

2007

In Re the Marriage of Arne John Jacobsen v. Minnie Larue Thomas : Brief of Appellant

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

FILED
UTAH APPELLATE
MAR 27 2008

Appellate Case Number: 20070560-CA

IN RE THE MARRIAGE OF)

ARNE JOHN JACOBSEN,)

Petitioner and Appellee,)

vs.)

MINNIE LARUE THOMAS,)

Respondent and Appellant.)

BRIEF OF THE APPELLANT

On Appeal from the District Court of the
Fourth Judicial District of the State of Utah, County of Utah
Utah Fourth District Court Case No. 04440279
Judge Anthony Schofield

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FILED
UTAH APPELLATE COURTS
MAR 24 2008

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The following constitutional provisions, statutes or rules are determinative or of central importance to this issue on appeal:

- Utah Code Ann. Section 78B-12-202, 203, 205, 206, 210, 212, and 302. (Amended by Chapter 3, 2008 General Sessions).
- These statutes are reproduced in total, included herein in Addendum C.
- Utah Code Ann. Section 30-3-32 to 36. (Amended by Chapter 3, 2001, 2004, 2007 and 2008 General Sessions);
- Utah Code Ann. Section 30-3-5.2. (Amended by Chapter 3, 2008 General Session);
- Utah Code Ann. Sections 30.3.10. (Amended by Chapter 3, 2008 General Session);
- Utah Code Ann. Section 30.3.10.1-4, 8, 10, 10.9. (Amended by 2001, 2003, 2005, 2006, and 2008 General Sessions);
- Utah Code Ann. Sections 30.4-3. (Amended by Chapter 257, 1991 General Session).
- These statutes are reproduced in total, included herein in Addendum E.

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IN THE UTAH COURT OF APPEALS

ARNE JOHN JACOBSEN, II

Petitioner and Appellee,

vs.

MINNIE LARUE THOMAS,

Respondent and Appellant

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Appellant Brief

Appellate Court No: 20070560-CA

Fourth District Ct. No. 04440279

COMES NOW Minnie LaRue Thomas, Appellant and Respondent, and respectfully submits this opening brief to the Utah Court of Appeals.

STATEMENT OF JURISDICTION

It is Appellant's understanding that the Utah Court of Appeals has jurisdiction. A further explanation is included herein as Addendum A.

STATEMENT OF ISSUES AND STANDARD OF REVIEW

- 1. Did the district court err in regards to Utah Annotated Code Title 78B- Chapter 12- Sections 202, 203, 205, 206, 302, and Utah Rules of Judicial Procedure Rule 103(b) when it entered its orders establishing and/or modifying child support (Rulings on Child Support)?**

“In determining whether to grant or deny a petition to modify a child support obligation, the trial court is afforded considerable discretion. See Diener v. Diener, 2004 UT App 314, P4, 98 P.3d 1178, cert. denied, 106 P.3d 743 (Utah 2005). (The Court of Appeals) grants substantial deference to the trial court’s findings of fact in child support disputes. In reviewing a modification of child support, (the Court of Appeals) accord(s) “substantial deference to the trial court’s findings” and “will not disturb the [trial] court’s actions unless the court exceeded the limits of its permitted discretion.” Diener v. Diener, 2004 UT App 314, P4, 98 P.3d 1178, cert.denied, 106 P.3d 743 (Utah 2005) (quotations and citations omitted). “However, (the Appellate Court) review(s) the [trial] court’s decision for correctness to the extent it involves questions of statutory interpretation.” Id. (quotations and citations omitted).” (quoted from Meerderink v. Meenderink, 2006 UT App 348, Paragraphs 2 and 6, P.1andP.3, Case No. 20050466-CA.)

- 2. Did the District Court abuse its discretion with regards to Utah Code - Title 30 - Chapter 3 - Sections 32-36, Section 30-3-5.2, Sections 30.3.10, Section 30.3.10.1-4, 8, 10, 10.9, and Sections 30.4-3 when it ordered a “temporary” parenting plan without accepting evidence and/or considering the best interests of the child(ren)?**
- 3. Did the district court violate the children’s rights to have frequent, meaningful, and continuing access to each parent, and to have their mother actively involved in their lives?**
- 4. Did the district court violate the children’s and the mother’s rights to due process?**

In searching applicable case law regarding these issues, juvenile court petitions have the

most history with this Court addressing visitation, custodial, and parental rights issues. “In reviewing a decision to grant or deny a termination petition, “[w]e will not disturb the juvenile court’s findings and conclusions unless the evidence clearly preponderates against the findings as made or the court has abused its discretion.” In *re R.A.J.*, 1999 UT App 329, Paragraph 6, 991 P.2d 1118 (quoting in *re M.L.*, 965 P.2d 551, 559 (Utah Ct. App. 1998))). ... “Matters of (3) and 78-3a-402(2); statutory construction are questions of law that are reviewed for correctness.” *Platts v. Parents Helping Parents*, 947 P.2d 658, 661 (Utah 1997).”

“Utah law requires a court to make two distinct findings before terminating a parent-child relationship. See In *re M.L.*, 965 P.2d [551, 561 n. 13 (Utah Ct. App. 1998)]. First, the court must find that “the parent is below some minimum threshold of fitness,” such as finding that a parent is unfit or incompetent based on any of the grounds for termination under sections 78-3a-407 of the Utah Code. *Id.* (citation omitted); ... Second, the court must find that the best interests and welfare of the child are served by terminating the parents’ parental rights. See Utah Code Ann. Sections 78-3a-406; see also In *re M.L.*, 965, P.2d at 561 n. 13. In *re R.A.J.*, 1999 UT App 329 at Paragraph 7 (footnotes omitted).” (quoted from *T.B. v State of Utah* October 3, 2002 UT App 314 Paragraphs 6 and 7, P.2 of 5, Case No. 20001022-CA.)

This appeal is from a “Ruling on Child Support” of the Fourth Judicial District Court in Utah County, State of Utah, originally signed by the Honorable Anthony W. Schofield, before he retired from the bench, on May 31, 2007. An associated “Order” was filed on June 12, 2007, by the Honorable Lynn W. Davis, with the handwritten notation, “for” Anthony W. Schofield, District Court Judge, “*based upon his ‘Ruling on Child Support’ dated 31 May 2007 and not any ruling of this judge. Judge Schofield retired before he could sign this order.*”

The Attorney for Petitioner filed a Notice of Entry of Order on June 19, 2007, stating,

“....please take notice and be advised that the Order [April 9, 2007 Hearing] in the above-entitled matter was signed and entered by the Court on the 12th day of June, 2007.”

LaRue filed a timely Notice of Appeal on July 2, 2007.

STATEMENT OF THE CASE:

On May 31, 2007, the Fourth Judicial District Court ruled that LaRue must pay more than \$12,000 in retroactive child support, and established her child support obligation at \$299 per month. LaRue had filed for Chapter 7 Bankruptcy in March of 2007, and the court accepted extensive evidence to document the bankruptcy at a hearing on April 9, 2007. LaRue's bankruptcy was due largely to medical disabilities (that have rendered her unable to earn an income), extensive medical bills, and outstanding legal fees she accrued as a result of continuing vexatious litigation from her ex-husband, Arne Jacobsen, Petitioner and Appellee, in this matter.

LaRue has suffered from a medical disability since July of 2005. The Fourth Judicial District Court based its child support ruling, for support beginning in August of 2005, on imputed income to LaRue that disregarded the extent of LaRue's medical disability, and included gifts and financial assistance from years prior from her former fiancé, without requiring either party to file worksheets, nor to fully document all sources of income, nor to verify income to meet the rebuttable guidelines as established in Utah Annotated Code Title 78B, Chapter 12.

Prior to issuing the child support ruling, at a hearing on April 9, 2007, the Fourth Judicial District Court issued a verbal order from the bench that terminated LaRue's parenting rights indefinitely, and allowed the Special Master appointed in this case to prohibit all contact between LaRue and her two children, until an “evaluation” was completed. The district court based its orders solely on “hearsay” information relayed by the Special Master, the majority of which was

communicated to the Special Master second- or third-hand. The Special Master's information was not required to be legally supported with evidence, nor allowed to be cross-examined. The district court did not accept information from either side to establish a preponderance of evidence to overcome the rebuttable presumption for minimum parent time stipulations, did not entertain a motion to modify the parenting plan, did not issue findings of fact and conclusions of law regarding parenting time, and did not order a custody evaluation according to Rule 4-903b.

As noted, LaRue is disabled. She has not been able to work, even part-time, since July of 2005. At the time of the hearing in the Fourth District Court on April 9, 2007, medical doctors had not been able to pinpoint the cause of - nor a remedy for - LaRue's medical disability. Nonetheless, LaRue's counsel presented evidence documenting her medical condition, and her standing diagnoses, to the extent of the medical knowledge and understanding at the time. During the court hearing, LaRue had an IV line in place for the intravenous injection of antibiotics and other medications. The PICC line was implanted for almost an entire year, until March 21, 2008. During that year, the pendency of the subject matter of this appeal, LaRue had to undergo IV therapy via the PICC line for 2-8 hours every day to manage chronic daily migraine headaches, and for emergent intervention of minor strokes, or transient ischemic attacks (TIAs). On March 21, 2008, LaRue suffered a complex migraine that presented with stroke-like symptoms, thought to be another TIA. After ambulance transport to LDS Hospital in Salt Lake City, it was discovered that LaRue had several DVTs (Deep Vein Thromboses), which are blood clots. To prevent a possible stroke, heart attack, or pulmonary embolism from the DVTs, LaRue is presently injecting Lovenox twice daily and is under home health until she is stabilized on Coumadin. LaRue submits the medical documentation substantiating the summary of her medical conditions above, as Addendum B.

HISTORY OF THE CASE:

1. The parties were married on June 27, 1992 in Glacier National Park, Montana. Two children were born of this marriage, Jonah John Jacobsen (DOB: 03/26/1997) and Savannah Claire Jacobsen (DOB: 08/10/1998). The parties' final decree of dissolution was signed on May 14, 2001, in the Montana Fourth Judicial District Court in Missoula, MT. Jurisdiction was transferred to the Utah Fourth Judicial District Court under the auspices of UFISA in early 2005.
2. The parties' original decree in May of 2001 appointed the mother as primary residential custodial parent until both parties moved to North Carolina, stipulated that both parties and the children would move to North Carolina for the children to benefit from their extensive support network there (family and close friends), agreed that both parties were working professionals, anticipated that the mother would move to North Carolina with the children "before the end of 2001," allowed that the father would have "up to two years" to move to North Carolina after he finished cleaning up his "business obligations," agreed to a 50/50 parenting arrangement four months after the father moved to North Carolina, and stipulated that child support would be reviewed and determined at a later date.
3. The original decree was agreed to by the parties after a 12-hour long Settlement Conference, and ordered by the Montana Fourth Judicial District Court two weeks later. It soon became obvious that the father, Arne Jacobsen, never intended to move to North Carolina. Instead, in November of 2001, he moved to Park City, Utah, purportedly to work for one of the companies owned by his brother, Eric Jacobsen.
4. Arne Jacobsen threatened LaRue that he would "burn every penny" she had in the courts, and take the children from her. He began making good on his threat literally one week after the

Montana District Judge signed the divorce decree, by filing Contempt of Court motions, and continuing litigious pleadings in the Montana court.

5. In October of 2002, the Montana Court revised the Parenting Plan, placing the children with their father as primary residential parent in Park City, UT. No court order was issued regarding child support. LaRue appealed the Order to the Montana Supreme Court, with counsel arguing, among other issues, that the district court erred in not allowing counsel to call the Guardian Ad Litem as a witness, nor to examine the evidence the GAL submitted to the court. The Montana Supreme Court determined that the district court had committed error in that regard, but that it was “harmless error,” and affirmed the district court decision and modified Parenting Plan.
6. Upon receiving the October 2002 order from the Montana Court, LaRue quit her job in North Carolina, put her NC home up for sale, and moved to Provo, Utah, so that she could be near her children, who were four and five years old at the time.
7. In December of 2004, the Montana Fourth Judicial District Court entered another Parenting Plan Order, which restricted the children’s contact with their mother. LaRue appealed, with counsel. No child support issues were addressed. The Parenting Plan of December 2004 had been recommended by a Utah Special Master, and was adopted in total by the Utah Fourth Judicial District Court. The Parenting Plan stipulates, among other issues, that LaRue must be represented by legal counsel, but does not provide for a method of payment for legal representation if LaRue is not able to pay.
8. Between the time of the divorce in 2001, and the decision of the Montana Supreme Court on the appeal, whenever LaRue and the children were on vacation or out-of-state, Arne would threaten and harass LaRue and the children, verbally, psychologically, and at times

physically. LaRue called 911 several times – in Montana, in North Carolina, and in Park City, Utah. Arne would always leave before the police arrived, or would approach the officer first and claim that it was LaRue that had “physically abused” him.

9. In August of 2006, the Montana Supreme Court issued its opinion. The Supreme Court found one of LaRue’s arguments to be dispositive, determined the district court’s error to be a matter of law, and reversed and remanded the matter back to the district court. The Utah Fourth Judicial District Court accepted the December 2004 Parenting Plan from Montana, yet to LaRue’s knowledge and belief, has refused to address the reverse and remand of its adopted December 2004 Parenting Plan that was ordered by the Montana Supreme Court in August of 2006.
10. After the Montana Supreme Court decision in August of 2006 that was favorable to LaRue’s position, LaRue was the victim of several incidents of harassing and threatening behavior that she believes were instigated by her ex-husband, Arne Jacobsen.
11. In November of 2006, as LaRue was returning the children to Utah after their scheduled Thanksgiving holiday in Montana, a breakdown in the fuel system of LaRue’s Dodge Caravan stranded LaRue and the children in Idaho Falls. Jonah and Savannah pled with their mother, with police officers, with a hospital crisis worker, and with the Special Master, not to “make them go back to their father.” They stated several times that they were afraid of their father, and that they were afraid that their father would “murder them.” The children told the professionals charged to protect them that their father “hurt them bad,” and that he “yelled at them every day”. A few days later, Jonah and Savannah told a DCFS investigator that they saw their father hurt their mother, and choke their mother until she passed out, when they were young toddlers and the family lived in Montana.

12. This was the first time the children had expressed such horrific fear of their father to LaRue.

Arne was horribly abusive to LaRue prior to the divorce. LaRue had foolishly thought that the children were young enough that they would not be negatively impacted by witnessing the abuse. LaRue had never spoken to the children about their father's abuse of her.

13. On November 29, 2006, in opposition to the actions of the Guardian Ad Litem, the Special Master unilaterally terminated LaRue's parenting rights - without talking to LaRue, without speaking to LaRue's attorney at the time, and without checking with DCFS or the police, and without reviewing the documentation from the hospital professionals that had worked with the children.

14. Since November of 2006, and continuing today, the Special Master and Guardian Ad Litem have systematically moved to keep pertinent information documented by the hospital crisis worker, DCFS, 911 call records, LDS Family Services, and other verifiable sources away from the Utah Fourth Judicial District Court.

15. LaRue sought and was granted a Temporary Civil Stalking Injunction against her ex-husband, Arne Jacobsen, and his wife, SuAnne Hoffman Jacobsen, in January of 2007.

16. The Special Master and the Utah Fourth Judicial District Court ignored the evidence presented to them, some of it from DCFS, about Arne's physical abuse of LaRue in front of the children, Arne's addictions and his violent criminal history, Arne's acts of domestic violence toward LaRue, Arne's continuing stalking and harassment of LaRue since their divorce, Arne's threats of violence to the children, and Arne's explosive anger that causes his children to fear for their lives when they are in his care. The Special Master stated that the DCFS reports have no bearing on her decisions regarding the children.

17. The Fourth Judicial District Court issued its orders regarding parenting time and child

support in April, May, June and November of 2007.

18. Prior to the ruling and orders signed by the Utah Fourth Judicial District Court in 2007, there had been no court orders from either Montana or Utah establishing child support.
19. Since the time of the parties' divorce, and specifically during the seven months prior to the child support ruling, Mr. Jacobsen had manipulated the court system to "burn every penny" LaRue had - as he had threatened he would do. In the Spring of 2007, not satisfied with the Utah district court's actions, Arne hired a separate attorney to disparage LaRue before the Federal Bankruptcy Trustee, in an attempt to have the federal court disallow LaRue's bankruptcy proceeding. Nonetheless, after much contentious legal maneuvering, mostly instigated by Mr. Jacobsen, LaRue's bankruptcy was duly discharged on June 14, 2007.
20. In January of 2008, LaRue was informed by the Utah Office of Recovery Services that a subsequent "order" on the same matter was signed into effect in November of 2007. LaRue requested the court documents from the Utah Fourth Judicial District Court, and learned that Judge Davis had, in fact, signed another "Ruling." It is LaRue's understanding that this second ruling is taken directly from the April 9, 2007 hearing and Judge Schofield's "Ruling" of May 31, 2007, that form the substance whereby this appeal is taken. The information from Utah ORS was an overwhelming surprise to LaRue, as a hearing had been set before the Honorable Judge Lynn W. Davis in August of 2007. To LaRue's knowledge and belief, the hearing was cancelled by the court.
21. LaRue is not an attorney, and is not knowledgeable about the proper procedures for setting court hearings, and for determining what evidence can be heard at which hearing. She has no legal education, and has been perplexed by the interplay of laws that govern the two rulings and one order that have been issued in this matter in the past year establishing child support

and accessing retroactive child support.

22. It is LaRue's knowledge and belief that Utah statutory code was violated when the Fourth Judicial District Court established (or modified) child support, did not address jurisdiction under UFISA, imputed LaRue's income to \$50,000 per year, and accessed retroactive child support based on an "income" of \$9,000 per month during the time period that LaRue has been disabled and unable to work even part time.
23. From LaRue's perspective, the best interests of the two children have been wholly ignored with the modification of the court-ordered parenting plan, with verbal directives from the bench, with no respect of Rule 4-903, nor of the statutes embodied in Utah Annotated Code Title 30 Section 3.
24. To date, LaRue has been prohibited from presenting any information regarding the events of November of 2006, after which LaRue's parenting rights were suspended, and feels this information is necessary for the district court and other involved parties to best ascertain the best interests of her two children.
25. LaRue was not allowed the opportunity to present updated medical and financial information to the Fourth District Court prior to the filing of the "Ruling" by Judge Davis in November of 2007. She was not informed of the November 2007 Ruling until the end of January of 2008.

