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COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON

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NO. 43025-8-II

COURT OF APPEALS OF THE STATE OF WASHINGTON,

DIVISION II

REBECCA A. BAMBERG, FKA
Rebecca A. Larsen,
Petitioner-Respondent

vs.

JEREMIAH J. LARSEN,
Respondent-Appellant.

BRIEF OF RESPONDENT

Rebecca A. Bamberg
Pro Se Petitioner-Respondent

15481 SW Donna Ct.
Beaverton, OR 97007
(360) 560-1614

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STATEMENT OF THE CASE

1. MARRIAGE

Jeremiah Larsen and Rebecca Bamberg, FKA Rebecca Larsen, were married on September 21, 2002. They had two children together during their marriage, Emilia and Annike. (RP 191-192) Jeremiah has two additional children from his previous marriage. (Rp 143) Rebecca worked during the marriage until September 2003, while pregnant with their first child, Emilia. After Emilia's birth, Rebecca was a home maker and began home schooling the couple's children in early 2008. Jeremiah was diagnosed with Multiple Sclerosis in April 2006 and was medically retired due to his disability September 2008. In April 2010, Rebecca enrolled at East West College of the Healing Arts to begin classes in July 2010. Student loans and grants were granted in April 2010 to finance Rebecca's education to become a massage therapist. (CP 102) The couple's relationship was unhealthy throughout the marriage and help was frequently sought from professionals, clergy and friends. After another verbally and emotionally abusive confrontation with Jeremiah on August 6, 2010, Rebecca left the couple's home to stay with her parents in Cornelius, Oregon. Jeremiah continued to be emotionally and verbally abusive the Rebecca and the children.

2. PROCEEDUAL HISTORY

Rebecca filed for legal separation October 12, 2010. (CP 2) Rebecca was granted an Ex Parte Protection order October 12, 2010. (CP 4) On November 8, 2010, the

Protection Order was denied (“I lack jurisdiction” (RP 12)) and set over to the November 17, 2010 temporary hearing. Temporary Orders were entered November 17, 2010 and Rebecca's requested granted for the proceedings be changed to dissolution at the November 17, 2010. The issue of a protection order was not revisited at this time. Additionally the case was ordered to Family Court to be evaluated and a temporary recommendation ordered by December 15, 2010. (CP 30) As Jeremiah had not paid his fees to the Family Court by the December 15 hearing, the Honorable Commissioner Gary Bashor ordered partial payment and arrangements be made for the balance so the case could proceed. (CP 42) On February 2, 2011 Temporary Orders were entered by Honorable Bashor for Visitation and Spring break based on the Family Court's preliminary report. (CP 46) On February 16, 2011, Jeremiah filed a Motion for review of the Temporary Support order which Jeremiah requested to strike on March 17, 2011. On March 7, 2011, Jeremiah filed a Motion for Clarification of the temporary orders. (CP 58) Jeremiah continued this pattern of filing repeated motions for review and revision of the Court's orders. (CP 68) Although Rebecca completed her required parenting class in December 2010, Jeremiah did not file his confirmation until June 20, 2011 meanwhile he had entered numerous filings and amended filings in the case. (CP 40, 91, 92) The final Family Court report was entered June 24, 2011. No settlement could be reached during the July 26, 2011 Mandatory Settlement conference after only one meeting by the Honorable Judge Pro Term Dennis Maher with each of the parties and the case was assigned for trial. (CP 106) Temporary Orders were entered

by the Honorable Dennis Maher on June 15, 2011. (CP 87, 89, 90) Jeremiah's August 1, 2011 motion for contempt was heard September 23, 2011 and no contempt was found. (RP 81) December 22, 2011 the case was heard before Honorable Judge Marilyn Haan for a full day. Honorable Haan exercised entered a Decree of Dissolution, Final Parenting Plan and a Final Child Support Order based on Child Support Worksheets. The approved orders were presented by Rebecca and entered with some modifications by Honorable Haan. (RP 192-212) Jeremiah filed Notice of Appeal November 11, 2012. (CP 187)

SUMMARY OF ARGUMENT

The Court did not abuse its discretion when entering final orders for the dissolution of the parties' marriage on December 22, 2011. Although Mr. Larsen disagrees with the Court's decision, he has not shown abuse of discretion by Honorable Haan.

