

66814-5

66814-5

ORIGINAL

NO. 66814-5 I

COURT OF APPEALS, DIVISION I  
OF THE STATE OF WASHINGTON

---

In re the Marriage of:

SANDRA BURLINGAME-ESTEP n/k/a  
SANDRA BURLINGAME,

Respondent,

v.

JAMES R. ESTEP, IV,

Appellant.

---

BRIEF OF RESPONDENT

---

ON APPEAL FROM THE SUPERIOR COURT OF  
THE STATE OF WASHINGTON FOR KING COUNTY

---

Attorneys for Respondent

Mary E. Coleman WSBA#19864  
Curran Law Firm P.S.  
555 West Smith Street  
P.O. Box 140  
Kent, Washington 98035  
(253) 852-2345

2011 NOV 14 AM 10:55

FILED  
COURT OF APPEALS DIV I  
STATE OF WASHINGTON

**Table of Contents**

I. INTRODUCTION.....1

II. ISSUES PRESENTED.....1

    1. Whether the trial court abused its discretion when it properly resolved a routine discovery dispute against Mr. Estep.....1

    2. Whether the trial court erred when it properly the husband’s interest in the Estep Family Trust is vested, as the Trustor is deceased.....1

    3 (a). Whether the trial court abused its discretion when it properly determined that Mr. Estep’s interest in the Estep Family Trust is an asset and considered that asset for purposes of a fair and equitable division of assets, as the Trustor is deceased and the Trust provides that Mr. Estep will receive 66.66% of any assets remaining after the trust is terminated no later than 2019.....1

    (b). Whether the trial court abused its discretion when it awarded the wife a larger proportion of the community property after a long term marriage where the wife has medical issues that impair her ability to work, a limited work history and a limited education.....1

    4. Whether the trial court abused its discretion when it ordered the husband to pay maintenance after a long term marriage where the wife has medical issues that impair her ability to work, a limited work history and a limited education and the husband has the ability to pay maintenance.....1

    5. Whether the wife is entitled to attorneys’ fees.....1

III.	RESPONDENT'S STATEMENT OF THE CASE.....	2
IV.	ARGUMENT.....	3
	1. The court did not abuse its discretion by ordering the husband to produce information and documents in his possession.....	3-6
	2. The trial court correctly characterized the husband's interest in the Estep Family Trust as a vested interest.....	6-8
	3. The trial court's distribution of assets comports with the relevant law	
	(a) The trial court correctly determined that the husband has an interest in the Trust and properly considered that interest for purposes of a fair and equitable division of assets.....	8-10
	(b) The trial court properly awarded the wife a reasonable percentage of the community property.....	10-12
	4. The trial court properly awarded maintenance to the wife, given the length of the marriage, the husband's income and the wife's limited work history, education and her permanent disabilities.....	13-15
	5. The wife is entitled to attorneys' fees.....	15
V.	CONCLUSION.....	16

## TABLE OF AUTHORITIES

### CASES

<i>Andrus v. State Dept. of Transportation</i> , 128 Wn.App. 895, 900, 117 P.2d 1152 (2006) <i>review denied</i> 157 Wn.2d 1005, 136 P.3d 759 (2006).....	15
<i>City of Lakewood v. Koenig</i> , 160 Wn.App. 883, 892 P.3d (2011) <i>citing Clarke v. Office of the Attorney Gen.</i> , 133 Wn.App. 767, 777 138 P.3d 14 (2006), <i>review denied</i> , 160 Wn.2d 1006 (2007).....	4
<i>Edwards v. Edwards</i> , 1 Wn.App. 67, 459 P.2d 422,425 (1969).....	7
<i>In re Marriage of Estes</i> , 84 Wn.App. 586, 593, 929 P.2d 500 (1997).....	13
<i>Friedlander v. Friedlander</i> , 80 Wn.2d 293, 305, 494 P.2d 208 (1972)...	10
<i>In re Marriage of Gillespie</i> , 89 Wn.App. 390, 398-99 948 P.2d 1338 (1997).....	9
<i>Holbrook v. Weyerhaeuser Co.</i> , 118 Wn.2d 306, 315, 822 P.2d 271 (1992).....	4
<i>Johnson v. Jones</i> , 91 Wn.App. 127, 138, 955 P.2d 826 (1998).....	15
<i>In re Marriage of Kraft</i> , 119 Wn.2d 438, 450, 832 P.2d 871 (1992).....	8,10
<i>Magana v. Hyundai Motor Am.</i> , 167 Wn.2d 570, 582-83 220 P.3d 191, 1997 (2009) <i>reconsideration denied</i> (2010).....	4
<i>Marriage of McKean</i> , 110 Wn.App. 191, 38 P.3d 1053 (2002).....	8
<i>State v. Halstien</i> , 122 Wn.2d 109, 128-29, 857 P.2d 270 (1993).....	9
<i>In re Marriage of Terry</i> , 79 Wn.App. 866, 869, 905 P.2d 935 (1995).....	9,13
<i>In re Marriage of Washburn</i> , 101 Wn.2d 168, 179, 677 P.2d 152 (1984).....	9
<i>Willener v. Sweeting</i> , 107 Wn.2d 388, 393, 730 P.2d 45 (1986).....	7

