

FILED

JUL 12 2010

COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON

No. 285979-III  
IN THE COURT OF APPEALS, DIVISION III  
OF THE STATE OF WASHINGTON

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GERALD WOOLEY, et ux, Respondents  
v.  
SHERI BYNUM (fka WOOLEY) Appellant

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BRIEF OF APPELLANT

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Rebecca M. Coufal, WSB #16957  
Attorney for Sheri Bynum

2131 West Ohio  
Spokane, WA 99201  
(509) 328-5789  
(509) 328-5805 FAX

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ASSIGNMENT OF ERROR

1. The Trial Court erred in failing to allow Ms. Bynum to speak following the Court's imposition of contempt, before the Court entered its punishment and removal from the court.
2. The trial court erred in refusing to allow Ms. Bynum to testify in the hearing regarding the petition for the renewal of and expansion of the order for protection.
3. The trial court erred in entering findings regarding drug/alcohol use/abuse as there is no verification of the allegations Ms. Bynum was using/abusing alcohol or drugs, no UA's or hair follicle tests. (CP 046.)
4. The trial court erred in issuing a non-expiring order of protection without allowing Ms. Bynum an opportunity to put

on her defense (testify in her own behalf).

5. The trial court erred in finding of fact 10 (CP 046) as the only evidence on which to base the finding that Ms. Bynum's contact with her children, KW and WW, would in any way harm the children's well being was testimony of Mr. and Mrs. Wooley which Ms. Bynum was not permitted to rebut.

ISSUES PERTAINING TO ASSIGNMENT OF ERROR

1. If denying Ms. Bynum the right to testify, denied her the ability to meet the burden of proof required to defeat the renewal of the protection order?
2. If Ms. Bynum's behavior in the course of the hearing was so disruptive as to allow the court to deny her the right to testify?
3. If allowing Ms. Bynum to testify in the hearing would mitigate her right to speak following the imposition of contempt with jail time?
4. If the court's failure to allow Ms. Bynum the chance to address the court requires the contempt to be voided?

STATEMENT OF THE CASE

Ms. Bynum<sup>1</sup> appeared in Stevens County Superior Court August 10, 2009 for hearings on a Child in Need of Services petition (CHINS) and an at Risk Youth petition (ARY). RP 4, 8. On that day, the deputy court clerk served Ms. Bynum with the order transferring the protection order case from Stevens County District Court to Stevens County Superior Court. RP 8. Also appearing that day were Mr. Wooley, his current wife Cheryl Louise Wooley, KW, the child subject of the CHINS and ARY, Ms. Turner (the person with whom KW was staying and who filed a protection order on behalf of KW) along with the attorney for KW, for Mr. and Mrs. Wooley, and the undersigned for Ms. Bynum. RP 4-5.

The court consolidated 4 separate cases, the ARY and CHINS and two protection order

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<sup>1</sup> The appellant is referred to as Ms. Bynum, the appellees are referred to as either Mr. Wooley, Mrs. Wooley or Mr. and Mrs. Wooley, the child is referred to as KW.

cases (Ms. Turner's and the transfer case from Stevens County District Court between Mr. and Mrs. Wooley versus Ms. Bynum) for hearing on August 10, 2009. RP 4. Ms. Bynum as the court determined she was not a party in either the ARY or CHINS cases asked no questions of witnesses on the first day of hearing. RP 37-38.

The court resumed hearing these matters August 13, 2009 in the afternoon. RP 87. At the beginning of cross examination by KW's attorney of David Rose, the afternoon's first witness, the court admonished Ms. Bynum as follows:

The Court: Ms. Bynum? Ms. Bynum, you need to take a seat - -

Ms. Bynum: I'm sorry, your honor.

The Court: Okay. You - you do have a restraining order against (inaudible) contact with Katie. So, -- (inaudible) certainly right in the courtroom, here.

RP 94. The record does not show what Ms. Bynum did other than, apparently stand and, make contact of some sort with her daughter KW. RP 94.

Later in that afternoon's testimony of the paternal grandmother, Darlene Wooley, the Court again admonished Ms. Bynum as follows:

The Court: Ms. Bynum, have a seat, please.

Ms. Bynum: She's (inaudible) to call my daughter -

The Court: Excuse me -

Ms. Bynum: --(inaudible)

The Court: Ms. Bynum, I think you know what happens when you have an outburst in court<sup>2</sup> --

Ms. Bynum: Yes, your Honor -

---

<sup>2</sup> This reference is to the prior case, a dependency case regarding Mr. Wooley's and Sheri Bynum's children in which the Court found Ms. Bynum in contempt of court in a 12/07 review hearing at which Ms. Bynum requested to speak, was not permitted to and continued to speak. In that hearing, Ms. Bynum after being found in contempt stormed out of the courtroom damaging the door to the courtroom.

The Court: Let me just refresh your  
Memory.

Ms. Bynum: Okay.

The Court: If there's any more  
outburst, such as slapping your hands on  
the bench in front of you, or having any  
kind of verbal outburst, trying to  
interrupt, then - In fact, Madam Clerk, I  
think it might be a good idea to go ahead  
and call for a sheriff - - just because  
it's a very volatile situation for  
everyone and I want to have the ability to  
immediately react if anybody decides to  
get out of hand.

And I'm talking to you right now,  
Ms. - Ms. Bynum. And I want to make sure  
you keep your completely under control -

Ms. Bynum: I'm very tired, --

The Court: Make sure you -

Ms. Bynum: --your Honor. I'm so  
Sorry.

The Court: It's not a matter of trying. You know how to do it, and it's going to need to occur. It's going to need - you're going to need to actually do the behavior of controlling yourself.

