

2004

Lara Young v. David Young : Brief of Appellant

Utah Court of Appeals

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David Young; Respondent/Appellant--Pro Se

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IN THE UTAH COURT OF APPEALS

Case No. 20040227 - CA
District Ct No. 95-46-00158

.A10

DOCKET NO. 20040227-CA

LARA YOUNG,

Petitioner/Appellee,

vs.

DAVID YOUNG

Respondent/Appellant.

Appeal from the Third District Court, Summit County, Judge Bruce C. Lubeck.

BRIEF OF RESPONDENT - APPELLANT

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Respondent/Appellant request a published decision by this Utah Court of Appeals

FILED
UTAH APPELLATE COURTS

SEP 02 2004

LIST OF ALL PARTIES RELATING TO THIS CASE

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Lara Young, Petitioner/Appellee

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Scott T. Poston, attorney for the Petitioner/Appellee in Utah, of TeschGraham P.C. Park
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Honorable Judge Bruce C. Lubeck, Third District Court of Summit County, Utah

Honorable Judge Helen L. Halpert, Superior Court of the State of Washington for the
County of King

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through 78-45c-318: (see **addendum “m”**, for full statutory context)

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CASES:

(All of the following case references apply to all issues listed as, I, II, III, IV and V.)

(see **addendum “n”**, for the full context of reference):

Kingdon v. Kingdon, filed October 2, 2003, (2003 UT App. 326) Case No. 20020631-CA, Determining Jurisdiction over custody matters is a question of law. See, e.g. In re D.S.K., 792 P.2d 118, 123 (Utah Ct. App. 1990) (citing Dragoo v. Dragoo, 298 N.W.2d 231, 232 (1980)):	44
In re Brilliat, No. 08-01-00054-CV, Court of appeals of Texas, Eighth District. El Paso, 86 S.W.3d 680; 2002 Tex. App. Lexis 4390, June 20, 2002, Decided, Released for Publication October 7, 2002.:	44

RULES:

(all Utah “Rules” apply to this appeal as allowed by law)

OTHERS:

Final draft of the: **Uniform Child-Custody Jurisdiction and Enforcement Act**
(1997)(UCCJEA), including the texts of the “**Prefatory Note and Comments**”, build
by the “National Conference of Commissioners on Uniform State Laws” (NCCUSL), and
found at **addendum “b”**, or; www.law.upenn.edu/blulc/uccjea/final1997act.htm .
pages:..... 2, 3, 16, 17, 18, 20, 21, 23, 25, 28, 30, 33, 37, 39, 41, 43

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Short Title

Sec. 6. Sections 6 to 10 of this Act // 42 USC 1305 // may be cited as the “Parental
Kidnaping Prevention Act of 1980”, pages:.....21, 28, 41, 42

STATEMENT OF JURISDICTION

This is an appeal from a final decision of the Third District Court, Summit County entered on November 25, 2003, District Court Case No. 95-46-00158. This Court has jurisdiction pursuant to Utah Code Ann. 78-2a-3 (2)(h).

STATEMENT OF ISSUES & STANDARD OF REVIEW

I. Issue Number One

I. Issue: Exclusive, Continuing Jurisdiction, Utah Codes Ann. 78-45c-202

The District Court committed an error of Utah and UCCJEA law of due process, by not acknowledging that Utah has a non-uniformed UCA 202 statute, by relinquish jurisdiction under false pretense, by discriminated against a Utah citizen, by failure to prioritize facts, and by ignoring jurisdictional evidentiary standards.

II Issue Number Two

II. Issue: Simultaneous Proceedings, Utah Codes Ann. 78-45c-206

The Third District Court committed an error of Utah and UCCJEA law of due process, by ignoring and/or the failure to act upon the Petitioners/Appellee's unjustifiable conduct of creating "Simultaneous Proceedings" in two jurisdiction as the same time.

III Issue Number Three

III. Issue: Inconvenient Forum, Utah Codes Ann. 78-45c-207

The Third District Court committed an error of Utah and UCCJEA law by not conforming to the UCCJEA chapter regarding due process, and by not using jurisdictional evidentiary standards.

IV Issue Number Four

IV. Issue: Communication Between Courts, UCA 78-45c-110

The Third District Court committed an error of Utah and UCCJEA law by not

conforming to the UCCJEA due process protocol, by failure to notice a person outside the state of an ex-parte hearing was and/or had taking place, by not allowing the Respondent/Appellant an opportunity to be heard after said ex-parte hearing before his final ruling and order of this case.

V Issue Number Five

V. Issue: Jurisdiction Declined By Reason Of Conduct, Utah Codes Ann. 78-45c-208

The Third District Court failed to acknowledge and/or act upon as a matter of Utah and UCCJEA law the Petitioners/Appellee's multiple acts of bad faith, unjustifiable conduct, and total disregards of UCCJEA due process and evidentiary standards.

Standard of Review

Standard of review: this applicable standard of appellate UCCJEA review has been shepardize in all fifty states, including the current 38 states that have enacted UCCJEA, and for accuracy, the old UCCJA was not review (see **addendum "a"**).

CONSTITUTIONAL OR STATUTORY PROVISIONS

Uniform Child-Custody Jurisdiction and Enforcement Act (1997), including the texts of the "Prefatory Note and Comments", build by the "National Conference of Commissioners on Uniform State Laws" (NCCUSL), and found at www.law.upenn.edu/bllulc/uccjea/final1997act.htm .
(see **addendum "b"**)

STATEMENT OF THE CASE

a. Introduction, nature of the case;

Respondent/Appellant is requesting relief in this mater that the Third District Court

erred in its ruling and order on entered on November 25, 2003, District Court Case No. 95-46-00158.

The Respondent/Appellant intend to show this Utah Appeal Court the nature of this case, as a matter of law, will be based on the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)(1997) drafted by the National Conference of Commissioners on Uniform State Law (NCCUSL) and by it approved and recommended for enactment in all the states at its Annual conference Meeting in its One-Hundred-And-Sixth Year in Sacramento California July 25 – August 1, 1997 with Prefatory Note and Comments and that was adopted and enacted by the State of Utah in the year 2000 (see **addendum “b”**).

Respondent/Appellant will show that the Third District Court committed multiple error of law listed in this brief as five (5) issues of statutory factors, and roughly fourteen (14) violations of UCCJEA and Utah’s UCA 78-45c-101 chapter due process laws. Further showing that the Petitioner/Appellee unjustifiable conduct of filing this cases “Motion to Quash Service of Summons” was an act of bad faith, and the contributing factor to all violations the Respondent/Appellant’s rights to due process of this case.

b. course of proceedings; the relevant facts below indicate date and times of proceedings related to this case:

June 30, 2003: Respondent/Appellant filed and mail service to Petitioner; Petition To Modify Decree of Divorce and Adoption of the Proposed Parenting Plan with the Third District Court of Summit County Utah. **July 30, 2003:** Nancy Mismash, Attorney for the Petitioner, filed; Notice of appearance of Counsel, with the Third District Court of

