

64322-3

64322-3

No. 64322-3

WASHINGTON STATE COURT OF APPEALS

DIVISION I

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IN RE MARRIAGE OF:

DANIEL M CASEY  
Appellant

and

SUZANNE E. NEVAN  
Respondent.

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REVIEW FROM THE SUPERIOR COURT  
FOR KING COUNTY

The Honorable Judge Ponomarchuk (Pro Tem)

BRIEF OF APPELLANT

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A. Assignments of error

1. Trial court erred in awarding the Mother as primary parent/custodian. Because it failed to follow the criteria of "RCW 26.09.187
2. The trial court erred in considering the agreed temporary parenting plan for their son during the parents separation. (no contract was signed but they did have a set schedule, which fluctuated every other weekend)
3. Trial court erred when it entered the parenting plan. Because it failed to follow the requirements under RCW 26.09
4. Trial court error in entering a parenting plan that had a restriction on the father even though there were no restriction entered under RCW 26.09.191
5. The trial court error in entering the parenting plan because it failed to consider the agreements of the parents.
6. Should the trial court be required to point out in its finding as to why it chose to alter the parent child relationship beyond what is necessitated by the changing relationship of the parents'?

Issues Pertaining to Assignments of Error

1. Did the trial court properly adhere to the requirements of RCW RCW26.09 in determining which parent should be the primary parent.
2. Did the parenting plan entered by the trial court meet the requirements under RCW 26.09.
3. Should a trial court be able to consider the parents agreed temporary parenting plan when entering its decision, even though it was not an order of the court.
4. Can a trial court ignore the agreements of the party, when such an agreement is not in conflict with the requirements of RCW 26.09.187 or in conflict with RCW 26.09.191
5. Was there ample evidence in the record to support the parenting plan entered by the trial court. Or does there exist strong evidentiary support for the findings of the facts entered by the trial court.
6. Should the trial court be required to point out in its finding as to why it chose to alter the parent child relationship beyond what is necessitated by the changing relationship of the parents'?
7. Should a court not weight the relationship with all the Childs siblings and make provision accordingly.
8. Was the trial court decision based on untenable grounds or reasons or manifestly unreasonable?

B. Statement of the Case (facts)

The party's son Joe was born on June 15<sup>th</sup> 2002. Their son resided with the mother prior to the party's marriage on January 24, 2004. They were separated in August 2008 and the mother filed for divorce on October 7<sup>th</sup> 2008. At the time of trial their son was 7 years old. The parties have children from prior marriages, the mother has two children a girl and a boy, and the father has one a girl. The parties were married for 4 years and 7 months prior to the separation and were separated for approximately 1 year prior to the trial date. At the time of separation the parents entered into an agreement with all the children (RP50), during the time of separation the mother had numerous angry outbreaks and sometimes violent out breaks in front of their son.(RP55)

Prior to the marriage the mother agreed to get a Job comparable to her qualifications (RP68) as she had 20 years experience in mortgage banking (RP45). The plan was for both parents to contribute as much as possible to the household now they had four children (RP67). The mother worked away from the home (RP45) (RP93) during the marriage and so did the father. Shortly after the marriage the Mother got a full time job working for Washington Financial Group a mortgage firm as the "head of underwriting operations for a warehouse line" (RP 44). Since their

marriage the parties' son had spent his days either in daycare or at school (RP54).

After the separation the parties functioned from their own agreed temporary parenting plan, which was that Joe would reside with the father on every Monday afternoon after school, have an overnight every Wednesday's, both of which are the same time he had his daughter Orla from his first marriage, and that Joe would also reside with the father every other weekend starting Friday after school returning Joe Monday morning to school or on every other other weekend the Father had Joe returning him to the mother Sunday evening. They also agreed to the distribution of the vehicle by tossing a coin, as well as what the minimum long term contact between the fathers two child would be (RP50). The parties could not agree to a permanent parenting plan. Both parents live in West Seattle and live equal distance from their son's school (RP55). Father paid monthly child support early directly to the mother in the sum of \$349.

While married the father performed more of the daily household chores than the mother and spent more time directly interacting with their son than the mother(RP52-54)(RP59).

In the evening the mother spent a lot of time away from the house (RP71).

Shortly after the parties were married the mother got a full time job but within a short period of time she voluntarily quit her job (RP68). She attempted to be a real estate agent for a year, shortly after that she committed to babysitting her brother twines at his house and worked numerous different jobs (RP45).

Because there was no agreed permanent parenting plan (RP 4 ln17) a trial was held on September 16<sup>th</sup> 2009, in King County Superior court by the honorable Judge Ponomarchuk, Pro Tem. The Mother petitioned the court to be the primary parent and to restrict the fathers time (RP23). The father petitioned the court to be the primary parent. An oral and written decision was issued the same day of trial. A motion for reconsideration was filed by the father on September 25<sup>th</sup> 2009(CP 31), and denied by the court on September 30<sup>th</sup> 2009(CP 35).

D. Argument

1. Trial court erred in awarding the Mother as primary parent/custodian. Because under RCW 26.09.187 (3)(a)(i) the factor to be given the greatest weight is “The relative strength, nature and stability of the child’s relationship with each parent” Given the testimony to the court on the day of trial it is clear that the strength, nature and stability of the child’s relationship with the mother is suspect at best and that the father has as more stable relationship with their son than the mother, and the reasoning given by the court on the day of trial and in it’s “order denying motion/petition” for reconsideration is not consistence with this part of the statute or the trial court record.

During the Fathers closing argument he quoted from In re Marriage of Kovacs, 121 Wn.2d 795, 854 P2.d 629 in an attempt to be sure the court followed the single factor of who has the more stable relationship with their son when making it decision. He also politely pointed it out to the court while it was reading its ruling DVD JAVS 4/3:33:48 and quoted the statute to be followed (RP104) only to be told “that’s a basis for an appeal”.

“I understand you’re doing – you’re finishing—but if—I have updated 187(3)(1)(a), and it does not include that last phrase that you have included. They have removed it for that specific reason. That the only criteria to consider - - the number one criteria according to (inaudible)(In re marriage of Kovacs) is relative strength, nature and stability of the parents who has had the primary - - the most time is irrelevant and they’ve removed it from the statute, and you’re quoting a different statute.”(RP104)

While reading out the courts ruling the judge references “the relative strength, nature and stability” from the statute, but enters no facts from the trial or testimony to support who had the more stable relationship with their son to support the decision. Instead talks about

“in most cases, particularly ones that are contested for custody” they normally have “a mental health professional weigh in on this”(RP103).

The court then goes on to reference who the child has resided with and what parental involvement there was from both parents and completely skips over the first factor, of “relative strength and nature of that relationship”.

The trial court gives it reasoning on the day of trial for appointing the mother as the primary parent (RP 104) based on two factors it believed, one was that “the child has resided with the mother at all times since birth” and the other one was “it does appear that the child has - - that the mother has taken greater responsibility of

performing parenting functions.” Neither of these relate to which parent their son has had the more stable relationship. In re Marriage of Kovacs 121 Wn.2d 795, 854 P.2d 629 “holding that the Parenting act of 1987 does not create a presumption in favor of placement with the primary caregiver”

The court cited the father’s inability to remember the names of the, doctor, dentist and teacher of their son to why the court thought that the mother was the primary parent and that the Father was not, (RP 106) , “The father could not tell me who these people are which bespeaks the argument that he’s the primary caretaker”

In the “Order on Respondents Motion for Reconsideration” (CP 35-36) the court acknowledges having used an out of date copy of the statute while in the court room and says that it had an “up to date copy of the statute in chambers”. In the order the court clarifies its reasoning and says it used the appropriate statute giving the greatest weight to RCW 26.09187(3)(i) and further says

“the mother’s demonstrated showing that she has taken greater responsibility in performing parenting functions relating to the daily needs of the child and the court’s determination regarding the relative strength, nature and stability of the child’s relationship with each parent which the court found to be strong for both parents but more favorable for the mother.”

Again in the above statement the court gives as its reasoning for its determination of the mother stable relationship with their son as the amount of time it believed she has spent performing parenting functions with their son, nothing else. There is little to no testimony from the mother regarding her relationship with their son only regarding her claim to be the primary parent. Mothers complete testimony regarding her involvement with their son was

“mostly mom” (RP 15), “I have been, and continue to be Joe’s primary parent.” (RP 24), “I have taken Joe to all his dental appointments, to all his doctor’s appointments, with the exception of one or two”, “and then just to wrap it up , historically, I have made a conscious choice in my adult life that once I had children to not pursue a career. My career has been taking care of my children. And I have, in my marriage with Danny, I had numerous jobs that augmented our family income, but my primary focus was on raising these kids. I was involved 100% with Joe staying at home till he was school age” (RP 35)

Although the mother claimed to be the primary parent, she did not enter testimony regarding her interaction with Joe or daily parenting functions or things she supposedly did with Joe to support the courts conclusion that the relative strength, nature and stability of the child’s relationship was “more favorable for the mother” (CP35-36) she also did not enter testimony that would support the follow court statement,

“the mother had demonstrated showing that she has taken greater responsibility in performing parenting functions relating to the daily needs of the child”(CP35-36)

Other than the fact their now 7 year old son had resided with the mother for the first year and a half of their sons life.

In contrast the father testimony was way more detailed and was as follows

“Joe is our seven year old son. He’s very open person, personable person, very personality, almost like an {inaudible (adult) [DVD Javs 11:13:40]}. Very friendly, willing to talk to almost anyone.”(RP 49).

“There was one morning Joe and myself and Orla were at the tennis court playing tennis prior to taking Joe to school”(RP 49)

“I taught Joe how to ride his bicycle at Hiawatha Park.” “I’ve been to all of Joe’s soccer games, most of his baseball games.”(RP 52).

“When I was coaching Katie’s Joe was with us and he would hang out and he would assistant coach. He got a little honor for doing that, which is one of the reasons why Joe is a good soccer player”.(RP 53)

“I have encouraged Orla, when she comes home, to do her homework immediately which is why whenever we’re in the office, the first priority is that they do their homework. I read to Orla, I read to Joe. I’ve read to Joe for ages. I help him with his homework. And I emphasize the importance of doing it immediately after you come home from work. And Just recently I’ve taught Joe how to read the clock. When Suzanne and I lived together, I cooked as many family meals as Suzanne did. I was the one who was responsible for doing the laundry. I vacuumed the house, wash the dishes. Friday’s laundry issue was always trying to coordinate the kids and get the laundry downstairs and get it finished for the weekend.” (RP 53)

“On the day I have Orla and Joe, I go in late because I drop them off at school. And if I’m picking them up, I come home early, and the days I don’t have them, I go in early and I stay late. My work is flexible enough that I can do that. If one of them is sick, which I’ve done, I work from home.”(RP 54)

“When we lived in the house, I was the one who was engaged with Joe. I was the one who would be outside playing with Joe and his friends Jackson and Austin, and there’s one other boy, and I forget the (inaudible) guys name.”(RP 59)

All this testimony goes to show the father spent a lot of time nurturing his relationship with his son and that for the 4 years and 7 months of the marriage “maintained a loving, stable consistent, and nurturing relationship with” their son, which shows how the court said that the father had a strong relationship with his son.

This testimony also showed that the father took a greater role in the running of the household and attended to adequate education for the child”, help their son “maintain appropriate interpersonal relationships” all of which are criteria to be considered when making a decision. All of which go to show that compared to the testimony entered by the mother that “the relative strength, nature and stability of the child’s relationship” with the father was considerable better. Was like this because the father spent more time in the house than the mother did.

The factor to consider is the stability of the relationship between the parents and child, and the relative strength, nature of that relationship.

The father was more involved with their son than the mother was. In contrast to the mother the father was involved with their son in tennis (RP49), bicycle, soccer and baseball (RP 53), education (RP53), outside their house playing with their son and his friends (RP59 ln 6) as well as doing the daily cooking and cleaning (RP 53). These interactions showed that their son had a strong, natural and stable relationship with the father, which is the main point to consider when making a decision as to who the child should reside with and was recognized by the court in its 'order on respondents motion for reconsideration" (CP35-36) "which the court found to be strong for both parents but more favorable for the mother".

The nature of the mother son relationship was suspect at best. And the father testified about the nature of the relationship between the mother and their son as the father had concerns about the nature of that relationship, "(RP 64 ln14)

"since we got married, I've been fully involved in our son's life. I truly believe that our son has a greater attachment to me than he does to Suzanne. There have been a number of instances when we

first started separating, and there were recently - - in the last month or so there was one, and I could hear there was one on the phone yesterday, where Suzanne, or Joe, has a problem separating from Suzanne when - - when it comes time to switch from one parent to the other. And I believe this separation - - Joe's not sure of his relationship with his mom. Yeah, he needs his mom, but he's not sure what that relationship is going to be in any given point in time because of the way Suzanne reacts"(RP 64).

