

No. 71413-9-I

COURT OF APPEALS,  
OF THE STATE OF WASHINGTON  
DIVISION ONE

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ROBIN MARILEE HITZ, Respondent

v.

ERIC JAMES HITZ, Appellant

FILED  
COURT OF APPEALS DIV I  
STATE OF WASHINGTON  
2014 JUN 12 AM 9:23

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ON APPEAL FROM THE SUPERIOR COURT OF  
THE STATE OF WASHINGTON WHATCOM COUNTY  
NO: 10-3-00638-9

**OPENING BRIEF OF APPELLANT**

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A. ASSIGNMENTS OF ERROR

1. The trial judge lost jurisdiction over the instant case when he voluntarily recused himself as per the “bright line” rule set out in *SKAGIT COUNTY v. WALDAL* 163 Wn. App. 284, (2011), which requires that once is recused his only remaining function is to assign the case to another judge.

2. The trial judge lacked jurisdiction to hear the instant case on remand from the US Bankruptcy Court because the appellant had timely filed an affidavit of prejudice under RCW 4.12.050 prior to Judge Ihra Uhrig making any discretionary ruling

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. The *bright line* rule enunciated in *SKAGIT COUNTY v. WALDAL* 163 Wn. App. 284, (2011) holds that once a judge has been recused via an affidavit of prejudice, under RCW 4.12.040 and RCW 4.12.050 his only remaining ministerial function is to sign an order assigning the case to another judge. This appeal raises the question as whether there is a difference in the application of this *bright line* rule based on whether the judge has recused himself voluntarily or whether he has been forced to recuse himself under RCW 4.12.040 and RCW 4.12.050.

The facts in this appeal are not in dispute. Judge Uhrig made it known at the outset that his family did business with Bank of the Pacific and invited recusal. After the divorce the judge voluntarily disqualified or otherwise removed himself from the Hitz dissolution proceeding when Bank of the Pacific became directly involved in the Hitz dissolution.<sup>1</sup>

When a subsequent motion was brought by Petitioner, Judge Uhrig reassumed jurisdiction over the case. It was at this point that Appellant filed a motion stating that Judge Uhrig was prejudice against his interest and asked that Judge Uhrig remove himself under the “bright line rule” stated in *Skagit v Waldal*.<sup>2</sup>, Judge Uhrig refused to remove himself from the case stating that the bright line rule didn’t apply to him because he had not had a conflict of interest, but had removed himself voluntarily. Not clarified by Judge Uhrig was how he retained jurisdiction over the case after he assigned it to Judge Mura.

These are the issues that pertain to the first assignment of error, the second assignment stems from the fact that Mr. Hitz thereafter declared bankruptcy, hoping for a new life, when his ex-wife succeeded in getting the matter remanded to state court for clarification of the property division in the divorce. Knowing that the case would go before Judge Uhrig for further proceedings, Eric Hitz filed an affidavit of prejudice against Judge Uhrig as per RCW 4.12.040 and RCW 4.12.050 which brings us to the second issue.

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<sup>1</sup> CP 258 attached as Appendix “A”

<sup>2</sup> *SKAGIT COUNTY v. WALDAL* 163 Wn. App. 284, (2011)

2. RCW 4.12.040 and RCW 4.12.050 allow a party move for a change of judge before the judge has issued any discretionary rulings. So long as a party complies with the terms of these statutes, the judge is divested of authority to proceed and loses all jurisdiction over the case.

A litigant is entitled to file an affidavit of prejudice against a judge if the case comes back to the court on new facts. This has long been the rule in Washington pertaining to divorce and alimony modification. When Appellant's case came back to the trial court, it was certainly different in that Appellant no longer had an ownership interest in anything, and the time for restraining orders ended when the marriage was dissolved.

Appellant Eric Hitz timely filed an affidavit of prejudice requesting the recusal of Judge Ira Uhrig shortly after the Bankruptcy court entered an order remanding the matter to the state court for an interpretation of the decree of divorce and prior to any motion having been filed by the Petitioner.

Judge Uhrig had removed himself from hearing matters involving Bank of the Pacific, but had retained jurisdiction over the remaining aspects of the case. On remand from the Bankruptcy court, Judge Uhrig signed and entered an order restraining the Appellant Eric Hitz from coming within 100 yards of his former place of the business, in which he no longer had any interest. Mr. Hitz's former interest in the property now belonged to the Trustee in Bankruptcy.

The court may not impose new post trial restrictions on Mr Hitz on a post trial motion where he has not been served. The motion for contempt is a new procedure and Mr. Hitz is entitled to personal notice. There is no jurisdiction for a court to impose these post trial restrictions on Mr. Hitz in the absences of service of process.

C. STATEMENT OF THE CASE

Introduction

Robin and Eric Hitz had build a very successful business valued in the millions during their twenty years of marriage. Their primary creditors were Eric Hitz's parents and Bank of the Pacific.

At the outset, before he made any discretionary rulings, Judge Uhrig advised the parties that his family did business with Bank of the Pacific. Appellant did not request another judge at this time.

On the second day of the dissolution trial, the Hitz's business banker, Mr. David Chylinski, was called about as a witness by the Petitioner. It was at this point that the trial judge, the Honorable Ira Uhrig, informed the parties and their attorneys that he and his family were long time customers of Bank of the Pacific, and asked if the parties wanted him to recuse himself and bring in another judge. The Appellant Eric Hitz did not want to start the trial over and waived whatever conflict was presented by the Judge Uhrig's new revelations. The trial continued.

After the trial the judge granted the parties their divorce and left them as tenants in common, putting the wife in charge of winding up the family business.

#### POST DIVORCE PROCEDURE

Within a short time of the divorce the sale of the Hitz family home closed, leaving the parties with \$592,000.00 to distribute after payment of the underlying obligations. Since the divorce did not dispose of the proceeds of the sale of said home, contention arose between the Hitz's individually and their bank, Bank of the Pacific, as to the division of these funds.

Not surprisingly, Robin and Eric Hitz were unable to agree on anything, including the division of the \$592,000.00 and the on 3/1/2012 the Appellant Eric Hitz filed a motion for an order to show cause as to why Robin Hitz should not be removed as manager of the property they now owned as tenants in common<sup>3</sup> and March 9. 2012, Robin Hitz filed a response and her own motion to enforce the decree.<sup>4</sup>

These two motions came on before Judge Uhrig on March 30, 2012 and the Judge ruled among other things that the Bank of the Pacific, (who is a stranger to the proceedings), was to be paid in full from the Hitz's proceeds from the sale of their home.<sup>5</sup>

#### BANK OF THE PACIFIC

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<sup>3</sup> Appellant's motion is set out in Appendix "B"

<sup>4</sup> The motion is set out in Appendix "C"

<sup>5</sup> See the Clerk's notes from the hearing on 3/30/12 as set out in Appendix "D"

It was at this point that Bank of the Pacific made its move on the proceeds from the sale of the Hitz family residence by commencing a separate action against Eric and Robin Hitz claiming that the Bank of the Pacific felt itself to be under-secured because it did not have Eric and Robin's various business loans cross collateralized by their personal residence.

Entry of Judge Uhrig's ruling on the disposition of the \$592,000.00 was set for hearing on 4/11/12. Judge Uhrig's ruling on paying Bank of the Pacific caused the Appellant Eric Hitz's attorney hand delivered a letter to Judge Uhrig asking him to recuse himself because of his involvement with Bank of the Pacific. That letter did not make its way into the file except as an Appendix to a subsequent motion, but it read substantially as follows:

April 10, 2012  
The Honorable Ira Uhrig  
Whatcom County Superior Court Judge  
311 Grand Ave  
Bellingham WA 98225

Re: Marriage of Hitz, Case No. 10-3-00638-9

Dear Judge Uhrig:

It is my understanding that you have recused yourself from hearing Hitz v. Hitz, Whatcom County cause number 12-2-00359-5, due to a conflict of interest because you operate a family business which has banking ties with The Bank of the Pacific.

If this is correct, then I ask that you also recues yourself from the dissolution matter at this time. As you know, the Bank of the Pacific is seeking distribution of just under \$600,000 from my trust account. The Bank's attorney, Laughlan

Clark, attended the last hearing in this matter and has been in extensive negotiation with both parties. The Bank has filed several declarations in this matter, including one for the last hearing, and a Bank representative, David Chylinski, testified at trial on the Bank's behalf. Most recently, the Bank filed a Motion to Intervene, seeking to quash a Motion to Intervene in Hitz v. Hitz (#] 2-2-00359-5). That matter is now before Judge Mura, who Cannot resolve all issues with only a ruling in one case.

The current issues involving the Bank are intricately entwined with Hitz v. Hit; (#12-2-00359-5), and cannot be bifurcated. This includes whether the Bank can intervene (essentially in both cases), enforcement of the attorney lien against the proceeds sought by the Bank, whether the Writ can be quashed, the nature and extent of the Bank's priority, if any, as an otherwise secured creditor with respect to and distribution of unsecured proceeds which the Bank has not attached. It appears that these issues must also be heard by a different Judge.

Please advise of your position on recusal and whether you wish for me to put this on the record. Thank you.

Sincerely,  
Eric Weight

Judge Uhrig responded to the letter the same day, and likewise, that response was not put into the record except as an Appendix to a subsequent motion, and it read substantially as follows:<sup>6</sup>

Counsel,

I am in receipt of Mr. Weight's letter of 4/10/2012 and provide this response thereto.

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<sup>6</sup> CP 258 attached to Appendix "A"

I chose to voluntarily disqualify myself from the case involving collection on the Note. I did not "recuse due to a conflict of interest".

During the dissolution trial I disclosed to the parties that my family's corporation has a business loan with the Bank of the Pacific. Though the Code of Judicial Conduct does not require disqualification in such circumstances, I always think it best to provide all parties with as much information as possible, even though my disclosures frequently go well beyond that which the Code of Judicial Conduct requires. In any event, both parties waived any objection to my proceeding with that case.

