

No. 66615-1

THE COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
DIVISION I

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MARK B. MAYO, Appellant

v.

KARI P. MAYO, Respondent

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RESPONDENT'S REPLY BRIEF

William M. Zingarelli  
WSBA# 23568

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P.O. Box 356  
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FILED  
COURT OF APPEALS DIV I  
STATE OF WASHINGTON  
2011 DEC 29 AM 10:24

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A. Introduction

This case involves an action to dissolve the marriage between appellant Mark Mayo and Appellee Kari Mayo. The only remarkable aspect of this otherwise simple case is Mark's refusal to acknowledge the devastating impact his incarceration for felony assault and alcoholic behavior has had on his family.

It is well established that this Court will not reverse the trial court's decisions in a dissolution proceeding absent a manifest abuse of discretion and that the Court cannot substitute its judgment for that of the trial court unless the trial court's decisions rest on untenable grounds. Here, the court did not abuse its discretion when denying Mark's motion to adopt the parenting plan negotiated during mediation or his follow on motions for reconsideration. Moreover, the final parenting plan entered upon trial is supported by substantial evidence. Accordingly, this Court should affirm.

B. Counter Statement of the Issues

Kari acknowledges Mark's assignments of error; however, she believes the issues in this case are appropriately and simply expressed as follows:

1. Did the trial court properly exercise its discretion when it denied Mark's multiple motions to enforce the mediated parenting plan?

2. Did the court properly exercise its discretion by adopting the final parenting plan, including RCW 26.09.191 language referencing Mark's alcoholism?

3. Has Mark been harmed in any way, thereby justifying sanctions and/or an award of attorneys fees?

C. Counter Statement of the Case

As a preliminary matter, Mark's brief does not conform to the Rules of Appellate procedure. Mark's brief submitted on November 16, 2011 and delivered to Kari's attorney was rejected by the Court for failure to report the specific pages in the Clerk's Papers. Mark resubmitted his brief to the court on 11/28/2011 but failed to provide a copy of his revisions to Kari's attorney. Mark's failure to provide a properly formatted brief has created an additional burden on Kari by requiring her to cross reference all citations to the actual record.

Also, RAP 10.3(a)(5) requires a brief to contain a "fair statement of the facts and procedure relevant to the issues presented for review, without argument. See, e.g. Br. of Appellant at 14 ("Ms. Mayo, at the time had refused to respond to offers of settlement she refused to participate in the submittal or foundation of a pretrial order"). At 15

(“... the answers provided were misleading, vague, incomplete and bizarre. Her anger and resentment are prevalent throughout the document.”) These arguments are out of place in a statement of the case, are a far cry from the objective requirements set forth in RAP 10.3(a)(5), and should therefore be disregarded by the Court.

Kari disagrees with Mark’s statement of the case; she believes that he has white washed or ignored several key facts that must be brought to the Court’s attention.

Kari filed for divorce after Mark committed felony assault in September 2009. The assault took place outside a casino after Mark had been drinking heavily and gambling. This was just the last in a series of serious incidents involving Mark’s abuse of alcohol, drugs and gambling. The incidents ranged from carjacking, to DUI, to property destruction, squandering family resources and the aforementioned felony. (CP 23-25).

Despite this tortured history Mark remains in denial. “I also deny that I have a long term impairment resulting from drugs and/or alcohol.” (CP 23). Mark’s continuing denial goes to the heart of his appeal. He is fighting hard for the parenting plan crafted at mediation specifically because it does not incorporate section 2.2 language about his alcohol and substance abuse. (CP 173).

Comparison of the two “competing” parenting plans shows little substantive differences with the final order placing no restrictions upon Mark’s time with his children despite the inclusion of the impairment language in paragraph 2.2.

## 2.2 Other Factors (RCW 26.09.191(3))

The respondent’s involvement or conduct may have an adverse effect on the children’s best interests because of the existence of the factors which follow:

A long-term impairment resulting from drug, alcohol, or other substance abuse that interferes with the performance of parenting functions.

Other than paragraph 2.2 in the final parenting plan, there were only minor adjustments made in comparison to the mediated parenting plan.

3.2 of the final parenting plan grants extended visitation to Mark Mayo from Friday after school until Sunday evening and mid week visits. In the mediated parenting plan, Mark requested Thursday through Monday visitation. Paragraph 3.3 and 3.4 are the same in both plans. In paragraph 3.5, summer schedule, the trial court granted Mark Mayo additional overnight visitation and two consecutive weeks of summer vacation. Paragraph 3.7, holiday schedule, remained the same from the mediated plan to the final parenting plan, granting Mark Mayo Jewish as

well as Christian holidays; and paragraph 3.8, special occasions remained the same.

Paragraph 3.10 of the final parenting plan restricts the father's use of alcohol and gambling in conjunction with Paragraph 2.2. All other paragraphs of the final parenting plan entered by the trial court remain the same as proposed in the mediated parenting plan, including access to records, telephone access, use of mediation and joint decision making authority.

D. Argument in Response

1. Standards of Review

In domestic relations, appellate courts have historically been averse to changing trial court decisions. “[T]rial court decisions in marital dissolution proceedings are rarely changed on appeal.” *In re Marriage of Williams*, 84 Wn. App. 263, 267, 927 P.2d 679 (1996), review denied, 131 Wn. 2d 1025 (1997). Such decisions are difficult to reach and should be accorded deference. See *In re Marriage of Landry*, 103 Wn.2d 807, 809, 669 P. 2d 214 (1985).

Appellate courts should not encourage appeals by tinkering with them. The emotional and financial interests affected by such decisions are best served by finality. The spouse who challenges such decisions bears a heavy burden of showing a manifest abuse of discretion on the part of the trial

court. The trial court's decision will be affirmed unless no reasonable judge would have reached the same decision. Id. at 809-10 (citation omitted).

The trial court manifestly abuses its discretion if it makes an untenable or unreasonable decision. See *In re Marriage of Tower*, 55 Wn. App. 697, 700, 780 P.2d 863 (1989) review denied, 114 Wn.2d 1002 (1990). A court's decision is manifestly unreasonable if it is outside the range of acceptable choices, given the facts and the applicable legal standard; it is based on untenable grounds if the factual findings are unsupported by the record. See *In re the Marriage of Littlefield*, 133 Wn.2d 39, 47, 940 P.2d 1362 (1997) (citation omitted). When there is no abuse of discretion, this Court will uphold the trial court. See *Landry*, 103 Wn. 2d at 810-11.

2. The Proffered Transcripts are Incomplete, Inaccurate and Misleading

Contrary to Mark's claims not "all communications" during the mediation were recorded by DOC. Ap Br 13 – 14. Mark was only available for short stints via speaker phone from the jail and the "transcripts" of the phone calls are therefore an incomplete and confusing record of the process. DOC Page 3, Lines 10 and 13 cite "simultaneous

speech;” Lines 19, 21, 24 and 25 “indiscernible”. Both “indiscernible” and “simultaneous” speeches are noted throughout the transcript. Significant portions were not transcribed as “attorney – client privileged.” Moreover, it is impossible for the Court to discern the tone of the speech and the overt tension throughout.

Mark’s attempt to rely upon the hit and miss statements within the partial transcript of the proceedings is confusing at best and misleading at worst. He fails to meet his high burden of proof in seeking to overcome the trial court’s decision to deny enforcement of the mediated parenting plan.

### 3. Alternative Dispute Resolution Efforts Don’t Always Result in Settlement

Our court system directs parties to resolve their dispute short of trial and CR2(a) agreements are encouraged. However, as the Howard court held: “The purpose of the cited rule and statute is to avoid disputes and to give certainty and finality to settlements and compromises...” *Howard v. DiMaggio*, 70 Wn. App. 734, 738, 855 P.2d 335 (1993). It is clear that the Court’s desire for early resolution in CR2(a) agreements is to settle disputes, not create more.

For the Mayos, the mediation and aborted parenting plan only created more problems and did not resolve all the issues. At the

mediation, neither party signed the parenting plan. Although Mark authorized his attorney to sign for him, Kari chose not to ratify the parenting plan. (CP 173 & 251). Mark acknowledges that Kari refused to execute the mediated parenting plan. Ap Br p. 13.

As the mediation process continued it became clear that Mark and his attorney were not in agreement about the sufficiency of the parenting plan. (DOC Volume II, pgs. 19-21). Both took turns revisiting issues with the apparent intent of continuing to negotiate and alter terms of the parenting plan, specifically transportation during incarceration and work release. (CP 173).

In discussing transportation of children during incarceration, for example (DOC p. 102 – 110) the dispute became quite heated with Mark insisting that Kari share the burden whereas Kari wanted to stick with the terms of the temporary order directing that Mark be 100% responsible. As tempers flared it became clear that Kari's role as sole parent and sole provider was wearing on her. "I can't make ends meet every month. I don't have time or the money to be shuffling these kids around so that Mark's family can get them, and take them to come and see him in jail you know." (DOC p. 108.)

Subsequently, Kari and Mark's attorneys engaged in a heated discussion regarding funding for the children's daycare, DOC p. 109.

When Mark attempted to intercede:

"Wait, wait, wait. Everybody listen, stop and I am going to speak."