So, excuse me, but Ms. Markel, Ms.

Wooley was not finished with her answer.

RP 126-127. The Court did not again admonish Ms. Bynum on August 13, 2009.

September 9, 2009 the Court resumed the hearing on these matters with continued examination of Mrs. Wooley. RP 217. During re-direct examination of Mrs. Wooley, the Court again admonished Ms. Bynum as undersigned counsel attempted to make an objection as follows:

Mr. Bynum: (Inaudible) -

The Court: Okay. Ms. Bynum, please.

Ms. Bynum, I'm not going to tolerate your making commentary -

Ms. Bynum: (Inaudible), your Honor.

The Court: --until you have an opportunity to get on the witness stand yourself and have a question directed to you.

Go Ahead, Ms. Coufal.

. . . .

Ms. Bynum: (Inaudible)--

The Court: Ms. Bynum, you're really skating on thin ice.

And I think, Madam Clerk, we should probably go ahead and call to ask for a deputy sheriff to come. . . .

RP 249-239. There was a second admonishment during Mr. Wooley's cross examination by Ms. James:

The Court: And Ms.--One more time, Ms. Bynum. One more time and I'm going to have the officer that's in the courtroom--

Ms. Bynum: I'm sorry.

The Court: -- arrest you for contempt of court. You understand?

Ms. Bynum: Yes, I do-

The Court: That's the last time.

You know literally, that's the last time.

. . . .

RP 284.

On return from the lunch recess at about 2:00 p.m. September 9, 2009, cross examination of Mr. Wooley continued. RP 301. In response to a question about when Mr. Wooley served Ms. Bynum with the parenting plan, Mr. Wooley commented about Ms. Bynum resulting in another admonishment by the Court:

A: . . . I don't know what Ms. Bynum finds so funny about this. She keeps busting up laughing. These are my children.

Q. Mr. Wooley-

The Court: Okay. Just a second, Mr. Wooley.

We'll get ourselves under control, Here, Ms. Bynum, If you would, please.

Ms. Bynum. Yes, your honor.

The Court: All right. . . .

RP 306. Shortly after the foregoing, the Court had Ms. Bynum taken in custody for contempt:

A.--first of all, I couldn't read the doctor's handwriting--.

Ms. Bynum: --asking (inaudible)?

Okay. That's it. Ms. Bynum is going to be held in contempt for her outbursts, and I'm - I'm going to have these officers take in custody. I am going to have her removed from the courtroom 'cause she's going to be disruptive even further than she has been, repeatedly told not disrupt the proceedings.

And so, we'll have - Ms. Coufal can proceed without her presence. She's created this herself.

So,--

Ms. Coufal: Your Honor, is she going to be permitted to comeback to testify?

The Court: Well,--

Ms. Coufal: Because -

The Court: --I'll take that up at some point -

Ms. Coufal: I think she has every right to testify.

The Court: I'll take that up. She certainly may have forfeited that right, Ms. Coufal.

So let's hear your -your remaining questions of Mr. -- We'll let you know.

Thank you, detective.

RP 313<sup>3</sup>.

The issue of Ms. Bynum testifying was raised again following the conclusion of the testimony and the Court denied the request:

The Court:. . . Now Ms. Coufal, I know you have requested that Ms. Bynum be allowed

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<sup>3</sup> Interestingly, when Ms. James (KW's attorney) put on Ms. Turner, the person with whom KW had been staying, the court did not admonish a person believed to be Mr. Wooley when Ms. Turner during cross examination by Mr. and Mrs. Wooley's attorney complained "And he's sitting there making funny gestures at me,. . . RP 340.

to testify. I'm going to decline to do that. She has really forfeited her - her right to do that by repeatedly violating the court's oral directives to not have these outbursts<sup>4</sup>. She was held in contempt and I would not want to risk her disrupting the courtroom further by having her participate personally. But if you have any other witnesses that you wish to call at this time --.

Ms. Coufal: I do not, your Honor, because I was relying her being able to testify. She is - Mr. Wooley and his current wife are requesting restraining orders against her. I think she has every right to testify in front of this court,

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<sup>4</sup> The Court used the term "outburst" in the second and final admonishment to Ms. Bynum. Outburst is defined as: "a sudden violent display, as of activity or emotion" in the American Heritage College dictionary, third edition, copyright 1993, p.969. It is unclear from the record that on any of the occasions for which the court took Ms. Bynum to task there was violence though Ms. Bynum apparently stood up at the time of the second admonishment on 8/13/09 as well as starting a comment most of which is not even loud enough to be picked up by the recording.

even if she is disruptive. If she's on the stand and you have a police office in the courtroom, I do not see how she be further disruptive. I do think she has the right to respond to the allegations that have been made against her, and the slurs, if you will She's been accused of just about anything you care to look at, at the present time -

The Court: Okay.

Ms. Coufal: Your Honor, she has asked and asked and asked this court to be heard. And this was her chance to be heard.

Has she been disruptive? Yes. That has gone back and I think the court has sat in many, many hearings with Ms. Bynum, with Mr. Wooley, with the current Mrs. Wooley, and is well aware - that she finds it very difficult to continue to hear things said about her and not be able to respond.

I do repeat my request and renew my request that she be allowed to testify as to

what she - what her take on this is. I think it is time for that and I do make - renew that request.

The Court: Okay. And - I think you've made your record on that. I would have to decline to - to do that under the circumstances. . . .

RP 379-380.

The Court did order Ms. Bynum serve a 10 day jail term for the contempt. RP 323, 381 CP 040. Further the court granted the "petition for the extension an - renewal of the protection order." RP 403. The Court then ordered the order be a "non-expiring order" as to Mr. and Mrs. Wooley. RP 403. The order as to the children is ordered only until the children's 18<sup>th</sup> birthdays and there is a provision to allow Ms. Bynum to request relief from the protection order if she can show she has successfully completed a treatment program. RP 403-404 CP 046.

