UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

Brian P. Carr Plaintiff versus Sam Reed, in his official capacity as Secretary of State of the State of Washington, Wanda Briggs in her official capacity as Chair of the State of Washington Commission of Judicial Conduct and Rob McKenna, in his official capacity as Attorney General of the State of Washington and representing in their official capacity as representatives of the State of Washington and, separately, as private individuals the Honorable Robert L. Harris, John F. Nichols, Barbara D. Johnson, Kenneth Eiesland, Rich Melnick, John Hagensen, Kelli E. Osler, Joel Penoyar, (J.) C. C. Bridgewater, J. Robin Hunt, Gerry L. Alexander, Barbara Madsen, Mary E. Fairhurst, Susan Owens and James M. Johnson as well as other currently unnamed parties as determined by the Court Defendants	Civil No. 3:07-cv-05260-RJB First Amended COMPLAINT

The Plaintiff, Brian P. Carr, appearing pro se in this matter, as and for his complaint allege the following:

Introduction

1. The Plaintiff's rights to liberty and property were deprived without due process and Plaintiff

was not provided equal protection under the law as required by the Fourteenth Amendment of the U.S. Constitution in proceedings in the State of Washington under RCW 26.50 (Domestic Violence). While the statute itself provides for due process and equal protection under the law, the Defendants ignored the requirements of the statute and the state constitution. The Plaintiff is seeking declaratory relief as well as damages.

2. This case is an outgrowth of two Domestic Violence cases initiated in the Clark County Superior Court of the State of Washington under RCW 26.50 as case number 04-2-08824-4 in which Mr. Carr was a Respondent and case number 04-2-08908-9 in which Mr. Carr was the Plaintiff. In each case, Mr. Carr's wife, hereafter referred to as Karyn, was the other party. Mr. Carr and Karyn were in the process of separating and later divorcing

3. As Karyn is not a party to this matter and these proceedings will be available to the public, all identifying information for Karyn has been redacted. The Defendants have access to the originals and can identify Karyn fully if it is of relevance to the case at hand.

4. Shortly after the Order for Protection was issued in case 04-2-08824-4 against Mr. Carr, he was at a social event in Portland, OR where Karyn was not present when, apparently, one of Karyn's friends notified her of his presence and she went to the restaurant and called the police claiming a violation of the Order while remaining outside the restaurant and with Mr. Carr unaware of her presence. Mr Carr was arrested and remained in custody for more than three days. The Multnomah County District Attorney did not prosecute the case because of a lack of evidence that Mr. Carr knew of Karyn's presence (Multnomah Circuit Court Clearing 0923389).

5. The record of the Domestic Violence Orders as well as the subsequent arrest has restricted Mr. Carr's ability to seek alternative employment. In 1975, Mr. Carr graduated with honors with a B.E. from U.S.M.A., West Point, NY. In 1977, Mr. Carr received a M.A. in Computer Science (Applied Mathematics) from M.I.T., Cambridge, MA. Mr. Carr served in the Signal Corps with a Top Secret security clearance until 1982 when Mr. Carr left the U.S. Army as a Captain. Mr. Carr has an otherwise spotless record and the Domestic Violence Order and the Oregon arrest have had a significant detriment in his ability to seek employment as well as

making him a likely candidate for searches as a potential terrorist.

6. On all job applications for permanent positions which Mr. Carr has completed in the last decade he has been asked if he has ever been arrested. The job market is quite competitive in the areas where Mr. Carr works and negative responses to applicants are always general such as 'another candidate was found to be more qualified for the position'; no specific reason for the negative response is ever provided. In face of the highly competitive nature of each position, the requirement that Mr. Carr explain his criminal history makes him virtually unemployable in most of the positions to which he would otherwise be eligible.

7. While the framers of the constitution (both state and federal) could not have foreseen the widespread dissemination of criminal records, they did provide the guarantee of certain rights when they impacted a person's livelihood as criminal records do today. While the state certainly has the ability to impair a person's livelihood, it can only do so within the constraints of due process. This guarantees the right of the affected individual to be heard before an impartial authority, presented with the evidence against them, given the opportunity to present evidence on their own behalf, and the right to appeal.

8. Since 2005 to the present, Mr. Carr can not use automated check in for flights and is subjected to more intensive scrutiny as he has been identified as a potential terrorist due to the Order in case 04-2-008824-4 and its aftermath. Further, Mr. Carr has been banned from the social functions which he had attended, not for any action on his part, but due to the assumptions people make about the moral character of a person who has been the subject of a Restraining Order.

9. Mr. Carr applied to have the record of the arrest in Oregon sealed (Multnomah Circuit Court Clearing 0923389), but this was denied. Mr. Carr has appealed to the Oregon Court of Appeals (case A132012), but this appeal is still pending and is not yet ripe for federal consideration. No actions in Oregon will be considered in this case other than their continuing impact on Mr. Carr's ability to seek alternative employment.

10. The District Court can process many RCW 26.50 requests, but in cases where there is a

shared residence (as in the cases above), the Superior Court must hold the hearing and issue the Order (RCW 26.50.020 (5) (c)). However, rather than dividing the RCW 26.50 requests between the courts or having the Clark County Superior Court hear all these requests, the Clark County Superior Court chose to attempt to delegate authority to hear these matters to the District Court. Unfortunately there does not appear to be any legal way to delegate these matters.

11. The two cases before the Superior Court (04-2-08824-4 and 04-2-08908-9) were heard by Defendants Eiesland and Melnick who were appointed as Superior Court Commissioners in violation of the state constitution and, hence, did not have jurisdiction to hear the matters. There were also numerous violations of Washington State statutes as as well as the Fourteenth Amendment of the U.S. Constitution requirements of due process and equal protection under the law. These issues were raised before the trial court.

12. The violations of Washington statutes and constitutional issues include:

- Washington Constitution Article IV, Section 23, Clark County Superior Court Commissioners exceed three in number.
- RCW 2.24.040 (3) Family Court Commissioners issue orders which are not temporary.
- RCW 26.50.070 (3), no ex parte hearings held.
- RCW 26.50.070 (1), requirement of irreparable injury ignored .
- RCW 26.50.030, RCW 26.50.010, and RCW 9A.46.110 requirement of allegations of domestic violence ignored.
- Fourteenth Amendment, U.S. Constitution- Due Process, no testimony taken at hearing.
- Fourteenth Amendment, U.S. Constitution- Due Process, evidence from Judicial Information System used without notice and service to Respondent.
- RCW 26.50.070 (4), RCW 26.50.085 and RCW 26.50.123, temporary orders longer 14 days granted without required underlying justification (publishing or mail).
- RCW 26.50.035 (1) (c), placed restrictions on Respondent's ability to request modifications to an Order for Protection.
- Fourteenth Amendment, U.S. Constitution- Due Process, denying Petition for FTA (Failure to Appear) when there was an Order for Protection prohibiting attendance at the hearing

and outstanding Motions to reschedule the hearing and, separately, permitting attendance at the hearing.

- Fourteenth Amendment, U.S. Constitution- Due Process, right of appeal not provided.
- Fourteenth Amendment, U.S. Constitution- Equal Protection under the Law, sexual bias in entire process for RCW 26.50 (domestic violence) matters.

13. While Washington state government certainly has the authority to grant restraining orders, such orders always require a careful balance of constitutional rights of both the Petitioner and Respondent. Defendants' wholesale disregard for the restrictions of the relevant statutes and constitutional provisions virtually assured that numerous parties would have their constitutional rights infringed upon both through the granting of orders which were unfounded as well as the denial of orders which were warranted such as in Mr. Carr's cases. Defendants could easily have foreseen unwarranted arrests and criminal records impacting individual's employment as in the case at hand.

14. Mr. Carr appealed to the Washington State Court of Appeals, Division II, in case number 32671-0-II where these issues were again raised. The Court of Appeals affirmed the decision of the Superior Court.

15. Mr. Carr filed a Petition for Review to the Washington Supreme Court (case 78768-9) which was denied.

Jurisdiction and Venue

16. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331, as a case arising under 42 U.S.C. § 1981, 42 U.S.C.§ 1982, 42 U.S.C. § 1983, 42 U.S.C. § 1985 (3), and 42 U.S.C. § 1986 as a case seeking to enforce rights and privileges secured by the laws of the United States as authorized by 28 U.S.C. § 2201 (a) and 28 U.S.C. § 2202 as well as under the Fourteenth Amendment of the U.S. Constitution guarantees of Due Process and Equal Protection of the Law.

17. Venue is proper in this district pursuant to 28 U.S.C. § 1391 (b) because a substantial part of

the events or omissions giving rise to the claim have occurred or will occur in this district and all of the Defendants in this matter reside in this District.

18. Defendant Sam Reed is sued in his official capacity as the Secretary of State of Washington. His official residence is at the Legislative Building, Olympia, WA 98504. The Secretary of State is designated by law as the chief elections officer of the State and has supervisory control over local election officials. RCW 29A.04.230. He is responsible for administering all statewide elections, including for federal office, id.; for issuing instructions and promulgating rules, and facilitating their execution in a "uniform manner," for the conduct of elections, id 29A.04.610; for providing "voter guides" and updated compilations of election law to local and county election officers, id. RCW 29A.04.245, RCW 29A.04.235; for instructing county elections officials with respect to election administration and compelling observance with the laws, rules and guidelines related thereto, id. RCW 29A.04.530; for prescribing training of polling place officials, id; and for recording and certifying statewide election results, id RCW 29A.04.230, among other things. Defendant Reed is also responsible for coordinating the requirements of Washington election law and federal law.

19. Defendant Rob McKenna is sued in his official capacity as Attorney General of the State of Washington. His official residence is at 1125 Washington St SE; Olympia, WA 98504-0100. Some of the relief sought in this action would apply throughout the State of Washington and it is Mr. McKenna and his office's duty to appear and act as counsel for the state in accordance with RCW 4.92.030. Further as other Defendants are being sued in their official capacity for the State of Washington, Mr. McKenna may be requested to represent them in their official capacity in accordance with RCW 4.92.060.

20. Defendants Robert L. Harris, John F. Nichols, and Barbara D. Johnson are all Judges for the Clark County Superior Court and are being sued in both their official capacity for the State of Washington as well as private individuals. Their official residence is Clark County Superior Court; 1200 Franklin Street; Vancouver, WA 98660.

21. Defendants Kenneth Eiesland, Rich Melnick, and John Hagensen are all Judges for the Clark County District Court while Kelli E. Osler is a Commissioner for the Clark County District

Court and are being sued in both their official capacity for the State of Washington as well as private individuals. Their official residence is Clark County District Court; 1200 Franklin Street; PO Box 9806; Vancouver, WA 98666. Defendants Eiesland and Melnick were also two of more than three individuals appointed in Clark County as Superior Court Commissioners under (and in violation of) Washington State Constitution, Article IV, Section 23 in 2004 and 2005. All four of these Defendants are Family Court Commissioners in Clark County under RCW 26.12 in 2006 and 2007.

22. Defendants Joel Penoyar, (J.) C. C. Bridgewater and J. Robin Hunt are Judges in the Court of Appeals, Division II and are being sued in both their official capacity for the State of Washington as well as private individuals. Their official residence is Court of Appeals, Division II; 950 Broadway, Suite 300; Tacoma, WA 98402.

23. Defendants Gerry L. Alexander, Barbara Madsen, Mary E. Fairhurst, Susan Owens and James M. Johnson are Judges in the Washington State Supreme Court and are being sued in both their official capacity for the State of Washington as well as private individuals. Their official residence is Washington State Supreme Court; 415 12th Ave SW; Olympia, WA 98504-0929.

24. Plaintiff resides at 11301 NE 7th St., Apt J5; Vancouver, WA 98604 and is a resident of Clark County. The Plaintiff and Defendants are residents of Clark, Thurston, and Pierce counties all of which are in the jurisdiction of this court.

Count I

Commissioners Exceed Three in Number

25. Plaintiff repeats and realleges paragraphs 1 through 24, as if fully set forth.

26. Defendant Harris signed orders appointing the Honorable Anders, Eiesland, Melnick and Schreiber as Clark County Superior Court Commissioners in 2004 and the Honorable Anders, Eiesland, Melnick and Schreiber in 2005. These orders violated the Washington State Constitution, Article IV, Section 23 which states

> There may be appointed in each county, by the judge of the superior court having jurisdiction therein, one or more court commissioners, ***not exceeding three in***

number, who shall have authority to perform like duties as a judge of the superior court at chambers....

These orders were included in the record of cases 04-2-08824-4 and 04-2-08908-9.

27. A reasonable person could easily conclude the numeric limit placed on the appointment of Superior Court Commissioners in the Washington constitution (Article IV, Section 23) is arcane, ineffective and even counter productive. However, enough reasonable people did not reach that conclusion when the issue was presented to the voters in 1981, Ordell v. Gaddis, 99 Wn.2d 409, (1983). As long these numeric limits are held to be valid, it is not reasonable to simply ignore the limits. The danger of placing of expediency over legality is that once it becomes the norm in our society (as it must once we start down that slippery slope), within a decade we would no longer have a government of law, but, in all likelihood, a military dictatorship.

28. While the court found in Ordell v. Gaddis, 99 Wn.2d 409 that Family Court / Law Commissioners and Pro Tempore Commissioners do not count in the numerical limit, the orders cited above do not contain any such reference. Further, Ordell makes it clear that the constitutional numeric limit on Superior Court Commissioners is a valid limit and that the courts may not otherwise exceed that limit.

29. These Orders violated Plaintiff's and numerous other residents of Clark County right to have matters heard by a Judge rather than an appointed Commissioner as too many matters were heard by these alleged Commissioners in Clark County. These Orders further violated Plaintiff's and other residents of Clark County right to due process under Fourteenth Amendment, U.S. Constitution as the alleged Commissioners hearing their matters did not have jurisdiction to hear said matters because their appointment Orders were invalid.

30. The law is clear on the effect of Orders made when the court did not have jurisdiction. An order can be 'declared void for the reason that the ... court did not have jurisdiction to enter such decree.' Barker v. Barker, 31 Wn. (2d) 506. It is also well established that all subsequent actions based on the void order are void ab initio or void from the beginning Beyerle v. Bartsch, 111 Wash. 287. Any Orders for Protection, arrests and convictions based on these

invalid Orders are similarly void.