SUMMARY OF ARGUMENT:

ISSUE 1: CHILD SUPPORT

It is LaRue's perspective and belief that Utah statutory code was violated when the Fourth Judicial District Court established (or modified) child support, did not enter

findings of fact to rebut the established child support presumptions, imputed LaRue's income at \$50,000 per year, did not require that the child support worksheets be filed, unilaterally determined that LaRue could work half-time during the time period that LaRue has been disabled and unable to work even part time, accessed retroactive child support based on an "income" of \$9,000 per month, did not enter specific findings of fact to show the evidentiary basis for imputing income to LaRue at such high levels, and did not address jurisdiction or modification parameters under UFISA.

ISSUE 2: MODIFICATION OF PARENTING PLAN AND TERMINATION OF PARENTAL RIGHTS

The best interests of the two children have been wholly ignored with the modification of the court-ordered parenting plan, with the termination of LaRue's parenting rights for six months, with verbal directives from the bench that allowed the suspension of LaRue's parental rights to continue indefinitely, with the Special Master Order for an evaluation ignoring procedures stipulated in Rule 4-903, and with the court's refusal to consider evidence of domestic violence presented to it by the mother.

ISSUES 3 & 4: VIOLATION OF THE CHILDREN'S AND THE MOTHER'S RIGHTS

It is LaRue's perspective and belief that the district court continues to violate the children's right to have frequent, meaningful, and continuing access to their mother, and to have their mother actively involved in their lives. It is LaRue's belief that the children's rights and her right to due process have been denied.

ARGUMENT:

ISSUE 1: CHILD SUPPORT

The following constitutional provisions, statutes or rules are determinative or of central importance to this issue on appeal: Utah Code Ann. Section 78B-12-202, 203, 205, 206, 210, 212, and 302. (Amended by Chapter 3, 2008 General Sessions). These statutes are reproduced in total, included herein in Addendum C.

In reviewing case law applicable to this matter, the Utah Court of Appeals and Supreme Court are unambiguous in their decisions to afford the trial court considerable discretion in child support orders. There is significant case law to justify a review of the rulings and order in this matter. Specifically, “Although we generally review the determination to modify a divorce decree for an abuse of discretion, insofar as that determination is based on a conclusion of law, we review it for correctness. Krambule v. Krambule, 1999 UT App 357 Paragraph 10, 994 P.2d 210 cert denied, 4 P.3rd 1289 (Utah 2000). The Court of Appeals reviews the district court’s decision for correctness to the extent it involves questions of statutory interpretation. Ball v. Peterson, 912P. 2d 1006, 1009 Utah Ct. App 1996).’

“We review a determination on whether a substantial change of circumstances has been shown for abuse of discretion.” Mancil v. Smith, 2000 UT App. 378 18 P.3d 509, 511. Our Standard of Review in divorce proceedings allows us to disturb the action of the trial court only when the evidence clearly preponderates to the contrary or the trial court has abused its discretion or misapplied principles of law.” Weise v. Weise, 699 P.2d 700, (Utah 1985). Subject to those limitations, we are free to review both the facts and the law. Openshaw v. Openshaw, 639 P. 2d 177, 178 (1981); Christensen v. Christensen, 628 P.2d 1297, (1981).

“Ordinarily we accord the trial court considerable discretion in adjusting the financial interests of divorced parties and thus, “the court’s actions are entitled to a presumption

of validity.’” Hansen v. Hansen, 736, P.2d 1055 (Utah Ct. App. 1987.) However, where the court has abused its discretion in apportioning those financial responsibilities, we cannot affirm that determinations. Id. One such abuse we have recognized in this area of law is the failure to enter specific, detailed findings supporting each of the factors which must be considered when making a child support award. With this standard in mind, we analyze the adequacy of the court’s findings in this case. Allred v. Allred, 797 P.2d 1108, 1111, (Utah Ct. App. 1990).’” (quoted from Appellant Brief of Meerderink v. Meenderink, 2006 UT App 348, Paragraphs 2 and 6, P.1 and P.3, Case No. 20050466-CA.)

PERCEIVED STATUTORY CODE VIOLATION #1: Utah Code Ann. Section 78B-12-202. Determination of amount of support – Rebuttable guidelines. (1)

- (a) Prospective support shall be equal to the amount granted by prior court order unless there has been a substantial change of circumstance on the part of the obligor or obligee or adjustment under Subsection 78B-12-210(6) has been made.
- (2) **If no court order exists, The court determining the amount of prospective support shall require each party to file a proposed award of child support using the guidelines before an order awarding child support or modifying an existing award may be granted.** (emphasis added)

and Rule 103. Child support worksheets.

- (a) When filing a child support worksheet required by Utah Code Section 78-45-7.3, a party shall
- (b) **The court shall not enter the final decree of divorce, final order of modification, or final decree of paternity until the completed worksheet is filed.**

In the instant case, there was no prior court order addressing child support, no substantial change of circumstance was presented nor acknowledged, no child support worksheets were filed by either party, no requirement of LaRue to file a proposed award of child support, no adjustment under Subsection 78B-12-210(6) was requested nor accepted, sufficient evidence was not presented to rebut the guidelines, there were no findings of fact to rebut the guidelines, and arrearages were assessed in violation of the guidelines described in this chapter.

For these reasons, it is LaRue’s perspective and belief that the Fourth Judicial District

Court violated Utah Code Ann. Section **78B-12-202. Determination of amount of support – Rebuttable guidelines** with its rulings and order for child support.

Applying the similar standard of review to a child support order as is afforded to Rule 11 Sanctions, “ ... [A]ppellate courts can only overturn an award [of attorney fees based on a finding of bad faith] if the trial court abused its discretion, and it found no such abuse. See Griffith v. Griffith, 959, P.2d 1015, 1021 (Utah Ct. App. 1998) ... “We conclude that this purported factual finding, drafted as it was by counsel for the prevailing party, simply paraphrasing the language of rule 11, and standing by itself without any detailed factual findings particularizing its conclusions is insufficiently specific as a matter of law to support the imposition of rule 11 sanctions. ... “We have said that a trial court is required to make explicit findings of fact in support of its legal conclusions. See Willey v. Willey, 951 P.2d 226, 230 (Utah 1997). ... “The trial court’s findings and conclusions must reveal the court’s reasoning clearly enough that an appellate court can apply the appropriate standard of review to each part of the trial court’s ruling. What we have before us is plainly insufficient for that purpose.’ ” (quoted from Griffith v. Griffith, 1999 UT Supreme Court 78 Paragraphs 8-10 Case No. 981462 in the Supreme Court of the State of Utah.)

PERCEIVED STATUTORY CODE VIOLATION #2: Utah Code Ann. Section 78B-12-203. Determination of gross income – Imputed income.

(7) (a) Income may not be imputed to a parent unless the parent stipulates to the amount imputed, the parent defaults, or, in contested cases, a hearing is held and the judge in a judicial proceeding or the presiding officer in an administrative proceeding enters findings of fact as to the evidentiary basis for the imputation.

(b) If income is imputed to a parent, the income shall be based upon employment potential and probable earnings as derived from employment opportunities, work history,

(c) If a parent has no recent work history or a parent’s occupation is unknown, income shall be imputed at least at the federal minimum wage for a 40-hour work week. To impute a greater income, the judge in a judicial proceeding or the presiding officer in an administrative proceeding shall enter specific findings of fact as to the evidentiary basis for the imputation.

(d) **Income may not be imputed** if any of the following conditions exist and the

condition is not of a temporary nature:

(ii) **a parent is physically or mentally unable to earn minimum wage**

In the instant case, the judge did not enter findings of fact as to the evidentiary basis for imputing LaRue's income at \$9,000 per month from August 2005 through August 2006, and then at \$50,000 per year, or \$2083 per month, from September 2006 to present. Instead, the judge issued a "ruling", and directed the Petitioner's counsel to compile the findings of fact. The imputation ignored the work history and earnings over the previous nine years, as verified by documents from the federal government, and submitted as evidence by LaRue's counsel during the April 9, 2007 hearing. The judge imputed a greater income, but did not enter **specific** findings of fact as to the evidentiary basis for the imputation. The judge imputed income even though LaRue's medical disabilities rendered her physically unable to earn minimum wage, with evidence presented that this physical disability had affected LaRue for almost two years prior to the "ruling" issued by the court.

CASE LAW: See Reese v. Reese 1999 UT Supreme Court 75 Paragraphs 11-19,

Case No. 980004 In the Supreme Court of the State of Utah

For these reasons, it is LaRue's perspective and belief that the Fourth Judicial District Court violated Utah Code Ann. Section **78B-12-203. Determination of gross income – Imputed income** with its rulings and order for child support.

PERCEIVED STATUTORY CODE VIOLATION #3: Utah Code Ann. Section **78B-12-205. Calculation of obligations.**

(1) Each parent's child support obligation shall be established in proportion to their adjusted gross incomes, unless the low income table is applicable.

(6) If the monthly adjusted gross income of either parent is \$649 or less, the tribunal shall determine the amount of the child support obligation on a case-by-case basis, but the base child support may not be less than \$30.

and Utah Code Ann. Section **78B-12-302. Low income table – Obligor parent only.**

(1) If a child support order is established or modified on or before December 31, 2007, the

table in this Subsection (1) shall be used for a modification to that order made on or before December 31, 2009.

In the instant case, the low income table is applicable. At the hearing on April 9, 2007, LaRue presented federal income documentation verifying that she received income in 2005 of \$104. LaRue's 2005 IRS Form 1040, included herein in Addendum D, substantiates earned income of \$104, for a total income of \$235.00 for 2005. LaRue also presented federal income documentation verifying that she received income in 2006 of \$5,262. LaRue's 2006 IRS Form 1040, included herein in Addendum D, substantiates earned income of \$5,262, for a total income of \$5,262.00 for 2006. LaRue's income was clearly less than \$650 per month.

The tribunal in this case determined child support should be calculated on an individual basis, yet violated the rebuttable guidelines, in issuing the "Ruling on Child Support." The tribunal accepted Petitioner's testimony of earned income, without the prerequisite worksheets or supporting documentation. The tribunal accepted evidence of financial assistance and other gifts given to LaRue over a period of years, imputed a "gift" of "rental substitution" as proposed by Petitioner, and determined LaRue's monthly income for retroactive child support to be \$9,000. As presented in testimony, the large majority of that financial assistance given to LaRue during the time period in question was to pay for private school tuition for Jonah and Savannah, support for the children, Special Master fees, and legal fees - which were ordered by the Fourth Judicial District Court in its adoption of the December 2004 Parenting Plan. LaRue struggled to pay the fees ordered by the Special Master in support of the children, such as paying more than \$6,940 to Mr. Jacobsen and for private school tuition, even after the onset of her disability. When other parties that care about LaRue and the children provided the monetary assistance for basic living expenses and to pay the fees ordered by the court, the court then counted that financial assistance

as income - and imputed LaRue's income at \$9,000 per month! The court did not include other income and "gifts" to Petitioner in this one-sided ruling.

CASE LAW: See Johansen v. Johansen, State of Utah, Office of Recovery Services, 2002 UT App 75 Paragraphs 5,6,12, & 27, Case No. 20001127-CA.

For these reasons, it is LaRue's perspective and belief that the Fourth Judicial District Court violated Utah Code Ann. Section **78B-12-205. Calculation of obligations** and Code Ann. Section **78B-12-302. Low income table – Obligor parent only** with its rulings and order for child support.

PERCEIVED STATUTORY CODE VIOLATION #4: Utah Code Ann. Section **78B-12-210. Application of guidelines – Use of ordered child support.**

- (1) The guidelines in this chapter apply to any judicial or administrative order establishing or modifying an award of child support entered on or after July 1, 1989.
- (2) (a) The guidelines shall be applied as a rebuttable presumption in establishing or modifying the amount of temporary or permanent child support.
(b) The rebuttable presumption means the provisions and considerations required by the guidelines, the award amounts resulting from the application of the guidelines, and the use of worksheets consistent with these guidelines are presumed to be correct, unless rebutted under the provisions of this section.
- (3) A written finding or specific finding on the record supporting the conclusion that complying with a provision of the guidelines or ordering an award amount resulting from use of the guidelines would be unjust, inappropriate, or not in the best interest of a child in a particular case is sufficient to rebut the presumption in that case. If an order rebuts the presumption through findings, it is considered a deviated order.
- (4) The following shall be considered deviations from the guidelines, if:
 - (a) the order includes a written finding that it is a deviation from the guidelines;
 - (b) the guidelines worksheet has:
 - (i) the box checked for a deviation; and
 - (ii) an explanation as to the reason

In the instant case, the judge did not enter a written finding or specific finding on the record that use of the guidelines would be unjust, inappropriate, or not in the best interest of the child(ren). The qualifications were not met to rebut the presumption for determination of the amount of child support to be ordered. Neither the rulings nor the order included a written

finding that they are a deviation from the guidelines, nor were guidelines worksheets used (therefore the box was not checked for a deviation), nor was there an explanation as to the reason for the deviation from the rebuttable presumptions. Since the child support rulings and order did not rebut the presumptions through findings, they cannot be considered deviated orders.

“The trial court findings “should be more than cursory statements; they must ‘ ‘ be sufficiently detailed and include enough subsidiary fact to disclose the steps by which the ultimate conclusions ... was reached.”” Williamson v. Williamson, 1999 UT App 219, Paragraph 9, 983 P.2d 1103 (quoting Muir v. Muir, 841 P.2d 736 739 (Utah Ct. App. 1992) (other citation omitted)) ... “Accordingly, because we conclude that the trial court’s findings fail to address certain elements necessary to a modification determination, we remand this issue for the trial court to enter adequate finds, support by appropriate evidence. ... “must be accompanied by sufficient finding regarding the best interests of the children. Because such finding were not entered in this case, we remand this issue to the trial court for the articulation and entry of additional finding supporting its order....” (quoted from Diener v. Diener, 2004 UT App 314, P4, 98 P.3d 1178, cert.denied, 106 P.3d 743 (Utah 2005.)

For these reasons, it is LaRue’s perspective and belief that the Fourth Judicial District Court violated Utah Code Ann. Section with its rulings and order for child support

PERCEIVED STATUTORY CODE VIOLATION #5: Question of jurisdiction and appropriate modification of a court order under UFISA parameters.

This case was transferred to Utah, under UFISA parameters, from the state of Montana. Neither a “registered child support order” was enacted by the State of Montana prior to the UFISA transfer, nor were the two circumstances allowing a Utah court to modify a “registered child support order” in place. Accordingly, LaRue questions whether the Fourth Judicial District

Court had jurisdiction to modify the child support obligations in this case.

In Utah, a court may only modify a spousal support order issued by another state if the Utah court has “continuing, exclusive jurisdiction” over the spousal support order. Utah Code Ann. Title 78-45f-206(2) (Spp. 1998). The method by which a Utah court obtains “continuing, exclusive jurisdiction” over a spousal support order is by “issuing a support order **consistent with the law of this state . . .**” Id. Title 78-45f-205(6) (emphasis added). State of Utah, Department of Human Services, ex rel.; State of Pennsylvania, ex rel.; and Robin E. Kirby v Avi Alex Jacoby, Case No. 981157-CA filed February 25, 1999. In the instant case, it appears that the ruling by the district court was not consistent with the law of this state, nor had the district court established jurisdiction to make a modification under the oversight of UFISA.

CASE LAW: See Case v. Case, 2004 UT App 423, Paragraphs 11,12,&18, Case No. 20030971-CA filed November 18, 2004.

ARGUMENT:

ISSUE 2: MODIFICATION OF PARENTING PLAN, TERMINATION OF PARENTAL RIGHTS

The following constitutional provisions, statutes or rules are determinative or of central importance to this issue on appeal: Utah Code Ann. Section 30-3-32 to 36. (Amended by Chapter 3, 2001, 2004, 2007 and 2008 General Sessions); Utah Code Ann. Section 30-3-5.2. (Amended by Chapter 3, 2008 General Session); Utah Code Ann. Sections 30.3.10. (Amended by Chapter 3, 2008 General Session); Utah Code Ann. Section 30.3.10.1-4, 8, 10, 10.9. (Amended by 2001, 2003, 2005, 2006, and 2008 General Sessions); Utah Code Ann. Sections 30.4-3. (Amended by Chapter 257, 1991 General Session). These statutes are reproduced in total, included herein in Addendum E.

PERCEIVED STATUTORY CODE VIOLATION #1: Utah Code Ann. Section 30-3-

32. Parent-time – Intent – Policy – Definitions.

- (1) It is the intent of the Legislature to promote parent-time at a level consistent with all parties' interests.
- (2) (a) A court shall consider as primary the safety and well-being of the child and the parent who is the victim of domestic or family violence.
(b) Absent a showing by a preponderance of evidence of real harm or substantiated potential harm to the child:
 - (i) it is in the best interests of the child of divorcing, divorced, or adjudicated parents to have frequent, meaningful, and continuing access to each parent following separation or divorce;
 - (ii) each divorcing, separating, or adjudicated parent is entitled to and responsible for frequent, meaningful, and continuing access with his child consistent with the child's best interests; and
 - (iii) it is in the best interests of the child to have both parents actively involved in parenting the child.

In the instant case, Fourth Judicial District Court allowed and ordered the Special Master in this case, Sandra N. Dredge, Esq., to prohibit the children, ages 9 and 10, from having any contact whatsoever with their mother for a period of almost six months - from November of 2006 through May of 2007. The Special Master took this action in December of 2007, in spite of clear, unambiguous disagreement from one of the psychologists that had been appointed by the Special Master. In May of 2007, a second court-ordered psychologist recommended that mother-child contact be reinstated for 1-4 hours **every week**. In spite of this recommendation, the children's father refused to allow the children's contact with their mother to expand, and through the Special Master, prohibited the children from any and all contact with their mother for three-three week periods, and then again for two separate periods of two weeks each, during the ensuing months. During the months of January through March of 2008, the children had contact with their mother for only **3.5 hours every other Saturday**, supervised visitation through Renaissance Child Visitation Services, in the home their mother has made for them on Harvard Avenue in Salt Lake City, for over one and a half years.

The children are prohibited from telephoning or emailing their mother, in spite of repeated requests from the children to have contact with their mother. LaRue is not allowed to visit the children at school, to attend their extra-curricular activities, or to participate in their school, sporting, musical, or medical activities and events. LaRue feels that the prohibition of her contact with her children for such an extended period of time does not meet the legislated standards for the children to have frequent, meaningful, and continuing access to each parent. LaRue feels the punitive measures of the Special Master, and vague orders of the court, prohibit the children from having their mother actively involved in their lives.