## STANDARD OF REVIEW

A restraining order is reviewed for an abuse of discretion and will be upheld if a trial court's findings of fact are supported by substantial evidence. See *Ledgerwood v. Lansdowne*, 120 Wn.App. 414, 423 (2004). Further, a trial court's conclusions of law which must be supported by its findings are reviewed de novo. *Ledgerwood*, supra at 424.

A court's ability to exercise its inherent authority to impose a contempt sanction is a question of law reviewed de novo. *Interest of Mowery*, 141 Wn.App. 263, 281 (2007). The finding of contempt and punishment are within the sound discretion of the trial court and will be reviewed for an abuse of discretion. *State v. Jordan*, 146 Wn.App. 395, 401 (2008).

ARGUMENT

- 1. The trial court's extension of the protection order is erroneous and an abuse of discretion as Ms. Bynum was not allowed to testify.**

Mr. and Mrs. Wooley petitioned on July 22, 2009 for the renewal and extension of the order for protection pursuant to RCW 10.14.080(5) which order had originally been entered in Stevens County District Court on or about August 17, 2007. CP 002. The petition for renewal included a request to add Mr. Wooley's minor children and grandchildren then living with Mr. and Mrs. Wooley which required the matter be transferred to Stevens County Superior Court. CP 001.

*Hough v. Stockbridge*, 113 Wn.App. 532, 542 (2002), reversed on other grounds<sup>5</sup> in *Hough v.*

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<sup>5</sup> *Hough v. Stockbridge*, 150 Wn.2d 235 (2003) reversed the Court of Appeals Div. II on the issue of the ability of the District Court to act in equity and issue mutual restraining orders when there had been no petition for an

*Stockbridge*, 150 Wn.2d 234 (2003), states: RCW 10.14.080(5) is a two step process in which the petition for renewal must provide reasons why the order of protection should be renewed which petition will be granted unless, the respondent can prove he will not resume harassment with the expiration of the order (that is the burden shifts to the respondent).

The trial court found Mr. and Mrs. Wooley met their burden to provide reasons<sup>6</sup> to renew and expand the order for protection. RP 402-403. Ms. Bynum, however, was not permitted to provide testimony regarding whether or not she would be able to not resume the harassment, to provide explanation as to what her understanding of the status of the protection order was in July 2009. Further, Ms. Bynum's counsel was not allowed to

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order of protection by the respondent to the initial petition.

<sup>6</sup> The undersigned does not have a copy of the petition to renew the order for protection and therefore cannot comment on its actual contents.

proffer what her testimony would have been had the court allowed her to testify. RP 388.

The refusal of Ms. Bynum's testimony also goes to the errors in findings of fact 8 and 10 as the "evidence" of Ms. Bynum's drug/alcohol abuse is hearsay evidence which she could have addressed in testimony. The same is true as to the allegations of emotional harm to Ms. Bynum's children as the GAL noted KW has "always wanted her mom. . . She longs for her mom." RP 358.

The refusal to allow Ms. Bynum's testimony is error and an abuse of the court's discretion as alternatives to Ms. Bynum being in the courtroom were offered and refused. RP 379 (having a police officer in the courtroom). This matter must either be remanded for additional hearing to allow Ms. Bynum's testimony or the order for protection must be voided.

**2. The courts finding of contempt is erroneous and an abuse of discretion as Ms. Bynum's behavior did not rise to the level usually considered contumacious.**

The court has an inherent power to issue a finding of contempt and punishment. The finding of contempt and punishment "lies within the sound discretion of the trial court." *State v. Jordan*, 146 Wn.App. 395, 401 (2008), a case involving the court's order to show cause and summary finding of contempt of an attorney who failed to appear for a hearing without notice to the court or prosecutor, in which Division II of the Court of Appeals dismissed the finding of contempt as not complying with RCW 7.21.050 and dismissed the sanctions imposed. "The court's finding of contempt and punishment, lies within the sound discretion of the trial court. We will not disturb a trial court's contempt ruling absent an abuse of that discretion. A trial court abuses

its discretion when it exercises its discretion in a manifestly unreasonable manner or bases its decision on untenable grounds or reasons." *Id* (citations omitted.)

There are two kinds of contempt, civil, which may be initiated under RCW 7.21 or under the inherent power of courts of general jurisdiction, and criminal. *Jordan*, *id* and fn.4. A summary finding of contempt applies only to contempt which the court actually witnesses, that is a direct contempt. See *State v. Hobble* 126 Wn.2d. 283, 293 (1995).

*State v. Dugan*, 96 Wn.App. 346, 351-352 (1999)<sup>7</sup> provides examples of behavior meeting the requirement of RCW 7.21.010(1)(a) stating: "Under this definition, the contemtor must (1) act with intent, (2) in a manner that is disorderly, contemptuous, or insolent toward the judge while

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<sup>7</sup> In this case the trial court found the deputy prosecutor in contempt of court for a question to a witness which question the court found objectionable after an objection by defense counsel. The appellate court in *Dugan* reversed the finding as not meeting the requirement of RCW 7.21.010(1)(a).

holeing court, and (3) with the effect that it tends to impair the trial court's authority or interrupt its proceedings." The next paragraph in *Dugan* lists a number of cases with examples of behavior which met the requirement of contemptuous behavior.

