

Case No. 41040-1

COURT OF APPEALS, DIVISION II
OF STATE OF WASHINGTON

JAMES W BOWMAN JR

Appellant

VS.

KRISTINE L BOWMAN

Respondent

APPEAL FROM THE SUPERIOR COURT OF THE STATE OF
WASHINGTON FOR PIERCE COUNTY
THE HONORABLE JUDGE CUTHBERTSON

APPELLANT'S RESPONSIVE BRIEF

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COURT OF APPEALS
DIVISION II
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STATE OF WASHINGTON
BY _____
DEPUTY

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INTRODUCTION REPSONSE

James wants nothing more than to be able to support his family the way he did throughout the marriage until the mortgage industry and the economy collapsed. He was never able to satisfy the temporary orders. Almost a year and a half prior to separation, he liquidated all his savings to protect his family's home and to support his family during this crisis yet still was unable to pay most of the bills.

With sadness, James and Kristine informed the children that the home would have to be sold. A month later she had James forcibly removed from the family home shortly after his release from the Intensive Care Unit where he nearly died.

What happened to James, who has been a dedicated and good father and husband, should not happen to any spouse in a divorce. Kristine knew or should have known that all the community bills were delinquent and that James' had no savings and no money left. They communicated constantly about finances. She stated that she didn't need him anymore and she could make it on her own.

There are a number of questionable facts and mischaracterizations in Kristine's opening brief. For example, she states that a phantom amount of nearly \$200,000 of community funds were under James' unilateral control when no such amount existed at the time or during the time of separation or even the year prior to separation.

The 401(k) was liquidated in mid-2007 and subsequently used to make mortgage payments and other community debt in 2007 and 2008 preventing an earlier foreclosure. The tax refund went immediately to pay the family bills in 2008. There was no more cash or credit available to pay family obligations. And there were no PREMCO/CMG settlement funds. Kristine put forth a new argument that James "squandered" away money that neither she nor the trial court had ever mentioned, insinuated or concluded in the past.

Both parties had separate bank accounts; however, it was Kristine who failed to disclose her accounts. At the time of separation, Kristine's business was doing very well and she was gainfully employed. Even more interesting is that Kristine had unilateral control of over a \$200,000 in cash that flowed through her

hands in 2009 which included one-half of James's income, control of the family home, and 100% of the household contents and her own 401(k).

Another mischaracterization is this notion of a 1-day trial. This was a ½-day trial where none of James' motions were heard and Kristine failed to timely produce required statements and discovery. Yet, the Trial Court ignored James timely filings and exclusively used Kristine's untimely statement of "Property Division" in awarding her everything on her list. James objected multiple times. James had no ability to review, respond to it, or even present his case. His Domestic Relations Form with Property Division was the only document before the court. The trial court should have used that information to equitably divide the marital assets or the trial should have been declared a mistrial or continued.

"The right to be heard is an essential component of a fair and impartial system of justice"

- CJC RULE 2.6 Ensuring the Right to Be Heard.

The awarding of the "underwater" family residence was ordered without an appraisal and the husband was required to quit-claim the home while remaining liable for the mortgages or face jail

time. He capitulated under duress. This created a \$1 million dollar transfer payment to Kristine.

“No person shall be deprived of life, liberty, or property, without due process of law”

- Washington State Constitution Article I Sec 3 PERSONAL RIGHTS

Kristine then cites that “Pro Se litigants are bound to the same rules of procedure...” Here we have a case where the Pro Se litigant follows the rules for trial and the attorney violates them. When the Pro Se litigant unintentionally filed untimely pleadings in earlier proceedings, his pleadings were rejected. When her attorney with 31 years of experience files untimely documents his client is rewarded. When the Pro Se litigant’s discovery was late he was sanctioned but when the attorney failed to produce discovery he won a big settlement for his client.

Code of Judicial Conduct CANON 2: A JUDGE SHOULD PERFORM THE DUTIES OF JUDICIAL OFFICE IMPARTIALLY, COMPETENTLY, AND DILIGENTLY.

Contrary to what Kristine’s attorneys’ say, there were multiple citations to the record in James’ brief. He has asked and requested that if there is any material or technical deficiency in his brief or in his responsive brief that he be allowed to correct them.

“It is not a violation of this Rule for a judge to make reasonable accommodations to ensure pro se litigants the opportunity to have their matters fairly heard.”

- CJC 2.2 Impartiality and Fairness Comment (4)

To say James financially abandoned Kristine and their dependent children is a misrepresentation of the facts. She evicted him from the home when the bills were already delinquent because she said she didn't want to support him and could make it on her own. He resisted leaving until she threatened him with violence and legal action. He was forced to find low cost housing and was fortunate to have a supportive family where the children had a safe, friendly and familiar environment at “grandpa's” house. A place both Kristine and the children insisted James stay until he could get healthy and back on his feet literally and financially.

Finally, the trial court abused its discretion on multiple levels, the husband is still living in a basement, below the poverty level, cannot afford an attorney; and the wife enjoys a significant economic advantage, has been unjustly enriched and should be denied attorney's fees.

