

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

Brian P. Carr
Plaintiff

versus

Sam Reed, in his official capacity as Secretary
of State of the State of Washington, and Rob
McKenna, in his official capacity as Attorney
General of the State of Washington and
representing in their official capacity as
representatives of the State of Washington and,
separately, as private individuals the Honorable
Robert L. Harris, John F. Nichols, Barbara D.
Johnson, Kenneth Eiesland, Rich Melnick,
John Hagensen, Kelli E. Osler, Joel Penoyar,
(J.) C. C. Bridgewater, J. Robin Hunt, Gerry L.
Alexander, Barbara Madsen, Mary E.
Fairhurst, Susan Owens and James M. Johnson
as well as other currently unnamed parties as
determined by the Court
Defendants

Civil No. _____

COMPLAINT

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

3 Introduction

4 1. The Plaintiff's rights to liberty and property were deprived without due process and Plaintiff
5 was not provided equal protection under the law as required by the Fourteenth Amendment of
6 the U.S. Constitution in proceedings in the State of Washington under RCW 26.50 (Domestic

Complaint 1 of 27

Carr v McKenna

Brian P. Carr, Pro Se

1 Violence). While the statute itself provides for due process and equal protection under the
2 law, the Defendants ignored the requirements of the statute and the state constitution. The
3 Plaintiff is seeking declaratory relief as well as damages.
4

5 2. This case is an outgrowth of two Domestic Violence cases initiated in the Clark County
6 Superior Court of the State of Washington under RCW 26.50 as case number 04-2-08824-4 in
7 which Mr. Carr was a Respondent and case number 04-2-08908-9 in which Mr. Carr was the
8 Plaintiff. In each case, Mr. Carr's wife, hereafter referred to as Karyn, was the other party. Mr.
9 Carr and Karyn were in the process of separating and later divorcing
10

11 3. As Karyn is not a party to this matter and these proceedings will be available to the public, all
12 identifying information for Karyn has been redacted. The Defendants have access to the
13 originals and can identify Karyn fully if it is of relevance to the case at hand.
14

15 4. Shortly after the Order for Protection was issued in case 04-2-08824-4 against Mr. Carr, he
16 was at a social event in Portland, OR where Karyn was not present when, apparently, one of
17 Karyn's friends notified her of his presence and she went to the restaurant and called the police
18 claiming a violation of the Order while remaining outside the restaurant and with Mr. Carr
19 unaware of her presence. Mr Carr was arrested and remained in custody for more than three
20 days. The Multnomah County District Attorney did not prosecute the case because of a lack
21 of evidence that Mr. Carr knew of Karyn's presence (Multnomah Circuit Court Clearing
22 0923389).
23

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

1 Oregon arrest have had a significant detriment in his ability to seek employment as well as
2 making him a likely candidate for searches as a potential terrorist.

3
4 6. On all job applications for permanent positions which Mr. Carr has completed in the last
5 decade he has been asked if he has ever been arrested. The job market is quite competitive in
6 the areas where Mr. Carr works and negative responses to applicants are always general such
7 as 'another candidate was found to be more qualified for the position'; no specific reason for
8 the negative response is ever provided. In face of the highly competitive nature of each
9 position, the requirement that Mr. Carr explain his criminal history makes him virtually
10 unemployable in most of the positions to which he would otherwise be eligible.

11
12 7. While the framers of the constitution (both state and federal) could not have foreseen the
13 widespread dissemination of criminal records, they did provide the guarantee of certain rights
14 when they impacted a person's livelihood as criminal records do today. While the state
15 certainly has the ability to impair a person's livelihood, it can only do so within the constraints
16 of due process. This guarantees the right of the affected individual to be heard before an
17 impartial authority, presented with the evidence against them, given the opportunity to present
18 evidence on their own behalf, and the right to appeal.

19
20 8. Since 2005 to the present, Mr. Carr can not use automated check in for flights and is subjected
21 to more intensive scrutiny as he has been identified as a potential terrorist due to the Order in
22 case 04-2-008824-4 and its aftermath. Further, Mr. Carr has been banned from the social
23 functions which he had attended, not for any action on his part, but due to the assumptions
24 people make about the moral character of a person who has been the subject of a Restraining
25 Order.

26
27 9. Mr. Carr applied to have the record of the arrest in Oregon sealed (Multnomah Circuit Court
28 Clearing 0923389), but this was denied. Mr. Carr has appealed to the Oregon Court of
29 Appeals (case A132012), but this appeal is still pending and is not yet ripe for federal

1 consideration. No actions in Oregon will be considered in this case other than their
2 continuing impact on Mr. Carr's ability to seek alternative employment.