Ms. Bynum's behavior as detailed above, while certainly intentional in the sense that impulsive behavior is intentional does not begin to rise to the level described in the cases cited in *Dugan*. In fact, most of Ms. Bynum's comments were not even picked up by the recording resulting in the transcriber entering inaudible in the transcription. The comments and the action on the first instance were certainly not violent, loud, abusive to anyone, fighting or even angry. They were impulsive actions (approaching KW, Ms. Bynum's daughter), or words uttered in response to, in the second admonishment to the testimony of Ms. Bynum's former mother-in-law regarding KW. In the third

and fourth instances Ms. Bynum's comment or action is not recorded. In the fifth instance the court responds to a comment from Mr. Wooley who is testifying at the time and when the court found contempt only part of Ms. Bynum's comment is picked up and clearly did not meet the definition of outburst as the complete comment was not even loud enough to be recorded.

The behaviors and words of Ms. Bynum, while arguably, somewhat disruptive, do not meet the definition of "outburst" nor (2) above though they may have interrupted the proceedings certainly did not impair the trial court's authority. The court's finding of contempt is an abuse of discretion as shown by the evidence in the record and must be reversed and dismissed<sup>8</sup>.

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<sup>8</sup> The undersigned is well aware Ms. Bynum has already served the punishment, the 10 days, in this matter but she would certainly appreciate a reversal of the contempt and this issue should be addressed for the benefit of further clarifying what is permissible contempt.

**3. The court's failure to allow Ms. Bynum to speak following the finding of contempt and prior to the imposition of the punishment and removal from the courtroom is error and the finding of contempt must be voided.**

*Templeton v. Hurtado*, 92 Wn.2d 847, 853-855 (1998) addressed the issue of the opportunity to speak in mitigation stating at 854-855 citing a Wisconsin case: "The right [to speak in mitigation] is so basic that it will not be inferred from the record. The right must be exercised after the court has made its finding of contempt but before punishment is imposed. . . . the allocation requirement essentially proves a check on the heightened potential for abuse posed by the summary contempt power by providing an opportunity for the contemnor to apologize or to defend or explain the contumacious behavior . The opportunity to apologize, defend or explain

that we require, allows the contemnor to speak in mitigation of the misconduct which the court has already determined." *Id.* While the trial court in *Templeton*, 855, gave him an opportunity to avoid being found in contempt (by signing the order) this did not satisfy the need to allow a contemnor the opportunity to speak in mitigation.

The trial court did not allow (or even provide an opportunity for Ms. Bynum to speak) did allow the undersigned a chance to address the court however that did not speak to the mitigation of the contempt, in fact only addressed allowing Ms. Bynum to testify. While Ms. Bynum has served the sentence on the contempt, the issue is not completely moot as the order for protection and Ms. Bynum's ability to testify in such a hearing would allow a way to, in a way, "cure" the contempt finding and the errors in that finding.

Ms. Bynum asks this matter be remanded to allow her to speak to the court regarding the

finding of contempt and to reopen the hearing on the order for protection<sup>9</sup> to allow Ms. Bynum's testimony.

**4. Allowing Ms. Bynum to testify would have mitigated the need to allow her to speak prior to the imposition of the contempt penalty.**

*United States v. Ives*, 504 F.2d 934, 937-945 (9<sup>th</sup> Cir. 1974); vacated on other grounds<sup>10</sup> and remanded 95 S.Ct. 1671 (1976), addresses the issue of testimony of the defendant in a criminal trial and the extent to which the trial court went to allow that defendant to participate in the trial (along with detailing truly disruptive behavior in a courtroom).

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<sup>9</sup> Since this order for protection was entered, it has on the motion of Ms. Bynum been removed as to KW though it remains as to Mr. and Mrs. Wooley and the three children besides KW.

<sup>10</sup> The U.S. Supreme Court remanded *Ives* to the 9<sup>th</sup> Circuit on the mental health issues not on the ability or not to testify.

While the hearing on the petition for renewal and expansion of the order for protection is clearly a civil trial, RCW 10.14 allows a person violating the order for protection to be criminally charged<sup>11</sup> and *Ives* is certainly instructive on the issue of testimony and the level of behavior which can lead to the denial of testimony.

The trial court in *Ives* went to great lengths to maintain both decorum and to allow the testimony of the defendant. The trial court installed a special cell and communication system to allow the defendant to be taken out of the courtroom but continue to be able to participate through his attorney. No one is suggesting the trial court in this case needed to go to such lengths, but, then, Ms. Bynum's behavior in no way even approximated the behavior exhibited in

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<sup>11</sup> At the time of the hearing on the renewal of the protection order, MS. Bynum awaited a hearing on a criminal charge in Stevens County District Court of violation of the original protection order. Those charges have since been dismissed without prejudice.

Ives. What is requested is guidance in what a trial court should do to allow a person to testify.

Ms. Bynum, through counsel did suggest the trial court allow Ms. Bynum to testify with the sheriff's deputy standing by to be able to remove her if she had become disruptive during testimony. This offer was refused and the court offered no suggestions to allow Ms. Bynum's testimony such as allowing her to appear from the jail by telephone. The trial court by its refusal to allow her to testify or to create a way for her to testify denied her the ability to present any defense to the order for protection or even to speak in mitigation of the order of contempt.

All Ms. Bynum requests is the opportunity to testify in her own behalf, to address the court and present her side of the story. The trial courts refusal to allow Ms. Bynum to testify or to craft a way for her to testify abused its

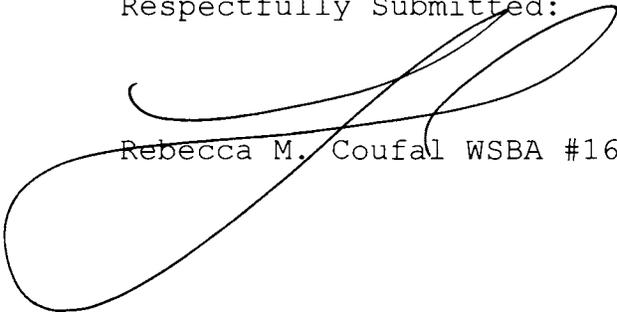
discretion and this matter must be remanded with directions as to how the court can remedy this refusal.

