

68103-6

68103-6

No. 68103-6-1

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION ONE

In re the Marriage of

LISA R. PASCALE
Respondent

and

MICHAEL J. PASCALE
Appellant

ON REVIEW FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR KING COUNTY

BRIEF OF APPELLANT

FILED
COURT OF APPEALS DIV 1
STATE OF WASHINGTON
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I. ASSIGNMENTS OF ERROR

1. The trial court erred when it did not enforce an arbitration clause in the CR 2A.

2. The trial court erred when it made the following findings of fact or conclusions of law:

7. Regarding the parties['] dispute about the terms of the CR 2A Agreement, the court finds that: [T]he CR 2A Agreement at Section 13 set forth a schedule for payment of spousal support that adds to 96 months (in decreasing amounts over time). The written document is clear on its face. Extrinsic evidence may not be used to modify an agreement that is clear on its face.

9. Regarding the husband's request for binding arbitration with Harry R. Slusher, the court finds: There is no arbitrable dispute because of the Court's findings and conclusions regarding the CR 2A Agreement.

CP 723, 725.

3. The court erred when it awarded the wife attorney fees. CP 726 (§ 10).

4. The court erred when it denied the husband's request for fees under CR 11.

Issues Pertaining to Assignments of Error

1. Where a CR 2A agreement requires that all "disputes in the drafting of the final documents or any other aspect of this agreement (form or substance)" be referred to the mediator for

binding arbitration, and the parties dispute the terms of the maintenance agreed upon, must the court refer the dispute to arbitration?

2. In any case, was the court wrong to interpret the contract as it did?

3. Because the court was wrong to deny the motion to arbitrate, was it also wrong to award attorney fees to the wife?

4. Should the attorney fees award also be reversed because the court did not have and did not state a legal or factual basis for the award?

5. Because the wife had agreed to submit to arbitration all disputes respecting the CR 2A, was her motion to enforce filed in bad faith and should the court have sanctioned her pursuant to CR 11?

II. STATEMENT OF THE CASE

The wife moved to enforce the CR 2A, stating: “a dispute has arisen in that the wife contends that the Agreement requires the husband to pay spousal support for eight years and the husband contends, through counsel, that he is only required to pay spousal support for four years.” CP 9. In the alternative, she requested the entire agreement be declared invalid. CP 9-10.

Specifically, the wife claimed the agreement awarded her 96 months (or eight years) of spousal maintenance, beginning at \$9500 monthly and eventually stepping down to \$5000 monthly, for a total of \$830,000. CP 12. She was also to receive an additional 29 months of spousal support in the amount of \$1666, which she characterized as compensation for the husband's economically wasteful conduct. Id.

The maintenance schedule, as claimed by the wife, included a curious redundancy, as follows:

\$9,500 per month for 48 months, and then
\$9,500 per month for 22 months, and then
\$7,500 per month for 14 months, and then
\$5,000 per month for 12 months.

CP 12. For reasons the wife did not explain, the agreement divides the \$9500/monthly payments into two durational segments (i.e., 48 and 22 months), instead of simply stating \$9500 for 70 months.

According to the husband, this oddity is explained by the fact that the agreement was for a total of 48 months maintenance, not 96, meaning the first line (i.e., \$9500 for 48 months) was an alternative rejected in the negotiations in favor of 48 months of maintenance in staggered amounts. CP 1074-1075. In support of

this contention, he pointed to the handwritten portion of the CR 2A, where the mediator used yellow highlighting and red pen to alter the document pursuant to negotiations. That section is reproduced as follows (with totals in brackets, added here for illustrative purposes):

(g)	amount	duration	
	9500 ¹ /mo x	48 months	[456,000]
9500	8500 ²	22	[209,000]
then	7500	14	[105,000]
then	5000	12	[60,000]

CP 1061; see Appendix. According to the husband, the total amount originally proposed equaled \$456,000 (\$9500 x 48 months). The amount the husband claims the parties settled on equaled \$374,000 (a difference of \$82,000 from what was originally proposed and a difference of \$538,000 from what the wife now claims). In other words, the husband read the document as agreeing there would be zero amount (amount stricken) for 48 months, \$9500 for 22 months, then \$7500 for 14 months, then \$5000 for 12 months. CP 1074-1075. Four years (or 48 months)

¹ The strikeout is in red ink.

² The strikeout is in black ink.

The wife is a professional nurse who quit working when the parties' second child was born in 1996. CP 10, 1075. She was represented at mediation by attorney Scott East. CP 11. (Subsequently, she obtained new counsel.) The husband is an anesthesiologist and was represented at the mediation by Natalie De Maar. The mediator was Harry Slusher and the mediation lasted a day. CP 11. At its conclusion, according to the wife, both Slusher and East congratulated the wife on obtaining a good and fair settlement. CP 16. The agreement included a declaration that:

Each party understands that even though final documents yet need to be prepared this stipulation and agreement is effective and binding upon execution and enforceable in court. The parties stipulate and acknowledge that this agreement is fair and equitable.

CP 1041.

The agreement also included an arbitration clause, specifically providing that:

Any disputes in the drafting of the final documents or any other aspect of this agreement (form or substance), or any issue not discussed shall be submitted to Harry R. Slusher for binding arbitration. (RCW 7.04A).

CP 1042. The husband cited this clause in his cross-motion, asking the court to order the parties to binding arbitration with Harry Slusher or to enter the final orders the husband had proposed. CP

1070, 1075. The husband also suggested various motivations for the wife's "buyer's remorse." CP 1072-1073.