“[T]rial court decisions in a dissolution action will seldom be changed upon appeal. Such decisions are difficult at best. Appellate courts should not encourage appeals by tinkering with them. The emotional and financial interests affected by such decisions are best served by finality. The spouse who challenges such decisions bears the heavy burden of showing a manifest abuse of discretion on the part of the trial court. The trial court's decision will be affirmed unless no reasonable judge would have reached the same conclusion. “In re Marriage of Landry, 103 Wn.2d 807, 809-810, 699 P.2d 214 (1985). The Court properly considered all the evidence in this case and ordered decisions which were reasonable and fair. In his appeal, Mr. Larsen has presented new evidence. Under RAP 2.5 the appellate court may refuse to review any claim of error which was not raised in the trial court. The Court should not consider Mr. Larsen's arguments. Mr. Larsen has not perfected the record sufficient for appellate review. Under RAP 9.2, "the party seeking review has the burden of perfecting the record so that this court has before it all of the evidence relevant to the issue." *Allemeier v. University of Washington*, 42 Wn. App. 465, 472-473, 712 P.2d 306 (1985). Absent are numerous clerk's papers, including the Final Orders of which Mr. Larsen proposes are unjust. Also omitted from the Report of Proceedings are several hearings, testimonies, most notably Rebecca's testimony and the testimony of her

witnesses during the trial. "An appellate court may decline to address a claimed error when faced with a material omission in the record." *State v. Wade* 138 Wn.2d 460, 465-466, 979 P.2d 850 (1999). In addition to not perfecting the record, Mr. Larsen has twisted and construed the facts so as to give favorable light to his testimony. "As a general principle, an appellant's brief is insufficient if it merely contains a recitation of the facts in the light most favorable to the appellant even if it contains a sprinkling of citations to the record throughout the factual recitation." *Estate of Lint*, 135 Wn.2d 518, 532, 957 P.2d 755 (1998).

It should be noted that although both parties were Pro Se for the duration of these proceedings, the Appellant has extensive experience with court procedure through his previous dissolution experience beginning in 2001 as he has been primarily Pro Se throughout his previous Clark County dissolution, repeated motions, hearings and a child custody trial in that case. He was aware and experienced in court procedures, for example such as the Whole Family Formula and the presentation of evidence prior to the December 22, 2011 trial and commencement of this appeal.

The Respondent asks the Court to dismiss Mr. Larsen's appeal on the grounds he has not arranged for a sufficient record from which the court could review. Furthermore, Mr. Larsen did not show abuse of discretion, and any reasonable judge would have reached the same decisions. The Respondent further requests the Court to affirm the decisions ordered following the December 22, 2011 trial.

ARGUMENT

- I.** The proposed visitation schedule presented to the Trial Court by Rebecca on December 22, 2011 were not substantially different than the Temporary Orders entered August 17, 2011. However, Mr. Larsen did not file Clerk's Papers submission #181, the Final Parenting Plan entered on December 22, 2011, therefore this court has insufficient record for which to base a decision on this argument under RAP 9.6. The final Child Support order was based on the Child Support Work Sheets, also presented to the court and absent from the record before this court. On December 15, 2011, a week before trial, Rebecca emailed copies of her proposed orders to Jeremiah in effort to reach a settlement prior to trial. Working copies of the petitioner's proposed orders were given to Jeremiah upon entry into the court room prior to the trial commencing. Mr. Larsen presented his proposed orders to the court just prior to the lunch recess, but did not have copies. (pg 118-120 RP) Court recessed at 11:50am for lunch to resume at 1:30pm. Mr. Larsen did not appear until after 2:15pm (pg 120-121RP) at which time the petitioner received copies of his proposed orders. The petitioner testified, "I provided him copies of mine a few days ago to review." (pg 119 RP). The Trial Court did not abuse it's discretion when making the decision to adopt the petitioner's proposed orders.
- II.** The Court was within it's discretion when granting the petitioner's anti-harassment order. During the trial, Honorable Judge Haan said, "I've seen