**STATUTES**

RCW 26.09.080.....5,11,12  
RCW 26.09.090.....13  
RCW 26.09.140.....15

**COURT RULES**

King County LCR 7(b)(4)(D).....2  
King County LCR 26(b)(1) .....4  
King County LCR 59(b).....6  
RAP 18.1(a).....15  
RAP 18.9(a).....15

## **I. INTRODUCTION**

The wife respectfully requests this Court affirm the order of the trial court and award her attorneys' fees.

## **II. ISSUES PRESENTED**

1. Whether the trial court abused its discretion when it properly resolved a routine discovery dispute against Mr. Estep.
2. Whether the trial court erred when it properly found the husband's interest in the Estep Family Trust is vested, as the Trustor is deceased
- 3(a). Whether the trial court abused its discretion when it properly determined that Mr. Estep's interest in the Estep Family Trust is an asset and considered that asset for purposes of a fair and equitable division of assets, as the Trustor is deceased and the Trust provides that Mr. Estep will receive 66.66% of any assets remaining after the trust is terminated no later than 2019.
- 3(b). Whether the trial court abused its discretion when it awarded the wife a larger proportion of the community property after a long term marriage where the wife has medical issues that impair her ability to work, a limited work history and a limited education.
4. Whether the trial court abused its discretion when it ordered the husband to pay maintenance after a long term marriage where the wife has medical issues that impair her ability to work, a limited work history and a limited education and the husband has the ability to pay maintenance.
5. Whether the wife is entitled to attorneys' fees.

### III. RESPONDENT'S STATEMENT OF THE CASE

The parties were married for more than 24 years (Clerk's Papers 148).<sup>1</sup>

On July 8, 2010, the wife served Interrogatories and Requests for Production on the husband (CP 172). On November 15, 2010, the husband provided his responses to the Interrogatories, but they were not complete (CP 193-249).

The wife filed a motion to compel complete responses on December 28, 2010 (CP 162-170). The motion was set for hearing on January 6, 2011 (CP 160). The hearing was continued to January 11, 2011. Pursuant to King County Local Rule 7(b)(4)(D), the husband's response to the motion to compel was due January 7, 2011.

The husband filed his response to the motion to compel on January 11, 2011 (CP 15-20), the same date the trial court was to consider the motion. The husband also filed a two page "Motion/Order for Order of Protection" (CP 46-47). The wife filed a reply to the husband's untimely response (CP 187-189). The wife

---

<sup>1</sup> It appears that Appellant designated Clerk's Papers by the Superior Court docket (sub) number. Therefore, CP 86 "Findings" designated by Appellant should be correctly designated as CP 147-151.

did not file a response to the Motion/Order for Order of Protection, as it had not been set for hearing.

On February 2, 2011, the Honorable J. Wesley St. Clair granted the wife's motion to compel and awarded terms (CP 48-49). That order is one subject of the current Appeal.

On February 15, 2011, the husband filed a motion for reconsideration of the trial court's February 2 order (CP 51-53). The trial court denied the husband's motion on March 10, 2011 (CP 84-86).

On March 15, 2011, the husband filed a Notice of Discretionary Review with this Court.

Trial in this matter was held on March 16, 17, and 21, 2011.

The husband filed a motion to amend the discretionary review and treat the motion as a notice of appeal on May 4, 2011. The motion was granted and the husband filed an amended notice of appeal.

#### **IV. ARGUMENT**

1. The court did not abuse its discretion by ordering the husband to produce information and documents in his possession

The trial court's decision below was not an abuse of discretion, the standard of review for discovery sanctions. See

*Magana v. Hyundai Motor Am.*, 167 Wn.2d 570, 582-83, 220 P.3d 191, 197 (2009), *reconsideration denied* (2010). “A trial court abuses its discretion when its order is manifestly unreasonable or based on untenable grounds.” *Holbrook v. Weyerhaeuser Co.*, 118 Wn.2d 306, 315, 822 P.2d 271 (1992). “A discretionary decision rests on ‘untenable grounds’ or is based on ‘untenable reasons’ if the trial court relies on unsupported facts or applies the wrong legal standard.” *Magana*, 167 Wn.2d at 583.

“The decision to grant or deny a motion to compel is within the sound discretion of the trial court, and we will not disturb a trial court's discovery decision absent a manifest abuse of discretion.” *City of Lakewood v. Koenig*, 160 Wn. App. 883, 892 P.3d (2011) (citing *Clarke v. Office of the Attorney Gen.*, 133 Wn. App. 767, 777, 138 P.3d 144 (2006), *review denied*, 160 Wn.2d 1006 (2007)).