Summit County Utah. **August 6, 2003:** Petitioner/Appellee, filed Petition for Modification/Adjustment of Custody Decree/Parenting Plan/Residential Schedule, Parenting Plan, with the Superior Court of the State of Washington for the County of King (see **addendum “c”**). **August 11, 2003:** Petitioner filed a; Motion to Quash Service of Summons, and Memorandum in support of motion to Quash Service of Summons, with the Third District Court of Summit County Utah. **August 11, 2003:** Hearing took place, at the Third District Court of Summit County Utah, regarding Respondent’s Motion for Temporary Relief (see **addendum “d”**). **August 19, 2003:** Respondent filed a Motion for Extended Time to Answer Petitioners Motion to Quash Service of Summons, with the Third District Court of Summit County Utah. **September 11, 2003:** Respondent filed; Respondents Answer to Petitioners Motion to Quash Service of Summers, with the Third District Court of Summit County Utah (see **addendum “e”**). **September 24, 2003:** Respondent filed a: Answers to Petitioners Petition for Modification/Adjustment of Custody Decree/Parenting Plan/Residential Schedule, Parenting Plan, with the Superior Court of the State of Washington for the County of King. **November 17, 2003:** The honorable Bruce C. Lubeck of the Third District Court contacted the Honorable Helen Halpert regarding “the off-the –record conversation. On November 18, 2003, that discussion was scheduled for November 24, 2003.” (see **addendum “f”**). **November 20, 2003:** Mr. Henry R. Hanssen, Jr., Washington State attorney for the Petitioner/Appellee, mailed an exclusive letter to the Honorable Helen L. Helpert, King County Superior Court, State of

Washington, regarding “Young Parenting Plan Proceeding, King County Superior Court Case No. 03-3-09663-0 SEA. November 21, 2003: Mr. Henry R. Hanssen, Jr., faxed the same letter to the Honorable Judge Bruce C. Lubeck, Third District Court, Summit County, Utah (see **addendum “g”**). **November 24, 2003:** Hearing took place in the Third District Court of Summit County Utah for: Petitioner’s motion to Quash, at 11:00 a.m. **November 24, 2003:** A Chambers/Telephonic hearing was held. Appearances where by the Honorable Bruce C. Lubeck, Third District Court, Summit County Utah, appearing in Utah Chambers. The Honorable Helen L. Halpert, King County Superior Court, State of Washington, appearing Telephonically form Washington. And Mr. Hansen, Esquire of the Plaintiff (Petitioner/Appellee) in Washington, also appearing Telephonically form Washington (see **addendum “f”**). **November 25, 2003:** Third District Court of Summit County Utah, Ruling and Order were filed regarding: Petitioner’s motion to Quash. **November 25, 2003:** Third District Court of Summit County Utah, mailed the Ruling and Order to Honorable Judge Helen L. Halpert, Superior Court of the State of Washington for the County of King (see **addendum “h”**). **December 8, 2003:** Respondent filed; Motion this Court To Reconsider its Ruling and Order Dated November 25, 2003, with the Third District Court of Summit County Utah, including their answer (**addendum “i”**). **January 12, 2004:** Respondent filed; Notice to Submit for Decision, RE: Respondents Motions This Court to Reconsider its Ruling and Order Dated November 25, 2003, with the Third District Court of Summit County Utah. **January 12, 2004:** Third District Court of Summit County Utah: file it’s Ruling and Order regarding Respondents; Notice to Submit for Decision, RE:

Respondents Motions This Court to Reconsider its Ruling and Order Dated November 25, 2003. **February 11, 2004:** Respondent file; Notice of Appeal, and, Affidavit of Impecuniosity, with the Third District Court of Summit County Utah. February 11, 2004: Respondent filed a letter, Request for Transcripts, with the Third District Court of Summit County Utah. February 11, 2004: Third District Court of Summit County Utah: file its Ruling and Order Denying Respondents Affidavit of Impecuniosity. **February 19, 2004:** Respondent filed; Motion For Extended Time To File a Memorandum Challenging the Appeal Fee Assessments, with the Third District Court of Summit County Utah. **March 2, 2004:** Respondent filed a second letter, Request for Transcripts, with the Third District Court of Summit County Utah. **March 16, 2004:** Respondent filed; Memorandum Challenging The Appeal fee Assessments, with the Third District Court of Summit County Utah. **March 17, 2004:** Third District Court of Summit County Utah: file it's Ruling and Order regarding Respondents; Approving Respondents Affidavit of Impecuniosity and the mailing of Respondents Notice of Appeal to the Utah Court of Appeals. **March 19, 2004:** Utah Court of Appeals sent Respondent that the Notice of Appeal was now on file, and that the Respondent had 10 day to file his Docketing Statement Outline, and send a letter Requesting Transcripts. **March 26, 2004:** Respondent filed a third letter, Request for Transcripts, with the Third District Court of Summit County Utah. **March 29, 2004:** Respondent / Appellant: filed; Docketing Statement, with the Utah Court of Appeals. **April 5, 2004:** Utah Court of Appeals sends a letter to Respondent / Appellant regarding the need for more information within the

Docketing Statement submitted on March 29, 2004, and allowed 10 days to submit said information. **June 21, 2004:** Briefing Schedule set by Utah Court of Appeals. **July 7, 2004:** Extension of time granted by Utah Court of Appeals, brief due date September 2, 2004.

c. disposition at trial, None, or not available.

STATEMENT OF RELEVANT FACTS
Please reference the following facts of this case

I. Issue, Facts: Exclusive, Continuing Jurisdiction, U.C.A. 78-45c-202, (UCA 202)

Facts; IA & B 1.: I.A. Utah's non-uniformed UCCJEA statutes

I.A. False Pretense of Utah's non-uniformed UCCJEA statutes

I.A. Jurisdictional stability within the Utah's UCCJEA statutes

The following excerpts summarize the facts, evidence and argument presented and to the Third District Court **by the Petitioner/Appellee** in the form of her Motion to Quash Service of Summons with supporting Memorandum (see addendum "d"):

Motion to Quash Service of Summons:

I.A.1 page 2, introduction, starting with; *"According to the UCCJA, U.C.A. § 78-45c ...*

I.A.2 page 2, introduction, starting with; *"Additionally, as allowed in U.C.A. § 78-45c...*

Continuing under the heading of "Facts":

I.A.3 page 2, item 1, starting with; *"Prior to 1999, this Court granted a Decree of ...*

I.A.4 page 4 and 5, item I, starting with; *"Utah does not have any significant connect...*

Continuing under the heading of "Argument":

I.A.5 page 7, item I cont., starting with; *"This court must follow U.C.A. § 78-45c-202...*

Continuing under the heading of "Conclusion":

I.A.6 page 9, conclusion, starting with; *“Based upon the UCCJA, codified in U.C.A....*

The Third District Courts Ruling and Order (see addendum “h”):

Under the heading of “Background”;

I.A.7, starting with: *“A hearing was scheduled and held August 11, 2003...”*

I.A.8, starting with: *“On August 11, 2003, petitioner filed the present motion to quash...”*

I.A.9, starting with: *“The court continued the matter to allow respondent to respond, ...*

I.A.10, starting with: *“Oral argument was held November 17, 2003” ...*

Under the heading of “Discussion”;

I.A.11, starting with: *“Under the UCCJEA, UCA 78-45c-101 et. seq., this court has...*

I.A.12, starting with: *“Thus, the court believes there are two reasons why it could...”*

Facts I.B.