enough of the emails, so, that's why [the restraining order is] being ordered.”
(pg 196 RP) Further, while questioning the Petitioner during trial, Mr. Larsen was physically aggressive in approaching the witness stand , causing the Petitioner emotional distress and ordered by Judge Haan to remain in his seat while completing his questioning. This portion of the record, the Petitioner's Testimony, was omitted from the Verbatim Reports of Proceedings in the filing of this appeal. Previously an anti-harassment order was denied as it was presented to the wrong court (Page 9 RP) and Honorable Judge James Stonier lacked jurisdiction. (Page 12 RP) The trial court did not abuse it's discretion when issuing an anti-harassment order.

III. The court did not abuse it's discretion and issued a reasonable ruling dividing the parties' marital debts in half and crediting each party the marital debts held in their name. The debts were listed out during trial (Page 90-94 RP) and added and divided by the court (Page 175-176 RP). Additionally, Mr. Larsen maintained control of the parties' 2010 tax return and dispersed it without knowledge of the Petitioner. (Page 174 RP) The court ordered half of the parties' 2010 tax return to Rebecca. (Page 176 RP) This resulted in a \$15,535 judgement against Mr. Larsen, which is reasonable considering the substantial amount of marital debt totaling \$32,565, the parties' incurred during the marriage. (Page 176 RP) The Decree of Dissolution provides Mr. Larsen two years to *either* refinance the parties' mortgage into his name *or* sell the home. Mr. Larsen testified, “The mortgage, I've assumed liability of

it.” (Page 93 RP, italics added) The trial court was reasonable in providing the appellant two years for which to remove the petitioner's legal liability from the parties' mortgage. The Trial Court made a reasonable decision and showed no abuse of discretion in the division of marital debt and providing the appellant adequate time for which to removed the petitioner's interest from the parties' mortgage.

- IV.** The trial court was reasonable in it's decision to rule each party responsible for 50% of the marital debts and crediting each party with the respective debts held in their name. This ruling is within the Court's discretion. Mr. Larsen restates his unsupported allegation, “The parties refinanced the home in 2007 and used the equity to pay off the respondent's credit card debt from her previous marriage.” This statement was made during trial by Mr. Larsen and the court sustained Rebecca's objection advising Mr. Larsen to “stick only to the facts you have information on.” (pg 146) The trial court rejected Mr. Larsen's allegation and is requesting this court to revisit rejected testimony. On appeal, this Court "defer[s] to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence." *State v. Summers*, 107 Wn. App. 373, 388-389, 28 P.3d 780(2001). The court was within it's discretion and made a reasonable ruling to divide the parties' debts in half while giving the appellant freedom to determine how to arrange his finances to accommodate his desire to remain in the marital home.
- V.** The balances of the parties' marital debt were presented to the court, (Page

90-94) adequately addressed and added by Honorable Judge Haan during the trial. (pg175-176 RP) Documentation of the petitioner's income and debts is a part of the record (Clerk's Papers, Submission #120, 147, 148 and 150). The Appellant's income and debts (Clerk's papers, Submission #72 and 73) are also part of the record, but were not provided to this court and were used as the basis for this decision. The trial court addressed each debt individually (page 88-94 RP) and the Appellant made no objection during the trial to any of the amounts presented. In his brief, Mr. Larsen alleges, "Student loans and credit card debts were incurred after the parties separated and the full amounts and dates of purchases thereof are undisclosed and have never been revealed to the Court." This was allegation was not brought before the trial court and Mr. Larsen is attempting to introduce new evidence before this court. This argument should be rejected for appeal under RAP 2.5. The trial court was reasonable and other reasonable judge would have reached the same conclusion.

VI. The court made no error and was within its discretion when incorporating the language in Section 3.3 of the final Parenting Plan. The time of exchange, 8pm on Christmas Eve, is the same time provided for in the Temporary Parenting Plan (Submission #126 CP) and ordered August 17, 2011. Mr. Larsen's Clark County order for his older children provides for the exchange to occur at the Clark County Court house, not at the older children's residence as presented in the Appellant's Brief. The court house is 30 minutes

away from the petitioner's residence. Additionally, with the grace period of 50 minutes and provision of a phone call if tardiness is expected provided for in the Final Parenting Plan for this case, Mr. Larsen can and has reasonably exercised commencing this parenting time in a timely fashion. Further, this argument was not presented during trial and Mr. Larsen is attempting to introduce new evidence to this court and under RAP 2.5 this argument should be rejected for appeal. Furthermore, Mr. Larsen has not perfected the record by providing this court a copy of his Clark County Parenting Plan, nor the Final Parenting Plan for this case so that this court may have adequate evidence for which to base a decision on.

