

Family Law Annual Seminar: Plain Talk on Plain Language Issues

Wednesday, December 14, 2016, Seattle, WA

*Presented by WSBA CLE
in partnership with the Family Law Section*

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Chair and Faculty

A Special Thank You to Our Program Chair and Faculty!

Those who have planned and will present at this WSBA CLE seminar are volunteers. Their generous contributions of time, talent, and energy have made this program possible. We appreciate their work and their service to the legal profession.

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Laurie Garber — *Northwest Justice Project, Vancouver, WA*

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Program Schedule

Family Law Annual Seminar: Plain Talk on Plain Language Issues

Wednesday, December 14, 2016

- 8:00 a.m.** **Check-in • Walk-in Registration • Coffee and Pastry Service**
- 8:25 a.m.** **Welcome and Introductions**
Mark Alexander, Seattle Divorce Services, Seattle
- 8:30 a.m.** **Parenting Plans**
Nancy Hawkins is in private practice and represents men and women in family law cases with a variety of parenting plan needs. She will discuss potential problems with the new plain language forms and provide drafting suggestions to overcome those problems. She will provide suggestions for handling a variety of parenting plan issues using the now mandatory plain language form.
Nancy Hawkins, Attorney At Law, Seattle
- 9:30 a.m.** **There's a Form for That? Getting to Know the New Plain Language Forms**
Laurie Garber staffed the ATJ Pro Se Project's Forms Review Workgroup that revised all of the domestic relations forms into plain language. Laurie will give tips for working with the new forms and discuss some of the lesser known forms, including those about accessing restricted court records, registering out-of-state orders, extending immediate restraining orders, the Service Members Civil Relief Act.
Laurie Garber, Northwest Justice Project, Vancouver
- 10:30 a.m.** **BREAK**
- 10:45 a.m.** **Mediation Papers: When Less is More**
How much information does a mediator really need, or want? What papers do you really want, or need, to provide? Also: developments regarding mediation ethics rules or guidelines.
Linda Roubik, Wechsler Becker LLP, Seattle
- 11:45 a.m.** **LUNCH on your own**

Schedule continued on next page

*Program Schedule (cont.)***12:45 p.m. The New Plain Language Child Support Order**

Nancy Koptur of the DSHS Division of Child Support participated as a member of the ATJ Pro Se Project Forms Review Workgroup and thinks the new Plain Language Child Support Order is pretty cool. However, Nancy would also like to point out some issues that have arisen when DCS receives child support orders entered by attorneys or unrepresented parties using the new form, some of which result in unenforceable orders. This session has three goals:

- Pointing out problems with how the new form is filled out
- Identifying problems that practitioners see in the new form, and
- Developing suggestions for possible ways to fix those problems.

Nancy Koptur, WA State Department of Social and Health Services, Olympia

1:45 p.m. Modifications

Modifications, with a view toward the modern forms.

Amir John Showrai, The Pacific Law Firm PLLC, Seattle

2:45 p.m. BREAK**3:00 p.m. Ethics and Family Law - Not an Oxymoron**

We will explore ethical issues common in family law including defining boundaries and scope of representation, withdrawal and substitution of counsel, due diligence, and dealing with client decisions that you do not agree with under RPC 1.2, RPC 1.3, RPC 1.16, and RPC 2.1.

Lisa DuFour, Integrative Family Law PLLC, Seattle

Sharon Friedrich, Integrative Family Law PLLC, Seattle

4:00 p.m. Adjourn • Complete Evaluation Forms

Chair Biography

Mark Alexander

Mark Alexander graduated with honors from Harvard College and attended the Backus School of Law of Case Western Reserve University, where he was a legal research, advocacy, and writing instructor for first-year law students. Licensed as an attorney since 1979 and admitted in five states, he has been practicing family law in the Puget Sound area since 1990. He has served as Managing Attorney for the Family Law Mentor Program of the King County Bar Association and as Chair of the KCBA Family Law Section. A member for over 20 years of its Local Rules committee, he worked on the joint effort to update and clarify the King County Local Family Law Rules, coordinated group comments on proposed statewide Family Law Civil Rules, and has helped revise the family law forms into plain language. In addition to devoting time to the Greenwood family law clinic and the Volunteer Settlement Conference program, Mark serves on the WSBA Family Law Executive Committee. He mediates and litigates at Seattle Divorce Services in Ballard.

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Seminar Sponsor:	<u>WSBA-CLE</u>									
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Seminar Date:	December 14, 2016									
Approved Credits:	<u>6.00</u> CLE Credits for Washington Attorneys (<u>5.0</u> Law & Legal Procedure, <u>1.0</u> Ethics and <u>0.0</u> Other)									
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I hereby certify that I have earned the number of L&LP/Ethics/Other credits inserted above on the Credits Earned line.										
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CHAPTER ONE

PARENTING PLANS

November 2016

**Nancy Hawkins
Attorney At Law**Phone: (206) 781-2570
nhawkins@seanet.com

NANCY HAWKINS received her undergraduate degree from the University of Washington in 1979 and her law degree from the University of Puget Sound Law School in 1981. She was admitted to the Washington State Bar Association in 2016. She is a sole practitioner who concentrates her practice in the areas of family law. She is a former chair of the King County Bar Association Family Law Section. She is a chapter author for the WSBA Family Law Deskbook. She is a member of the WSBA Family Law Section Executive Committee.

I. Introduction

The importance of parenting plans.

Long after your client has left the courthouse and you have cashed the check, your Parenting Plan will live on. Your work will be tested every school year, every holiday, every special occasion and every summer. Will you be remembered fondly or cursed as an incompetent? That starts here, or in your office, when you decide what language to put in their proposed parenting plan.

There is no “standard” parenting plan. Each one is unique and must be drafted for that particular family and those particular children. The potential issues to be addressed in a parenting plan are infinite and you must consider as many of them as you can foresee. This seminar is intended to provide suggestions for handling a variety of parenting plan issues using the now mandatory plain language forms.

II. Family Law prior to 1987.

Prior to 1987, there were no Parenting Plans or Orders of Child Support. Typically, there were two documents entered at the conclusion of a Dissolution of Marriage: Findings of Fact and Conclusions of Law and a Decree of Dissolution. All of these documents together typically totaled ten pages or less. For the vast majority of Decrees, the sole provisions as to parenting were as follows:

“The mother shall have sole custody of the minor child, Mary Lou, and the father shall have reasonable visitation. The father shall pay child support in the amount of \$50 per month.”

Sometimes there would be another sentence or two regarding holidays and summers such as:

“The father shall have visitation every other weekend, one-half of Christmas vacation, spring break in odd-numbered years and two weeks each summer.”

These provisions resulted in numerous disagreements over the rights of the “custodial” parent and the “non-custodial” parent. Those disagreements were not easy to resolve given the lack of specificity in the Decree of Dissolution.

As disagreements arose, parents either worked out the details on each holiday or vacation or their lawyers tried to do so. There were no mediators and no arbitrators. Lawyers did actually talk to each other with varying proposals. The courts were packed every week before Christmas and every week before school was out with disputes that could not be resolved by the parties.. As you might imagine, this was a frustrating situation for all involved.

III. Family Law since 1987.

For a variety of reasons, laws were changed. New documents were now required and these documents and these changes now provided for protections in cases of abuse and other risks to children's health and safety. They also provided for protections for the rights of each parent. The passage of the Parenting Act in 1987 changed family law, generally for the better.

Dissolutions now include a separate document entitled "Parenting Plan." Through very specific provisions, the parenting plan is supposed to keep families out of court throughout the year and provide certainty for the parents and the children. Among its other purposes and requirements, the Parenting Plan is required to "include a residential schedule which designates in which parent's home each minor child shall reside on given days of the year, including provision for holidays, birthdays of family members, vacations and other special occasions"

R.C.W. 26.09.184 (6). You are supposed to be able to look at a Parenting Plan any day of the year and determine where the child should be.

IV. Before Drafting a Parenting Plan.

In order to draft an appropriate schedule for your parenting plan, you must take many issues into consideration. You should not rely on the parents to consider all of these issues without your prompting. You should raise these issues and offer appropriate suggestions. Once this kind of information is known, you can begin to determine a reasonable schedule for the parenting plan.

School Schedule

School district calendars vary from district to district. Some have a mid-winter break and others do not. Many have a number of early dismissal days or in-service days that fall on Fridays. Other weeks have no school sessions but have parent-teacher conferences, sometimes over an entire week. Some districts start school prior to Labor Day and others do not. Knowing the school district schedule, especially for out-of-state districts, can be very important in drafting a Parenting Plan that will meet the needs of the parents and children.

Other Children In the Family

Do either of the parents have children from other relationships? What is that child's schedule of time with your client or the opposing client? It is likely that the parent with multiple children under more than one parenting plans will want some overlap so that all of his/her children can spend time together. Do those other children have any special needs or issues that need to be considered? Perhaps an older child is a sex offender or drug user and language needs to be included in this parenting plan to protect against that other child. Perhaps you don't want overlap in those cases.

Parents' work schedules

In order to determine transfer times and transportation, you need to know when the parents are available given their work schedules and work location. A parenting plan that provides for a parent to pick a child up from school in north Seattle at 3:00 p.m. when that parent doesn't get off work in Renton until 5:00 p.m. will likely not work out well. Some parents have flexible schedules while others do not. You want certainty in your plan that works, not a schedule that you can predict with "certainty" will not work out.

Children's needs

Fairness doesn't necessarily mean splitting holidays in half. If your client lives in Spokane and the other parent lives on Bainbridge Island, that will affect your parenting plan. If your plan provides for a transfer on Christmas Day at Snoqualmie Pass at noon, the child will have holiday memories of long hours in a car and on a crowded ferry rather than a cozy day in front of a fire surrounded by loving relatives while opening presents.

Traffic

If one parent lives in Everett and the other in Federal Way, take the traffic congestion on I-5 into consideration in determining a reasonable transfer time.

Interactions between parents

If there is domestic violence or other significant problems, you will likely want to utilize transfers at school to minimize contact between the parents. The decision to do so should be carefully considered. A particular child may be reluctant to carry a suitcase to school. That child may want to come home before the transfer to pick up clothes, musical instruments, cell phones, etc. A particular parent may have difficulty getting to the school on time consistently due to work issues, traffic issues or other issues. But, even if the bulk of the transfers occur at school or daycare, there will likely always be some transfers that will take place when school is out or daycare is closed. You need to provide for those situations and pick appropriate transfer points. The transfer point should be reasonable. Is one parent habitually late? Take that into account and don't set up a situation where the child and an angry other parent are waiting for hours somewhere with nothing to do and no bathroom facilities.

Family traditions

Holidays may not matter if a family does not celebrate them or one parent does not. Sometimes one side traditionally celebrates Christmas Eve while the other family celebrates Christmas Day; by incorporating those traditions the disruption to the child's life is reduced. Other holidays may need to be included if the parties have a different faith or tradition. Remember that some holidays have multiple days (Passover, Chanukah, for example are 8 days long). Other special occasions may matter. If one family has a reunion every Fourth of July, that parent should get that day every year. Some families celebrate a child's adoption day. Find out what days matter in your client's family and include a provision in your parenting plan for that special day.

Some families travel to visit relatives in other states each winter or take trips to other countries. Those families may want to negotiate a plan that gives the entire winter break to one parent each year.

Anticipate all other possible issues

Find out if anyone's birthday ever falls on another holiday or special occasion so you can negotiate in advance how to handle the conflict. If one parent is Jewish and the other is Christian, write a provision for the possible conflict on the occasional year that year end holidays from the two religions conflict. Similarly, deal with the possible conflict between Easter and Passover.

If a parent is interested in sports and takes the child to Seahawk games every home game, have language that allows for those games to supersede the regular schedule. The schedule for the games differ in day and time; they are not always on Sunday afternoon.

Does a child have a medical need that must be taken into account?

Drafting the Parenting Plan.

Limitations on a parent (formerly 2.1 and 2.2 and 3.10, now paragraphs 3 and 4.)

The use of the phrase “**must** limit” in the instructions to paragraph 3, without reference to paragraph 4, is problematic. While parents should be identifying factors under RCW 26.09.191, they should first understand that not all such factors will result in a termination of time with the other parent. Parents who want to foster a child’s relationship with the other parent may think they need to deny any problematic history of the other parent. For example, a history of domestic violence against the parent does not preclude some kind of relationship with a child in the future, with appropriate language in paragraph 4.

Babies and Pre-school children [formerly paragraph 3.1, now paragraph 8(a)]

The practical truth is that nursing babies must be with the mother for the majority of the time. Ideally, the mother would provide the father with milk for use during his time with the child. If not, the father must still be able to feed the child so a plan for a switch to formula will likely need to be discussed and determined.

New mothers often suggest that the father of a very young infant visit the baby in her home. This has pros and cons. The setting is ideal since all of the baby’s physical needs can be met there without the need to duplicate equipment such as a crib, changing table, etc. But a baby presented with a choice of parents to look to for comfort will often choose the parent that is most familiar so the father will be unhappy if the child wants the mother to hold him the whole time. Removing the mother as a choice in the child’s eyes can resolve that but using mother’s home but sending mother out to the mall or the neighbor’s is best for father but not best for the mother who likely wanted to use the time for a shower or nap.

Pre-school children are very different from each other. Some adapt well to two homes and others take longer to do so. Long drawn out goodbyes should be avoided so transfers at daycare or pre-school are often preferable. A back pack of familiar stuffed animals and the favorite blanket are often important but must be returned at the end of a visit. Remind parents that denying access to these familiar items for discipline purposes is not appropriate.

Transportation issues must be carefully considered for very young children. Long trips can be difficult for both a parent and a child, especially when a baby is unhappy. This may be a time to make suggestions to your client about how to have a more successful visit. Do they have another adult who can drive while the parent is in the back seat entertaining a baby. Is there a grandparent nearby: You can always suggest that a parent have a shorter visit at his/her parents’ home so that the entire visit isn’t

consumed by the transportation. But, these suggestions should be options, not requirements in a parenting plan

Each parent should have his/her own legal car seat. It is time-consuming and frustrating to move car seats even once, let alone multiple times back and forth.

School year: [formerly paragraph 3.2, now paragraph 8(b)]

A typical schedule has the child in one home on alternate weekends with a mid-week or two.

Your first question should be when the weekend starts. For some plans, we start the weekend on Thursday and have that parent take the child to school on Friday. This can only be done if that parent has a work schedule or a designee to provide transportation on that Friday to/from school. If not, a reasonable alternative is to provide for the weekend to generally start on Friday but start on Thursday if Friday is an in-service day or other school holiday.

When should the weekend end? For some plans, we end the weekend on Monday morning. Again, this can only be done if that parent has a work schedule or a designee to provide transportation on that Monday to school. If not, a reasonable alternative is to provide for the weekend to generally end on Sunday but end on Monday if Monday is an in-service day or other school holiday.

The mid-week visit raises many logistical issues. The work schedule of the parents will often determine whether the time can be overnight. A child's schedule for extra-curricular activities will often limit a child's availability for more than a post-practice dinner. A parent's schedule will often limit the parent's availability to start a mid-week time (immediately after school or only after work).

What time should the transfer back language use? How old is the child? You should anticipate a child getting older. A return time at 5 for a very young child isn't necessary for a 14 year old.

Winter Break (formerly paragraph 3.3, now a part of paragraph 10)

I still see lots of plans that just say the each parent gets one-half of the vacation and then, in the holiday section, gives one Christmas Eve and one Christmas Day. Without more specific provisions, you are likely to be called every December with a dispute to resolve.

I prefer to set forth the entire break, including Christmas Eve and Day and New Year's Eve and Day, in Section 3.3 and then in the holiday section, merely refer to Section 3.3. Remember to provide for the possible confusion arising from using odd/even designations for the two different years involved in the winter break.

I encourage some parents to have one transfer time during the middle of winter vacation even if it results in differing numbers of days for each parent. With the odd/even switch the following year, the division of days usually evens up.

If the distance between the parents would result in a long trip, encourage the parents to consider alternating the entire Christmas Eve and Day period so the children do not have to travel on Christmas.

What is this family's tradition? If the mother's family always celebrates on Christmas Eve and the father's family always celebrates on Christmas Day, there is no reason to alternate the two portions of the holiday and disrupt the tradition.

Holidays and School Breaks (paragraph 10)

These days, mid-winter breaks are often scheduled to coincide with and merely extend President's Day weekend. Make sure that you don't have inconsistent provisions for mid-winter break and President's Day weekend unless you want to be in mediation or court every year. The same is true for Easter and spring break. Again, does anyone have a birthday that will fall during one of these breaks? Provide for it.

Summer Schedule [formerly paragraph 3.5, now paragraph 9]

For a parent who can't meet the transportation needs or other issues raised by longer weekends but still wants more time with the children, summer can be the time to get more time. This paragraph should be consistent with the vacation provisions. Anticipate the shorter summer if there are snow days by not having summer start on a particular date but rather a particular event such as the end of the school year.

Vacation with Parents (formerly paragraph 3.6, now a limited and insufficient mention in paragraph 9)

I don't like the often-used language that gives one parent "priority" over the other in alternate years. I like firm deadlines for selection of time for each parent so that the parents have time to plan daycare/camps, etc. around both parents' preferred vacation time. Which parent chooses first should be included in the deadline language. Once vacation times are set, sometimes the rest of the summer schedule has some uncertainty. This is particularly true if the parents provide for a week on/off schedule for the summer. Particularly for young children, you may want to add a sentence or two to deal with situations where parents try to schedule their vacation time so as to extend their uninterrupted time by appending it to their regular time. Your plan can allow it or prohibit those clever extensions of uninterrupted time.

The mandatory form does not provide for vacation except if the remaining summer is the same as the school year. Do not let the form define your parenting plan.

Schedules for Holidays (formerly paragraph 3.7, now paragraph 10)

Holidays must have start times and end times. No exceptions. You must anticipate the availability of additional time arising from early dismissals or non-school days. Should Thanksgiving always be all weekend? Or from Wednesday to Friday, giving the other parent the rest of the weekend. Fourth of July events require unique time sets. Does Veteran's Day require special handling in the parenting plan since it sometimes falls mid-week?

Schedule for Special Occasions (formerly paragraph 3.8, now a part of paragraph 10)

Special occasions must have start times and end times. No exceptions. As with holidays, you must anticipate the availability of additional time arising from early dismissals or non-school days. Do birthdays matter to this family? Do they have to be celebrated on the birthday? Parents' birthdays? This paragraph is where you add your client's special provision for Adoption Day or some other family celebration.

Is there a special occasion that your client's spouse has each year but she hasn't mentioned? Should you bring it up? Yes, it shows good faith and it will prevent a fight down the road.

Priorities Under the Residential Schedule [formerly paragraph 3.9, now paragraph 11 (conflicts in scheduling)]

Don't ignore the priorities section. The priorities section has meaning. Consider it carefully so that the parenting plan is implemented in the manner you intended.

Dispute Resolution. (formerly Paragraph V, now paragraph 6).

Every provision of your Dispute Resolution section should be specific. Your mediator or arbitrator should have a name and a back up name, if the first person is not available. Do not say "agreed upon mediator." These parents have a disagreement or they wouldn't need their ADR provision; what makes you think they can quickly agree on a mediator to use. Don't use certified mail; no one picks up their certified mail anymore.

Transportation Arrangements (formerly paragraph 3.11, now paragraph 12)

I don't like grace periods. If you give someone a 30 minute grace period, they will not try hard enough to be there on time. I don't like meetings in the middle of nowhere. Nothing makes people more upset than to sit and wait on a street corner with tired and impatient children. If you must meet at a neutral location, make it one where the children have something to do or you can get something to eat.

I like to specify that a parent can send a designee. Every parent has, at some time, had to send a parent or friend or new spouse. You don't want the other parent refusing to

turn the children over. On the other hand, in some instances, a limit to who the designee can be is appropriate.

Other. (formerly paragraph VI, now paragraph 14)

If you do not have anything in paragraph 14, quit now. This is where you really protect your client and provide appropriately for the children. You should have some standard language if you represent the primary residential parent and standard language if you represent the other side. You must also add specifics for this specific family.

Conclusion

A well-written parenting plan will provide the parents a clear road map each year of shared parenting until their child reaches the age of majority. It will have a dispute resolution mechanism that will allow a mediator or arbitrator the rules/guidance needed to resolve disputes that arise. Most of all, it should keep the parents out of court. Finally, if one parent files a motion, the court should be able to rule on the issue easily based on the crystal clear language that you drafted.

Exhibit PP draft provisions

Example of a provision for an infant.

The father's residential time with the baby shall be from 3:00 p.m. until 5:00 p.m. every day for the next 90 days. This time shall be exercised at the mother's home. The mother shall be at the home for the first week but remain in another part of the home during the father's time. This will allow the father to bond with the child but allow the mother to be available for consultation or nursing at the father's request. After this first week, the mother shall leave the home during the father's time. It is anticipated that she will be at the next-door neighbor's home and available for consultation or assistance as needed. The father shall be entitled to access and use of the baby's supplies and equipment but shall respect the mother's privacy as to her room and her property. The father's family (no more than two at a time) can visit the child during the father's time but shall be held to the same requirements. The father's uncle, Clyde Barrow, shall not be included in any family visitation at the mother's home.

The parents acknowledge that the father may not be able to exercise his time every single day due to his work schedule. He will provide the mother with at least 24 hours' notice of any day he will not exercise his time.

Example of a provision regarding a parent with prior substance abuse

First, are you checking 3.1 or 3.2 issues, now known as Paragraph 3 and 4 issues? If you are not because the problem is presently under control, don't you still want an asterisk*

*The mother has a history of alcohol abuse but is presently in recovery.

Why is that important? If there is a relapse, the court will look to your parenting plan as to any prior findings. But, more importantly, you are required as an officer of the court to bring appropriate issues to the court's attention. If your plan was silent on the abuse issue and the court did its records check and found a conviction for prescription forgery or DUI, your plan might not get approved.

Here is an example of terms to use in a parenting plan with prior substance abuse and an extended period of time without contact between mother and child.

The mother's initial time with the child shall be professionally supervised. She shall have six four-hour sessions professionally supervised visits by Gonzo Thompson. The purpose of the supervision is to ensure that the mother is not using drugs or alcohol during the residential time and to assist with a unification process as well as provide a record of this unification. The mother may bring one of her parents on each such visit but is not required to do so. No one else shall be present. The cost of the professional

supervisor shall be paid by the mother. If she does not do so, the father shall do so and such amount shall be credited against the lien in favor of the mother for the division of property set forth in the Decree of Dissolution.

The mother shall then have six four-hour sessions with the child at the home of her parents without professional supervision. One of the mother's parents shall be in the home at the time of the session but need not be in the same room at all times.

The mother shall thereafter have residential time with the child at her home as follows:

Each Wednesday and Saturday from 10:00 a.m. until 6:00 p.m. for a period of three months.

Assuming the mother has exercised the sessions scheduled above, the mother's time will be increased thereafter to each Wednesday from 10:00 a.m. until 6:00 p.m. and each Friday at noon until 6:00 p.m. on Saturday for the next period of three months.

Assuming the mother has exercised the sessions scheduled above, the mother's time will be increased thereafter to each Wednesday from 10:00 a.m. until 6:00 p.m. and every other Friday at noon until 6:00 p.m. on Sunday.

A missed session will extend the number of weeks in that phase by one week, regardless of the reason for the missed session.

Gonzo Thompson and each of mother's parents will sign an Oath of Supervisor as set forth in the attached form.

Any use of alcohol or prohibited drug shall result in a suspension of residential time pending further order of the court. If the father suspects that the mother has used alcohol or a prohibited drug, he has the right to unilaterally suspend the mother's time with the child but, in such instance, the father shall be required to bring the matter to the court's attention within one month of the claimed relapse.

The father has the authority to demand that the mother take a test to determine whether she has used drugs or alcohol. If the father makes such a request, the mother shall comply with testing within two hours at _____ facility. Such test shall be at the mother's expense but subject to reimbursement if the test is negative or if the court later orders.

Example of religious training agreement:

The parents have agreed that the children will be raised in the Jewish faith. At the appropriate time, there will be classes and preparation for each child's Bat/Bar Mitzvah. These needed classes and study will take place during each parent's residential time. Each parent will transport the child to such classes during his/her residential time.

This paragraph does not preclude the father from including the children in his Christmas celebrations during his residential time.

Example of Passover language.

Passover shall be defined as 9:00 a.m. (or from school, if a school day) on the day of the first night of Passover until school the next day (10:00 a.m., if no school).

Remember to look for potential conflict between religious holidays. What if the first night of Chanukkah conflicts with Christmas? Which holiday prevails?

Example of a conflict between a holiday and a special occasion.

Some years the father's birthday will fall on Mother's Day. For such years, the Mother's Day time shall begin Saturday at 6:00 p.m. and end Sunday at 2:00 p.m. and the father's birthday time will begin Sunday at 2:00 p.m. until school the following morning.

Example for holidays that float (Veteran's Day).

I generally recommend that parents follow the regular schedule for Veteran's Day but some parents insist on including it in the Parenting Plan. If so, here is some possible language:

If Veteran's Day falls on a Tuesday, Wednesday or Thursday, it shall be from 10:00 a.m. on Veterans Day through 10:00 a.m. the following day.

If Veteran's Day falls on a Saturday or Sunday, it shall be from Friday at 3:00 p.m. until Monday at school (or 9:00 a.m., if no school).

If Veteran's Day falls on a Friday or Monday, the holiday weekend shall begin Thursday at 6:00 p.m. (for Friday holidays) or begin Friday at 6:00 pm. (for Monday holidays). The holiday weekend shall end Tuesday morning at school (or 9:00 a.m., if no school) for Monday holidays. It should end Monday morning at school (or 9:00 a.m., if no school) for Friday holidays.

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Superior Court of Washington, County King

In re:

No. 16-3-00000-0

Petitioner:

Parenting Plan
(PPP/PPT/PP)

BRAD JONES

Clerk's action required:

And Respondent:

ANGELINA SMITH

Parenting Plan

1. This parenting plan is a *(check one)*:

Proposal (request) by a parent (*name/s*): Brad Jones. It is not a signed court order (PPP).

Court Order signed by a judge or commissioner. This is a *(check one)*:

Temporary order (PPT).

Final order (PP).

This final parenting plan changes the last final parenting plan.

1 **2. Children - This parenting plan is for the following children:**

Child's name	Age
1. Jennifer Smith Jones	10
2. Monica Smith Jones	9
3. Chandler Smith Jones	8
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3. Reasons for putting limitations on a parent (under RCW 26.09.191)

a. Abandonment, neglect, child abuse, domestic violence, assault, or sex offense.
(If a parent has any of these problems, the court must limit that parent's contact with the children and the right to make decisions for the children.)

Neither parent has any of these problems. (Skip to 3.b.)

A parent has one or more of these problems as follows *(check all that apply)*:

Abandonment - (Parent's name): intentionally abandoned a child listed in 2. for an extended time.

Neglect - (Parent's name): substantially refused to perform his/her parenting duties for a child listed in 2.

Child Abuse - (Parent's name): (or someone living in that parent's home) abused or threatened to abuse a child. The abuse was *(check all that apply)*: physical sexual repeated emotional abuse.

Domestic Violence - (Parent's name): (or someone living in that parent's home) has a history of domestic violence as defined in RCW 26.50.010(1).

Assault - (Parent's name): (or someone living in that parent's home) has assaulted or sexually assaulted someone causing grievous physical harm or fear of such harm.

Sex Offense -

(Parent's name): has been convicted of a sex offense as an adult.

Someone living in *(parent's name):* 's home has been convicted as an adult or adjudicated as a juvenile of a sex offense.

b. Other problems that may harm the children's best interests *(If a parent has any of these problems, the court may limit that parent's contact with the children and right to make decisions for the children.):*

Neither parent has any of these problems. (Skip to 4.)

A parent has one or more of these problems as follows *(check all that apply)*:

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Be evaluated for: Drug/alcohol abuse/addiction

Start Continue and comply with treatment

as recommended by the evaluation.

as follows (*specify kind of treatment and any other details*):

Provide a copy of the evaluation and compliance reports (*specify details*):

The father's counsel and the court.

If this parent does not follow the evaluation or treatment requirements above, then
(*what happens*):

Residential time is suspending pending further order of the court.

1 **5. Decision-making**

2 When the children are with you, you are responsible for them. You can make day-to-day
3 decisions for the children when they are with you, including decisions about safety and
4 emergency health care. Major decisions must be made as follows.

5 **a. Who can make major decisions about the children?**

Type of Major Decision	Joint <i>(parents make these decisions together)</i>	Limited <i>(only the parent named below has authority to make these decisions)</i>
School / Educational	[X]	[] (Name):
Health care (not emergency)	[X]	[] (Name):
Other: Daycare	[X]	[] (Name):
Other: Drivers License	[X]	[] (Name):
Other: Tattoos	[X]	[] (Name):

6 **b. Reasons for limits on major decision-making, if any:**

7 [X] There are no reasons to limit major decision-making.

8 [] Major decision-making **must** be limited because one of the parents has problems
9 as described in 3.a. above.

10 [] Major decision-making **should** be limited because *(check all that apply)*:

11 [] Both parents are against shared decisions-making.

12 [] One of the parents does not want to share decisions-making and this is
13 reasonable because of :

14 [] problems as described in 3.b. above.

15 [] the history of each parent's participation in decision-making.

16 [] the parents' ability and desire to cooperate with each other in
17 decision-making.

18 [] the distance between the parents' homes makes it hard to make timely
19 decisions together.

20 **6. Dispute Resolution - If you and the other parent disagree**

1 From time to time, the parents may have disagreements about shared decisions or about
2 what parts of this parenting plan mean.

3 a. To solve disagreements about this parenting plan, the parents will go to (*check one*):

4 the dispute resolution provider below (before they may go to court):

5 Mediation (*mediator or agency
6 name*):

7 *If there are domestic violence issues, you may only use mediation if the victim
8 asks for mediation, mediation is a good fit for the situation, and the victim can
9 bring a support person to mediation.*

10 Arbitration (*arbitrator or agency name*): Lynn Pollock (in memoriam)

11 Counseling (*counselor or agency
12 name*):

13 If a dispute resolution provider is not named above, or if the named provider is no
14 longer available, the parents may agree on a provider or ask the court to name
15 one.

16 ***Important!*** Unless there is an emergency, the parents must participate in the
17 dispute resolution process listed above in good faith, before going to court. This
18 section does not apply to disagreements about money or support.

19 court (without having to go to mediation, arbitration, or counseling). (*If you check
20 this box, skip to section 7 below, do not fill out 6.b.*)

21 b. If mediation, arbitration, or counseling is required, one parent must notify the other
22 parent by (*check one*): certified mail. other (*specify*):

23 Written request

24 The parents will pay for the mediation, arbitration, or counseling services as follows
(*check one*):

(*Name*): _____ will pay %, (*Name*): _____ will pay %.

based on each parents' Proportional Share of Income (percentage) from line 6 of
the *Child Support Worksheet*.

as decided through the dispute resolution process.

What to expect in the dispute resolution process

- Preference shall be given to carrying out the parenting plan.

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7. Custodian

The custodian is *(name)*: Brad Jones solely for the purpose of all state and federal statutes which require a designation of determination of custody. Even though one parent is called the custodian, this does not change the parenting rights and responsibilities described in this plan.

(Washington law generally refers to parenting time and decision-making, rather than custody. However, some state and federal laws require that one person be named the custodian. The custodian is the person with whom the children are scheduled to spend more of their time.)

1 **Parenting Time Schedule (Residential Provisions)**

2 **Skip the parenting time schedule in sections 8 - 11 if one parent has no contact with**
3 **the children other than what is described in section 4 – Limitations.**

4 The children live with (name): _____ except as described in section 4.

5 **Complete the parenting time schedule in sections 8 - 11.**

6 **8. School Schedule**

7 **a. Children under School-Age**

8 Does not apply. All children are school-age.

9 The schedule for children under school-age is the same as for school-age children.

10 Children under school-age are scheduled to live with (name): Angelina Smith except
11 when they are scheduled to live with (name): Brad Jones on (check all that apply):

12 WEEKENDS:

13 every week. every other week. other (specify):
14 See Exhibit PP

15 From (day) at : .m. to (day) at : .m.

16 From (day) at : .m. to (day) at : .m.

17 WEEKDAYS:

18 every week. every other week. other (specify):

19 See Exhibit PP

20 From (day) at : .m. to (day) at : .m.

21 From (day) at : .m. to (day) at : .m.

22 OTHER (specify):

23 Other (specify):

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b. School-Age Children

This schedule will apply when (*check one*): the youngest child the oldest child each child begins: (*check one*):

Kindergarten.

1st grade.

Other:

The children are scheduled to live with (*name*): Angelina Smith except when they are scheduled to live with (*name*): Brad Jones on (*check all that apply*):

WEEKENDS:

every week. every other week. other (*specify*):

Every other weekend beginning December 1, 2016.

From (day) Thursday at 3:00 p.m. to (day) Monday at 9:00 a.m.

From (day) at : .m. to (day) at : .m.

WEEKDAYS:

every week. every other week. other (*specify*):

Every Wednesday from school (9:00 a.m., if no school) until Thursday at school (noon, if no school).

From (day) at : .m. to (day) at : .m.

From (day) at : .m. to (day) at : .m.

OTHER (*specify*):

If there is a non-school day immediately preceding or immediately following a parent's weekend, the parent may include such day in his/her weekend with ten days notice to the other parent.

Other (*specify*):

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2 **9. Summer Schedule**

3 Summer begins and ends according to the school calendar.

4 as follows:

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6 The Summer Schedule is the **same** as the School Schedule (*Skip to 10.*)

7 The Summer Schedule is the **same** as the School Schedule **except** that each parent
8 shall spend 2 weeks of uninterrupted vacation time with the children each summer.
9 The parents shall confirm their vacation schedules in writing by the end of
10 (*date*) each year. (*Skip to 10.*)

11 The Summer Schedule is **different** than the School Schedule. The Summer Schedule
12 will begin the summer before (*check one*): Kindergarten 1st grade Other:

13 During the summer the children are scheduled to with (*name*): Brad Jones except
14 when they are scheduled to be with (*name*): Angelina Smith on (*check all that apply*).

15 WEEKENDS:

16 every week every other week other (*specify*):

17 From (day) at : .m. to (day) at : .m.

18 From (day) at : .m. to (day) at : .m.

19 WEEKDAYS:

20 every week every other week other (*specify*):

21 From (day) at : .m. to (day) at : .m.

22 From (day) at : .m. to (day) at : .m.

23 OTHER (*specify*):

24 The parents will alternate the weeks of the summer with the parenting having the last weekend of the school year keeping the child with him/her until the Friday following the last day of school when the child will be transferred to the other parent to begin his/her full week. If the last day of school is a Friday, the parent not having the children on the last weekend shall begin his/her first full week the following Friday. The parents will alternate each week of the summer with the transfer time being noon on Friday.

The summer, under this paragraph, shall conclude on the Friday of Labor Day weekend at noon.

Alternative Vacation Language. Each parent shall have two one-week periods each summer for vacation purposes. Beginning in 2018, the weeks may be taken consecutively.

The father picks his summer vacation by April 15th in even-numbered years and then mother chooses her summer vacation by May 1st. The mother picks her summer vacation by April 15th in odd-numbered years and then father chooses his summer vacation by May 1st.

10. Holiday Schedule (includes school breaks)

The Holiday Schedule is the same as the School and Summer Schedules above for all holidays and school breaks. (Skip to 11.)

This is the Holiday Schedule for all children school-age children only:

Holiday	Children with (name): Brad Jones	Children with (name): Angelina Smith
Martin Luther King Jr. Day	<input checked="" type="checkbox"/> Odd Years <input type="checkbox"/> Even Years <input type="checkbox"/> Every Yr. Begin day/time: Thursday after school, noon if no school	<input type="checkbox"/> Odd Years <input checked="" type="checkbox"/> Even Years <input type="checkbox"/> Every Yr. Begin day/time: Same
	End day/time: Tuesday at school, noon if no school	End day/time: Same
	<input type="checkbox"/> With the parent who has the children for the attached weekend <input type="checkbox"/> Other plan:	
Presidents' Day	<input type="checkbox"/> Odd Years <input checked="" type="checkbox"/> Even Years <input type="checkbox"/> Every Yr. Begin day/time: Thursday after school, noon if no school	<input checked="" type="checkbox"/> Odd Years <input type="checkbox"/> Even Years <input type="checkbox"/> Every Yr. Begin day/time: Same
	End day/time: Tuesday at school, noon if no school	End day/time: Same
	<input type="checkbox"/> With the parent who has the children for the attached weekend <input type="checkbox"/> Other plan:	
Mid-winter Break	<input type="checkbox"/> Odd Years <input type="checkbox"/> Even Years <input type="checkbox"/> Every Yr.	<input type="checkbox"/> Odd Years <input type="checkbox"/> Even Years <input type="checkbox"/> Every Yr.

Holiday	Children with (name): Brad Jones	Children with (name): Angelina Smith
	Begin day/time: _____ End day/time: _____	Begin day/time: _____ End day/time: _____
	<input type="checkbox"/> Each parent has the children for the half of break attached to his/her weekend. The children must be exchanged on Wednesday at (time): _____ <input checked="" type="checkbox"/> Other plan: Same as President's Day	
Spring Break	<input checked="" type="checkbox"/> Odd Years <input type="checkbox"/> Even Years <input type="checkbox"/> Every Yr. Begin day/time: 5:00 p.m. on the last day of school End day/time: At school on the first day of school following the break	<input type="checkbox"/> Odd Years <input checked="" type="checkbox"/> Even Years <input type="checkbox"/> Every Yr. Begin day/time: Same End day/time: Same
	<input type="checkbox"/> Each parent has the children for the half of break attached to his/her weekend. The children must be exchanged on Wednesday at (time): _____ <input type="checkbox"/> Other plan: _____	
Mother's Day	<input type="checkbox"/> Odd Years <input type="checkbox"/> Even Years <input type="checkbox"/> Every Yr. Begin day/time: _____ End day/time: _____	<input type="checkbox"/> Odd Years <input type="checkbox"/> Even Years <input checked="" type="checkbox"/> Every Yr. Begin day/time: Saturday at 6:00 p.m. End day/time: Monday at school
	<input type="checkbox"/> Other plan: _____	
Memorial Day	<input type="checkbox"/> Odd Years <input type="checkbox"/> Even Years <input checked="" type="checkbox"/> Every Yr. Begin day/time: Thursday after school End day/time: Tuesday at school	<input type="checkbox"/> Odd Years <input type="checkbox"/> Even Years <input type="checkbox"/> Every Yr. Begin day/time: _____ End day/time: _____
	<input type="checkbox"/> With the parent who has the children for the attached weekend <input checked="" type="checkbox"/> Other plan: If the father stops attending the Smith family reunion in Aspen CO, , the parents will alternate the Memorial Day weekend on the same terms as the MLK weekend.	
Father's Day	<input type="checkbox"/> Odd Years <input type="checkbox"/> Even Years <input checked="" type="checkbox"/> Every Yr. Begin day/time: Saturday at 6:00 p.m. End day/time: Monday at school or, if no school, resume summer schedule on Sunday at 6:00 p.m.	<input type="checkbox"/> Odd Years <input type="checkbox"/> Even Years <input type="checkbox"/> Every Yr. Begin day/time: _____ End day/time: _____
	<input type="checkbox"/> Other plan: _____	

Holiday	Children with (name): Brad Jones	Children with (name): Angelina Smith
Fourth of July	<input checked="" type="checkbox"/> Odd Years <input type="checkbox"/> Even Years <input type="checkbox"/> Every Yr. Begin day/time: Friday noon End day/time: Monday 8:00 p.m.	<input type="checkbox"/> Odd Years <input checked="" type="checkbox"/> Even Years <input type="checkbox"/> Every Yr. Begin day/time: Friday noon End day/time: Monday 8:00 p.m.
	<input type="checkbox"/> Follow the Summer Schedule in section 9. <input type="checkbox"/> Other plan:	
Labor Day	<input type="checkbox"/> Odd Years <input type="checkbox"/> Even Years <input type="checkbox"/> Every Yr. Begin day/time: _____ End day/time: _____	<input type="checkbox"/> Odd Years <input type="checkbox"/> Even Years <input checked="" type="checkbox"/> Every Yr. Begin day/time: Thursday at noon End day/time: Tuesday at noon
	<input type="checkbox"/> With the parent who has the children for the attached weekend <input type="checkbox"/> Other plan:	
Thanksgiving Day / Break	<input checked="" type="checkbox"/> Odd Years <input type="checkbox"/> Even Years <input type="checkbox"/> Every Yr. Begin day/time: Wednesday after school End day/time: Sunday at noon	<input type="checkbox"/> Odd Years <input checked="" type="checkbox"/> Even Years <input type="checkbox"/> Every Yr. Begin day/time: Same End day/time: Same
	<input type="checkbox"/> Other plan:	
Winter Break	<input type="checkbox"/> Odd Years <input type="checkbox"/> Even Years <input type="checkbox"/> Every Yr. Begin day/time: _____ End day/time: _____	<input type="checkbox"/> Odd Years <input type="checkbox"/> Even Years <input type="checkbox"/> Every Yr. Begin day/time: _____ End day/time: _____
	<input checked="" type="checkbox"/> Other plan: See below	
Christmas Eve	<input type="checkbox"/> Odd Years <input type="checkbox"/> Even Years <input checked="" type="checkbox"/> Every Yr. Begin day/time: Last day of school, from school End day/time: Christmas Day at 2:00 p.m.	<input type="checkbox"/> Odd Years <input type="checkbox"/> Even Years <input type="checkbox"/> Every Yr. Begin day/time: _____ End day/time: _____
	<input type="checkbox"/> Follow the Winter Break schedule above. <input type="checkbox"/> Other plan:	
Christmas Day	<input type="checkbox"/> Odd Years <input type="checkbox"/> Even Years <input type="checkbox"/> Every Yr. Begin day/time: _____ End day/time: _____	<input type="checkbox"/> Odd Years <input type="checkbox"/> Even Years <input checked="" type="checkbox"/> Every Yr. Begin day/time: Christmas Day at 2:00 p.m. End day/time: January 2 at noon or at school, if a school day
	<input type="checkbox"/> Follow the Winter Break schedule above. <input type="checkbox"/> Other plan:	

Holiday	Children with (name): Brad Jones	Children with (name): Angelina Smith
New Year's Eve / New Year's Day <i>(odd/even is based on New Year's Day)</i>	[] Odd Years [] Even Years [] Every Yr.	[] Odd Years [] Even Years [X] Every Yr.
	Begin day/time: _____ End day/time: _____	Begin day/time: See Christmas Day End day/time: See Christmas Day
[] Follow the Winter Break schedule above. [X] Other plan: See above		
Children's Birthdays	[] Odd Years [] Even Years [] Every Yr.	[] Odd Years [] Even Years [] Every Yr.
	Begin day/time: _____ End day/time: _____	Begin day/time: _____ End day/time: _____
[X] Other plan: Regular Schedule		
All three-day weekends not listed elsewhere	<i>(Federal holidays, school in-service days, etc.)</i> [X] The children shall spend any unspecified holiday or non-school day with the parent who has them for the attached weekend. [] Other plan:	
Other occasion important to the family: Monica's Adoption Day, February 14	[X] Odd Years [] Even Years [] Every Yr.	[] Odd Years [X] Even Years [] Every Yr.
	Begin day/time: From school (noon, if no school) End day/time: 8:00 p.m.	Begin day/time: Same End day/time: Same
[] Other plan:		
Other occasion important to the family: Jennifer's Adoption Day December 3	[] Odd Years [X] Even Years [] Every Yr.	[X] Odd Years [] Even Years [] Every Yr.
	Begin day/time: After school, or noon if no school End day/time: The following morning at school, or noon if no school	Begin day/time: Same End day/time: _____
[] Other plan:		

11. Conflicts in Scheduling

The Holiday Schedule must be observed over all other schedules. If there are conflicts within the Holiday Schedule *(check all that apply)*:

[X] Named holidays shall be followed before school breaks.

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Children's birthdays shall be followed before named holidays and school breaks.

Other (*specify*):

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12. Transportation Arrangements

The children will be exchanged for parenting time (picked up and dropped off) at
 each parent's home.
 school or day care when in session.
 other location (*specify*):

When school is not in session, the picking up parent will pick the children up at the home of the other parent. The parent will remain in or by his/her vehicle during such transfers. Neither parent will discuss other aspects of the parenting plan or other legal issues during transfers.

Who is responsible for arranging transportation?

The **picking up** parent - The parent who is about to **start** parenting time with the

children must arrange to have the children picked up.

The **dropping off** parent - The parent whose parenting time is **ending** must arrange to have the children dropped off.

Other details (if any):

Each parent will use legal and appropriate car seats/booster seats in his/her vehicle.

Each parent will be covered by auto insurance.

1 **13. Moving with the Children (Relocation)**

2 If the custodian plans to move, s/he **must notify** every person who has court-ordered
3 time with the children.

4 ***Move to a different school district***

5 If the move is to a different school district, the custodian must complete the form *Notice of*
6 *Intent to Move with Children* (FL Relocate 701) and deliver it at least **60 days** before the
7 intended move.

8 ***Exceptions:***

- 9 • If the custodian could not reasonably have known enough information to complete
10 the form in time to give 60 days' notice, the custodian must give notice within **5**
11 **days** after learning the information.
- 12 • If the custodian is relocating to a domestic violence shelter or moving to avoid a
13 clear, immediate and unreasonable risk to health or safety, notice may be delayed
14 **21 days**.
- 15 • If information is protected under a court order or the address confidentiality
16 program, it may be withheld from the notice.
- 17 • A custodian who believes that giving notice would put her/himself or a child at
18 unreasonable risk of harm, may ask the court for permission to leave things out of
19 the notice or to be allowed to move without giving notice. Use form *Motion to Limit*
20 *Notice of Intent to Move with Children (Ex Parte)* (FL Relocate 702).

21 The *Notice of Intent to Move with Children* can be delivered by having someone
22 personally serve the other party or by any form of mail that requires a return receipt.

23 If the custodian wants to change the *Parenting Plan* because of the move, s/he must
24 deliver a proposed *Parenting Plan* together with the *Notice*.

Move within the same school district

If the move is within the *same* school district, the custodian still has to let the other
parent know. However, the notice does not have to be served personally or by mail
with a return receipt. Notice to the other party can be made in any reasonable way. No
specific form is required.

Warning! If you do not notify...

A custodian who does not give the required notice may be found in contempt of court.
If that happens the court can impose sanctions. Sanctions can include requiring the
custodian to bring the children back if the move has already happened, and ordering
the custodian to pay the other side's costs and lawyer's fees.

Right to object

1 A person who has court-ordered time with the children can object to a move to a
2 different school district and/or to the custodian's proposed *Parenting Plan*. If the move
3 is within the same school district, the other party doesn't have the right to object to the
4 move but s/he may ask to change the *Parenting Plan* if there are adequate reasons
5 under the modification law (RCW 26.09.260).

6 An objection is made by filing the *Objection about Moving with children and Petition*
7 *about Changing a Parenting/Custody Order (Relocation)* (form FL Relocate 721). File
8 your Objection with the court and serve a copy on the custodian and anyone else who
9 has court-ordered time with the children. Service of the *Objection* must be by personal
10 service or by mailing a copy to each person by any form of mail that requires a return
11 receipt. The *Objection* must be filed and served no later than **30 days** after the *Notice*
12 *of intent to Move with Children* was received.

13 ***Right to move***

14 During the 30 days after the *Notice* was served, the custodian may not move to a
15 different school district with the children unless s/he has a court order allowing the
16 move.

17 After the 30 days, if no *Objection* is filed, the custodian may move with the children
18 without getting a court order allowing the move.

19 After the 30 days, if an *Objection* has been filed, the custodian may move with the
20 children **pending** the final hearing on the *Objection* **unless**:

- 21 • The other party gets a court order saying the children cannot move, or
- 22 • The other party has scheduled a hearing to take place no more than 15 days after
23 the date the *Objection* was served on the custodian. (However, the custodian may
24 ask the court for an order allowing the move even though a hearing is pending if
the custodian believes that s/he or a child is at unreasonable risk of harm.)
- the court may make a different decision about the move at a final hearing on the
Objection.

25 ***Parenting Plan after move***

26 If the custodian served a proposed *Parenting Plan* with the *Notice*, and if no *Objection*
27 is filed within 30 days after the *Notice* was served (or if the parties agree):

- 28 • Both parties may follow that proposed plan without being held in contempt of the
29 *Parenting Plan* that was in place before the move. However, the proposed plan
30 cannot be enforced by contempt unless it has been approved by a court.
- 31 • Either party may ask the court to approve the proposed plan. Use form *Ex Parte*
32 *Motion for Final Order Changing Parenting Plan – No Objection to Moving with*
33 *Children* (FL Relocate 706).

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Forms

You can find forms about moving with children at:

The Washington State Courts' website: *www.courts.wa.gov/forms*,
The Administrative Office of the Courts - call: (360) 705-5328,
Washington LawHelp: *www.washingtonlawhelp.org*, or
The Superior Court Clerk's office or county law library (for a fee).

(This is a summary of the law. The complete law is in RCW 26.09.430 through 26.09.480.)

1 **14. Other**

2 1. Neither parent shall make negative comments about the other or any aspect of
3 these legal proceedings nor shall he or she allow the child to be on or near third parties
4 making such comments.

5 2. Neither parent shall make plans and arrangements that would impinge upon the
6 other parent's authority or time with the child without the express agreement of the other
7 parent. Extra-curricular activities for the child are mutual decisions for the parents.

8 **Decision Making.**

9 1. Education. Education decisions shall include, but not be limited to school,
10 daycare, school schedule, education programs, and extra-curricular activities.

11 2. Non-emergency health care. Non-emergency health care decisions shall
12 include, but not be limited to, choice of doctor(s), course of care, scheduling
13 appointments, dental care, counseling, etc.

14 3. Joint Decisions/Consent Required. Before any of the three following events may
15 occur prior to the child's 18th birthday, both parents must consent, in writing, to the child's:
16 (a) acquisition of a driver's license; (b) marrying; or (c) entry into any type of military
17 service. In the event of disagreement each parent has temporary veto power with
18 reference to these three (3) decisions until referral to mediation or Court.

19 4. Parental Access to Schools, Etc. Each parent shall have equal and independent
20 authority to confer with school, and other programs with regard to the child's progress.
21 Each parent shall have full, equal and independent access to school and all other
22 educational records of the child, and each shall facilitate the access of the other parent to
23 such records. Each parent shall have authority to give parental consent or permission as
24 may be required concerning school, daycare or other programs for the child while the child
is in his or her care.

5. Healthcare. The father shall be empowered to obtain emergency health and
dental care for the child without the consent of the other parent while the child is in his
care. Each parent is to notify the other parent as soon as reasonably possible of any
significant illness requiring medical attention, or any emergency involving the child. Each
parent shall have full, equal and independent access to medical, dental, counseling, and
all other health care records of the child, and each shall facilitate the access of the other
parent to such records.

Chandler has recently been diagnosed with Type 1 Diabetes. Prior to her
residential time, the mother and her parents will meet with Chandler's doctor and learn
about his condition. They will attend the four session program for parents at Group
Regence Northwest that the father has already attended. Both parents will maintain a
supply of insulin and related equipment so as to ensure that Chandler is properly treated
while in either parent's home.

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Miscellaneous.

1. Telephone and other Access. The child shall have reasonable telephone and email privileges with the parent with whom the child is not then residing, without interference of the residential parent or others. Such contact shall not be denied for disciplinary reasons.

2. Participation in Events of Child. The parents intend that they shall both participate in school open-houses and parent-teacher conferences, if possible. For events the child is attending, she will be transported to such event by the parent with whom she is residing that day. Each parent shall be responsible for informing the other of school, athletic, and social events in which the child participates and both parents can attend the event, participate in the event and have contact with the child at such event.

3. Notice re Travel. Any time the child is expected to travel out of state during a parent's residential time, the parent shall provide to the other parent (as soon as known), an itinerary including travel method and flight schedule (and other details) and telephone numbers and addresses where the child will be during the travel. The child shall not travel unaccompanied until the parents mutually agree that the child is mature enough to do so. Neither parent shall remove the child from the United States without prior written consent of the other party or prior court order. Trips out of Washington are allowed for periods of vacation with advance notice to the other parent in accordance with this paragraph.

1 **15. Proposal**

2 Does not apply. This is a court order.

3 This is a **proposed** (requested) parenting plan. *(The parent/s requesting this plan*
4 *must read and sign below.)* I declare under penalty of perjury under the laws of the
5 state of Washington that this plan was proposed in good faith and that the information
6 in section 3. above is true.

7 _____
8 *Parent requesting plan signs here*

_____ *Signed at (city and state)*

9 _____
10 *Other parent requesting plan (if agreed) signs here*

_____ *Signed at (city and state)*

11 **16. Court Order**

12 Does not apply. This is a proposal.

13 This is a court order (if signed by a judge or commissioner below).

14 **Findings of Fact - Based on the pleadings and any other evidence considered:**

15 The Court adopts the statements in section 3. (Reasons for putting limitations on a
16 parent) as its findings.

17 The Court makes additional findings which are:

18 Contained in an order or findings of fact entered at the same time as this
19 *Parenting Plan.*

20 Attached as Exhibit A as part of this *Parenting Plan.*

21 Other:

22 **Conclusions of Law - This *Parenting Plan* is in the best interest of the children.**

23 Other:

24 **Order - The parties must follow this *Parenting Plan.***

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CONDENSED VERSION

Superior Court of Washington, County King

In re:

No. 16-3-00000-0

Petitioner:

Parenting Plan
(PPP/PPT/PP)

BRAD JONES

Clerk's action required:

And Respondent:

ANGELINA SMITH

Parenting Plan

- 1. This parenting plan is a **Proposal** by a parent Brad Jones. It is not a signed court order (PPP).
- 2. **Children** - This parenting plan is for the following children:

Child's name	Age
1. Jennifer Smith Jones	10
2. Monica Smith Jones	9
3. Chandler Smith Jones	8

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3. Reasons for putting limitations on a parent (under RCW 26.09.191)

a. Abandonment, neglect, child abuse, domestic violence, assault, or sex offense.

Neither parent has any of these problems.

b. Other problems that may harm the children's best interests:

A parent has one or more of these problems as follows:

Substance Abuse - Angelina Smith has a long-term problem with drugs, alcohol or other substances that gets in the way of his/her ability to parent.

4. Limitations on a parent

No limitations despite reasons:

The mother has a history of prescription drug abuse. However, she underwent treatment in 2012 and has been clean and sober since then.

The following limits or conditions apply to Angelina Smith.

Other limitations or conditions during parenting time:

The mother shall undergo a drug and alcohol evaluation at the Bill W. treatment facility within thirty days. The evaluation shall include collateral information from the father. The evaluator shall be provided a copy of the police report arising out of the mother's October 2016 arrest.

The evaluation shall be provided to the father's counsel and shall be filed under seal with with the court.

The mother shall follow all treatment recommendations, if any. If treatment is not ordered, the mother's residential time will begin two weeks after the evaluation has been completed and provided to father. If treatment is ordered, once the mother has completed six weeks of treatment, her residential time shall begin.

The mother shall not drink alcohol or use illegal drugs at any time. The mother shall take prescribed drugs only in the manner prescribed and only if prescribed by a health care provider that has been given a copy of the police report described above and the evaluation. All doctors prescribing medication must be made aware of any other prescriptions that the mother is taking.

If the father believes that the mother is not complying with this provision, he has the

1 authority to unilaterally suspend the mother's time, provided that he brings the matter
2 to the court's attention within one month of initiating such suspension.

3 **Evaluation or treatment required. Angelina Smith must:**

4 Be evaluated for: Drug/alcohol abuse/addiction

5 Start and comply with treatment as recommended by the evaluation.

6 Provide a copy of the evaluation and compliance reports:

7 The father's counsel and the court.

8 If this parent does not follow the evaluation or treatment requirements above, then:

9 Residential time is suspending pending further order of the court.

10 **5. Decision-making**

11 When the children are with you, you are responsible for them. You can make day-to-day
12 decisions for the children when they are with you, including decisions about safety and
13 emergency health care. Major decisions must be made as follows.

14 **a. Who can make major decisions about the children?**

Type of Major Decision	Joint <i>(parents make these decisions together)</i>	Limited <i>(only the parent named below has authority to make these decisions)</i>
School / Educational	[X]	
Health care (not emergency)	[X]	
Other: Daycare	[X]	
Other: Drivers License	[X]	
Other: Tattoos	[X]	

15 **b. Reasons for limits on major decision-making, if any:**

16 There are no reasons to limit major decision-making.

17 **6. Dispute Resolution - If you and the other parent disagree**

18 From time to time, the parents may have disagreements about shared decisions or about
19 what parts of this parenting plan mean.

- 1
2 a. To solve disagreements about this parenting plan, the parents will go to the dispute resolution provider below:

3 Arbitration: Lynn Pollock (in memoriam)

- 4 b. If mediation, arbitration, or counseling is required, one parent must notify the other parent by:

5 Written request

6 The parents will pay for the mediation, arbitration, or counseling services as follows: based on each parents' Proportional Share of Income from line 6 of the *Child Support Worksheet*.

7 **What to expect in the dispute resolution process**

- 8
 - 9 • Preference shall be given to carrying out the parenting plan.
 - 10 • If you reach an agreement, it must be put into writing, signed, and both parents must get a copy.
 - 11 • If the court finds that you have used or frustrated the dispute resolution process without a good reason, the court can order you to pay financial sanctions (penalties) including the other parent's legal fees.
 - 12 • You may go back to court if the dispute resolution process doesn't solve the disagreement or if you disagree with the arbitrator's decision.

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15 **7. Custodian**

16 The custodian is Brad Jones solely for the purpose of all state and federal statutes which require a designation of determination of custody. Even though one parent is called the custodian, this does not change the parenting rights and responsibilities described in this plan.

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19 ***Parenting Time Schedule (Residential Provisions)***

20 **8. School Schedule**

21 **a. Children under School-Age**

22 Children under school-age are scheduled to live with Brad Jones except when they are scheduled to live with Angelina Smith on:

23 **WEEKENDS:**

1 See Exhibit PP

2 From at : .m. to at : .m.

3 WEEKDAYS:

4 See Exhibit PP

5 From at : .m. to at : .m.

6
7 **b. School-Age Children**

8 This schedule will apply when begins: 1st grade.

9 The children are scheduled to live with Brad Jones except when they are scheduled to live
10 with Angelina Smith on:

11 WEEKENDS: every other week.

12 From Thursday at 3:00 p.m. to Monday at 9:00 a.m.

13 WEEKDAYS: every week.

14 From at : .m. to at : .m.

15 OTHER:

16 If there is a non-school day immediately preceding or immediately following a parent's
17 weekend, the parent may include such day in his/her weekend with ten days notice to
18 the other parent.

19 Other:

20 **9. Summer Schedule**

21 Summer begins and ends as follows: See below

22 The Summer Schedule is **different** than the School Schedule. The Summer Schedule will
23 begin the summer before: 1st grade

24 During the summer the children are scheduled to with Brad Jones except when they
are scheduled to be with Angelina Smith on.

1 OTHER:

2
3 The parents will alternate the weeks of the summer with the parenting having the last
4 weekend of the school year keeping the child with him/her until the Friday following the
5 last day of school when the child will be transferred to the other parent to begin his/her
6 full week. If the last day of school is a Friday, the parent not having the children on
7 the last weekend shall begin his/her first full week the following Friday. The parents
8 will alternate each week of the summer with the transfer time being noon on Friday.
9 The summer, under this paragraph, shall conclude on the Friday of Labor Day
10 weekend at noon.

11 Alternative Vacation Language. Each parent shall have two one-week periods each
12 summer for vacation purposes. Beginning in 2018, the weeks may be taken
13 consecutively.

14 The father picks his summer vacation by April 15th in even-numbered years and then
15 mother chooses her summer vacation by May 1st. The mother picks her summer
16 vacation by April 15th in odd-numbered years and then father chooses his summer
17 vacation by May 1st.

18 **10. Holiday Schedule (includes school breaks)**

19 This is the Holiday Schedule for all children:

Holiday	Children with: Brad Jones	Children with: Angelina Smith
Martin Luther King Jr. Day	Odd Years Begin day/time: Thursday after school, noon if no school)	Even Years Begin day/time: Same
	End day/time: Tuesday at school, noon if no school	End day/time: Same
Presidents' Day	Even Years Begin day/time: Thursday after school, noon if no school	Odd Years Begin day/time: Same
	End day/time: Tuesday at school, noon if no school	End day/time: Same
Mid-winter Break		

Holiday	Children with: Brad Jones	Children with: Angelina Smith
	Begin day/time: _____ End day/time: _____	Begin day/time: _____ End day/time: _____
Other plan: Same as President's Day		
Spring Break	Odd Years Begin day/time: 5:00 p.m. on the last day of school End day/time: At school on the first day of school following the break	Even Years Begin day/time: Same End day/time: Same
Mother's Day	Begin day/time: _____ End day/time: _____	Every Yr. Begin day/time: Saturday at 6:00 p.m. End day/time: Monday at school
Memorial Day	Every Yr. Begin day/time: Thursday after school End day/time: Tuesday at school	Begin day/time: _____ End day/time: _____ Other plan: If the father stops attending the Smith family reunion in Aspen CO, , the parents will alternate the Memorial Day weekend on the same terms as the MLK weekend.
Father's Day	Every Yr. Begin day/time: Saturday at 6:00 p.m. End day/time: Monday at school or, if no school, resume summer schedule on Sunday at 6:00 p.m.	Begin day/time: _____ End day/time: _____
Fourth of July	Odd Years Begin day/time: Friday noon End day/time: Monday 8:00 p.m.	Even Years Begin day/time: Friday noon End day/time: Monday 8:00 p.m.
Labor Day	Begin day/time: _____ End day/time: _____	Every Yr. Begin day/time: Friday at noon End day/time: Tuesday at noon

Holiday	Children with: Brad Jones	Children with: Angelina Smith
Thanksgiving Day / Break	Odd Years	Even Years
	Begin day/time: <u>Wednesday after school</u>	Begin day/time: <u>Same</u>
	End day/time: <u>Sunday at noon</u>	End day/time: <u>Same</u>
Winter Break	Begin day/time: _____	Begin day/time: _____
	End day/time: _____	End day/time: _____
	Other plan: See below	
Christmas Eve	Every Yr.	
	Begin day/time: <u>Last day of school, from school</u>	Begin day/time: _____
	End day/time: <u>Christmas Day at 2:00 p.m.</u>	End day/time: _____
Christmas Day	Begin day/time: _____	Every Yr.
	End day/time: _____	Begin day/time: <u>Christmas Day at 2:00 p.m.</u>
		End day/time: <u>January 2 at noon or at school, if a school day</u>
New Year's Eve / New Year's Day <i>(odd/even is based on New Year's Day)</i>	Every Yr.	
	Begin day/time: _____	Begin day/time: <u>See Christmas Day</u>
	End day/time: _____	End day/time: <u>See Christmas Day</u>
	Other plan: See above	
Children's Birthdays	Begin day/time: _____	Begin day/time: _____
	End day/time: _____	End day/time: _____
	Other plan: Regular Schedule	

Holiday	Children with: Brad Jones	Children with: Angelina Smith
All three-day weekends not listed elsewhere	<i>(Federal holidays, school in-service days, etc.)</i> The children shall spend any unspecified holiday or non-school day with the parent who has them for the attached weekend.	
Other occasion important to the family: Monica's Adoption Day, February 14	Odd Years Begin day/time: From school (noon, if no school)	Even Years Begin day/time: Same
	End day/time: 8:00 p.m.	End day/time: Same
Other occasion important to the family: Jennifer's Adoption Day December 3	Even Years Begin day/time: After school, or noon if no school	Odd Years Begin day/time: Same
	End day/time: The following morning at school, or noon if no school	End day/time:

11. Conflicts in Scheduling

The Holiday Schedule must be observed over all other schedules. If there are conflicts within the Holiday Schedule:

Named holidays shall be followed before school breaks.

Children's birthdays shall be followed before named holidays and school breaks.

12. Transportation Arrangements

The children will be exchanged for parenting time (picked up and dropped off) at school or day care when in session.

other location:

When school is not in session, the picking up parent will pick the children up at the home of the other parent. The parent will remain in or by his/her vehicle during such transfers. Neither parent will discuss other aspects of the parenting plan or other legal issues during transfers.

1 Who is responsible for arranging transportation?

2 The **picking up** parent - The parent who is about to **start** parenting time with the
3 children must arrange to have the children picked up.

4 Other details:

5 Each parent will use legal and appropriate car seats/booster seats in his/her vehicle.

6 Each parent will be covered by auto insurance.

7 **13. Moving with the Children (Relocation)**

8 If the custodian plans to move, s/he **must notify** every person who has court-ordered
9 time with the children.

10 ***Move to a different school district***

11 If the move is to a different school district, the custodian must complete the form *Notice of*
12 *Intent to Move with Children* (FL Relocate 701) and deliver it at least **60 days** before the
intended move.

13 ***Exceptions:***

- 14 • If the custodian could not reasonably have known enough information to complete
15 the form in time to give 60 days' notice, the custodian must give notice within **5**
16 **days** after learning the information.
- 17 • If the custodian is relocating to a domestic violence shelter or moving to avoid a
18 clear, immediate and unreasonable risk to health or safety, notice may be delayed
19 **21 days**.
- 20 • If information is protected under a court order or the address confidentiality
21 program, it may be withheld from the notice.
- 22 • A custodian who believes that giving notice would put her/himself or a child at
23 unreasonable risk of harm, may ask the court for permission to leave things out of
24 the notice or to be allowed to move without giving notice. Use form *Motion to Limit*
Notice of Intent to Move with Children (Ex Parte) (FL Relocate 702).

20 The *Notice of Intent to Move with Children* can be delivered by having someone
21 personally serve the other party or by any form of mail that requires a return receipt.

