

To Be Argued by
Brian P. Carr
Time: 15 minutes

Court of Appeals, Division II
State of Washington

Case 32671-0-II

Karyn

Petitioner-Respondent

versus

Brian Patrick Carr

Respondent-Appellant

Appellant's Brief

Brian P. Carr
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360-607-0556

Respondent:

Karyn

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

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1	11/12/04	Denied Order for Protection, Brian Carr Petitioner
3	11/12/04	Petition for Order for Protection, Brian Carr
7	11/23/04	Motion for Order Re: Petition for Order of Protection
9	12/10/04	Notice of Appeal to Court of Appeals Div II
		(repetition of page 1-6)
16	1/10/05	Motion to Reschedule and Consolidate, Brian Carr
18	1/10/05	Memorandum in Support of Motion to Reschedule
20	1/10/05	Affidavit in Support of Motion to Reschedule
22	Exhibit A	Letter from Judge Johnson, Jan 6, 2005
23	Exhibit B	Amended Denial of TMORPRT, Judge Nichols, 1/5/05
26	1/6/05	Order Clarifying Denial of Petition, Judge Nichols
27	1/7/05	Letter from Judge Johnson to Brian Carr
29	1/14/05	Motion Requesting Decision and Hearing, Brian Carr
30	1/14/05	Memorandum in Support of Motion for Decision
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34	1/19/05	Denial of Petition, Honorable Eiesland
35	2/16/05	Findings and Order, Judge Johnson
38	3/30/05	Affidavit of Jurisdiction, Brian Carr
40	Exhibit A	Appointment Order, Commissioner Eiesland, 2005
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46	10/15/04	Petition for Order for Protection, Karyn
50	10/15/04	Temporary Order for Protection, Honorable Eiesland
53	10/27/04	Order for Protection, Honorable Melnick, unmodified
57	10/27/04	Order for Protection, Honorable Melnick, modified
61	11/23/04	Motion for Review of Order for Protection, Brian Carr
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76	12/28/04	Motion to Revise, Memorandum in Support, Brian Carr
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81	Exhibit A	Loan Agreement, May 26, 2003
82	Exhibit B	Letter from Brian Carr dated Oct 1, 2004 (incorrect)
85	Exhibit C	E-mail from Karyn, Nov 15, 2005 (incorrect)
89	Exhibit D	E-mail from Karyn, Dec 18, 2004
91	Exhibit E	Letter from Brian Carr, Dec 19, 2004
97	12/8/04	Motion to Revisit and Consolidation with 04-2-08908-9
108	12/8/04	Affidavit in Support of Motion to Revisit and Consolidate
110	Exhibit A	Motion for Delay in 04-3-02728-9 w Affidavit, 12/9/04
113		E-mail from Karyn, Nov 15, 2005 (incorrect)
117		Letter from Brian Carr dated Nov 24, 2004
119	Exhibit B	E-mail from Karen Hanson dated Dec 2, 2004
120	Exhibit C	E-mail from Brian Carr. September 29, 2004, 6:26:33

Pg	Date	Title, Case 04-2-008824-4
121		E-mail from Brian Carr. September 29, 2005, 21:48:53
124		E-mail from Brian Carr dated Oct 3, 2004
125	12/18/04	Letter to Judge Johnson from Brian Carr
126	12/18/04	Proposed Decision and Order, Brian Carr, 04-2-08824-4
127	12/18/04	Proposed Decision and Order, Brian Carr, 04-2-08908-8
128	12/9/04	Return Not Found, Sheriff's Department, 04-2-08824-4
129	12/23/04	Affidavit for Record, Brian Carr
131	Exhibit A	Tape Request, for CRT 3, 10-27-04, Nov 12, 2004
132	Exhibit B	Proposed Notice of Appeal, 04-2-08824-4
133	Exhibit C	Proposed Designation of Record on Appeal, 11/16/04
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137	1/7/05	Letter from Judge Johnson to Brian Carr
139	1/7/05	Decision and Order from Judge Johnson
140	1/18/05	Affidavit of Service, 04-2-08824-4 and 04-2-08908-9
142	1/18/05	Notice of Appeal to Court of Appeals Div II
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156	1/31/05	Notice of Hearing Scheduled, includes 04-2-08908-9
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160	Exhibit A	Appointment Order, Commissioner Eiesland, 2004
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164		Appointment Order, Commissioner Anders, 2004
166		Appointment Order, Commissioner Schreiber, 2004
168	Exhibit B	Appointment Order, Commissioner Eiesland, 2005