The fathers testimony to support his concern about the mother son relationship was as follows,

"She takes funny modes. There was one morning Joe and myself and Orla were at the tennis court playing tennis prior to taking Joe to school, and Suzanne happened to be driving by as we were leaving and Joe noticed his mom, he waved and ran down the stairs. She slowed down, and stopped for a split second to say "gotta go, I got no gas, can't talk." And she drove away, left Joe (inaudible) upset, and this was shortly after we had done our separation" (RP 49)

"And as I said earlier, unfortunately, Suzanne's behavior swings up and down. I don't understand why, but it does. Shortly after our separation, I pulled into Bartell Drug Store one day with Joe and Orla, which is close to where we both live, and Suzanne was about to go in. She spotted us and she waited until we got to the door, said hello, and follows us into the store with an angry look on her face. She followed me around the store actually, argument (inaudible) and yelling at me. I refused to engage and got what I wanted from the self, walked to the cash register. She followed and continued the same behavior even while I was checking out. Joe and Orla went to the toy lane like they normally do, and then we left. She later apologized to Joe and myself for the incident." (RP55)

"I hate to say this, but it goes to show the character. I come out of the hospital after having a stroke two days later and she starts arguing with me during the phone. It's the same thing whenever Joe's around. One afternoon when I dropped Joe off at Suzanne's and told her we were going to Ireland for our vacation, Suzanne

asked if that was true. She stormed back in the house and slammed the door while Joe was there. She'd done this on a number of occasions.”(RP56)

“In one of them, she slammed the door - - I can't remember what the incident was - - later sat down and talked to Joe and apologized and explained to him that she shouldn't be doing this”.(RP56)

“On the day I needed to meet her and Joe at the passport office, she arrived angry. Was very angry - -that I filled out Joe's address as my address. You know, there was no determination at this point, and she kept yelling “I'm the primary parent, I'm the primary parent” in front of everyone. There weren't a lot of people there admittedly, there was only like two people, but she really didn't care about what anybody thought and said, she went ahead and did it.” (RP 57)

“Again, I did not engage. I have a tendency to shut down is what I do. She has continued this behavior for quite a while, without care to Joe. A lot of times it's in front of Joe and Joe will be there. About a month or so ago, I dropped papers off that were due, something to do with the court, and she happened to see that I had dropped by the house, and she called me on the phone and asked what I was doing. I explained to her what I was doing. I then talked to Joe, said hello to Joe. Then Suzanne came back on the phone and tried to start another argument, and Joe - - I can hear Joe in the back ground - - again, end of conversation.”(RP57)

“And the day I went to pick up Joe to go on summer vacation, that was shortly after we came out of our negotiation. Suzanne was ticked off about something, put Joe in the van and slammed the door on him. That was Joe's goodbye for three weeks from his mom.” (RP58)

These interactions of the mother when around her son show the true nature of that relationship. The mother choosing to drive away at the tennis court when it was clear from the son's running down

the stairs, that the son wanted the mother only to have his emotions crushed when she drove away. The mother slamming the door on her son when he wouldn't see her for the next three weeks. The mother's angry outburst in front of the son without care of the consequence to their son. These interactions would bring any reasonable person to question the nature and stability of the mother-son relationship. All this goes against the court's assumption about the mother having a stronger relationship or attachment with their son. The father clearly had their son's interests at heart during the whole separation period when he was confronted numerous times in front of his son with an out-of-control spouse and did not react or engage in the mother's behavior, "shutting down" (RP56). The parent who does not respond in kind clearly has a strong caring bond for the child in question and it would be natural to assume that the child would feel more secure with the less aggressive parent than the other way around.

The trial court weighed heavily on the fact that the father could not remember the names of their son's doctor, dentist or his new teacher as a primary reason as to why he could not be the primary parent.

“The father could not tell me who these people are which bespeaks the argument that he’s the primary caretaker. A primary care taker would be able to tell a judge who the dentist, the doctor, and the teacher are, irrespective of whether school’s only been in effect for one week”.(RP106)

The father goes into this in detail in his motion to the court for reconsideration (CP 31 -34). Basically the mother knew the father had difficulty remembering names as is evident in the record (RP59 In 10) and (RP 80 In 12) when the father couldn’t remember names of people he had considerable interaction with and the mother knew this and exploited it by asking the question. The father basically argued the parenting plan only requires that the parent perform the functions of taking care of their son, which the father did on a daily bases and which he did when he had to take his son to three separate doctors after he got a cut on his eye ball (CP 31-34), parents should not be required to remember names, only to perform parenting functions. These factors that were given such great weight by the court, while a parenting function, do not occur as frequently as the daily or weekly routine parenting functions like cooking cleaning, etc, or interacting with their son. These are the factor to consider when entering a parenting plan and were testified to the father and not the mother, and should have

been the one's the court weighed on, and not a parents ability to remember names.

The trial court based its decision on which parent had the stronger relationship with their son, on who it thought was the primary parent, by the parent it thought that had "taken greater responsibility in performing parenting functions relating to the daily needs of the child". It is confusing as to how the court could think the mother had taken the greater role in performing parenting functions over the time period of their marriage since the mother was out working while their son was either in daycare or at school (RP54) and the father performed most of the daily parenting functions when they were at home including the one's for her children (RP53) and spent more time in the house than the mother did the mother

"The reality is that when Suzanne was available after work and I was available, I was generally the one that was in the house Suzanne is a very social bud - - and there's nothing wrong with that - - and spent a lot of time outside the house doing other volunteer work or just spending time with her brother or going to the neighbors and chatting with people. She always seemed to have something to do."(RP70)

The mother started a fulltime job immediately after the marriage for a mortgage firm called Washington Financial group worked

there for three months (RP44), was a real estate agent for a year, had numerous part-time jobs and baby sat her brothers twin at his house for three years (RP45), had numerous other jobs and that the parties son has been in daycare or school since the marriage, (RP54). These facts alone show that the mother was not a stay at home mom for their son, as she tries to project. But the mother removes any ambiguity about this when she asks the father the following question “do you think it’s unusual for a couple to share in household chores when both work outside of the home?” (RP92) This was the mothers attempt to try and down play the majority of the household chores the father was performing. The father was performing the majority of the house hold chores because the mother was out socializing.

The mother does not contest any of the father statements of his responsibilities with their son or give contradictory testimony and did not question the father on his assertion.

The court references not having a professional expert witness testimony, but it did have the fathers’ testimony who had spent time during and after his first divorce reading about the effects of divorce on children (RP 62) and who clearly was the more clear

head of the two parents. Which is evident from his choice of not react during the mothers angry and violent out busts. Truly making choices that were better for their son and more in line with a primary parents choices.

The fathers testimony showed that the mother had a consistent pattern of being angry and having outbursts in front of their son.(RP58). The father gives reference to numerous angry and violent outburst by the mother in his testimony (RP55-58) none of which was considered or referenced by the court in it decision.

This testimony on the record of the mothers angry outbursts in front of their son as well as, violent outbursts in front of their son, would bring any reasonable person to question the nature and stability of the mother son relationship.

Hence the court decision was manifestly unreasonable, is not based on the facts of this case or the relationship of the parents with their son, and is not supported by substantial evidence in the record of the court. In fact the only evidence that the mother entered regarding her relationship with their son was the claim that she was the primary parent, which was not supported by the evidence in

this case. One final important point that the mother made “Danny is a good father” (RP26 ln 5)

2. The trial court erred in considering the temporary parenting plan of the parents, for their child during the parent’s separation.

RCW 26.09.191 (5) “in entering a permanent parenting plan, the court shall not draw any presumptions from the provisions of the temporary parenting plan”

The intent of the legislature was to reduce or to encourage the parents to reduce the conflict at what is a very stressful time for all, in an effort to minimize the effect on all, including the children. In 2007 the legislator wrote RCW 26.09.003 clarifying the intent of this law,

“In order to better implement the existing legislative intent the legislature finds that incentives for parties to reduce family conflict and additional alternative dispute resolution options can assist in reducing the number of contested trials” .

As point out In Re Marriage of Kovacs 121 Wn.2d

“parents who had been awarded temporary residential placement of the child not be given unfair advantage when permanent parenting plan was entered”.

The legislature point here was it intended to point out that fighting to win the temporary residential placement will not give you an unfair advantage when the permanent parenting plan is entered.

The fact that the parties temporary parenting plan was not an order of the court but by agreement, best fulfills the legislative purpose and intent of the statute. Yet the court did what it was not supposed to do, it took into consideration the parties agreed temporary parenting plan when deciding the residential time for the parents,

“The agreements of the parties – a very important factor. There have been no temporary orders entered in this case. The child has been residing with the parents based upon the mother’s proposed parenting plan - - actually, her parenting plan proposes an extra over night - - meaning that the parties, whether they - - they clearly agree to the scenario, but with the case pending for a year, they could have come in for temporary orders at any time and did not. That’s another factor” (RP106)

The court restates this in its Order on Respondents Motion for reconsideration (cp 35 1.2), “ In light of the *status quo* parenting plan (which was by agreement)” and acknowledges that it was a parenting plan the parties were functioning from. If courts are allowed to consider mutual agreed upon temporary parenting plans then all parenting cases would end up in the courts for temporary parenting plan orders, which was not the intent of the legislature when it enacted this statute. In Re Marriage of Kovacs 121 Wn.2d

“Washington Parenting Act represents a unique legislative attempt to reduce the conflict between parents who are in the throes of a marriage dissolution by focusing on continued “parenting “ responsibilities, rather than on winning custody/visitation battles.”

The court should not have considered the agreed temporary parenting plan when establishing the Permanent Parenting Plan residential provisions. Although the legislature used the word “awarded”, I do not believe that the legislature cared if temporary parenting plan was awarded by the court or awarded by mutual agreement of the parties, the intent of the legislature was to reduce conflict. If it had required judicial intervention it would have required the parties to go before the court to enter temporary parenting arrangements. The intent of the legislature is outlined in the 1987 Proposed Parenting Act- Section 15 page 19 [Appendix] when it states

“ The presumptions also address the race-to-the-courthouse phenomenon. The year-long period of care prior to filing for dissolution that the court must scrutinize is intended to prevent residential provisions at the temporary stage that favor the party who has only the advantage of physical control over the child at the time of the hearing.”

The father chose to accept the temporary parenting plan and patiently wait, because of the mother's antagonistic approach to resolving issues and because it was just that temporary and he believed it would not be held against him or their son and it would be the least emotionally disruptive for their son given the mother's behavior. It was the intent of the parties that this agreement was

only a temporary agreement. It is clear from the testimony of both the father and the mother of this marriage that the father had a highly contested first divorce from his first marriage, as was pointed out by the evidence entered from the mother when she introduced the docket from the fathers first marriage (RP 18), which was one of the reason the father was trying to avoid conflict. One of the reasons the mother was so familiar about the fathers' first divorce was that she was in the court room the last day the father argued a motion on the case, which was mention by the father on closing. The court clearly awarded the mothers parenting plan based on its belief that it thought the parties agreement was based on the mothers proposed parenting plan and that compared with the temporary parenting plan the mothers plan gave the father an extra day.

In 1987 proposed parenting act- Section 15 page 20 "If facts are in agreement in the parenting plan proposed or if the parties reach agreement, those agreements become stipulations for the ensuing trail."

The court recognized that the parties had not reached an agreement to whom the primary parent should be, or to what that parental arrangement would be and that was why they were in court "We're here because there was no agreement"(RP4), the court references

it's belief that the parties had been "residing with the mother based on her proposed parenting plan" There were no provisions as it relates to the weekly schedule of their son in either of the parents proposed parenting plan that were in agreement. The only thing that remotely resembled an agreement in the proposed parenting plan was the weekdays that the son would reside with the father, Monday, Wednesday and Friday but no agreement as to what time. (Appendix 41 - 60) The Court has taken into consideration the parties agreed temporary parenting plan when it references "the child has been residing with the parents" to make it decision. The only agreement to consider are agreements reached by the parties by virtue of what it is they agreed to in their separately filed Proposed Parenting Plans with the court, and a temporary parental arrangement is not an agreement to be considered. This best fulfils the legislative purpose and intent.

3. The trial court should enter a parenting plan that fosters the relationship between the parent and child, and maintains that relationship, i.e what is in "the best interest of the child", child court erred because it did not follow this requirements. When entering a parenting plan the judicial officers of the court

“have the discretion and flexibility to assess each case based on the merits of the individual cases before them” RCW 26.09.003 and are required to consider a number of factors, the policy under RCW 26.09.002, Policy intent under RCW 26.09.003, the definitions of parenting functions under RCW 26.09.004, the parenting plan objectives under RCW 26.09.184(1) and the criteria for the residential provisions under RCW26.09.187(3)(a) and finally must be based on tenable grounds and must not be manifestly unreasonable. The trial court erred when it entered the parenting plan that the mother had proposed on the day of trial , because it abused its discretion as the final plan does not meet the above criteria.

RCW 26.09.002 “the relationship between the child and each parent should be fostered unless inconsistent with the child’s best interests” “ The best interests of the child are served by a parenting arrangement that best maintains a child’s emotional growth, health and stability, and physical care. Further, the best interest of the child is ordinarily served when the existing pattern of interaction between parent and child is altered only to the extent necessitated by the changed relationship of the parents or as required to protect the child from physical, mental or emotional harm.”

RCW 26.09.004(3)

(3) "Parenting functions" means those aspects of the parent-child relationship in which the parent makes decisions and performs functions necessary for the care and growth of the child. Parenting functions include:

(a) Maintaining a loving, stable, consistent, and nurturing relationship with the child;

(b) Attending to the daily needs of the child, such as feeding, clothing, physical care and grooming, supervision, health care, and day care, and engaging in other activities which are appropriate to the developmental level of the child and that are within the social and economic circumstances of the particular family;

(c) Attending to adequate education for the child, including remedial or other education essential to the best interests of the child;

(d) Assisting the child in developing and maintaining appropriate interpersonal relationships;

(e) Exercising appropriate judgment regarding the child's welfare, consistent with the child's developmental level and the family's social and economic circumstances; and

(f) Providing for the financial support of the child.