I. CORRECTION OF WIFE'S RESTATEMENT OF FACTS

- A. The Parties were married for over twenty years from December 1987 through dissolution in July 2010 - a period of 22.6 years and have three adult children

Kristine did not drop out of school to get married to James. 03/12/10 RP111. The two older children had scholarships that covered the cost of tuition, housing, books, fees, and "J.T." had a monthly stipend and "Katie" had work study. The children all had summer jobs to cover their own personal expenses. 3/12/10 RP102. The parties never set-up a college fund or saved any money for these expenses. CP44. Further, their intention is made clear by the fact that they did not claim their oldest son "JT" after he turned 18 and started college. See 2005 and 2006 Joint Tax Returns Exemptions (4) if qualifying child for child tax credit- unmarked. EX44. EX45. Later, both "JT" and the parties' daughter, "Katie", was also not claimed. See 2007 Joint Tax Returns Exemptions (4) if qualifying child for child tax credit- unmarked. EX46. The wife admits the parties did not claim "JT" on the tax returns. 03/12/10 RP102. The wife admits that there was no intention to pay for post-secondary education expenses while they were married. 03/12/10 RP103.

B. James did not own a company, He Owned Shares in a Lawful Corporation with multiple shareholders from October 1999 through June 2009 a period of 9.7 years and this only represents 43% of the length of time of the marriage. Kristine completed the couple's tax returns during most of

the marriage from 1987 through 2002 and had significant knowledge of the Corporation and contributed to the completion of all the joint tax returns for the couple throughout the marriage.

James was never secretive about any finances and Kristine confirmed in trial under cross-examination that "We (James and Kristine) always discussed our finances" and that she was aware of the corporation details including the formation of PREMCO with multiple shareholders. 3/12/10 RP112. She worked at times in the office. 03/12/10 RP45. She knew it was formed as a corporation. 03/12/10 RP113. Kristine had to buy the Suburban, an asset of the corporation, from the trustee assigned to the liquidation of the corporation - PREMCO. 3/12/10 RP72. She had access to the corporate checking account forging James' name on checks which caused bounced checks. EX59.

James and Kristine worked on the tax returns together and she had copies of the tax returns at the family home. EX86. When he filed the 2007 tax returns for this case on December 17, 2008, he found them in the home office in a folder with her handwriting on December 16, 2008. 03/12/10 RP28. She admits that it was her handwriting on the folder that James said he got from the family home and used to file the 2007 Tax returns with the court which

were readily available to Kristine on December 1, 2008 when she filed her financial disclosures and imputed James current income at \$10,000 net per month and "unknown" but she willfully withheld them in order to perpetuate a fraud. 03/12/10 RP118-119. She had copies of the 2007 tax return that she took to Bellarmine for financial aid for our children. CP40. If she misplaced the copy at home she certainly could have walked over to the financial aid office and picked-up a copy.

Kristine is an intelligent and savvy business woman who has a background in business accounting from the University of Washington, she is familiar with business entities having formed her own company and her parents were business owners. 3/12/10 RP112. She created multiple streams of income including a booth at the farmer's market that operated on a cash basis that was doing well. 03/12/10 RP75.

Kristine had a social security income statement that had 2006 and 2007 wages of James that she did not file as evidence when she imputed James income of \$10,000 per month net on December 1, 2008 and admitted that he did not make that much "obviously". 03/12/10 RP135. James' IRS statements showing his historical income were mailed to the family home along with all of

Kristine's business account statements, credit cards and other family financial statements and she controlled the only mailbox key. 03/12/10 RP112. She concealed credit cards that she created in James' name. CP41-42

Further, Kristine knew about the family's financial problems and she admitted that she was aware that the family was hurting financially. 03/12/10 RP114. She went to work because the family was struggling and the Bellarmine Tuition was already significantly past due. 03/12/10 RP50. She was supposed to use her income for tuition but she didn't the first two months and James had to borrow money. CP42. She had enough financial information to file her initial financial disclosure that detailed an itemization of liabilities with balances and payments that were very similar to James' initial filing.

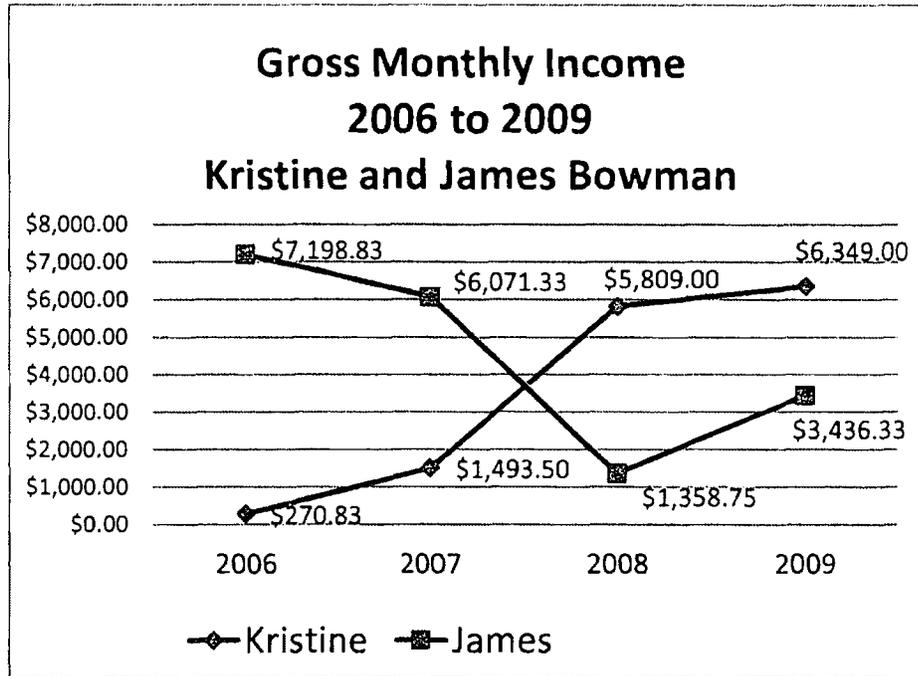
- C. Kristine caused additional financial hardship for the family when she had James forcibly removed from the Family Home when he had no money or income during the largest financial crisis in the history of the mortgage industry and since the great depression - "Sub-Prime Mortgage Crisis" which is important and relevant to the Economic Conditions of the parties at the time of divorce.