#### CONCLUSION

Ms. Bynum requests this court remand this case back to the trial court with directions as to how that court can allow Ms. Bynum to testify and allowing her to testify. Further, Ms. Bynum requests the finding of contempt be voided as being improper (not meeting the criteria of RCW 7.21.010(1)(a)) and being in abuse of the court's discretion.

Dated this 12<sup>th</sup> day of July, 2010.

Respectfully Submitted:



Rebecca M. Coufal WSBA #16957

CERTIFICATE OF SERVICE

I, Darla McArthur, certify that I placed in the United States Mail, postage paid, copies of this brief to addressed to Gerald Wooley 802 N. Victoria Chewelah WA 99109 and to Cheryl Wooley P.O. Box 606, Colville WA 99114 the last known addresses of Mr. Wooley and Mrs. Wooley who are not known to be represented at this time.

So certified this 12<sup>th</sup> day of July, 2010 by:



Darla McArthur  
Darla McArthur

# APPENDIX

**Chapter 7.21 RCW  
CONTEMPT OF COURT**

**7.21.010 Definitions.** The definitions in this section apply throughout this chapter:

(1) "contempt of court" means intentional:

(a) Disorderly, contemptuous, or insolent behavior towards the judge while holding the court, tending to impair its authority, or to interrupt the due course of a trial or other judicial proceedings;

(b) Disobedience of any lawful judgment, decree, order, or process of the court;

(c) Refusal as a witness to appear, be sworn, or, without lawful authority, to answer a question; or

(d) Refusal, without lawful authority, to produce a record, document, or other object.

(2) "Punitive sanction" means a sanction imposed to punish a past contempt of court for the purpose of upholding the authority of the court.

(3) "Remedial sanction" means a sanction imposed for the purpose of coercing performance when the contempt consists of the omission or refusal to perform an act that is yet in the person's power to perform.

**7.20.020 Sanctions—Who may impose.** A judge or commissioner of the supreme court, the court of appeals, or the superior court, a judge of a court of limited jurisdiction, and a commissioner of a court of limited jurisdiction may impose a sanction for contempt of court under this chapter.

**7.21.030 Remedial sanctions—Payment for losses. (1)**  
The court may initiate a proceeding to impose a remedial sanction on its own motion or on the motion of a person aggrieved by a contempt of court in the proceeding to which the contempt is related. Except as provided in RCW 7.21.050, the court, after notice and hearing, may impose a remedial sanction authorized by this chapter.

(2) If the court finds that the person has failed or refused to perform an act that is yet within the person's power to perform, the court may find the person in contempt of court and impose one or more of the following remedial sanctions:

(a) Imprisonment if the contempt of court is of a type defined in RCW 7.21.010(1) (b) through (d). The imprisonment may extend only so long as it serves a coercive purpose.

(b) A forfeiture not to exceed two thousand dollars for each day the contempt of court continues.

(c) An order designed to ensure compliance with a prior order of the court.

(d) Any other remedial sanction other than the sanctions specified in (a) through (c) of this subsection if the court expressly finds that those sanctions would be ineffectual to terminate a continuing contempt of court.

(e) In cases under chapters 13.32A, 13.34, and 28A.225 RCW, commitment to juvenile detention for a period of time not to exceed seven days. This sanction may be imposed in addition to, or as an alternative to, any other remedial sanction authorized by this chapter. This remedy is specifically determined to be remedial sanction.

(3) The court may, in addition to the remedial sanctions set forth in subsection (2) of this section, order a person found in contempt of court to pay a party for an losses suffered by the party as a result of the contempt and any costs incurred in connection with the contempt proceeding, including reasonable attorney's fees.

(4) If the court finds that a person under the age of eighteen years has willfully disobeyed the terms of an order issued under

chapter 10.14 RCW, the court may find the person in contempt of court and may, as a sole sanction for such contempt, commit the person to juvenile detention for a period of time not to exceed seven days.

**7.21.040 Punitive sanctions—Fines.** (1) Except as otherwise provided in RCW 7.21.050, a punitive sanction for contempt of court may be imposed only pursuant to this section.

(2)(a) An action to impose a punitive sanction for contempt of court shall be commenced by a complaint or information filed by the prosecuting attorney or city attorney charging a person with contempt of court and reciting the punitive sanction sought to be imposed.

(b) If there is probable cause to believe that a contempt has been committed, the prosecuting attorney or city attorney may file the information or complaint on his or her own initiative or at the request of a person aggrieved by the contempt.

(c) A request that the prosecuting attorney or the city attorney commence an action under this section may be made by a judge presiding in an action or proceeding to which a contempt relates. If required for the administration of justice, the judge

making the request may appoint a special counsel to prosecute an action to impose a punitive sanction for contempt of court.

A judge making a request pursuant to this subsection shall be disqualified from presiding at the trial.

(d) If the alleged contempt involves disrespect to or criticism of a judge, that judge is disqualified from presiding at the trial of the contempt unless the person charged consents to the judge presiding at the trial.

(3) The court may hold a hearing on a motion for a remedial sanction jointly with a trial on an information or complaint seeking a punitive sanction.

(4) A punitive sanction may be imposed for past conduct that was a contempt of court even though similar present conduct is a continuing contempt of court.