Mark's attorney overrode him:

Ms. Silva: No, no. Wait. No wait. No.

The Moderator: Andrekita, his family has - he is - he is speaking.

Ms. Silva: (indiscernible). I know.

The Moderator: But he's speaking, and he (simultaneous speech).

The Moderator: Guys, I want this to stop right now, because we are losing...

Ms. Silva; Okay.

Moderator: ....control of this process, so listen.

Ms. Siva: Okay right.

Moderator: Stop, everyone. I want to hear what Mark has to say for the moment. So Mark, what I was hearing you say, because I'm going to pull out the one who's sounding reasonable at the moment. Mark...

Mrs. Silva: Okay, Mark, What...

Moderator: Well, no. I want to...

Ms. Silva: You need...

Moderator: ...speak to Mark.

Ms. Silva: Okay. But I need to warn you now...

Mr. Attorney: Hey...

Mr. Mayo: No, wait, wait, wait. Andrekita, stop.

Whereupon a halt to the proceedings was imposed by the moderator. The end result was that the issue of transportation could not be fully resolved. (DOC p. 124).

DOC pps. 141 – 142 reflect portions of the teleconference not transcribed leaving the Court in the dark as to the details of that portion of the mediation.

Mark has submitted a second volume of the transcription completed by a different agency, DOC Volume II transcribed by Phillip Puzio of Reed Jackson Watkins.

In the midst of wrapping up the discussion about the parenting plan Ms. Silva again made her push to recover storybooks authored by Mark. DOC Vol II p. 14:

“Ms. Silva: Now this isn’t part of the parent (sic) plan, but Mark asked about those stories that she said she could...

Ms. Mayo: Oh my gosh he did excellent. Yes. If I can ..  
(inaudible).

Ms. Silva: (Inaudible) yeah, yeah. No, no. I'm just saying that's actually probably not a part of the parent plan, it's probably a property issue, but just so you know..."

The above interchange reflects how careless Ms. Silva was in raising highly sensitive issues in the midst of attempting to reach a resolution.

The following exchange between Mark and his attorney highlights Kari's reaction. DOC Vol II p. 15:

"Ms. Silva: Okay. Did you hear Kari go bonkers on that one?"

Mr. Mayo; Yeah. I can't believe she's talking to you that way. Why is she so upset about it?

Ms. Silva: Well, it's just...I don't know.

Mr. Mayo: why is she so angry? I mean, she's just an angry person..."

Whereupon the transcription is halted as "privileged".

Kari's reaction reflects her feelings that Mark was trying to "manipulate [Kari's] emotions and denigrate her role as a parent." CP 173. Mark's "unreasonable and bizarre demands" (CP 173-174) came directly from Mark but also from his attorney.

Thereafter, the parties attempted to resolve the few remaining property issues. Despite Kari's abundant willingness to cooperate in

Mark's requests for copies of photos, Ms. Silva failed to accept "yes" for an answer. DOC p. 18 – 19:

“Mr. Zingarelli: Copies of what?”

Ms. Silva: Apparently, they – they copied all the – copies of all the photos from all the various computers.

Ms. Mayo: Then I'll make copies if I have them.

Mr. Zingarelli: We're saying yes, Andrekita.

Ms. Silva: Okay.

Mr. Zingarelli: We're saying yes.

Ms. Silva: Yeah...My concern is...

Mr. Zingarelli: Forget your concern.

Ms. Silva: Okay. Yeah.

Mr. Zingarelli: We said yes already.

Ms. Mayo: It's not your concern.

Mr. Zingarelli: Wait, wait, wait.

Ms. Silva: Right, right. Okay.

Mr. Zingarelli: We're about to walk out.

Whereupon the mediation was terminated without reaching a resolution.

4. Mark's Attempt to Raise Other Pretrial Issues are Not Properly Before the Court

Mark raises concerns about other failed settlement attempts, pretrial orders and discovery concerns. Ap Br p. 14-15. None of these issues are raised in Mark's Assignment of Errors nor were these issues raised at trial. Therefore, the Court should disregard these statements by mark as misleading and unduly prejudicial.

5. A Three Day Trial was Conducted Openly and Fairly

As noted by mark, a three day trial was held February 7, 8 and 9 of 2011. Mark was afforded every opportunity to be heard, present relevant evidence, and argue the merits of his case. He testified telephonically and called multiple witnesses, including experts, to coo berate his positions.

Through his counsel Mark had ample opportunity to cross examine Kari. Kari did not call any other witnesses.

6. The Mediated Parenting Plan is Not Enforceable

The parties clearly disagree as to how best to co-parent their children. That is why a three day trial was conducted with the majority of time and effort dedicated to Mark's presentation. Very little of the court's time was expended on property and debt issues.

As noted by Mark, "Even if the divorcing parties agree as to every aspect of the dissolution, their stipulations must be approved and entered by a court to have effect, and with regards to agreements regarding a

parent (sic) plan, the court must find that the parent plan is in the best interest of the children.” (Citations omitted).

In the instant case the parties failed to agree on every aspect. Moreover, the court, after three days of testimony, entered a final order in compliance with RCW 26.19.010 that differs from what Mark is now asserting is in the children’s best interest.

Mark’s arguments fall short of controlling case law. The proffered transcripts belie his assertions that “each essential fact, including the existence of a mutual intention,” is shown. Ap Br p. 17 citing *Cahn v. Foster and Marshall, Inc.* 33 Wn. App 838 (1983) (citations omitted).

The duty to enforce agreements as found in *Hearst Communications, Inc. v. Seattle Times Co.*, 154 Wn. 2d 493 (2005) only applies where the language is unambiguous. Ap Br p. 17 (citation omitted). In the instant case, the parties failed to resolve key components of the parenting plan, i.e., transportation, and Kari refused to execute the agreement.

Mark’s argument regarding “conditions precedent,” Ap Br p. 17, is not properly cited in his table of authorities. A “condition precedent” is one that is to be performed before the agreement becomes effective, and which calls for the happening of some event or the performance of some act after the terms of the contract have been arrested on, before the

contract shall be binding upon the parties (citations omitted) Blacks Law Dictionary, 5<sup>th</sup> Ed (1979).

As noted earlier in Mark's brief, RCW 26.09 requires that even an agreed parenting plan must be reviewed and accepted by the court before it will be given force and effect. Ap Br p. 16. Despite Mark's argument to the contrary the instant case is precisely the circumstance wherein a "condition precedent" controls.

#### 7. Post-Mediation Settlement Efforts Failed

Mark provides snippets of emails and correspondence to support his allegation that the mediated parenting plan should be enforced. Ap Br p.19. The only thing that the correspondence makes clear is that the parties, through their attorneys, continued to negotiate but ultimately failed to reach agreement.

#### 8. Mark's Motion to Enforce was Properly Considered

Kari agrees that the two questions posed by Mark in seeking enforcement of the parenting plan were:

"1) Whether or not the parties entered into a binding contract, and if so,

2) Whether the proposed order submitted to the court accurately reflected the terms of the parties' agreement." Ap Br p. 20.

Because the court ruled in the negative on the first question it did not need to address the second.

Mark's argument regarding when rescission would be granted is not relevant here. Ap Br p. 21. He has failed to prove that a fully formed contract ever existed. On the contrary, he acknowledges that Kari did not execute the agreement. Ap Br p. 16, and the proffered transcripts demonstrate her timely rejection DOC 19-24.

Moreover, Mark fails to show how statements submitted by Kari and her attorney regarding the events that took place during mediation are hearsay.

#### 9. Mark's Claim of Double Standard is Misleading

At no point was Kari afforded an opportunity denied Mark. Ap Br p. 26. As the moving party seeking enforcement he was granted the opportunity to file a response. CP 118-168. In seeking reconsideration he again filed his motion and his response. CP 194-202. At trial, he took a third crack at moving the court for relief and provided ample pleadings for the court to consider. CP 250 -263. It's hard to imagine how many more opportunities Mark would have needed to please his case effectively.

#### 10. The Final Parenting Plan does not Prejudice Mark Mayo

The deficit of 72 days per year between the two parenting plans is misleading and moot. Under the mediated plan Mark would have been

afforded Thursday after school through Monday visitation but only after he was free from incarceration and only up until the children reach school age. Appendix B.

He has yet to be released from his post-incarceration commitments and the children are now attending school.

It is presently in the children's best interest to stay with the final order granting visitation to mark from after school on Friday through Sunday evening.

The final parenting plan appropriately requires a modest transition during the summer of 2012. Mark is granted two weeks uninterrupted time and mid week visits will be extended to include an overnight. Thereafter, in 2013, the parties will be equally sharing the summers "by agreement." Appendix A.

As demonstrated previously the differences between the two plans are relatively minor in substance and do not support Mark's allegations that he has been harmed.

#### 11. Mark's Allegations of Perjury are Unfounded.

The trial court had ample opportunity to assess the credibility of both parties. He has made a feeble attempt to link Kari's rejection of his claim that he practices the Jewish faith to a Claim of perjury. Ap Br p.

29-30. Kari stated her belief based upon her personal knowledge gleaned over six years of marriage.