Of course, the Bank was not and is not a party to the Dissolution. But when I learned that the Bank was seeking to become a party in the lawsuit on the Note, and since the parties were different than in the Dissolution, I determined that I would explain to the parties my family corporation's loan with the Bank, at which time I anticipated I would inquire if there was any objection to me proceeding. Ultimately, I elected to voluntarily disqualify myself from that case in order to avoid the expense of an unnecessary court appearance and possible delays in the event that any party wished me to step down, and if I made the decision to do so.

Coincidentally, Judicial Ethics Opinion #12-02 was issued on 4/6/2012. That Opinion makes clear that a "de-minimus economic interest" that could not be "substantially affected by the outcome of the proceeding" is not grounds for disqualification of a Judge. Under the scenario here presented, I do not believe I have any economic interest whatsoever, not even a de minimus interest, and even if there were such an interest, it could not be substantially affected by the outcome of the proceedings. Even though it now seems clear from that Opinion that I need not have disqualified myself from the action on the Note, I will

stand by my decision, as it is set for hearing on 4/11/2012 and will probably have been before the Court even before most of you have read this message.

As concerns the Dissolution action, the issues appear To Be entirely separate from the action on the Note, and the Bank and any other creditors have been and will be treated the same as any other creditors similarly situated. There need be no bifurcation if the actions have not been joined. Though I have never encountered the situation of a Bank attempting to intervene in a dissolution action, if they make such a motion, it would be dealt with at the appropriate time.

Nevertheless, I am happy to allow the parties to address These issues on the record and I am equally happy to re-think my position if it seems appropriate. Any of you may secure a special-set hearing date from my Bailiff. And if counsel for any non-parties wish to weigh-in, they may do as they see fit.

Sincerely  
Ira Uhrig  
Whatcom County Superior Court

Judge Uhrig went ahead and heard the case and ruled that he wanted all the money from the sale of the Hitz family home to be paid to Bank of the Pacific. In an act of rare co-operation, Robin Hitz and Eric Hitz agreed to strike their motions and enter an agreed order distributing the funds in such a way that none of the money went to Bank of the Pacific.<sup>7</sup> It was at this point that Judge Uhrig voluntarily either removed or recused himself from the case, and it was transferred to Judge Mura.

## JUDGE REASSUMES JURISDICTION

When the Appellant heard that Judge Uhrig was scheduled to hear the next post dissolution motion brought by his ex-wife, instead of Judge Mura he objected and filed a motion that Judge Uhrig recuse himself from the case on the grounds the Judge Uhrig was prejudice against the interests of the Appellant/Respondent and on the grounds that the judge, having once recused himself, lost jurisdiction of the case and may not make further rulings<sup>8</sup>.

When it comes to recusal Washington follows the bright line rule, which holds that; “...*once a judge has recused, the judge should take no other action in the case except for the necessary ministerial acts to have the case transferred to another judge.*” (emphasis added) *Skagit County v. Waldal, LLC* 163 Wn.App. 284, at 290 (2011).

Judge Uhrig denied the motion that he recuse himself, explaining that he had voluntarily disqualified himself from hearing the issues involving the Bank of the Pacific, but that he had not recused himself, and therefore he retained jurisdiction over the case for purposes that did not involve the Bank of the Pacific. Judge Uhrig then assessed attorney’s fees against the Appellant to cover the cost of the opposing party’s legal expense in having to contend against Eric Hitz’s recusal motion.

## RESPONDENT DECLALRES BANKRUPTCY

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<sup>7</sup> A copy of the order is set out in Appendix “E”

Eric Hitz believed that his ex-wife was self dealing in her management of the parties community property, and with the judge on her side, there was no way he was going to win anything. Eric also has physical custody of the parties' children and he decided it was time for a new beginning. On August 2012, he filed a petition for a voluntary Chapter 7 bankruptcy in federal court.<sup>9</sup>

#### BANKRUPTCY CONTESTED

Not to be denied, Eric's ex-wife filed a motion to deny Appellant a discharge in his bankruptcy on the grounds (*inter alia*) that his conduct in opposing her proposed sale of their commonly held property had damaged her; that the conduct was deliberate and that Eric Hitz was not entitled to a bankruptcy discharge of his debts. The Bankruptcy Judge determined that the state court where the divorce had occurred was the best venue to determine the merits of the contentions and in April 2013 Judge June Overstreet signed an order remanding the matter to state court for a determination of whether or not Eric had interfered with the sale proposed by his ex-wife.<sup>10</sup>

On 7/18/13 the Respondent/Petitioner Robin Hitz filed a MOTION FOR ATTORNEY'S FEES, FOR RESTRAINING ORDERS AND FOR OTHER RELIEF in the present state court dissolution proceedings setting the motion for a hearing on the regular motion calendar for 8/27/2013. It was set before Judge Uhrig.<sup>11</sup>

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<sup>8</sup> The motion is set out in Appendix "A"

<sup>9</sup> A copy of the Notice of Bankruptcy is set out in Appendix "E"

<sup>10</sup> A copy of said order is set out in Appendix "G"

<sup>11</sup> CP No 298, and 299, Pages 223-232, 233

Appellant contends that the remand is a new proceeding based on new facts in that he no longer owns any of the former community property, having given it all to the trustee in Bankruptcy.

#### AFFIDAVIT OF PREJUDICE

Not wanting to be before Judge Uhrig, Eric Hitz filed an Affidavit of Prejudice against Judge Ira Uhrig on 8/13/2013.<sup>12</sup> On 8/20/2013, the Petitioner filed a response to the Affidavit of Prejudice arguing that the affidavit of prejudice should be denied because Judge Uhrig had already made a ruling on the case. Respondent also asked for \$750.00 in attorney's fees for having to oppose the Appellant's motion.<sup>13</sup> On the same day Judge Uhrig entered an order wherein he denied the affidavit of prejudice.<sup>14</sup>

At the hearing before Judge Uhrig on 8/27/2013 the Appellant Eric Hitz appeared through his attorney and argued in opposition to Robin Hitz's post trial motion pointing out 1) that Judge Uhrig lacked jurisdiction because the Respondent Eric Hitz had filed an affidavit of prejudice under RCW 4.12.040, .050;; 2) alternatively that the issues raised could not be raised on a motion calendar, 3) that there was no legal basis for a post divorce restraining order since this was a new post divorce proceeding and 4) that the trustee in

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<sup>12</sup> CP No 300, P 234, 235

<sup>13</sup> CP# 302 p 237 - 239

<sup>14</sup> CP No. 301, P 301

bankruptcy was a necessary party to the proceedings because now owned the Respondent's interest in the property before the court.<sup>15</sup>

On 8/27/13 Judge Uhrig signed an order that was requested by Robin Hitz.

On 9/5/13 Respondent filed and served on opposing counsel a MOTION FOR RECONSIDERATION OF ORDER OF AUGUST 27, 2013.<sup>16</sup>

D. ARGUMENT

ONE KIND OF RECUSAL

The first assignment of error deals with the scope of the "bright line" rule set out in *Skagit v Waldal* which holds that once a judge has had an affidavit of prejudice filed against him under RCW 4.12.050, his only remaining function is to sign an order transferring the case to another judge.

By definition, a bright line is one that sets a clear demarcation that cannot be missed. A recent example of a bright line is provided in *State v. Rhone* 168 Wn.2d 645 (2010) where Justice Alexander discusses *Batson v. Kentucky*, 476 U.S. 79, 106 S. Ct. 1712, 90 L. Ed. 2d 69 (1986). In his dissent, Justice Alexander wrote that he would have adopted a bright-line rule "that a prima facie case of discrimination is established under *Batson* when the sole remaining

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<sup>15</sup> CP No. 304, P 243-249

<sup>16</sup> CP No. 307, P 250-289

venire member of the defendant's constitutionally cognizable racial group or the last remaining minority member of the venire is peremptorily challenged." 16 Wn.2d at 661 (Alexander, J., dissenting). In the 2013 case of *State v. Meredith* No. 86825-5, (August 8, 2013) the Supreme Court clarified that the bright line rule discussed in *Rhone* was something favored by four of the justices in the dissent, but not adopted by Washington's Supreme Court.

At the very beginning of the case, Judge Uhrig advised the parties that his family did business with Bank of the Pacific, who was the Hitz's largest creditor, but the Respondent Eric Hitz did not disqualify Judge Uhrig at that time.

Again during trial, just before the Bank of the Pacific employee Mr. Chlinski was set to testify, Judge Uhrig informed the parties of his association with Bank of the Pacific and informed them that he would voluntarily disqualify himself from the case and bringing another judge to try the case if either side requested it. Since this was the third day of trial and bringing in another judge would mean starting the trial over, which would entail endless delays, the Appellant, through his attorney, waived any objection and the trial continued.

The third time Judge Uhrig's connection with Bank of the Pacific came up was after the Hitzs were due to receive \$592,000.00 from the sale of their family home. It was at this point that Bank of the Pacific intervened in the Hitz dissolution, which resulted in an exchange letters on April 10, 2012 between Eric Hitz's Attorney Eric Weight and Judge Uhrig wherein Mr. Weight asked that

Judge Uhrig recuse himself because of his close connection with Bank of the Pacific. Interestingly, it is at this point that Judge Uhrig refuses to recuse himself after having twice invited such recusal.

The scope of judicial disqualification is examined in the present appeal. There is no dispute that Judge Uhrig voluntarily excused or disqualified himself from the Hitz dissolution. The degree of the Judge's involvement with Bank of the Pacific is not on the record but it is clear that the involvement was sufficient that Judge Uhrig addressed it on his own volition. What is not clear in this case is what is the effect is of a voluntary disqualification by a trial judges? Does the judge who voluntarily disqualifies himself retain some kind of continuing jurisdiction over the case so that he can undisqualify himself when he feels he wants to get back on the case? Judge Uhrig is silent on this point.<sup>17</sup>

This begs the question of what kind of disqualification Judge Uhrig foresaw in his letter and whether or not that was prejudicial to the Appellant. The record is bare of any order reassigning the Hitz dissolution back to Judge Uhrig from Judge Mura. For Judge Uhrig to legally reacquire jurisdiction over the Hitz dissolution case without the necessity of a court order would have to mean that his disqualification was partial and not total. Needless to say this is not the bright line approach the court enunciated in *Skagit v. Waldal* because the court would now have to create a new category of cases where a voluntarily disqualified

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<sup>17</sup> CP 258 attached as Appendix "A"

judge maintains jurisdiction over the case he just disqualified himself from. Creating two classes of disqualification would certainly detract from the brightness of the line that had just been defined.