There has been no court hearing regarding this matter. There has been no preponderance of evidence of real harm presented to the court, nor substantiated potential harm to the child(ren) alleged. In court hearings convened to address separate matters, such as child support, the court has heard only the opinion of the Special Master, yet not allowed any discussion or presentation of evidence by either side. The children's father, conjointly with the office of the Special Master, made allegations to DCFS in November of 2006 that the mother had emotionally abused the children. After an extensive investigation, DCFS determined that the allegations could not be substantiated. After the DCFS conclusions were in the favor of the mother, the Special Master stated that the DCFS evaluation had no bearing on her decisions. After several months of supervised visitation by Renaissance Child Visitation Services, the psychologist in charge, Dr. Carol Gage, wrote a letter to the Special Master indicating that the officials at R.C.V.S. felt it would be appropriate to allow visitation to be expanded. The Special Master refused, and instead **decreased** the amount of time that the children have with their mother under supervised visitation.

CASE LAW: See M.T.M. v. State of Utah, 2006 UT App 435, Paragraphs 14,17,

For these reasons, it is LaRue's perspective and belief that the Fourth Judicial District Court violated Utah Code Ann. Section **30-3-32. Parent-time – Intent – Policy – Definitions** in granting authority to the Special Master to terminate LaRue's parental rights and substantially modify parent time over a period of sixteen months without regard to the children's best interests.

PERCEIVED STATUTORY CODE VIOLATION #2: Utah Code Ann. Section 30-3-34. Best interests – Rebuttable presumption.

- (1) If the parties are unable to agree on a parent-time schedule, the court may establish a parent-time schedule consistent with the best interests of the child.
- (2) The advisory guidelines as provided in Section **30-3-33** and the parent-time schedule as provided in Sections **30-3-35** and **30-3-35.5** shall be presumed to be in the best interests of the child. The parent-time schedule shall be considered the minimum parent-time to which the noncustodial parent and the child shall be entitled unless a parent can establish otherwise by a preponderance of the evidence that more or less parent-time should be awarded based upon any of the following criteria: (a) – (o)
- (3) The court shall enter the reasons underlying its order for parent-time that:
 - (a) incorporates a parent-time schedule provided in Section 30-3-35 or 30-3-35.5;
 - (b) provides more or less parent-time than a parent-time schedule provided in Section **30-3-35** or **30-3-35.5**.

and Utah Code Ann. Section 30-3-10. Custody of children in case of separation or divorce – Custody consideration.

(1)(a) In determining any form of custody, the court shall consider the best interests of the child and, among other factors the court finds relevant, the following: ... (i-iv) ...

(2) In awarding custody, the court shall consider, among other factors the court finds relevant, which parent is most likely to act in the best interests of the child, including allowing the child frequent and continuing contact with the noncustodial parent as the court finds appropriate. ...

(4) (a) Except as provided in Subsection (4)(b), a court may not discriminate against a parent due to a disability, as defined in Section 57-21-2, in awarding custody or determining whether a substantial change has occurred for the purpose of modifying an award of custody.

(b) If a court takes a parent's disability into account in awarding custody or determining whether a substantial change has occurred for the purpose of modifying an award of custody, the parent with a disability may rebut any evidence, presumption, or inference arising from the disability by showing that:

(i) the disability does not significantly or substantially inhibit the parent's ability to provide for the physical and emotional needs of the child at issue; or

(ii) the parent with a disability has sufficient human, monetary, or other resources available to supplement the parent's ability to provide for the physical and emotional needs of

the child at issue. ...

In the instant case, no claim, nor evidence, has been presented to the Court, and no finding has been made by a preponderance of evidence, that the mother would harm, or has the potential to harm her children. Three expert witnesses have declared to the Court that the mother is a competent and capable mother that loves her children, and that their clinical observations and comprehensive testing of the mother indicate that her parental and visitation rights should not be restricted.

The Special Master has made repeated inferences to LaRue's disabilities, and misrepresented the impact of those disabilities to the court and to other professionals involved in this matter. LaRue has not been given the opportunity at any time to rebut those inferences, as the court has simply allowed the Special Master to terminate LaRue's parental rights and suspend LaRue's visitation, without any orders or presentation of evidence to object to or to rebut.

The court issued an order from the bench that purportedly gave the Special Master carte blanche to suspend LaRue's parental rights indefinitely, and without adherence to any logical method to remedy the unfortunate situation or set reasonable reunification avenues for LaRue and for the children. The court did not enter the reasons underlying its order of less parent-time for LaRue. Throughout this time, no attempt has been made to consider the best interests of Jonah and Savannah.

For these reasons, it is LaRue's perspective and belief that the Fourth Judicial District Court violated Utah Code Ann. Section **30-3-34. Best interests – Rebuttable presumption** and Utah Code Ann. Section **30-3-10. Custody of children in case of separation or divorce – Custody consideration** in its verbal order allowing the Special Master to prohibit Jonah's and

Savannah's contact with their mother, without any checks or balances or attempts to abide by Utah statutory code.

CASE LAW

PERCEIVED STATUTORY CODE VIOLATION #3: Violation of the Code of Judicial Administration, **Rule 4-903. Uniform custody evaluations.**

In its Memorandum to Judges, Commissioners, Attorneys, and Custody Evaluators dated March 31, 2003 the Administrative Office of the Courts stated, "Noting that custody evaluations are of varying quality, that high quality evaluations can be costly, and that waiting for evaluations stalls the legal process, the Judicial Council ... presents substantial revisions to Rule 4-903, "Custody Evaluations." Rule 4-903, included herein with the Memorandum outlining the custody evaluation procedure as Addendum F, was invoked by the Special Master on December 1, 2006, when the Special Master first appointed Dr. Jay Jensen, of ACAFS in Provo, Utah, to conduct an evaluation of custodial and visitation matters in this case.

Section (5) of Rule 4-903 states, "The purpose of the custody evaluation will be to provide the court with information it can use to make decisions regarding custody and parenting time arrangements that are in the child's best interest. This is accomplished by assessing the prospective custodian's capacity to parent, the developmental, emotional, and physical needs of the child, and the fit between each prospective custodian and child. Unless otherwise specified in the order, evaluators must consider and respond to each of the following factors:

LaRue's custody of and visitation with her children were suspended pending a custody evaluation, that was first ordered by the Special Master on December 1, 2006. None of the requirements of Rule 4-903 regarding "anticipated dates of commencement and completion of the evaluation and the estimated cost of the evaluation" were included in the court's order for the evaluation. Over a year later, the evaluation is not completed, and Rule 4-903 continues to be repudiated. It would be asinine for anyone to argue that Jonah's and Savannah's best interests are served with this lack of proper jurisprudence.

For these reasons, it is LaRue's perspective and belief that the Fourth Judicial District Court violated Utah Code of Judicial Administration, **Rule 4-903. Uniform custody evaluations** with the Special Master's orders and the bench directives ordering an evaluation without abiding by the parameters of the established rule.

CASE LAW

PERCEIVED STATUTORY CODE VIOLATION #4: Utah Code Ann. Section **70-3-5.2** and **30-3-10.10 Parenting plan – Domestic violence**.

- (1) In any proceeding regarding a parenting plan, the court shall consider evidence of domestic violence, if presented.
- (2) If there is a protective order, civil stalking injunction, or the court finds that a parent has committed domestic violence, the court shall consider the impact of domestic violence in awarding parent-time, and make specific findings regarding the award of parent-time.

In the instant case, the Fourth Judicial District Court ignored evidence presented to it of domestic violence - of the father abusing the mother in front of the children prior to their divorce, and substantiated by reports from Child Protective Services, a hospital crisis worker, and a police officer. The father's abuse included threatening the mother with a loaded gun and choking the mother until the mother passed out. (See Addendum G) Medical tests have now substantiated that the mother's disability was caused by trauma to the brain, believed to have caused two strokes that were triggered when her then-husband beat her and suffocated her in rampages of domestic violence between April of 1999 and November of 2001.

For these reasons, it is LaRue's perspective and belief that the Fourth Judicial District Court violated Utah Code Ann. Section **70-3-5.2** and **30-3-10.10 Parenting plan – Domestic violence** when it did not consider the evidence of domestic violence presented to it prior to entering its order that terminated LaRue's parental rights for six months. The court effectively modified the ordered parenting plan without considering the impact of domestic violence on the

children or the mother, and did not enter specific findings related to the domestic violence in the family dynamics, nor in the parenting plan that was implemented.

CASE LAW

PERCEIVED STATUTORY CODE VIOLATION #5: Question of jurisdiction and appropriate modification of a court order under UFISA parameters.

In this case, it appears that the ruling by the district court was not consistent with the law of this state, nor had the district court established jurisdiction to make a modification under the oversight of UFISA.

ARGUMENT:

ISSUES 3 & 4: VIOLATION OF THE CHILDREN'S AND THE MOTHER'S RIGHTS

It is LaRue's perspective and belief that the district court continues to violate the children's right to have frequent, meaningful, and continuing access to their mother, and to have their mother actively involved in their lives. It is LaRue's belief that the children's rights and her right to due process have been denied.

It is LaRue's perspective and belief that the Fourth Judicial District Court violated Utah Code in granting authority to the Special Master to terminate LaRue's parental rights and substantially modify parent time over a period of sixteen months without regard to the children's best interests and without affording the children the rights granted to them by the state of Utah.

LaRue believes that because these actions have been taken by the Fourth Judicial District Court without allowing LaRue the opportunity to present evidence to the court, and after canceling a hearing set to address these issues, that LaRue's and the children's rights to due process have been denied.

CONCLUSION:

The Utah Court of Appeals should reverse and remand the district court's rulings and orders regarding child support and parenting time and order a hearing that affords due process for the following reasons:

1. Regarding the assessment of child support, there was no prior court order accessing child support, no substantial change of circumstance was presented nor acknowledged, no child support worksheets were filed by either party, no requirement of LaRue to file a proposed award of child support, no adjustment under Subsection 78B-12-210(6) was requested nor accepted, sufficient evidence was not presented to rebut the guidelines, there were no specific findings of fact to rebut the guidelines, and "arrearages" were assessed in violation of the guidelines set forth in Utah Code.
2. Regarding imputation of income, the imputation ignored the work history and earnings over the previous nine years. The judge imputed a greater income, but did not enter **specific** findings of fact as to the evidentiary basis for the imputation. The judge imputed income even though LaRue's medical disabilities rendered her physically unable to earn minimum wage, with evidence presented that this physical disability had affected LaRue for almost two years prior to the "ruling" issued by the court.
3. The court disregarded substantial evidence presented to it that the low income table was applicable in determining the adjusted gross income for LaRue, and then did not require documentation or consideration of other sources of income that would impact the adjusted gross income for Arne.
4. The judge did not enter a written finding or specific finding on the record that use of the rebuttable child support guidelines would be unjust, inappropriate, or not in the best

interest of the child(ren). The qualifications were not met to rebut the presumption for determination of the amount of child support to be ordered.


5. The question of jurisdiction and appropriate modification of a court order under UFISA parameters was not addressed.
6. The court violated Utah Code in granting authority to the Special Master to terminate LaRue's parental rights and substantially modify parent time over a period of sixteen months without regard to the children's best interests.
7. The prohibition of Jonah's and Savannah's contact with their mother for such an extended period of time does not meet the legislated standards for the children to have frequent, meaningful, and continuing access to each parent. The punitive measures of the Special Master, and vague orders of the court, prohibit the children from having their mother actively involved in their lives.
8. No claim, nor evidence, has been presented to the Court, and no finding has been made by a preponderance of evidence, that the mother would harm, or has the potential to harm her children.
9. The Special Master has made repeated inferences to LaRue's disabilities, and misrepresented the impact of those disabilities to the court and to other professionals involved in this matter. LaRue has not been given the opportunity at any time to rebut those inferences, as the court has simply allowed the Special Master to terminate LaRue's parental rights and suspend LaRue's visitation, without any orders or presentation of evidence to object to or to rebut.
10. Over a period of sixteen months, neither the Special Master, nor the Guardian Ad Litem, nor the court has made reasonable reunification efforts for the children and for LaRue.

The court did not enter the reasons underlying its order of less parent-time for LaRue.

Throughout this time, no attempt has been made to consider the best interests of Jonah and Savannah.

11. In the evaluation ordered by the court that has substantially altered custody for sixteen months, **Rule 4-903** has not been followed.
12. The court ignored evidence presented to it of domestic violence - of the father abusing the mother in front of the children prior to their divorce, and of repeated stalking and harassment of the mother by the father after the divorce, including when the mother and the children were out of state. The mother's reports of domestic violence and the children's resulting fear of their father were substantiated by reports from Child Protective Services, a hospital crisis worker, and a police officer. During a period of time when a temporary civil Stalking Injunction was in place protecting the mother from the father's harassing behavior, the judge totally disregarded a fellow judge's discernment, and denied the mother all avenues of possible protection in case the harassment continued.
13. There has been no court hearing regarding this matter. There has been no preponderance of evidence of real harm presented to the court, nor substantiated potential harm to the child(ren) alleged in any forum. In court hearings convened to address separate matters, such as child support, the court has heard only the opinion of the Special Master, yet not allowed any discussion or presentation of evidence by either side.
14. After an extensive investigation, DCFS determined that the allegations that the mother had emotionally abused the children could not be substantiated. After the DCFS conclusions were in the favor of the mother, the Special Master stated that the DCFS

RESPECTFULLY SUBMITTED this 24th day of March, 2008.


Minnie LaRue Thomas, Pro Se

CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of March, 2008, I caused a true and correct copy of the foregoing to be [☒] mailed, postage prepaid, [☐] hand-delivered, [☐] sent via facsimile to:

Frederick Green
7390 South Creek Road, Suite 104
Sandy, Utah 84093

Martha M. Pierce
Guardian ad Litem
450 South State Street, W-22
P.O. Box 140403
Salt Lake City, Utah 84114-0403


Minnie LaRue Thomas

evaluation had no bearing on her decisions.

15. After several months of supervised visitation by Renaissance Child Visitation Services, the psychologist in charge, Dr. Carol Gage, wrote a letter to the Special Master indicating that the officials at R.C.V.S. felt it would be appropriate to allow visitation to be expanded. The Special Master refused, and instead **decreased** the amount of time that the children have with their mother under supervised visitation.

RESPECTFULLY SUBMITTED this 24th day of March, 2008.

Minnie LaRue Thomas

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I hereby certify that on the 24th day of March, 2008, I caused a true and correct copy of the foregoing to be [] mailed, postage prepaid, [] hand-delivered, [] sent via facsimile to:

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Martha M. Pierce
Guardian ad Litem
450 South State Street, W-22
P.O. Box 140403
Salt Lake City, Utah 84114-0403

Minnie LaRue Thomas

ADDENDUM A – Jurisdiction

LaRue humbly requests that this Court recognize her pro se status, without disdain. LaRue has no legal education, and suffers a medical disability, that can be incapacitating at times. The process of attempting to file a credible appellant brief has overwhelmed LaRue with the limitations of her knowledge of the judicial process and her ability to present a logical argument.

The only reason LaRue is appearing pro se is because she could not afford to hire an attorney to file an appeal on her behalf. LaRue begs this Court to understand this as a desperate situation, and not to interpret LaRue's attempts herein as opposition to or lack of respect of the court's authority. LaRue's father devoted his entire life to military service, law enforcement, and caring for those less fortunate. Her parents instilled within her a deep respect for the laws of our land, and the judicial system that upholds those laws. That respect abides.

LaRue believes that the Utah Court of Appeals has jurisdiction in this matter, previously pursuant to Utah Code 78-2a-3h. With the recent changes enacted by the 2008 General Session of the Legislature in the Annotated Code 78, 78A, and 78B, it is unclear to her which statute to reference. The changes from the 2008 General Session have also made it more difficult and time intensive for her, as a layman, to determine the proper statutes to reference when referring to child support and parenting time guidelines – especially when referring to prior case law. LaRue does not request special treatment, but rather reasonable and holistic consideration of this complex case, and equitable measures to ensure that the best interests of her children are being enforced.

ADDENDUM B – Medical documentation

The onset of LaRue's disabling condition was in July of 2005, after receiving a penicillin shot for strept throat. She began having chronic daily intractable migraine headaches in September of 2006. Due to the frequent complex migraines that present with stroke-like symptoms, LaRue is presently under the care of IHC Home Health Care, and requires the services of a Home Health Care nurse in her home each week. LaRue must have assistance with normal activities of daily living. Doctors have documented that LaRue has a "fair" chance of resuming previous physical activity. LaRue does not know if she will be able to return to full-time work in the future.

The doctors had great difficulty determining the root cause of LaRue's medical disability, and at separate times over the past several years, specialists have diagnosed LaRue and begun treatment for Rheumatoid Arthritis, and possible Multiple Sclerosis. After testing positive for late-stage acute Lyme disease, LaRue was under an intensive IV antibiotic regimen. The antibiotics were effective, and it appears that the Lyme disease is now in remission. The Lyme Disease, which is a bacterial infection that can "bore" into tissue and sequester in the central nervous system, is believed to have caused LaRue's infectious symptoms of a toxic nature that were originally thought to be Rheumatoid Arthritis or Multiple Sclerosis.

Brain MRI's and other clinical tests from March-June of 2007 gave evidence that LaRue has suffered at least two incidents of stroke-like damage to her brain. The lesions on her brain, believed to be the result of scar tissue from the strokes, or possibly from mild traumatic brain injuries, result in chronic daily headaches and other debilitating neurological dysfunction. For approximately one year, the pendency of the subject matter of this appeal, LaRue had to undergo

IV therapy via the PICC line for 2-8 hours every day to manage chronic daily migraine headaches, and for emergent intervention of minor strokes, or transient ischemic attacks (TIAs). Since March 29, 2007, LaRue has suffered more than ten complex migraines that present with stroke-like symptoms that required emergency medical intervention. These “minor strokes,” sometimes referred to as TIA’s (Transient Ischemic Attacks), render LaRue virtually incapacitated for several weeks.

LaRue suffered a TIA that required emergency medical care in Commissioner Thomas Patton’s courtroom on December 6, 2007, after the hearing and Commissioner Patton had left the room. Recognizing the stroke symptoms, LaRue’s attorney and others called 911. EMT’s responded, and transported LaRue via a gurney out of the courthouse, to the ambulance, and to Utah Valley Regional Medical Center. LaRue later passed out while being treated in the Emergency Room.

On March 21, 2008, LaRue suffered a complex migraine that presented with stroke-like symptoms, thought to be another TIA. After ambulance transport to LDS Hospital in Salt Lake City, it was discovered that LaRue had several DVTs (Deep Vein Thromboses), which are blood clots. To prevent a possible stroke, heart attack, or pulmonary embolism from the DVTs, LaRue is presently injecting Lovenox twice daily and is under home health until she is stabilized on Coumadin. LaRue is under close supervision of a team of medical professionals.