The trial court granted the wife's motion and denied the husband's. The court found "a dispute arose between the parties regarding Section 13 of the CR 2A Agreement relating to spousal support[.]" CP 722. The court resolved that dispute by declaring the CR 2A Agreement awarded 96 months of maintenance (in Section 13) and that "[t]he written document is clear on its face. Extrinsic evidence may not be used to modify an agreement that is clear on its face." CP 723. The court did not reach the wife's requests for alternative relief. CP 724. The court further found "[t]here is no arbitrable dispute because of the Court's findings and conclusions regarding the CR 2A Agreement." CP 725. The court awarded the wife attorney fees, though without stating any authority or reason except that her motion "was warranted by the facts and the law." CP 726. The court also struck various factual claims the wife made in her reply. CP 726.

The husband timely appealed. CP 735-758.

III. ARGUMENT

A. THE ARBITRATION CLAUSE APPLIED AND REQUIRED THE COURT TO REFER THE PARTIES' DISPUTE TO ARBITRATION.

First, it bears noting that Washington law encourages settlement of disputes and strongly encourages arbitration. *Hadley v. Cowan*, 60 Wn. App. 433, 438-439, 804 P.2d 1271 (1991) (favors settlements between family members); *Davidson v. Hensen*, 135 Wn.2d 112, 118, 954 P.2d 1327 (1998) (strong public policy favoring arbitration). Arbitration is a highly valued mechanism by which parties with disputes may avoid “the formalities, the delay, the expense and vexation of ordinary litigation.” *Barnett v. Hicks*, 119 Wn.2d 151, 160, 829 P.2d 1087 (1992). Indeed, the “very purpose of arbitration is to avoid the courts insofar as the resolution of the dispute is concerned.” *Id.* This value is lost if parties seek to evade their own agreements to arbitrate.

The issue presented here is whether the arbitration clause was binding on the parties. At the wife’s urging, the trial court skipped over this issue to decide the substance of the parties’ dispute (i.e., the meaning of the agreement regarding maintenance). Thus, the issue on appeal is whether the trial court correctly denied the husband’s motion for arbitration. Arbitrability is

a question of law, which this Court reviews de novo. *Townsend v. Quadrant Corp.*, 173 Wn.2d 451, 455 – P.3d – (2012), *affirming Townsend v. Quadrant Corp.*, 153 Wn. App. 870, 224 P.3d 818 (2009).

Washington law makes clear a trial court must first independently evaluate the validity of an arbitration clause before determining the substance of a dispute. *In re Marriage of Bernard*, 137 Wn. App. 827, 832-833, 155 P.3d 171 (2007), *citing Pinkis v. Network Cinema, Corp.*, 9 Wn. App. 337, 345, 512 P.2d 751 (1983).³ This rule applies here, meaning that “[i]nstead of trying the validity of the agreement as a whole, the trial court should have first determined whether the arbitration clause, viewed independently, was substantively or procedurally unconscionable.” *Bernard*, 137 Wn. App. at 832. Here there was no challenge to the arbitration clause itself or even any suggestion that it was improperly transacted. *Pinkis*, 9 Wn. App. at 345. Accordingly, the court should simply have enforced it by referring the parties to Harry Slusher for arbitration.

³ This statement of the law was *dictum* in *Bernard*, because the issue was not raised by the parties below. The holding in *Bernard* (re: the prenuptial agreement) was affirmed at *In re Marriage of Bernard*, 165 Wn.2d 895, 204 P.3d 907 (2009). The *Bernard dictum* is supported by the cited authority, *Pinkis*.

The *Townsend* case, cited above, mandates this outcome.

Townsend involved a dispute arising from a purchase and sale agreement (PSA) for real estate. The PSA included a broad mandatory arbitration clause substantively identical to the one here.

The two are set forth below in sequence

Any controversy or claim arising out of or relating to this Agreement, any claimed breach of this Agreement, or any claimed defect relating to the Property, including, without limitation, any claim brought under the Consumer Protection Act [, ch. 19.86 RCW,], (but excepting any request by Seller to quiet title to the Property) shall be determined by arbitration commenced in accordance with RCW 7.04[A].060.

Townsend, 173 Wn.2d at 454 (emphasis added).

Any disputes in the drafting of the final documents or any other aspect of this agreement (form or substance), or any issue not discussed shall be submitted to Harry R. Slusher for binding arbitration. (RCW 7.04A).

CP 1042 (emphasis added). As noted in *Townsend*, such agreements are declared valid and enforceable by RCW

7.04A.060.⁴ Furthermore, the statute sharply curtails the trial

⁴ The statute provides as follows:

(1) An agreement contained in a record to submit to arbitration any existing or subsequent controversy arising between the parties to the agreement is valid, enforceable, and irrevocable except upon a ground that exists at law or in equity for the revocation of contract.

court's inquiry. Specifically, where there is an arbitration clause, "a court may entertain only a challenge to the validity of the arbitration clause itself, not a challenge to the validity of the contract containing the arbitration clause." *Townsend*, 173 Wn.2d at 456 (citing *Townsend v. Quadrant Corp.*, 153 Wn. App. at 879-880).

Here, as in *Townsend*, there was no attack upon the arbitration clause itself, just an attack upon the maintenance provision and the agreement overall. The wife made no attempt to carry her burden to show the agreement to arbitrate was not enforceable. *Townsend*, 173 Wn.2d at 455.

The trial court seemed to think the dispute about the agreement was not arbitrable because it viewed the contract as "clear on its face." CP 723. But the court could not reach the issue of the contract's meaning. That issue had to be submitted to arbitration. *Townsend*, 173 Wn.2d at 460. Here, by so doing, the court overreached its authority under the statute and the arbitration

(2) The court shall decide whether an agreement to arbitrate exists or a controversy is subject to an agreement to arbitrate.