3
4 10.The District Court can process many RCW 26.50 requests, but in cases where there is a
5 shared residence (as in the cases above), the Superior Court must hold the hearing and issue
6 the Order (RCW 26.50.020 (5) (c)). However, rather than dividing the RCW 26.50 requests
7 between the courts or having the Clark County Superior Court hear all these requests, the
8 Clark County Superior Court chose to attempt to delegate authority to hear these matters to
9 the District Court. Unfortunately there does not appear to be any legal way to delegate these
10 matters.

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

18
19 12.The violations of Washington statutes and constitutional issues include:

- 20 • Washington Constitution Article IV, Section 23, Clark County Superior Court
21 Commissioners exceed three in number.
- 22 • RCW 2.24.040 (3) Family Court Commissioners issue orders which are not temporary.
- 23 • RCW 26.50.070 (3), no ex parte hearings held.
- 24 • RCW 26.50.070 (1), requirement of irreparable injury ignored .
- 25 • RCW 26.50.030, RCW 26.50.010, and RCW 9A.46.110 requirement of allegations of
26 domestic violence ignored.
- 27 • Fourteenth Amendment, U.S. Constitution- Due Process, no testimony taken at hearing.
- 28 • Fourteenth Amendment, U.S. Constitution- Due Process, evidence from Judicial
29 Information System used without notice and service to Respondent.

- 1 • RCW 26.50.070 (4), RCW 26.50.085 and RCW 26.50.123, temporary orders longer 14
- 2 days granted without required underlying justification (publishing or mail).
- 3 • RCW 26.50.035 (1) (c), placed restrictions on Respondent's ability to request
- 4 modifications to an Order for Protection.
- 5 • Fourteenth Amendment, U.S. Constitution- Due Process, denying Petition for FTA (Failure
- 6 to Appear) when there was an Order for Protection prohibiting attendance at the hearing
- 7 and outstanding Motions to reschedule the hearing and, separately, permitting attendance at
- 8 the hearing.
- 9 • Fourteenth Amendment, U.S. Constitution- Due Process, right of appeal not provided.
- 10 • Fourteenth Amendment, U.S. Constitution- Equal Protection under the Law, sexual bias in
- 11 entire process for RCW 26.50 (domestic violence) matters.
- 12

13 13. While Washington state government certainly has the authority to grant restraining orders,

14 such orders always require a careful balance of constitutional rights of both the Petitioner and

15 Respondent. Defendants' wholesale disregard for the restrictions of the relevant statutes and

16 constitutional provisions virtually assured that numerous parties would have their

17 constitutional rights infringed upon both through the granting of orders which were unfounded

18 as well as the denial of orders which were warranted such as in Mr. Carr's cases. Defendants

19 could easily have foreseen unwarranted arrests and criminal records impacting individual's

20 employment as in the case at hand.

21

22 14. Mr. Carr appealed to the Washington State Court of Appeals, Division II, in case number

23 32671-0-II where these issues were again raised. The Court of Appeals affirmed the decision

24 of the Superior Court.

25

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

27 was denied.

28

29

Jurisdiction and Venue

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

17. Venue is proper in this district pursuant to 28 U.S.C. § 1391 (b) because a substantial part of the events or omissions giving rise to the claim have occurred or will occur in this district and all of the Defendants in this matter reside in this District.

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

19. Defendant Rob McKenna is sued in his official capacity as Attorney General of the State of Washington. His official residence is at 1125 Washington St SE; Olympia, WA 98504-0100. Some of the relief sought in this action would apply throughout the State of Washington and it

1 is Mr. McKenna and his office's duty to appear and act as counsel for the state in accordance
2 with RCW 4.92.030. Further as other Defendants are being sued in their official capacity for
3 the State of Washington, Mr. McKenna may be requested to represent them in their official
4 capacity in accordance with RCW 4.92.060.

5
6 20. Defendants Robert L. Harris, John F. Nichols, and Barbara D. Johnson are all Judges for the
7 Clark County Superior Court and are being sued in both their official capacity for the State of
8 Washington as well as private individuals. Their official residence is Clark County Superior
9 Court; 1200 Franklin Street; Vancouver, WA 98660.

10
11 21. Defendants Kenneth Eiesland, Rich Melnick, and John Hagensen are all Judges for the Clark
12 County District Court while Kelli E. Osler is a Commissioner for the Clark County District
13 Court and are being sued in both their official capacity for the State of Washington as well as
14 private individuals. Their official residence is Clark County District Court; 1200 Franklin
15 Street; PO Box 9806; Vancouver, WA 98666. Defendants Eiesland and Melnick were also
16 two of more than three individuals appointed in Clark County as Superior Court
17 Commissioners under (and in violation of) Washington State Constitution, Article IV, Section
18 23 in 2004 and 2005. All four of these Defendants are Family Court Commissioners in Clark
19 County under RCW 26.12 in 2006 and 2007.