Pg	Date	Title, Case 04-2-008824-4
		(repetition pages 158-169, copied and scanned again)
183	2/13/2005	Letter from Karyn to Judge Johnson
185		Attachment, Notice of Hearing Scheduled, Jan 31, 2004
186		Attachment, Letter from Karyn to Brian Carr, Feb 12, 2005
188	2/16/05	Findings and Order, Judge Johnson
191	3/30/05	Amended Designation of Record on Appeal
195		Certificate of Clerk's Papers

Preliminary Statement

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

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

Mr. Carr seeks reversal of the Orders granted to Karyn, and granting of the Order for Protection

sought by Mr. Carr. Mr. Carr also seeks a general review of selected [RCW 26.50](#) Domestic Violence proceedings in Clark County to determine the extent of the failure of justice, the lack of due process, and the degree of prohibited sexual stereotyping.

Assignment of Error

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

Issues

- Can the Superior Court in any given county make more than three valid simultaneous appointments of Commissioners who aren't Family Court Commissioners? The trial court answered in the affirmative.
- Can a Temporary Order of Protection under [RCW 26.50](#) be issued when there are no allegations of irreparable injury or even of violence or threats of violence? The trial court answered in the affirmative.
- In sessions announced as being under the auspices of the District Court, can decisions of the Superior Court be properly entered if the Superior Court Commissioner never announces his/her status as a Commissioner? The trial court answered in the affirmative.
- Can an Order for Protection under [RCW 26.50](#) be issued when there are no allegations of violence or threats of violence and the claims of stalking are conclusory without any foundation of fear of injury. The trial court answered in the affirmative.
- Can a court grant an Order of Protection under [RCW 26.50](#) without taking any evidence (testimony) from either party when there are conflicting allegations about points of substance? The trial court answered in the affirmative.
- Does an in chambers review of a Petition under [RCW 26.50](#) where the Petitioner is not present constitute an 'ex parte hearing in person or by telephone' as required under [RCW 26.50.070](#) (3)? The trial court answered in the affirmative.
- Is it permissible to routinely deny petitions without noting the deciding authority in the record? The trial court answered in the affirmative.

- Do three prior assaults (albeit minor), increasing animosity, emotional instability, and possession of a firearm meet the requirements of irreparable injury for a Temporary Order for Protection under [RCW 26.50](#)? The trial court answered in the negative.
- Must an Order of Protection with no contact provisions explicitly allow attendance at court hearings or sessions where the Respondent is scheduled to appear? The trial court answered in the negative.
- Can a Petition for an Order for Protection under [RCW 26.50](#) be denied for FTA (failure to appear) while there is a pending Motion to Reschedule the hearing and while the Petitioner is prohibited by court order from appearing? The trial court answered in the affirmative.
- Is it permissible as a matter of law for a clerk to refuse to accept a Notice of Appeal because of defects in the form of the decision appealed from? The trial court answered in the affirmative.
- Is it appropriate for a court to deny a properly submitted Motion to Revisit which was filed while the decision was still appealable as a matter of right? The trial court answered in the affirmative.
- When the parties are the same and court is the same and the issues are intimately related is it appropriate to issue different case numbers to matters dealing with [RCW 26.50](#) Domestic Violence? The trial court answered in the affirmative.
- Is it incumbent on the Superior Court to insure that Superior Court Commissioners provide equal protection under the law and are not influenced by sexual stereotyping? The trial court answered in the negative.
- Is it incumbent on the court to insure that the parties are provided access to any evidence that the court relies on in making its decisions? The trial court answered in the negative.
- Can the court summarily deny motions properly submitted to the court without holding the requested hearing because the respondent to the motions notifies the court that the hearing is inconvenient and chooses not to attend the hearing. The trial court answered in the affirmative.
- Can the Superior Court restrict the parties access to scheduling hearings in [RCW 26.50](#)

matters? The trial court answered in the affirmative.

Statement of the Case

Background

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

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

The Marriage

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

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

The Separation

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

Temporary Order

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

Order For Protection

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

Arrest and Incarceration

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

Counter Petition

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

Attempt to Appeal

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

Notice of Appeal

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

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

Revised Decision

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

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

Final Decision

The hearing of January 28, 2005 was canceled without Mr. Carr being notified and on January Appellant's Brief

31, 2005 Mr. Carr rescheduled the hearing for February 18, 2005 as motions were not being heard on February 11. ([CP 74, 156](#)) On February 13, 2005, Karyn wrote to Judge Johnson informing her that Karyn had been served with notice of the hearing as of February 10, 2005 (more than five days before the hearing) and that she would not be attending because of schedule conflicts. ([CP 183-187](#)) Karyn did not propose an alternate hearing date or attempt to submit any other opposing requests or evidence. ([CP 183-187](#)) On February 16, 2005 Judge Johnson issued a written decision in both cases (they were mirror of each other) summarily denying all requests by Mr. Carr and Judge Johnson's clerk contacted Mr. Carr and asked that he not attend the scheduled hearing as the matters were already resolved. ([CP 35-37, 188-190](#)) Mr. Carr amended the preceding Notices of Appeal to include these decisions as well as the two decisions in January 2005 in case 04-2-08908-9. (via Motion to Court of Appeals as in files for this appeal)