TO: Todd Thayne
Utah Office of Recovery Services

Fax TO:

FROM: M. LaRue Thomas
1885 Harvard Avenue
Salt Lake City, UT 84108

801.344.4895

801.787.8887

MLaRueThomas@kinextions.com

DATE: January 24, 2008

RE: MEDICAL DISABILITY INFORMATION

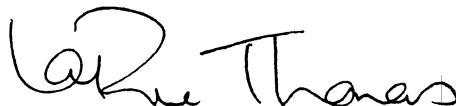
Thank you for taking the time today to direct me to the website www.ors.utah.gov, and to inform me of what further information would be helpful. Transmitted please find the medical disability information you requested.

MEDICAL DISABILITY INFORMATION:

1. Letter from Dr. Pamela Vincent and Dr. Victoria Sucher, dated 7/6/2007. This letter documents:
 - a. Onset of this flare of debilitating symptoms in July 2005, becoming completely disabling by September 2006. (Page 1, paragraph 2.)
 - b. "Minnie is slowly showing improvement each month, but currently is still disabled. She is unable to think clearly at times and showing (sic) toxic symptoms of an infections nature. She continues to have debilitating complex migraines that could be due to absorption issues of electrolytes in the gastrointestinal system." (Page 2, paragraph 2.)
2. Doctor's order from Patrice Duvernay, Neurologist, extending home health and skilled nursing care through 06/24/2008.
3. Home Health Re-Certification and Plan of Care from IHC Home Health Care, dated 12/03/2007 certifying that I am homebound due to my medical disability, and that my rehabilitation potential is fair for return to previous physical status. (Page 3, top of page.)
4. Letter from Dr. Mitchell Freedman, dated 11/22/2002, documenting the doctors' earlier diagnosis of possible Multiple Sclerosis, and stating that I could not work full-time to earn an income "while combating the overwhelming physical limitations she faces." (paragraph 3.)

I will fax the remaining information you requested to you in the next few business days, as that information will take longer to compile and prepare for transmission. Please contact me if you require any further information.

Sincerely, LaRue Thomas



Pamela Vincent, MD-PC
Victoria Sucher ND
Integrated Healing Arts-Utah
Riverwoods Neurological Center
280 West River Park Drive Suite 350
Provo, Utah 84604
telephone (801) 229-1014
fax (801) 229-1067
www.riverwoodsneurological.com

7/6/2007

Dear Terry Spencer, Attorney at Law

In response to your request for information re Minnie LaRue Thomas

Minnie LaRue has been seen for **WHITE MATTER OF BRAIN SYNDROME NOS (323.9), VARIANTS OF MIGRAINE WITH INTRACTABLE MIGRAINE, SO STATED (346.21); LYME DISEASE (088.81), and FACTOR V DEFICIENCY, NOS (286.3)** (Leiden thrombophilia). She was first seen in this office for a consult on 11/7/06 for multiple complaints of episodic neurological symptoms that had begun about 16 years ago. Each flare of symptoms were related to stressful periods such as the births of children and/or usually a course of antibiotic therapy. After a few days on the antibiotics she would have a flare of the muscle aches and joint swelling that would show up like a Rheumatoid Arthritis picture. The joints would not always be the same though. She reported having a truncal rash with the first flare of symptoms 16 years ago that did not itch and seemed to resolve on its own.

The migraines and the musculoskeletal symptoms worsened in July 2005 following a shot of penicillin for Strep throat. The symptoms became debilitating by Sept 2006 when she was referred here to this office. Previous MRI's were reviewed showing a few white matter lesions that appeared to be stable. She had blood work at that initial visit to discover if there was a reason for the white matter lesions and the neurological symptoms. It was demonstrated at that time that she was positive for Factor V Leiden thrombophilia, which can contribute to the formation of thrombotic white matter lesions.

This did not explain many of the neurological symptoms that she was having, but possibly explained the migraines. The question of Multiple Sclerosis (MS) or Chronic Lyme disease was raised because of the nature of the symptom history, the progression of symptoms and previous travel to areas known to have Lyme disease. She had had a spinal tap previously that had not shown to be diagnostic for Multiple Sclerosis (MS) so a Lyme titer was performed, which came back with two highly specific bands for Lyme and one non-specific band for Lyme disease. As per the CDC and the ILADS criteria, the clinical diagnosis of Chronic Lyme disease was made.

She had a PICC line placed and started on IV antibiotics in combination with two oral antibiotics as per the ILADS treatment protocol for the treatment of Chronic Lyme disease after clearance from the Factor V Leiden specialist in North Carolina. The first week on the antibiotics she felt worse as expected, which started to resolve to the point that she reported feeling more normal for the first time in several years.

Then she was seen in the ER twice within a six week period (3/30 and 5/9) with complicated migraine headaches that presented with stroke-like symptoms. The migraines would escalate to the point that the left side of her body would go limp, she started to slur her words, be incoherent at times, and bilateral blindness. This worried her and she was started on Calan-SR for migraine prevention by Dr. Renner, which seemed to help some. She was temporarily taken off the antibiotics to determine if they were inadvertently contributing to the complicated migraines. Then it was shown that if she was given Normal Saline at the beginning of a migraine it would start to resolve and not progress into the complicated migraines that she was starting to get more frequently.

She also had an abdominal CT scan done that showed something wrong with the liver so an ultrasound was done that showed possibly two abscesses in the liver. A referral to a hepatologist at LDS was made for further work up. It was suggested that a biopsy be done this coming month and a Lyme titer with bacteria culture be done to see if the Lyme spirochete or some other bacteria is causing the abscesses. She will be

placed back on IV antibiotics by the end of the month and if the Lyme spirochete is in the abscesses of the liver then another 4-6 months of antibiotics may be necessary to completely eradicate it. If the Lyme spirochete is not responsible for the liver abscesses, then whatever is present should be cleared first then the ILADS Chronic Lyme protocol should be followed for another 3 months or one month after symptoms resolve and the CD57 NK cell count is above 100 (35%)

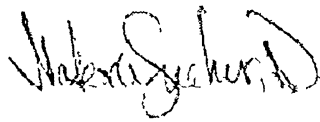
Minnie is slowly showing improvement each month, but currently is still disabled. She is unable to think clearly at times and showing toxic symptoms of an infectious nature. She continues to have debilitating complex migraines that could be due to absorption issues of electrolytes in the gastrointestinal system. This could possibly be related back to the issues with the liver at the present moment. Her last liver function tests were normal.

Please contact my office if additional information is needed
Time spent preparing this report: 60 minutes

Please contact my office if additional information is needed
Time spent preparing this report: 60 minutes

Thank you,

Victoria Sucher, N.D.

A handwritten signature in black ink, appearing to read 'Victoria Sucher, N.D.', with a stylized, cursive script.

cc Christian Burrdige, Attorney at Law
Minnie LaRue Thomas

2250 SOUTH 1300 WEST
SALT LAKE CITY, UT, 84119
(801) 887-7353

Patient #: 27021 / 8264285
Name: THOMAS, MINNIE L
Address: 1885 HARVARD AVE
: SALT LAKE CITY, UT 84108
Phone: ()
Rph. KELLY GARCIA, CPHT
Diagnosis: LYME DISEASE

Prescription #: 030715
Order #: 70112
Page #: 1

Prescription Information: SODIUM CHLORIDE 0.9% 500 ML
INFUSE THROUGH PICC LINE AT 70 ML/HR
OVER 8 HOURS EVERY DAY. FLUSH LINE AS
DIRECTED.

Start Date 12/27/07

QTY DISPENSED: 24

Stop Date: _____

Type of Equipment: _____

Other Prescription Items: SET IV DIAL-A-FLO CUSTOM
LABEL IV TUBING CHANGE 1000/RL
CAP MALE STERILE LIFESHIELD
PROTECTOR PICC CATH ARM CUFF
TAPE TRANSPORE 1" 1527-1 3M 12

Refill Date: 06/24/08

DOCTOR'S ORDER EXTENDING HOME HEALTH
AND SKILLED NURSING CARE ~~THROUGH~~ THROUGH
JUNE 24, 2008.

Physician Signature: _____

Date: _____

Substitution Permitted _____, MD

Dispense As Written _____, MD

DUVERNAY, PATRICE A
SALT LAKE CLINIC- NEURO
333 SOUTH 900 EAST
Salt Lake City, UT 84132-
Phone: (801) 535-8129 FAX: (801) 355-3746
Dea #: BD2492940

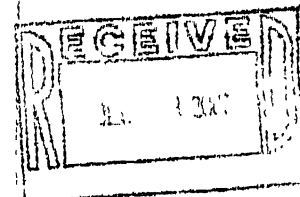
Fax TO: SANDRA DREDGE LAW OFFICE

801.375.9081

* CONFIDENTIAL *

2032330793v 9.x HOME HEALTH CERTIFICATION AND PLAN OF CARE

1. Patient's MT Claim No. 800435776		2. Start Of Care Date 082407		3. Certification Period From: 082407 To: 102307		4. Medical Record No. 546839439-210002446		5. Provider No 103920334101	
6. Patient's Name and Address THOMAS, MINNIE LARON 1885 HARVARD AVE SALT LAKE CITY, UT 84108 801 787 8887					7. Provider's Name, Address and Telephone Number Salt Lake Home Health Skilled Center 402 Intermountain Homecare 2255 S 1300 W Suite A SLC, UT 84119 801 977 5900				
8. Date of Birth 051563		9. Sex M X F		10. Medications: Dose/Frequency/Route (N)ew (C)hanged					
11. ICD-9-CM 08881		Principal Diagnosis LYME DISEASE		Date 082307 O		CEFTIOXIME 2 gram VIAL (N) 2 gm INJECTION; 2 times daily			
12. ICD-9-CM N/A		Surgical Procedure		Date		HEPARIN FLUSH 100 unit/mL KIT (N) INTERVENOUS; As needed			
						NORMAL SALINE FLUSH 0.9 % DISF SYRIN (N) INJECTION; As needed			
						AMOXIL 500 mg CAPSULE (N) 2 ORAL; 2 times daily 2 capsules bid			
						VERAPAMIL HCL 120 mg TABLET SA (N) 2 ORAL; Daily			
						ANAPROX 275 mg TABLET (N) 2 ORAL; As needed every 12 hours			
						ASPIRIN 81 LOW DOSE 81 mg TABLET DR (N) 1 ORAL; Daily			
						CITIZENITA 10 mg CAPSULE DR (N) 2 ORAL; Daily			
						PROVIGIL 100 mg TABLET (N) 1 ORAL; Daily			
						LUNESTA 1 mg TABLET (N) 1 ORAL; Bedtime 1-2 at hs prn			
						XANITREX 100 mg TABLET (N) 1 ORAL; Intermittent 1 - 2 daily - 2 hours between doses, prn			
						REGULIN 10 mg TABLET (N) 1 ORAL; As needed every 8 hours			



800435776

THOMAS, MINNIE LARON

Cert. Dates: 8/24/2007 To: 10/23/2007 Plan of Care

Page: 1 of 3

Confidential Notice

The documents accompanying this Fax Cover Letter contains confidential information belonging to the sender. This information is legally privileged and intended only for the use of the individual or entity names above. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution, or action taken in reliance on the contents of these documents is strictly prohibited. If you have received this fax in error, please notify the sender immediately to arrange for return of these documents.



LYRICA 30 mg CAPSULE (N)
1 ORAL, Daily 1 at bedtime x 2 weeks, then
increase to 1 bid

MELATONIN 5 mg TAB SUBL (N)
2 SUBLINGUAL, Bedtime

DIFLOXAN 100 mg TABLET (N)
1 ORAL, Weekly

NORMAL SALINE 0.9 % IV SOLN. (N)
1 INTRAVENOUS, As needed NS 1000 ml IV infusion
as needed for dehydration (pt gives herself)

13. ICD-9-CM	Other Pertinent Diagnoses	Date
27651	DEHYDRATION	082307 O
34690	MIGRAINE NOS W/O INT	082307 O
V5891	PT/ADJUST VASC CATH	082307 O
V5862	LONG-TERM ANTIEMETIC	082307 O

14. DME and Supplies:
Has - Other (specify) IV Supplies

15. Safety Measures:
N/A

16. Nutritional Requirements

1 - Regular

17. Allergies:

No Known Allergies

18.A. Functional Limitations

1 Amputation	5 Paralysis	9 Legally Blind
2 Urinary/Bladder (Incontinence)	6 x Endurance	8 Dyspnea With Minimal Exercise
3 Contracture	7 Ambulation	B Other (Specify)
4 Hearing	8 Speech	

18.B. Activities Permitted

1 Complete Bedrest	5 Partial Weight Bearing	8 Wheelchair
2 Bedrest BNP	7 x Independent At Home	9 Walker
3 x Up As Tolerated	8 Crutches	C No Restrictions
4 Transfer Bed/C	9 Cane	D Other (Specify)
5 Exercises Free		

19. Mental Status: 1 Oriented 3 Forgetful 5 Disoriented 7 Agitated
2 Comatose 4 Depressed 6 Lethargic 8 Other

20. Prognosis: 1 Poor 2 Guarded 3 x Fair 4 Good 5 Excellent

21. Orders for Discipline and Treatment (Specify Amount/Frequency/Duration)

SN 1 Week P/S As Needed
SN to change central line dressing every week and as needed using a transparent semipermeable membrane dressing

SN to flush line with 5 to 10 ml of Normal Saline daily and as needed.
SN to flush line with 3 ml of Heparin Lock Solution daily and after each line use.
SN to teach patient and or caregiver to administer medication and perform line flushes.

SN to infuse and teach patient to infuse CERTILAXONE 2 gram slow IV push 2 times daily via PICO.

SN to teach patient and or caregiver signs and symptoms of complications with line and steps to take with complications.

SN to obtain blood sample via PICO line for CBC and CMP once every 2 weeks Fax results to 801-228-1067. Start 6/24/07.

SN for up to 3 as needed visits for line malfunction or followup teaching.

22. Goals/Rehabilitation Potential/Discharge Plans

Goals: Patient will demonstrate ability to maintain patent and intact parenteral access device. Patient will remain free of S/S of infection and complications related to infusion therapy. Patient/caregiver will demonstrate independence in administration of parenteral medication/fluid. Patient/caregiver will demonstrate proper storage, handling, and disposal of parenteral medication, fluid, equipment and supplies. Patient/caregiver will

800435776

THOMAS, MINNIE LARUE

Cert. Dates: 8/24/2007 to 10/23/2007 Visit of Care

Page: 2 of 3

verbalize knowledge of potential adverse effects of infusion therapy and appropriate actions to take
 Patient/caregiver will verbalize knowledge of disease process and purpose, process, duration and goals of infusion
 therapy Rehab Potential 3 - Fair for return to previous physical status Discharge, Plans, Discharge When
 longer requires IV medications/fluids, PICC removed, and no further need for skilled services.

23 Nurse's Signature and Date of Verbal SOC Where Applicable:

Joe Rawls SN

082307

25 Date NHA Received signed for

DEC 3 2007

24 Physician's Name and Address

VINCENT, PAMELA L
 290 W RIVER PARK DR
 STE 350
 PROVO UT 84604
 801 229 1024

26 I certify/recertify that this patient is confined
 to his/her home and needs intermittent skilled nursing
 care, physical therapy and/or speech therapy or
 continues to need occupational therapy. The patient is
 under my care, and I have authorized the services on
 this plan and will periodically review the plan

27 Attending Physician's Signature and Date Signed

[Signature] 11/29/07

28 Anyone who misrepresents, falsifies or conceals essential
 information required for payment of Federal funds may be subject
 to fine, imprisonment, or civil penalty under applicable Federal
 Laws

PLEASE SIGN DATE & RETURN



November 22, 2002

To Whom It May Concern:

Re: LaRue Thomas
RNA: 96078

Dear Sir or Madam:

LaRue Thomas is a 39 year old, 5' 10", 125 lb., white female that has been professionally diagnosed with multi-level DJD, DDD, premature osteoarthritis, trigeminal neuralgia and other neurological and musculo-skeletal symptoms that have plagued her for most of her adult life, most predominately over the last six years. The onset of the worst of the neurological symptoms coincided with complications after delivery of her two children, after which she caught internal infections resulting in septicemia.

LaRue is presently experiencing exacerbations of symptoms that limit her ability to work productively in an office setting for more than a couple of hours at a time. She is undergoing initial treatment, and we are conducting tests to ascertain the root cause of the symptoms with which she now struggles on a daily basis. At least one specialist has indicated that LaRue may have multiple sclerosis.

It is hard to expect require LaRue to work full-time to earn an income while combating the overwhelming physical limitations she faces. It is anticipated that we will have a clearer diagnosis within the next three to six weeks. A treatment plan utilizing all available treatment methods can be implemented. I am hoping that she will improve over the next 6 months.

LaRue has exhibited admirable personal strength and fortitude to face the health issues that plague her, and she is dedicated to heartily resuming a productive lifestyle of successful professional endeavors once we have completed proper diagnostic procedures and applicable treatment plans.

Feel free to contact me if necessary.

Sincerely,

A handwritten signature in black ink, appearing to read 'S. Mitchell Freedman', is written over a printed name and title. The signature is fluid and cursive.

S. Mitchell Freedman, MD
SMF:wr

78B-12-202. Determination of amount of support – Rebuttable guidelines.

(1) (a) Prospective support shall be equal to the amount granted by prior court order unless there has been a substantial change of circumstance on the part of the obligor or obligee or adjustment under Subsection **78B-12-210(6)** has been made.

(b) If the prior court order contains a stipulated provision for the automatic adjustment for prospective support, the prospective support shall be the amount as stated in the order, without a showing of a material change of circumstances, if the stipulated provision:

(i) is clear and unambiguous;

(ii) is self-executing;

(iii) provides for support which equals or exceeds the base child support award required by the guidelines; and

(iv) does not allow a decrease in support as a result of the obligor's voluntary reduction of income.

(2) If no prior court order exists, a substantial change in circumstances has occurred, or a petition to modify an order under Subsection **78B-12-210(6)** has been filed, the court determining the amount of prospective support shall require each party to file a proposed award of child support using the guidelines before an order awarding child support or modifying an existing award may be granted.

(3) If the court finds sufficient evidence to rebut the guidelines, the court shall establish support after considering all relevant factors, including but not limited to:

(a) the standard of living and situation of the parties;

(b) the relative wealth and income of the parties;

(c) the ability of the obligor to earn;

(d) the ability of the obligee to earn;

(e) the ability of an incapacitated adult child to earn, or other benefits received by the adult child or on the adult child's behalf including Supplemental Security Income;

(f) the needs of the obligee, the obligor, and the child;

(g) the ages of the parties; and

(h) the responsibilities of the obligor and the obligee for the support of others.