20
21 22. Defendants Joel Penoyar, (J.) C. C. Bridgewater and J. Robin Hunt are Judges in the Court of
22 Appeals, Division II and are being sued in both their official capacity for the State of
23 Washington as well as private individuals. Their official residence is Court of Appeals,
24 Division II; 950 Broadway, Suite 300; Tacoma, WA 98402.

25
26 23. Defendants Gerry L. Alexander, Barbara Madsen, Mary E. Fairhurst, Susan Owens and James
27 M. Johnson are Judges in the Washington State Supreme Court and are being sued in both
28 their official capacity for the State of Washington as well as private individuals. Their official
29 residence is Washington State Supreme Court; 415 12th Ave SW; Olympia, WA 98504-0929.

1 24.Plaintiff resides at 11301 NE 7th St., Apt J5; Vancouver, WA 98604 and is a resident of Clark
2 County. The Plaintiff and Defendants are residents of Clark, Thurston, and Pierce counties all
3 of which are in the jurisdiction of this court.
4

5 **Count I**

6 **Commissioners Exceed Three in Number**

7 25.Plaintiff repeats and realleges paragraphs 1 through 24, as if fully set forth.
8

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

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

17 These orders were included in the record of cases 04-2-08824-4 and 04-2-08908-9.
18

19 27.A reasonable person could easily conclude the numeric limit placed on the appointment of
20 Superior Court Commissioners in the Washington constitution (Article IV, Section 23) is
21 arcane, ineffective and even counter productive. However, enough reasonable people did not
22 reach that conclusion when the issue was presented to the voters in 1981, Ordell v. Gaddis, 99
23 Wn.2d 409, (1983). As long these numeric limits are held to be valid, it is not reasonable to
24 simply ignore the limits. The danger of placing of expediency over legality is that once it
25 becomes the norm in our society (as it must once we start down that slippery slope), within a
26 decade we would no longer have a government of law, but, in all likelihood, a military
27 dictatorship.
28

29 28.While the court found in Ordell v. Gaddis, 99 Wn.2d 409 that Family Court / Law
30 Commissioners and Pro Tempore Commissioners do not count in the numerical limit, the

1 orders cited above do not contain any such reference. Further, Ordell makes it clear that the
2 constitutional numeric limit on Superior Court Commissioners is a valid limit and that the
3 courts may not otherwise exceed that limit.
4

5 29. These Orders violated Plaintiff's and numerous other residents of Clark County right to have
6 matters heard by a Judge rather than an appointed Commissioner as too many matters were
7 heard by these alleged Commissioners in Clark County. These Orders further violated
8 Plaintiff's and other residents of Clark County right to due process under Fourteenth
9 Amendment, U.S. Constitution as the alleged Commissioners hearing their matters did not
10 have jurisdiction to hear said matters because their appointment Orders were invalid.
11

12 30. The law is clear on the effect of Orders made when the court did not have jurisdiction. An
13 order can be 'declared void for the reason that the ... court did not have jurisdiction to enter
14 such decree.' Barker v. Barker, 31 Wn. (2d) 506. It is also well established that all subsequent
15 actions based on the void order are void ab initio or void from the beginning Beyerle v.
16 Bartsch, 111 Wash. 287. Any Orders for Protection, arrests and convictions based on these
17 invalid Orders are similarly void.
18

19 31. Defendants Eiesland, Melnick, Nichols and B. Johnson were aware of these illegal orders and
20 acted in concert with Defendant Harris as well as individually through actions taken in
21 support of this deprivation of rights and through the omission of actions required under the
22 constitution of Washington and the United States and their oath of office. See paragraphs 39
23 through 42 for more details about the complicity of these Defendants.
24

25 32. These knowing and willful violations of the constitutions and their oath of office are so
26 egregious that they can not have been performed in Defendants' official capacity and were in
27 fact made as private individuals in violation of the United States Constitution and 42 U.S.C. §
28 1981, 42 U.S.C. § 1982, 42 U.S.C. § 1983, 42 U.S.C. § 1985 (3), and 42 U.S.C. § 1986.
29

Count II

Interference With Right To Appeal

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

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

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

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

37. The deciding authority is routinely not completed in the Judicial Information System so that there is no record of the deciding identity other than the signature which is often not clearly legible. In case 04-2-008908-9 there was even no signature on the decision of November 12, 2004.

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

39. Plaintiff's Motions for Review were improperly denied by Defendant B. Johnson on December 10, 2004 even though they were properly submitted during the 30 day period when

1 the Orders were appealable as matter of right. The justification was that the Motions were not
2 submitted within the ten day period for a Motion for Revision of a Commissioner's decision,
3 but this was the first time that Plaintiff had been informed of Defendants Eiesland and
4 Melnick's status as an alleged Commissioner.