It is appellants position and contention that the bright line rule established in *Skagit v. Waldal* revokes the jurisdiction of a recused judge and that said jurisdiction does not return of its own because it needs an order of the court to be effective.

It was after Judge Uhrig reassumed jurisdiction of the Hitz post dissolution proceedings that the Appellant Eric Hitz filed a motion asking that Judge Uhrig recuse himself because the Judge was prejudiced against the interests of Appellant. This motion was consistent with the Judge's invitation to put the matter on the record as stated in his letter of April 10, 2012 and consistent with the Judge's offer at trial to remove himself and bring in another Judge.

It is unseemly for a trial judge to invite his own disqualification, actually disqualify himself voluntarily reassume jurisdiction, for who knows what reason, and then refuse the request of a party that said judge in fact recuse himself from the case. The judge is now parsing his own prejudice.

The problem with parsing a bright line rule is that it detracts from the brightness of the line. What it creates is some kind of continuing jurisdiction in a judge who has handed jurisdiction of the case off to another judge. This is not the smooth administration of justice to say the least. It would create some form

of boomerang jurisdiction where the case returns to the self disqualified judge upon the happening of some future as yet unknown event.

#### ON REMAND

Appellant maintains that upon remand from the US Bankruptcy court that there had been a sufficient change of circumstances in the case to render it a new proceeding requiring personal service and renewing his right to file an affidavit of prejudice as a matter of right. It was held in *State ex ret Mauerman v. Sup'r Ct.*, 127 Wash. 101, 104, 219 Pac. 862 (1923), that a

A proceeding to modify the child custody provisions of a divorce decree, upon allegations of changed conditions since the entry of that decree, is a new proceeding. It presents new issues arising out of new facts occurring since the entry of the decree. It is not ancillary to or in aid of the enforcement of the divorce decree. It is a "proceeding" within the meaning of the cited statutes, and the petitioner is entitled to a change of judges as a matter of right. *Bedolfe v. Bedolfe*, 71 Wash. 60, 61, 127 Pac. 594 (1912); *State ex rel. Foster v. Superior Court*, 95 Wash. 647, 653, 164 Pac. 198 (1917). See *State ex rel. Buttnick v. Superior Court*, \*831 127 Wash. 101, 104, 219 Pac. 862 (1923), involving modification of alimony. at 831

On remand from the Bankruptcy Court, Judge Uhrig lacked jurisdiction to consider the post trial motion filed by Robin Hitz because Eric Hitz had timely filed an affidavit of prejudice prior to the commencement of any new proceedings which deprived Judge Uhrig of jurisdiction over the case under the law set forth in *Skagit v. Waldal*.

RCW 4.12.040 provides, in part, "No judge of a superior court of the state of Washington shall sit to hear or try any action or proceeding when it shall be established as hereinafter provided that said judge is prejudiced against any party or attorney, or the interest of any party or attorney appearing in such cause." RCW 4.12.040(l). The next section sets the time limits for filing a motion for change of judge, or "affidavit of prejudice":

Any party to or any attorney appearing in any action or proceeding in a superior court, may establish such prejudice by motion, supported by affidavit that the judge before whom the action is pending is prejudiced against such party or attorney, so that such party or attorney cannot, or believes that he or she cannot, have a fair and impartial trial before such judge: PROVIDED, That such motion and affidavit is filed and called to the attention of the judge before he or she shall have made any ruling whatsoever in the case, either on the motion of the party making the affidavit, or on the motion of any other party to the action, of the hearing of which the party making the affidavit has been given notice, and before the judge presiding has made any order or ruling involving discretion, but the arrangement of the calendar, the setting of an action, motion or proceeding down for hearing or trial, the arraignment of the accused in a criminal action or the fixing of bail, shall not be construed as a ruling or order involving discretion within the meaning of this proviso; and in any event, in counties Where there is but one resident judge, such motion and affidavit shall be tiled not later than the day on which the case is called to be set for trial: AND PROVIDED FURTHER, 'That notwithstanding the filing of such motion and affidavit, if the parties shall, by stipulation in writing agree, such judge may hear argument and rule upon any preliminary motions, demurrers, or other matter thereafter presented: AND PROVIDED FURTHER, That

no party or attorney shall be permitted to make more than one such application in any action or proceeding under this section and RCW 4.12.040.

Together, these provisions guarantee that if a litigant timely files an affidavit of prejudice before the judge makes any discretionary rulings, the trial court must grant the motion for a change of judge. RCW 4.12.040, .050; *State v. Cockrell*, 102 Wn.2d 561, 565-67, 689 P.2d 32 (1984). At this point, “the judge loses all jurisdiction over the case.” *Cockrell*, 102 Wn.2d at 565.

Mr. Hitz timely filed an affidavit of prejudice asking Judge Uhrig to remove himself from the case. Judge Uhrig refused to recuse himself at that point and instead assessed terms against the Respondent Eric Hitz to cover incurred by the Petitioner in having to respond to Eric Hitz’s motion.

Whether or not Judge Uhrig lost jurisdiction of the case when he recused himself prior to Eric Hitz’s bankruptcy is set aside for the moment, because when the case was remanded to the trial court the timely filing of the affidavit of prejudice deprived Judge Uhrig of all jurisdiction over the case except for the ministerial function of assigning the case to another judge.

When the bankruptcy court remanded Mr. Hitz’s divorce proceeding to the trial court it was for an interpretation of the property division however, Eric Hitz no longer had any interest in the former community property because his interest was now held by the Trustee in Bankruptcy, who was the real party in interest as to Eric Hitz’s former property.

When Judge Uhrig entered the order on September 27, 2013 he lacked jurisdiction over the case. If Judge Uhrig is presumed to know the law then the judge was aware that he did not have jurisdiction over the case. An order entered Without jurisdiction is void. Harbor Enterprises, Inc. v. Gmyonsson, 116 Wn.2d 283, 293, 803 P.2d 798 (1991). This Court is asked to hold that the courts order of September 27, 2013 entered in Mr. Hitz's case is void because it was entered by a court that lacked jurisdiction.

The court erred in imposing a restraining order against the Responded Eric Hitz because it was completely baseless and is cited by appellant as proof of Judge Uhrig's prejudice against Mr. Hitz. There had been no restraining order against Mr. Htiz in the divorce proceeding and there had not been a reservation of the authority to impose a post trial restraining order all as pointed out in the Motion For Reconsideration which was denied by Judge Uhrig.

Judge Uhrig erred in imposing attorney's fees against Appellant because he lacked jurisdiction over the case after Appellant timely filed the Affidavit of Prejudice against said judge.

E. CONCLUSION

For the reasons set forth above, Mr. Hitz respectfully requests that this Court hold that Judge Uhrig lost jurisdiction over the case when he disqualified himself and Judge Uhrig never reacquired jurisdiction over the case after he assigned it to Judge Mura. This court is asked to rule that all orders entered by

Judge Uhrig after he voluntarily disqualified himself from the case be declared null and void.

In the alternative, this court is asked to rule that all orders entered by Judge Uhrig after the matter was remanded from the Bankruptcy court be declared as null and void.

Finally, this court is asked to award reasonable attorney's fees to the Appellant for having to bring this appeal.

DATED this <sup>17<sup>th</sup></sup> 2 day of June, 2014,

Respectfully submitted,



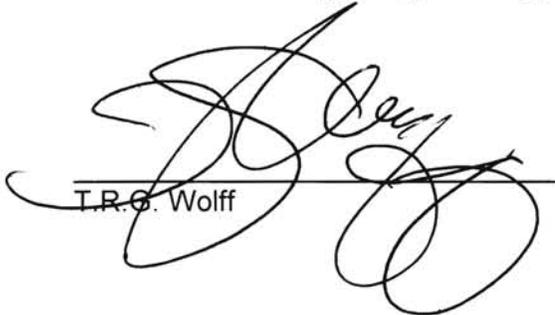
T.R.G. Wolff, WSBA #4146  
Attorney for Appellant  
P.O. Box 558  
Conway, WA 98238  
Phone: 360 445-5512

PROOF OF SERVICE

The undersigned certifies under the penalty of perjury under the laws of the State of Washington that I am now and at all times herein mentioned, a citizen of the United States, a resident of the State of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

On June 12, 2014 at approximately \_\_\_\_\_ a.m., I served the forgoing OPENING BRIEF OF APPELLANT upon the Karen D. Moore of Brewe Layman, the attorney for the Respondent, by leaving a copy of said document with her receptionist at 3525 Colby Ave #333, Everett, WA 98201

Executed in Conway, Skagit County, Washington this <sup>12<sup>th</sup></sup> day of June 2014.

  
T.R.G. Wolff

FILED  
COURT OF APPEALS DIV 1  
STATE OF WASHINGTON  
2014 JUN 12 AM 9:24

# Appendix “A”

SCANNED 12

FILED  
COUNTY CLERK

2012 JUN -8 AM 8:33

WHATCOM COUNTY  
WASHINGTON

BY [Signature]

WHATCOM COUNTY SUPERIOR COURT FOR WASHINGTON STATE

In re the Marriage of

ROBIN M. HITZ

Petitioner,

and

ERIC J. HITZ

Respondent.

NO: 10-3-00638-9

RESPONDENT'S MOTION THAT  
JUDGE UHRIG RECUSE HIMSELF

COMES NOW the Respondent and moves that Judge Uhrig recuse himself in this matter on the same grounds that he disqualified himself in the related case of BANK OF THE PACIFIC, vs. NORTHWEST CHIP & GRIND, INC.; E AND R LANDS, LLC.; ERIC HITZ and ROBIN M. HITZ, Whatcom County Cause Number 12-2-01309-4.

On April 10, 2012 Judge Uhrig via his Judicial Assistant wrote a letter wherein he recused himself in the Bank of the Pacific matter (12-2-01309-4) for the reasons stated in said letter a copy of which is attached, marked Exhibit "A" in is by this reference incorporated herein.