31. Defendants Eiesland, Melnick, Nichols and B. Johnson were aware of these illegal orders and acted in concert with Defendant Harris as well as individually through actions taken in support of this deprivation of rights and through the omission of actions required under the constitution of Washington and the United States and their oath of office. See paragraphs 39 through 42 for more details about the complicity of these Defendants.

32. These knowing and willful violations of the constitutions and their oath of office are so egregious that they can not have been performed in Defendants' official capacity and were in fact made as private individuals in violation of the United States Constitution and 42 U.S.C. § 1981, 42 U.S.C.§ 1982, 42 U.S.C. § 1983, 42 U.S.C. § 1985 (3), and 42 U.S.C. § 1986.

Count II

Interference With Right To Appeal

33. Plaintiff repeats and realleges paragraphs 1 through 32, as if fully set forth.

34. The attempted appointment of Superior Court Commissioners in Clark County in violation of Washington State Constitution, Article IV, Section 23 created an environment where appeals were illegally restricted to prevent the required overturning of these void orders.

35. The fact that the Defendants Melnick and Eiesland were acting as alleged Commissioners was concealed from all parties by holding the hearings in what were clearly marked as a District Court Rooms and in a session announced as one of the District Court and before a Judge. Further when their status is identified on forms (case 04-2-008824-4, order dated October 27. 2004) they are listed as Judge rather than Commissioner.

36. The dockets which would normally list the deciding authority were not posted for public access but instead kept by security guards who directed parties to the correct court room.

37. The deciding authority is routinely not completed in the Judicial Information System so that there is no record of the deciding identity other than the signature which is often not clearly

legible. In case 04-2-008908-9 there was even no signature on the decision of November 12, 2004.

38. When Plaintiff attempted to file a Notice of Appeal on November 23, 2004 in cases 04-2-008824-4 and 04-2-008908-9, it was improperly rejected by an unidentified clerk with some indications that she was being directed to violate the appeal process. Plaintiff was then directed to file a Motion for Revision.

39. Plaintiff's Motions for Review were improperly denied by Defendant B. Johnson on December 10, 2004 even though they were properly submitted during the 30 day period when the Orders were appealable as matter of right. The justification was that the Motions were not submitted within the ten day period for a Motion for Revision of a Commissioner's decision, but this was the first time that Plaintiff had been informed of Defendants Eiesland and Melnick's status as an alleged Commissioner.

40. In an apparent attempt to keep the identity of the deciding authority hidden from the Court of Appeals, Defendant B. Johnson falsely identified Defendant Nichols as the deciding authority (case 04-2-08908-9 , letter dated January 7, 2005) even though a trivial comparison of the hand writing in the Orders of November 12, 2004 and January 3, 2005 demonstrates her 'discovery' as false.

41. Defendant Nichols issued an Order in case 04-2-08908-9 on January 3, 2005 even though there was no motion before the court in this case and a Notice of Appeal had been filed in this case on December 10, 2004. This ruse as to the deciding authority was dropped on January 19, 2005 after the Plaintiff had filed a Notice of Appeal on January 18, 2005 in case 04-2-008824-4 where the identity of Defendants Eiesland and Melnick were clearly identified in the record and on the Notice of Appeal.

42. Defendants Eiesland, Nichols, Johnson, and Harris acted in concert as well as individually through actions taken in support of this deprivation of rights and through the omission of actions required under the constitution of Washington and the United States and their oath of office.

43. These knowing and willful violations of the Defendants' oaths of office are so egregious that they can not have been performed in Defendants' official capacity and were in fact made as private individuals in violation of the United States Constitution and 42 U.S.C. § 1981, 42 U.S.C.§ 1982, 42 U.S.C. § 1983, 42 U.S.C. § 1985 (3), and 42 U.S.C. § 1986.

Count III

Requirements of Statutes Ignored

44. Plaintiff repeats and realleges paragraphs 1 through 43, as if fully set forth.

45. An environment where the Washington State and U.S. Constitution were ignored and barriers were placed in the appeal process caused widespread neglect of other Rules of Law.

46. Defendants Eiesland, Melnick, Hagensen, and Osler violated RCW 26.50.070 (3) which requires the court to hold an ex parte hearing which must be 'in person or by telephone' but is actually in chambers with no contact with the Petitioner. There are numerous cases where this is true, but in particular this includes 04-2-008824-4, 04-2-008908-9, 07-2-07027-7, and 07-2-07028-5.

47. These ex parte hearings were required by the legislature to provide the court with the opportunity to gather information missing from the petition thereby protecting the rights of both the Petitioner and the Respondent. For example, a purported burglary which was reported to the police could, based on inquiries from the court, turn out to just be a husband dropping by to pick up a few things which he had left at the jointly maintained marital residence while his wife was out of town and as part of an on-going separation. Further, if the court did not see irreparable injury as a foreseeable possibility with facts such as that the Respondent 'has been seeing a neurologist and taking serious psychotropic medications.... She does not take her medications regularly and as result has serious emotional outbreaks', an unsecured hand gun, and increasing animosity, then the Plaintiff has the opportunity to more fully explain how the facts presented combine to make irreparable injury as a foreseeable possibility.

48. Defendant Eiesland and Melnick ignored the requirement of RCW 26.50.070 (1) of irreparable injury in case 04-2-008824-4 where the Temporary Order for Protection was granted even though the Petition contained no elements of irreparable injury and case 04-2-008908-9 where the Temporary Order for Protection was denied even though the Petition contained the elements of irreparable injury.

49. Defendant Eiesland and Melnick ignored the requirements of RCW 26.50.030, RCW 26.50.010, and RCW 9A.46.110 of allegations of domestic violence, i.e. assault, threats of assault, or behavior which would cause a reasonable person to fear injury to person or property. An order was granted in case 04-2-008824-4 where there were no allegations of domestic violence, but denied in case 04-2-008908-9 where there were such allegations.

50. Defendant Melnick granted and denied numerous RCW 26.50 cases including case 04-2-008824-4 on October 27, 2005 without permitting to the Respondent to testify as required by due process, STATE v. KARAS - 108 Wn. App. 692 as no parties were ever placed under oath, only allegations were heard with no realistic threat of penalty for lying to the court.

51. Defendant Hagensen routinely grants extensions of Temporary Orders of greater than 14 days (normally 21 days) without meeting the requirements of RCW 26.50.070, RCW 26.50.085 and RCW 26.50.123 as in case 06-2-08385-1.

52. Defendant Melnick relied on evidence from the Judicial Information System on October 27, 2007 using evidence which was not provided to the Respondent with the notice and service required by due process and Fourteenth Amendment, U.S. Constitution.

53. The Order in case 04-2-008824-4 was modified to correct Mr. Carr's birth date by an unknown party (though Defendant Melnick is a likely candidate) even though there was nothing in the record to support this change and no motion before the court in that matter. Mr. Carr later attempted to gain access to any police reports (a likely source of that information) which may have accessed via the Judicial Information System to support that change, but the Superior Court denied those requests (Motion of December 29, 2004) on February 16, 2005.

54. Defendant Eiesland denied Plaintiff's Petition in case 04-2-008908-9 for FTA (failure to appear) on January 19, 2005 even though the Plaintiff was prohibited from attending the hearing and there was an outstanding Motion to Reschedule (January 10, 2005) the hearing and a Motion to Revise (04-2-008824-4, December 29, 2004) to permit the Plaintiff to attend the hearing. This violated Plaintiff's right to due process through the abuse of judicial discretion.

55. Defendant B. Johnson violated Plaintiff's rights to due process on February 16, 2005 by denying the Motion to Revise in case 04-2-008824-4 request for the ability to attend hearings where he was scheduled to appear and RCW 26.50.035 (1) (c) by adding restrictions on Plaintiff's right to request modifications of the Order of Protection.

Count IV

Family Court Commissioners issue Restraining Orders

56. Plaintiff repeats and realleges paragraphs 1 through 43, as if fully set forth.

57. In apparent recognition that the prior appointments of Superior Court Commissioners violated the numeric limits of the Washington Constitution and were not valid, in 2006 and 2007 Defendant Harris representing the Superior Court instead appointed the District Court Judges and Defendant Osler as Family Law Court Commissioners under RCW 26.12. However, the Family Court is a court of limited jurisdiction (Ordell v. Gaddis, 99 Wn.2d 409) and Family Court Commissioners are only authorized to issue temporary restraining orders (RCW 2.24.040 (3)) which does not include the Orders for Protection of a year or more which they routinely issue.

58. The individuals hearing RCW 26.50 matters in Clark County at this time do not have jurisdiction to sign the resulting Orders which makes them invalid. To support this facade, the Defendant Harris signed orders in 2007 appointing as Family Court Commissioners the Honorable Eiesland, Hagensen, Melnick, Osler, Schreiber, Swanger and Zimmerman. Assigning case loads to Commissioners who have no authority to resolve matters (and ignoring the restrictions of statutes) is another violation of the oath of office. Defendants B.

Johnson and Nichols as well as the other Judges of the Clark County Superior Court are complicit in this assignment of cases to Commissioners outside their jurisdiction.

59. Defendant Hagensen signed an Order for Protection for a full year on January 17, 2007 in case 07-2-07009-9 which involved a shared residence (must be heard in Superior Court) even though he only had authority to issue temporary restraining orders (RCW 2.24.040 (3)).

60. Defendant Osler signed an Order for Protection for a full year in case 06-2-08362-1 even though she only had authority to issue temporary restraining orders (RCW 2.24.040 (3)).

61. Defendants Johnson, Nichols, Osler, and Hagensen acted in concert with Defendant Harris as well as individually through actions taken in support of this deprivation of rights and through the omission of actions required under the constitution of Washington and the United States and their oath of office.

62. These knowing and willful violations of the Defendants' oaths of office are so egregious that they can not have been performed in Defendants' official capacity and were in fact made as private individuals in violation of the United States Constitution and 42 U.S.C. § 1981, 42 U.S.C.§ 1982, 42 U.S.C. § 1983, 42 U.S.C. § 1985 (3), and 42 U.S.C. § 1986.

Count V

No Right of Appeal

63. Plaintiff repeats and realleges paragraphs 1 through 62 as well as those listed in Count VI, as if fully set forth.

64. Plaintiff submitted an appeal to the Washington Court of Appeals in case 32671-0-II which raised the issues in Counts I through III and in Count VI. In particular it raised the question of:

> Can the Superior Court in any given county make more than three valid simultaneous appointments of Commissioners who aren't Family Court Commissioners? The trial court answered in the affirmative.

with evidence copies of Orders appointing four Commissioners who weren't Family Court / Law Commissioners.

65. Defendants Penoyar, Bridgewater and Hunt denied the appeal in an unpublished opinion which stated in part:

> Carr argues that his due process rights and his right to have a judge adjudicate his case were violated because Clark County allegedly appointed more than three court commissioners. However, a family law commissioner is not a "commissioner" within the meaning of the constitutional provision limiting the number of court commissioners in counties...

The Defendants intentionally misconstrued the question before them and and answered a well understood question which was not relevant to the case at hand.

66. Plaintiff submitted a Petition for Review to the Washington Supreme Court in case 78768-9 which raised the same issues. It also called to attention to the fashion in which Defendant Penoyar intentionally misconstrued the issues which had been presented to the Court of Appeals. While it could be argued that Defendant Penoyar had simply misread a point or two, the manner in which so many issues were artfully misconstrued indicates it was intentional and not any accident.

67. Defendants Alexander, Madsen, Fairhurst, Owens and J. Johnson denied the Petition as well as supplemental evidence presented in Count IV.

68. When Washington judges are presented with evidence of direct violations of the state constitution, their oath of office requires them to correct these violations to include overturning the invalid orders and everything which was the result of these violations. Instead they attempted to conceal these violations of the state constitution.

69. Defendants Penoyar, Bridgewater, Hunt, Alexander, Madsen, Fairhurst, Owens and J. Johnson acted in concert as well as individually through actions taken in support of this deprivation of rights and through the omission of actions required under the constitution of Washington and the United States and their oath of office.

70. These knowing and willful violations of the constitutions and their oath of office are so egregious that they can not have been performed in Defendants' official capacity and were in

fact made as private individuals in violation of the United States Constitution and 42 U.S.C. § 1981, 42 U.S.C.§ 1982, 42 U.S.C. § 1983, 42 U.S.C. § 1985 (3), and 42 U.S.C. § 1986.

Count VI

Sexual Bias in RCW 26.50 Process

71. Plaintiff repeats and realleges paragraphs 1 through 70, as if fully set forth.

72. In an environment of Defendants acting without jurisdiction and routinely placing expediency of legality, ignoring any statutes or other restrictions which were inconvenient, there is no expectation that the Defendants would endeavor to provide equal protection under the law as required for the Fourteenth Amendment of the U.S. Constitution, in particular, decisions which are fair and without sexual bias.

73. Mr. Carr's Petition for an Order for Protection was denied even though it met all the requirements listed in RCW 26.50.030, RCW 26.50.010, and RCW 26.50.070 (1) in case 04-2-008908-9 while Karyn's Petition for an Order for Protection was granted even though it did not meet the requirements listed in RCW 26.50.030, RCW 26.50.010, and RCW 26.50.070 (1) in case 04-2-008824-4. Given the sex of the parties in these matters it suggests there may be sexual bias in the processing of RCW 26.50 (domestic violence) matters in Clark County.

74. A review of recent RCW 26.50 (domestic violence) decisions in Clark County including cases 06-2-08344-3 through 07-2-07040-4 shows that 103 of the 118 cases could be clearly classified as female seeking protection from male (FM) or male seeking protection from female (MF). 84 were FM with 37 withdrawn, 39 granted, and 8 denied. 19 were MF with 12 withdrawn, 3 granted and 4 denied.

75. These rates are exactly what one would expect if men were about ten times more likely to commit domestic violence than men. However, peer reviewed studies have repeatedly shown that men and women are about equally likely to commit acts of violence in domestic relations as this time. See Change In Spouse Assault Rates From 1975 to 1992: A Comparison of Three National Surveys in the United States, Murray A. Strauss and Glenda Kaufman Kantor. Numerous other studies have found similar results. When U.S. Census Bureau figures are

used to compute the estimated number of eligible victims and assuming a normalized distribution of applicants, the discrepancy between the rates of eligible victims and orders granted clearly demonstrates and deeply rooted sexual bias in the entire RCW 26.50 domestic violence process.