5
6 40. In an apparent attempt to keep the identity of the deciding authority hidden from the Court of
7 Appeals, Defendant B. Johnson falsely identified Defendant Nichols as the deciding authority
8 (case 04-2-08908-9, letter dated January 7, 2005) even though a trivial comparison of the
9 hand writing in the Orders of November 12, 2004 and January 3, 2005 demonstrates her
10 'discovery' as false.

11
12 41. Defendant Nichols issued an Order in case 04-2-08908-9 on January 3, 2005 even though
13 there was no motion before the court in this case and a Notice of Appeal had been filed in this
14 case on December 10, 2004. This ruse as to the deciding authority was dropped on January
15 19, 2005 after the Plaintiff had filed a Notice of Appeal on January 18, 2005 in case 04-2-
16 008824-4 where the identity of Defendants Eiesland and Melnick were clearly identified in
17 the record and on the Notice of Appeal.

18
19 42. Defendants Eiesland, Nichols, Johnson, and Harris acted in concert as well as individually
20 through actions taken in support of this deprivation of rights and through the omission of
21 actions required under the constitution of Washington and the United States and their oath of
22 office.

23
24 43. These knowing and willful violations of the Defendants' oaths of office are so egregious that
25 they can not have been performed in Defendants' official capacity and were in fact made as
26 private individuals in violation of the United States Constitution and 42 U.S.C. § 1981, 42
27 U.S.C. § 1982, 42 U.S.C. § 1983, 42 U.S.C. § 1985 (3), and 42 U.S.C. § 1986.

Count III

Requirements of Statutes Ignored

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

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

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

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

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

1 008908-9 where the Temporary Order for Protection was denied even though the Petition
2 contained the elements of irreparable injury.

3
4 49. Defendant Eiesland and Melnick ignored the requirements of RCW 26.50.030, RCW
5 26.50.010, and RCW 9A.46.110 of allegations of domestic violence, i.e. assault, threats of
6 assault, or behavior which would cause a reasonable person to fear injury to person or
7 property. An order was granted in case 04-2-008824-4 where there were no allegations of
8 domestic violence, but denied in case 04-2-008908-9 where there were such allegations.

9
10 50. Defendant Melnick granted and denied numerous RCW 26.50 cases including case 04-2-
11 008824-4 on October 27, 2005 without permitting to the Respondent to testify as required by
12 due process, STATE v. KARAS - 108 Wn. App. 692 as no parties were ever placed under
13 oath, only allegations were heard with no realistic threat of penalty for lying to the court.

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

18
19 52. Defendant Melnick relied on evidence from the Judicial Information System on October 27.
20 2007 using evidence which was not provided to the Respondent with the notice and service
21 required by due process and Fourteenth Amendment, U.S. Constitution.

22
23 53. The Order in case 04-2-008824-4 was modified to correct Mr. Carr's birth date by an
24 unknown party (though Defendant Melnick is a likely candidate) even though there was
25 nothing in the record to support this change and no motion before the court in that matter.
26 Mr. Carr later attempted to gain access to any police reports (a likely source of that
27 information) which may have accessed via the Judicial Information System to support that
28 change, but the Superior Court denied those requests (Motion of December 29, 2004) on
29 February 16, 2005.

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

7
8 55. Defendant B. Johnson violated Plaintiff's rights to due process on February 16, 2005 by
9 denying the Motion to Revise in case 04-2-008824-4 request for the ability to attend hearings
10 where he was scheduled to appear and RCW 26.50.035 (1) (c) by adding restrictions on
11 Plaintiff's right to request modifications of the Order of Protection.

12
13 **Count IV**

14 **Family Court Commissioners issue Restraining Orders**

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

16
17 57. In apparent recognition that the prior appointments of Superior Court Commissioners violated
18 the numeric limits of the Washington Constitution and were not valid, in 2006 and 2007
19 Defendant Harris representing the Superior Court instead appointed the District Court Judges
20 and Defendant Osler as Family Law Court Commissioners under RCW 26.12. However, the
21 Family Court is a court of limited jurisdiction (Ordell v. Gaddis, 99 Wn.2d 409) and Family
22 Court Commissioners are only authorized to issue temporary restraining orders (RCW
23 2.24.040 (3)) which does not include the Orders for Protection of a year or more which they
24 routinely issue.

25
26 58. The individuals hearing RCW 26.50 matters in Clark County at this time do not have
27 jurisdiction to sign the resulting Orders which makes them invalid. To support this facade, the
28 Defendant Harris signed orders in 2007 appointing as Family Court Commissioners the
29 Honorable Eiesland, Hagensen, Melnick, Osler, Schreiber, Swanger and Zimmerman.