12. Cited Contradictions are Typical in Disputed Dissolution Actions.

Mark has gleaned statements, arguments, claims and assertions from sources scattered throughout the pleadings in an effort to demonstrate falsity. Ap Br. P. 31-36. However, it is disingenuous and misleading to string out a series of unconnected correspondence, snippets of pleadings, and unrelated statements.

Parties to a divorce action are entitled to make assertions and change positions as the case evolves.

13. The Trial Court Properly Imposed 2.2 Language

The Court heard testimony from a variety of sources, not just Kari, regarding mark's substance abuse. It also heard testimony regarding Kari's. There was no dispute that both parties engaged in drinking during the marriage. The significant difference comes in Mark's admission that his drinking had caused significant disruption and eventually ended the marriage.

The court accepted Mark's admission but apparently rejected his claim that it is all in the past.

E. Conclusion

The Court should affirm the ruling of the trial court and accept the final orders entered. All matters were fairly and openly presented at trial and taken into consideration by the court.

Mark Mayo has failed to prove that a binding parenting plan was formed or that the court erred in denying his many attempts to prove otherwise.

The critical issues regarding how to properly care for the minor children were fleshed out at trial resulting in a final order that is in the children's best interest.

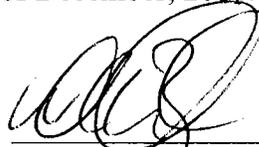
Overturing the present order would only send the parties back to court for a further trial. Neither can afford to do so and as shown in the final order entered by the Court, restrictive language regarding Mark Mayo's alcohol and substance abuse would be included.

Mark Mayo has failed to demonstrate any aspect of falsity on the part of either Kari Mayo or her attorney. Nor has he demonstrated any prejudice resulting from the imposition of the final parenting plan.

It should be acknowledged to the Court that the very nature of any "final" parenting plan is in fact only temporary in nature. Until the minor children reach the age of majority either parent may petition the court to modify the "final" plan to comport with the children's best interest.

Accordingly, Mark Mayo's request for award of attorney's fees and imposition of sanctions should be denied.

Respectfully submitted this 28<sup>th</sup> day of December, 2011.

A handwritten signature in black ink, appearing to be 'W. M. Zingarelli', written over a horizontal line.

William M. Zingarelli  
WSBA 23568  
Attorney for Kari Mayo

## Table of Authorities

### Cases

<i>Cahn v. Foster and Marshall, Inc.</i>	
33 Wn. App 838 (1983).....	page 14
<i>Hearst Communications, Inc. v. Seattle Times Co.,</i>	
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<i>Howard v. DiMaggio,</i>	
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<i>In re Marriage of Landry,</i>	
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55 Wn. App. 697, 700, 780 P.2d 863 (1989); and reviewed 114 Wn.2d 1002 (1990).....	page 5
<i>In re Marriage of Williams,</i>	
84 Wn. App. 263, 267, 927 P.2d 679 (1996).....	page 4

### Statutes

RCW 26.09.191..... page 2 and throughout

### Rules

CR2(a)..... page 7

RAP 10.3(a)(5).....page 2 and 3

### Other Citations

Blacks Law Dictionary, 5<sup>th</sup> Ed (1979).....page 14

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Superior Court of Washington  
County KING

In re the Marriage of:

No. 09-3-05216-0 SEA

KARI PAULINE MAYO

Parenting Plan

Petitioner,

Final Order (PP)

and

MARK B MAYO

Respondent.

This parenting plan is the final parenting plan signed by the court pursuant to a decree of dissolution, legal separation, or declaration concerning validity signed by the court on this date.

**It Is Ordered, Adjudged and Decreed:**

**I. General Information**

This parenting plan applies to the following children:

Name	Age
EMMA ELIZABETH MAYO	6
MAX ISAAC MAYO	4

**II. Basis for Restrictions**

*Under certain circumstances, as outlined below, the court may limit or prohibit a parent's contact with the children and the right to make decisions for the children.*

**Appendix A**

ORIGINAL

1 **2.1 Parental Conduct (RCW 26.09.191(1), (2))**

2 Does not apply.

3  
4 **2.2 Other Factors (RCW 26.09.191(3))**

5 The respondent's involvement or conduct may have an adverse effect on the children's  
6 best interests because of the existence of the factors which follow:

7 A long-term impairment resulting from drug, alcohol, or other substance abuse  
8 that interferes with the performance of parenting functions.

9 **III. Residential Schedule**

10 *The residential schedule must set forth where the children shall reside each day of the year,*  
11 *including provisions for holidays, birthdays of family members, vacations, and other special*  
12 *occasions, and what contact the children shall have with each parent. Parents are encouraged*  
13 *to create a residential schedule that meets the developmental needs of the children and*  
14 *individual needs of their family. Paragraphs 3.1 through 3.9 are one way to write your*  
15 *residential schedule. If you do not use these paragraphs, write in your own schedule in*  
16 *Paragraph 3.13*

17 **3.1 Schedule for Children Under School Age**

18 Prior to enrollment in school, the children shall reside with the petitioner, except for the  
19 following days and times when the children will reside with or be with the other parent:

20 From Friday to Sunday

21 From Friday after school through Sunday evening at 5:00 p.m. every other week

22 From Thursday to Thursday (or such other weekday as the parties  
23 may agree upon)

24 Thursday for mid week visitation from after school through 7:00 p.m. on alternate  
25 visitation weeks.

26 **A. Designation of Residential Time During Incarceration.**

27 The residential schedule as set forth above, shall be suspended during any period that the  
28 father is incarcerated.

29 In that event, the father may designate two 24 hour visitations each month with his extended  
30 family for the purpose of facilitating the extended family relationships and facilitating visitation

31 Parenting Plan (PPP, PPT, PP) Page 2 of 12  
32 WPF DR 01.0400 Mandatory (6/2008) - RCW 26.09.181; .187; .194

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1 between the father and children. The father may consolidate two 24 hour periods into a 48 hour  
2 visit once per month.

3 Father's family is solely responsible for transportation and arrangements of this  
4 visitation.

### 5 3.2 School Schedule

6 Upon Father's release from incarceration (expected 2/6/2012) the children shall reside  
7 with the Mother, except for the following days and times when the children will reside  
8 with or be with the Father.

9 Phase I: (Upon release until start of school year, Fall 2012) Every other weekend from  
10 Friday after school until Sunday evening at 5:00 p.m.

11 Midweek visitation: On weeks when Father does not have regularly scheduled  
12 weekend visitation, he shall visit with the children Thursday after school until 7:30 p.m.  
13 Visits shall take place within the Stanwood area and Father shall provide all  
14 transportation for midweek visitation during Phase I.

15 Phase II: (Coincides with start of school year, Fall 2012) Every other weekend from  
16 Friday after school until Monday morning at the start of school or daycare.

17 Midweek visitation: In the event Father resides within 35 miles of Stanwood then he  
18 may extend his midweek visitation until Friday morning at the start of school or day care,  
19 whichever is applicable. Transportation shall be shared equally by the parents only if  
20 Mother is delivering the children on Thursday. In the event Father elects to pick up the  
21 children on Thursday, then he shall also be responsible for returning them on Friday  
22 morning to school or day care.

### 23 3.3 Schedule for Winter Vacation

24 The children shall reside with the petitioner during winter vacation, except for the  
25 following days and times when the children will reside with or be with the other parent:

The children shall reside with their parents equally during winter vacation.

Winter break begins after school is recessed for winter break and ends school resumes.  
The parents shall confer no later than December 1 with regards to a mutually agreeable  
winter break schedule. If the parents can not agree then the Mother's choice shall  
control in even years and the Father's choice shall control in odd years.

### 3.4 Schedule for Other School Breaks

1 The children shall reside with the petitioner during other school breaks, except for the  
2 following days and times when the children will reside with or be with the other parent.

3 The parents shall alternate mid-winter and spring break each year.

4 Mid-Winter Break Mother in odd years  
5 Father in even years

6 Spring Break Mother in even years  
7 Father in odd years

8 Mid Winter Break shall consist of the non school days in addition to the weekend  
9 surrounding the break.

10 Spring Break shall consist of seven uninterrupted days. These days shall not interfere  
11 with each parents regularly scheduled visitation.

### 12 3.5 Summer Schedule

13 Upon completion of the school year, the children shall reside with the petitioner, except  
14 for the following days and times when the children will reside with or be with the other  
15 parent: *Summer of 2012: per p 3.2 except that the mid-week visit shall be overnight and the Sunday return time is 6:00 p.m. Also, father shall have one uninterrupted two week period set as below.*

16 ~~Summer of 2012 shall follow the School Schedule set forth in 3.2, above.~~ Beginning with  
17 summer of 2013, the parents shall equally share the summer break with schedules to be  
18 arranged by agreement. The parents shall exchange written schedules including two  
19 week uninterrupted vacation time, no later than April 30. In the event no agreement is  
20 reached by May 31, then the Mother's schedule shall control in even years and the  
21 Father's schedule shall control in odd years.

### 22 3.6 Vacation With Parents

23 The schedule for vacation with parents is as follows:

24 Each parent shall be entitled to 14 days of uninterrupted summer vacation.  
25 Determination of vacation schedule per 3.5 above.