The court acknowledged that both parents can care for Joe (RP103)

“I get the sense that both parties have the ability to cook and to clean up and to take care of Joseph” and that “The potential for future performance of parenting functions. Well, that tends to be a draw (RP106).” Court also found “That there was heavy involvement by the father - - it’s very clear from the testimony” (RP104), and that parent child relationship “to be strong for both parents but more favorably for the mother”. The mother concurs when she states (RP 26) “Danny is a good father”. The court gave

no reason for accepting the mothers parenting plan other than it believed, 'the child has resided with the mother since birth" and "it does appear that the child has - - that the mother has taken greater responsibility of parenting functions" (RP 104) and referenced nothing in regarding accepting the restrictions requested and included in the mother parenting plan. The restriction was that the father would not have their son on a Monday as agreed and that,

" During scheduled residential time, respondent shall not take the child to his work for more than one hour per day. In the event that this services are required at work for more than an hour, respondent is obligated to obtain child care by a responsible individual 15 years or older". (CP 22-30, Para 3.13)

The three reason given by the mother for requesting a deviation from RCW 26.09.184 (1)

(1) OBJECTIVES. The objectives of the permanent parenting plan are to:

- (a) Provide for the child's physical care;
- (b) Maintain the child's emotional stability;
- (c) Provide for the child's changing needs as the child grows and matures, in a way that minimizes the need for future modifications to the permanent parenting plan;
- (d) Set forth the authority and responsibilities of each parent with respect to the child, consistent with the criteria in RCW 26.09.187 and 26.09.191;

(e) Minimize the child's exposure to harmful parental conflict;

(f) Encourage the parents, where appropriate under RCW 26.09.187 and 26.09.191, to meet their responsibilities to their minor children through agreements in the permanent parenting plan, rather than by relying on judicial intervention; and

(g) To otherwise protect the best interests of the child consistent with RCW 26.09.002.

and RCW 26.09.187 (3)

### (3) RESIDENTIAL PROVISIONS.

(a) The court shall make residential provisions for each child which encourage each parent to maintain a loving, stable, and nurturing relationship with the child, consistent with the child's developmental level and the family's social and economic circumstances. The child's residential schedule shall be consistent with RCW 26.09.191. Where the limitations of RCW 26.09.191 are not dispositive of the child's residential schedule, the court shall consider the following factors:

(i) The relative strength, nature, and stability of the child's relationship with each parent;

(ii) The agreements of the parties, provided they were entered into knowingly and voluntarily;

(iii) Each parent's past and potential for future performance of parenting functions as defined in RCW 26.09.004(3), including whether a parent has taken greater responsibility for performing parenting functions relating to the daily needs of the child;

(iv) The emotional needs and developmental level of the child;

(v) The child's relationship with siblings and with other significant adults, as well as the child's involvement with his or her

physical surroundings, school, or other significant activities;

(vi) The wishes of the parents and the wishes of a child who is sufficiently mature to express reasoned and independent preferences as to his or her residential schedule; and

(vii) Each parent's employment schedule, and shall make accommodations consistent with those schedules.

Factor **(i) shall be given the greatest weight.**

(b) Where the limitations of RCW 26.09.191 are not dispositive, the court may order that a child frequently alternate his or her residence between the households of the parents for brief and substantially equal intervals of time if such provision is in the best interests of the child. In determining whether such an arrangement is in the best interests of the child, the court may consider the parties geographic proximity to the extent necessary to ensure the ability to share performance of the parenting functions.

(c) For any child, residential provisions may contain any reasonable terms or conditions that facilitate the orderly and meaningful exercise of residential time by a parent, including but not limited to requirements of reasonable notice when residential time will not occur.

for the parenting plan she submitted to the court and accepted by the court, were #1) that by making the father the primary parent it “would put Joe in the middle of a back and forth that I think just doesn’t serve him well” (RP19 ln 17), she goes on to clarify her reasoning by quoting one instance to do with the boys scouts, “I think it’s enough of that way that to have Danny be the primary custodian of Joe, or even just a 50/50 would be really difficult for

Joe”(RP26). The mothers own testimony disputes this “Your Honor, we currently have been operating under a reasonable residential schedule ..... that has existed for over a year, and that we can easily maintain with the least amount of disruption to Joe” (RP 22 ln19). Since a “trial court is not precluded from ordering frequent residential alteration for the child” In Re Marriage of Jacobson 90 Wn.App 738, then even if the court’s decision of who was the primary parent was right, and the fact that the father took greater responsibility in the daily activities with their son and household chores and given their past (during the marriage) and present (during separation) cooperation. Then the Parenting Plan requested by the father would have been way more consistent with what was in the best interest of the child, it would have fostered both parents relationship with their son and was easily achieved given that the parents lived half way between their son’s school (RP55), which is only four blocks, no matter which parent was awarded primary custody, the fathers parenting plan was more consistent with the requirements of the above RCW. The fathers parenting plan clearly was not consistent with the parental arrangement at the time of marriage since he was the parent performing the majority of the daily parental function, but since he

believed having both parents heavily involved with their son he thought his parenting plan was in their sons long term best interest, and consistent with “RCW 26.09.184 (c)

“provide for the child’s changing needs as the child grows and matures, in a way that minimizes the need for future modifications to the permanent parenting plan”.

#2) The mother states in her testimony (RP 26 ln4) “I also believe that Danny struggles with communication skills in that it is difficult to come to consensus with Danny. He can be argumentative and obstinate and non-responsive, and there can be a long process for decision-making.” But the testimony in the one day of the trail reflects quite a different picture, the father was clearly the more cooperative of the parents and the mother was clearly the parent who was aggressive, argumentative, angry and even violent. She then goes on to describe one instance regarding the boys Scotts, the father did not engage with her in an effort not to get into an argument, this was a reasoning for her parenting plan. It was this approach by the father of refusing to engage (RP55) or “Shutting down” (RP56) in an argument that kept the parental conflict from escalating. Examples of the fathers cooperation, a)The mother requested \$250 for child support, the father gave her the same amount he was paying his first X-wife

\$350(cp 39), b) the father paid the child support 2-3 weeks early when the Mother requested it (RP 59 ). c) The father attempted to maintain some sort of normalcy in the family relationship by inviting, the Mother and her kids around to his house on two separate occasions, both times the mother said yes but later couldn't make it d) The father even help the mother get her broken car home and he help to repair the vehicle on another instance (RP60 ), e) he repaired the mothers hot water heater (RP 59). Which is consistent with what he has done for his first x-wife (RP 59). All of this after she kicked him out of the house, this speaks a lot to the character of the father. #3) One of the other reasons the mother requested that the father not have their son on a Monday was that he had a meeting, yet its clear that the meeting she referenced was for one hour on a Wednesday and only once a month (RP25). Which the trial court acknowledge when it said "The employment schedule here - - the closest that came to a factor was the fathers schedule, and I'm satisfied that he would do what's necessary during the periods of time that he needs to deal with work to make sure the child has suitable supervision." (RP108) it didn't accept it the argument or consider it, yet it accepted this part

of her parenting plan and that was one of the reason she gave for removing the Monday.

The court accepted the mothers parenting plan given the reasons of it's belief that she was the one performing the parenting functions and that the child had resided with her since birth, but referenced no fact from the trial for accepting the mother deviation from the requirement of the RCW's. Court entered no finding as to why it accepted the residential schedule on the mother Parenting Plan or the restriction under paragraph 3.13 of the Parenting Plan. There is no testimony on the record to support the restriction inserted under this paragraph or the deviations from the RCW's. In fact this request for a restriction wasn't in the original proposed parenting [Appendix Page 54 ] plan that the mother submitted to the court and was only disclosed to the court on the day of trial. This restriction of limiting the time the father can take his son to work wasn't even argued or acknowledged in court. In fact the mothers request to limit the father taking his son to his work was something that the mother had done in the past.

4. Agreements of the parties RCW 26.09.187 (3)(a)(ii), the agreements of the parties, provided they were entered into

knowingly voluntarily, When the parties separated they sat down and talked with all the children (RP50) and told the children “that every effort was going to be made to keep the children in as much contact as possible” specifically the parents told all the children that Orla and Joe at a minimum would be together with their father on the days that Orla is with her father, this is why the mother acknowledged in court that the originally submitted proposed residential plan “was an effort to mirror Danny’s residential time with his daughter Orla”(RP23). The court total ignored this agreement instead focused on the temporary parenting plan and now Orla the daughter of the father only sees her brother once during the week, instead of twice and there can be a period of a 6 days or more that their son doesn’t see his father or his sister, which is not consistent with their agreement or the statute.. The mother reasoning for requesting the change was that she had done research and talked to a lot of people, nothing of which was submitted to the court. The importance of a parent’s family unit has been recognized by the Washington State Supreme court “In Re Sumey 94 Wn 2d 757”

“that the family unit is a fundamental resource of American life which should be nurtured and that accordingly, “the family unit

should remain intact in the absence of compelling evidence to the contrary”

The family unit in this case is the fathers family unit, which now would be his son Joe (from this marriage) and his daughter Orla (from his first marriage), this unit should remain intact absence a showing of evidence to the contrary, the only evidence the mother referenced was she had talked to people, hardly compelling evidence. In fact the mother in this case is circumventing the fathers family unit by now cooperating with the fathers first X-wife, she say in court

“Certainly, the relationship between Joe and Orla - - it’s one, that you know, I feel that I have to be really diligent to foster because Danny only has Orla 17% of the time, so his time with Joe is not going to foster that relationship, and so I communicated and had talks with Danny’s ex-wife Rita and we are both determined that Orla’s very close to Katie - - continue to build those relationships.” (RP24).

Here the mother is arguing that by separating the fathers children’s time with their father, that she is in fact encouraging the bonds of the children with the father. But what she is doing is cutting up the father family unit. Which is not in the best interest of anyone and is manifestly unreasonable to allow one parent to determine how much time the other parents child can have with his other child. The mother is also acknowledging that Joe and Orla need to be

spending more time together as brother and sister, but only if she has control of when it is happening.

This decision of the court is manifestly unreasonable and was requested by a parent who wishes to portray conflict, or uncooperativeness, to gain control of their son and just allows this parent to sabotage the relationship of the father and son.

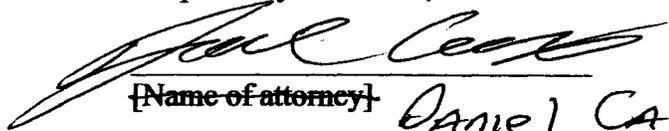
E. Conclusion

Appellate seeks

- 1) Reversal of the designation of the mother as the primary parent and
- 2) To vacate parenting plan entered in this case by Judge Ponomarchuk of the Superior Court of Seattle, WA. On September 16<sup>th</sup> 2009
- 3) Vacate provision 3.13 of the parenting plan
- 4) Order that parties are to continue to operate under their agreed temporary parenting plan until such time as the case can be resolved in court, or parties can come to a mutual agreement.

[Date]

Respectfully submitted,

  
[Name of attorney] Daniel Casey.

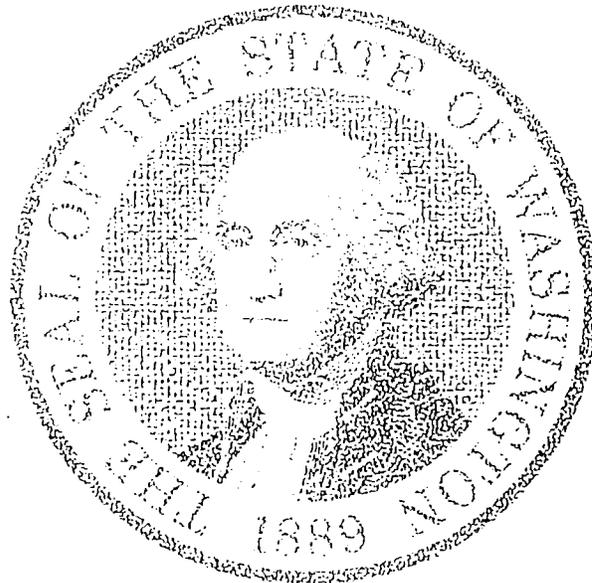
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## 1987 Proposed Parenting Act

Replacing the concept  
of child custody  
Commentary and Text

Sponsored by  
Representative Marlin Appelwick  
House of Representatives  
Olympia, Washington

Dear Reader,

The following is a section-by-section analysis of the proposed 1987 Parenting Act. This proposal is being circulated for public comment and may be changed based on pertinent and appropriate suggestions.

Comments should be submitted as soon as possible and mailed to:

J. Porter Kelley  
Prince, Kelley & Newsham  
Second Floor, Hoge Bldg.  
Second Ave. & Cherry St.  
Seattle, Wash., 98104

Comments may be used by the drafting committee and could be included in recommendations to the Legislature.

The 1986 draft repealed all of Chapter 26.09 RCW sections, enlarged the chapter and reenacted pertinent parts. This was done so that the readers of the legislation would have the full text of the chapter in front of them. The 1987 act does not repeal all of Chapter 26.09, but makes selective sections to be unrepeaters.

The repealed sections are not shown on the proposed bill. These sections address child custody proceedings. Custody is being eliminated from the marital dissolution cases under Chapter 26.09 RCW. To that extent, the elimination of these sections was logically required. Repeaters are shown in Section 31 of the Act.