22 If the custodian wants to change the *Parenting Plan* because of the move, s/he must
23 deliver a proposed *Parenting Plan* together with the *Notice*.

23 ***Move within the same school district***

24 If the move is within the *same* school district, the custodian still has to let the other

1 parent know. However, the notice does not have to be served personally or by mail
2 with a return receipt. Notice to the other party can be made in any reasonable way. No
3 specific form is required.

4 ***Warning! If you do not notify...***

5 A custodian who does not give the required notice may be found in contempt of court.
6 If that happens the court can impose sanctions. Sanctions can include requiring the
7 custodian to bring the children back if the move has already happened, and ordering
8 the custodian to pay the other side's costs and lawyer's fees.

9 ***Right to object***

10 A person who has court-ordered time with the children can object to a move to a
11 different school district and/or to the custodian's proposed *Parenting Plan*. If the move
12 is within the same school district, the other party doesn't have the right to object to the
13 move but s/he may ask to change the *Parenting Plan* if there are adequate reasons
14 under the modification law (RCW 26.09.260).

15 An objection is made by filing the *Objection about Moving with children and Petition*
16 *about Changing a Parenting/Custody Order (Relocation)* (form FL Relocate 721). File
17 your *Objection* with the court and serve a copy on the custodian and anyone else who
18 has court-ordered time with the children. Service of the *Objection* must be by personal
19 service or by mailing a copy to each person by any form of mail that requires a return
20 receipt. The *Objection* must be filed and served no later than 30 days after the *Notice*
21 *of intent to Move with Children* was received.

22 ***Right to move***

23 During the 30 days after the *Notice* was served, the custodian may not move to a
24 different school district with the children unless s/he has a court order allowing the
25 move.

26 After the 30 days, if no *Objection* is filed, the custodian may move with the children
27 without getting a court order allowing the move.

28 After the 30 days, if an *Objection* has been filed, the custodian may move with the
29 children pending the final hearing on the *Objection* unless:

- 30 • The other party gets a court order saying the children cannot move, or
- 31 • The other party has scheduled a hearing to take place no more than 15 days after
32 the date the *Objection* was served on the custodian. (However, the custodian may
33 ask the court for an order allowing the move even though a hearing is pending if
34 the custodian believes that s/he or a child is at unreasonable risk of harm.)
- 35 • the court may make a different decision about the move at a final hearing on the
36 *Objection*.

1 **Parenting Plan after move**

2 If the custodian served a proposed *Parenting Plan* with the *Notice*, and if no *Objection*
3 is filed within 30 days after the *Notice* was served (or if the parties agree):

- 4 • Both parties may follow that proposed plan without being held in contempt of the *Parenting Plan* that was in place before the move. However, the proposed plan cannot be enforced by contempt unless it has been approved by a court.
- 5 • Either party may ask the court to approve the proposed plan. Use form *Ex Parte Motion for Final Order Changing Parenting Plan – No Objection to Moving with Children* (FL Relocate 706).

6
7 **Forms**

8 You can find forms about moving with children at:

9 The Washington State Courts' website: www.courts.wa.gov/forms,
10 The Administrative Office of the Courts - call: (360) 705-5328,
11 Washington LawHelp: www.washingtonlawhelp.org, or
12 The Superior Court Clerk's office or county law library (for a fee).

13 *(This is a summary of the law. The complete law is in RCW 26.09.430 through*
14 *26.09.480.)*

15 **14. Other**

16 1. Neither parent shall make negative comments about the other or any aspect of
17 these legal proceedings nor shall he or she allow the child to be on or near third parties
18 making such comments.

19 2. Neither parent shall make plans and arrangements that would impinge upon the
20 other parent's authority or time with the child without the express agreement of the other
21 parent. Extra-curricular activities for the child are mutual decisions for the parents.

22 **Decision Making.**

23 1. **Education.** Education decisions shall include, but not be limited to school,
24 daycare, school schedule, education programs, and extra-curricular activities.

2. **Non-emergency health care.** Non-emergency health care decisions shall
include, but not be limited to, choice of doctor(s), course of care, scheduling
appointments, dental care, counseling, etc.

3. **Joint Decisions/Consent Required.** Before any of the three following events may
occur prior to the child's 18th birthday, both parents must consent, in writing, to the child's:
(a) acquisition of a driver's license; (b) marrying; or (c) entry into any type of military
service. In the event of disagreement each parent has temporary veto power with

1 reference to these three (3) decisions until referral to mediation or Court.

2 4. Parental Access to Schools, Etc. Each parent shall have equal and independent
3 authority to confer with school, and other programs with regard to the child's progress.
4 Each parent shall have full, equal and independent access to school and all other
5 educational records of the child, and each shall facilitate the access of the other parent to
6 such records. Each parent shall have authority to give parental consent or permission as
7 may be required concerning school, daycare or other programs for the child while the child
8 is in his or her care.

9 5. Healthcare. The father shall be empowered to obtain emergency health and
10 dental care for the child without the consent of the other parent while the child is in his
11 care. Each parent is to notify the other parent as soon as reasonably possible of any
12 significant illness requiring medical attention, or any emergency involving the child. Each
13 parent shall have full, equal and independent access to medical, dental, counseling, and
14 all other health care records of the child, and each shall facilitate the access of the other
15 parent to such records.

16 Chandler has recently been diagnosed with Type 1 Diabetes. Prior to her
17 residential time, the mother and her parents will meet with Chandler's doctor and learn
18 about his condition. They will attend the four session program for parents at Group
19 Regence Northwest that the father has already attended. Both parents will maintain a
20 supply of insulin and related equipment so as to ensure that Chandler is properly treated
21 while in either parent's home.

22 Miscellaneous.

23 1. Telephone and other Access. The child shall have reasonable telephone and
24 email privileges with the parent with whom the child is not then residing, without
interference of the residential parent or others. Such contact shall not be denied for
disciplinary reasons.

2. Participation in Events of Child. The parents intend that they shall both
participate in school open-houses and parent-teacher conferences, if possible. For events
the child is attending, she will be transported to such event by the parent with whom she is
residing that day. Each parent shall be responsible for informing the other of school,
athletic, and social events in which the child participates and both parents can attend the
event, participate in the event and have contact with the child at such event.

3. Notice re Travel. Any time the child is expected to travel out of state during a
parent's residential time, the parent shall provide to the other parent (as soon as known),
an itinerary including travel method and flight schedule (and other details) and telephone
numbers and addresses where the child will be during the travel. The child shall not travel
unaccompanied until the parents mutually agree that the child is mature enough to do so.
Neither parent shall remove the child from the United States without prior written consent
of the other party or prior court order. Trips out of Washington are allowed for periods of
vacation with advance notice to the other parent in accordance with this paragraph.

RCW 26.09.184**Permanent parenting plan.**

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

- (a) Provide for the child's physical care;
- (b) Maintain the child's emotional stability;
- (c) Provide for the child's changing needs as the child grows and matures, in a way that minimizes the need for future modifications to the permanent parenting plan;
- (d) Set forth the authority and responsibilities of each parent with respect to the child, consistent with the criteria in RCW 26.09.187 and 26.09.191;
- (e) Minimize the child's exposure to harmful parental conflict;
- (f) Encourage the parents, where appropriate under RCW 26.09.187 and 26.09.191, to meet their responsibilities to their minor children through agreements in the permanent parenting plan, rather than by relying on judicial intervention; and
- (g) To otherwise protect the best interests of the child consistent with RCW 26.09.002.

(2) **CONTENTS OF THE PERMANENT PARENTING PLAN.** The permanent parenting plan shall contain provisions for resolution of future disputes between the parents, allocation of decision-making authority, and residential provisions for the child.

(3) **CONSIDERATION IN ESTABLISHING THE PERMANENT PARENTING PLAN.** In establishing a permanent parenting plan, the court may consider the cultural heritage and religious beliefs of a child.

(4) **DISPUTE RESOLUTION.** A process for resolving disputes, other than court action, shall be provided unless precluded or limited by RCW 26.09.187 or 26.09.191. A dispute resolution process may include counseling, mediation, or arbitration by a specified individual or agency, or court action. In the dispute resolution process:

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

(5) **ALLOCATION OF DECISION-MAKING AUTHORITY.**

(a) The plan shall allocate decision-making authority to one or both parties regarding the children's education, health care, and religious upbringing. The parties may incorporate an agreement related to the care and growth of the child in these specified areas, or in other areas, into their plan, consistent with the criteria in RCW 26.09.187 and 26.09.191. Regardless of the allocation of decision-making in the parenting plan, either parent may make emergency decisions affecting the health or safety of the child.

(b) Each parent may make decisions regarding the day-to-day care and control of the child while the child is residing with that parent.

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

(6) **RESIDENTIAL PROVISIONS FOR THE CHILD.** The plan shall include a residential schedule which designates in which parent's home each minor child shall reside on given days of the year, including provision for holidays, birthdays of family members, vacations, and other special occasions, consistent with the criteria in RCW 26.09.187 and 26.09.191.

(7) **PARENTS' OBLIGATION UNAFFECTED.** If a parent fails to comply with a provision of a parenting plan or a child support order, the other parent's obligations under the parenting plan or the child support order are not affected. Failure to comply with a provision in a parenting plan or a child support order may result in a finding of contempt of court, under RCW 26.09.160.

(8) **PROVISIONS TO BE SET FORTH IN PERMANENT PARENTING PLAN.** The permanent parenting plan shall set forth the provisions of subsections (4)(a) through (c), (5)(b) and (c), and (7) of this section.

[2007 c 496 § 601; 1991 c 367 § 7; 1989 c 375 § 9; 1987 c 460 § 8.]

NOTES:

Part headings not law—2007 c 496: See note following RCW 26.09.002.

Severability—Effective date—Captions not law—1991 c 367: See notes following RCW 26.09.015.

Custody, designation of for purposes of other statutes: RCW 26.09.285.

Failure to comply with decree or temporary injunction—Obligations not suspended: RCW 26.09.160.

RCW 26.09.002**Policy.**

Parents have the responsibility to make decisions and perform other parental functions necessary for the care and growth of their minor children. In any proceeding between parents under this chapter, the best interests of the child shall be the standard by which the court determines and allocates the parties' parental responsibilities. The state recognizes the fundamental importance of the parent-child relationship to the welfare of the child, and that the relationship between the child and each parent should be fostered unless inconsistent with the child's best interests. Residential time and financial support are equally important components of parenting arrangements. The best interests of the child are served by a parenting arrangement that best maintains a child's emotional growth, health and stability, and physical care. Further, the best interest of the child is ordinarily served when the existing pattern of interaction between a parent and child is altered only to the extent necessitated by the changed relationship of the parents or as required to protect the child from physical, mental, or emotional harm.

[2007 c 496 § 101; 1987 c 460 § 2.]

NOTES:

Part headings not law—2007 c 496: "Part headings used in this act are not any part of the law." [2007 c 496 § 801.]

RCW 26.09.187**Criteria for establishing permanent parenting plan.**

(1) **DISPUTE RESOLUTION PROCESS.** The court shall not order a dispute resolution process, except court action, when it finds that any limiting factor under **RCW 26.09.191** applies, or when it finds that either parent is unable to afford the cost of the proposed dispute resolution process. If a dispute resolution process is not precluded or limited, then in designating such a process the court shall consider all relevant factors, including:

- (a) Differences between the parents that would substantially inhibit their effective participation in any designated process;
- (b) The parents' wishes or agreements and, if the parents have entered into agreements, whether the agreements were made knowingly and voluntarily; and
- (c) Differences in the parents' financial circumstances that may affect their ability to participate fully in a given dispute resolution process.

(2) **ALLOCATION OF DECISION-MAKING AUTHORITY.**

(a) **AGREEMENTS BETWEEN THE PARTIES.** The court shall approve agreements of the parties allocating decision-making authority, or specifying rules in the areas listed in **RCW 26.09.184(5)(a)**, when it finds that:

- (i) The agreement is consistent with any limitations on a parent's decision-making authority mandated by **RCW 26.09.191**; and
- (ii) The agreement is knowing and voluntary.

(b) **SOLE DECISION-MAKING AUTHORITY.** The court shall order sole decision-making to one parent when it finds that:

- (i) A limitation on the other parent's decision-making authority is mandated by **RCW 26.09.191**;

- (ii) Both parents are opposed to mutual decision making;
- (iii) One parent is opposed to mutual decision making, and such opposition is reasonable based on the criteria in (c) of this subsection.

(c) **MUTUAL DECISION-MAKING AUTHORITY.** Except as provided in (a) and (b) of this subsection, the court shall consider the following criteria in allocating decision-making authority:

- (i) The existence of a limitation under **RCW 26.09.191**;
- (ii) The history of participation of each parent in decision making in each of the areas in **RCW 26.09.184(5)(a)**;
- (iii) Whether the parents have a demonstrated ability and desire to cooperate with one another in decision making in each of the areas in **RCW 26.09.184(5)(a)**; and
- (iv) The parents' geographic proximity to one another, to the extent that it affects their ability to make timely mutual decisions.

(3) **RESIDENTIAL PROVISIONS.**

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

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

- (ii) The agreements of the parties, provided they were entered into knowingly and voluntarily;
- (iii) Each parent's past and potential for future performance of parenting functions as defined in *RCW 26.09.004(3), including whether a parent has taken greater responsibility for performing parenting functions relating to the daily needs of the child;
- (iv) The emotional needs and developmental level of the child;
- (v) The child's relationship with siblings and with other significant adults, as well as the child's involvement with his or her physical surroundings, school, or other significant activities;
- (vi) The wishes of the parents and the wishes of a child who is sufficiently mature to express reasoned and independent preferences as to his or her residential schedule; and
- (vii) Each parent's employment schedule, and shall make accommodations consistent with those schedules.

Factor (i) shall be given the greatest weight.

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

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

[2007 c 496 § 603; 1989 c 375 § 10; 1987 c 460 § 9.]

NOTES:

*Reviser's note: RCW 26.09.004 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (3) to subsection (2).

Part headings not law—2007 c 496: See note following RCW 26.09.002.

Custody, designation of for purposes of other statutes: RCW 26.09.285.

RCW 26.09.191**Restrictions in temporary or permanent parenting plans.**

(1) The permanent parenting plan shall not require mutual decision-making or designation of a dispute resolution process other than court action if it is found that a parent has engaged in any of the following conduct: (a) Willful abandonment that continues for an extended period of time or substantial refusal to perform parenting functions; (b) physical, sexual, or a pattern of emotional abuse of a child; or (c) a history of acts of domestic violence as defined in *RCW 26.50.010(1) or an assault or sexual assault which causes grievous bodily harm or the fear of such harm.

(2)(a) The parent's residential time with the child shall be limited if it is found that the parent has engaged in any of the following conduct: (i) Willful abandonment that continues for an extended period of time or substantial refusal to perform parenting functions; (ii) physical, sexual, or a pattern of emotional abuse of a child; (iii) a history of acts of domestic violence as defined in *RCW 26.50.010(1) or an assault or sexual assault which causes grievous bodily harm or the fear of such harm; or (iv) the parent has been convicted as an adult of a sex offense under:

(A) RCW 9A.44.076 if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (d) of this subsection;

(B) RCW 9A.44.079 if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (d) of this subsection;

(C) RCW 9A.44.086 if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (d) of this subsection;

(D) RCW 9A.44.089;

(E) RCW 9A.44.093;

(F) RCW 9A.44.096;

(G) RCW 9A.64.020 (1) or (2) if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (d) of this subsection;

(H) Chapter 9.68A RCW;

(I) Any predecessor or antecedent statute for the offenses listed in (a)(iv)(A) through (H) of this subsection;

(J) Any statute from any other jurisdiction that describes an offense analogous to the offenses listed in (a)(iv)(A) through (H) of this subsection.

This subsection (2)(a) shall not apply when (c) or (d) of this subsection applies.

(b) The parent's residential time with the child shall be limited if it is found that the parent resides with a person who has engaged in any of the following conduct: (i) Physical, sexual, or a pattern of emotional abuse of a child; (ii) a history of acts of domestic violence as defined in *RCW 26.50.010(1) or an assault or sexual assault that causes grievous bodily harm or the fear of such harm; or (iii) the person has been convicted as an adult or as a juvenile has been adjudicated of a sex offense under:

(A) RCW 9A.44.076 if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (e) of this subsection;

(B) RCW 9A.44.079 if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (e) of this subsection;

(C) RCW 9A.44.086 if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (e) of this subsection;

(D) RCW 9A.44.089;

(E) RCW 9A.44.093;

(F) RCW 9A.44.096;

(G) RCW 9A.64.020 (1) or (2) if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (e) of this subsection;

(H) Chapter 9.68A RCW;

(I) Any predecessor or antecedent statute for the offenses listed in (b)(iii)(A) through (H) of this subsection;

(J) Any statute from any other jurisdiction that describes an offense analogous to the offenses listed in (b)(iii)(A) through (H) of this subsection.

This subsection (2)(b) shall not apply when (c) or (e) of this subsection applies.

(c) If a parent has been found to be a sexual predator under chapter 71.09 RCW or under an analogous statute of any other jurisdiction, the court shall restrain the parent from contact with a child that would otherwise be allowed under this chapter. If a parent resides with an adult or a juvenile who has been found to be a sexual predator under chapter 71.09 RCW or under an analogous statute of any other jurisdiction, the court shall restrain the parent from contact with the parent's child except contact that occurs outside that person's presence.

(d) There is a rebuttable presumption that a parent who has been convicted as an adult of a sex offense listed in (d)(i) through (ix) of this subsection poses a present danger to a child. Unless the parent rebuts this presumption, the court shall restrain the parent from contact with a child that would otherwise be allowed under this chapter:

(i) RCW 9A.64.020 (1) or (2), provided that the person convicted was at least five years older than the other person;

(ii) RCW 9A.44.073;

(iii) RCW 9A.44.076, provided that the person convicted was at least eight years older than the victim;

(iv) RCW 9A.44.079, provided that the person convicted was at least eight years older than the victim;

(v) RCW 9A.44.083;

(vi) RCW 9A.44.086, provided that the person convicted was at least eight years older than the victim;

(vii) RCW 9A.44.100;

(viii) Any predecessor or antecedent statute for the offenses listed in (d)(i) through (vii) of this subsection;

(ix) Any statute from any other jurisdiction that describes an offense analogous to the offenses listed in (d)(i) through (vii) of this subsection.

(e) There is a rebuttable presumption that a parent who resides with a person who, as an adult, has been convicted, or as a juvenile has been adjudicated, of the sex offenses listed in (e)(i) through (ix) of this subsection places a child at risk of abuse or harm when that parent exercises residential time in the presence of the convicted or adjudicated person. Unless the parent rebuts the presumption, the court shall restrain the parent from contact with the parent's child except for contact that occurs outside of the convicted or adjudicated person's presence:

(i) RCW 9A.64.020 (1) or (2), provided that the person convicted was at least five years older than the other person;

(ii) RCW 9A.44.073;

(iii) RCW 9A.44.076, provided that the person convicted was at least eight years older than the victim;

- (iv) RCW **9A.44.079**, provided that the person convicted was at least eight years older than the victim;
- (v) RCW **9A.44.083**;
- (vi) RCW **9A.44.086**, provided that the person convicted was at least eight years older than the victim;
- (vii) RCW **9A.44.100**;
- (viii) Any predecessor or antecedent statute for the offenses listed in (e)(i) through (vii) of this subsection;
- (ix) Any statute from any other jurisdiction that describes an offense analogous to the offenses listed in (e)(i) through (vii) of this subsection.

(f) The presumption established in (d) of this subsection may be rebutted only after a written finding that:

(i) If the child was not the victim of the sex offense committed by the parent requesting residential time, (A) contact between the child and the offending parent is appropriate and poses minimal risk to the child, and (B) the offending parent has successfully engaged in treatment for sex offenders or is engaged in and making progress in such treatment, if any was ordered by a court, and the treatment provider believes such contact is appropriate and poses minimal risk to the child; or

(ii) If the child was the victim of the sex offense committed by the parent requesting residential time, (A) contact between the child and the offending parent is appropriate and poses minimal risk to the child, (B) if the child is in or has been in therapy for victims of sexual abuse, the child's counselor believes such contact between the child and the offending parent is in the child's best interest, and (C) the offending parent has successfully engaged in treatment for sex offenders or is engaged in and making progress in such treatment, if any was ordered by a court, and the treatment provider believes such contact is appropriate and poses minimal risk to the child.

(g) The presumption established in (e) of this subsection may be rebutted only after a written finding that:

(i) If the child was not the victim of the sex offense committed by the person who is residing with the parent requesting residential time, (A) contact between the child and the parent residing with the convicted or adjudicated person is appropriate and that parent is able to protect the child in the presence of the convicted or adjudicated person, and (B) the convicted or adjudicated person has successfully engaged in treatment for sex offenders or is engaged in and making progress in such treatment, if any was ordered by a court, and the treatment provider believes such contact is appropriate and poses minimal risk to the child; or

(ii) If the child was the victim of the sex offense committed by the person who is residing with the parent requesting residential time, (A) contact between the child and the parent in the presence of the convicted or adjudicated person is appropriate and poses minimal risk to the child, (B) if the child is in or has been in therapy for victims of sexual abuse, the child's counselor believes such contact between the child and the parent residing with the convicted or adjudicated person in the presence of the convicted or adjudicated person is in the child's best interest, and (C) the convicted or adjudicated person has successfully engaged in treatment for sex offenders or is engaged in and making progress in such treatment, if any was ordered by a court, and the treatment provider believes contact between the parent and child in the presence of the convicted or adjudicated person is appropriate and poses minimal risk to the child.

(h) If the court finds that the parent has met the burden of rebutting the presumption under (f) of this subsection, the court may allow a parent who has been convicted as an adult of a sex offense listed in (d)(i) through (ix) of this subsection to have residential time with the child supervised by a neutral and independent adult and pursuant to an adequate plan for supervision of such residential time. The court shall not approve of a supervisor for contact between the child and the parent unless the court finds, based on the evidence, that the supervisor is willing and capable of protecting the child from harm. The court shall revoke court approval of the supervisor upon finding, based on the evidence, that the supervisor has failed to protect the child or is no longer willing or capable of protecting the child.

(i) If the court finds that the parent has met the burden of rebutting the presumption under (g) of this subsection, the court may allow a parent residing with a person who has been adjudicated as a juvenile of a sex offense listed in (e)(i) through (ix) of this subsection to have residential time with the child in the presence of the person adjudicated as a juvenile, supervised by a neutral and independent adult and pursuant to an adequate plan for supervision of such residential time. The court shall not approve of a supervisor for contact between the child and the parent unless the court finds, based on the evidence, that the supervisor is willing and capable of protecting the child from harm. The court shall revoke court approval of the supervisor upon finding, based on the evidence, that the supervisor has failed to protect the child or is no longer willing or capable of protecting the child.

(j) If the court finds that the parent has met the burden of rebutting the presumption under (g) of this subsection, the court may allow a parent residing with a person who, as an adult, has been convicted of a sex offense listed in (e)(i) through (ix) of this subsection to have residential time with the child in the presence of the convicted person supervised by a neutral and independent adult and pursuant to an adequate plan for supervision of such residential time. The court shall not approve of a supervisor for contact between the child and the parent unless the court finds, based on the evidence, that the supervisor is willing and capable of protecting the child from harm. The court shall revoke court approval of the supervisor upon finding, based on the evidence, that the supervisor has failed to protect the child or is no longer willing or capable of protecting the child.

(k) A court shall not order unsupervised contact between the offending parent and a child of the offending parent who was sexually abused by that parent. A court may order unsupervised contact between the offending parent and a child who was not sexually abused by the parent after the presumption under (d) of this subsection has been rebutted and supervised residential time has occurred for at least two years with no further arrests or convictions of sex offenses involving children under chapter 9A.44 RCW, RCW 9A.64.020, or chapter 9.68A RCW and (i) the sex offense of the offending parent was not committed against a child of the offending parent, and (ii) the court finds that unsupervised contact between the child and the offending parent is appropriate and poses minimal risk to the child, after consideration of the testimony of a state-certified therapist, mental health counselor, or social worker with expertise in treating child sexual abuse victims who has supervised at least one period of residential time between the parent and the child, and after consideration of evidence of the offending parent's compliance with community supervision requirements, if any. If the offending parent was not ordered by a court to participate in treatment for sex offenders, then the parent shall obtain a psychosexual evaluation conducted by a certified sex offender treatment provider or a certified affiliate sex offender treatment provider indicating that the offender has the lowest likelihood of risk to reoffend before the court grants unsupervised contact between the parent and a child.

(l) A court may order unsupervised contact between the parent and a child which may occur in the presence of a juvenile adjudicated of a sex offense listed in (e)(i) through (ix) of this subsection who resides with the parent after the presumption under (e) of this subsection has been rebutted and supervised residential time has occurred for at least two years during which time the adjudicated juvenile has had no further arrests, adjudications, or convictions of sex offenses involving children under chapter 9A.44 RCW, RCW 9A.64.020, or chapter 9.68A RCW, and (i) the court finds that unsupervised contact between the child and the parent that may occur in the presence of the adjudicated juvenile is appropriate and poses minimal risk to the child, after consideration of the testimony of a state-certified therapist, mental health counselor, or social worker with expertise in treatment of child sexual abuse victims who has supervised at least one period of residential time between the parent and the child in the presence of the adjudicated juvenile, and after consideration of evidence of the adjudicated juvenile's compliance with community supervision or parole requirements, if any. If the adjudicated juvenile was not ordered by a court to participate in treatment for sex offenders, then the adjudicated juvenile shall obtain a psychosexual evaluation conducted by a certified sex offender treatment provider or a certified affiliate sex offender treatment provider indicating that the adjudicated juvenile has the lowest likelihood of risk to reoffend before the court grants unsupervised contact between the parent and a child which may occur in the presence of the adjudicated juvenile who is residing with the parent.

(m)(i) The limitations imposed by the court under (a) or (b) of this subsection shall be reasonably calculated to protect the child from the physical, sexual, or emotional abuse or harm that could result if the child has contact with the parent requesting residential time. The limitations shall also be reasonably calculated to provide for the safety of the parent who may be at risk of physical, sexual, or emotional abuse or harm that could result if the parent has contact with the parent requesting residential time. The limitations the court may impose include, but are not limited to: Supervised contact between the child and the parent or completion of relevant counseling or treatment. If the court expressly finds based on the evidence that limitations on the residential time with the child will not adequately protect the child from the harm or abuse that could result if the child has contact with the parent requesting residential time, the court shall restrain the parent requesting residential time from all contact with the child.

(ii) The court shall not enter an order under (a) of this subsection allowing a parent to have contact with a child if the parent has been found by clear and convincing evidence in a civil action or by a preponderance of the evidence in a dependency action to have sexually abused the child, except upon recommendation by an evaluator or therapist for the child that the child is ready for contact with the parent and will not be harmed by the contact. The court shall not enter an order allowing a parent to have contact with the child in the offender's presence if the parent resides with a person who has been found by clear and convincing evidence in a civil action or by a preponderance of the evidence in a dependency action to have sexually abused a child, unless the court finds that the parent accepts that the person engaged in the harmful conduct and the parent is willing to and capable of protecting the child from harm from the person.

(iii) If the court limits residential time under (a) or (b) of this subsection to require supervised contact between the child and the parent, the court shall not approve of a supervisor for contact between a child and a parent who has engaged in physical, sexual, or a pattern of emotional abuse of the child unless the court finds based upon the evidence that the supervisor accepts that the harmful conduct occurred and is willing to and capable of

protecting the child from harm. The court shall revoke court approval of the supervisor upon finding, based on the evidence, that the supervisor has failed to protect the child or is no longer willing to or capable of protecting the child.

(n) If the court expressly finds based on the evidence that contact between the parent and the child will not cause physical, sexual, or emotional abuse or harm to the child and that the probability that the parent's or other person's harmful or abusive conduct will recur is so remote that it would not be in the child's best interests to apply the limitations of (a), (b), and (m)(i) and (iii) of this subsection, or if the court expressly finds that the parent's conduct did not have an impact on the child, then the court need not apply the limitations of (a), (b), and (m)(i) and (iii) of this subsection. The weight given to the existence of a protection order issued under chapter 26.50 RCW as to domestic violence is within the discretion of the court. This subsection shall not apply when (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), and (m)(ii) of this subsection apply.

(3) A parent's involvement or conduct may have an adverse effect on the child's best interests, and the court may preclude or limit any provisions of the parenting plan, if any of the following factors exist:

- (a) A parent's neglect or substantial nonperformance of parenting functions;
- (b) A long-term emotional or physical impairment which interferes with the parent's performance of parenting functions as defined in RCW 26.09.004;
- (c) A long-term impairment resulting from drug, alcohol, or other substance abuse that interferes with the performance of parenting functions;
- (d) The absence or substantial impairment of emotional ties between the parent and the child;
- (e) The abusive use of conflict by the parent which creates the danger of serious damage to the child's psychological development;
- (f) A parent has withheld from the other parent access to the child for a protracted period without good cause; or
- (g) Such other factors or conduct as the court expressly finds adverse to the best interests of the child.

(4) In cases involving allegations of limiting factors under subsection (2)(a)(ii) and (iii) of this section, both parties shall be screened to determine the appropriateness of a comprehensive assessment regarding the impact of the limiting factor on the child and the parties.

(5) In entering a permanent parenting plan, the court shall not draw any presumptions from the provisions of the temporary parenting plan.

(6) In determining whether any of the conduct described in this section has occurred, the court shall apply the civil rules of evidence, proof, and procedure.

(7) For the purposes of this section:

- (a) "A parent's child" means that parent's natural child, adopted child, or stepchild; and
- (b) "Social worker" means a person with a master's or further advanced degree from a social work educational program accredited and approved as provided in RCW 18.320.010.

[2011 c 89 § 6; 2007 c 496 § 303; 2004 c 38 § 12; 1996 c 303 § 1; 1994 c 267 § 1. Prior: 1989 c 375 § 11; 1989 c 326 § 1; 1987 c 460 § 10.]

NOTES:

***Reviser's note:** RCW 26.50.010 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (1) to subsection (3).

Effective date—2011 c 89: See note following RCW 18.320.005.

Findings—2011 c 89: See RCW 18.320.005.

Part headings not law—2007 c 496: See note following RCW 26.09.002.

Effective date—2004 c 38: See note following RCW 18.155.075.

Effective date—1996 c 303: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 30, 1996]." [1996 c 303 § 3.]

Effective date—1994 c 267: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [April 1, 1994]." [1994 c 267 § 6.]

RCW 26.09.225**Access to child's education and health care records.**

(1) Each parent shall have full and equal access to the education and health care records of the child absent a court order to the contrary. Neither parent may veto the access requested by the other parent.

(2) Educational records are limited to academic, attendance, and disciplinary records of public and private schools in all grades kindergarten through twelve and any form of alternative school for all periods for which child support is paid or the child is the dependent in fact of the parent requesting access to the records.

(3) Educational records of postsecondary educational institutions are limited to enrollment and academic records necessary to determine, establish, or continue support ordered pursuant to RCW 26.19.090.

[1991 sp.s. c 28 § 3; 1990 1st ex.s. c 2 § 18; 1987 c 460 § 17.]

NOTES:

Severability—Effective date—Captions not law—1991 sp.s. c 28: See notes following RCW 26.09.100.

Effective dates—Severability—1990 1st ex.s. c 2: See notes following RCW 26.09.100.

Family Law Forms - Plain Language Conversion (sorted by existing number)

Updated 1/29/2016

Existing Form Number	Existing Form Title	New FL Number	Plain Lang. Form Title	Comments
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Court Files - Confidential Information forms

WPF DRPSCU 09.0200	Confidential Information Form (INFO)	FL All Family 001	Confidential Information	
WPF DRPSCU 09.0210	Addendum to Confidential Information Form (AD)	FL All Family 002	Attachment to Confidential Information (Additional Parties or Children)	
WPF DRPSCU 09.0220	Sealed Financial Source Documents (Cover Sheet) (SEALFN)	FL All Family 011	Sealed Financial Source Documents	title mandated by GR22(g)(1)
WPF DRPSCU 09.0230	Stipulation and Order to Allow Access to Court Records Restricted Under GR 22(c)(2) (ORAR)	FL All Family 020	Agreed Order Allowing Access to Restricted Court Records (GR22(c)(2))	
WPF DRPSCU 09.0240	Motion/Declaration to Allow Access to Court Records Restricted Under GR 22(c)(2) (MTAF)	FL All Family 021	Motion for Access to Restricted Court Records (GR22(c)(2))	
WPF DRPSCU 09.0250	Order Re: Access to Court Records Restricted Under GR 22(c)(2) (ORAR)	FL All Family 022	Order about Access to Restricted Court Records (GR22(c)(2))	
WPF DRPSCU 09.0260	Sealed Personal Health Care Records (Cover Sheet) (SEALPHC)	FL All Family 012	Sealed Personal Health Care Records	title mandated by GR22(g)(1)
WPF DRPSCU 09.0270	Sealed Confidential Reports (Cover Sheet) (SEALRPT)	FL All Family 013	Sealed Confidential Report	title mandated by GR22(g)(1)
	none	FL All Family 003	Confidential Information (filed by State)	possible new version of the form for use by the State only - not to be posted to AOC website

8 Existing forms 9 New Total 1 Added 0 Deleted

Forms for Use in All Family Law Cases

WPF DRPSCU 01.0050	Motion for Order Re: _____ (MT)	FL All Family 181	Motion for Order for: _____	
WPF DRPSCU 01.0100	Declaration of _____ [Name] (DCLR)	FL All Family 135	Declaration of (name): _____	
WPF DRPSCU 01.0150	Order Re: _____ (OR)	FL All Family 182	Order: _____	
WPF DRPSCU 01.0180	Declaration Regarding Personal Service Outside the State of Washington (DCLR)	FL All Family 102	Declaration: Personal Service Could Not be Made in Washington	
WPF DRPSCU 01.0185	Notice Re: Dependent of a Person in Military Service (NTDMP)	FL All Family 103	Notice Re Military Dependent	
WPF DRPSCU 01.0250	Return of Service (RTS)	FL All Family 101	Proof of Personal Service	Removed service by mail option from this form; created new form for that: FL All Family 107.
WPF DRPSCU 01.0260	Motion and Declaration for Service of Summons by Publication (DCLR)	FL All Family 108	Motion to Serve by Publication	
WPF DRPSCU 01.0265	Order for Service of Summons by Publication (ORPUB)	FL All Family 109	Order to Allow Service by Publication	

Family Law Forms - Plain Language Conversion (sorted by existing number)

Updated 1/29/2016

Existing Form Number	Existing Form Title	New FL Number	Plain Lang. Form Title	Comments
WPF DRPSCU 01.0270	Summons by Publication (SMPB)	FL All Family 110	Summons Served by Publication	
WPF DRPSCU 01.0280	Motion and Declaration to Serve by Mail (MTAF)	FL All Family 104	Motion to Serve by Mail	
WPF DRPSCU 01.0285	Order Allowing Service by Mail (ORRSR)	FL All Family 105	Order to Allow Service by Mail	
WPF DRPSCU 01.0290	Summons by Mail (SM)	FL All Family 106	Summons Served by Mail	
WPF DRPSCU 01.0310	Acceptance of Service (ACSR)	FL All Family 117	Service Accepted	
WPF DRPSCU 01.0320	Pro Se Notice of Appearance (APPS)	FL All Family 118	Notice of Appearance (for a party without a lawyer)	
WPF DRPSCU 01.0330	Joinder (JN)	FL All Family 119	Agreement to Join Petition (Joinder)	
WPF DRPSCU 01.0410	Order to Show Cause (ORTSC)	FL All Family 183	Order to Go to Court (Order to Show Cause)	
WPF DRPSCU 01.0550	Motion for Order of Dismissal (MTDSM)	FL All Family 163	Motion for Dismissal	
WPF DRPSCU 01.0560	Order of Dismissal (ORDSM)	FL All Family 164	Order on Motion for Dismissal	
WPF DRPSCU 01.0570	Order of Dismissal (ORDSM)		Deleted	This form will be moved to All Cases (not just family law) and will not be revised into PL now.
WPF DRPSCU 01.0600	Declaration Regarding Public Assistance (DCLR)	FL All Family 132	Declaration about Public Assistance	optional use form
WPF DRPSCU 01.1550	Financial Declaration (FNDCLR)	FL All Family 131	Financial Declaration of (name):	
WPF DRPSCU 03.0100 and 06.0400	Motion and Declaration for Default (MTDFL)	FL All Family 161	Motion for Default	Combined with CS mod version
WPF DRPSCU 03.0200 and 06.0450	Order on Motion for Default (ORDFL / ORDYMT)	FL All Family 162	Order on Motion for Default	Combined with CS mod version
WPF DRPSCU 05.0100	Motion/Declaration for an Order to Show Cause re Contempt (MTSC)	FL All Family 165	Motion for Contempt Hearing	
WPF DRPSCU 05.0150	Order to Show Cause re Contempt (ORTSC)	FL All Family 166	Order to Go to Court for Contempt Hearing (Order to Show Cause)	
WPF DRPSCU 05.0200	Order on Show Cause re Contempt/Judgment (ORCN)	FL All Family 167	Contempt Hearing Order	
WPF PS 10.0800	Motion and Declaration for Order Appointing Guardian Ad Litem (MTAF)	FL All Family 145	Motion to Appoint Guardian ad Litem	adapted for use in all FL cases
WPF PS 10A.0850	Order Appointing Guardian Ad Litem for a Minor Party or Incapacitated Respondent (ORAPGL)	FL All Family 147	Order Appointing Guardian ad Litem for a Minor Party	adapted for use in all FL cases
	none	FL All Family 107	Proof of Service by Mail	NEW FORM bc removed this option from old 01.0250/new 101.
	none	FL All Family 111	Proof of Publication (Cover Sheet)	new form

Family Law Forms - Plain Language Conversion (sorted by existing number)

Updated 1/29/2016

Existing Form Number	Existing Form Title	New FL Number	Plain Lang. Form Title	Comments
	none	FL All Family 112	Proof of Mailing or Hand Delivery (for documents after Summons and Petition)	new optional form to prove mailing after initial service of process
	none	FL All Family 120	Notice of Address Change	new form
	none	FL All Family 148	Order Appointing Parenting Evaluator/Investigator	new form adapted from King Cty version
	none	FL All Family 151	Extension of Immediate Restraining Order and Hearing Notice	new form adapted from DV version
	none	FL All Family 170	Order re Service Members Civil Relief Act	NEW FORM. Ask the PFC to make this an All Cases form (not just All Family)
	none	FL All Family 173	Motion for Temporary Change to Parenting Order (Military Parent)	NEW FORM bc no longer in general DR motion for temp orders.
28 Existing forms	35 New Total	8 Added	-1 Deleted	

Family Law Forms - Plain Language Conversion (sorted by existing number)

Updated 1/29/2016

Existing Form Number	Existing Form Title	New FL Number	Plain Lang. Form Title	Comments
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Chapter 26.09 RCW

WPF DR 01.0100	Petition for Dissolution of Marriage (PTDSS)	FL Divorce 201	Petition for Divorce (Dissolution)	
WPF DR 01.0105	Petition for Dissolution of Registered Domestic Partnership (PTDSS)	FL Divorce 202	Petition to End Registered Domestic Partnership (Dissolution)	
WPF DR 01.0110	Petition for Legal Separation (Marriage) (PTLGSP)	FL Divorce 203	Petition for Legal Separation (Marriage)	
WPF DR 01.0115	Petition for Legal Separation (Registered Domestic Partnership) (PTLGSP)	FL Divorce 204	Petition for Legal Separation (Registered Domestic Partnership)	
WPF DR 01.0120	Petition for Declaration Concerning Validity (Marriage) (PTIN)	FL Divorce 205	Petition to Invalidate (Annul) Marriage	
WPF DR 01.0125	Petition for Declaration Concerning Validity (Registered Domestic Partnership) (PTIN)	FL Divorce 206	Petition to Invalidate (Annul) Registered Domestic Partnership	
WPF DR 01.0200	Summons (SM)	FL Divorce 200	Summons: Notice About a Marriage or Domestic Partnership	
WPF DR 01.0300	Response to Petition (Marriage) (RSP)	FL Divorce 211	Response to Petition about a Marriage	
WPF DR 01.0305	Response to Petition (Registered Domestic Partnership) (RSP)	FL Divorce 212	Response to Petition about a Registered Domestic Partnership	
WPF DR 01.0400 and PS 01.0400	Parenting Plan; Proposed (PPP), Temporary (PPT), Final Order (PP)	FL All Family 140	Parenting Plan	Combined DR and PS versions
WPF DR 01.0410	Residential Time Summary Report (RTSR)	FL Divorce 243	Residential Time Summary Report	Only changed references to specific PP sections to minimize impact on DCS and the CRC at AOC
WPF DR 01.0420	Temporary Residential Time Re Military Parents (TRTMP)	FL All Family 174	Order on Motion for Temporary Change to Parenting/Custody Order (Military Parent)	adapted for use in all FL cases
WPF DR 01.0500, PS 01.0500 and CU 01.0500	Order of Child Support (TMORS, ORS)	FL All Family 130	Child Support Order	Combined DR, PS and CU versions
WPF DR 03.0300	Note for Dissolution Calendar (NTC)	FL All Family 185	Notice of Hearing	adapted for use in all FL cases
WPF DR 04.0050	Motion/Declaration by Military Parent for Ex Parte Order to Expedite Hearing/Allow Electronic Testimony (MTAF)	FL All Family 171	Motion for Immediate Order (Ex Parte) about a Hearing on Parenting Issues (Military Parent)	adapted for use in all FL cases
WPF DR 04.0055	Ex Parte Order Re: <input type="checkbox"/> Expediting Hearing (ORSGT) <input type="checkbox"/> Allowing Electronic Testimony and Evidence (ORATE), (ORDYMT)	FL All Family 172	Immediate Order (Ex Parte) about a Hearing on Parenting Issues (Military Parent)	adapted for use in all FL cases
WPF DR 04.0070	Motion and Declaration for Order Reinstating Parenting Plan (Military Parent) (MTAF)	FL All Family 175	Motion to Reinstate a Parenting Order (Military Parent)	adapted for use in all FL cases
WPF DR 04.0075	Order on Motion for Order Reinstating Parenting Plan (Military Parent) (ORDYMT, ORRPP)	FL All Family 176	Order on Motion to Reinstate a Parenting Order (Military Parent)	adapted for use in all FL cases

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Existing Form Number	Existing Form Title	New FL Number	Plain Lang. Form Title	Comments
WPF DR 04.0100	Motion and Declaration for Temporary Order (MTAF)	FL Divorce 223	Motion for Temporary Family Law Order [] and Restraining Order	Pulled the military parent temp PP request out of this form. FL All Family 173 is a new separate motion form for that purpose.
WPF DR 04.0120 and PS 04.0120	Declaration in Support of Parenting Plan (DCLSPF)	FL All Family 139	Information for Temporary Parenting Plan	Combined DR and PS versions
WPF DR 04.0150	Motion/Declaration for Ex Parte Restraining Order and for Order to Show Cause (MTSC)	FL Divorce 221	Motion for Immediate Restraining Order (Ex Parte)	
WPF DR 04.0170	Ex Parte Restraining Order/Order to Show Cause (TPROTSC/ORTSC)	FL Divorce 222	Immediate Restraining Order (Ex Parte) and Hearing Notice	
WPF DR 04.0200 and PS 10B.0850 and CU 04.0200	Order Appointing Guardian Ad Litem on Behalf of Minor (ORAPGL)	FL All Family 146	Order Appointing Guardian ad Litem for a Child	Combined DR, PS and CU versions
WPF DR 04.0250	Temporary Order (TMO/TMRO)	FL Divorce 224	Temporary Family Law Order	
WPF DR 04.0300	Findings of Fact and Conclusions of Law (Marriage) (FNFCL)	FL Divorce 231	Findings and Conclusions About a Marriage	
WPF DR 04.0305	Findings of Fact and Conclusions of Law (Registered Domestic Partnership) (FNFCL)	FL Divorce 232	Findings and Conclusions About a Registered Domestic Partnership	
WPF DR 04.0400	Decree of Dissolution (DCD)/Legal Separation (DCLGSP)/Concerning the Validity of the Marriage (DCINMG)	FL Divorce 241	Final Divorce Order (Dissolution Decree) / Legal Separation Order (Decree) / Invalid Marriage Order (Annulment Decree) / Valid Marriage Order (Decree)	
WPF DR 04.0405	Decree of Dissolution (DCD)/Legal Separation (DCSGSP)/ Concerning the Validity of the Registered Domestic Partnership (DCINMG)	FL Divorce 242	Final Order Ending Registered Domestic Partnership (Dissolution Decree) / Legal Separation Order / Invalid Registered Domestic Partnership Order (Annulment Decree) / Valid Registered Domestic Partnership Order	
WPF DR 04.0500	Restraining Order (adoped by Pattern Forms in June 2012)	FL All Family 150	Restraining Order	adapted for use in all FL cases
WPF DR 08.0100	Motion and Declaration to Convert Decree of Legal Separation to Decree of Dissolution (MT)	FL Divorce 251	Motion to Convert Legal Separation Order to Final Divorce Order (Dissolution Decree)	
WPF DR 08.0200	Order on Motion to Convert Separation Decree to Decree of Dissolution (OR)	FL Divorce 253	Order Converting Legal Separation Order to Final Divorce Order (Dissolution Decree)	
	none	FL Divorce 252	Motion to Convert Legal Separation to Order Ending Registered Domestic Partnership (Dissolution Decree)	NEW FORM needed because title change to "Order Ending RDP" made a combined marriage/DP order too cumbersome.
	none	FL Divorce 254	Order Converting Legal Separation to Order Ending Registered Domestic Partnership (Dissolution Decree)	NEW FORM needed because title change to "Order Ending RDP" made a combined marriage/DP order too cumbersome.

31
Existing forms

33
New Total

2
Added

0
Deleted

Family Law Forms - Plain Language Conversion (sorted by existing number)

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Existing Form Number	Existing Form Title	New FL Number	Plain Lang. Form Title	Comments
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Chapter 26.26 RCW

WPF PS 01.0100	Petition for Establishment of Parentage (PTDTP)	FL Parentage 301	Petition to Decide Parentage	
WPF PS 01.0150	Declaration of a Party to the Action to Establish Parentage (Parentage) (DCLR)	FL Parentage 302	Declaration about Parentage	
WPF PS 01.0160, 11.0200, 12.0200, 13.0200, 14.0200, and 16.0200	Summons (Parentage) (SM)	FL Parentage 300	Summons: Notice about Parentage	Consolidated Summons form for all the parentage petitions (except 15.0200)
WPF PS 01.0300	Response to Petition for Establishment of Parentage (RSP)	FL Parentage 303	Response to Petition to Decide Parentage	
WPF PS 01.0400	Parenting Plan; Proposed (PPP), Temporary (PPT), Final Order (PP)		Deleted	Combined with the DR version into FL All Family 140
WPF PS 01.0450 and 15.0650	Residential Schedule; Proposed (PRS), Temporary (TRS), Final Order (RS)	FL Parentage 304	Residential Schedule	
WPF PS 01.0500	Order of Child Support (TMORS, ORS)		Deleted	Combined with the DR and CU version into FL All Family 130
WPF PS 02.0200	Motion and Declaration for Order to Require Genetic Tests (MTAF)	FL Parentage 305	Motion for Genetic Testing	
WPF PS 02.0250	Paternity Genetic Testing Stipulation/Order on Stipulation (ORBT)	FL Parentage 307	Agreed Order for Genetic Testing	
WPF PS 02.0300	Order Requiring Genetic Tests (ORBT)	FL Parentage 306	Order on Motion for Genetic Testing	Adapted form to either grant or deny motion
WPF PS 02.0350	Declaration of Chain of Custody (Optional Use) (DCLR)	FL Parentage 308	Chain of Custody Declaration	
WPF PS 03.0250	Motion for Summary Judgment on Parentage (MTSMJG)	FL Parentage 313	Motion for Summary Judgment (Final Decision) (Parentage)	
WPF PS 03.0270	Order Granting Motion for Summary Judgment (ORGSJ)	FL Parentage 314	Summary Judgment Order (Final Decision) (Parentage) [] Partial	
WPF PS 04.0100	Motion and Declaration for Temporary Order (MTAF)	FL Parentage 323	Motion for Temporary Family Law Order [] and Restraining Order	Tracks FL Divorce 223
WPF PS 04.0120	Declaration in Support of Proposed Parenting Plan (DCLSPP)		Deleted	Combined with the DR version into FL All Family 139
WPF PS 04.0150	Motion/Declaration for Ex Parte Restraining Order and Order to Show Cause (MTSC)	FL Parentage 321	Motion for Immediate Restraining Order (Ex Parte)	Tracks FL Divorce 221
WPF PS 04.0170	Ex Parte Restraining Order/Order to Show Cause (TPROTSC/ORTSC)	FL Parentage 322	Immediate Restraining Order (Ex Parte)	Tracks FL Divorce 222
WPF PS 04.0200	Judgment and Order Determining Parentage and Granting Additional Relief (JDOEP)	FL Parentage 316	Final Parentage Order	
WPF PS 04.0250	Temporary Order (Parentage) (TMO/TMRO)	FL Parentage 324	Temporary Family Law Order	Tracks FL Divorce 224

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Existing Form Number	Existing Form Title	New FL Number	Plain Lang. Form Title	Comments
WPF PS 04.0350	Findings of Fact and Conclusions of Law (Parentage) (FNFLC)	FL Parentage 315	Findings and Conclusions About Parentage	
WPF PS 04.0500	Motion and Declaration for Parenting Plan/Residential Schedule Within Two Years of Entry of Parentage Judgment (MTAF)	FL Parentage 317	Motion for Parenting Plan or Residential Schedule (within 2 years of Parentage Order)	
WPF PS 04.0550	Order Re Parenting Plan/Residential Schedule Within Two Years of Entry of Parentage Judgment (OAPP2Y)	FL Parentage 318	Order on Motion for Parenting Plan or Residential Schedule (within 2 years of Parentage Order)	
WPF PS 10B.0850	Order Appointing Guardian Ad Litem on Behalf of Minor (ORAPGL)		Deleted	Combined with the DR version into FL All Family 146
WPF PS 11.0100 and 12.0100	Petition for Rescission of Paternity Acknowledgment (PT)	FL Parentage 341	Petition to Withdraw (Rescind) Paternity Acknowledgment / Denial of Paternity	Combined versions for PA Acknowledgment and Denial
WPF PS 11.0200	Summons (Rescission of Acknowledgment of Paternity Within 60 Days) (SM)		Deleted	Combined into a consolidated Summons form FL Parentage 300
WPF PS 11.0300 and 12.0300	Response to Petition for Rescission of Acknowledgment of Paternity Within 60 Days (RSP)	FL Parentage 342	Response to Petition to Withdraw (Rescind) Paternity Acknowledgment or Denial	Combined versions for PA Acknowledgment and Denial
WPF PS 11.0400	Findings of Fact and Conclusions of Law on Rescission of Paternity Acknowledgment (FNFLC)		Deleted	Combined Findings and Order into FL Parentage 343
WPF PS 11.0400, 11.0500, 12.0400 and 12.0500	Judgment and Order on Rescission of Acknowledgment of Paternity Within 60 Days and Granting Other Relief (JDOAKP)	FL Parentage 343	Final Order and Findings on Petition to Withdraw (Rescind) Paternity Acknowledgment or Denial	Combined Findings and Order. Combined versions for PA Acknowledgment and Denial.
WPF PS 12.0100	Petition for Rescission of Denial of Paternity (PT)		Deleted	Combined with the version for Acknowledgments, FL Parentage 341
WPF PS 12.0200	Summons (Rescission of Denial of Paternity Within 60 Days) (SM)		Deleted	Combined into a consolidated Summons form FL Parentage 300
WPF PS 12.0300	Response to Petition for Rescission of Denial of Paternity Within 60 Days (RSP)		Deleted	Combined with the version for Acknowledgments, FL Parentage 342
WPF PS 12.0400	Findings of Fact and Conclusions of Law on Rescission of Denial of Paternity (FNFLC)		Deleted	Combined with the version for Acknowledgments, FL Parentage 343
WPF PS 12.0500	Judgment and Order on Rescission of Denial of Paternity Within 60 Days and Granting Other Relief (JDOEP)		Deleted	Combined with the version for Acknowledgments, FL Parentage 343
WPF PS 13.0100 and 14.0100	Petition for Challenge to Paternity Acknowledgment (PTAKP)	FL Parentage 345	Petition to Challenge Paternity Acknowledgment and/or Denial of Paternity	Combined versions for PA Acknowledgment and Denial
WPF PS 13.0200	Summons (Challenge to Acknowledgment of Paternity) (SM)		Deleted	Combined into a consolidated Summons form FL Parentage 300
WPF PS 13.0300 and 14.0300	Response to Petition for Challenge to Acknowledgment of Paternity (RSP)	FL Parentage 346	Response to Petition to Challenge Paternity Acknowledgment or Denial	Combined versions for PA Acknowledgment and Denial

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Existing Form Number	Existing Form Title	New FL Number	Plain Lang. Form Title	Comments
WPF PS 13.0400 and 14.0400	Findings of Fact and Conclusions of Law on Challenge to Paternity Acknowledgment (FNFCL)	FL Parentage 347	Findings and Conclusions on Petition to Challenge Paternity Acknowledgment or Denial	Combined versions for PA Acknowledgment and Denial
WPF PS 13.0500 and 14.0500	Judgment and Order on Challenge to Paternity Acknowledgment and Granting Other Relief (JDOAKP)	FL Parentage 348	Final Order on Petition to Challenge Paternity Acknowledgment or Denial	Combined versions for PA Acknowledgment and Denial
WPF PS 14.0100	Petition for Challenge to Denial of Paternity (PT)		Deleted	Combined with the version for Acknowledgments, FL Parentage 345
WPF PS 14.0200	Summons (Challenge to Denial of Paternity) (SM)		Deleted	Combined into a consolidated Summons form FL Parentage 300
WPF PS 14.0300	Response to Petition for Challenge to Denial of Paternity (RSP)		Deleted	Combined with the version for Acknowledgments, FL Parentage 346
WPF PS 14.0400	Findings of Fact and Conclusions of Law on Challenge to Denial of Paternity (FNFCL)		Deleted	Combined with the version for Acknowledgments, FL Parentage 347
WPF PS 14.0500	Judgment and Order on Challenge to Denial of Paternity and Granting Other Relief (JDOEP)		Deleted	Combined with the version for Acknowledgments, FL Parentage 348
WPF PS 15.0100 and 15A.0100	Petition for Residential Schedule/Parenting Plan/Child Support (PT)	FL Parentage 331	Petition for a Parenting Plan, Residential Schedule and/or Child Support	Combined in-state and out-of-state versions
WPF PS 15.0150	Sealed [] Acknowledgment [] Denial of Paternity [] Birth Certificate (Cover Sheet) (SADP)	FL Parentage 329	Sealed Birth Certificate or Paternity Document	
WPF PS 15.0200 and 15A.0200	Summons (Petition for Residential Schedule/Parenting Plan or Child Support) (SM)	FL Parentage 330	Summons: Notice about Petition for Parenting Plan, Residential Schedule, and/or Child Support	Combined in-state and out-of-state versions
WPF PS 15.0300 and 15A.0300	Response to Petition for Residential Schedule/Parenting Plan/Child Support (RSP)	FL Parentage 332	Response to Petition for Parenting Plan, Residential Schedule and/or Child Support	Combined in-state and out-of-state versions
WPF PS 15.0400	Findings of Fact and Conclusions of Law on Petition for Residential Schedule/Parenting Plan or Child Support (FNFCL)		Deleted	Combined Findings and Order into FL Parentage 333
WPF PS 15.0400, 15.500, 15A.0400 and 15A.0500	Judgment and Order Establishing Residential Schedule/Parenting Plan/Child Support (JDORS)	FL Parentage 333	Final Order and Findings for a Parenting Plan, Residential Schedule and/or Child Support	Combined Findings and Order. Combined in-state and out-of-state versions.
WPF PS 15.0600	Parenting Plan (PPP, PPT, PP)		Deleted	Combined DR and PS versions into FL All Family 140
WPF PS 15.0650	Residential Schedule: Proposed (PRS), Temporary (TRS), Final Order (RS)		Deleted	Combined with PS 01.0450 into FL Parentage 304
WPF PS 15.0700	Order of Child Support (TMORS, ORS)		Deleted	Combined DR and PS versions into FL All Family 130

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Existing Form Number	Existing Form Title	New FL Number	Plain Lang. Form Title	Comments
WPF PS 15A.0100	Petition for Residential Schedule/Parenting Plan/Child Support (<i>Out-of-State Paternity Acknowledgment or Judgment Establishing Parentage</i>) (PT)		Deleted	Comined with in-state version, FL Parentage 331
WPF PS 15A.0200	Summons (Petition for Residential Schedule/Parenting Plan or Child Support) (<i>Out-of-State Acknowledgment of Paternity</i>) (SM)		Deleted	Comined with in-state version, FL Parentage 330
WPF PS 15A.0300	Response to Petition for Residential Schedule/Parenting Plan/Child Support (<i>Out-of-State Paternity Acknowledgment or Judgment Establishing Parentage</i>) (RSP)		Deleted	Comined with in-state version, FL Parentage 332
WPF PS 15A.0400	Findings of Fact and Conclusions of Law on Petition for Residential Schedule/Parenting Plan or Child Support (<i>Out-of-State Paternity Acknowledgment or Judgment Establishing Parentage</i>) (FNFCL)		Deleted	Comined with in-state version, FL Parentage 333
WPF PS 15A.0500	Judgment and Order Establishing Residential Schedule/Parenting Plan/Child Support (<i>Out-of-State Paternity Acknowledgment or Judgment Establishing Parentage</i>) (JDORS)		Deleted	Comined with in-state version, FL Parentage 333
WPF PS 16.0100	Petition for Establishment of Parentage Pursuant to RCW 26.26.540(2) (PTDTP)	FL Parentage 351	Petition to Decide Parentage (after Acknowledgment or Court Decision)	
WPF PS 16.0200	Summons (Petition for Establishment of Parentage Pursuant to RCW 26.26.540(2)) (SM)		Deleted	Combined into a consolidated Summons form FL Parentage 300
WPF PS 16.0300	Response to Petition for Establishment of Parentage Pursuant to RCW 26.26.540(2) (RSP)	FL Parentage 352	Response to Petition to Decide Parentage (after Acknowledgment or Court Decision)	
WPF PS 16.0400	Findings of Fact and Conclusions of Law on Petition for Establishment of Parentage Pursuant to RCW 26.26.540(2) (FNFCL)	FL Parentage 353	Findings and Conclusions About Parentage (after Acknowledgment or earlier Court Decision)	
WPF PS 16.0500	Judgment and Order on Petition for Establishment of Parentage Pursuant to RCW 26.26.540(2) and Granting Other Relief (JDOEP)	FL Parentage 354	Final Parentage Order (after Acknowledgment or earlier Court Decision)	
WPF PS 17.0100	Petition to Disestablish Parentage Based on Presumption (PT)	FL Parentage 355	Petition to Disprove Parentage of Presumed Parent	
WPF PS 17.0200	Summons (Petition to Disestablish Parentage Based on Presumption) (SM)		Deleted	Combined into a consolidated Summons form FL Parentage 300
WPF PS 17.0300	Response to Petition to Disestablish Parentage Based on Presumption (RSP)	FL Parentage 356	Response to Petition to Disprove Parentage of Presumed Parent	

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Existing Form Number	Existing Form Title	New FL Number	Plain Lang. Form Title	Comments
WPF PS 17.0400	Findings of Fact and Conclusions of Law on Petition to Disestablish Parentage Based on Presumption (FNFCL)	FL Parentage 357	Findings and Conclusions on Petition to Disprove Parentage of Presumed Parent	
WPF PS 17.0500	Judgment and Order on Petition to Disestablish Parentage Based on Presumption and Granting Other Relief (JODRDP)	FL Parentage 358	Final Order on Petition to Disprove Parentage of Presumed Parent	

67
Existing forms

39
New Total

0
Added

-28
Deleted

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Existing Form Number	Existing Form Title	New FL Number	Plain Lang. Form Title	Comments
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Chapter 26.10 RCW

WPF CU 01.0100	Nonparental Custody Petition (PTCUS)	FL Non-Parent 401	Non-Parent Custody Petition	
WPF CU 01.0200	Summons for Nonparental Custody Proceeding (SM)	FL Non-Parent 400	Summons: Notice about Non-Parent Custody Petition	
WPF CU 01.0250	Indian Child Welfare Act Notice 25 U.S.C. § 1912(a) (BIAN)	FL Non-Parent 402	Indian Child Welfare Act Notice (Non-parent Custody)	
WPF CU 01.0255	Proof of Mailing (AFML)	FL Non-Parent 404	Proof of Mailing (Indian Child Welfare Act Notice)	specific to ICWA notices -- sealed
WPF CU 01.0300	Response to Nonparental Custody Petition (RSP)	FL Non-Parent 415	Response to Non-Parent Custody Petition	
WPF CU 01.0450	Residential Schedule, Proposed (PRS), Temporary (TRS), Final Order (RS)	FL Non-Parent 405	Residential Schedule (Non-Parent Custody)	
WPF CU 01.0500	Nonparental Custody Order of Child Support (TMORS, ORS)		Deleted	Combined with DR and PS versions into FL All Family 130
WPF CU 02.0100	Findings of Fact and Conclusions of Law (Nonparental Custody) (FNFCL)	FL Non-Parent 430	Findings and Conclusions on Non-Parent Custody Petition	
WPF CU 02.0200	Nonparental Custody Decree (DCC)	FL Non-Parent 431	Final Non-Parent Custody Order	
WPF CU 02.0300 and 02.0350	Petitioner's Notice of Hearing for Adequate Cause Determination (Nonparental Custody) (NTHG)	FL Non-Parent 416	Motion for Adequate Cause Decision (Non-parent Custody)	Combined Petitioner's and Respondent's versions
WPF CU 02.0350	Respondent's Notice of Hearing for Adequate Cause Determination (NTHG)		Deleted	Combined Petitioner's and Respondent's versions into FL Non-Parent 416
WPF CU 02.0400	Order Re Adequate Cause (Nonparental Custody) (ORRACD, ORRACG, ORH)	FL Non-Parent 417	Order on Adequate Cause for Non-parent Custody	
WPF CU 03.0100	Motion and Declaration for Temporary Nonparental Custody Order (MTAF)	FL Non-Parent 423	Motion for Temporary Non-Parent Custody Order [] and Restraining Order	
WPF CU 03.0150	Motion/Declaration for Ex Parte Restraining Order and for Order to Show Cause (Nonparental Custody) (MTSC)	FL Non-Parent 421	Motion for Immediate Restraining Order – Non-Parent Custody (Ex Parte)	
WPF CU 03.0170	Ex Parte Restraining Order/Order to Show Cause (Nonparental Custody) (TPROTSC/ORTSC)	FL Non-Parent 422	Immediate Restraining Order (Ex Parte) and Hearing Notice (Non-Parent Custody)	
WPF CU 03.0200	Temporary Custody Order (Nonparental Custody) (TCO/TMO/TMRO)	FL Non-Parent 424	Temporary Non-Parent Custody Order	
WPF CU 03.0500	Order Directing DCFS/CPS to Release Information and Order Restricting Access (Nonparental Custody) (ORDINFO)	FL Non-Parent 407	Order to DSHS to Release CPS Information (Non-Parent Custody)	
WPF CU 03.0520	Cover Sheet for DCFS/CPS Investigative Information (Nonparental Custody) (CSBKGD)	FL Non-Parent 408	Sealed CPS Information (Cover Sheet)	
WPF CU 03.0540	Cover Sheet for Authorization to Release Information to the Court (Nonparental Custody) (CSAUTH)		Deleted	OK to delete. DCFS will release the info pursuant to the court order, don't need signed Authorizations.

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Existing Form Number	Existing Form Title	New FL Number	Plain Lang. Form Title	Comments
WPF CU 03.0550	Cover Sheet for WSP Criminal History Record (Nonparental Custody) (CSCRIM)	FL Non-Parent 406	Criminal History Record (Cover Sheet) (Non-Parent Custody)	
WPF CU 04.0200	Order Appointing Guardian Ad Litem on Behalf of Minor (ORAPGL)		Deleted	Combined with DR and PS versions into FL All Family 146
WPF CU 05.0100	Motion for Order Transferring Jurisdiction to Tribal Court (MTAFTC)	FL Non-Parent 440	Motion to Transfer to Tribal Court	
WPF CU 05.0150	Order re Transferring Jurisdiction to Tribal Court (ORGTC, ORDYMT)	FL Non-Parent 441	Order about Transfer to Tribal Court	
WPF CU 05.0170	Cover Sheet for Order Transferring Jurisdiction to Tribal Court (TSCCYO)	FL Non-Parent 442	Proof of Service of Order about Transfer to Tribal Court	changed this form from a clerk's action cover sheet to proof of svc from a party
WPF CU 05.0200	Tribal Court's Order Accepting/Declining Jurisdiction	FL Non-Parent 443	Tribal Court Order about Accepting Case	
	none	FL Non-Parent 403	ICWA Notice – Attachment for Additional Child	
	none	FL Non-Parent 432	Final Order Denying Non-Parent Custody	new form; can also use to terminate NPC after a modification action
	none	FL Non-Parent 444	Order on Review of Transfer to Tribal Court	suggest two alternative docket codes, one if transfer was accepted, one if declined.