James was not served the temporary orders until December 24, 2008. There was simply no feasible way he could pay these

orders. This was not a refusal to comply it was an inability to comply.

Kristine threatened legal action and told James to move in with his father EX74. James had no money on October 12, 2008 when he was evicted less than two weeks after being released from the Intensive Care Unit of Tacoma General Hospital for bilateral pulmonary embolism with blood clots after nearly dying. CP23.

At the time she filed the Petition for Dissolution on December 1, 2008, Kristine had reported \$5,809.00 per month gross income. When the orders of December 18 were rendered, James had filed his paystub showing that he had made only \$1,200.55 from any employer from October through December 2008. CP5 and CP60. He had no cash in the bank or on hand. CP23. And personal monthly expenses of \$11,278.50 CP26. She had control of all the family income and assets at this time.

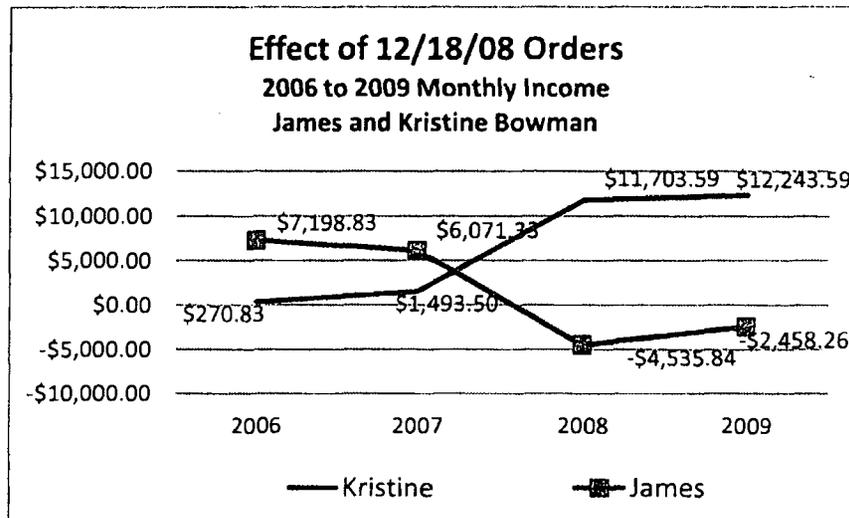


Note: 2006 and 2007 employment income is from the Joint Federal Income Tax Returns EX45, EX46. For James income for 2008 W2 CP60 and 2009 W2 EX48. Income for Kristine EX58 from her Financial Declarations filed with the Trial Court for the years 2008 and 2009

James needed financial help since the mortgage industry is in a worldwide tailspin. CP42

Further, James asserts that Kristine's income was substantially understated CP445, suppressed and she hid her income 3/12/11 RP24 and he showed how he calculated her net income at \$9,806 per month and well over \$200,000 in cash flow for her benefit CP478-480.

The Temporary Orders required James to pay \$5,894.59 in family support: \$4,500.00 per month in Spousal Maintenance and \$1,394.59 in Child Support when his average gross monthly income from 2006 through 2009 was \$4,516.31. These orders were not based on assets rather on Kristine's falsely stated income of James. The United States Bankruptcy Court Petition # 09-15631 Schedule I Par17 states **"His (James') income varies, average \$2,776.32 for 6 month from 12-1 to 6-09; 5 month gross = \$3,331"**. The family support order of nearly \$6,000 per month was over \$3,000.00 per month more than his net income. This caused a huge disparity of income of about \$15,000 per month in favor of the wife that resulted in forcing the husband to live below the poverty level.



After paying half his net income for over a year, after the Trial Court lowered the "Undifferentiated support and maintenance" to a total \$4,500 per month from January to August 2009 and to \$4,000 per month from August through March 2010 06/11/10 RP14, James was still in arrears on family support by \$80,000. If James graphed the net income after family support allocations then the arrearage would be even greater.

- D. James dutifully filed all the financial information required by the court several days before they were required and informed Kristine about the PREMCO/CMG Settlement and that she needed to have a Court order to have the terms of the Settlement Disclosed since it was sealed by a Federal Court Order. She never made such a request to the Court.

The PREMCO/CMG settlement was entered on November 20-25, 2008. EX49. The amount of the settlement did not cover all the accrued costs or losses for PREMCO and although PREMCO was not named in the temporary orders, James informed Kristine they had settled and that the settlement was sealed by the Federal Court and would require a Court order to disclose the terms. CP42. He offered to give her the settlement but she didn't want the liabilities. For over five months after finding out about the settlement, Kristine never attempts to sue PREMCO and never

requests a court order. It is James who wants this issue resolved and asked the court to order the terms of the settlement be disclosed on May 28, 2009 RP36.