76. Over the last several decades there have been numerous portrayals in the media of the scenario where 'Man says something which Woman finds offensive, Woman slaps Man, Man is silenced by this justified response to his offensive behavior, and, later, through the typical sort of karmic retribution, terrible things happen to Man for his prior offensive behavior'. The problem with this scenario is that it has the effect of condoning and even encouraging criminal physical abuse of men in domestic relations (with the inherent emotional abuse of such physical abuse) while at the same time convincing men that any abuse they receive must be justified and that they have no real alternative to accepting their abuse in silence. The reverse scenario when a man strikes a woman is uniformly portrayed as a heinous act. This abhorrence of abuse by men is consistent with the values of our society and the law itself. However, the sexually discriminatory acceptance of the physical abuse of men is an example of the inconsistencies in our society's values, but the law does not and should not reflect these inconsistencies.

77. Over the last forty years there has been an almost hysterical concern with domestic violence against women, presumably being fed by the inconsistent values of society as described above, but also feeding these same inconsistencies. There are numerous serious publications where it is stated that the primary cause of injury and death to adult women is domestic violence to include the Bell Atlantic HR News before the merger to form Verizon. The claim is patently absurd. A trivial check of the figures from the U.S. Center for Disease Control demonstrates that the actual causes are automobile accidents and cancer respectively. However, even an otherwise scholarly work such as A Process Evaluation of the Clark County Domestic Violence Court by Kleinhesselink and Mosher claims that domestic violence '*is the leading cause of injury to women ages 15 to 44*'. Instead of listing the original source, though, it is just a quote from Mills, L. (1998). *Mandatory arrest and prosecution policies for domestic violence.* Criminal Justice and Behavior 25:306-318.

78. Ms. Mills made what appears to be an intentionally inaccurate quote from the Surgeon General, Ms. Novello, U.S. Public Health Service, JAMA, 267(23), 3132 which states 'One

study found violence to be ... the leading cause of injuries to women ages 15 through 44 years (Am J Epidemiol. 1991;134:59-68). That study, conducted for a 1-year period by the Philadelphia Injury Prevention Program, examined injuries to women resulting in emergency department visits or death.' While that study has numerous flaws, not the least of which is the very limited and skewed sample (ghetto demographics and no correction for the endemic non domestic violence in such areas), at no point did Ms. Novello imply that this very limited result could be generalized to a much larger population as Ms. Mills did or that non domestic violence could be ignored in these results. It appears that the truth was not extreme enough for Ms. Mills and she found it necessary to knowingly publish false claims. Now those attempting to generate additional hysteria concerning domestic violence against women simply cite this and similar false sources ad nauseum.

79. While these academic fabrications may be of little interest outside of academic circles, their repercussions extend far beyond the academic environment. For example, the very title of the U.S. 'Violence Against Women Act of 1994' encourages sexual bias by ignoring the plight of men. By 1992 it was well established that men were victims of domestic violence as often as women. However, in the hysterical environment created by these false claims there can be little hope of equal protection under the law.

80. In particular, everyone involved with prosecuting domestic violence matters from police to clerks and adjudicators is often given 'training' which has the effect of developing and increasing this sexual bias. They are often taught that even if the women and man both deny that there is any abuse of any kind they should assume that the man is beating the woman and look for evidence to support that conclusion. Until this needless sexual bias is removed from the process, any findings which result are suspect.

81. An example of how Clark County Superior Court discriminates against men is the instructional videos which are posted on their web site at:
http://www.co.clark.wa.us/courts/dvvidio.html
In that video the victim is a woman and the offender is a man. This is just one of the subtle ways in which our society tells men that they are not entitled to equal protection under the law in these matters.

82. The Plaintiff is deeply concerned about the seriousness of Domestic Violence, being a victim himself, and does not in any way condone or encourage this criminal behavior. However, an extremely biased judicial process can not effectively address this very complex and multi-faceted problem. Corrections are required to promote a safe and healthy environment for everyone, men and women.

Count VII

Restrictions on Candidates for Court Justices

83. Plaintiff repeats and realleges paragraphs 1 through 82, as if fully set forth.

84. The Washington State Constitution Art. 4 § 17 requires that residents seeking to declare their candidacy for election as Judges for the Washington Superior Court or Washington Supreme Court be must have been admitted to practice law before the courts of Washington but the Washington Supreme Court plays a critical role in determining who can practice law before said courts (RCW 2.48.060). The Supreme Court in Washington has the ability to determine who run against them in upcoming elections. This circular restriction infringes on Fourteenth Amendment, U.S. Constitution Equal Protection under the Law rights as it has the potential for creating a privileged class of practitioners. While this can be acceptable for the practice of law if there are adequate alternatives (such as pro se representation), it is unacceptable for any elected office.

85. The widespread choice of expediency over legality in Clark County and, given the complicity of the appeals process, by extension throughout Washington State, raises questions as to how such neglect and open contempt for the Rules of Law can have persisted. Surely any number of attorneys must have noticed that the constitution and statutes had little relevance in these proceedings. Why weren't there numerous appeals by attorneys who support and believe in the Rule of Law? The likely answer is that attorneys soon learned that the appeals process was fruitless and that complaining of violations of the Rule of Law simply got retribution against them and their clients. An attorney simply could not earn a living practicing law if the judges he or she appeared before punished past complaints. This places attorneys in the unenviable position of either going along with a morally corrupt system or pursuing a new

line of work (and after they had spent many years getting the training required to practice law). In such an environment, the only truly qualified candidates for a judicial position would be someone who had not participated in that corrupt system, i.e. someone who has not practiced law in Washington state. Given the inbred controls on the practice of law in Washington, there is no basis for the requirement that a candidate for a judicial position be admitted to practice law in the state of Washington.

86. Plaintiff intends to be a candidate in the 2008 elections for judicial positions in Washington and to encourage others who have not practiced law in Washington to similarly become candidates. It should be the choice of the voters as to whether they would prefer these untainted but also inexperienced candidates.

87. Similarly, RCW 2.06.050 and RCW 3.34.060 each have requirements that candidates for the Washington Court of Appeals and District Courts be lawyers admitted to practice law in the state of Washington. Further, in 2006 Ernest Edsel was barred from appearing on the ballots for the Court of Appeals Division II (opposite Defendant Penoyar) because of an Order from the Thurston Superior Court relying on this requirement of RCW 2.06.050. The voters would have been much better served to have candidates who are devoted to upholding the Rule of Law rather than placing expediency above legality.

88. RCW 29A.24.091 requires a filing fee of roughly $1320 or a petition with an equivalent number of petitions if the filer lacks sufficient assets or income to pay the filing fee. However, just as the traditional poll tax was found to be discriminatory against low income citizens, this either / or alternative is discriminatory against citizens of moderate means, those who would be most likely to challenge an incumbent with the promise of upholding the rule of law and putting an end to expediency above legality. A potential candidate of moderate means could be construed to be able to pay the filing fee (by going into debt for example), but would be needlessly discouraged by this fee in a fashion similar to poll taxes discouraging low income voters.

Additional Defendant
Commission of Judicial Conduct

89. Plaintiff repeats and realleges paragraphs 1 through 70, as if fully set forth.

90. Defendant Wanda Brigg is sued in her official capacity as the Chair of the Washington State Commission of Judicial Conduct. Her official residence is at P.O. Box 1817; 210 11th Ave. SW (GA Building), Suite 400; Olympia, WA 98507. The Washington State Constitution - Article IV, Section 31 along with RCW 2.64 creates the Commission on Judicial Conduct and directs that the Commission create and maintain rules of procedure. Under these rules, Wanda Briggs was elected Chair from June 16, 2007 to June 16, 2008. The Chair has the authority to call meetings of the commission and act as presiding officer at those meetings at which the Chair is present.

91. Washington State Constitution, Article IV, Section 31, directs that the Commission on Judicial Conduct "*shall first investigate the complaint*" ... and "*if there is probable cause to believe that a judge or justice has violated a rule of judicial conduct*"..., conduct hearings and "*shall either dismiss the case, or shall admonish, reprimand, or censure the judge or justice, or shall censure the judge or justice and recommend to the supreme court the suspension or removal of the judge or justice*".

92. On July 9, 2006, August 12, 2006, and October 16, 2006, Mr. Carr complained to the Commission of the Defendants' (those listed as private individuals) violations of the state and U.S. Constitution and, implicitly, the law and their oaths of office. These were violations of Canon 1 which states '*Judges shall uphold the integrity and independence of the judiciary*' and in comments '*Although judges should be independent, they must comply with the law*'. Mr. Carr also complained that the Defendants violated Canon 3, '*Judges shall perform the duties of their office impartially and diligently.*'

93. On August 4, 2006 and June 8, 2007, the Commission decided to not consider these complaints with "dismiss[ed] as legal" and "dismiss as no basis to reopen." Confidentiality provisions no longer apply to individuals outside the Commission as the issue is resolved, CJCRP 11 (3).

Count VIII
Commission of Judicial Conduct

94. Plaintiff repeats and realleges paragraphs 89 through 94 as if fully set forth.

95. By ignoring serious violations of statutes and the constitutions, the Commission of Judicial Conduct helped to create an environment where judges ignore the statutes and the constitutions with impunity. Further, not taking actions to prevent continuing violations of the rights of numerous individuals under due process is a violation of 42 U.S.C. § 1986. Had the Commission taken actions against the Defendants, it is likely that the Defendants would have been required to comport with the requirements of the constitution and statutes simply because of the high profile of the Commission's decisions

96. The Plaintiff was harmed by the inaction of the Commission of Judicial Conduct because he has not been able to apply to Clark County Superior Court for redress under RCW 26.50 as the alleged Commissioners hearing such matters still do not have jurisdiction to provide the relief sought and do not comply with the Due Process requirement included in RCW 26.50. This has infringed on the Plaintiff's and numerous other individuals' Fourteenth Amendment right to due process with respect to life, liberty, and property (each of which is impacted by RCW 26.50 proceedings).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff asks this Court to enter an Order:

1. Declaring both the Temporary Order for Protection as well as full Order for Protection entered in Clark County Superior Court case 04-2-008824-4 void for the reason that the Honorable Eiesland and Melnick did not have jurisdiction to enter such decrees as well as other faults in the processing of that matter and lack of evidence in accordance with RCW 26.50;

2. Declaring void ab initio all Orders and Decisions which are signed by an alleged Commissioner in 2004 and 2005 who were one of more than three Commissioners appointed under and in violation of the Washington State Constitution, Article IV, Section 23 and that

all arrests and convictions which were based on these void ab initio decrees are similarly void. Further, that Clark County Superior Court Orders and Decisions in other years are similarly void if it can be shown they were signed by an alleged Commissioner who was one of more than three Clark County Superior Court Commissioners appointed under and in violation of the Washington State Constitution, Article IV, Section 23;

3. Declaring that all Decisions and Orders in Clark County Superior Court where the deciding authority can not be readily determined from the record are void ab initio as the jurisdiction of the court can not be established and that all arrests and convictions which were based on these void ab initio decrees are similarly void.

4. Declaring void ab initio all Orders for Protection and Restraining Orders in the state of Washington of Family Court Commissioners which are of duration greater than 14 days (or 24 days if the statutory requirements of RCW 26.50.070, RCW 26.50.085 and RCW 26.50.123 are met) and that all arrests and convictions which are based on these void ab initio orders are similarly void.

5. Declaring that RCW 26.50 Orders for Protection in Washington State must allow the Respondent to attend any court hearings where the Respondent is scheduled to appear and that this exception must be included in writing in every Order for Protection. Further, the omission of this allowance in previously completed orders does not invalidate the order nor does it in any way reduce this allowance;

6. Declaring that no court in Washington State can restrict a Respondent's right to apply for a modification to an RCW 26.50 order at any time as long as the application is made in writing to the court which issued the order as specified in RCW 26.50 (1) (c);

7. Declaring all Orders and Decisions in Clark County Superior Court case 04-2-008908-9 void as the Superior Court never held the ex parte hearing required by RCW 26.50.070 and also ordering the Superior Court to hold such a hearing as soon as practicable;

8. Declaring all RCW 26.50 Orders and Decisions in Clark County Superior Court as well as arrests and convictions which are the result of these decrees void if there is no documentation

of an ex parte hearing held in accordance with RCW 26.50.070;

9. Declaring that no clerk of the courts in Washington State can refuse to accept a Notice of Appeal if:
   - The notice is in writing,
   - The case number is specified and the clerk can accept filings for that case, and
   - The filer has the required fee.

   The clerk may transfer the request to another clerk of the court who is more knowledgeable in Notices of Appeals if the alternative clerk is available at that time;

10. Declaring that Notices of Appeal in Washington State can be filed with either the clerk of the court appealed from (see Washington State RAP Rule 5.2) or the court appealed to;

11. Declaring that in Washington State if a party properly submits a Motion to / for Revision, Reargue, Reconsider, Review, Renew, Revise or other similar request from a Decision during the period in which the Decision is appealable by right, the Court must grant this motion but may deny any and all of the relief sought. The time to file a Notice of Appeal is extended to be from the date of decision in said Motion (normally 30 days from the decision in the Motion);

12. Declaring that the Plaintiff in this matter be granted access to any information in the Judicial Information System which is not part of the public record in cases 04-2-008824-4 and 04-2-008908-9 and which was accessed by any Judge or alleged Commissioner considering these matters or, if there are not records of what material was accessed, then any and all records which reasonably could have been accessed by any Judge or alleged Commissioner considering these matters.

13. Declaring that no Judge or Commissioner in Washington State be granted access to any information in the Judicial Information System unless it is determined what case it is relevant to and only if it can be demonstrated that the parties in the matter have been given prior notice and service to all information which is displayed.

14. Due to pervasive sexual bias, declaring the entire record in RCW 26.50 matters in Clark County Superior Court to include any arrests and convictions which are the result of any resulting decrees be sealed, only to be released to the parties and, while they are active, for the purpose of enforcement but never for the purpose of determining employment prospects even for sensitive positions. However, the court must make available on request to any party the following information concerning any RCW 26.50 matter:

- Case Number,
- First names of parties,
- Sex of each party if it can be determined from the record (must be recorded in record for new petitions),
- Date, Name of Judge / Commissioner making the Decision, and Summary of each Decision (Granted, Denied, Withdrawn, or other result).