(3) An arbitrator shall decide whether a condition precedent to arbitrability has been fulfilled and whether a contract containing a valid agreement to arbitrate is enforceable.

(4) If a party to a judicial proceeding challenges the existence of, or claims that a controversy is not subject to, an agreement to arbitrate, the arbitration proceeding may continue pending final resolution of the issue by the court, unless the court otherwise

clause. The court's orders should be vacated, including the order awarding attorney fees to the wife, and the matter remanded with an order to submit the dispute about maintenance to the arbitrator, as the parties agreed.

B. EVEN IF THE ARBITRATION CLAUSE DID NOT APPLY, THE COURT'S ANALYSIS OF THE CR 2A WAS ERRONEOUS.

The trial court thought the meaning of the maintenance provision was "clear on its face" and, therefore, no extrinsic evidence could be admitted for the purpose of interpreting the provision. CP 723, 725. From these premises, the court concluded further that the issue was not arbitrable. CP 725. As observed above, the fact that the parties had a dispute subjected them to the requirement for arbitration, regardless of the court's opinion about the substance of their dispute. But assuming, for the sake of argument, the court could reach the issue, the court did not reach the correct conclusion, a conclusion this Court reviews *de novo*. That is, whether a provision is ambiguous is a legal question. *Schwab v. City of Seattle*, 64 Wn. App. 742, 751, 826 P.2d 1089 (1992).

An ambiguity exists if the contract language is fairly susceptible to more than one reasonable interpretation. *Daley v.*

Allstate Ins. Co., 135 Wn.2d 777, 783-784, 958 P.2d 990 (1998). Assuming for the sake of argument that the wife's interpretation is reasonable (not conceded), certainly the maintenance provision is also susceptible to the husband's interpretation, which is reasonable. Certainly, he better explains the text itself, with its strikeouts, etc. CP 1061, 1074-1075. Moreover, under his interpretation, the wife receives maintenance until the youngest child leaves the home. CP 622, 1074. She receives it in a substantial amount, despite that her age and her education strongly favor her for successful re-entry into the job market. CP 989 (50 years of age), 1075 ("masters prepared nurse"). Indeed, the maintenance amount is generous by standards a trial court likely would have applied, given the length of the marriage (i.e., 17 or 18 years) and the relative youthfulness of the parties. CP 622, 989. See *In re Marriage of Rockwell*, 141 Wn. App. 235, 243, 170 P.3d 572 (2007) (long term marriage is 25 years or more); 2 WASH. STATE BAR ASS'N, FAMILY LAW DESKBOOK § 32.3(3), at 32-17. This is a midrange marriage of two professionals. Moreover, the husband's interpretation better comports with common sense, i.e., a maintenance figure reached by agreement that is close to the

as described above, the wife's motion was not warranted by either the facts or the law. The CR 2A she signed expressly provides for arbitration of any disputes by the person who mediated the agreement, yet the wife, after obtaining a new attorney (CP 641), instead initiated these costly judicial proceedings. The court should have sanctioned her under CR 11, as the husband requested. CP 1076. Certainly, for these reasons, the award of fees should be vacated.

Moreover, the trial court's award has no basis in law or fact. "In Washington, attorney fees may be awarded only when authorized by a private agreement, a statute, or a recognized ground of equity." *Fisher Props., Inc. v. Arden-Mayfair, Inc.*, 106 Wn2.d 826, 849-850, 726 P.2d 8 (1986). The court cited none of these grounds and none of them pertains. Nor did the court substantiate its award with findings, and, on that basis alone, it is reversible. *Bay v. Jensen*, 147 Wn. App. 641, 661, 196 P.3d 753 (2008). For multiple reasons, the attorney fees award should be vacated.

Moreover, the trial court should be required to revisit the question of CR 11 sanctions against the wife, since it denied the request for such terms based on an erroneous understanding of the

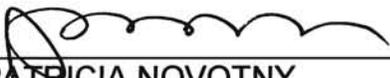
law and, therefore, abused its discretion. See *In re Marriage of Farmer*, 172 Wn.2d 616, 625, 259 P.3d 256 (2011) (“[a] error of law constitutes an untenable reason”). Here, the wife agreed to submit “any dispute” to arbitration, then turned around and asked the court to read the maintenance provision in a way that resulted in an enormous windfall to her. Not only did she violate the agreement she signed, she forced the parties into the litigation they had agreed to avoid, added to court congestion, and increased costs to everyone. This is precisely the kind of conduct CR 11 properly sanctions.

IV. CONCLUSION

For the foregoing reasons, the court’s orders should be vacated, including the order awarding attorney fees to the wife, and the matter remanded with an order to submit the dispute about maintenance to the arbitrator, as the parties agreed. The court should also be ordered to revisit the issue of CR 11 sanctions.

Dated this 23rd day of March 2012.

RESPECTFULLY SUBMITTED,



PATRICIA NOVOTNY
WSBA #13604
Attorney for Appellant

**INDEX TO APPENDIX:
BRIEF OF APPELLANT**

In re Marriage of Pascale
Court of Appeals, Division One, No. 68103-6-1

<u>Number</u>	<u>Description</u>
A	CR 2A (CP 1041-1063)
B	Excerpts of Statutory Provisions

APPENDIX A

APPENDIX A

APPENDIX: RELEVANT STATUTES AND RULES

CR 2A Stipulations

No agreement or consent between parties or attorneys in respect to the proceedings in a cause, the purport of which is disputed, will be regarded by the court unless the same shall have been made and assented to in open court on the record, or entered in the minutes, or unless the evidence thereof shall be in writing and subscribed by the attorneys denying the same.