I. Issue, Facts: Exclusive, Continuing Jurisdiction, U.C.A. 78-45c-202, (UCA 202)

I.B. Prioritizing evidence as a matter of UCCJEA law

I.B. Jurisdictional Standards as a matter of law in a UCCJEA proceeding

The following excerpts summarize the facts and argument presented to the Third District Court **by the Petitioner/Appellee** in the form of her Motion to Quash Service of Summons with supporting Memorandum (see **addendum “d”**):

Motion to Quash Service of Summons:

I.B.1 page 1, item 1, starting with; *“Jurisdiction and venue are properly vested within ...*

I.B.2 page 2, item 1 cont., starting with; *“Specifically, Petitioner and the parties’ min...*

I.B.3 page 2, item 1 cont., starting with; *“Petitioner and Kayla have lived in the State ...*

I.B.4 page 2, item 1 cont., starting with; *“No current evidence is available in the State ...*

I.B.5 page 2, item 1 cont., starting with; “*Accordingly, pursuant to U.C.A. §§ 78-45c-...*

I.B.6 page 2, item 1 cont. , starting with; “*78-45c-201(1)(b)*” (Initial Child-Custody...

I.B.7 page 2, item 1 cont. , starting with; “*78-45c-207*” (Inconvenient Forum)...

Memorandum in Support of Motion To Quash Service of Summons:

I.B.8 page 1, introduction, starting with; “*The controlling law in this case is the Un...*

I.B.9 pages 1 and 2, introduction, starting with; “*and codified in U.C.A. §§ 78-45c-101 ...*

I.B.10 page 2, item 2, starting with; “*Respondent was awarded liberal and reasonable...*

I.B.11 pages 2,3 and 4, items 3,4,5,6,7,8,9,10, and 11: (*these listed items relate only to “best interest of the child” and not about jurisdictional standards*).

Continuing under the heading of “Argument”:

I.B.12 page 5, item I cont., starting with; “*Petitioner and Kayla moved from the State ...*

I.B.13 page 5, item I cont; starting with; “*Utah, on the other hand, does not have any...*

I.B.14 page 6 and 7, item 1 cont., starting with; “*Liska v. Liska, is a case almost ident ...*

I.B.15 page 8, item II, starting with; “*This Court Must Decline Jurisdiction Based ...*

I.B.16 page 8, item II cont., starting with; “*This court is unable to decide the issue...*

I.B.17 page 9, conclusion, starting with; “*this Court must find that Petitioner and ...*

I.B.18 page 9, conclusion, starting with; “*Petitioner and Kayla have continually reside...*

I.B.19 page 9, conclusion, starting with; “*This Court should award costs and fees to...*

The Third District Courts Ruling and Order (see **addendum “h”**):

Under the heading of “Background”;

I.B.20 starting with: “*The parties have been given joint physical custody” ...*

I.B.21 starting with: “*On June 30, 2003, respondent filed this petition to modify...*

I.B.22 starting with: *“On August 1, 2003, petitioner filed a motion in King County, ...*

Under the heading of “Discussion”;

I.B.23 starting with: *“The child is there, and though the UCCJEA does not reflect...*

I.B.24 starting with: *“These proceedings are STAYED in Utah and the matters to be...*

II. Issue, Facts: Simultaneous Proceedings, U.C.A. 78-45c-206, (UCA 206)

II.A. Unjustifiable Simultaneous Proceeding as a matter of UCCJEA law

The following excerpts summarize the facts, evidence and argument presented to the Third District Court by the **Petitioner/Appellee** in the form of her Motion to Quash Service of Summons with supporting Memorandum (see **addendum “d”**):

Motion to Quash Service of Summons:

II.A.1 page 2, item 1 cont., starting with; *“this Court should decline jurisdiction and ...*

II.A.2 page 2, item 1 cont., starting with; *“to determine the appropriate jurisdiction...*

Memorandum in Support of Motion To Quash Service of Summons

II.A.3 page 4, item 12, starting with; *“Petitioner has filed an additional action in the...*

II.A.4 page 8 and 9, item II cont, starting with; *“This court must stay this action.*

II.A.5 page 9, item III, starting with; *“This Court Should Communicate with the...*

II.A.6 page 9, conclusion, starting with; *“Therefore, this Court must decline jurisdict...*

II.A.7 page 9, conclusion, starting with; *“and/or communicate with the Washington...*

II.A.8 page 9, conclusion, starting with; *“While this Court is determining this issue, it...*

The Third District Courts Ruling and Order (see **addendum “h”**):

Under the heading of “Background”;

II.A.9, starting with: *“On August 1, 2003, petitioner filed a motion in King County, ...*

II.A.10, starting with: *“On August 11, 2003, petitioner filed the present motion to ...*

II.A.11, starting with: *“Oral argument was held November 17, 2003” ...*

Under the heading of “Discussion”;

II.A.12, starting with: *“The child is there, and though the UCCJEA does not reflect ...*

II.A.13, starting with: *“These proceedings are STAYED in Utah and the matters ...*

III. Issue, Facts: Inconvenient Forum, U.C.A. 78-45c-207, (UCA 207)

III.A. Inconvenient Forum as a matter conformity to the UCCJEA law

III.A. Inconvenient Forum Jurisdictional Standards as a matter of law

The following excerpts summarize the facts, evidence and argument presented to the Third District Court **by the Petitioner/Appellee** in the form of her Motion to Quash Service of Summons with supporting Memorandum (see **addendum “d”**):

Memorandum in Support of Motion To Quash Service of Summons

Under the heading of “Argument”:

III.A.1 number 6, II, pages 7 and 8, starting with: *“This Court Must Decline Jurisdict ...*

III.A.2 number 6, II, page 8, starting with: *“This court is unable to decide the issue ...*

III.A.3 number 6, II, page 8, starting with: *“This court must stay this action. U.C.A. ...*

III.A.4 number 6, III, page 9, starting with: *“This Court Should Communicate with the ...*

Under the heading of “Conclusion”:

III.A.5 page 9, starting with: *“While this Court is determining this issue, it must stay ...*

Third District Courts, Ruling and Order (see **addendum “h”**):

Under the heading of Background;

III.A.6, starting with: *“The parties have been given joint physical custody” ...*

III.A.7, starting with: *“The court ruled that it would take the matter under advisement...*

Under the heading of Discussion;

III.A.8, starting with: *“UCA 78-45c-202. This state is inconvenient if another state...*

III.A.9, starting with: *“The second and distinct reason it may decline jurisdiction is...*

III.A.10, starting with: *“The mother, petitioner, and the child moved from Utah in ...*

III.A.11, starting with: *“Respondent has remained in Utah. Respondent has evidently...*

III.A.12, starting with: *“The child was not in school before she left Utah in 1999, be ...*

III.A.13, starting with: *“Overall, the court believes that the proceeding in this jurisdic...*

III.A.14, starting with: *“These proceedings are STAYED in Utah and the matter is to...*

IV. Issue, Facts: Communication Between Courts, U.C.A. 78-45c-110, (UCA 110)

IV.A. Communication Between Courts as a matter conformity to the UCCJEA law

IV.A. Notice to persons outside state as a matter of UCCJEA law

IV.A. Ex-parte Communication Between Courts as a matter of law

IV.A. Notice Opportunity to be heard – Joinder as a matter of UCCJEA law

On or about November 20, 2003 attorneys for the Petitioner/Appellee, Ms Nancy Missash in the state of Utah and Mr. Henry R. Hanssen, Jr., in the state of Washington State both failed to give notice to Respondent/Appellant of Mr. Henry R. Hanssen, Jr. participation in the parties Utah UCCJEA proceeding, both failed in coping the Respondent/Appellant an exclusive letter mailed to the Honorable Helen L. Helpert, King County Superior Court, State of Washington, and faxed to the Honorable Judge Bruce C. Lubeck, Third District Court regarding “Young Parenting Plan Proceeding, King County Superior Court Case No. 03-3-09663-0 SEA, failed to notice to the Respondent/Appellant

of Mr. Henry R. Hanssen Jr. participation in the Chambers/Telephonic hearing between the Honorable Bruce C. Lubeck, Third District Court, Summit County Utah and the Honorable Helen L. Helpert, King County Superior Court, State of Washington held on November 24, 2003.