VII. The court did not abuse its discretion in ordering the appellant to provide a separate wardrobe for use during his residential time. A deviation was granted to provide for this provision in the child support worksheets of \$25/month, equivalent to the petitioner's budget for wardrobe. (Submission #183 CP) Shoes and seasonal outerwear travel with the children. This point was a continuous matter of conflict between the parties during the proceedings and the order provides for a reasonable solution to eliminate the conflict. The court was reasonable in its decision in this matter and another reasonable judge would have reached the same conclusion. The Appellant did not perfect the record and Submission #183 of the Clerk's Papers is absent from the record before this court.

VIII. The court did not abuse its discretion in ordering Dispute Resolution

and was reasonable in its decision. Clearly, as the case history shows, the parties are unable to reach settlements without court action and therefore the parties require a third party to mitigate issues. By providing a means of dispute resolution other than court action, the Court limits the use of court resources for potentially unnecessary and on going litigation. The record shows an already substantial amount of submissions and proceedings within a relatively short period of time. Additionally, Mr. Larsen is attempting to admit new evidence as he made no objection to this provision during the trial.

IX. The court was within its discretion when adopting the petitioner's Child Support Order and attached Worksheets. The petitioner's pay stubs were provided to the court (Submission #150 CP). The Appellant's argument depends on Facebook pages of the the petitioner, "is able to decline employment... able to purchase her own office... and has additional income..." is construed and unsupported. On appeal, this Court "defer[s] to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence." *State v. Summers*, 107 Wn. App. 373, 388-389, 28 P.3d 780 (2001). The court provided for annual exchange of tax information by the parties in section 3.22 so as to provide for annual modification of the child support order based on actual income. (Page 198-199, 205-206 RP) Judge Haan was reasonable in her decision and no abuse of discretion has been shown.

X. Mr. Larsen is presenting new evidence to this court. A Family Formula was

not presented to the court during trial and this fact was addressed in the court's colloquy following the trial. "Well, if you wanted me to consider [the Whole Family Formula], you should've had it ready for me to consider. I went with what's in front of me." (pg 203 RP) Under RAP 2.5, this Court should refuse to review this allegation of error.

XI. Mr. Larsen is accurate the parties agreed the petitioner shall have both tax exemptions in exchange for full responsibility of home schooling expenses. However, Mr. Larsen presented no evidence that day care was agreed to be considered a home school expense. On page 161, lines 8-11 in the RP home schooling expenses are addressed, however there is no mention of day care expenses. It is unreasonable to merge the two as such as they are separate issues and unrelated. The children are currently 6 and 8 years of age and not legally nor emotionally able to care for themselves while the petitioner works. Additionally, the petitioner's primary working hours are in the afternoons and evenings, as the petitioner testified during trial, thus requiring day care regardless of the children's mode of education. Although Mr. Larsen disagrees with the court's decision, he is introducing new evidence to this court and under RAP 2.5 the court should refuse to review this claim of error. The court exercised reasonable discretion in ordering day care expenses.

XII. The Trial court was within its discretion in incorporating the petitioner's child support worksheets and support order. The Petitioner's information was provided to the court as previously addressed in Argument IX above and the

worksheets are based on this information. Additionally, also previously addressed in Argument IX above, the court ordered a provision which allows the parties to modify the order annually as opposed to the standard not sooner than 24 months, due to the petitioner's field of work is typically subject to income fluctuations. This allows for the orders to be based on actual income based on tax return information. The appellant's property value is not utilized and was not considered to calculate the transfer amount. The appellant has not shown abuse of discretion by the trial court and the court was reasonable in its decision to provide for annual modification of the child support orders based on actual income. (page 206 RP)

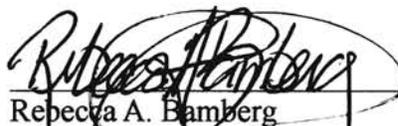
XIII. The student loans incurred to provide Rebecca's education and were in fact occurred during the marriage, April 2010 and her subsequent entrance into the massage therapy field occurred prior to the December 22, 2012 trial. The appellant did not object to the inclusion of this debt during trial (page 92 RP) The subject of the protection order was previously addressed in Argument II above.