25
Existing forms

24
New Total

3
Added

-4
Deleted

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Updated 1/29/2016

Existing Form Number	Existing Form Title	New FL Number	Plain Lang. Form Title	Comments
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Modification of Child Support

WPF DRPSCU 06.0100	Petition for Modification of Child Support (PTMD)	FL Modify 501	Petition to Modify Child Support Order	
WPF DRPSCU 06.0200	Summons for Modification of Child Support (SM)	FL Modify 500	Summons: Notice about Petition to Modify Child Support Order	
WPF DRPSCU 06.0300	Response to Petition for Modification of Child Support (RSP)	FL Modify 502	Response to Petition to Modify Child Support Order	
WPF DRPSCU 06.0400	Motion/Declaration for Default (Child Support Modification) (MTDFL)		Deleted	Combined with generic default motion in FL All Family 161
WPF DRPSCU 06.0450	Order of Default (Child Support Modification) (ORDFL)		Deleted	Combined with generic default order in FL All Family 162
WPF DRPSCU 06.0500	Motion and Declaration to Present Oral Testimony (Child Support Modification) (MT)	FL Modify 503	Motion to Allow Testimony (About Modifying Child Support)	
WPF DRPSCU 06.0520	Response re Oral Testimony (Child Support Modification) (RSP)	FL Modify 504	Response to Motion to Allow Testimony (About Modifying Child Support)	
WPF DRPSCU 06.0540	Order re Oral Testimony (Child Support Modification) (ORH)	FL Modify 505	Order on Motion to Allow Testimony (About Modifying Child Support)	
WPF DRPSCU 06.0560	Notice of Hearing (Child Support Modification) (NTHG)	FL Modify 506	Notice of Hearing on Petition to Modify Child Support Order	
WPF DRPSCU 06.0570	Request to Schedule Hearing (Child Support Modification) (RQ)		Deleted	Delete statewide form but offer as template for local jurisdictions
WPF DRPSCU 06.0600	Findings/Conclusions on Petition for Modification of Child Support (FNFCL)		Deleted	Combined Findings and Order into FL Modify 510
WPF DRPSCU 06.0600 and 06.700	Order on Modification of Child Support (ORMDD)	FL Modify 510	Final Order and Findings on Petition to Modify Child Support Order	Combined Findings and Order
WPF DRPSCU 06.0800	Motion and Declaration for Adjustment of Child Support (MT)	FL Modify 521	Motion to Adjust Child Support Order	
WPF DRPSCU 06.0900	Order Re Adjustment of Child Support (OR)	FL Modify 522	Order on Motion to Adjust Child Support Order	

14
Existing forms

10
New Total

0
Added

-4
Deleted

Existing Form Number	Existing Form Title	New FL Number	Plain Lang. Form Title	Comments
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Modification of Parenting Plan Forms

WPF DRPSCU 07.0100	Petition for Modification/Adjustment of Custody Decree/Parenting Plan/Residential Schedule (PTMD)	FL Modify 601	Petition to Change a Parenting Plan, Residential Schedule or Custody Order	
WPF DRPSCU 07.0120	Summons (Modification/Adjustment of Custody Decree/Parenting Plan/Residential Schedule) (SM)	FL Modify 600	Summons: Notice about Petition to Change a Parenting Plan, Residential Schedule or Custody Order	
WPF DRPSCU 07.0200	Response to Petition for Modification/Adjustment of Custody Decree/Parenting Plan/Residential Schedule (RSP)	FL Modify 602	Response to Petition to Change a Parenting Plan, Residential Schedule or Custody Order	
WPF DRPSCU 07.0250	Petitioner's Notice of Hearing for Adequate Cause Determination (NTHG)	FL Modify 603	Motion for Adequate Cause Decision (to change a parenting/custody order)	Combined Petitioner's and Respondent's versions
WPF DRPSCU 07.0255	Respondent's Notice of Hearing for Adequate Cause Determination (NHG)		Deleted	Combined Petitioner's and Respondent's versions into FL Modify 603
WPF DRPSCU 07.0300	Order re Adequate Cause (Modification/Adjustment of Custody Decree/Parenting Plan/Residential Schedule) (ORRACD, ORRACG, ORH)	FL Modify 604	Order on Adequate Cause to Change a Parenting/Custody Order	
WPF DRPSCU 07.0400	Order re Modification/Adjustment of Custody Decree/Parenting Plan/Residential Schedule (ORMDD)	FL Modify 610	Final Order and Findings on Petition to Change a Parenting Plan, Residential Schedule or Custody Order	

7
Existing forms

6
New Total

0
Added

-1
Deleted

Existing Form Number	Existing Form Title	New FL Number	Plain Lang. Form Title	Comments
Child Relocation Act Forms				
WPF DRPSCU 07.0500	Notice of Intended Relocation of Children (NTRRELOC)	FL Relocate 701	Notice of Intent to Move with Children (Relocation)	
WPF DRPSCU 07.0550	Motion/Declaration for Ex Parte Order to Waive Requirements for Notice of Intended Relocation of Children (MTAF)	FL Relocate 702	Motion to Limit Notice of Intent to Move with Children (Ex Parte)	
WPF DRPSCU 07.0555	Ex Parte Order Waiving Notice Requirements for Relocation of Children (ORWVRQR)	FL Relocate 703	Order on Motion to Limit Notice of Intent to Move with Children	
WPF DRPSCU 07.0600	Return of Service (Notice of Intended Relocation of Children) (RTS)		Deleted	No need for separate form; use Proof of Personal Service (FL All Family 101) or Service by Mail (FL All Family 107).
WPF DRPSCU 07.0700	Objection to Relocation/Petition for Modification of Custody Decree/Parenting Plan/Residential Schedule (OBPT)	FL Relocate 721	Objection about Moving with Children and Petition about Changing a Parenting/Custody Order (Relocation)	
WPF DRPSCU 07.0720	Summons (Objection to Relocation/Petition for Modification of Custody Decree/Parenting Plan/Res Schedule) (SM)	FL Relocate 720	Summons: Notice of Objection about Moving with Children and Petition about Changing a Parenting/Custody Order (Relocation)	
WPF DRPSCU 07.0730	Response (Objection to Relocation/Petition for Modification of Custody Decree/Parenting Plan/Res Schedule) (RSP)	FL Relocate 722	Response to Objection about Moving with Children and Petition about Changing a Parenting/Custody Order (Relocation)	
WPF DRPSCU 07.0760	Return of Service (Objection to Relocation/Petition for Modification of Custody Decree/Parenting Plan/Res Schedule) (RTS)		Deleted	No need for separate form; use Proof of Personal Service (FL All Family 101) or Service by Mail (FL All Family 107).
WPF DRPSCU 07.0800	Motion/Declaration for an Ex Parte Order Allowing Change of Children's Principal Residence (Relocation) (MTAF)	FL Relocate 704	Motion for Immediate Order Allowing Move with Children -- Before Objection Deadline (Ex Parte Relocation)	
WPF DRPSCU 07.0830	Ex Parte Order Re: Change of Children's Principal Residence (Relocation) (ORDYMT or ORGRRE)	FL Relocate 705	Immediate Order on Motion to Move with Children -- Before Objection Deadline (Ex Parte Relocation)	
WPF DRPSCU 07.0850	Motion/Declaration for Temporary Order Restraining Relocation of Children (MTAF)	FL Relocate 725	Motion for Temporary Order Preventing Move with Children (Relocation)	
WPF DRPSCU 07.0870	Motion/Declaration for Temporary Order Permitting Relocation of Children (MTAF)	FL Relocate 726	Motion for Temporary Order Allowing Move with Children (Relocation)	
WPF DRPSCU 07.0890	Temporary Order Re: Relocation of Children (TMORELO)	FL Relocate 728	Temporary Order about Moving with Children (Relocation)	

Family Law Forms - Plain Language Conversion (sorted by existing number)

Updated 1/29/2016

Existing Form Number	Existing Form Title	New FL Number	Plain Lang. Form Title	Comments
WPF DRPSCU 07.0900	Order On Objection to Relocation/Modification of Custody Decree/Parenting Plan/Residential Schedule (ORDYMT or ORGRRE)	FL Relocate 735	Final Order and Findings on Objection about Moving with Children and Petition about Changing a Parenting/Custody Order (Relocation)	
WPF DRPSCU 07.0950	Motion/Declaration for Ex Parte Order Modifying Parenting Plan/Residential Schedule (Relocation) (MTAF)	FL Relocate 706	Ex Parte Motion for Final Order Changing Parenting Plan – No Objection to Moving with Children (Relocation)	
WPF DRPSCU 07.0955	Ex Parte Order Modifying Parenting Plan/Residential Schedule (Relocation) (ORMDPP)	FL Relocate 707	Ex Parte Order on Motion for Final Order Changing Parenting Plan – Moving with Children (Relocation)	
WPF DRPSCU 07.1000	Attachment A: Summary of RCW 26.09.430 - .480, Regarding Relocation of a Child	FL Relocate 736	Attachement: Summary of the law about moving with children (Relocation Act, RCW 26.09.430 - .480)	

17
Existing forms

15
New Total

0
Added

-2
Deleted

Family Law Forms - Plain Language Conversion (sorted by existing number)

Updated 1/29/2016

Existing Form Number	Existing Form Title	New FL Number	Plain Lang. Form Title	Comments
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UCCJEA

WPF DRPSCU 08.0500	Request for Child Custody Determination Registration Under UCCJEA (RQCUSDR)	FL UCCJEA 801	Request to Register Out-of-State Custody Order	
WPF DRPSCU 08.0510	Motion/Declaration for Ex Parte Order Allowing Petitioner to Arrange Service (Optional Use) (MTAF)		Deleted	
WPF DRPSCU 08.0520	Ex Parte Order Allowing Petitioner to Arrange Service (Optional Use) (ORRSR)		Deleted	
WPF DRPSCU 08.0530	Notice of Child Custody Determination Registration Under UCCJEA (NTCUSDR)	FL UCCJEA 802	Notice of Registration of Out-of-State Custody Order	
WPF DRPSCU 08.0540	Request for Hearing to Contest Registration of Child Custody Determination (RQTH)	FL UCCJEA 804	Motion to Dismiss Registration of Out-of-State Custody Order and Notice of Hearing	
WPF DRPSCU 08.0550	Order of Confirmation of Registered Child Custody Determination (ORCCUSD)	FL UCCJEA 805	Order About Registering Out-of-State Custody Order	
WPF DRPSCU 08.0555	Notice of Confirmation of Child Custody Determination Registration by Operation of Law Under UCCJEA (NTCCR)	FL UCCJEA 806	Notice: Out-of-State Custody Order Confirmed Without Hearing	
WPF DRPSCU 08.0560	Petition for Enforcement of Child Custody Determination and Issuance of Order to Show Cause Under UCCJEA (PT)	FL UCCJEA 811	Petition to Enforce Out-of-State Custody Order	
WPF DRPSCU 08.0570	Order to Appear and Show Cause Re: Enforcement of Child Custody Determination Under UCCJEA (ORTSC)	FL UCCJEA 812	Order to Go to Court About Out-of-State Custody Order (Order to Show Cause)	
WPF DRPSCU 08.0580	Order on Petition for Enforcement of Child Custody Determination Under UCCJEA (ORSC)	FL UCCJEA 815	Final Order on Petition to Enforce Out-of-State Custody Order	
	none	FL UCCJEA 803	Court's Proof of Mailing (Out-of-State Custody Order Registration)	NEW optional form

10
Existing forms

9
New Total

1
Added

-2
Deleted

Family Law Forms - Plain Language Conversion (sorted by existing number)

Updated 1/29/2016

Existing Form Number	Existing Form Title	New FL Number	Plain Lang. Form Title	Comments
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UIFSA forms

WPF DRPSCU 10.0100	Request for Support Order Registration Under UIFSA (RQSREG)	FL UIFSA 851	Deleted	Deleting this form for now. PL group suggests that the regular DR Forms Subc. develop a full set of these modeled on the UCCJEA set.
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1	0	0	-1
Existing forms	New Total	Added	Deleted

Child Support Schedule/Worksheets

WSCSS - Schedule	Washington State Child Support Schedule Definitions and Standards, Instructions, and Economic Table	no change	no change	no change
WSCSS - Worksheets	Washington State Child Support Schedule Worksheets (CSW)	no change	no change	no change
	none	WSCSS – Attachment for RSA	Attachment for Residential Split Adjustment	NEW optional form
WSCSS – Worksheets RDP	Washington State Child Support Schedule Worksheets – Registered Domestic Partnership (CSW)		Deleted	PFC deleted this form and made the regular worksheets gender neutral in 2015

3	3	1	-1
Existing forms	New Total	Added	Deleted

Totals

211	183	16	-44
Total existing forms	New Total PL forms	# of new forms added	# of forms to be deleted

CHAPTER TWO

**THERE'S A FORM FOR THAT?
GETTING TO KNOW THE NEW PLAIN LANGUAGE FORMS**

November 2016

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LAURIE GARBER is a statewide Advocacy Coordinator at the Northwest Justice Project for the Victims of Crime Act (VOCA) Program. Prior to becoming an Advocacy Coordinator this fall, she had been a staff attorney in the Vancouver office of the Northwest Justice Project since being admitted to the Washington State Bar in 1998. Laurie specializes in family law, advocating for survivors of domestic violence, clients with disabilities, limited English speakers and other persons facing barriers to justice. She has served on the Domestic Relations Pattern Forms Subcommittee since 2007. From 2012 to 2016 she staffed the Plain Language Family Law Forms Project, a joint effort of the Access to Justice Board and the Administrative Office of the Courts to convert the mandatory family law forms into plain language.

➤ **Pattern Forms Committee**

In 1978, the Washington State Supreme Court established the Pattern Forms Committee (PFC) to implement the adoption of standardized court forms, consider requests for revising adopted forms, and oversee all necessary revisions.¹ In 1986, the Supreme Court issued another order clarifying PFC membership and setting term limits.²

The PFC's members represent the associations of judges, clerks, court administrators, prosecuting attorneys, public defenders, the bar, and others when specific knowledge is required. The Chief Justice appoints the PFC chair. The Administrative Office of the Courts (AOC) provides staff support and posts the forms on its website, www.courts.wa.gov/forms.

The PFC has the ultimate authority to promulgate a mandatory form; but the drafting work is done by subcommittees whose members have expertise in the subject area. There are pattern forms for several areas of law, including family, criminal, juvenile, guardianship, mental proceedings, protection orders, financial, and general.

The PFC also approves Format and Style Rules that apply to all pleadings filed in family and juvenile court: <http://www.courts.wa.gov/forms/?fa=forms.static&staticID=4>.

➤ **Domestic Relations Subcommittee**

State law has required domestic relations litigants to use mandatory forms since the early 1990's.

RCW 26.18.220. Standard court forms—Mandatory use.

(1) The administrative office of the courts shall develop not later than July 1, 1991, standard court forms and format rules for mandatory use by litigants in all actions commenced under chapters [26.09](#), 26.10, and [26.26](#) RCW effective January 1, 1992. The administrator for the courts shall develop mandatory forms for financial affidavits for integration into the worksheets. The forms shall be developed and approved not later than September 1, 1992. The parties shall use the mandatory form for financial affidavits for actions commenced on or after September 1, 1992. The administrative office of the courts has continuing responsibility to develop and revise mandatory forms and format rules as appropriate.

(2) A party may delete unnecessary portions of the forms according to the rules established by the administrative office of the courts. A party may supplement the mandatory forms with additional material.

(3) A party's failure to use the mandatory forms or follow the format rules shall not be a reason to dismiss a case, refuse a filing, or strike a pleading. However, the court may require the party to submit a corrected pleading and may impose terms payable to the opposing party or payable to the court, or both.

(4) The administrative office of the courts shall distribute a master copy of the forms to all county court clerks. The administrative office of the courts and county clerks shall distribute the mandatory forms to the public upon request and may charge for the cost of production and distribution of the forms. Private vendors may distribute the mandatory forms. Distribution may be in printed or electronic form.

Emphasis added. See also RCW 26.09.006, 26.10.015, 26.26.065.

The Domestic Relations Subcommittee drafts updates to the family law forms for the PFC's approval. While there are no requirements for representation on the DR Subcommittee, it generally includes representatives from:

- Superior Court Judges Association/Family and Juvenile Law Committee
- Superior Court Clerks
- Court Facilitators
- Division of Child Support
- Washington Association of Prosecuting Attorneys
- WSBA's Family Law Executive Committee
- Private bar
- Civil legal aid

The DR Subcommittee meets as needed to consider the impact of new legislation and case law on the forms, and requests for changes from the public. Over the years, the DR Forms Subcommittee has changed the forms in reaction to legal developments, but has never had time for a wholesale review of the forms.

➤ Plain Language Forms

From 2009 to 2016, the Access to Justice Board's Pro Se Project led the effort to revise the mandatory domestic relations forms into plain language.³ Recognizing that the domestic relations forms' complexity had become a significant barrier to the increasing numbers of pro se litigants in family court, the Supreme Court endorsed the ATJ Board's efforts to address this barrier.⁴ In 2012, the Court approved a Memorandum of Understanding between the PFC and the ATJ Board in which the PFC temporarily delegated its authority to draft and approve mandatory forms for family law to the ATJ Pro Se Project Forms Review Work Group.⁵

The ATJ Pro Se Project recruited members of the PFC, the DR Forms Subcommittee, and key justice system stakeholders to develop the new plain language forms. A plain language consultant, Transcend Translations, drafted the initial templates for many forms and provided training to workgroup and PFC members. The Northwest Justice Project contributed a staff attorney's time to manage the project and coordinate the weekly calls of workgroup members who reviewed and edited each form in detail over a three-year period. Over seventy volunteers contributed thousands of hours to the effort.

The ATJ's Plain Language Executive Committee continued to meet through early 2016 to revise the forms based on public comments and user testing. The Executive Committee published final versions of the new forms on February 1 for optional use beginning May 1, and mandatory use beginning July 1, 2016. Now that the plain language forms have been adopted, the PFC has resumed responsibility for maintaining and updating the forms going forward.

The forms will always be a work in progress, responding to changes in the law and the needs of courts and court-users. The DR Subcommittee continues to receive comments on the new forms and is proposing some revisions for approval by the PFC in early 2017. You may sign up to get notice about changes in the forms on AOC's website:

<http://www.courts.wa.gov/notifications/?fa=notifications.home¬groupID=2>.

¹ Attachment 1 – Washington Supreme Court Order No. 25700-B-188 creating the Pattern Forms Committee, 12/19/1978

² Attachment 2 – Washington Supreme Court Order No. 25700-B-210 revising the Pattern Forms Committee, 5/14/1986

³ Attachment 3 – Kirsten Barron and Lynn Greiner, *Drum Roll, Please... The New and Improved (and Plain Language) Mandatory Family Law Forms*, NW Lawyer, Apr/May 2016, Vol. 70, No. 3, at 9-11.

⁴ Attachment 4 – Supreme Court's letter of support, 1/5/2012

⁵ Attachment 5 – Memorandum of Understanding, 12/5/2012

There's a form for that?

II. Tips for using the new plain language forms

Page | 4

1. There's a conversion chart on www.courts.wa.gov/forms showing how all the old forms were renamed and renumbered.
2. When responding to a petition filed on an old domestic relations form, use the old response form. The old domestic relations response forms will be available on www.courts.wa.gov/forms at least until July 1, 2017.
3. Proposed orders that were proposed on the old domestic relations forms before July 1, 2016, may be entered as final orders after July 1, 2016.
4. On the Child Support Worksheets, you can replace "Column 1" and "Column 2" with the parties' names.
5. You can still shorten the forms by deleting checkboxes and text you don't select – no change there.
6. There's protected space for your firm name and address in the right hand column of a hidden table in the footer.
7. The "Navigation Pane" allows you to jump between sections of the form. "Control F" will pull it up in Microsoft Word.
8. Double-click on a check box to fill it with an "X". (becomes)
9. You may add line numbers in the margins. CR 10(e)(6) *recommends* the use of numbered paper.
10. The "other" box is your best friend.

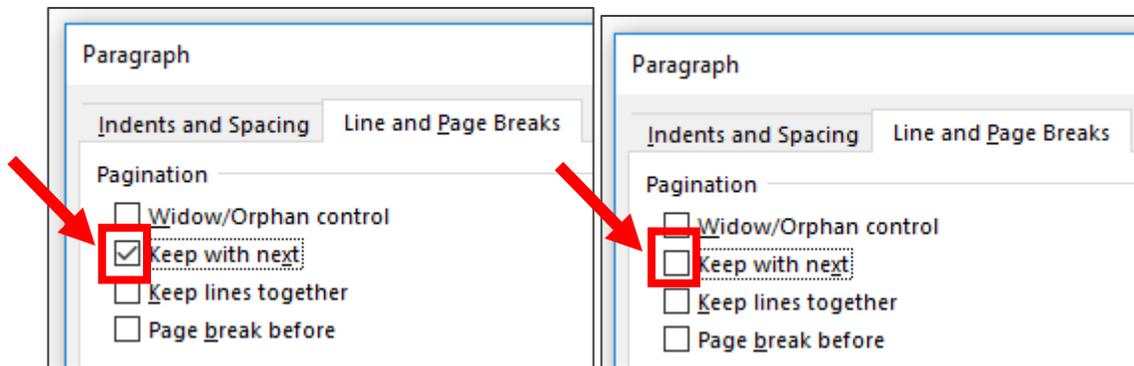
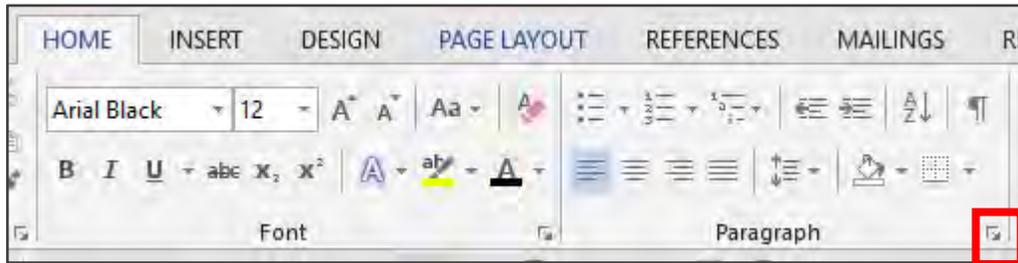
[RCW 26.18.220\(3\)](#): A party's failure to use the mandatory forms or follow the format rules shall not be a reason to dismiss a case, refuse a filing, or strike a pleading. However, the court may require the party to submit a corrected pleading and may impose terms payable to the opposing party or payable to the court, or both.

There's a form for that?

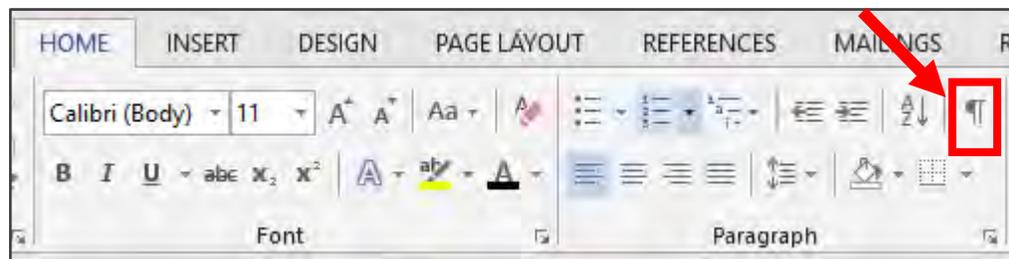
II. Tips for using the new plain language forms

Word Formatting Tips

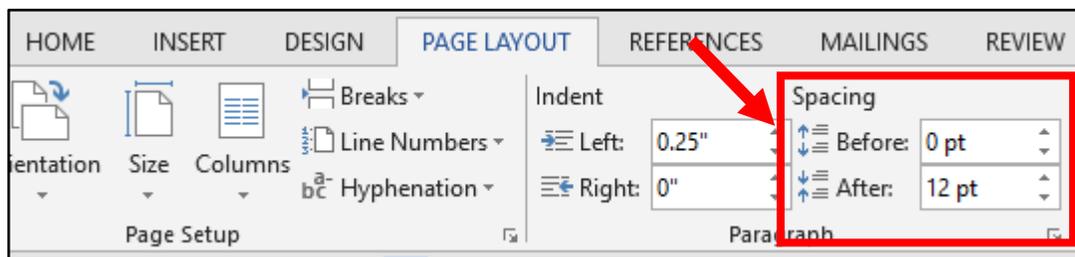
- **Page breaking at the wrong places?** Check paragraph formatting for “keep with next”



- **Formatting looks wrong – can't figure out why?** When in doubt, show formatting marks.



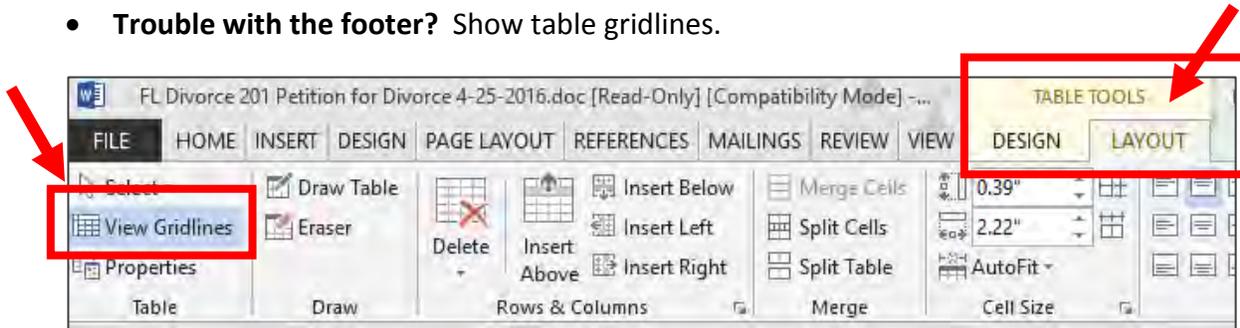
- **Why won't this line go up/down?** Check for fixed paragraph spacing before and after.



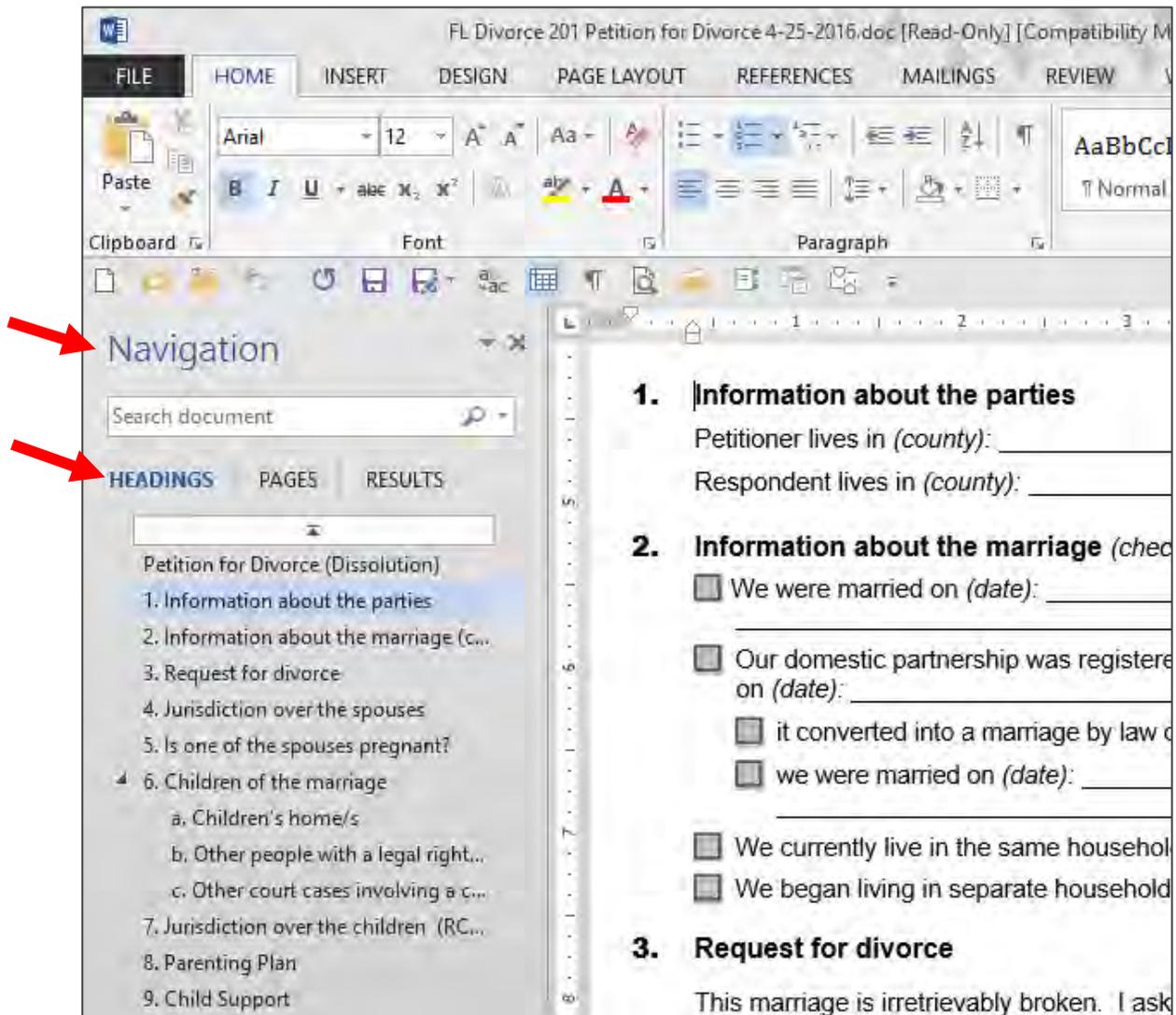
There's a form for that?

II. Tips for using the new plain language forms

- **Trouble with the footer?** Show table gridlines.



- **Tired of scrolling?** Use the navigation pane headings.



All of the pattern forms are posted at www.courts.wa.gov/forms. The Administrative Office of the Courts (AOC) has compiled some of the family law forms into groups, but the only way to find all of the family law forms is to click on the link for the [List of All Forms](#).

List of All Forms

[A complete list of all Washington State Court Forms](#)

Once there, click on the [Family Law Forms](#) Quick Link to jump down to the family law forms.

Scroll down, and among the familiar divorce, parentage and non-parent custody forms are some that you may not have noticed.

a. Extending immediate restraining orders

FL All Family 151 Extension of Immediate Restraining Order and Hearing Notice

This is a new form in the family law set, modeled on the domestic violence form DV 5.010, *Reissuance of Temporary Order for Protection and Notice of Hearing*.

Immediate (ex parte) restraining orders are often continued to a new hearing date because the other party either was not served or asks for a continuance. This new form, FL All Family 151, includes the necessary language to reissue the order, set a new hearing, and have the clerk forward a copy of the *Extension* order to law enforcement. It also addresses whether the other party needs to be notified.

This *Extension* order deliberately does **not** include an “other” box to write in any exceptions or changes to the *Immediate Restraining Order* being extended. Law enforcement has given the PFC consistent feedback that it is difficult to enforce restraining orders in the field when they must cross-reference multiple orders to determine what is currently in effect. If changes must be made to an *Immediate Restraining Order* upon reissuance, fill out a new *Immediate Restraining Order* form with the desired terms and a new hearing date. Use FL Divorce 222, FL Parentage 322, or FL Non-Parent 422, depending on the kind of case.

At the return hearing, use form **FL All Family 150, Restraining Order** if the court grants a temporary or final restraining order. There is only one version of this form for use in all types of family law cases.

b. Service Members Civil Relief Act

FL All Family 170 Findings/Order re Service Members Civil Relief Act

This is a new optional use form intended to help litigants, attorneys, and the court be more aware of the rights and protections of military service members in civil cases. Those protections are strongest against default final orders, but also include protections against temporary orders in family law cases without the service member's participation.

When the issue of whether a party is covered by either the state or federal Service Members Civil Relief Act (SCRA) is raised, the court can use the new *Findings/Order re Service Members Civil Relief Act* (form FL All Family 170) to help determine whether either SCRA applies, and if so, what protections are appropriate.

The form first gives a brief description of who is covered by the federal and state SCRAs:

The federal Servicemembers Civil Relief Act covers:

- Army, Navy, Air Force, Marine Corps, and Coast Guard members on active duty;
- National Guard members under a call to active service for more than 30 days in a row; and
- commissioned corps of the Public Health Service and NOAA.

The state Service Members' Civil Relief Act covers Washington state residents who are National Guard or Reserve members under a call to active service for more than 30 days in a row, and their dependents.

Next, the form prompts the court to make specific findings about the branch of service, state of residence, duty status and dependent status that will guide the conclusion whether or not either act applies.

<p>2. Findings</p> <p><input type="checkbox"/> (Name): _____ is or was in service as follows:</p>		
Branch of Service	State of Residence	Duty Status
<input type="checkbox"/> U.S. Armed Forces (Army, Navy, Air Force, Marine Corps, Coast Guard) <input type="checkbox"/> National Guard or Reserves <input type="checkbox"/> commissioned corps of Public Health Service or National Oceanic and Atmospheric Administration	<input type="checkbox"/> Washington <input type="checkbox"/> Not Washington	<input type="checkbox"/> In military service (meaning active duty or a call to active service for more than 30 days in a row) <input type="checkbox"/> Is within 90 days after termination of or release from military service (50 USC 522(a)(1)) <input type="checkbox"/> Is within 180 days after termination of or release from military service (RCW 38.42.060(1)(a)) <input type="checkbox"/> Not on active duty or a call to active service for more than 30 days in a row

3. **Conclusions**

(Name): _____ is covered by:

- the **federal** Servicemembers Civil Relief Act. 50 USC 501 et seq.
- the **state** Service Members' Civil Relief Act. Chapter 38.42 RCW.
- neither** the state or federal act. *(Skip the Court Order sections and sign below.)*

If the party is covered by one of the SCRA's, the court may go on to order a stay of proceedings, appoint counsel or deny relief. There are prompts for adequate findings and statutory citations for each option. The findings necessary to grant or deny a stay of proceedings are especially detailed. See 50 USC 521 and 522; RCW 38.42.050 and .060.

The form also prompts the court to decide whether it can issue **temporary orders** in a family law case, which is complicated because the standard differs under the state and federal SCRA's. Under the state act, the court may issue temporary family law orders without the service member's participation if it finds, "that failure to act, despite the absence of the service member, would result in manifest injustice to the other interested parties." RCW 38.42.050(6). Under the federal act, there is no provision specifically allowing for temporary family law orders without the service member's participation. 50 USC 521.

All of the family law motions now contain a brief description of who is covered by the federal and state SCRA's, and ask the moving party to state whether or not the other party is covered.

From FL Divorce 223, **Motion for Temporary Family Law Order**:

3. **Active duty military**

(The federal Servicemembers Civil Relief Act covers:

- *Army, Navy, Air Force, Marine Corps, and Coast Guard members on active duty;*
- *National Guard members under a call to active service for more than 30 days in a row; and*
- *commissioned corps of the Public Health Service and NOAA.*

The state Service Members' Civil Relief Act covers Washington state residents who are National Guard or Reserve members under a call to active service for more than 30 days in a row, and their dependents.)

- My spouse/domestic partner is **not** covered by the state or federal Service Members Civil Relief Acts.
- My spouse/domestic partner is covered by the state federal Service Members Civil Relief Act.
- For persons covered only by the state act – Military duty may keep the service member or dependent from responding or coming to the hearing on this motion. I ask the court to approve temporary orders even if the covered*

person asks for a stay or doesn't respond. It would be very unfair (a manifest injustice) not to make temporary orders now because: _____

The temporary family law orders have corresponding findings about whether the SCRA applies. When there is an issue about the SCRA, there is an option to address that issue in the new form, *Findings/Order re Service Members Civil Relief Act* (form FL All Family 170), or in an "other" section within the temporary family law order.

From FL Divorce 224, *Temporary Family Law Order*:

3. Active duty military

(The federal Servicemembers Civil Relief Act covers:

- *Army, Navy, Air Force, Marine Corps, and Coast Guard members on active duty;*
- *National Guard members under a call to active service for more than 30 days in a row; and*
- *commissioned corps of the Public Health Service and NOAA.*

The state Service Members' Civil Relief Act covers Washington state residents who are National Guard or Reserve members under a call to active service for more than 30 days in a row, and their dependents.)

None of the parties are covered by the state or federal Service Members Civil Relief Act, **OR** no party covered by the Acts has asked for a stay.

One or more of the parties is covered by the state or federal Service Member's Civil Relief Acts and has not appeared in this case, or has asked for a stay.
(Check one):

The court signed the *Order re Service Members Civil Relief Act* (form FL All Family 170) filed separately.

The court's order about the service member's rights is in section 14 below.

Other Findings: _____

The **default motion and order** also includes expanded information on service members' status and outlines the limited conditions under which a service member can be defaulted. (Forms FL All Family 161 and 162.) If a service member is covered under the SCRA, and the court denies a motion for default, the default order form gives the option of also entering the *Findings/Order re Service Members Civil Relief Act* (form FL All Family 170) separately to address whether the court should grant a stay or appoint counsel.

c. Registering out-of-state custody orders

FL UCCJEA 801	Request to Register Out-of-State Custody Order
FL UCCJEA 802	Notice of Registration of Out-of-State Custody Order
FL UCCJEA 803	Court's Proof of Mailing (Out-of-State Custody Order Registration)
FL UCCJEA 804	Motion to Dismiss Registration of Out-of-State Custody Order and Notice of Hearing
FL UCCJEA 805	Order About Registering Out-of-State Custody Order
FL UCCJEA 806	Notice: Out-of-State Custody Order Confirmed Without Hearing

Registration of out-of-state child custody orders is governed by Article 3 of the Uniform Child Custody and Enforcement Act (UCCJEA), adopted and codified in Washington as RCW 26.27.401 et seq. Once registered in Washington, an out-of-state custody order is enforceable in the same manner as Washington order. RCW 26.27.441.

The forms listed above track the statutory requirements for registration. The party filing the *Request to Register* (FL UCCJEA 801) must:

1. Confirm under penalty of perjury that the order being registered is valid (has not been modified);
2. Attach two copies of the order/s to be registered (one copy must be certified);
3. Attach a *Notice of Registration of Out-of-State Custody Order* (FL UCCJEA 802); and
4. File a *Confidential Information* form (FL All Family 001) with the names and addresses of anyone who has custody or visitation with a child covered by the custody order.

The *Request to Register* form includes a “Clerk’s action” asking the clerk to “Deliver copies of this *Request* and all attachments to the Court Administrator or other appropriate court personnel to send to all other parties.” This tracks the requirement of RCW 26.27.441(2) that the **court** shall serve the notice of registration:

“On receipt of the documents required by subsection (1) of this section, **the registering court shall:**

- (a) Cause the determination to be filed as a foreign judgment, together with one copy of any accompanying documents and information, regardless of their form; and
- (b) **Serve notice** upon the persons named pursuant to subsection (1)(c) of this section and provide them with an opportunity to contest the registration in accordance with this section.”

RCW 26.27.441(2), *emphasis added*.

The court may use the optional form, *Court’s Proof of Mailing* (FL UCCJEA 803), to document that the notice was served.

Note – The old domestic relations forms included an optional use *Motion/Declaration for Ex Parte Order Allowing Petitioner to Arrange Service* of the notice of registration. This form was not converted into plain language and is no longer available.

The *Notice of Registration* (FL UCCJEA 802) tells the other party that the order has been registered in Washington and can now be enforced the same as a Washington custody order. It informs the other party that if s/he believes the registered order is not valid, s/he can ask the court for a hearing within 20 days by filing a *Motion to Dismiss Registration of Out-of-State Custody Order and Notice of Hearing* (FL UCCJEA 804).

At the hearing, the court will confirm the registration unless the moving party can show that the registered order is not valid because either:

- A court with proper jurisdiction issued an order that vacated, stayed, or modified the order that was registered in Washington; or
- The court that issued the custody order did not have proper jurisdiction; or
- S/he did not receive proper notice under the standards of 26.27.081 before the out-of-state custody order was issued.

RCW 26.27.441(4); *Order About Registering Out-of-State Custody Order* (FL UCCJEA 805).

If the other party does **not** contest the registration, the registration will be confirmed and the other party may not later raise issue that the registered order was invalid due to lack of jurisdiction or notice. RCW 26.27.441(3)(c). The **court** must send a notice confirming the registration. RCW 26.27.441(5) provides:

“If a timely request for a hearing to contest the validity of the registration is not made, the registration is confirmed as a matter of law and the person requesting registration and all persons served must be notified of the confirmation.”

The form *Notice: Out-of-State Custody Order Confirmed Without Hearing* (FL UCCJEA 806) includes the following “court action” alerting the court to this requirement.

Court action: This *Notice* must be sent to the person who asked for registration and all other parties who were notified about the registration. RCW 26.27.441(5).

Not all courts have developed procedures to manage the court’s responsibilities in registering out-of-state orders. Practitioners may need to alert appropriate court personnel to the requirements of the statute that the court serve notice of the registration and notice if the registration is confirmed without a hearing.

d. Accessing restricted court records

FL All Family 020	Agreed Order Allowing Access to Restricted Court Records (GR22(c)(2))
FL All Family 021	Motion for Access to Restricted Court Records (GR22(c)(2))
FL All Family 022	Order about Access to Restricted Court Records (GR22(c)(2))

General Rule 22 governs access to family and guardianship court records. The purpose of the rule is: “to facilitate public access to court records, provided that such access will not present an unreasonable invasion of personal privacy, will not permit access to records or information defined by law or court rule as confidential, sealed, exempted from disclosure, or otherwise restricted from public access, and will not be unduly burdensome to the ongoing business of the courts.” GR 22(a).

Parties are not required to put “Restricted Personal Identifiers” in court documents except those that are filed as “Restricted Access.” GR22(d).

“Restricted Personal Identifiers” include:

- A party or child’s social security number
- Driver’s license number
- A party’s telephone number
- Financial account numbers
- Children’s birthdates

“Restricted Access” documents include:

- **Confidential Information Form**
- **Domestic Violence Information Form**
- Any **Personal Information Sheet** necessary for JIS purposes
- Sealed Personal Health Care Record,
- Sealed Financial Source Documents
- Retirement Plan Order,
- Confidential Reports defined in GR22(e)
- Notice of Intent to Relocate
- Unredacted Judicial Information System (JIS) database information considered by the court for parenting plan approval

GR22(c)(2).

Except as otherwise provided by statute or court rule, parties and their attorneys are allowed access to *all* documents in their cases, *except* for the Confidential Information Form, the Domestic Violence Information Form, Personal Information Sheet, Law Enforcement Information Form, Foreign Protection Order Form, and the Vital Statistics

Form. GR22(h)(2). Court appointed Title 11 GALs have the same access as parties or attorneys in cases where they are actively involved.

Access to restricted records may be gained by stipulation of the parties, or by motion and court order. GR22(i). If access is sought by motion, the rule generally requires notice to all parties (with some exceptions), and a balancing of interests between the public or private interest of those seeking access and the privacy and safety interests of the parties or dependent children. The rule provides:

(i) Access to Court Records Restricted Under This Rule.

- (1) The parties may stipulate in writing to allow public access to any court records otherwise restricted under section (c)(2) above.
- (2) **Any person** may file a motion, supported by an affidavit showing **good cause**, for access to any court record otherwise restricted under section (c)(2) above, or to be granted access to such court records with specified information deleted. **Written notice** of the motion shall be provided to **all parties** in the manner required by the Superior Court Civil Rules. If the person seeking access **cannot locate** a party to provide the notice required by this rule, after making a good faith reasonable effort to provide such notice as required by the Superior Court Rules, an affidavit may be filed with the court setting forth the efforts to locate the party and requesting waiver of the notice provision of this rule. **The court may waive the notice requirement** of this rule if the court finds that further good faith efforts to locate the party are not likely to be successful, or if the motion requests access to redacted JIS database records.
 - (A) The **court shall allow access** to court records restricted under this rule, or relevant portions of court records restricted under this rule, **if the court finds that the public interests in granting access or the personal interest of the person seeking access outweigh the privacy and safety interests of the parties or dependent children.**
 - (B) Upon receipt of a motion requesting access, the court may provide access to JIS database records described in (f) after the court has reviewed the JIS database records and redacted pursuant to GR 15 (c), any data which is confidential or restricted by statute or court rule.
 - (C) If the court grants access to restricted court records, the **court may enter such orders necessary to balance the personal privacy and safety interests of the parties or dependent children with the public interest or the personal interest of the party seeking access, consistent with this rule.**

GR22(i), *emphasis added*.

The motion and order forms FL All Family 021 and 022 walk the parties and the court through the detailed requirements of the court rule for gaining access to this otherwise restricted information. Versions of these forms already existed prior to the plain language conversion, but they are now easier to follow and better track the requirements of the court rule. The order includes specific findings about the balancing test between privacy and safety vs. public or personal interest. If the court allows access to a restricted record with specified information deleted, the order form prompts the court to specify who will be doing the redacting.

THE SUPREME COURT OF WASHINGTON

IN THE MATTER OF THE
ESTABLISHMENT OF A
FORMS COMMITTEE.

NO. 25700-¹⁸⁸
ORDER

FILED
SUPREME COURT
CLERK OF THE COURT
JUL 19 1988
JUL 19 1988
JUL 19 1988
JUL 19 1988

WHEREAS, considerable divergence has developed the forms used in the trial courts of the various counties of the State of Washington; and,

WHEREAS, the Court recognizes the need to develop standardized forms to reflect new statutes and court rules; and,

WHEREAS, a central authority is necessary for the establishment of effective procedures for the use of standardized forms and overseeing subsequent revisions to be sure that a uniform set of forms, once drafted, is utilized and properly maintained; Now, therefore, it is hereby

ORDERED:

(a) That a permanent Washington State Forms Committee be established to implement the adoption of forms, to consider requests for the redrafting of adopted forms, and to oversee all necessary redrafting.

(b) The committee shall be chaired by a designee of the Chief Justice of the Washington State Supreme Court and shall consist of representatives from the following organizations:

- Superior Court Judges' Association
- Washington State Association of County Clerks
- Washington State Bar Association
- Washington State Prosecuting Attorneys' Association
- Washington State Public Defenders' Association
- Washington Judicial Council
- Washington State Trial Court Administrators' Association
- Washington State Magistrates Association

Other groups may provide a representative to the committee when specific knowledge is required.

83/231 1.

(c) For the purpose of carrying out the provisions of this order, the following persons and organizations are designated:

The Hon. George T. Shields, Chairman	Superior Court Judges' Association
Laura Brader	Washington State Association of County Clerks
Madelyn Botta	Washington State Association of County Clerks
Henry R. Dunn	Washington State Prosecuting Attorneys' Association
Syd Fernald	Washington State Forms Management Center
The Hon. William C. Goodloe	Superior Court Judges' Association
Myrth C. Miller	Washington State Court Administrators' Association
Dan Reaugh	Washington State Bar Association
Robin Trenbeath	Administrator for the Courts Information Systems Division
The Hon. Herbert E. Wieland	Superior Court Judges' Association
Lish Whitson	Seattle-King County Public Defenders' Association

DATED at Olympia, Washington this 19th day of December, 1978.

Charles T. Wright

Hugh J. Resellini

Robert H. Brantley

Chris Hamelt

Harvey J.

Paul A. Stoff

Jan W. Dolbin

Walter J.

Floyd V. Hicks

In the Supreme Court

Attachment 2

OF THE

STATE OF WASHINGTON

IN THE MATTER OF THE ESTABLISHMENT
OF A FORMS COMMITTEE
us.

No. 25700-B-210

Department

ORDER

CLERK

MAY 14 1979 9:50

SUPREME COURT
STATE OF WASHINGTON

WHEREAS, the Washington Pattern Forms Committee has functioned since December 17, 1978 pursuant to Supreme Court Order, and the Committee has developed and revised uniform sets of forms; and

WHEREAS, the Order dated December 17, 1978, named both persons and organizations to carry out the provisions of the Order, and many of the named individuals no longer serve on the Committee; and

WHEREAS, the Court desires that only organizations be named as representatives to the Washington Pattern Forms Committee;

NOW, therefore, it is hereby

ORDERED:

The Washington Pattern Forms Committee shall be chaired by a designee of the Chief Justice of the Washington State Supreme Court and shall consist of representatives from the following organizations:

Superior Court Judges' Association (2)
District and Municipal Court Judges Association (2)
Washington State Bar Association (1)
Washington State Prosecuting Attorneys' Association (1)
Washington State Public Defenders' Association (1)
Washington State Association of County Clerks (1)
Association of Washington Superior Court Administrators (1)
Washington Association for Court Administrators (1)
Administrator for the Courts (1)

Of the members first appointed, six (6) shall be for three (3) years, five (5) shall be for four (4) years; thereafter, appointments shall be for a four-year term.

Other groups may provide a representative to the Committee when specific knowledge is required.

DATED at Olympia, Washington, this 14th day of May, 1986.

James Adkins

James L. Anderson

Robert F. Braetendorf

Keith M. Callow

Fred H. Dore

Wm. C. Hendley

Vernon R. Larson

B. D. Dumban

Attachment 3

DRUM ROLL, PLEASE ...

The New and Improved (and Plain Language) Mandatory Family Law Forms



GUEST COLUMN BY KIRSTEN BARRON
AND LYNN GREINER

As the unmet civil legal needs of the consuming public continue to outpace the ability of the profession to keep up with demand, innovative ideas continue to propel our state forward in meeting the unmet need. The Plain Language Forms Project was many years, and countless hours, in the making. I am pleased to have guest writers Kirsten Barron and Lynn Greiner in this month's Executive Director's column share with the membership the exciting news of the Plain Language Forms roll-out. Congratulations to the ATJ Board, AOC, and all of the other participants in this amazing project. The Washington legal community is among the most progressive and dedicated in the nation — onward and upward to more greatness! — PAULA LITTLEWOOD

especially for the thousands of pro se litigants navigating the court system on their own every year.

Why Plain Language?

Lawyers certainly aim to write with clarity, but we often fall short. The law is complicated, and lawyers and judges speak “legalese.” Plain language forms are a desirable and necessary element

statement about the need for plain language forms in *Turner v. Rogers*, 564 US 2507 (2011):

By effectively endorsing forms as an access to justice tool — and indeed mandating them in certain situations — the Supreme Court has challenged access communities and national institutions to put in place national and local strategies for deploying forms for access. Such state strategies are likely to include ... [R]eview of existing forms for compliance with plain language standards.

Development of our new plain language forms was driven by a number of factors:

Readability: The average American's reading level proficiency is

generally considered to be 5th to 7th grade. People usually stop reading when the text exceeds their reading ability. Plain forms increase the chance that the reader will read and accurately complete the form.

Access for Limited English Proficiency (LEP) Litigants: In Washington state, there are many people whose first language is not English. A plain language form is much easier to translate into a different language.



of an accessible justice system. Plain language, as a term, describes language that is in a format and with words that a reader finds accessible — meaning easy to use and understand. We need “plain language” given the increasing complexity of court forms and procedures, a growing poverty population that is culturally and linguistically diverse, and the prevalence of self-represented litigants in our courts.

The U.S. Supreme Court made a clear

On May 1 of this year, all of our state family law court forms will change — to a new plain language format. For the past six years, a group of volunteers, organized by the Access to Justice Board, has methodically converted over 200 forms into plain language, making them much more accessible, understandable, and usable,

Reduced Cost to Litigants: A plain form, easier to fill out correctly, helps pro se litigants avoid unnecessary trips to courthouse facilitators or to engage document preparers. Complete forms are less likely to be rejected by court clerks. And litigants who understand a court order are more likely to comply with it.

Reduced Costs to Courts: Accurate and complete forms save the court's time, for many of the same reasons they save the pro se litigant's time. The California court system has saved money by using plain language forms.

Why Family Law?

In 50% of family law cases, neither side is represented by an attorney. In 80%, at least one side is not represented. 65% of the litigants in family law cases are unrepresented. About 95% of those who go to court on their own say that cost is the primary factor in deciding not to hire a lawyer. An unknown number of people simply do not file for divorce because it is too expensive and too complicated to do so.

What Makes a Form "Plain Language"?

Plain language forms have a number of features. They typically:

- Use familiar and smaller words and sentences.
- Convert levels of sentence hierarchy into bullet lists and check boxes.
- Create a step-by-step pattern to the document.
- Avoid using too many nouns.
- Eliminate extra words and unnecessary details.
- Use active voice and direct address.

Our Effort

Concerned about the burgeoning number of pro se litigants in our justice system, in 2009 the Access to Justice Board, together with the Administrative Office of the Courts (AOC), spearheaded the Pro Se Project. After looking at many ways to assist pro se litigants, the project members decided to focus on converting the large group of family law court forms into a plain language format. To begin, a handful of project members worked to translate 18 family law forms into plain language — as a pilot project. It quickly became ap-

parent that this task required skill and expertise beyond our capability, which led the ATJ Board to engage the support of Transcend®, a California company that specializes in plain language translations. Transcend staff trained and coached project members in the translation process. With this help, the 18 forms were successfully translated, paving the way to proceed with the remainder of the forms.

In 2012, the Pro Se Project moved into high gear when Laurie Garber, a staff attorney with the Northwest Justice Project's Vancouver office, stepped up to manage the project. She organized and led three workgroups of volunteers, representing all the key justice system stakeholders, to do the actual forms translation. These three workgroups met weekly for almost three years to review and edit each form in detail.

In Washington, the Supreme Court's Pattern Forms Committee drafts and revises all mandatory forms. Many members of the Pattern Forms Committee participated in this project, including its chair, Judge Laura Middaugh and AOC staff to the committee, Merrie Gough. In 2012, the Pattern Forms Committee and the ATJ Board entered into a Memorandum of Understanding, approved by the Supreme Court, to give the ATJ Pro Se Project forms group the authority to develop and approve the plain language family law forms for mandatory use.

As the forms were completed, a number of them were tested with pro se litigants to ensure that they made a difference with the end user. The consensus was that the forms were much easier to understand and complete. As the forms were completed, they were posted on the AOC website for public comment. Many family law practitioners and judges submitted hundreds of comments that informed the final versions of the forms.

The Pro Se Project has been funded by the Washington Supreme Court, the WSBA, the ATJ Board, and the AOC. Staff assistance by AOC and the Northwest Justice Project has been absolutely essential. The sustained collective effort of all of these partners has made the complete translation of the 211 mandatory family law forms possible.

So what really makes a project as large in scope as this happen? The peo-

ple. At last count, over 70 people have worked on this project's six different sub-committees and task groups. This group includes family law attorneys, court clerks, courthouse facilitators, superior court judges, legal aid attorneys, AOC staff, ATJ board members, and WSBA staff. These volunteers were constant and dependable participants in this five-year effort.

The Roll-out

The new plain language family law forms are available on May 1, and will be mandatory on July 1. If a case is already in progress, the new plain forms will be required for any court filing after this date. Court clerks, courthouse facilitators, and superior court judges are all aware of this change. In September, the WSBA offered a web-based CLE on the changes in the family law forms; over 1,800 participants attended this seminar.

While we know that some family law attorneys are concerned about the effect of these forms on their practice, in other states with plain language forms, family law practitioners have not noticed a drop in business. Going to court on your own is still harder if you don't have a lawyer. Those who can afford lawyers and would like to have lawyers almost always hire them.

Indeed, in some areas, plain language forms have enabled some family law attorneys to increase their business by offering unbundled services. Limited scope clients begin their own cases or are shown the plain language forms by the attorney, and then return for short consultations as needed.

Opportunities and Next Steps

Over the next several years, we hope to evaluate the effectiveness of the plain language forms and make further adjustments. We will rely on feedback from practitioners, judges, and courthouse facilitators, and especially pro se litigants.

Our Pro Se Plan identifies additional changes to the legal system that would benefit pro se litigants. As a complement to the new forms, we would like to see a "document assembly" feature included in the state's new case management system, with an interactive website that retains the user's information and prompts the user to com-

plete only relevant questions. AOC has agreed to translate many of the new forms into Spanish as a first step in making the forms accessible to a large segment of non-English speakers.

In sum, we're very proud of all the work that has been done: countless hours spent by many volunteers over a six-year period. The dedication of these volunteers is a testament to their conviction that the old forms were in desperate need of a "plain language" fix in order to increase access to justice for those that cannot afford an attorney.

The new forms are indeed much more user-friendly. As with any roll-out of a whole new system, there will be bumps in the road. But we're confident that the new forms will be of tremendous benefit to pro se litigants, who continue to steer their family law cases through the court system alone.

For more information: <https://www.courts.wa.gov/forms/?fa=forms.static&staticid=20>. **NWL**



The authors of this article helped to convert the old family law forms into the new plain language format and offer this information



and these considerations as the new forms come into use. **KIRSTEN BARRON** is an attorney with Barron Smith Daugert, PLLC, in Belling-

ham and practices in the areas of business and employment law.

She can be reached at kbarron@barronsmithlaw.com.

LYNN GREINER is of counsel with Chihak

& Associates and can be reached at lgreiner@seanet.com.

PAULA LITTLEWOOD is the WSBA execu-

tive director and can be reached at paulal@wsba.org.

This article appeared in the April/May 2016 issue of the Washington State Bar Association's official publication, *NWLawyer*, and is reprinted with permission from the Washington State Bar Association.

Attachment 4

*The Supreme Court
State of Washington*

BARBARA A. MADSEN
CHIEF JUSTICE
TEMPLE OF JUSTICE
POST OFFICE BOX 40929
OLYMPIA, WASHINGTON
98504-0929



(360) 357-2037
FAX (360) 357-2085
E-MAIL J_B.MADSEN@COURTS.WA.GOV

January 5, 2012

Re: ATJ/AOC/WSBA Plain Forms Project

Dear Friends of Access to Justice:

The members of the Washington State Supreme Court encourage you to join an important collaborative project that will have a significant and positive impact on family law litigants. The Access to Justice Board, the Washington State Bar Association, and the Administrative Office of the Courts are working collaboratively to create “plain language” forms for family law cases.

Most individuals who come to family court are facing untold challenges and turmoil in their lives and the lives of their children. Many times the parties cannot resolve their disputes in a cooperative fashion and must rely on the courts to help them reach justice. Adding to these stresses, all family law parties—some with attorneys and most without—have a myriad of paperwork to read and understand. Currently, the family law forms in use in Washington are often difficult to comprehend and complete because of legalistic and sometimes archaic language.

Plain language and more accessible formats allow parties to understand our forms and the legal concepts they convey easily and completely. Less confusion, greater clarity, better understanding, and achievement of personal and legal goals are just some of the benefits plain language forms offer. The benefits of plain language forms extend to attorneys and the courts as well.

The forms will undergo vigorous field testing to ensure they meet all legal requirements under statute and court rule. Protocols are being developed to make sure that the forms are not available for use until all testing and revisions have been done and to make

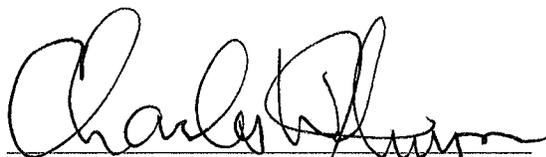
sure we have the smoothest transition possible as the new forms are put into use. Access to Justice partners, such as courthouse facilitators, pro bono legal programs, and dispute resolution centers, will help with both the testing and transition phases of this project.

Our Access to Justice partners will keep you informed as the plain language forms project proceeds. If you have suggestions, comments, or concerns, please share them with Ms. Merrie Gough, Senior Legal Analyst, at 360.357.2128 or at Merrie.Gough@courts.wa.gov, or with Ms. Janet Skreen, Senior Court Program Analyst at 360.705.5252 or at Janet.Skreen@courts.wa.gov, both with the Administrative Office of the Courts.

Sincerely,



Barbara A. Madsen
Chief Justice



Charles W. Johnson, Assoc. Chief Justice



Tom Chambers, Justice



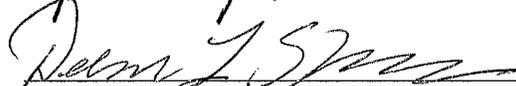
Susan Owens, Justice



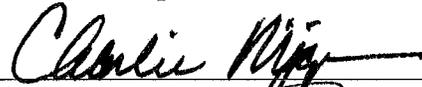
Mary E. Fairhurst, Justice



James M. Johnson, Justice



Debra A. Stephens, Justice



Charles K. Wiggins, Justice



Steven C. Gonzalez, Justice

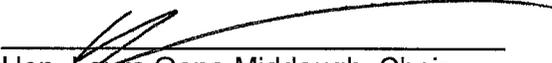
Attachment 5

Memorandum of Understanding

The Washington Pattern Forms Committee (committee) and the Access to Justice Board (board) enter this Memorandum of Understanding to clarify the process to approve plain language Domestic Relations forms and to adopt them as the mandatory Domestic Relations pattern forms. These parties are participants to this agreement because the committee is authorized by Washington State Supreme Court Order to oversee all drafting and redrafting of pattern forms and the board has contributed leadership, volunteer and staff resources, and acquired funds to convert the family law forms into plain language.

The parties agree to the following procedure:

1. The ATJ Pro Se Project Forms Review Work Group will draft and approve the plain language Domestic Relations forms.
2. The members of the Pattern Forms Committee and its subcommittees may participate in the meetings of the ATJ Pro Se Project Forms Review Work Group but only have voting power if they are also a member of the ATJ Pro Se Project Forms Review Work Group.
3. The ATJ Pro Se Project Forms Review Work Group Executive Committee, working with AOC staff, will publish the forms for public comment on the AOC website.
4. The comment period will be no less than 90 days.
5. Once the comment period is over, the ATJ Pro Se Project Forms Review Work Group Executive Committee will consider any comments and make any changes in the forms it feels are appropriate.
6. Once a form is adopted as "final" by the ATJ Pro Se Project Forms Review Work Group Executive Committee it can be published on the AOC website and the current form will be removed. The plain language form will become the mandatory form which, by statute, all parties must use.
7. The drafting, approval and publication of the plain language forms will be on a schedule determined by the ATJ Pro Se Project Forms Review Work Group Executive Committee.
8. Unless further changes are made in the duties of the Pattern Forms Committee, once the forms are developed the maintenance, modification and updating of the Domestic Relations forms will fall back to the Pattern Forms Committee.
9. The Pattern Forms Committee reserves the right to rescind its approval of this process and ask the Supreme Court to return approval and management of the forms to the Pattern Forms Committee if it feels that issues are not properly being addressed.

		4/13/12
Hon. Laura Gene Middaugh, Chair Washington Pattern Forms Committee	Date	
		10/30/12
Kirsten Barron, President Access to Justice Board	Date	

Memorandum of Understanding reviewed and approved by the Supreme Court:

		12/5/2012
Chief Justice Barbara A. Madsen	Date	

Superior Court of Washington, County of _____

In re:

Petitioner/s (*person/s who started this case*):

And Respondent/s (*other party/parties*):

No. _____

Extension of Immediate Restraining Order
and Hearing Notice
(OREXRO)

Clerk's action required: 2, 3

Extension of Immediate Restraining Order
and Hearing Notice

1. **Extension** – This order extends the *Immediate Restraining Order (Ex Parte)* signed by the court on (*date*): _____ through the new hearing date listed below.
2. **Hearing Notice** – The court will consider the requests made by the protected person at a court hearing:



on: _____ at: _____ a.m. p.m.
date *time*

at: _____, _____
court's address *room or department*

docket / calendar or judge / commissioner's name

3. **To the Clerk:** Provide a copy of this order and the *Law Enforcement Information Sheet* to the agency listed below within one court day. The law enforcement agency must enter this order into the state's database.

Name of law enforcement agency where the protected person lives: _____

Superior Court of Washington, County of _____

In re:

Petitioner/s *(person/s who started this case)*:

And Respondent/s *(other party/parties)*:

No. _____

Findings/Order re Service Members Civil Relief Act (ORSMCRA)

Findings/Order re Service Members Civil Relief Act

The *federal Servicemembers Civil Relief Act* covers:

- Army, Navy, Air Force, Marine Corps, and Coast Guard members on active duty;
- National Guard members under a call to active service for more than 30 days in a row; and
- commissioned corps of the Public Health Service and NOAA.

The *state Service Members' Civil Relief Act* covers Washington state residents who are National Guard or Reserve members under a call to active service for more than 30 days in a row, and their dependents.

1. An issue has been raised about whether the state or federal Service Members Civil Relief Act applies to a party in this case.

2. **Findings**

(Name): _____ is or was in service as follows:

Branch of Service	State of Residence	Duty Status
<input type="checkbox"/> U.S. Armed Forces (Army, Navy, Air Force, Marine Corps, Coast Guard)	<input type="checkbox"/> Washington <input type="checkbox"/> Not Washington	<input type="checkbox"/> In military service (meaning active duty or a call to active service for more than 30 days in a row)
<input type="checkbox"/> National Guard or Reserves		<input type="checkbox"/> Is within 90 days after termination of or release from military service (50 USC 522(a)(1))
<input type="checkbox"/> commissioned corps of Public Health Service or National Oceanic and Atmospheric Administration		<input type="checkbox"/> Is within 180 days after termination of or release from military service (RCW 38.42.060(1)(a))
		<input type="checkbox"/> Not on active duty or a call to active service for more than 30 days in a row

- (Name): _____ is a **dependent** of a Washington resident National Guard or Reserve member (name): _____ who is under a call to active service for more than 30 days in a row.
(Dependent means a spouse, child under 18, or other person who got at least 50% of his/her financial support from a National Guard or Reserve member during the 180 days just before this case started. State law protects **only** the dependents of Washington resident National Guard or Reserve members, **not** the dependents of regular U.S. Armed Forces members, or non-Washington residents.)

3. Conclusions

(Name): _____ is covered by:

- the **federal** Servicemembers Civil Relief Act. 50 USC 501 et seq.
 the **state** Service Members' Civil Relief Act. Chapter 38.42 RCW.
 neither the state or federal act. (Skip the Court Order sections and sign below.)

➤ The Court Orders:

4. Stay of proceedings (suspending or delaying the case)

(People covered by the **state** act may request a stay while in military service or within **180 days** after termination of or release from military service. People covered by the **federal** act may request a stay while in military service or within **90 days** after termination of or release from military service.)

- A stay is not needed because the service member or dependent has appeared in this case and has not asked for a stay, and the court finds no reason to grant a stay on its own motion.
- The Court **grants** a stay of proceedings until (date): _____. This is:
- the first stay granted in this case. (First stay must be for at least 90 days.)
 - an additional stay.