1  
2 **3.7 Schedule for Holidays**

3 The residential schedule for the children for the holidays listed below is as follows:

4 Easter: the children shall reside with the mother in every year from 10:30 a.m. to 7:30  
5 p.m.

6 Passover: The children shall reside with the father every year for two nights or a period  
7 of 48 hours.

8 Roshashana: The children shall reside with the Father every year for two nights or for a  
9 period of 48 hours.

10 Yom Kippur: The children shall reside with the Father every year for one night or for a  
11 period of 24 hours.

12 Hanukkah: The children shall reside with the Father every year for one night of  
13 Hanukkah or for a period of 24 hours. If he has no regularly scheduled residential time  
14 during the eight days of Hanukkah, then the father shall be entitled to one 24 hour  
15 period during Hanukkah.

16 July 4: the children shall reside with the mother in odd years and with the father in even  
17 years for one night or for a period of 24 hours.

18 Thanksgiving Day: The children shall reside with the mother in even years and with the  
19 father in odd years. Thanksgiving shall start on Wednesday before Thanksgiving after  
20 school and it shall end on Friday at 7:00 p.m.

21 Christmas Eve: The children shall reside with their mother in all years and shall carry  
22 over to Christmas day every year.

23 Christmas Day: The children shall reside with their mother in all years.

24 Unless expressly allocated in this parenting plan, on holidays, the children shall reside  
25 with whichever parent they would reside pursuant to other provisions in the parenting  
plan. The children shall reside with whichever parent has their residential care the  
weekend directly adjoining that holiday.

If a holiday lands on a Tuesday, Wednesday or Thursday, the holiday shall begin at  
10:30 a.m. and end at 7:30 p.m.

Unless expressly stated otherwise, if holiday time allocated to a parent displaces the  
other parents residential time that parent shall confirm his or her intent to exercise his or  
her holiday time 14 days prior to the holiday. Such confirmation shall be in writing.

1 **3.8 Schedule for Special Occasions**

2 The residential schedule for the children for the following special occasions (for  
3 example, birthdays) is as follows:

	With Petitioner (Specify Year Odd/Even/Every)	With Respondent (Specify Year Odd/Even/Every)
4 Mother's Day	every	
5 Father's Day		every
6 Emma's Birthday	every	every
7 Max' Birthday	every	every

8 Other:

9  
10 The children will reside with whomever they would ordinarily reside on the birthdate of  
11 the child in question. Notwithstanding the foregoing, if a parent does not have regularly  
12 scheduled residential time within 48 hours of the birthdate of the child in question, then  
13 that parent shall have access to the child (and to both children if requested) for a period  
14 of up to 4 hours for the propose of celebrating the child's birthday. The birthday plans of  
15 the parent who would otherwise have the care of the child shall have priority over the  
16 time requested by the offer if there is a conflict. (mother's + father's Day = up to 6 hours) WJ

17 A parent shall give 7 days written notice of an intent to exercise a special occasion that  
18 does not land within their regular residential time.

19 **3.9 Priorities Under the Residential Schedule**

20 Paragraphs 3.3 - 3.8, have priority over paragraphs 3.1 and 3.2, in the following order:

21 Rank the order of priority, with 1 being given the highest priority:

- 22 2 winter vacation (3.3)
- 23 3 school breaks (3.4)
- 24 5 summer schedule (3.5)
- 25 1 holidays (3.7)
- 4 special occasions (3.8)
- 3 vacation with parents (3.6)

26 **3.10 Restrictions**

27 The respondent's residential time with the children shall be limited because there are  
28 limiting factors in paragraphs 2.1 and 2.2. The following restrictions shall apply: ~~children~~  
29 when the children are with the father. WJ

1 Respondent shall not consume alcohol and shall not gamble.

2 **3.11 Transportation Arrangements**

3 Transportation costs are included in the Child Support Worksheets and/or the Order of  
4 Child Support and should not be included here.

5 Transportation arrangements for the children between parents shall be as follows:

6 Transportation arrangements for the children shall be shared equally by the parents  
7 except during periods of incarceration. (See paragraph 3.1) and during Phase I, mid-  
8 week visitation (see 3.2) wherein the Father is solely responsible for all transportation.

9 The Mother shall deliver the children to the Father at the start of his visitation and Father  
10 shall return the children to the Mother, school or daycare, at the end of his visits.

11 Absent agreement, if the parents live within 10 miles of each other, then the receiving  
12 parent shall pick up the children at the start of their residential time at the other parent's  
13 residence (or a mutually agreed upon location convenient to the parent's residence). If  
14 the parents live more than 10 miles from each other, the parents shall meet at a  
15 mutually convenient location which is close to 1/2 way between each of their residences.

16 Notwithstanding the above, if the children are being delivered directly to the daycare or  
17 school at the beginning of the day at the conclusion of the father's residential time, then  
18 the father is responsible for delivering the children to the school or daycare at the  
19 conclusion of his residential time. Absent agreement or unless the father elects to  
20 provide round trip transportation, then the mother shall deliver the children to the father  
21 at his residence (or other mutually agreed upon location convenient to his residence) at  
22 the start of his residential time.

23 Children shall at all times be transported by licensed insured drivers, *whether that*  
24 *driver is a party or a reliable person designated by a party.* (M)

25 **3.12 Designation of Custodian**

The children named in this parenting plan are scheduled to reside the majority of the  
time with the petitioner. This parent is designated the custodian of the children solely for  
purposes of all other state and federal statutes which require a designation or  
determination of custody. This designation shall not affect either parent's rights and  
responsibilities under this parenting plan.

**3.13 Other**

A. Designation of Residential Time During Incarceration.

The residential schedule as set forth above, shall be suspended during any period that  
the father is incarcerated.

1 In that event, the father may designate two 24 hour visitations each month with his  
2 extended family for the purpose of facilitating the extended family relationships and  
3 facilitating visitation between the father and children. The father may consolidate two 24  
4 hour periods into a 48 hour visit once per month.

5 Father shall ensure his extended family provide all transportation during his  
6 incarceration.

### 7 **3.14 Summary of RCW 26.09.430 - .480, Regarding Relocation of a Child**

8 This is a summary only. For the full text, please see RCW 26.09.430 through 26.09.480.

9 If the person with whom the child resides a majority of the time plans to move, that  
10 person shall give notice to every person entitled to court ordered time with the child.

11 If the move is outside the child's school district, the relocating person must give notice  
12 by personal service or by mail requiring a return receipt. This notice must be at least 60  
13 days before the intended move. If the relocating person could not have known about  
14 the move in time to give 60 days' notice, that person must give notice within 5 days after  
15 learning of the move. The notice must contain the information required in RCW  
16 26.09.440. See also form DRPSCU 07.0500, (Notice of Intended Relocation of A Child).

17 If the move is within the same school district, the relocating person must provide actual  
18 notice by any reasonable means. A person entitled to time with the child may not object  
19 to the move but may ask for modification under RCW 26.09.260.

20 Notice may be delayed for 21 days if the relocating person is entering a domestic  
21 violence shelter or is moving to avoid a clear, immediate and unreasonable risk to health  
22 and safety.

23 If information is protected under a court order or the address confidentiality program, it  
24 may be withheld from the notice.

25 A relocating person may ask the court to waive any notice requirements that may put  
the health and safety of a person or a child at risk.

Failure to give the required notice may be grounds for sanctions, including contempt.

**If no objection is filed within 30 days after service of the notice of intended  
relocation, the relocation will be permitted and the proposed revised residential  
schedule may be confirmed.**

A person entitled to time with a child under a court order can file an objection to the  
child's relocation whether or not he or she received proper notice.

An objection may be filed by using the mandatory pattern form WPF DRPSCU 07.0700,  
(Objection to Relocation/Petition for Modification of Custody Decree/Parenting  
Plan/Residential Schedule). The objection must be served on all persons entitled to time

1 with the child.

2 The relocating person shall not move the child during the time for objection unless: (a)  
3 the delayed notice provisions apply; or (b) a court order allows the move.

4 If the objecting person schedules a hearing for a date within 15 days of timely service of  
5 the objection, the relocating person shall not move the child before the hearing unless  
6 there is a clear, immediate and unreasonable risk to the health or safety of a person or a  
7 child.

#### 8 IV. Decision Making

##### 9 4.1 Day-to-Day Decisions

10 Each parent shall make decisions regarding the day-to-day care and control of each  
11 child while the children are residing with that parent. Regardless of the allocation of  
12 decision making in this parenting plan, either parent may make emergency decisions  
13 affecting the health or safety of the children.

##### 14 4.2 Major Decisions

15 Major decisions regarding each child shall be made as follows:

16 Education decisions: joint

17 Non-emergency health care: joint

18 Religious upbringing: joint

19 The Petitioner will have sole decision making in regards to education, non emergency health  
20 care and religious upbringing during the time Respondent is incarcerated.

##### 21 4.3 Restrictions in Decision Making

22 Does not apply <sup>except:</sup> because there are no limiting factors in paragraphs 2.1 and 2.2  
23 ~~above~~. Sole decision making shall be ordered to the petitioner during Respondent's  
24 incarceration.