1 Assigning case loads to Commissioners who have no authority to resolve matters (and
2 ignoring the restrictions of statutes) is another violation of the oath of office. Defendants B.
3 Johnson and Nichols as well as the other Judges of the Clark County Superior Court are
4 complicit in this assignment of cases to Commissioners outside their jurisdiction.
5

6 59. Defendant Hagensen signed an Order for Protection for a full year on January 17, 2007 in case
7 07-2-07009-9 which involved a shared residence (must be heard in Superior Court) even
8 though he only had authority to issue temporary restraining orders (RCW 2.24.040 (3)).
9

10 60. Defendant Osler signed an Order for Protection for a full year in case 06-2-08362-1 even
11 though she only had authority to issue temporary restraining orders (RCW 2.24.040 (3)).
12

13 61. Defendants Johnson, Nichols, Osler, and Hagensen acted in concert with Defendant Harris as
14 well as individually through actions taken in support of this deprivation of rights and through
15 the omission of actions required under the constitution of Washington and the United States
16 and their oath of office.
17

18 62. These knowing and willful violations of the Defendants' oaths of office are so egregious that
19 they can not have been performed in Defendants' official capacity and were in fact made as
20 private individuals in violation of the United States Constitution and 42 U.S.C. § 1981, 42
21 U.S.C. § 1982, 42 U.S.C. § 1983, 42 U.S.C. § 1985 (3), and 42 U.S.C. § 1986.
22

23 **Count V**

24 **No Right of Appeal**

25 63. Plaintiff repeats and realleges paragraphs 1 through 62 as well as those listed in Count VI, as
26 if fully set forth.
27

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

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

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

6
7 65. Defendants Penoyar, Bridgewater and Hunt denied the appeal in an unpublished opinion
8 which stated in part:

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

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

16
17 66. Plaintiff submitted a Petition for Review to the Washington Supreme Court in case 78768-9
18 which raised the same issues. It also called to attention to the fashion in which Defendant
19 Penoyar intentionally misconstrued the issues which had been presented to the Court of
20 Appeals. While it could be argued that Defendant Penoyar had simply misread a point or two,
21 the manner in which so many issues were artfully misconstrued indicates it was intentional
22 and not any accident.

23
24 67. Defendants Alexander, Madsen, Fairhurst, Owens and J. Johnson denied the Petition as well
25 as supplemental evidence presented in Count IV.

26
27 68. When Washington judges are presented with evidence of direct violations of the state
28 constitution, their oath of office requires them to correct these violations to include
29 overturning the invalid orders and everything which was the result of these violations. Instead
30 they attempted to conceal these violations of the state constitution.

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

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

Count VI

Sexual Bias in RCW 26.50 Process

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

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

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

74. A review of recent RCW 26.50 (domestic violence) decisions in Clark County including cases 06-2-08344-3 through 07-2-07040-4 shows that 103 of the 118 cases could be clearly

1 classified as female seeking protection from male (FM) or male seeking protection from
2 female (MF). 84 were FM with 37 withdrawn, 39 granted, and 8 denied. 19 were MF with 12
3 withdrawn, 3 granted and 4 denied.

4
5 75. These rates are exactly what one would expect if men were about ten times more likely to
6 commit domestic violence than women. However, peer reviewed studies have repeatedly
7 shown that men and women are about equally likely to commit acts of violence in domestic
8 relations as this time. See Change In Spouse Assault Rates From 1975 to 1992: A
9 Comparison of Three National Surveys in the United States, Murray A. Strauss and Glenda
10 Kaufman Kantor.

11 Numerous other studies have found similar results. When U.S. Census Bureau figures are
12 used to compute the estimated number of eligible victims and assuming a normalized
13 distribution of applicants, the discrepancy between the rates of eligible victims and orders
14 granted clearly demonstrates and deeply rooted sexual bias in the entire RCW 26.50 domestic
15 violence process.

16
17 76. Over the last several decades there have been numerous portrayals in the media of the scenario where
18 'Man says something which Woman finds offensive, Woman slaps Man, Man is silenced by this
19 justified response to his offensive behavior, and, later, through the typical sort of karmic retribution,
20 terrible things happen to Man for his prior offensive behavior'. The problem with this scenario is that
21 it has the effect of condoning and even encouraging criminal physical abuse of men in domestic
22 relations (with the inherent emotional abuse of such physical abuse) while at the same time
23 convincing men that any abuse they receive must be justified and that they have no real alternative to
24 accepting their abuse in silence. The reverse scenario when a man strikes a woman is uniformly
25 portrayed as a heinous act. This abhorrence of abuse by men is consistent with the values of our
26 society and the law itself. However, the sexually discriminatory acceptance of the physical abuse of
27 men is an example of the inconsistencies in our society's values, but the law does not and should not
28 reflect these inconsistencies.