15. Declaring that the Clark County Superior Court must maintain records of the number of RCW 26.50 Petitions submitted and resulting decisions based on Male or Female Plaintiffs and Respondents to determine the extent of sexual bias in these proceedings. Further that the Court, Clerks, Sheriff's Office, Police and other agents of the state acting in their official capacity to process and enforce these RCW 26.50 matters be given training on the importance of eliminating sexual bias from these proceedings as well as the actual rates of incidence of domestic violence as best determined in peer reviewed studies. Further that the sealing of the RCW 26.50 records, maintenance of additional records and training will continue until the Superior Court can demonstrate that it is actively addressing the problem of sexual bias and has corrected the problem to the satisfaction of the Federal District Court;

16. Declaring that those individuals identified by the court as having acted outside their official capacity and having acted to deprive the Plaintiff or others of their constitutional guaranteed rights each individually pay damages of $500 or such other amount as the court finds reasonable to a tax deductible charity of the Defendant's choice or other party as the court determines reasonable;

17. Declaring that the Washington State Constitution Art. 4 § 17, RCW 2.06.050 and RCW 3.34.060 are overly broad and that, given the totality of the circumstances, can not be used to

restrict eligibility for judicial positions in Washington state based on whether or not the candidate has been admitted to the practice of law.

18. Declaring that in order to increase the breadth of candidates for judicial positions in Washington state and not deprive any citizens of equal protection under the law, RCW 29A.24.091 must allow for any combination of the filing fee and petitions which total to the computed filing fee irrelevant of the filers current assets and income levels.

19. Declaring that the Washington State Commission of Judicial Conduct must initiate proceedings whenever there are allegations of violations of Washington state or United States statutes or constitutions which are related to a judge's official actions. In addition, any allegation that a judge interfered with the right of appeal or intentionally misconstrued or avoided addressing issues raised in an appeal which was before the judge, must be pursued. Further, if the allegations are substantiated the Commission must take some action against the offending judge.

20. Awarding Plaintiff any attorney fees and costs in accordance with 42 U.S.C. § 1988; and

21. Granting Plaintiff such additional relief as the interests of justice may require, together with his costs and disbursements in maintaining this action.

Respectfully submitted, August 15, 2007 (Vancouver, WA).

s/ *Brian P Carr*
Signature of Plaintiff
Brian Carr
11301 NE 7th St., Apt J5
Vancouver, WA 98684
503-545-8357

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

Brian P. Carr Plaintiff versus SAM REED, in his official capacity as Secretary of State of the State of Washington, and ROB MCKENNA, in his official capacity as Attorney General of the State of Washington and representing in their official capacity as representatives of the State of Washington and, separately, as private individuals the Honorable ROBERT L. HARRIS, JOHN F. NICHOLS, BARBARA D. JOHNSON, KENNETH EIESLAND, RICH MELNICK, JOHN HAGENSEN, KELLI E. OSLER, JOEL PENOYAR, (J.) C. C. BRIDGEWATER, J. ROBIN HUNT, GERRY L. ALEXANDER, BARBARA MADSEN, MARY E. FAIRHURST, SUSAN OWENS and JAMES M. JOHNSON as well as other currently unnamed parties as determined by the Court Defendants	Civil No. 3:07-cv-05260-RJB Plaintiff's Initial Disclosures Under FRCP 26 (a) (1)

I, Brian P. Carr, the Plaintiff in this matter, submit this Initial Disclosures Under FRCP 26 (a) (1).

1. The following defendants are expected to be sources of discoverable information:

Defendant	Records Sought
Eiesland	Concerning cases 04-2-08824-4 and 04-2-08908-9, training in domestic violence and / or sexual discrimination, and domestic violence case history in 2004 and 2005.
Melnick	Concerning cases 04-2-08824-4 and 04-2-08908-9, training in domestic violence and / or sexual discrimination, and domestic violence case history in 2004 and 2005.
Hagensen	Concerning case 06-2-08385-1, 07-2-07009-9 and 07-2-07028-5, training in domestic violence and / or sexual discrimination, and domestic violence case history in 2006
Osler	Concerning case 06-2-08362-1, training in domestic violence and / or sexual discrimination, and domestic violence case history in 2006
Nichols	Concerning cases 04-2-08824-4 and 04-2-08908-9, training in domestic violence and / or sexual discrimination, Commissioner appointments in 2004 to 2007, and domestic violence case history in 2004 and 2005
B. Johnson	Concerning cases 04-2-08824-4 and 04-2-08908-9 training in domestic violence and / or sexual discrimination, Commissioner appointments in 2004 to 2007, and domestic violence case history in 2004 and 2005
Harris	Commissioner appointments in 2004 to 2007
Penoyar	Concerning case 32671-0-II
Bridgewater	Concerning case 32671-0-II
Hunt	Concerning case 32671-0-II
Alexander	Concerning case 78768-9
Madsen	Concerning case 78768-9
Fairhurst	Concerning case 78768-9
Owens	Concerning case 78768-9
J. Johnson	Concerning case 78768-9
McKenna	Concerning Judicial Information System

Defendant	Records Sought
Briggs	Concerning case 5079

The Defendants are fully identified (to the degree known) in the complaint in this matter. No other individuals have been identified to date as likely sources of discoverable information.

2. I have tax records and records from the cases listed in the complaint that may be used to support the allegations in the complaint. They are maintained at my residence and may be reviewed at that location.

3. My computations of damages are shown in my Declaration dated August 15, 2007 with a total damages claimed of $206,006 if Plaintiff's criminal record is cleared by October 1, 2007.

4. I do not have any insurance agreements which are likely to be applicable for any judgment which is entered against me in this matter.

Dated August 15, 2007 at Vancouver, Clark County, WA.

s/ Brian P Carr
Signature of Plaintiff
Brian Carr
11301 NE 7th St., Apt J5
Vancouver, WA 98684
503-545-8357

Note: This brief and the associated transcripts are as submitted to the court except that all identifying information for my wife has been replaced with her first name, Karyn, as the normal references on my web pages are to first name only.

The Unpublished Opinion of the Court of Appeals as well as the Petition for Review are also available on line. These is also a page with links to the sections describing events as they occurred.

Page breaks have been moved slightly to avoid page splits in the middle of paragraphs. Page sizes are relatively small because of the formatting requirements of the Court.

To Be Argued by

Brian P. Carr

Time: 15 minutes

Court of Appeals, Division II

State of Washington

Case 32671-0-II

Karyn

Petitioner-Respondent

versus

Brian Patrick Carr

Respondent-Appellant

Appellant's Brief

Brian P. Carr

11301 NE 7th St, Apt J5

Vancouver, WA

360-607-0556

Respondent:

Karyn

Table of Contents

Extended Index of Record for Case 04-2-08908-9 4

Extended Index of Record for Case 04-2-08824-4 5

Preliminary Statement 7

Assignment of Error 8

Issues 8

Statement of the Case 11

- Background 11
- The Marriage 11
- The Separation 12
- Temporary Order 12
- Order For Protection 13
- Arrest and Incarceration 13
- Counter Petition 14
- Attempt to Appeal 14
- Notice of Appeal 15
- Revised Decision 15
- Final Decision 16

Argument 17

- 1. More Than Three Commissioners 17
- 2. Grounds for Temporary Order 19
- 3 Status of Commissioner not Announced 21
- 4 Grounds for Order for Protection 21
- 5. No Testimony taken at Hearing 23
- 6. No ex parte hearing 24
- 7 No deciding authority in the Record 25
- 8 Irreparable Injury 26
- 9. Attendance at Court Hearings 28
- 10 Failure to Appear 28
- 11. Clerk's rejection of Notice of Appeal 30
- 12 Denied Motion for Revision 31

13 Assignment of Separate Case Numbers 32

14 Sexual Stereotyping 33

15 Access to the Judicial Information System 34

16 Motions Denied Without Hearing 35

17 Restrictions on Scheduling Hearings 37

Summary 38

Table of Cases and References

CAR 7.2 (e) 36

City of Auburn v. Juan Jose Solis-Marcial - 51003-7-I 37

Clark County Superior Court Rule Rule 0.7 21

DETENTION OF G.V. - 124 Wn.2d 288 25, 29

HECKER v. CORTINAS - 110 Wn. App. 865 26

RCW 2.24.050 Revision by court 31

RCW 26.12.010 17

RCW 26.12.050 (3) 17

RCW 26.50.010 Definitions 19

RCW 26.50.020 (5) (c) 18, 39

RCW 26.50.035 (1) (c) 36p.

RCW 26.50.070 (3) 9, 24, 27

RCW 26.50.070 (5) 20

RCW 9A.46.110 9p, 22

SPENCE v. KAMINSKI - 103 Wn. App. 325 19, 24, 33

STATE v. KARAS - 108 Wn. App. 692 18, 23, 35pp.

Superior Court Civil Rule 7 35

Washington State Constitution, Article IV, Section 23 17

Pg	Date	Title, Case 04-2-08908-9
1	11/12/04	Denied Order for Protection, Brian Carr Petitioner
3	11/12/04	Petition for Order for Protection, Brian Carr
7	11/23/04	Motion for Order Re: Petition for Order of Protection
9	12/10/04	Notice of Appeal to Court of Appeals Div II
		(repetition of page 1-6)
16	1/10/05	Motion to Reschedule and Consolidate, Brian Carr
18	1/10/05	Memorandum in Support of Motion to Reschedule
20	1/10/05	Affidavit in Support of Motion to Reschedule
22	Exhibit A	Letter from Judge Johnson, Jan 6, 2005
23	Exhibit B	Amended Denial of TMORPRT, Judge Nichols, 1/5/05
26	1/6/05	Order Clarifying Denial of Petition, Judge Nichols
27	1/7/05	Letter from Judge Johnson to Brian Carr
29	1/14/05	Motion Requesting Decision and Hearing, Brian Carr
30	1/14/05	Memorandum in Support of Motion for Decision
32	1/14/05	Affidavit in Support of Motion for Decision
34	1/19/05	Denial of Petition, Honorable Eiesland
35	2/16/05	Findings and Order, Judge Johnson
38	3/30/05	Affidavit of Jurisdiction, Brian Carr
40	Exhibit A	Appointment Order, Commissioner Eiesland, 2005
42		Appointment Order, Commissioner Anders, 2005
44		Appointment Order, Commissioner Schreiber, 2005

Pg	Date	Title, Case 04-2-008824-4
46	10/15/04	Petition for Order for Protection, Karyn
50	10/15/04	Temporary Order for Protection, Honorable Eiesland
53	10/27/04	Order for Protection, Honorable Melnick, unmodified
57	10/27/04	Order for Protection, Honorable Melnick, modified
61	11/23/04	Motion for Review of Order for Protection, Brian Carr
		(repetition of pages 46-52, 1-6)
74	12/28/04	Motion to Revise, Notice of Hearing, Brian C
75	12/28/04	Motion to Revise, Requested Relief, Brian Carr
76	12/28/04	Motion to Revise, Memorandum in Support, Brian Carr
79	12/28/04	Motion to Revise, Affidavit in Support, Brian Carr
81	Exhibit A	Loan Agreement, May 26, 2003
82	Exhibit B	Letter from Brian Carr dated Oct 1, 2004 (incorrect)
85	Exhibit C	E-mail from Karyn, Nov 15, 2005 (incorrect)
89	Exhibit D	E-mail from Karyn, Dec 18. 2004
91	Exhibit E	Letter from Brian Carr, Dec 19, 2004
97	12/8/04	Motion to Revisit and Consolidation with 04-2-08908-9
108	12/8/04	Affidavit in Support of Motion to Revisit and Consolidate
110	Exhibit A	Motion for Delay in 04-3-02728-9 w Affidavit, 12/9/04
113		E-mail from Karyn, Nov 15, 2005 (incorrect)
117		Letter from Brian Carr dated Nov 24, 2004
119	Exhibit B	E-mail from Karen Hanson dated Dec 2, 2004
120	Exhibit C	E-mail from Brian Carr. September 29, 2004, 6:26:33
121		E-mail from Brian Carr. September 29, 2005, 21:48:53
124		E-mail from Brian Carr dated Oct 3, 2004
125	12/18/04	Letter to Judge Johnson from Brian Carr
126	12/18/04	Proposed Decision and Order, Brian Carr, 04-2-08824-4

Extended Index of Record for Case 04-2-08824-4

Pg	Date	Title, Case 04-2-008824-4
127	12/18/04	Proposed Decision and Order, Brian Carr, 04-2-08908-8
128	12/9/04	Return Not Found, Sheriff's Department, 04-2-08824-4
129	12/23/04	Affidavit for Record, Brian Carr
131	Exhibit A	Tape Request, for CRT 3, 10-27-04, Nov 12, 2004
132	Exhibit B	Proposed Notice of Appeal, 04-2-08824-4
133	Exhibit C	Proposed Designation of Record on Appeal, 11/16/04
		(repetition of pages 125-126)

137	1/7/05	Letter from Judge Johnson to Brian Carr
139	1/7/05	Decision and Order from Judge Johnson
140	1/18/05	Affidavit of Service, 04-2-08824-4 and 04-2-08908-9
142	1/18/05	Notice of Appeal to Court of Appeals Div II
		(repetition of pages 46-56, 139)
156	1/31/05	Notice of Hearing Scheduled, includes 04-2-08908-9
158	1/24/05	Affidavit of Jurisdiction, Brian Carr, also 04-2-08908-9
160	Exhibit A	Appointment Order, Commissioner Eiesland, 2004
162		Appointment Order, Commissioner Melnick, 2004
164		Appointment Order, Commissioner Anders, 2004
166		Appointment Order, Commissioner Schreiber, 2004
168	Exhibit B	Appointment Order, Commissioner Eiesland, 2005
		(repetition pages 158-169, copied and scanned again)
183	2/13/2005	Letter from Karyn to Judge Johnson
185		Attachment, Notice of Hearing Scheduled, Jan 31, 2004
186		Attachment, Letter from Karyn to Brian Carr, Feb 12, 2005
188	2/16/05	Findings and Order, Judge Johnson
191	3/30/05	Amended Designation of Record on Appeal
195		Certificate of Clerk's Papers

Preliminary Statement

The parties in this matter are married while their divorce is pending in Lincoln County. Soon after Mr. Carr moved out of the marital residence, Karyn applied for and received Orders for Protection which Mr. Carr opposes as unfounded without any allegations of violence or threats of violence. Shortly thereafter, Karyn complained of a violation of the Order and had Mr. Carr arrested in Portland, OR at the Mandarin House Restaurant at a meeting of Mensa, a social organization. Mr. Carr contends that he was not in violation of the Order as he was not aware of Karyn's presence. Mr. Carr applied for a similar Order for Protection to avoid future 'ambushes', but his request was denied.