CONCLUSION

Rebecca Bamberg, FKA Rebecca Larsen respectfully asks the court to deny and dismiss Jeremiah Larsen's appeal as he has failed to perfect the record sufficient for appellate review and repeatedly attempts to introduce new evidence to this court. Each of Mr. Larsen's 13 errors should be rejected on these grounds. Honorable Judge Haan properly considered all the evidence present at the time of trial. Mr. Larsen has failed to prove abuse of discretion and all decisions were within the court's jurisdiction. Mr. Larsen's action of bringing this dissolution before the Court of Appeal has resulted in unnecessary expenses incurred by the petitioner for travel and legal fees to oppose this appeal. Mr. Larsen has unnecessarily delayed closure and finality of this matter causing continued emotional distress on the part of the petitioner following an already drawn out proceedings and trial in effort to dissolve an unhealthy marriage. Although he disagrees with the Trial Court's decisions, this is not grounds for appellate review. The Trial Court reached fair conclusions which any other reasonable judge would have reached with the evidence before it. Mrs. Bamberg further requests the Court to affirm the Trial Court's findings and orders entered December 22, 2011 and give long overdue finality to this matter.

DATED this 23rd day of November, 2012.

Respectfully submitted



Rebecca A. Bamberg
Petitioner-Respondent, FKA Rebecca A. Larsen

APPENDIX

RULE 2.5: CIRCUMSTANCES WHICH MAY AFFECT SCOPE OF REVIEW

(a) **Errors Raised for First Time on Review.** The appellate court may refuse to review any claim of error which was not raised in the trial court. However, a party may raise the following claimed errors for the first time in the appellate court: (1) lack of trial court jurisdiction, (2) failure to establish facts upon which relief can be granted, and (3) manifest error affecting a constitutional right. A party or the court may raise at any time the question of appellate court jurisdiction. A party may present a ground for affirming a trial court decision which was not presented to the trial court if the record has been sufficiently developed to fairly consider the ground. A party may raise a claim of error which was not raised by the party in the trial court if another party on the same side of the case has raised the claim of error in the trial court.

(b) **Acceptance of Benefits.**

(1) **Generally.** A party may accept the benefits of a trial court decision without losing the right to obtain review of that decision only (i) if the decision is one which is subject to modification by the court making the decision or (ii) if the party gives security as provided in subsection (b)(2) or (iii) if, regardless of the result of the review based solely on the issues raised by the party accepting benefits, the party will be entitled to at least the benefits of the trial court decision or (iv) if the decision is one which divides property in connection with a dissolution of marriage, a legal separation, a declaration of invalidity of marriage, or the dissolution of a meretricious relationship.

(2) **Security.** If a party gives adequate security to make restitution if the decision is reversed or modified, a party may accept the benefits of the decision without losing the right to obtain review of that decision. A party that would otherwise lose the right to obtain review because of the acceptance of benefits shall be given a reasonable period of time to post security to prevent loss of review. The trial court making the decision shall fix the amount and type of security to be given by the party accepting the benefits.

(3) **Conflict With Statutes.** In the event of any conflict between this section and a statute, the statute governs.

(c) **Law of the Case Doctrine Restricted.** The following provisions apply if the same case is again before the appellate court following a remand:

(1) **Prior Trial Court Action.** If a trial court decision is otherwise properly before the appellate court, the appellate court may at the instance of a party review and determine the propriety of a decision of the

trial court even though a similar decision was not disputed in an earlier review of the same case.

(2) Prior Appellate Court Decision. The appellate court may at the instance of a party review the propriety of an earlier decision of the appellate court in the same case and, where justice would best be served, decide the case on the basis of the appellate court's opinion of the law at the time of the later review.