#### 25 V. Dispute Resolution

Parenting Plan (PPP, PPT, PP) Page 9 of 12  
WPF DR 01.0400 Mandatory (6/2008) - RCW 26.09 181; .187; 194

WILLIAM M. ZINGARELLI, P.S.  
9733 271 St. N.W.  
P.O. Box 356  
Stanwood, WA 98292  
(360) 629-2424  
Fax: (360) 629-6005

1 The purpose of this dispute resolution process is to resolve disagreements about carrying out  
2 this parenting plan. This dispute resolution process may, and under some local court rules or  
3 the provisions of this plan must, be used before filing a petition to modify the plan or a motion  
4 for contempt for failing to follow the plan.

5 Disputes between the parties, other than child support disputes, shall be submitted to  
6 (list person or agency):

7 mediation by a mutually agreed upon party, ~~if this box is checked and issues of~~  
8 ~~domestic violence or child abuse are present, then the court finds that the victim~~  
9 ~~requested mediation, that mediation is appropriate and that the victim is permitted to~~  
10 ~~have a supporting person present during the mediation proceedings, or~~ WLP

11 The cost of this process shall be allocated between the parties as follows: *(presumptively)*  
12 *this will be pro rata based on income unless*  
13 *As determined in the dispute resolution process, this would be inequitable* WLP

14 The dispute resolution process shall be commenced by notifying the other party by  
15 written request.

16 In the dispute resolution process:

- 17 (a) Preference shall be given to carrying out this Parenting Plan.
- 18 (b) Unless an emergency exists, the parents shall use the designated process to  
19 resolve disputes relating to implementation of the plan, except those related to  
20 financial support.
- 21 (c) A written record shall be prepared of any agreement reached in counseling or  
22 mediation and of each arbitration award and shall be provided to each party.
- 23 (d) If the court finds that a parent has used or frustrated the dispute resolution  
24 process without good reason, the court shall award attorneys' fees and financial  
25 sanctions to the other parent.
- (e) The parties have the right of review from the dispute resolution process to the  
superior court.

## VI. Other Provisions

There are the following other provisions:

A. Access to Children's Records. As permitted by law, both parents shall have the  
authority to inspect and receive school records, to consult with school, health and  
medical providers and other governmental agencies concerning the children's health,  
welfare and education. Each parent shall have equal and independent authority to  
confer with school, day care and other programs with regard to the children's progress.

1 Each parent shall have authority to give parental consent or permission, as may be  
2 required, concerning school, daycare or other programs for the children while the  
children are in his or her care.

3 B. Access to Children During the School Day. Both parents may have reasonable  
4 access to the children during the school day and both parents may participate in  
volunteer activities at the child's school ( or special camps) regardless of the residential  
5 schedule.

6 C. Support of Child's Academic and Extracurricular Activities. Both parents may attend  
and participate in education, athletic, extracurricular and or social events or activities in  
7 which the children are involved so long as, in the absence of prior express invitation,  
such events/activities do not involve private family gatherings or private recreational  
8 activities.

9 D. Absent agreement, the parent caring for the children shall have the right and/or  
responsibility to accompany the children and ensure their attendance at educational  
10 and/or extracurricular activities (plays, recitals, sporting events, etc.)

11 E. Exchange of Information Pertaining to Children. Each parent shall be responsible  
for keeping herself/himself informed of school, athletic, extracurricular and/or social  
12 events in which the children participate. Notwithstanding each parent shall provide the  
other parent promptly with any significant information regarding the children's welfare,  
13 including but not limited to physical and mental health information, performance in  
school, etc. which a parent would have received while the children were in her/his care  
14 and which would not be promptly and routinely forwarded by a third party entity (school,  
tutor, treatment provider, etc.) to the other parent.

15 F. Interference with Other Parent's Residential Time/Authority. Neither parent shall  
16 make plans and/or arrangements, nor allow the child to make plans and/or  
arrangements that would interfere with and/or impinge upon the other parent's authority  
17 or residential time with the child without the express agreement of the other parent.

18 G. Derogatory Comments Prohibited. Neither parent shall make derogatory comments  
about the other parent in front of the child or allow anyone else to do the same in the  
19 child's presence.

20 H. Telephone Access. Both parents shall have reasonable, unimpeded, and private  
telephone access to the children when they are in the other's care. Telephone contact  
21 shall be limited to two evenings per week and once on the weekend.

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23 **VII. Declaration for Proposed Parenting Plan**

24 Does not apply.

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**VIII. Order by the Court**

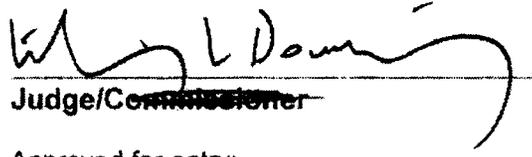
It is ordered, adjudged and decreed that the parenting plan set forth above is adopted and approved as an order of this court.

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

When mutual decision making is designated but cannot be achieved, the parties shall make a good faith effort to resolve the issue through the dispute resolution process.

If a parent fails to comply with a provision of this plan, the other parent's obligations under the plan are not affected.

Dated: 2/24/11

  
\_\_\_\_\_  
Judge/Commissioner

Presented by: \_\_\_\_\_  
23568

Approved for entry: \_\_\_\_\_  
17314

William M. Zingarelli  
Signature of Party or Lawyer/WSBA No.

Andrequita Silva  
Signature of Party or Lawyer/WSBA No.

**CONFIDENTIAL OFFER OF SETTLEMENT  
EXPIRES TUESDAY, DECEMBER 7, 2010 AT 6:00 P.M.**

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**SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF KING**

IN RE: THE MARRIAGE OF	)	Case No: 09-3-05216-0 SEA
	)	
Kari P. Mayo , Petitioner	)	<b>Parenting Plan , Final Order</b>
	)	
and	)	<b>(PP)</b>
	)	
Mark B. Mayo, Respondent.	)	
	)	

This parenting plan is: the final parenting plan signed by the court pursuant to a decree of dissolution dated \_\_\_\_\_.

**It Is Ordered, Adjudged and Decreed:**

**I. General Information**

This parenting plan applies to the following children:

<u>Name</u>	<u>Age</u>
Emma E. Mayo	5
Max I. Mayo	4

**Appendix B**

**COPY**

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**II. Basis for Restrictions**

**2.1 Parental Conduct (RCW 26.09.191(1), (2))**

Does not apply.

**2.2 Other Factors (RCW 26.09.191(3))**

Does not apply.

**III. Residential Schedule**

**3.1 Schedule for Children Under School Age**

A. Prior to enrollment in school, the children shall reside with the petitioner, except for the following days and times when the children will reside with or be with their father:

i. Every other weekend from ~~Friday~~ <sup>Thursday</sup> at 2:30 p.m. or if the child(ren) is /are in school, within two hours of school being recessed for the day until Monday at 10:30 a.m. or if the children are in school, when the children start their school day.

ii. ~~So long as the father lives within 35 miles of the mother's present address of 29114-68<sup>th</sup> Avenue N.W, Stanwood, then the children shall reside with the father one midweek overnight every week from 2:30 p.m. or if the child(ren) is /are in school, within two hours of school being recessed for the day until the following morning at 10:30 a.m. or if the children are in school, when the children start their school day.~~

~~On those weeks when the father does not have weekend residential time, his mid week overnight shall be on shall be on a Thursday. On those weeks when the father has a weekend residential time, his midweek overnight shall be on a Tuesday before his weekend time.~~

The above results in the children having 10 overnights with their father in each four week period.

a) **MIDWEEK OVERNIGHT EVER OTHER WEEK IF FATHER DOES NOT RESIDE WITHIN 35 MILES**

~~If the father does not reside within 35 miles of the mother's present residence, then the father shall have one mid week overnight every other week from 2:30 p.m. or if the children are in school, within two hours of school being~~

*delete*

*as wf*

**CONFIDENTIAL OFFER OF SETTLEMENT  
EXPIRES TUESDAY, DECEMBER 7, 2010 AT 6:00 P.M.**

recessed for the day until the following morning at 10:30 a.m. or if the children are in school, when the children start their school day.

The above results in the children having 8 overnights with their father in each four week period. The father's mid week overnight shall be on the Thursday that he does not have weekend residential time.

B. Notwithstanding the above, in the past the father has worked in an industry that requires weekend work and/ or evening work.

At the beginning of the month, and / or within 24 hours, or as soon as is practicable, of receiving a work schedule that creates conflicts with the parenting plan, the father shall provide the mother with a copy of his work schedule.

If the mother is not working and/ or if the children are in daycare or the care of any other third party during the time that the father is NOT scheduled to work, including mid weeks, then the father's work schedule shall be accommodated and his residential time shall be adjusted to such days of the week such that the father may exercise his 10 nights of residential time in a 4 week period during a time when he is the most available to care for the children.

**INCARCERATION**

C. Notwithstanding the provisions of 3.1. A. and B., if the father is incarcerated, the above provisions at 3.13. A shall be in effect.

**3.2 School Schedule**

Same as the school year schedule at 3.1 above.

The school schedule will start when the first child begins kindergarten and will apply to both children such that the younger child will start the school year schedule prior to commencing kindergarten.