(5) If the defendant is found guilty of contempt of court under this section, the court may impose for each separate contempt of court a fine of not more than five thousand dollars or imprisonment in the county jail for not more than one year, or both.

**7.21.050 Sanctions—summary imposition—procedure.**

(1) The judge presiding in an action or proceeding may summarily

impose either a remedial or punitive sanction authorized by this chapter upon a person who commits a contempt of court within the courtroom if the judge certifies that he or she saw or heard the contempt. The judge shall impose the sanctions immediately after the contempt of court or at the end of the proceeding and only for the purpose of preserving order in the court and protecting the authority and dignity of the court. The person committing the contempt of court shall be given an opportunity to speak in mitigation of the contempt unless compelling circumstances demand otherwise. The order of contempt shall recite the facts, state the sanctions imposed, and be signed by the judge and entered on the record.

(2) A court, after a finding of contempt of court in a proceeding under subsection (1) of this section may impose for each separate contempt of court a punitive sanction of a fine of not more than five hundred dollars or imprisonment in the county jail for not more than thirty days, or both, or a remedial sanction set forth in RCW 7.21.030(2). A forfeiture imposed as a remedial sanction under this subsection may not exceed more than five hundred dollars for each day the contempt continues.

**7.21.070 Appellate review.** A party in a proceeding or action under this chapter may seek appellate review under applicable court rules. Appellate review does not stay the proceedings in any other action, suit, or proceeding, or any judgment, decree, or order in the action, suit, or proceeding to which the contempt relates.

## **Chapter 10.14 RCW HARASSMENT**

**10.14.010 Legislative finding, intent.** The legislature finds that serious, personal harassment through repeated invasions of a person's privacy by acts and words showing a pattern of harassment designed to coerce, intimidate, or humiliate the victim is increasing. The legislature further finds that the prevention of such harassment is an important governmental objective. This chapter is intended to provide victims with a speedy and inexpensive method of obtaining civil antiharassment protection orders preventing all further unwanted contact between the victim and the perpetrator.

**10.14.020 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Unlawful harassment" means a knowing and willful course of conduct directed at a specific person with seriously alarms, annoys, harasses, or is detrimental to such person, and which serves no legitimate or lawful purpose. The course of conduct shall be such as would cause a reasonable person to

suffer substantial emotional distress, and shall actually cause substantial emotional distress to the petitioner, or, when the course of conduct would cause a reasonable parent to fear for the well-being of their child.

(2) "Course of conduct" means a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose. "Course of conduct" includes in addition to any other form of communication, contact, or conduct, the sending of an electronic communication. Constitutionally protected activity is not included within the meaning of "course of conduct."

**10.14.030 Course of conduct—Determination of purpose.** In determining whether the course of conduct serves any legitimate or lawful purpose, the court should consider whether:

(1) Any current contact between the parties was initiated by the respondent only or was initiated by both parties;

(2) The respondent has been given clear notice that all further contact with the petitioner is unwanted;

(3) The respondent's course of conduct appears designed to alarm, annoy, or harass the petitioner;

(4) The respondent is acting pursuant to any statutory authority, including but not limited to acts which are reasonable necessary to:

- (a) Protect property or liberty interests;
- (b) Enforce the law; or
- (c) Meet specific statutory duties or requirements;

(5) The respondent's course of conduct has the purpose or effect of unreasonably interfering with the petitioner's privacy or the purpose or effect of creating an intimidating, hostile, or offensive living environment for the petitioner;

(6) Contact by the respondent with the petitioner or the petitioner's family has been limited in any manner by any previous court order.

**10.14.040 Protection order—Petition.** There shall exist an action known as a petition for an order for protection in cases of unlawful harassment.

(1) A petition for relief shall allege the existence of harassment and shall be accompanied by an affidavit made under oath stating the specific facts and circumstance from which relief is sought.

(2) A petition for relief may be made regardless of whether or not there is pending lawsuit, complaint, petition, or other action between the parties.

(3) All court clerks' offices shall make available simplified forms and instructional brochures. Any assistance or information provided by clerks under this section does not constitute the practice of law and clerks are not responsible for incorrect information contained in a petition.

(4) Filing fees are set in RCW 36.18.020, but no filing fee may be charged for a petition filed in an existing action or under an existing cause number brought under this chapter in the jurisdiction where the relief is sought or as provided in RCW 10.14.055. Forms and instructional brochures shall be provided free of charge.

(5) A person is not required to post a bond to obtain relief in any proceeding under this section.

(6A) The parent or guardian of a child under age eighteen may petition for an order of protection to restrain a person age eighteen years or over from contact with that child upon a showing that contact with the person to be enjoined is detrimental to the welfare of the child.

(7) The parent or guardian of a child under the age of eighteen may petition in superior court for an order of protection to restrain a person under the age of eighteen years from contact with that child only in cases where the person to be restrained has been adjudicated of an offense against the child protected by the order, or is under investigation or has been investigated for such an offense. In issuing a protection order under this subsection, the court shall consider, among the other facts of this case, the severity of the alleged offense, and continuing physical danger or emotional distress to the alleged victim, and the expense, difficulty, and educational disruption that would be caused by a transfer of the alleged offender to another school. The court may order that the person restrained in the order not attend the public or approved private elementary, middle, or high school attended by the person under the age of eighteen years protected by the order. In the event that the court orders a transfer of the restrained person to another school, the parents or legal guardians of the person restrained in the order are responsible for transportation and other costs associated with the change of school by the person restrained in the order. The court shall send notice of the restriction on attending the same school as the person protected by the order

to the public or approved private school the person restrained by the order will attend and to the school the person protected by the order attends.