The stay is granted because:

- no appearance** – the covered party has not appeared in this case, is currently in military service (or is the dependent of a Washington resident National Guard or Reserve member currently in military service), **and** the court has determined:
- There may be a defense to the action and a defense cannot be presented without the presence of the service member or dependent; **or**
 - After due diligence, the service member or dependent's lawyer has been unable to contact the service member or dependent, or otherwise determine if a meritorious defense exists. 50 USC 521(d), RCW 38.42.050(5).
- upon request** – the covered party has provided:
- A letter or other communication setting forth facts stating the manner in which current military duty requirements materially affect the service member's or dependent's ability to appear and stating a date when the service member or dependent will be available to appear; **and**
 - A letter or other communication from the service member's commanding officer stating that the service member's current military duty prevents either the service member's or dependent's appearance and that military leave is not authorized for

the service member at the time of the letter. 50 USC 522(b)(2), RCW 38.42.060(3).

Other reason: _____

The court **denies** the service member or dependent's request for a stay because:

the service member or dependent did **not** provide:

- A letter or other communication setting forth facts stating the manner in which current military duty requirements materially affect the service member's or dependent's ability to appear and stating a date when the service member or dependent will be available to appear; **and**
- A letter or other communication from the service member's commanding officer stating that the service member's current military duty prevents either the service member's or dependent's appearance and that military leave is not authorized for the service member at the time of the letter. 50 USC 522(b)(2), RCW 38.42.060(3).

a first stay has already been granted and the court finds that an additional stay should not be granted.

The court has appointed a lawyer in section 5 below.

The service member or dependent has his/her own lawyer.

other reason: _____

5. Appointment of Lawyer

Does not apply.

The Court appoints (*name of lawyer*): _____
to represent the service member or dependent named above in this case. The court is appointing a lawyer because:

no appearance – the service member or dependent named above has not appeared in this case. Appointment of counsel is required by 50 USC 521(b)(2) or RCW 38.42.050(4).

additional stay denied – the court denied the service member or dependent's request for an additional stay. Appointment of counsel is required by 50 USC 522(d)(2) or RCW 38.42.060(6).

Other: _____

Superior Court of Washington, County of _____

In re:

Petitioner/s (as listed on the out-of-state order):

And Respondent/s (as listed on the out-of-state order):

No. _____

Request to Register Out-of-State
Custody Order
(RQCUSDR)

Clerk's action required: 7

Request to Register Out-of-State Custody Order

1. Registration

I ask the Court to register the current out-of-state custody order/s. I will file any request to enforce the out-of-state order/s using this case number.

2. Confirmation that order is valid

The out-of-state custody order/s I am asking the court to register is/are currently in effect and have not been changed (modified).

3. Person requesting registration

I am a parent or person acting as a parent who has custody or visitation with the children under the order being registered.

4. Other parties

The other parties are every other parent or person acting as a parent who has custody or visitation with the children under the order/s being registered.

5. Confidential Information

I am filing the *Confidential Information* form (FL All Family 001) separately to provide mailing addresses and other information about the parties.

6. **Attachments**

I am attaching the following documents to this *Request*:

- Two copies of the out-of-state custody order/s currently in effect (one copy must be certified); and
- A *Notice of Registration of Out-of-State Custody Order* (form FL UCCJEA 802).

7. **Notice**

I ask the court to notify the other parties of this registration as required by RCW 26.27.441.

Clerk's action: Deliver **copies** of this *Request* and all attachments to the Court Administrator or other appropriate court personnel to send to all other parties.

Person requesting registration fills out below:

I declare under penalty of perjury under the laws of the state of Washington that the facts I have provided on this form are true.

Signed at (*city and state*): _____ Date: _____

▶ _____
Person requesting registration signs here *Print name here*

I agree to accept legal papers for this case at (*check one*):

- my lawyer's address, listed below.
- the following address (*this does not have to be your home address*):

street address or PO box *city* *state* *zip*

(Optional) email: _____

(If this address changes before the case ends, you must notify all parties and the court clerk in writing. You may use the Notice of Address Change form (FL All Family 120). You must also update your Confidential Information form (FL All Family 001) if this case involves parentage or child support.)

Lawyer (if any) fills out below:

▶ _____
Lawyer signs here *Print name and WSBA No.* *Date*

Lawyer's address *city* *state* *zip*

Email (*if applicable*): _____

Superior Court of Washington, County of _____

In re:

Petitioner/s (as listed on the out-of-state order):

And Respondent/s (as listed on the out-of-state order):

No. _____

Notice of Registration of Out-of-State
Custody Order
(NTCUSDR)

Notice of Registration of Out-of-State Custody Order

The attached out-of-state custody order has been registered in Washington State. Now that it has been registered, it can be enforced the same as a Washington custody order.

If you believe this custody order is **not** valid, you can ask the court for a hearing. To do that, fill out and file a *Motion to Dismiss Registration of Out-of-State Custody Order and Notice of Hearing* (FL UCCJEA 804).

You can get this form and other forms you may need at:

- The Washington State Courts' website: www.courts.wa.gov/forms
- The Administrative Office of the Courts – call: (360) 705-5328
- Washington Law Help: www.washingtonlawhelp.org, or
- The Superior Court Clerk's office or county law library (for a fee).

Deadline! You have **20 days** after you are served this *Notice* to file your *Motion*.

If you miss the deadline to file a *Motion*:

- The registration of the custody order will be confirmed, and
- You will not be able to challenge its validity in the future.

Superior Court of Washington, County of _____

In re:

Petitioner/s (as listed on the out-of-state order):

And Respondent/s (as listed on the out-of-state order):

No. _____

Court's Proof of Mailing (Out-of-State
Custody Order Registration)
(AFML)

Court's Proof of Mailing
(Out-of-State Custody Order Registration)

I declare:

1. I am a court employee (job title): _____.

2. On (date): _____, I personally mailed copies of the:

- Request to Register Out-of-State Custody Order
- Out-of-State Custody Order
- Notice of Registration of Out-of-State Custody Order

Other: _____

To the following party/parties:

(Name): _____

street number or P.O. box city state zip

(Name): _____

street number or P.O. box city state zip

3. I mailed the documents by *(check all that apply)*:

certified mail with return receipt requested.

first class mail.

4. Other information (if any): _____

I declare under penalty of perjury under the laws of the state of Washington that the statements on this form are true.

Signed at _____ Date: _____
city state

▶ _____
Signature of server

_____ _____
Print or type name of server

Tape return receipt below, if any:

Superior Court of Washington, County of _____

In re:

Petitioner/s (as listed on the out-of-state order):

And Respondent/s (as listed on the out-of-state order):

No. _____

Motion to Dismiss Registration of Out-of-State Custody Order and Notice of Hearing (RQTH)

Clerk's action required: 2

Motion to Dismiss Registration of Out-of-State Custody Order and Notice of Hearing

- 1. I ask the Court to dismiss the registration of the out-of-state custody order. I am filing this motion within 20 days of being served with a Notice of Registration of Out-of-State Custody Order.
2. I have scheduled a court hearing (contact the court clerk for scheduling information):



for: _____ at: _____ [] a.m. [] p.m.
date time

at: _____ in _____
court's address room or department

docket / calendar or judge / commissioner's name

- 3. The Court should dismiss the registration of the out-of-state custody order because I have the following defense under RCW 26.27.441(4) (check all that apply):

[] A court with proper jurisdiction in (county): _____, (state): _____ issued an order on (date): _____ that canceled (vacated), suspended (stayed), or changed (modified) the order that was registered in this state.

[] The court that issued the custody order did not have proper jurisdiction.

(Explain): _____

Superior Court of Washington, County of _____

In re:

Petitioner/s (as listed on the out-of-state order):

And Respondent/s (as listed on the out-of-state order):

No. _____

Order About Registering Out-of-State
Custody Order
(ORCCUSD)

Clerk's action required: 3

Order About Registering Out-of-State Custody Order

1. The Court held a hearing on (date): _____ to consider a *Motion to Dismiss Registration of Out-of-State Custody Order*.
2. The following people were at the hearing (check all that apply):
 - Petitioner (name): _____ This person's lawyer
 - Respondent (name): _____ This person's lawyer
 - Other Respondent (name): _____ This person's lawyer
 - Other (specify): _____
3. After considering the arguments and records for this case, the Court **finds** and **orders**:
 - The Court confirms** the registration of the out-of-state order custody order because the person who asked to dismiss the registration (check all that apply):
 - did not file the *Motion to Dismiss Registration of Out-of-State Custody Order and Notice of Hearing* by the deadline.
 - did not prove a defense to confirming the order under RCW 26.27.441(4).The out-of-state custody order registered under this case number will be **enforced** the same as a Washington custody order.
 - The Court does not confirm** the out-of-state custody order because the person who asked to dismiss the registration proved (check all that apply):
 - the custody order that was registered is not valid because a court with proper jurisdiction has cancelled (vacated), suspended (stayed), or changed (modified) it.

- the court that issued the custody order did not have proper jurisdiction.
- s/he did not receive proper notice before the out-of-state custody order was issued.

The registration of the out-of-state custody order is **dismissed**.

Other findings or orders (*specify*): _____

Ordered.

_____  _____
Date *Judge or Commissioner*

Petitioner and Respondent or their lawyers fill out below:

This document (*check any that apply*):

- is an agreement of the parties
- is presented by me
- may be signed by the court without notice to me

This document (*check any that apply*):

- is an agreement of the parties
- is presented by me
- may be signed by the court without notice to me

 _____
Petitioner signs here or lawyer signs here + WSBA #

 _____
Respondent signs here or lawyer signs here + WSBA #

_____ *Print Name* *Date*

_____ *Print Name* *Date*

Superior Court of Washington, County of _____

In re:

Petitioner/s (as listed on the out-of-state order):

And Respondent/s (as listed on the out-of-state order):

No. _____

Notice: Out-of-State Custody Order
Confirmed Without Hearing
(NTCCR)

Notice: Out-of-State Custody Order
Confirmed Without Hearing

1. A Request to Register Out-of-State Custody Order was filed by (name): _____.
2. The Court notified the other parties of the registration and their right to ask the court to dismiss the registration under RCW 26.27.441(4).
3. The other parties (name/s): _____
were served with copies of the:
 - Request to Register Out-of-State Custody Order
 - Out-of-state custody order
 - Notice of Registration of Out-of-State Custody OrderProof is filed showing service on (date/s): _____.
4. No one filed a Motion to Dismiss Registration of Out-of-State Custody Order and Notice of Hearing within 20 days of being served.
5. The Court confirms the registration of the out-of-state custody order as a matter of law.
 - The out-of-state custody order registered under this case number will be enforced the same as a Washington custody order.
 - You will not be able to challenge its validity in the future.

Court action: This Notice must be sent to the person who asked for registration and all other parties who were notified about the registration. RCW 26.27.441(5).

Superior Court of Washington, County of _____

In re:

Petitioner/s (person/s who started this case):

And Respondent/s (other party/parties):

No. _____

Agreed Order Allowing Access to Restricted Court Records (GR 22(c)(2))

(ORAR)

Clerk's action required.

Agreed Order Allowing Access to Restricted Court Records (GR 22(c)(2))

Based on the parties' agreement, (name): _____ is allowed access to the confidential court records in this case described below. Check one:

Complete court record, with access to end on (date): _____.

Only the records checked below:

Confidential Information Form

Sealed Financial Source Documents

Sealed Confidential Report

Sealed Personal Health Care Records

Notice of Intent to Move with Children (Relocation)

Redacted JIS database records reviewed before approval of a parenting/custody order. Any data which is confidential or restricted by statute or court rule must be redacted pursuant to GR 15(c).

Other (specify): _____

Ordered.

Date

Judge or Commissioner

Petitioner and Respondent or their lawyers fill out below.

This document is an agreement of the parties.

This document is an agreement of the parties.

Petitioner signs here or lawyer signs here + WSBA #

Respondent signs here or lawyer signs here + WSBA #

Print Name

Date

Print Name

Date

Superior Court of Washington, County of _____

In re:

Petitioner/s *(person/s who started this case)*:

And Respondent/s *(other party/parties)*:

No. _____

Motion for Access to Restricted Court
Records (GR 22(c)(2))
(MTAF)

Motion for Access to Restricted Court Records
(GR 22(c)(2))

Important! The person making this motion must schedule a hearing. You may use the Notice of Hearing form (FL All Family 185) unless local rule requires a different form. Contact the court for scheduling information.

1. My name is: _____.

2. I ask the Court to allow me access to confidential court records in this case restricted by GR 22(c)(2), as follows *(check one)*:
 - The complete court record, with access ending on *(date)*: _____
 - Only the records checked below:
 - the *Confidential Information* form
 - Sealed Financial Source Documents*
 - Sealed Personal Health Care Records*
 - Sealed Confidential Report*
 - Notice of Intent to Move with Children (Relocation)*
 - JIS database records reviewed before approval of a parenting/custody order
 - Other *(specify)*: _____

3. I ask for *(check one)*:
 - full access to these records with nothing deleted.
 - access to these records with the following information **deleted**:
 - Social Security Number of *(name)*: _____

- Driver's License Number of (name): _____
- Telephone number/s of (name): _____
- Financial account number/s of (name): _____
- Home address of (name): _____
- Social Security Numbers of the children under 18
- Dates of birth of the children under 18
- Other (specify): _____

➤ **I declare:**

4. There are good reasons to give me access to these restricted documents.
(List the reasons):

These reasons are more important than the privacy and safety interests of the parties or children in this case because (explain):

5. **Notice**

- I will have this *Motion* served on all other parties in this case.
- I ask the Court to **not** require service on (name): _____
as allowed by GR 22(i)(2) because (check all that apply):
- I am only asking for access to the redacted JIS database records.
- I have not been able to find him/her after making a good faith effort. (List what you did to try to find the other party):

<i>What you did</i>	<i>Date you did this</i>	<i>Result</i>

Superior Court of Washington, County of _____

In re:

Petitioner/s (*person/s who started this case*):

And Respondent/s (*other party/parties*):

No. _____

Order about Access to Restricted Court
Records (GR 22(c)(2))

(ORAR / ORDYMT)

Clerk's action required: 4

Order about Access to Restricted Court Records
(GR 22(c)(2))

1. The Court has considered a *Motion* to allow (*name*): _____
access to confidential court records restricted by GR 22(c)(2).

➤ **The Court Finds**

2. **Notice**

- All parties in this case were properly served with this *Motion*.
- The court should not require (*party's name*): _____ to be served because (*check one*):
- s/he could not be found after good faith efforts. Additional good faith efforts to find this person probably would not be successful.
- the *Motion* is seeking access only to JIS database records reviewed before approval of a parenting/custody order.
- Other: _____

3. **Privacy and safety vs. public or personal interest**

- The *Motion* should **not** be approved because the privacy and safety interests of the parties or children in this case outweigh the (*check one*):
- public interests personal interests of the person asking for access.

- The *Motion should be* approved because the (*check one*):
 public interests personal interests of the person asking for access
 outweigh the privacy and safety interests of the parties or children in this case.
- Other: _____

➤ **The Court Orders**

4. The *Motion for Access to Restricted Court Records* is:

- Denied.**
- Approved.** The Court Clerk must give (*name*): _____
 access to the court record in this case as follows: (*check all that apply*):

Specific Records

- The complete court record, with access ending on (*date*): _____
- Only the records checked below:
- the *Confidential Information* form
 - Sealed Financial Documents*
 - Sealed Personal Health Care Records*
 - Sealed Confidential Report*
 - Notice of Intent to Move with Children (Relocation)*
 - Redacted JIS database records reviewed before approval of a parenting/custody order. Any data which is confidential or restricted by statute or court rule must be redacted by the court pursuant to GR 15(c).
 - Other (*specify*): _____

Information Deleted

- Full access to these records with nothing deleted.
- Access to these records with the following information deleted:
- Social Security Number of (*name*): _____
 - Driver's License Number of (*name*): _____
 - Telephone number/s of (*name*): _____
 - Financial account number/s of (*name*): _____
 - Home address of (*name*): _____
 - Social Security Numbers of the children under 18
 - Dates of birth of the children under 18
 - Other (*specify*): _____

(*Name*): _____
must provide a copy of these records, with any deletions ordered above, to the court clerk. The clerk must file the redacted copies and allow access as ordered above.

There's a form for that?



December 14, 2016
WSBA Family Law Annual Seminar
Laurie Garber, Advocacy Coordinator
Northwest Justice Project

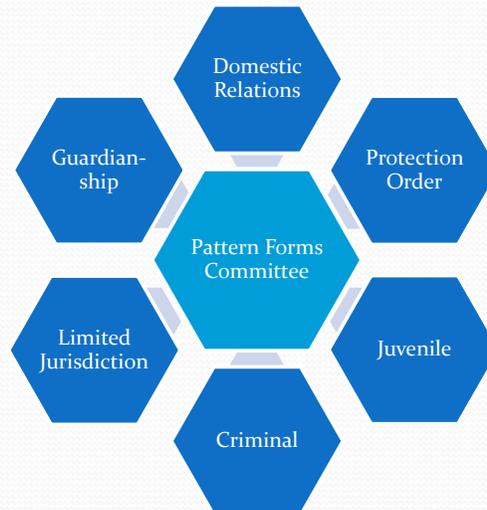
Who creates the mandatory forms?

Washington Pattern Forms Committee (PFC)

Established in 1978 by order of the Washington State Supreme Court to:

- Implement adoption of standardized court forms,
- Consider requests for redrafting adopted forms, and
- Oversee all necessary redrafting.

Subcommittees



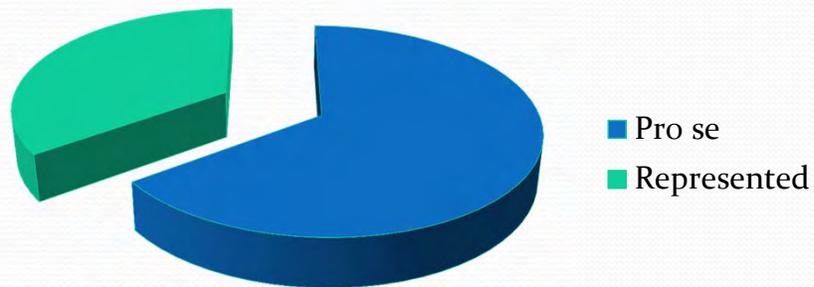
DR forms required by statute

RCW 26.18.220

- (1) Requires AOC to develop standard court forms for mandatory use in dissolution, nonparental custody and parentage actions by 1992, and to develop and revise mandatory forms and format rules as appropriate. [See also, RCW 26.09.006, 26.10.015, 26.26.065.]
- (2) Allows a party to delete unnecessary portions of the forms according to AOC's rules, and supplement mandatory forms with additional material.
- (3) **"A party's failure to use the mandatory forms or follow the format rules shall not be a reason to dismiss a case, refuse a filing, or strike a pleading. However, the court may require the party to submit a corrected pleading and may impose terms payable to the opposing party or payable to the court, or both."**
- (4) Provides for distribution of the forms.

Why plain language?

Most family law litigants don't have lawyers



Motion/Declaration for
Ex Parte Restraining
Order and for Order to
Show Cause

Motion for
Immediate
Restraining Order

ATJ Family Law Forms Project

- 2009-2010 State Plan for Integrated Pro Se Assistance
- 2012 MOU with Pattern Forms Committee
- 2012-2015
 - Plain language conversion by Transcend
 - Legal edit by NJP attorney
 - Thorough review by volunteer workgroups, including:
 - Judge, County Clerk, courthouse facilitator,
 - Private practice family law lawyer, legal aid lawyer, volunteer clinic lawyer, and
 - Either an AOC staffer, prosecuting attorney, or child support agency lawyer
 - Revisions after testing and public comment
- 2016 – Approved for mandatory use

Tips

WASHINGTON COURTS

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Courts Home > Court Forms

Washington State Court Forms

Here you will find forms that are used statewide in Washington Courts. This is not a complete list of all forms. Your Court may have forms you must file in a case. Please check with your local Court to confirm. Additionally, you may want to check the Local Court Rules for forms and for more information.

- > [View the List of All Forms](#)
- > [Guidelines for using an old Domestic Relations form to respond to or complete a case started on the old forms before July 1, 2016.](#)
- > [Response forms for old Domestic Relations Petitions.](#)
- > [Charts showing old Domestic Relations forms and new Family Law Forms](#)
 - > [Chart showing old and new forms - sorted by Domestic Relations number](#)
 - > [Chart showing old and new forms - sorted by new Family Law \(FL\) number](#)

Browse Forms by Category

Ending the Marriage
 Divorce (Dissolution), Legal Separation, Convert Legal Separation to Divorce (Dissolution), Invalidate (Annul) Marriage, Default, Temporary Order to Pay Spousal

Protection Orders
 Domestic Violence, Antiharassment, Sexual Assault, Stalking Protection Orders, Surrender of Weapons, Temporary Restraining Order, No-Contact Orders, Domestic

Search Forms

List of All Forms
 A complete list of all Washington State Court Forms

Translated Forms

- > Cambodian / Khmer Forms
- > Chinese Forms
- > Korean Forms
- > Russian Forms
- > Spanish Forms

Family Law Forms - Plain Language Conversion (sorted by new FL number)

New FL Number	Plain Lang. Form Title	Existing Form Number	Existing Form Title
Court Files - Confidential Information forms			
FL All Family 001	Confidential Information	WPF DRPSCU 09.0200	Confidential Information Form (INFO)
FL All Family 002	Attachment to Confidential Information (Additional Parties or Children)	WPF DRPSCU 09.0210	Addendum to Confidential Information Form (AD)
FL All Family 003	Confidential Information		
FL All Family 011	Sealed Financial Source Documents		
FL All Family 012	Sealed Personal Health Care Records		
FL All Family 013	Sealed Confidential Reports		
FL All Family 020	Agreed Order Allowing Access to Restricted Court Records (GR22(c)(2))		
FL All Family 021	Motion for Access to Restricted Court Records (GR22(c)(2))		
FL All Family 022	Order about Access to Restricted Court Records (GR22(c)(2))		

Family Law Forms - Plain Language Conversion (sorted by existing number)

Existing Form Number	Existing Form Title	New FL Number	Plain Lang. Form Title
Court Files - Confidential Information forms			
WPF DRPSCU 09.0200	Confidential Information Form (INFO)	FL All Family 001	Confidential Information
WPF DRPSCU 09.0210	Addendum to Confidential Information Form (AD)	FL All Family 002	Attachment to Confidential Information (Additional Parties or Children)
WPF DRPSCU 09.0220	Sealed Financial Source Documents (Cover Sheet) (SEALFN)	FL All Family 011	Sealed Financial Source Documents
WPF DRPSCU 09.0230	Stipulation and Order to Allow Access to Court Records Restricted Under GR 22(c)(2) (ORAR)	FL All Family 020	Agreed Order Allowing Access to Restricted Court Records (GR22(c)(2))
WPF DRPSCU 09.0240	Motion/Declaration to Allow Access to Court Records Restricted Under GR 22(c)(2) (MTAF)	FL All Family 021	Motion for Access to Restricted Court Records (GR22(c)(2))
WPF DRPSCU 09.0250	Order Re: Access to Court Records Restricted Under GR 22(c)(2) (ORAR)	FL All Family 022	Order about Access to Restricted Court Records (GR22(c)(2))
WPF DRPSCU 09.0260	Sealed Personal Health Care Records (Cover Sheet) (SEALPHC)	FL All Family 012	Sealed Personal Health Care Records
WPF DRPSCU 09.0270	Sealed Confidential Reports (Cover Sheet) (SEALRPT)	FL All Family 013	Sealed Confidential Report

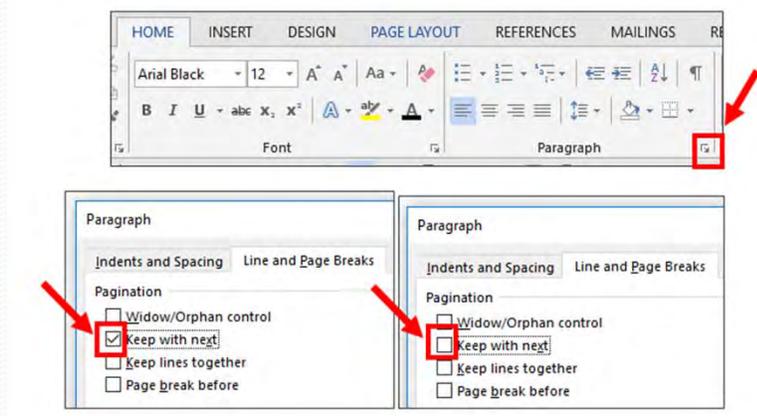
Charts are online at courts.wa.gov/forms

New numbering system

Category	Old	New	Number
Confidential / Sealed Information	DRPSCU	FL All Family	001
For use in all family law cases	DRPSCU	FL All Family	100
RCW 26.09	DR	FL Divorce	200
RCW 26.26	PS	FL Parentage	300
RCW 26.10	CU	FL Non-Parent	400
Modify Child Support	DRPSCU	FL Modify	500
Modify Parenting Plan / Res Sched	DRPSCU	FL Modify	600
Child Relocation	DRPSCU	FL Relocation	700
Uniform Child Custody	DRPSCU	FL UCCJEA	800
Uniform Interstate Family Support	DRPSCU	FL UIFSA	850

Page break issues?

Check paragraph formatting for “keep with next”



Line won't go up/down?

Check for fixed paragraph spacing before and after

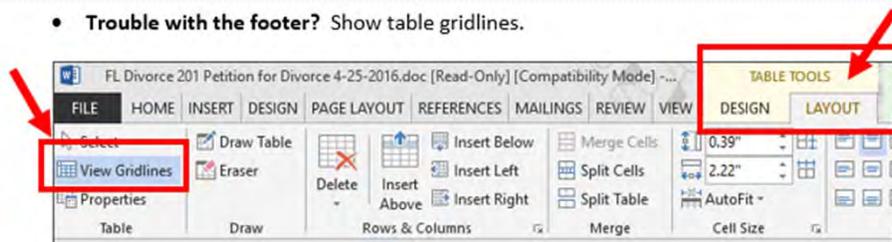


Footer

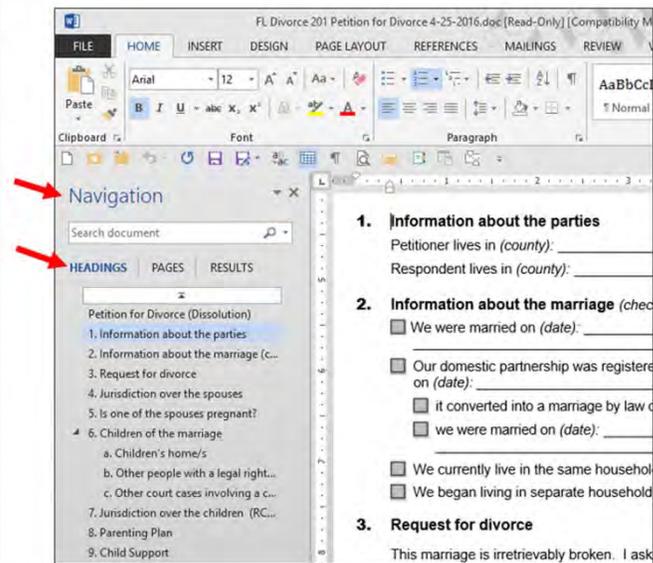
Hidden table leaves space for lawyer name/address on the right

RCW 26.09.020 Mandatory Form (4/2016) FL Divorce 201	Petition for Divorce (Dissolution) p. 1 of 11	
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- **Trouble with the footer?** Show table gridlines.



Use navigation pane headings



Lesser known forms

Online at www.courts.wa.gov/forms

WASHINGTON COURTS

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Courts Home > Court Forms

Washington State Court Forms

Here you will find forms that are used statewide in Washington Courts. This is not a complete list of all forms. Your Court may have forms you must file in a case. Please check with your [local Court](#) to confirm. Additionally, you may want to check the [Local Court Rules](#) for forms and for more information.

[View the List of All Forms](#)

- > [Guidelines for using an old Domestic Relations form to respond to or complete a case started on the old forms before July 1, 2016.](#)
- > [Response forms for old Domestic Relations Petitions.](#)
- > [Charts showing old Domestic Relations forms and new Family Law Forms](#)
 - > [Chart showing old and new forms - sorted by Domestic Relations number](#)
 - > [Chart showing old and new forms - sorted by new Family Law \(FL\) number](#)

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Ending the Marriage Divorce (Dissolution) , Legal Separation , Convert Legal Separation to Divorce (Dissolution) , Invalidate (Annul) Marriage , Default , Temporary Order to Pay Spousal	Protection Orders Domestic Violence , Antiharassment , Sexual Assault , Stalking Protection Orders , Surrender of Weapons , Temporary Restraining Order , No-Contact Orders , Domestic
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List of All Forms
A complete list of all Washington State Court Forms

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For All Cases

Form	Download	Revised
Courts of Limited Jurisdiction		
CLJ Cover Sheet		03/2015
SCOMIS		
Cover Sheets		06/2015
Odyssey *		
Cover Sheet - Civil Cases		06/2015
Cover Sheet - Family Cases		06/2015
Cover Sheet - Probate and Mental Health Cases		06/2015

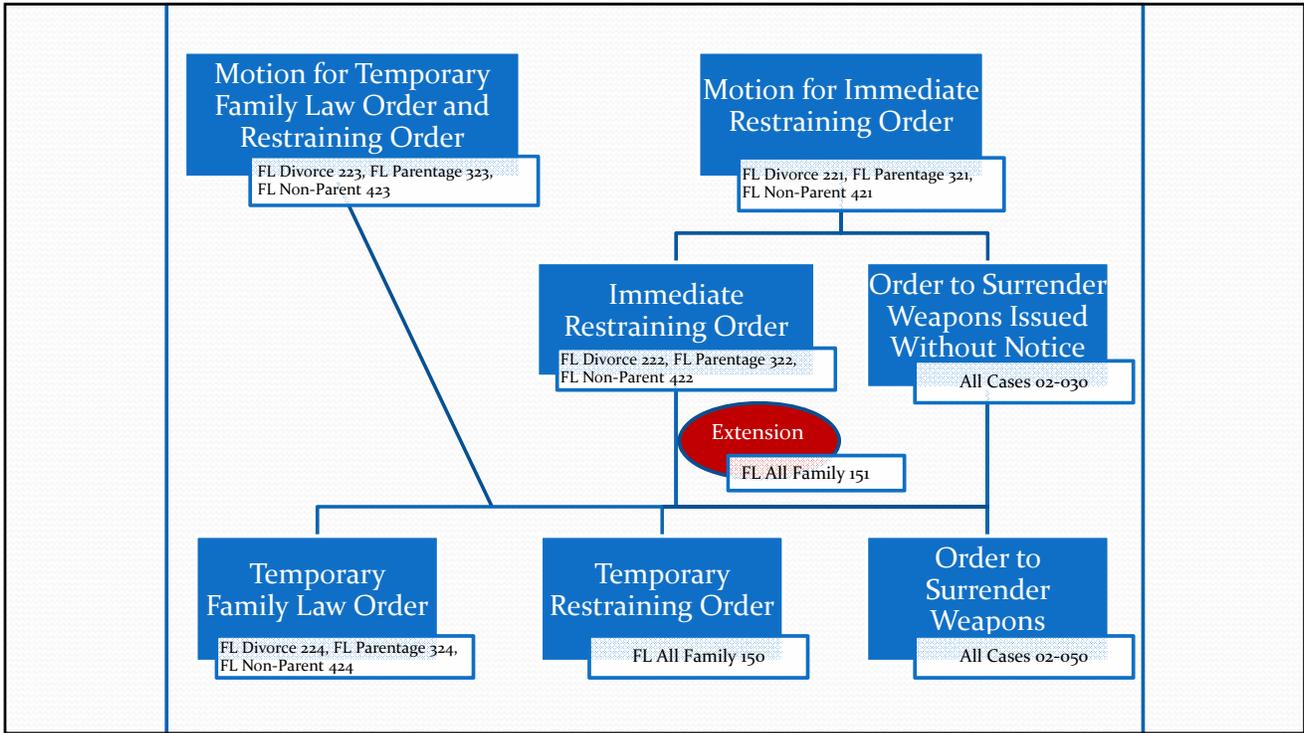
* For the following Superior Courts/County Clerks offices:

Family Law Forms

Court Files-Confidential Information forms			
Form	Title	Download	Revised
FL All Family 001	Confidential Information	 	05/2016
FL All Family 002	Attachment to Confidential Information (Additional Parties or Children)	 	05/2016
FL All Family 011	Sealed Financial Source Documents (Cover Sheet)	 	05/2016
FL All Family 012	Sealed Personal Health Care Records (Cover Sheet)	 	05/2016
FL All Family 013	Sealed Confidential Report (Cover Sheet)	 	05/2016
FL All Family 020	Agreed Order Allowing Access to Restricted Court Records (GR22(c)(2))	 	05/2016
FL All Family 021	Motion for Access to Restricted Court Records (GR22(c)(2))	 	05/2016
FL All Family 022	Order about Access to Restricted Court Records (GR22(c)(2))	 	05/2016
Forms for Use in All Family Law Cases			
Form	Title	Download	Revised
FL All Family 101	Proof of Personal Service	 	05/2016
FL All Family 102	Declaration: Personal Service Could Not be Made in Washington	 	05/2016
FL All Family 103	Notice Re Military Dependent	 	05/2016
FL All Family 104	Motion to Serve by Mail	 	05/2016
FL All Family 105	Order to Allow Service by Mail	 	05/2016
FL All Family 106	Summons Served by Mail	 	05/2016
FL All Family 107	Proof of Service by Mail	 	05/2016
FL All Family 108	Motion to Serve by Publication	 	05/2016
FL All Family 109	Order to Allow Service by Publication	 	05/2016

FL All Family 151

Extension of Immediate Restraining
Order and Hearing Notice



FL All Family 151

Superior Court of Washington, County of _____	
In re: Petitioner/s (person/s who started this case): _____ And Respondent/s (other party/parties): _____	No. _____ Extension of Immediate Restraining Order and Hearing Notice (OREXRO) <input checked="" type="checkbox"/> Clerk's action required: 2, 3
Extension of Immediate Restraining Order and Hearing Notice	
<p>1. Extension – This order extends the <i>Immediate Restraining Order (Ex Parte)</i> signed by the court on (date): _____ through the new hearing date listed below.</p> <p>2. Hearing Notice – The court will consider the requests made by the protected person at a court hearing:</p> <p> on: _____ at: _____ <input type="checkbox"/> a.m. <input type="checkbox"/> p.m. <small>date time</small></p> <p>at: _____ <small>court's address room or department</small></p> <p>_____ <small>docket / calendar or judge / commissioner's name</small></p> <p>3. To the Clerk: Provide a copy of this order and the <i>Law Enforcement Information Sheet</i> to the agency listed below within one court day. The law enforcement agency must enter this order into the state's database. Name of law enforcement agency where the protected person lives: _____</p>	

FL All Family 151

4. To the person who asked for this extension:

Fill out a *Law Enforcement Information Sheet* (form All Cases 01.0400) and give it to the clerk.
(Check one):

You must notify the other party because neither s/he nor his/her lawyer signed this order or was at the hearing when this order was issued. Have someone serve the other party with a copy of this *Extension* (and with the *Immediate Restraining Order* and other documents, if those were not already served). After serving, the server fills out a *Proof of Personal Service* (form FL All Family 101) and gives it to you. File the original *Proof of Personal Service* with the court clerk, and give a copy to the law enforcement agency listed below.

You do not have to notify the other party. The other party or his/her lawyer signed this order or was at the hearing when this order was issued.

Ordered.

Date _____ Time _____ Judge or Commissioner _____

Petitioner and Respondent or their lawyers fill out below.

This order (check any that apply):

- is an agreement of the parties
- is presented by me
- may be signed by the court without notice to me

This order (check any that apply):

- is an agreement of the parties
- is presented by me
- may be signed by the court without notice to me

Petitioner signs here or lawyer signs here + WSBA #

Respondent signs here or lawyer signs here + WSBA #

Print Name

Date

Print Name

Date

FL All Family 170

Findings/Order re Service Members
Civil Relief Act

Polling question

- Have you ever used the form FL All Family 170, Findings/Order re Service Members Civil Relief Act?

FL All Family 170

Findings/Order re Service Members Civil Relief Act

The federal Servicemembers Civil Relief Act covers:

- Army, Navy, Air Force, Marine Corps, and Coast Guard members on active duty;
- National Guard members under a call to active service for more than 30 days in a row; and
- commissioned corps of the Public Health Service and NOAA.

The state Service Members' Civil Relief Act covers Washington state residents who are National Guard or Reserve members under a call to active service for more than 30 days in a row, and their dependents.

1. An issue has been raised about whether the state or federal Service Members Civil Relief Act applies to a party in this case.

2. Findings

(Name): _____ is or was in service as follows:

Branch of Service	State of Residence	Duty Status
<input type="checkbox"/> U.S. Armed Forces (Army, Navy, Air Force, Marine Corps, Coast Guard)	<input type="checkbox"/> Washington <input type="checkbox"/> Not Washington	<input type="checkbox"/> In military service (meaning active duty or a call to active service for more than 30 days in a row)
<input type="checkbox"/> National Guard or Reserves		<input type="checkbox"/> Is within 90 days after termination of or release from military service (50 USC 522(a)(1))
<input type="checkbox"/> commissioned corps of Public Health Service or National Oceanic and Atmospheric Administration		<input type="checkbox"/> Is within 180 days after termination of or release from military service (RCW 38.42.060(1)(a))
		<input type="checkbox"/> Not on active duty or a call to active service for more than 30 days in a row

(Name): _____ is a **dependent** of a Washington resident National Guard or Reserve member (name): _____ who is under a call to active service for more than 30 days in a row.
*(Dependent means a spouse, child under 18, or other person who got at least 50% of his/her financial support from a National Guard or Reserve member during the 180 days just before this case started. State law protects **only** the dependents of Washington resident National Guard or Reserve members, **not** the dependents of regular U.S. Armed Forces members, or non-Washington residents.)*

FL All Family 170

3. Conclusions

(Name): _____ is covered by:

- the federal Servicemembers Civil Relief Act. 50 USC 501 et seq.
- the state Service Members' Civil Relief Act. Chapter 38.42 RCW.
- neither the state or federal act. (Skip the Court Order sections and sign below.)

> The Court Orders:

4. Stay of proceedings (suspending or delaying the case)

5. Appointment of Lawyer

6. Temporary family law orders

- Does not apply because no temporary family law orders have been requested.
- The court may issue temporary orders in this family law case because the service member or dependent has appeared in this case and the court is not issuing a stay.
- The service member or dependent has not appeared or has been granted a stay.
 - Federal Act** – The court may issue temporary orders in this family law case because the service member or dependent is represented by a lawyer.
 - State Act** – The court may issue temporary orders in this family law case even if the service member has not appeared or a stay has been granted. The court finds that a failure to issue temporary orders at this time, despite the absence of the service member, would result in manifest injustice to the other interested parties. Temporary orders issued without the service member's participation shall not set any precedent for the final disposition of the matters addressed therein. RCW 38.42.050(6).
- Other: _____

Family law motions ask about SCRA

FL Divorce 223

**Motion for Temporary Family Law Order
and Restraining Order**

...

3. Active duty military

(The federal Servicemembers Civil Relief Act covers:

- Army, Navy, Air Force, Marine Corps, and Coast Guard members on active duty,
- National Guard members under a call to active service for more than 30 days in a row, and
- commissioned corps of the Public Health Service and NOAA.

The state Service Members' Civil Relief Act covers Washington state residents who are National Guard or Reserve members under a call to active service for more than 30 days in a row, and their dependents.)

- My spouse/domestic partner is **not** covered by the state or federal Service Members Civil Relief Acts.
- My spouse/domestic partner is covered by the state federal Service Members Civil Relief Act.
 - For persons covered only by the **state** act – Military duty may keep the service member or dependent from responding or coming to the hearing on this motion. I ask the court to approve temporary orders even if the covered person asks for a stay or doesn't respond. It would be very unfair (a manifest injustice) not to make temporary orders now because: _____

Temporary Orders prompt optional use of separate SCRA form when SCRA applies

FL Divorce 224

Temporary Family Law Order

...

3. Active duty military

(The federal Servicemembers Civil Relief Act covers:

- Army, Navy, Air Force, Marine Corps, and Coast Guard members on active duty;
- National Guard members under a call to active service for more than 30 days in a row, and
- commissioned corps of the Public Health Service and NOAA.

The state Service Members' Civil Relief Act covers Washington state residents who are National Guard or Reserve members under a call to active service for more than 30 days in a row, and their dependents.)

None of the parties are covered by the state or federal Service Members Civil Relief Act, **OR** no party covered by the Acts has asked for a stay.

One or more of the parties is covered by the state or federal Service Member's Civil Relief Acts and has not appeared in this case, or has asked for a stay. *(Check one):*

The court signed the **Order re Service Members Civil Relief Act (form FL All Family 170)** filed separately.

The court's order about the service member's rights is in section **14** below.

Other Findings: _____

Other military forms

New FL Number	Plain Lang. Form Title	Old Number	Existing Form Title	Comments
FL All Family 170	Findings/Order re Service Members Civil Relief Act		none	NEW FORM
FL All Family 171	Motion for Immediate Order (Ex Parte) about a Hearing on Parenting Issues (Military Parent)	WPF DR 04.0050	Motion/Declaration by Military Parent for Ex Parte Order to Expedite Hearing/Allow Electronic Testimony (MTAF)	adapted for use in all FL cases
FL All Family 172	Immediate Order (Ex Parte) about a Hearing on Parenting Issues (Military Parent)	WPF DR 04.0055	Ex Parte Order Re: [] Expediting Hearing (ORSGT) [] Allowing Electronic Testimony and Evidence (ORATE), (ORDYMT)	adapted for use in all FL cases
FL All Family 173	Motion for Temporary Change to Parenting/Custody Order (Military Parent)		none	NEW FORM bc pulled from general motion for temp orders
FL All Family 174	Order on Motion for Temporary Change to Parenting/Custody Order (Military Parent)	WPF DR 01.0420	Temporary Residential Time Re Military Parents (TRTMP)	adapted for use in all FL cases
FL All Family 175	Motion to Reinstate a Parenting/Custody Order (Military Parent)	WPF DR 04.0070	Motion and Declaration for Order Reinstating Parenting Plan (Military Parent) (MTAF)	adapted for use in all FL cases
FL All Family 176	Order on Motion to Reinstate a Parenting/Custody Order (Military Parent)	WPF DR 04.0075	Order on Motion for Order Reinstating Parenting Plan (Military Parent) (ORDYMT, ORRPP)	adapted for use in all FL cases

FL UCCJEA 801 - 806

Registering out-of-state custody orders

Request to Register includes new clerk's action

FL UCCJEA 801

Request to Register Out-of-State Custody Order

- ▶ **1. Registration**
- ▶ **2. Confirmation that order is valid**
- ▶ **3. Person requesting registration**
- ▶ **4. Other parties**

5. Confidential Information

I am filing the *Confidential Information* form (FL All Family 001) separately to provide mailing addresses and other information about the parties.

6. Attachments

I am attaching the following documents to this *Request*:

- Two copies of the out-of-state custody order/s currently in effect (one copy must be certified); and
- A *Notice of Registration of Out-of-State Custody Order* (form FL UCCJEA 802).

7. Notice

I ask the court to notify the other parties of this registration as required by RCW 26.27.441.

Clerk's action: Deliver copies of this *Request* and all attachments to the Court Administrator or other appropriate court personnel to send to all other parties.

RCW 26.27.441(2)

“On receipt of the documents required by subsection (1) of this section, **the registering court shall:**

- (a) Cause the determination to be filed as a foreign judgment, together with one copy of any accompanying documents and information, regardless of their form; and
- (b) **Serve notice** upon the persons named pursuant to subsection (1)(c) of this section and provide them with an opportunity to contest the registration in accordance with this section.”

(Emphasis added.)

Court sends out Notice of Registration

FL UCCJEA 802

Notice of Registration of Out-of-State Custody Order

The attached out-of-state custody order has been registered in Washington State. Now that it has been registered, it can be enforced the same as a Washington custody order.

If you believe this custody order is **not** valid, you can ask the court for a hearing. To do that, fill out and file a *Motion to Dismiss Registration of Out-of-State Custody Order and Notice of Hearing* (FL UCCJEA 804).

You can get this form and other forms you may need at:

- The Washington State Courts' website: www.courts.wa.gov/forms
- The Administrative Office of the Courts – call: (360) 705-5328
- Washington Law Help: www.washingtonlawhelp.org, or
- The Superior Court Clerk's office or county law library (for a fee).

Deadline! You have **20 days** after you are served this *Notice* to file your *Motion*.

If you miss the deadline to file a *Motion*:

- The registration of the custody order will be confirmed, and
- You will not be able to challenge its validity in the future.

FL UCCJEA 803 - Court's Proof of Mailing (optional use)

RCW 26.27.441(4)

- Other party may raise limited defenses to registration by requesting a hearing within 20 days of service
- Court will confirm registration unless other party shows:
 - A court with proper jurisdiction issued an order that vacated, stayed, or modified the order that was registered in WA; or
 - The court that issued the custody order did not have proper jurisdiction; or
 - S/he did not receive proper notice under the standards of 26.27.081 before the out-of-state custody order was issued.
- Forms:
 - FL UCCJEA 804 – Motion to Dismiss Registration of Out-of-State Custody Order and Notice of Hearing
 - FL UCCJEA 805 – Order about Registering Out-of-State Custody Order

RCW 26.27.441(5)

- If other party does not contest within 20 days, **court must send a notice confirming the registration**
 - “(5) If a timely request for a hearing to contest the validity of the registration is not made, the registration is confirmed as a matter of law and the person requesting registration and all persons served must be notified of the confirmation.”
- Form: FL UCCJEA 806 – Notice: Out-of-State Custody Order Confirmed Without Hearing

Local practice

- Not all courts have developed procedures to manage the court's responsibilities in registering out-of-state orders.
- Practitioners may need to alert appropriate court personnel to the requirements of the statute that the court serve notice of the registration and notice if the registration is confirmed without a hearing.

FL All Family 020 - 022

Accessing restricted court records

General Rule 22

- Purpose:
 - “to facilitate public access to court records, provided that such access will not present an unreasonable invasion of personal privacy, will not permit access to records or information defined by law or court rule as confidential, sealed, exempted from disclosure, or otherwise restricted from public access, and will not be unduly burdensome to the ongoing business of the courts.”

Privacy of identifying information

- Not required to put “Restricted Personal Identifiers” in court documents except those filed as “Restricted Access.” GR22(d).
 - A party or child’s social security number
 - Driver’s license number
 - A party’s telephone number
 - Financial account numbers
 - Children’s birthdates

Restricted Access Documents

- **Confidential Information Form**
- **Domestic Violence Information Form**
- Any **Personal Information Sheet** necessary for JIS purposes
- Sealed Personal Health Care Record,
- Sealed Financial Source Documents
- Retirement Plan Order,
- Confidential Reports defined in GR22(e)
- Notice of Intent to Relocate
- Unredacted Judicial Information System (JIS) database information considered by the court for parenting plan approval
GR22(c)(2).

Access by parties/attorneys/GALs

- Except as otherwise provided by statute or court rule, parties and their attorneys are allowed access to **all** documents in their cases, **except**
 - Confidential Information Form
 - Domestic Violence Information Form
 - Personal Information Sheet
 - Law Enforcement Information Form
 - Foreign Protection Order Form
 - Vital Statistics Form.

GR22(h)(2).

Access by stipulation or motion

- Parties may stipulate to allow access.
- If access is sought by motion, GR22(i) requires
 - **notice** to all parties (unless only seeking redacted JIS database records reviewed by court for parenting plan), and
 - **balancing** of interests between the public or private interest of those seeking access and the privacy and safety interests of the parties or dependent children.
- Forms:
 - FL All Family 020 – Agreed Order Allowing Access to Restricted Court Records (GR22(c)(2))
 - FL All Family 021 – Motion for Access to Restricted Court Records (GR22(c)(2))
 - FL All Family 022 – Order about Access to Restricted Court Records (GR22(c)(2))

Redactions

- Court may allow access to restricted records only with specific information deleted (redacted)
 - Who does the redacting? Court order should specify

Questions?

Laurie Garber
Northwest Justice Project
360-693-6130, ext. 0962
LaurieG@nwjustice.org

CHAPTER THREE

MEDIATION PAPERS: WHEN LESS IS MORE

November 2016

**Linda M. Roubik
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LINDA M. ROUBIK has been a partner at Wechsler Becker since 1992. After already developing her own family law practice at Helsell Fetterman, and serving as Chair of the Family Law Section of the King County bar association, she joined this well-reputed firm devoted exclusively to family law practice. All the attorneys in this group maintain a high level of involvement in professional activities.

Early on, Linda had also clerked for Judge Gerard Shellan, renowned for his skill at family law settlement conferences. She gained both an insider's view of the courthouse, and a firm sense of the value of settling these cases.

Linda's overall philosophy is to be practical. Getting cases settled in the most efficient manner is the goal. She is accessible to clients, and maintains good relationships with opposing counsel, mediators and judges. One of the highest compliments is when an opposing party refers friends or family to her. Linda's reputation is one of being a reasonable lawyer.

MEDIATION -- PAPERS

This presentation includes two subjects regarding mediation and papers (as everything in family law, the topics are interrelated):

Part 1: “When Less is More: How much information does a mediator really need, or want? What papers do you really want, or need, to provide?”

Part 2: “Developments regarding mediation ethics rules or guidelines” – this is the current vexing issue regarding mediators drafting the agreements, or the court papers. What parts will you have to draft?

My background:

-- after law school, 1 year as law clerk / bailiff to Judge Gerard Shellan at King County Superior Court (known as a dean of judges, who also conducted 3 settlement conferences per week, especially in family law; now recently retired from JAMS);

-- 30 years in private practice, almost all in family law, almost all at Wechsler Becker (small firm, exclusively family law);

-- very involved in bar activities, including chair of KCBA Family Law Section, and KCBA Board of Trustees;

-- frequent consumer of ADR for my cases; serve as mediator only for the Volunteer Settlement Conference program of our Superior Court.

My background informs my outlook on these subjects.

Part 1: When Less is More (Mediation Papers)

I’m going to posit that “less is more” regarding mediation papers. Others will disagree. Again, as everything in family law . . . it depends.

It depends on the facts of the case. It depends on the procedure. It depends on the mediator. It depends on your style.

My main message is to relax. There are few rules on this, and if so they are not likely enforced. There are no mandatory forms!!

Even if your time to prepare were unlimited . . . and even if your client had the means to pay a lot . . . distilling your case to its essentials should be your main task in your position letter. Come to the conference prepared with the rest of the details. Then let the conference flow.

Judge Shellan hated the black notebooks. He took them home, anyway, but his wife always scolded him about them. Ever since, I have prided myself if I can deliver papers that fit under a black clip . . . that don't need a notebook.

In my prior life in the business world (Procter & Gamble, a leader in consumer products), any important memo to upper management had to be boiled down to one page. I have heard that this is still done at Microsoft, too.

Divorce is more complicated than that. It's every aspect of people's lives . . . and their history . . . and their future. It's about two adults, plus any children.

Early in my career, I used to write the 20-page letter about the parties and their history. But that's too much to read, and it still can't capture all the details. Also, usually that effort costs too much.

A settlement conference letter of about 5-8 pages seems about right. Otherwise, put details into attachments. But don't have too many attachments.

Now, I'll back up with some caveats, and observations.

1) Some attorneys really do prepare for trial from day one. There is a line of thinking that that is the only way to really be prepared to settle. I respect that idea . . . I just have never been able to live up to it. Also, most clients don't need that, because about 98% of our cases settle.

For that type of attorney, coming in with a 5-inch notebook full of tabs has a definite intimidation factor. If you're on the receiving end, tell your client that the mediator is not more impressed with the other side's case because of the number of trees killed to fill the notebook.

Mediators, just like judges, always (always) listen to both sides. Your message may actually be more powerful if it is delivered in a succinct, persuasive format.

Mediators (and judges) are human beings. Most stop really paying attention after about 5 pages.

(I'm referring to single-space, letter-style pages. There are no page limits to our mediation letters, but note this is the equivalent of a temporary motion declaration of about 10 pages in its required double-spacing. That's often about the amount of pages you use for your own client's declaration, to tell the story of the case in your opening motion papers, while you're saving the rest of your limited number of pages for your reply.)

2) Just tell the story of your own client. Don't try to anticipate what the other side will say. Give your reactions to that orally at the conference.

(That way the other side does not get as much of a clue about the strength of your comebacks. The mediator will tell the other side what you've said . . . but usually in more general terms . . . and perhaps in a way that is designed to scare the other side as to the strength of your comeback comments.)

I am framing these remarks in the context of the usual "ships passing in the night" one-time exchange of mediation papers. This is not a motion brought by one side, so we don't have the more linear development of motion-response-reply (which does give some benefit to the moving party, in getting the last word).

For arbitrations, sometimes, the paperwork is structured in a two-exchanges manner (similar to the paperwork for a support-only trial by modification in King County, with the exchanges one week apart). That is meant as an opportunity to respond in writing to the other side's points.

But for mediations, that would be unneeded time, effort and cost.

Unlike a court motion where you will have only a few minutes of in-person oral argument, followed by an immediate ruling by the commissioner, the paperwork for a mediation is much less essential. (For court motions, I say it's all about the paperwork . . . as rarely does a commissioner change his or her mind based on the oral arguments. The decision has largely been already made based on the paperwork.)

For mediations, the time in the room with the mediator is much more important than the paperwork. From the paperwork, the mediator primarily just wants to get a nodding acquaintance with what this case is about.

3) One of the reasons for getting the paperwork to the mediator at minimum 2 days ahead of the session (some mediators use this as the deadline; others have a 1-week prior deadline, which often devolves into one or both sides being late with the papers,

such that the deadline gets extended to a minimum of 2 days ahead) is to allow the mediator to study or refresh on a certain substantive subject, or consult with colleagues about it.

Another reason is to allow time to peel your client off the ceiling. Seeing the other side's position will do that to clients. After sleeping on it for one night, the client can begin to grasp that reality better. After sleeping on it a second night, the client more likely will be able to talk about it in a business-like manner at the conference.

4) The tactic of taking an opening position as out-there as Mars is usually counterproductive. Yes, it scares the other side (more likely, it scares the party on the other side, not the attorney). However, the mediator smells it as extreme. You lose credibility with the mediator.

(I never care what the other party, or the other party's attorney, thinks. I direct all my comments only to the decision-maker . . . which is the judge in a courtroom, or in a mediation the mediator who drives and influences the process.)

Better is to consider where you want to end up, and what is the likely ballpark of reasonableness going in either direction around that result. Take a position perhaps on the edge of that ballpark of reasonableness.

You do, absolutely, need room for movement in a mediation. If both sides take extreme positions, it will just take that much longer to reach a reasonable middle-ground.

Will the extreme position be better, because movement to the middle starts from further out at the edge? Not when you have a mediator experienced in family law. (This could be a danger in a trial, where many judges may have no idea what is a reasonable result in a family law case.)

Will it be more honest, or honorable, to state your position and stick to it? It just never works that way. Again, a mediation means movement. Your side will move, and you will just lose credibility if you claimed you would not.

There is however also the type of session (especially when required before a trial as in King County) where the party or attorney on the other side has no intention of settling, and is only going through the motions of attending. But that is rare. Almost no client really wants to go to trial. They want to settle, as they should.

5) Mediation is separate rooms is the way to go, according to me. It gives the client a real feeling of having been heard by the quasi-decision-maker (the mediator does not

make the decision, but is of huge guidance in getting there). Clients don't appreciate how precious it is to sit around a table and actually talk to the mediator . . . not realizing how in a trial, there is essentially no opportunity to actually discuss anything with the trial judge.

If the client has the feeling of having been heard, the client will almost always want to settle, and will feel good about the settlement. The actual case result sometimes does not matter as much, as having that feeling of having been heard!

(The memory of the case result often fades for the client, after a few years. The feeling of having been railroaded into a settlement is a feeling that lingers, however. A businesslike approach to settlement, guided by an impartial mediator who heard you speak freely and thus "gets it", leads to a result that is easier to accept.)

Putting the clients into one room is often counterproductive. Mostly, their heads will flood with the unpleasantness of being in this situation with their spouse. Being in one room actually never needs to happen. (I know several longtime mediators who stopped even doing the 5-minute introduction session in the same room. It was often disturbing to clients . . . and you can't tell which clients will be disturbed by it. Giving the same intro talk twice, once in each room, was worth the extra time.)

On occasion, a mediator has convinced me to try being all-in-one-room. It is indeed more efficient, as the mediator does not spend time telling each room what was said in the other room, and the parties themselves may immediately jump in with constructive information or comments. But when this has happened, I think I may have been lucky that those particular parties were able to take it. And one still never knows if the clients may have appeared to be ok with it, but were actually fuming or flooded the whole time.

Clients almost always get very comfortable talking to the mediator in our own room. I have never once had a client say they wish they had been in the same room as their spouse (other than the common wish to be an invisible fly on that wall, to hear what was actually said there).

6) This concern about comfort does not extend to non-sharing of position papers. It is the rare situation where some aspect of the case really needs to be told only to the mediator, and not shared with the other side. Clients often don't realize in advance (so tell them, in advance!) that mediation papers, just like court-motion papers, must be shared with the other side.

Otherwise, the mediator cannot properly evaluate the case for each side. If it would come out at a trial, it better get discussed at the mediation.

For a client who is uncomfortable sharing too much, that is another reason to keep your position letter short. You can fill out a lot orally at the session, when in your separate room.

7) How can you cover all the myriad topics and details of a case, with a short position letter?

My answer is to come to the mediation with a sheaf of small pieces of paper, on which I've written down one point per page, in my own version of shorthand or outline. I made those notes by hand while reviewing the file, and then assembled them into topics with colored clips. I've probably already used that outline to write my position letter (or, sometimes, I know the case so well that the position letter just flows from my mind).

As I prep for the actual session, I may re-shuffle the pieces of paper. I usually tab the pieces that contain an item that must get into the final papers.

At the session, I use these small papers for my oral presentation to the mediator. Depending on the style of the mediator, this presentation may be longer, or shorter. (Sometimes, the mediator presents to us his or her own oral outline of the issues, first.)

You never know when a mediator will state he or she must get back into the other room. At that point, you've placed face down the pieces of paper about the topics you have covered, and you can perhaps again shuffle and re-assemble the rest of the topics, for the next time the mediator returns to your room.

As the session gets closer to a result, use your tabs to make sure you don't forget to cover any specific items that must get into the final papers.

8) If you have the time, it is helpful to draft the actual final papers. That is because such outlining of the actual intended result focuses your mind on the topics you must cover in the session.

Plus, you will need (or want) to do this work eventually, anyway. Someone will be tasked with drafting the final papers, and if it's not you, you'll want to have gone through the analysis yourself to make sure all necessary topics . . . or nuances . . . are covered.

Sometimes, the proposed final papers might be submitted along with your position letter. But I'd rather keep them in my pocket for use during, or after, the session. You will likely be changing your position during the session (see above, re movement). Providing the proposed final papers in advance also makes your side look (and likely feel) rigid.

I note that for King County, there is a local rule (LFLR 16) stating that proposed final orders are required. However, most practitioners don't even know this rule exists. Most mediators do not require proposed final papers with the position letter.

9) That same local rule requires a Financial Declaration. You will know if yours is a case that revolves around a financial declaration. If yes, provide it, and make it transparent and supported by evidence (probably with a page or more of footnotes outlining the basis and calculation of each figure). For many cases, a financial declaration is superfluous, and likely a waste of time. They are so subject to manipulation that they can be meaningless.

That same local rule specifies a proposed parenting plan. Again, that may be helpful to develop or provide, but as we know sometimes a case revolves around parenting evaluations that spend 20 pages discussing who said what . . . with only 1 page at the end summarizing the recommended points to be included in a parenting plan.

Statewide CR 16 (on "pretrial procedure") does not address ADR). Copies of King County's LR 16, and LFLR 16, are also attached, showing general requirements, and requirements for a family law ADR conference.

10) That same local rule, finally, requires a property chart. I agree, for any case involving division of property.

This chart will list each asset or debt, its characterization as separate or community, its gross and net value, and suggested distribution to each spouse. The bottom of the chart should total the community net values in each distribution column, include a line for any transfers, and show final percentages. (Be sure to place any offsets, for example for back-due support, only after the bottom line of the chart. These are not shared items, but rather owed 100% by one party.)

In the old days, property charts were handwritten . . . and they worked fine. Bring a calculator, and know how to calculate a transfer figure to reach a desired outcome.

Clients always get stuck on getting their percentage of each item, until they grasp how the distribution columns work. Each side may get 100% of this item, or that item . . . with one easily-divisible line-item such as a money market account used as the "fudge factor" line to place appropriate dollars in each party's column so that the columns total to the overall desired percentages. If no such line-item is available, a transfer figure will be shown after the column totals, again leading to the overall desired percentages. Through such sharing (often unequally) of a "fudge-factor" line item, or through a later

transfer payment to be accomplished in some other form, we eventually allocate the entire community pie by the desired percentages.

Nowadays, everyone has computer spreadsheets. They are usually different models! You, the other attorney, and the mediator probably have 3 different spreadsheets. In the ideal world, you could all agree to use one person's model, just changing the items or values. But I've never seen that happen. Be prepared to feed your information into the mediator's spreadsheet. Or . . . it's the unusual case that can't be calculated by hand, after you narrow the issues to what should be the allocation of the "fudge-factor" line item, or what should be the transfer figure.

11) What other attachments might you use? It depends on the case.

For child support issues, supply at least your child support worksheets. You've likely already shared and discussed with the other side the paystubs and other financial evidence; include copies of these only if interpretation of such documents is a material issue in your case.

If you have expert reports, you will likely include them (certainly you would include a parenting evaluation). But does your mediator really need to see a 30-page real estate appraisal, with all its pictures? Maybe, but only if a battle of the experts on this issue is central to your case.

If your case went through a big temporary orders motion (or multiple such motions), it may be effective and acceptable to attach copies of those declarations. You will save a lot of time and cost. If you include such papers, you probably should include the declarations from each side.

You almost never want to attach all your discovery papers. Maybe pluck out a pertinent interrogatory question or request for production, along with that answer, or those documents. Attach that much, and discuss it in your position letter. (Some mediators outright don't read attachments.)

12) Want to develop an appreciation for what works in mediations, and papers for mediations? Become a mediator!

In King County, the court's Volunteer Settlement Conference program (must have 9+ years of practice, at least 50% in family law) is a great opportunity to experience the other side of the coin. As a volunteer settlement conference master, you will get to experience being that fly on the wall in each room.

You will see an amazing variety of fact patterns. You will see attorneys in action, both new and old, effective and less so. You will experience the challenges of some pro-se litigants. With attorneys, you will see their papers, and get a sense of whether you actually needed any more papers. How did the papers relate to the attorney's performance at the conference, and to the actual outcome of the case? You will see the views of each party evolve over the course of the session. You will find out if you naturally fit into the role of a mediator.

Of course, you will be helping real people in real cases, and very much helping the courthouse. Such pro-bono services utilize your skills at a highest-and-best level.

If your county does not have a Volunteer Settlement Conference program, start one.

13) Over time, I have realized that you can never anticipate the actual flavor of any mediation session. That is the fun of it. This also lightens your burden.

In other words, each session will take on a life of its own, which you can't predict. The parties will be different, the facts will be different, the mediator will be different, and all these things in combination will be endlessly different. This is what makes our job interesting. Go with the flow.

14) We gain a lot of insight into human behavior, as we work on and settle our cases. It makes us more introspective in our own lives, and perhaps even wise.

Once you think you've become wise . . . offer your services at the harder (but still interesting) level of being an arbitrator, or judge.

Part 2: Developments regarding mediation ethics rules or guidelines

In 2012, a strange WSBA ethics opinion suddenly came out, purportedly preventing some mediators from drafting papers (which papers, exactly, has been open to debate).

Specifically, Advisory Opinion #2223 (<http://mcle.mywsba.org/IO/print.aspx?ID=1669>, copy attached) stated that while an attorney may serve as a neutral mediator, his or her role shifts into the practice of law when drafting “complex and customized provisions using original language and choices that impact the party’s legal and property rights”.

As this change of role “may” be confusing to unrepresented parties . . . and as the parties’ interests “may” be directly in conflict in a dissolution matter . . . opinion #2223 concluded that such drafting (specifically, of a Property Settlement Agreement, or an Order of Child Support, or a Parenting Plan) for unrepresented parties would be representation of both -- in a way that is nonconsentable, and thus categorically prohibited.

That flew into the face of many years of actual practice, by many mediators!

It also flew into the face of practicality, public policy, and common sense . . . especially in an era of increasing numbers of pro-se’s (around 80% of divorce cases now involve at least one pro-se), and increasing use of mediation (both for its lower costs and other benefits), and increasing costs of traditional litigation.

#2223 creates a situation seeking the perfect, at the expense of the good.

The problems with #2223, for family law cases, are manifold:

-- For “double” pro-se’s: not only does this opinion prohibit drafting of such documents for pro-se’s by an attorney mediator after a divorce mediation conducted by that mediator . . . it also specifically prohibits two pro-se’s from hiring one attorney to draft the needed court papers after a divorce mediation conducted by a *non-attorney* mediator.

Thus, if spouses who are both pro-se want equal, rather than one-sided assistance to which the other spouse might acquiesce, they must hire at least 2 attorneys, in addition to any mediator. (That’s 3 attorneys total, if they want the good assistance of a lawyer-mediator. These are parties who for cost reasons, or other reasons, were trying to avoid hiring individual lawyers in the first place . . .)

Agreements reached in mediation tend to evaporate, if not committed to enforceable writing at the conclusion of the mediation. The momentum is off; new issues emerge.