RULE 9.2: VERBATIM REPORT OF PROCEEDINGS

(a) Transcription and Statement of Arrangements. If the party seeking review intends to provide a verbatim report of proceedings, the party should arrange for transcription of and payment for an original and one copy of the verbatim report of proceedings within 30 days after the notice of appeal was filed or discretionary review was granted. If the proceeding being reviewed was recorded on videotape, transcription of the videotapes shall be completed by a court-approved transcriber in accordance with procedures developed by the Office of the Administrator for the Courts. Copies of these procedures are available at the court administrator's office in each county where there is a courtroom that videotapes proceedings or through the Office of the Administrator for the Courts. The party seeking review must file with the appellate court and serve on all parties of record and all named court reporters a statement that arrangements have been made for the transcription of the report and file proof of service with the appellate court. The statement must be filed within 30 days after the notice of appeal was filed or discretionary review was granted. The party must indicate the date that the report of proceedings was ordered, the financial arrangements which have been made for payment of transcription costs, the name of each court reporter or other person authorized to prepare a verbatim report of proceedings who will be preparing the transcript, the hearing dates, and the trial court judge. If the party seeking review does not intend to provide a verbatim report of proceedings, a statement to that effect should be filed in lieu of a statement of arrangements within 30 days after the notice of appeal was filed or discretionary review was granted and served on all parties of record.

(b) Content. A party should arrange for the transcription of all those portions of the verbatim report of proceedings necessary to present the issues raised on review. A verbatim report of proceedings provided at public expense will not include the voir dire examination or opening statement unless so ordered by the trial court. If the party seeking review intends to urge that a verdict or finding of fact is not supported by the evidence, the party should include in the record all evidence relevant to the disputed verdict or finding. If the party seeking review intends to urge that the court erred in giving or failing to give an instruction, the party should include in the record all of the instructions given, the relevant instructions proposed, the party's objections to the instructions given, and the court's ruling on the objections.

(c) Notice of Partial Report of Proceedings and Issues. If a party seeking review arranges for less than all of the verbatim report of proceedings, the party should include in the statement of arrangements a statement of the issues

the party intends to present on review. Any other party who wishes to add to the verbatim report of proceedings should within 10 days after service of the statement of arrangements file and serve on all other parties and the court reporter a designation of additional parts of the verbatim report of proceedings and file proof of service with the appellate court. If the party seeking review refuses to provide the additional parts of the verbatim report of proceedings, the party seeking the additional parts may provide them at the party's own expense or apply to the trial court for an order requiring the party seeking review to pay for the additional parts of the verbatim report of proceedings.

(d) Payment of Expenses. If a party fails to make arrangements for payment of the costs of the verbatim report of proceedings at the time the verbatim report of proceedings is ordered, the party may be subject to sanctions as provided in rule 18.9.

(e) Title Page and Table of Contents. The court reporter or other authorized transcriber shall include at the beginning of each volume of the verbatim report of proceedings a title page and a table of contents.

(1) The title page should include the following:

(A) Case name,

(B) Trial court and appellate cause numbers,

(C) Date(s) of hearings,

(D) Trial court judge(s),

(E) Names of attorneys at trial,

(F) Name, business address and telephone number of each court reporter or other authorized transcriber.

(2) The table of contents shall follow the title page and shall indicate, under the headings listed below, the pages where the following appear:

(A) Proceedings. The beginning of each proceeding and the nature of that proceeding;

(B) Testimony. The testimony of each witness, the page where it begins, and the type of examination, i.e., direct, cross, re-direct, re-cross, and the page

where the plaintiff rests and the defendant rests;

(C) Exhibits. The admission into evidence of exhibits and depositions;

(D) Argument. The pages where opening statements occur, except as otherwise provided in rule 9.2(b) for verbatim reports of proceedings provided at public expense, and the pages where closing arguments occur;

(E) Instructions. All instructions proposed and given. Any other events should be listed under a suitable heading which would help the reviewing court locate separate parts of the verbatim report of proceedings.

(F) Multiple Days. If a volume includes hearings from more than one day, there shall be a separate table of contents for each day.