That same letter/information is referenced in this case by way of the Clerk's Notes for April 11, 2012 wherein the Clerk notes that "Mr. Weight stated agreement between the parties. Court **stated it will voluntarily disqualify from matter.**"(emphasis added) A copy of said Clerk's

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1 notes, as shown in Clerks Document number 244 is attached hereto, marked Exhibit "B" and is  
2 by this reference incorporated herein.

3 Simultaneously, and in concert with the Bank of the Pacific's endeavor to attach the  
4 parties real property the ex-wife has moved to enforce post divorce relief that goes beyond the  
5 division of property ordered in the Decree of Dissolution herein. The Bank of the Pacific takes  
6 the position that both of the Hitzs would receive more money if the property in question was sold  
7 as an ongoing business instead of a liquidation as stated in the Dissolution Decree.

8  
9 A subpoena has already been issued and served on the Bank of the Pacific, Vice  
10 President David Chylinski. A copy of said subpoena is attached hereto marked Exhibit "C" and is  
11 by this reference incorporated herein.

12 The Respondent takes strong exception to the Bank and ex-wife's proposed sale because  
13 the ex-wife is the hidden purchaser in the scheme being proposed by the Bank and Robin Hitz,  
14 the Petitioner herein.

15  
16 When it comes to recusal Washington follows the bright line rule which hold that; "...once  
17 **a judge has recused, the judge should take no other action in the case except for the**  
18 **necessary ministerial acts to have the case transferred to another judge.**" (emphasis added)  
19 SKAGIT COUNTY v. WALDAL 163 Wn.App. 284, at 290 (2011). The case and its complete  
20 reasoning are set out below;

21  
22 ¶1 BECKER, J. – Granting Skagit County's appeal, we reverse orders  
23 issued against the County early in the case by a judge who later recused.  
24 Denying relief to cross appellants, we affirm an order enjoining them from  
25 conducting solid waste handling activities without a permit.

### EFFECT OF RECUSAL

1 ¶2 Skagit County (County) initiated this action by suing Scott Waldal,  
2 Skagit Hill Recycling Inc. and Avis LLC (collectively Waldal) for abatement of a  
nuisance.

3 ¶3 The County filed the complaint on June 12, 2009. Waldal filed a  
4 counterclaim on July 2, 2009. In the counterclaim, Waldal alleged that the  
County was a competitor with private recycling facilities in the County; that two  
5 of the county commissioners were opposed to privatization of solid waste  
handling; and that one commissioner in particular had a personal pecuniary  
6 interest in preventing Skagit Hill Recycling from operating at its current site.

7 ¶4 On June 23, the County had issued subpoenas to several of Waldal's  
8 lenders and to his wife's demolition company. Waldal and some of the  
subpoenaed parties moved to quash. Waldal requested sanctions for having to  
9 resist the subpoenas. Skagit County Judge Susan Cook presided over a  
hearing on the motions on July 24, 2009. During the hearing, counsel for the  
10 County discussed Waldal's allegations that the improper pecuniary interest of  
the commissioner was the driving force behind the decision to deny the permit.

11 ¶5 Judge Cook ruled that the subpoenas were overly broad, unreasonable,  
and oppressive. She signed orders quashing the subpoenas on July 24, 2009,  
12 and indicated that she was also inclined to grant Waldal's request for monetary  
sanctions. At the time, counsel for Waldal did not have an order prepared with  
an exact dollar figure.

13 ¶6 On August 3, 2009, the County asked Judge Cook to reconsider. The  
County also argued that sanctions were not warranted because the subpoenas  
14 were "substantially justified" within the meaning of CR 37, the rule allowing  
discovery sanctions.

15 ¶7 On August 17, 2009, the last brief on the topic of sanctions against the  
County was filed.

16 ¶8 Also on August 17, all Skagit County Superior Court judges, including  
17 Judge Cook, recused from the case. The judges issued a brief announcement  
explaining the recusal was "due to the personal allegations involving our  
18 County Commissioners." The case was transferred to visiting Judge Ronald  
Castleberry of Snohomish County. «1»

19 «1» According to the final judgment, the counterclaim was later dismissed,  
and it is not at issue in this appeal.

20 ¶9 On August 27, Judge Cook issued a letter ruling denying the County's  
21 motion for reconsideration. "I have now reviewed the pleadings filed in  
connection with the County's motion for reconsideration. The motion is denied."

22 ¶10 On September 18, 2009, the County filed a memorandum arguing that  
23 Judge Cook, having recused herself, should vacate her previous orders and  
should take no further action in the case. Meanwhile, Waldal proposed an  
order granting sanctions.

24 ¶11 On September 30, Judge Cook signed Waldal's proposed order  
25 granting \$6,240 in sanctions against the County. The County's motion for

1 discretionary review of that order was later accepted by this court as a direct  
2 appeal.

3 ¶12 The County contends that all orders signed by Judge Cook must be  
4 vacated. The County's argument is based on the appearance of fairness  
5 doctrine.

6 [1-5] ¶13 The appearance of fairness doctrine seeks to ensure public  
7 confidence by preventing a biased or potentially interested judge from ruling on  
8 a case. Evidence of a judge's actual or potential bias is required to establish a  
9 violation. *In re Marriage of Meredith*, 148 Wn. App. 887, 903, 201 P.3d 1056,  
10 *review denied*, 167 Wn.2d 1002 (2009). "Under the appearance of fairness  
11 doctrine, a judicial proceeding is valid only if a reasonably prudent and  
12 disinterested person would conclude that all parties obtained a fair, impartial,  
13 and neutral hearing." *Meredith*, 148 Wn. App. at 903. Judges must recuse—that  
14 is, disqualify themselves from hearing a case—if they are biased against a party  
15 or if their impartiality may reasonably be questioned. *Meredith*, 148 Wn. App. at  
16 903.

17 ¶14 Whether recusal was necessary in this case is not the issue before us.  
18 The fact is the judges did recuse. The issue is what actions a judge may or  
19 may not take after recusing. There appears to be no Washington authority on  
20 this point. Federal courts "have almost uniformly held that a trial judge who has  
21 recused himself should take no other action in the case except the necessary  
22 ministerial acts to have the case transferred to another judge." *Doddy v. Oxy*  
23 *USA, Inc.*, 101 F.3d 448, 457 (5th Cir. 1996) (even though no grounds  
24 supported judge's decision to recuse, judge could not reconsider that decision  
25 once recused); *see also El Fenix de P.R. v. The MIY Johanny*, 36 F.3d 136,  
26 142 (1st Cir. 1994) (though motion to disqualify judge should not have been  
granted, judge once recused should not have reconsidered the order granting  
the motion). Although Washington courts have not addressed the issue, other  
states have. *See, e.g., Payton v. State*, 937 So. 2d 462, 465 (Miss. Ct. App.)  
(adopting federal rule on issue of first impression and listing other states that  
follow same or similar rule), *cert. denied*, 937 So. 2d 450 (Miss. 2006).

¶15 Waldal assumes the recusal by the judges was motivated by a  
concern about the potential for an appearance of bias *in favor* of the County.  
He argues that because Judge Cook ruled *against* the County, there is no need  
to reverse the order of sanctions. We reject this argument. All we know about  
why the Skagit County judges recused is that it was due to "personal  
allegations involving our County Commissioners." All we can infer is that the  
judges believed that because of those allegations, their impartiality might  
reasonably be questioned if any of them made rulings in the case. Whatever  
may be the reason a judge announces that he or she must refrain from judging  
a case, any rulings by that judge in that case will appear to a disinterested  
person as being potentially tainted by bias no matter which way the rulings go.  
This is so even where the direction of the bias may seem obvious, as where  
the judge has a family relationship with a party. When a judge is thought to

1 have a bias in favor of one party, that party may still seek recusal out of  
2 concern that the judge, "in an effort to avoid any possible appearance of  
3 partiality, might bend over backward in favor of the other side." 13D CHARLES  
4 ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 3553, at  
5 159 (3d ed. 2008) (citing *Pashaian v. Eccelston Props., Ltd.*, 88 F.3d 77, 83 (2d  
6 Cir. 1996)).

7 ¶16 We follow other courts in adopting a bright line rule: once a judge has  
8 recused, the judge should take no other action in the case except for the  
9 necessary ministerial acts to have the case transferred to another judge. On  
10 this ground, we conclude the two orders entered by Judge Cook after recusing--  
11 the order denying the County's motion for reconsideration and the order  
12 granting sanctions--must be reversed.

13 ¶17 The County contends that the proper remedy is to reverse not only the  
14 orders Judge Cook entered after she recused, but also her earlier order  
15 granting the motions to quash the subpoenas. This order was entered before  
16 recusal but after Judge Cook became aware of Waldal's allegations involving  
17 the county commissioners.

18 ¶18 The test for recusal is an objective one under either the appearance of  
19 fairness doctrine or the Code of Judicial Conduct. *Meredith*, 148 Wn. App. at  
20 903. Judges must disqualify themselves from hearing a case if they are  
21 actually biased against a party or if their impartiality may reasonably be  
22 questioned. *Meredith*, 148 Wn. App. at 903. The presence in the lawsuit of  
23 personal allegations involving the county commissioners was the reason given  
24 by all the judges for their decision to recuse. An objective person might  
25 reasonably question whether Judge Cook's rulings, from the point at which she  
26 became aware of those allegations, were affected by those allegations. For this  
reason, the order quashing the subpoenas will also be reversed.

¶19 Whether the motions by Waldal that led to the orders may be renewed  
in further proceedings is an issue not briefed by the parties, and we do not  
address it.

¶20 The orders quashing subpoenas, denying reconsideration, and  
granting sanctions are reversed. The orders granting summary judgment and  
injunctive relief are affirmed.

¶21 The remainder of this opinion has no precedential value. Therefore, it  
will not be published but has been filed for public record. See RCW 2.06.040;  
CAR 14.

It is apparent that in the present case, the roll of the Bank of Pacific in assisting the  
Petitioner Robin Hitz will be contentious and if the wife and the Bank are successful in their  
attempt award to the ex-wife undistributed community property in the form of customer lists and  
covenants not to compete then there will undoubtedly be an appeal of such a result.