**10.14.070 Hearing—Service.** Upon receipt of the petition alleging a prima facie case of harassment, other than a petition alleging a sex offense as defined in chapter 9A.44 RCW, the court shall order a hearing which shall be held not later than fourteen days from the date of the order. If the petition alleges a sex offense as defined in chapter 9A.44 RCW, the court shall order a hearing which shall be held not later than fourteen days from the date of the order. Except as provided in RCW 10.14.085, personal service shall be made upon the respondent not less than five court days before the hearing. If timely personal service cannot be made, the court shall set a new hearing date and shall either require additional attempts at obtaining personal service or permit service by publication as provided by RCW 10.14.085. IF the court permits service by publication, the court shall set the hearing date not later than twenty-four days from the date of the order. The court may issue an ex parte order for protection pending the hearing as provided in RCW 10.14.080 and 10.14.085.

**10.14.080 Antiharassment protection orders—Ex parte temporary—hearing—Longer term, renewal.** (1) Upon filing a petition for a civil antiharassment protection order under this chapter, the petitioner may obtain an ex parte temporary antiharassment protection order. An ex parte temporary antiharassment protection order may be granted with or without notice upon the filing of an affidavit which, to the satisfaction of the court, shows reasonable proof of unlawful harassment of the petitioner by the respondent and that great or irreparable harm will result to the petitioner if the temporary antiharassment protection order is not granted.

(2) An ex parte temporary antiharassment protection order shall be effective for a fixed period not to exceed fourteen days or twenty-four days if the court has permitted service by publication under RCW 10.14.085. The ex parte order may be reissued. A full hearing, as provided in this chapter, shall be set for not later than fourteen days from the issuance of the temporary order or not later than twenty-four days if service by publication is permitted. Except as provided in RCW 10.14.070 and 10.14.085, the respondent shall be personally served with a copy of the ex parte order along with a

copy of the petition and notice of the date set for the hearing. The ex parte order and notice of hearing shall include at a minimum the date and time of the hearing set by the court to determine if the temporary order should be made effective for one year or more, and notice that if the respondent should fail to appear or otherwise not respond, an order for protection will be issued against the respondent pursuant to the provisions of this chapter, for a minimum of one year from the date of the hearing. The notice shall also include a brief statement of the provisions of the ex parte order and notify the respondent that a copy of the ex parte order and notice of hearing has been filed with the clerk of the court.

(3) at the hearing, if the court finds by a preponderance of the evidence that unlawful harassment exists, a civil antiharassment protection order shall issue prohibiting such unlawful harassment.

(4) An order issued under this chapter shall be effective for not more than one year unless the court finds that the respondent is likely to resume unlawful harassment of the petitioner when the order expires. If so, the court may enter an order for a fixed time exceeding one year or may enter a permanent antiharassment protection order. The court shall not enter an order that is effective

for more than one year if the order restrains the respondent from contacting the respondent's minor children. This limitation is not applicable to civil antiharassment protection orders issued under chapter 26.09, 26.10, or 26.26 RCW. If the petitioner seeks relief for a period longer than one year on behalf of the respondent's minor children, the court shall advise the petitioner that the petitioner may apply for renewal of the order as provided in this chapter or if appropriate may seek relief pursuant to chapter 26.09 or 26.10 RCW.

(5) At any time within the three months before the expiration of the order, the petitioner may apply for a renewal of the order by filing a petition for renewal. The petition for renewal shall state the reasons why the petitioner seeks to renew the protection order. Upon receipt of the petition for renewal, the court shall order a hearing which shall be not later than fourteen days from the date of the order except as provided in RCW 10.14.0885, personal service shall be made upon the respondent not less than five days before the hearing. If timely service cannot be made the court shall set a new hearing date and shall either require additional attempts at obtaining personal service or permit service by publication as provided by RCW 10.14.085. If the court permits service by

publication, the court shall set the new hearing date not later than twenty-four days from the date of the order. If the order expires because timely service cannot be made the court shall grant an ex parte order of protection as provided in this section. The court shall grant the petition for renewal unless the respondent proves by a preponderance of the evidence that the respondent will not resume harassment of the petitioner when order expires. The court may renew the protection order for another fixed time period or may enter a permanent order as provide in subsection (4) of this section.

(6) The court, in granting an ex parte temporary antiharassment protection order or a civil antiharassment protection order, shall have broad discretion to grant such relief as the court deems proper, including an order:

(a) Restraining the respondent from making any attempts to contact the petitioner;

(b) Restraining the respondent from making any attempts to keep the petitioner under surveillance;

(c) Requiring the respondent to stay a stated distance from the petitioner's residence and workplace; and

(d) Considering the provisions of RCW 9.41.800.

(7) A petitioner may not obtain an ex parte temporary antiharassment protection order against a respondent if the petitioner has previously obtained two such ex parte orders against the same respondent but has failed to obtain the issuance of a civil antiharassment protection order unless good cause for such failure can be shown.

(8) The court order shall specify the date an order issued pursuant to subsections (4) and (5) of this section expires if any. The court order shall also state whether the court issued the protection order following personal service or service by publication of an order issued under this section.

**10.14.090 Representation or appearance.** (1) Nothing in this chapter shall preclude wither party form representation by private counsel or form appearing on his or her own behalf.

(2) The court may require the respondent to pay the filing fee and court costs, including service fees, and to reimburse the petitioner for costs incurred in bringing the action, including a reasonable attorney's fee. FI the petitioner has been granted leave to proceed in forma pauperis, the court may require the respondent

to pay the filing fee and costs, including services fees, to the county or municipality incurring the expense.

**10.14.100 Service of order.** (1) An order issued under this chapter shall be personally served upon the respondent, except as provided in subsections (5) and (7) of this section.