CR 11 Signing and drafting of pleadings, motions, and legal memoranda: Sanctions

(a) Every pleading, motion, and legal memorandum of a party represented by an attorney shall be dated and signed by at least one attorney of record in the attorney's individual name, whose address and Washington State Bar Association membership number shall be stated. A party who is not represented by an attorney shall sign and date the party's pleading, motion, or legal memorandum and state the party's address. Petitions for dissolution of marriage, separation, declarations concerning the validity of a marriage, custody, and modification of decrees issued as a result of any of the foregoing petitions shall be verified. Other pleadings need not, but may be, verified or accompanied by affidavit. The signature of a party or of an attorney constitutes a certificate by the party or attorney that the party or attorney has read the pleading, motion, or legal memorandum, and that to the best of the party's or attorney's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

- (1) it is well grounded in fact;
- (2) it is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law or the establishment of new law;
- (3) it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and
- (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a

lack of information or belief. If a pleading, motion, or legal memorandum is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a pleading, motion, or legal memorandum is signed in violation of this rule, the court, upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or legal memorandum, including a reasonable attorney fee.

(b) In helping to draft a pleading, motion or document filed by the otherwise self-represented person, the attorney certifies that the attorney has read the pleading, motion, or legal memorandum, and that to the best of the attorney's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

- (1) it is well grounded in fact,
- (2) it is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law or the establishment of new law,
- (3) it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation, and
- (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief. The attorney in providing such drafting assistance may rely on the otherwise self-represented person's representation of facts, unless the attorney has reason to believe that such representations are false or materially insufficient, in which instance the attorney shall make an independent reasonable inquiry into the facts.

APPENDIX B

APPENDIX B

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SUPERIOR COURT OF WASHINGTON
COUNTY OF KING

In re the Marriage of:

LISA R. PISCALÉ,
Petitioner,

And

MICHAEL J. PISCALÉ,
Respondent.

No.: 11-3-01399-9
SEA

CR2A STIPULATION AND AGREEMENT

The following is a full and complete settlement stipulation and agreement of the parties pursuant to CR2A.

I. PARENTING PLAN

See attached.

II. CHILD SUPPORT

See attached.

①

1 **III. SPOUSAL MAINTENANCE**

2
3
4 *See attached.*

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10 **IV. PROPERTY DIVISION**

11 A. Except as specified herein, each party shall retain any and all assets acquired by that party
12 subsequent to separation.

13 B. Except as specified herein, each party shall pay any and all obligations incurred by that
14 party subsequent to separation.

15 C. Unless otherwise specified herein, each party shall pay any and all obligation due on any
16 assets received by that party.

debt, interest & penalties.

17 D. Each party shall hold the other harmless with regard to any obligations to be paid by
18 him/her. E. *See attached.*

19
20 **V. MISCELLANEOUS PROVISIONS**

21 A. The parties agree the marriage is irretrievably broken.

22 B. The wife acknowledges she is not pregnant.

23 C. Each party agrees and stipulate this is a full and complete agreement between the parties
24 and is enforceable in court. Each party understands that even though final documents yet need to be
25 prepared this stipulation and agreement is binding upon execution and enforceable in court. The parties
26 stipulate and acknowledge that this agreement is fair and equitable.

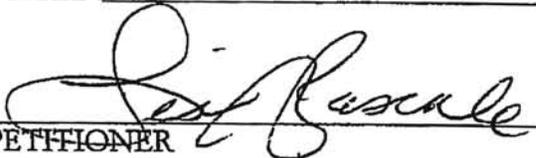
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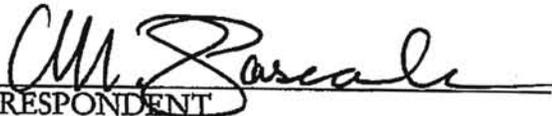
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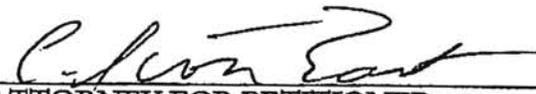
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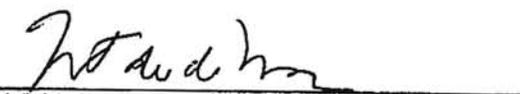
D. Any disputes in the drafting of the final documents shall be submitted to Harry R. Slusher for arbitration. (RCW 7.04A).
binding

DATED: 9-6-11


PETITIONER


RESPONDENT


ATTORNEY FOR PETITIONER
WSBA # 1024


ATTORNEY FOR RESPONDENT
WSBA # 24386


HARRY R. SLUSHER, WSBA #7401

(*) or any other aspect of this agreement (form or substance), or any issue not discussed



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**Superior Court of Washington
County of King**

In re the Marriage of:

LISA R. PASCALE

Petitioner,
and

MICHAEL J. PASCALE,

Respondent.

