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
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503-545-8357