The school schedule starts and the summer schedule ends on <sup>at 7:30pm</sup> ~~Monday morning~~ <sup>the Friday before the</sup> first day of school. <sup>the mothers residential time will start the first day of</sup> ~~the school year~~ <sup>the school year</sup>.  
The school schedule ends <sup>at 7:30pm</sup> ~~friday~~ <sup>immediately</sup> following the end of the school year.

**3.3 Schedule for Winter Vacation**

The children shall reside with their parents equally during Winter vacation. As soon as the oldest child is in school and has a winter vacation, then the winter vacation schedule applies to both children.

Winter break begins at 2:30 p.m. (or at whatever time school is out for the day) the day school is recessed for winter break and ends at 10:30 a.m. the day school resumes (or the school start time for of the school day, whichever is later).

This will reset the alternate weekend schedule for the father.

Handwritten initials and marks at the bottom right of the page.

**CONFIDENTIAL OFFER OF SETTLEMENT**  
**EXPIRES TUESDAY, DECEMBER 7, 2010 AT 6:00 P.M.**

1 The parents shall confer no later than December 1 with regards to a mutually agreeable  
2 winter break schedule.

3 If the parents are unable to agree, then the parent who would ordinarily have had the  
4 children the first weekend of the winter break according to the alternating weekend  
5 schedule shall have the first part of the Winter break ending at noon on Christmas Day.  
6 The other parent shall begin their half of the winter break at noon on Christmas. If this  
7 schedule results in one parent receiving more than 1/2 of the winter break, then the parent  
8 having more than 1/2 of the nights shall give up enough nights during their residential time  
9 to equalize the winter vacation schedule.

10 **3.4 Schedule for Other School Breaks**

11 The children shall reside with the petitioner and respondent equally during all school  
12 breaks consisting of no more and no less than 5 days. If the school has two breaks of 5  
13 days each (mid winter and spring), then the children shall be with the mother during mid  
14 winter break in odd years and with the father during spring break in those same odd  
15 years. The children will be with the father for mid winter break in even years and with the  
16 mother during spring break in those same even years.

17 The break will begin at school start time the first mid week day that school is in recess  
18 and end at school dismissal time the last midweek day before school resumes.

19 Unless the parents have adjusted the weekend schedule to accommodate the father's  
20 work schedule, the goal will be to leave the alternating weekend schedule uninterrupted.

21 **3.5 Summer Schedule**

22 Upon completion of the school year, the children shall reside with the parents as set  
23 forth in 3.1 and 3.2 above with the following exception:

24 The father shall have one mid week overnight visit every week regardless of the distance  
25 between the parents homes such that he shall have 10 nights of residential time in every  
four week period. In addition, he shall have the vacation time set out in 3.6 below.

**3.6 Vacation With Parents**

The schedule for vacation with parents is as follows:

Each parent shall be entitled to 14 days of uninterrupted summer vacation.  
The father shall have four weeks of uninterrupted summer vacation. That uninterrupted  
time may be taken two week blocks or as a block of four weeks. The mother is entitled to  
a two-week uninterrupted summer vacation.

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**CONFIDENTIAL OFFER OF SETTLEMENT**  
**EXPIRES TUESDAY, DECEMBER 7, 2010 AT 6:00 P.M.**

Such uninterrupted vacation time is conditioned on the parent seeking to exercise his or her uninterrupted vacation time giving the other parent 45 days written notice of his or her intent to exercise that uninterrupted vacation period. Notwithstanding the requirement for notice, absent an unavoidable conflict, each parent shall make a good faith effort to accommodate the other parent's vacation request.

In the event of a conflict where each parent has given timely notice of his or her intended vacation, the mother's request will have priority in even years and the father's request will have priority in odd years.

A parent need not travel out of town to exercise a vacation request.

**3.7 Schedule for Holidays**

The residential schedule for the children for the holidays listed below is as follows:

Passover: The children shall reside with the Father every year for two nights or for a period of 48 hours.

*children may miss one day of school maximum*

Roshashana: The children shall reside with the Father every year for two nights or for a period of 48 hours.

*children may not miss school.*

Yom Kippur: The children shall reside with the Father every year for one night or for a period of 24 hours.

*children may miss one day of school*

July 4<sup>th</sup> // The children shall reside with the Mother in odd years and with the father in even years for one night or for a period of 24 hours.

*→ PRIORITY //*

Halloween: The children shall reside with the Mother in odd years and with the father in even years for one night or for a period of 24 hours.

Thanksgiving Day: The children shall with the mother in even years and with the father in odd years. Thanksgiving shall start on Wednesday (day before Thanksgiving) at 2:30 p.m. and it shall end on ~~Sunday~~ at 7:00 p.m.

*Friday*

Christmas Eve: The children shall reside with their mother in all years.

Christmas Day: The children shall reside with their mother in all years.

Unless expressly allocated otherwise in this parent plan, on holidays, the children shall reside with whichever parent they would reside pursuant to other provisions in the parent plan. National holidays falling on a Friday or a Monday shall be expanded to include the Saturday and Sunday directly adjoined. The children shall reside with whichever parent has their residential care the weekend directly adjoining that holiday.

A holiday landing on a Friday shall start on Thursday at 2:30 p.m. and end at 7:30 p.m. on Sunday. A holiday landing on a Monday, shall start at 2:30 p.m. on Friday and end at 7:30 p.m. on Monday.

*one overnight of Hannukah based on new schedule -*

*Easter to Mom 10:30-7:30pm. w/ car*

*good on Monday*

**CONFIDENTIAL OFFER OF SETTLEMENT  
EXPIRES TUESDAY, DECEMBER 7, 2010 AT 6:00 P.M.**

If a holiday lands on a Tuesday, Wednesday, or Thursday, the holiday shall begin at 10:30 a.m. and end at 7:30 p.m.

If holiday time allocated to a parent **DISPLACES** the other parents residential time, that parent shall confirm his or her intent to exercise his or her holiday time 14 days prior to the holiday. Such confirmation shall be in writing.

**3.8 Schedule for Special Occasions**

The residential schedule for the children for the following special occasions (for example, birthdays) is as follows:

Mother's Day: The children shall reside with the mother every mother's day from 10:30 a.m. to 7:30 p.m.

Father's Day: The children shall reside with the father every father's day from 10:30 a.m. to 7:30 p.m.

Children's birthdays: The children will reside with whomever they would ordinarily reside on the birthdate of the child in question. Notwithstanding the foregoing, if a parent does not have regularly scheduled residential time within 48 hours of the birthdate of the child in question, then that parent shall have access to the child (and to both children if requested) for a period of up to 4 hours for the purpose of celebrating the child's birthday. The birthday plans of the parent who would otherwise have the care of child pursuant to 3.1, 3.2 and/ or 3.4 shall have priority over the time requested by the other if there is a conflict.

*birthdays require notice*

*no advance request will be exercised*

A parent shall give 7 days written notice of an intent to exercise a special occasion that does not land within their regular residential time.

**3.9 Priorities Under the Residential Schedule**

Paragraphs 3.3 - 3.8, have priority over paragraphs 3.1 and 3.2, in the following order: No 1 is given the highest priority:

- 1 -Holidays (3.7)
- 2 Winter Break (3.3)
- 3 Midwinter Break and Spring Break (3.4)
- 3 vacation with parents (3.6)
- 4 special occasions (3.8)

*July 4 = priority*

During any period of the father's incarceration, the above priorities also apply to 3.13A.

*as w4*

~~CONFIDENTIAL OFFER OF SETTLEMENT~~  
~~EXPIRES TUESDAY, DECEMBER 7, 2010 AT 6:00 P.M.~~

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4 **3.10 Restrictions**

Does not apply because there are no limiting factors in paragraphs 2.1 or 2.2. Notwithstanding, see paragraph 3.13.

5  
6  
7 **3.11 Transportation Arrangements**

Transportation costs are included in the Child Support Worksheets and/or the Order of Child Support and should not be included here.

Transportation arrangements for the children shall be shared equally.

8 Absent agreement, if the parents live within 10 miles of each other, then the receiving parent (the parent starting/ resuming their residential time) shall pick up the children at the start of their residential time at the other parents residence (or other mutually agreed upon location convenient to the parent's residence). If the parents live more than 10 miles from each other, the parents shall meet at a mutually convenient location which is as close to 1/2 way between each of their residences.

9  
10  
11  
12  
13  
14  
15 Notwithstanding the above, if the child (ren) are being delivered directly to the daycare or school at the beginning of the day at the conclusion of the father's residential time, then the father is responsible for delivering the children to the school or daycare at the conclusion of his residential time. Absent agreement or unless the father elects to provide round trip transportation, then the mother shall deliver the children to the father at his residence (or other mutually agreed upon location convenient to his residence) at the start of his residential time.

Children shall at all times be transported by licensed insured drivers.

16  
17 **3.12 Designation of Custodian**

The children named in this parenting plan are scheduled to reside the majority of the time with the Mother. This parent is designated the custodian of the children solely for purposes of all other state and federal statutes which require a designation or determination of custody. This designation shall not affect either parent's rights and responsibilities under this parenting plan.