29
30 77. Over the last forty years there has been an almost hysterical concern with domestic violence against
31 women, presumably being fed by the inconsistent values of society as described above, but also

1 feeding these same inconsistencies. There are numerous serious publications where it is stated that
2 the primary cause of injury and death to adult women is domestic violence to include the Bell Atlantic
3 HR News before the merger to form Verizon. The claim is patently absurd. A trivial check of the
4 figures from the U.S. Center for Disease Control demonstrates that the actual causes are automobile
5 accidents and cancer respectively. However, even an otherwise scholarly work such as A Process
6 Evaluation of the Clark County Domestic Violence Court by Kleinhesselink and Mosher
7 claims that domestic violence '*is the leading cause of injury to women ages 15 to 44*'. Instead
8 of listing the original source, though, it is just a quote from Mills, L. (1998). *Mandatory*
9 *arrest and prosecution policies for domestic violence*. Criminal Justice and Behavior 25:306-
10 318.

11
12 78. Ms. Mills made what appears to be an intentionally inaccurate quote from the Surgeon
13 General, Ms. Novello, U.S. Public Health Service, JAMA, 267(23), 3132 which states 'One
14 study found violence to be ... the leading cause of injuries to women ages 15 through 44 years
15 (Am J Epidemiol. 1991;134:59-68). That study, conducted for a 1-year period by the
16 Philadelphia Injury Prevention Program, examined injuries to women resulting in emergency
17 department visits or death.' While that study has numerous flaws, not the least of which is
18 the very limited and skewed sample (ghetto demographics and no correction for the endemic
19 non domestic violence in such areas), at no point did Ms. Novello imply that this very limited
20 result could be generalized to a much larger population as Ms. Mills did or that non domestic
21 violence could be ignored in these results. It appears that the truth was not extreme enough
22 for Ms. Mills and she found it necessary to knowingly publish false claims. Now those
23 attempting to generate additional hysteria concerning domestic violence against women
24 simply cite this and similar false sources ad nauseum.

25
26 79. While these academic fabrications may be of little interest outside of academic circles, their
27 repercussions extend far beyond the academic environment. For example, the very title of the
28 U.S. 'Violence Against Women Act of 1994' encourages sexual bias by ignoring the plight of
29 men. By 1992 it was well established that men were victims of domestic violence as often as
30 women. However, in the current hysterical environment there can be little hope of equal

1 protection under the law.

2
3 80. In particular, everyone involved with prosecuting domestic violence matters from police to
4 clerks and adjudicators is often given 'training' which has the effect of developing and
5 increasing this sexual bias. They are often taught that even if the women and man both deny
6 that there is any abuse of any kind they should assume that the man is beating the woman and
7 look for evidence to support that conclusion. Until this needless sexual bias is removed from
8 the process, any findings which result are suspect.

9
10 81. An example of how Clark County Superior Court discriminates against men is the
11 instructional videos which are posted on their web site at:

12 <http://www.co.clark.wa.us/courts/dvvidio.html>

13 In that video the victim is a woman and the offender is a man. This is just one of the subtle
14 ways in which our society tells men that they are not entitled to equal protection under the law
15 in these matters.

16
17 82. The Plaintiff is deeply concerned about the seriousness of Domestic Violence, being a victim
18 himself, and does not in any way condone or encourage this criminal behavior. However, an
19 extremely biased judicial process can not effectively address this very complex and multi-
20 faceted problem. Corrections are required to promote a safe and healthy environment for
21 everyone, men and women.

22
23 **Count VII**

24 **Restrictions on Candidates for Court Justices**

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

26
27 84. The Washington State Constitution Art. 4 § 17 requires that residents seeking to declare their
28 candidacy for election as Judges for the Washington Superior Court or Washington Supreme
29 Court be must have been admitted to practice law before the courts of Washington but the

1 Washington Supreme Court plays a critical role in determining who can practice law before
2 said courts (RCW 2.48.060). The Supreme Court in Washington has the ability to determine
3 who run against them in upcoming elections. This circular restriction infringes on Fourteenth
4 Amendment, U.S. Constitution Equal Protection under the Law rights as it has the potential
5 for creating a privileged class of practitioners. While this can be acceptable for the practice of
6 law if there are adequate alternatives (such as pro se representation), it is unacceptable for any
7 elected office.