(4) When no prior court order exists, the court shall determine and assess all arrearages based upon the guidelines described in this chapter.

Renumbered and Amended by Chapter 3, 2008 General Session
Download Code Section [Zipped](#) WP 6/7/8 [78B0C020.ZIP](#) 3,094 Bytes

[Sections in this Chapter](#)|[Chapters in this Title](#)|[All Titles](#)|[Legislative Home Page](#)

Last revised: Friday, February 15, 2008

Rule 103. Child support worksheets.

(a) When filing a child support worksheet required by Utah Code Section 78-45-7.3, a party shall:

(a)(1) file the worksheet in duplicate and the clerk of court shall send one copy to the Administrative Office of the Courts; or

(a)(2) file one worksheet with the court, send the information on the worksheet electronically to the Administrative Office and so indicate on the worksheet.

(b) The court shall not enter the final decree of divorce, final order of modification, or final decree of paternity until the completed worksheet is filed.

IN THE _____ DISTRICT COURT

_____ COUNTY, STATE OF UTAH

<p>_____,</p> <p>vs.</p> <p>_____</p>	<p style="text-align: center;">CHILD SUPPORT OBLIGATION WORKSHEET (JOINT PHYSICAL CUSTODY)</p> <p>Base Combined Child Support Obligation Table: <input checked="" type="checkbox"/> 78B-12-301(1) <input type="checkbox"/> 78B-12-302(2) <i>Effective January 1, 2008</i></p> <p style="text-align: right;">Civil No. _____</p>
---------------------------------------	--

	MOTHER	FATHER	COMBINED
1. Enter the # of natural and adopted children of this mother and father for whom support is to be awarded.			2
2a. Enter the father's and mother's gross monthly income. Refer to Instructions for definition of income.	\$ 0.00	\$ 6,250.00	
2b. Enter previously ordered alimony that is actually paid. (Do not enter alimony ordered for this case).	0.00	0.00	
2c. Enter previously ordered child support. (Do not enter obligations ordered for the children in Line 1).	0.00	0.00	
2d. OPTIONAL: Enter the amount from Line 12 of the Children in Present Home Worksheet for either parent.	0.00	0.00	
3. Subtract Lines 2b, 2c, and 2d from 2a. This is the Adjusted Gross Income for child support purposes.	\$ 0.00	\$ 6,250.00	\$ 6,250.00
4. Take the COMBINED figure in Line 3 and the number of children in Line 1 to the Support Table. Enter the Combined Support Obligation here.			\$ 1,150.00
5. Divide each parent's adjusted monthly gross in Line 3 by the COMBINED adjusted monthly gross in Line 3.	0%	100%	
6. Multiply Line 4 by Line 5 for each parent to obtain each parent's share of the Base Support Obligation.	\$ 0.00	\$ 1,150.00	
7. Enter the number of nights the children will spend with each parent. (They must total 365.) Each parent must have at least 111 overnights to qualify for Joint Physical Custody. (UCA 78B-12-217(13))	111	254	365
7b. Identify the parent who has the lesser number of overnights, and continue the rest of the calculation for them. You will be making adjustments to the net amount owed by this parent.	Mother		
8a. For the parent who has the child the lesser number of overnights, multiply the number of overnights that are greater than 110 but less than 131 by .0027 to obtain a resulting figure and enter in the respective column.	0.0027		
8b. Multiply the result on line 8a by the Combined Support Obligation on line 4 for this parent and enter the number in the respective column.	\$ 3.10		
8c. Subtract the respective dollar amount on line 8b from this parent's share of the Base Support Obligation found in the column for this parent on line 6 to determine the amount as indicated by UCA 78B-12-208(3)(a) and enter the amount in the respective column.	\$ -3.10		
9a. Additional calculation necessary if both parents have the child for more than 131 overnights (Otherwise go to line 10): For the parent who has the child the lesser number of overnights, multiply the number of overnights that exceed 130 (131 overnights or more) by .0084 to obtain a resulting figure and enter it in the respective column.	0.0000		
9b. Multiply the result on line 9a by the Combined Support Obligation on line 4 for this parent and enter each in the respective column.	\$ 0.00		
9c. Subtract this parent's dollar amount on line 9b from their respective amount as identified on line 8c to determine the amount as indicated by UCA 78B-12-209(3)(b) and enter the amount in the respective column. Go to line 10.	\$ -3.10		

10. BASE CHILD SUPPORT AWARD: If the result in line 9c is > 0, then this parent is the obligor (and the other parent is the obligee). Enter the amount owed by this parent to the obligee all 12 months of the year. If the result in line 9c is < 0, then this parent is the obligee (and the other parent is the obligor). Enter the absolute value of the result in line 9c here. This is the amount owed to this parent by the obligor all 12 months of the year.	\$ 3.10
--	---------

11. Which parent is the obligor? () Mother (X) Father
12. Is the support award the same as the guideline amount in line 10? () Yes () No
If NO, enter the amount ordered: \$ _____, and answer number 13.
13. What were the reasons stated by the court for the deviation?
 () property settlement
 () excessive debts of the marriage
 () absence of need of the custodial parent
 () other: _____

Attorney Bar No. _____ () Electronic Filing () Manual Filing 6/2000

78B-12-203. Determination of gross income – Imputed income.

(1) As used in the guidelines, "gross income" includes prospective income from any source, including earned and nonearned income sources which may include salaries, wages, commissions, royalties, bonuses, rents, gifts from anyone, prizes, dividends, severance pay, pensions, interest, trust income, alimony from previous marriages, annuities, capital gains, Social Security benefits, workers' compensation benefits, unemployment compensation, income replacement disability insurance benefits, and payments from "nonmeans-tested" government programs.

(2) Income from earned income sources is limited to the equivalent of one full-time 40-hour job. If and only if during the time prior to the original support order, the parent normally and consistently worked more than 40 hours at the parent's job, the court may consider this extra time as a pattern in calculating the parent's ability to provide child support.

(3) Notwithstanding Subsection (1), specifically excluded from gross income are:

(a) cash assistance provided under Title 35A, Chapter 3, Part 3, Family Employment Program;

(b) benefits received under a housing subsidy program, the Job Training Partnership Act, Supplemental Security Income, Social Security Disability Insurance, Medicaid, Food Stamps, or General Assistance; and

(c) other similar means-tested welfare benefits received by a parent.

(4) (a) Gross income from self-employment or operation of a business shall be calculated by subtracting necessary expenses required for self-employment or business operation from gross receipts. The income and expenses from self-employment or operation of a business shall be reviewed to determine an appropriate level of gross income available to the parent to satisfy a child support award. Only those expenses necessary to allow the business to operate at a reasonable level may be deducted from gross receipts.

(b) Gross income determined under this subsection may differ from the amount of business income determined for tax purposes.

(5) (a) When possible, gross income should first be computed on an annual basis and then recalculated to determine the average gross monthly income.

(b) Each parent shall provide verification of current income. Each parent shall provide year-to-date pay stubs or employer statements and complete copies of tax returns from at least the most recent year unless the court finds the verification is not reasonably available. Verification of income from records maintained by the Department of Workforce Services may be substituted for pay stubs, employer statements, and income tax returns.

(c) Historical and current earnings shall be used to determine whether an underemployment or overemployment situation exists.

(6) Gross income includes income imputed to the parent under Subsection (7).

(7) (a) Income may not be imputed to a parent unless the parent stipulates to the amount imputed, the parent defaults, or, in contested cases, a hearing is held and the judge in a judicial proceeding or the presiding officer in an administrative proceeding enters findings of fact as to the evidentiary basis for the imputation.

(b) If income is imputed to a parent, the income shall be based upon employment potential and probable earnings as derived from employment opportunities, work history, occupation qualifications, and prevailing earnings for persons of similar backgrounds in the community, or the median earning for persons in the same occupation in the same geographical

area as found in the statistics maintained by the Bureau of Labor Statistics.

(c) If a parent has no recent work history or a parent's occupation is unknown, income shall be imputed at least at the federal minimum wage for a 40-hour work week. To impute a greater income, the judge in a judicial proceeding or the presiding officer in an administrative proceeding shall enter specific findings of fact as to the evidentiary basis for the imputation.

(d) Income may not be imputed if any of the following conditions exist and the condition is not of a

temporary nature:

(i) the reasonable costs of child care for the parents' minor children approach or equal the amount of income the custodial parent can earn;

(ii) a parent is physically or mentally unable to earn minimum wage;

(iii) a parent is engaged in career or occupational training to establish basic job skills; or

(iv) unusual emotional or physical needs of a child require the custodial parent's presence in the home.

(8) (a) Gross income may not include the earnings of a minor child who is the subject of a child support award nor benefits to a minor child in the child's own right such as Supplemental Security Income.

(b) Social Security benefits received by a child due to the earnings of a parent shall be credited as child support to the parent upon whose earning record it is based, by crediting the amount against the potential obligation of that parent. Other unearned income of a child may be considered as income to a parent depending upon the circumstances of each case.

Renumbered and Amended by Chapter 3, 2008 General Session

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Last revised: Friday, February 15, 2008

78B-12-205. Calculation of obligations.

(1) Each parent's child support obligation shall be established in proportion to their adjusted gross incomes, unless the low income table is applicable. Except during periods of court-ordered parent-time as set forth in Section **78B-12-216**, the parents are obligated to pay their proportionate shares of the base combined child support obligation. If physical custody of the child changes from that assumed in the original order, modification of the order is not necessary, even if only one parent is specifically ordered to pay in the order.

(2) Except in cases of joint physical custody and split custody as defined in Section **78B-12-102** and in cases where the obligor's adjusted gross income is \$1,050 or less monthly, the base child support award shall be determined as follows:

(a) combine the adjusted gross incomes of the parents and determine the base combined child support obligation using the base combined child support obligation table; and

(b) calculate each parent's proportionate share of the base combined child support obligation by multiplying the combined child support obligation by each parent's percentage of combined adjusted gross income.

(3) In the case of an incapacitated adult child, any amount that the incapacitated adult child can contribute to the incapacitated adult child's support may be considered in the determination of child support and may be used to justify a reduction in the amount of support ordered, except that in the case of orders involving multiple children, the reduction shall not be greater than the effect of reducing the total number of children by one in the child support table calculation.

(4) In cases where the monthly adjusted gross income of either parent is between \$650 and \$1,050, the base child support award shall be the lesser of the amount calculated in accordance with Subsection (2) and the amount calculated using the low income table. If the income and number of children is found in an area of the low income table in which no amount is shown, the base combined child support obligation table is to be used.

(5) The base combined child support obligation table provides combined child support obligations for up to six children. For more than six children, additional amounts may be added to the base child support obligation shown. Unless rebutted by Subsection **78B-12-210(3)**, the amount ordered may not be less than the amount which would be ordered for up to six children.

(6) If the monthly adjusted gross income of either parent is \$649 or less, the tribunal shall determine the amount of the child support obligation on a case-by-case basis, but the base child support award may not be less than \$30.

(7) The amount shown on the table is the support amount for the total number of children, not an amount per child.

(8) For all worksheets, income and support award figures shall be rounded to the nearest dollar.

Renumbered and Amended by Chapter 3, 2008 General Session
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Last revised Friday, February 15, 2008

78B-12-302. Low income table – Obligor parent only.

(1) If a child support order is established or modified on or before December 31, 2007, the table in this Subsection (1) shall be used for a modification to that order made on or before December 31, 2009. Monthly Adj.

Gross Income		Number of Children				
1	2	3	4	5		6
From	To					
650 - 675	23	23	23	23	24	24
676 - 700	45	46	46	47	47	48
701 - 725	68	68	69	70	71	71
726 - 750	90	91	92	93	94	95
751 - 775	113	114	115	116	118	119
776 - 800		137	138	140	141	143
801 - 825		159	161	163	165	166
826 - 850		182	184	186	188	190
851 - 875		205	207	209	212	214
876 - 900		228	230	233	235	238
901 - 925		250	253	256	259	261
926 - 950		276	279	282		285
951 - 975		299	302	306		309
976 - 1,000			326	329		333

78B-12-206. Income in excess of tables.

If the combined adjusted gross income exceeds the highest level specified in the table, an appropriate and just child support amount shall be ordered on a case-by-case basis, but the amount ordered may not be less than the highest level specified in the table for the number of children due support.

Renumbered and Amended by Chapter 3, 2008 General Session

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Last revised Friday, February 15, 2008

78B-12-210. Application of guidelines -- Use of ordered child support.

(1) The guidelines in this chapter apply to any judicial or administrative order establishing or modifying an award of child support entered on or after July 1, 1989.

(2) (a) The guidelines shall be applied as a rebuttable presumption in establishing or modifying the amount of temporary or permanent child support.

(b) The rebuttable presumption means the provisions and considerations required by the guidelines, the award amounts resulting from the application of the guidelines, and the use of worksheets consistent with these guidelines are presumed to be correct, unless rebutted under the provisions of this section.

(3) A written finding or specific finding on the record supporting the conclusion that complying with a provision of the guidelines or ordering an award amount resulting from use of the guidelines would be unjust, inappropriate, or not in the best interest of a child in a particular case is sufficient to rebut the presumption in that case. If an order rebuts the presumption through findings, it is considered a deviated order.

(4) The following shall be considered deviations from the guidelines, if:

(a) the order includes a written finding that it is a deviation from the guidelines;

(b) the guidelines worksheet has:

(i) the box checked for a deviation; and

(ii) an explanation as to the reason; or

(c) the deviation is made because there were more children than provided for in the guidelines table.

(5) If the amount in the order and the amount on the guidelines worksheet differ by \$10 or more:

(a) the order is considered deviated; and

(b) the incomes listed on the worksheet may not be used in adjusting support for emancipation.

(6) (a) Natural or adoptive children of either parent who live in the home of that parent and are not children in common to both parties may at the option of either party be taken into account under the guidelines in setting or modifying a child support award, as provided in Subsection (7). Credit may not be given if:

(i) by giving credit to the obligor, children for whom a prior support order exists would have their child support reduced; or

(ii) by giving credit to the obligee for a present family, the obligation of the obligor would increase.

(b) Additional worksheets shall be prepared that compute the obligations of the respective parents for the additional children. The obligations shall then be subtracted from the appropriate parent's income before determining the award in the instant case.

(7) In a proceeding to adjust or modify an existing award, consideration of natural or adoptive children born after entry of the order and who are not in common to both parties may be applied to mitigate an increase in the award but may not be applied:

(a) for the benefit of the obligee if the credit would increase the support obligation of the obligor from the most recent order; or

(b) for the benefit of the obligor if the amount of support received by the obligee would be decreased from the most recent order.

(8) (a) If a child support order has not been issued or modified within the previous three

years, a parent, legal guardian, or the office may move the court to adjust the amount of a child support order.

(b) Upon receiving a motion under Subsection (8)(a), the court shall, taking into account the best interests of the child:

(i) determine whether there is a difference between the payor's ordered support amount and the payor's support amount that would be required under the guidelines; and

(ii) if there is a difference as described in Subsection (8)(b)(i), adjust the payor's ordered support amount to the payor's support amount provided in the guidelines if:

(A) the difference is 10% or more;

(B) the difference is not of a temporary nature; and
(C) the order adjusting the payor's ordered support amount does not deviate from the guidelines.
(c) A showing of a substantial change in circumstances is not necessary for an adjustment under this Subsection (8).

(9) (a) A parent, legal guardian, or the office may at any time petition the court to adjust the amount of a child support order if there has been a substantial change in circumstances. A change in the base combined child support obligation table set forth in Section **78B-12-301** is not a substantial change in circumstances for the purposes of this Subsection (9).

(b) For purposes of this Subsection (9), a substantial change in circumstances may include:

- (i) material changes in custody;
- (ii) material changes in the relative wealth or assets of the parties;
- (iii) material changes of 30% or more in the income of a parent;
- (iv) material changes in the employment potential and ability of a parent to earn;
- (v) material changes in the medical needs of the child; or
- (vi) material changes in the legal responsibilities of either parent for the support of others.

(c) Upon receiving a petition under Subsection (9)(a), the court shall, taking into account the best interests of the child:

(i) determine whether a substantial change has occurred;

(ii) if a substantial change has occurred, determine whether the change results in a difference of 15% or more between the payor's ordered support amount and the payor's support amount that would be required under the guidelines; and

(iii) adjust the payor's ordered support amount to that which is provided for in the guidelines if:

(A) there is a difference of 15% or more; and

(B) the difference is not of a temporary nature.

(10) Notice of the opportunity to adjust a support order under Subsections (8) and (9) shall be included in each child support order.

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Last revised: Friday, February 15, 2008

78B-12-212. Medical expenses.

(1) The court shall order that insurance for the medical expenses of the minor children be provided by a parent if it is available at a reasonable cost.

(2) In determining which parent shall be ordered to maintain insurance for medical expenses, the court or administrative agency may consider the:

- (a) reasonableness of the cost;
- (b) availability of a group insurance policy;
- (c) coverage of the policy; and
- (d) preference of the custodial parent.

(3) The order shall require each parent to share equally the out-of-pocket costs of the premium actually paid by a parent for the children's portion of insurance.

(4) The parent who provides the insurance coverage may receive credit against the base child support award or recover the other parent's share of the children's portion of the premium. In cases in which the parent does not have insurance but another member of the parent's household provides insurance coverage for the children, the parent may receive credit against the base child support award or recover the other parent's share of the children's portion of the premium.

(5) The children's portion of the premium is a per capita share of the premium actually paid. The premium expense for the children shall be calculated by dividing the premium amount by the number of persons covered under the policy and multiplying the result by the number of children in the instant case.

(6) The order shall require each parent to share equally all reasonable and necessary uninsured medical expenses incurred for the dependent children, including but not limited to deductibles and copayments.

(7) The parent ordered to maintain insurance shall provide verification of coverage to the other parent, or to the Office of Recovery Services under Title IV of the Social Security Act, 42 U.S.C. Section 601 et seq., upon initial enrollment of the dependent children, and thereafter on or before January 2 of each calendar year. The parent shall notify the other parent, or the Office of Recovery Services under Title IV of the Social Security Act, 42 U.S.C. Section 601 et seq., of any change of insurance carrier, premium, or benefits within 30 calendar days of the date the parent first knew or should have known of the change.

(8) A parent who incurs medical expenses shall provide written verification of the cost and payment of medical expenses to the other parent within 30 days of payment.

(9) In addition to any other sanctions provided by the court, a parent incurring medical expenses may be denied the right to receive credit for the expenses or to recover the other parent's share of the expenses if that parent fails to comply with Subsections (7) and (8).