While the Superior Court of Clark County has made an admirable effort to simplify and speed the processing of RCW 26.50 Domestic Violence cases, the court has chosen to ignore various requirements of the Washington state constitution, state law, and good principles of jurisprudence in seeking these goals. It is these excessive expediencies which make the process adopted in Clark County unconstitutional because of the lack of due process.

Mr. Carr seeks reversal of the Orders granted to Karyn, and granting of the Order for Protection sought by Mr. Carr. Mr. Carr also seeks a general review of selected RCW 26.50 Domestic Violence proceedings in Clark County to determine the extent of the failure of justice, the lack of due process, and the degree of prohibited sexual stereotyping.

Did the trial court abide by the constitutional and statutory requirements in granting Karyn Orders for Protection and denying Mr. Carr's Petition for an Order for Protection. Did the trial court abuse its discretion in summarily denying Mr. Carr's motions without a hearing and imposing further barriers to scheduling hearings?

Issues

- Can the Superior Court in any given county make more than three valid simultaneous appointments of Commissioners who aren't Family Court Commissioners? The trial court answered in the affirmative.

- Can a Temporary Order of Protection under RCW 26.50 be issued when there are no allegations of irreparable injury or even of violence or threats of violence? The trial court answered in the affirmative.

- In sessions announced as being under the auspices of the District Court, can decisions of the Superior Court be properly entered if the Superior Court Commissioner never announces his/her status as a Commissioner? The trial court answered in the affirmative.

- Can an Order for Protection under RCW 26.50 be issued when there are no allegations of violence or threats of violence and the claims of stalking are conclusory without any foundation of fear of injury. The trial court answered in the affirmative.

- Can a court grant an Order of Protection under RCW 26.50 without taking any evidence (testimony) from either party when there are conflicting allegations about points of substance? The trial court answered in the affirmative.

- Does an in chambers review of a Petition under RCW 26.50 where the Petitioner is not present constitute an 'ex parte hearing in person or by telephone' as required under RCW 26.50.070 (3)? The trial court answered in the affirmative.

- Is it permissible to routinely deny petitions without noting the deciding authority in the record? The trial court answered in the affirmative.

- Do three prior assaults (albeit minor), increasing animosity, emotional instability, and possession of a firearm meet the requirements of irreparable injury for a Temporary Order for Protection under RCW 26.50? The trial court answered in the negative.

- Must an Order of Protection with no contact provisions explicitly allow attendance at court hearings or sessions where the Respondent is scheduled to appear? The trial court answered in the negative.

- Can a Petition for an Order for Protection under RCW 26.50 be denied for FTA (failure to appear) while there is a pending Motion to Reschedule the hearing and while the Petitioner is prohibited by court order from appearing? The trial court answered in the affirmative.

- Is it permissible as a matter of law for a clerk to refuse to accept a Notice of Appeal because of defects in the form of the decision appealed from? The trial court answered in the affirmative.

- Is it appropriate for a court to deny a properly submitted Motion to Revisit which was filed while the decision was still

appealable as a matter of right? The trial court answered in the affirmative.

- When the parties are the same and court is the same and the issues are intimately related is it appropriate to issue different case numbers to matters dealing with RCW 26.50 Domestic Violence? The trial court answered in the affirmative.

- Is it incumbent on the Superior Court to insure that Superior Court Commissioners provide equal protection under the law and are are not influenced by sexual stereotyping? The trial court answered in the negative.

- Is it incumbent on the court to insure that the parties are provided access to any evidence that the court relies on in making its decisions? The trial court answered in the negative.

- Can the court summarily deny motions properly submitted to the court without holding the requested hearing because the respondent to the motions notifies the court that the hearing is inconvenient and chooses not to attend the hearing. The trial court answered in the affirmative.

- Can the Superior Court restrict the parties access to scheduling hearings in RCW 26.50 matters? The trial court answered in the affirmative.

Background

After 30 years of training and working as a computer professional, in 2001 Mr. Carr left New York because he was divorced and his kids were grown and he commenced traveling and working as a manual laborer. (10/27/04 RP 4, 7 CP 104, 108-109)

In October of 2002, Mr. Carr was attending a Mensa social function at the Mandarin House Restaurant in Portland, OR where he met Karyn. (10/27/04 RP 7, CP 103, 108) Mr. Carr had been a member of Mensa since 1989 while Karyn had allowed her membership to lapse (10/27/04 RP 7, CP 103, 108). The parties dated and Mr. Carr settled in Vancouver, WA as he sought permanent employment (10/27/04 RP 4, 7, CP 104, 108, 109). When Mr. Carr could not find work as a computer professional, he accepted work as a driver and mover for United Van Lines agent, Active Moving and Mr. Carr continued to seek employment as a computer professional. (10/27/04 RP 4, 7, CP 104, 108, 109)

The Marriage

The parties were married on August 16, 2003, and Mr. Carr moved to xxxx, Vancouver, WA. (10/27/04 RP 4, 6 CP 79, 81, 104, 108) This residence remained in Karyn's name, but both parties contributed to its upkeep while they resided there; it was not maintained as separate property. (10/27/04 RP 4-6 CP 79, 81, 108, 124) However, there were problems in the marriage. (10/27/04 RP 7 CP 5, 6, 108) Before they met, Karyn was taking several serious psychotropic drugs to treat her migraines, but Karyn did not take her medications as prescribed, sometimes reducing the dosage against the advice of her neurologist and then exceeding the dosage in a hazardous way, each causing serious emotional outbreaks. (CP 6, 104, 108) Mr. Carr attempted to assist Karyn with her medication regimen, but Karyn resented this interference. (CP 108)

On three occasions Karyn assaulted Mr. Carr, but Mr. Carr did not report the incidents as they were minor assaults with no risk of serious injury. (CP 5) Mr. Carr expressed his disapproval of such violence but attempted to resolve their difficulties without involving the police. (CP 5)

The Separation

In July 2004, Mr. Carr applied for a Data Analyst position with AtOnce.com, but was turned down on August 16, 2004, the date Karyn, by coincidence, sent in the papers to file for a divorce.. (10/27/04 RP 4, 7 CP 104, 108, 109, 120) Karyn asked Mr. Carr to leave the marital residence immediately, but Mr. Carr would not leave until he had arranged another place to stay. (10/27/04 RP 4, 5) On September 3, 2004 Mr. Carr was offered a position with AtOnce.com which he accepted, but this threw his plans into flux. (10/27/04 RP 4, 5 CP 104, 108, 109) Mr. Carr was not able to arrange another place to stay and move until September 28, 2004. (10/27/04 RP 4, 5)

Temporary Order

Early in October of 2004, Karyn alleges that Mr. Carr retrieved some of his property which was at the marital residence while Karyn was out of town. (10/27/04 RP 5, 6 CP 48) Karyn filed a police report of residential burglary and filed a Petition for an Order for Protection on October 15, 2004, case 04-2-08824-4. (10/27/04 RP 5, 6 CP 46-52). There were no allegations of irreparable injury or even of violence or threats of violence and the claims of stalking were conclusory, never providing foundation for any fear of injury to person or property. (CP 48-49) The Temporary Order was granted by the Honorable Eiesland, a District Court judge, but also one of more than three Superior Court Commissioners in Clark County. (CP 51-52, 160-167)

41

On October, 27, 2004, a hearing for the Order for Protection was held with both parties present before the Honorable Melnick, a District Court judge, but also one of more than three Superior Court Commissioners in Clark County. (10/27/04 RP 1-12 CP 160-167) The hearing was held in a session of the District Court, but the order was issued as a Superior Court Order. (10/27/04 RP 3 CP 53) Karyn made extensive and rambling allegations, but there was the same lack of allegations of violence, threats of violence, or fear of injury to person or property.(10/27/04 RP 4-10) Mr. Carr denied any allegations of wrong doing, but without ever concluding was cut off. (10/27/04 RP 6, 7) The Honorable Melnick issued the Order for Protection without taking any testimony from either party. (10/27/04 RP 3-8) Mr. Carr objected noting the lack of foundation and was told by the Honorable Melnick that he was finding Mr. Carr guilty of the crimes of trespass and stalking. (10/27/04 RP 8)

Arrest and Incarceration

Karyn had rejoined Mensa as she became dissatisfied with the marriage. (CP 103, 108) Karyn asked in both the Petition and at the hearing that Mr. Carr be precluded from attending Mensa functions, but in both Orders there were no such prohibitions. (10/27/04 RP 7 CP 47, 50-56) On November 5, 2004, Mr. Carr was attending a Mensa function at the Mandarin House Restaurant when, apparently, one of Karyn's friends called her to inform her of Mr. Carr's presence. (CP 5) Karyn went to the restaurant but did not enter and instead called the police. (CP 5) Mr. Carr was never aware of her presence until after the police were escorting him out of the facility. (CP 5) Mr. Carr was arrested and incarcerated until the evening of November 8, 2004. (CP 5)

Counter Petition

On November 12, 2004, Mr. Carr filed a Petition for an Order of Protection to, amongst other things, preclude such 'ambushes' in the future. (CP 1-5) All of the parties seeking Temporary Orders waited in a District Court room, but no judge or commissioner spoke to any party. (CP 32, 129) Mr. Carr's Petition, case 04-2-08908-9, was denied citing 'Action Stale', but it was not signed. (CP 2, 32, 129) While the record never indicated the deciding authority, an informal inquiry by Mr. Carr determined that the clerk routinely notes the initials of the deciding authority outside the formal record when a Petition is denied and that his Petition was denied by the Honorable Melnick (CP 32,33)

Attempt to Appeal

On November 12, 2004 Mr. Carr also requested a copy of the CD with the video recording of the hearing of October 27, 2004 as well as the procedure for appealing the decision. (CP 129, 131) Domestic Violence cases are processed by clerks of the District Court but they were unsure as to how to appeal such a case as they are never appealed. (CP 129) On November 23, 2004 Mr. Carr attempted to file a Notice of Appeal, but the clerk refused to accept the Notice even if it were corrected to be from the Superior Court to the Court of Appeals as it was under the signature of a District Judge. (CP 129, 130, 132) Instead, his only option was to submit Motions for Revision which Mr. Carr did as Motions to Revisit (Mr. Carr was not familiar with Motions for Revision or the fact the Honorable Melnick was a Superior Court Commissioner), attempting service through the Sheriff's department on that date. (CP 7, 8, 61, 62, 125, 128, 130)

Notice of Appeal

Service was not obtained and on December 10, 2004 Judge Johnson denied the dual Motions as they were not within ten days of the decisions of the Superior Court Commissioners. (12/10/04 RP 2, CP 128) This was the first notice to Mr. Carr of their status as commissioners. (entire record prior to 12/10/04) After this decision was announced and on the same day, Mr. Carr filed the Notice of Appeal in case 04-2-08908-9. (CP 9)

On December 30, 2004, Mr Carr filed a Motion to Revise with hearing scheduled for January 28, 2005 in case 04-2-08824-4 seeking, amongst other things, permission to attend court hearings where he was scheduled to appear. (CP 74, 75) On January 7, 2005, Judge Johnson filed a written decision in case 04-2-08824-4 denying the Motion for Revision as announced from the bench on December 10, 2004. (CP 139) On January 18, 2005 Mr. Carr filed a Notice of Appeal for this decision as well as the preceding Orders for Protection which were consolidated into this appeal. (CP 142)

Revised Decision

On January 7, 2005 in case 04-2-08908-9 (where there was already an appeal), Judge Johnson notified Mr. Carr via letter that she had changed her decision as there was no signature in the record. (CP 137, 138) She inaccurately stated the denial had been by Judge Nichols who had modified the decision to schedule a hearing on January 19, 2005. (CP 23-26, 137, 138) On January 10, 2005, Mr. Carr submitted a motion to have this hearing rescheduled to the hearing of January 28, 2005 as the current Order in case 04-2-08824-4 prevented him from knowingly remaining within 300 feet of Karyn and the physical dimensions of court rooms would not permit him to be present with Karyn. (CP 16-25, 54)

However, it appears that the hearing was held on January 19, 2005 in any case and the Petition was denied for 'FTA' (which is assumed to be Failure to Appear) by the Honorable Eiesland who was still one of more than three Superior Court Commissioners in Clark County. (CP 34, 40-45, 168, 169) Mr. Carr was not notified of any decisions in this matter until the middle of February. (CP 38).

Final Decision

The hearing of January 28, 2005 was canceled without Mr. Carr being notified and on January 31, 2005 Mr. Carr rescheduled the hearing for February 18, 2005 as motions were not being heard on February 11. (CP 74, 156) On February 13, 2005, Karyn wrote to Judge Johnson informing her that Karyn had been served with notice of the hearing as of February 10, 2005 (more than five days before the hearing) and that she would not be attending because of schedule conflicts. (CP 183-187) Karyn did not propose an alternate hearing date or attempt to submit any other opposing requests or evidence. (CP 183-187) On February 16, 2005 Judge Johnson issued a written decision in both cases (they were mirror of each other) summarily denying all requests by Mr. Carr and Judge Johnson's clerk contacted Mr. Carr and asked that he not attend the scheduled hearing as the matters were already resolved. (CP 35-37, 188-190) Mr. Carr amended the preceding Notices of Appeal to include these decisions as well as the two decisions in January 2005 in case 04-2-08908-9. (via Motion to Court of Appeals as in files for this appeal)

Argument

1. More Than Three Commissioners

Washington State Constitution, Article IV, Section 23 states

> *There may be appointed in each county, by the judge of the superior court having jurisdiction therein, one or more court commissioners, not exceeding three in number, who shall have authority to perform like duties as a judge of the superior court at chambers....*

However, in CP 40 to 45 and 160 to 169 there are copies of Orders appointing four District Court Judges as Superior Court Commissioners in 2004 and 2005. The restriction on the number of Commissioners preserves the right of the citizens of the state to have matters of a more serious nature heard by actual judges with a higher level of accountability than appointees. While the Superior Court in Clark County may wish to divest itself of responsibility for hearing RCW 26.50 matters, they do not have the authority to usurp the rights of citizens to be heard by actual judges in these matters.