Only the mediator was present at the session, and thus has an appropriate sense of who gave up points in one area to gain in another area, etc. Nuances in the writings about such issues may matter in a way not obvious to an outsider. Even that mediator's memory fades, if he or she does not do the memorialization task promptly.

Anyone *other than* that joint mediator, later attempting to put the agreement into writing (despite not having been present at the session), is subject to much error in the transmission of information, plus from the passage of time. He or she is also subject to claims of bias, or at least the appearance of bias, if hired by just one of the parties.

Ultimately, any resulting court orders may be less reliable. If the parties proceed with no lawyer advice at all, their orders may be replete with errors or oversights. If the orders are drafted by only one side's attorney, with reluctant acceptance by the other spouse who is still pro-se, that other spouse may be less likely to believe in those orders and follow them. This may lead to more trouble in the future, concerning enforcement, or when there are any future modifications of parenting or support based on substantially changed circumstances, or even when the more common biennial optional adjustments of child support occur.

-- For attorneys in general: our image suffers by looking like we are just money-grubbers, out of touch with the times, completely unhelpful to those of modest means.

-- For attorneys in cases with a pro-se: some mediators now won't even write a CR2A Agreement (also contains "complex and customized provisions" etc.), so the feeling of neutrality brought to such a document when drafted by the mediator is lost. A pro-se will then be more likely to walk away, from a seemingly successful mediation, without any binding agreement signed.

-- For attorneys even in cases where both parties are represented: some mediators now avoid drafting *any* CR2A's: what if one side's representation is markedly weaker than the other side's? Should they step in to promote fairness . . . or could that lead to ethical trouble?

-- For the court: More cases remain unsettled, with the courts having to deal with pro-se's who can't agree on what was agreed.

-- For the public: Costs for the court system may increase accordingly.

Also, societal progress is lost, when divorce cases don't get mediated by lawyers. Experienced family law lawyers can provide the most knowledge and guidance regarding the laws which our society has developed and interpreted over many decades. These laws and interpretations were often designed to protect the less-

financially-advantaged spouse (who is still, most often, the woman), and to protect children (correct child support, appropriate limitations in parenting plans, etc.).

-- For non-attorney mediators: Drafting any agreement, after a mediation for unrepresented parties, is likely the unauthorized practice of law.

-- For every Dispute Resolution Center (DRC), throughout the state of Washington: with no one left to draft the agreements, for the unrepresented parties who came to the DRC because they can't or won't hire 2 lawyers, any agreements may be just illusory if they don't get properly memorialized or implemented.

There are a few things hopeful in this picture, however.

1) WSBA advisory opinions are just that: "advisory". (But who wants to be the test case to go up to the Washington Supreme Court, which has the ultimate power to interpret the RPC's?)

2) In summer 2016, the WSBA Committee on Professional Ethics (CPE) undertook a review of Advisory Opinion #2223. Hurrah!

Just as the news about the 2012 opinion may still be taking a long time to filter down to all those impacted by it . . . this is a long process, however. The chair of the CPE recently told me that *next summer (summer 2017)* may be a good bet for when we'll see a result. He also cautioned that that result might be: no change to the current opinion, *or* a complete reversal, *or* just a tweak. He did say that there was a lot of discussion back and forth about this subject amongst the Committee members.

This ethics *review* again at first started with almost no publicity. But certain quarters of the bar found out . . . and have been vocal, in comments unanimously opposing #2223. But even those efforts have received no mainstream publicity.

Unlike changes to court rules, there is no solicitation of comments, or time period for comments, or email lists for interested observers, regarding WSBA's ethics opinions. There is not much publicity of the process, if any . . . or much transparency.

(If you spent your time monitoring the CPE website, some months after the event, you'd see posted either the agenda, or the minutes, of the various CPE meetings, along with the announcement of any new ethics opinions. So far in 2016, just one ethics opinion had been issued.)

The dedicated, and no doubt overworked, volunteers on the CPE committee meet about 6 times per year. They read volumes of paperwork, on the many different and difficult ethics subjects that come before that committee. Their meeting agendas look daunting. Our important issue is just one of many (although it may affect more Washington citizens than all the other issues combined).

The CPE volunteer attorneys, most of whom work in the area of lawyer grievances etc. (no family law practitioners, from what I can see) do lots of further homework for CPE subcommittees for the various topics. No doubt, this committee also deals with its own administrative problems, or resources problems, or political problems. After a small barrage of unsolicited comments descended on the CPE this summer about #2223, a very helpful WSBA paralegal at least posted a comments link, at the bottom of the CPE website, so such comments could be gathered in one place.

Briefly, the comments sent in this summer to the CPE included:

- A letter from WSBA's ADR section;
- A letter from KCBA's ADR section, including compilation of 15 comments it received after soliciting its members;
- A letter from the Washington association for DRC's;
- 10 letters generated by yours-truly having emailed about 100 of her closest family law friends about this issue, using names and contact info culled from a list of about 500 members of the KCBA Family Law Section. We had also posted the same comments solicitation to the KCBA Family Law Section listserve; the Section has no meetings in the summer. (The timing was tight in anticipation of an 8/26/16 CPE meeting, after we learned that an earlier intended meeting that summer was postponed for lack of quorum. This was also during end-of-August vacation season. Little did we know that this process could take a year, over multiple CPE meetings, after subcommittee work!)

I have now seen all the above letters submitted to the CPE. While not an outpouring, in terms of volume (given the timing, lack of visibility . . . and perhaps the sensitivity of this subject), they were all heartfelt and powerful comments. Each was different, but every comment opposed #2223.

As of 9/1/16, the kind chair of the CPE let all of us "activists" know that his committee did not need more comments, or possible focus groups, or other further input. He wrote:

"Thank you again for the comments you provided and coordinated to the Committee on Professional Ethics concerning WSBA Advisory Opinion 2223. The Committee found the comments received very helpful in understanding the issues involved.

At its meeting on August 26, the Committee voted to create a subcommittee to review the issues involved in more detail and to make an eventual recommendation to the full Committee. The timing for further consideration by the full Committee will depend on the work of the subcommittee. Specific information and updates on the work of the Committee of Professional Ethics such as agendas and minutes can be found at <http://www.wsba.org/Legal-Community/Committees-Boards-and-Other-Groups/Committee-Professional-Ethics>.

Again, thank you for your insights.

Please feel free to share this with whoever you deem appropriate.”

3) In 2014, an excellent student-Comment piece appeared in the UW Law School’s law review:

Caitlin Park Shin, Comment, *Drafting Agreements as an Attorney-Mediator: Revisiting Washington State Bar Association Advisory Opinion 2223*, 89 Wash. L. Rev. 1035 (2014), <http://digital.law.washington.edu/dspace-law/bitstream/handle/1773.1/1399/89WLR1035.pdf>

A copy of this 33-page article is attached (and has already been given to the CPE, by a retired UW law professor who is on its small subcommittee reviewing #2223, as well as by the WSBA ADR Section).

This careful 2014 UW law review piece may lead the way for a reversal of #2223.

At pages 1044-48, it analyzes the statements of #2223.

Throughout the piece, and especially at pages 1063-64, it outlines the unfortunate practical ramifications of #2223.

At pages 1049-52, it shows that RPC 1.7’s Comments 17 and 28 (mysteriously not mentioned in #2223, which did cite RPC 1.7’s Comments 15 and 23) may allow waiver of a conflict here, when the clients’ interests are “generally aligned” even though some differences exist. An example provided in Comment 28 is “arranging a property distribution in settlement of an estate”. Sounds like?! A major point is that at the end of a successful mediation, each party now has a new, different and aligned interest: to memorialize the results of the mediation.

At pages 1052-59, it shows that the citations to Oregon and Texas cases cited in #2223 are distinguishable, or old, or out of sync with the majority of states which have addressed this issue. (Oregon now expressly allows a divorce mediator to draft the agreement and implementing documents, as one of the 14 states that currently allow

such drafting. Texas and Washington and 7 other states have in the past said “no”, but #2223 does not mention that this is now a minority view. The other states have not addressed the issue. The ABA has said “yes”. Interestingly, Utah at first said “no” . . . but in 2006 it reversed its opinion to become a “yes” state.)

Finally, at pages 1059-63, it shows how Washington could adopt the 2001 approach of New York, which allowed such drafting with a “disinterested lawyer” test (would a disinterested lawyer believe that the attorney-mediator could competently represent both parties’ interests in preparing and filing the settlement agreement and divorce papers?).

4) *In Spring 2016, another survey-type law review piece specifically discussed and supported the conclusions reached in 2014 by the UW law review student (who advocated adopting the New York approach, see above):*

Robert Kirkman Collins, Jed D. Melnick Symposium, *The Scrivener’s Dilemma in Divorce Mediation: Promulgating Progressive Professional Parameters*, 17 *Cardozo J. of Conflict Resolution* 691 (2016), http://cardozoicr.com/wp-content/uploads/2016/04/CAC302_crop.pdf

A copy of only the first 5 pages, 691-95, of this 25-page piece is attached (a copy of the whole piece has already been given to the CPE, by both the WSBA and KCBA ADR Sections).

It features the Washington State drama prominently at pages 692-694.

We learn from this rather colorful author (director of Cardozo’s Divorce Mediation Clinic and a Visiting Clinical Professor after almost 40 years as a divorce practitioner and mediator), at page 700, that “as a practical matter, the [disinterested lawyer] test appears to have been ‘passed’ by every couple in the Empire State who reach terms after mediation”.

Recall, New York has had that ethics opinion since 2001; in the footnote to his above quote the professor cites only one case, in 2010, when an experienced attorney-mediator was brought up on disciplinary charges “after court personnel (not either client) objected to his having drafted a formal separation agreement at the conclusion of a mediation; the charges were subsequently dropped.”

This author from Cardozo is a crusader for non-attorney rights. He concludes, at the end of his piece, that a Certified Mediation Scrivener designation (similar to Washington’s LLLP’s, page 713, or Colorado’s real estate brokers, page 714) should be created. Testing for this new certification would then be required for both non-attorneys

and attorneys. Thus, non-attorneys could not only conduct divorce mediations, but also draft the resulting settlement agreements.

(At page 712 he states that divorce mediation “is not the practice of law, but does involve legal practice – a recognized paradox.” At page 714 he states that per his idea of such a certification, “mediators without law degrees could . . . help their mediation clients to closure without the ominous threat of Unauthorized Practice of Law prosecutions”.)

As this author notes at page 695, the issue of “whether a *non-attorney* mediator can – or in fact should – draft operative settlement documents for their couple without running afoul of UPL (Unauthorized Practice of Law) restrictions” is an “exponentially more controversial issue”.

He also, at page 694, notes that “there are actually two issues – the agreement, and the divorce papers.” His subsequent discussion of that topic gets confused, however, or maybe it does not translate well given the differences in practices of different states.

This piece also has a number of errors (some are perhaps cosmetic, such as dating the UW law review piece to 2013 rather than 2014), and suffers from gaps in analysis or support. (As a symposium piece, probably it was not cite-checked and edited for a whole year, as happens with a student law-review piece!).

As a whole, however, I must also discount this author’s point of view, given his incredibly out-of-touch commentary at page 694:

“The ‘real’ reason for the Washington State [#2223] opinion? This salvo seems to be yet another shot in the ongoing siege by matrimonial litigators attempting to halt civilian flight away from their traditional gladiatorial matrimonial practice – the most recent skirmish in the reactionary thirty-year turf war being fought by the litigation bar since the inception of divorce mediation.”

As I mentioned in my letter to the CPE this summer, this view is completely misguided. At least during my entire last 30 years of family law practice . . . at least in Washington State . . . local divorce practitioners spend about half our time protecting individuals and children and their rights on temporary motions, and the other half settling cases in mediations. We are big believers in mediation. Very few of our cases go to trial.

The UW student author, at page 1037, intentionally sidestepped the issue of non-attorney mediators drafting documents, as “beyond the scope of this Comment”.

Perhaps, grappling with the non-attorneys issue is what the CPE finds more troubling regarding changing #2223. Again, as with most family law issues, those topics are interrelated.

5) I'll conclude with one state's ethics opinion that I find quite wonderful, and simple.

As discussed at page 1057 of the UW law review piece, the 1996 Arizona ethics committee wrote "[a]s the Committee has not be[en] able to reach a consensus on whether a lawyer-mediator may draft pleadings and other documents implementing understandings reached by participants in the mediation, lawyers are advised to exercise their own professional judgment on this issue."

The state of Arizona seems to have been living under this gentle common-sense guidance unperturbed, for the past 20 years!



LCR 16. Pretrial Deadlines and Procedures Local Civil Rule

(a) Pretrial Procedures- Civil Cases and Family Law Cases Not Involving Children.

(1) Mandatory Joint Confirmation of Trial Readiness. Parties shall complete a Joint Confirmation of Trial Readiness form, file it with the clerk, and provide a working copy to the assigned judge by the deadline on the case schedule. Failure to complete and file the form by the deadline may result in sanctions, including possible dismissal of this case. The Joint Confirmation of Trial Readiness Report shall include, at minimum:

- (A)** Type of trial and estimated trial length;
- (B)** Trial week attorney conflicts;
- (C)** Interpreter needs;
- (D)** To what extent alternative dispute resolution has been used in the case;
- (E)** Any other factors to assist the court to bring about a just, speedy, and economical resolution of the matter.

(b) Alternative Dispute Resolution (ADR) All cases. See also LCR 4.

(1) Unless excused by (1) an order signed by the judge to whom a case is assigned or (2) a family law commissioner in the case of a family law matter, or (3) the Order Setting Case Schedule issued does not, itself, provide for a deadline for participating in ADR, the parties in every case governed by an order setting case schedule as set forth by LCR 4(b) shall participate in a settlement conference or other alternative dispute resolution process conducted by a neutral third party.

(2) Preparation for Conference.

(A) Attendance and Preparation Required. The attorney in charge of each party's case shall personally attend all alternative resolution proceedings and shall come prepared to discuss in detail and in good faith the following:

- (i)** All liability issues.
- (ii)** All items of special damages or property damage.
- (iii)** The degree, nature and duration of any claimed disability.
- (iv)** General damages.
- (v)** Explanation of position on settlement.

(B) Family Law Cases--Requirements. See LFLR 16.

(3) Parties to Be Available.

(A) Presence in Person. The parties shall personally attend all alternative resolution processes, unless excused, in advance, by the person conducting the proceeding.

(B) Representative of Insurer. Parties whose defense is provided by a liability insurance company need not personally attend the settlement conference or other dispute resolution process, but a representative of the insurer of said parties, if such a representative is available in King County, shall attend in person with sufficient authority to bind the insurer to a settlement. If the representative is not available in King County, the representative shall be available by telephone at the parties' expense.

(4) Failure to Attend. Failure to attend the dispute resolution procedure in accordance with paragraphs (A) and (B) above may result in the imposition of terms and sanctions that the judge may deem appropriate.

(5) Judge Disqualified for Trial. A judge presiding over a settlement conference shall be disqualified from acting as the trial judge in the matter, unless all parties agree in writing that he/she

should so act.

[Amended September 1, 1977; September 1, 1981; amended effective January 1, 1990, September 1, 1992; September 1, 1993; September 1, 1994; September 1, 2001; January 2, 2004; September 1, 2004; September 1, 2007; September 1, 2008; June 1, 2009; September 1, 2012; September 2, 2013; September 2, 2014; September 1, 2015.]

Last Updated August 31, 2015



LFLR 16. Alternative Dispute Resolution (ADR)
Local Family Law Rule

(a) Alternative Dispute Resolution Required. Except in cases involving domestic violence, child support only modifications (RCW 26.09.175), or where waived by a court order, the parties in every case shall participate in a settlement conference, mediation or other alternative dispute resolution process conducted by a neutral third person no later than thirty (30) days before trial.

(b) Attendance at the Alternative Dispute Resolution Proceeding. All parties and their attorneys, if any, shall personally attend and participate in all alternative resolution proceedings and shall come prepared to discuss all unresolved issues.

(c) Required materials. Proposed final orders, a financial declaration and, if parenting is at issue, a proposed parenting plan, as well as any other materials requested by the neutral third person must be provided to the neutral third person and all parties no later than two (2) working days before the day scheduled for the conference. The materials are not to be filed with the Clerk. When the division of property or debt is at issue, the parties shall provide a table listing all their property and debt substantially the following format:

Description of Property	Community or Separate?	Gross and Net value	Amount owed/Cost of Sale	Award to husband or wife?
Description of Debt	Community or Separate?	Amount owing	Post-Separation?	Award to husband or wife?

Totals: Property to Wife \$ _____
 Property to Husband \$ _____
 Debt to Wife \$ _____
 Debt to Husband \$ _____
 Other Requests: _____

The above property and debt distribution is proposed by: _____

Signature: _____ Date: _____

(d) Duty of good faith. Each party is under an obligation to act in good faith in an attempt to resolve the issues without the need for trial. Failure to act in good faith or failure to abide by the provisions of this rule may result in the imposition of sanctions by the assigned judge.

(e) Pretrial Procedures in Family Law Cases Involving Children.

(1) Pretrial Conference. In dissolution cases involving families with children, non-parental custody cases, paternity cases not filed by the prosecutor, domestic relocation cases, cases to establish or disestablish paternity and set residential schedules, and in actions to establish or modify a parenting plan, the Court will schedule a pretrial conference, which shall be attended by the lead trial attorney of each party who is represented by an attorney and by each party who is unrepresented. The conference may include:

- (A) Hearing of non-dispositive pretrial motions;
- (B) Filing of trial briefs;

(C) The Court's estimate of length of trial;

(D) Any other matters that might simplify the issues and bring about a just, speedy and economical resolution of the matter.

[Adopted effective September 1, 2004; Amended effective September 1, 2008; September 2, 2013.]

Last Updated February 17, 2015



Advisory Opinion: 2223

Year Issued: 2012

RPC(s): RPC 1.7, 2.4, GR 24(a), GR24 (b)(4)

Subject: Lawyer-Mediator Preparing Legal Documents for Unrepresented Parties

This opinion concerns:

(1) Whether a lawyer who is acting as a neutral mediator pursuant to RPC 2.4 may prepare a Property Settlement Agreement, Order of Child Support, or Parenting Plan for unrepresented parties; and

(2) Whether a lawyer may be retained as a neutral mediator solely for the purpose of preparing a Property Settlement Agreement, Order of Child Support, and/or Parenting Plan for unrepresented parties, after agreements between the parties on the substance were reached with the assistance of a non-lawyer mediator.

The inquirer states that the preparation of the Property Settlement Agreement, Order of Child Support, and Parenting Plans at issue is not a matter of checking boxes on standardized forms, but frequently involves the drafting of complex and customized provisions using original language and choices that impact the party's legal and property rights. These inquiries are discussed jointly as the discussion applies equally to both inquiries.

GR 24 defines the practice of law as "the application of legal principles and judgment with regard to the circumstances or objectives of persons which require the knowledge and skill of a person trained in law." GR 24(a). GR 24(a)(1-2) states that the practice of law includes giving advice and drafting documents that affect the rights and responsibilities of an entity or person. GR 24(b)(4) states that whether or not they are the practice of law, a lawyer may serve "in a neutral capacity as a mediator [or] arbitrator." Thus the question presented is whether preparing the documents described causes an attorney-mediator to step out of the neutral mediator role and into a representation role.

A lawyer acts as a third-party neutral "when the lawyer assists two or more persons who are not clients of the lawyer to reach a resolution of a dispute or other matter that has arisen between them." RPC 2.4. Where a lawyer acts as a mediator for unrepresented parties the potential for confusion arises regarding the lawyer's role:

Unlike nonlawyers who serve as third-party neutrals, lawyers serving in this role may experience unique problems as a result of differences between the role of a third-party neutral and a lawyer's service as a client representative. The potential for confusion is significant when the parties are unrepresented in the process.

RPC 2.4, Comment 3. This inquiry also implicates RPC 1.7. In a dissolution matter, the

parties' interests may be directly in conflict, thus creating a conflict of interest for any attorney involved in the dual representation of the parties. Texas ethics opinion number 583 discusses the questions raised when an attorney-mediator prepares pleadings for unrepresented parties in a dissolution, and finds that the preparation of the pleadings constitutes the representation of the parties:

Although acting as a mediator with respect to a divorce does not constitute the practice of law, the preparation of documents to implement an agreement for divorce reached in a mediation clearly involves the provision of legal services by a lawyer/mediator...[T]he preparation of documents for both otherwise unrepresented parties in a divorce to effect an agreed settlement would constitute representation of both parties in the divorce litigation.

This Texas opinion prohibits the discussed practice pursuant to Texas Rule of Professional Conduct 1.06(a), which bars a lawyer from representing "opposing parties to the same litigation." Similarly, comment 23 to RPC 1.7 finds the conflict raised by the "representation of opposing parties in the same litigation" nonconsentable. Comment 15 to RPC 1.7 states generally that "under paragraph (b)(1), representation is prohibited if in the circumstances the lawyer cannot reasonably conclude that the lawyer will be able to provide competent and diligent representation."

Other courts have raised concerns about a lawyer's ability to provide competent and diligent representation when representing both parties in a family law case, as discussed in Oregon ethics opinion number 2005-86. See *In re McKee*, 316 Or 114, 849 P2d 509 (1993) (lawyer disciplined for representing husband and wife as copetitioners in divorce; concurring opinion suggests that consent usually will not cure conflict of interest between copetitioners in divorce); *In re Bryant*, 12 DB Rptr 69 (1998) (lawyer who merely "put into legal language" dissolution agreement worked out previously by husband and wife nonetheless had actual conflict of interest when minor children and substantial assets were involved, despite lawyer's recommendation that both clients seek separate counsel); *In re Taub*, 7 DB Rptr 77 (1993) (lawyer disciplined for representing both husband and wife in divorce after wife expressed doubts regarding settlement to lawyer; lawyer's claim that he did not represent either party and provided only scrivener services was rejected).

Consequently, because the preparation of "complex and customized provisions using original language and choices" as part of a mediation for unrepresented parties goes beyond the role of a mediator, and is instead the representation of the parties, the practices raised in this inquiry violate RPC 1.7 and are prohibited.

Advisory Opinions are provided for the education of the Bar and reflect the opinion of the Committee on Professional Ethics (CPE) or its predecessor, the Rules of Professional Conduct Committee. Advisory Opinions issued by the CPE are distinguished from earlier RPC Committee opinions by a numbering format which includes the year followed by a sequential number. Advisory Opinions are provided pursuant to the authorization granted by the Board of Governors, but are not individually approved by the Board and do not reflect the official position of the Bar association. Laws other than the Washington State Rules of Professional Conduct may apply to the inquiry. The Committee's answer does not include or opine about any other applicable law other than the meaning of the Rules of Professional Conduct.

DRAFTING AGREEMENTS AS AN ATTORNEY-MEDIATOR: REVISITING WASHINGTON STATE BAR ASSOCIATION ADVISORY OPINION 2223

Caitlin Park Shin*

Abstract: This Comment argues that Washington State Bar Association Advisory Opinion 2223 (WSBA Advisory Opinion 2223) should be revisited. WSBA Advisory Opinion 2223 reaches the unqualified conclusion that an attorney-mediator violates the Washington Rules of Professional Conduct (RPC) when drafting legal documents such as Property Settlement Agreements, Orders of Child Support, or Parenting Plans for unrepresented parties. WSBA Advisory Opinion 2223 creates confusion because it contains two significant flaws: (1) an omission of relevant comments to the RPC, and (2) an inconsistent reliance on extra-jurisdictional authority. Given WSBA Advisory Opinion 2223's practical ramifications, the opinion should be reconsidered. Reexamining this opinion should include a thorough discussion of all applicable RPC comments and an analysis of guidance from other jurisdictions that have faced the same question. These considerations may lead to a conclusion different from the one reached in WSBA Advisory Opinion 2223. Yet because Washington attorneys turn to WSBA advisory opinions for guidance concerning their ethical obligations, it is particularly important that WSBA Advisory Opinion 2223 be accurate, comprehensive, and clear.

INTRODUCTION

In 2012, the Washington State Bar Association's Rules of Professional Conduct Committee (the Committee) released Advisory Opinion 2223.¹ The Committee drafted Washington State Bar Association Advisory Opinion 2223 (WSBA Advisory Opinion 2223) in response to an inquiry about "[w]hether a lawyer who is acting as a neutral mediator pursuant to RPC 2.4 may prepare a Property Settlement Agreement, Order of Child Support, or Parenting Plan for unrepresented parties."² In WSBA Advisory Opinion 2223, the Committee opined that a lawyer acting as a neutral mediator preparing "complex and customized provisions using original language and choices" in drafting a document for unrepresented parties is (1) practicing law; (2) representing parties who may have interests directly in conflict; and (3)

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1. Wash. State Bar Ass'n Rules of Prof'l Conduct Comm., Advisory Op. 2223 (2012), available at <http://mcle.mywsba.org/IO/print.aspx?ID=1669> [hereinafter *WSBA Advisory Op. 2223*].

2. *Id.*

violating RPC 1.7,³ which governs conflicts of interest with regard to current clients.⁴ Mediators often draft documents such as those WSBA Advisory Opinion 2223 describes.⁵ WSBA Advisory Opinion 2223 has therefore caused confusion and concern among Washington's mediation community.⁶ Consequently, Washington attorney-mediators are left to wonder⁷ whether they may no longer ethically perform a traditional step in the mediation process, as well as what WSBA Advisory Opinion 2223 means for clients seeking mediation's benefits.

This Comment discusses WSBA Advisory Opinion 2223, and so extensively examines the Washington Rules of Professional Conduct (RPC). Many mediators are not attorneys,⁸ and Washington's Uniform Mediation Act does not require a mediator to be an attorney.⁹ But because the RPC generally govern only lawyers,¹⁰ and do not create

3. WASH. RULES OF PROF'L CONDUCT R. 1.7 (2006).

4. *WSBA Advisory Op. 2223*, *supra* note 1.

5. See KIMBERLEE K. KOVACH, *MEDIATION IN A NUTSHELL* 276 (2003) ("In many instances, mediators in divorce cases also took on the responsibility for drafting not only the memorandum of agreement at the close of the mediation, but also the final court documents, including the decree of divorce.").

6. See *Advisory Opinion 2223 Discussion Group*, WASH. ST. B. ASS'N. ALTERNATIVE DISP. RESOL. SEC., <http://wsba-adr.org/groups/group/show?groupUrl=advisory-opinion-2223-discussion-group&id=4703052%3AGroup%3A32862&page=1#comments> (last visited Sept. 14, 2014) (providing a forum discussion in which Washington attorney-mediators express concerns about WSBA Advisory Opinion 2223); WASH. STATE BAR ASS'N. ALT. DISPUTE RESOLUTION SECTION, *21ST NORTHWEST DISPUTE RESOLUTION CONFERENCE SESSION SUMMARIES 7* (2014), available at <http://api.ning.com/files/72Jodi1YAGFvMeXHYY16U9Z13F-8mJC8SVW-gjNQUF28QtfsuVFyD5r7zlcZ40y0Drjzv9Mh-cXDUtleyQNexPfbzmojkr/21stDisputeResolutionConferenceSessionSummaries3.pdf> (summarizing a conference workshop entitled *Scrivener's Dilemma: Mediators Who Draft Settlement Agreements (WSBA Advisory Opinion 2223)*); Bob Collins, *Put Down that Pen . . . and Keep Your Hands up Where I Can See Them!*, COMMON SENSE DIVORCE MEDIATION (Sept. 2, 2013), <http://www.bobcollinsmediation.com/put-that-pen-down-and-keep-your-hands-out-where-i-can-see-them/#more-400> (last visited Aug. 25, 2014) (discussing WSBA Advisory Opinion 2223 and referencing a meeting with a group of concerned mediators in Spokane, Washington).

7. Washington State Bar Association Advisory Opinions are advisory only. *Advisory Opinions*, WASH. ST. B. ASS'N., <http://www.wsba.org/Resources-and-Services/Ethics/Advisory-Opinions> (last visited Sept. 3, 2014); see also *WSBA Advisory Op. 2223*, *supra* note 1 ("Advisory Opinions are provided for the education of the Bar and reflect the opinion of the Rules of Professional Conduct Committee. Advisory Opinions are provided pursuant to the authorization granted by the Board of Governors, but are not individually approved by the Board and do not reflect the official position of the Bar association."). Despite this "advisory only" status, Washington attorneys pay close attention to the WSBA's advisory opinions. See *infra* note 79 and accompanying text.

8. SARAH R. COLE ET AL., *MEDIATION: LAW, POLICY & PRACTICE* § 10:10 (2012–2013 ed.).

9. See Uniform Mediation Act, WASH. REV. CODE § 7.07.080(6) (2012) ("This chapter does not require that a mediator have a special qualification by background or profession.").

10. See generally WASH. RULES OF PROF'L CONDUCT (2006). Note that the RPC's preamble and scope, and indeed the majority of the rules, mention only lawyers and nonlawyer assistants.

concerns for nonlawyer third-party neutrals,¹¹ this Comment's scope will be limited to WSBA Advisory Opinion 2223's effects on attorney-mediators. This Comment will not examine WSBA Advisory Opinion 2223's implications for mediators who are not attorneys.¹²

This Comment explores WSBA Advisory Opinion 2223 in depth, focusing on both its reasoning and its effects on Washington attorney-mediators' practices. Part I gives a brief overview of mediation's history and development. Part II examines the fundamentals of the mediation process, including the principles generally applicable to mediation and mediation's basic steps. Part III takes a detailed look at WSBA Advisory Opinions in general, and WSBA Advisory Opinion 2223 in particular. Part IV analyzes WSBA Advisory Opinion 2223's flaws, focusing on two categories: (1) an omission of relevant comments to the RPC, and (2) an inconsistent reliance on extra-jurisdictional authority. Part V then argues that because of WSBA Advisory Opinion 2223's practical ramifications, revisiting WSBA Advisory Opinion 2223 is necessary. Finally, Part VI maintains that when reexamining WSBA Advisory Opinion 2223, the Committee should carefully consider all applicable RPC comments and seek guidance from other jurisdictions that have faced the same question. The Committee should be open to the possibility that these considerations may lead to a conclusion different from that reached in WSBA Advisory Opinion 2223.

I. A BRIEF HISTORY OF MEDIATION

Mediation is defined broadly as "a process where an impartial person

11. See, e.g., WASH. RULES OF PROF'L CONDUCT R. 2.4 cmt. 3 ("Unlike nonlawyers who serve as third-party neutrals, lawyers serving in this role may experience unique problems . . .").

12. Whether mediation qualifies as the practice of law, therefore indicating that non-attorney mediators are engaging in the unauthorized practice of law, is a serious concern without a clear answer in many jurisdictions. See COLE ET AL., *supra* note 8, § 10:10 ("Despite considerable concern about the possibility that a nonlawyer mediator may engage in the unauthorized practice of law, there are few reported cases."). The American Bar Association Section of Dispute Resolution has stated that "[m]ediation is not the practice of law," a mediator's preparation of a settlement agreement "incorporating the terms of settlement specified by the parties, does not constitute the practice of law," and that all unauthorized practice of law statutes and regulations "should be interpreted and applied in such a manner as to permit all individuals, regardless of whether they are lawyers, to serve as mediators." ABA Section of Dispute Resolution, *Resolution on Mediation and the Unauthorized Practice of Law*, AM. B. ASS'N (Feb. 2, 2002), http://www.americanbar.org/content/dam/aba/migrated/2011_build/dispute_resolution/resolution2002.authcheckdam.pdf. WSBA Advisory Opinion 2223, however, begins with a definition of the practice of law that seems to encompass drafting documents as described in the inquiry. See *WSBA Advisory Op. 2223, supra* note 1. WSBA Advisory Opinion 2223 may thus have unauthorized practice of law implications for non-attorney mediators who draft these documents. This issue is beyond the scope of this Comment.

assists others in reaching a resolution of a conflict or dispute.”¹³ Humans have long practiced mediation. For example, there are reported uses of mediation in China over 4000 years ago.¹⁴ In the United States, mediation became increasingly prominent through the development of labor relations.¹⁵ Additionally, during the twentieth century mediation was used as a cost-effective method for resolving cases outside of adjudication.¹⁶

The modern mediation movement is generally considered to have begun with the Pound Conference in 1976.¹⁷ The Pound Conference was a gathering of judges and scholars in the American Bar Association who wanted to examine why people were dissatisfied with the American justice system.¹⁸ The conference contained a series of discussions and debates, including one that addressed the overcrowded and costly court system.¹⁹ The Pound Conference gave rise to a pilot project creating Neighborhood Justice Centers designed to test mediation’s role in resolving minor disputes.²⁰ These programs grew to become Dispute Resolution Centers, which now exist throughout the United States.²¹ These community mediation centers in turn spurred the development of mediation’s widespread use in the court system.²² Today, mediation programs operate in both state and federal trial and appellate courts, as well as small claims courts.²³ Additionally, mediation is practiced in law schools through mediation courses and clinics.²⁴ The private mediation

13. KOVACH, *supra* note 5, at 16.

14. *Id.* at 17; Cao Pei, *The Origins of Mediation in Traditional China*, 54 DISP. RESOL. J. 32, 32 (1999).

15. KIMBERLEE K. KOVACH, *MEDIATION: PRINCIPLES AND PRACTICE* 31 (3d ed. 2004). For example, the first government-mediated labor settlement in the United States occurred in 1838, when President Martin Van Buren facilitated the settlement of a shipyard workers’ strike. *Our History*, FED. MEDIATION & CONCILIATION SERVICES, <http://www.fmcs.gov/internet/itemDetail.asp?categoryID=21&itemID=15810> (last visited Sept. 3, 2014).

16. COLE ET AL., *supra* note 8, § 4:1; *see also* Reginald Heber Smith, *The Place of Conciliation in the Administration of Justice*, 9 A.B.A. J. 746–47 (1923); George H. Ostenfeld, *Danish Courts of Conciliation*, 9 A.B.A. J. 747–48 (1923); George F. Shafer, *North Dakota’s Conciliation Law*, A.B.A. J. 748–49 (1923); Thomas H. Salmon, *Minneapolis Conciliation Court*, 9 A.B.A. J. 749 (1923); C.J. Dempsey, *Conciliation in the City of Cleveland*, 9 A.B.A. J. 749–51 (1923).

17. KOVACH, *supra* note 15, at 31.

18. *Id.* at 32.

19. *Id.*

20. *Id.*

21. *Id.* at 32–33.

22. *Id.* at 33.

23. KOVACH, *supra* note 5, at 24, 26.

24. *Id.* at 31–32.

practice has grown to the point where it is now considered an independent profession.²⁵

Mediation's prominence in the United States is particularly evident in its role in family law. Thousands of divorce-related disputes use mediation each year.²⁶ Since the late 1970s, the use of mediation in divorce settlement and child custody disputes has increased dramatically.²⁷ No-fault²⁸ and "do-it-yourself" divorces—along with the realization that an adversarial divorce process did not always best serve the parties' interests—contributed to family law mediation's growth.²⁹ Today, the vast majority of family law courts offer mediation services.³⁰ Domestic relations courts sometimes even compel mediation participation by parties who have custody or visitation disputes.³¹ In the family law context, mediation provides parties with a way to achieve flexible resolutions while saving on the costs of litigation.³² Mediation's role in family law illustrates why it is important that attorney-mediators have clear guidance about the ethical permissibility of family law mediation practices.

II. THE MEDIATION PROCESS

The root of the term "mediate" is the Latin word *mediare*, meaning "to be in the middle."³³ According to the Washington Uniform Mediation Act,³⁴ mediation is "a process in which a mediator facilitates communication and negotiation between parties to assist them in reaching a voluntary agreement regarding their dispute."³⁵ The

25. *Id.* at 34.

26. COLE ET AL., *supra* note 8, § 15.2.

27. *Id.* § 4:3; KOVACH, *supra* note 5, at 28.

28. Washington is a no-fault divorce state. *See* WASH. REV. CODE § 26.09.080 (2012). This means that in a marriage dissolution proceeding the trial court may not consider "marital misconduct" when making a disposition of the property and liabilities of the parties. *Id.*; *see also In re Marriage of Muhammad*, 153 Wash. 2d 795, 803–04, 108 P.3d 779, 783–84 (2005) (holding that trial court's division of property in dissolution decree was an abuse of discretion because trial court considered marital fault).

29. KOVACH, *supra* note 5, at 28.

30. Peter Salem, *The Emergence of Triage in Family Court Services: The Beginning of the End for Mandatory Mediation?*, 47 FAM. CT. REV. 371, 373 (2009) (citing a survey showing that ninety-two percent of family courts have mediation programs).

31. COLE ET AL., *supra* note 8, § 15.2.

32. *Id.* § 4:3.

33. MERRIAM WEBSTER'S COLLEGIATE DICTIONARY 770 (11th ed. 2003).

34. Uniform Mediation Act, WASH. REV. CODE ch. 7.07 (2012).

35. *Id.* § 7.07.010(1).

mediation process can take many forms; yet there are principles that are generally applicable to all mediations and steps that most mediations follow.³⁶ This section explores these general principles and steps.

A. Key Principles of Mediation

Mediation involves a neutral third party, called the mediator, who helps the parties in reaching a mutually acceptable agreement.³⁷ Mediation is a consensual process in which the mediator has no power to rule or to compel the parties to agree to a particular resolution.³⁸ Some courts or contracts mandate mediation, but such mediations are mandatory only in the sense that the parties are required to attend the mediation and try the process.³⁹ The parties can discuss what they wish without using evidentiary or procedural rules.⁴⁰ Mediation is, by definition, voluntary and both parties must agree to those resolutions reached.⁴¹

Self-determination is a key element in the mediation process.⁴² “Self-determination is the act of coming to a voluntary, uncoerced decision in which each party makes free and informed choices as to process and outcome.”⁴³ This principle requires that the individuals are free to make their own decisions throughout the mediation.⁴⁴ How to proceed in the mediation, and whether to resolve a dispute or create an agreement, and on what terms, is at the discretion of each mediation party.⁴⁵ Self-determination sets mediation apart from other dispute resolution processes, such as adjudication or arbitration, in which a third party may make the decision for the parties.⁴⁶ Self-determination gives the parties the ability to be the final decision makers in their dispute, and is therefore an important aspect of mediation.⁴⁷

36. KOVACH, *supra* note 5, at 40; *see also* KOVACH, *supra* note 15, at 27–28 (listing eleven different basic definitions of mediation).

37. KOVACH, *supra* note 15, at 26.

38. DOUGLAS N. FRENKEL & JAMES H. STARK, *THE PRACTICE OF MEDIATION* 3 (Vicki Been et al. eds., 2d ed. 2012).

39. *Id.*

40. *Id.*

41. *Id.*

42. KOVACH, *supra* note 5, at 230.

43. MODEL STANDARDS OF CONDUCT FOR MEDIATORS Standard I.A. (2005).

44. KOVACH, *supra* note 5, at 165–66.

45. *Id.* at 36–37.

46. *Id.* at 36.

47. *Id.* at 36–37.

B. Mediation's Basic Steps

Mediation does not have to follow a set format,⁴⁸ but most mediation models include the same basic steps.⁴⁹ The first step in mediation is the mediator's opening statement.⁵⁰ This opening generally encompasses introductions, confirms the presence and authority of the necessary parties, gives an overview of relevant principles, and provides an explanation of the mediation process.⁵¹ In some mediations, although not all, after the first step the mediator will move the parties into a caucus and proceed in a shuttle-style mediation, where the mediator moves back and forth between the two parties.⁵² Next, the mediator may give the parties the opportunity to describe the situation leading to the mediation.⁵³ In this stage, the mediator may ask clarifying questions and reflect back the parties' statements.⁵⁴ Once both parties have had the opportunity to express their positions, the mediator may set a detailed agenda outlining which issues the parties wish to address.⁵⁵ The mediation then proceeds to negotiation, in which the mediator facilitates conversation and helps the parties contemplate their goals and options.⁵⁶ If the negotiating phase results in an agreement, the next step is often to outline the arrangement.⁵⁷

The final product created in the agreement drafting stage can take several forms. In some mediations, the mediator creates a synopsis of the main terms of agreement that the parties and their lawyers later use to create detailed agreement documents.⁵⁸ Sometimes the mediator drafts a formal agreement but the parties wait to review the document with their

48. See generally DWIGHT GOLANN & JAY FOLBERG, *MEDIATION: THE ROLES OF ADVOCATE AND NEUTRAL* 145 (Vicki Been et al. eds., 2006) ("A mediator has almost complete freedom to improvise, and in practice good neutrals use widely varying approaches."); KOVACH, *supra* note 5, at 39 ("While guidelines do exist, such guidelines are rarely precise or detailed.")

49. KOVACH, *supra* note 5, at 40 ("Over the years, numerous outlines or views of mediation have evolved. A variety of stages or segments of the mediation process have been outlined. These range from a four or five-stage model to one with ten or more stages.")

50. FRENKEL & STARK, *supra* note 38, at 134.

51. *Id.* at 135.

52. COLE ET AL., *supra* note 8, § 3:3. Mediation can occur with the parties in the same room or in separate rooms. FRENKEL & STARK, *supra* note 38, at 260. A mediator can also meet with the parties both together and in a separate caucus. KOVACH, *supra* note 5, at 43.

53. KOVACH, *supra* note 5, at 42.

54. *Id.* at 148.

55. *Id.* at 44.

56. *Id.*

57. *Id.*

58. *Id.* at 208.

own attorneys before signing.⁵⁹ In other cases, the parties sign the mediation agreement at the conclusion of the mediation.⁶⁰ A mediated agreement can take the form of a simple outline.⁶¹ Other cases require formal contracts using legal terms.⁶² In family law cases, the mediation agreement can include form documents used to effectuate the divorce.⁶³ These documents can include a Property Settlement Agreement,⁶⁴ an Order of Child Support, or a Parenting Plan.⁶⁵

The mediator's role in drafting the agreement can vary. Sometimes the parties or their attorneys draft the agreement.⁶⁶ In other mediations, the mediator may only review his or her notes from the mediation's discussions with the parties to help them formalize their agreement.⁶⁷ In many instances, the mediator drafts the agreement for the parties.⁶⁸ The mediator asks questions to ensure the agreement is clear and specific.⁶⁹ Regardless of the form of the agreement, "it remains the mediator's duty to be sure that the participants do not leave the mediation without a complete understanding of the details of their agreement."⁷⁰ The mediator serves an important purpose in implementing the mediated agreement,⁷¹ and therefore needs clear guidance about the attorney-mediator's ethical responsibilities at this final mediation stage.

III. WSBA ADVISORY OPINION 2223

This Section explores WSBA Advisory Opinion 2223 in detail. Part A begins with a discussion of WSBA advisory opinions in general, with a particular focus on what these opinions mean for Washington attorneys.

59. KOVACH, *supra* note 15, at 350.

60. *Id.* at 348.

61. *See id.* at 346.

62. *Id.*

63. KOVACH, *supra* note 5, at 28.

64. A Property Settlement Agreement is "[a] contract that divides up the assets of divorcing spouses and is incorporated into a divorce decree." BLACK'S LAW DICTIONARY 1338 (9th ed. 2009) (giving the definition of "property settlement," then stating that it is "[a]lso termed . . . *property settlement agreement*." (emphasis in original)).

65. A Parenting Plan is "[a] plan that allocates custodial responsibility and decision-making authority for what serves the child's best interests and that provides a mechanism for resolving any later disputes between parents." BLACK'S LAW DICTIONARY 1224 (9th ed. 2009).

66. KOVACH, *supra* note 5, at 205.

67. *Id.* at 206.

68. *Id.* at 205.

69. KOVACH, *supra* note 15, at 343-44.

70. KOVACH, *supra* note 5, at 207.

71. *See id.*

Next, Part B provides an overview of WSBA Advisory Opinion 2223's factual background. Finally, Part C examines WSBA Advisory Opinion 2223's specifics: what it says, what authority it relies on, and what conclusions it draws.

A. Washington State Bar Association Advisory Opinions in General

WSBA advisory opinions are influential in the Washington legal community. While the Washington Supreme Court approves and adopts Washington's RPC,⁷² the WSBA claims "a major responsibility" for the ethics rules governing law practice in Washington.⁷³ To carry out this responsibility and to aid Washington attorneys in understanding their ethical duties, the WSBA issues advisory opinions.⁷⁴ These advisory opinions are issued by a Bar Association committee.⁷⁵ The opinions concern both new and recurring ethical issues WSBA members face, and are often issued in response to ethical questions WSBA members submit.⁷⁶ WSBA advisory opinions are advisory only⁷⁷—the Washington State Supreme Court "bears the ultimate responsibility for lawyer discipline."⁷⁸ Despite this "advisory only" status, Washington attorneys pay close attention to the WSBA's advisory opinions. Washington attorneys and courts both cite WSBA advisory opinions to lend authority to arguments.⁷⁹ Furthermore, Washington Court Rule

72. *Advisory Opinions*, WASH. ST. B. ASS'N, <http://www.wsba.org/Resources-and-Services/Ethics/Advisory-Opinions> (last visited Sept. 3, 2014).

73. *Id.*

74. *Id.*

75. *Id.* Currently this committee is called the Committee on Professional Ethics, although prior to October 1, 2012, this committee was called the Rules of Professional Conduct Committee. *Rules of Professional Conduct Committee*, WASH. STATE BAR ASS'N, <http://www.wsba.org/Legal-Community/Committees-Boards-and-Other-Groups/RPC-Committee> (last visited Sept. 3, 2014).

76. *See Rules of Professional Conduct Committee*, WASH. ST. B. ASS'N, <http://www.wsba.org/Legal-Community/Committees-Boards-and-Other-Groups/RPC-Committee> (last visited Sept. 3, 2014); *Advisory Opinions*, WASH. ST. B. ASS'N, <http://www.wsba.org/Resources-and-Services/Ethics/Advisory-Opinions> (last visited Sept. 3, 2014).

77. *Advisory Opinions*, WASH. ST. B. ASS'N, <http://www.wsba.org/Resources-and-Services/Ethics/Advisory-Opinions> (last visited Sept. 3, 2014); *see also WSBA Advisory Op. 2223*, *supra* note 1 ("Advisory Opinions are provided for the education of the Bar and reflect the opinion of the Rules of Professional Conduct Committee. Advisory Opinions are provided pursuant to the authorization granted by the Board of Governors, but are not individually approved by the Board and do not reflect the official position of the Bar association.").

78. *In re Disciplinary Proceeding Against DeRuiz*, 152 Wash. 2d 558, 571, 99 P.3d 881, 888 (2004).

79. *See, e.g., Rafel Law Group PLLC v. Defoor*, 176 Wash. App. 210, 226–28, 308 P.3d 767, 776–77 (2013) (Schindler, J., concurring) (citing Wash. State Bar Ass'n Rules of Prof'l Conduct Comm., Advisory Opinion 2209 (2012) to demonstrate the current interpretation of WASH. RULES

General Rule 12.1 specifically authorizes the WSBA to “inform and advise lawyers regarding their ethical obligations.”⁸⁰ Finally, the WSBA’s own goal of “assist[ing] members in interpreting their ethical obligations by issuing advisory opinions on specific issues,”⁸¹ supports Washington attorneys’ reliance on WSBA Advisory Opinions. This reliance explains why it is so important that WSBA Advisory Opinions provide clear guidance.

B. WSBA Advisory Opinion 2223’s Background

WSBA Advisory Opinion 2223 was issued in 2012 in response to an inquiry asking whether a lawyer acting as a neutral mediator under RPC 2.4 may prepare specific family law documents for unrepresented parties.⁸² These documents included a Property Settlement Agreement, an Order of Child Support, and a Parenting Plan.⁸³ The inquirer stated that preparing these documents “is not a matter of checking boxes on standardized forms, but frequently involves the drafting of complex and customized provisions using original language and choices that impact the party’s legal and property rights.”⁸⁴ In response to this question and this factual premise, the Committee issued WSBA Advisory Opinion 2223.

C. WSBA Advisory Opinion 2223’s Specifics: Its Statements, Its Authority, and Its Conclusions

WSBA Advisory Opinion 2223 concludes that attorney-mediators violate the Washington RPC when they draft documents such as Property Settlement Agreements, Orders of Child Support, or Parenting Plans as part of a mediation for unrepresented parties. WSBA Advisory Opinion 2223 begins by citing Washington State Courts General Rule

OF PROF’L CONDUCT R. 1.8(a)); *Ferguson Firm, PLLC v. Teller & Associates, PLLC*, 178 Wash. App. 1033, *9 (2013) (citing Wash. State Bar Ass’n, Advisory Opinion 1522 (1993) to define the term “legal responsibility” as used in WASH. RULES OF PROF’L CONDUCT R. 1.5(e)); *Mayers v. Bell*, 167 Wash. App. 1039, *3 (2012) (analyzing Wash. State Bar Ass’n, Advisory Opinions 1610 (1995) and 1838 (1998) after defendant law firm argued reliance on these opinions).

80. WASH. CT. GEN. R. 12.1(b)(5) (2013), available at http://www.courts.wa.gov/court_rules/?fa=court_rules.display&group=ga&set=gr&ruleid=GAGR12.1.

81. *Advisory Opinions*, WASH. STATE BAR ASS’N, <http://www.wsba.org/Resources-and-Services/Ethics/Advisory-Opinions> (last visited Sept. 3, 2014).

82. *WSBA Advisory Op. 2223*, *supra* note 1.

83. *Id.*

84. *Id.*

(GR) 24⁸⁵ to define the practice of law.⁸⁶ GR 24 states that “[t]he practice of law is the application of legal principles and judgment with regard to the circumstances or objectives of another entity or person(s) which require the knowledge and skill of a person trained in the law.”⁸⁷ WSBA Advisory Opinion 2223 continues to cite GR 24(a)(1)–(2) for the proposition that “the practice of law includes giving advice and drafting documents that affect the rights and responsibilities of an entity or person.”⁸⁸ WSBA Advisory Opinion 2223 recognizes that GR 24(b)(4) permits a lawyer “to serve ‘in a neutral capacity as a mediator,’”⁸⁹ regardless of whether this service constitutes the practice of law.⁹⁰ WSBA Advisory Opinion 2223 then asks whether the preparation of documents moves an attorney-mediator out of a neutral role and into a representation role. WSBA Advisory Opinion 2223 cites RPC 2.4⁹¹ to explain that a lawyer is a third-party neutral “when the lawyer assists two or more persons who are not clients of the lawyer to reach a resolution of a dispute or other matter that has arisen between them.”⁹² WSBA Advisory Opinion 2223 cautions that when the lawyer mediates for unrepresented parties there is potential for confusion regarding the lawyer’s role.⁹³

WSBA Advisory Opinion 2223 next examines RPC 1.7.⁹⁴ WSBA Advisory Opinion 2223 begins this discussion by stating that a conflict of interest may exist for an attorney representing both parties in a dissolution matter because “the parties’ interests may be directly in conflict.”⁹⁵ To explain how other jurisdictions have handled the ethics involved in this scenario, WSBA Advisory Opinion 2223 refers to Texas Ethics Opinion Number 583 (TX Ethics Opinion 583).⁹⁶ TX Ethics Opinion 583 concludes that while divorce mediation is not the practice

85. WASH. CT. GEN. R. 24(a) (2002), available at http://www.courts.wa.gov/court_rules/?fa=court_rules.rulesPDF&ruleId=gagr24&pdf=1.

86. *Id.*

87. *Id.*

88. *WSBA Advisory Op. 2223*, *supra* note 1.

89. WASH. CT. GEN. R. 24(b)(4), available at http://www.courts.wa.gov/court_rules/?fa=court_rules.rulesPDF&ruleId=gagr24&pdf=1.

90. *Id.*

91. WASH. RULES OF PROF’L CONDUCT R. 2.4 (2006).

92. *WSBA Advisory Op. 2223*, *supra* note 1 (citing WASH. RULES OF PROF’L CONDUCT R. 2.4).

93. *Id.*

94. *See generally id.*

95. *Id.*

96. *Id.*; State Bar of Tex. Prof’l Ethics Comm., Ethics Op. 583 (2008).

of law, preparing documents implementing a divorce agreement reached through mediation “clearly involves” the lawyer-mediator’s providing legal services and therefore preparing documents for unrepresented parties to bring about the settlement constitutes “representation of both parties in the divorce litigation.”⁹⁷ TX Ethics Opinion 583 considers this practice a violation of a Texas ethics rule prohibiting lawyers from representing parties opposed in the same litigation.⁹⁸ WSBA Advisory Opinion 2223 takes a similar position, citing RPC 1.7 comment 23 and comment 15 for the principles that, respectively, “representation of opposing parties in the same litigation” is non-consentable, and that representation is prohibited when an attorney “cannot reasonably conclude that the lawyer will be able to provide competent and diligent representation.”⁹⁹

WSBA Advisory Opinion 2223 next briefly examines three Oregon cases as examples of other jurisdictions having concerns about an attorney’s “ability to provide competent and diligent representation when representing both parties in a family law case.”¹⁰⁰ The first case WSBA Advisory Opinion 2223 cites is *In re McKee*.¹⁰¹ WSBA Advisory Opinion 2223 states that the Oregon Supreme Court in *In re McKee* disciplined a lawyer for representing copetitioners in divorce, and that the concurrence suggested “consent usually will not cure conflict of interest between copetitioners in divorce.”¹⁰² WSBA Advisory Opinion 2223 also refers to *In re Bryant*,¹⁰³ in which a lawyer had a conflict of interest when putting into legal terms a dissolution agreement the divorcing couple developed.¹⁰⁴ Finally, WSBA Advisory Opinion 2223 mentions *In re Taub*,¹⁰⁵ in which the Oregon Supreme Court sanctioned a lawyer for representing both parties in a divorce after rejecting the lawyer’s defense that he was only a scrivener.¹⁰⁶ From these three cases, WSBA Advisory Opinion 2223 draws the conclusion that other

97. *WSBA Advisory Op. 2223*, *supra* note 1; State Bar of Tex. Prof’l Ethics Comm., Ethics Op. 583 (2008).

98. *WSBA Advisory Op. 2223*, *supra* note 1; State Bar of Tex. Prof’l Ethics Comm., Ethics Op. 583 (2008).

99. *WSBA Advisory Op. 2223*, *supra* note 1 (citing WASH. RULES OF PROF’L CONDUCT R. 1.7 cmt. 15 (2006)).

100. *Id.*

101. 849 P.2d 509 (Or. 1993).

102. *WSBA Advisory Op. 2223*, *supra* note 1.

103. 12 Disciplinary B. Rptr 69 (Or. 1998).

104. *See generally id.*

105. 7 Disciplinary B. Rptr. 77 (Or. 1998).

106. *See generally id.*

jurisdictions are similarly uneasy with joint representation of parties in family law cases.¹⁰⁷

WSBA Advisory Opinion 2223 concludes that “because the preparation of ‘complex and customized provisions using original language and choices’ as part of a mediation for unrepresented parties goes beyond the role of a mediator, and is instead the representation of the parties, the practices raised in this inquiry violate RPC 1.7 and are prohibited.”¹⁰⁸

In sum, WSBA Advisory Opinion 2223 takes the following positions:

1. Under GR 24, drafting documents that impact parties’ legal and property rights constitutes the practice of law.¹⁰⁹
2. Under GR 24(b) and RPC 2.4, an attorney may serve as a neutral mediator, regardless of whether the attorney-mediator’s service constitutes the practice of law.¹¹⁰
3. Yet, as explained in RPC 2.4, there is potential confusion regarding the attorney-mediator’s role when the mediation parties are unrepresented.¹¹¹
4. The question becomes whether preparing documents as described in this fact pattern removes an attorney from a neutral role to a role of representation. WSBA Advisory Opinion 2223 refers to a Texas ethics opinion that found (1) preparing documents implementing a divorce agreement reached through mediation is providing legal services, (2) preparing documents for unrepresented parties to bring about the settlement constitutes representation of both parties, and (3) preparing divorce documents for unrepresented parties violates a Texas ethics rule prohibiting lawyers from representing adverse parties in the same litigation.¹¹²
5. Under RPC 1.7, a conflict of interest may exist for an attorney representing both parties in a dissolution because the parties’ interests may be directly opposed.¹¹³ Comment 23 to RPC 1.7 clarifies that representation of opposing parties in the same litigation is a nonconsentable conflict of interest.¹¹⁴

107. *WSBA Advisory Op. 2223, supra* note 1.

108. *Id.*

109. *Id.*

110. *Id.*

111. *Id.*

112. *Id.*; State Bar of Tex. Prof’l Ethics Comm., Ethics Op. 583 (2008).

113. WASH. RULES OF PROF’L CONDUCT R. 1.7 (2006).

114. WASH. RULES OF PROF’L CONDUCT R. 1.7 cmt. 23.

Comment 15 to RPC 1.7 prohibits a representation when the lawyer “cannot reasonably conclude that the lawyer will be able to provide competent and diligent representation.”¹¹⁵

6. Other jurisdictions have concerns about an attorney’s “ability to provide competent and diligent representation when representing both parties in a family law case,” as shown in three Oregon disciplinary cases.¹¹⁶
7. WSBA Advisory Opinion 2223 concludes that preparing the documents described in the inquiry for unrepresented parties “goes beyond the role of a mediator, and is instead the representation of the parties,” and the practice is therefore prohibited as a violation of RPC 1.7.¹¹⁷

WSBA Advisory Opinion 2223’s conclusion draws a clear line: it is not ethically permissible for attorney-mediators to draft documents such as Property Settlement Agreements, Orders of Child Support, or Parenting Plans as part of a mediation for unrepresented parties.¹¹⁸ This opinion, however, contains significant flaws that give rise to questions about its accuracy. Part IV explores these flaws, and their ramifications, in detail.

IV. WSBA ADVISORY OPINION 2223’S FLAWS

This Part argues that WSBA Advisory Opinion 2223 is flawed and proposes that the Committee reexamine the opinion. WSBA Advisory Opinion 2223’s flaws fall into two categories: (1) an omission of relevant comments to the RPC, and (2) an inconsistent reliance on extra-jurisdictional authority. WSBA Advisory Opinion 2223’s practical ramifications make it necessary to revisit this opinion. When reconsidering WSBA Advisory Opinion 2223, the Committee should carefully examine all applicable comments to the RPC and look for guidance from other jurisdictions who have addressed WSBA Advisory Opinion 2223’s ethical considerations. Revisiting WSBA Advisory Opinion 2223 may involve drawing a different conclusion.

115. *WSBA Advisory Op. 2223*, *supra* note 1 (citing WASH. RULES OF PROF’L CONDUCT R. 1.7 cmt. 15).

116. *Id.*

117. *Id.*

118. *See generally id.*

A. *WSBA Advisory Opinion 2223 Does Not Discuss Relevant Comments to RPC 1.7*

WSBA Advisory Opinion 2223 cites RPC 1.7, governing conflicts of interest between current clients,¹¹⁹ in support of its conclusion that an attorney-mediator who drafts the described documents is in violation of the Washington RPC.¹²⁰ WSBA Advisory Opinion 2223 also references RPC 1.7 comment 23 and RPC 1.7 comment 15.¹²¹ However, two relevant comments to RPC 1.7—comments 17 and 28—are omitted from WSBA Advisory Opinion 2223’s analysis.¹²² This section explores the idea that RPC 1.7 comments 17 and 28 may permit an attorney-mediator to draft the documents at issue in WSBA Advisory Opinion 2223 without violating his or her ethical obligations. This section argues that WSBA Advisory Opinion 2223’s analysis is incomplete without considering RPC 1.7 comments 17 and 28.

1. *RPC 1.7 Comment 17*

In certain circumstances a concurrent conflict of interest cannot be waived.¹²³ RPC 1.7 comment 17 describes how to determine whether clients are aligned directly against each other such that the representation is impermissible under RPC 1.7(b)(3).¹²⁴ RPC 1.7(b)(3) prohibits representation that involves a claim by one client against another client in the same litigation or proceeding before a tribunal.¹²⁵ Comment 17 provides that determining “[w]hether clients are aligned directly against each other within the meaning of [(b)(3)] requires examination of the context of the proceeding.”¹²⁶ Comment 17 proceeds to state that “this paragraph does not preclude a lawyer’s multiple representation of adverse parties to a mediation (because mediation is not a proceeding before a ‘tribunal’ under Rule 1.0(m)).”¹²⁷ Comment 17 is directly

119. WASH. RULES OF PROF’L CONDUCT R. 1.7.

120. *WSBA Advisory Op. 2223*, *supra* note 1 (citing WASH. RULES OF PROF’L CONDUCT R. 1.7 & 2.4 (2006)).

121. *See generally id.*

122. *WSBA Advisory Op. 2223*, *supra* note 1.

123. *See* WASH. RULES OF PROF’L CONDUCT R. 1.7 (prohibiting representation in which one client asserts a claim against another client represented by the lawyer in the same litigation).

124. *Id.* at R. 1.7 cmt. 17.

125. *Id.* at R. 1.7(b)(3).

126. *Id.* at R. 1.7 cmt. 17.

127. *Id.* The RPC define “tribunal” as “a court, an arbitrator in a binding arbitration proceeding or legislative body, administrative agency or other body acting in an adjudicative capacity. A legislative body, administrative agency or other body acts in an adjudicative capacity when a neutral

applicable to the mediation context but WSBA Advisory Opinion 2223 does not mention it.¹²⁸

Considering comment 17 might have led the Committee to draw a different conclusion. WSBA Advisory Opinion 2223's conclusion assumes the parties in the inquiry have directly opposed interests.¹²⁹ But this need not be an assumption—comment 17 provides a framework for analyzing whether the interests of the parties indeed conflict. Under comment 17, one seeking to determine if RPC 1.7(b)(3) is satisfied would first examine the context of the proceeding¹³⁰—in this case, the mediation. RPC 1.7(b)(3) prohibits only representation that concerns a claim by one client against another “in the same litigation or proceeding before a tribunal.”¹³¹ Comment 17 expressly states that mediation is not a proceeding before a tribunal.¹³² Thus, the mediation context is not one that automatically contains clients aligned directly against each other under RPC 1.7(b)(3). Therefore, under comment 17's analysis, the fact pattern at issue in WSBA Advisory Opinion 2223 does not automatically violate RPC 1.7(b)(3). WSBA Advisory Opinion 2223 does not explore comment 17's impact on the inquiry.

2. *RPC 1.7 Comment 28*

Furthermore, RPC 1.7 comment 28 explains that conflict consentability “depends on the circumstances.”¹³³ Comment 28 gives an example to illustrate this concept: a lawyer may not represent multiple parties with “fundamentally antagonistic” interests in the same negotiation, but may represent both parties when the clients' interests are “generally aligned” even though some differences exist.¹³⁴

Comment 28 is particularly relevant in the mediation context. When documents are drafted at the end of the mediation, the parties have already reached an agreement. The parties' interests are perhaps no longer directly opposed, but instead aligned with a common goal: memorializing the results of their mediation. Indeed, at the agreement-

official, after the presentation of evidence or legal argument by a party or parties, will render a binding legal judgment directly affecting a party's interests in a particular matter.” WASH. RULES OF PROF'L CONDUCT R. 1.0(m).

128. *WSBA Advisory Op. 2223*, *supra* note 1.

129. *Id.*

130. WASH. RULES OF PROF'L CONDUCT R. 1.7 cmt. 17.

131. *Id.* at R. 1.7(b)(3).

132. *Id.*

133. *Id.* at R. 1.7 cmt. 28.

134. *Id.*

writing phase it is likely the parties' interests are more aligned than they have been at any point during the mediation. If a lawyer-mediator is representing the parties during the document drafting stage, it is possible that the lawyer is not representing parties with "fundamentally antagonistic" interests in the same negotiation, but instead is aiding parties with "generally aligned" interests. Comment 28 does not require the interests to be completely aligned—instead it permits some differences to exist without preventing the attorney from representing both parties.¹³⁵ Comment 28 gives examples of scenarios where an attorney may commonly represent parties with differing interests, including when "arranging a property distribution in settlement of an estate."¹³⁶ The property distribution scenario comment 28 describes is analogous to WSBA Advisory Opinion 2223's context, when the parties share a common goal of drawing up their agreements (including a Property Settlement Agreement) to implement their divorce. It is therefore conceivable that the attorney-mediator in WSBA Advisory Opinion 2223's inquiry is faced with a consentable conflict of interest, rather than a conflict of interest in clear violation of RPC 1.7.

This analysis extends further. RPC 1.7(a) prohibits joint representation when "the representation of one client will be directly adverse to another client."¹³⁷ One may wonder whether parties who reach a complete agreement through mediation necessarily qualify as "adverse." Things are adverse when they are "acting against or in a contrary direction."¹³⁸ At the end of a successful mediation, two parties will have reached a full concurrence on how to resolve their dispute. The only remaining task is to put that agreement in writing. The family law system requires that to completely resolve the dispute (the divorce), this agreement must take the form of specific, required paperwork that must be filed with the court.¹³⁹ This one remaining task does not seem to fit the definition of "adverse."¹⁴⁰ To the contrary, the parties now have the

135. *Id.* ("[C]ommon representation is permissible where the clients are generally aligned in interest even though there is some difference in interest among them.")

136. *Id.*

137. *Id.* at R. 1.7(a).

138. MERRIAM WEBSTER'S COLLEGIATE DICTIONARY 19 (11th ed. 2003).

139. See 20 KENNETH W. WEBER ET AL., WASHINGTON PRACTICE, FAMILY & COMMUNITY PROPERTY LAW § 31.4 (2013) ("Legislation enacted in 1990 directed the Office of the Administrator for the Courts to develop standardized forms for most family law proceedings, including dissolutions. These forms have now been promulgated and, with few exceptions, their use is mandatory.")

140. The Utah Rules of Professional Conduct support this argument. See UTAH RULES OF PROF'L CONDUCT R. 2.4 cmt. 5(a) (2006) ("Rule 2.4(c) is intended to permit a lawyer-mediator for parties

common goal of completing the documents necessary to finalize their agreement. Because divorcing parties at the conclusion of mediation proceedings are not necessarily “adverse,” it seems there may be situations in which drafting documents, such as those described in WSBA Advisory Opinion 2223, is not a violation of RPC 1.7.