8
9 85.The widespread choice of expediency over legality in Clark County and, given the complicity
10 of the appeals process, by extension throughout Washington State, raises questions as to how
11 such neglect and open contempt for the Rules of Law can have persisted. Surely any number
12 of attorneys must have noticed that the constitution and statutes had little relevance in these
13 proceedings. Why weren't there numerous appeals by attorneys who support and believe in
14 the Rule of Law? The likely answer is that attorneys soon learned that the appeals process
15 was fruitless and that complaining of violations of the Rule of Law simply got retribution
16 against them and their clients. An attorney simply could not earn a living practicing law if the
17 judges he or she appeared before punished past complaints. This places attorneys in the
18 unenviable position of either going along with a morally corrupt system or pursuing a new
19 line of work (and after they had spent many years getting the training required to practice
20 law). In such an environment, the only truly qualified candidates for a judicial position would
21 be someone who had not participated in that corrupt system, i.e. someone who has not
22 practiced law in Washington state. Given the inbred controls on the practice of law in
23 Washington, there is no basis for the requirement that a candidate for a judicial position be
24 admitted to practice law in the state of Washington.

25
26 86.Plaintiff intends to be a candidate in the 2008 elections for judicial positions in Washington
27 and to encourage others who have not practiced law in Washington to similarly become
28 candidates. It should be the choice of the voters as to whether they would prefer these
29 untainted but also inexperienced candidates.

1
2 87. Similarly, RCW 2.06.050 and RCW 3.34.060 each have requirements that candidates for the
3 Washington Court of Appeals and District Courts be lawyers admitted to practice law in the
4 state of Washington. Further, in 2006 Ernest Edsel was barred from appearing on the ballots
5 for the Court of Appeals Division II (opposite Defendant Penoyar) because of an Order from
6 the Thurston Superior Court relying on this requirement of RCW 2.06.050. The voters
7 would have been much better served to have candidates who are devoted to upholding the
8 Rule of Law rather than placing expediency above legality.

9
10 88. RCW 29A.24.091 requires a filing fee of roughly \$1320 or a petition with an equivalent
11 number of petitions if the filer lacks sufficient assets or income to pay the filing fee.
12 However, just as the traditional poll tax was found to be discriminatory against low income
13 citizens, this either / or alternative is discriminatory against citizens of moderate means, those
14 who would be most likely to challenge an incumbent with the promise of upholding the rule
15 of law and putting an end to expediency above legality. A potential candidate of moderate
16 means could be construed to be able to pay the filing fee (by going into debt for example), but
17 would be needlessly discouraged by this fee in a fashion similar to poll taxes discouraging low
18 income voters.

19
20
21 PRAYER FOR RELIEF

22 WHEREFORE, Plaintiff asks this Court to enter an Order:

- 23
24 1. Declaring both the Temporary Order for Protection as well as full Order for Protection entered
25 in Clark County Superior Court case 04-2-008824-4 void for the reason that the Honorable
26 Eiesland and Melnick did not have jurisdiction to enter such decrees as well as other faults in
27 the processing of that matter and lack of evidence in accordance with RCW 26.50;
28
29 2. Declaring void ab initio all Orders and Decisions which are signed by an alleged

1 Commissioner in 2004 and 2005 who were one of more than three Commissioners appointed
2 under and in violation of the Washington State Constitution, Article IV, Section 23 and that
3 all arrests and convictions which were based on these void ab initio decrees are similarly void.
4 Further, that Clark County Superior Court Orders and Decisions in other years are similarly
5 void if it can be shown they were signed by an alleged Commissioner who was one of more
6 than three Clark County Superior Court Commissioners appointed under and in violation of
7 the Washington State Constitution, Article IV, Section 23;

8
9 3. Declaring that all Decisions and Orders in Clark County Superior Court where the deciding
10 authority can not be readily determined from the record are void ab initio as the jurisdiction of
11 the court can not be established and that all arrests and convictions which were based on these
12 void ab initio decrees are similarly void.

13
14 4. Declaring void ab initio all Orders for Protection and Restraining Orders in the state of Washington
15 of Family Court Commissioners which are of duration greater than 14 days (or 24 days if the statutory
16 requirements of RCW 26.50.070, RCW 26.50.085 and RCW 26.50.123 are met) and that all
17 arrests and convictions which are based on these void ab initio orders are similarly void.