In five months, James is already in arrears by \$45,000.00 and has \$19,000 in judgments. He is making only \$3,044 per month and has filed three sets of financial declarations CP132-137, CP56-81, CP105-119. He still has no money and his being garnished 50% of his income. James again tells Kristine he has talked with a bankruptcy attorney and the court says it would be a good idea to have a trustee in charge. 5/28/09 RP19-20. The Court concludes, "it's just a standard American family in the mortgage business, unfortunately." 5/28/09 RP35.

As a result, on June 9, 2009 James files for federal bankruptcy protection and the Superior Court in the State of Washington no longer has jurisdiction over the property. PREMCO settlement funds are not personal property. PREMCO shares are worth \$0.00 and have no value to the community since the liabilities exceed the assets. On June 16, 2009, PREMCO files for federal bankruptcy protection. All property and settlement funds are

accounted for at the request of the Trustee and PREMCO is dissolved.

In the meantime, during the court hearing on July 17, 2009 Kristine is complaining that James has not shown any financial information. 7/17/09 RP5. And didn't show any information about the litigation money although this was a hearing for revision of the May 28, 2009 ruling when nobody had started discovery and Kristine had not ever requested it. 7/17/09 RP10. What's unusual about this is that the trial court judge advocates for the wife. He puts forth and argument that the wife never made about the corporate settlement funds when he says, "I would argue that that's a community asset". 7/17/09 RP22. PREMCO was already in bankruptcy. He acknowledged James makes maybe \$3,000 per month. 7/17/09 RP17 and "you can't get blood from a turnip" 7/17/09 RP23 then instead of correcting the child support based on James' income he says "I'm not taking the gun away from his head until there's something on the table" 7/17/09 RP31. James was upset and intimidated by that comment. It was the first indication that James felt this judge was either bias or had been prejudiced.

E. The Trial lasted less 4 hours and James was on the stand for 30 minutes and was not allowed to present evidence,

argue his motion to vacate, motion to compel discovery and inspect his property, Motion for Contempt, or to modify erroneous orders as promised by the Trial Court. Then lacking jurisdiction and substantial evidence failed to equitably divide property instead awarded assets that had no value and never existed to Kristine and unlawfully delayed the ruling causing additional financial hardship to James and consequently the family

James stated that he needed 2-3 days for a trial on two different occasions based on two attorney recommendations and the amount of evidence needed to refute the false allegations of Kristine. The Judge having apparently, pre-determined his ruling, dismissed James's request and held a ½ day trial in which James had only 30 minutes to make his case. CP500.

James was very concerned about the time, while Kristine was on the stand, twice James mentioned the time and noted the clock and realized that she had been presenting for over one and one-half hours. 3/12/10 RP78 and RP121. When James was attempting to cross-examine, the trial court abruptly interrupted him stating that "we're going to get out of here at 4:30."

Before he took the stand James asked if the trial will be continued and the Trial Court responds "I really don't want to" 03/12/10 RP133. Shortly after 4:30pm James is asked to take the stand without his notes, brief, pleadings, exhibits, and evidence.

The trial court explains that James will be asking himself questions. But before he could even begin his arguments, the judge asks him questions 03/12/10 RP136. The trial Court makes misstatements about his income and he has trouble responding stating, "If I had them (exhibits) in front of me I could tell you where they're at." 03/12/10 RP140.

The entire transcript of March 12, 2010 is 174 pages long over a 4 hour period that's about 1.4 minutes per page. James does not take the stand until page 136 and cross-examination of him begins on page 152. Of the 16 intervening pages, the trial court directs and asks all the questions. James speaks up and says "I need to ask myself because I haven't a chance - -". The Trial Court interrupts "I'll give you a couple minutes." James tries to finish his sentence, "Because I haven't had a chance to ask - -I am going to have to - -". Before he could complete the sentence to ask for a continuance the judge interrupts again. 03/12/10 RP164 (last sentence on the page) and 03/12/10 RP165. James tries to continue until the Judge concludes by interrupting his testimony. 03/12/10 RP167.

At 1.4 minutes per page, James was given three pages or approximately 5.2 minutes to direct questions. For one-half of this time, questions were directed by the Trial Court. During the 30 minutes that he was on the witness stand without his notes, brief, or evidence, the judge abruptly cut him off and never allowed him to present his arguments. The trial court sought to give him only two (2) minutes and it seems to have accomplished its mission.

Code of Judicial Conduct CANON 2: A JUDGE SHOULD PERFORM THE DUTIES OF JUDICIAL OFFICE IMPARTIALLY, COMPETENTLY, AND DILIGENTLY.

RULE 2.6 Ensuring the Right to Be Heard.

(A) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law.

COMMENT

[1] The right to be heard is an essential component of a fair and impartial system of justice. Substantive rights of litigants can be protected only if procedures protecting the right to be heard are observed.

III. ARGUMENT- REBUTTAL

A. The Trial Court Abused Its Discretion by Not Only Failing to Vacate Erroneous Temporary Orders But Was Unfair, Unconstitutional - Preventing Due Process, and Abusive in Refusing to Hear the Motion To Vacate, Motion to Compel Discovery, and other Matters at Trial and Not Continuing the Trial or Declaring a Mistrial

Whether or not the December 18, 2008 Notice of Hearing was purposely or inadvertently not supplied to James as required for service is still mystery. James never saw it and never heard about

it. He relied on the Clerk to give him accurate information about the proceedings and the Clerk misinformed him that there was no hearing on that date. He was stunned and surprised when he found out. Which led him to panic and the confiscation the corporate vehicle to possibly sell if he had to pay judgments, and family support that at the time he had no way of satisfying. The order should have been vacated a long time ago under CR60, failure to comply with RCW 26.19, and misrepresentation when determining child support.