Renumbered and Amended by Chapter 3, 2008 General Session
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Last revised: Friday, February 15, 2008

“(1) As used in the guidelines, “gross income” includes prospective income from any source, including earned and nonearned income sources which may include salaries, wages, commissions, royalties, bonuses, rents, gifts from anyone, prizes, dividends, severance pay, pensions, interest, trust income, alimony from previous marriages, annuities, capital gains . . .”

6 **Misrepresentation.** A second instance wherein Petitioner violates Utah Annotated Code § 8-45-7.5, Petitioner intones that disclosure of W2 income is the Court’s only requirement of Mr. Jacobsen “for the purposes of fixing child support”. Petitioner then vehemently argues that the Court must include “income from any source” and other in-kind resources available to Ms. Thomas.

7 **False.** Ms. Thomas suffered two strokes, as a direct result of Mr. Jacobsen’s physical abuse of Ms. Thomas prior to their divorce. His abuse of her included threatening her with a loaded gun and choking her until she passed out - on several occasions in the presence of their two children when they were young. Ms. Thomas is now disabled from the brain injuries caused by the strokes and is unable to work.

8 **False.** Prior to the divorce, Ms. Thomas’ income was NOT \$50,000 per year. In fact, and substantiated by evidence presented in court, Ms. Thomas’ average annual income for nine of the past ten years has been **\$12, 828.33**. As presented by counsel at the April 9, 2007 hearing, Ms. Thomas’ income prior to the divorce and for the subsequent five years was:

1997	\$ 25,832
1998	\$ 0
1999	\$ 0
2001	\$ 26,364
2002	\$ 20,495
2003	\$ 12,201
2004	\$ 25,197
2005	\$ 104
2006	\$ 5,262
9 - YEAR TOTAL INCOME	\$ 115,455

AVERAGE ANNUAL INCOME \$ 12,828.33 per year \$1069.03 per month

2006 TOTAL ANNUAL INCOME \$ 5,262

2006 AVERAGE MONTHLY INCOME \$ 438.50 per month

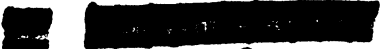
IRS filings from the 1997-2000 tax years prove that Mr. Jacobsen's income was over \$850,000 in that three-to-four year period. As substantiated with federal income documentation, and reiterated above, Ms. Thomas' income during that same time period was \$25,832. To repeat, **Mr. Jacobsen's income was \$850,000, Ms. Thomas' was \$25,000.**

The only aberration to Ms. Thomas' earnings history over the entire ten year period listed above was the year 2000, prior to the divorce, when Ms. Thomas worked part-time for her husband (Petitioner, Mr. Jacobsen). Mr. Jacobsen was the CEO of the company. He demanded that his wife work at least part-time, even though their children were two- and one-years old. Respondent wanted to be home full-time with the children, but their father insisted that she work for his business and the children be cared for by a surrogate caregiver. Mr. Jacobsen set Ms. Thomas' salary at \$52,201 for the year 2000. His intentions to financially harm Ms. Thomas and not provide for his children are obvious; he filed for divorce on January 19, 2001. He then used the artificially-high "salary" he paid to his wife the last year they were married to manipulate this Court into imputing Ms. Thomas' income at more than double the annual income she rightfully earned working full-time during the ten years prior.

It is apparent that Mr. Jacobsen set Ms. Thomas' salary at such a high level when she worked for him part-time in the year 2000 to maximize his personal financial gain and reduce his obligation to support his children when he divorced their mother. When Ms. Thomas expressed disagreement with the financial settlement that he demanded when he filed for divorce, Mr. Jacobsen assaulted her in such aggressive acts of domestic violence, that he caused her to suffer

two strokes. Mr. Jacobsen intentionally manipulated the legal system to shirk his obligations for child support for their two children and his duty to pay alimony to his wife, and continues to do so six years later in his misrepresentations to this Court.

9 **Misrepresentation.** The salient point in determining the best interests of the children is that at all times since the divorce on May 14, 2001, Ms. Thomas has provided a wonderful home and nurturing environment for their two children. In spite of the enormous discrepancies in their earnings history and potential, Mr. Jacobsen has not paid one penny of child support, nor alimony, since the divorce.

 Petitioner confuses his dollar figures, and is deceitful in the amounts he presents to the Court. His conclusion is not only erroneous, but also deceptive. It is difficult to ascertain any reliance upon the Utah Code Annotated 78-45-7.5(7) in his proposed findings to justify a monthly imputed income of \$9,000. Utah Code Annotated 78-45-7.5(7) specifically states with regard to imputed income:

(7) (a) Income may not be imputed to a parent unless the parent stipulates to the amount imputed, the parent defaults, or, in contested cases, a hearing is held and the judge in a judicial proceeding or the presiding officer in an administrative proceeding enters findings of fact as to the evidentiary basis for the imputation.

(b) If income is imputed to a parent, the income shall be based upon employment potential and probable earnings as derived from employment opportunities, work history, occupation qualifications, and prevailing earnings for persons of similar backgrounds in the community, or the median earning for persons in the same occupation in the same geographical area as found in the statistics maintained by the Bureau of Labor Statistics.

(c) If a parent has no recent work history or a parent's occupation is unknown, income shall be imputed at least at the federal minimum wage for a 40-hour work week. To impute a greater income, the judge in a judicial proceeding or the presiding officer in an administrative proceeding shall enter specific findings of fact as to the evidentiary basis for the imputation.

(d) Income may not be imputed if any of the following conditions exist and the condition is not of a temporary nature:

(i) the reasonable costs of child care for the parents' minor children approach or equal the amount of income the custodial parent can earn;

(ii) a parent is physically or mentally unable to earn minimum wage, (emphasis added)

Ms. Thomas fully complied with all stipulations of disclosure of income, gifts, and other resources to meet the Utah Child Support Obligation Calculation Guidelines. Counsel presented all relevant documents regarding Ms. Thomas' past, present, and potential earnings during the April 9, 2007 hearing.

Examples of Petitioner's erroneous representations to the court are his inclusion, "for the purposes of fixing child support," payments Ms. Thomas made for private school tuition, and legal fees that the Special Master and this Court ordered that Ms. Thomas pay. In the Utah Parenting Plan Ordered by the Honorable Judge Schofield, page 4, number 8, it is ordered that:

" . . . LaRue shall retain legal counsel on an on-going basis . . . "

Mr. Jacobsen, through his counsel, Mr. Green, attempts to manipulate the Court into penalizing Ms. Thomas for complying with its order, and then counting payments she made for private school tuition and to attorneys, as ordered by the Special Master and by the Court, a second time as "income." It is indeed Mr. Jacobsen's physical abuse and ongoing "scorched earth" policy with regards to relentless vexatious litigation against the mother of his children, that left Ms. Thomas with mounting legal and medical bills in the face of her disability, and no other alternative but to file bankruptcy.

[REDACTED] **[REDACTED]**. As stated, during the time period in question, Ms. Thomas paid more than \$6,940 directly to Mr. Jacobsen for the children and/or for private school tuition at Mr. Jacobsen's insistence that the children not attend public schools. The assertion that the "children receive no support from their mom" is ludicrous. Mr. Jacobsen evades the disclosure stipulations of the Utah Uniform Civil Liabilities for Support Act, and misrepresents the amounts spent and amounts available for the support of the two minor children. Mr. Jacobsen threatened to "burn

every penny” Ms. Thomas ever made by manipulating the courts to take their children away from her. He has succeeded in bankrupting his children’s mother and avoiding his legal and appropriate financial obligations to his own children.

12 **False.** As presented by Mr. Jacobsen, his monthly regular income since January of 2006 is \$7,500. Due to her disabilities from the two strokes from her ex-husband’s assaults, Ms. Thomas’ monthly income is zero. The parties’ combined incomes do not exceed “the chart”. In fact, Judge Schofield’s Ruling on Child Support specifically states: **“It is appropriate, particularly given that Ms. Thomas’ income is support from her friend/fiancé, that the court not exceed the chart in calculating child support.”** (Ruling, item 12.)

13 **Agreed.** Other than welfare from the Church of Jesus Christ of Latter Day Saints, and assistance paying rent and medical bills, Ms. Thomas has had no income from outside sources for over a year, since August of 2006.

14 **Agreed.** Since September of 2006, Ms. Thomas is completely disabled from the strokes that resulted from her ex-husband’s acts of violence against her. She is unable to work, and has had to rely on other sources of income for her subsistence.

15 **False.** Not supported by evidence.

16 **False.** Not supported by evidence.

17 **Misrepresentation.** As presented *extensively* by legal counsel at the April 9, 2007 hearing, because of the pervasive disability brought on by the brain damage from the strokes, no less than *eleven medical specialists* had been consulted prior to the hearing. Since each of them were in various phases of testing to reach a diagnosis, there was no quantitative medical evidence to produce at the time of the hearing. As evidenced with official documents from the federal department of Social Security Disability that were also presented at the hearing,

30-3-32. Parent-time – Intent – Policy – Definitions.

(1) It is the intent of the Legislature to promote parent-time at a level consistent with all parties' interests.

(2) (a) A court shall consider as primary the safety and well-being of the child and the parent who is the victim of domestic or family violence.

(b) Absent a showing by a preponderance of evidence of real harm or substantiated potential harm to the child:

(i) it is in the best interests of the child of divorcing, divorced, or adjudicated parents to have frequent, meaningful, and continuing access to each parent following separation or divorce;

(ii) each divorcing, separating, or adjudicated parent is entitled to and responsible for frequent, meaningful, and continuing access with his child consistent with the child's best interests; and

(iii) it is in the best interests of the child to have both parents actively involved in parenting the child.

(c) An order issued by a court pursuant to Title 78B, Chapter 7, Part 1, Cohabitant Abuse Act shall be considered evidence of real harm or substantiated potential harm to the child.

(3) For purposes of Sections **30-3-32** through **30-3-37**:

(a) "Child" means the child or children of divorcing, separating, or adjudicated parents.

(b) "Christmas school vacation" means the time period beginning on the evening the child gets out of school for the Christmas or winter school break until the evening before the child returns to school, except for Christmas Eve and Christmas Day.

(c) "Extended parent-time" means a period of parent-time other than a weekend, holiday as provided in Subsections **30-3-35**(2)(f) and (2)(g), religious holidays as provided in Subsections **30-3-33**(3) and (15), and "Christmas school vacation."

(d) "Virtual parent-time" means parent-time facilitated by tools such as telephone, email, instant messaging, video conferencing, and other wired or wireless technologies over the Internet or other communication media to supplement in-person visits between a noncustodial parent and a child or between a child and the custodial parent when the child is staying with the noncustodial parent. Virtual parent-time is designed to supplement, not replace, in-person parent-time.

(4) If a parent relocates because of an act of domestic violence or family violence by the other parent, the court shall make specific findings and orders with regards to the application of Section **30-3-37**.

Amended by Chapter 3, 2008 General Session

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Last revised. Friday, February 08, 2008

30-3-34. Best interests – Rebuttable presumption.

(1) If the parties are unable to agree on a parent-time schedule, the court may establish a parent-time schedule consistent with the best interests of the child.

(2) The advisory guidelines as provided in Section 30-3-33 and the parent-time schedule as provided in Sections 30-3-35 and 30-3-35.5 shall be presumed to be in the best interests of the child. The parent-time schedule shall be considered the minimum parent-time to which the noncustodial parent and the child shall be entitled unless a parent can establish otherwise by a preponderance of the evidence that more or less parent-time should be awarded based upon any of the following criteria:

(a) parent-time would endanger the child's physical health or significantly impair the child's emotional development;

(b) the distance between the residency of the child and the noncustodial parent;

(c) a substantiated or unfounded allegation of child abuse has been made;

(d) the lack of demonstrated parenting skills without safeguards to ensure the child's well-being during parent-time;

(e) the financial inability of the noncustodial parent to provide adequate food and shelter for the child during periods of parent-time;

(f) the preference of the child if the court determines the child to be of sufficient maturity;

(g) the incarceration of the noncustodial parent in a county jail, secure youth corrections facility, or an adult corrections facility;

(h) shared interests between the child and the noncustodial parent;

(i) the involvement of the noncustodial parent in the school, community, religious, or other related activities of the child;

(j) the availability of the noncustodial parent to care for the child when the custodial parent is unavailable to do so because of work or other circumstances;

(k) a substantial and chronic pattern of missing, canceling, or denying regularly scheduled parent-time;

(l) the minimal duration of and lack of significant bonding in the parents' relationship prior to the conception of the child;

(m) the parent-time schedule of siblings;

(n) the lack of reasonable alternatives to the needs of a nursing child; and

(o) any other criteria the court determines relevant to the best interests of the child.

(3) The court shall enter the reasons underlying its order for parent-time that:

(a) incorporates a parent-time schedule provided in Section 30-3-35 or 30-3-35.5; or

(b) provides more or less parent-time than a parent-time schedule provided in Section 30-3-35 or 30-3-35.5.

(4) Once the parent-time schedule has been established, the parties may not alter the schedule except by mutual consent of the parties or a court order.

Amended by Chapter 255, 2001 General Session

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Last revised. Friday, February 08, 2008

30-3-33. Advisory guidelines.

In addition to the parent-time schedules provided in Sections **30-3-35** and **30-3-35.5**, advisory guidelines are suggested to govern all parent-time arrangements between parents. These advisory guidelines include:

- (1) parent-time schedules mutually agreed upon by both parents are preferable to a court-imposed solution;
- (2) the parent-time schedule shall be utilized to maximize the continuity and stability of the child's life;
- (3) special consideration shall be given by each parent to make the child available to attend family functions including funerals, weddings, family reunions, religious holidays, important ceremonies, and other significant events in the life of the child or in the life of either parent which may inadvertently conflict with the parent-time schedule;
- (4) the responsibility for the pick up, delivery, and return of the child shall be determined by the court when the parent-time order is entered, and may be changed at any time a subsequent modification is made to the parent-time order;
- (5) if the noncustodial parent will be providing transportation, the custodial parent shall have the child ready for parent-time at the time the child is to be picked up and shall be present at the custodial home or shall make reasonable alternate arrangements to receive the child at the time the child is returned;
- (6) if the custodial parent will be transporting the child, the noncustodial parent shall be at the appointed place at the time the noncustodial parent is to receive the child, and have the child ready to be picked up at the appointed time and place, or have made reasonable alternate arrangements for the custodial parent to pick up the child;
- (7) regular school hours may not be interrupted for a school-age child for the exercise of parent-time by either parent;
- (8) the court may make alterations in the parent-time schedule to reasonably accommodate the work schedule of both parents and may increase the parent-time allowed to the noncustodial parent but shall not diminish the standardized parent-time provided in Sections **30-3-35** and **30-3-35.5**;
- (9) the court may make alterations in the parent-time schedule to reasonably accommodate the distance between the parties and the expense of exercising parent-time;
- (10) neither parent-time nor child support is to be withheld due to either parent's failure to comply with a court-ordered parent-time schedule;
- (11) the custodial parent shall notify the noncustodial parent within 24 hours of receiving notice of all significant school, social, sports, and community functions in which the child is participating or being honored, and the noncustodial parent shall be entitled to attend and participate fully;
- (12) the noncustodial parent shall have access directly to all school reports including preschool and daycare reports and medical records and shall be notified immediately by the custodial parent in the event of a medical emergency;
- (13) each parent shall provide the other with his current address and telephone number, email address, and other virtual parent-time access information within 24 hours of any change;
- (14) each parent shall permit and encourage, during reasonable hours, reasonable and uncensored communications with the child, in the form of mail privileges and virtual parent-time if the equipment is reasonably available, provided that if the parties cannot agree on whether the

equipment is reasonably available, the court shall decide whether the equipment for virtual parent-time is reasonably available, taking into consideration:

- (a) the best interests of the child;
 - (b) each parent's ability to handle any additional expenses for virtual parent-time; and
 - (c) any other factors the court considers material;
- (15) parental care shall be presumed to be better care for the child than surrogate care and the court

shall encourage the parties to cooperate in allowing the noncustodial parent, if willing and able, to provide child care;

(16) each parent shall provide all surrogate care providers with the name, current address, and telephone number of the other parent and shall provide the noncustodial parent with the name, current address, and telephone number of all surrogate care providers unless the court for good cause orders otherwise; and

(17) each parent shall be entitled to an equal division of major religious holidays celebrated by the parents, and the parent who celebrates a religious holiday that the other parent does not celebrate shall have the right to be together with the child on the religious holiday.

Amended by Chapter 321, 2004 General Session

Amended by Chapter 132, 2004 General Session

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[Sections in this Chapter](#)[Chapters in this Title](#)[All Titles](#)[Legislative Home Page](#)

Last revised: Friday, February 08, 2008

30-3-35. Minimum schedule for parent-time for children 5 to 18 years of age.

(1) The parent-time schedule in this section applies to children 5 to 18 years of age.