18
19 5. Declaring that RCW 26.50 Orders for Protection in Washington State must allow the
20 Respondent to attend any court hearings where the Respondent is scheduled to appear and that
21 this exception must be included in writing in every Order for Protection. Further, the
22 omission of this allowance in previously completed orders does not invalidate the order nor
23 does it in any way reduce this allowance;

24
25 6. Declaring that no court in Washington State can restrict a Respondent's right to apply for a
26 modification to an RCW 26.50 order at any time as long as the application is made in writing
27 to the court which issued the order as specified in RCW 26.50 (1) (c);

28
29 7. Declaring all Orders and Decisions in Clark County Superior Court case 04-2-008908-9 void
30 as the Superior Court never held the ex parte hearing required by RCW 26.50.070 and also

1 ordering the Superior Court to hold such a hearing as soon as practicable;

2
3 8. Declaring all RCW 26.50 Orders and Decisions in Clark County Superior Court as well as
4 arrests and convictions which are the result of these decrees void if there is no documentation
5 of an ex parte hearing held in accordance with RCW 26.50.070;

6
7 9. Declaring that no clerk of the courts in Washington State can refuse to accept a Notice of
8 Appeal if:

- 9 • The notice is in writing,
10 • The case number is specified and the clerk can accept filings for that case, and
11 • The filer has the required fee.

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

14
15 10. Declaring that Notices of Appeal in Washington State can be filed with either the clerk of the
16 court appealed from (see Washington State RAP Rule 5.2) or the court appealed to;

17
18 11. Declaring that in Washington State if a party properly submits a Motion to / for Revision,
19 Reargue, Reconsider, Review, Renew, Revise or other similar request from a Decision during
20 the period in which the Decision is appealable by right, the Court must grant this motion but
21 may deny any and all of the relief sought. The time to file a Notice of Appeal is extended to
22 be from the date of decision in said Motion (normally 30 days from the decision in the
23 Motion);

24
25 12. Declaring that the Plaintiff in this matter be granted access to any information in the Judicial
26 Information System which is not part of the public record in cases 04-2-008824-4 and 04-2-
27 008908-9 and which was accessed by any Judge or alleged Commissioner considering these
28 matters or, if there are not records of what material was accessed, then any and all records
29 which reasonably could have been accessed by any Judge or alleged Commissioner

1 considering these matters.

2
3 13.Declaring that no Judge or Commissioner in Washington State be granted access to any
4 information in the Judicial Information System unless it is determined what case it is relevant
5 to and only if it can be demonstrated that the parties in the matter have been given prior notice
6 and service to all information which is displayed.

7
8 14.Due to pervasive sexual bias, declaring the entire record in RCW 26.50 matters in Clark
9 County Superior Court to include any arrests and convictions which are the result of any
10 resulting decrees be sealed, only to be released to the parties and, while they are active, for the
11 purpose of enforcement but never for the purpose of determining employment prospects even
12 for sensitive positions. However, the court must make available on request to any party the
13 following information concerning any RCW 26.50 matter:

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

20
21 15.Declaring that the Clark County Superior Court must maintain records of the number of RCW
22 26.50 Petitions submitted and resulting decisions based on Male or Female Plaintiffs and
23 Respondents to determine the extent of sexual bias in these proceedings. Further that the
24 Court, Clerks, Sheriff's Office, Police and other agents of the state acting in their official
25 capacity to process and enforce these RCW 26.50 matters be given training on the importance
26 of eliminating sexual bias from these proceedings as well as the actual rates of incidence of
27 domestic violence as best determined in peer reviewed studies. Further that the sealing of the
28 RCW 26.50 records, maintenance of additional records and training will continue until the
29 Superior Court can demonstrate that it is actively addressing the problem of sexual bias and

1 has corrected the problem to the satisfaction of the Federal District Court;

2
3 16. Declaring that those individuals identified by the court as having acted outside their capacity
4 and having acted to deprive the Plaintiff or others of their constitutional guaranteed rights
5 each individually pay damages of \$500 or such other amount as the court finds reasonable to a
6 tax deductible charity of the Defendant's choice or other party as the court determines
7 reasonable;

8
9 17. Declaring that the Washington State Constitution Art. 4 § 17, RCW 2.06.050 and RCW
10 3.34.060 are overly broad and that, given the totality of the circumstances, can not be used to
11 restrict eligibility for judicial positions in Washington state based on whether or not the
12 candidate has been admitted to the practice of law.

13
14 18. Declaring that in order to increase the breadth of candidates for judicial positions in
15 Washington state and not deprive any citizens of equal protection under the law, RCW
16 29A.24.091 must allow for any combination of the filing fee and petitions which total to the
17 computed filing fee irrelevant of the filers current assets and income levels.

18
19 19. Awarding Plaintiff any attorney fees and costs in accordance with 42 U.S.C. § 1988; and

20
21 20. Granting Plaintiff such additional relief as the interests of justice may require, together with
22 his costs and disbursements in maintaining this action.

23
24 21. Respectfully submitted, May 23, 2007 (Vancouver, WA).

25
26
27
28 _____
29 Signature of Plaintiff
30 Brian Carr
31 11301 NE 7th St., Apt J5
Vancouver, WA 98684

1
2

503-545-8357