The scope of discovery is broad. CR 26(b)(1). Mr. Estep cites no privilege as to the trust (CP 198, 201). In addition to refusing to provide information regarding the assets of the trust, the husband also refused to provide complete information regarding bank accounts to which he had deposited or withdrawn money during the marriage (CP 199). Information regarding separate and community assets and debts is relevant to the dissolution of a

marriage, as the trial court is required to make a just and equitable disposition of the property and liabilities of the parties. RCW 26.09.080. The husband did not move for a protective order regarding the discovery until six months after the initial discovery requests went out, and only after the wife filed a motion to compel (CP 78-79). Even after filing a document entitled "Motion/Order for Order of Protection", the husband did not note the motion for hearing.

The wife acknowledges that any interest in the trust is separate property of the husband. She simply sought information about the husband's financial situation. The husband reported that the trust has loaned money to the marital community (RP March 17, 2011 at 117-118). Bank statements showed multiple transfers between a trust bank account and the parties' personal bank account (CP 251-260, 268-269). Financial information is acutely relevant in a dissolution proceeding in which the trial court seeks to equitably divide the parties' property and liabilities.

The trial court acted properly in denying a motion that was not set for hearing, and it properly awarded the wife sanctions. The trial court acted properly in denying a motion that was not set for hearing, and it properly awarded the wife sanctions. Here, the trial

court rested its decision to grant the wife's motion to compel on well-supported facts and black letter law regarding discovery. The husband refused for five months to provide information plainly relevant to the dissolution action. The husband failed to provide timely objections to the Interrogatories and Requests for Production. The husband failed to move for a protective order until after the trial court had entered its Order Compelling Responses, and even then he failed to note the motion for hearing.

The husband failed to file a timely motion for reconsideration. CR 59(b) requires a party to file a reconsideration motion within 10 days of the decision the party seeks to be reconsidered. The husband filed the reconsideration motion on February 15, 2011, more than 10 days after the trial court entered granted the wife's motion to compel on February 2, 2011.

The trial court's order granting the wife's motion to compel, and subsequent order denying the husband's motion for reconsideration were well within the court's discretion. Accordingly, this Court should affirm the trial court's orders as to this issue.

2. The trial court correctly characterized the husband's interest in the Estep Family Trust as a vested interest.

The standard of review for a trial court's findings of fact and conclusions of law is a two-step process. First, the court must determine if the trial court's findings of fact were supported by substantial evidence in the record. If so, the court must next decide whether those findings of fact support the trial court's conclusions of law. *Willener v. Sweeting*, 107 Wn.2d 388, 393, 730 P.2d 45 (1986).

The Estep Family Trust is a valid testamentary trust which divested the Trustor of his property upon his death (Trial Exhibit 19, Revocable Trust Agreement of James R. Estep Sr.). The Trustor died in 2004 (RP March 17, 2011 at 194). The husband's interest in the trust became vested at the death of the Trustor. *Edwards v. Edwards*, 1 Wn. App. 67, 459 P.2d 422, 425 (1969).

The Estep Family Trust provides that upon the death of the Trustor, the trust property shall be used to pay the debts of the Trustor (Ex 19, pages 3-4). The trust estate was to be held as a single trust for the benefit of the Trustor's grandchildren (Ex 19, page 5). The benefits payable on behalf of the grandchildren are payable for four consecutive years (Ex 19, pages 5-6). The Trust terminates "upon graduation of the last grandchild qualifying for benefits hereunder from graduate school or four (4) years after the

last of the grandchildren qualifying for benefits hereunder commences his or her college education, whichever event occurs first” (Ex 19, page 6). Any funds remaining shall be divided 33.34% to ROBERT EDWARD LUCKEY” and 66.66% to JAMES R. ESTEP, JR., per stirpes (Ex 19, page 6).

In this case, the trial court did not adjudicate any rights belonging to the trust, but instead properly found that the husband had a separate property interest in the Trust (CP 149), and awarded that interest to the husband (CP 143). By contrast, the trial court in McKean erred by the trust property transferred to a corporate trustee. *Marriage of McKean*, 110 Wn.App. 191, 38 P.3d 1053 (2002). No similar action by the Court occurred in this matter.

3. (a) The trial court correctly determined that the husband has an interest in the Trust and properly considered that interest for purposes of a fair and equitable division of assets.