James called Kristine numerous times and told her that the attorney recommended that they jointly file bankruptcy but she wasn't interested. CP46-47. James along with the other shareholder decided to pay what they could and try to save the corporation from bankruptcy.

He could not afford the spousal maintenance of \$4,500.00

RCW 26.09.090 Maintenance orders for either spouse or either domestic partner — Factors

(f) *The ability* of the spouse or domestic partner from whom maintenance is sought *to meet his or her needs* and financial obligations while meeting those of the spouse or domestic partner seeking maintenance.

PREMCO Shares were valued at \$0.00 by the Federal Bankruptcy Court Schedule B – Personal Property because the

liabilities exceed assets. There was no 401(k). Consequently, these rulings were simply untenable. Based on the temporary and final orders James could not possibly meet his needs and other financial obligations.

Kristine's attorney, Catherine Smith, successfully reversed the Superior Court Ruling in which her client was ordered to pay untenable amounts after his company went bankrupt because he was in the technology industry after the "dot com" bubble burst that were reversed in part because the economic collapse was unforeseeable and beyond his control. The Trial Court was directed to revise and determine how much family support he over paid after it ordered him to pay "undifferentiated" family support that was beyond his ability. In the first appeal, the Court reversed and remanded to the trial court to reconsider and to segregate monthly child support, spousal maintenance, and any property distribution adjustments flowing there from. The Court also directed the trial court to set child support according to the requirements of chapter 26.19 RCW and directed the trial court to reconsider its award of attorney fees to the wife at trial. 129 Wn. App. 390, In re Marriage of McCausland and 159 Wn. 2d. 607, Feb. 2007 In re Marriage of McCausland.

Kristine states that James pays no rent. This is completely false. She has no basis to make that claim. He has rent payments of \$500.00 due per month. Admittedly James cannot always pay everything because of the untenable rulings of the Trial Court. If he did not live with a family member then he would be out on the street or living out of his car.

B. The Court Lacked Jurisdiction, Showed Bias and Prejudice and Abuse of Discretion Given The Fact That James Did Not Control The Money, Communicated At All Time With Kristine about The Use Of The Money, and Used His 401(k) and The Community Tax Refund to Pay The Family Expenses That Prevented Foreclosure of the Family Home in 2008-Rebutal to Kristine's Argument B.

James went bankrupt and PREMCO went bankrupt and the bankruptcy court had jurisdiction over all the property of the two distinct estates. Kristine never challenged the validity nor filed any claims as a creditor. The judgments awarded to her and her attorney from the December 18, 2009 orders were discharged.

28 U.S.C. § 1334. BANKRUPTCY CASES AND PROCEEDINGS

(a) Except as provided in subsection (b) of this section, the district courts shall have original and *exclusive jurisdiction* of all cases under title 11.

(b) Except as provided in subsection (e)(2), and notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11.

(e) The district court in which a case under title 11 is commenced or is pending shall have *exclusive jurisdiction*—

(1) of all the property, wherever located, of the debtor as of the commencement of such case, and of property of the estate; and
(2) over all claims or causes of action that involve construction of section 327 of title 11, United States Code, or rules relating to disclosure requirements under section 327

Under CR 60(b)(6) "The judgment had been satisfied, released, or discharged..."

There is no evidence that James' kept his 401(k) for any personal use to deprive Kristine or that he still had it at any time during separation or subsequently. She merely asserts that she doesn't know what happened to it. The parties were in constant communication about finances. She knew or should have known about the finances. since she had access to all the records, had seen all the tax returns, had helped prepare them, signed them, and delivered them to get financial aid for the children. They were located at her place of employment and she neglected to present them to the court. She admits that she had evidence, in the form of an IRS statement, which showed James' income for the immediate two years prior to the Petition for Dissolution. Yet she withheld the information and misrepresented James' income to the court that contributed to subsequent prejudice by the court and caused economic harm to James and the family.

The bankruptcy court had determined that James had no assets and his net income of less than \$3,000.00 per month before family support deductions was not sufficient to pay his obligations going back 6 months prior to his bankruptcy filing of June 9, 2009. James had no 401(k). The shares of PREMCO which constitute the community assets in which she would have been entitled to 50%, was determined to have no value (\$0.00).

Since the beginning of this action, James had stated that PREMCO liabilities exceeded its assets. And Kristine, being a savvy business woman with background in corporation formation and business accounting seems to have known this since she made no attempt to get a court order to review the sealed PREMCO settlement agreement even after James informed her of it and offered it to her. James was the one who asked the Court to order it.

The factual misrepresentation of James' income by Kristine induced a court order with judgments on December 18, 2008 that James could not possibly comply. James' contends that Kristine aided and abetted by her attorney, Jeffrey Robinson, committed

fraud and at the very least, her and him, misrepresented the facts that lead to untenable orders and judgments.

Court Rule 60 Relief from Judgment or Order:

60(b)(4) Fraud (whether hereto denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party

The trial court at a hearing in July, 2009 wants to hold “a gun to his (James) head” to force him to provide accounting that had not be propounded by Kristine, after acknowledging that James did not make the \$10,000.00 net income, and saying “you can’t get blood from a turnip” after determining James’ income maybe \$3,000.00 per month. Then the trial court advocates for her and puts forth an argument on her behalf stating he would argue that the PREMCO settlement is community property while PREMCO was under the jurisdiction of the federal district bankruptcy court. Kristine made no such argument. It was intimidating to James who felt he was being coerced to abide by court orders that he could not possibly fulfill. This was an abuse of discretion and seems to have violated Judicial Codes of Conduct.