In fact, initially WSBA Advisory Opinion 2223 seems to consider this possibility when it states “[i]n a dissolution matter, the parties’ interests *may* be directly in conflict.”¹⁴¹ Yet, WSBA Advisory Opinion 2223 then concludes that “the practices raised in this inquiry violate RPC 1.7 and are prohibited.”¹⁴² This unqualified prohibition is puzzling, given the opinion’s recognition that directly conflicting interests are not a certainty and in light of comment 17’s framework for determining when a conflict is consentable. WSBA Advisory Opinion 2223 is flawed because of this gap in analysis.

B. WSBA Advisory Opinion 2223 Inconsistently Relies on Extra-Jurisdictional Authority

WSBA Advisory Opinion 2223 is also flawed because of the authority it cites. WSBA Advisory Opinion 2223 relies on two sources of authority outside Washington: three Oregon attorney discipline cases and TX Ethics Opinion 583.¹⁴³ This section explains why this reliance is misguided and why these authorities are insufficient to support WSBA Advisory Opinion 2223’s position. First, Part 1 explores why the Oregon cases do not adequately support WSBA Advisory Opinion 2223’s conclusion. Next, Part 2 explains that WSBA Advisory Opinion 2223’s analysis is incomplete because it relies solely on TX Ethics Opinion 583 while neglecting to consider the positions of many other jurisdictions that have explored this ethical issue. Part 2 also provides an overview of these other jurisdictions’ positions. Finally, Part 3 examines New York State Bar Association Committee on Professional Ethics Opinion 736 (NY Ethics Opinion 736)¹⁴⁴ as an example of how a thorough

who have successfully resolved all issues between them to draft a legally binding agreement and, to the extent necessary or appropriate, record or file related papers or pleadings with an appropriate tribunal. In so doing, the lawyer will be jointly representing the parties in their common goal of effecting proper legal filings or obtaining judicial approval of their fully resolved issues. Because the parties in this situation have fully resolved their issues, they are not considered “adverse” under Rule 1.7(a)(1).”

141. *WSBA Advisory Op. 2223*, *supra* note 1 (emphasis added).

142. *Id.*

143. *Id.*

144. N.Y. State Bar Ass’n Comm. on Prof’l Ethics, Ethics Op. 736 (2001).

consideration of other opinions might lead to a conclusion different from that reached in WSBA Advisory Opinion 2223.

I. The Oregon Disciplinary Cases Are Distinguishable and Do Not Adequately Support WSBA Advisory Opinion 2223's Conclusion

WSBA Advisory Opinion 2223 references three attorney discipline cases from Oregon, but its reliance on these cases is flawed. The first case, *In re Conduct of McKee*,¹⁴⁵ is distinguishable from the facts in WSBA Advisory Opinion 2223's inquiry. Mr. McKee was not functioning as a mediator; the decision does not mention mediation at all.¹⁴⁶ While it is true that Mr. McKee was disciplined for representing copetitioners in divorce,¹⁴⁷ Mr. McKee also committed a number of other ethical breaches. In particular, he failed to advise the parties that their interests were potentially in conflict.¹⁴⁸ Mr. McKee also later provided both parties with legal advice in disputes concerning the completed divorce agreement¹⁴⁹ and then, without consent, sued one party on behalf of the other in a claim involving the family home, one asset at issue in the dissolution agreement.¹⁵⁰ The Oregon Bar did not discipline Mr. McKee for the drafting of the divorce agreement, and the Court's opinion in *McKee* does not mention this action as a violation.¹⁵¹

Significantly, the Oregon State Supreme Court's decision in *McKee* supports the proposition that it is at least possible to represent adverse parties in a divorce proceeding.¹⁵² Under the Oregon Disciplinary Rules (Oregon DR), the Court explained, "[i]n situations involving dissolution of marriage where the parties have minor children and jointly acquired assets, it may seldom be 'obvious that the lawyer can adequately represent the interest of each [client]'"¹⁵³ Thus, while it may be seldom, it was still possible to represent copetitioners in a divorce. The Oregon DR were amended during *McKee*, and the Court noted that under the new rule there were "ten factors that must be present in order for a

145. 849 P.2d 509 (Or. 1993), *reinstatement granted sub nom. In re* Reinstatement of McKee, 37 P.3d 987 (2002).

146. *See generally id.*

147. *See generally id.*

148. *Id.* at 512.

149. *Id.*

150. *Id.* at 513.

151. *See generally id.*

152. *Id.* at 516–17.

153. *Id.* at 517.

lawyer's joint representation of parties in a marital dissolution to avoid an actual conflict of interest."¹⁵⁴ Joint representation of a divorcing couple was therefore permissible under the new Oregon ethics rules as well.

In *McKee*, two justices concurred in the result but "[wrote] separately to venture the opinion that rarely, if ever, can a lawyer represent both spouses in a marital dissolution proceeding."¹⁵⁵ With this hesitation in mind, the concurrence nevertheless continued on to say: "The law, and the Disciplinary Rules, should be sensitive to the all too common situation in which neither spouse can afford *one* lawyer, much less two. Perhaps allowing the lawyer to 'represent' both is preferable to having one spouse go unrepresented" ¹⁵⁶ WSBA Advisory Opinion 2223 states that the *McKee* "concurring opinion suggests that consent usually will not cure conflict of interest between copetitioners in divorce."¹⁵⁷ This interpretation focuses on only part of the *McKee* concurrence's conclusion. While it is true that the *McKee* concurrence was concerned with a lawyer's ability to represent both parties to a divorce, the concurrence also suggests that joint representation is preferable to having one spouse go unrepresented.¹⁵⁸

Neither the concurring nor the majority opinions in *McKee* stand for the premise that joint representation of parties in a divorce proceeding is always impermissible. Mr. McKee was not disciplined because he drafted a divorce agreement, but rather because he failed to adequately disclose the conflict of interest present in the joint representation,¹⁵⁹ among a multitude of other ethics violations.¹⁶⁰ Additionally, *McKee* does not concern mediation. Thus, *In re McKee* does not provide definitive support for WSBA Advisory Opinion 2223's conclusion.

Furthermore, both of the other cases WSBA Advisory Opinion 2223 relies on, *In re Bryant*¹⁶¹ and *In re Taub*,¹⁶² are disciplinary cases from

154. *Id.* at 517 n.13.

155. *Id.* at 519 (Peterson, J., concurring).

156. *Id.* at 520 (Peterson, J., concurring) (emphasis in original).

157. *WSBA Advisory Op. 2223*, *supra* note 1.

158. *In re McKee*, 849 P.2d at 520 (Peterson, J., concurring).

159. *Id.* at 516 ("That disclosure, however, falls far short of that required by *former* DR 5-105(C) . . . which requires a *full* disclosure of the possible effect of multiple representation on the exercise of the lawyer's independent professional judgment on behalf of each client." (emphasis in original) (internal citations omitted)).

160. *Id.* at 510 ("We find the accused guilty of several violations . . .").

161. 12 Disciplinary B. Rptr 69 (Or. 1998).

162. 7 Disciplinary B. Rptr 77 (Or. 1993).

the 1990s based on old Oregon DRs. Importantly, since these opinions were issued, Oregon has amended the Oregon DRs to expressly state that “[a] lawyer serving as a mediator: (1) may prepare documents that memorialize and implement the agreement reached in mediation.”¹⁶³ Under the modern Oregon DRs, the ethics violations in both *Bryant* and *Taub* do not exist. The facts of both cases are somewhat similar to those in WSBA Advisory Opinion 2223’s inquiry: in both cases an attorney drafted documents for copetitioners to a divorce, although the attorney was not serving as a mediator.¹⁶⁴ WSBA Advisory Opinion 2223 cites both cases as evidence that “[o]ther courts have raised concerns about a lawyer’s ability to provide competent and diligent representation when representing both parties in a family law case.”¹⁶⁵ These “concerns,” however, no longer exist in Oregon—so much so that Oregon altered the Oregon DRs to expressly permit attorney-mediators to prepare documents. Thus, WSBA Advisory Opinion 2223’s reliance on these Oregon cases as proof that other jurisdictions are similarly concerned about drafting the agreements described in the inquiry is flawed.

2. *WSBA Advisory Opinion 2223 Did Not Thoroughly Examine the Opinions of Other Jurisdictions*

Several jurisdictions have addressed the factual scenario at issue in WSBA Advisory Opinion 2223. WSBA Advisory Opinion 2223, however, relies solely on one extra-jurisdictional ethics opinion: TX Ethics Opinion 583.¹⁶⁶ Yet, Texas is only one of many jurisdictions that have discussed this ethical issue. The bar associations of nine states have issued opinions advising that it is ethically impermissible to draft documents like those described in WSBA Advisory Opinion 2223.¹⁶⁷ One of these nine states, Utah, subsequently amended its Rules of Professional Conduct to expressly permit the drafting of such

163. OR. RULES OF PROF’L CONDUCT R. 2.4(b)(1) (2005).

164. See generally *In re Bryant*, 12 Disciplinary B. Rptr 69 (Or. 1998); *In re Taub*, 7 Disciplinary B. Rptr 77 (Or. 1993).

165. *WSBA Advisory Op. 2223*, *supra* note 1.

166. See generally *id.*

167. These nine states are: Illinois, Ill. State Bar Ass’n, Advisory Op. 04-03 (2005); Michigan, State Bar of Mich., Legal Ethics Op. RI-351 (2011); New Hampshire, N.H. Bar Ass’n Ethics Comm., Formal Op. 1993-94/4 (1993); North Carolina, N.C. State Bar, Formal Ethics Op. 2012-2 (2012); Ohio, Ohio Bd. of Comm’rs on Grievances and Discipline, Legal Ethics Op. 2009-4 (2009); Texas, State Bar of Tex. Prof’l Ethics Comm., Legal Ethics Op. 583 (2008); Utah, Utah State Bar Ethics Advisory Op. Comm., Ethics Op. 05-03 (2005); Vermont, Vt. Bar Ass’n, Advisory Ethics Op. 80-12 (1980); and Washington, *WSBA Advisory Op. 2223*, *supra* note 1.

documents.¹⁶⁸ On the other hand, fourteen states permit attorney-mediators to draft agreements reached in divorce mediation. In four of these fourteen states bar association ethics committees have produced ethics opinions that directly address WSBA Advisory Opinion 2223's concerns and find that the practice is ethically permissible.¹⁶⁹ There are four states that have issued ethics advisory opinions that, while not specifically discussing WSBA Advisory Opinion 2223's factual scenario, endorse practices that encompass drafting documents similar to those at issue in WSBA Advisory Opinion 2223.¹⁷⁰ Four states have provisions in their Rules of Professional Conduct or Bar Rules that permit attorney-mediators to draft documents implementing agreements reached in mediation.¹⁷¹ And two of the fourteen states have court rules that allow an attorney-mediator to draft documents.¹⁷² Finally, one state

168. UTAH RULES OF PROF'L CONDUCT R. 2.4(c) (2006) ("A lawyer serving as a mediator in a mediation in which the parties have fully resolved all issues: (c)(1) may prepare formal documents that memorialize and implement the agreement reached in mediation; (c)(2) shall recommend that each party seek independent legal advice before executing the documents; and (c)(3) with the informed consent of all parties confirmed in writing, may record or may file the documents in court, informing the court of the mediator's limited representation of the parties for the sole purpose of obtaining such legal approval as may be necessary."); *see also id.* at R. 2.4 cmt. 5(a) ("Rule 2.4(c) is intended to permit a lawyer-mediator for parties who have successfully resolved all issues between them to draft a legally binding agreement and, to the extent necessary or appropriate, record or file related papers or pleadings with an appropriate tribunal. In so doing, the lawyer will be jointly representing the parties in their common goal of effecting proper legal filings or obtaining judicial approval of their fully resolved issues. Because the parties in this situation have fully resolved their issues, they are not considered 'adverse' under Rule 1.7(a)(1).").

169. These four states are: Florida, Fla. State Bar Ass'n Comm. on Prof'l Ethics, Legal Ethics Op. 86-8 (1986); Massachusetts, Mass. Bar Ass'n, Ethics Op. 85-3 (1985); Missouri, Mo. Bar, Informal Advisory Op. 2010-0055 (2010); and New York, N.Y. State Bar Ass'n Comm. on Prof'l Ethics, Ethics Op. 736 (2001).

170. These four states are: Connecticut, Conn. Bar Ass'n Comm. on Prof'l Ethics, Informal Op. 97-12 (1997) (approving a mediation collaboration in which the attorney would draft documents in divorce mediation); Kentucky, Ky. Bar Ass'n, Ethics Op. E-335 (1989) (recognizing that the mediator cannot insist that the parties have independent counsel, but instructing mediators to encourage unrepresented parties to have separate counsel review any proposed agreement prepared in the mediation and to warn of the risks of being unrepresented); Pennsylvania, Penn. Bar Ass'n Comm. on Legal Ethics and Prof'l Responsibility, Informal Ethics Op. 93-210 (1994) (advising attorney who wishes to form organization that creates pro se consent custody orders to inform parties attorney is a mediator); and Virginia, Va. State Bar, Legal Ethics Op. 1368 (1990) (ruling that a mediator who mediated a dispute and then drafted an agreement was not in violation of ethics rules).

171. Three of these four states are: Maine, ME. BAR R. 3.4(h)(4) (2012); Oregon, OR. RULES OF PROF'L CONDUCT R. 2.4(b)(1)-(2) (2014); and Tennessee, TENN. RULES OF PROF'L CONDUCT R. 2.4(e) (2011). Utah has also amended its Rules of Professional Conduct to allow a lawyer-mediator to draft documents that "memorialize and implement" the mediation agreement. UTAH RULES OF PROF'L CONDUCT R. 2.4(c) (2006).

172. These two states are Kansas and Indiana. Kansas permits attorney-mediators to draft mediation agreements under both the Kansas Supreme Court Rules and the Kansas Court Rules

Bar Association Ethics Committee faced WSBA Advisory Opinion 2223's ethical question and was unable to reach a consensus.¹⁷³ The remaining twenty-seven states plus Washington D.C. have not provided guidance on this issue.

Additionally, the American Bar Association Alternative Dispute Resolution Section's Committee on Mediator Ethics (ABA Committee) has issued Mediator Ethical Guidance Opinion 2010-1 (ABA Opinion 2010-1), which expressly permits a lawyer-mediator to prepare an agreement concerning the division of property and custody plans for unrepresented parties in a divorce.¹⁷⁴ ABA Opinion 2010-1 addresses a fact pattern in which a couple with one minor child seeks an uncontested no-fault divorce with joint custody.¹⁷⁵ The couple jointly retains a mediator to help them work out the terms of a property settlement, custody, and support agreement.¹⁷⁶ At the conclusion of the mediation, the parties request that the mediator prepare the agreement for them.¹⁷⁷ The parties do not want to retain their own attorneys and will not have an attorney review the agreement the mediator prepares.¹⁷⁸ In ABA Opinion 2010-1, the ABA Committee states that it "sees no ethical

Relating to Mediation. See KAN. SUP. CT. R. 901 ("The attorney-mediator advises and encourages the parties to seek independent legal advice before the parties execute any settlement agreement drafted by the attorney-mediator."); KAN. SUP. CT. R. RELATING TO MEDIATION VII(D) ("Any memo of understanding or the proposed agreement which is prepared in the mediation process should be separately reviewed by independent counsel for each participant before it is signed. While a mediator cannot insist that each participant have separate counsel, they should be discouraged from signing any agreement which has not been so reviewed. If the participants, or either of them, choose to proceed without independent counsel, the mediator shall warn them of any risk involved in not being represented, including where appropriate, the possibility that the agreement they submit to a court may be rejected as unreasonable in light of both parties' legal rights or may not be binding on them."). Similarly, Indiana court rules pertaining to dispute resolution permit mediators to draft documents during mediation. See IND. RULES OF CT., RULES FOR ALT. DISPUTE RESOLUTION R. 2.7(f) (2014) ("Mediator shall also review each document drafted during mediation with any unrepresented parties. During the review the Mediator shall explain to unrepresented parties that they should not view or rely on language in documents prepared by the Mediator as legal advice. When the document(s) are finalized to the parties' and any counsel's satisfaction, and at the request and with the permission of all parties and any counsel, the Mediator may also tender to the court the documents listed below when the mediator's report is filed.").

173. Arizona's Bar Association Ethics Committee wrote "[a]s the Committee has not be[en] able to reach a consensus on whether a lawyer-mediator may draft pleadings and other documents implementing understandings reached by participants in the mediation, lawyers are advised to exercise their own professional judgment on this issue." State Bar of Ariz., Ethics Op. 96-01 (1996).

174. ABA Comm. on Mediator Ethical Guidance, Advisory Op. 2010-1 (2010).

175. *Id.*

176. *Id.*

177. *Id.*

178. *Id.*

impediment under the Model Standards to the mediator performing a drafting function that he or she is competent to perform by experience or training.”¹⁷⁹ The ABA Committee writes that in drafting the agreement the mediator may act as a “‘scrivener’—simply memorializing the parties’ agreement without adding terms or operative language.”¹⁸⁰ The ABA Committee also maintains that a “lawyer-mediator with the experience and training to competently provide additional drafting services could do so,” if the attorney-mediator acts consistent with mediator standards concerning “party self-determination and mediator impartiality.”¹⁸¹ ABA Opinion 2010-1 clarifies, however, that before entering a drafting role, the mediator must explain the role’s implications, advise the parties of their right to consult a lawyer, and obtain the parties’ consent.¹⁸²

In reaching these conclusions, ABA Opinion 2010-1 relies on the 2005 Model Standards of Conduct for Mediators¹⁸³ as adopted by the American Bar Association, the American Arbitration Association, and the Association for Conflict Resolution.¹⁸⁴ The ABA Committee also references, while specifically not interpreting, the Model Standards of Practice for Family and Divorce Mediation (Family Standards)¹⁸⁵ approved by the ABA House of Delegates, the Association of Family and Conciliation Courts, and the Association for Conflict Resolution.¹⁸⁶ The Family Standards provide that “[w]ith the agreement of the participants, the mediator may document the participants’ resolution of their dispute. The mediator should inform the participants that any agreement should be reviewed by an independent attorney before it is signed.”¹⁸⁷ ABA Opinion 2010-1 notes that “the Family Standards expressly contemplate the drafting role of the mediator, whether a lawyer-mediator or a mediator with another profession-of-origin.”¹⁸⁸ ABA Opinion 2010-1 does not rely on any state’s ethics rules.¹⁸⁹ The

179. *Id.*

180. *Id.*

181. *Id.*

182. *Id.*

183. MODEL STANDARDS OF CONDUCT FOR MEDIATORS (2005).

184. ABA Comm. on Mediator Ethical Guidance, Op. 2010-1 (2010).

185. MODEL STANDARDS OF PRACTICE FOR FAMILY AND DIVORCE MEDIATION (Ass’n of Family and Conciliation Courts 2000).

186. ABA Comm. on Mediator Ethical Guidance, Op. 2010-1 (2010).

187. MODEL STANDARDS OF PRACTICE FOR FAMILY AND DIVORCE MEDIATION § VI.E (Ass’n of Family and Conciliation Courts 2000).

188. ABA Comm. on Mediator Ethical Guidance, Op. 2010-1 (2010).

189. *See generally id.* (“The Committee is not applying any other mandatory aspirational codes of

ABA Committee cautions that professional codes of conduct for lawyers may be relevant, and advises “the lawyer-mediator to consider their possible application.”¹⁹⁰ ABA Opinion 2010-1 is therefore not expressly relevant under any state’s ethics rules. It does, however, provide evidence that drafting agreements such as those at issue in WSBA Advisory Opinion 2223 is common practice for mediators across the country, and the concerns of WSBA Advisory Opinion 2223 have been considered, and found ethically permissible, by a national organization.

While TX Ethics Opinion 583 supports WSBA Advisory Opinion 2223’s position, it represents only one of the many opinions concerning WSBA Advisory Opinion 2223’s ethical dilemma. WSBA Advisory Opinion 2223 does not explain why it relies solely on TX Ethics Opinion 583, nor why it does not examine the opinions of other jurisdictions.¹⁹¹ This cursory glance at the extensive body of work discussing this ethical issue renders WSBA Advisory Opinion 2223’s analysis incomplete.

3. *NY Ethics Opinion 736 Is an Example of How a Careful Consideration of Other Opinions Might Lead to a Conclusion Different from that Reached in WSBA Advisory Opinion 2223*

WSBA Advisory Opinion 2223 fails to consider extra-jurisdictional opinions based on facts and ethics rules that are essentially identical to those at issue in WSBA Advisory Opinion 2223—some of which reach an outcome directly contrary to that of WSBA Advisory Opinion 2223. This section examines one such opinion in detail: NY Ethics Opinion 736.¹⁹² NY Ethics Opinion 736 was issued in response to background facts and ethical considerations similar to that of WSBA Advisory Opinion 2223.

NY Ethics Opinion 736 addresses whether “an attorney engaged in matrimonial mediation [may] draft and file a separation agreement and divorce papers that incorporate terms agreed upon by the marital parties in the course of the mediation.”¹⁹³ NY Ethics Opinion 736 begins by stating that a lawyer serving as a mediator in a matrimonial context does not represent either party for the purposes of rules governing conflicts of

ethics adopted by states or by other mediation organizations.”).

190. *Id.*

191. See generally *WSBA Advisory Op. 2223*, *supra* note 1.

192. N.Y. State Bar Ass’n Comm. on Prof’l Ethics, Ethics Op. 736 (2001).

193. *Id.*

interest.¹⁹⁴ While NY Ethics Opinion 736 recognizes that sometimes a lawyer-mediator must not mediate in a particular situation because a party's interest cannot be adequately protected without obtaining legal representation, "the fact that the parties may begin with differing interests that would preclude joint representation does not, in and by itself, foreclose the possibility of mediation."¹⁹⁵ NY Ethics Opinion 736 then discusses whether at the completion of a mediation the lawyer-mediator may "represent the parties and draft and file legal documents on their behalf—in particular, the separation agreement and divorce papers."¹⁹⁶

Like WSBA Advisory Opinion 2223, NY Ethics Opinion 736 assumes that in drafting these documents the attorney-mediator switches from a neutral role to a representational role.¹⁹⁷ But unlike WSBA Advisory Opinion 2223, NY Ethics Opinion 736 concludes that when a disinterested lawyer would believe that the attorney-mediator could competently represent both parties' interests in preparing and filing the settlement agreement and divorce papers, the joint representation is permissible.¹⁹⁸ NY Ethics Opinion 736 cautions that it is likely uncommon that a disinterested lawyer can conclude that he or she can competently represent both parties' interests.¹⁹⁹ But NY Ethics Opinion 736 states that it may be possible if the lawyer objectively concludes that the parties are committed to the mediated terms, the terms are consistent with both spouses' goals and legal rights, there are no remaining points of disagreement, and "the lawyer can competently fashion the settlement agreement and divorce documents."²⁰⁰ In such a circumstance, the spouses should be permitted "to avoid the expense incident to separate representation and [permitted] to consummate a truly consensual parting, provided both spouses consent to the representation after full disclosure of the implications of the simultaneous representation and the advantages and risks involved."²⁰¹

The conclusion drawn in NY Ethics Opinion 736 applies to the factual inquiry and ethical considerations in WSBA Advisory Opinion

194. *Id.*

195. *Id.*

196. *Id.*

197. See generally *WSBA Advisory Op. 2223*, *supra* note 1; N.Y. State Bar Ass'n Comm. on Prof'l Ethics, Ethics Op. 736 (2001).

198. N.Y. State Bar Ass'n Comm. on Prof'l Ethics, Ethics Op. 736 (2001).

199. *Id.*

200. *Id.*

201. *Id.*

2223. NY Ethics Opinion 736 recognizes that under the relevant ethics rules conflicts of interest do arise in joint representation of parties to a divorce. Nonetheless, NY Ethics Opinion 736 also recognizes that the conflict of interest rules do not prohibit all representations of parties with conflicting interests. The Washington RPC similarly do not prohibit all representations with conflicts of interest between current clients. RPC 1.7(a) states that “[e]xcept as provided in paragraph (b),” a lawyer may not engage in a representation with a concurrent conflict of interest.²⁰² Paragraph (b) expressly permits dual representation where (1) the lawyer “reasonably believes” he or she can provide each client with “competent and diligent representation,” (2) the law does not prohibit the representation, (3) “the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal,” and (4) “each affected client gives informed consent, confirmed in writing.”²⁰³ In WSBA Advisory Opinion 2223’s factual scenario, element (2) is not at issue, because Washington law does not prohibit the drafting of documents for both parties to a divorce. Element (3) is not at issue because, as discussed in Part IV.A.1, RPC 1.7 comment 17 expressly permits this representation when it states that paragraph (b)(3) “does not preclude a lawyer’s multiple representation of adverse parties to a mediation (because mediation is not a proceeding before a ‘tribunal’ under Rule 1.0(m)).”²⁰⁴ Element (4) can be satisfied if the attorney-mediator obtains informed consent, in writing, from each client. Finally, as explored further below, it is conceivable that there will be some situations in which the attorney-mediator can satisfy element (1). If these four requirements of paragraph (b) are satisfied, then the dual representation is permissible.

A lawyer can conceivably satisfy element (1). To do so, the lawyer must “reasonably believe”²⁰⁵ the lawyer can provide each client with “competent and diligent representation.”²⁰⁶ NY Ethics Opinion 736 opines that this is rare but possible.²⁰⁷ WSBA Advisory Opinion 2223 does not give any reason why satisfying element (1) is impossible.²⁰⁸ If, as NY Ethics Opinion 736 requires, “the parties are firmly committed to

202. WASH. RULES OF PROF’L CONDUCT R. 1.7(a) (2006).

203. *Id.* at R. 1.7(b).

204. *Id.* at R. 1.7 cmt. 17.

205. *Id.* at R. 1.7(b).

206. *Id.*

207. N.Y. State Bar Ass’n Comm. on Prof’l Ethics, Ethics Op. 736 (2001).

208. See generally *WSBA Advisory Op. 2223*, *supra* note 1.

the terms arrived at in mediation, the terms are faithful to both spouses' objectives and consistent with their legal rights, there are no remaining points of contention, and the lawyer can competently fashion the settlement agreement and divorce documents,"²⁰⁹ it seems that a lawyer could satisfy element (1), and therefore make this dual representation permissible under RPC 1.7.

The conclusion that an attorney-mediator may represent both parties to a divorce for the purpose of drafting agreements reached after mediation implicates one more ethical consideration. Under RPC 1.12 "Former Judge, Arbitrator, Mediator or Other Third-Party Neutral,"²¹⁰ a former mediator may not "represent anyone in connection with a matter in which the lawyer participated personally and substantially . . . as an arbitrator, mediator or other third party neutral, unless all parties to the proceeding give informed consent, confirmed in writing."²¹¹ Furthermore, RPC 1.12(b) prohibits a lawyer from negotiating for employment with any person involved as a party in a matter in which the lawyer served "personally and substantially" as a mediator.²¹² Thus, an attorney-mediator drafting documents such as those in WSBA Advisory Opinion 2223 must not negotiate for this work and must be sure to obtain the parties' informed consent, confirmed in writing.

In sum, NY Ethics Opinion 736 provides guidance that addresses WSBA Advisory Opinion 2223's factual circumstances and ethical concerns, yet leads to a conclusion opposite from that of WSBA Advisory Opinion 2223. Consistent with the Washington RPC, and as reasoned in NY Ethics Opinion 736, it is conceivable that at the conclusion of a successful mediation an attorney-mediator may draft divorce documents, including a Property Settlement Agreement, Order of Child Support, and Parenting Plan, for unrepresented parties provided:

1. The lawyer does not negotiate with the parties for the document drafting work;
2. The lawyer reasonably believes he or she can provide each client with "competent and diligent representation" in the instant matter;
3. The parties are fully informed of the implications of the lawyer-mediators' drafting of the documents; and

209. N.Y. State Bar Ass'n Comm. on Prof'l Ethics, Ethics Op. 736 (2001).

210. WASH. RULES OF PROF'L CONDUCT R. 1.12 (2006).

211. *Id.* at R. 1.12(a).

212. *Id.* at R. 1.12(b).

4. The lawyer obtains informed consent from both parties in writing.

WSBA Advisory Opinion 2223's unqualified prohibition of the drafting of these documents does not consider this possibility.

WSBA Advisory Opinion 2223 does not discuss NY Ethics Opinion 736.²¹³ Instead, WSBA Advisory Opinion 2223 relies solely on TX Ethics Opinion 583.²¹⁴ WSBA Advisory Opinion 2223 does not explain why TX Ethics Opinion 582 is its favored authority, nor why other jurisdictions' opinions do not warrant examination.²¹⁵ But as this section shows, consistent with the Washington RPC, WSBA Advisory Opinion 2223 could have relied on other opinions—such as New York's—to have reached a different conclusion. WSBA Advisory Opinion 2223 remains incomplete without an examination of all extra-jurisdictional authority.

V. WSBA ADVISORY OPINION 2223'S PRACTICAL RAMIFICATIONS

WSBA Advisory Opinion 2223 has several serious practical ramifications for mediation in Washington. First, Washington's attorney-mediators may need to alter their current mediation practice. Some attorney-mediators may have previously believed it was ethically permissible to draft divorce documents at the conclusion of mediation.²¹⁶ Since WSBA Advisory Opinion 2223's issuance, however, these attorney-mediators may have altered their practice in an attempt to comply with the Committee's opinion. Some attorney-mediators may no longer memorialize the agreements reached in the mediation, but instead require the parties to obtain their own independent legal counsel to formalize their agreement. This practice can be expensive, inefficient, and prone to error. Parties will now have to hire not only a mediator to facilitate the agreement, but also two additional attorneys to draft any agreement reached. This new procedure increases the cost of divorce mediation significantly. Involving more attorneys is also inefficient, especially compared to a practice in which the mediator can memorialize

213. See generally *WSBA Advisory Op. 2223*, *supra* note 1.

214. *Id.*

215. *Id.*

216. KOVACH, *supra* note 5, at 276; see also *supra* note 6 (detailing the Washington attorney-mediator community's concerns regarding WSBA Advisory Opinion 2223's practical implications); *supra* Part IV.B.2 (examining the many jurisdictions where this ethical issue has arisen, thus indicating that drafting these documents at the conclusion of a mediation for unrepresented parties is a common mediation practice).

the parties' agreement at the conclusion of the mediation, and the parties can leave knowing that their dispute is conclusively resolved. Furthermore, more hands drafting the agreement will likely lead to increased error. The mediator, having just worked with the parties, will likely have the best grasp of how to memorialize what the parties want.²¹⁷ Requiring another attorney to draft the documents—an attorney who perhaps was not present at the mediation and likely will be drafting some time after the mediation's conclusion—increases the chance that the drafted document will not accurately reflect the parties' resolution.

Second, WSBA Advisory Opinion 2223 has potential social implications. As discussed in Part II.A, self-determination is a critical aspect of mediation. By prohibiting parties from choosing their attorney-mediator as the one to memorialize their agreement, WSBA Advisory Opinion 2223 interferes with the parties' ability to fully direct their own mediation. Furthermore, WSBA Advisory Opinion 2223 could have serious implications for access to justice. Many parties seek divorce mediation because it is a lower cost alternative to traditional adversarial litigation. It may be very difficult, if not impossible, for some clients to afford to pay for a mediator and an independent attorney.

Altering common mediation practice to comply with WSBA Advisory Opinion 2223 will have significant practical consequences. Before taking such a step, Washington's attorney-mediators deserve comprehensive guidance concerning the ethics of this issue. WSBA advisory opinions are advisory only.²¹⁸ Yet as discussed in Part III.A, attorneys look to the WSBA advisory opinions for direction in understanding their ethical obligations.²¹⁹ WSBA Advisory Opinion 2223's practical ramifications make it particularly important that WSBA Advisory Opinion 2223 be clear, well-reasoned, and well-supported. In light of its practical effects, the Committee should revisit WSBA Advisory Opinion 2223 soon.

VI. WSBA ADVISORY OPINION 2223 SHOULD BE REVISITED

Given its flaws, WSBA Advisory Opinion 2223 should be revisited. In this reconsideration, the Committee should thoroughly examine all relevant comments to the RPC. Specifically, the Committee should discuss whether RPC 1.7 comment 17 and RPC 1.7 comment 28 have

217. KOVACH, *supra* note 5, at 206 ("In most instances, the mediator is in the best position to know and record the material aspects of the agreement.")

218. See *WSBA Advisory Op. 2223*, *supra* note 1; see also *supra* note 72 and accompanying text.

219. See *supra* note 79 and accompanying text.

bearing on the Committee's decision. The Committee should also consider guidance from the multitude of other jurisdictions that have faced the same question. The Committee should carefully examine which extra-jurisdictional authority the Committee wishes to rely on. The Oregon disciplinary cases cited in WSBA Advisory Opinion 2223 do not provide the authority the opinion needs. Additionally, TX Ethics Opinion 583 is only one of many opinions that discuss this ethical situation. Other jurisdictions' decisions are also relevant—for example, NY Ethics Opinion 736 grapples with similar facts and ethical concerns. A detailed analysis of both sides of the debate will provide Washington's attorney-mediators with a more complete opinion, and will provide answers to many of the questions that WSBA Advisory Opinion 2223 leaves open.

The Committee should consider an alternative conclusion to the inquiry in WSBA Advisory Opinion 2223. As discussed in Part IV.A, RPC 1.7 prohibits representation of a client when the representation involves a concurrent conflict of interest, which exists when (1) the representation of one client is directly adverse to another client, or (2) there is a significant risk client representation will be materially limited by the lawyer's responsibilities to another.²²⁰ Part IV.A.2 explored how, at the conclusion of a mediation after the parties have reached complete agreement resolving all disputed issues, the parties' interests may no longer be "adverse" because the parties now share the common goal of memorializing their agreement. If, however, the parties do still qualify as "adverse," or there is a risk the lawyer's responsibilities to another will materially limit the representation, RPC 1.7(a) cannot be read in isolation. RPC 1.7(b) details four elements that, if satisfied, permit representation despite a concurrent conflict of interest. As examined in Part IV.B.3, if certain conditions are satisfied it is possible that an attorney-mediator may reasonably believe he or she can provide "competent and diligent" representation to both clients, obtain written informed consent from both parties, and therefore satisfy RPC 1.7(b)'s requirements. In this perhaps rare, but not impossible, situation, the attorney-mediator's drafting of the documents described in WSBA Advisory Opinion 2223 would not violate RPC 1.7. Such a conclusion is aligned with the reasoning in NY Ethics Opinion 736.

WSBA Advisory Opinion 2223 addresses a particularly thorny ethical conundrum—one grappled with in a multitude of jurisdictions. The Committee may have responses to the questions this Comment raises—

220. WASH. RULES OF PROF'L CONDUCT R. 1.7 (2006).

responses that support WSBA Advisory Opinion 2223's conclusion. But WSBA Advisory Opinion 2223 itself does not provide the answers to these questions. Without a more thorough discussion of the issue, Washington's attorney-mediator community is left to ponder this matter without clear guidance.

WSBA Advisory Opinion 2223 has many practical ramifications, including implications for mediation cost and efficiency, mediation agreements' accuracy, party self-determination, and access to justice. Furthermore, while WSBA Advisory Opinions are "advisory only," Washington attorneys turn to these opinions for guidance on their ethical obligations.²²¹ This reliance makes it particularly important that WSBA Advisory Opinions are accurate, comprehensive, and clear. In light of WSBA Advisory Opinion 2223's wide-reaching effects, and its important role in providing ethical guidance to Washington attorney-mediators, the Committee should revisit WSBA Advisory Opinion 2223 soon.

CONCLUSION

Advisory Opinion 2223 of the Washington State Bar Association's Rules of Professional Conduct Committee has created concern in the Washington mediation community.²²² WSBA Advisory Opinion 2223 reaches the unqualified conclusion that attorney-mediators who draft legal documents such as Property Settlement Agreements, Orders of Child Support, or Parenting Plans for unrepresented parties are in violation of the Washington Rules of Professional Conduct. Drafting such documents, however, is common in mediation practice both in Washington and throughout the country. Washington's attorney-mediators are therefore concerned about how WSBA Advisory Opinion 2223 affects both their mediation process and their ability to provide comprehensive service to mediation clients. WSBA Advisory Opinion 2223 creates confusion because it contains two significant flaws: (1) an omission of relevant comments to the RPC, and (2) an inconsistent reliance on extra-jurisdictional authority. Given WSBA Advisory Opinion 2223's practical ramifications, the Committee should reexamine this opinion. In doing so, the Committee should thoroughly discuss all applicable RPC comments and seek guidance from the many other jurisdictions that have faced the same question. The Committee should be open to the possibility that these considerations may lead to a

221. See *supra* note 72 and accompanying text.

222. See *supra* note 6.

different conclusion. It is only through such an analysis that the Committee can provide Washington's attorney-mediators with the guidance necessary to best serve mediation parties while complying with their ethical obligations.

THE SCRIVENER'S DILEMMA IN DIVORCE MEDIATION: PROMULGATING PROGRESSIVE PROFESSIONAL PARAMETERS

*Robert Kirkman Collins**

“Our fetishization of the adversary system does lead to injustice and inefficiencies.”

—Prof. Kermit Roosevelt¹

I. INTRODUCTION

A festering ethical question for attorneys who practice divorce mediation is the propriety of an ADR neutral drafting the settlement agreement that memorializes the understandings a separating couple reach through mediation and then crafting the forms needed to allow those spouses to obtain an uncontested divorce decree. States are inconsistent in their rules permitting mediators to utilize their professional expertise to complete the paperwork process, even though it would appear that best practice would be not only to permit but to encourage mediators to scribe the couple's documents at the conclusion of their negotiations, and to guide them through the bewildering bureaucratic papers needed to obtain their divorce decree.

The debate over divorce mediator drafting is, however, simply part of the larger controversy of who, in the future, will be permitted to be a dispute resolution professional in this nation. Modern mediation attorneys are seeking to discredit the false assumption that divorce is essentially a legal problem, and declining to perpetrate the antique myth that every couple's divorce need be resolved in a trial analogous to a criminal prosecution—a dramatic courtroom battle in which past wrongs will be proven, a “bad” parent identified and exposed, and “rights” determined by a wise judge applying clear legal precedents to the facts of a particular couple.

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¹ Kermit Roosevelt, *Richard A. Posner's Divergent Paths: the Academy and the Judiciary*, N.Y. TIMES (Jan. 29, 2016), <http://www.nytimes.com/2016/01/31/books/review/richard-a-posners-divergent-paths-the-academy-and-the-judiciary.html?r=0>.

Today's divorce mediation attorneys are even questioning the legal profession's self-serving fiction that attendance at law school and admission to the Bar ensure competence in document drafting, and that matters such as scribing settlement agreements and divorce forms are so arcane as to be beyond the ken of those without legal training.

This Article starts with an examination of one state's relatively recent contribution to the controversy over divorce mediator drafting, and then tours the nation to illuminate the confusing array of approaches to this issue that have been adopted in different jurisdictions. It then steps back to examine the role that lawyers have traditionally played in assisting or impeding access to justice for divorcing couples, and explores why divorce mediation can now offer a more appropriate approach than classic lawyering to marital reorganization. It concludes with an endorsement of attorney-mediators acting as scriveners for their clients, and explores an approach that, at the cost of abandoning some romanticized notions of law school education, would allow even non-legal mediation professionals the authority to meet their couples' critical needs for access to the courthouse.

II. THE DRAFTING DEBATE, UPDATED

A few years ago a tremor ran through the divorce mediation community in the state of Washington—not emanating from the movement of tectonic plates on the West Coast, but from a seismic shift induced by the promulgation of a two-page ethics opinion issued by a committee of that state's Bar Association.² While only an “advisory” comment from the Rules of Professional Conduct Committee (and not the official position of the Washington State Bar Association),³ WSBA Advisory Opinion 2223 purported to prohibit lawyer-mediators from drafting the final settlement documents for couples that they had just guided to resolution. This proscription went far beyond the expected “unauthorized practice of law” rules that bar non-lawyer mediators from drafting legal docu-

² Wash. State Bar Ass'n of Prof'l Conduct Comm., Advisory Op. 2223 (2012), <http://mcle.mywsba.org/IO/print.aspx?ID=1669>.

³ And, in fact, it is the Supreme Court of Washington that “bears the ultimate responsibility for lawyer discipline.” Caitlin Park Shin, *Drafting Agreements as an Attorney-Mediator: Revisiting Washington State Bar Association Advisory Opinion 2223*, 89 WASH. L. REV. 1035 (2013) (quoting *In re Disciplinary Proceeding Against DeRuiz*, 152 Wash. 2d 558, 572 (2004)).

ments; this ukase prohibited even divorce mediators who were attorneys in good standing from drafting the documents for their otherwise unrepresented clients. In doing so, the ethics committee in Washington sought to add that state to the minority list of jurisdictions⁴ that explicitly prohibit even attorney-mediators from concluding their professional responsibilities by drafting the documentation that memorializes the couple's agreements.

The Washington ethics opinion—which has already been thoroughly and negatively analyzed elsewhere⁵—didn't stop there, however; it also proceeded to prohibit any other lawyer—not just the mediator, but even an independent attorney “scrivener”—from drafting the documents for a mediated couple.⁶

The logic underlying the Washington State Opinion? When a lawyer-mediator finishes the mediation and stands ready to draft documents, the opinion concludes that the ADR professional is no longer mediating but “practicing law,” however, because the husband and wife are divorcing, the opinion asserts that the two spouses have a non-waiveable conflict of interest, and therefore cannot be “represented” by a single attorney.

The fatal flaws in this logic? First, the committee members (none of whom, one suspects, either practices or approves of mediation) have not grasped the revolutionary concept of practice by a “neutral” attorney—the counselor as problem-solver rather than as hired mercenary fighting for one “side” against the other. Second, the opinion declares that the drafting of a contract constitutes the “practice of law,” which may be traditionally accurate, but may no longer be considered universally true.

Finally, leaving theoretical discussions aside, the opinion overlooks the reality that while people at the outset of divorce do have conflicting interests, at that magical moment when the mediator has helped them get to “Yes!”⁷ and the myriad details of their marital settlement have finally been worked through, the two spouses no longer retain those opposing interests—they now have a single, unified concern in getting their understandings accurately reduced to writing and formalized, and their divorce papers correctly filled

⁴ Of the fifteen or so states that have explicitly addressed the issue, approximately twice as many states permit the attorney-mediator to draft than prohibit it. For examples of the variety of proscriptions promulgated, see *infra* Part. III.

⁵ Shin, *supra* note 3, at 1048–63.

⁶ The goal appears to be to generate employment for not just one, but for three attorneys—the mediator, and separate counsel for each spouse.

⁷ WILLIAM L. URY, ET AL., *GETTING TO YES: NEGOTIATING AGREEMENT WITHOUT GIVING IN* (1992).

out and processed through the court. While no one would seek to resurrect the ancient “Doctrine of Unity” studied in Family Law, which dealt with a married couple as a single entity under the historic doctrine of “couverture” by simply obliterating the wife’s identity and subsuming her rights under those of her husband, the archaic concept of dealing with the “couple” as a single unit might actually prove useful at this moment.⁸ At the outset of any divorce the departing husband and wife do have potentially (if not actual) adverse interests over an entire spectrum of parenting and financial issues, but any conflicts become not only waiveable but non-existent once resolution of all of their substantive questions has been achieved through mediation. At that moment of consensus, all that remains to be done is to memorialize and sign their agreement and process their divorce papers—in which the parties’ interests are beyond being generally aligned . . . and actually congruent.⁹

The “real” reason for the Washington State opinion? This salvo seems to be yet another shot in the ongoing siege by matrimonial litigators attempting to halt civilian flight away from their traditional gladiatorial matrimonial practice—the most recent skirmish in the reactionary thirty-year turf war being fought by the litigation bar since the inception of divorce mediation.

III. A SCRIVENER SCORECARD

Washington is now moving to place itself in the minority of states that prohibit attorney-mediators from drafting; it does not stand alone, however, in seeking to bar divorce mediation attorneys from drafting . . . and preserve billable hours for more traditional lawyers.

Currently, there is widespread disagreement among the various jurisdictions as to the proper scope of document drafting authority for an attorney practicing divorce mediation.¹⁰ There is

⁸ This would be analogous to the single-entity status of two people who hold property as “tenants by the entirety.”

⁹ “[C]ommon representation is permissible where the clients are generally aligned in interest even though there is some difference in interest among them.” *WASH. RULES OF PROF’L. CONDUCT* R. 1.7 cmt. 28.

¹⁰ For the would-be scrivener, there are actually two issues—the agreement, and the divorce papers. There’s more of a need for discretion (and therefore greater difficulty) in drafting the particular points in a settlement agreement (both in the wording of the different provisions and the decision to include or omit specific paragraphs or points), whereas in most jurisdictions there’s only one acceptable way to prepare divorce documents or forms for the Court’s approval.

simply no discernible consensus among the states as to whether the divorce mediator, who is also a duly admitted attorney in that jurisdiction may, at the conclusion of a mediation in which the parties have reached consensus on all their marital issues, appropriately draft the settlement agreement that reflects and memorializes the financial and parenting decisions made by the couple.¹¹

The rules that do exist in each jurisdiction regarding the proper professional parameters of an attorney practicing divorce mediation must, unfortunately, be ferreted out from a variety of state ethics opinions, disciplinary proceedings, Practice Guidelines, and state Court Rules.¹² The answers that do emerge from a review of the fifty states, however, is less a contrasting study in black and white and more of a spectrum approaching “Fifty Shades of Grey”¹³—an array of rules ranging from “yes” to “no”. . .with a bewildering variety of approaches in between.

A roll call of the states does suggest that a majority—but certainly not an overwhelming one—favors permitting the mediator to act as scrivener; the bar associations of nine states have opined that the drafting of the agreement by an attorney-mediator is prohibited, while fourteen states find it permissible. (One state apparently couldn’t figure it out.)¹⁴

A. *Some States Say “Yes”*

- i. Indiana explicitly authorizes divorce mediators to draft their clients’ settlement agreement and craft and submit a proposed dissolution decree, a waiver of a final hearing,

On the other hand, when preparing papers—presumably on behalf of the plaintiff or petitioner in the divorce proceeding, even if done with the consent of and as an accommodation to both spouses, a mediation scrivener may be technically (even if not functionally) *appearing* as counsel for one party in court in an official capacity—which seems both intuitively less than neutral and closer to the traditional “practice of law.”

¹¹ Discussed below is the exponentially more controversial issue of whether a *non-attorney* mediator can—or in fact, should—draft operative settlement documents for their couple without running afoul of UPL (Unauthorized Practice of Law) restrictions. *See infra* Part IX.

¹² *See* Amy G. Applegate & Connie J.A. Beck, *Self-Represented Parties in Mediation: Fifty Years Later it Remains the Elephant in the Room*, 51 FAM. CT. REV. 85, at 93-7 (2013).

¹³ With apologies to E.L. JAMES, *FIFTY SHADES OF GREY* (2013).

¹⁴ *See* Shin, *supra* note 3. The State Bar of Arizona couldn’t make up its mind in 1996 as to whether a lawyer-mediator could draft the settlement documents, and simply advised lawyers “to exercise their own professional judgment” on the issue (!). STATE BAR OF ARIZ. RULES OF PROF’L CONDUCT, ETHICS OP. 96-01 (1996).

CHAPTER FOUR

THE NEW PLAIN LANGUAGE CHILD SUPPORT ORDER

November 2016

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NANCY KOPTUR is a graduate of the University of Michigan (AB Greek, 1979), the University of Washington (MA Classics, 1981), and the University of Washington School of Law (JD, 1984). Nancy started with the DSHS Division of Child Support since February 1990, and has worked in DCS Headquarters since September 1995. Nancy participated as a member of the ATJ Pro Se Project Forms Review Workgroup and thinks the concept of Plain Language forms is really great. Nancy is in the third year of her current term on the Family Law Executive Committee (FLEC) and hopes to run for a second term next summer. She was previously on FLEC from 2006 through 2012.

Nancy would like to remind you that this presentation, including the PowerPoint, consists of her own opinions and statements and is not in any way intended to be a statement of the policy or position of the Department of Social and Health Services or the Division of Child Support.

I. INTRODUCTION

When we first planned my session for this seminar, the idea was that I would talk about issues I see with the Plain Language Child Support Order Pattern Form and then gather your input, with an eye to having either my agency or the Family Law Executive Committee (FLEC) propose changes to the Pattern Forms Committee.

I am happy to say that the Domestic Relations Subcommittee of the Pattern Forms Committee has already made some changes which should be released in early 2017! I need to warn you that the revised form is not yet ready for prime time, so please don't start using it yet.¹

Nonetheless, FLEC would like to encourage you to let us know about any issues (or fabulous results) you are finding with any of the Plain Language Pattern Forms so that we can make some suggestions on behalf of the Family Law Section.

I am going to discuss the proposed changes to the Child Support Order form, point out some things I still wish could/would be changed, and see what thoughts you have about the form. And then, since you're already here, I'd like to talk about some ongoing issues I've seen, which aren't really tied to any one version of the form.

II. A SHORT INTRODUCTION TO DCS FOR ANY NEWBIES

WAC [388-14A-1030](#) sets out the different services that DCS provides. Our services include, but are not limited to the following:

- Receiving payments and distributing the payments²
- Establishing or modifying administrative child support orders³
- Enforcing and modifying court orders for child support or maintenance⁴
- Referral to the prosecuting attorney for establishment of paternity or parentage
- Providing locate services⁵
- Cooperation with the IV-D agencies of Indian tribes and other states, and the central authorities of other countries⁶

DCS has different kinds of cases with different levels of service:

Payment Services Only – DCS provides payment processing and records maintenance services to parties to a support order which provides for payments through the Washington State Support Registry (WSSR), if the family does not receive public assistance, and:

¹ This could get you in trouble with the AOC *Format and Style Rules for Mandatory Forms*, attached as *Exhibit A*.

² WAC [388-14A-5000](#)

³ WAC [388-14A-3100](#) and [388-14A-3925](#)

⁴ WAC [388-14A-3304](#), [388-14A-3310](#) and [388-14A-3900](#)

⁵ WAC [388-14A-1035](#) through [388-14A-1045](#)

⁶ WAC [388-14A-1060](#)

- A WSSR order is entered and neither parent applies for full support enforcement services, or
- A parent who has been receiving full support enforcement services requests that enforcement services stop

Full child support enforcement services – these are services provided under Title IV-D of the Social Security Act, when:

- A family receives cash public assistance
- A public assistance recipient stops receiving a cash grant under the Temporary Assistance for Needy Families (TANF) program (we call this “continuation of services”)
- A custodial parent (CP) or former physical custodian of a child applies for services
- A noncustodial parent (NCP) requests services
- A man requests paternity establishment services alleging he is the father of a dependent child
- An NCP submits a support order for inclusion in or a support payment to the WSSR, together with an application for support enforcement services
- An Indian tribe or another state or country requests services in an intergovernmental case

Medical Enforcement Only – As part of the implementation of the Affordable Care Act,⁷ this level of services is being phased out and is currently offered only when Washington acts as the responding tribunal in an intergovernmental case.⁸ Before October 1, 2013, DCS would provide payment processing, records maintenance, paternity establishment, medical support establishment, and medical support enforcement services when a recipient of medicaid-only benefits declined full support enforcement services in writing. DCS would also offer MEO-level services to a family which terminated TANF but continued to receive Medicaid.

Locate Services Only – DCS will accept a request for locate services and will attempt to locate an NCP using all sources of information and available records in Washington or other states, including the Federal Parent Locator Service (FPLS) maintained by the federal Department of Health and Human Services.⁹

Limited Services in Intergovernmental Cases – DCS cooperates with requests for the following limited services: (a) Quick locate; (b) Service of process; (c) Assistance with discovery; (d) Assistance with genetic testing; (e) Teleconferenced hearings; (f)

⁷ The *Patient Protection and Affordable Care Act* (aka the *Affordable Care Act* or ACA), Public Law 111-148, Mar. 23, 2010, 124 Stat. 119, commonly known as “Obamacare.”

⁸ In 2015, the Legislature adopted the 2008 version of the *Uniform Interstate Family Support Act* (UIFSA 2008), as required by our state plan under the federal Social Security Act as amended by PL 113-183. Changes to Chapter [26.21A](#) RCW were necessary in order to accommodate the provisions of the *2007 Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance* (“the 2007 Hague Convention”). The US is a signatory of the 2007 Convention, which goes into effect for all states as of January 1, 2017.

⁹ See WAC [388-14A-1035](#) through [388-14A-1045](#).

Administrative reviews; (g) High-volume automated administrative enforcement in interstate cases under [42 USC 666\(a\)\(14\)](#); (h) Copies of court orders and payment records; and other limited services as appropriate.

III. HOW CAN I CONTACT DCS?

There are nine DCS field offices, all of which use a centralized mailing address: PO Box 11520, Tacoma WA 98411. We also have a centralized FAX number: 866-668-9518. Our centralized phone number is 1-800-442-KIDS (1-800-442-5437).

Using the KIDS **automated phone system** (1-800-442-KIDS), you can choose from several options. You can find out lots of information (for instance, if a payment has been made on your case) without having to talk to anyone.

If you call one of our field offices, you may go through that office's **automated phone system**. We have a voice mail system that allows you to leave messages for us, and allows us to leave private messages for you. Again, information without pesky human intervention!

We have a "Voice Portal" phone system that routes calls to every DCS field office and to Headquarters without racking up long distance fees for the caller. Parents can connect to the office handling their case by calling any local DCS office or one of our 1-800 numbers. Our DCS toll free numbers remain the same. Attached as *Appendix B* is a listing of the field offices and their contact information.

IV. POWER POINT PRESENTATION

I will be using a PowerPoint presentation during the seminar. Because of page limits, I can't make it officially part of my materials, but if it's not available through WSBA, I would be happy to send it to anybody who asks. My email address is on page one of these materials.

V. APPENDICES

Appendix A: AOC Format and Style Rules for Mandatory Forms, May 2016
Appendix B: DCS field offices and their contact information
Appendix C: Latest **draft** revisions to the Plain Language Support Order

APPENDIX A

Note: document has been re-paginated to make it fit

Note 2: **yellow** sections are my highlights

Administrative Office of the Courts Format and Style Rules for Mandatory Forms Developed Pursuant to RCW 26.18.220 (May 2016)

➤ Form and Pleading Standards

The following standards apply to written forms, to printed forms, and to the electronic reproduction of forms and pleadings required by RCW 26.09.006, RCW 26.10.015 and RCW 26.26.065.

1. Required Format Standards

The format standards in this section are **required for all forms, pleadings, motions, and other papers filed with the court** pursuant to GR 14. The rule applies to all proceedings in all courts of the state of Washington unless otherwise specifically indicated by court rule.

❖ **Paper Size**

Paper size is 8-1/2" x 11".

❖ **Writing or Printing**

Forms and pleadings must be legibly written or printed on one side of each page only.

❖ **Font**

- **Font:** Forms and pleadings must be printed in standard text fonts. Use a Sans Serif font, such as Arial.
- **Font size:** Use the following fonts sizes for the:
 - caption: 11 or 12 point font, as explained in **3**, below;
 - form title repeated immediately below the caption: 15 - 16 point font, as explained in **4**, below;
 - section headings: bold, 12 point font;
 - section text: 11 or 12 point font;
 - footers: 9 point font. Other point sizes may be used for footers so long as the footers are legible when faxed, photocopied or scanned.
- **Text enhancement:** Bold, underlined, and italicized type are acceptable where appropriate.

❖ **Margins**

- First page:
 - Top Margin: Three inches.
 - Left Side Margin: One inch.
 - Right Side Margin: One inch.
 - Bottom Margin: One inch.
- Subsequent pages:
 - Top Margin: One inch.
 - Left Side Margin: One inch.
 - Right Side Margin: One inch.
 - Bottom Margin: One inch.

❖ **No Color**

Filed forms and pleadings must not include any colored pages, highlighting, or other colored markings.

❖ **Exhibits**

The required format standards are not mandatory for exhibits, but encouraged if they do not impair legibility.

2. Recommended Format Standards

Check local court rules for any formatting requirements. The format recommendations in CR 10(e) must be followed in the absence of local rules concerning use of numbered paper, spacing, and related formatting standards.

- ❖ **Footers** must be placed at the left side and middle of the bottom of each page, *in* the one inch bottom margin.
- ❖ **Attorney or firm name**, mailing address, telephone number, and URL may be present in the right side of the one inch bottom margin.
- ❖ **Line numbers** may be present in the one inch left side margin.
- ❖ **Vertical lines** may be present in the one inch side margins.

The margin requirements in Section 1 are required for scanning purposes. Anything present in the margins might not be scanned and might not become a part of the court's or county clerk's electronic archive.

3. Captions

Captions must include the following:

- ❖ **Name of Court.** The court's name must be in bold, 12 point font and centered at the top of the first page of the pleading or form.

- ❖ **Designation of Parties and Action.** The parties and title of the action must be in 11 point font and designated as required in RCW 26.09.010 and RCW 26.10.020 in the left-hand field of the caption.
- ❖ **Form Title.** The title of the form is designated by the Administrative Office of the Courts. The title must be printed in 11 point font, in the caption in the right hand field. The form title may not be changed or deleted, except to delete inapplicable portions of the title (e.g., the title of the parenting plan may be altered to indicate whether the parenting plan is a proposed, temporary or final parenting plan).
- ❖ **Docket Code.** The docket code is assigned to the form by the Administrative Office of the Courts. Print the docket code underneath the form title. The docket code may not be changed or altered from the assigned code.

4. Form Title below the Caption

The form title from the caption should be repeated immediately below the caption, centered and in 15 – 16 point font.

5. Footers

Footers for the forms are mandatory. The footers must consist of the following components:

- ❖ **In the left cell of the footer, left justify and include:**

- *Top line.* The Revised Code of Washington or Court Rule citation.
- *Middle line:* “Mandatory Form” or “Optional Form” followed by the form’s revised date “(MM/YYYY).”
- *Bottom line:* the form number in bold font. Example form number: “**FL Divorce 241.**”

- ❖ **In the middle cell of the footer, center and include:**

- *Top line:* the form title. If the form title is long, continue the title on the second line.
- *Bottom line:* the page number and number of pages in the form.

- ❖ **Example Left and Middle Sections of the Footer:**

RCW 26.09.030; .040; .070(3) Mandatory Form (05/2016) FL Divorce 241	Final Divorce/Legal Separation/ Valid/Invalid Marriage Order p. 7 of 12
---	---

6. Sections

- ❖ **Section Number and Header.** Each section of a form includes a section number and, in most instances, a header. The section number and header must not be changed or deleted.

- ❖ **Section Text.** The text of a section must not be altered, deleted or revised from the text provided in the form or pleading, except where there are check boxes provided in the form or pleading. If there are check boxes in the section, the text above or before the first check box may **not** be altered, deleted or revised. Text following check boxes may be deleted as provided in 7 below. Text may be added to a section only as provided in 8 below.
- ❖ **Example.** The portions of Section 4 of the Petition for Divorce (Dissolution) which are shaded below **may not be altered, deleted or revised in any fashion.** The text and check boxes following the shaded area may be deleted as provided in 7 below:

4. Jurisdiction over the spouses

The court has jurisdiction over the marriage because at least one of the spouses lives in Washington State, or is stationed in this state as a member of the armed forces.

- The court **has** personal jurisdiction over the Respondent because *(check all that apply)*:
 - The Respondent lives in Washington State.
 - The Petitioner and Respondent lived in Washington State while they were married, and the Petitioner still lives in this state or is stationed in this state as a member of the armed forces.
 - The Petitioner and Respondent may have conceived a child together in this state.
 - Other *(specify)*: _____
- The court does **not** have personal jurisdiction over the Respondent. *(This may limit the court's ability to divide property and debts, award money, set child support or spousal support, or approve a restraining order or protection order.)*

7. Delete check boxes that do not apply

- ❖ **Options:** Check boxes are used wherever optional statements exist and a person may select one or more options. The check boxes are before the options to which they apply.
- ❖ **Delete options:** Check boxes and the statements that follow the check boxes may be deleted if they do not apply to a case. Any instructions in parentheses, such as *(Check all that apply)*, may be deleted with the check boxes and statements.
- ❖ **Example:** If the respondent is residing in Washington, the lines of Section 4 of the Petition for Divorce (Dissolution) highlighted below apply:

4. Jurisdiction over the spouses

The court has jurisdiction over the marriage because at least one of the spouses lives in Washington State, or is stationed in this state as a member of the armed forces.

The court **has** personal jurisdiction over the Respondent because *(check all that apply)*:

The Respondent lives in Washington State.

The Petitioner and Respondent lived in Washington State while they were married, and the Petitioner still lives in this state or is stationed in this state as a member of the armed forces.

The Petitioner and Respondent may have conceived a child together in this state.

Other *(specify)*: _____

The court does **not** have personal jurisdiction over the Respondent. *(This may limit the court's ability to divide property and debts, award money, set child support or spousal support, or approve a restraining order or protection order.)*

Delete the check boxes that do not apply so the statements that do apply appear as follows:

4. Jurisdiction over the spouses

The court has jurisdiction over the marriage because at least one of the spouses lives in Washington State, or is stationed in this state as a member of the armed forces.

The court **has** personal jurisdiction over the Respondent because the Respondent lives in Washington State.

8. Add text to a form or pleading

❖ **Other:** Text may not be added to a form or pleading except where the word "other" appears as a section heading or a check box option in the form or pleading. Any text that is added to a form or pleading at a check box option must be preceded by the word "other" to identify the text as added text.

❖ **Example:** In section 4 of the Petition for Divorce (Dissolution) add an "other" basis for jurisdiction over the respondent as follows:

4. Jurisdiction over the spouses

The court has jurisdiction over the marriage because at least one of the spouses lives in Washington State, or is stationed in this state as a member of the armed forces.

The court **has** personal jurisdiction over the Respondent because:

Other: The respondent is submitting to the jurisdiction of the court by joining the petition.

9. Miscellaneous

- ❖ **Names of Parties.** The names of the parties may be substituted for petitioner, respondent, husband, wife, mother, father, non-parent custodian, etc., wherever appropriate in the body of the forms.
 - *Child Support Worksheets:* Names of parties may be substituted for “Column 1” and “Column 2” in the *Worksheets and Attachment for Residential Split Adjustment*.
- ❖ **Instructions within boxes.** Instructions and information in boxes are mandatory and must not be altered, deleted, or revised.
- ❖ **Attachments.** Attachments to the forms are permissible.
- ❖ **WSBA Numbers.** Pursuant to APR 13(a) and CR 11, attorneys must include their WSBA number whenever a form or pleading is signed.
- ❖ **Service, Transmittal or Confirmation Stamps on Original Documents.** Do not place stamps in the upper right space of the first page of the document. You may place these stamps in the upper left space of the first page. GR 14 and CR 10.

➤ Use of Pleadings and Forms not Developed by the Administrative Office of the Courts

Pleadings and forms, other than those developed by the Administrative Office of the Courts, may be submitted provided:

1. **Authorized by Law.** The pleading or form is authorized under civil rules or statute (e.g., interrogatories and subpoenas, declarations of parties, etc.);
2. **No mandatory form.** A similar pleading or form is not included in the mandatory forms developed by the Administrative Office of the Courts; and
3. **Complies with format and style rules.** The pleading or form complies with these format standards and rules and the caption of the form or pleading contains the notation "No Mandatory Form Developed."

Appendix B

DIVISION OF CHILD SUPPORT DIRECTORY

NOTE: ALL DCS OFFICES USE THE SAME MAILING ADDRESS:

**DCS
PO BOX 11520
TACOMA, WA 98411**

CENTRALIZED FAX: 866-668-9518
CENTRALIZED PHONE: 1-800-442-KIDS

Office	Phone Number	Toll Free	FAX	TDD/RELAY <i>Yes, they are all the same!</i>
Seattle	206-341-7000	800-526-8658	206-464-7449	1-800-833-6384
Tacoma	253-597-3700	800-345-9976	253-597-3725	1-800-833-6384
Everett	425-438-4800	800-729-7580	425-438-4879	1-800-833-6384
Yakima	509-249-6000	800-441-0859	509-576-3776	1-800-833-6384
Spokane	509-363-5000	800-345-9982	509-329-3864	1-800-833-6384
Olympia	360-664-6900	800-345-9964	360-438-8520	1-800-833-6384
Wenatchee	509-886-6800	800-535-1113	509-886-6212	1-800-833-6384
Vancouver	360-696-6100	800-345-9984	360-696-6491	1-800-833-6384
Kennewick	509-374-2000	800-345-9981	509-734-7251	1-800-833-6384

DCS HEADQUARTERS

712 Plum Street SE
PO Box 9162, MS 45860
Olympia, WA 98507-9162

PHONE: 800-457-6202 or 360-664-5005

FAX 360-586-3274

TDD/RELAY 800-833-6384

Other ways to get in touch:

DSHS as a whole has gone on-line in a big way. We have both "internet" (*i.e.*, public) and "intranet" (*i.e.*, private) web sites.

- You can find DCS at www.wa.gov/dshs/dcs or www.childsupportonline.wa.gov
- You can find us through the main DSHS site, at www.wa.gov/dshs

Appendix C

The latest draft version of the
Plain Language Support Order Pattern Form
begins on the next page

Superior Court of Washington, County of _____

In re:

Petitioner/s *(person/s who started this case)*:

And Respondent/s *(other party/parties)*:

No. _____

Child Support Order

Temporary (TMORS)

Final (ORS)

Clerk's action required: WSSR-

Child Support Order

1. Money Judgment Summary

No money judgment is ordered.

Summarize any money judgments from section 22 in the table below.