The trial court did not abuse its discretion by awarding any interest the husband has in the Trust to the husband. Challenges to the decision of the superior court involving property and debt distribution are reviewed for an abuse of discretion. *In re Marriage of Kraft*, 119 Wn.2d 438, 450, 832 P.2d 871 (1992). A party challenging a property distribution must demonstrate that the trial

court manifestly abused its discretion. *In re Marriage of Washburn*, 101 Wn.2d 168, 179, 677 P.2d 152 (1984); *In re Marriage of Terry*, 79 Wn.App. 866, 869, 905 P.2d 935 (1995). The Court abuses its discretion when it acts on untenable grounds or for untenable reasons. *In re: Marriage of Gillespie*, 89 Wn. App. 390, 398-99, 948 P.2d 1338 (1997). The trial court properly considered the husband's interest in the Trust, as well as other factors including the health of each party, the education of each party, and the future earning capacity of each party in determining an overall property distribution (CP 149).

Findings of fact are reviewed under the substantial evidence standard. Substantial evidence exists when there is evidence of a sufficient quantum to persuade a fair-minded person of the truth of the declared premise. *State v. Halstien*, 122 Wn.2d 109, 128-29, 857 P.2d 270 (1993). The testimony of the Trustee (RP March 17, 2011 at 74-77) and financial documents (Ex 21, Ex 22) provided the trial court with substantial evidence regarding the assets of the trust.

The Trust contains substantial assets in excess of the amount needed to fully pay for the post secondary education of the Trustor's grandchildren pursuant to the terms of the Trust (RP

March 17, 2011 at 59-60, 74-77). The Trustees have set aside \$240,000.00 for post secondary education of the Trustor's grandchildren (RP March 17, 2011 at 59, 60 and 61), and it is the opinion of the Trustee that \$240,000.00 is sufficient to pay for the grandchildren's post secondary education (RP March 17, 2011 at 61, 79). Additional assets of the trust include \$260,000.00 to \$270,000.00 in bank accounts and \$95,000.00 in loans owed to the trust (RP March 17, 2011 at 74-77). The husband will receive 66.66% of these additional assets after termination of the trust, no later than 2019 (Ex 19, page 6, and RP March 17, 2011 at 50).

In a dissolution action, all property, both community and separate, is before the court for distribution. *Friedlander v. Friedlander*, 80 Wn.2d 293, 305, 494 P.2d 208 (1972) The trial court did not err in finding that the husband has an interest in the Trust funds, given the assets of the trust exceed the amount that can be paid for post secondary education of the grandchildren.

3. (b) The trial court properly awarded the wife a reasonable percentage of the community property.

Challenges to the decision of the superior court involving property and debt distribution are reviewed for an abuse of discretion. *In re Marriage of Kraft*, 119 Wn.2d 438, 450, 832 P.2d

871 (1992). The trial court properly considered factors such as the health of each party, the education of each party, and the future earning capacity of each party in determining an overall property distribution pursuant to RCW 26.09.080. (CP 149).

The community assets of the parties included retirement accounts, real property, vehicles, and personal property. The husband estimated the value of the parties' assets, exclusive of retirement accounts, to be \$90,000.00 (RP March 17, 2011 at 187-188).

Contrary to the husband's claim that the wife received 98% of the community property, the wife received 50% of the community portion of the husband's defined benefit retirement with his employer (Ex 9), 50% of an account with Mellon, 60% of an IRA with RBC (Ex 7), 60% of a 401K with Boeing (Ex 9), \$20,000.00 (CP 145), and a lien on the marital home if the home is not sold by December 21, 2011 (CP 145-146). The husband was awarded the marital home, which he valued at \$755,000.00 (RP March 17, 2011, page 102), subject to a lien by the wife if the home is not sold by December 21, 2011 (CP 142). He was also awarded personal property, post separation interest in his retirement accounts, 50% of the community portion of his defined benefit retirement, 50% of an

account with Mellon, 40% of an IRA with RBC and the 401K with Boeing, and a Merrill Lynch IRA (Ex 8 and CP 142-143).

Finally, the trial court found that the husband had engaged in intransigent behavior during the dissolution, including a willful refusal to provide financial information, a failure to respond to discovery, and failure to timely appear for a settlement conference. (RP March 21, 2011 at 13-18)

The wife has a limited education (RP March 16, 2011 at 35, 41), permanent disabilities (RP March 16, 2011 at 42, 45-53, 165-167; March 17, 2011 at 6-8; Ex 75), a negligible work history (RP March 16, 2011 at 36-40; and Ex 24 and Ex 26), and limitations on her future ability to work. (RP March 16, 211 at 99; March 17, 2011 at 184). She contributed her inheritance and personal injury settlement to the community (RP March 16, 2011 at 61, 72, 78, 81-82; and Ex 75). By contrast, the husband has significant earning capacity (RP March 17, 2011 at 88, 95). The husband failed to provide information regarding his assets and debts in response to discovery requests (CP 48-49, 190-249). Given the length of the marriage and the relative economic futures of the parties, the Court did not abuse its discretion in the award of property after consideration of the factors set forth in RCW 26.09.080.

4. The trial court properly awarded maintenance to the wife, given the length of the marriage, the husband's income, and the wife's limited work history, education, and her permanent disabilities.