No. 11-3-01399-9 SEA

Parenting Plan

Final Order (PP)

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:

<u>Name</u>	<u>Age</u>
Michael W. Pascale	16
Christopher A. Pascale	15

*Parenting Plan (PPP, PPT, PP) - Page 1 of 11
WPF DR 01.0400 Mandatory (6/2008) RCW 26.09.016,
.181; .187; .194*

1 **II. Basis for Restrictions**

2 *Under certain circumstances, as outlined below, the court may limit or prohibit a*
3 *parent's contact with the child(ren) and the right to make decisions for the child(ren).*

4 **2.1 Parental Conduct (RCW 26.09.191(1), (2))**

5 Does not apply.

6 **2.2 Other Factors (RCW 26.09.191(3))**

7 *Does not apply*

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

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

12 ~~The abusive use of conflict by the parent which creates the danger of
13 serious damage to the children's psychological development.~~

14 **III. Residential Schedule**

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

22 **3.1 Schedule for Children Under School Age**

23 There are no children under school age.

24 **3.2 School Schedule**

*Neither parent shall ask child to make
25 decisions or requests involving the residential
26 schedule, and he/she will discuss those matters*

27 Upon enrollment in school, the child(ren) shall reside with the mother except for
28 the following days and times when the child(ren) will reside with or be with the
29 father:

*with
the
other
parent*

- 30
1. Every other weekend from Friday 6:00 pm until start of school Monday or, if no school, then until start of school Tuesday.
 2. Every other Monday from 6:00 pm until return to school on Tuesday during the week following the mother's weekend

- 1 3. The parties understand that father's work schedule changes and that both
2 parties agree to be flexible in making reasonable adjustments as may be
3 required by his work schedule. Father shall promptly provide Mother a
4 copy of his regular work schedule as soon as practicable after receipt by
him and any revisions thereto as soon as they become known.

5 **3.3 Schedule for Winter Vacation**

6 The children shall reside with the mother in odd years and the father in even
7 years from 6pm on the last day of school before the break to noon December 25
8 and with the other parent from then to start of school first day after the vacation.

9 **3.4 Schedule for Other School Breaks**

- 10 1. Spring Vacation shall be with mother in even numbered years and father
11 in odd numbered years.
12 2. Midwinter vacation shall be with father in odd numbered years and mother
13 in even numbered years.
14 3. Unless otherwise specified, school breaks are defined as beginning at
6pm on the last day of school before the break and ending on the first day
of school following the break;

15 **3.5 Summer Schedule**

16 Same as school year schedule.

17 **3.6 Vacation With Parents**

18 Each parent shall have the children for two weeks of uninterrupted residential
19 time with the children each summer. The two weeks may be consecutive, or
20 taken in blocks of 7 days each.

21 Notice of vacation elections shall be made by April 1st each year. If there is a
22 conflict in scheduling, mother's request prevails in even numbered years and
23 father's request prevails in odd numbered years; provided, if a parent with priority
24 fails to give notice by April 1st, the first parent to provide written notice of the two
25 week blocks her or she elects for that summer vacation shall prevail that year.

26 If a parent has not elected his or her two weeks of summer vacation by June 1,
27 the other parent may designate the children's vacation weeks with the delayed-
28 notice parent that year, regardless which parent may have otherwise had priority
29 that year. The purpose of these provisions is to allow each parent to schedule in
a timely manner both their time with and their time without the boys each
summer.

If this results in a vacationing
parent having 3 weekends in
row, the next 2 weekends
will go to the other parent

1 **3.7 Schedule for Holidays**

2 The residential schedule for the child(ren) for the holidays listed below is as
3 follows:

	With Mother (Specify Year <u>Odd/Even/Every</u>)	With Father (Specify Year <u>Odd/Even/Every</u>)
4		
5		
6		
7	See section 3.3	
8	with the parent schedule for the adjacent weekend	
9	See section 3.4.	
10	with the parent scheduled for the adjacent	
11	weekend	
12	July 4th	Even
13	Labor Day	See below
14	Veterans' Day	with the parent scheduled for the adjacent
15	weekend or, if not adjacent, then with whichever parent is scheduled to have them	
16	under the school year schedule.	
17	Thanksgiving Day	Even
18	Christmas Eve	See 3.3
19	Christmas Day	See 3.3

1. Thanksgiving shall be from 6pm Wednesday to start of school Monday.
2. The alternating weekend schedule shall resume with the other parent the weekend following a parent's priority weekend.
3. Holidays allocated as being adjacent to the regular alternating weekend schedule shall start at 6pm Thursday for Friday holidays and shall be extended to start of school Tuesday for Monday holidays. Adjacent holidays, as used herein, shall include those Fridays and Mondays recognized as non court days when the actual holiday falls on Saturday or Sunday.

22 **3.8 Schedule for Special Occasions**

23 The residential schedule for the child(ren) for the following special occasions (for
24 example, birthdays) is as follows:

	With Mother (Specify Year <u>Odd/Even/Every</u>)	With Father (Specify Year <u>Odd/Even/Every</u>)
25		
26		
27	Mother's Day	Every
28	Father's Day	Every
29	Mother's Birthday	Every
30	Father's Birthday	Every
	Michael's Birthday	Even

Christopher's Birthday Even Odd

- 1. Mothers' and Fathers' Days shall begin at noon and end at 6pm on Sunday.
- 2. The children's birthdays shall begin at 6pm and end at 9pm on the birthday, but if

non-school day, then
noon until 9PM.

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:

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

- | | | | | | |
|---|--------------|-----------------------|---|--------------|-----------------------------|
| 3 | 1 | winter vacation (3.3) | 1 | X | holidays (3.7) |
| 3 | 2 | school breaks (3.4) | 2 | X | special occasions (3.8) |
| 4 | 3 | summer schedule (3.5) | 4 | X | vacation with parents (3.6) |

3.10 Restrictions

Does not apply because there are no limiting factors in paragraphs 2.1 or 2.2.

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 child(ren), between parents shall be as follows: The receiving parent shall provide transportation.

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 child(ren) 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

3.13.1. The children shall not be taken out of school without agreement of both parents.

3.13.2. The father occasionally must work on an on-call basis. If the father has overnight residential time scheduled with the children for a time when he is on-call, the children shall be returned to the mother by 8 PM in the evening. They

1 will resume their time with the father, if any remains for that period, after school
2 the next day, or if no school, then at 9am.