RCW 26.09 also allows an independent custody action by a parent or non-parent. The new proposal would repeal the provisions for an independent custody action by a parent under Chapter 26.09. Married parents must seek entry of an order containing a parenting plan. Unmarried parents should proceed under Chapter 26.26 RCW, the Uniform Parentage Act.

Actions by non-parents for custody under Chapter 26.09 RCW are repealed. Instead, this action must be brought exclusively under Washington's Guardianship Statute -- RCW 11.88. The result is more comprehensive. The proceeding under the guardianship statute would require control of the child's person and of the child's estate. To accomplish this change, a companion bill will amend the Family Court Act, Chapter 26.12 RCW to insure that family court commissioners are empowered to act on actions for guardianship of minors.

Certain aspects of repealed sections -- not restricted to the independent custody action, and which remain of value -- have been integrated into the balance of the proposed act.

The members of the Ad Hoc Committee are listed on the following page.

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BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

COMMENT

Introduction:

The amendments here discussed would improve the procedures and criteria by which the post-decree care of minor children and related issues are determined under chapter 26.09 RCW. Due to inadequate standards and guidelines, the current law has two major failings: 1) harmful conflict between parents is not minimized to the extent possible; and 2) children and vulnerable parties are not protected from abuses or harassment.

Widespread confusion is the hallmark of the current system, as reflected in the myriad problems detailed below. Part of this confusion has resulted from the failure of the 1973 Dissolution Act to set meaningful standards in the child custody area. The 1973 act introduced the then revolutionary concept of no-fault dissolution; it did not purport to address the issue of child custody. In fact, it could not have done so effectively, since in 1973 the psychiatric and mental health professions had little formal understanding of the powerful psychological effects of dissolution on the parties going through the process. It has only been in the past five years that data and studies have led to a clearer understanding of these processes. See, e.g., Wallerstein, (ed.) Children of Divorce: Recent Research, 24 J. Am. Acad. Child Psychiatry 515-589 (1985). This knowledge has been incorporated into the provisions of the act so that the legal process will become a more constructive vehicle for resolving child custody issues.

In addition, there is a need for the law to respond to the changing societal norms for parental behavior which have evolved in the last decades. By introducing the concepts of "parenting plans" and "parental functions", the drafters intend to acknowledge and provide for the performance of parental functions and responsibilities, however limited or shared between the parties, both pending the dissolution of marriage and after entry of a final decree. The more adversarial, power-laden terms "custody" and "visitation" were felt to be anachronistic and incompatible with the functional approach to parent-child relationships which this bill enacts. Those terms have been replaced.

#### Failures of the Current System

A high degree of frustration and concern with the current system exists amongst many involved in this area, including family law practitioners, judges, family court workers, members of the public who feel unfairly treated by the current system, father's rights advocates, women's rights advocates, battered spouse advocates, and mental health professionals. This frustration and sense of unfairness contributes significantly to the widespread failure of the current child support system and to the ever larger numbers of women and children who live in poverty.

Below is a list of some commonly cited problems with the current system:

- 1) "Win-Lose" Adversarial Process: In the current system, the children are seen as a "prize", and the "loser" often feels divorced from an entire family;

- 2) "It's the Marriage We're Ending, Not the Parent-Child Relationship": Parents do not ordinarily intend to divorce their children when they divorce one another. However, the current system fails to separate the process of ending the marriage from the process of changing the parent and child relationship. There are no adequate standards by which the parties and the court can define appropriate continuing relationships of children with both parents.
- 3) "Uncertainty and Confusion Plague the System:" There are no clear guidelines and criteria for determining child custody in a manner which fosters fairness and uniformity. Often, insufficient weight is given to demonstrated patterns of parental care and existing emotional attachments between parent and child.
- 4) "The Child Support System is a Cruel and Dismal Failure": The current system fails on two counts. In a majority of the cases, it does not ensure the setting of support amounts adequate to meet a child's fundamental needs, and it condones nonpayment. Many Washington courts set support at amounts even lower than the inadequate and somewhat arbitrary schedule established by the Association of Superior Court Judges Uniform Child Support Guidelines. Lenore Weitzman and Ruth Dixon found that the amount of child support awarded in Los Angeles in 1972 was only half the amount needed to raise children in low-income families at 1960-1961

prices, and that it amounted to no more than twenty-five percent of the father's net income.<sup>1</sup> Another study, in Denver, found that two-thirds of the fathers were ordered to pay less for child support than they reported spending on monthly car payments.<sup>2</sup> In national data, child support averaged 13% of average male income in 1978 and 1981.<sup>3</sup> In spite of court orders, 53% of the millions of custodial parents (overwhelmingly women) who are due child support do not receive it, according to a 1981 U.S. Census Bureau survey. About 30% of the women received only part of the payments ordered, while another quarter received nothing.<sup>4</sup>

This widespread willful disregard of child support obligations makes a mockery of the legal system, and is often the difference between poverty and non-poverty for many families.

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<sup>1</sup>Weitzman & Dixon, *Child Custody Awards: Legal Standards and Empirical Patterns for Child Custody, Support and Visitation After Divorce*, 12 U.C.D.L. Rev. 473, 497-99 (1979).

<sup>2</sup>The average father for whom data was available paid \$136.97 per month for his car and \$113.59 per month for his 1.6 children. Yee, *What Really Happens in Child Support Cases: An Empirical Study of the Establishment and Enforcement of Child Support Orders in the Denver District Courts*, 57 Denver L.J. 21, at 37 (1979).

<sup>3</sup>U. S. Bureau of the Census, "Child Support and Alimony: 1981," Current Population Reports, Series P-23, No. 124 (Washington, D.C. U. S. Government Printing Office, 1983), p.1.

<sup>4</sup>Ibid, p. 24.

Another alarming trend is reductions or set-offs in child support based on time spent with the noncustodial parent, regardless of the fact that such time rarely reduces the fixed and ongoing costs for the custodial parent.

5) "The Threat of Joint Custody as a Bad Faith Bargaining

Tool": The system fails to protect persons who are vulnerable. There is often a substantial power imbalance between the parties because of physical, emotional, or economic differences, or where certain types of conduct, particularly spousal abuse and child abuse, have occurred. In such situations, the current system fails to properly:

- a. limit or prohibit joint custody or other provisions which require forced and inappropriate continuing contact between the parties;
- b. sanction or prohibit the abusive use of a custody challenge as a bargaining weapon to gain reduced or "apportioned" support awards or other concessions;
- c. identify and protect unrepresented vulnerable parties;

6) "What About the Future?": The current system places inappropriate focus on circumstances existing at the time of the divorce and fails to recognize or provide for the dynamic, changing nature of the relationship

between parent and the developing child;

- 7) "Changing Parental Roles": The current system fails to acknowledge changing patterns of parental involvement in childrearing. Insistence upon traditional patterns ignores the changed expectations of some parties;
- 8) "Conforming the Law to Reality": Currently, many court orders fail to reflect actual custody arrangements between many parties;
- 9) Cheap Shots--Everyone Loses: The current system is incapable of preventing the combative withholding of child support or visitation by parties who believe that such measures are their only available avenue for redress or retaliation;
- 10) "Affidavit Wars and Other Horribles": Under the current system, there are no rational guidelines for temporary orders. As a result, the parties get caught up in irrational desperation tactics such as the "race to the courthouse" and the swearing matches now associated with temporary custody hearings and proceedings;
- 11) "Justice Delayed...": The current system fails to promote timely resolution of custody issues. It allows the use of delay as a bargaining tool. This prolongation of the adversarial process is often destructive to the emotional well-being of the child and the parties.

## History

In order to constructively amend our law, it is necessary to understand the historical evolution of child custody. In the early and middle nineteenth century, children were considered the property of their fathers. When divorce occurred, the father, as owner of the family property, was given "custody" of the children. Legislation passed in 1878 (now 26.16.125 RCW) attempted to improve the historic pattern by providing that: "The rights and responsibilities of the parents in the absence of misconduct shall be equal...", notwithstanding that enactment, largely as a result of the industrial revolution in the early decades of this century, the pendulum swung to favor the mother. The "tender years" doctrine, which resulted in awarding custody to the mother in almost all cases, was established.

Recognizing the new imbalance between parents, the legislature in 1949 enacted 26.08.110 RCW. The 1949 Act provided simply that the divorce court "shall make provision... for the custody, support and education of the minor children of the marriage. . . ." This law remained in effect until the passage of the 1973 Dissolution Act.

Our Supreme Court usually applied the tender years doctrine favoring mothers, but in some instances it upheld what it called joint custody arrangements. At least as early as 1923, in Brock v. Brock, 123 Wash. 450 (1923), our Supreme Court approved a divided custody arrangement, giving sequential custody to the mother and father, stating that "Every such child is entitled to the love, nurture, advice and training of both father and mother,

and to deny to the child an opportunity to know, associate with, love and be loved by either parent, may be a more serious ill than to refuse it in some part those things which money can buy."

However, Washington appellate courts have given no clear guidelines regarding sole or joint custody. Under the rubric of the "best interests of the child", our courts have approved extremely diverse and conflicting decisions. The resulting confusion gives little guidance to the public or the legal practitioner. For a review of custody and joint custody in Washington state, see Kelley, "Custody in Washington State", paper presented to Washington State Trial Lawyers Association Seminar, February, 1983.

In 1973 the legislature enacted our present dissolution of marriage statute and in Section 26.09.190 RCW, provided the following "criteria" for awarding custody:

- (1) Wishes of the parents;
- (2) Wishes of the child;
- (3) Interaction of the child with the parents, siblings and other significant persons;
- (4) The child's adjustment to home, school and community; and
- (5) Mental and physical health of all individuals involved.

The court shall not consider conduct of a proposed guardian that does not affect the welfare of the child.

In addition, Chapter 26.09.250 RCW provides, in part, "The custodian may determine the child's upbringing, education, health care, religious training," unless there is a finding "that the child's physical, mental, or emotional health would be endan-

gered..." In practice, these statutory provisions offer inadequate guidance to courts and parties who must decide upon the parent and child relationship after a dissolution of marriage.

Nor do court decisions provide the needed guidance. Courts have not elucidated standards for the award of sole versus joint custody, nor are there decisions which adequately define these terms.

California and other states have passed statutes which establish presumptions in favor of joint custody, but provide few guidelines for implementation of this ill-defined concept. See Cal. Civ. Code § 4600 et. seq. A tremendous amount of controversy exists over the alleged harms and benefits of joint custody. Disturbing problems have emerged with the use of joint custody as a systemwide approach to the resolution of child custody disputes.

#### Recent Legislative History

Since the late 1970's, the legislature has been confronted each session with a variety of proposals designed to alter the 1973 Act's child custody provisions. The many problems discussed above, and changing societal concepts and expectations concerning parental behavior during marriage and after dissolution, were the impetus for many of these proposals. The 1982 and 1983 legislatures considered several bills, including a joint custody bill, House Bill 403.

The drafters of this new act believe that House Bill 403 and others failed to pass for a specific reason. "Joint custody" as

a term and as a legislative concept polarized those who wanted to correct the current system's unfairness to nonresidential parents and those who feared that the threat of a joint custody award could be abused to extract concessions (such as reduced child support amounts) from a vulnerable party. In addition, the imposition of joint custody awards on those who would otherwise be custodial parents, could inappropriately expose vulnerable populations to increased and unregulated continuing contact with, or harassment by, a former spouse.

#### Development of New Parenting Bill

Following the 1983 legislative session, a new approach was initiated in an effort to reconcile the conflicts described above. A multi-disciplinary ad hoc committee, which included lawyers, state representatives, family law professors, child psychiatrists and child psychologists, was brought together. The input of family court judges and commissioners was solicited and received.

#### Deliberations of the Committee

The committee was intentionally constituted to represent a variety of concerns, such as the need for protection of vulnerable populations, including low-income parents, abused spouses and children, the need to recognize the interests of fathers in continuing to be involved with their children, and the overriding concern that wherever possible and appropriate, children would be permitted to have positive relationships with both parents.

The term "parenting" replaces the term "custody" because of its different substantive meaning. A committee of child psychiatrists of the Washington State Psychiatric Association gave valuable input in defining parenting functions, and establishing criteria for limitations on parenting functions. The committee felt it essential to provide for child support in the context of this legislation. The urgent need to protect vulnerable spouses and children from harm which might result from the act's new approach resulted in a limitations clause, and a special sanctions provision.

During 1985, the drafting committee prepared the act and commentary for the 1986 legislative session. The process continued during 1986. The present draft has had the benefit of legislative attention during the 1986 session. The draft presented at that session has been modified in response to suggestions by legislators, family law practitioners, judges, family court workers, members of the public, and mental health professionals.

#### Goals of the Committee

The drafting committee sought to change current law with the introduction of five basic concepts:

- 1) Provide a framework which allows for and encourages participation in the parenting functions and responsibilities by the parents following dissolution which is consistent with the best interests of the child and where activity by a parent does not call for limitations on the parents' involvement.
- 2) Shift to a future-oriented, functional approach to

post-decreed parent-child relationships through the use of parenting plans. The plans provide for appropriate continuing relationships, flexibility, and a more accurate reflection of changing patterns and expectations of parental involvement. Existing relationships are to be altered as little as possible. Thus, an active and involved parent would remain involved if limitations do not exist; a long-absent or abusive party, having forfeited his or her rights under the act by failing to perform his or her duties, would not gain any new rights under this act.