An award of maintenance is within the broad discretion of the court. *In re: Marriage of Terry*, 79 Wn.App. 866, 869, 905 P.2d 935 (1995). An award of maintenance must be just in light of the relevant facts, including the financial resources of each party, the duration of the marriage, and the resources and obligations of the spouse seeking maintenance, including that spouse's ability for self-support. RCW 26.09.090; *In re Marriage of Estes*, 84 Wn.App. 586, 593, 929 P.2d 500 (1997).

Here, the husband's gross income exceeds \$9,700.00 per month (RP March 17, 2011 at 180 and Ex 20). The trial court's award of maintenance underscored the central reality of this case: Petitioner and Respondent were married for 23 ½ years. (CP 148) During that time, the wife was responsible for raising the parties' children while the husband attended school to obtain a graduate degree. (RP March 16, 2011 at 39-41). The wife has a limited education (RP March 16, 2011 at 35, 41), permanent disabilities (RP March 16, 2011 at 42, 45-53, 165-167; March 17, 2011 at 6-8; Ex 75), a negligible work history (RP March 16, 2011 at 36-40; and

Ex 24 and Ex 26), and limitations on her future ability to work. (RP March 16, 2011 at 99; March 17, 2011 at 184). Her future monthly expenses were anticipated to be \$4,555.00 per month (Ex. 100).

The payment of \$3,000.00 per month maintenance leaves the husband with a \$6,700.00 per month gross income, which will increase to more than \$7,200.00 in a few years when the maintenance is reduced to \$2,500.00 per month (RP March 17, 2011 at 180). Additionally, he will likely continue to receive bonuses and cost of living adjustments. (RP March 17, 2011 at 177-179)

The husband indicated his intention to sell the marital home and pay off debt (RP March 17, 2011 at 103) stating that based on what was a reasonable amount of maintenance, it would be really difficult to keep the house (RP March 17, 2011 at 245-246). If the home is sold by December 21, 2011, the mortgage, the home equity line of credit, and the personal line of credit will be paid prior to distribution of equity to either party. (CP 142) Payment of these debts will substantially reduce the husband's monthly expenses (Ex 105).

The Court did not abuse its discretion in awarding the wife maintenance as ordered. It properly considered the relevant factors

and determined a reasonable amount supported by the evidence presented at trial. Accordingly, this court should affirm the trial court's award of maintenance.

5. The wife is entitled to attorneys' fees.

The wife is entitled to the fees she incurred in responding to the husband's appeal. First, RAP 18.1(a) allows fees on appeal if they are available under applicable law. Here, RCW 26.09.140 provides for an award of fees based upon need and ability to pay.

Second, RAP 18.9(a) authorizes this Court to award to the wife her attorneys fees for responding to the husband's frivolous appeal. An appeal is frivolous if it "raises no debatable issues and is so devoid of merit that there is no reasonable possibility of reversal." *Andrus v. State Dept. of Transportation*, 128 Wn.App. 895, 900, 117 P.2d 1152 (2006), *review denied* 157 Wn.2d 1005, 136 P.3d 759 (2006).

The husband has not established that the trial court abused its discretion or otherwise erred in the proceedings below. See *Johnson v. Jones*, 91 Wn.App. 127, 138, 955 P.2d 826 (1998) (awarding fees pursuant to RAP 18.9(a) because "there was no reasonable basis to argue that the trial court abused its discretion.")

**V. CONCLUSION**

The husband cannot establish that the trial court abused its discretion in entering orders well-supported by the facts and law.

Accordingly, this Court should affirm the trial court's orders and award the wife the attorneys' fees she incurred to respond to this appeal.

Dated this 10<sup>th</sup> day of November, 2011.



Mary E. Coleman, WSBA #19864  
CURRAN LAW FIRM, P.S.  
Attorneys for Sandra Burlingame  
555 West Smith Street  
Kent, WA 98032  
(253) 852-2345

## APPENDIX

RCW 26.09.080.....	5, 11,12
RCW 26.09.090.....	13
King County LCR 7.....	2

## RCW 26.09.080

## Disposition of property and liabilities — Factors.

In a proceeding for dissolution of the marriage or domestic partnership, legal separation, declaration of invalidity, or in a proceeding for disposition of property following dissolution of the marriage or the domestic partnership by a court which lacked personal jurisdiction over the absent spouse or absent domestic partner or lacked jurisdiction to dispose of the property, the court shall, without regard to misconduct, make such disposition of the property and the liabilities of the parties, either community or separate, as shall appear just and equitable after considering all relevant factors including, but not limited to:

- (1) The nature and extent of the community property;
- (2) The nature and extent of the separate property;
- (3) The duration of the marriage or domestic partnership; and
- (4) The economic circumstances of each spouse or domestic partner at the time the division of property is to become effective, including the desirability of awarding the family home or the right to live therein for reasonable periods to a spouse or domestic partner with whom the children reside the majority of the time.