3 The alternating weekend schedule shall resume with the father the next regular
4 weekend following the mother having the children due to his being on call.

5 3.13.3. The father's residential time shall be conditioned upon participation
6 in, and completion of, the WPHP ~~treatment and recovery~~ program and
7 compliance with any requirements of that program, including but not limited to
8 upon abstinence from any drugs not prescribed to him by another doctor. The
9 children shall reside with the mother during any period of the father's
10 noncompliance with the WPHP program. OK

11 *mzkg*
Wahl 3.13.4. The mother shall have a right of first refusal to care for the children
12 in the event that the father is unavailable to care for them during his scheduled
13 residential time for an overnight ~~or for a block of more than 8 hours~~ on any
14 special occasions and holidays.

13 3.14 Summary of RCW 26.09.430 - .480, Regarding Relocation of a Child

14 This is a summary only. For the full text, please see RCW 26.09.430 through
15 26.09.480.

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

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

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

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

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

28 A relocating person may ask the court to waive any notice requirements that may
29 put the health and safety of a person or a child at risk.
30

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

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

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

8 An objection may be filed by using the mandatory pattern form WPF DRPSCU
9 07.0700, (Objection to Relocation/Petition for Modification of Custody
10 Decree/Parenting Plan/Residential Schedule). The objection must be served on
11 all persons entitled to time with the child.

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

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

19 **NOTWITHSTANDING THE PROVISIONS OF THE RELOCATION STATUTE,
20 THE PARTIES AGREE THAT NEITHER PARENT SHALL RELOCATE THE
21 CHILDREN OUTSIDE OF KING COUNTY WITHOUT AGREEMENT. THE
22 PARENTS FURTHER AGREE, THAT IN ANY RELOCATION PROCEEDINGS,
23 THERE SHALL BE NO PRESUMPTION IN FAVOR OF RELOCATION.**

24 IV. Decision Making

25 4.1 Day-to-Day Decisions

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

30 4.2 Major Decisions

Major decisions regarding each child shall be made as follows:

Education decisions	Joint*
Non-emergency non-routing health care	Joint*
Routine Health Care	Joint*
Religious upbringing	Joint*
Body Art, Tattoos, Body Piercing	Joint*

Parenting Plan (PPP, PPT, PP) - Page 7 of 11
WPF DR 01.0400 Mandatory (6/2008) RCW 26.09.016,
.181; .187; .194



1 Obtaining a Driver's License
2 Extracurricular activities

Fz will direct WPHH to keep fully advised at all times & will Joint* Joint*

if Fz over not in full compliance with WPHH program requirements, then Mo. be sole decision-maker.

*The parents shall share joint decision making once the father has completed and fully complied with the WPHH treatment program and participated in counseling re: the making of disparaging remarks about the mother in front of the children. Prior thereto, the mother shall have sole decision making.

6 **4.3 Restrictions in Decision Making**

to verify compliance at all times.

7 The parents shall share joint decision making once the father once the father has
8 completed and fully complied with the WPHH treatment program and
9 participated in counseling re: the making of disparaging remarks about the
10 mother in front of the children, until such time the sole decision making is
11 ordered to the petitioner for the following reasons:

12 One parent is opposed to mutual decision making, and such opposition is
13 reasonably based on the following criteria:

- 14 (a) The existence of a limitation under RCW 26.09.191;
- 15 (b) The history of participation of each parent in decision making
16 in each of the areas in RCW 26.09.184(4)(a);
- 17 (c) Whether the parents have demonstrated ability and desire to
18 cooperate with one another in decision making in each of the areas in
19 RCW 26.09.184(4)(a); and
- 20 (d) The parents' geographic proximity to one another, to the
21 extent that it affects their ability to make timely mutual decisions.

22 **V. Dispute Resolution**

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

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

28 mediation by first avail. of Larry Bask or Lynn Pollock
29 mediation by Harry Slusher or other agreed upon mediator, if this box is
30 checked and issues of domestic violence or child abuse are present, then
the court finds that the victim requested mediation, that mediation is

Fz is prohibited from discussing any aspects of this case except residential schedule with the children; and is further prohibited from disparaging the mother in front of the children.

Melce
Motel

1 appropriate and that the victim is permitted to have a supporting person
2 present during the mediation proceedings

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
5 support worksheets.

6 The dispute resolution process shall be commenced by notifying the other party
7 by written or electronic request.

8 In the dispute resolution process:

- 9
- 10 (a) Preference shall be given to carrying out this Parenting Plan.
 - 11 (b) Unless an emergency exists, the parents shall use the designated process
12 to resolve disputes relating to implementation of the plan, except those
13 related to financial support.
 - 14 (c) A written record shall be prepared of any agreement reached in
15 counseling or mediation and of each arbitration award and shall be
16 provided to each party.
 - 17 (d) If the court finds that a parent has used or frustrated the dispute resolution
18 process without good reason, the court shall award attorneys' fees and
19 financial sanctions to the other parent.
 - 20 (e) The parties have the right of review from the dispute resolution process to
21 the superior court.