(2) If the parties do not agree to a parent-time schedule, the following schedule shall be considered the minimum parent-time to which the noncustodial parent and the child shall be entitled:

(a) (i) one weekday evening to be specified by the noncustodial parent or the court from 5:30 p.m. until 8:30 p.m.; or

(ii) at the election of the noncustodial parent, one weekday from the time the child's school is regularly dismissed until 8:30 p.m., unless the court directs the application of Subsection (2)(a)(i);

(b) (i) alternating weekends beginning on the first weekend after the entry of the decree from 6 p.m. on Friday until 7 p.m. on Sunday continuing each year; or

(ii) at the election of the noncustodial parent, from the time the child's school is regularly dismissed on Friday until 7 p.m. on Sunday, unless the court directs the application of Subsection (2)(b)(i);

(c) holidays take precedence over the weekend parent-time, and changes may not be made to the regular rotation of the alternating weekend parent-time schedule;

(d) if a holiday falls on a regularly scheduled school day, the noncustodial parent shall be responsible for the child's attendance at school for that school day;

(e) (i) if a holiday falls on a weekend or on a Friday or Monday and the total holiday period extends beyond that time so that the child is free from school and the parent is free from work, the noncustodial parent shall be entitled to this lengthier holiday period; or

(ii) at the election of the noncustodial parent, parent-time over a scheduled holiday weekend may begin from the time the child's school is regularly dismissed at the beginning of the holiday weekend until 7 p.m. on the last day of the holiday weekend;

(f) in years ending in an odd number, the noncustodial parent is entitled to the following holidays:

(i) child's birthday on the day before or after the actual birthdate beginning at 3 p.m. until 9 p.m.; at the discretion of the noncustodial parent, he may take other siblings along for the birthday;

(ii) Martin Luther King, Jr. beginning 6 p.m. on Friday until Monday at 7 p.m. unless the holiday extends for a lengthier period of time to which the noncustodial parent is completely entitled;

(iii) spring break beginning at 6 p.m. on the day school lets out for the holiday until 7 p.m. on the Sunday before school resumes;

(iv) Memorial Day beginning 6 p.m. on Friday until Monday at 7 p.m., unless the holiday extends for a lengthier period of time to which the noncustodial parent is completely entitled;

(v) July 24th beginning 6 p.m. on the day before the holiday until 11 p.m. on the holiday;

(vi) Halloween on October 31 or the day Halloween is traditionally celebrated in the local community from after school until 9 p.m. if on a school day, or from 4 p.m. until 9 p.m.;

(vii) Veteran's Day holiday beginning 6 p.m. the day before the holiday until 7 p.m. on the holiday; and

(viii) the first portion of the Christmas school vacation as defined in Subsection 30-3-32(3)(b) plus Christmas Eve and Christmas Day until 1 p.m., so long as the entire holiday is equally divided;

(g) in years ending in an even number, the noncustodial parent is entitled to the following holidays:

(i) child's birthday on actual birthdate beginning at 3 p.m. until 9 p.m.; at the discretion of the noncustodial parent, he may take other siblings along for the birthday;

(ii) Washington and Lincoln Day beginning at 6 p.m. on Friday until 7 p.m. on Monday unless the holiday extends for a lengthier period of time to which the noncustodial parent is completely entitled;

(iii) July 4th beginning at 6 p.m. the day before the holiday until 11 p.m. on the holiday;

(iv) Labor Day beginning at 6 p.m. on Friday until Monday at 7 p.m. unless the holiday extends for a lengthier period of time to which the noncustodial parent is completely entitled;

(v) the fall school break, if applicable, commonly known as U.E.A. weekend beginning at 6 p.m. on Wednesday until Sunday at 7 p.m. unless the holiday extends for a lengthier period of time to which the noncustodial parent is completely entitled;

(vi) Columbus Day beginning at 6 p m the day before the holiday until 7 p m on the holiday,
(vii) Thanksgiving holiday beginning Wednesday at 7 p m until Sunday at 7 p m , and
(viii) the second portion of the Christmas school vacation, including New Year's Day, as defined in Subsection 30-3-32(3)(b) plus Christmas day beginning at 1 p m until 9 p m , so long as the entire Christmas holiday is equally divided,

(h) the custodial parent is entitled to the odd year holidays in even years and the even year holidays in odd years,

(i) Father's Day shall be spent with the natural or adoptive father every year beginning at 9 a m until 7 p m on the holiday,

(j) Mother's Day shall be spent with the natural or adoptive mother every year beginning at 9 a m until 7 p m on the holiday,

(k) extended parent-time with the noncustodial parent may be

(i) up to four weeks consecutive at the option of the noncustodial parent,

(ii) two weeks shall be uninterrupted time for the noncustodial parent, and

(iii) the remaining two weeks shall be subject to parent-time for the custodial parent consistent with these guidelines,

(l) the custodial parent shall have an identical two-week period of uninterrupted time during the children's summer vacation from school for purposes of vacation,

(m) if the child is enrolled in year-round school, the noncustodial parent's extended parent-time shall be 1/2 of the vacation time for year-round school breaks, provided the custodial parent has holiday and phone visits,

(n) notification of extended parent-time or vacation weeks with the child shall be provided at least 30 days in advance to the other parent, and

(o) telephone contact and other virtual parent-time, if the equipment is reasonably available, shall be at reasonable hours and for reasonable duration, provided that if the parties cannot agree on whether the equipment is reasonably available, the court shall decide whether the equipment for virtual parent-time is reasonably available, taking into consideration

(i) the best interests of the child,

(ii) each parent's ability to handle any additional expenses for virtual parent-time, and

(iii) any other factors the court considers material

(3) Any elections required to be made in accordance with this section by either parent

concerning parent-time shall be made a part of the decree and made a part of the parent-time order

(4) Notwithstanding Subsection (2)(e)(i), the Halloween holiday may not be extended beyond the hours designated in Subsection (2)(f)(vi)

Amended by Chapter 302, 2007 General Session

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Last revised Friday, February 08, 2008

30-3-36. Special circumstances.

(1) When parent-time has not taken place for an extended period of time and the child lacks an appropriate bond with the noncustodial parent, both parents shall consider the possible adverse effects upon the child and gradually reintroduce an appropriate parent-time plan for the noncustodial parent.

(2) For emergency purposes, whenever the child travels with either parent, all of the following will be provided to the other parent:

(a) an itinerary of travel dates;

(b) destinations;

(c) places where the child or traveling parent can be reached; and

(d) the name and telephone number of an available third person who would be knowledgeable of the child's location.

(3) Unchaperoned travel of a child under the age of five years is not recommended.

Amended by Chapter 255, 2001 General Session

Download Code Section [Zipped](#) WP 6/7/8 [30_03048.ZIP](#) 2,057 Bytes

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Last revised: Friday, February 08, 2008

30-3-10. Custody of children in case of separation or divorce – Custody consideration.

(1) If a husband and wife having minor children are separated, or their marriage is declared void or dissolved, the court shall make an order for the future care and custody of the minor children as it considers appropriate.

(a) In determining any form of custody, the court shall consider the best interests of the child and, among other factors the court finds relevant, the following:

(i) the past conduct and demonstrated moral standards of each of the parties;

(ii) which parent is most likely to act in the best interest of the child, including allowing the child frequent and continuing contact with the noncustodial parent;

(iii) the extent of bonding between the parent and child, meaning the depth, quality, and nature of the relationship between a parent and child; and

(iv) those factors outlined in Section 30-3-10.2.

(b) The court shall, in every case, consider joint custody but may award any form of custody which is determined to be in the best interest of the child.

(c) The children may not be required by either party to testify unless the trier of fact determines that extenuating circumstances exist that would necessitate the testimony of the children be heard and there is no other reasonable method to present their testimony.

(d) The court may inquire of the children and take into consideration the children's desires regarding future custody or parent-time schedules, but the expressed desires are not controlling and the court may determine the children's custody or parent-time otherwise. The desires of a child 16 years of age or older shall be given added weight, but is not the single controlling factor.

(e) If interviews with the children are conducted by the court pursuant to Subsection (1)(d), they shall be conducted by the judge in camera. The prior consent of the parties may be obtained but is not necessary if the court finds that an interview with the children is the only method to ascertain the child's desires regarding custody.

(2) In awarding custody, the court shall consider, among other factors the court finds relevant, which parent is most likely to act in the best interests of the child, including allowing the child frequent and continuing contact with the noncustodial parent as the court finds appropriate.

(3) If the court finds that one parent does not desire custody of the child, or has attempted to permanently relinquish custody to a third party, it shall take that evidence into consideration in determining whether to award custody to the other parent.

(4) (a) Except as provided in Subsection (4)(b), a court may not discriminate against a parent due to a disability, as defined in Section 57-21-2, in awarding custody or determining whether a substantial change has occurred for the purpose of modifying an award of custody.

(b) If a court takes a parent's disability into account in awarding custody or determining whether a substantial change has occurred for the purpose of modifying an award of custody, the parent with a disability may rebut any evidence, presumption, or inference arising from the disability by showing that:

(i) the disability does not significantly or substantially inhibit the parent's ability to provide for the physical and emotional needs of the child at issue; or

(ii) the parent with a disability has sufficient human, monetary, or other resources available to supplement the parent's ability to provide for the physical and emotional needs of the

child at issue.

(c) Nothing in this section may be construed to apply to adoption proceedings under Title 78B, Chapter 6, Part 1, Utah Adoption Act.

(5) This section establishes neither a preference nor a presumption for or against joint legal custody, joint physical custody, or sole custody, but allows the court and the family the widest discretion to choose a parenting plan that is in the best interest of the child.

Amended by Chapter 3, 2008 General Session

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Last revised: Friday, February 08, 2008

30-3-10.10. Parenting plan – Domestic violence.

(1) In any proceeding regarding a parenting plan, the court shall consider evidence of domestic violence, if presented.

(2) If there is a protective order, civil stalking injunction, or the court finds that a parent has committed domestic violence, the court shall consider the impact of domestic violence in awarding parent-time, and make specific findings regarding the award of parent-time.

(3) If the court orders parent-time and a protective order or civil stalking injunction is still in place, it shall consider whether to order the parents to conduct parent-time pick-up and transfer through a third party. The parent who is the stated victim in the order or injunction may submit to the court, and the court shall consider, the name of a person considered suitable to act as the third party.

(4) If the court orders the parents to conduct parent-time through a third party, the parenting plan shall specify the time, day, place, manner, and the third party to be used to implement the exchange.

Enacted by Chapter 287, 2006 General Session

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Last revised: Friday, February 08, 2008

30-3-5.2. Allegations of child abuse or child sexual abuse – Investigation.

When, in any divorce proceeding or upon a request for modification of a divorce decree, an allegation of child abuse or child sexual abuse is made, implicating either party, the court, after making an inquiry, may order that an investigation be conducted by the Division of Child and Family Services within the Department of Human Services in accordance with Title 62A, Chapter 4a. A final award of custody or parent-time may not be rendered until a report on that investigation, consistent with Section **62A-4a-412**, is received by the court. That investigation shall be conducted by the Division of Child and Family Services within 30 days of the court's notice and request for an investigation. In reviewing this report, the court shall comply with Section **78A-2-227**.

Amended by Chapter 3, 2008 General Session

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Last revised Friday, February 08, 2008

Rule 4-903. Uniform custody evaluations.

Intent:

To establish uniform guidelines for the preparation of custody evaluations.

Applicability:

This rule shall apply to the district and juvenile courts.

Statement of the Rule:

(1) Custody evaluations shall be performed by persons with the following minimum qualifications:

(1)(A) Social workers who hold the designation of Licensed Clinical Social Worker or equivalent license by the state in which they practice may perform custody evaluations within the scope of their licensure.

(1)(B) Doctoral level psychologists who are licensed by the state in which they practice may perform custody evaluations within the scope of their licensure.

(1)(C) Physicians who are board certified in psychiatry and are licensed by the state in which they practice may perform custody evaluations within the scope of their licensure.

(1)(D) Marriage and family therapists who hold the designation of Licensed Marriage and Family Therapist (Masters level minimum) or equivalent license by the state in which they practice may perform custody evaluations within the scope of their licensure.

(2) Every motion or stipulation for the performance of a custody evaluation shall include:

(2)(A) the name, address, and telephone number of each evaluator nominated, or the evaluator agreed upon;

(2)(B) the anticipated dates of commencement and completion of the evaluation and the estimated cost of the evaluation;

(2)(C) specific factors, if any, to be addressed in the evaluation.

(3) Every order requiring the performance of a custody evaluation shall:

(3)(A) require the parties to cooperate as requested by the evaluator;

(3)(B) restrict disclosure of the evaluation's findings or recommendations and privileged information obtained except in the context of the subject litigation or other proceedings as deemed necessary by the court;

(3)(C) assign responsibility for payment;

(3)(D) specify dates for commencement and completion of the evaluation;

(3)(E) specify any additional factors to be addressed in the evaluation;

(3)(F) require the evaluator to provide written notice to the court, counsel and parties within five business days of completion (of information-gathering) or termination of the evaluation and, if terminated, the reason;

(3)(G) require counsel or parties to schedule a settlement conference with the court and the evaluator within 45 days of notice of completion or termination unless otherwise directed by the court so that evaluator may issue a verbal report; and

(3)(H) require that any party wanting a written custody evaluation to be prepared give written notice to the evaluator after the settlement conference.

(4) In divorce cases where custody is at issue, one evaluator may be appointed by the court to conduct an impartial and objective assessment of the parties and submit a written report to the court. When one of the prospective custodians resides outside of the jurisdiction of the court two individual evaluators may be appointed. In cases in which two evaluators are appointed, the court will designate a primary evaluator. The evaluators must confer prior to the commencement of the evaluation to establish appropriate guidelines and criteria for the evaluation and shall submit only one joint report to the court.

(5) The purpose of the custody evaluation will be to provide the court with information it can use to make decisions regarding custody and parenting time arrangements that are in the child's best interest. This is accomplished by assessing the prospective custodians' capacity to parent, the developmental, emotional, and physical needs of the child, and the fit between each prospective custodian and child. Unless otherwise specified in the order, evaluators must consider and respond to each of the following factors:

(5)(A) the child's preference;

(5)(B) the benefit of keeping siblings together;

(5)(C) the relative strength of the child's bond with one or both of the prospective custodians;

(5)(D) the general interest in continuing previously determined custody arrangements where the child is happy and well adjusted;

(5)(E) factors relating to the prospective custodians' character or status or their capacity or willingness to function as parents, including:

(5)(E)(i) moral character and emotional stability;

(5)(E)(ii) duration and depth of desire for custody;

(5)(E)(iii) ability to provide personal rather than surrogate care;

(5)(E)(iv) significant impairment of ability to function as a parent through drug abuse, excessive drinking or other causes;

(5)(E)(v) reasons for having relinquished custody in the past;

(5)(E)(vi) religious compatibility with the child;

(5)(E)(vii) kinship, including in extraordinary circumstances stepparent status;

(5)(E)(viii) financial condition; and

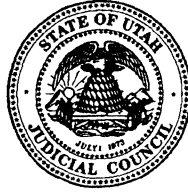
(5)(E)(ix) evidence of abuse of the subject child, another child, or spouse; and

(5)(F) any other factors deemed important by the evaluator, the parties, or the court.

(6) In cases in which specific areas of concern exist such as domestic violence, sexual abuse, substance abuse, mental illness, and the evaluator does not possess specialized training or experience in the area(s) of concern, the evaluator shall consult with those having specialized training or experience. The assessment shall take into consideration the potential danger posed to the child's custodian and the child(ren).

(7) In cases in which psychological testing is employed as a component of the evaluation, it shall be conducted by a licensed psychologist who is trained in the use of the tests administered, and adheres to the ethical standards for the use and interpretation of psychological tests in the jurisdiction in which he or she is licensed to practice. If psychological testing is conducted with adults and/or children, it shall be done with knowledge of the limits of the testing and should be viewed within the context of information gained from clinical interviews and other available data. Conclusions drawn from psychological testing should take into account the inherent stresses associated with divorce and custody disputes

Advisory Committee Note. The qualifications enumerated in this rule are required for the performance of a custody evaluation. However, if the qualifications are met, a practitioner from another state with a different title will not be barred from performing a custody evaluation.



Administrative Office of the Courts

Chief Justice Christine M. Durham
Utah Supreme Court
Chair, Utah Judicial Council

MEMORANDUM

Daniel J. Becker
State Court Administrator
Myron K. March
Deputy Court Administrator

To: Judges, Commissioners, Attorneys, and Custody Evaluators
From: Alicia Davis, Staff, Standing Committee on Children and Family Law
Date: March 31, 2003
Re: New Custody Evaluation Procedures

I. Introduction

Noting that custody evaluations are of varying quality, that high quality evaluations can be costly, and that waiting for evaluations stalls the legal process, the Judicial Council charged the Standing Committee on Children and Family Law to "improve the quality and timeliness of custody evaluations." Having studied the issue in depth, the Standing Committee now presents substantial revisions to Rule 4-903, "Custody Evaluations" of the Code of Judicial Administration, as well as these accompanying forms. This memo explains the process envisioned by the forms, and details the changes made to the rules.

II. Contemplated Custody Evaluation Process

Custody Evaluation forms have been approved by the Supreme Court and Judicial Council to reduce the need for extensive, formally-prepared evaluations, and to make custody considerations more accessible to the commissioner or judge on the bench. **Any custody evaluation submitted to the court must address the topics noted on these forms.**

The settlement conference procedure is designed to (1) reduce the time and expense of preparing a written report in cases where this might not be needed, (2) disclose the custody evaluation findings in such a way that is less adversarial and less damaging to family relationships, and (3) allow the parties a final opportunity to participate in the fashioning of an agreement. It allows the parties to benefit from the insights of the evaluator while still experiencing a sense of control over the decisions made about their children. Through greater participation of the parties, it is hoped that future conflict will be reduced. If no settlement is reached at or soon after this conference, a written evaluation would be prepared and a court date set. The "Settlement Conference Report" form sets forth the topics to be addressed at the settlement conference. Toward the end of the settlement conference, and depending on the wishes of the commissioner or judge, the evaluator may issue verbal custody recommendations.

The "Table of Contents" form is to be used if a formal, written custody evaluation is requested by the parties. It has been designed to allow the judge or commissioner to refer to pertinent

**The mission of the Utah judiciary is to provide the people an open, fair,
Efficient, and independent system for the advancement of justice under the law.**

information quickly while on the bench. It also serves as a guide to evaluators and ensures that the written evaluation includes all of the information listed on the forms.

Available at www.utcourts.gov/resources/forms, both forms can be downloaded, and expanded at the evaluator's preference.

The custody evaluation procedure shall be as follows:

1. Evaluator receives the court order of appointment from one of the attorneys and is notified of the web site where the new rules, forms, and custody evaluation procedure can be downloaded.
2. Evaluator commences and completes information-gathering component of the evaluation and notifies the parties or their counsel within five business days of completion of the information-gathering process.
3. Counsel arranges a Settlement Conference including the commissioner or judge, the evaluator, all counsel (including the GAL), and the parties (except children) within 45 days of notice from the evaluator that the information-gathering is complete.
4. The evaluator completes the identifying information on the "Settlement Conference Report" and makes written notations of topics to be covered verbally concerning "Summary of Children's Needs" and "Summary of Each Parent's and Stepparent's Ability and Propensity to Provide for these Children's Needs." The evaluator does not enter notations for "Rule 4-903 Considerations" or "Legal and Physical Custody Recommendations," but should be prepared to verbally present his/her conclusions. The commissioner or judge will determine if custody recommendations will be issued.
5. During the Settlement Conference, the Commissioner/Judge advises the parties of the process and lets the evaluator know if custody recommendations are to be presented. The evaluator distributes copies of the partially-completed "Settlement Conference Report" for further individual note-taking. After the evaluator presents his/her findings, the counsel and parties determine if settlement is possible, either at that time or after further negotiation. At the conclusion of the meeting, the Commissioner/Judge (a) issues restrictions on what the children are told about the findings and by whom, and (b) restricts distribution of the "Settlement Conference Report" and asks the parties' counsel to retain their clients' copies.
6. Evaluator receives, preferably within 10 days after the conference, (a) a request from any counsel/party in the case that a written report is necessary or (b) notice from counsel that a settlement has been reached and the evaluation case can be closed. If a report is necessary, any additional retainer needed is collected from the parties in the same proportion stated in the order. The evaluator completes the report and completes the "Table of Contents", which is placed on top of the report and forwarded to the court and to all counsel. If no report is needed, any retainer held for the writing of the report is returned to the parties and the case is closed.