[2008 c 6 § 1011; 1989 c 375 § 5; 1973 1st ex.s. c 157 § 8.]

## Notes:

**Part headings not law -- Severability -- 2008 c 6:** See RCW 26.60.900 and 26.60.901.

RCW 26.09.090

Maintenance orders for either spouse or either domestic partner — Factors.

(1) In a proceeding for dissolution of marriage or domestic partnership, legal separation, declaration of invalidity, or in a proceeding for maintenance following dissolution of the marriage or domestic partnership by a court which lacked personal jurisdiction over the absent spouse or absent domestic partner, the court may grant a maintenance order for either spouse or either domestic partner. The maintenance order shall be in such amounts and for such periods of time as the court deems just, without regard to misconduct, after considering all relevant factors including but not limited to:

(a) The financial resources of the party seeking maintenance, including separate or community property apportioned to him or her, and his or her ability to meet his or her needs independently, including the extent to which a provision for support of a child living with the party includes a sum for that party;

(b) The time necessary to acquire sufficient education or training to enable the party seeking maintenance to find employment appropriate to his or her skill, interests, style of life, and other attendant circumstances;

(c) The standard of living established during the marriage or domestic partnership;

(d) The duration of the marriage or domestic partnership;

(e) The age, physical and emotional condition, and financial obligations of the spouse or domestic partner seeking maintenance; and

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

[2008 c 6 § 1012; 1989 c 375 § 6; 1973 1st ex.s. c 157 § 9.]

Notes:

**Part headings not law -- Severability -- 2008 c 6:** See RCW 26.60.900 and 26.60.901.

## LCR 7. CIVIL MOTIONS

### **(b) Motions and Other Documents.**

**(1) Scope of Rules.** Except when specifically provided in another rule, this rule governs all motions in civil cases. See, for example, LCR 26, LCR 40, LCR 56, and the LFLR's.

**(2) Hearing Times and Places.** Hearing times and places will also be available from the Clerk's Office/Department of Judicial Administration (E609 King County Courthouse, Seattle, WA 98104 or 401 Fourth Avenue North, Room 2C, Maleng Regional Justice Center, Kent WA 98032; or for Juvenile Court at 1211 East Alder, Room 307, Seattle, WA 98122) by telephone at (206) 296-9300 or by accessing <http://www.kingcounty.gov/courts/clerk>. Schedules for all regular calendars (family law motions, ex parte, chief civil, etc.) will be available at the information desk in the King County Courthouse and the Court Administration Office in Room 2D of the Regional Justice Center.

**(3) Argument.** All nondispositive motions and motions for orders of default and default judgment shall be ruled on without oral argument, except for the following:

- (A)** Motions for revision of Commissioners' rulings;
- (B)** Motions for temporary restraining orders and preliminary injunctions;
- (C)** Family Law motions under LFLR 5;
- (D)** Motions to be presented in person to the Ex Parte and Probate Department pursuant to the Ex Parte and Probate Department Presentation of Motions and Hearings Manual ("Motions and Hearings Manual") issued by the Clerk;

**(E)** Motions for which the Court allows oral argument.

### **(4) Dates of Filing, Hearing and Consideration.**

**(A) Filing and Scheduling of Motion.** The moving party shall serve and file all motion documents no later than six court days before the date the party wishes the motion to be considered. A motion must be scheduled by a party for hearing on a judicial day. For cases assigned to a judge, if the motion is set for oral argument on a non-judicial day, the moving party must reschedule it with the judge's staff; for motions without oral argument, the assigned judge will consider the motion on the next judicial day.

**(B) Scheduling Oral Argument on Dispositive Motions.** The time and date for hearing shall be scheduled in advance by contacting the staff of the hearing judge.

**(C) Oral Argument Requested on All Other Motions.** Any party may request oral argument by placing "ORAL ARGUMENT REQUESTED" on the upper right corner of the first page of the motion or opposition.

**(D) Opposing Documents.** Any party opposing a motion shall file and serve the original responsive papers in opposition to a motion, serve copies on parties, and deliver working copies to the hearing judge no later than 12:00 noon two court days before the date the motion is to be

considered. Working copies shall be submitted pursuant to the requirements in this rule.

**(E) Reply.** Any documents in strict reply shall be similarly filed and served no later than 12:00 noon on the court day before the hearing.

**(F) Working Copies.** Working copies of the motion and all documents in support or opposition shall be delivered to the hearing judge, commissioner, or appropriate judicial department no later than on the day they are to be served on all parties. Working copies shall be submitted as follows:

**(i) Electronic Submission of Working Copies.** Judges' working copies of an e-filed motion and all documents in support or opposition may be electronically submitted using the Clerk's eFiling Application. The Clerk may assess a fee for the electronic submission of working copies.

**(ii) E-Filed Documents For Which Working Copies Shall Not Be Electronically Submitted.** Judges' working copies shall not be electronically submitted for any document of 500 pages or more in length or for any documents filed in paper form. These working copies must be submitted in paper form pursuant to the requirements in this rule.