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>>> Marsha Scevers 4/10/2012 6:35 PM >>>

Counsel, The following is Judge Uhrig's response to Eric Weight's letter dated April 10, 2012.

Counsel,

I am in receipt of Mr. Weight's letter of 4/10/2012 and provide this response thereto.

I chose to voluntarily disqualify myself from the case involving collection on the Note. I did not "recuse due to a conflict of interest".

During the dissolution trial I disclosed to the parties that my family's corporation has a business loan with the Bank of the Pacific. Though the Code of Judicial Conduct does not require disqualification in such circumstances, I always think it best to provide all parties with as much information as possible, even though my disclosures frequently go well beyond that which the Code of Judicial Conduct requires. In any event, both parties waived any objection to my proceeding with that case.

Of course, the Bank was not and is not a party to the Dissolution. But when I learned that the Bank was seeking to become a party in the lawsuit on the Note, and since the parties were different than in the Dissolution, I determined that I would explain to the parties my family corporation's loan with the Bank, at which time I anticipated I would inquire if there was any objection to me proceeding. Ultimately, I elected to voluntarily disqualify myself from that case in order to avoid the expense of an unnecessary court appearance and possible delays in the event that any party wished me to step down, and if I made the decision to do so.

Coincidentally, Judicial Ethics Opinion #12-02 was issued on 4/6/2012. That Opinion makes clear that a "de minimus economic interest" that could not be "substantially affected by the outcome of the proceeding" is not grounds for disqualification of a Judge. Under the scenario here presented, I do not believe I have any economic interest whatsoever, not even a de minimus interest, and even if there were such an interest, it could not be substantially affected by the outcome of the proceedings. Even though it now seems clear from that Opinion that I need not have disqualified myself from the action on the Note, I will stand by my decision, as it is set for hearing on 4/11/2012 and will probably have been before the Court even before most of you

**Exhibit "A"**

---

have read this message.

As concerns the Dissolution action, the issues appear to be entirely separate from the action on the Note, and the Bank and any other creditors have been and will be treated the same as any other creditors similarly situated. There need be no bifurcation if the actions have not been joined. Though I have never encountered the situation of a Bank attempting to intervene in a dissolution action, if they make such a motion, it would be dealt with at the appropriate time.

Nevertheless, I am happy to allow the parties to address these issues on the record and I am equally happy to re-think my position if it seems appropriate. Any of you may secure a special-set hearing date from my Bailiff. And if counsel for any non-parties wish to weigh-in, they may do as they see fit.

Sincerely

Ira Uhrig  
Whatcom County Superior Court

Marsha Scevers  
Judicial Assistant  
Superior Court, Dept 1  
(360) 715-7461

SCANNED 1

DOCKETED W FN  MTHRG  HSTKMA  HSTKSTP  HCNT  RESHRG  SMJHRG  (other) \_\_\_\_\_

SCOMB CODES

<u>HITZ, ROBIN MALEE</u>	No. <u>10-3-00638-9</u>
_____	JUDGE <u>UHRIG</u>
and	REPORTER <u>PEACH</u>
<u>HITZ, ERIC JAMES</u>	CLERK <u>LONG</u>
_____	DATE <u>April 11, 2012, 2012</u>

Plaintiff/Petitioner Appeared IN PERSON WITH Counsel GREGORY KOSANKE (LIMITED)  
 Defendant/Respondent Appeared IN PERSON WITH Counsel ERIC WEIGHT  
 THIS MATTER CAME ON FOR SPECIAL SET ENTRY OF ORDER RE DISTRIBUTION OF FUNDS

Mr. Weight stated agreement between the parties.  
 Court stated it will voluntarily disqualify from matter.  
 Court signed "Agreed Order for Distribution of Funds" as presented by Mr. Weight.

*JAH*

DATE: MARCH 30, 2012

[civil min.dot]

**Exhibit "B"**

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WASHINGTON STATE SUPERIOR COURT FOR WHATCOM COUNTY

In re the Marriage of  
ROBIN M. HITZ  
and  
ERIC J. HITZ  
Petitioner,  
Respondent.

NO: 12-2-01309-4  
SUBPOENA DUCES TECUM TO  
DAVID CHYLINKSI

THE STATE OF WASHINGTON,  
TO: DAVID CHYLINKSI, Assistant Vice President of Bank of the Pacific

GREETINGS:

YOU ARE HEREBY COMMANDED to be and appear at the offices of Bank of the Pacific at 100 Grand Avenue, Bellingham, WA 98225, on Thursday, May 31, 2012, commencing at the hour of 10:00 A.M. on said day, and then and there to testify as a witness in the above-entitled cause, and to remain in attendance upon the undersigned or any other Notary Public until discharged.

AND YOU ARE FURTHER COMMANDED to bring with you at said time and place the following instruments, papers, and documents, to wit:

SUBPOENA DUCES TECUM  
TO DAVID CHYLINKSI  
Page - 1 -

T.R.G. WOLFF  
Attorney at Law  
P. O. Box 558  
Conway, WA 98238  
Tel. (360) 445-5512

**Exhibit "C"**

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1. Bank of the Pacific's entire original files and documents from May 1, 2011 to the present day relating to the following borrowers:

- (a) Northwest Chip & Grind, Inc.,
- (b) E and R Lands, LLC, and
- (c) Eric Hitz and Robin M. Hitz.

2. For purposes of this subpoena duces tecum, the above stated "Bank of the Pacific's entire original files and document" includes but is not limited to:

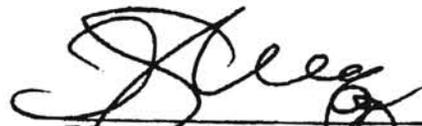
- (a) All correspondence to and from the borrowers.
- (b) All transfers of title and sales of borrower's assets and supporting documentation.
- (c) All internal memos, correspondence, e-mail, faxes and attached notes, etc relating to the borrowers.
- (d) All bank account records for the borrowers.
- (e) All legal memo's and opinions relating to the borrowers.
- (f) All balance sheets relating to the borrowers.
- (g) All inventories of assets relating to the borrowers.
- (h) All reports and memo's.
- (i) All minutes and notes of meetings relating to the borrowers.
- (j) All contracts and/or agreements between the borrowers and third parties.
- (k) All internal audit reports relating to the borrowers.
- (l) Cell phone records, statements, records of incoming and outgoing calls relating to borrowers.

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3. Personal cell phone records of David Chylinski from May 1, 2011 to the present day, including updated print-outs of internet based present day records of incoming and outgoing telephone calls.

**HEREIN FAIL NOT AT YOUR PERIL.**

DATED this 29th day of May, 2012.

  
T.R.G. Wolff, WSBA # 4146  
Attorney for Defendant Eric Hitz  
P.O. Box 558  
Conway, WA 98238  
Phone 360 445-5512

# Appendix “B”

SCANNED 3

FILED  
COUNTY CLERK  
2012 MAR -1 PM 4:20  
WHATCOM COUNTY  
WASHINGTON  
BY W

SUPERIOR COURT OF WASHINGTON FOR WHATCOM COUNTY

In re the Marriage of:  
ROBIN M. HITZ,

Petitioner,

and  
ERIC J. HITZ,

Respondent.

Case No. 10-3-00638-9

MOTION FOR ENFORCEMENT  
OF DECREE OF DISSOLUTION

COMES NOW the Respondent, by counsel of Weight Law Offices, and files this *Motion for Enforcement of Decree of Dissolution.*

This motion seeks enforcement of the Decree of Dissolution by entry of an order for the following relief:

1. For removal of Robin Hitz from the liquidation and sale process, and to restrain her interference therewith.
2. For appointment of Jack W. Curnow, CPA of Curnow & Curnow as a neutral third party in charge of the liquidation process.
3. For appointment of Gregory Thulin as Special Master to execute any and all documents required for either party for implementation of all sales and the Decree.

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ORIGINAL

4. For payment of all unsecured creditors in full from the proceeds of sale of the Smith Rd residence.

5. To prohibit the distribution or payment of any unsecured community funds for payment of secured business debts.

6. To prohibit the sale of real property to any buyer that is acting on behalf of a party or not in an arms length transaction and/or where no other reasonable buyers or offers were considered.

7. To prohibit NW Chip and Grind from bidding or entering into any new contracts that cannot be immediately terminated upon liquidation.

8. To prohibit any real estate transaction that further encumbers title to real property.

9. To prohibit Robin Hitz from seeking or implementing a non-complete clause for any and all aspects of this liquidation process.

10. To require Robin Hitz to disclose all negotiations and potential third party buyers.

11. To require Robin Hitz to provide an equipment list and pricing information therefore.

12. To require good faith consideration of all offers, without respect to personal gain of a single party.

13. For immediate liquidation of all equipment.

14. For immediate closure of NW Chip and Grind.

15. For payment of the attorney lien from Eric Hitz's portion of the Smith Rd. proceeds.

16. For distribution of all net proceeds of the Smith Rd sale to the parties after joint payment to all unsecured creditors and after payment of the attorney lien from Eric Hitz's portion of such net proceeds.

17. For \$1,200 reimbursement from Robin Hitz for Eric Hitz's payment of the WECU credit card.

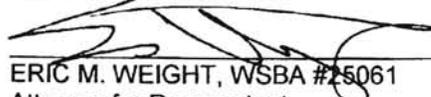
18. For a finding of contempt against Robin Hitz for the issues raised in that motion.

19. For an award of attorney fees and sanctions against Robin Hitz, including a daily monetary award for failure to comply.

20. For such further relief as deemed just and equitable, including modification of the November 17, 2011 *Decree of Dissolution* as provided therein.

DATED: March 1, 2012.

Submitted by,  
WEIGHT LAW OFFICES:



ERIC M. WEIGHT, WSBA #25061  
Attorney for Respondent

SCANNED 1

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COUNTY CLERK

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WASHINGTON  
BY W

SUPERIOR COURT OF WASHINGTON FOR WHATCOM COUNTY

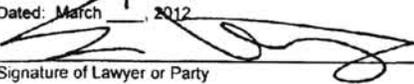
In re the Marriage of:  
  
ROBIN M. HITZ,  
  
and  
  
ERIC J. HITZ,  
  
Petitioner,  
  
Respondent.