It is fact that the Honorable Judge Bruce C. Lubeck failed to hear, or receive oral or written argument from the Respondent/Appellant regarding the participation and submitting of written and oral of Mr. Henry R. Hanssen, Jr. during or after the November 24, 2003 hearing between the to state court and before a determination was made (see **addendum “f”**) and (see **addendum “g”**).

The following excerpts summarize the facts, evidence and argument presented to the Third District Court **by the Petitioner/Appellee** in the form of her Motion to Quash Service of Summons with **supporting Memorandum** (see **addendum “d”**):

Under the heading of “Argument”:

IV.A.1 page 9, III, starting with: *“This Court Should Communicate with the Washing ...*

Under the heading of “Conclusion”:

IV.A.2 page 9, starting with: *“and/or communicate with the Washington Court to...*

Third District Court ruling and order (see **addendum “h”**):

Under the heading of Discussion:

IV.A.3, starting with: *“The court has reviewed the pleadings of the parties and the ...*

IV.A.4, starting with: *“The court has now discussed the matter with the Honorable ...*

IV.A.5, The following excerpts summarize the transcription made from the chambers/telephonic ex parte communications and hearing held on November 24, 2003,

between Judge Bruce C. Lubeck, Judge Helen L. Helpert, and attorney Henry R. Hanssen, Jr. (**addendum “f”**, contains the complete context of this transcript.)

On November 24, 2003 a Chambers/Telephonic hearing was held. Appearances where by the Honorable Bruce Lubeck, Third District Court, Summit County Utah, appearing in Utah Chambers. The Honorable Helen L. Helpert, King County Superior Court, State of Washington, appearing Telephonically form Washington. And Mr. Hansen, Esquire of the Plaintiff (Petitioner/Appellee) in Washington, also appearing Telephonically form Washington. Issues 4.a-5, are in regards to the relevant fact of the said hearing, that was recorded and transcription made.

Both the Utah and Washington trail courts failed to notice and serve the Respondent/Appellant of a hearing that was to include Mr. Hansen attorney for the Plaintiff (Petitioner/Appetee) where oral and written arguments where presented and herd. The following are annotates from the transcript made on November 24, 2003, starting with (**addendum “f”**):

page 3, line 7 to 12 ; Judge Halpert: “Yes, and in court with me is Mr. Hansen, who represents the mother in Washington; is that correct? Mr. Hansen: That’s correct. Judge Lubeck: All right, let me I’ll just make my record. I am in my office; no one is here. Page 4, lines 15 to 25; and page 5, lines 1 to 9; Judge Halpert: I would agree there is -- I don’t – Mr. Hansen doesn’t know if this is his problem or not. He wrote me a letter, which I got Friday, which explains Mon’s position. I believe I asked that it also be faxed to you; I think my bailiff might have done that. Judge Lubeck: Yes. And I did

receive that. (see addendum “g”, for entire context of Mr. Hansen’s written argument) Judge Halpert: But Mr. Hansen was relying on Utah counsel to serve Mr. Young and was had no idea whether that happened. Judge Lubeck: Correct. I don’t have anything that indicates whether it did or didn’t. Mr. Hansen: (Inaudible). Judge Halpert: So, having said that, had Mr. Young had notice of this, he could have been in your court; correct? Judge Lubeck: No. He didn’t have notice from us of this. No, I didn’t intend for either party to be here, to be part of this; at least I didn’t set it up that way. If you think it should be, we can do that, but no, he did not have notice of this, and to my knowledge neither did Lara Young’s attorney here in Utah. Page 9, lines 15 to 20; Judge Halpert: I don’t think it’s legally hard case. I mean, I don’t think Mr. Hansen is arguing that Washington be the home state for modification; he’s arguing that it makes more sense to have it here, but not – I don’t think anyone disagrees as to what the law is, and that it is your choice. (End) (see addendum “f”) and (see addendum “g”).

V. Issue, Facts: Jurisdiction Declined By Reason Of Conduct, U.C.A. 78-45c-208, (UCA 208)

V.A. Jurisdiction Declined By Reason Of Conduct as a matter of UCCJEA law

V.A.1 The following facts relate to **Respondent/Appellant’s arguments** presented to the Third District Court before its Ruling and Order was final. See **addendums “e”**, for the full context on fact, evidence and arguments relating to the Utah Code Section 78-45c-208 (UCA 208). Jurisdiction declined by reason of conduct. See **addendum “e”**

Memorandum In Support To Decline Petitioners Motion To Quash; Service of Summons, pages 18 through 25; Utah Code Section 78-45c-208 (UCA 208), page 18,

(VIII)(1)(2) , starting with:“(VIII) *This Court should...*

Page 25, (IX)(1)(3) , starting with:“(IX) *Information to be submitted to court*”

“Respondent/Appellant’s Motions This Court To Reconsider its Ruling And Order

Dated November 25, 2003” (see **addendum “e”**); page 3, item d, starting with:

“*Linking child...* and Page 5, item 4(g).

“Respondent/Appellant’s Answer To Petitioners Motion To Quash Service of

Summons” (see **addendum “e”**); page 1, item 2, starting with: “2. *Petitioner ...*

Page 2, item 3, starting with: “3. *Basis for Petitioners move of Jurisdiction and venue* “...

Page 2, item 6, starting with: “6. *This Court should decline Petitioners, “Motion To...*

Page’s 3, item 7, starting with: “7. *Petitioner has committed fraud in not disclosing...*

Page 4, item 8, starting with: “8. *The Petitioner is miss-guiding the Utah and Wash ...*

SUMMARY OF THE ARGUMENT AND RESTATEMENT OF THE ISSUES

Had the Third District Court follow proper evidentiary standards due process UCCJEA procedures and prioritized the fact, evidence and arguments of this case it would have denied Petitioners Motion to Squash Service of Summons instead of its erroneous dismissal of **Exclusive, Continuing Jurisdiction** and Staying her motion. The following arguments relate to the jurisdictional standards as a matter of law in this case. These standards include UCCJEA due process procedures and the prioritizing of the facts, evidence and arguments are, and have, been available since 1997 by the National Conference of Commissioners on Uniform State Laws (NCCUSL). The NCCUSL 1997 enactment of the UCCJEA and its “prefatory note and comments” is the basis of these

following argument, and can be found in addendum “b”:

ARGUMENTS

I. Issue Number One

I. Issue: Exclusive, Continuing Jurisdiction, U.C.A. 78-45c-202, (UCA 202)

I.A. – 1. Utah’s non-uniformed UCCJEA statutes

Because of the fact that one of the two major, either UCA 201 or UCA 202, statutes will determine the total outcome of a UCCJEA case, as a matter of law, the statutes must have continuity in its uniform contexts and numbering formatting, throughout the nation to have the same uniform presumption believe by all that are evolved with the case, such as this. Though buried within the “*Prefatory Note and Comment*” of the NCCUSL’s final drafts are imperative and pivotal points of this case relating to the due process law. Starting within the “*Prefatory Note*”, addendum “b”, page 6 of 55, item 3. comments are as follow:

“3. Exclusive continuing jurisdiction for the State that entered the decree.” “The second problem arises when it is necessary to determine whether the State with continuing jurisdiction has relinquished it. There should be a clear basis to determine when that court has relinquished jurisdiction.” Emphasis added

Under facts I.A , facts I.A.1 through I.A.6 are the excerpts of fact, evidence and argument by the Petitioner/Appellee, submitted on August 11, 2003 to the Third District Court. These are one of many conflicting statute that the Petitioner/Appellee clearly argue and believe this case “must” be ruled upon the context of Utah’s UCA 78-45c-202. Items above under I.A. facts, I.A.7 through I.A.12 is the excerpts of context as stated by

the Third Districts Courts ruling and order on November 25, 2003 regarding this case. Facts I.A.7 through I.A.11 mostly give clarity on when hearings took place, and that it wanted to confirm it had jurisdiction under Utah's UCA 78-45c-202 (UCA 202), Exclusive, Continuing Jurisdiction (UCA 202). Facts I.A.12, state by the Third District Court, that it "believes there are two reasons" to decline jurisdiction under Utah's 202. It is fact, Utah law has three paragraphs of context in Utah UCA 202 to decline jurisdiction, with two difference presumptions beliefs to choose and base a decline of jurisdiction from.

The confusion created by the Utah legislators started with the first two of three sets of UCA 202 context; Utah's UCA 202 (1) "until one of two events occur" (a) significant connection / substantial evidence, (b) no longer resides in Utah, along with its link to UCA 78-45c-207 (UCA 207) in which the left behind contestant has failed somewhere along the criteria of 202 (1)(b) and UCA 207. The path to UCA 207 through UCA 202 (1)(b) creates the first presumption that the contestant "no longer resides" in Utah and is an Inconvenient Forum (UCA 207), this path is defined in the NCCUSL prefatory note and comments, page 27 of 55 (see **addendum "b"**), you arrive at the following:

"In accordance with the majority of UCCJA case law, the State with exclusive, continuing jurisdiction may relinquish jurisdiction when it determines that another State would be a more convenient forum under the principles of Section 207")

Emphasis added.

Utah's UCA 202 (1) "(a) and (b)" are the "first" and "second" context, and with UCA 202 (2) being the "third". The first presumption to decline jurisdiction based on the UCA

207's is UCA 202(1)(b) contestant "no longer resides", then the Utah legislators went a step further and created UCA 202 (2) which brought forth a stand alone second presumption of "relative circumstances" of a contestant.

In addition of the Utah legislators creation of UCA 202 (2) was its failure to exclude the NCCUSL's related UCA 202 (1)(b) comments on page 27 of 55 of the prefatory note, therefore any sighting of the UCA 78-45c-202 in a UCCJEA case, such as this one, I.A.11 and I.A.12, makes for un-clear basis of presumption in which to formulate evidence and as a matter evidentiary standard of law, or a way to have constitutional due process. As with this case, the Third District Court ruling and order (I.A.12) fail to distinguish which presumption it chose in UCA 202, in which they sought a distinct reason to decline jurisdiction through UCA 207's Inconvenient Forum..

The Third District Court failed specify, or as the NCCUSL states "There should be a clear basis to determine when that court has relinquished jurisdiction", as to which of the 3 sets of context within Utah's 202 they have chosen and clearly defined the presumptive path to Utah's UCA 78-45c-207 Inconvenient forum. Furthermore, no evidentiary standard has been, or could ever have been, met. Thus, the ruling and order in question is a violation of the Respondents/Appellants due process of uniform UCCJEA law, and an act of bad faith by the Third District Court for stating un-uniform statutory factors.

I.A. – 2. False Pretense of Utah's non-uniformed UCCJEA statutes

According to the NCCULS, 37 of 38 states to date, legislated the UCCJEA 202

uniform text verbatim, along with its formatted numbers (see **addendum “a”**). 37 states in this country that have enacted the new UCCJEA can only assume they have the same uniform text, numbering and presumptive belief on a co-define 101 basis as the other 38 uniform UCCJEA states. Utah so far, is the only state that has legislators that have changed the numbers and added text to its UCA 202 statute, *UCA §§ 78-45c-202 (1) “continues until one of two events occurs” (a) or (b), (2) ((2) being the new and third context and second presumption).*

When a Utah court relinquishes its jurisdiction (I.A.1, “this court must decline” and I.A.2)), it is on the uniformed presumption by all other states that the ruling and order (Third District Courts I.A.12) was based on the same uniformed UCCJEA’s text and numbers format such as Washington state in this case, who UCA 202 statute is verbatim to NCCUSL’s texts (see **addendum “b”**). The state of Washington can only presume that a case, such as this, was sold to them on the uniform UCA 202 (1)(b) principles of a 207 basis, in which according to their statute can only occur if “one” the “two event” occur, *“Continuing jurisdiction is lost when the child, the child’s parents, and any person acting as a parent “on longer reside” in the original decree state.”*

Whereby, it was a flagrant act of bad faith when Utah’s Third District Court failed to distinguish, define and disclose in its communications with the State of Washington (issue IV) of which of Utah’s two UCA 202 presumption it choose to determine the ruling and order of this case. Therefore, it was an act of committing fraud when the Third District Court sold the jurisdiction of the parties to the State of Washington, under the false pretense of Utah’s non-uniform UCA 202, item number (1)(b),.

Furthermore, as a matter of UCCJEA uniform law, a flaw of this magnitude, nullifies Utah's own version of UCA 202 (Utah's UCA 78-45c-202) and the entire chapter under Utah's UCA 101. This flaw not only effects this case as a matter of due process law, but the entire set of UCA 101 statutes, including the governing UCCJEA's federal PAKA and its law enforcement, such as the new enacted Amber Alert System. A sample of how this flaw effect law enforcement is stated within the NCCUSL "Prefatory Note", page 7 of 55, under the heading of "Enforcement Provisions". comments on "Lack of uniformity" is as follow, (see **addendum "b"**):

"Lack of uniformity complicates the enforcement process in several ways: (1) It increases the cost of the enforcement action in part because the services of more than one lawyer may be required – one in the original forum and one in the State where enforcement is sought; (2) It decreases the certainty of outcome; (3) It can turn enforcement into a long and drawn out procedure. A parent opposed to the provisions of a visitation determination may be able to delay implementation for many months, possible even years, thereby frustrating not only the other parent, but also the process that led to the issuance of the original court order." Emphasis added.