III. Amended Rule 4-903

Effective April 1, 2003, Code of Judicial Administration Rule 4-903 has been amended to provide 1) who is competent to perform custody evaluations, 2) inclusions on motions or stipulations for the performance of custody evaluations, and 3) expanded consideration in cases in which special concerns are at issue, like domestic violence, or psychological testing.

Changes to Rule 4-903 require social workers to have a master's degree in social work and be licensed as a 'Licensed Clinical Social Worker' (LSCW) to perform custody evaluations. Social workers with lesser degrees are not qualified. 'Licensed Marriage and Family Therapists' (LMFT) are included in Rule 4-903 as those professionals qualified to perform custody evaluations. The qualifications enumerated in this rule are required for the performance of a custody evaluation. However, if the qualifications are met, a practitioner from another state with a different title will not be barred from performing a custody evaluation. In cases in which two evaluators are appointed, one in Utah and the other out-of-state, the out-of-state evaluator will be expected to meet the same criteria as the evaluator who is licensed in Utah.

To assure timely submission of evaluations, 4-903 now requires that the evaluation state the "anticipated dates of commencement and completion of the evaluation and the estimated cost of the evaluation." This information, as well as assignment of cost, will be included in the court's order for the evaluation. Including the completion date in the order will require greater timeliness from the parties.

The order shall also set forth "special" factors requiring evaluation, such as domestic violence, substance abuse, sexual abuse or mental illness. The subcommittee considered actual examples in which an evaluator's lack of experience or expertise in a particular area prevented the evaluator from assessing the risk inherent in a particular family dynamic. The amendment also recognizes that psychological testing should be dispositive in an evaluation, but should be considered within the context of all of the available data, and should take into account the inherent stresses associated with divorce and custody disputes. The amended rule can be found at www.utcourts.gov/resources/rules/ucja/index.htm.

These procedures have been considered carefully by the Standing Committee on Children and Family Law, and by the Judicial Council and Supreme Court. By addressing minimum qualifications, deadlines for completion, and addressing the special considerations of particular cases, the amendments intend to address concerns expressed with the current processes, and to alleviate those concerns.

Temporary Civil Stalking Injunction

Ex Parte Order



Case Number:

060403495

Court: UT Fourth Judicial District

County: UTAH

State: Utah

Petitioner (protected person):

MINNIE LARUE THOMAS

First Middle Last

Address and phone # (to keep private, leave blank):

1885 E HARVARD DR

Street

SALT LAKE CITY UT 84603

City

State

Zip

Phone #: 801.787.8887

Petitioner's attorney (if any):

Name

Phone #

Other people protected by this order:

Name

Age

Relationship
to Petitioner

Respondent (person Petitioner is protected from):

ARNE JOHN JACOBSEN, II

First Middle Last

Other names used:

Address: 591W 11100N

Street

HIGHLAND UT 84603

City

State

Zip

Warning! ☒ Weapon Involved

Describe Respondent:

Sex	Race	Date of Birth	Ht.	Wt.
M	W	9/22/1960	5'10"	165
Eyes	Hair	Social Security # (only the last 4 numbers)		
Blue	White (Blond)	516-74-5818		
Distinguishing features (like scars, tattoos, limp, etc.):				
Driver's license issued by (State): UT Expires: ?				
Best time and place to find Respondent: (Time) after 6:00 pm (Place): home address				

Findings: The court has reviewed the Petitioner's Request for Stalking Injunction, finds there is reason to believe it has jurisdiction over the parties and this case, that stalking has occurred, and that the Respondent is the stalker. The Respondent has the right to a hearing, if he or she asks for it.

(Utah Code §77-3a-106.5, §77-3a-101.)

The Court orders the Respondent to obey all orders initialed on this form.

☐ You must not contact or stalk the Petitioner.

This order ends 3 years
after it is served.

Warnings to the Respondent:

- Attention: This is an official court order. No one except the court can change it. If you disobey this order, the court may find you in contempt. You may also be arrested and prosecuted for the crime of stalking and any other crime you may have committed in disobeying this order.
- If you do not agree with this order, you can ask for a hearing to tell your side. Your request must be in writing, and must be filed at the court listed below within 10 days of the date you were served with this order. If you do not ask for a hearing within 10 days, this order will last for 3 years after it is served. You can still ask for a hearing after 10 days, but then you must persuade the court the injunction is not needed.
- Court address to ask for a hearing: 4TH DISTRICT COURT 125N 100W Provo 84601
- This order is valid in all U.S. states and territories, the District of Columbia, and tribal lands. If you go to another U.S. state, territory or tribal land to violate this order, a federal judge can send you to prison.
- No guns or firearms!** It is a federal crime for you to have, possess, transport, ship, or receive any firearm or ammunition, including hunting weapons, while this stalking injunction is in effect.

Violence Against Women Act of 1994 18 U.S.C. §§ 2265, 2262, 18 U.S.C. § 922(g)(8)

To: (Respondent's name): ARNE JOHN JACOBSEN, II

Obey all orders initialed by the judge.

Violation of these orders is a criminal Class A Misdemeanor, punishable by up to one year in jail and a fine. A second or subsequent violation can result in more severe penalties.

1 Personal Conduct Order

Do not stalk the Petitioner. This means you must not follow, threaten, annoy, harass, or cause distress to the Petitioner. For a legal definition of stalking, see Utah Code sections 77-3a-106.5 and 77-3a-101.

2 No Contact Order

Do not contact, phone, mail, e-mail, or communicate in any way with the Petitioner and any person listed below, either directly or indirectly.

Other people you must not contact: My bishop or other ward members of Valecrest 2nd ward, Bonnerville Stake. This is my

3 Stay Away Order

Stay away from:

- ☐ a. The Petitioner's current or future: ☒ Vehicle ☒ Job ☒ School ☒ Home, premises and property (list current addresses below):

Home address: 1885E HARVARD AVE SUITE 8408

Previous home address: 1107IN 5020W HIGHLAND, UT 84003

School address: UNIVERSITY OF UTAH

Describe vehicle: ① 2003 VW Passat (white) ② 1998 Dodge Grand

- ☐ b. Other (specify): Caravan (Red)

4 Other Orders (List below):

DO NOT ATTEMPT TO DISPARAGE OR DISCREDIT DUE TO HER LDS BISHOP, HOME TEACHER, THE CHILDREN'S TEACHERS OR OTHERS (eg. cub scout

Date: 1/21/04 Time: 1:15 ☐ a.m. ☐ p.m.

Judge's Name: Steven L. Hansen

[Signature]
Judge's Signature

leaders), WARD MISSION LEADER, OR OTHERS

Disability Accommodations and Interpreter Services

Assistive listening systems, sign language and oral language interpreter services are available at no charge in stalking proceedings. Contact the clerk's office at least 5 days before your hearing.

Temporary Civil Stalking Injunction Ex Parte Order



Case Number: 060403496
Court: UT FOURTH JUDICIAL DISTRICT
County: UTAH State: Utah

COMPLETED

Petitioner (protected person):

MINNIE LARUE THOMAS

First Middle Last

Address and phone # (to keep private, leave blank):

1885E HARVARD DR

Street

SALT LAKE CITY UT 84003

City

State

Zip

Phone #: 801 787. 8887

Petitioner's attorney (if any):

Name

Phone #

Respondent (person Petitioner is protected from):

SUANNE HOFFMAN JACOBSEN

First Middle Last

Other names used:

Address: 5191W 11100N

Street

HIGHLAND

City

UT

State

Zip

84003

Warning!



Weapon Involved

Describe Respondent:

Sex	Race	Date of Birth	Ht	Wt
F	W	?	5'2"	155 lbs
Eyes	Hair	Social Security # (only the last 4 numbers)		
dirty blue	brown	?		
Distinguishing features (like scars, tattoos, limp, etc.):				
?				
Driver's license issued by (State):			Expires: ?	
UT			?	
Best time and place to find Respondent: (Time) after 6:00 pm (Place): home address				

Findings: The court has reviewed the Petitioner's Request for Stalking Injunction, finds there is reason to believe it has jurisdiction over the parties and this case, that stalking has occurred, and that the Respondent is the stalker. The Respondent has the right to a hearing, if he or she asks for it.

(Utah Code §77-3a-106.5, §77-3a-101)

The Court orders the Respondent to obey all orders initialed on this form.



You must not contact or stalk the Petitioner.

This order ends 3 years
after it is served.

Warnings to the Respondent:

- Attention: This is an official court order. No one except the court can change it. If you disobey this order, the court may find you in contempt. You may also be arrested and prosecuted for the crime of stalking and any other crime you may have committed in disobeying this order
- If you do not agree with this order, you can ask for a hearing to tell your side. Your request must be in writing, and must be filed at the court listed below within 10 days of the date you were served with this order. If you do not ask for a hearing within 10 days, this order will last for 3 years after it is served. You can still ask for a hearing after 10 days, but then you must persuade the court the injunction is not needed.
- Court address to ask for a hearing: 4TH DISTRICT COURT 125N 100W Provo 84601
- This order is valid in all U.S. states and territories, the District of Columbia, and tribal lands. If you go to another U.S. state, territory or tribal land to violate this order, a federal judge can send you to prison.
- **No guns or firearms!** It is a federal crime for you to have, possess, transport, ship, or receive any firearm or ammunition, including hunting weapons, while this stalking injunction is in effect.

Violence Against Women Act of 1994, 18 U.S.C. §§ 2265, 2262, 18 U.S.C. § 922(g)(8)

To: (Respondent's name): SUANNE HOFFMAN JACOBSEN

Obey all orders initialed by the judge.

Violation of these orders is a criminal Class A Misdemeanor, punishable by up to one year in jail and a fine. A second or subsequent violation can result in more severe penalties.

1 ☒ Personal Conduct Order

Do not stalk the Petitioner. This means you must not follow, threaten, annoy, harass, or cause distress to the Petitioner. For a legal definition of stalking, see Utah Code, sections 77-3a-106.5 and 77-3a-101.

2 ☒ No Contact Order

Do not contact, phone, mail, e-mail, or communicate in any way with the Petitioner and any person listed below, either directly or indirectly.

Other people you must not contact: My bishop or other ward members of Valecrest 2nd ward, Bonnerville Stake. This is my

3 ☒ Stay Away Order

Stay away from:

- ☐ a. The Petitioner's current or future: ☒ Vehicle ☒ Job ☒ School ☒ Home, premises and property (list current addresses below):

Home address: 18856 HARVARD AVE SEC 8408

Previous home (for sale) work address: 11071N 5020W HIGHLAND, UT 84003

School address: UNIVERSITY OF UTAH

Describe vehicle: ① 2003 VW Passat (white) ② 1998 Dodge Grand

- ☐ b. Other (specify): Caravan (Red)

4 ☒ Other Orders (List below):

DO NOT ATTEMPT TO DISPARAGE OR DISCREDIT LADUE TO HER LDS BISHOP, HOME TEACHER,

THE CHILDREN'S TEACHERS OR OTHERS (eg. cub scout leaders), WARD MISSION LEADER, OR OTHERS

Date: 12/21/06 Time: 11:45 ☐ a.m. ☒ p.m.

Judge's Name: Steven L. Hansen

[Signature]
Judge's Signature

Disability Accommodations and Interpreter Services

Assistive listening systems, sign language and oral language interpreter services are available at no charge in stalking proceedings. Contact the clerk's office at least 5 days before your hearing.

Has the Respondent used weapons or been violent in the past? ☒ Yes ☐ No ☐ Don't know

Is the Respondent a law enforcement officer, government investigator,
or licensed private investigator? ☐ Yes ☒ No ☐ Don't know

4 Describe the stalking below:

- a. When and where did the stalking events happen? (Attach additional pages if necessary.)

1st stalking event: and 2nd

When: November 28 + 29, 2006

Where: Idaho Falls, IDAHO

3rd Stalking event:

When: July 2005

4th - July 2003 and September 2002

Where: Atlanta, Georgia

Raleigh, NC

- b. Who did you report the stalking to (if anyone)? my atty; Special Master Sandra Dredge;

- c. List names of all people who witnessed the stalking: Pocatello, ID Domestic Violence

my attorney Gary Weight

Alliance

police men of Idaho Falls City PD

- d. List any evidence you have of the stalking, like transcripts, audiotape, police reports, photos, sworn statements from witnesses (affidavits), etc. You must attach at least one of these to this form.

> police report from Idaho Falls City Police

> evaluation of my children from Eastern Idaho
Regional Medical Center

- e. Describe what the stalker did and why it made you or your family member feel emotionally distressed or afraid of being physically harmed, and why it would have made a reasonable person feel emotionally distressed or afraid of being physically harmed:

> please refer to evaluation of my children from Eastern Idaho

> my ex-husband has stalked me several times when our children and I have been in other states. He and his present wife have approached me and verbally accosted me and threatened me several times in Utah, Montana, and North Carolina

- f. Other facts: Recent threats.

1st May 2005

investigated by DCFS. Social worker investigated,

determined verbal and psychological abuse did occur

- 2nd November 2006 Special Master Sandra Dredge's office

☒ Check here if you need more space. Ask the clerk for the "Describe Stalking" form. Fill it out and attach it to this form.

5 Other Court Cases

a. Are there other Court orders to the Respondent about stalking? ☐ Yes ☐ No

(If Yes, fill out below and attach a copy of the court order.)

b. Have you or the Respondent ever been involved in any other court case involving either of you?

☒ Yes ☐ No (If yes, list ALL court cases below):

Type of Case	County and State	Court Case # (NOT the police report #)	Person involved	Did the judge make an order?
Divorce, Child Custody	Utah Cnty, UT	several	<input checked="" type="checkbox"/> You <input checked="" type="checkbox"/> Respondent	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
	Missoula, MT	several	<input checked="" type="checkbox"/> You <input checked="" type="checkbox"/> Respondent	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
			<input type="checkbox"/> You <input type="checkbox"/> Respondent	<input type="checkbox"/> Yes <input type="checkbox"/> No

RESPONDENT IS MY EX-HUSBAND. WE HAVE TWO CHILDREN,
Please, Judge, I am asking you to:

☒ Make the orders I have checked below,

A SON THAT IS NOW 9 y old, &

6 ☒ Personal Conduct

Order the Respondent not to stalk me.

A DAUGHTER THAT IS NOW 8 y old.

7 ☒ No Contact

Order the Respondent not to contact, phone, mail, email, or communicate with me in any way, either directly or indirectly, or any person listed below:

Other people the Respondent must not contact:

Name	Relationship to Petitioner	Address
My bishop or present LDS ward members		VALECREST 2nd WARD BONNEVILLE STATE

8 ☒ Stay Away

Order the Respondent to stay away from:

☒ a. My current or future: ☒ Vehicle ☒ Job ☒ School ☒ Home, premises and property (My current addresses are listed below):

Home address: 1885 E HARVARD AVE SLC 84108

Previous Home address: 11071N 5020W HIGHLAND, UT 84003

School address: University of Utah

Describe vehicle: 2003 VW Passat (white); 1998 Dodge Grand Caravan

☐ b. Other (specify):

9 ☒ Other Assistance Needed (List below any other orders needed to protect you and other protected people listed on page 1 of this form):

AN INVESTIGATION/

I ASK THE COURT TO ALLOW A HEARING

TO ASCERTAIN THE POSSIBLE DANGER TO

OUR CHILDREN OF THEIR FATHER'S

STALKING BEHAVIOR

Request for Civil Stalking Injunction - Describe Stalking

(Use this sheet only if you need more space to describe the stalking. Attach this sheet to your Request for Civil Stalking Injunction.)

4 Describe the stalking below:

I HAVE ATTACHED A TIMELINE
OF THE STALKING, THREATS,
AND ABUSE (PHYSICAL,
VERBAL, AND PSYCHOLOGICAL)
THAT I HAVE SUFFERED AT
THE HANDS OF MY EX-HUSBAND.
HE THREATENED THAT IF I EVER
REPORTED THESE THINGS THAT
HE WOULD KILL ME, PLEASE
ADVISE ME IF THIS TIMELINE
CAN BE KEPT CONFIDENTIAL.

VIOLATION OF TEMPORARY CIVIL STALKING INJUNCTION

Case Number: Utah Case # 060403495

Reported by: Officer M. Kazinsky, Police Dept of Missoula, Montana, P070111-018

Petitioner: Minnie LaRue Thomas (formerly Minnie LaRue Thomas Jacobsen)

Respondent: Arne John Jacobsen

TIMELINE OF COURT ACTION AND VIOLATIONS:

DATE	COURT ACTION / VIOLATIONS
December 2006	LaRue seeks assistance and protection from the Utah courts through the UT Legal Aid in Salt Lake City. Because much of the stalking and harassment occurred in Provo and other states, they advise her to seek a protective order in the 4 th District.
12/21/2006	<p>LaRue follows the advice of legal aid in SLC. On December 21st, Judge Stephen Hansen signed a Temporary Civil Stalking Injunction through the Utah 4th Judicial District Court in Provo, Utah. (Case # 060403495)</p> <p>The Court Order stipulates that Arne John Jacobsen MUST:</p> <ol style="list-style-type: none">1. NOT follow, threaten, ANNOY, HARASS, or cause DISTRESS to LaRue2. NOT contact, phone, mail, email, or communicate in any way with LaRue3. STAY AWAY from LaRue's home, vehicle, job, and school4. NOT ATTEMPT TO DISPARAGE OR DISCREDIT LARUE to her LDS Bishop, home teacher, the children's teachers, or others (eg. cub scout leaders) ward mission leader, or OTHERS <i>in LaRue's and the children's lives (italics added)</i>
01/03/2007	Utah County (4 th District) Sheriff's Deputy Dave Sheen served the Stalking Injunction to Arne John Jacobsen at approximately 8:30 am, after repeated attempts over the holidays. Deputy Sheen calls LaRue to confirm the Stalking Injunction has been served. LaRue feels threatened because Arne and LaRue have a court hearing in Missoula, Montana on January 4 th , and Arne has harassed LaRue before and after previous hearings or court-ordered meetings.
01/04/2007	VIOLATION: On January 4, 2007, after a court hearing at the Missoula County Courthouse, and after Judge Larson had left the courtroom, Arne became angry, annoyed, harassed, and caused distress to LaRue. Arne disparaged and discredited LaRue by attacking LaRue's personality, mental stability, and mothering skills. Several people witnessed Arne Jacobsen's verbal attack of LaRue.