' web site.**

(2) The handbook created under subsection (1) of this section shall be provided by the county auditor when an individual applies for a marriage license under RCW 26.04.140.

(3) In a dissolution or legal separation action filed under this chapter, the petitioner's counsel shall provide to the

petitioner a copy of the handbook created under subsection (1) of this section (~~shall also be provided to the petitioner when~~) at the time he or she files (~~(a) the petition (for dissolution, and to the respondent, unless the respondent did not file a response, notice of appearance, or any other paper in the case or did not appear in court)~~) and provide a copy of the handbook to be served along with the petition and summons upon the respondent. If the petitioner is unrepresented by counsel at the time the petition is filed, the court shall provide the petitioner with a copy of the handbook and direct that a copy of the handbook be served along with the petition and summons upon the respondent. The administrative office of the courts shall on an annual basis reimburse the counties for each copy of the handbook that is distributed by the court directly to family law parties under this section, provided that the county submits documentation of the number of handbooks distributed on an annual basis.

(4) The information contained in the handbook created under subsection (1) of this section shall be reviewed and updated annually. The handbook must contain the following information:

(a) Information on prenuptial agreements as contracts and as a means of structuring financial arrangements and other aspects of the marital relationship;

(b) Information on shared parental responsibility for children, including establishing a residential schedule for the child in the event of the dissolution of the marriage , **and guidelines on what is included in the parenting plan in order to maximize to the highest degree the amount of time the child may spend with each parent;**

(c) Information on notice requirements and standards for parental relocation;

(d) Information on child support for minor children;

(e) Information on property rights, including equitable distribution of assets and premarital and postmarital property rights;

(f) Information on spousal maintenance;

(g) Information on domestic violence, child abuse, and neglect, including penalties;

(h) Information on the court process for dissolution;

(i) Information on the effects of dissolution on children;

(j) Information on community resources that are available to separating or divorcing persons and their children.

--- END ---

DECLARATION OF SERVICE

I, Lori Mason, declare under penalty of perjury under the laws of the State of Washington, that on May 1, 2020, I caused a true and correct copy of Appellant's Opening Brief to be served upon the following, via the eFiling Portal for the Washington State Appellate Courts:

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