No. 10-3-00638-9  
  
NOTE FOR:  
Motion Docket (NTMTDK)  
  
JUDGE UHRIG - Special Set

xxxx NOTE FOR MOTION DOCKET  
Please take note that the issue in this case will be heard on the date set out in the margin and the clerk is requested to note the same on the motion docket for that day, subject to the confirmation rule.

NOTE FOR TRIAL DOCKET  
The undersigned certifies that this case is ready for trial setting. All issues have been joined. All responsive pleadings as to all named parties have been filed or proper defaults have been taken. This case is not subject to mandatory arbitration under WCMAR. Either (1) the parties agree that all discovery in the case has been completed, or (2) the parties have filed an Agreed Order on Discovery which specifies the order and timing of discovery and terminates discovery 30 days before trial, or (3) this case has been noted for a scheduling conference before the trial judge. The clerk is requested to note this on the trial setting calendar to be brought on for trial at the time set by the court - subject to the confirmation rule.

March 15, 2012 at 8:45 a.m.  
Date and Time of Hearing  
  
Motion to Enforce Decree and Show Cause  
Nature of Hearing  
  
Date and Time of Trial Setting Calendar  
  
Nature of Cause  
Jury requested:  Yes  No  
  
Estimate of Time Required for Trial  
  
Reason Exempt from Mandatory Arbitration

Dated: March 1, 2012  
  
Signature of Lawyer or Party

Eric M. Weight, WSBA #25061  
119 N. Commercial Street, Suite 1400  
Bellingham, Washington 98225  
Telephone: (360) 650-9200  
Respondent  
If Attorney, Party Represented

Names/addresses of other attorneys or parties  
  
Robin Hitz  
4243 Hannegan Road  
Bellingham, WA 98226  
  
Timothy G. Krell  
301 Prospect St Ste 7  
Bellingham, WA 98225

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W

NOTE FOR DOCKET  
PAGE 1 OF 1

ORIGINAL

WEIGHT LAW OFFICES INC., P.S.  
119 NORTH COMMERCIAL STREET  
SUITE 1400 BELLINGHAM TOWERS  
BELLINGHAM, WASHINGTON 98225  
(360) 650-9200 FAX 650-9100

# Appendix “C”

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2012 MAR -3 PM 1:29  
WHATCOM COUNTY  
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BY CW

Superior Court of Washington  
County of Whatcom

In re the Marriage of:

Robin Maelee Hitz,

Petitioner,

No. 10-3-00638-9

and

Eric James Hitz,

Respondent.

**Responsive Declaration of  
Robin Hitz; Request that Eric  
Hitz be held in Contempt;  
Request for Court to lift all  
Attorney Weight's Lien against  
Properties**

I, ROBIN HITZ, declare under penalty of perjury under the laws of the State of Washington and pursuant to 28 USC Section 1746 that the following statements are true and correct:

I have worked diligently to follow the Court orders and I am not in contempt. I am asking that Eric Hitz be held in contempt for not signing purchase and sale agreements, for failing to sign documents in a timely manner, for allowing our properties to be encumbered by an attorney lien. I am asking that Eric Hitz be required to sign documents presented to him within 48 hours of receipt without changes being made to those documents. I am asking for the attorney lien to be removed from all properties.

Responsive Declaration of Robin Hitz;  
Request for Eric Hitz to be held in Contempt;  
Request for Attorney Weight's Lien to be lift from Properties - Page 1 of 6

224  
**BRETT MURPHY**  
Washington's Injury Lawyers  
1310 10th Street, Suite 101  
P.O. Box 4196 • Bellingham, WA 98227  
Tel. (360) 714-0900 • Fax (360) 437-0623

am asking for my attorney fees for dealing with the lien and responding to this motion. I  
am asking to continue the orderly liquidation process.

**1. Chronology since Dissolution Decree:**

On November 17, 2011 our Decree of Dissolution was signed and entered. On  
November 21, 2011, I worked with Don Hale to list the following property:

4291 Hannegan:	\$1,425,000
4243 Hannegan:	\$950,000
Holtzheimer:	\$129,000
Lincoln Road:	\$370,000
4xxx Hannegan 0332 (South):	\$225,000
4xxx Hannegan 9398 (North):	\$225,000
Queen Mountain:	\$1,000,000

On December 8, 2011, Eric Hitz and I reached several agreements concerning our  
children, the Smith Road property, and the \$3,000 monthly payments. I wrote up our  
agreement and we both initialed, signed and had our signatures notarized. Our  
agreement was not to list 4 parcels of property at Smith Road at this time. We also  
agreed I would not be held in contempt if I couldn't make the \$3,000 monthly payments  
(see attached agreement).

On December 19, 2011, Heather Wolf agreed to continue to assist Eric Hitz and I  
with our real property issues. (see attached engagement letter).

On February 3, 2012, Eric Weight filed an attorney lien for \$90,687.50 and then  
filed the lien against the community real estate.

On February 8, 2012, I began negotiating with Mr. Wiebe of Heron Point  
Properties to purchase Block 17 Hannegan (Back Forty). On February 11, 2012, Heron  
Point Properties **offered a one-million dollar cash** on our Hannegan back 40. On  
February 20, 2012, I received and reviewed with Eric Hitz a letter from Philip G. Calder

1 that Mr. Wiebe has sufficient funds to complete a \$1,000,000 US Cash purchase of the  
2 above property. Eric refuses to sign this sale agreement. Mr. Wiebe asked for a 60  
3 day feasibility study and Eric Hitz changed it to 30 days and then changed the closing  
4 date. On February 27, 2012, Mr. Wiebe compromised to 45 day feasibility and resigned  
5 the offer. Eric refused this compromise. Eric made changes, refused to sign. On  
6 February 28, 2012, Mr. Wiebe made a **\$1,350,000 offer** to purchase 4291 Hannegan  
7 Road. Eric refuses to sign this sale agreement.

8 On January 11, 2012, Eric Hitz brought a written offer from his friend, Kurt Lunde  
9 of Double K properties for our Smith Road home. We agreed to the sale price and  
10 terms. On March 1, 2012, the sale closed. The sale proceeds were \$592,408. I had to  
11 hire an attorney, Tim Krell, to remove Mr. Weight's lien but that only resulted in the  
12 money being held in Eric Weight's trust account (see attached invoice from Tim Krell).

13 Eric Hitz brought another potential buyer David Edelstein who made an  
14 unreasonably low bid. I was nervous about Mr. Edelstein as I know his last project,  
15 Fairhaven Highlands, is in financial ruins and that other projects have been reposed.  
16 When I asked for proof of funds, Mr. Edelstein used another persons' investment  
17 account that was not named in the offer.

## 18 2. LIQUIDATION PROCESS:

19 I have been working closely with our realtor, the Bank of the Pacific, our  
20 accountant, and our vendors (please see attached liquidation debt payment plan). I am  
21 trying to keep the business running to pay bills. I only bid on the city "Clean Green"  
22 contract because it would have made our business and the pieces of equipment more  
23 valuable. In the bid I reserve the right to continue the same services with the same  
24  
25  
26

Responsive Declaration of Robin Hitz;  
Request for Eric Hitz to be held in Contempt;  
Request for Attorney Weight's Lien to be lift from Properties - Page 3 of 6

**BRETT MURPHY**  
Washington's Injury Lawyers  
1310 10th Street, Suite 104  
P.O. Box 4196 • Bellingham, WA 98227  
Tel: (360) 714-0900 • Fax: (866) 437-0623

prices under a different company name or ownership. We did not get the bid.

1 I have had to borrow money to pay our bills. I have received an offer on March 8,  
2 2012, from Mr. Wiebe to purchase the business and equipment for \$1,500,000 (less the  
3 \$26,766.15 borrowed from Mr. Wiebe). Mr. Wiebe is a reputable business man who  
4 has the funds to make these purchases. This needs to happen now.  
5

6 **4. ERIC HITZ CONTEMPT OF COURT ORDER:**

7 Eric Hitz refuses to sign offers to purchase. He must sign those offers  
8 immediately. Eric Hitz makes unreasonable demands and writes changes onto offers.  
9 This needs to stop. Eric Hitz encumbered our property with his separate debt. His  
10 support of the attorney lien must be rescinded and withdrawn.  
11

12 **5. RESPONSE TO MOTIONS:**

13 Eric Hitz agreed with the final dissolution papers. He should not be allowed now  
14 to go back and make changes to the orders. Specifically, to ask for a start date for the  
15 \$3,000.00 that is earlier to the date when the final papers were entered. I should not be  
16 in contempt for not paying the \$3,000.00 based on Eric's written and signed agreement  
17 that stated: "Also, wife (mother) shall try to pay \$3,000 a month to husband, but will not  
18 be held in contempt if it is not financially feasible to do so within the end of January  
19 2012 time period as stated in section K." I paid Eric \$2,000 a month on payroll through  
20 October of 2011. I assumed from the Decree being in November that the \$3,000 was  
21 for November, December and January of 2012.  
22

23 Eric Hitz knew that we were behind on payments to his parents, and we have  
24 had a history before of being behind sometimes up to six months without any problems.  
25

26 Eric Hitz has received some money since the divorce ruling at the end of

1 November 2011. \$5,289.50 was his ½ of the IRS refund from 2010. I sold the horse  
2 trailer and Eric received ½ which was \$1,350, as well as his portion of the guns sold  
3 \$760. I have paid him \$1,500 of the \$9,000 owing. Eric owes some money for  
4 expenses incurred for the Smith Road house.

5 As to Eric Hitz's credit card payments, I am not a signer on that card and the  
6 statements are not sent to me. He has made charges on that card after our date of  
7 separation and he is responsible for that debt. Eric has not found any work or income. I  
8 have not been able to pay all of my bills and I have to prioritize. For instance, my  
9 highest priority is to maintain all of our medical insurance.

10 I have continued to run the business to finish the contracts we are obligated to,  
11 so we are not in breach of contract, while reducing our workforce down to a total of  
12 approximately 8 part-time and full-time staff.

