

RECEIVED  
IN  
LEGAL COUNSEL

FILED

MAY 28 2013

COURT CLERK  
JUDICIAL  
STATE OF WASHINGTON  
By \_\_\_\_\_

**No. 31320-4-III**

**COURT OF APPEALS, DIVISION III**

**STATE OF WASHINGTON**

---

**In re the Marriage of:**

**BRIAN DALE HAMOND, Appellant**

**and**

**PATRICIA ABRAMS-HAMOND, Respondent**

---

**APPEAL FROM THE SUPERIOR COURT**

**OF SPOKANE COUNTY**

**HONORABLE JUDGE MICHAEL PRICE**

---

**REPLY BRIEF**

---

**Robert Cossey  
Attorney for Appellant  
Robert Cossey & Associates, P.S.  
902 N. Monroe  
Spokane, WA 99201  
(509) 327-5563**

## TABLE OF CONTENTS

	<u>Page</u>
I. ARGUMENT.....	1
A. Reply for Time Rule Argument.....	1
B. Reply for Social Security Benefit Offset Argument.....	3
II. CONCLUSION .....	5

## TABLE OF AUTHORITIES

<u>Cases</u>	<u>Page</u>
<u>In re Marriage of Smith</u> , 158 Wn.App. 248, 241 P.3d 449 (2010).....	2
<u>In re Rockwell</u> , 141 Wn.App. 235, 170 P.3d 572 (2007).....	4
<u>Marriage of Chavez</u> , 80 Wn.App. 432, 909 P.2d 314 (1996).....	2

# I ARGUMENT

## REPLY FOR TIME RULE ARGUMENT

Mr. Hamond referenced the fact that the present value of the community property portion of his LOEFF plan was \$507,193.88. (CP 117). This was based on the present value calculation by Brian Gosline *up to the date of separation*. (CP 129). Ms. Abrams-Hamond specifically references the accumulated contributions of \$150,714.14 to the LOEFF plan as of the *date of separation*. (CP 13, 89). Neither party requested division of any contributions to the LOEFF plan made by Mr. Hamond *after* the date of separation. As Mr. Hamond continues to work his present contributions should not be considered community property and should not be divided. Neither party requested this and both parties referred directly to figures for the LOEFF account that were based on contributions made *prior to* the date of separation.

Although Mr. Hamond did not specifically use the words “time rule” in his argument before the trial court, there is no question that it was understood his request for division of the LOEFF account contemplated the contributions made up to the date of separation. Ms. Abrams-Hamond also referred directly to figures that were based on contributions made up to the date of separation but not after. The trial court simply made a

generalized award of “1/2 the LOEFF plan” to each party and did not specify that the division was of the contributions made prior to separation even though both parties clearly contemplated in their pleadings division of only those contributions made prior to separation. (CP 117, 13, 89). The trial court should have used the “time rule” formula to avoid awarding post-separation earnings. See Marriage of Chavez, 80 Wn.App. 432, 909 P.2d 314 (1996).

Mr. Hamond’s contributions since the date of separation do not constitute increases in the value of the pension as a result of the community. There is no evidence that Mr. Hamond received a salary increase shortly after separation that was a result of community effort and therefore should be included in the division of the LOEFF account. “[W]hen a spouse continues to accumulate pension benefits following divorce, the trial court should not simply divide the total pension in half.” In re Marriage of Smith, 158 Wn.App. 248, 261, 241 P.3d 449 (2010). Division of Mr. Hamond’s subsequent contributions after the date of separation should not have been awarded to Ms. Abrams-Hamond and neither party requested such a division in their pleadings. It is proper that this issue be remanded to specify that the division of the LOEFF plan should include only contributions made prior to separation.

## **REPLY FOR SOCIAL SECURITY ARGUMENT**

Mr. Hamond's original request was for the court to off-set the amount of Social Security which he would have received had he not elected to contribute to the LOEFF retirement plan. (CP 117). His request was straightforward and specifically agreed to accept the calculations of Brian Gosline when the calculations concerning what portion of the LOEFF plan equated to Mr. Hamond's Social Security benefits were completed. (CP 117). It is disingenuous for Ms. Abrams-Hamond to state in her Response Brief that the record was devoid of any statement of what those values were and therefore no relief is allowed. (RB 16). Mr. Hamond did present calculations from Brian Gosline regarding other aspects of the LOEFF retirement plan and agreed to abide by whatever calculations were forthcoming but not completed as to the valuation of his Social Security benefit portion of the plan. (CP 117). Though it is true that an exact amount was not presented, this does not lead to the conclusion that his request is therefore without merit. Nowhere in her Declaration did Ms. Abrams-Hamond object to any of the calculations of Brian Gosline as otherwise presented or that she would object to the calculations of Mr. Hamond's Social Security benefits portion when it should be presented at a later date. (CP 13).

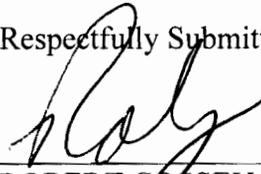
It was important for the court to take into account the Social Security benefits of each party when making a property division. As stated in Rockwell, “A trial court could not properly evaluate the economic circumstances of the spouses unless it could also consider the amount of Social Security benefits currently received.” In re Rockwell, 141 Wn.App. 235, 245, 170 P.3d 572 (2007). Just as in Rockwell, the court should have discounted both parties projected Social Security benefits and removed them entirely from the equation “in order to put them on comparable footing prior to dividing the remaining assets”. Id. at 245. This was found to be a proper means of considering Social Security benefits and achieving overall fairness. Id. at 245.

In this case, Mr. Hamond clearly requested the discounting of his projected Social Security benefits from the value of the LOEFF plan and, although Brian Gosline had not completed his analysis at the time of trial, was willing to be bound by whatever result Brian Gosline projected. (CP 117). Ms. Abrams-Hamond made no objection to this proposal by Mr. Hamond or to the use of Brian Gosline’s figures, other than a generalized statement that Mr. Hamond had not determined what portion of his LOEFF plan would be attributable to a replacement for Social Security. (CP 13).

**II**  
**CONCLUSION**

It is respectfully requested that this court reverse the challenged decisions of the trial court and remand for further consideration.

Respectfully Submitted,



---

ROBERT COSSEY  
WSBA # 16481  
Attorney for Respondent

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

In re:  
**BRIAN HAMOND**  
  
Appellant  
  
and  
  
**PATRICIA C. ABRAMS**  
  
Respondent

No. 313204  
  
**AFFIDAVIT OF MAILING**

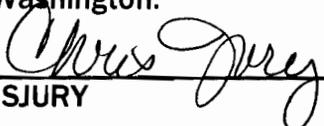
I, Chris Jury, under penalty of perjury under the laws of the State of Washington, declare that on May 24, 2013, I delivered a copy of the Reply Brief of Brian Hamond to the individuals listed in this Affidavit at the below last known addresses:

Shannon Deonier  
William Schroeder  
PAINE HAMBLEN LLP  
717 W Sprague, Suite 1200  
Spokane WA 99201

The following party listed below was served by U.S. Mail on May 24, 2013.

Brian Hamond  
414 E Gem Lane  
Colbert WA 99005

Dated this 24 day of May 2013, at Spokane, Washington.

  
CHRISJURY