“Public confidence in the judiciary is eroded by improper conduct. This principle applies to both the professional and personal conduct of a judge.”

- CJC Canon 1 COMMENT [1]

“Conduct that compromises the independence, integrity, and impartiality of a judge undermines public confidence in the judiciary.”

- CJC Canon 1 COMMENT [3]

CANON 1. A JUDGE SHALL UPHOLD AND PROMOTE THE INDEPENDENCE, INTEGRITY, AND IMPARTIALITY OF THE JUDICIARY, AND SHALL AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY.

RULE 1.1 Compliance with the Law

A judge shall comply with the law, including the Code of Judicial Conduct.

RULE 1.2 Promoting Confidence in the Judiciary

A judge shall act at all times in a manner that promotes public confidence in the independence,* integrity,* and impartiality* of the judiciary, and shall avoid impropriety and the appearance of impropriety.*

The Trial Court abused its discretion by awarding the wife funds that did not even exist at the time separation and in some cases more than a year before separation.

It was Kristine's idea to have James live with his father since she knew that they were hurting financial and behind on bills. She also told the children and they understood that their parents could no longer afford to keep the home. CP44. For the sake of the family, why didn't the Court interview the children?

Further, James did not ever unilaterally control \$200,000 of community funds; however absent discovery, it appears that Kristine may have.

Kristine states in her brief that James "squandered" the 401(k); however, this is a new argument. All she says is that "I don't know what happened to it". Despite the fact that she admitted

they were in constant communication about their finances. James saved the home from foreclosure and could not have possibly squandered the money away unless paying for the family home, mortgages, utilities, and his children's expenses from his 401(k) savings, trying to save his livelihood is considered wasteful and extravagant spending.

She had access to the corporation's accounts and every piece of mail that came to the family home passed through her hands such as: bank account statement, bills, credit card statements, mortgage statements, James' W2s, benefit statements such as 401(k) and IRS income statements. She controlled her own separate bank accounts. She controlled the mailbox key and she made sure that James was not able to retrieve the mail since it was delivered while he was at work.

C. The Court Abused Its Discretion When Making An Award Of Post-Secondary Support For The Parties Daughter By Neglecting The Intention of the Parties And Ignoring State Law.

Kristine and James have always told their children that they are responsible for their college tuition and all expenses just as Kristine and James were responsible for their own college tuition and expenses.

RCW 26.19.090 Standards for postsecondary educational support awards

(2) When considering whether to order support for postsecondary educational expenses, the court shall determine whether the child is in fact dependent and is relying upon the parents for the reasonable necessities of life. The court shall exercise its discretion when determining whether and for how long to award postsecondary educational support based upon consideration of factors that include but are not limited to the following: Age of the child; the child's needs; **the expectations of the parties for their children when the parents were together**, the child's prospects, desires, aptitudes, abilities or disabilities; the nature of the postsecondary education sought; and the parents' level of education, standard of living, and **current and future resources**. Also to be considered are the amount and type of support that the child would have been afforded if the parents had stayed together.

The parties' intentions were clear during the marriage that they expected their children to pay for their own expenses. Both parents are loving and supportive of their children. James is a good father. 03/12/10 RP103. He states "I will do whatever I can for my kids based on my means. If I don't have the means to do it then I can't do it." 03/12/10 RP138. He stated that he helped his daughter move into college by depositing into her account the entire \$250.00 a friend gave him to help in a catering function. 03/12/10 RP103. However, due to James' economic situation at the time of separation through the present, awards for postsecondary educational are beyond his ability to pay, and are unfeasible. If Kristine can afford to supplement the adult children's incomes and scholarships and she has the means to do it then it is

within her discretion to do so. She gets the benefits of their earnings and her earnings.

RCW 26.16.140 Earnings and accumulations of spouses or domestic partners living apart, minor children.

When spouses or domestic partners are living separate and apart, their respective earnings and accumulations shall be the separate property of each. The earnings and accumulations of minor children shall be the separate property of the spouse or domestic partner who has their custody or, if no custody award has been made, then the separate property of the spouse or domestic partner with whom said children are living.

This and any award from the Trial Court would be contrary to the parents' intentions during marriage, beyond James' resources, and is an abuse of discretion.

D. James Was Not Granted a "Fair Trial"- Rebuttal to Wife's "Argument D" that James was granted a "fair" trial. And Correction of wife's restatement of facts "E"

At no time did James state he was able to proceed in the Trial. He was missing information about the two most critical aspects of the trial 1) Property Division and what property was Kristine going to ask for, how she valued it, how was it apportioned and 2) Assets of the Family business "The Last Bite" and Income of Kristine. He objected to the Trial on the grounds that he was disadvantaged and unable to cross-examine at least two ways:

- 1) Unable to respond to the any issues pertaining to community property raised by Kristine since it was unknown to James.

Kristine violated PCLSR 94.04(b) that states in part: *Contested Matters "...The Pretrial Information shall be filed and served two (2) court days prior to the scheduled final hearing or trial..."*

This form contains all the community property contested by both parties, what each party estimates value, and how each party would like it allocated. James complied with the rule. If the matter was not contested this would be a minor rule violation; however, there were multiple contested issues. Kristine had the advantage of being able to craft a response before trial and James had no ability to respond. This is a significant issue when one party has all the information and the other party has nothing. James appropriately objected and the judge noted the objection stating "The objection means that the issue is preserved for appeal if you decide you want to appeal..." 03/12/10 RP 10.