The legislature did not place any numeric limits on the number of Superior Court Commissioners, but the legislature did not need to as the constitution already set such limits. The legislature was well aware of these limits as indicated by the wording of RCW 26.12.050 (3) where it is noted that Family Court Commissioners:

may be made in addition to all other appointments of commissioners and other judicial attaches otherwise authorized by law

Had the legislature wished that RCW 26.50 matters be heard by Commissioners without regard to the limit of three in the constitution, they could have added RCW 26.50 to list of family court matters in RCW 26.12.010.

The fact that the Superior Court found there was more work to be handled by Commissioners than could be handled by three Commissioners demonstrates that too many matters were being handled by Commissioners (according the standards of the constitution) and invalidates the appointments of all Commissioners in the county and all decisions made by them as there is no way to distinguish which portion of the matters could have or should have been properly heard by Commissioners.

As the individuals improperly appointed as Superior Court Commissioners in this case were also District Court judges who could otherwise hear RCW 26.50 Domestic Violence cases, it could be argued that the decisions themselves were valid as the deciding authority met the requirement in STATE v. KARAS - 108 Wn. App. 692 requiring the matter '*heard by a neutral decisionmaker. ... a hearing before a judicial officer'*. However, Karas goes on to require '*the right to appeal. See, e.g., Spence, 103 Wn. App. At 334'* [1], which was not satisfied as the Clerk's office refused to accept a Notice of Appeal based on their announced status as District Court judges (CP 125-133). Further, the Order issued on October 27. 2004 did, in fact, '*exclude a party from the dwelling which the parties share*' which are specifically prohibited from District Courts in RCW 26.50.020 (5) (c). The appointment of all of Clark County's District Court judges as Superior Court Commissioners is an apparent attempt to thwart the legislature's clear intent to have these serious matters heard before Superior Court judges, and, as such, is unconstitutional.

1The full text of the requirements listed in Karas are shown on page 23.

The Court of Appeals is asked to find that all decisions by the Superior Court Commissioners of Clark County during 2004 and 2005 are invalid, they are always subject to revision by an actual judge without time limits, appealable as a matter of right without time limits, and otherwise without any force or validity. This is to allow the parties whose rights were infringed upon (the parties whose case was heard improperly by an appointee rather than a judge) to seek redress and have the matter heard before a judge.

On this basis, the Appellant asks that the Temporary Order for Protection of October 15, 2004 and Order for Protection of October, 27, 2004 and Denied Petition of November 12, 2004 and January 19, 2005 be reversed.

2. Grounds for Temporary Order

The Temporary Order for Protection issued on October 15, 2004 was improper because the supporting Petition does not contain any allegations of domestic violence in accordance with RCW 26.50.010. SPENCE v. KAMINSKI - 103 Wn. App. 325 stated

The petition for relief must allege "the existence of domestic violence" and must be accompanied by an affidavit under oath that states specific facts and circumstances supporting relief.

RCW 26.50.010 Definitions

(1) "Domestic violence" means: (a) Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault, between family or household members; (b) sexual assault of one family or household member by another; or (c) stalking as defined in RCW 9A.46.110 of one family or household member by another family or household member.

The allegations of stalking/harassment by Karyn are conclusory and without foundation. RCW 9A.46.110 places a high standard on stalking as:

(1) A person commits the crime of stalking if, without lawful authority and under circumstances not amounting to a felony attempt of another crime:
(a) He or she intentionally and repeatedly harasses or repeatedly follows another person; and
(b) The person being harassed or followed is placed in fear that the stalker intends to injure the person, another person, or property of the person or of another person. The feeling of fear must be one that a reasonable person in the same situation would experience under all the circumstances; and
(c) The stalker either:
(i) Intends to frighten, intimidate, or harass the person; or
(ii) Knows or reasonably should know that the person is afraid, intimidated, or harassed even if the stalker did not intend to place the person in fear or intimidate or harass the person.

Of particular note is the requirement that there be a reasonable fear of injury to person or property. Unwanted contact is to be expected when parties are divorcing and separating their property, but it is not sufficient for an Order of Protection under RCW 26.50 or RCW 9A.46.110.

There are numerous unrelated allegation in the Petition of October 15, 2004. (CP 46-49) They were addressed in detail in the Motion to Revisit of December 8, 2004 (CP 97-100) and won't be addressed individually here.

As the Court of Appeals has access to the full record before the Trial Court, the Appellant asks that the Temporary Order for Protection be denied (rather remanded to the Trial Court). This issue is not moot even though the Temporary Order for Protection has expired as such Orders are widely disseminated in accordance with RCW 26.50.070 (5)

Any order issued under this section ... shall be entered into a statewide judicial information system by the clerk of the court within one judicial day after issuance.

Domestic Violence is taken very seriously by the legislature and law enforcement bodies. Mr. Carr seeks a statement that the Temporary Order for Protection should never have been issued so that he can begin the process of correcting the record as to his propensity to domestic violence.

3 Status of Commissioner not Announced

The hearing on October 27. 2004 was announced as being a session of the District Court. (10/27/04 RP 3) Further, it was held in a District Court Room and all the papers were handled by clerks of the District Court. Clark County Superior Court Rule Rule 0.7 (Domestic Violence Petitions) says:

(a) Filing. The clerk may refer a petitioner to either the District Court or Superior Court for issuance of an ex parte temporary order for protection pursuant to RCW 26.50.070. All hearings for an order for protection issued pursuant to RCW 26.50.060 shall be scheduled before the Superior Court Commissioner in accordance with the court's published schedule.

But the reality is that all RCW 26.50 matters are handled exclusively by the District Court and their clerks.

When matters are adjudicated under the auspices of a different jurisdiction (not the one actually being applied), due process is

denied as the parties are not afforded their rights. In particular, the right to appeal is at risk as the jurisdiction is misunderstood and, at best, ambiguous. For these reasons, the Appellant asks that the Temporary Order for Protection of October 15, 2004 and Order for Protection of October, 27, 2004 and Denied Petition of November 12, 2004 be reversed.

4 Grounds for Order for Protection

While the Petition for an Order for Protection was defective due to the lack of allegations of domestic violence or the fear of injury to person or property, this defect was not corrected at the hearing of October 27, 2004. The court allowed Karyn to ramble on about numerous unrelated issues, but there were no allegations of violence or threats of violence on the part of Mr. Carr. The Trial Court's finding of the crime of trespass is completely irrelevant as, while it may be a form of domestic violence in other parts of the Revised Code of Washington, RCW 26.50 has its own very precise definition (cited above on page 19) and trespass has no bearing.

Karyn's numerous unrelated allegations were addressed in detail in the Motion to Revisit of December 8, 2004 (CP 100-104) and won't be addressed individually here.

The finding of stalking would be relevant, but the allegations do not support that finding in accordance with RCW 9A.46.110[2] as there was nothing described which would induce fear of injury to person or property. Karyn complained of e-mails and voice messages, but a review of the e-mails (CP 120-124) shows that they were neither threatening nor harassing. They dealt with schedules and property transfers and were completely normal for a couple that is separating. The only content we can infer from the record concerning the voice messages (10/27/04 RP 5) is that they similarly dealt with schedules and property transfers which in no way induces fear of injury to person or property.

Karyn made a great deal of Mr. Carr's refusal to stop going to Mensa functions, but as he had been an active member for over ten years, there is little reason to doubt his lawful purposes in continued attendance.

The Appellant asks that the Order of Protection issued on October 27. 2004 be overturned and denied as the allegations made by Karyn are insufficient to meet the requirements of RCW 26.50.

2The definition of stalking under RCW 9A.46.110 was listed previously on page 19.

5. No Testimony taken at Hearing

At no time during the hearing of October 27, 2004 was any testimony taken. Karyn made numerous false and misleading allegations as described above, but Mr. Carr was given no opportunity to refute these allegations though there were numerous points of active defense he could have made had he given the opportunity as noted in his affidavit. (CP 108, 109)

In STATE v. KARAS - 108 Wn. App. 692 referring to RCW 26.50

the Act's provisions satisfy the two fundamental requirements of due process-notice and a meaningful opportunity to be heard by a neutral decisionmaker. The procedural safeguards include: (1) a petition to the court setting forth facts under oath; (2) notice to the respondent; (3) a hearing before a judicial officer where the petitioner and respondent may testify; (4) the opportunity to file a motion to modify a protection order; (5) a requirement that a judicial officer issue any order; and (6) the right to appeal. See, e.g., Spence, 103 Wn. App. at 334 (noting in dicta that the "process for issuing a permanent protection order provides adequate notice and ability to be heard"). Karas was afforded each of these safeguards although he failed to exercise his right to appeal the protection order.

Karas interprets the legislation as requiring that the Respondent be given the opportunity to testify at the hearing to meet the requirements of due process, but in Clark County hearing testimony is routinely eliminated violating due process.

As no testimony is taken, it raises the question of what is the purpose of the hearing as no additional evidence is permitted. Karyn's Petition contained numerous false or misleading claims which could easily have been refuted had Mr. Carr been given the opportunity to cross examine Karyn or testify himself on his own behalf.

However, the lack of additional evidence permits the Court of Appeals to simply deny Karyn's petition as the Court of Appeals has before it all the evidence which was before the trial court and there was no testimony to be interpreted by the trial court as to demeanor and believability.

6. No ex parte hearing

RCW 26.50.070 states the procedures for the issuance of the Temporary Order for Protection in RCW 26.50.070 (3):

The court shall hold an ex parte hearing in person or by telephone on the day the petition is filed or on the following judicial day.

However the procedure in Clark County (10/27/04 RP 11, 12 CP 32, 33) is that the Petitioner, while present in the Court Room, is not present in chambers where the petition is reviewed. It allows for the possibility that the Petitioner will not be aware of the actual reviewing authority. Further, if the petition is denied, there is no opportunity for the Petitioner to argue the error of decision and attempt to resolve any misconceptions the court may have.

In SPENCE v. KAMINSKI - 103 Wn. App. 325
An unambiguous statute is not subject to judicial interpretation, and the statute's meaning is derived solely from its language. Id. The court may not add language to a clearly worded statute, even if it believes the Legislature intended more. Id. Statutes are construed as a whole, giving effect to each provision. State v. Merritt, 91 Wn. App. 969, 973, 961 P.2d 958 (1998).

As such the procedures do not meet the requirement of RCW 26.50 and the decision reached should be overturned.

While it could be argued that the absence of an ex parte hearing is moot (it is not possible to unring the bell), that is not the case as in DETENTION OF G.V. - 124 Wn.2d 288

State. In re Swanson, 115 Wn.2d 21, 804 P.2d 1 (1990). However, we may decide a moot case if it involves matters of continuing and substantial public interest.

The expediencies taken by Clark County Superior Court in Domestic Violence cases violate the constitution, legislation, and principles of good jurisprudence. This requires clear direction from the Court of Appeals stating the unacceptability of such violations of due process.

7 No deciding authority in the Record

While the Superior Court in Clark County was almost certainly aware of the restriction on the number of Commissioners that could be appointed, rather openly testing a requirement which they apparently viewed as arcane and irrelevant, they instead attempted to keep their appointments secret by not publicizing the appointment (their web page lists only two of the apparent eight Commissioners), not announcing the status of the Commissioner holding the hearing, keeping the dockets secret (kept with bailiffs who directed people to the correct court room), and not signing the decision when Petitions are denied.

As interpreted by the Superior Court, the lack of a signature makes a decision final from the point of view not allowing any review or revision ***until*** a Notice of Appeal is filed, at which time it is not final and is subject to revision without the request of

any party. This is not a wise practice of jurisprudence as it encourages the court to not sign orders in order to minimize the risk of appeal. Once Judge Johnson announced her decision denying the Motion of Revision from the bench, the Motion for Revision was closed and the preceding decision was final based on Judge Johnson's decision if no other. The only option available to the trial court at that time would be to identify the deciding authority (the Honorable Melnick in this case) and have him sign the order correcting the obvious defect.

8 Irreparable Injury

The decision of November12, 2004 denies the Appellant's Petition with 'Denied Action Stale' (CP 2). However, in HECKER v. CORTINAS - 110 Wn. App. 865

An unambiguous statute is not subject to judicial interpretation, and the statute's meaning is derived solely from its language. Id. The court may not add language to a clearly worded statute, even if it believes the Legislature intended more. Id. Statutes are construed as a whole, giving effect to each provision. State v. Merritt, 91 Wn. App. 969, 973, 961 P.2d 958 (1998).

In light of the Legislature's intent to intervene before injury occurs, and in recognition that RCW 26.50.020 and RCW 26.50.060 do not require an allegation of recent domestic violence, we decline to read into these statutes a requirement of a recent violent act.

The Petition contains allegations of three acts of domestic violence, actual assaults although minor assaults, (CP 5) and meets the requirements for an Order for Protection under RCW 26.50. The Petition also meets the requirements for a Temporary Order for Protection. RCW 26.50.070 (3) states:

Where an application under this section alleges that irreparable injury could result from domestic violence if an order is not issued immediately without prior notice to the respondent, the court may grant an ex parte temporary order for protection, pending a full hearing

In the hearing on October 27, 2004, Karyn admitted that on September 29, 2004 she threatened that she would have Mr. Carr physically removed from the marital residence by her father. (10/27/04 RP 5) In addition, on November 5, 2005, Karyn intentionally went to a public restaurant where she knew Mr. Carr was present and had Mr. Carr arrested for violating the Order of Protection of October 27, 2004 though he was not aware that she was present at the time (CP 5). The arrest demonstrated increasing animosity between the parties. Further, since 2002 Karyn has been taking serious psychotropic medications and does not take them as prescribed and has serious emotional outbreaks as a result (CP 6, 49, 104, 108). Lastly, Karyn has a semi-automatic hand gun in the marital residence (CP 6).