(f) Form

(1) Generally. The verbatim report of proceedings shall be on 8-1/2-by 11-inch paper. Margins shall be lined 1-3/8 inches from the left and 5/8 inches from the right side of each page. Indentations from the left lined margin should be: 1 space for "Q" and "A"; 5 spaces for the body of the testimony; 8 spaces for commencement of a paragraph; and 10 spaces for quoted authority. Typing should be double spaced except that comments by the reporter should be single spaced. The page should have 25 lines of type. Type must be pica type or its equivalent with no more than 10 characters an inch.

(A) Witnesses Designated/Examination. Indicate at the top or bottom of each page the name of the witness and whether the examination is on direct, cross, re-direct, re-cross, or rebuttal.

(B) Jury In/Out. Indicate when the jury is present, when the jury leaves, and when the jury returns.

(C) Bench/Side Bar Conferences. Designate whether a bench/side bar conference is on or off the record.

(D) Chamber Conferences. If the conference is recorded, note the presence or absence of persons participating in chamber conferences.

(E) Speaker/Event Identification. Identify speakers and events that occur throughout the proceedings in capital letters centered on the appropriate line. For example: recess/court reconvene; direct examination, cross examination, re-direct examination, re-cross examination, plaintiff rests; defendant's

evidence: direct examination, cross examination, re-direct examination, re-cross examination, defense rests; instructions, conference, closing arguments: for plaintiff, for defense, and rebuttal.

(2) Volume and Pages.

(A) Pages in each volume of the verbatim report of proceedings shall be numbered consecutively.

(B) Each volume shall include no more than 200 pages. The volumes shall be either bound or fastened securely.

(3) Copies. The verbatim report of proceedings should be legible, clean and reproducible.

RULE 9.6: DESIGNATION OF CLERK'S PAPERS AND EXHIBITS

(a) Generally. The party seeking review should, within 30 days after the notice of appeal is filed or discretionary review is granted, serve on all other parties and file with the trial court clerk and the appellate court clerk a designation of those clerk's papers and exhibits the party wants the trial court clerk to transmit to the appellate court. A copy of the designation shall also be filed with the appellate court clerk. Any party may supplement the designation of clerk's papers and exhibits prior to or with the filing of the party's last brief. Thereafter, a party may supplement the designation only by order of the appellate court, upon motion. Each party is encouraged to designate only clerk's papers and exhibits needed to review the issues presented to the appellate court.

(b) Designation and Contents.

(1) The clerk's papers shall include, at a minimum:

(A) the notice of appeal or the notice for discretionary review;

(B) the indictment, information, or complaint in a criminal case;

(C) any written order or ruling not attached to the notice of appeal, of which a party seeks review;

(D) the final pretrial order, or the final complaint and answer or other pleadings setting out the issues to be tried if the final pretrial order does not set out those issues;

(E) any written opinion, findings of fact or conclusions of law;

(F) any jury instruction given or refused that presents an issue on appeal; and

(G) any order sealing documents if sealed documents have been designated.

(2) Each designation or supplement shall specify the full title of the pleading, the date filed, and, in counties where subnumbers are used, the clerk's subnumber.

(3) Each designation of exhibits shall include the trial court clerk's list of exhibits and shall specify the exhibit number and the description of the exhibit to be transmitted.

(c) Format.

(1) Full copies of all designated pleadings shall be included, unless the trial court orders otherwise.

(2) The trial court clerk shall number the papers sequentially from beginning to end, including any supplemental clerk's papers, regardless of which party designated them.

(3) The trial court clerk shall make available a copy of the clerk's papers transmitted to the appellate court to any party, upon payment of the trial court clerk's reasonable expenses. If the trial court clerk generates the clerk's papers in electronic format, the trial court clerk shall make available to any party a copy of the clerk's papers in electronic format, upon payment of the trial court clerk's reasonable expenses.

Christine M. Styffe
CHRISTINE M. STYFFE

SUBSCRIBED AND SWORN TO before me this 5th day of December, 2012.



Clara Ann Gard
NOTARY PUBLIC in and for the State of
Oregon residing at Hillsboro OR
My Commission Expires: May 20th 2013

[Faint, illegible text or stamp]