- 2) Establish clear standards and specific guidelines by which parties and the courts may determine how to meet the child's best interests. This is done through the definition of "parenting functions", and the setting forth of criteria by which the component parts of a parenting plan (e.g. a dispute resolution mechanism, or residential provisions) are to be determined. This process reduces the use of child custody as a forum for "blame-laying" between the parties.
- 3) Better identify and affirmatively protect the best interests of the child as well as at-risk parties by establishing specific criteria for limitations to be imposed on a party's continued involvement and/or access to the child, where circumstances or conduct make this necessary.
- 4) Establish clearly, and in the context of parental

rights and responsibilities in a parenting plan, the obligation to provide support for the child.

In addition to these overall goals, the committee sought to correct more specific problem areas with measures such as:

- 1) Introduction of a "dispute resolution process" to be incorporated into the parenting plan, for an ongoing, rational avenue of problem-solving and where necessary, redress;
- 2) A shortened and statutory timeline to establish an incentive for the deliberate and timely resolution of disputes involving children;
- 3) Uniform pleadings;
- 4) An improved system for pro se cases, enabling unrepresented parties to proceed with simplified forms and instructions similar to procedures in use under the current system.

#### A Delicate Balance

The myriad problems in this area today are in large measure a result of the unwieldiness of the legal system in addressing complex human relationships. The tangled, interrelated nature of residential provisions, decisionmaking authority, child support, and the inability of the parties to continue to live together make some problems unavoidable. However, the drafting committee has juggled, weighed, balanced and counterbalanced the interests of the child, parents, and the "State", in the general societal context of that term, and has reached the integrated statutory

scheme of checks and balances which is before you. Change in one aspect will inevitably have an effect on another aspect, and will undo this most delicate balance. This balance must be kept in mind and addressed if and when any changes are made.

COMMENT TO SECTION 2 - POLICY

This section affirms that the best interests of the child govern all decisions regarding the care of the minor child in some actions under RCW 26.09. It reflects the committee's view that as a general proposition, the parties have a responsibility to care for the child, subject to restrictions imposed by the court or by the parties themselves. It encourages continued parent-child interaction, where it would be in the child's best interests, after the dissolution of the parties' marriage. However, the language referring to the "existing pattern of interaction" between the parties and the child is not intended to suggest a preference for a duplication of the residential arrangements existing in the pre-dissolution household, since that would be impossible. Rather, the intention is to preserve whatever parent-child relationships have developed based on parenting patterns in existence at the time of the dissolution. The committee also rejected the blanket assumption that maximum parent-child interaction is always in the child's best interests, recognizing that in some situations a party's abusive or other behavior toward the child or the other party negates the benefits of extensive post-dissolution contact between the child and the abuser.

COMMENT TO SECTION 3 - DEFINITIONS

As the Introduction to these comments demonstrates, one of the difficulties with the concept of custody is that it equates physical control over the child with the assumption of full responsibility for the child. For example, RCW 26.09.250 allocates decision-making authority to the child's custodian. However, physical care of the child is only one aspect of a full range of parental responsibilities, as this statute recognizes. The new definitions propose that the decision on post-dissolution care of the child should be based on a functional allocation of responsibility. The decision is to be guided by criteria and after consideration of parenting patterns established during the course of the the parties' marriage. It should not be treated as a winner-take-all contest.

Section 3(1) introduces the temporary parenting plan. It replaces the custody-visitation order currently obtainable under RCW 26.09.200, but has essentially the same scope and purpose--to provide stability in the child's living arrangements pending final resolution of the case. See Section 15 for the standard to be applied in determining the care of the child at the temporary stage.

Section 3(2) defines the permanent parenting plan, which replaces the custody-visitation order in the final decree. The use of the word "plan" is intended to change the current focus on "winning" or "losing," in favor of encouraging parties to plan for the future by making functional arrangements that benefit the child. However, the change in wording does not affect the plans'

enforceability by courts or, in cases of custodial interference under RCW 9A.40.060-080, by law enforcement.

Section 3(3), the concept of parenting functions, originated with an ad hoc committee of the Washington State Council on Child Psychiatry. The committee adapted it for use in this statute. It has no equivalent in former law. It serves two purposes in this statutory scheme: it guides the parties as they divide their responsibilities under the parenting plan, and should the court be required to formulate the plan, then the parties' performance of these functions is used as a criterion in formulating the permanent parenting plan.

The mental health professionals on the committee recognized that parental functioning is a complex, dynamic interaction between a parental figure and the child, which gradually evolves as the parental figure assists the child in achieving adult independence. The committee as a whole recognized that there is a wide variation in how these parenting functions might actually be successfully carried out, and that both mother and father figures have important but different roles to play in this process. Further variations are to be expected based on the child's developmental level and the family's socio-economic circumstances.

However, in most families, there are discernible patterns developed for the care of children. In some households, parental functioning might operate with one party performing primary care functions for the child; in others, the parties may share the functions; in others still, one or both parties may perform the functions by maintaining routine contact with a third-party care-

giver.

This section outlines the discrete, ongoing functions of parenting necessary to meet the child's physical and psychological needs. These functions include certain objectively observable behaviors, such as "attending to the daily needs of the child," as is reflected in section 3(3)(b), or attending to the child's educational needs, as is noted in section 3(3)(c). The use of the phrase "attending to" reflects the committee's emphasis on the direct performance or assumption of oversight responsibility for tasks essential to meeting the child's needs, as opposed to simply the provision of financial support. Equally important are the subjective elements of parenting, such as having a loving, stable, consistent, nurturing relationship with the child, hence section 3(3)(a).

Section 3(3)(b) includes the objectively observable day-to-day caregiving functions that have been recognized in case law. It recognizes the significant role played by the party who has performed these day-to-day caregiving functions for the child. The mental health professional on the committee found that where such a pattern of care exists, maintaining it is beneficial to the child's post-decree best interests.

COMMENT TO SECTION 15 - PRESUMPTION IN ISSUANCE OF

TEMPORARY PARENTING PLAN

Current law. The statutory standard of RCW 26.09.190 was used by the court in both temporary and permanent custody deci-

sions. As the Introduction notes, it was a vague standard that offered little detailed guidance for parties or courts attempting to foster positive parent-child relationships in the period between the parties' initial separation and entry of the final order. In particular, there was no recognition of the importance to the child's emotional stability of maintaining established patterns of care during what is generally a highly chaotic and emotionally stressful time.

Nor did the standard address the problem of parental kidnaping as it affected the outcome at the temporary hearing. Again, because of the failure to consider established caregiving patterns, the temporary hearing often resulted in temporary custody being granted to the party who has managed to obtain physical control of the child and win the race to the courthouse, regardless of the pattern of parental care that may have existed before.

Change. The presumption in Section 15 requires the court to designate a temporary residence that preserves the patterns of parental care disclosed by the affidavits submitted under Section 14(3), unless there has been a showing of extraordinary circumstances such as those set forth in Section 10. In particular, if the court finds that a party has taken greater responsibility for the caregiving functions defined in section 3(3)(b), the residential provisions for the child should continue the pattern of care, unless any of the narrow exceptions in Section 15(1) through (3) exist. These exceptions include the limiting factor under Section 10, the wishes of older children deemed sufficient-

ly mature to decide where they want to live, and truly voluntary, but contrary, agreements of the parents.

The standard in Section 15 is based on the premise that, absent unusual circumstances, the child's emotional stability is best maintained by an award of temporary residence which continues established patterns. The mental health professionals on the committee recognized that such an outcome is enormously important to the child's emotional stability during this troubled transitional period.

The presumptions also address the race-to-the-courthouse phenomenon. The year-long period of care prior to filing for dissolution that the court must scrutinize is intended to prevent residential provisions at the temporary stage that favor the party who has only the advantage of physical control over the child at the time of the hearing.

COMMENT TO SECTION 7 - PROCEDURE FOR ISSUANCE OF  
PERMANENT PARENTING PLAN

Under Section 7(1), each party is to file and serve a proposed permanent parenting plan within 180 days of service of the original petition. This process serves to make the parties think through future arrangements and helps identify what the issues really are. Agreements between the parties that conform to the requirements for such a plan will be recognized by the court. Failure to file a proposed permanent parenting plan could result in default in favor of the party who did file one. This should help parties take the provisions seriously and keep the timetable

crisp. If neither party files in timely fashion, the case may be dismissed or the court may impose terms. The parenting plans help each party understand the desires of the other, help map a discovery agenda, and provide the basis for the mandatory settlement conference.

The mandatory settlement conference cannot be set until both parties have filed a permanent parenting plan. The parties have up to 180 days to file their plans, allowing a "cooling-off" period. The conference is to be presided over by an officer of the court who must apply the statutory criteria for establishment of the permanent parenting plan. The purpose of the conference is to settle the case or to narrow the issues for trial. The proposed parenting plans will be the working reference for issues relating to the children. The issues of property division and spousal maintenance may be analyzed from other materials. If facts are in agreement in the parenting plan proposals or if the parties reach agreement, those agreements become stipulations for the ensuing trial. Bad faith in participating is grounds for contempt. The goal is to ensure dialogue in a structured setting which is calculated to reduce the issues and contentiousness.

COMMENT TO SECTION 8 - PERMANENT PARENTING PLAN

Former law. RCW 26.09.250 assigned both the decision making authority and the responsibility for the child's physical care to the custodian, absent a written agreement or court order to the contrary. This is a reflection of the formerly held view that the non-custodial parent's responsibility to the children ended

when the marital household was dissolved. The committee recognized that in fact, parents' responsibilities to their children encompass a highly complex set of duties, and that each parent's role in fulfilling them changes over time. In some cases, where a parent has been abusive or has abandoned the child, the assumption of parental responsibility would be detrimental to the child. Courts must protect against this occurrence. However, the law of custody, which attaches significance only to the delineation of the parties' rights to control, leaves no room for consideration of the appropriate allocation of parental responsibility in each case.

As the Introduction notes, the changing roles of the parties in some households, and at the other end of the spectrum, the need to protect vulnerable parties and children, have not been adequately considered by courts and parties. The resulting decrees and court orders fail to include sufficient post-dissolution guidance for parties, and often do not reflect the realities of day-to-day existence. The actual components of a plan for carrying out children's post-dissolution care have never been provided for either by the legislature or the courts. In the vast majority of cases, the parents can and will work out their parenting arrangements amicably. The components of the plan are set out to insure that parents think through carefully their parenting plan and arrive at arrangements that are realistic and are for the best interests of their children. The committee recognized that for some families, changes in parental roles require a framework to accommodate some parties' far different expectations

of participation in the child's care following the family's dissolution. For other families, the "traditional" allocation of parental responsibility to a primary caregiver remains the reality, consistent with "traditional" expectations that the interests of a primary caregiver shall be protected in the dissolution process. In still other families, a party's conduct may have harmful consequences for the child or the other party and a limitation on the party's assumption of responsibility is warranted. The key advantage of the parenting plan concept over current custody concepts is its ability to accommodate widely differing factual patterns, and allocate parental responsibility accordingly.

Changes. The new section states the objectives of the permanent parenting plan. The parties, their counsel, mental health counselors, and judges are given explicit direction of what is to be accomplished concerning the present and future welfare of the child.

Section 8(2) summarizes the minimum requirements of the plan. Section 8(3) requires all plans, excluding specified cases, to provide a method for a non-judicial post-decree dispute resolution process.

The committee preferred this process, which calls for the parties to resolve, by reason and discussion, the problems that cause non-compliance because the process reduces exposure of children to emotionally damaging parental conflict. It was also agreed that compliance with a plan is best achieved by requiring such dispute resolution process. Indeed, it was felt that punitive measures tend to be ineffective and may merely escalate con-

flict because they fail to get at the causes of noncompliance.

However, section 8(3)(c) permits sanctions where a party misuses the dispute resolution process. Likewise, appeal to the superior court is provided.

Section 8(4) requires allocation of decision making authority. The parties are to specify the areas of the child's development thought important enough to require mutual decision making. Such designation is subject to the criteria and limitations of sections 9 and 10. These critical developmental areas are distinguished from those relating to matters of daily routine. This distinction is highlighted in subsection (b)(i) which preserves for each party the right to make decisions concerning day-to-day care of the child. This protects against unwarranted intrusion into the respective households by the other party.

Section 8(5) requires a specific schedule indicating when the child will be in the home of the respective parents. Special occasions and holidays must be included.

Section 8(6) requires that provision for child support, consistent with later sections of the Act, be included in the permanent plan.

Section 8(7) provides that failure of performance of one provision in the plan does not justify retaliatory nonperformance of other provisions.

Section 8(8) indicates that a parent may invoke the protection of the criminal custodial interference statutes whenever access as provided for under the plan is intentionally denied for a period of 72 hours or more. The plan is to contain such a

declaration to provide clear and immediate guidance to law enforcement authorities when faced with such a situation.

Commentary to Section 9 - Criteria for Establishing  
Permanent Parenting Plan

Current law. The factors for determining custody are currently found in Chapter 26.09.190 RCW. They are vague, generally calling for the court to consider all of the circumstances and act in accordance with the best interests of the child. Practitioners unanimously agree that the resulting decisions have lacked uniformity. These results are not surprising, given that the shift to no-fault dissolution in the 1973 statute was made without providing improved standards in the area of child custody. Lacking determinative criteria, the parties cannot intelligently negotiate for care of the children.

The committee also felt that RCW 26.09.190 does not adequately take into account the importance to the child of maintaining established patterns of parental functioning. Courts are compelled to make custody decisions without the aid of functional guidelines which help the parties best maintain their relationships and responsibilities to their children after the family unit is dissolved.