13 I believe we should continue to use Heather Wolf as our real estate attorney. I  
14 also believe we should continue to use Penny Zehnder as our CPA. Ms. Zehnder has  
15 worked for us jointly and she gives Eric any documents he requests. Recently, Eric was  
16 given a copy of the equipment list and spreadsheet of assets by Ms. Zehnder. I have  
17 not withheld this information from Eric. If Eric requires another CPA's opinion, then I  
18 propose using Dennis Archer who was Eric's expert accountant in the dissolution.  
19

20 Eric does not understand that all of our debts, corporate to vendors, to the Bank  
21 of the Pacific, everyone are all personally guaranteed, especially since we started our  
22 business over 20 years ago using these personal guarantees. As I stated at trial, our  
23 bills need to be paid in order of urgency in order to decrease litigation costs, finance  
24 charges, and penalties and to avoid a fire sale situation which will greatly decrease the  
25  
26

Responsive Declaration of Robin Hitz;  
Request for Eric Hitz to be held in Contempt;  
Request for Attorney Weight's Lien to be lift from Properties - Page 5 of 6

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net monies that will go to both Eric and me.

1 **6. RELIEF REQUESTED:**

2 I am not in contempt and I am following the Court's orders. In short, I have listed  
3 real estate. I have sold real estate. I have several sales pending. There is currently,  
4 \$592,408 in Eric Weight's trust account. In the Decree of Dissolution, we were each  
5 responsible for our own attorney fees, no where does it say that Eric Weight gets a lien,  
6 that he gets to be paid first, or that he can hold the proceeds from the sale in his trust  
7 account.  
8

9 In the Decree of Dissolution, my understanding was that I was to liquidate our  
10 assets in an orderly manner, and while I appreciate Eric bringing me buyers, he does  
11 not have authority to make changes to offers as he did with the proposed feasibility  
12 study (See Declaration of David Chalinsky). He does not have the right to refuse to sign  
13 offers. He does not have the right to refuse to sign documents in a timely manner.  
14 Refusing to sign documents is a tactic he used during our divorce and it slows  
15 everything down. He should have to sign a document within forty-eight (48) hours of  
16 presentation.  
17

18 I am asking that my attorney fees be paid for having to rehire Ms. McCandlis and  
19 responding to this motion.  
20

21 Signed in the City of Bellingham, WA this 9 day of March, 2012.

22   
23 \_\_\_\_\_  
24 Robin M. Hitz, Petitioner

# Appendix “D”

SCANNED 1

DOCKETED W  MTHRG  HSTKNA  HSTKSTP  HCNT  RESHRG  SMJHRG  (other) \_\_\_\_\_

SCOMIS CODES

89-002430

**SUPERIOR COURT OF THE STATE OF WASHINGTON FOR WHATCOM COUNTY**

<u>HITZ, ROBIN MAELEE</u>	No. <u>10-J-00638-9</u>
_____	JUDGE <u>UHRIG</u>
and	REPORTER <u>PEACH</u>
_____	CLERK <u>LONG</u>
<u>HITZ, ERIC JAMES</u>	DATE <u>MARCH 30, 2012 @ 1:30</u>
_____	

Plaintiff/Petitioner Appeared IN PERSON WITH Counsel PAULA MCCANDLIS  
 Defendant/Respondent Appeared IN PERSON WITH Counsel ERIC WEIGHT  
 THIS MATTER CAME ON FOR PLAINTIFF'S MOTION FOR CONTEMPT / RESPONDENT'S MOTION TO ENFORCE DECREE

Mr. Weight made brief argument and Ms. McCandlis responded.

Court ruled transaction to go forward and documents transferred with Mr. Hitz's signature. transaction is to go forward. Full amounts are to be paid to Bank of Pacific.  
 Attorney's liens are to be removed, issue may be heard on reconsideration.  
Court reserved ruling on issue of fees and contempt.

No order signed in court.

243

DATE: MARCH 30, 2012

[civil min.dot]



# Appendix “E”

SCANNED 2

FILED IN OPEN COURT  
4/11 2012  
WHATCOM COUNTY CLERK  
By \_\_\_\_\_ Deputy

SUPERIOR COURT OF WASHINGTON FOR WHATCOM COUNTY

~~JAMES R. HITZ and CAROL A. HITZ,~~  
~~Husband and Wife,~~

IN RE: MARRIAGE OF Plaintiffs,

ERIC J. HITZ and ROBIN M. HITZ,  
~~separate individuals,~~  
Defendants.

~~WEIGHT LAW OFFICES AND JRS,~~  
~~Commodore Defendant,~~

Case No. ~~42-2-00359-5~~  
10-3-00638-9

AGREED ORDER FOR  
DISTRIBUTION OF TRUST  
FUNDS AND SATISFACTION  
OF JUDGMENT

THIS CAUSE came to be heard by agreement of the parties, and it appearing to the Court that this order should be entered; it is hereby,

ADJUDGED, ORDERED AND DECREED as follows:

By March 1, 2012 written agreement of Eric Hitz and Robin Hitz with counsel, \$592,408.11 in net proceeds from the sale of the parties' Smith Rd residence was placed in trust at Weight Law Offices. All of these proceeds shall be immediately distributed as follows:

1. Eno \$93,955 shall be paid to James and Carol Hitz for satisfaction of judgment WF in this matter. \* 12-2-00359-5. \*
2. The remaining balance of \$498,453.11 shall be distributed ~~equally in~~ three as set forth below. WF

245

200  
ZC  
WK

\$200,000.00

3. ~~\$166,151.03~~ shall be distributed to the Bank of the Pacific for ~~principal~~

~~and interest~~ payment on Eric Hitz and Robin Hitz's loans; *provided loan default and acceleration will not be cured.*

ZC  
WK  
EW  
CW

4. ~~\$166,151.03~~ shall be distributed to Robin Hitz as her sole and separate property. 149,226.56

5. ~~\$166,151.03~~ shall be distributed to Eric Hitz as his sole and separate property. From these proceeds, Eric Hitz shall pay all of his attorney fees and the

attorney lien to Weight Law Offices in full, which lien is hereby extinguished.

6. *Funds shall be distributed on April 11, 2012.*

DATED: April 11, 2012.

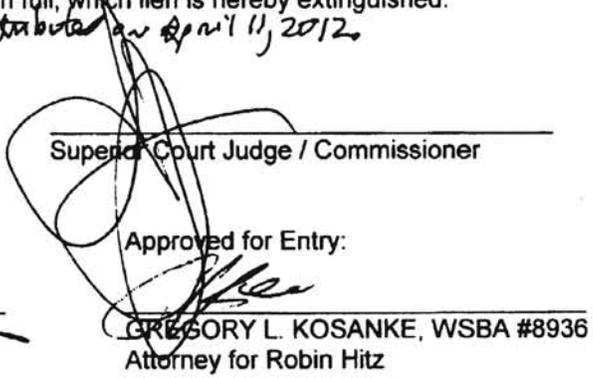
ZC  
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Superior Court Judge / Commissioner

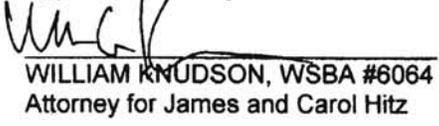
Approved for Entry:

  
ERIC M. WEIGHT, WSBA #25064  
Attorney for Eric Hitz

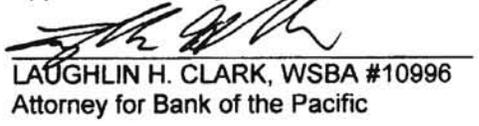
Approved for Entry:

  
GREGORY L. KOSANKE, WSBA #8936  
Attorney for Robin Hitz

Approved for Entry:

  
WILLIAM KNUDSON, WSBA #6064  
Attorney for James and Carol Hitz

Approved for Entry:

  
LAUGHLIN H. CLARK, WSBA #10996  
Attorney for Bank of the Pacific

ZC  
WK  
EW  
CW

*\* WATER RIGHTS SHALL BE RESTORED TODAY,  
AND REMAIN IN OPERATION NO LESS THAN ONE  
YEAR OR FURTHER ORDER OF COURT THEREAFTER.*

# Appendix “F”

**UNITED STATES BANKRUPTCY COURT**  
Western District of Washington

**Notice of Chapter 7 Bankruptcy Case, Meeting of Creditors, & Deadlines**  
**Notice of Ex Parte Motion to Dismiss if Debtor Fails to Appear at the Sec. 341 Meeting,**  
**and Notice of Appointment of Trustee**

A chapter 7 bankruptcy case concerning the debtor(s) listed below was filed on **August 23, 2012**.

You may be a creditor of the debtor. **This notice lists important deadlines.** You may want to consult an attorney to protect your rights. All documents filed in the case may be inspected at the bankruptcy clerk's office at the address listed below.

NOTE: The staff of the bankruptcy clerk's office cannot give legal advice.

**See Reverse Side For Important Explanations**

Debtor(s) (name(s) used by the debtor(s) in the last 8 years, including married, maiden, trade, and address):

Eric James Hitz  
4328 Hannegan Rd  
Bellingham, WA 98284

Case Number: 12-18740-KAO  
Office Code: 2

Social Security/Individual Taxpayer ID/Employer Tax ID/Other nos.  
xxx-xx-2045

Attorney for Debtor(s) (name and address):  
Gloria Z Nagler  
Nagler & Malaier PS  
500 Union St Ste 927  
Seattle, WA 98101  
Telephone number: 206-224-3460

Bankruptcy Trustee (name and address):  
Peter H. Arkison  
103 E Holly St #502  
Bellingham, WA 98225-4728  
Telephone number: 360-671-0300  
Send 4002 documents to: Not available

**Meeting of Creditors**

Date: **September 24, 2012**

Time: **01:00 PM**

Location: **Whatcom County Courthouse, Conference Room 513 (5th Floor), 311 Grand Avenue, Bellingham, WA 98225**

**Important Notice to Debtors:** All Debtors (other than corporations and other business entities) must provide picture identification and proof of social security number to the Trustee at the meeting of creditors. Original documents are required; photocopies are not sufficient. Failure to comply will result in referral of your case for action by the U.S. Trustee.