**(iii) Delivery of Working Copies in Paper Form.** The upper right corner of all judges' working copies submitted in paper form shall be marked "working copies" and note the date of consideration or hearing, the name of the hearing judge or commissioner or the name of the calendar on which the motion is to be heard, by whom the documents are being presented ("moving party," "opposing party," or other descriptive or identifying term), and shall be delivered to the judges' mailroom or appropriate department in the courthouse in which the judge or commissioner is located.

**(G) Terms.** Any material offered at a time later than required by this rule, and any reply material which is not in strict reply, will not be considered by the court over objection of counsel except upon the imposition of appropriate terms, unless the court orders otherwise.

**(H) Confirmation and Cancellation.** Confirmation is not necessary, but if the motion is stricken, the parties shall immediately notify the opposing parties and notify the staff of the hearing judge.

**(5) Form of Motion and Responsive Pleadings.**

**(A) Note for Motion.** A Note for Motion shall be filed with the motion. The Note shall identify the moving party, the title of the motion, the name of the hearing judge, the trial date, the date for hearing, and the time of the hearing if it is a motion for which oral argument will be held. A Note for Motion form is available from the Clerk's Office.

**(B) Form of Motion and of Responsive Pleadings.** The motion shall be combined with the memorandum of authorities into a single document, and shall conform to the following format:

**(i) Relief Requested.** The specific relief the court is requested to grant or deny.

**(ii) Statement of Facts.** A succinct statement of the facts contended to be material.

**(iii) Statement of Issues.** A concise statement of the issue or issues of law upon which the Court is requested to rule.

**(iv) Evidence Relied Upon.** The evidence on which the motion or opposition is based must be specified with particularity.

Deposition testimony, discovery pleadings, and documentary evidence relied upon must be quoted verbatim or a photocopy of relevant pages must be attached to an affidavit identifying the documents. Parties should highlight those parts upon which they place substantial reliance. Copies of cases shall not be attached to original pleadings. Responsive pleadings shall conform to this format.

**(v) Authority.** Any legal authority relied upon must be cited. Copies of all cited non-Washington authorities upon which parties place substantial reliance shall be provided to the hearing Judge and to counsel or parties, but shall not be filed with the Clerk.

**(vi) Page Limits.** The initial motion and opposing memorandum shall not exceed 12 pages without authority of the court; reply memoranda shall not exceed five pages without the authority of the court.

**(C) Form of Proposed Orders; Mailing Envelopes.** The moving party and any party opposing the motion shall attach a proposed order to the working copies of their documents. The original of each proposed order shall be submitted to the hearing judge but shall not be filed with the Clerk. For motions without oral argument for which working copies are submitted in paper form, the moving party shall also provide the court with pre-addressed stamped envelopes addressed to each party/counsel. Envelopes are not necessary when submitting working copies electronically via the Clerk's system.

**(D) Presentation by Mail.** With respect only to those matters that must be presented to the assigned judge, the chief judge of the Regional Justice Center or the Chief Judge of the Unified Family Court Department, parties may present agreed orders and ex parte orders based upon the record in the file by mail, addressed to the court. When signed, the judge/commissioner will file such order with the Clerk. For agreed orders presented in paper form, an addressed stamped envelope shall be provided for return of any conformed materials.

**(6) Motions to Reconsider.** See LCR 59.

**(7) Reopening Motions.** No party shall remake the same motion to a different judge without showing by affidavit what motion was previously made, when and to which judge, what the order or decision was, and any new facts or other circumstances that would justify seeking a different ruling from another judge.

**(8) Motions for Revision of a Commissioner's Order.** For all cases except juvenile and mental illness proceedings:

**(A)** A motion for revision of a commissioner's order shall be served and filed within 10 days of entry of the written order, as provided in RCW 2.24.050, along with a written notice of hearing that gives the other parties at least six days notice of the time, date and place of the hearing on the motion for revision. The motion shall identify the error claimed.

**(B)** A hearing on a motion for revision of a commissioner's order shall be scheduled within 21 days of entry of the commissioner's order, unless the assigned Judge or, for unassigned cases, the Chief Civil Judge, orders otherwise.

**(i)** For cases assigned to an individual Judge, the time and date for the hearing shall be scheduled in advance with the staff of the assigned Judge.

**(ii)** For cases not assigned to an individual Judge, the hearing shall be scheduled by the Chief Civil Department for Seattle

case assignment area cases. For Kent case assignment area cases, the hearing shall be scheduled by the Maleng Regional Justice Center Chief Judge. For family law cases involving children the hearing shall be scheduled by the Chief Unified Family Court Judge.