This combination of factors makes 'irreparable injury' a reasonable possibility. It is worth noting that the statute does not require that such injury is likely, only that it **could** result. This is similar to the state's restrictions on driving while under the influence of alcohol or other drugs. The truth is that in any given instance it is unlikely that a driver under the influence will have an accident. However, the state reasonably places these restrictions to avoid the serious consequences of such accidents as they are a foreseeable possibility even if unlikely (they **could** result).

There was sufficient grounds for a Temporary Order for Protection for Mr. Carr's Petition and Mr. Carr asks that the denial be reversed.

9. Attendance at Court Hearings

The standard Order for Protection in use in Clark County is unconstitutional in that it does not directly make exceptions for attendance at court hearings where the Respondent is scheduled to appear. In order to exercise constitutional due process, a party is often required to appear in court, but given the physical dimensions of court rooms, the 300 feet restriction requires that the Respondent leave any court room where the Petitioner is present. While the Order itself provides for modifications of the Order

(CP 2, 52, lines 9 and 10 and CP 56 line 2), this is not sufficient as Mr. Carr had made just such a request on December 29, 2004 in case 04-2-08824-4 (CP 75, 76). He was penalized in case 04-2-08908-9 by having his case case dismissed for 'FTA' (failure to appear) on January 19, 2005 even though he had submitted a Motion on January 10, 2005 asking that the matter be rescheduled and explaining that the order in the other case prevented him from attending a hearing where Karyn was present (CP 16-18).

Clearly this exception needs to be included in the standard Order for Protection as the procedure for getting exceptions is too fraught with the possibility of mistake, neglect and even intentional manipulation.

10 Failure to Appear

On January 6, 2005 the court scheduled a hearing on Mr. Carr's Petition for January 19, 2005. (CP 26) However, on January 10, 2005, Mr. Carr submitted a Motion to Reschedule the hearing to January 28. 2005 (CP 16-25) as the Order for Protection in case 04-2-08824-4 prevented him from knowingly remaining within 300 feet of Karyn (CP 54) and the physical dimensions of the Clark County court rooms would require him to leave any hearing at which Karyn was present. However, on January 19, 2005 Mr. Carr's Petition was denied for 'FTA' (failure to appear) with no mention of the Motion to Reschedule (CP 34). This was an error as the court should have resolved the Motion to Reschedule before denying the Petition for failure to appeal.

Judge Johnson's summary denial on February 16, 2005 denied the Motion to Reschedule. This denial was an abuse of the trial court's discretion. In DETENTION OF G.V. - 124 Wn.2d 288

Decisions whether to grant a motion for a continuance are generally within the discretion of the trial court and are upheld absent an abuse of discretion. State v. Campbell, 103 Wn.2d 1, 14, 691 P.2d 929 (1984), cert. denied, 471 U.S. 1094 (1985). An action constitutes an abuse of discretion if the discretion is "manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons. . . . Whether this discretion is based on untenable grounds, or is manifestly unreasonable, or is arbitrarily exercised, depends upon the comparative and compelling public or private interests of those affected by the order or decision and the comparative weight of the reasons for and against the decision one way or the other". In re Schuoler, 106 Wn.2d 500, 512, 723 P.2d 1103 (1986).

After the court had delayed any hearing on the Petition for over two months for no claimed reason, a delay of nine days was reasonable as it would have no impact on any party (Karyn made no response to the Motion to Reschedule) and would allow the matter to be heard at a hearing that, hopefully, both parties could attend. Further, before denying continuances on a matter the court must consider the inability of the requesting party to attend due to such things as other Orders, incarceration, or hospitalization. To not do so makes a travesty of due process as it allows the court to arbitrarily eliminate a party's opportunity to be heard.

As Mr. Carr had previously submitted a motion on December 28. 2004 with a hearing scheduled for January 28, 2005 in case 04-2-08824-4 requesting, amongst other things, that he be permitted to remain in attendance at court hearings, the scheduling of a separate hearing before that date raises the possibility that this was done intentionally to insure that Mr. Carr was not permitted any opportunity to be heard on the matter. The canceling of the hearing on January 28, 2005 without notice and then the issuing of an order on February 16, 2005 before the hearing date of February 18, 2005 further supports this possibility. This abuse of judicial discretion should be reversed.

11. Clerk's rejection of Notice of Appeal

In the record on pages 129 to 133, there is a description in detail of Mr. Carr's efforts to file a Notice of Appeal in these matters on November 23, 2005. There are sound principles of jurisprudence for the finality of actions and limiting the period when a appeal can be filed. The time limits on submitting a Notice of Appeal are intended to prevent contested decisions from languishing unopposed for unreasonable periods. Mr. Carr notified the court of his opposition to the decision at the hearing of October 27, 2004 (RP 8, lines 14 to 22) and proceeded to develop his appeal, ordering the electronic recording of the proceeding

and attempting to file a Notice of Appeal. In many jurisdictions (such as New York), the Notice of Appeal is filed directly with the Appellate Division, thereby protecting the sanctity of the appeals process. However, in Washington state where Notice of Appeals are filed with the trial court, there is a danger of the court erecting unconstitutional barriers to appeals. The secret jurisdiction of the Commissioners (never announced to the parties) along with refusal of the court clerk to accept the Notice of Appeal are serious errors which allows the Court of Appeals to extend the appeal back to the earlier decision of October 27, 2004 in case 04-2-08824-4 as well as the prior decision (not final) of October 15, 2004.

12 Denied Motion for Revision

When Mr. Carr was unable to file a Notice of Appeal, he took the only action available to him of submitting a Motion to Revisit. While this motion was not timely in accordance with RCW 2.24.050 Revision by court which states:

All of the acts and proceedings of court commissioners hereunder shall be subject to revision by the superior court. Any party in interest may have such revision upon demand made by written motion, filed with the clerk of the superior court, within ten days after the entry of any order or judgment of the court commissioner. Such revision shall be upon the records of the case, and the findings of fact and conclusions of law entered by the court commissioner, and unless a demand for revision is made within ten days from the entry of the order or judgment of the court commissioner, the orders and judgments shall be and become the orders and judgments of the superior court, and appellate review thereof may be sought in the same fashion as review of like orders and judgments entered by the judge.

Of particular note is that after the ten day period the decision is reviewable as if ordered by a judge. While the principles of good jurisprudence give finality to decisions after the period when a Notice of Appeal can be filed as a matter of right, there is no advantage to restricting the courts own power to correct errors before this period is over. In many jurisdictions (such as New York) any motion to renew, reargue, revisit or similar ilk must be granted if the motion is properly submitted while the decision is still appealable as a matter of right. This allows the option of correcting (or attempting to correct) simple defects such misspelled names or incorrect dates without the expense and time of a formal appeal. Of course, while the motion must be granted, the court has the often used option of not granting any of the relief requested. The net effect is that the time limit for appeal is extended until the Motion is resolved. The court has the option of directly fixing errors or not. If the court chooses to not make the requested correction, then the parties still have the right of appeal as the granting of the Motion to Revisit, Reargue, ... resets the clock on appeals.

While the trial court could not modify the decision because it was made by a commissioner (as more than ten days had passed), the court could modify the decision as the motion was properly submitted (CP 61, 62) and service attempted (CP 128) while the decision was appealable as a matter of right. It was an error for the trial court to deny the Motion to Revisit (or for Revision in the decision) on December 10, 2004 (12/10/04 RP 2) and on January 7, 2005 (CP 139). Instead the court should have granted the motion and then denied all relief (as the court seemed so inclined). The Appellant asks that this denial be overturned for the reasons stated and that the appeal be extended back to the decision of October 27, 2004 and the prior temporary (not final) decision of October 15, 2004.

13 Assignment of Separate Case Numbers

While the court in its decisions of February 16, 2005 complains of the confusion the clerks have faced as the papers in each case often referred to the other case (CP 36, 189), this is the result of the assignment of different case numbers to matters which are so closely related. In the court's letters of January 6 and 7, 2005 (CP 22, 137, 138), the court contributes to this problem by sending a single letter which refers to both cases. The solution the court used on February 16, 2005 of making mirror decisions with only the case number being different (CP 35, 188) is hardly a good solution as it simply doubles the number of papers and volume of the record to be considered. The real solution is to not assign separate case numbers when the matters are so intimately related. It was an error of the trial court to assign separate case numbers to these matters and then refusing any requests to consolidate the cases.

14 Sexual Stereotyping

While the granting of an Order for Protection to the Respondent, a woman, when the criteria established in RCW 26.50 were clearly not met as well as the denial of Order for Protection to the Appellant, a man, is only anecdotal evidence of sexual stereotyping on the part of the Commissioners, in light of the other procedurals errors in their process, it suggests a review of their past decisions to determine the degree of sexual stereotyping in their decisions. This relief was sought from the trial court. (CP 107)

In SPENCE v. KAMINSKI - 103 Wn. App. 325

II. Equal Protection. The principle of equal protection requires that all persons similarly situated with respect to the legitimate purposes of the law must receive like treatment. Davis v. Dep't of Licensing, 137 Wn.2d 957, 972, 977 P.2d 554 (1999).

While RCW 26.50 is neutral on gender, there is a widespread perception in our society that in matters related to Domestic Violence, the courts presume men to be violent brutes while women are presumed to be helpless victims. The result of such stereotyping can only be injustice when the stereotypes are wrong. Women seeking the upper hand in adversarial separations need only allege violence and they get control of the property and custody of the children even when there is no basis in fact for their claims. While this widespread perception of sexual stereotyping may not be accurate, the best way to deal with these perceptions is to review the records to determine if is there is a consistent bias in decisions of the courts. If none is found, the inaccurate perception will have been addressed with the potential of correcting the perception. If, however, it is found that the courts are not implementing RCW 26.50 in a gender neutral fashion, then it is important to correct this improper bias.

15 Access to the Judicial Information System

The statewide judicial information system of RCW 2.68 raises questions of due process for respondents in matters of domestic violence under RCW 26.50 as in chambers review of the Petitions does not document what, if any, information was accessed or provide the parties with notice and rights of appeal to this information. The court improperly modified the Order of October 27. 2004, correcting Mr. Carr's birth date (CP 53, 57) without any written request. While the arresting officer had noted the incorrect date when checking Mr. Carr's driver's license on November 5, 2004, there was no request for correction in the record.

The easy access of the courts to arrest reports can be seen in the Narrative Report of Proceeding of October 27. 2004 page 3, lines 5 to 25. The court accessed several police reports, but only recorded one in the record. However, at an in chambers review of the Petition where the deciding authority is only recorded off the record by the clerk, there is no indication as to which reports were accessed by the court or what their contents were.

This easy access to these police reports certainly provides the court with access to a great deal of information, but is contrary to the principles of due process as the parties are not given notice of the information so accessed nor are they served with the information (in many cases it remains confidential) and do not have the right to appeal the information. As such it does not meet the requirements listed in STATE v. KARAS - 108 Wn. App. 692 as cited previously on page 23 of this brief.

16 Motions Denied Without Hearing

The canceling of the hearing on January 28, 2005 without notice and then the issuing of an order on February 16, 2005 before the hearing date of February 18, 2005 was not proper.

The trial court denied the Motion to Revise, Motion to Reschedule, and Motion for Decision based on Superior Court Civil Rule 7 and claiming that there were not stated grounds for the motion and the relief sought (CP 35-37, 188-190). Superior Court Civil Rule 7 states

(b) Motions and Other Papers.

(1) How Made. An application to the court for an order shall be by motion which, unless made during a hearing or trial, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion.

However, the following table denotes the location of each of these required items.

Title	Date	Grounds	Relief
tion to Revise	Dec 28, 2004	Pages 76-78	Page 75
tion to Reschedule	Jan 10, 2005	Pages 18-19	Page 16-17
tion for Decision	Jan 14, 2005	Pages 30-31	Page 29

The claimed basis for the decisions on February 16, 2005 is a lack of jurisdiction as appeals had been filed in the cases. However, under CAR 7.2 (e)

Postjudgment Motions and Actions To Modify Decision. The trial court has authority to hear and determine (1) postjudgment motions authorized by the civil rules, the criminal rules, or statutes, and (2) actions to change or modify a decision that is subject to modification by the court that initially made the decision.

The Order itself provides the court with authority to modify the order based only on a written request any party (CP 56 line 2)[3] as specified in CAR 7.2 (e) (2) and the papers supporting the Motion to Revise of December 29, 2004 were in writing. Karyn had demonstrated notice of the hearing more than five days prior to the hearing in her letter dated February 11, 2005 (CP 183, 184) and had notified the court of her intention to not attend the hearing. While Karyn did ask that the hearing be rescheduled to another date, she asked the court to reschedule to some date after mid to late-March (a delay of over one month) without providing any alternative date on her own. In the alternative, Karyn could have submitted any response she wanted to be heard in writing to the court.

Karyn complains in her letter dated February 11, 2005 (CP 184) of the frequency of hearings while, in fact, there was not any hearing in these matters that she was required to attend after the hearing of October 27. 2004 which she herself instigated.

3 While the statement 'Only the court can change the order upon written application' does not explicitly say that the court retains jurisdiction to alter the order, if the court did not have such jurisdiction, the statement would be 'This order can not be changed' which is obviously not the case. The only requirement for jurisdiction stated is that the court receive a request in writing from some party (other than the court itself). The phrase itself is mandated in RCW 26.50.035 (1) (c) and was interpreted in STATE v. KARAS - 108 Wn. App. 692 as providing '*the opportunity to file a motion to modify a protection order;*', one of five provisions to support the constitutionality of the RCW 26.50 proceedings and maintaining due process.