Additionally, it is also un-constitutional and of bad faith for the NCCUSL (to recommend) and Utah to legislate a statute (UCA §§ 78-45c-101) asking for stability in jurisdiction as a matter of law to prosecute cases relating to UCCJEA governing PAKA laws, then allowing under the same set of statutes a contradiction of un-stability of jurisdiction (using UCA 207, either by it self, and/or via Utah's 202 (b) or 202 (2))

whereby discriminating and disenfranchising its members of all Utah's divorce, separated and never married restructured families. (the NCCUSL's UCCJEA 207, and Utah's UCA §§ 78-45c-207(1) allows a stand alone reason to decline jurisdiction, it states; "*The issue of inconvenient forum may be raised upon the court's own motion, request of another court, or motion of a party*", and basis its finding on un-defined guidance of, "*relative circumstances*")

Utah's current and future disenfranchises restructured families are the poor or middle class citizens that can not defend them self as a matter of law from a state that discriminates against its people (Respondent/Appellant in this case) in a UCCJEA proceedings. With this case, and others to follow, UCCJEA's UCA 207 encourages the bad faith and in-stability of forum shopping by the moving parent as with the Petitioner/Appellee in this case. These cases will be the precedents that set UCCJEA standards as a matter of law, a law that is already extremely vague and guideless, and will greatly effect the stability and relationship between the left behind (parent) restructured family and their children.

Whether or not the "relative circumstances", UCA 207, of the left behind Utah parent is poor, disabled, ill-mannered, uncivil, and difficult to deal with or work with, is where UCA 207's contradiction to a Utah culture that prides itself with taking anyone in this world under its wing, and then nurture it. A Utah culture that spends 24 hours, 7 days a week on unity and involvement on the intact family relationship, then only to legislate as a statute as a matter of law that sells out from underneath them its citizens jurisdictional stability to another state on the whim of un-constitutional discrimination, as with this case

in hand (Facts I.A.12).

I.B. – 1. Prioritizing evidence as a matter of UCCJEA law

Prioritizing Evidence as a matter of UCCJEA law, the Petitioner/Appellee is asking the Utah District Court to “decline jurisdiction” bases on the use of the old UCCJA statute and case precedence (I.B.8 and I.B.14), and/or combining the context of the five (5) UCCJEA statutes. The Petitioner/Appellee failed to prioritize whether or not this is a UCA 201 or UCA 202 case, and further failed to prioritizes the follow fact, evidence and argument as a matter of UCCJEA law; UCCJA vs. UCCJEA, §§ 78-45c-201 Initial Child-Custody Determination (I.B.1, I.B.6, and I.B.9), §§ 78-45c-202, Exclusive, Continuing Jurisdiction (I.B.17), §§ 78-45c-207 Inconvenient Forum (I.B.7, I.B.15, and I.B.16), and to be compensated in the form of “*cost and fees*”, “*for having to defend*”, a “*matter*” they have “*Motion To Quash*” the court for under Utah’s article III, §§ 78-45c-312 (UCA 312) Cost, Fees, and Expenses (I.B.19). UCA 312 is listed under Article 3 “*Enforcement*”, and does not apply to their motion. *also see Respondent/Appellant argument on pages 10 and 11, items (V)(1)(2) UCA 206, Jurisdiction to modify determination ,addendum “e”.*

With regarded prioritization of due process in a UCCJEA proceeding can be found within the NCCUSL’s “Prefatory Note”, stated on page 32 of 55 of it’s final draft, under the heading of “SECTION 206. SIMULTANEOUS PROCEEDINGS”; the first comment states (see **addendum “b”**):

“Most of the problems have been resolved be the prioritization of home state jurisdiction under Section 201; the exclusive, continuing jurisdiction provisions of Section 202; and

the prohibitions on modification of Section 203. If there is a home State, there can be no exercise of significant connection jurisdiction in and initial child custody determination and , therefore, no simultaneous proceedings. If there is a State of exclusive, continuing jurisdiction, there cannot be another State with concurrent jurisdiction and , therefore, no simultaneous proceedings. Emphasis added.

Also see **addendum “j”**; Under the U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention (OJJDP), “Juvenile Justice Bulletin” article entitled, “The Uniform Child-Custody Jurisdiction and Enforcement Act”, by Patricia M. Hoff, dated December 2001 (www.ncjrs.org/pdffiles1/ojjdp/189181.pdf); page 5 states this fact; starting with: “Initial and Modification Determinations”, “The UCCJEA governs courts’ jurisdiction to issue permanent, temporary, initial, and modification orders. The rules that govern courts’ jurisdiction to make and initial custody determination differ from those governing jurisdiction to modify an existing order. The type of custody proceeding determines which rules apply and whether a court has the authority to act.” Emphasis added.

The facts, evidence and argument presented by the Petitioner/Appellee where not prioritized to an evidentiary standard as a matter of law for this UCCJEA case, issue I.B. Therefore as a matter of law, the Petitioner/Appellee violated the Respondent/Appellant’s rights to due process, facts I.B.20 through I.B.24, in regards to trying apply and argue the Petitioner/Appellee’s Motion to Quash that has cited and bases its motion on the miss-construe use of the old UCCJA statute and case precedence, in addition to combining the conflicting context of the five (5) Utah UCCJEA UCA 101 statutes that

contain multiple presumptive beliefs.

As a matter of law, the Third District Court erroneously failed when marshaling and prioritizing, facts I.B.1 through I.B.19, of the facts, evidence and argument presented as an evidentiary standard by the Petitioner/Appellee that could have never been met by anyone, including the Respondent/Appellant in this case. For the Third District Court to circumvent and/or de-scramble the overwhelming miss-construe evidence and argument for the Petitioner/Appellee benefit, was an act of bad faith and collusion far be-on his discretionary judicial latitude. Whereby effecting due process UCCJEA laws and creating a negative outcome for the Respondent/Appellant in his ruling and order of this case.

I.B. – 2. Jurisdictional Standards as a matter of law in a UCCJEA proceeding

All of the Petitioner/Appellee evidence, facts and argument listed throughout her Motion To Quash Service of Summons, including pages 2,3 and 4, items 3,4,5,6,7,8,9,10, and 11 and above facts I.B.1 through I.B.19, is basing her finding on citing both the old UCCJA statues and case law, and the new UCCJEA statutes, while re-interjecting “substantive standards relating to custody and visitation of child” statement through her Motion To Quash Service of Summons (this case) (**addendum “d”**). Insisting that the old UCCJA “best interest” standard should (“must”) override the jurisdictional standards for a determinations of this UCCJEA cases.

The NCCUSL’s prefatory notes (see **addendum “b”**) make a clear point of why the term and presumption “best interests” and/or “substantive standards” of the child has been eliminated in the newer UCCJEA as a matter of law, and clearly replaces it with

“jurisdictional standards”, as stated on Page 7 of 55, number 5; with the comment of:

“5. Role of “Best Interests.” The jurisdictional scheme of the UCCJA was designed to promote the best interests of the children whose custody was at issue by discouraging parental abduction and providing that , in general, the State with the closest connections to , and the most evidence regarding, a child should decide that child’s custody. The “best interest” language in the jurisdictional sections of the JCCJA was not intended to be an invitation to address the merits of the custody dispute in the jurisdictional determination or to otherwise provide that “best interest” considerations should override jurisdictional determinations or provide an additional jurisdictional basis. The UCCJEA eliminates the term “best interests” in order to clearly distinguish between the “jurisdictional standards” and the substantive standards relating to custody and visitation of children.” Emphasis added.

It is of bad faith for the Petitioner/Appellee to file her entire Motion To Quash Service of Summons on the elementary basis of a “best interests” substantive standards relating to custody and visitation of the minor child that does not belong and/or should exist within the fact, evidence and argument of a Utah UCCJEA proceeding, such as this case in hand. As a matter of UCCJEA law, the Third District Court erroneously failed when marshaling and prioritizing the lack of , “jurisdictional standard” within the Petitioner/Appellee’s entire Motion To Quash Service of Summons, pages 2,3, and 4, items 3,4,5,6,7,8,9,10 and 11, and above facts I.B.1 through I.B.19 including the above facts I.B.1 through I.B.19.