Changes of new section. Section 8, reviewed above, requires permanent plans to provide for dispute resolution, allocation of decision making, and for the child's residence. Section 9 provides functional guidelines to parents and courts making these provisions. The best interest of the child continues to be the

paramount standard. Additional criteria, specific to each of these required provisions, enable the parents to "negotiate intelligently" and assist courts in entering appropriate orders when the parties fail to reach agreement.

Section 9(1). Dispute resolution process. This section makes clear that any limiting factor of section 10 must first be considered and applied as appropriate. Consideration must be given to whether the differences between the parties inhibit effective negotiation. Agreement upon a dispute resolution plan must be truly voluntary by both parties and not the result of manipulation by one party.

Furthermore, both parties should have equal access to the dispute resolution process. A costly private dispute resolution mechanism might make one party unable to participate effectively. The committee did not intend to place one of the parties in an unfair and unequal position due to economic disparity. In such cases the parties can return to court.

Section 9(2) - Allocation of decision making authority. The court must approve agreements between the parties concerning decision making authority if there are no limitations imposed by section 10 and if the agreement is truly knowing and voluntary by both parties.

The intention of the committee in this section was to encourage mutual decision making authority where appropriate. On the other hand, if there are limitations existing as delineated in section 10, such as abuse by one of the parties, decision making authority would have to be appropriately allocated. Thus,

if a party has essentially abandoned the child or is engaged in a history of abuse, the emotional cost to the child of permitting such party to assert decision making authority was judged to be too high and limitations are appropriate. If a party has physically or sexually abused the child, the mental health professionals on the committee agreed that the harm to the child of further interaction with the party through decision making warrants a limitation on that party's decision making authority.

If mutual decision making is appropriate under the criteria provided, the parties' agreements can be particularly useful in designating areas for mutual decision making so long as they are genuinely voluntary. However, if the parties cannot agree on the areas for mutual decision making, the areas designated by the court should be those which affect the child's long-term interests, such as religious upbringing or education. Other criteria that can assist in the designation of areas for mutual decision making are the past pattern of decision making by the parties; demonstrated ability to cooperate in particular areas, and proximity of the parties' homes.

Section 9(3) - Residential provisions. The residence of the child is often a crucial issue in a divorce. The wording of this subsection concerning residence was drafted to further the fundamental approach of the bill, that is, a functional approach to parenting. This subsection is a distillation of hours of debate both inside and outside the ad hoc committee concerning the rights of mothers, fathers, and children regarding residence. All persons both inside and outside the committee agreed that the

best interests of the child was ultimately at stake. The intent of the wording is to accommodate, to the extent feasible, the often conflicting desires and expectations of the parents while still protecting the best interests of the child.

To achieve this goal, section 9(3) provides criteria which are assigned sequential priority. The first criterion is that a party may not be considered if that party is disqualified by the provision of section 10. Second, if the parties have agreed concerning residence of the child, the agreement is to be approved only if made knowingly, voluntarily, and in the child's best interest. If the parties are not disqualified but no agreement has been made, a third criterion is to be used. This third criterion favors the parent who has taken greater responsibility for the routine parenting functions described in section 3(3)(b). Only if the preceding criteria do not resolve the issue is a fourth criterion to be used. It directs the court's attention to patterns of interaction between the child and siblings or other significant persons. Lastly, a fifth criterion gives weight to the wishes of a mature child. The court may depart from the priority assigned to these criteria if the court expressly finds that such departure would be in the best interest of the child.

The committee was aware that agreements or orders which provide for alternating residence of the child for substantially equal intervals can result when the parties or the courts are searching for facile avoidance of child care disputes. Such temporizing arrangements may be harmful to the child. Therefore, section 9(3)(c) prohibits such alternation unless specific safe-

guards exist. In addition to the usual tests of section 10 and the knowing, voluntary test of agreements, the court must also find a history of cooperation and sharing of parental functioning. The parties must also show that geographic proximity reasonably permits alternation and that they have designated a residential parent for purposes of jurisdiction and venue.

COMMENT TO SECTION 10

This section is extremely important to the statute as a whole, since it modifies and affects the operation of provisions throughout the statute. Specifically, while the rest of the statutory scheme attempts to define the parameters of the parties' involvement with the care of the child, Section 10 operates to limit such involvement, in either the temporary or post-dissolution phases, depending on a party's conduct or history of interaction with the other party or the child.

If the court finds that a party has engaged in conduct specified in section 10(1), the permanent parenting plan shall not require mutual decision making nor shall it require a nonjudicial dispute resolution process. Such conduct is also a basis for limiting the time the child is to spend with the parent.

The subsections of section 10(1) describe the precluding or limiting facts. Section 10(1)(a) deals with willful and extended abandonment or substantial failure to perform any of the parenting functions. Such conduct may reasonably be treated as a forfeiture of parental rights.

Section 10(1)(b) limits the parental involvement of a party

who has been physically or sexually abusive to the child. These considerations were an integral part of former RCW 26.09.190(5), which required the court to consider the parties' physical, mental and emotional health. However, in the context of this statute, this factor represents the committee's sense that where child abuse has occurred, maintaining parental involvement of the abuser would be harmful to the child.

Section 10(1)(c) reflects the committee view that limitations are also required in cases involving a physically abusive party. The harmful implications of continued contact with a batterer for a battered spouse are obvious, but children are also emotionally traumatized, and sometimes physically injured, by exposure to battering. They also may learn inappropriate behaviors from observing such parental interaction. Thus, limitations on contact with the abusive party are needed in this and any other circumstances where harm to the victim-parent or the child would result. The limiting provisions of Section 10(1)(c) are designed to provide such protection, and are to be exercised in favor of protecting the victim-parent or the child. The term "history of domestic violence" is intended to identify a pattern of domestic violence by an abuser. The committee intended to exclude from this section isolated, de minimus incidents which could technically be defined as domestic violence. The committee believed that as to all of the limiting factors in Section 10(1), the standard of proof required should be less than the clear and convincing evidence required in a dependency action, since no termination of parental rights is intended. Thus, the language em-

employed in Section 10(1)(c) is that of RCW 26.50, which sets forth the types of acts warranting the issuance of an Order for Protection, a form of relief available in a civil action.

Section 10(3) lists factors which give the court discretionary authority to limit parental involvement as to any aspect of the parenting plan where there are circumstances which raise the likelihood of harm to the child based on impaired parental functioning. Section 10(3)(b) is not intended to preclude a physically handicapped parent, who may be able to perform or provide for the performance of the parenting functions, from being granted the child's residence. Similarly, a party who can demonstrate that his or her psychiatric impairment is short term or temporary in nature, and/or does not impair parenting skills, should not be prevented from involvement in the child's care. Section 10(3)(c) similarly treats only long-term substance abuse as a factor for consideration, and only if it prevents a party from functioning effectively as parent. Section 10(3)(d) refers to cases in which a party's prolonged absence from a child's life, whether or not a result of the party's willful abandonment, would make that party's extensive parental involvement emotionally difficult for the child. Section 10(3)(e) refers to those cases where the level and extent of parental conflict is severe enough to adversely affect the child. This section has special significance concerning the formulation of the mutual decision making and dispute resolution components of the parenting plan. The statute does not allow a party to abusively perpetuate conflict with the other party at the expense of the child. Section 10(3)(f) is a catch-

all category designed to address any other conduct of a party which could adversely affect a child.

COMMENT TO SECTION 11 - CHILD SUPPORT

Child support is central to fulfilling the financial aspects of parenting. Often, parties perceive support as a "reward" to a former spouse, and forget that it is there for the care of their children. This section makes it clear that both parents have an ongoing duty to financially support their children. The intent of section 11(1) is to make certain that the children are adequately provided for and that each parent is clearly informed of his or her obligation. To this end the section requires express provision in the decree. Furthermore, section 11(1) provides authority for the support of children who have reached majority or who have been emancipated.

Guidelines for fixing support, such as the Association of Superior Court Judges' Uniform Child Support Schedule, are currently available. The committee has not addressed this issue, believing that the function of RCW 26.09 is to assure that support is provided and that many factors outside the terms of the statute should be considered in fixing the amount.

Nor is section 11 concerned with enforcement, although it does facilitate enforcement by requiring that a specific amount is to be paid by an identified party obligor to the other parent and by requiring that the federal social security of each parent is set out in the decree.

In recent years under the label of "apportionment", the

court has allowed set-off for in-kind expenditures, or the termination of child support payments during summer visitation or other such periods. Such practices often result in the underfunding of the household where the children reside most of the time. This practice is no longer possible under section 11(2) of this statute, which precludes the apportionment of support based on the amount of time spent with each party. Apportionment may be permitted only when the direct contribution by an obligor parent results in an actual reduction in necessary expenses incurred by the obligee parent.

The state provides financial support to many low-income families through its public assistance programs. Because section 11 makes the sum owed precise, the time of payment certain, and the obligor identifiable, the task of appropriate enforcement and recoupment of state funds will be facilitated.

#### COMMENT TO SECTION 12: SANCTIONS

Current law. A party may be found in contempt for failure to comply with any provision of a decree in a family law proceeding under RCW 7.20 et. seq. Contempt sanctions the court may impose include jailing and financial sanctions, including attorneys' fees. In addition, while one party's obligations are not suspended by another party's failure to comply with the decree, under RCW 26.09.160 the injured party "may move the court to grant an appropriate order."

Changes. Section 12 makes more specific the sanctions available against parties who fail to comply with provisions of

the parenting plan, including jailing and fines, as well as attorneys' fees. However, the availability of sanctions is also expanded to include cases of bad-faith negotiations by parties prior to the entry of an order. In particular, the committee sought to end the common practice of parties and counsel who condition their agreement on one aspect of the parenting plan upon concessions by the other party, e.g. a party threatens a battle over child's residence unless the other party agrees to a reduction in child support, or a party attempts to condition visitation upon the timely receipt of child support. Such practices are subject to sanction.

COMMENT TO SECTION 14 - PROCEDURE FOR ISSUANCE  
OF TEMPORARY PARENTING PLAN

Current law. RCW 26.09.200 and 270, taken together, authorize either party in a custody proceeding to move for temporary custody. The motion was to be supported by affidavits or other evidence, and could occur through issuance of an order to show cause. The committee found that the procedure invited the parties to exacerbate the differences that led to their separation. Often their affidavits gave the court no reasoned basis for the designation of a temporary residence for the child in the period pending the entry of the final order. The current lack of guidelines for determination of temporary custody encourages an adversarial battle for possession, instead of focusing the parties on development of a practical plan for temporary care of the child.

Changes. Sections 14(1) and 14(2) require one or both of the parties to file a temporary parenting plan. If they do not file jointly, the petitioner must file a parenting plan with the petition. The respondent may file at any time not later than 20 days from service. Joint proposals will be recognized if they conform with the substantive requirements of the temporary parenting plan. If only one party files a proposal within the allotted time, that party may apply to the court to have it entered by default. The 20 day timeline is the same as the statutory timeline for responding to the petition for dissolution if the respondent is in the state.

The real change here is the imposition of a structured timeline for the parties in bringing motions or show cause orders. Provision is made for hearing and entry of an order as soon as the proposed temporary parenting plans frame the issues, but in no event later than 35 days after the respondent is served. Absent emergency circumstances, the status quo is maintained pending the entry of the temporary parenting plan. The race to the courthouse is largely eliminated.

Section 14(3) standardizes, to some extent, the affidavits to be used by parties at temporary hearings. Each party submits a form affidavit containing information about the routine of parental care, and the parent-child relationship that has existed, in the past year. The affidavit is intended to provide sufficient evidence for the court to issue a temporary parenting plan, particularly in light of the presumption in Section 15. The reference to the use of "relevant evidence" was intended to leave

intact local procedures which may authorize the taking of live testimony, or the submission of supporting affidavits or exhibits from the parties or witnesses. These affidavits are often particularly important to establishing the presence of extraordinary circumstances. The committee did not intend to foreclose their use.

The temporary relief available is listed in Section 14(4), which includes a schedule for time with each parent, if appropriate, a designation of the child's temporary residence, and a temporary allocation of the decision making authority of each party. It also authorizes the court to order, as part of the temporary parenting plan, temporary child support and temporary restraining orders, as authorized by 26.09.060 RCW.

COMMENT TO SECTION 18: RIGHTS OF NONPARENTS;  
VISITATION RIGHTS OF PARENTS

Former Law. This section formerly provided for visitation and custody rights of nonparents. It also set standards for visitation rights of parents.

A nonparent was allowed visitation whenever it was in the best interests of the child regardless of whether there was any change in circumstances.

Changes. The visitation rights of nonparents are left unchanged. However, a nonparent seeking custody of a child will now be required to proceed under the guardianship statute rather than maintaining an independent custody action. The guardianship statute has the advantage of not only containing provisions for

the authority as to the child, i.e, custody or guardianship, but also authority as to the child's estate.

Language contained in this section regarding visitation rights of nonparents is deleted in favor of the more extensive language in sections 9 and 10 regarding residential provisions for the child.

COMMENT TO SECTION 19: MODIFICATIONS

Current law. RCW 26.09.260 authorizes custody modification based on the substantially changed circumstances of the child or the child's custodian. This section is changed to add language that provides for modification of a parenting plan under the same criteria.