- 2) Unable to respond, determine the number of accounts, prepare questions to cross-examine, to authentic, or to determine and verify the cash assets of the family business

that was in Kristine's sole control or to what extent it had on Kristine's business income.

Kristine obstructed and failed to produce discovery and refused to confer in good faith under CR26. James filed a motion to compel discovery and presented it at trial CP461-467 and previously on 11/30/2009 CP175-183.

At Trial the Judge asked James ""...are you ready to go ahead with trial today?" James Responded "I've got one other issue before I can answer that question Your Honor. I have propounded discovery from the petitioner and her attorney seven or eight times now with the information about the Last Bite Accounts, bank account information, accounting, check balances. This is a family business, and I have not received anything at all." 3/12/10 RP 11. "If you recall, we had a hearing in October, and in October, you said they have a CR 26 (i) conference. Mr. Robinson has not responded one time. He has obstructed the due process of discovery. He has prohibited me from being able to respond appropriately..." 03/12/10 RP 12. See also email to Jeffrey Robinson requesting discovery. CP192. See faxed letter to Robinson requesting discovery two more times. EX110.

Further, James never states that he is ready to go ahead with the trial. Instead the Judge responds "This is what I am going to do. I am going to get started with petitioner's case." And James responds "...Obviously, I have to object because there is absolutely no way I can determine her income without documentation..." 03/12/10 RP 13.

Why is James, a Pro Se litigant, held to a higher standard than Kristine who has counsel? This is unfair.

Washington State Constitution:
Article I Section 3 **PERSONAL RIGHTS**. No person shall be deprived of life, liberty, or property, without due process of law.

3. James had asserted that he has a right to inspect his property under CR(34) within the scope of rule 26(b). CP466. The judge unfairly abrogated his rights.

James was prohibited from inspecting and itemizing his property and the judge justified it in his oral ruling by stating he was concerned among other things about a disagreement between James's son and the son's grandfather. 06/11/10 RP 7. This event occurred in February 2010 several months after the Motion to inspect the property in October 2009 CP151. The Court could have had James supervised when evaluating his property but to have his

constitutional rights abrogated by Trial Court after he testified that that Kristine was disposing of community property 12/18/09 RP 11 was unconstitutional. James had estimated the Personal Property to be over \$78,000 based on what he could remember in June, 2009. CP449. The trial court, based on Kristine's list produced on the afternoon of the trial and objected to by James, determined the Personal Property to be worth a total of \$11,805 and awarded it all to her. 06/11/10 RP3.

What happened to over \$68,000 worth of property? The court abused its discretion depriving James' of his property.

Simply put the Trial Court judge made an arbitrary ruling that was biased in favor of Kristine in December, 2009 then justifies its ruling with an event that didn't involve James and that occurred after he denied James due process and property rights. These actions are prejudicial, biased in favor of Kristine, and an abuse of discretion. This is reversible.

Other abuses endured by James include his constitutional right to a decision without necessary delay.

Washington State Constitution Article I Section 10 ADMINISTRATION OF JUSTICE. Justice in all cases shall be administered openly, and without unnecessary delay.

Washington State Constitution Article IV Section 20 DECISIONS, WHEN TO BE MADE. Every cause submitted to a judge of a superior court for his decision shall be decided by him within ninety days from the submission thereof; *Provided*, That if within said period of ninety days a rehearing shall have been ordered, then the period within which he is to decide shall commence at the time the cause is submitted upon such a hearing.

The Trial occurred on March 12, 2010. The Final Orders prepared by Kristine and submitted without James's or The Trial Court's review, were signed on July 2, 2010. This is a period of 112 days. Now, this would be acceptable if there was a rehearing within 90 days; however the Oral Decision on June 11, 2010 was not within 90 days of the Trial. This was an unnecessary delay. Because of the delay, the Trial Court at the Oral Hearing was not prepared, made errors, and forgot important facts. Such as:

- a) When James asked the Trial Court to substantiate its calculation of James' commission income the Trial Court could not explain or demonstrate mathematically how it arrived at his income. Stating that it took the "hard" number. 06/11/10 RP 16-18. Despite the fact that at trial, the Judge knew that James income was commission only when he stated "Okay. So now it's purely commission".
3/12/10 RP 145.
- b) The Trial Court calculates that the 401(k) of 123,000 divided by two is 62,000. Kristine's attorney points out that the correct answer is

\$61,500 to which the Trial Court replies, "I'm sorry. It must have been a late night". 06/11/10 RP 19. James stated at trial the 401(k) was only \$84,000. 3/12/10 RP 141. James stated multiple times that he used the money to pay community debt and had no value. He explained how the money was spent using the Judges own words "you were right when you said...nobody could live, you couldn't live off \$16,000" and provided evidence of how the corporate debt was restructured to repay the community prior to separation. 03/12/10 RP 142 and EX 55.

- c) When James points out that the \$123,000 was the gross amount before the 30% deduction (20% for taxes withheld and 10% early withdraw penalty), the Trial Court states it could not ascertain who paid and said "I understand what you're – the issue that you're raising but that's all I can say about that." 3/11/10 RP 20. The information was on the 2007 Joint Tax returns filed by both parties and in James Exhibits. The Actual Gross Amount was \$121,911. EX 46. The net amount was \$95,529 before the 10% Early Withdrawal Penalty after the penalty the net distribution was \$85,976. The trial court forgot that James' bankruptcy had occurred in June, 2009 and James had no assets and no 401(k).