18  
19  
20 **3.13 Other**

21 **A. DESIGNATION OF RESIDENTIAL TIME DURING INCARCERATION**

22  
23 i. The residential schedule set forth at 3.1 ( and 3.2) shall be suspended during any period that the father is incarcerated.

24 In that event, the father may designate two 24 hour visitations each month with his extended family for the purpose of facilitating the extended family

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1 relationships and facilitating visitation between the father and children. The  
2 father may consolidate two 24 hour periods into a 48 hour visit once per month.

*Rebut*  


3 If the father is on work release, the father may designate four 24 hour visitations  
4 with his extended family for the purpose of facilitating extended family  
5 relationships and facilitating visitation between the father and children. The  
6 father may consolidate two 24 hour periods into a 48 hour visit ~~twice~~ per month. (F)

- 7 ii. The residential schedule set forth at 3.3 Winter Break, 3.4 Other School Breaks,  
8 3.5 Summer Schedule, 3.6 Vacation, 3.7 Holidays, and 3.8 Special Occasions  
9 shall be suspended during any period that the father is incarcerated or on work  
10 release.

11 Notwithstanding the above, the father may designate to his extended family for  
12 the purpose of facilitating extended family relationships and facilitating visitation  
13 between the father and children the following time in addition to the time he may  
14 designate at 3.13A.i. as follows:

- 15 a. Re: 3.3 Winter break: Two 24 hour periods.
- 16 b. Re: 3.4 Other 5 day school break: One 24 hour period
- 17 c. Re: 3.5 Summer Schedule: Same as 3.1 and 3.1 as described at 3.13A
- 18 d. Re: 3.6 Vacation with Parents: One week of uninterrupted time.
- 19 e. Re: 3.7 Holidays: 50% of all holiday time allocated to the father.
- 20 f. Re: 3.8 Special Occasion: One 24 hour period for father's day, one 24  
21 hour period for the purpose of celebrating both children's  
22 birthdays combined

23 **B. FUTURE ADJUSTMENT TO RESIDENTIAL SCHEDULE:**

24 The father may seek an adjustment and the court may grant an adjustment to the  
25 residential schedule without a showing of adequate cause so long as the proposed  
modification in the residential schedule is a minor modification that does not change  
the residence from the mother's home and so long as

- 1) the adjustment does not exceed 24 full days in a calendar year and
- 2) there is no evidence of substance abuse on his part.

Compliance by the father with the terms of criminal orders is a basis for seeking a  
minor modification.

Non compliance by the father with the terms of criminal orders is a basis upon which  
the mother may seek a minor modification.



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1 C. SUBSTANCE ABUSE

2 Future substance abuse issues by either parent may be a basis for a major  
 3 modification.

4 **3.14 Summary of RCW 26.09.430 - .480, Regarding Relocation of a Child**

5 This is a summary only. For the full text, please see RCW 26.09.430 through  
 6 26.09.480.

7 If the person with whom the child resides a majority of the time plans to move, that  
 8 person shall give notice to every person entitled to court ordered time with the child.  
 9 If the move is outside the child's school district, the relocating person must give  
 10 notice by personal service or by mail requiring a return receipt. This notice must be  
 11 at least 60 days before the intended move. If the relocating person could not have  
 12 known about the move in time to give 60 days' notice, that person must give notice  
 13 within 5 days after learning of the move. The notice must contain the information  
 14 required in RCW 26.09.440. See also form DRPSCU 07.0500, (Notice of Intended  
 15 Relocation of A Child).

16 If the move is within the same school district, the relocating person must provide  
 17 actual notice by any reasonable means. A person entitled to time with the child may  
 18 not object to the move but may ask for modification under RCW 26.09.260.  
 19 Notice may be delayed for 21 days if the relocating person is entering a domestic  
 20 violence shelter or is moving to avoid a clear, immediate and unreasonable risk to  
 21 health and safety.

22 If information is protected under a court order or the address confidentiality program,  
 23 it may be withheld from the notice.

24 A relocating person may ask the court to waive any notice requirements that may put  
 25 the health and safety of a person or a child at risk.

Failure to give the required notice may be grounds for sanctions, including contempt.  
**If no objection is filed within 30 days after service of the notice of intended  
 relocation, the relocation will be permitted and the proposed revised  
 residential schedule may be confirmed.**

A person entitled to time with a child under a court order can file an objection to the  
 child's relocation whether or not he or she received proper notice.

An objection may be filed by using the mandatory pattern form WPF DRPSCU  
 07.0700, (Objection to Relocation/Petition for Modification of Custody  
 Decree/Parenting Plan/Residential Schedule). The objection must be served on all  
 persons entitled to time with the child.

The relocating person shall not move the child during the time for objection unless:  
 (a) the delayed notice provisions apply; or (b) a court order allows the move.

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1 If the objecting person schedules a hearing for a date within 15 days of timely  
2 service of the objection, the relocating person shall not move the child before the  
3 hearing unless there is a clear, immediate and unreasonable risk to the health or  
4 safety of a person or a child.

**IV. Decision Making**

**4.1 Day-to-Day Decisions**

6 Each parent shall make decisions regarding the day-to-day care and control of each  
7 child while the child is residing with that parent. Regardless of the allocation of  
8 decision making in this parenting plan, either parent may make emergency decisions  
9 affecting the health or safety of the children.

**4.2 Major Decisions**

11 Major decisions regarding each child shall be made as follows:

- 12 Education decisions  joint
- 13 Non-emergency health care  joint
- 14 Religious upbringing  joint

Process for Joint Decision-Making

15 If a parent wishes to make a decision which requires joint decision making, she or he  
16 shall give the other parent written notice of the issue which he or she believes needs  
17 to be decided along with her or his proposed resolution. The other parent shall  
18 respond in writing within 10 days. An objection must explain the basis for the  
19 objection and propose an alternate resolution, if one is believed to exist. If no  
20 objection is made within 10 days, agreement shall be deemed. If an objection is  
21 made, then the other parent must reply within 10 days. If the reply does not produce  
22 an agreement within 5 days, the person seeking resolution to the issue may give  
23 notice of the request to mediate.

24 A response or reply is deemed made when the other party receives the objection.  
25 Notice by fax or email shall be deemed adequate so long the fax or email is followed  
by a telephone call or text message advising the other that a fax or email has been  
sent and there is verification that the fax transmission was complete or no evidence  
that an electronic email transmission was interrupted or bounced back.

Pending completion of the decision making process, the previously established status  
quo shall be maintained, i.e., existing health care providers shall remain in place.

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1 When no status quo has been established, a parent may take preliminary steps to  
2 preserve an option, so long as the preliminary steps do not obligate either party.

3 Likewise, so long as a parent does not involve a child in the investigation of options  
4 pertaining to a major decision, a parent may also do preliminary research to inform  
5 themselves of the available options without first advising the other parent, i.e., a  
6 parent may not take a child to visit a private program, attend an audition or tryout for  
7 an extracurricular activity, etc. prior to agreement.

**DECISION MAKING DURING PERIOD OF INCARCERATION**

8 Notwithstanding the above, the mother shall have sole decision making with regards  
9 to education and non emergency health care during the father's incarceration.  
10 However, the mother shall give the father 30 days notice in writing of major decisions  
11 she is contemplating. The father shall have 14 days from receipt of the notice to  
12 provide input to the mother. The mother may make the decision after giving careful  
13 consideration to the wishes and expressed opinions of the father.

14 During any period that the father is on work release, decisions shall be made jointly  
15 pursuant to the "Process For Joint Decision-Making " described above.

**4.3 Restrictions in Decision Making**

16 There are no 2.1 and/ or 2.2 limitations on decision making. However, sole decision  
17 making will apply during the father's incarceration as he has more limited access to  
18 information necessary to participate more equally.

**V. Dispute Resolution**

19 *The purpose of this dispute resolution process is to resolve disagreements about carrying  
20 out this parenting plan. This dispute resolution process may, and under some local court  
21 rules or the provisions of this plan must be used before filing a petition to modify the plan or  
22 a motion for contempt for failing to follow the plan.*

23 Disputes between the parties, other than child support disputes, shall be submitted  
24 to mediation, unless arbitration is required under the parenting plan.

*If Barbara is  
not available  
during a  
reasonable  
time,  
Mr.  
Mr. Bartlett shall be used.*

25 Absent agreement, such mediation shall be by *Barbara Wechsler,* Howard Bartlett, Larry Besk, or  
Michael Loudon, in that order. If Mr. Bartlett is not available within a reasonable  
period of time given the urgency or lack of urgency of the issue to be mediated, then  
Mr. Besk shall be used unless he is also not available within a reasonable period of  
time given the urgency or lack of urgency of the issue to be mediated. In the event  
Michael Loudon is also not available within a reasonable period of time given the  
issues being mediated, then the parties will select a mediator who is reasonably

*as* *as*

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1 available given the issues to be mediated, who is recommended by Howard Bartlett,  
2 Larry Besk, or Michael Louden (in that order).

3 The cost of this process shall be allocated between the parties as follows:

4 based on each party's proportional share of income from line 6 of the child support  
5 worksheets.