Section 19(1)(b) is amended, as one of the prerequisites of modification, to require not only that the child be integrated into the petitioner's household but that it be in substantial deviation from the parenting plan or decree. This is done in recognition of those situations where the child, pursuant to the decree or parenting plan, actually spends substantial amounts of time in each parent's household. This situation alone should not allow either of the parties to modify the parenting plan or decree, absent other factors as specified in RCW 26.09.260.

Section 19(2) is a specific provision under which the court may assess attorney's fees and costs when a motion to modify the parenting plan is brought in bad faith.

COMMENT TO SECTION 21: PUBLIC BENEFITS

Under Section 21, the parent entitled to receive child support is also the parent entitled to receive any public benefits, such as AFDC, which the child is eligible to receive.

Public benefits for the child generally flow to the parent who is the child's custodian. As the terms custody and visitation have been abolished under this Act, it is necessary that there be a clear designation of who may receive public benefits. By tying the receipt of public benefits to the entitlement to child support, it most clearly targets the public benefits to the household most in need of the benefits. This section also requires such a designation to be specified in all applicable court orders. It is unrealistic to expect that all administrative agencies vested with the power to award public benefits will examine this Act carefully to determine who is entitled to receive public benefits.

This section does not supercede or amend general eligibility factors set forth in state and federal public benefit statutes such as income and residency requirements, but simply designates which parent is entitled to benefits given that they may meet all other eligibility factors.

COMMENT TO SECTION 22: REMEDIES FOR VIOLATIONS  
OF THE PARENTING PLAN

Section 22(1) adds a new section vesting the court with broad discretion to punish "bad faith" conduct in negotiation on performance of the parenting plan.

Section 22(2) amends the current law as to the tort of cus-

todial interference to allow the action to be based a violation of the residential provisions of the parenting plan as well as a right to physical custody under former law.

COMMENT TO SECTION 24 - EFFECT OF THIS ACT ON PRIOR DECREES

This section deems all prior decrees involving child custody, visitation, or support to be parenting plans.

The committee, however, was concerned that this section not encourage a flood of litigation as to prior decrees, thereby taxing the court system and disrupting the stability of the children's lives. Therefore, this section provides that the Act itself does not constitute substantially changed circumstances for the purpose of modifying decrees. Furthermore, any clarification or interpretation of prior decrees shall be based upon prior law. This should confine motions for clarification or interpretation solely to those cases where there is genuine ambiguity in the decree.

COMMENT TO SECTIONS 25 AND 26:  
CRIMINAL CUSTODIAL INTERFERENCE STATUTES

The criminal custodial interference statutes are amended to make them applicable to violations of parenting plans as well as violations of custody orders occurring under former law.

In addition, section 26(1) is amended to specify that a misdemeanor occurs only when the child is taken for at least a period of 72 hours in which the parent was not entitled to have the child in his or her care. This provides much needed guidance to law enforcement authorities and allows them to decline involve-

ment where de minimis violations of a parenting plan occur.

COMMENT TO SECTION 28: AMENDMENT TO THE  
DOMESTIC VIOLENCE PREVENTION ACT - RCW 26.50.060(1)(c)

The Domestic Violence Prevention Act (DVPA) required courts, when determining temporary child custody and visitation under DVPA, to apply the same standards as required by former law under RCW 26.09.

DVPA is intended primarily to be an expeditious means of affording protection to domestic violence victims. The majority of DVPA litigants do not have attorneys and must look to the court system for guidance in complying with court rules and statutory procedures. Under the DVPA, a litigant may, as part of a protection order, obtain temporary but not permanent custody or visitation.

Changes. The Domestic Violence Prevention Act is amended to provide that the standards for determining residential provisions under this Act as set forth in sections 9 and 10 are made applicable to the DVPA.

However, parenting plans will not be required under the DVPA, given that the orders are temporary in nature and that the court system would be hard-pressed to expeditiously apply these requirements.

COMMENT TO SECTION 29: AMENDMENT TO  
UNIFORM PARENTAGE ACT, RCW 26.26.130

Former law. In determining custody between nonmarried parents of a minor child, the Uniform Parentage Act applied the same

standards as required by former law under RCW 26.09.

Changes. RCW 26.26.130(6) is amended to apply the new standards for determining residential provisions under this Act as set forth in sections 9 and 10 of this Act. However, parenting plans shall not be required under the Uniform Parentage Act unless the parties so agree.

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**Superior Court of Washington  
County of**

In re the Marriage of:  
Suzanne Nevan

Petitioner,

and  
Daniel M Casey

Respondent.

No. 08-3-07464-5SEA  
**Respondents  
Parenting Plan  
[X] Proposed (PPP)**

This parenting plan is: Respondent Daniel M Casey

**It Is Ordered, Adjudged and Decreed:**

**I. General Information**

This parenting plan applies to the following children:

<u>Name</u>	<u>Age</u>
Joseph Nevan Casey	6

**II. Basis for Restrictions**

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

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

Does not apply.

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

Does not apply.

### **III. Residential Schedule**

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

There are no children under school age.

#### **3.2 School Schedule**

Upon enrollment in school, the child shall reside with the Mother except for the following days and times when the child will reside with or be with the other parent:

Every Monday over night from after school (3:00 pm) until Tuesday morning, returning Joe to school in the morning (or if it is a non-school day, to the mother at 9:00 a.m.)

Every Wednesday over night from after school (2:15) until Thursday morning, returning Joe to school in the morning (or if it is a non-school day, to the mother at 9:00 a.m.)

Every other weekend from Friday after school to Monday morning, returning Joe to school in the morning (This schedule is to start on a weekend that the father has his daughter Orla from his first marriages.)

On none school days not covered in the sections below then Joe is to reside with the parent who Joe is scheduled to stay the night with.

#### **3.3 Schedule for Winter Vacation**

The winter vacation schedule shall commence at the time the school schedule commences. The parties shall evenly divide the winter vacation schedule, to be defined as the period of time from the day after school recesses for the vacation until the day before school resumes. The parties shall evenly divide the winter vacation by agreement. In the absence of agreement, the father shall have the first half of the winter vacation in odd years and the mother shall have the second half of winter vacation in odd years, with the schedule reversed in even years.

**3.4 Schedule for Spring Breaks**

The spring vacation schedule, to be defined as the period of time from the day after school recesses for the vacation until the day school resumes.

The spring vacation schedule shall commence at the time the school schedule commences. The parties shall alternate the spring vacation, with mother having odd years and father having even years.

**3.5 Summer Schedule**

Upon completion of the school year, the child shall reside with the [X] respondent, except for the following days and times when the child will reside with or be with the other parent:

Same as school year schedule.

**3.6 Vacation with Parents**

The schedule for vacation with parents is as follows: Each parent shall have up to three weeks of vacation per year, both parties are free to agree to additional vacation time if the they find the need arises.

**3.7 Schedule for Holidays**

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

	With Father (Specify Year <u>Odd/Even/Every</u> )	With Mother (Specify Year <u>Odd/Even/Every</u> )
New Year's Day	Even _____	Odd _____
Martin Luther King Day	Odd _____	Even _____
Presidents' Day	Even _____	Odd _____
Easter	Every _____	_____
Memorial Day	Even _____	Odd _____
July 4th	Odd _____	Even _____

Labor Day	Even _____	Odd _____
Veterans' Day	Even _____	Odd _____
Halloween	Odd _____	Even _____
Thanksgiving Day	_____	Every _____
Christmas Eve	Odd _____	Even _____
Christmas Day	Even _____	Odd _____
_____	_____	_____
_____	_____	_____

For purposes of this parenting plan, a holiday shall begin and end as follows (set forth times): 9 a.m. until 9 a.m. the following day

Holidays which fall on a Friday or a Monday shall include Saturday and Sunday.

Other:

**3.8 Schedule for Special Occasions**

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

	With Father (Specify Year <u>Odd/Even/Every</u> )	With Mother (Specify Year <u>Odd/Even/Every</u> )
<u>Mother's Day</u> _____	_____	Every _____
<u>Father's Day</u> _____	Every _____	_____
<u>Mothers birthday</u> _____	_____	Every _____
<u>Fathers birthday</u> _____	Every _____	_____
<u>Orla's birthday</u> _____	Every _____	_____
<u>Katie birthday</u> _____	_____	Every _____
<u>Pasqualie's birthday</u> _____	_____	Every _____

Other: For purposes of this parenting plan, a holiday shall begin and end as follows (set forth times): 9 a.m. until 9 a.m. the following day

**3.9 Priorities Under the Residential Schedule**

Paragraphs 3.3 - 3.8, have priority over paragraphs 3.1 and 3.2, in the following order:

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

- |                           |                            |
|---------------------------|----------------------------|
| # 3 winter vacation (3.3) | #1 holidays (3.7)          |
| #4 school breaks (3.4)    | #2 special occasions (3.8) |

#5 summer schedule (3.5)  
#7 Regular Weekly Schedule

#6 vacation with parents (3.6)

Other:

### 3.10 Restrictions

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

### 3.11 Transportation Arrangements

Transportation costs are included in the Child Support Worksheets and/or the Order of Child Support and should not be included here.

Transportation arrangements for the child, between parents shall be as follows:

To be negotiated based on parent availability for drop off or pick up.

### 3.12 Designation of Custodian

The child named in this parenting plan is scheduled to reside equal time with both petitioner and respondent, but respondent is designated the custodian of the child solely for purposes of all other state and federal statutes which require a designation or determination of custody. This designation shall not affect either parent's rights and responsibilities under this parenting plan.

### 3.13 Other. N/A

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**IV. Decision Making**

**4.1 Day-to-Day Decisions**

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

**4.2 Major Decisions**

Major decisions regarding each child shall be made as follows:

Education decisions	<input type="checkbox"/>	petitioner	<input type="checkbox"/>	respondent	<input checked="" type="checkbox"/>	joint
Non-emergency health care	<input type="checkbox"/>	petitioner	<input type="checkbox"/>	respondent	<input checked="" type="checkbox"/>	joint
Religious upbringing	<input type="checkbox"/>	petitioner	<input type="checkbox"/>	respondent	<input checked="" type="checkbox"/>	joint

**4.3 Restrictions in Decision Making**

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

**V. Dispute Resolution**

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

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

The cost of this process shall be allocated between the parties as follows:

50% petitioner 50% respondent. If mediator finds that one of the parties has used this process unfairly then mediator may allocate a disproportionate share of the cost for the dispute resolution process to that party.

The dispute resolution process shall be commenced by notifying the other party by  written request  certified mail  other:

In the dispute resolution process:

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

## VI. Other Provisions

There are the following other provisions:

- 6.1 When determining the alternation of holidays and vacations, the parties shall do so in a manner least disruptive to their regular visitation schedule.
- 6.2 The mother and father shall make an effort to communicate concerning parenting of their child, so that there can be consistency between homes: and further regarding any positive or negative changes occurring for the child with regard to his schedule or medical records.
- 6.3 Either parent shall have the right to reasonable telephone contact with the child, at reasonable times and for reasonable periods of time, when the child is not residing with that parent; which, for purposes of this provision, shall be exercised between 7:00 am weekdays (9:00 am weekends) and 9:00 pm weekdays (10:00 pm Friday and Saturday) unless an emergency dictates otherwise.
- 6.4 Each parent shall make an effort to foster respect and affection between the child and the other parent, to refrain from words or conduct that would have a tendency to estrange the child from the other parent or diminish the opinion of the child for the other parent, and from making disparaging remarks about the other parent.

- 6.5 Each parent shall be responsible for keeping him or herself advised of athletic and social events in which the child participates and may participate in school and athletic activities for the child, regardless of the residential schedule. Each parent shall promptly provide the other parent with any significant information they have and/or receive pertaining to the health, welfare and well-being of the child, including physical and mental health, social or athletic activities, school, extracurricular activities, etc., if they have reason to believe that the other parent did not receive the information.
- 6.6 Each parent shall have full and equal access to the child's educational and health records. Each parent shall have full and independent authority to confer with the child's school, medical providers and other programs with respect to the child's educational, medical, emotional and social progress.
- 6.7 Neither parent shall discuss these proceedings with the child, or give her access to any pleading in this action, or influence the child regarding the visitation/residential provisions herein.
- 6.8 Each parent agrees to honor the other's parenting style, privacy and authority. Neither parent shall interfere in the parenting style of the other, nor shall either parent make plans or arrangements that would impinge upon the other parent's time or authority with the child without the express agreement of the other. When either parent signs the child up for extra-curricular activities such as sports, music or foreign language classes, he or she will inform the other parent and will attempt to work around that parent's residential time as much as possible. Each parent shall encourage the child to discuss any grievance they may have against a parent directly with the parent in question.
- 6.9 Neither parent shall advise the child of the status of child support payments or other legal matters regarding the parental relationship obligation.
- 6.10 Neither parent shall use the child, directly or indirectly, to gather information about the other parent or take verbal messages to the other parent.
- 6.11 Each parent shall have the right and responsibility to insure that the child attend school and other scheduled activities while in that parent's care.
- 6.12 Each parent shall provide the other parent with the address and telephone number of their residence and update such information within a reasonable period of time whenever it is anticipated to change or changes.
- 6.13 A parent traveling out of the Puget Sound area for an overnight with the child shall provide the other parent with a daily travel itinerary and telephone numbers where the child may be contacted. This provision is not to be read to invade the privacy of either parent and is intended to keep the other parent informed if urgent circumstances arise.
- 6.14 The child shall attend Catholic schools through high school, at the expense of the mother, Suzanne Nevan, unless otherwise agreed.