(iii) All motions for revision of a commissioner's order shall be based on the written materials and evidence submitted to the commissioner, including documents and pleadings in the court file. The moving party shall provide the assigned judge a working copy of all materials submitted to the commissioner in support of and in opposition to the motion, as well as a copy of the electronic recording, if the motion before the commissioner was recorded. Oral arguments on motions to revise shall be limited to 10 minutes per side. Working copies shall be submitted pursuant to the requirements of LCR 7 (b).

(iv) The commissioner's written order shall remain in effect pending the hearing on revision unless ordered otherwise by the assigned Judge, or, for unassigned cases, the Chief Judge.

(v) The party seeking revision shall, at least 5 days before the hearing, deliver to the assigned judge or Chief Judge working copies of the motion, notice of hearing, and copies of all documents submitted by all parties to the commissioner, pursuant to LCR 7(b).

(vi) For cases in which a timely motion for reconsideration of the commissioner's order has been filed, the time for filing a motion for revision of the commissioner's order shall commence on the date of the filing of the commissioner's written order of judgment on reconsideration.

**(9) Motion for Order to Show Cause.** Motions for Order to Show Cause shall be presented without oral argument to the Ex Parte and Probate Department through the Clerk's office. For cases where the return on the order to show cause is before the hearing judge, the moving party shall obtain a date for such hearing from the staff of the assigned judge before presenting the motion to the Ex Parte and Probate Department.

**(10) Motion Shortening Time.**

(A) The time for notice and hearing of a motion may be shortened only for good cause upon written application to the court in conformance with this rule.

(B) A motion for order shortening time may not be incorporated into any other pleading.

(C) As soon as the moving party is aware that he or she will be seeking an order shortening time, that party must contact the opposing party to give notice in the form most likely to result in actual notice of the pending motion to shorten time. The declaration in support of the motion must indicate what efforts have been made to notify the other side.

(D) Except for emergency situations, the court will not rule on a motion to shorten time until the close of the next business day following filing of the motion (and service of the motion on the opposing party) to permit the opposing party to file a response. If the moving party asserts that exigent circumstances make it impossible to comply with this requirement, the moving party shall contact the bailiff of the judge assigned the case for trial to arrange for a conference call, so that the opposing party may respond orally and the court can make an immediate decision.

(E) Proposed agreed orders to shorten time: if the parties agree to a briefing schedule on motion to be heard on shortened time,

the order may be presented by way of a proposed stipulated order, which may be granted, denied or modified at the discretion of the court.

**(F)** The court may deny or grant the motion and impose such conditions as the court deems reasonable. All other rules pertaining to confirmation, notice and working papers for the hearing on the motion for which time was shortened remain in effect, except to the extent that they are specifically dispensed with by the court.

### **(11) Motion for Stay of Proceedings.**

**(A)** Motions for stay of proceedings shall be heard by the individual judge assigned, to the specifically assigned calendar or if not assigned by the Seattle Chief Civil Judge for civil cases with a Seattle designation and to the Chief Judge in Kent for civil cases with a Kent designation, the Chief Unified Family Court Judge for family law cases with children. The order staying proceedings shall indicate a future date by which the case status will be reviewed.

[Amended effective September 1, 1984; May 1, 1988; September 1, 1992; September 1, 1993; September 1, 1994, March 1, 1996; September 1, 1996; April 14, 1997; September 1, 1997; September 1, 1999; September 1, 2001; September 1, 2002; September 1, 2004; September 1, 2006; September 1, 2007; September 1, 2008; January 1, 2009; June 1, 2009, September 1, 2011]

---

**[Home](#) | [Privacy](#) | [Accessibility](#) | [Terms of use](#) | [Search](#)**

Links to external sites do not constitute endorsements by King County. By visiting this and other King County web pages, you expressly agree to be bound by terms and conditions of the site

© 2011 King County

ORIGINAL

NO. 66814-5 I

COURT OF APPEALS, DIVISION I  
OF THE STATE OF WASHINGTON

In re the Marriage of:

JAMES R. ESTEP, IV,

Appellant,

vs.

SANDRA BURLINGAME-ESTEP,

Respondent.

DECLARATION OF TRANSMITTAL

I, Cynthia C. Geray, certify and declare as follows:

I am over the age of 18 and not a party to this action; I am in the employ of CURRAN LAW FIRM P.S., Attorneys at Law; and that on the undersigned date, I sent via ABC Legal Services a copy of the following: Brief of Respondent, being addressed to:

JENNIFER BOSSERMAN  
ATTORNEY AT LAW  
216 FIRST AVE S, STE 364  
SEATTLE WA 98104

MICHAEL WITHEY  
ATTORNEY AT LAW  
601 UNION ST, STE 4200  
SEATTLE WA 98101

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge, information and belief.

SIGNED at Kent, Washington, this 10<sup>th</sup> day of November, 2011.

  
Cynthia C. Geray

FILED  
COURT OF APPEALS DIV I  
STATE OF WASHINGTON  
2011 NOV 14 AM 10:55