Argument

1. More Than Three Commissioners

[Washington State Constitution, Article IV, Section 23](#) states

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

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

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

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

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

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

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

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

¹ The full text of the requirements listed in [Karas](#) are shown on [page 23](#).
Appellant's Brief

parties whose case was heard improperly by an appointee rather than a judge) to seek redress and have the matter heard before a judge.

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

2. Grounds for Temporary Order

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

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

[RCW 26.50.010](#) Definitions

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

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

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

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

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

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

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

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

3 Status of Commissioner not Announced

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

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

But the reality is that all [RCW 26.50](#) matters are handled exclusively by the District Court and their clerks.

When matters are adjudicated under the auspices of a different jurisdiction (not the one actually being applied), due process is denied as the parties are not afforded their rights. In particular, the right to appeal is at risk as the jurisdiction is misunderstood and, at best, ambiguous. For these reasons, the Appellant asks that the Temporary Order for Protection of October 15, 2004 and Order for Protection of October, 27, 2004 and Denied Petition of November 12, 2004 be reversed.

4 Grounds for Order for Protection

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

Karyn's numerous unrelated allegations were addressed in detail in the Motion to Revisit of December 8, 2004 ([CP 100-104](#)) and won't be addressed individually here. The finding of stalking would be relevant, but the allegations do not support that finding in accordance with [RCW 9A.46.110](#)² as there was nothing described which would induce fear of injury to person or property. Karyn complained of e-mails and voice messages, but a review of the e-mails ([CP 120-124](#)) shows that they were neither threatening nor harassing. They dealt with schedules and property transfers and were completely normal for a couple that is separating. The only content we can infer from the record concerning the voice messages ([10/27/04 RP 5](#)) is that they similarly dealt with schedules and property transfers which in no way induces fear of injury to person or property.

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

² The definition of stalking under [RCW 9A.46.110](#) was listed previously on page 19.

continued attendance.

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

5. No Testimony taken at Hearing

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

In [STATE v. KARAS - 108 Wn. App. 692](#) referring to RCW 26.50

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

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

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

However, the lack of additional evidence permits the Court of Appeals to simply deny Karyn's petition as the Court of Appeals has before it all the evidence which was before the trial court

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and there was no testimony to be interpreted by the trial court as to demeanor and believability.

6. No ex parte hearing

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

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

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

In [SPENCE v. KAMINSKI - 103 Wn. App. 325](#)

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

As such the procedures do not meet the requirement of [RCW 26.50](#) and the decision reached should be overturned.

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

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

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

7 No deciding authority in the Record

While the Superior Court in Clark County was almost certainly aware of the restriction on the number of Commissioners that could be appointed, rather openly testing a requirement which they apparently viewed as arcane and irrelevant, they instead attempted to keep their

appointments secret by not publicizing the appointment (their web page lists only two of the apparent eight Commissioners), not announcing the status of the Commissioner holding the hearing, keeping the dockets secret (kept with bailiffs who directed people to the correct court room), and not signing the decision when Petitions are denied.

As interpreted by the Superior Court, the lack of a signature makes a decision final from the point of view not allowing any review or revision *until* a Notice of Appeal is filed, at which time it is not final and is subject to revision without the request of any party. This is not a wise practice of jurisprudence as it encourages the court to not sign orders in order to minimize the risk of appeal. Once Judge Johnson announced her decision denying the Motion of Revision from the bench, the Motion for Revision was closed and the preceding decision was final based on Judge Johnson's decision if no other. The only option available to the trial court at that time would be to identify the deciding authority (the Honorable Melnick in this case) and have him sign the order correcting the obvious defect.

8 Irreparable Injury

The decision of November 12, 2004 denies the Appellant's Petition with 'Denied Action Stale' (CP 2). However, in [HECKER v. CORTINAS - 110 Wn. App. 865](#)

An unambiguous statute is not subject to judicial interpretation, and the statute's meaning is derived solely from its language. Id. The court may not add language to a clearly worded statute, even if it believes the Legislature intended more. Id. Statutes are construed as a whole, giving effect to each provision. State v. Merritt, 91 Wn. App. 969, 973, 961 P.2d 958 (1998). In light of the Legislature's intent to intervene before injury occurs, and in recognition that [RCW 26.50.020](#) and [RCW 26.50.060](#) do not require an allegation of recent domestic violence, we decline to read into these statutes a requirement of a recent violent act.