6.15 Each parent shall have the first option to care for Joe during any period greater than two (2) hours when the other parent is not available to provide care for Joe. Each parent shall have the first option to care for Joe during any period greater than twenty-four (24) hours when the other parent is not available to provide care for Joe (such as vacation or recreation).

**VII. Declaration for Proposed Parenting Plan**

- Does not apply.
- (Only sign if this is a proposed parenting plan.) I declare under penalty of perjury under the laws of the state of Washington that this plan has been proposed in good faith and that the statements in Part II of this Plan are true and correct.

Petitioner

Date and Place of Signature

Respondent

Date and Place of Signature

  
 \_\_\_\_\_  
 Respondent

10-28-8 Seattle  
 \_\_\_\_\_  
 Date and Place of Signature

**VIII. Order by the Court**

It is ordered, adjudged and decreed that the parenting plan set forth above is adopted and approved as an order of this court.

**WARNING:** Violation of residential provisions of this order with actual knowledge of its terms is punishable by contempt of court and may be a criminal offense under RCW 9A.40.060(2) or 9A.40.070(2). Violation of this order may subject a violator to arrest.

When mutual decision making is designated but cannot be achieved, the parties shall make a good faith effort to resolve the issue through the dispute resolution process.

If a parent fails to comply with a provision of this plan, the other parent's obligations under the plan are not affected.

Dated: 10-28-8

Judge/Commissioner

Presented by:

Approved for entry:

Signature of Party or Lawyer/WSBA No.

Signature of Party or Lawyer/WSBA No.

Print Name

DANIEL M CASEY

Print Name

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**Superior Court of Washington  
County of King**

**HELEN L. HALPERT**

In re the Marriage of:

Suzanne E. Nevan,

Petitioner,

and

Daniel M. Casey,

Respondent.

**08-3-07464-5 SEA**

**No.**

**Parenting Plan**

**Proposed (PPP)**

**Temporary (PPT)**

**Final Order (PP)**

This parenting plan is proposed by Petitioner Suzanne Nevan.

**It Is Ordered, Adjudged and Decreed:**

**I. General Information**

This parenting plan applies to the following child:

<u>Name</u>	<u>Age</u>
Joseph Michael Nevan-Casey	6

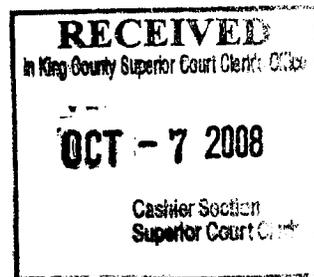
**II. Basis for Restrictions**

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

Does not apply.

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

Does not apply.



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### III. Residential Schedule

#### 3.1 Schedule for Children Under School Age

There are no children under school age.

#### 3.2 School Schedule

Upon enrollment in school, the child shall reside with the petitioner, except for the following days and times when the child will reside with or be with the other parent:

Monday from end of school (3:00 pm) to 7:30 pm every week, and

Wednesday from end of school (2:15 pm) overnight to Thursday drop off at school or 9:00 am, if no school, every week, and

Friday from end of school (3:00 pm) to Sunday at 5:00 pm every other week.

#### 3.3 Schedule for Winter Vacation

The child shall reside with the petitioner during winter vacation, except for the following days and times when the child will reside with or be with the other parent:

The parties shall evenly divide the winter vacation schedule, to be defined as the period of time from the day after school recesses for the vacation until the day before school resumes. The parties shall evenly divide the winter vacation by agreement. In the absence of agreement, the father shall have the first half of the winter vacation in odd years and the mother shall have the second half of winter vacation in odd years, with the schedule reversed in even years.

#### 3.4 Schedule for Other School Breaks

The child shall reside with the petitioner during other school breaks, except for the following days and times when the child will reside with or be with the other parent:

The parties shall alternate the spring vacation, with mother having odd years and father having even years.

#### 3.5 Summer Schedule

Upon completion of the school year, the child shall reside with the petitioner, except for the following days and times when the child will reside with or be with the other parent:

Same as school year schedule.

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**3.6 Vacation With Parents**

The schedule for vacation with parents is as follows:

Each parent shall be able to take up to three weeks' vacation each year. The parties shall give each other at least thirty days' notice of their vacation plans. If their plans conflict, then mother's shall have priority in odd numbered years and father's in even numbered years.

**3.7 Schedule for Holidays**

The residential schedule for the child for the holidays listed below is as follows:

	<u>Petitioner</u>	<u>Respondent</u>
New Year's Day	See winter vacation schedule	_____
Martin Luther King Day	* _____	_____
Presidents' Day	* _____	_____
Memorial Day	Even _____	Odd _____
July 4th	Odd _____	Even _____
Labor Day	Odd _____	Even _____
Veterans' Day	Regular schedule _____	_____
Thanksgiving Day	Every _____	_____
Christmas Eve	Even** _____	Odd _____
Christmas Day	Odd** _____	Even _____
Easter _____	_____	Every _____

\* Monday holidays shall be spent with the parent who has the adjacent weekend.

\*\* If both parents are in town, then the parent who has the first half of winter break shall have the child on Christmas Eve through Christmas Day at 10:00 am, and the other parent shall have the child on Christmas Day at 10:00 am until Dec. 26 at 10:00 am.

**3.8 Schedule for Special Occasions**

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

	<u>Petitioner</u>	<u>Respondent</u>
<u>Mother's Day</u>	Every _____	_____
<u>Father's Day</u>	_____	Every _____
<u>Katherine Sena birthday 12/22</u>	Every _____	_____
<u>Pasquale Sena birthday 6/9</u>	Every _____	_____
<u>Orla Casey birthday 3/27</u>	_____	Every _____

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**3.9 Priorities Under the Residential Schedule**

Paragraphs 3.3 - 3.8, have priority over paragraphs 3.1 and 3.2, in the following order:

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

- |   |                                      |
|---|--------------------------------------|
| <u>  3  </u> winter vacation (3.3)          | <u>  1  </u> holidays (3.7)          |
| <u>  4  </u> school breaks (3.4)            | <u>  2  </u> special occasions (3.8) |
| <u>  5  </u> summer schedule (3.5)<br>(3.6) | <u>  6  </u> vacation with parents   |

**3.10 Restrictions**

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

**3.11 Transportation Arrangements**

Transportation costs are included in the Child Support Worksheets and/or the Order of Child Support and should not be included here.

Transportation arrangements for the child, between parents shall be as follows:

To be negotiated based on parent availability for drop off or pick up.

**3.12 Designation of Custodian**

The children named in this parenting plan are scheduled to reside the majority of the time with the petitioner. This parent is designated the custodian of the child solely for purposes of all other state and federal statutes which require a designation or determination of custody. This designation shall not affect either parent's rights and responsibilities under this parenting plan.

**3.13 Other. N/A**

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

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

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

If the move is outside the child's school district, the relocating person must give notice by personal service or by mail requiring a return receipt. This notice must be at least 60 days before the intended move. If the relocating person could not have known about the move in time to give 60 days' notice, that person must give notice within 5 days after learning of the move. The notice must contain the information

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1 required in RCW 26.09.440. See also form DRPSCU 07.0500, (Notice of Intended  
2 Relocation of A Child).

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

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

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

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

13 Failure to give the required notice may be grounds for sanctions, including  
14 contempt.

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

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

20 An objection may be filed by using the mandatory pattern form WPF DRPSCU  
21 07.0700, (Objection to Relocation/Petition for Modification of Custody  
22 Decree/Parenting Plan/Residential Schedule). The objection must be served on all  
23 persons entitled to time with the child.

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

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

## IV. Decision Making

### 4.1 Day-to-Day Decisions

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

### 4.2 Major Decisions

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1 Major decisions regarding each child shall be made as follows:

- 2 Education decisions joint
- 3 Non-emergency health care joint
- 4 Religious upbringing joint

4.3 **Restrictions in Decision Making**

5 Does not apply because there are no limiting factors in paragraphs 2.1 and 2.2  
6 above.

7 **V. Dispute Resolution**

8 Disputes between the parties, other than child support disputes, shall be submitted  
9 to (list person or agency): mediation by an agreed mediator

10 The cost of this process shall be allocated between the parties as follows:

11 based on each party's proportional share of income from line 6 of the child support  
12 worksheets.

13 The dispute resolution process shall be commenced by notifying the other party by  
14 certified mail.

15 In the dispute resolution process:

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

**VI. Other Provisions**

27 There are the following other provisions:

28 6.1 When determining the alternation of holidays and vacations, the parties shall do so  
29 in a manner least disruptive to their regular visitation schedule.

30 6.2 The mother and father shall make an effort to communicate concerning parenting of

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their child, so that there can be consistency between the homes; and, further, regarding any positive or negative changes occurring for the child with regard to his schedule or medical needs.

6.3 Either parent shall have the right to reasonable telephone contact with the child, at reasonable times and for reasonable periods of time, when the child is not residing with that parent; which, for purposes of this provision, shall be exercised between 7:00 am weekdays (9:00 am weekends) and 9:00 pm weekdays (10:00 pm Friday and Saturday) unless an emergency dictates otherwise.

6.4 Each parent shall make an effort to foster respect and affection between the child and the other parent, to refrain from words or conduct that would have a tendency to estrange the child from the other parent or diminish the opinion of the child for the other parent, and from making disparaging remarks about the other parent.

6.5 Each parent shall be responsible for keeping him or herself advised of athletic and social events in which the child participates and may participate in school and athletic activities for the child, regardless of the residential schedule. Each parent shall promptly provide the other parent with any significant information they have and/or receive pertaining to the health, welfare and well-being of the child, including physical and mental health, social or athletic activities, school, extracurricular activities, etc., if they have reason to believe that the other parent did not receive the information.

6.6 Each parent shall have full and equal access to the child's educational and health records. Each parent shall have full and independent authority to confer with the child's school, medical providers and other programs with respect to the child's educational, medical, emotional and social progress.

6.7 Neither parent shall discuss these proceedings with the child, or give her access to any pleading in this action, or influence the child regarding the visitation/residential provisions herein.

6.8 Each parent agrees to honor the other's parenting style, privacy and authority. Neither parent shall interfere in the parenting style of the other, nor shall either parent make plans or arrangements that would impinge upon the other parent's time or authority with the child without the express agreement of the other. When either parent signs the child up for extra-curricular activities such as sports, music or foreign language classes, he or she will inform the other parent and will attempt to work around that parent's residential time as much as possible. Each parent shall encourage the child to discuss any grievance they may have against a parent directly with the parent in question.

6.9 Neither parent shall advise the child of the status of child support payments or other legal matters regarding the parental relationship obligation.

6.10 Neither parent shall use the child, directly or indirectly, to gather information about

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the other parent or take verbal messages to the other parent.

6.11 Each parent shall have the right and responsibility to insure that the child attend school and other scheduled activities while in that parent's care.

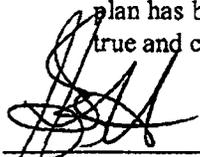
6.12 Each parent shall provide the other parent with the address and telephone number of their residence and update such information within a reasonable period of time whenever it is anticipated to change or changes.

6.13 A parent traveling out of the Puget Sound area for an overnight with the child shall provide the other parent with a daily travel itinerary and telephone numbers where the child may be contacted. This provision is not to be read to invade the privacy of either parent and is intended to keep the other parent informed if urgent circumstances arise.

6.14 The child shall attend Catholic schools through high school, at the expense of the mother, Suzanne Nevan.

**VII. Declaration for Proposed Parenting Plan**

I declare under penalty of perjury under the laws of the state of Washington that this plan has been proposed in good faith and that the statements in Part II of this Plan are true and correct.



Suzanne Nevan

9/30/08

Date

**VIII. Order by the Court**

It is ordered, adjudged and decreed that the parenting plan set forth above is adopted and approved as an order of this court.

**WARNING:** Violation of residential provisions of this order with actual knowledge of its terms is punishable by contempt of court and may be a criminal offense under RCW 9A.40.060(2) or 9A.40.070(2). Violation of this order may subject a violator to arrest.

When mutual decision making is designated but cannot be achieved, the parties shall make a good faith effort to resolve the issue through the dispute resolution process.

If a parent fails to comply with a provision of this plan, the other parent's obligations under the plan are not affected.

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Dated: \_\_\_\_\_

\_\_\_\_\_  
**Judge/Commissioner**

Presented by:

Approved for entry:

*Pat Johnston*

\_\_\_\_\_  
Law Offices of Patrice M. Johnston PLLC  
Patrice M. Johnston, WSBA #13584  
Attorney for Petitioner

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Washington State Court of Appeals  
Division I

Suzanne Nevan	)	
Respondent,	)	No. 08-3-07464-5 SEA
	)	No. 64322-3
v.	)	
	)	
Daniel M Casey	)	
Appellant.	)	

CERTIFICATE

I certify that I hand delivered and mailed a copy of the Appellant Brief and A copy of the "Verbatim report of proceedings". This hand delivered to Suzanne Nevan home (respondent, Pro Se), at 3417 41<sup>st</sup> Ave SW, Seattle, WA 98116(residence), and mailed to the same address, postage prepaid, on February 12, 2010.

  
\_\_\_\_\_  
Daniel M Casey  
2100 California Ave SW #302, Seattle, W A 98116  
206-935-4616

FILED  
COURT OF APPEALS DIV #1  
STATE OF WASHINGTON  
2010 FEB 17 AM 10:00