Judgment for	Debtor's name <i>(person who must pay money)</i>	Creditor's name <i>(person who must be paid)</i>	Amount	Interest
Past due child support from _____ to _____			\$	\$
Past due medical support from _____ to _____			\$	\$
Past due children's exp. from _____ to _____			\$	\$
Other amounts <i>(describe)</i> :			\$	\$
Yearly Interest Rate for child support, medical support, and children's expenses: 12% . For other judgments: ____% <i>(12% unless otherwise listed)</i>				
Lawyer <i>(name)</i> :		represents <i>(name)</i> :		
Lawyer <i>(name)</i> :		represents <i>(name)</i> :		

➤ **Findings and Orders**

2. The court orders child support as part of this family law case. This is a *(check one)*:
 temporary order. final order.
3. The *Child Support Schedule Worksheets* attached or filed separately are approved by the court and made part of this Order.
4. **Parents' contact and employment information**

Each parent must fill out and file with the court a *Confidential Information* form (FL All Family 001) including personal identifying information, mailing address, home address, and employer contact information.

Important! If you move or get a new job any time while support is still owed, you must:

- Notify the Support Registry, and
- Fill out and file an updated *Confidential Information* form with the court.

Warning! Any notice of a child support action delivered to the last address you provided on the *Confidential Information* form will be considered adequate notice, if the party trying to serve you has shown diligent efforts to locate you.

5. **Parents' Income**

Parent (name): _____ Net monthly income \$ _____ <small>(line 3 of the Worksheets)</small> This income is (check one): <input type="checkbox"/> imputed to this parent. (Skip to 6.) <input type="checkbox"/> this parent's actual income (after any exclusions approved below).	Parent (name): _____ Net monthly income \$ _____ <small>(line 3 of the Worksheets)</small> This income is (check one): <input type="checkbox"/> imputed to this parent. (Skip to 6.) <input type="checkbox"/> this parent's actual income (after any exclusions approved below).
Does this parent have income from overtime or a 2 nd job? <input type="checkbox"/> No. (Skip to 6.) <input type="checkbox"/> Yes. (Fill out below.) Should this income be excluded? (check one): <input type="checkbox"/> No. The court has included this income in this parent's gross monthly income on line 1 of the <i>Worksheets</i> . <input type="checkbox"/> Yes. This income should be excluded because: <ul style="list-style-type: none"> ▪ This parent worked over 40 hours per week averaged over 12 months, and ▪ That income was earned to pay for <input type="checkbox"/> current family needs <input type="checkbox"/> debts from a past relationship <input type="checkbox"/> child support debt, and ▪ This parent will stop earning this extra income after paying these debts. The court has excluded \$ _____ from this parent's gross monthly income on line 1 of the <i>Worksheets</i> .	Does this parent have income from overtime or a 2 nd job? <input type="checkbox"/> No. (Skip to 6.) <input type="checkbox"/> Yes. (Fill out below.) Should this income be excluded? (check one): <input type="checkbox"/> No. The court has included this income in this parent's gross monthly income on line 1 of the <i>Worksheets</i> . <input type="checkbox"/> Yes. This income should be excluded because: <ul style="list-style-type: none"> ▪ This parent worked over 40 hours per week averaged over 12 months, and ▪ That income was earned to pay for <input type="checkbox"/> current family needs <input type="checkbox"/> debts from a past relationship <input type="checkbox"/> child support debt, and ▪ This parent will stop earning this extra income after paying these debts. The court has excluded \$ _____ from this parent's gross monthly income on line 1 of the <i>Worksheets</i> .

Parent (name): _____	Parent (name): _____
<input type="checkbox"/> Other Findings: _____ _____	<input type="checkbox"/> Other Findings: _____ _____

6. Imputed Income

To calculate child support, the court may **impute** income to a parent:

- whose income is unknown, or
- who the Court finds is unemployed or under-employed by choice.

Imputed income is not actual income. It is an assigned amount the court finds a parent could or should be earning. (RCW 26.19.071(6))

Parent (name): _____	Parent (name): _____
<input type="checkbox"/> Does not apply. This parent's actual income is used. (Skip to 7.)	<input type="checkbox"/> Does not apply. This parent's actual income is used. (Skip to 7.)
<input type="checkbox"/> This parent's monthly net income is imputed because (check one): <ul style="list-style-type: none"> <input type="checkbox"/> this parent's income is unknown. <input type="checkbox"/> this parent is voluntarily unemployed. <input type="checkbox"/> this parent is voluntarily under-employed. <input type="checkbox"/> this parent works full-time but is purposely under-employed to reduce child support. <p>The imputed amount is based on the information below: (Options are listed in order of required priority. The Court used the first option possible based on the information it had.)</p> <ul style="list-style-type: none"> <input type="checkbox"/> Full-time pay at current pay rate. <input type="checkbox"/> Full-time pay based on reliable information about past earnings. <input type="checkbox"/> Full-time pay based on incomplete or irregular information about past earnings. <input type="checkbox"/> Full-time pay at minimum wage in the area where the parent lives because this parent (check all that apply): <ul style="list-style-type: none"> <input type="checkbox"/> is a high school student. <input type="checkbox"/> recently worked at minimum wage jobs. <input type="checkbox"/> recently stopped receiving public assistance, supplemental security income (SSI), or disability. <input type="checkbox"/> was recently incarcerated. <input type="checkbox"/> Table of Median Net Monthly Income. <input type="checkbox"/> Other (specify): _____ 	<input type="checkbox"/> This parent's monthly net income is imputed because (check one): <ul style="list-style-type: none"> <input type="checkbox"/> this parent's income is unknown. <input type="checkbox"/> this parent is voluntarily unemployed. <input type="checkbox"/> this parent is voluntarily under-employed. <input type="checkbox"/> this parent works full-time but is purposely under-employed to reduce child support. <p>The imputed amount is based on the information below: (Options are listed in order of required priority. The Court used the first option possible based on the information it had.)</p> <ul style="list-style-type: none"> <input type="checkbox"/> Full-time pay at current pay rate. <input type="checkbox"/> Full-time pay based on reliable information about past earnings. <input type="checkbox"/> Full-time pay based on incomplete or irregular information about past earnings. <input type="checkbox"/> Full-time pay at minimum wage in the area where the parent lives because this parent (check all that apply): <ul style="list-style-type: none"> <input type="checkbox"/> is a high school student. <input type="checkbox"/> recently worked at minimum wage jobs. <input type="checkbox"/> recently stopped receiving public assistance, supplemental security income (SSI), or disability. <input type="checkbox"/> was recently incarcerated. <input type="checkbox"/> Table of Median Net Monthly Income. <input type="checkbox"/> Other (specify): _____

7. **Limits affecting the monthly child support amount**

- Does not apply. The monthly amount was not affected by the upper or lower limits in RCW 26.19.065.
- The monthly amount has been affected by (check all that apply):
 - low-income limits.** The self-support reserve and presumptive minimum payment have been calculated in the *Worksheets*, lines 8.a. - c.
 - the 45% net income limit.** The court finds that the paying parent's child support obligations for his/her biological and legal children are more than 45% of his/her net income (*Worksheets*, line 18). Based on the children's best interests and the parents' circumstances, it is (check one): fair **not** fair to apply the 45% limit. (Describe both parents' situations):

- Combined Monthly Net Income over \$12,000.** Together the parents earn more than \$12,000 per month (*Worksheets* line 4). The child support amount (check one):
 - is the presumptive amount from the economic table.
 - is **more** than the presumptive amount from the economic table because (specify):

8. **Standard Calculation**

~~(Check one);~~ From the *Child Support Schedule, Worksheets* line 17:

For the parent in column 1 (name) _____, the standard calculation is \$ _____.

For the parent in column 2 (name) _____, the standard calculation is \$ _____.

Residential information for all the children covered by this order.

- All children living together Primary residence** – All of the children are living with (parent or non-parent custodian's name): _____ most of the time. ~~The other parent must pay child support. The standard calculation from the *Child Support Schedule Worksheets* line 17 for the parent paying support is \$_____.~~
- Substantially equal** – All of the children are living with each parent about the same amount of time.
- Residential Split** – For relationships with more than one child, Eeach parent has at least one of the children from this relationship living with him/her most of the time. ~~(Do not use this for 50/50 schedules.)~~

These children (names and ages):	These children (names and ages):
----------------------------------	----------------------------------

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Live with (parent's name):	Live with (parent's name):
----------------------------	----------------------------

The standard calculation for the parent paying support is \$_____. This is from (check one):

- the Attachment for Residential Split Adjustment, line G (form WSCSS–Attachment for RSA). This Attachment to the Child Support Schedule Worksheets is approved by the court and made part of this order.
- other calculation (specify method and attach Worksheet/s): _____

9. **Deviation from standard calculation**

Should the monthly child support amount be different from the standard calculation?

- No** – The monthly child support amount ordered in section 10 is the **same** as the standard calculation listed in section 8 because (check one):
 - Neither parent asked for a deviation from the standard calculation. (Skip to 10.)
 - There is no good reason to approve the deviation requested by (name/s): _____
The facts supporting this decision are (check all that apply):
 - detailed in the Worksheets, Part VIII, lines 20 through 26.
 - the parent asking for a deviation:
 - has a new spouse or domestic partner with income of \$_____.
 - lives in a household where other adults have income of \$_____.
 - has income from overtime or a 2nd job that was excluded in section 5 above.
 - other (specify): _____
- Yes** – The monthly child support amount ordered in section 10 is **different** from the standard calculation listed in section 8 because (check all that apply):
 - A parent or parents in this case has:
 - children from other relationships.
 - paid or received child support for children from other relationships.
 - gifts, prizes or other assets.
 - income that is not regular (non-recurring income) such as bonuses, overtime, etc.
 - unusual unplanned debt (extraordinary debt not voluntarily incurred).
 - tax planning considerations that will not reduce the economic benefit to the children.
 - very different living costs, which are beyond their control.
 - The children in this case:
 - spend significant time with the parent who owes support. The non-standard amount still gives the other parent's household enough money for the children's basic needs. The children do not get public assistance (TANF).
 - have extraordinary income.

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- have special needs because of a disability.
- have special medical, educational, or psychological needs.
- spend significant time with the parent who owes support. The non-standard amount still gives the other parent's household enough money for the children's basic needs. The children do not get public assistance (TANF).
- There are (or will be) costs for court-ordered reunification or a voluntary placement agreement.
- The parent who owes support has shown it is not fair to have to pay the \$50 per child presumptive minimum payment.
- The parent who is owed support has shown it is not fair to apply the self-support reserve (calculated on lines 8.a. – c. of the *Worksheets*).
- Other reasons: _____

The facts that support the reasons checked above are (check all that apply):

- detailed in the *Worksheets*, Part VIII, lines 20 through 26.
- the parent asking for a deviation:
 - has a new spouse or domestic partner with income of \$_____.
 - lives in a household where other adults have income of \$_____.
 - has income from overtime or a 2nd job that was excluded in section 5 above.
- as follows: _____

10. **Monthly child support amount (transfer payment)**

After considering the standard calculation in section 8, and whether or not to apply a deviation in section 9, the court orders the following monthly child support amount (transfer payment).

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- ~~All children living together~~ – (Name): _____ must pay child support to (name): _____ each month as follows for the children listed below (add lines for additional children if needed):

	Child's Name	Age	Amount
1.			\$
2.			\$
3.			\$
4.			\$
5.			\$
Total monthly child support amount:			\$

- Child turning twelve years old – The monthly amount for (child's name) _____ will change to \$_____ starting with the month this child turns twelve (month, year): _____

- Residential Split** – Each parent has at least one of the children from this relationship living with him/her most of the time. (Name): _____ must pay child support to (name): _____ each month as follows:

Total monthly child support amount: \$ _____

11. Starting date and payment schedule

The monthly child support amount must be paid starting (month, year): _____ on the following payment schedule:

- in one payment each month by the ____ day of the month.
 in two payments each month: ½ by the ____ and ½ by the ____ day of the month.
 other (specify): _____

12. Step Increase (for modifications or adjustments only)

- Does not apply.
 Approved – The court is changing a final child support order. The monthly child support amount is increasing by more than 30% from the last final child support order. This causes significant financial hardship to the parent who owes support, so the increase will be applied in two equal steps:
- For six months from the Starting Date in section 11 above, the monthly child support amount will be the old monthly amount plus ½ of the increase, for a total of \$ _____ each month.
 - On (date): _____, six months after the Starting Date in section 11, the monthly child support amount will be the full amount listed in section 10.
- Denied** – The court is changing a final child support order (check one):
- but the monthly payment increased by less than 30%.
 - and the monthly payment increased by more than 30%, but this does not cause a significant hardship to the parent who owes support.

13. Periodic Adjustment

- Child support may be changed according to state law. The Court is not ordering a specific periodic adjustment schedule below.
 Any party may ask the court to adjust child support periodically on the following schedule **without** showing a substantial change of circumstances:
The *Motion to Adjust Child Support Order* may be filed:
- every ____ months.
 - on (date/s): _____
 - other (describe condition or event): _____

Important! A party must file a *Motion to Adjust Child Support Order (form FL Modify 521)*, and the court must approve a new *Child Support Order* for any adjustment to take effect.

- Deadlines, if any (for example, deadline to exchange financial information, deadline to file the motion): _____

14. **Payment Method** (*check either Registry or Direct Pay*)

Send payment to the ~~(check one)~~:

- ~~Washington State Support Registry~~ – Send payment to the Washington State Support Registry. The Division of Child Support (DCS) will forward the payments to the person owed support and keep records of all payments.

Address for payment: Washington State Support Registry
PO Box 45868, Olympia, WA 98504

Important! If you are ordered to send your support payments to the Washington State Support Registry, and you pay some other person or organization, you will **not** get credit for your payment.

DCS Enforcement (~~check one~~ if Registry is checked above):

- DCS will **enforce** this order because (*check all that apply*):
- this is a public assistance case.
 - one of the parties has already asked DCS for services.
 - one of the parties has asked for DCS services by signing the application statement at the end of this order (above the *Warnings*).
- DCS will **not** enforce this order unless one of the parties applies for DCS services or the children go on public assistance.

- Direct Pay** – Send payment to the Other parent or non-parent custodian by:

mail to: _____
street address or PO box city state zip

or any new address the person owed support provides to the parent who owes support. (*This does not have to be his/her home address.*)

other method: _____

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15. **Enforcement through income withholding (garnishment)**

DCS or the person owed support can collect the support owed from the wages, earnings, assets or benefits of the parent who owes support, and can enforce liens against real or personal property as allowed by any state's child support laws without notice to the parent who owes the support.

If this order is not being enforced by DCS and the person owed support wants to have support paid directly from the employer, the person owed support must ask the court to sign a separate wage assignment order requiring the employer to withhold wages and make payments. (Chapter 26.18 RCW.)

Income withholding may be delayed until a payment becomes past due if the court finds good reason to delay.

- Does not apply. There is no good reason to delay income withholding.
- Income withholding will be **delayed** until a payment becomes past due because *(check one)*:
 - the child support payments are enforced by DCS and there are good reasons in the children's best interest **not** to withhold income at this time. If this is a case about changing child support, previously ordered child support has been paid on time.
List the good reasons here: _____
 - the child support payments are **not** enforced by DCS and there are good reasons **not** to withhold income at this time.
List the good reasons here: _____
 - the court has approved the parents' written agreement for a different payment arrangement.

16. **End date for support**

Support must be paid for each child until *(check one)*:

- the court signs a different order, if this is a temporary order.
- the child turns 18 or is no longer enrolled in high school, whichever happens last, unless the court makes a different order in section 17.
- the child turns 18 or is otherwise emancipated, unless the court makes a different order in section 17.
- after *(child's name)*: _____ turns 18. Based on information available to the court, it is expected that this child will be unable to support him/herself and will remain dependent past the age of 18. Support must be paid until *(check one)*:
 - this child is able to support him/herself and is no longer dependent on the parents.
 - other: _____
- other *(specify)*: _____

17. **Post-secondary educational support (for college or vocational school)**

- Reserved** – A parent or non-parent custodian may ask the court for post-secondary educational support at a later date without showing a substantial change of circumstances by filing a *Petition to Modify Child Support Order* (form FL Modify 501). The *Petition* must be filed *before* child support ends as listed in section 16.
- Granted** – The parents must pay for the children's post-secondary educational support. Post-secondary educational support may include support for the period after high school and before college or vocational school begins. The amount or percentage each person must pay *(check one)*:
 - will be decided later. The parties may make a written agreement or ask the court to set the amount or percentage by filing a *Petition to Modify Child Support Order* (form FL Modify 501).

is as follows (specify): _____

Denied – The request for post-secondary educational support is denied.

Other (specify): _____

18. Claiming children as dependents on tax forms

Does not apply.

The parties have the right to claim the children as their dependents on their tax forms as follows (check one):

Every year – (name): _____
has the right to claim (children's names): _____;
and (name): _____
has the right to claim (children's names): _____.

Alternating – (name): _____
has the right to claim the children for (check one): even odd years. The other parent has the right to claim the children for the opposite years.

Other (specify): _____

For tax years when a non-custodial parent has the right to claim the children, the parents must cooperate to fill out and submit IRS Form 8332 in a timely manner.

Warning! Under federal law, the parent who claims a child as a dependent may owe a tax penalty if the child is not covered by health insurance.

19. Health Insurance

Important! Read the Health Insurance Warnings at the end of this order.

The court is not ordering how health insurance must be provided for the children because the court does not have enough information to determine the availability of accessible health insurance for the children (insurance that could be used for the children's primary care). **Both parents have a statutory obligation to provide or pay for health insurance.** The Division of Child Support (DCS) or either parent can enforce ~~the duty to provide or pay for health insurance~~ **this obligation.** (Skip to 20.)

OR

(Name): _____ must pay the premium to provide health insurance coverage for the children. The court has considered the needs of the children, the cost and extent of coverage, and the accessibility of coverage.

The other parent must pay his/her proportional share* of the premium paid. Health insurance premiums (check one):

are included on the *Worksheets* (line 14). No separate payment is needed.

are **not** included on the *Worksheets*. Separate payment is needed. A parent or non-parent custodian may ask DCS or the court to enforce payment for the proportional share.

* *Proportional share is each parent's percentage share of the combined net income from line 6 of the Child Support Schedule Worksheets.*

The other parent is **not** ordered to pay for any part of the children's insurance because (*explain*): _____

Neither parent can be ordered to pay an amount towards health insurance premiums that is more than 25% of his/her basic support obligation (*Worksheets*, line 19) unless the court finds it is in the best interest of the children.

A parent has been ordered to pay an amount that is more than 25% of his/her basic support obligation. The court finds this is in the children's best interest because: _____

Other (*specify*): _____

20. Health insurance if circumstances change or court has not ordered

If the parties' circumstances change, or if the court is not ordering how health insurance must be provided for the children in section 19:

- A parent, non-parent custodian, or DCS can enforce medical support obligation.
- If a parent does not provide proof of accessible private insurance (insurance that can be used for the children's primary care), that parent ~~may have to~~ must:
 - Get (or keep) insurance through his/her work or union, unless the insurance costs more than 25% of his/her basic support obligation (line 19 of the *Worksheets*),
 - Pay his/her share of the other parent's monthly premium up to 25% of his/her basic support obligation (line 19 of the *Worksheets*), or
 - Pay his/her share of the monthly cost of any public health care coverage, such as Healthy Kids, BHP, or Medicaid, for which there is an assignment.

21. Children's expenses not included in the monthly child support amount

Uninsured medical expenses – Each parent is responsible for a share of uninsured medical expenses as ordered below. Uninsured medical expenses include premiums, co-pays, deductibles, and other health care costs not covered by insurance. ~~A parent can ask DCS to collect those expenses, or a parent or non-parent custodian can ask the court for a judgment.~~

Children's Expenses for:	Parent (<i>name</i>):	Parent (<i>name</i>):	Make payments to:	
	_____ pays monthly	_____ pays monthly	Person who pays the expense	Service Provider
Uninsured medical expenses	<input type="checkbox"/> Proportional Share* <input type="checkbox"/> _____%**	<input type="checkbox"/> Proportional Share* <input type="checkbox"/> _____%**	<input type="checkbox"/>	<input type="checkbox"/>

* *Proportional Share is each parent's percentage share of the combined net income from line 6 of the Child Support Schedule Worksheets.*

** *If the percentages ordered are different from the Proportional Share, explain why:*

Other shared expenses (check one):

Does not apply. The monthly amount covers all expenses, except health care expenses.

The parents will share the cost for the expenses listed below (*check all that apply*):

Children's Expenses for:	Parent (name):	Parent (name):	Make payments to:	
	_____ pays monthly	_____ pays monthly	Person who pays the expense	Service Provider
<input type="checkbox"/> Day care: _____ _____	<input type="checkbox"/> Proportional Share* <input type="checkbox"/> \$ _____ <input type="checkbox"/> _____%**	<input type="checkbox"/> Proportional Share* <input type="checkbox"/> \$ _____ <input type="checkbox"/> _____%**	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Education: _____ _____	<input type="checkbox"/> Proportional Share* <input type="checkbox"/> \$ _____ <input type="checkbox"/> _____%**	<input type="checkbox"/> Proportional Share* <input type="checkbox"/> \$ _____ <input type="checkbox"/> _____%**	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Long-distance transportation: _____ _____	<input type="checkbox"/> Proportional Share* <input type="checkbox"/> \$ _____ <input type="checkbox"/> _____%**	<input type="checkbox"/> Proportional Share* <input type="checkbox"/> \$ _____ <input type="checkbox"/> _____%**	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Other (specify): _____ _____	<input type="checkbox"/> Proportional Share* <input type="checkbox"/> \$ _____ <input type="checkbox"/> _____%**	<input type="checkbox"/> Proportional Share* <input type="checkbox"/> \$ _____ <input type="checkbox"/> _____%**	<input type="checkbox"/>	<input type="checkbox"/>

* *Proportional Share is each parent's percentage share of the combined net income from line 6 of the Child Support Schedule Worksheets.*

** *If any percentages ordered are different from the Proportional Share, explain why:*

Other (give more detail about covered expenses here, if needed): _____

A person receiving support can ask DCS to collect:

- expenses owed directly to him/her.
- reimbursement for expenses the person providing support was ordered to pay.
- an order for a money judgment that s/he got from the court.

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22. **Past due child support, medical support and other expenses**

- This order does not address any past due amounts or interest owed.
- As of (date): _____, neither parent owes (check all that apply):
- past due child support interest on past due child support
 past due medical support interest on past due medical support
 past due other expenses interest on past due other expenses
- to (check all that apply): the other parent or non-parent custodian. the state.
- The court orders the following **money judgments** (summarized in section 1 above):

Judgment for	Debtor's name (person who must pay money)	Creditor's name (person who must be paid)	Amount	Interest
<input type="checkbox"/> Past due child support from _____ to _____			\$	\$
<input type="checkbox"/> Past due medical support (health ins. & health care costs not covered by ins.) from _____ to _____			\$	\$
<input type="checkbox"/> Past due expenses for: <input type="checkbox"/> day care <input type="checkbox"/> education <input type="checkbox"/> long-distance transp. from _____ to _____			\$	\$
<input type="checkbox"/> Other (describe): _____			\$	\$

The **interest rate** for child support judgments is 12%.

- Other (specify): _____
- _____

23. **Overpayment caused by change**

- Does not apply.
- The *Order* signed by the court today or on date: _____
caused an overpayment of \$_____.
- (Name): _____ shall repay this amount
to (Name): _____ by (date): _____.
- The overpayment shall be credited against the monthly support amount owed each
month at the rate of \$_____ each month until paid off.
- Other (specify): _____
- _____

24. Other Orders

All the Warnings below are required by law and are incorporated and made part of this order.

Other (specify): _____

Ordered.

Date Judge or Commissioner

Petitioner and Respondent or their lawyers fill out below:

This document (check any that apply):

- is an agreement of the parties
- is presented by me
- may be signed by the court without notice to me

This document (check any that apply):

- is an agreement of the parties
- is presented by me
- may be signed by the court without notice to me

Petitioner signs here or lawyer signs here + WSBA # Respondent signs here or lawyer signs here + WSBA #

Print Name Date Print Name Date

If any parent or child received public assistance:

The state Department of Social and Health Services (DSHS) was notified about this order through the Prosecuting Attorney's office, and has reviewed and approved the following:

- child support medical support
- past due child support other (specify): _____

Deputy Prosecutor signs here Print name and WSBA # Date

Parent or Non-Parent Custodian applies for DCS enforcement services:

I ask the Division of Child Support (DCS) to enforce this order. I understand that DCS will keep \$25 each year as a fee if DCS collects more than \$500, unless I ask to be excused from paying this fee in advance. (You may call DCS at 1-800-442-5437. DCS will not charge a fee if you have ever received TANF, tribal TANF, or AFDC.)

Parent or Non-Parent Custodian signs here Print name Date
(lawyer cannot sign for party)

All the warnings below are required by law and are part of the order. Do not remove.

Warnings!

If you don't follow this child support order...

- DOL or other licensing agencies may deny, suspend, or refuse to renew your licenses, including your driver's license and business or professional licenses, and
- Dept. of Fish and Wildlife may suspend or refuse to issue your fishing and hunting licenses and you may not be able to get permits. (RCW 74.20A.320)

If you receive child support...

You may have to:

- Document how that support and any cash received for the children's health care was spent.
- Repay the other parent for any day care or special expenses included in the support if you didn't actually have those expenses. (RCW 26.19.080)

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Health Insurance Warnings!

Both parents must keep the Support Registry informed whether or not they have access to health insurance for the children at a reasonable cost, and provide the policy information for any such insurance.

If you are ordered to provide children's health insurance...

You have **20 days** from the date of this order to send:

- proof that the children are covered by insurance, or
- proof that insurance is not available as ordered.

Send your proof to the other parent or to the Support Registry (if your payments go there).

If you do **not** provide proof of insurance:

- The other parent or the support agency may contact your employer or union, without notifying you, to ask for direct enforcement of this order (*RCW 26.18.170*), and
- The other parent may:
 - Ask the Division of Child Support (DCS) for help,
 - Ask the court for a contempt order, or
 - File a Petition in court.

Don't cancel your children's health insurance without the court's approval, unless your job ends and you can no

longer get or continue coverage as ordered in section 19 through your job or union. If your insurance coverage for the children ends, you must notify the other parent and the Support Registry.

If an insurer sends you payment for a medical provider's service:

- you must send it to the medical provider if the provider has not been paid; or
- you must send the payment to whoever paid the provider if someone else paid the provider; or
- you may keep the payment if you paid the provider.

If the children have public health care coverage, the state can make you pay for the cost of the monthly premium.

Always inform the Support Registry and other parent if your access to health insurance changes or ends.

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CHILD SUPPORT ORDERS: THE PLAIN LANGUAGE FORMS AND OTHER COMPLAINTS

Nancy Koptur
DSHS Division of Child Support HQ
December 14, 2016

Today's Plan

- Issues I've seen with the Plain Language Child Support Order – *and some fixes in the works*
- Issues I've seen with child support orders in general
- Q&A

BREAKING NEWS RE PLAIN LANGUAGE ORDER FORM!

- *There are changes coming in 2017!*
- Draft revisions to the Child Support Order are in your materials
- Some critical issues fixed
- This may not solve all your problems

The two sections of the current plain language support order that cause the most problems for the Division of Child Support, and therefore, for you ...

PARAGRAPH 14: PAYMENT METHOD

5

Payment Method

Paragraph 14 is confusing

- Lots of mistakes, both from attorneys and from unrepresented parties
- Formatting: it's hard to line up boxes on two separate pages

6

Current form offers this choice

14. Payment Method

Send payment to the *(check one)*:

Washington State Support Registry. *Blah blah blah blah
blah*

{page break}

Other parent or non-parent custodian by: *Blah blah
blah blah blah*

7

This is how lots of people read the current form

14. Payment Method

Send payment to the *(check one)*:

*{It's okay, you can ignore everything else on the bottom
of this page and go directly to the next page}*

DCS Enforcement *(check one)*:

DCS will enforce ...

DCS will not enforce ...

Other parent or non-parent custodian by: *Blah blah blah
blah blah*

8

So what happens?

- No choice of Payment Method
- *Unenforceable order!*

Revised Form

Paragraph 14 directions are clarified:

Payment Method *(check either Registry or Direct Pay)*

**still split between pages 7 and 8!*

“Registry”

[__] **Registry** – Send payment to the Washington State Support Registry. The Division of Child Support (DCS) will forward the payments to the person owed support and keep records of all payments.

What does that mean?

***Important!** If you are ordered to send your support payments to the Washington State Support Registry, and you pay some other person or organization, you will **not** get credit for your payment.*

If support is paid to WSSR, what will DCS do?

DCS Enforcement *(if Registry is checked above):*

DCS will **enforce** this order because *(check all that apply):*

this is a public assistance case.

one of the parties has already asked DCS for services.

one of the parties has asked for DCS services by signing the application statement at the end of this order (above the *Warnings*).

DCS will **not** enforce this order unless one of the parties applies for DCS services or the children go on public assistance.

13

“Direct Pay”

Direct Pay – Send payment to the other parent or non-parent custodian by:

mail to: _____
street address or PO box city state zip

or any new address the person owed support provides to the parent who owes support. *(This does not have to be his/her home address.)*

other method: _____

14

“Direct Pay”

- Note that checking “Direct Pay” option does not mean that DCS will never be involved in the case.
- Custodial Parent has the option of applying for DCS services *at any time*, unless the order specifies the circumstances.
- DCS must serve a notice to inform NCP that we are enforcing. RCW 74.20A.040, WAC 388-14A-3300.

15

**PARAGRAPH 19:
EVERYBODY’S FAVORITE TOPIC:
HEALTH INSURANCE**

16

Health Insurance

Current form, Paragraph 19:

Important! Read the Health Insurance Warnings at the end of this order.

New form, page 14:

All the warnings below are required by law and are part of the order. Do not remove.

Health Insurance

Current form, Paragraph 19:

The court is not ordering how health insurance must be provided for the children because the court does not have enough information to determine the availability of accessible health insurance for the children (insurance that could be used for the children's primary care). The Division of Child Support (DCS) or either parent can enforce the duty to provide or pay for health insurance.

Health Insurance

New form, Paragraph 19:

The court is not ordering how health insurance must be provided for the children because the court does not have enough information to determine the availability of accessible health insurance for the children (insurance that could be used for the children's primary care). Both parents have a statutory obligation to provide or pay for health insurance. The Division of Child Support (DCS) or either parent can enforce this obligation.

19

What's the difference?

The court is not ordering how health insurance must be provided for the children because the court does not have enough information to determine the availability of accessible health insurance for the children (insurance that could be used for the children's primary care). *Both parents have a statutory obligation to provide or pay for health insurance.* The Division of Child Support (DCS) or either parent can enforce this obligation.

20

Other proposed changes

Current Paragraph 8: Standard Calculation

Standard Calculation

(Check one):

All children living together – All of the children are living with (name): _____ most of the time. The other parent must pay child support. The standard calculation from the *Child Support Schedule Worksheets* line 17 for the parent paying support is \$ _____.

Residential Split – Each parent has at least one of the children from this relationship living with him/her most of the time. (Do not use this for 50/50 schedules.)

Other proposed changes

New Paragraph 8: Standard Calculation

From the Child Support Schedule Worksheets line 17:

For the parent in column 1 (name) _____, the standard calculation is \$ _____.

For the parent in column 2 (name) _____, the standard calculation is \$ _____.

Residential information for all the children covered by this order.

Primary residence – All of the children are living with (parent or non-parent custodian's name): _____ most of the time.

Substantially equal – All of the children are living with each parent about the same amount of time.

Residential Split – For relationships with more than one child, each parent has at least one of the children from this relationship living with him/her most of the time.

Other proposed changes

Paragraph 10: Monthly child support amount (transfer payment)

Current form:

After considering the standard calculation and whether or not to apply a deviation, the court orders the following monthly child support amount (transfer payment).

All children living together – (Name): _____ must pay child support to (name): _____ each month as follows for the children listed below (add lines for additional children if needed): ...

Residential Split

New form:

After considering the standard calculation in section 8, and whether or not to apply a deviation in section 9, the court orders the following monthly child support amount (transfer payment).

(Name): _____ must pay child support to (name): _____ each month as follows for the children listed below (add lines for additional children if needed): ...

Residential Split ...

23

Other proposed changes

Paragraph 21: Children's expenses not included in the monthly child support amount

Current form:

- **Uninsured medical expenses** – Each parent is responsible for a share of uninsured medical expenses as ordered below. Uninsured medical expenses include premiums, co-pays, deductibles, and other health care costs not covered by insurance. A parent can ask DCS to collect those expenses, or a parent or non-parent custodian can ask the court for a judgment.

New form:

- **Uninsured medical expenses** – Each parent is responsible for a share of uninsured medical expenses as ordered below. Uninsured medical expenses include premiums, co-pays, deductibles, and other health care costs not covered by insurance.

But wait, there's more ...

24

Other proposed changes

Paragraph 21: Children's expenses not included in the monthly child support amount

Current form:

- **Uninsured medical expenses** – Each parent is responsible for a share of uninsured medical expenses as ordered below. Uninsured medical expenses include premiums, co-pays, deductibles, and other health care costs not covered by insurance. A parent can ask DCS to collect those expenses, or a parent or non-parent custodian can ask the court for a judgment.

New form:

- **A person receiving support can ask DCS to collect:**
 - expenses owed directly to him/her.
 - reimbursement for expenses the person providing support was ordered to pay.
 - an order for a money judgment that s/he got from the court.

25

Changes I'd like to see

- If possible, make formatting changes so sections are not broken up
- **Paragraph 23** talks about an *Overpayment caused by change* but where is the section on *Underpayment caused by change*?

26

NOW, WHAT ELSE SHOULD WE TALK ABOUT?

27

Drafting Customized Orders

My advice:

Stick to the pattern forms as closely as possible and we'll both be happy.

AOC rules:

"The text of a section must not be altered, deleted or revised from the text provided in the form or pleading, except where there are check boxes provided in the form or pleading. If there are check boxes in the section, the text above or before the first check box may not be altered, deleted or revised. Text following check boxes may be deleted as provided in ... Text may be added to a section only as provided in ..."

*****The full document is included in your materials*****

28

Customized Orders

- If you just can't resist tweaking, you can contact DCS to make sure you have drafted an enforceable order.
- Think about it this way: *Do you really want DCS to tell your client you drafted an unenforceable order?*

29

Does your order make sense?

- Would it pass the "reasonable reader" test?
- We're not stupid, but we're not here to interpret your order, we are here to enforce it **as written**.
- If you do something **unusual**, use the "Other" box to explain or clarify.

30

Nancy's Whine List

- Please don't check the *Clerk's Action Required* box on proposed orders until the presiding officer actually signs the order.
- Don't put child support matters/conditions in your parenting plan.
- Make sure the *Child Support Schedule Worksheets* actually get filed.

But wait, there's more ...

31

Nancy's Whine List

- The *Whole Family Formula* is not yet part of Chapter 26.19 RCW, so you still need **Findings of Fact** to support the deviation.

In re Marriage of Choate, 143 Wn.App 235, 177 P.3d 175 (Wash.App. Div 2, 2008)

- Remind your client to keep the court and DCS updated with address information:

Warning! Any notice of a child support action delivered to the last address you provided on the Confidential Information form will be considered adequate notice, if the party trying to serve you has shown diligent efforts to locate you.

But wait, there's more ...

32

Nancy's Whine List

- If you don't set out a per-child amount, DCS may say that your support order is **undifferentiated**.
- See WAC 388-14A-4800 through 388-14A-4830
- Under WAC 388-14A-4800:
 - (2) A support order which provides a monthly amount of child support for two or more children, but does not provide a specific support obligation for each child, may be a differentiated support order or an undifferentiated support order.
 - (a) To determine whether a support order is differentiated or undifferentiated, the division of child support (DCS) reviews the information contained in the support order, and, if necessary to interpret the intent of the order, may consider the worksheets associated with the order.
 - (b) *When the order may justifiably be divided into per child amounts* for each child, the division of child support (DCS) calls it a "differentiated support order."
 - (c) *When the order does not contain enough information in either the order or the worksheets to justify dividing the monthly amount into per child amounts* for each child, DCS calls it an "undifferentiated support order."

But wait, there's more ...

33

That's enough from me

- What are your concerns/issues about the Plain Language Child Support Order?
- Any concerns/issues about how DCS has been enforcing your child support orders?
- Q&A if there's time ...

34

Questions?

Nancy Koptur
DCS Headquarters
Nancy.Koptur@dshs.wa.gov
360-664-5065

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CHAPTER FIVE

MODIFICATIONS

November 2016

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AMIR JOHN SHOWRAI Biography not available at this time.

Superior Court of Washington, County of _____

In re:

Petitioner/s *(as listed on the Petition)*:

And Respondent/s *(as listed on the Petition)*:

No. _____

Final Order and Findings on Petition to
Modify Child Support Order
(ORMDD)

Clerk's action required: 1, 13

Final Order and Findings on Petition to Modify
Child Support Order

1. Money Judgment Summary

No money judgment is ordered.

Summarize any money judgment from section 13 in the table below.

Judgment for	Debtor's name <i>(person who must pay money)</i>	Creditor's name <i>(person who must be paid)</i>	Amount	Interest
Lawyer fees				
Court costs			\$	\$
Other <i>(specify)</i> :			\$	\$
Yearly Interest Rate: ____% <i>(12% unless otherwise listed)</i>				
Lawyer <i>(name)</i> :		represents <i>(name)</i> :		
Lawyer <i>(name)</i> :		represents <i>(name)</i> :		

2. Court findings based on *(check all that apply)*:

Parents' agreement.

Order on Motion for Default signed on *(date)*: _____

The court's decision after a hearing on *(date)*: _____, at which *(check one)*:

no one testified.

these people testified (*name/s*): _____

➤ **Findings & Conclusions**

3. **Jurisdiction**

The court has authority to modify the current child support order because it was issued by a (*check one*):

Washington state court.

Different state or jurisdiction, but has been registered in a Washington state court and (*check one*):

All Parties in Washington Now:

- All the parties to the current order (other than a State party) now live in this state; and
- The children do not live in the state or jurisdiction where the order was issued.

No One Left In Issuing State:

- None of the children or parties to the current order (other than a State party) live in the state or jurisdiction where the order was issued;
- The person asking to modify the order (Petitioner) lives outside of Washington; and
- Washington has personal jurisdiction over the Respondent because s/he (*check all that apply*):
 - lives in this state now.
 - will be personally served in this state with a *Summons* and *Petition* for this case.
 - lived in this state with the children.
 - lived in this state and paid for pregnancy costs or support for the children.
 - did or said something that caused the children to live in this state.
 - had sex in this state, which may have produced the children.
 - signed an agreement to join this *Petition* or other document agreeing that the court can decide his or her rights in this case.
 - other (*specify*): _____

Parties Have Consented:

- At least one child or party to the current order lives in Washington state now; and
- Each party to the current order (other than a State party) has filed a consent with the court that issued the current order agreeing that a Washington court may modify the order and take continuing, exclusive jurisdiction.

The court does **not** have authority to modify the current child support order because (*explain*): _____

4. **Should the court modify the monthly child support amount?**

- Does not apply. No change was requested.
- No.** The monthly child support amount should **not** be changed because there are no valid reasons to change it. *(Explain why the reasons in the Petition are not valid):* _____

- Yes.** The monthly child support amount should be changed as written in the new *Child Support Order* because *(check all that apply):*

- Agreement** – The parties agree to the changes.
 - 1 year or more has passed** – The current order was signed at least one year ago and *(check all that apply):*
 - the current order causes severe financial hardship for the requesting party or the children .
 - a child has turned 12 and has the right to more support.
 - the court should add a Periodic Adjustment provision according to RCW 26.09.100. Support may be adjusted periodically as described in the new *Child Support Order*.
 - 2 years or more have passed** – The current order was signed at least two full years (24 months) ago and *(check all that apply):*
 - the parents' income has changed.
 - the economic table or standards in RCW 26.19 have changed.
 - Default or Past Agreement** – The current order was issued by default or agreement, without the court independently examining the evidence to decide a reasonable amount of support according to the law.
 - Change of Circumstances** – There has been a substantial change in circumstances since the current order was signed. *(Describe):* _____
-
-
-
-
-
-
-
-
-
-

5. **Should the court modify the end date for child support?**

- Does not apply. No change was requested.
- No.** The end date for child support should **not** be changed because there are no valid reasons to change it. *(Explain why the reasons in the Petition are not valid):* _____

-
-
- Yes.** The end date should be changed as written in the new *Child Support Order* because (*check all that apply*):
- Agreement** – The parties agree to the changes.
- Finish High School** – The current order was signed at least one year ago. (*Child's name*): _____ will still be in high school when s/he turns 18 and will need support until s/he finishes high school.
- Dependent Adult Child** – The current order says support must be paid for each child until the child turns 18 or is no longer enrolled in high school, whichever happens last. Support should continue past this time for (*child's name*): _____ because this child will be unable to support him/herself and will remain dependent past the age of 18. This child's situation has changed substantially since the current order was signed. (*Describe*): _____
-
-
- Default or Past Agreement** – The current order was issued by default or agreement, without the court independently examining the evidence to decide a reasonable end date for support according to the law.
- Other** – (*Specify*): _____

6. **Should the court modify post-secondary educational support?**

- Does not apply. No change was requested.
- No.** The court should **not** change or order post-secondary support because there are no valid reasons. (*Explain why the reasons in the Petition are not valid*): _____
-
-
- Yes. Issue was reserved** – The current order allows a parent/custodian to ask the court for post-secondary support at a later date. The children depend on the parents for the reasonable necessities of life. The court has considered the factors in RCW 26.19.090(2) and decided that post-secondary support should be ordered as written in the new *Child Support Order*.
- Yes. Support was granted, need to set an amount** – The current order says the parents must pay for the children's post-secondary support, but did not set a payment amount or percentage. The court has considered the financial resources of the parents and the child, the expenses for post-secondary education, and other relevant information. The court approves the post-secondary support amount or percentage of expenses written on the new *Child Support Order*.
- Yes. Modify** – The court should change post-secondary support as follows (*check all that apply*):

- Require** – The current order says post-secondary support is not required. The court should modify the order so that post-secondary support is required for *(Children’s names)*: _____
This child depends on the parents for the reasonable necessities of life. The court has considered the factors in RCW 26.19.090(2) and decided that post-secondary support should be ordered as written on the new *Child Support Order*.
- Cancel** – The current order says the parents must pay for the children’s post-secondary (college or vocational school) support. The court should change the order so that post-secondary support is no longer required.
- Change Amount** – The current order requires the parents to pay a specific amount or percentage of expenses for the children’s post-secondary (college or vocational school) support. The court should change the amount or percentage as written on the new *Child Support Order*.

These changes should be made because *(check all that apply)*:

- Agreement** – The parties agree to the changes in the new *Child Support Order*.
- Default or Past Agreement** – The current order was issued by default or agreement, without the court independently examining the evidence to decide these issues.
- Change of Circumstances** – There has been a substantial change in circumstances since the current order was signed.
 - See change of circumstances described in section 4 above.
 - (Describe)*: _____

7. Should the court modify payment for children’s expenses or tax exemptions?

- Does not apply. No change was requested.
- No.** The court should **not** change payment for other expense or tax exemptions because there are no valid reasons for change. *(Explain why the reasons in the Petition are not valid)*: _____

- Yes.** The court should order or modify the following as written in the new *Child Support Order* *(check all that apply)*:

- day care expenses.
- educational expenses.
- long-distance transportation expenses.
- other expenses.
- tax exemptions.

These changes should be made because *(check all that apply)*:

- Agreement** – The parties agree to the changes.
- 2 years or more have passed** – It has been at least two full years (24 months) since the order was signed and these requests are based only on changes in the parents' income or the economic table or standards in RCW 26.19.
- Default or Past Agreement** – The current order was issued by default or agreement, without the court independently examining the evidence to decide these issues.
- Change of Circumstances** – There has been a substantial change in circumstances since the current order was signed.
 - See change of circumstances described in section 4 above.
 - (Describe)*: _____

8. **Should the court modify health insurance orders?**

- Does not apply. No change was requested.
- No.** The court should **not** change health insurance orders because there are no valid reasons for change. *(Explain why the reasons in the Petition are not valid)*: _____

- Yes.** The court should change health insurance orders as written in the new *Child Support Order*. These changes should be made because *(check all that apply)*:
 - Agreement** – The parties agree to the changes in the new *Child Support Order*.
 - 2 years or more have passed** – It has been at least two full years (24 months) since the order was signed and these changes are based only on changes in the parents' income or the economic table or standards in RCW 26.19.
 - Default or Past Agreement** – The current order was issued by default or agreement, without the court independently examining the evidence to decide these issues.
 - Change of Circumstances** – There has been a substantial change in circumstances since the current order was signed.
 - See change of circumstances described in section 4 above.
 - (Describe)*: _____

9. **Overpayment / underpayment caused by modification**

- Does not apply.

- Underpayment** – The changes to the *Child Support Order* caused an underpayment of support or other expenses. The underpayment must be paid according to the judgment in section 22 of the new *Child Support Order*.
- Overpayment** – The changes to the *Child Support Order* caused an overpayment of support or other expenses. The overpayment must be repaid according to section 23 of the new *Child Support Order*.

10. **Fees and costs**

- Does not apply. Neither party asked that the other party pay his/her lawyer fees and costs.
- (Name): _____ should pay court costs, lawyer fees, and other reasonable costs listed in the Money Judgment in section 13 below because (explain): _____

- (Name): _____ should **not** have to pay court costs, lawyer fees, and other reasonable costs because (explain): _____

- Other: _____

11. **Other findings, if any**

➤ **Court Orders**

12. **Decision**

- The *Petition* is denied. The current final *Child Support Order* remains in effect.
- The final *Child Support Order* and *Worksheets* signed by the court today or on (date): _____ are approved and filed separately.

13. **Money judgment for fees and costs** (summarized on page 1)

- No money judgment is ordered.
- The court orders a money judgment for fees and costs as follows:

Judgment for	Debtor's name (person who must pay money)	Creditor's name (person who must be paid)	Amount	Interest
<input type="checkbox"/> Lawyer fees			\$	\$
<input type="checkbox"/> Court costs			\$	\$
<input type="checkbox"/> Other fees and expenses (specify):			\$	\$

The **interest rate** is 12% unless another amount is listed below.

The interest rate is ____% because (*explain*): _____

14. **Other orders (if any)**

Ordered.

Date ▶ _____
Judge or Commissioner

Petitioner and Respondent or their lawyers fill out below:

This document (*check any that apply*):

- is an agreement of the parties
- is presented by me
- may be signed by the court without notice to me

This document (*check any that apply*):

- is an agreement of the parties
- is presented by me
- may be signed by the court without notice to me

▶ _____
Petitioner signs here or lawyer signs here + WSBA #

▶ _____
Respondent signs here or lawyer signs here + WSBA #

Print Name *Date*

Print Name *Date*

Superior Court of Washington, County of _____

In re:

Petitioner/s (*person/s who started this case*):

And Respondent/s (*other party/parties*):

No. _____

Motion to Adjust Child Support Order
(MTAS)

Motion to Adjust Child Support Order

To all parties:

Deadline! Your papers must be filed and served by the deadline in your county's Local Court Rules, or by the State Court Rules if there is no local rule. Court Rules and forms are online at www.courts.wa.gov.

If you want the court to consider your side, you **must**:

- File your original documents with the Superior Court Clerk; AND
- Give the Judge/Commissioner a copy of your papers (if required by your county's Local Court Rules); AND
- Have a copy of your papers served on all other parties or their lawyers; AND
- Go to the hearing.

Read your county's Local Court Rules, if any:

- You may be required to file other forms and documents.
- The court may not allow you to testify at the motion hearing.

Bring proposed orders to the hearing.

To the person filing this motion:

You must schedule a hearing on this motion. You may use the *Notice of Hearing* (form FL All Family 185) unless your county's Local Court Rules require a different form. Contact the court for scheduling information.

To the person receiving this motion:

If you do not agree with the requests in this motion, file a statement (using form FL All Family 135, *Declaration*) explaining why the court should not approve those requests. You may file other written proof supporting your side, and propose your own *Child Support Worksheets*.

1. My name is: _____ . I ask the court to adjust the *Child Support Order*. I am filing and serving proposed *Child Support Schedule Worksheets* at the same time as this motion.

2. **Is the state filing this motion? (Check one):**

No. This motion is filed by a parent or non-parent custodian.

Yes. The state Department of Social and Health Services (DSHS) is filing this motion because *(check all that apply)*:

the children receive public assistance.

the children do not receive public assistance, but one of the parties asked DSHS to review the order and DSHS decided the order should be adjusted.

another state or jurisdiction asked for this adjustment.

➤ **Why should the court adjust child support? (Check all that apply):**

3. **Two years or more have passed**

Does not apply.

At least two full years (24 months) have passed since the current order was issued and any step increase took effect **and** *(check all that apply)*:

the economic table or standards in RCW 26.19 have changed.

the parents' income has changed. *(Explain the changes here or use a separate Declaration form (FL All Family 135) and/or Financial Declaration form (FL All Family 131))*: _____

4. **Current order allows periodic adjustment**

Does not apply.

The current *Child Support Order* says support may be adjusted now.

5. **Other (if any):**

Superior Court of Washington, County of _____

In re:

Petitioner/s (*person/s who started this case*):

And Respondent/s (*other party/parties*):

No. _____

Order on Motion to Adjust
Child Support Order
(ORAS)

Order on Motion to Adjust Child Support Order

1. The court has considered the *Motion to Adjust Child Support Order* filed by
(*name*): _____.

2. **Jurisdiction:** The court has the authority to decide this case for these parties.

3. **Findings** (*check one*):

Child support should **not** be adjusted because: _____

Child support **should be** adjusted because (*check all that apply*):

Two years or more have passed – At least two full years (24 months) have
passed since the current order was entered and any step increase took effect and
(*check all that apply*):

the parents' income has changed.

the economic table or standards in RCW 26.19 have changed.

Current order allows periodic adjustment – The current *Child Support Order*
says support may be adjusted now.

Other findings (if any): _____

Superior Court of Washington, County of _____

In re:

Petitioner/s (as listed on the Petition):

And Respondent/s (as listed on the Petition):

No. _____

Summons: Notice about Changing a
Parenting Plan, Residential Schedule or
Custody Order
(SM)

Summons: Notice about Petition to Change a Parenting
Plan, Residential Schedule or Custody Order

To: _____
(name/s of the party/parties who did **not** file this Summons and Petition)

The person filing this *Summons* and *Petition* asked the court to change a *Parenting Plan*, *Residential Schedule*, or custody order. You must respond in writing for the court to consider your side.

Deadline! Your *Response* must be served on the other party within **20 days** of the date you were served this *Summons* (60 days if you were served outside of Washington State). If the case has been filed, you must also file your *Response* by the same deadline. If you do not serve and file your *Response* or a *Notice of Appearance* by the deadline:

- No one has to notify you about other hearings in this case, and
- The court may approve the requests in the *Petition* without hearing your side (called a *default judgment*).

Follow these steps:

1. **Read** the *Petition* and any other documents you receive with this *Summons*. These documents explain what the other party is asking for.
2. **Fill out** the *Response to Petition to Change a Parenting Plan, Residential Schedule or Custody Order* (form FL Modify 602). You can get the *Response* and other forms at:
 - The Washington State Courts' website: www.courts.wa.gov/forms,
 - The Administrative Office of the Courts – call: (360) 705-5328,
 - Washington LawHelp: www.washingtonlawhelp.org, or
 - The Superior Court Clerk's office or county law library (for a fee).

3. **Serve** (give) a copy of your *Response* to the person who filed this *Summons* at the address below, and to any other parties. You may use certified mail with return receipt requested. For more information on how to serve, read Superior Court Civil Rule 5.
4. **File** your original *Response* with the court clerk at this address:
 Superior Court Clerk, _____ County

address *city* *state* *zip*

If there is no "Case No." listed on page 1, this case may not have been filed and you will not be able to file a *Response*. Contact the Superior Court Clerk or check www.courts.wa.gov to find out.

If the case was **not** filed, you must still serve your *Response*, and you may demand that the other party file this case with the court. Your demand must be in writing and must be served on the other party or his/her lawyer (whoever signed this *Summons*). If the other party does not file papers for this case within 14 days of being served with your demand, this service on you of the *Summons* and *Petition* will not be valid. If the other party does file, then you must file your original *Response* with the court clerk at the address above.

5. **Adequate Cause:** Before the court will have a full hearing or trial about the *Petition*, one of the parties must ask the court to decide whether there are valid reasons to allow the case to move forward (adequate cause). If there are no valid reasons, the court will dismiss the *Petition*. Either party can file a *Motion for Adequate Cause Decision* (form FL Modify 603).
6. **Lawyer not required:** It's a good idea to talk to a lawyer, but you may file and serve your *Response* and other documents without one.

Person filing this *Summons* fills out below:

▶ _____

*Signature of person filing this *Summons* or lawyer* *Date*

*Print name of person filing this *Summons* or lawyer and WSBA No.*

I agree to accept legal papers for this case at (check one):

my lawyer's address:

lawyer's address *city* *state* *zip*

Email (if applicable): _____

the following address (this does **not** have to be your home address):

address *city* *state* *zip*

(Optional) email: _____

*(If this address changes before the case ends, you **must** notify all parties and the court clerk in writing. You may use the Notice of Address Change form (FL All Family 120). You must also update your Confidential Information Form (FL All Family 001) if this case involves parentage or child support.)*

*This *Summons* is issued according to Rule 4.1 of the Superior Court Civil Rules of the State of Washington.*

Superior Court of Washington, County of _____

In re:

Petitioner/s (see * below):

And Respondent/s (other party/parties):

No. _____

Petition to Change a Parenting Plan,
Residential Schedule or Custody Order
(PTMD)

* If you're filing this Petition in:

- the **same** case number as the current parenting/custody order, the person who is listed as the Petitioner in the current order will stay Petitioner, even if s/he is not the person asking for the change now.
- a **different** case number or county from where the current parenting/custody order was issued, the person asking for the change may be the Petitioner.

To modify a parenting/custody order from a sealed Parentage case, contact the Superior Court Clerk's office about who to list as Petitioner and if there is a new case number.

Petition to Change a Parenting Plan, Residential Schedule or Custody Order

1. Who is asking to change the parenting/custody order?

Name	Lives in (county and state)	Relation to the children
		<input type="checkbox"/> Parent <input type="checkbox"/> Non-Parent Custodian

2. Who are the other parents or custodians involved in this case?

Name	Lives in (county and state)	Relation to the children
		<input type="checkbox"/> Parent <input type="checkbox"/> Non-Parent Custodian
		<input type="checkbox"/> Parent <input type="checkbox"/> Non-Parent Custodian

3. **Who are the children involved in this case?**

Child's name	Age	Child's name	Age
1.		4.	
2.		5.	
3.		6.	

4. **Describe the parenting/custody order you have now:**

My current parenting/custody order is a (check one):

- Parenting Plan
 Residential Schedule
 Non-Parent Custody Order
 Other (title of order): _____

signed by a court on _____ in _____
date county and state

Important! Attach or file a certified copy of the current parenting/custody order that you want to change if it was issued in a different county or state.

5. **Explain why you are filing your request for change with this court:**

I ask the court to make the changes requested in sections 6 through 12 below, and to approve my proposed *Parenting Plan* or *Residential Schedule* that is filed with this *Petition*. This *Petition* shows I have valid reasons to ask for these changes. The changes are in the children's best interest.

I am filing this *Petition* in this county court because (check all that apply):

- I live in this county.
 the child/ren live in this county.
 the other parent (or non-parent custodian) lives in this county.
 the parenting/custody order that I want to change is from this county.

Note – If you need more space to explain in any of the sections below, you may add more pages to this Petition. Number, date and sign each page that you add.

6. **Request for minor change (RCW 26.09.260(5), (7) and (9))**

- No request.
 I ask the court to adjust the parenting schedule, but **not** change the person the child lives with most of the time. The situation of the child/ren, a parent, or a non-parent custodian has changed substantially.

Reason for minor change (check all that apply):

Note – Your reasons must be based on information that you learned about after the current parenting/custody order was issued, or, if the order was uncontested (issued by default or agreement), your reasons may be based on information that was unknown to the court when the order was issued.

- the current parenting/custody order is difficult to follow because the parent who has less residential time with the children has moved.
- the current parenting/custody order is difficult to follow because one parent's work schedule changed and the change was not by his/her choice.
- the requested change will affect the children's schedule on fewer than 25 full days a year.
- the requested change will impact the children's schedule on more than 24 full days, but fewer than 90 overnights a year. This change is needed because the current parenting/custody order does not give the children a reasonable amount of time with one parent and it's in the children's best interest to have more than 24 full days of increased time with that parent.

Are there any limitations on the parent whose time would be increased?

- No.** The current parenting/custody order does **not** limit that parent's time with the children because of abandonment, abuse, domestic violence, sex offense, or other serious problems.
- Yes.** That parent's time with the children is limited because of problems listed in the current parenting/custody order. I ask the court to allow that parent more parenting time with the children because the problems that caused the limitations have changed substantially.

Explain: _____

Has the parent whose time would be increased completed any required evaluations, treatment, or classes?

- Does not apply.** The current parenting/custody order does **not** require that parent to complete any evaluations, treatment or classes.
- Yes.** That parent has completed all court-ordered evaluations, treatment, or classes.

List completed evaluations, treatment, or classes here: _____

7. Request for major change (RCW 26.09.260(1) and (2))

- No request.
- I ask the court to make a major change in the parenting schedule or to change the person the child lives with most of the time. The situation of the child/ren or the *other* parent (or non-parent custodian) has changed substantially.

Reason for major change (check all that apply):

Note – Your reasons must be based on information that you learned about after the current parenting/custody order was issued, or, if the order was uncontested (issued by default or agreement), your reasons may be based on information that was unknown to the court when the order was issued.

the other parent (or non-parent custodian) and I agree with the changes asked for in my proposed *Parenting Plan* or *Residential Schedule*.

the children are living in my home now with the other parent's (or non-parent custodian's) permission. This is very different than what was ordered in the current parenting/custody order.

Explain: _____

the children's current living situation is harmful to their physical, mental or emotional health. It would be better for the children to change the parenting/custody order.

Explain: _____

the other parent (or non-parent custodian) has not followed the court's parenting/custody order. A court found him/her in contempt for disobeying the parenting schedule more than once in three years, or guilty of custodial interference in the first or second degree. (RCW 9A.40.060 or 9A.40.070)

Explain: _____

8. Request for limitations on one parent's parenting time and decision-making

No request.

Limit – The children already live with me the majority of the time. To protect the children, I ask the court to limit the other parent's parenting time and participation. The reasons for limitation are listed in my proposed *Parenting Plan* or *Residential Schedule*. (RCW 26.09.191, 26.09.260(4))

Adjust – The other parent is allowed some parenting time in the current parenting/custody order. But that parent has chosen not to spend any of his/her parenting time with the children for at least one year. I ask the court to adjust the parenting time for the other parent as shown in my proposed *Parenting Plan* or *Residential Schedule*. (RCW 26.09.260(8))

9. **Request for other changes** (RCW 26.09.260(10))

- No request.
- Because of a substantial change in one parent's/child's situation, I ask the court to adjust the following (*check all that apply*):
 - dispute resolution
 - decision making
 - transportation arrangements
 - other (*specify*): _____

Explain: _____

10. **Child Support** (RCW 26.09.170)

- No request. I am not asking the court to adjust or change child support.
- My request to change the parenting schedule affects child support because:
 - I'm asking to change the parent the children live with most of the time, or
 - I'm asking for a substantial change in the amount of time the children spend with the parent who pays child support.

If the court makes my requested changes, I also ask the court to set or change child support. I will file a *Financial Declaration* and proposed *Child Support Worksheets*.

Warning! *If the court does not change the parenting/custody order, your request to change child support may be denied. If you have other reasons to change child support, you may file separate forms to make that request (use form FL Modify 501 or 521).*

11. **Protection Order**

Do you want the court to issue an Order for Protection as part of the final orders in this case?

- No.** I do not want an *Order for Protection*.
- Yes.** (*You must file a Petition for Order for Protection, form DV-1.015 for domestic violence, or form UHST-02.0200 for harassment. You may file your Petition for Order for Protection using the same case number assigned to this case.*)

Important! *If you need protection now, ask the court clerk about getting a Temporary Order for Protection.*

- There already is an Order for Protection between (name): _____ and me.** (*Describe*):

Court that issued the order: _____

Case number: _____

Expiration date: _____

12. Restraining Order

Do you want the court to issue a Restraining Order as part of the final orders in this case?

No. (Skip to 13.)

Yes. Check the type of orders you want:

Do not disturb – Order (name/s) _____ not to disturb my peace or the peace of any child listed in 3.

Stay away – Order (name/s) _____:

Not knowingly to go or stay within _____ feet of my home, workplace, or school, or the daycare or school of any child listed in 3.

To stay away from my home, workplace, or school, and the daycare or school of any child listed in 3.

Do not hurt or threaten – Order (name/s) _____:

- Not to assault, harass, stalk or molest me or any child listed in 3; and
- Not to use, try to use, or threaten to use physical force against me or the children that would reasonably be expected to cause bodily injury.

Warning! If the court makes this order, the court must consider if weapons restrictions are required by state law; federal law may also prohibit the Restrained Person from possessing firearms or ammunition.

Prohibit weapons and order surrender – Order (name/s) _____:

- Not to possess or obtain any firearms, other dangerous weapons, or concealed pistol license until the Order ends, and
- To surrender any firearms, other dangerous weapons, and any concealed pistol license that he/she possesses to (check one): the police chief or sheriff. his/her lawyer. other person (name): _____.

Other restraining orders: _____

Important! If you want a restraining order now, you must file a Motion for Temporary Family Law Order and Restraining Order or a Motion for Immediate Restraining Order (Ex Parte).

13. Children’s Home/s

During the past 5 years have any of the children lived:

- on an Indian reservation,
- outside Washington state,
- in a foreign country, or
- with anyone who is not a party to this case?

No. (Skip to 14.)

Yes. (Fill out below to show where each child has lived during the last 5 years.)

Dates	Children	Lived with	In which state, Indian reservation, or foreign country

Dates	Children	Lived with	In which state, Indian reservation, or foreign country
From: To:	<input type="checkbox"/> All children <input type="checkbox"/> (Name/s):	<input type="checkbox"/> Petitioner <input type="checkbox"/> Respondent <input type="checkbox"/> Other (name):	
From: To:	<input type="checkbox"/> All children <input type="checkbox"/> (Name/s):	<input type="checkbox"/> Petitioner <input type="checkbox"/> Respondent <input type="checkbox"/> Other (name):	
From: To:	<input type="checkbox"/> All children <input type="checkbox"/> (Name/s):	<input type="checkbox"/> Petitioner <input type="checkbox"/> Respondent <input type="checkbox"/> Other (name):	
From: To:	<input type="checkbox"/> All children <input type="checkbox"/> (Name/s):	<input type="checkbox"/> Petitioner <input type="checkbox"/> Respondent <input type="checkbox"/> Other (name):	

14. Other people with a legal right to spend time with a child

Do you know of anyone besides the Petitioner and Respondent who has or claims to have a legal right to spend time with a child?

(Check one): No. (Skip to 15.) Yes. (Fill out below.)

Name of person	Children this person may have the right to spend time with
	<input type="checkbox"/> All children <input type="checkbox"/> (Name/s):
	<input type="checkbox"/> All children <input type="checkbox"/> (Name/s):

15. Other court cases involving a child

Do you know of any court cases involving any of the children?

(Check one): Yes. (Fill out below.) No. (Skip to 16.)

Kind of case (Family Law, Criminal, Protection Order, Juvenile, Dependency, Other)	County and State	Case number and year	Children
			<input type="checkbox"/> All children <input type="checkbox"/> (Name/s):
			<input type="checkbox"/> All children <input type="checkbox"/> (Name/s):
			<input type="checkbox"/> All children <input type="checkbox"/> (Name/s):

16. **Jurisdiction over children** (RCW 26.27.201 – .221, .231, .261, .271)

The court can change a parenting/custody order for the children because (*check all that apply; if a box applies to all of the children, you may write “the children” instead of listing names*):

- Exclusive, continuing jurisdiction** – A Washington court has already made a custody order or parenting plan for the children, and the court still has authority to make other orders for (*children’s names*): _____.
- Home state jurisdiction** – Washington is the children’s home state because (*check all that apply*):
- (*Children’s names*): _____ lived in Washington with a parent or someone acting as a parent for at least the 6 months just before this case was filed, or if the children are less than 6 months old, they have lived in Washington with a parent or someone acting as a parent since birth.
 - There were times the children were not in Washington in the 6 months just before this case was filed (or since birth if they are less than 6 months old), but those were temporary absences.
 - (*Children’s names*): _____ do not live in Washington right now, but Washington was the children’s home state some time in the 6 months just before this case was filed, and a parent or someone acting as a parent of the children still lives in Washington.
 - (*Children’s names*): _____ do not have another home state.
- No home state or home state declined** – No court of any other state (or tribe) has the jurisdiction to make decisions for (*children’s names*): _____, **or** a court in the children’s home state (or tribe) decided it is better to have this case in Washington **and**:
- The children and a parent or someone acting as a parent have ties to Washington beyond just living here; **and**
 - There is a lot of information (substantial evidence) about the children’s care, protection, education and relationships in this state.
- Other state declined** – The courts in other states (or tribes) that might be (*children’s names*): _____’s home state have refused to take this case because it is better to have this case in Washington.
- Temporary emergency jurisdiction** – The court can make decisions for (*children’s names*): _____ because the children are in this state now **and** were abandoned here **or** need emergency protection because the children (or the children’s parent, brother or sister) were abused or threatened with abuse. (*Check one*):
- A custody case involving the children was filed in the children’s home state (*name of state or tribe*): _____. Washington should take temporary emergency jurisdiction over the children until the Petitioner can get a court order from the children’s home state (or tribe).
 - There is **no** valid custody order or open custody case in the children’s home state (*name of state or tribe*): _____. If no case is filed *in the children’s home state (or tribe)* by the time the children have been in

Washington for 6 months, (date): _____, Washington should have final jurisdiction over the children.