22 VI. Other Provisions

23 There are the following other provisions:

*Neither party shall
unreasonably withhold permission (and
use of passports) for other party to
travel with children outside the
country.*

24 1. Objectives

25 The parties agree that the objectives of the parenting plan are to:

- 26 A. Provide for their child's physical care;
- 27 B. Maintain the child's emotional stability;
- 28 C. Provide for their child's changing needs as he/she grows and matures, in a
29 way that minimizes the need for future modification to this parenting plan;
- 30 D. Set forth the authority and responsibility of each parent with respect to their
child;
- E. Minimize the child's exposure to harmful parental conflict;
- F. Encourage each other to meet his/her responsibilities to their child through
agreements in the parenting plan and rather than relying upon judicial
interventions;
- G. Otherwise protect the best interests of their child at all times.

1 **2. School Records**

2 Each parent shall have equal and independent authority to confer with school, or
3 other educational or extracurricular programs with regard to their child's progress,
4 and each shall have free and timely access to school and program records.
5 Each parent shall have authority to give parental consent or permission as may
6 be required concerning school, or other programs for their child, while the child is
7 residing with that parent.

6 **3. Health Care**

7 Each parent is expected to, and has authority to provide emergency health care
8 for their child in case of accident or serious illness and shall inform the other
9 parent of such action, as soon as practical. Each parent shall have full and
10 complete access to the child's health care providers and medical records.

9 **4. Participation in Extracurricular Events**

- 10 A. The child shall be accompanied by the parent with whom he/she is
11 residing at the time of a given extracurricular event. The other parent shall
12 not be limited from attendance at that event, providing the attendance by
13 the non-residential parent is not disruptive to the other participants.
14 B. Each parent shall be responsible for keeping him/herself advised of school,
15 athletic, and extracurricular events in which the child participates. Both
16 parents may participate in school activities for a child such as open house,
17 athletic events, and the like.

15 **5. Unhampered Access**

16 Each parent shall exert every effort to maintain free access, or unhampered
17 contact between the child and the other parent so as to foster affection between
18 the child and each parent. Neither parent shall do anything that will estrange any
19 child from the other parent, nor shall a parent do anything that would tend to
20 injure a child's opinion of the other parent, or to impair in any way the natural
21 development of the child's love and respect for both parents.

20 **6. Telephone Access**

21 Each party shall be promptly advised by the other of any change of residence,
22 including any change in telephone number, and while a child is with one parent,
23 the other parent shall have uncensored telephone communication with the child
24 at reasonable times.

24 **7. Respect for One Another's Parenting Style and Authority**

25 The parties agree to honor one another's parenting style, privacy, and authority.
26 Neither will interfere in the parenting style of the other parent nor will either make
27 plans or arrangements or infringe upon the other's authority or time schedule to
28 be spent with their child, without the express agreement of the other party. Each
29 party agrees to encourage their child to discuss his/her grievance directly with
30 the parent in question. It is the intention of the parties to consistently encourage
a direct child/parent bond.

29 **8. Mediation/Legal Representation**



- A. The parties have utilized the services of Harry Slusher as mediator in reaching their agreement.
- B. Wife has consulted with or been represented by C. Scott East, WSBA #1024, and Husband has consulted with or been represented by Natalie De Maar, WSBA #24386.

VII. Declaration for Proposed Parenting Plan

Does not apply.

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: _____

Judge/Commissioner

Presented by: _____

Approved for entry: _____

 Lisa R. Pascale Date
 Petitioner

 Michael J. Pascale Date
 Respondent,

 C. Scott East, WSBA #1024 Date
 Attorney for Petitioner

 Natalie De Maar, WSBA #24386 Date
 Attorney for Respondent

1

1. Date of Separation (DOS) is 4-1-10

2. Unless specified otherwise herein,

(a) Each is fully responsible for his/her post-separation debt(s), and

(b) Each will keep his/her post-separation acquisitions.

3. Non-vehicle, tangible personal property —

H will have opportunity to do walk through of family home. Thereafter, parties will attempt to divide this category of assets by agreement. Slusher will arbitrate (RCW 7.04A) any items in dispute.

H will keep any such items already in his possession.

4. H will prepare all final papers, incl. PSA

W will have them entered.

(2)

5. Beyond what may have already been paid, each will pay his/her own attorney fees and costs in the matter, except: H will contribute \$2500 toward W's fees and costs.

6. H pay the mediator's fee today.

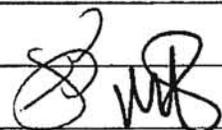
7. Each will be awarded term life insurance, if any, insuring his/her own life - subject to other provisions herein.

8. Traditional (checking/savings) bank accounts -

(a) Each keep any such accounts in his/her sole name.

(b) There are no joint bank accounts.

(c) 'Community' bank account funds have either been divided or spent, and will not be considered further.



9. Credit cards/unsecured debt -

(a) Each will keep any CC accounts in his/her sole name.

(b) There are no longer any joint CC accounts

(c) Transfer to W by QDRO roll-over all of the 401(k) account in H's name (leaving

H represents this is \$10,750

the required amount needed in connection with outstanding loan), W will 'cash in' and through Atty East's trust account, pay the following in the following order:

(1) US Bank Equity line

(2) US Bank LOC

(3) USB Visa

(4) BOA Visa.

(5) Nordstrom

(6) Macy's

Matrix debt



H 'service' in the meantime & responsible for any remainder owing

W service in the meantime & responsible for any remainder owing

(Divide any balance H-40%, W-60% - after W's tax on all QDRO transfer)

(d) H responsible for ~~Matrix debt~~; 401(k) loan and loan from his mother. & ~~past due HOA~~

10. Misc. -

(a) W responsible for the remaining \$300 owed to Howard Bartlett

(b) Continue present financial arrangements, i.e., \$11,100/mo. from H to W, through Sept. 2011

(c) H's ^{remaining} inheritance and wrongful death claim (from his father's demise) are his separate properties.

(d) Yamaha motorcycle is Christopher's.