**Presumption of Abuse under 11 U.S.C. § 707(b)**

*See "Presumption of Abuse" on reverse side.*

Insufficient information has been filed to date to permit the clerk to make any determination concerning the presumption of abuse. If more complete information, when filed, shows that the presumption has arisen, creditors will be notified.

**Deadlines:**

Papers must be *received* by the bankruptcy clerk's office by the following deadlines:

**Deadline to Object to Debtor's Discharge or to Challenge Dischargeability of Certain Debts**  
**and All Reaffirmation Agreements must be filed with the bankruptcy clerk's office by November 23, 2012**

**Deadline to Object to Exemptions:**

Thirty (30) days after the *conclusion* of the meeting of creditors or within thirty (30) days of any amendment to the list or supplemental schedules, unless as otherwise provided under Bankruptcy Rule 1019(2)(B) for converted cases.

**Creditors May Not Take Certain Actions:**

Generally, the filing of the bankruptcy case automatically stays certain collection and other actions against the Debtor and the Debtor's property. There are some exceptions provided for in 11 U.S.C. § 362. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized. Consult a lawyer to determine your rights in this case.

**Please Do Not File a Proof of Claim Unless You Receive a Notice To Do So.**

**Creditor with a Foreign Address:**

A creditor to whom this notice is sent at a foreign address should read the information under "Do Not File a Proof of Claim at This Time" on the reverse side.

**Address of the Bankruptcy Clerk's Office:**  
700 Stewart St. Room 6301  
Seattle, WA 98101  
Telephone number: 206-370-5200

**For the Court:**

Clerk of the Bankruptcy Court.  
Mark L. Hatcher

This case has been assigned to Judge Karen A. Overstreet

Hours Open: Monday - Friday 8:30 AM - 4:30 PM

Date: August 24, 2012

## EXPLANATIONS

Case Number **12-18740-KAO**

Filing of Chapter 7 Bankruptcy Case	A bankruptcy case under Chapter 7 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by or against the debtor(s) listed on the front side, and an order for relief has been entered.
Legal Advice	The staff of the bankruptcy clerk's office cannot give legal advice. Consult a lawyer to determine your rights in this case.
Creditors Generally May Not Take Certain Actions	Prohibited collection actions are listed in Bankruptcy Code §362. Common examples of prohibited actions include contacting the debtor by telephone, mail or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; starting or continuing lawsuits or foreclosures; and garnishing or deducting from the debtor's wages. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay.
Presumption of Abuse	If the presumption of abuse arises, creditors may have the right to file a motion to dismiss the case under § 707(b) of the Bankruptcy Code. The debtor may rebut the presumption by showing special circumstances.
Meeting of Creditors	A meeting of creditors is scheduled for the date, time and location listed on the front side. <i>The debtor (both spouses in a joint case) must be present at the meeting to be questioned under oath by the trustee and by creditors.</i> Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date specified in a notice filed with the court.
Do Not File a Proof of Claim at This Time	There does not appear to be any property available to the trustee to pay creditors. <i>You therefore should not file a proof of claim at this time.</i> If it later appears that assets are available to pay creditors, you will be sent another notice telling you that you may file a proof of claim, and telling you the deadline for filing your proof of claim. If this notice is mailed to a creditor at a foreign address, the creditor may file a motion requesting the court to extend the deadline.
Discharge of Debts	The debtor is seeking a discharge of most debts, which may include your debt. A discharge means that you may never try to collect the debt from the debtor. If you believe that the debtor is not entitled to receive a discharge under Bankruptcy Code §727(a) or that a debt owed to you is not dischargeable under Bankruptcy Code §523(a)(2), (4), or (6), you must file a complaint — or a motion if you assert the discharge should be denied under §727(a)(8) or (a)(9) — in the bankruptcy clerk's office by the "Deadline to Object to Debtor's Discharge or to Challenge the Dischargeability of Certain Debts" listed on the front of this form. The bankruptcy clerk's office must receive the complaint or motion and any required filing fee by that deadline.
Exempt Property	The debtor is permitted by law to keep certain property as exempt. Exempt property will not be sold and distributed to creditors. The debtor must file a list of all property claimed as exempt. You may inspect that list at the bankruptcy clerk's office. If you believe that an exemption claimed by the debtor is not authorized by law, you may file an objection to that exemption. The bankruptcy clerk's office must receive the objections by the "Deadline to Object to Exemptions" listed on the front side.
Bankruptcy Clerk's Office	Any paper that you file in this bankruptcy case should be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts and the list of the property claimed as exempt, at the bankruptcy clerk's office.
Creditor with a Foreign Address	Consult a lawyer familiar with United States bankruptcy law if you have any questions regarding your rights in this case.
Notice Re. Dismissal	If the Debtor, or joint Debtor, fails to file required schedules, statements or lists within 14 days from the date the petition was filed, the U.S. Trustee will apply for an ex parte order of dismissal on the seventh day after the deadline passes. If the Debtor, or joint Debtor, fails to appear at the meeting of creditors, the U.S. Trustee will apply for an ex parte order of dismissal seven days after the date scheduled for the meeting of creditors, or the date of any rescheduled or continued meeting. This is the only notice you will receive of the U.S. Trustee's motion to dismiss the case. If you wish to oppose the dismissal, you must file a written objection within seven days after the applicable deadline passes (i.e. 14-day deadline or date of the meeting of creditors).
Appointment of Trustee	Pursuant to 11 U.S.C. §701 and §322 and Fed. R. Bankr. P. 2008, <b>Peter H. Arkison</b> is appointed Trustee of the estate of the above named Debtor to serve under the Trustee's blanket bond. The appointment is made effective on the date of this notice. Unless the Trustee notifies the U.S. Trustee and the Court in writing or rejection of the appointment within seven (7) days of receipt of this notice, the Trustee shall be deemed to have accepted the appointment. Unless creditors elect another Trustee at the meeting of creditors, the Interim Trustee appointed herein will serve as the Trustee.  Mark H Weber, Assistant U.S. Trustee
<b>Refer to Other Side for Important Deadlines and Notices</b>	

# Appendix “G”

Below is the Order of the Court.



*Karen A. Overstreet*

Karen A. Overstreet  
U.S. Bankruptcy Judge  
(Dated as of Entered on Docket date above)

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IN THE UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF WASHINGTON

In re	)	Chapter 7 Proceeding
ERIC JAMES HITZ,	)	
<i>Debtor.</i>	)	Bankruptcy Case No. 12-18740
_____	)	
	)	Adv. Proc. No. 12-02028
ROBIN HITZ,	)	
<i>Plaintiff,</i>	)	ORDER ON MOTION FOR
	)	PROTECTION ORDER AND
v.	)	GRANTING RELIEF FROM
	)	THE AUTOMATIC STAY
ERIC JAMES HITZ,	)	
<i>Defendant.</i>	)	
_____	)	

**THIS MATTER** having come regularly before the Court on the plaintiff's motion for an order protecting her from answering certain interrogatories and requests for production served on her by the defendant. The plaintiff appeared personally and through her counsel, Steven Hathaway. The debtor appeared personally and through his counsel, Ron Wolff.

The Court having considered the argument of counsel, the stipulation and agreement of parties, the pleadings, exhibits and the records in the underlying bankruptcy case and this adversary proceeding finds that Whatcom County Superior Court has expertise in domestic relations issues and the history of this case and is the appropriate forum to adjudicate the

ORDER ON MOTION  
GRANTING RELIEF FROM  
THE AUTOMATIC STAY

STEVEN C. HATHAWAY  
3811 CONSOLIDATION AVE.  
BELLINGHAM, WA 98227  
(360) 676-0529

1 respective rights, responsibilities, obligations and property entitlement of the parties pursuant to  
2 the Decree of Dissolution entered in Whatcom County Superior Court on November 17, 2011,  
3 under cause number 10-3-00638-9. Whatcom County Superior Court may enter judgment and  
4 findings but this Court shall retain jurisdiction to enforce any judgment in accordance with the  
5 priorities established by the Bankruptcy Code and the rights of creditors and other parties in  
6 interest, **NOW THEREFORE, IT IS HEREBY**

7 **ORDERED** that Robin Hitz and Eric Hitz are granted relief from the automatic stay to  
8 proceed under the Decree of Dissolution entered in Whatcom County Superior Court on  
9 November 17, 2011, cause number 10-3-00638-9. It is further

10 **ORDERED** that Whatcom County Superior Court may proceed under the Decree of  
11 Dissolution and enter judgment and findings regarding any dispute between Robin Hitz and Eric  
12 Hitz stemming from the Decree of Dissolution but shall make no changes to the division of the  
13 community assets, which was fixed as of the petition date. It is further

14 **ORDERED** that this Court retains exclusive jurisdiction to enforce the Whatcom County  
15 Superior Court judgments and findings within the context of the underlying bankruptcy case and  
16 this adversary proceeding in accordance with the priorities established by the Bankruptcy Code  
17 and the rights of creditors and other parties in interest. It is further

18 **ORDERED** that the interrogatories defendant has served on the plaintiff are stricken and  
19 that plaintiff is not required to answer such interrogatories. It is further

20 **ORDERED** that the Subpoena Duces Tecum dated February 19, 2013, which was signed  
21 by the defendant and served on Peoples Bank is invalid and the bank shall not provide the  
22 defendant with any of the plaintiff's bank statements or other documentation and records  
23 pursuant to that Subpoena Duces Tecum.  
24

25  
26 */// End of Order///*  
27

28 ORDER ON MOTION  
GRANTING RELIEF FROM  
THE AUTOMATIC STAY

- 2 -

STEVEN C. HATHAWAY  
3811 CONSOLIDATION AVE.  
BELLINGHAM, WA 98227  
(360) 676-0529

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Presented by:

/s/ Steven C. Hathaway  
Steven C. Hathaway, Attorney for Plaintiff  
3811 Consolidation Avenue  
Bellingham, WA 98229  
(360) 676-0529

ORDER ON MOTION  
GRANTING RELIEF FROM  
THE AUTOMATIC STAY

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