6 The dispute resolution process shall be commenced by notifying the other party by  
7 [xx ] written request. Notice by fax or email shall be deemed adequate so long the  
8 fax or email is followed by a telephone call or text message advising the other that a  
9 fax or email has been sent and there is verification that the fax transmission was  
10 complete or no evidence that an electronic email transmission was interrupted or  
11 bounced back.

12 In the dispute resolution process:

- 13 (a) Preference shall be given to carrying out this Parenting Plan.
- 14 (b) Unless an emergency exists, the parents shall use the designated process to  
15 resolve disputes relating to implementation of the plan, except those related  
16 to financial support.
- 17 (c) A written record shall be prepared of any agreement reached in counseling or  
18 mediation and of each arbitration award and shall be provided to each party.
- 19 (d) If the court finds that a parent has used or frustrated the dispute resolution  
20 process without good reason, the court shall award attorneys' fees and  
21 financial sanctions to the other parent.
- 22 (e) The parties have the right of review from the dispute resolution process to the  
23 superior court.

**VI. Other Provisions**

24 The children's interests are best served by a full and regular pattern of contact with both  
25 parents, responsiveness and cooperation by both parents, and involvement by both parents  
in all aspects of the children's upbringing. Each parent desires to remain responsible and  
active in their children's growth and development consistent with the best interests of the  
children. Both parents shall make a sincere effort to maintain open, ongoing  
communications concerning the development, needs and interests of the children. To the  
above end, there are the following other provisions.

26 A. ACCESS TO CHILD'S RECORDS: As permitted by law, both parents shall have the  
27 authority to inspect and receive school records, to consult with school, health and  
28 medical providers and other governmental agencies concerning the children's health,  
29 welfare, and education. Each parent shall have equal and independent authority to  
30 confer with school, day care, and other programs with regard to the children's  
31 progress. Each parent shall have authority to give parental consent or permission, as

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1 may be required, concerning school, daycare, or other programs for the children while  
2 the children are in his or her care.

3  
4 B. ACCESS TO CHILDREN DURING THE SCHOOL DAY: Both parents may have  
5 reasonable access to the children during the school day and both parents may  
6 participate in volunteer activities at a child's school (or special camps) regardless of  
7 the residential schedule.

8 C. SUPPORT OF CHILD'S ACADEMIC AND EXTRACURRICULAR ACTIVITIES: Both  
9 parents may may attend and participate in educational, athletic, extracurricular and/  
10 social events or activities in which the children are involved so long as, in the absence  
11 of prior express invitation, such events/ activities do not involve private family  
12 gatherings or private recreational activities.

13 D. Absent agreement, the parent caring for the children shall have the right and/ or  
14 responsibility to accompany the children and ensure their attendance at educational  
15 and/ or extracurricular activities (plays, recitals, sporting events, etc).

16 E. EXCHANGE OF INFORMATION PERTAINING TO CHILDREN: Each parent shall be  
17 responsible for keeping herself/ himself informed of school, athletic, extracurricular  
18 and/ or social events in which the children participate. Notwithstanding, each parent  
19 shall provide the other parent promptly with any significant information regarding the  
20 children's welfare, including but not limited to physical and mental health information,  
21 performance in school, etc. which a parent would have received while the children  
22 were in her/his care and which would not be promptly and routinely forwarded by a  
23 third party entity (school, tutor, treatment provider, etc.) to the other parent.

24 F. INTERFERENCE WITH OTHER PARENT'S RESIDENTIAL TIME/ AUTHORITY:  
25 Neither parent shall make plans and/or arrangements, nor allow the child to make  
plans and/ or arrangements that would interfere with and/ or impinge upon the other  
parent's authority or residential time with the child without the express agreement of  
the other parent.

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

H. TRAVEL: Either parent may travel with the children out of state, to Canada, and/  
or Mexico during her/ his residential time. Notwithstanding the above, other than  
travel within the State of Washington and/ or Oregon, a parent must give the non

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1 traveling parent three weeks notice of the intent to travel. Such notice shall include an  
2 itinerary and emergency contact information. Travel out of the country shall require  
3 written consent by the non traveling parent, which written consent shall not be  
4 unreasonably withheld. Unless the traveling parent is intending to interfere with the  
5 non traveling parent's residential time, there is a presumption that, absent legitimate  
6 concerns based on the health and/ or safety of the children, the travel is permissible.  
7 I. TRAVEL IN WASHINGTON: Either parent may travel within the State of Washington  
with the children during her or his residential time. However, travel out of the King/  
Skagit/ Whatcom/ Pierce/ Snohomish County area for a period of 4 days or more is  
conditioned on the traveling parent giving the other parent written notice of the intent to  
travel at least 7 days prior to leaving King County or as soon as possible if the travel  
was not known 7 days prior. Such notice shall include an itinerary and emergency  
contact information.

8 J. WRITTEN NOTICE: Wherever written notice is required in this parent plan, email  
9 notice or fax transmission shall be sufficient so long as receipt of a fax transmission is  
10 verified and / or so long as there is no evidence that the electronic transmission was  
11 not interrupted or bounced back; and so long as such notice is followed by a telephone  
12 call or voice message giving verbal notice that the transmission has been sent along  
13 with a verbal summary of the content of the transmission.

14 K. TELEPHONE ACCESS: Both parents shall have reasonable, unimpeded, and private  
15 telephone access to the children when they are in the other's care. The parents shall  
16 make a good faith effort to agree on a written telephone schedule at the beginning of  
17 each month which shall accommodate reasonable, good faith, and known conflicts had  
18 by the other parent and/ or the children. Absent agreement, unless there is an  
19 unavoidable conflict, reasonable telephone access between the father and children  
20 means a telephone communication with the children 3 times per week, on ~~Tuesday and~~  
21 ~~Thursday evening and Saturday mornings.~~

22 Until the children are old enough to receive a telephone communication without  
23 facilitation from the parent having the care, the parent having the care of the child shall  
24 have an affirmative obligation to make the child available to receive telephone  
25 communications.

If a child is not available to receive a call, whichever parent was not able to comply  
with the agreed upon / presumptive telephone schedule shall have the greater burden  
of re-initiating and ensuring that the telephone communication occurs.

Notwithstanding the above, during the father's incarceration, absent agreement, the  
father may have telephone communications with the children two times a week.

L. CHANGE OF ADDRESS: Each parent has the obligation to keep the other advised of  
their current address and telephone number and to promptly advise of any changes.

*Wed*  
*Sunday*  
*Friday*  
*X*  
*access when*  
*children*  
*are ill.*

*as*  
*WFS*

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1 M. WRITTEN NOTICE: Wherever written notice is required in this parent plan, email  
2 notice or fax transmission shall be sufficient so long as receipt of a fax transmission is  
3 verified and / or so long as there is no evidence that the electronic transmission was  
4 not interrupted or bounced back; and so long as such notice is followed by a telephone  
5 call or voice message giving verbal notice that the transmission has been sent along  
6 with a verbal summary of the content of the transmission.

7 **VII. Declaration for Proposed Parenting Plan**

8 I declare under penalty of perjury under the laws of the state of Washington that this plan has  
9 been proposed in good faith and that the statements in Part II of this Plan are true and correct.

10 \_\_\_\_\_  
11 Mark Mayo, Respondent

\_\_\_\_\_ Date and Place of Signature

12 **VIII. Order by the Court**

13 It is ordered, adjudged and decreed that the parenting plan set forth above is adopted and  
14 approved as an order of this court.

15 **WARNING:** Violation of residential provisions of this order with actual knowledge of its terms is  
16 punishable by contempt of court and may be a criminal offense under RCW 9A.40.060(2) or  
17 9A.40.070(2). Violation of this order may subject a violator to arrest.

18 When mutual decision making is designated but cannot be achieved, the parties shall make a  
19 good faith effort to resolve the issue through the dispute resolution process.

20 If a parent fails to comply with a provision of this plan, the other parent's obligations under the  
21 plan are not affected.

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

\_\_\_\_\_ Judge/ Commissioner

23 PRESENTED BY:  
24 Law Office of F. Andrekita Silva

25 \_\_\_\_\_  
26 *Andrekita Silva*  
27 Andrekita Silva, WSBA No. 17314  
28 Attorney for Respondent

29 Copy received and  
30 Notice of Presentation Waived by:  
31 \_\_\_\_\_  
32 *William Zingarelli*  
33 William Zingarelli, WSBA No. 23568  
34 Attorney for Petitioner

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IN THE COURT OF APPEALS  
STATE OF WASHINGTON  
DIVISION I

MARK B. MAYO

Appellant,

and

No. 66615-1

KARI P. MAYO

Declaration of Mailing

Respondent.

Declaration of Mailing

Stacey Main declares that on December 28, 2011, I deposited in the U.S. Mail, postage prepaid at Stanwood, Washington a true and correct copy of Respondent's Reply Brief, addressed as follows:

Mark Mayo  
410 4<sup>th</sup> Avenue  
Seattle, WA 98104

  
Stacey Main  
Legal Assistant

Court of Appeals  
State of Washington  
Division One  
One Union Square  
600 University Street  
Seattle, WA 98101

FILED  
COURT OF APPEALS DIV I  
STATE OF WASHINGTON  
2011 DEC 29 AM 10:24

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