Furthermore, The Third District Court erroneously failed by not taking into account, but

instead choose in bad faith to ignore the numerous jurisdictional standards fact, evidence and argument brought forth throughout Respondents/Appellants motion to “Reconsider”, “Answer”, and “Memorandum”, of Petitioners/Appellee’s “Motion To Quash Service of Summons. (see **addendum “i”**) “Respondent/Appellant’s Motions This Court To **Reconsider** its Ruling And Order Dated November 25, 2003”; Page 10 and 11, item (V)(1)(2):

“Respondent/Appellant’s **Memorandum** In Support To Decline Petitioners Motion To Quash; Service Of Summons”; page 4 and 5, item (I), page 6, item (III), page 6 and 7, item (III)(2), page 9 and 10, item (IV)(1)(2)(3)(4), page 3, item d: page 4, item 4(a), page 5, item 4(g) (see **addendum “e”**):

“Respondent/Appellant’s **Answer** To Petitioners Motion To Quash Service of Summons”; page 1, item 2, page 2, item 4, page 2, item 6 (see **addendum “e”**);

“Respondent/Appellant’s **Memorandum** In Support To Decline Petitioners Motion To Quash; Service Of Summons”, Page 4 and 5, items (I, 1 through 6), page 6, item (III), page 6 and 7, item (III)(2), page 7, item (III)(3), page 8, item (III)(5), page 9 and 10, item (IV)(1)(2)(3)(4), page 9, 10 and 11, item (IV)(1)(2)(3)(4), page 10 and 11, item (V)(1)(2), page 16, (VIII)(5)(6), page 17, (VIII)(9), page 33, (Conclusion) (**addendum “e”**).

Within the Third District Court’s ruling and Order, Under the heading of “Discussion” states a key point of Judge Lubeck’s argument, listed as fact; **I.B.23**:

“The child is there, and though the UCCJEA does not reflect that the best interest of the child is a weighty consideration, it is to this court”: Emphasis added.

The phrase “and though” within Judge Lubeck’s Third District Court ruling and order is proof that Judge Lubeck knew of the statutory factors required with any UCCJEA proceedings.

Whether or not the UCCJEA “*reflect*” the “*best interest of the child*” is for Judge Lubeck is for Judge Lubeck to have found the only UCCJEA statement regarding “*best interest of the child*” on page 7 of 55, number 5 of the NCCUSL’s 1997 UCCJEA final draft and prefatory notes (see **addendum “b”**), thus having full statutory knowledge that the newer UCCJEA had eliminated the term “*best interests*” as a matter of law.

It can not be expected of anyone, including the Respondent/Appellant in a UCCJEA case such as this, to submit evidence and be effective with argument when Judge Lubeck of the Third District Court deliberately employs his judicial powers to subvert the UCCJEA (101) statutes and circumvents the intent of an evidentiary standard of UCCJEA law, a law of which is governed by the federal mandated PKPA. Therefore, basing an entire ruling and order of this case on “*best Interest*” is a “weighty consideration” and not a clearly distinguishable jurisdictional UCCJEA standards as a matter of law, is an act of bad faith and a violation of the Respondent/Appellant’s constitutional rights of due process in this case.

II Issue Number Two

II. Issue: Simultaneous Proceedings, U.C.A. 78-45c-206, (UCA 206)

II.A. – 1. Unjustifiable Simultaneous Proceeding as a matter of UCCJEA law

Because the Petitioner/Appellee felt the need to forum shop, there are currently Simultaneous Proceeding in Utah and Washington States as stated with the following:

*“and discuss in which forum is most appropriate for this case to proceed (fact II.A.5)”,
“to determining the most appropriate forum for these proceedings (fact II.A.-7)”.*

Wherefore, with Petitioner/Appellee’s filing a, *“Petitioner has filed an additional action in the State of Washington (fact II.A.3)”*, and/or, *“case already commenced in the state of Washington (fact II.A.6)”* (see **addendum “c”**), was further asking the Third District Court to *“and confer with the Honorable Helen L. Halper, King County Superior Court Judge”(fact II.A.1),” This Court Should Communicate with the Washington Court”(fact II.A.5), “and/or communicate with the Washington Court (fact II.A.7)”*. Further stating: *“Petitioner has filed an additional action in the State of Washington, King County Superior Court case number 03-3-09663-0 SEA before the Honorable Helen L. Halpert, seeking enforcement of ¶ ¶ 2,3,4,5,6,12,13, and 14 of the Decree of Divorce (fact II.A.3)”*. It should be noted that there have never been any additional actions filed regarding enforcement Washington State, where by her statement to the Third District Court is fraudulent.

See the following **addendum “e”**, “Respondent/Appellant’s **Memorandum In Support To Decline Petitioners Motion To Quash; Service Of Summons**” regarding simultaneous proceedings: *“There are currently, “Simultaneous proceeding” on pages; 11, 12 and 13, (VI)(1)(4)(5): 4. This Utah court should encourage the termination of the Washington State proceeding, “Jurisdiction declined by reason of conduct” Page 18, (VIII)(1):“Petitioner failed to disclose” Page 26, (IX)(6):6. Petitioner failed to disclose the facts to the state of Washington and Utah, that there are currently, “Simultaneous proceedings”, in both Washington and Utah courts.*

Judicial interpretation of a Simultaneous Proceedings in a UCCJEA case is apparent and clear, and basically states; as a matter of law there can not be two jurisdiction having simultaneous proceedings taking place at the same time with the same case.

Petitioner/Appellee never filed a motion in Utah to relinquish and/or “been terminated” jurisdiction before filing her pending motion to modify in the State of Washington, whereby creating “concurrent jurisdiction”. Basic principle of protocol, with regarded to Simultaneous UCA 206, due process in a UCCJEA proceeding can be found within the NCCUSL’s “Prefatory Note”, page 6 of 55, item 3. comments are as follow (see **addendum “b”**):

“3. Exclusive continuing jurisdiction for the State that entered the decree.

“The ambiguity regarding whether a court has declined jurisdiction can result in one court improperly exercising jurisdiction because it erroneously believes that the other court has declined jurisdiction. This caused simultaneous proceedings and conflicting custody orders” Emphasis added.

And further states on page 32 of 55 of the NCCUSL’s final draft, under the heading of “SECTION 206. SIMULTANEOUS PROCEEDINGS”; the first comment states (see **addendum “b”**):

“The problem of simultaneous proceedings is no longer a significant issue. Most of the problems have been resolved be the prioritization of home state jurisdiction under Section 201; the exclusive, continuing jurisdiction provisions of Section 202; and the prohibitions on modification of Section 203. If there is a home State, there can be no

exercise of significant connection jurisdiction in and initial child custody determination and , therefore, no simultaneous proceedings. If there is a State of exclusive, continuing jurisdiction, there cannot be another State with “concurrent jurisdiction” and , therefore, no simultaneous proceedings. Emphasis added.