Also, James objected to Kristine's evidence since it was presented at the time of trial.

- d) Kristine's attorney asks the Court about a judgment from the December 18, 2008 temporary orders of \$9,119.38. The Judge who apparently forgot to review the bankruptcy documents asks if it was addressed in either bankruptcy filing. James states that it was addressed. 3/11/10 RP 21. The Trial Court ignores him. The fact is the \$9,119.38 was discharged along with the \$10,000 in attorney's fees awarded to Kristine and her attorney. Bankruptcy Case 09-15631 Schedule F Discharged on September 16, 2009. The Federal Bankruptcy Court had Exclusive jurisdiction to determine what constitutes property of the estate. 28 U.S.C 1334(b),(e). Both Kristine and her attorney were listed as creditors, were both served, did not appear at the meeting of the creditors, did not File a Proof of claim and did not contest either the personal or corporate bankruptcy. US Bankruptcy Case 09-15631 and Case 09-15880
- e) Again James asks the Trial Court to explain how he could pay support payments and all the money owed (which totals \$215,062. See DCD and Findings of Fact filed 7/2/10. This averages \$15,361.57 per month from January 2009 through March 2010) when the Trial Court erroneously calculated his income at \$5,250

per month. The Trial Court Responds, "Well, I'm not going to relitigate". 06/11/10 RP 24. Both PREMCO and James were in bankruptcy within six (6) months after the December 18, 2008 ruling.

- f) Finally, to justify the December 18, 2008 ruling, the Trial Court says that pro tem Commissioner on December 18, 2008 had made salient points in his ruling to preserve the home for three kids and make sure community debts got taken care of. However, James pointed out that was not in the December 2008 ruling since that was only 4-5 pages long rather it was in the May 2009 ruling. The Judge simply dismisses James and states that he is right. 06/11/10 RP 25. A review of the record shows that Commissioner Marshal makes no such ruling. However, the Commissioner does state that he is "surprised" that with the stated income asserted by Kristine that James did not appear. 12/18/08 RP 2-5 in its entirety. It is noteworthy that when the Commissioner asks "Was there even any informal communication?" with James, Kristine (through counsel) states "No, none at all". 12/18/08 RP 2. This is contradictory to Kristine's later testimony and her brief that states she *may* have informed him. But this is consistent with what James has been saying all along. Kristine never formally or informally notified

James about the hearing of December 18, 2008. James had no idea what happened. He was completely surprised about the hearing when the temporary orders were served to him on Christmas Eve, December 24, 2008.

Rule 60(b)(1):Relief from Judgment or Order (b)(1) Mistakes, inadvertence, **surprise**, excusable neglect or irregularity in obtaining a judgment or order

The trial court was surprised and so was James. The temporary orders should be vacated.

James's constitutional rights have been violated by the Trial Court. The Trial Court abandoned jurisdiction by failing to abide by constitution and depriving James of his fundamental rights. This should invalidate the ruling and is reversible.

James also asked the Trial Court to make a ruling on CR 60(a). 3/12/10 RP7. When he went to the Court House on December 17, 2008 to file his responses to the Petition for Dissolution, he asked the Court Clerk to look up his case and let him know if there was anything else for him to do. Where else does one go for the most accurate information about a case pending at the Court House? There is no better source than the Court Clerk who is the repository of all legal authority and scheduling.

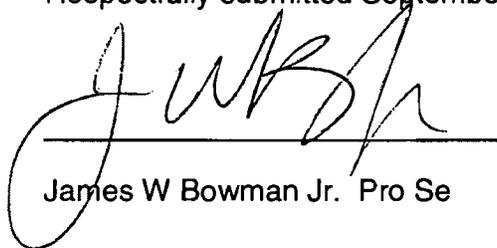
Misinformation arising from an oversight of the Court Clerk that one would reasonably rely on for information is grounds for relief under 60(a) or 60(b)(1). Since the Clerk made a mistake and at a minimum it was excusable neglect. The Trial Court refused to make a ruling even though it concluded this very statement.

E. Attorney fees for Kristine should be denied since Kristine Has Been Unjustly Enriched By The Trial Court, Has an Unfair Economic Advantage, And Has Squandered Away Money By Continuously Arguing Based On False Testimony, Refusing to Confer In Good Faith, Arguing On Untenable Basis and Kristine Should Be Sanctioned

IV. CONCLUSION

James request the he be fairly heard and that his request in his opening brief be granted, orders of December 18, 2008 be vacated, and the final orders be revised to reflect his actual income and assets.

Respectfully submitted September 30, 2011



James W Bowman Jr. Pro Se

DECLARATION OF SERVICE

Undersigned declares under penalty of perjury, under the laws of the state of Washington, that the foregoing is true and correct:

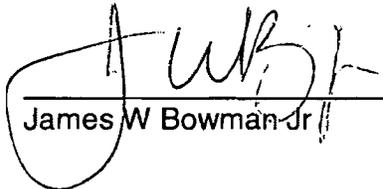
That on September 30, 2011, I arranged for Service of the foregoing Appellant's Responsive Brief, to the court and to the parties:

Office of Clerk Court of Appeals - Hand Delivered
950 Broadway, Suite 300

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Dated at Federal Way, WA this 30th Day of September, 2011


James W Bowman Jr.

STATE OF WASHINGTON
BY _____
DEPUTY

11 SEP 30 PM 2:06

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