(e) H responsible for any tax liabilities arising from prior joint tax returns.

no later than

11. ~~(a) The home will be sold. It shall be listed 7-1-15 by a listing agent chosen by agreement of the parties. If they are unable to agree, Slusher will pick one.~~

~~(b) Own as tenants-in-common, pending sale closing.~~

~~(c) The parties shall cooperate fully in the sale process; and unless they agree otherwise, they shall follow all recommendations of the agent in connection with the listing and sale; provided that if either party objects to a particular recommendation, Slusher will arbitrate (RCW 7.04A)~~

~~(d) If any recommendation of the agent requires an out-of-pocket expenditure, the one paying it shall be reimbursed fully, dollar for dollar, from the sale proceeds as though it were a cost of sale.~~

~~(e) 'Net proceeds' = sales price minus mortgage balance(s) minus costs of sale.~~

~~(f) Pending a sale closing, W shall have possession of the property and shall be responsible for paying the ^{1st} mortgage, taxes, insurance, ^{H&A} utilities and all normal expenses of living there. W shall also be responsible for normal upkeep and maintenance. Share major repairs & maintenance, H-50% W-50%~~

~~(g) Slusher will arbitrate (RCW 7.04A) any/all issues or disputes concerning the listing and sale.~~

~~(h) Share any net proceeds or other effects of sale:~~

H - 50%
W - 50%

W keep all interest in house subject to mtg #1.

see page 5A

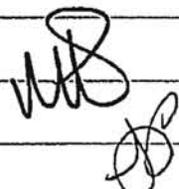
unless it is because

5A

→ If has not paid all he

is herein required
to pay

If W is more than 1 month late
in making the mortgage payments,
the house shall immediately be
placed on market for sale, except
it shall have 'right of first refusal'
to purchase house by matching any
offer.



6

12. Award - CP

(a)

	<u>H</u>	<u>W</u>
Lexus		x
Mercedes	x	
Overtake Surgery	9192	
Matrix	100	

(b) To settle all aspects of this case, including but not limited to W's claims of H's negatively productive conduct, H. pay W

1666
\$ ~~3850~~ / mo. for ~~42~~ 29 months

Starting month following termination of spousal maintenance (12/13). Due on 1st of each month. For tax purposes, this will also be spousal maintenance but will not terminate upon W's remarriage.

13. Spousal Maintenance -

(a) H pay W. Starting October, 2011

(b) Due: 15th

(c) Tax deductible for H. Income to W.

(d) Terminates upon W's death or remarriage.

(e) Survives H's death -

(1) will be secured by existing life insurance on H's life.

W will be named irrevocable beneficiary thereon to the extent needed to pay (then-present value) future unpaid maintenance at any point during the existence of the obligation. H will authorize the insurance company to communicate directly with W for purposes of verifying H's compliance with this obligation.

(2) if said insurance is not sufficient to fully secure the obligation, any 'shortfall' will be a claim against H's estate having the same priority as an award in lieu of homestead.

(f) non-modifiable as to amount and duration.

(g)

	amount		duration	
	9500	/mo. x	48	months
	9500	8500	22	
then	7500		14	
then	5000		12	

14. Child Support -

(a) Fa. pay Mo., starting October, 2011

(b) Due: 15th

(c) Amount: \$ 1600/mo.

(This is non-precedential for setting CS in the future)

(d) Adjustments: available per statute.

(e) Fa. will maintain health care insurance

(medical, dental, vision) for the children and

each of them as long as eligible.

However, Mo. will carry said insurance if such coverage is better coverage, or similar coverage at lesser cost.

(f) Exemptions: Fa. claim Michael, Mo. claim Christopher

When only 1 available, alternate it

with Mo. claiming first year.

However, for Fa. to claim 'his' exemption for any

given year, he must be fully current in his CS

and spousal maintenance obligations by 1/31

of the following year.

15. Child Support, continued -

(g) College:

- (1) Children must apply for all available grants and scholarships. After that,
- (2) Pay actual expenses, but not to exceed UW annual budget (revised annually),
 - (A) Child responsible for 10%
 - (B) Parents divide remaining percentage
Fz. 60%, Mo. 40%
- (3) Incorporate RCW 26.19.090

(h) Pay Fz. 60%, Mo 40%:

- (1) uninsured health care expenses
- (2) agreed-upon extra curricular expenses
- (3) Senior expenses
- (4) college applications
- (5) Car insurance.
- (6) cell phones

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

In re the Marriage of:

LISA R. PASCALE

Petitioner

and

MICHAEL J. PASCALE

Respondent

No. 68103-6-1

DECLARATION
OF SERVICE

FILED
COURT OF APPEALS DIV 1
STATE OF WASHINGTON
2012 MAR 26 AM 11:33

Jayne Hibbing certifies as follows:

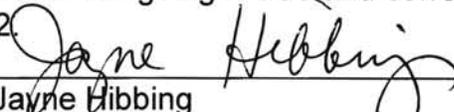
On March 23, 2012, I served upon the following true and correct copies of the Brief of Appellant, and this Declaration, by:

depositing same with the United States Postal Service, postage paid
 arranging for delivery by legal messenger.

Law Office of Ted O. Billbe
9 Lake Bellevue Drive, Suite 218
Seattle WA 98005

Valerie A. Villacin
Catherine Smith
1109 1st Ave., Suite 500
Seattle WA 98101-2988

I certify under penalty of perjury that the foregoing is true and correct.
Dated this 23rd day of March, 2012.



Jayne Hibbing
3418 NE 65th Street, Suite A
Seattle, WA 98115
206-781-2570