The Petition contains allegations of three acts of domestic violence, actual assaults although minor assaults, ([CP 5](#)) and meets the requirements for an Order for Protection under [RCW 26.50](#).

The Petition also meets the requirements for a Temporary Order for Protection. RCW 26.50.070 (3) states:

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

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

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

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

9. Attendance at Court Hearings

The standard Order for Protection in use in Clark County is unconstitutional in that it does not directly make exceptions for attendance at court hearings where the Respondent is scheduled to appear. In order to exercise constitutional due process, a party is often required to appear in court, but given the physical dimensions of court rooms, the 300 feet restriction requires that the Respondent leave any court room where the Petitioner is present. While the Order itself provides for modifications of the Order ([CP 2, 52](#), lines 9 and 10 and [CP 56 line 2](#)), this is not sufficient as Mr. Carr had made just such a request on December 29, 2004 in case 04-2-08824-4 ([CP 75, 76](#)). He was penalized in case 04-2-08908-9 by having his case dismissed for 'FTA' (failure to appear) on January 19, 2005 even though he had submitted a Motion on January 10, 2005 asking that the matter be rescheduled and explaining that the order in the other case prevented him from

attending a hearing where Karyn was present ([CP 16-18](#)).

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

10 Failure to Appear

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

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

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

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

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allows the court to arbitrarily eliminate a party's opportunity to be heard.

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

11. Clerk's rejection of Notice of Appeal

In the record on [pages 129 to 133](#), there is a description in detail of Mr. Carr's efforts to file a Notice of Appeal in these matters on November 23, 2005. There are sound principles of jurisprudence for the finality of actions and limiting the period when an appeal can be filed. The time limits on submitting a Notice of Appeal are intended to prevent contested decisions from languishing unopposed for unreasonable periods. Mr. Carr notified the court of his opposition to the decision at the hearing of October 27, 2004 ([RP 8, lines 14 to 22](#)) and proceeded to develop his appeal, ordering the electronic recording of the proceeding and attempting to file a Notice of Appeal. In many jurisdictions (such as New York), the Notice of Appeal is filed directly with the Appellate Division, thereby protecting the sanctity of the appeals process. However, in Washington state where Notice of Appeals are filed with the trial court, there is a danger of the court erecting unconstitutional barriers to appeals. The secret jurisdiction of the Commissioners (never announced to the parties) along with refusal of the court clerk to accept the Notice of Appeal are serious errors which allows the Court of Appeals to extend the appeal back to the earlier decision of October 27, 2004 in case 04-2-08824-4 as well as the prior decision (not final) of October 15, 2004.

12 Denied Motion for Revision

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

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

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

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

13 Assignment of Separate Case Numbers

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

14 Sexual Stereotyping

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

In [SPENCE v. KAMINSKI - 103 Wn. App. 325](#)

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

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

perception will have been addressed with the potential of correcting the perception. If, however, it is found that the courts are not implementing [RCW 26.50](#) in a gender neutral fashion, then it is important to correct this improper bias.

15 Access to the Judicial Information System

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

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

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

16 Motions Denied Without Hearing

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

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

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

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

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

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

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

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

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

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

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

17 Restrictions on Scheduling Hearings

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

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

one non ex parte hearing in these two cases.

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

Summary

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

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

- a) That Karyn be prohibited from possessing a firearm or ammunition for a period of one year (18.U.S.C. section 922(g)(8).
- b) All no contact restrictions between the parties be removed so that they can resolve their remaining property disputes and proceed with the dissolution of their marriage.
- c) That any firearms which Karyn acquires after one year be properly secured to prevent access by the minor child for as long as the minor child resides with Karyn.
- d) That the parties jointly attend at least two counseling sessions with a licensed therapist selected by Karyn and paid for jointly.

In addition, due to the excessive number of errors and serious violations of due process, the extraordinary relief sought by Mr. Carr for a review of other decisions by the purported Superior Court Commissioners of Clark County is requested to determine the degree of prohibited sexual stereotyping and correct any violations of due process. This was originally requested by Mr. Carr in his original Motion to Revisit and Consolidate ([CP 107](#)). Particular interest is called to recent

cases where the Petition was denied and to cases where an Order excluded '*a party from the dwelling which the parties share*' and the District Court would have been prohibited from issuing a permanent Order for Protection in accordance with [RCW 26.50.020](#) (5) (c)

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

Signature of Appellant
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360-607-0556

Respondent:

Karyn