(2) The sheriff of the county or the peace officers of the municipality in which the respondent resides shall serve the respondent personally unless the petitioner elects to have the respondent served by a private party.

(3) If the sheriff or municipal peace officer cannot complete service upon the respondent within ten days, the sheriff or municipal peace officer shall notify the petitioner.

(4) Returns of service under this chapter shall be made in accordance with the applicable court rules.

(5) If an order entered by the court recites that the respondent appeared in person before the court, the necessity for further service is waived and proof of service of that order is not necessary. The court's order, entered after a hearing, need not be served on a respondent who fails to appear before the court, if material terms of the order have not changed from those contained

in the temporary order, and it is shown to the court's satisfaction that the respondent has previously been personally served with the temporary order.

(6) Except in cases where the petitioner has fees waived under RCW 10.14.055 or is granted leave to proceed in forma pauperis, municipal police departments serving documents as required under this chapter may collect the same fees for service and mileage authorized by RCW 36.18.040 to be collected by sheriffs.

(7) If the court previously entered an order allowing service by publication of the notice of hearing and temporary order of protection pursuant to RCW 10.14.085, the court may permit service by publication of the order of protection issued under RCW 10.14.080. Service by publication must comply with the requirements of RCW 10.14.085.

**10.14.110 Notice to law enforcement agencies—**

**Enforceability.** (1) A copy of an antiharassment protection order granted under this chapter shall be forwarded by the clerk of the court on or before the next judicial day to the appropriate law enforcement agency specified in the order.

Upon receipt of the order, the law enforcement agency shall forthwith enter the order into any computer-based criminal intelligence information system available in this state used by law enforcement agencies to list outstanding warrants. The law enforcement agency shall expunge expired orders from the computer system. Entry into the law enforcement information system constitutes notice to all law enforcement agencies of the existence of the order. The order is fully enforceable in any county in the state.

(2) The information entered into the computer-based system shall include notice to law enforcement whether the order was personally served or served by publication.

**10.14.115 Enforcement of order—Knowledge prerequisite to penalties—Reasonable efforts to serve copy of order.** (1) When the court issues an order of protection pursuant to RCQ 10.14.080, the court shall advise the petitioner that the respondent may not be subjected to the penalties set forth in RCW 10.14.120 and 10.14.170 for a violation of the order unless the respondent knows of the order.

(2) When a peace officer investigates a report of an alleged violation of an order for protection issued under this chapter the officer shall attempt to determine whether the respondent know of the existence of the protection order. If the officer determines that the respondent did not or probably did not know about the protection order, the officer shall make reasonable efforts to obtain a copy of the protection order and serve it on the respondent during the investigation.

**10.14.120 Disobedience of order—Penalties.** Any willful disobedience by a respondent age eighteen years or over of any temporary antiharassment protection order or civil antiharassment protection order issued under this chapter subjects the respondent to criminal penalties under this chapter. Any respondent age eighteen years or over who willfully disobeys the terms of any order issued under this chapter may also, in the court's discretion, be found in contempt of court and subject to penalties under chapter 7.21 RCW. Any respondent under the age of eighteen years who willfully disobeys the terms of an order issued under this chapter may, in the court's discretion by found in contempt of court and subject to the sanction specified in RCW 7.21.030(4).

**10.14.150 Jurisdiction.** (1) The district courts shall have jurisdiction and cognizance of any civil actions and proceedings brought under this chapter, except the district court shall transfer such actions and proceedings to the superior court when it is shown that the respondent to the petition is under eighteen years of age.

(2) Municipal courts may exercise jurisdiction and cognizance of any civil actions and proceedings brought under this chapter by adoption of local court rule, except the municipal court shall transfer such actions and proceedings to the superior court when it is shown that the respondent to the petition is under eighteen years of age.

(3) Superior courts shall have concurrent jurisdiction to receive transfer of antiharassment petitions in cases where a district or municipal court judge makes finding of fact and conclusions of law showing that meritorious reasons exist for the transfer. The municipal and district courts shall have jurisdiction and cognizance of any criminal actions brought under RCW 10.14.120 and 10.14.170.

**10.14.160 Where an action may be brought.** For the purposes of this chapter an action may be brought in:

(1) The judicial district of the country in which the alleged acts of unlawful harassment occurred;

(2) The judicial district of the county where any respondent resides at the time the petition is filed;

(3) The judicial district of the county where a respondent may be served if it is the same county or judicial district where a respondent resides;

(4) The municipality in which the alleged acts of unlawful harassment occurred;

(5) The municipality where any respondent resides at the time the petition is filed; or

(6) The municipality where a respondent may be served if it is the same country or judicial district where a respondent resides.

**10.14.170 Criminal penalty.** Any respondent age eighteen years or over who willfully disobeys any civil antiharassment protection order issued pursuant to this chapter shall be guilty of a gross misdemeanor.

**10.14.180 Modification of order.** Upon application with notice to all parties and after a hearing, the court may modify the terms of an existing order under this chapter. In any situation where an order is terminated or modified before its expiration date, the clerk of the court shall forward on or before the next judicial day a true copy of the modified order or the termination order to the appropriate law enforcement agency specified in the modified order or termination order. Upon receipt of the order, the law enforcement agency shall promptly enter it in the law enforcement information system.

**10.14.190 Constitutional rights.** Nothing in this chapter shall be construed to infringe upon any constitutionally protected rights including, but not limited to, freedom of speech and freedom of assembly.

**10.14.200 Availability of orders in family law proceedings.** Any order available under this chapter may be issued in action under chapter 13.32AS, 26.09, 26.10, or 26.26 RCW. An order available under this chapter that is issued under

those chapters shall be fully enforceable and shall be enforced pursuant to the provisions of this chapter.