However, the trial court was premature in summarily denying the various motions before it without hearing as the perceived lack of jurisdiction should have been heard where Mr. Carr would have the opportunity to correct any misconceptions the court might have. The decision denying Mr. Carr's Petition for an Order For Protection issued on January 19,. 2005 for failure to appear (CP 34) never should have been made as there was an outstanding Motion to Reschedule (CP 16-25). The Motion to Reschedule should have been granted as the Order in case 04-2-08824-4 precluded Mr. Carr's attendance. The Order for Protection Mr. Carr sought in case 04-2-08908-9 (CP 3-6, 16-17) should have been granted as Karyn had been served with notice of the hearing and chose not to attend without submitting an alternate hearing date or other evidence as to why the requested relief should not be granted. In City of Auburn v. Juan Jose Solis-Marcial - 51003-7-I it is established that the Respondent need not be present at the

hearing for an Order for Protection to allow the court to issue the Order, only that the Respondent knew of the hearing and had received the warning that *failure to appear at the hearing may result in the court granting such relief.*

17 Restrictions on Scheduling Hearings

RCW 26.50.035 (1) (c) mandates that any Order for Protection under RCW 26.50 must contain the phrase 'Only the court can change the order upon written application'. This clause was interpreted in STATE v. KARAS - 108 Wn. App. 692 as providing '*the opportunity to file a motion to modify a protection order;*', one of five provisions to support the constitutionality of the RCW 26.50 proceedings and maintaining due process.

Appellant's Brief 37

In the record on pages 37 and 190 paragraph 2, Judge Johnson adds further and unjustified restrictions on requests to modify a protection order. As RCW 26.50 Orders infringe on constitutionally protected rights, it is incumbent on the court to carefully follow the specified procedures and maintain the checks and balances in place. This infringement on the parties' right to request modifications is not in anyway justified, in particular given the fact that there was only one non ex parte hearing in these two cases.

Given the court's propensity to ignore the requirements of the state constitution, legislature, and principles of jurisprudence, there is little reason to believe that this restriction on the scheduling of hearings will be handled in any fashion which guarantees due process for all parties and should be reversed.

Summary

While the efforts of the Clark County Superior Court to simplify and speed the processing of Domestic Violence cases under RCW 26.50 are admirable in and of themselves, the excessive expediences taken which are contrary to the state constitution, state law, and sound principles of jurisprudence can not be condoned.

Appellant's Brief 38

Because of numerous errors in the processing of these cases, Mr. Carr seeks reversal of the Orders of October 15 and 27, 2004, and the granting of an Order of Protection with the following provisions (CP 16):

a) That Karyn be prohibited from possessing a firearm or ammunition for a period of one year (18.U.S.C. section 922(g)(8).

b) All no contact restrictions between the parties be removed so that they can resolve their remaining property disputes and proceed with the dissolution of their marriage.

c) That any firearms which Karyn acquires after one year be properly secured to prevent access by the minor child for as long as the minor child resides with Karyn.

d) That the parties jointly attend at least two counseling sessions with a licensed therapist selected by Karyn and paid for jointly.

In addition, due to the excessive number of errors and serious violations of due process, the extraordinary relief sought by Mr. Carr for a review of other decisions by the purported Superior Court Commissioners of Clark County is requested to determine the degree of prohibited sexual stereotyping and correct any violations of due process. This was originally requested by Mr. Carr in his original Motion to Revisit and Consolidate (CP 107). Particular interest is called to recent cases where the Petition was denied and to cases where an Order excluded '*a party from the dwelling which the parties share*' and the District Court would have been prohibited from issuing a permanent Order for Protection in accordance with RCW 26.50.020 (5) (c)

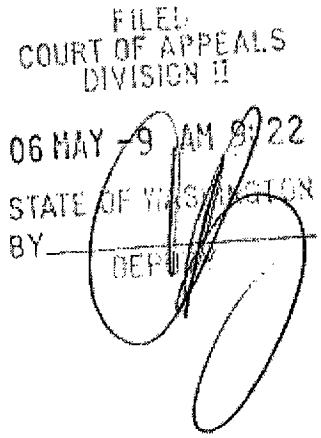
Respectfully submitted, May 10, 2005 (Vancouver, WA).

Signature of Appellant
Brian Carr
11301 NE 7th St., Apt J5
Vancouver, WA 98684
360-607-0556

Respondent:

Karyn

This page was last updated on April 14, 2007.



IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

BRIAN P. CARR, Appellant, v. KARYN Respondent.	No. 32671-0-II/32811-9-II UNPUBLISHED OPINION

PENOYAR, J. — Brian P. Carr appeals a domestic violence protective order against him. He argues that there was no basis of violence or threats of violence and that court commissioners lack authority to issue protective orders. Carr also argues that his due process rights were violated and that the trial court erred in denying his request for a protective order. We affirm.

FACTS

In August 2004, Karyn) filed for divorce and asked her husband, Brian P. Carr (Carr), to move out of her house. Carr refused to sign the divorce papers, and refused to move out of 's house until he could secure alternate housing. He moved out of home forty-five days after she asked him to leave.

Carr began attending social functions where was also present. asked him not to attend, but he refused to "leave her alone." Report of Proceedings (RP) (10/27/04) at 4. Carr also accepted a job approximately four blocks away from 's workplace and moved into an apartment just down the street from her home. On September 28, Carr called late at night stating he needed to retrieve some belongings from her home. He arrived at her door at 11:30 P.M. and forced himself into the house even though she tried to shut the door to keep him out.

On October 7, a package addressed to Carr was delivered to s residence. She brought it inside the house and left town on a trip. Carr called her repeatedly, stating he needed the package immediately. told him she would arrange for him to pick it up when she returned. Carr stated he was going to her house to get it. When returned to her house, the package, a rolling pin, a cord, and a light fixture were all missing. filed a police report.

On October 15, received a temporary protective order against Carr. In her petition, claimed that Carr had committed residential burglary at her home on October 7; that he was stalking and harassing her through unwanted contact, phone calls, and emails; and that he stated he intended to harass and upset her. stated that she experienced severe migraine headaches as a result of the stress Carr's actions caused and that a neurologist was treating her for her condition.

On October 27, Carr and each testified about whether the temporary protective order should be extended to a period of one year. The trial court issued the protective order, prohibiting Carr from causing physical harm (including harassing, threatening, or stalking) to ; coming near or having any contact whatsoever with her (except as related to the couple's dissolution); entering or being within 250 feet of 's current residence; and knowingly coming within, or knowingly remaining within, 300 feet of Huntting's person, workplace, day care, or school of 's son.

The trial court found that Carr's actions constituted domestic violence, trespass, and stalking. Carr disputed the findings, to which the court stated, "She is terrified. If you look at her, I can find that just looking at her . . . She's terrified, can't you see that?" RP (10/27/04) at 8-9. The protective order expired on October 27, 2005, and is no longer in effect.

Carr also petitioned for a temporary protective order and a permanent protective order against . Carr alleged that twice threw a cup of coffee at him and that she struck a plate of food that Carr was holding. He did not claim any resulting injuries. The trial court denied Carr's petitions.

Carr filed numerous subsequent motions in trial court.[1] The court scheduled a hearing for February 11, 2005 but, on February 16, 2005, the trial court found that Carr's filings "created an unreasonable burden for court staff" and denied Carr's request for a hearing. Clerk's Papers

[1] On November 23, 2004, Carr filed a motion for review of a protective order, which was denied (CP 139); on December 29, Carr filed an affidavit for record; on December 30, 2004, Carr filed a motion to revise; on January 6, 2005, Carr filed a motion to revisit and consolidate; on January 11, 2005, Carr filed a motion, memorandum in support, and affidavit, to reschedule and consolidate; on January 14, 2005, he filed a motion requesting decision and fact finding hearing, which was denied; on January 19, 2005, he filed another temporary protective order, which was denied; and on April 1, 2005, Carr filed an affidavit of jurisdiction.

(CP) at 36. The court stated that it would schedule a hearing only if a judge found an adequate basis in law and fact.

ANALYSIS

I. 'S PROTECTIVE ORDER

Carr, pro se, raises numerous arguments and mainly seems to dispute that there were no valid grounds to issue the protective order against him. He asks this court to reverse the trial court's issuance of the protective order. He argues that his actions did not constitute stalking and that the crime of trespass was not relevant. He claims he did not threaten He argues that, even though the protective order expired on October 27, 2005, the issue is not moot because the protective order may be publicly disseminated.

A case is considered moot if there is no longer a controversy between the parties, if the question is merely academic, or if a substantial question no longer exists. *Pentagram Corp. v. City of Seattle*, 28 Wn. App. 219, 223, 622 P.2d 892 (1981) (citing *State ex. rel. Chapman v. Superior Court*, 15 Wn.2d 637, 131 P.2d 958 (1942); *Grays Harbor Paper Co. v. Grays Harbor County*, 74 Wn.2d 70, 442 P.2d 967 (1968); *Sorenson v. Bellingham*, 80 Wn.2d 547, 496 P.2d 512 (1972)). A case is not moot if a court can still provide effective relief. *State v. Turner*, 98 Wn.2d 731, 733, 658 P.2d 658 (1983) (citing *Pentagram Corp.*, 28 Wn. App. at 223). Even though the protective order has expired, Carr claims the court can still provide relief in correcting the record as to his propensity to domestic violence.

This case arguably is not moot, since part of the relief Carr seeks is to cleanse his record of the protective order. Thus, we will review the substance of Carr's claims.

The Domestic Violence Prevention Act creates "an action known as a petition for an order for protection in cases of domestic violence." RCW 26.50.030. "Domestic violence" includes the infliction of fear of imminent physical harm, bodily injury or assault, or stalking as defined in RCW 9A.46.110. RCW 26.50.010(1). The protective order petition must be accompanied by a sworn affidavit, setting forth the facts supporting the request for relief. RCW 26.50.030(1). To receive a temporary order, the petitioner must allege that irreparable injury could result if an order is not immediately issued. RCW 26.50.070(1). The temporary order may not exceed 14 or 24 days, depending on the type of service. RCW 26.50.070(4).

The court may restrain the respondent from committing domestic violence, from entering the petitioner's residence or workplace, and from contacting the petitioner. RCW 26.50.060(1) (a), (b), (h). If the court finds that the respondent "is likely to resume acts of domestic violence against the petitioner . . . when the order expires," the court has discretion to enter a permanent protective order. RCW 26.50.060(2). We will not disturb an exercise of discretion on appeal absent a clear showing of abuse. *State ex rel. Carroll v. Junker*, 79 Wn.2d 12, 26, 482 P.2d 775 (1971).

A trial court's findings will be upheld on appeal if substantial evidence in the record supports them. *In re the Marriage of McDole*, 122 Wn.2d 604, 610, 859 P.2d 1239 (1993). Substantial evidence is evidence sufficient to persuade a fair-minded, rational person of the truth of the finding. *In the Matter of the Contested Election of Schoessler*, 140 Wn.2d 368, 385, 998 P.2d 818 (2000) (citing *State v. Hill*, 123 Wn.2d 641, 644, 870 P.2d 313 (1994)); *Pilcher v. State Dep't of Revenue*, 112 Wn. App. 428, 435, 49 P.3d 947 (2002).

In *Hecker v. Cortinas*, 110 Wn. App. 865, 43 P.3d 50 (2002), we found sufficient evidence to support the issuance of a protective order when the respondent appeared uninvited at the petitioner's house, pounded on the exterior wall, demanded that petitioner come outside, followed the petitioner, and threatened to shoot the petitioner. We pointed out that the Domestic Violence Prevention Act does not require infliction of physical harm; rather, the infliction of "fear" of physical harm is sufficient. *Hecker*, 110 Wn. App. at 870.

Here, the trial court found that the crimes of stalking and trespass had occurred and that was "terrified". RP (10/27/04) at 8. Carr broke into home while she was out of town and also forced himself through her doorway, into her house on another occasion when she was home. The trial court observed that was terrified during the hearing and specifically stated this to Carr.

Given these facts, we find no error in the trial court's issuance of the protective order. There are facts sufficient to persuade a fair-minded, rational person that Carr was stalking and that she feared Carr would commit acts of domestic violence against her. We hold that the trial court did not err in issuing a protective order against Carr.

II. CARR'S PROTECTIVE ORDER

Carr argues that the trial court erred in not granting him a protective order against Huntting. He argues that Huntting committed three acts of violence against him and that the trial court's denial was "sexual stereotyping". Br. of Appellant at 33.

Again, a trial court's findings will be upheld on appeal if substantial evidence in the record supports them. *Schoessler*, 140 Wn.2d at 385. In his petition, Carr stated that Huntting threw a cup of coffee at him and struck a plate of food he was holding. The trial court did not abuse its discretion by denying Carr's petition and finding that 's actions did not constitute domestic violence.

III. DUE PROCESS VIOLATIONS

Carr argues that his due process rights and his right to have a judge adjudicate his case were violated because Clark County allegedly appointed more than three court commissioners. However, a family law commissioner is not a "commissioner" within the meaning of the constitutional provision limiting the number of court commissioners in counties. *Ordell v. Gaddis*, 99 Wn.2d 409, 409-10, 662 P.2d 49 (1983). Furthermore, in *State v. Karas*, 108 Wn. App. 692, 700-02, 32 P.3d 1016 (2001), we held that a domestic violence protective order did not violate the defendant's right to procedural due process and the statute granting authority to court commissioners included power to issue permanent protective orders under the Domestic Abuse Prevention Act. Therefore, Carr's challenge to the constitutionality of a protective order under the Domestic Violence Protection Act and to the commissioner's authority to issue the order must fail.

Finally, Carr argues that he was unable to appeal the protective order issued against him and that his motions were denied without a hearing. The trial court specifically found that a hearing was not necessary. Carr's motions did not comply with Civil Rule (CR) 7(b)(1), which

requires an application for order to state with particularity the grounds for the motion, and to set forth the relief or order sought. We find no due process violation.

We affirm.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

Penoyar, J.

We concur:

Bridgewater, J.

Hunt, J.

THE SUPREME COURT OF WASHINGTON

BRIAN P. CARR, Petitioner, v. KARYN J, Respondent.	NO. 78768-9 **ORDER** C/A NOs. 32671-0-II & 32811-9-II (consolidated)

Department II of the Court, composed of Chief Justice Alexander and Justices Madsen, Bridge, Owens and J.M. Johnson (Justice Fairhurst sat for Justice Bridge), considered this matter at its January 30, 2007, Motion Calendar, and unanimously agreed that the following order be entered.

IT IS ORDERED:

That the Petition for Review is denied. The Petitioner's motion to expand the record is denied.

DATED at Olympia, Washington this 31st day of January, 2007.

For the Court

Gerry L Alexander
CHIEF JUSTICE

507/59