Other reason (specify): _____

17. Summary of requests

I ask the court to find that I have valid reasons for my *Petition* (adequate cause), and to approve the following orders (check all that apply):

- my proposed *Parenting Plan* or *Residential Schedule*
- my proposed *Child Support Order* setting or changing child support according to my proposed plan or schedule
- an order terminating non-parent custody
- Order for Protection* or *Restraining Order*
- other (specify): _____

Person filing this *Petition* fills out below:

I declare under penalty of perjury under the laws of the state of Washington that the facts I have provided on this form (including any attachments) are true. I've attached (#): _____ pages.

Signed at (city and state): _____ Date: _____

Person filing *Petition* signs here Print name

Lawyer (if any) for person filing this *Petition* fills out below:

Lawyer signs here Print name and WSBA No. Date

Warning! Documents filed with the court are available for anyone to see unless they are sealed. Financial, medical, and confidential reports, as described in General Rule 22, **must** be sealed so they can only be seen by the court, the other parties, and the lawyers in your case. Seal those documents by filing them separately, using a *Sealed* cover sheet (form FL All Family 011, 012, or 013). You may ask for an order to seal other documents.

The other parent (or non-parent custodian) fills out below if he/she agrees to join this *Petition*:

(If more than one other parent or non-parent custodian agrees to join the *Petition*, each person should copy and fill out the section below.)

I, (name): _____, agree to join this *Petition*. I understand that if I fill out and sign below, the court may approve the requests listed in this *Petition* including the proposed *Parenting Plan* unless I file and serve a *Response* before the court signs final orders. (Check one):

- I do not need to be notified about the court's hearings or decisions in this case.

Superior Court of Washington, County of _____

In re:

Petitioner/s *(as listed on the Petition)*:

And Respondent/s *(as listed on the Petition)*:

No. _____

Response to Petition to Change a Parenting Plan, Residential Schedule or Custody Order (RSP)

Response to Petition to Change a Parenting Plan,
Residential Schedule or Custody Order

1. Your response

Look at each section of the *Petition*. Check below to say if you agree or disagree with what the other party said in each section, or say if you don't know because you don't have enough information. (If you disagree with any part of a section, check "I disagree.") List your reasons for disagreeing on page 2.

Section in the Petition	Your response (<i>check one</i>)		
1. <i>Who is asking to change the parenting/ custody order?</i>	<input type="checkbox"/> I agree	<input type="checkbox"/> I disagree	<input type="checkbox"/> I don't know
2. <i>Who are the other parents or custodians involved in this case?</i>	<input type="checkbox"/> I agree	<input type="checkbox"/> I disagree	<input type="checkbox"/> I don't know
3. <i>Who are the children involved in this case?</i>	<input type="checkbox"/> I agree	<input type="checkbox"/> I disagree	<input type="checkbox"/> I don't know
4. <i>Describe the parenting/custody order you have now:</i>	<input type="checkbox"/> I agree	<input type="checkbox"/> I disagree	<input type="checkbox"/> I don't know
5. <i>Explain why you are filing your request for change with this court:</i>	<input type="checkbox"/> I agree	<input type="checkbox"/> I disagree	<input type="checkbox"/> I don't know
6. <i>Request for minor change</i>	<input type="checkbox"/> I agree	<input type="checkbox"/> I disagree	<input type="checkbox"/> I don't know
7. <i>Request for major change</i>	<input type="checkbox"/> I agree	<input type="checkbox"/> I disagree	<input type="checkbox"/> I don't know

Section in the Petition	Your response (<i>check one</i>)		
8. <i>Request for limitations on one parent's parenting time and decision-making</i>	<input type="checkbox"/> I agree	<input type="checkbox"/> I disagree	<input type="checkbox"/> I don't know
9. <i>Request for other changes</i>	<input type="checkbox"/> I agree	<input type="checkbox"/> I disagree	<input type="checkbox"/> I don't know
10. <i>Child Support</i>	<input type="checkbox"/> I agree	<input type="checkbox"/> I disagree	<input type="checkbox"/> I don't know
11. <i>Protection Order</i>	<input type="checkbox"/> I agree	<input type="checkbox"/> I disagree	<input type="checkbox"/> I don't know
12. <i>Restraining Order</i>	<input type="checkbox"/> I agree	<input type="checkbox"/> I disagree	<input type="checkbox"/> I don't know
13. <i>Children's Home/s</i>	<input type="checkbox"/> I agree	<input type="checkbox"/> I disagree	<input type="checkbox"/> I don't know
14. <i>Other people with a legal right to spend time with a child</i>	<input type="checkbox"/> I agree	<input type="checkbox"/> I disagree	<input type="checkbox"/> I don't know
15. <i>Other court cases involving a child</i>	<input type="checkbox"/> I agree	<input type="checkbox"/> I disagree	<input type="checkbox"/> I don't know
16. <i>Jurisdiction over children</i>	<input type="checkbox"/> I agree	<input type="checkbox"/> I disagree	<input type="checkbox"/> I don't know

If you checked "Disagree" for any of the sections, list your reasons here:

Section #: _____ Reasons: _____

Section #: _____ Reasons: _____

Section #: _____ Reasons: _____

(If you need more space, you may add more pages to this Response. Number, date and sign each page that you add.)

2. Protection Order

Do you want the court to issue an Order for Protection as part of the final orders in this case?

- No.** I do not want an Order for Protection.
- Yes.** (You must file a Petition for Order for Protection, form DV-1.015 for domestic violence, or form UHST-02.0200 for harassment. You may file your Petition for Order for Protection using the same case number assigned to this case.)

Important! If you need protection now, ask the court clerk about getting a Temporary Order for Protection.

- There already is an Order for Protection between (name): _____ and me.** (Describe):
Court that issued the order: _____
Case number: _____
Expiration date: _____

3. Restraining order

Do you want the court to issue a Restraining Order as part of the final orders in this case?

- No.** (Skip to 4.)
- Yes.** Check the type of orders you want:
- Do not disturb** – Order (name/s): _____ not to disturb my peace or the peace of any child listed in the *Petition*.
- Stay away** – Order (name/s): _____:
- not knowingly to go or stay within _____ feet of my home, workplace, or school, or the daycare or school of any child listed in the *Petition*
- to stay away from my home, workplace, or school, and the daycare or school of any child listed in the *Petition*
- Do not hurt or threaten** – Order (name/s): _____:
- Not to assault, harass, stalk or molest me or any child listed in the *Petition*; and
 - Not to use, try to use, or threaten to use physical force against me or the children that would reasonably be expected to cause bodily injury.

Warning! If the court makes this order, the court must consider if weapons restrictions are required by state law; federal law may also prohibit the Restrained Person from possessing firearms or ammunition.

- Prohibit weapons and order surrender** – Order (name/s): _____:
- Not to possess or obtain any firearms, other dangerous weapons, or concealed pistol license until the Order ends, and
 - To surrender any firearms, other dangerous weapons, and any concealed pistol license that he/she possesses to (check one): the police chief or sheriff. his/her lawyer. other person (name): _____.
- Other restraining orders:** _____

Important! If you want a restraining order *now*, you must file a *Motion for Temporary Family Law Order and Restraining Order* or a *Motion for Immediate Restraining Order (Ex Parte)*.

4. Requests

(Check all that apply):

- I ask the court to **deny** the other parent's (or non-parent custodian's) *Petition to Change a Parenting Plan, Residential Schedule or Custody Order*.
- If the court changes** the current parenting/custody order based on the reasons listed in the other parent's custodian's *Petition*, I ask the court to approve my proposed *Parenting Plan* or *Residential Schedule*. I am filing my proposed *Parenting Plan* or *Residential Schedule* at the same time as this *Response*.

Warning! If you want a change to the current parenting/custody order **based on different reasons than listed in the other parent's (or non-parent custodian's) Petition**, you must file your own *Petition to Change a Parenting Plan, Residential Schedule or Custody Order (form FL Modify 601)*.

- Child Support** – My request to change the parenting schedule affects child support because I'm asking to significantly change the amount of time the children spend with the parent who pays child support.

If the court makes my requested changes, I ask the court to set or change child support. I will file a *Financial Declaration* and proposed *Child Support Worksheets*.

Warning! If the court does not change the parenting/custody order, your request to change child support may be denied. If you have other reasons to change child support, you may file a separate form to make that request (use form FL Modify 501 or 521).

- Protection / Restraining Order** – Approve my request for an *Order for Protection* or *Restraining Order* as listed above.
- Other (specify): _____
- _____
- _____
- _____

Person filing this Response fills out below:

I declare under penalty of perjury under the laws of the state of Washington that the facts I have provided on this form (including any attachments) are true.

I have attached (*number of*): _____ pages.

Signed at (*city and state*): _____ Date: _____

▶ _____
Person filing Response signs here *Print name*

I agree to accept legal papers for this case at (*check one*):

my lawyer’s address, listed below.

the following address (*this does not have to be your home address*):

street address or PO box *city* *state* *zip*

(Optional) email: _____

(If this address changes before the case ends, you must notify all parties and the court clerk in writing. You may use the Notice of Address Change form (FL All Family 120).)

Important! You must fill out and file a *Confidential Information* form (FL All Family 001) with the court clerk.

Lawyer (if any) fills out below:

▶ _____
Lawyer signs here *Print name and WSBA No.* *Date*

Lawyer’s address *city* *state* *zip*

Email (*if applicable*): _____

Warning! Documents filed with the court are available for anyone to see unless they are sealed. Financial, medical, and confidential reports, as described in General Rule 22, **must** be sealed so they can only be seen by the court, the other party, and the lawyers in your case. Seal those documents by filing them separately, using a *Sealed* cover sheet (form FL All Family 011, 012, or 013). You may ask for an order to seal other documents.

Superior Court of Washington, County of _____

In re:

Petitioner/s (as listed on the Petition):

And Respondent/s (as listed on the Petition):

No. _____

Motion for Adequate Cause Decision
(to change a parenting/custody order)
(MACD)

Motion for Adequate Cause Decision
(to change a parenting/custody order)

To both parties:

Deadline! Your papers must be filed and served by the deadline in your county's Local Court Rules, or by the State Court Rules if there is no local rule. Court Rules and forms are online at www.courts.wa.gov.

If you want the court to consider your side, you **must**:

- File your original documents with the Superior Court Clerk; AND
- Give the Judge/Commissioner a copy of your papers (if required by your county's Local Court Rules); AND
- Have a copy of your papers served on all other parties or their lawyers; AND
- Go to the hearing.

The court may not allow you to testify at the motion hearing. Read your county's Local Court Rules, if any.

Bring proposed orders to the hearing.

To the person filing this motion:

You must schedule a hearing on this motion. You may use the *Notice of Hearing* (form FL All Family 185) unless your county's Local Court Rules require a different form. Contact the court for scheduling information.

To the person receiving this motion:

If you do not agree with the requests in this motion, file a statement (using form FL All Family 135, *Declaration*) explaining why the court should not approve those requests. You may file other written proof supporting your side.

1. **Request**

My name is _____. (Check one):

- I **filed** a *Petition to Change a Parenting Plan, Residential Schedule or Custody Order*. I ask the court to find adequate cause (valid reasons) and allow my case to move forward.
- I **received** a *Petition to Change a Parenting Plan, Residential Schedule or Custody Order*. I ask the court to find **no** adequate cause (no valid reasons) and dismiss the *Petition*, ending the case.

2. **Service of Summons and Petition**

- Does not apply. This motion is brought by the party who received the *Petition*.
- The other party (check all that apply):
 - was or will be served with the *Summons* and *Petition* for this case by:
 - personal service in Washington state.
 - personal service outside of Washington state.
 - publication.
 - mail.
 - waived service by joining the *Petition* and
 - does not need to be notified about the court's hearings or decisions in this case.
 - must be notified about the court's hearing or decisions in this case.

3. **Reason for request**

This request is based on the *Petition*, any *Response* and the following other documents (if any) filed separately and served on all parties:

- My Declaration (form FL All Family 135)
- Declaration/s of (name/s): _____
- Other documents (list): _____

Person making this motion or his/her lawyer fills out below:

 Person making this motion **or** lawyer signs here _____
Date

Print name (if lawyer, also list WSBA No.)

I agree to accept legal papers for this case at (check one):

- lawyer's address, listed below.

 Lawyer's street address or PO box city state zip

Email (if applicable): _____

Superior Court of Washington, County of _____

In re:

Petitioner/s (as listed on the Petition):

And Respondent/s (as listed on the Petition):

No. _____

Order on Adequate Cause to Change a
Parenting/Custody Order

(ORRACG / ORRACD / ORH: see 6)

Order on Adequate Cause to Change a
Parenting/Custody Order

1. The (check one): Petitioner Respondent made a *Motion for Adequate Cause Decision* and the court finds there is reason to approve this order. (Check one):
- An adequate cause hearing was held.
 - The parties agree there is adequate cause (valid reasons) for the case to move forward, or any party not in agreement has been defaulted.

➤ **The Court Finds:**

2. **Jurisdiction**

- This court has jurisdiction over this case.
- This court does **not** have jurisdiction over this case.

3. **Timing of Adequate Cause Decision**

- The court **cannot** decide adequate cause yet because:
 - the deadline for filing a *Response* to the *Petition* has not passed.
 - other (specify): _____
- The court **can** decide adequate cause because:
 - the deadline for filing a *Response* to the *Petition* has passed.
 - the motion was made by the party responding to the *Petition*.

other (specify): _____

4. **Adequate Cause**

- There is **not** adequate cause (valid reasons) to hold a full hearing or trial about the *Petition*. The *Petition* should be dismissed.
- There **is** adequate cause (valid reasons) to hold a full hearing or trial about the *Petition*.
 - The parties **agree** that there is adequate cause (valid reasons).

5. **Other Findings (if any)**

➤ **The Court Orders:**

6. **Decision**

- No Adequate Cause** – The *Petition to Change a Parenting Plan, Residential Schedule or Custody Order* is dismissed.
- Adequate Cause Found** –
 - The *Petition to Change a Parenting Plan, Residential Schedule or Custody Order* will move on to a full hearing or trial. The hearing or trial will take place (check one):
 - at a later date to be set by the court.
 - on (date): _____ at (time): _____ a.m. p.m.
in (Court, Room/Dept.): _____
 - on the date set by the case scheduling order made when the *Petition* was filed.

Superior Court of Washington, County of _____

In re:

Petitioner/s (as listed on the Petition):

And Respondent/s (as listed on the Petition):

No. _____

Final Order and Findings on Petition to
Change a Parenting Plan, Residential
Schedule or Custody Order

(ORMDD / ORDYMT: see 11)

Clerk's action required: 11

Final Order and Findings on Petition to Change a
Parenting Plan, Residential Schedule or Custody Order

1. **This Order is based on:**

- The *Petition to Change a Parenting Plan, Residential Schedule or Custody Order*,
- The children's best interest,
- The Court's decision that there were valid reasons to hear the *Petition* in the *Order on Adequate Cause to Change a Parenting/Custody Order* signed on (date): _____,

And (check one):

- the parents' agreement.
- the *Order on Motion for Default* signed on (date): _____.
- the court hearing or trial on (date): _____.

The following people were at the hearing or trial (list parties, lawyers, and any guardians):

➤ **Findings & Conclusions**

2. **Jurisdiction** (RCW 26.27.201 – .221, .231, .261, .271)

- The court **cannot** decide this case for the children because the court does not have jurisdiction over the children.

- The court **can** decide this case for the children because (*check all that apply; if a box applies to all of the children, you may write "the children" instead of listing names*):
- Exclusive, continuing jurisdiction** – A Washington court has already made a parenting plan, residential schedule or custody order for the children, and the court still has authority to make other orders for (*children's names*): _____.
- Home state jurisdiction** – Washington is the children's home state because (*check all that apply*):
- (*Children's names*): _____ lived in Washington with a parent or someone acting as a parent for at least the 6 months just before this case was filed, or if the children were less than 6 months old when the case was filed, they had lived in Washington with a parent or someone acting as a parent since birth.
- There were times the children were not in Washington in the 6 months just before this case was filed (or since birth if they were less than 6 months old), but those were temporary absences.
- (*Children's names*): _____ do not live in Washington right now, but Washington was the children's home state some time in the 6 months just before this case was filed, and a parent or someone acting as a parent of the children still lives in Washington.
- (*Children's names*): _____ do not have another home state.
- No home state or home state declined** – No court of any other state has the jurisdiction to make decisions for (*children's names*): _____, **or** a court in the children's home state decided it is better to have this case in Washington **and**:
- The children and a parent or someone acting as a parent have ties to Washington beyond just living here; **and**
 - There is a lot of information (substantial evidence) about the children's care, protection, education and relationships in this state.
- Other state declined** – The courts in other states that might be (*children's names*): _____'s home state have refused to take this case because it is better to have this case in Washington.
- Temporary emergency jurisdiction** – Washington had temporary emergency jurisdiction over (*children's names*): _____ when the case was filed, and now has jurisdiction to make a final custody decision because:
- When the case was filed, the children were abandoned in this state, or the children were in this state and the children (or children's parent, brother or sister) was abused or threatened with abuse;
 - The court signed a temporary order on (*date*) _____ saying that Washington's jurisdiction will become final if no case is filed in the children's home state by the time the children have been in Washington for 6 months;
 - The children have now lived in Washington for 6 months; **and**
 - No case concerning the children has been started in the children's home state.
- Other reason (*specify*): _____

3. **Minor change** (RCW 26.09.260(5) (7) and (9))

- Does not apply. No one requested a minor change.
- Denied** – The court denies the request for a minor change because (check all that apply):
 - the requested minor change is not in the children’s best interest.
 - the situation of the child/ren or a parent (or non-parent custodian) has not changed substantially.
 - the reasons (factual basis) for the requested minor change do not qualify under the law.
 - the parent requesting more time is limited because of problems listed in the current parenting/custody order. That parent has not shown substantial change in the problems that caused the limitations.
 - the parent requesting more time has not fully completed all evaluations, treatment, or classes required by the current parenting/custody order.
 - other reasons (specify): _____

- Approved** – The court approves a minor change to the parenting/custody order. The court signed the new *Parenting Plan* or *Residential Schedule* filed separately today or on (date): _____. The minor change is approved because:
 - The requested change is in the children’s best interest and does not change the person the children live with most of the time; and
 - There has been a substantial change in the children’s or a parent’s/custodian’s situation. (Describe how the situation has changed, or describe a situation that the court did not know about when it made its order):

Check reason/s for this change:

- The current parenting/custody order, is difficult to follow because the parent who has less residential time with the children has moved.
- The current parenting/custody order is difficult to follow because one parent’s work schedule changed and the change was not by his/her choice.
- The requested change will impact the children’s schedule on fewer than 25 full days a year.
- The requested change will impact the children’s schedule on more than 24 full days, but fewer than 90 overnights a year. This change is needed because the current parenting/custody order does not give the children a reasonable amount of time with one parent. It is in the children’s best interest to have more than 24 full days of increased time with that parent.

Are there any limitations on the parent whose time is being increased?

- No.** The current parenting/custody order does **not** limit that parent's time with the children because of abandonment, abuse, domestic violence, sex offense, or other serious problems.
- Yes.** That parent's time with the children is limited because of problems listed in the current parenting/custody order. That parent's situation has changed substantially. *(Describe how the parent's problems that caused the limitations in the current parenting/custody order have changed.)*

Has the parent whose time would be increased completed any required evaluations, treatment, or classes?

- Does not apply.** The current parenting/custody order does **not** require that parent to complete any evaluations, treatment, or classes.
- Yes.** That parent has completed all court-ordered evaluations, treatment, or classes required by the current parenting/custody order.

List completed evaluations, treatment, or classes here: _____

4. **Major change** (RCW 26.09.260(1) and (2))

- Does not apply. No one requested a major change.
- Denied** – The court denies the request for a major change because *(check all that apply)*:
 - the requested major change is not in the children's best interest.
 - there has been no substantial change to the situation of the child/ren or the parent (or non-parent custodian) who did not file the *Petition*.
 - the reasons (factual basis) for the requested major change do not qualify under the law.
 - other reasons *(specify)*: _____

- Approved** – The court approves a major change to the parenting/custody order. The major change is approved because:
 - The requested change is in the children's best interest, and
 - There has been a substantial change in the children's situation or in the situation of the parent (or non-parent custodian) who did not request the major change.*(Describe how the situation has changed, or describe a situation that the court did not know about when it made its order):*

Check reason/s for this change:

- The parents agree to the requested changes.
- The children are living in one parent's home with the other parent's (or non-parent custodian's) permission. This is very different than what was ordered in the previous parenting/custody order.
- The children's current living situation is harmful to their physical, mental, or emotional health. It would be better for the children to change the parenting/custody order.
- The other parent (or non-parent custodian) has not followed the court's parenting/custody order. A court found him/her in contempt for disobeying the parenting schedule more than once in three years, or guilty of custodial interference in the first or second degree. (RCW 9A.40.060 or 9A.40.070)

5. Limitations on one parent's parenting time and decision-making

- Does not apply.
- Limit** – To protect the children, the court will limit the parenting time and participation of the parent who already has less than half of the parenting time with the children. The reasons for this limitation are listed in the new *Parenting Plan* or *Residential Schedule* signed by the court today or on (date): _____. This *Parenting Plan* or *Residential Schedule* is approved and filed separately. (RCW 26.09.191, 26.09.260(4))
- Adjust** – The parent who did not file the *Petition* was allowed some parenting time by the current parenting/custody order. But that parent has chosen not to spend any time with the children for at least one year. The court will adjust the parenting time for that parent as listed in the new *Parenting Plan* or *Residential Schedule* signed by the court today or on (date): _____. This *Parenting Plan* or *Residential Schedule* is approved and filed separately. (RCW 26.09.260(8))
- Other findings: _____

6. Other Changes (RCW 26.09.260(10))

- Does not apply.
- Because of a substantial change in one parent's/child's situation, the court approves changes to the following parts of the *Parenting Plan* or *Residential Schedule* that are in the children's best interest (check all that apply):
 - dispute resolution

- decision-making
 - transportation arrangements
 - other (specify): _____
-

7. **Child Support**

- Does not apply. No one asked to change child support.
 - Denied** – The request to change child support is denied because:
 - the request to change the parenting/custody order is denied.
 - the approved change to the parenting/custody order (check all that apply):
 - does not change the parent the children live with most of the time.
 - does not change the amount of time the children spend with each parent so much that a child support deviation should be approved or changed.
 - other: _____
 - Approved** – The court approves a change to child support. The changes to the parenting/custody order affect child support by (check one):
 - changing the parent the children live with most of the time.
 - changing the amount of time the children spend with each parent so much that a child support deviation should be approved or changed.
 - other: _____
 - Other findings: _____
-

8. **Protection Order**

- Does not apply. No one requested an *Order for Protection* in this case.
- Approved** – The request for an *Order for Protection* is approved. The *Order for Protection* is filed separately.
- Denied** – The request for an *Order for Protection* is denied. The *Denial Order* is filed separately.
- Renewed/Changed** – The existing *Order for Protection* filed in or combined with this case is renewed or changed as described in the following order, filed separately (check one):
 - Order on Renewal of Order for Protection*
 - Order Modifying/Terminating Order for Protection*
- Other findings: _____

9. **Restraining Order**

- Does not apply. No one requested a *Restraining Order* in this case.
- Approved** – The request for a *Restraining Order* is approved. The *Restraining Order* is filed separately.
- Denied** – The request for a *Restraining Order* is denied.

To the Clerk: Provide a copy of this Order to the agency listed above within 1 court day. The law enforcement agency must remove the temporary Restraining Order from the state's database.

12. **Other Orders** (if any)

Ordered.

Date

▶ _____
Judge or Commissioner

Petitioner and Respondent or their lawyers fill out below.

This document (*check any that apply*):

- is an agreement of the parties
- is presented by me
- may be signed by the court without notice to me

This document (*check any that apply*):

- is an agreement of the parties
- is presented by me
- may be signed by the court without notice to me

▶ _____
Petitioner signs here or lawyer signs here + WSBA #

▶ _____
Respondent signs here or lawyer signs here + WSBA #

Print Name

Date

Print Name

Date

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CHAPTER SIX

ETHICS AND FAMILY LAW - NOT AN OXYMORON

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Ms. DuFour is rated Superb by AVVO and serves as a King County Pro Tem Family Law Commissioner. She is a member of the King County and Washington State Bar Association, Gallatin County and Montana State Bar Association and is admitted to the U.S. District Court for Western Washington and the United States Supreme Court.

SHARON FRIEDRICH is also a partner with Integrative Family Law and has worked as a family law attorney for over 20 years. She co-authors the Family Law Matters column for the KCBA journal with Lisa DuFour. Ms. Friedrich is trained as a mediator and in the collaborative law process. She volunteers with the KCBA Cross Cultural Family Law Clinic. She is a member of the King County and Washington State Bar Association and is admitted to the U.S. District Court for Western Washington.

Ethics in Family Law

The Rules of Professional Conduct, or RPCs, are meant to guide attorneys in conduct that is proper for the courtroom and the legal system. The RPCs are enforceable by sanctions, including disbarment.ⁱ Our legal system is based on law and fairness, justice and equality. However many court litigants, especially in Family Law, may feel that the legal system is not just and fair and they may believe there are ethical issues with their attorneys. Family attorneys should be especially diligent in complying with the RPCs because bar complaints occur more frequently in family law cases than any other type of case except for criminal cases.

Washington has a Committee on Professional Ethics (CPE) which issues advisory opinions to address recurring or emerging ethics issues facing Washington attorneys. The advisory opinions cover a broader range of topics and provide members with in-depth guidance on the RPCs as applied to a practice area. The CPE also plays a key role in the review and suggestion of potential amendments to the RPCs. Washington has added additional comments to the RPCs that are official comments and these comments should be read in conjunction with the rule for guidance.

One difference in the RPCs from the previous ABA model rules is that the model rules and Washington's RPCs removed the word "zealous" in the description of a lawyer's advocacy for their client and replaced it with the terms "commitment and dedication to the interests of the client and with diligence in advocacy." RPC 1.3, Comment 1. 1.

Each and every attorney should be familiar with the RPCs to guide their conduct both in their practice and in their private lives. According to the 2014 Washington Discipline System Annual Report, there were 2165 grievances with 30,226 active lawyers, of these, 20% of the complaints were about Family Law lawyers.ⁱⁱ The only type of law that received more complaints was criminal law with 28% of all the grievances. The most common complaints were: Personal behavior-20%; Interference with Justice-21%, and Unsatisfactory Performance-33%. The sources of grievances filed were: client-19%, former client-26%, and opposing client-24%. In 2014, there were 15 disbarments, 34 suspensions, 8 resignations in lieu of discipline, 11 reprimands, and 3 admonitions for a total of 71 disciplinary actions.

In 2015, the ratios were very similar although fewer grievances were filed in relation to the number of attorneys: 31,126 active licensed lawyers in Washington in 2015 with a total of 2,081 grievances files opened; 19% about family law attorneys and 31% about criminal law attorneys.ⁱⁱⁱ “In 2015, the most common grievance allegations against Washington lawyers related to unsatisfactory performance, personal behavior concerns, and interference with the administration of justice.”^{iv} In 2015, there were 43 formal charges filed, 18 disciplinary hearings, 74 disciplinary actions imposed and 2 Supreme Court Published Opinions.^v Possible sanctions include revocation, voluntary resignation in lieu of revocation, suspension, reprimand and admonition.^{vi}

A. DEFINING BOUNDARIES AND SCOPE OF REPRESENTATION:

This is a common issue for family law lawyers. RPC 1.2, Scope of Representation and Allocation of Authority Between the Client and Lawyer applies here. The client has the authority to make decisions about the objectives of representation. Some clients attempt to manipulate their attorney and seek to use them as a litigation weapon. It is up to the lawyer to navigate the ethical issues and inform their client when the client's request is unethical. Clients normally defer to the special knowledge and skill of their lawyer with respect to the legal tactics and strategy to accomplish their objectives and it is up to the client to make the decisions about costs and expenses to be incurred. However, if there are disagreements or questions, the lawyer should consult with the client and seek a mutually acceptable resolution of the disagreement. The lawyer has to be careful and withdraw if the client wants the attorney to violate the RPCs. Not every client is expected to be cooperative. It is up to the attorney to structure the communication with the client and honor the RPC that the client has the decision making authority (within ethical limits) on the objectives of the litigation. Of course, an attorney cannot counsel a client to commit a crime or a fraudulent act and should be very careful if the client's actions are crossing the line. RPC 1.2(d).^{vii}

An attorney may also want to file a Limited Notice of Appearance if appropriate to protect themselves and the client.

B. WITHDRAWAL AND SUBSTITUTION OF COUNSEL.

It can happen that a client that is currently represented decides to change attorneys and prior counsel receives a Notice of Withdrawal and Substitution from the new attorney for his/her signature. It is a concern if the prior attorney refuses to sign the Notice of Withdrawal and Substitution and/or will not cooperate in the transfer of the client file. The RPCs require attorneys to put the best interests of the client first, which can be difficult if the attorney has not been paid. The RCW that allows an attorney to require payment in full before transferring a file should be viewed in the context of the RPC 1.16(d) and Washington Advisory Opinion 181.^{viii} Since there are numerous complaints to the WSBA about attorney behavior—refusing to sign a Notice of Substitution and transfer the client’s file – is not a position that should be taken if the attorney wants to avoid the possibility of sanctions by the WSBA.

C. DUE DILIGENCE:

It is a very important aspect of a competent Family Law attorney to exercise due diligence in researching and obtaining verification of facts before presenting the facts to the court as veracities. Attorneys should not accept allegations made without any basis in fact or law. Due diligence is essential and enforceable. RPC 3.1, 3.3.

An attorney should also set reasonable expectations for a client based on the application of the law and the facts of the case. This is especially important in family law situations. It can be heart breaking to witness a family law litigant in the courtroom hallway after a hearing,

especially if they did not know the possible outcomes before the hearing.

D. CONFIDENTIALITY OF CLIENT INFORMATION:

This is another specific area of concern for Family Law attorneys. RPC 1.6 and 1.7. If an attorney receives and reviews information from a prospective client and it turns out there is a conflict in representation of that client, then the entire law firm is disqualified from representing either client if the information is directly related to the current action. Law firms should perform a conflict of interest check prior to obtaining any information from a prospective client.

Although, that the unilateral communication by a prospective client is not protected as an attorney client communication. RPC 1.18 (Comment 2). This rule changed and should be reviewed. It is also good practice to advise a client to obtain a new email and/or change their passwords to protect attorney client communication and information given over email.

E. SHARING FEES WITH A NONLAWYER:

Attorneys cannot share fees with a non-lawyer for giving them referrals. This is a firm rule according to Ethics Advisory Opinion 201401. Attorneys should be very careful about participation in online lead generation fee sharing arrangements.

F. CLIENTS:

Clients have the right to make poor choices. It is up to the lawyer to advise the client about the impact and implications of their choices but as long as they are not fraudulent or criminal, it is up to the client to make the decision. If the client has mental impairments, the

attorney is to maintain a normal attorney-client relationship as much as possible. RPC 1.14.

There are specific guidelines for an attorney that has a client with diminished capacity. If the attorney has questions about how to communicate with their client with diminished capacity, the attorney can call the WSBA Ethics Line for advice.^{ix}

Lawyers should know when the rules say “shall” it means SHALL and when the rules state “may” then the rule is discretionary.

The WSBA Ethics Line provides confidential, informal guidance for an attorney’s prospective conduct as related to the RPCs. The phone line and advice is confidential so attorneys can ask questions about conflicts of interest, client communication, handling client money, fee arrangements, and how to withdraw in an ethical manner. Calls are returned within two business days by an attorney at the WSBA. There is also a list of FAQs on the WSBA website for general questions about how an attorney should proceed in an ethical manner in specific common situations.

Specific bar admonishments and disciplinary notices are available at <https://www.mywsba.org/DisciplineNotice.aspx>.

Advisory opinions regarding specific RPCs can be searched by using the search term “family law” at <http://mcle.mywsba.org/IO/default.aspx>.

Here are specific RPCs discussed in the presentation today.

**RULE 1.2. SCOPE OF REPRESENTATION AND ALLOCATION OF AUTHORITY
BETWEEN LAWYER AND CLIENT**

(a) Subject to paragraphs (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

(b) A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.

(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.

(d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

(e) [Reserved].

(f) A lawyer shall not purport to act as a lawyer for any person or organization if the lawyer knows or reasonably should know that the lawyer is acting without the authority of that person or organization, unless the lawyer is authorized or required to so act by law or a court order.

[Amended effective October 1, 2002; October 29, 2002; September 1, 2006; September 1, 2011.]

COMMENT

Allocation of Authority between Client and Lawyer

Text of paragraph [1] effective until September 1, 2016.

[1] Paragraph (a) confers upon the client the ultimate authority to determine the purposes to be served by legal representation, within the limits imposed by law and the lawyer's professional obligations. The decisions specified in paragraph (a), such as whether to settle a civil matter, must also be made by the client. See Rule 1.4(a)(1) for the lawyer's duty to communicate with the client about such decisions. With respect to the means by which the client's objectives are to be pursued, the lawyer shall consult with the client as required by Rule 1.4(a)(2) and may take such action as is impliedly authorized to carry out the representation.

Text of paragraph [1] effective September 1, 2016.

[1] **[Washington revision]** Paragraph (a) confers upon the client the ultimate authority to determine the purposes to be served by legal representation, within the limits imposed by law

and the lawyer's professional obligations. The decisions specified in paragraph (a), such as whether to settle a civil matter, must also be made by the client. See Rule 1.4(a)(1) for the lawyer's duty to communicate with the client about such decisions. With respect to the means by which the client's objectives are to be pursued, the lawyer shall consult with the client as required by Rule 1.4(a)(2) and may take such action as is impliedly authorized to carry out the representation. See also Rule 1.1, comments [6] and [10] as to decisions to associate other lawyers or LLLTs.

[2] On occasion, however, a lawyer and a client may disagree about the means to be used to accomplish the client's objectives. Clients normally defer to the special knowledge and skill of their lawyer with respect to the means to be used to accomplish their objectives, particularly with respect to technical, legal and tactical matters. Conversely, lawyers usually defer to the client regarding such questions as the expense to be incurred and concern for third persons who might be adversely affected. Because of the varied nature of the matters about which a lawyer and client might disagree and because the actions in question may implicate the interests of a tribunal or other persons, this Rule does not prescribe how such disagreements are to be resolved. Other law, however, may be applicable and should be consulted by the lawyer. The lawyer should also consult with the client and seek a mutually acceptable resolution of the disagreement. If such efforts are unavailing and the lawyer has a fundamental disagreement with the client, the lawyer may withdraw from the representation. See Rule 1.16(b)(4). Conversely, the client may resolve the disagreement by discharging the lawyer. See Rule 1.16(a)(3).

[3] At the outset of a representation, the client may authorize the lawyer to take specific action on the client's behalf without further consultation. Absent a material change in circumstances and subject to Rule 1.4, a lawyer may rely on such an advance authorization. The client may, however, revoke such authority at any time.

[4] In a case in which the client appears to be suffering diminished capacity, the lawyer's duty to abide by the client's decisions is to be guided by reference to Rule 1.14.

Independence from Client's Views or Activities

[5] Legal representation should not be denied to people who are unable to afford legal services, or whose cause is controversial or the subject of popular disapproval. By the same token, representing a client does not constitute approval of the client's views or activities.

Agreements Limiting Scope of Representation

[6] The scope of services to be provided by a lawyer may be limited by agreement with the client or by the terms under which the lawyer's services are made available to the client. When a lawyer has been retained by an insurer to represent an insured, for example, the representation may be limited to matters related to the insurance coverage. A limited representation may be appropriate because the client has limited objectives for the representation. In addition, the terms upon which representation is undertaken may exclude specific means that might otherwise be used to accomplish the client's objectives. Such limitations may exclude actions that the client thinks are too costly or that the lawyer regards as repugnant or imprudent.

[7] Although this Rule affords the lawyer and client substantial latitude to limit the representation, the limitation must be reasonable under the circumstances. If, for example, a client's objective is limited to securing general information about the law the client needs in order to handle a common and typically uncomplicated legal problem, the lawyer and client may agree that the lawyer's services will be limited to a brief telephone consultation. Such a

limitation, however, would not be reasonable if the time allotted was not sufficient to yield advice upon which the client could rely. Although an agreement for a limited representation does not exempt a lawyer from the duty to provide competent representation, the limitation is a factor to be considered when determining the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. See Rule 1.1.

[8] All agreements concerning a lawyer's representation of a client must accord with the Rules of Professional Conduct and other law. See, e.g., Rules 1.1, 1.8 and 5.6.

See also Washington Comment [14].

Criminal, Fraudulent and Prohibited Transactions

[9] Paragraph (d) prohibits a lawyer from knowingly counseling or assisting a client to commit a crime or fraud. This prohibition, however, does not preclude the lawyer from giving an honest opinion about the actual consequences that appear likely to result from a client's conduct. Nor does the fact that a client uses advice in a course of action that is criminal or fraudulent of itself make a lawyer a party to the course of action. There is a critical distinction between presenting an analysis of legal aspects of questionable conduct and recommending the means by which a crime or fraud might be committed with impunity.

[10] When the client's course of action has already begun and is continuing, the lawyer's responsibility is especially delicate. The lawyer is required to avoid assisting the client, for example, by drafting or delivering documents that the lawyer knows are fraudulent or by suggesting how the wrongdoing might be concealed. A lawyer may not continue assisting a client in conduct that the lawyer originally supposed was legally proper but then discovers is criminal or fraudulent. The lawyer must, therefore, withdraw from the representation of the client in the matter. See Rule 1.16(a). In some cases, withdrawal alone might be insufficient. It may be necessary for the lawyer to give notice of the fact of withdrawal and to disaffirm any opinion, document, affirmation or the like. See Rule 4.1.

[11] Where the client is a fiduciary, the lawyer may be charged with special obligations in dealings with a beneficiary.

[12] Paragraph (d) applies whether or not the defrauded party is a party to the transaction. Hence, a lawyer must not participate in a transaction to effectuate criminal or fraudulent avoidance of tax liability. Paragraph (d) does not preclude undertaking a criminal defense incident to a general retainer for legal services to a lawful enterprise. The last clause of paragraph (d) recognizes that determining the validity or interpretation of a statute or regulation may require a course of action involving disobedience of the statute or regulation or of the interpretation placed upon it by governmental authorities.

[13] If a lawyer comes to know or reasonably should know that a client expects assistance not permitted by the Rules of Professional Conduct or other law or if the lawyer intends to act contrary to the client's instructions, the lawyer must consult with the client regarding the limitations on the lawyer's conduct. See Rule 1.4(a)(5).

Additional Washington Comments (14-17)

Agreements Limiting Scope of Representation

[14] An agreement limiting the scope of a representation shall consider the applicability of Rule 4.2 to the representation. (The provisions of this Comment were taken from former Washington RPC 1.2(c).) See also Comment [11] to Rule 4.2 for specific considerations pertaining to contact with a person otherwise represented by a lawyer to whom limited representation is being or has been provided.

Acting as a Lawyer Without Authority

[15] Paragraph (f) was taken from former Washington RPC 1.2(f), which was deleted from the RPC by amendment effective September 1, 2006. The mental state has been changed from “willfully” to one of knowledge or constructive knowledge. See Rule 1.0A(f) & (j). Although the language and structure of paragraph (f) differ from the former version in a number of other respects, paragraph (f) does not otherwise represent a change in Washington law interpreting former RPC 1.2(f).

[16] If a lawyer is unsure of the extent of his or her authority to represent a person because of that person's diminished capacity, paragraph (f) of this Rule does not prohibit the lawyer from taking action in accordance with Rule 1.14 to protect the person's interests. Protective action taken in conformity with Rule 1.14 does not constitute a violation of this Rule.

[17] Paragraph (f) does not prohibit a lawyer from taking any action permitted or required by these Rules, court rules, or other law when withdrawing from a representation, when terminated by a client, or when ordered to continue representation by a tribunal. See Rule 1.16(c).

Special Circumstances Presented by Washington Initiative 502 (Chap. 3, Laws of 2013)

[18] At least until there is a change in federal enforcement policy, a lawyer may counsel a client regarding the validity, scope, and meaning of Washington Initiative 502 (Chap. 3, Laws of 2013) and may assist a client in conduct that the lawyer reasonably believes is permitted by this statute and the other statutes, regulations, orders and other state and local provisions implementing them.

[Comment adopted effective September 1, 2006; amended effective September 1, 2011; December 9, 2014; April 14, 2015; September 1, 2016.]

RULE 1.3. DILIGENCE

A lawyer shall act with reasonable diligence and promptness in representing a client.

COMMENT

[1] **[Washington revision]** A lawyer should pursue a matter on behalf of a client despite opposition, obstruction or personal inconvenience to the lawyer, and take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor. A lawyer must also act with commitment and dedication to the interests of the client and with diligence in advocacy upon the client's behalf. A lawyer is not bound, however, to press for every advantage that might be realized for a client. For example, a lawyer may have authority to exercise professional discretion in determining the means by which a matter should be pursued. See Rule 1.2. The lawyer's duty to act with reasonable diligence does not require the use of offensive tactics or preclude the treating of all persons involved in the legal process with courtesy and respect.

[2] A lawyer's work load must be controlled so that each matter can be handled competently.

[3] Perhaps no professional shortcoming is more widely resented than procrastination. A client's interests often can be adversely affected by the passage of time or the change of conditions; in extreme instances, as when a lawyer overlooks a statute of limitations, the client's legal position may be destroyed. Even when the client's interests are not affected in substance, however, unreasonable delay can cause a client needless anxiety and undermine confidence in the lawyer's trustworthiness. A lawyer's duty to act with reasonable promptness, however, does not preclude

the lawyer from agreeing to a reasonable request for a postponement that will not prejudice the lawyer's client.

[4] Unless the relationship is terminated as provided in Rule 1.16, a lawyer should carry through to conclusion all matters undertaken for a client. If a lawyer's employment is limited to a specific matter, the relationship terminates when the matter has been resolved. If a lawyer has served a client over a substantial period in a variety of matters, the client sometimes may assume that the lawyer will continue to serve on a continuing basis unless the lawyer gives notice of withdrawal. Doubt about whether a client-lawyer relationship still exists should be clarified by the lawyer, preferably in writing, so that the client will not mistakenly suppose the lawyer is looking after the client's affairs when the lawyer has ceased to do so. For example, if a lawyer has handled a judicial or administrative proceeding that produced a result adverse to the client and the lawyer and the client have not agreed that the lawyer will handle the matter on appeal, the lawyer must consult with the client about the possibility of appeal before relinquishing responsibility for the matter. See Rule 1.4(a)(2). Whether the lawyer is obligated to prosecute the appeal for the client depends on the scope of the representation the lawyer has agreed to provide to the client. See Rule 1.2.

[5] **[Reserved.]**

[Comment adopted effective September 1, 2006.]

RULE 1.14. CLIENT WITH DIMINISHED CAPACITY

(a) When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.

(b) When the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial or other harm unless action is taken and cannot adequately act in the client's own interest, the lawyer may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian ad litem, conservator or guardian.

(c) Information relating to the representation of a client with diminished capacity is protected by Rule 1.6. When taking protective action pursuant to paragraph (b), the lawyer is impliedly authorized under Rule 1.6(a) to reveal information about the client, but only to the extent reasonably necessary to protect the client's interests.

[Former Rule 1.13 was amended effective July 1, 1988; July 14, 1989; March 1, 1991; October 1, 2002. Renumbered Rule 1.14 and amended effective September 1, 2006.]

COMMENT

[1] The normal client-lawyer relationship is based on the assumption that the client, when properly advised and assisted, is capable of making decisions about important matters. When the client is a minor or suffers from a diminished mental capacity, however, maintaining the ordinary client-lawyer relationship may not be possible in all respects. In particular, a severely incapacitated person may have no power to make legally binding decisions. Nevertheless, a

client with diminished capacity often has the ability to understand, deliberate upon, and reach conclusions about matters affecting the client's own well-being. For example, children as young as five or six years of age, and certainly those of ten or twelve, are regarded as having opinions that are entitled to weight in legal proceedings concerning their custody. So also, it is recognized that some persons of advanced age can be quite capable of handling routine financial matters while needing special legal protection concerning major transactions.

[2] The fact that a client suffers a disability does not diminish the lawyer's obligation to treat the client with attention and respect. Even if the person has a legal representative, the lawyer should as far as possible accord the represented person the status of client, particularly in maintaining communication.

[3] The client may wish to have family members or other persons participate in discussions with the lawyer. When necessary to assist in the representation, the presence of such persons generally does not affect the applicability of the attorney-client evidentiary privilege. Nevertheless, the lawyer must keep the client's interests foremost and, except for protective action authorized under paragraph (b), must look to the client, and not family members, to make decisions on the client's behalf.

Text of paragraph [4] effective until September 1, 2016.

[4] **[Washington revision]** If a legal representative has already been appointed for the client, the lawyer should ordinarily look to the representative for decisions on behalf of the client. In matters involving a minor, whether the lawyer should look to the parents as natural guardians may depend on the type of proceeding or matter in which the lawyer is representing the minor. If the lawyer represents the guardian as distinct from the ward, and is aware that the guardian is acting adversely to the ward's interest, the lawyer may have an obligation to prevent or rectify the guardian's misconduct. See Rules 1.2(d) and 1.6(b)(7).

Text of paragraph [4] effective September 1, 2016.

[4] **[Washington revision]** If a legal representative has already been appointed for the client, the lawyer should ordinarily look to the representative for decisions on behalf of the client. In matters involving a minor, whether the lawyer should look to the parents as natural guardians may depend on the type of proceeding or matter in which the lawyer is representing the minor. If the lawyer represents the guardian as distinct from the ward, and is aware that the guardian is acting adversely to the ward's interest, the lawyer may have an obligation to prevent or rectify the guardian's misconduct. See Rules 1.2(d) and 1.6(b)(8).

Taking Protective Action

[5] If a lawyer reasonably believes that a client is at risk of substantial physical, financial or other harm unless action is taken, and that a normal client-lawyer relationship cannot be maintained as provided in paragraph (a) because the client lacks sufficient capacity to communicate or to make adequately considered decisions in connection with the representation, then paragraph (b) permits the lawyer to take protective measures deemed necessary. Such measures could include: consulting with family members, using a reconsideration period to permit clarification or improvement of circumstances, using voluntary surrogate decisionmaking tools such as durable powers of attorney or consulting with support groups, professional services, adult-protective agencies or other individuals or entities that have the ability to protect the client. In taking any protective action, the lawyer should be guided by such factors as the wishes and values of the client to the extent known, the client's best interests and the goals of intruding into the client's decisionmaking autonomy to the least extent feasible, maximizing client capacities and respecting the client's family and social connections.

[6] In determining the extent of the client's diminished capacity, the lawyer should consider and balance such factors as: the client's ability to articulate reasoning leading to a decision, variability of state of mind and ability to appreciate consequences of a decision; the substantive fairness of a decision; and the consistency of a decision with the known long-term commitments and values of the client. In appropriate circumstances, the lawyer may seek guidance from an appropriate diagnostician.

[7] If a legal representative has not been appointed, the lawyer should consider whether appointment of a guardian ad litem, conservator or guardian is necessary to protect the client's interests. Thus, if a client with diminished capacity has substantial property that should be sold for the client's benefit, effective completion of the transaction may require appointment of a legal representative. In addition, rules of procedure in litigation sometimes provide that minors or persons with diminished capacity must be represented by a guardian or next friend if they do not have a general guardian. In many circumstances, however, appointment of a legal representative may be more expensive or traumatic for the client than circumstances in fact require. Evaluation of such circumstances is a matter entrusted to the professional judgment of the lawyer. In considering alternatives, however, the lawyer should be aware of any law that requires the lawyer to advocate the least restrictive action on behalf of the client.

Disclosure of the Client's Condition

[8] Disclosure of the client's diminished capacity could adversely affect the client's interests. For example, raising the question of diminished capacity could, in some circumstances, lead to proceedings for involuntary commitment. Information relating to the representation is protected by Rule 1.6. Therefore, unless authorized to do so, the lawyer may not disclose such information. When taking protective action pursuant to paragraph (b), the lawyer is impliedly authorized to make the necessary disclosures, even when the client directs the lawyer to the contrary. Nevertheless, given the risks of disclosure, paragraph (c) limits what the lawyer may disclose in consulting with other individuals or entities or seeking the appointment of a legal representative. At the very least, the lawyer should determine whether it is likely that the person or entity consulted with will act adversely to the client's interests before discussing matters related to the client. The lawyer's position in such cases is an unavoidably difficult one.

Emergency Legal Assistance

[9] In an emergency where the health, safety or a financial interest of a person with seriously diminished capacity is threatened with imminent and irreparable harm, a lawyer may take legal action on behalf of such a person even though the person is unable to establish a client-lawyer relationship or to make or express considered judgments about the matter, when the person or another acting in good faith on that person's behalf has consulted with the lawyer. Even in such an emergency, however, the lawyer should not act unless the lawyer reasonably believes that the person has no other lawyer, agent or other representative available. The lawyer should take legal action on behalf of the person only to the extent reasonably necessary to maintain the status quo or otherwise avoid imminent and irreparable harm. A lawyer who undertakes to represent a person in such an exigent situation has the same duties under these Rules as the lawyer would with respect to a client.

[10] **[Washington revision]** A lawyer who acts on behalf of a person with seriously diminished capacity in an emergency should keep the confidences of the person as if dealing with a client, disclosing them only to the extent necessary to accomplish the intended protective action. The lawyer should disclose to any tribunal involved and to any other legal practitioner involved the nature of his or her relationship with the person. The lawyer should take steps to regularize the

relationship or implement other protective solutions as soon as possible. Normally, a lawyer would not seek compensation for such emergency actions taken.

[Comment adopted effective September 1, 2006; amended effective April 14, 2015; September 1, 2016.

RULE 1.16. DECLINING OR TERMINATING REPRESENTATION

(a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall, notwithstanding RCW 2.44.040, withdraw from the representation of a client if:

- (1) the representation will result in violation of the Rules of Professional Conduct or other law;
- (2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or
- (3) the lawyer is discharged.

(b) Except as stated in paragraph (c), a lawyer may withdraw from representing a client if:

- (1) withdrawal can be accomplished without material adverse effect on the interests of the client;
- (2) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;
- (3) the client has used the lawyer's services to perpetrate a crime or fraud;
- (4) the client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement;
- (5) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;
- (6) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or
- (7) other good cause for withdrawal exists.

(c) A lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of another legal practitioner, surrendering papers and property to which the client is entitled and refunding any advance payment of fee that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law.

[Former Rule 1.15 was renumbered Rule 1.16 and amended effective September 1, 2006. Amended April 14, 2015.]

RULE 2.1. ADVISOR

In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client's situation.

COMMENT

Scope of Advice

[1] A client is entitled to straightforward advice expressing the lawyer's honest assessment. Legal advice often involves unpleasant facts and alternatives that a client may be disinclined to confront. In presenting advice, a lawyer endeavors to sustain the client's morale and may put advice in as acceptable a form as honesty permits. However, a lawyer should not be deterred from giving candid advice by the prospect that the advice will be unpalatable to the client.

[2] Advice couched in narrow legal terms may be of little value to a client, especially where practical considerations, such as cost or effects on other people, are predominant. Purely technical legal advice, therefore, can sometimes be inadequate. It is proper for a lawyer to refer to relevant moral and ethical considerations in giving advice. Although a lawyer is not a moral advisor as such, moral and ethical considerations impinge upon most legal questions and may decisively influence how the law will be applied.

[3] A client may expressly or impliedly ask the lawyer for purely technical advice. When such a request is made by a client experienced in legal matters, the lawyer may accept it at face value. When such a request is made by a client inexperienced in legal matters, however, the lawyer's responsibility as advisor may include indicating that more may be involved than strictly legal considerations.

[4] Matters that go beyond strictly legal questions may also be in the domain of another profession. Family matters can involve problems within the professional competence of psychiatry, clinical psychology or social work; business matters can involve problems within the competence of the accounting profession or of financial specialists. Where consultation with a professional in another field is itself something a competent lawyer would recommend, the lawyer should make such a recommendation. At the same time, a lawyer's advice at its best often consists of recommending a course of action in the face of conflicting recommendations of experts.

Offering Advice

[5] In general, a lawyer is not expected to give advice until asked by the client. However, when a lawyer knows that a client proposes a course of action that is likely to result in substantial adverse legal consequences to the client, the lawyer's duty to the client under Rule 1.4 may require that the lawyer offer advice if the client's course of action is related to the representation. Similarly, when a matter is likely to involve litigation, it may be necessary under Rule 1.4 to inform the client of forms of dispute resolution that might constitute reasonable alternatives to litigation. A lawyer ordinarily has no duty to initiate investigation of a client's affairs or to give advice that the client has indicated is unwanted, but a lawyer may initiate advice to a client when doing so appears to be in the client's interest.

[Comment adopted effective September 1, 2006.]

ⁱ The Washington Supreme Court adopted a modified version of the Ethics 2003 proposed ABA rules on July 10, 2006, with an effective date of September 1, 2006.

ⁱⁱ WSBA 2014 Washington Lawyer Discipline System Annual Report, Washington State Bar Association.

ⁱⁱⁱ WSBA 2015 Washington Lawyer Discipline System Annual Report, Washington State Bar Association.
[http://www.wsba.org/~media/Files/Licensing_Lawyer_Conduct/Discipline/2015 Discipline System Annual Report\(00212318\).ashx](http://www.wsba.org/~media/Files/Licensing_Lawyer_Conduct/Discipline/2015_Discipline_System_Annual_Report(00212318).ashx)

^{iv} Id. at page 8.

^v Id. At page 5.

^{vi} Id. At page 6.

^{vii} Clayton v. Wilson, 227 P.3d 278m, 168 Wash.2d 57 (2010).

^{viii} RCW 2.44.040 Change of attorneys.

The attorney in an action or special proceeding, may be changed at any time before judgment or final determination as follows:

- (1) Upon his or her own consent, filed with the clerk or entered upon the minutes; or
- (2) Upon the order of the court, or a judge thereof, on the application of the client, or for other sufficient cause; but no such change can be made until the charges of such attorney have been paid by the party asking such change to be made.

^{ix} Question about ethical conduct can be addressed through the WSBA Ethics Line 206-727-8284 or 1-800-945-8284.



ETHICS IN FAMILY LAW

LISA DUFOUR AND SHARON FRIEDRICH

RULES OF PROFESSIONAL CONDUCT

RPCs enforceable by sanctions:

Disbarment

Resignation in lieu of discipline

Reprimand

Admonishment

WA COMMITTEE ON PROFESSIONAL ETHICS

Advisory opinions

Address recurring or emerging ethical issues

“ZEALOUS” ADVOCACY

Replaced with:

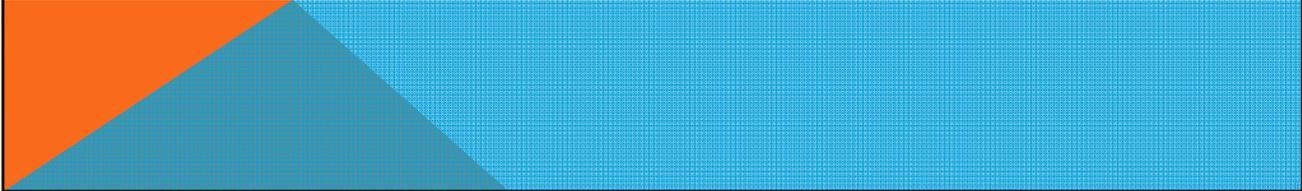
“commitment and dedication to the interests of the client and with diligence in advocacy.

RPC 1.2

comment 1.1

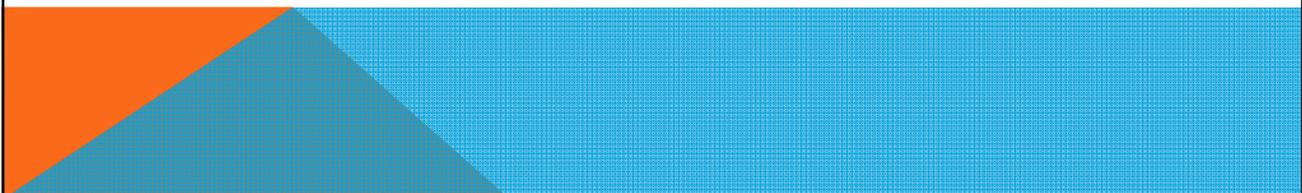
2014 GRIEVANCES

2165 grievances
30,226 active lawyers,
20% of the complaints were about Family Law
lawyers.



COMMON COMPLAINTS

Personal behavior - 20%
Interference with Justice - 21%
Unsatisfactory Performance - 33%.

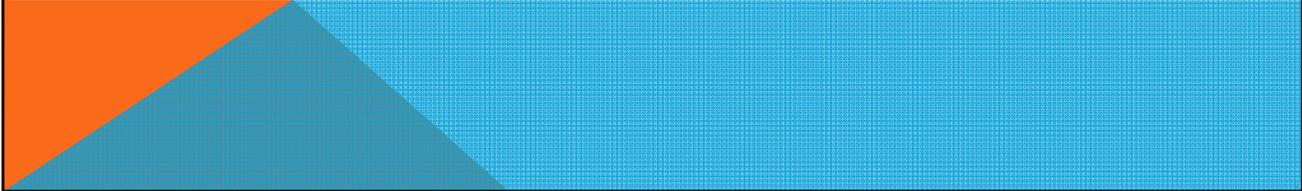


SOURCES OF GRIEVANCES FILED

Client-19%

Former client-26%

Opposing client-24%.



2014 DISCIPLINARY ACTIONS

15 disbarments

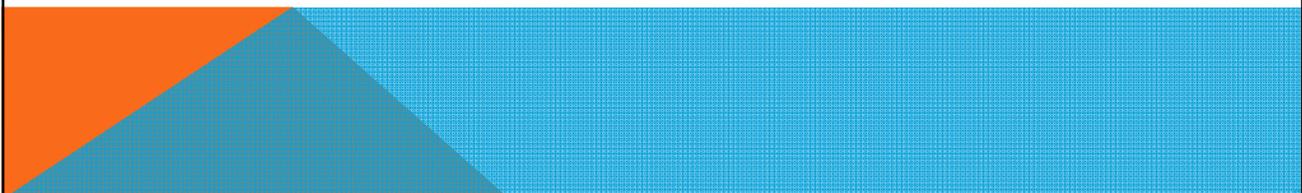
34 suspensions

8 resignations in lieu of discipline

11 reprimands

3 admonitions

Total of 71 disciplinary actions.



2015 DISCIPLINARY ACTIONS

31,126 active licensed lawyers

Total of 2,081 grievances files opened

19% about family law attorneys and 31% about criminal law attorneys.

“In 2015, the most common grievance allegations against Washington lawyers related to unsatisfactory performance, personal behavior concerns, and interference with the administration of justice.”

2015 DISCIPLINARY ACTIONS

43 formal charges filed

18 disciplinary hearings

74 disciplinary actions imposed

2 Supreme Court Published Opinions

DEFINING BOUNDARIES SCOPE OF REPRESENTATION

RPC 1.2

The client has the authority to make decisions about the objectives of representation.

LAWYER DECISIONS

Legal tactics and strategy
to accomplish their objectives.
Can file a Limited Notice of Appearance

CLIENT DECISIONS

Decisions about costs and expenses
to be incurred
Objectives as long as not unethical or fraudulent.

NOT EVERY CLIENT WILL BE COOPERATIVE

Attorney should withdraw if possible
if client will not agree with course of action
or client wants to commit a crime
or a fraudulent act.

RPC 1.2 (d)

WITHDRAWAL AND SUBSTITUTION OF COUNSEL

RPC 1.16(d) and WA Advisory Opinion 181

In family law, must withdraw if client wants you
to do so.

Must transfer file even if not paid.

RCW 2.44.040 conflicts

RCW 2.44.040

Change of attorneys.

The attorney in an action or special proceeding, may be changed at any time before judgment or final determination as follows:

- (1) Upon his or her own consent, filed with the clerk or entered upon the minutes; or
- (2) Upon the order of the court, or a judge thereof, on the application of the client, or for other sufficient cause; but no such change can be made until the charges of such attorney have been paid by the party asking such change to be made.

DUE DILIGENCE

Essential and Enforceable.

RPC 3.1 and 3.3.

**Do not accept allegations made without any basis in
fact or law.**

Set reasonable expectations

CONFIDENTIALITY OF CLIENT INFORMATION

RPC 1.6 and 1.7.

Conflicts if attorney conflicted out then entire firm is conflicted out.

Conflict of interest check prior to obtaining info from a prospective client.

Unilateral communications not protected. RPC 1.18 (comment 2).

SHARING FEES WITH A NONLAWYER

Attorneys cannot share fees
with a non-lawyer for giving them referrals.

This is a firm rule according to
Ethics Advisory Opinion 201401

CLIENTS WITH MENTAL IMPAIRMENTS

RPC 1.14 maintain a normal attorney-client relationship as much as possible

May appoint a guardian

BASIC RULES

When Rules say SHALL – means SHALL

When Rules Say MAY - discretionary

HELP WHEN YOU NEED IT

WSBA FAQ page

Specific bar admonishments and disciplinary notices are available at
<https://www.mywsba.org/DisciplineNotice.aspx>.

MORE ASSISTANCE

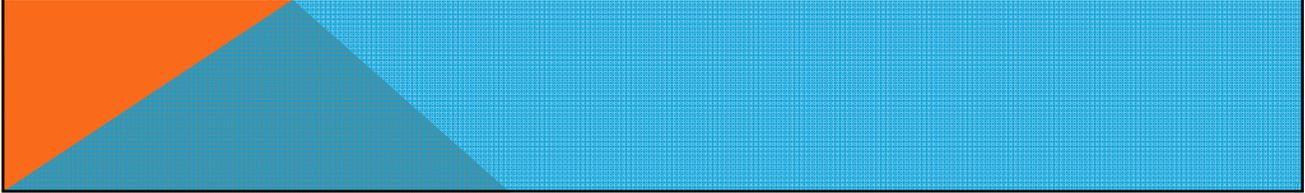
Advisory opinions regarding specific RPCs can be searched by using the search term “family law”
<http://mcle.mywsba.org/IO/default.aspx>.

DIFFICULT CLIENT OR CRAZY CASE

Call WSBA Ethics Line for advice

206-727-8284

1-800-945-8284



CHAPTER SEVEN
RULES OF PROFESSIONAL CONDUCT

WASHINGTON'S RULES OF PROFESSIONAL CONDUCT (RPC)

(Amended effective October 1, 2002, September 1, 2006, September 1, 2010; September 1, 2011; December 13, 2011; September 1, 2012, September 1, 2013, January 1, 2014, April 14, 2015, September 1, 2016]

Fundamental Principles of Professional Conduct

Preamble and Scope

1.0A Terminology

1.0B Additional Washington Terminology

Title 1 Client-Lawyer Relationship

1.1 Competence

1.2 Scope of Representation and Allocation

1.3 Diligence

1.4 Communication

1.5 Fees

1.6 Confidentiality of Information

1.7 Conflict of Interest: Current Clients

1.8 Conflict of Interest: Current Clients: Specific Rules

1.9 Duties to Former Clients

1.10 Imputation of Conflicts of Interest: General Rule

1.11 Special Conflicts of Interest for Former and Current Government Officers and Employees

1.12 Former Judge, Arbitrator, Mediator or Other Third-Party Neutral

1.13 Organization as Client

1.14 Client with Diminished Capacity

1.15A Safeguarding Property

1.15B Required Trust Account Records

1.16 Declining or Terminating Representation

1.17 Sale of Law Practice

1.18 Duties to Prospective Client

Title 2 Counselor

2.1 Advisor

2.2 (Deleted)

2.3 Evaluation for Use by Third Persons

2.4 Lawyer Serving as Third-Party Neutral

Title 3 Advocate

3.1 Meritorious Claims and Contentions

3.2 Expediting Litigation

3.3 Candor Toward the Tribunal

3.4 Fairness to Opposing Party

3.5 Impartiality and Decorum of the Tribunal

3.6 Trial Publicity

3.7 Lawyer as Witness

3.8 Special Responsibilities of a Prosecutor

3.9 Advocate in Nonadjudicative Proceedings

Title 4 Transactions With Persons Other Than Clients

4.1 Truthfulness in Statements to Others

4.2 Communication With Person Represented by a Lawyer

4.3 Dealing With Person Not Represented by a Lawyer

4.4 Respect for Rights of Third Person

Title 5 Law Firms and Associations

5.1 Responsibilities of Partners, Managers, and Supervisory Lawyers

5.2 Responsibilities of a Subordinate Lawyer

5.3 Responsibilities Regarding Nonlawyer Assistants

5.4 Professional Independence of a Lawyer

5.5 Unauthorized Practice of Law; Multijurisdictional Practice of Law

5.6 Restrictions on Right to Practice

5.7 Responsibilities Regarding Law-Related Services

5.8 Misconduct Involving Lawyers and LLLTs Not Actively Licensed to Practice Law

5.9 Business Structures Involving LLLT and Lawyer Ownership

5.10 Responsibilities Regarding Other Legal Practitioners

Title 6 Public Service

6.1 Pro Bono Publico Service

6.2 Accepting Appointments

6.3 Membership in Legal Services Organization

6.4 Law Reform Activities Affecting Client Interests

6.5 Nonprofit and Court-Annexed Limited Legal Service Programs

Title 7 Information About Legal Services

7.1 Communications Concerning a Lawyers Services

7.2 Advertising

7.3 Solicitation of Clients

7.4 Communication of Fields of Practice and Specialization

7.5 Firm Names and Letterheads

7.6 Political Contributions to Obtain Government Legal Engagements or Appointments by Judges

Title 8 Maintaining the Integrity of the Profession

8.1 Bar Admission and Disciplinary Matters

8.2 Judicial and Legal Officials

8.3 Reporting Professional Misconduct

8.4 Misconduct

8.5 Disciplinary Authority; Choice of Law

Appendix Guidelines for Applying Rule of Professional Conduct 3.6