As a matter of law it can not be expected of any one, including the Respondent/Appellant in this case to present facts, evidence and argue and defend a case accurately that has an opponent who deliberately commits fraud, demands un-necessary communication of judges, and file Simultaneous Proceedings in order to forum shop. The unjustifiable conduct of filing Simultaneous Proceedings by the Petitioner/Appellee is a costly act of bad faith and disrespects of Respondents/Appellants right to due process law. Cost associated with not only a thousand plus hours and expenses accumulated by the Respondent/Appellant to defend this matter in two jurisdiction including this appeal, but also the wasted expense of time and moneys by the Washington and Utah courts (see Washington State invoices, **addendum “L”**).

Whereby, a matter of UCCJEA law, at the Oral hearing on November 17, 2003, the Third District Court should have concurred with the Respondent/Appellants fact, evidence and arguments presented in his “Memorandum In Support To Decline Petitioners Motion To Quash Service of Summons (see **addendum “e”**), and denied Petitioner/Appellee Motion To Quash Service of Summons and then re-directed her to the proper UCCJEA due process procedures, in which did not happen.

This is therefore, as a matter of law, the Third District Court erroneously failed when marshaling and prioritizing the statutory factors of a UCCJEA proceeding, including

Issue II, facts II.A.1 through II.A.8, of the facts and evidence presented in bad faith by the Petitioner/Appellee and deliberately ignoring that simultaneous proceeding were occurring at the time of his ruling and order. By the Third District Court not sticking to the “*conformity with this chapter*” it has violated the Respondent/Appellant’s rights to due process of this case.

III. Issue Number Three

III. Issue: Inconvenient Forum, Utah Codes Ann. 78-45c-207 (UCA 207)

III.A. – 1. Inconvenient Forum as a matter conformity to the UCCJEA law

At the time of the oral hearing on November 17, 2003, as a matter of the technical merits of fundamental due process laws of this case, listed in this brief as issues number; I.A, I.B.1,I.B.2, and issues II, should have declined Petitioner/Appellee Motion To Quash Service of Summons as a matter of law.

Judicial discretion should not have allowed the movement of this case forward passed the November 17, 2003 oral hearing. Wherefore, continuing this case without conformity to this chapter by adding “Communication between the Courts” (issues number IV.), III.A.7

“take the matter under advisement and contact the court in Washington”, IV.A.3 *“The court has reviewed the pleadings of the parties and the entire file, and heard oral argument, concludes as follows.”*, and further *“STAYED”* (III.A.14) this ruling and order *“finding this is an inconvenient forum under UCA 78-45c-207”* (III.A.14), therefore moving forward and basing any part of the Third District Court ruling and order on these above issues number III UCA 207 of this brief, is a act of bad faith that violates the Respondent/Appellant due process as a matter of UCCJEA law.

III.A. – 2. Inconvenient Forum Jurisdictional Standards as a matter of law

Throughout this case, Petitioner/Appellee has lacked any evidentiary “jurisdictional standards” when basing her facts, evidence, and argument when she chose to motion the Third District Court with her “To Quash Service of Summons”. Under this Issue number III UCA 207, Inconvenient Forum, III.A.1 expresses the key to Petitioner/Appellee argument, “Based Upon Utah Being an Inconvenient Forum for Petitioner and Kayla”, and continues to states in III.A.2, “due to all substantial evidence concerning Kayla is found in Washington”. These statements by the Petitioner/Appellee “for Petitioner and Kayla” and “concerning Kayla” clearly indicate a “best interest” of the child standard, whereby asserting a standard that has been eliminated in any UCCJEA terminology and/or proceedings.

The NCCUSL’s prefatory notes make it clear that the term and presumption “best interests” and/or “substantive standards” of the child has been eliminated in the newer UCCJEA, and clearly replaces it with “jurisdictional standards”, as stated on Page 7 of 55, number 5, see **addendum “b”** and/or Issue I.B.–2 of this brief.

To date there are 171 instruments of record on file at Utah’s Third District Court relating to the parties jurisdictional issues, see **addendum “k”**. For the Petitioner/Appellee to state (III.A.2) “documents would have to be produced from Washington”, “Would have to be produced” is a fraudulent statement.

Petitioner/Appellee further miss-represented the facts by introducing (III.A.1) “*school records, teacher opinions, doctors records, childcare in formation, personal relationships*” as miss-construed issues that relate more to “best interest” and/or to the

priority of new records in a UCCJEA 201 Initial Child-Custody case, which this case is not (see miss-construed 201 issues on page 23, Issues I.B., argument I. Prioritizing Evidence).

It is also evident in Judge Lubeck of the Third District Court ruling and order, that he is not familiar with, or read the parties case file in order to make clear and concise judicial decision on evidentiary standards. As a matter of law, he fails in his statements to clearly base, or state, what jurisdictional evidence of “relative circumstances of the parties” related to his statutory “weighting” of facts within UCA 78-45c-207. The following is a sample of his findings: listed with III.A.6, “The parties have been given joint physical custody”, where they have not; and with III.A.12 “It is not in the record exactly what schools she has been attending, when she started, nor where all the records are.”, and III.A.13 “Any records concerning the child in Utah would be at least 4 years old”.

Though his later statement pertains to un-related issues of best interest of the child. His statement of, “where all the records are”, and/or “any records”, of what schools Kayla has “been attending”, show his lack of care and/or research of information available to him within the 171 instruments (**addendum “k”**) of the parties records, located at the Third District Court House where he works.

As a matter of law, the Third District Court could not have properly “marshaled” any of the facts, evidence or argument presented by the Petitioner/Appellee in this case, including issues III, items III.A.1 through III.A.5 when her argument lacks any “jurisdictional standards” relating to “relative circumstances of the parties” needed to

(III.A.14) “Stayed” this or any Utah UCCJEA proceeding. The Third District Court ruled; III.A.13, “The child is there, and though the UCCJEA does not reflect that the best interest of the child is a weighty consideration, it is to this court.”. The UCCJEA highly reflects a “jurisdictional standards” in this country as a means to uniformity that is necessary to meet the evidentiary standard in a UCCJEA proceeding, such as this one. The Third District Court exceeded its discretionary latitude when it employed his judicial powers to subvert the UCCJEA UCA 207 statutes and circumvents “best interest of the child” as the evidentiary standard into its ruling and order. Furthermore, the Third District Court stated; *“These proceedings are STAYED in Utah and the matter is to be considered in Washington under petitioner’s petition to modify, court finding this is an inconvenient forum under UCA 78-45c-207.”*. As a matter of UCCJEA law, for the Third District Court to fine this is an inconvenient forum under the duress of Simultaneous Proceeding, without jurisdictional evidence from the Petitioner/Appellee and/or to subvert and circumvents all UCA 207 statutory factors and further “STAYED” (III.A.14) this ruling, was an act of bad faith and discretionary abuse that violates the Respondent/Appellant due process as a matter of UCCJEA law in this case. Respondent/Appellant’s submitted the following UCA 207 evidence and argument, see **addendum “e”**, “Respondent/Appellant’s **Memorandum** In Support To Decline Petitioners Motion To Quash; Service Of Summons”, page 13 and 14, (VIII)(1)(2), page 16, (VIII)(5)(6), page 17, (VIII)(9):

Also see this appeals cases docking statement, Issue (a): Inconvenient Forum, Subsection (c) (d): (h) (h, b, and g) and Conclusion.

IV Issue Number Four

IV. Issue: Communication Between Courts, U.C.A. 78-45c-110, (UCA 110)

IV.A – 1. Communication Between Courts as a matter conformity to the UCCJEA law

At the time of the oral hearing, regarding this case on November 17, 2003, as a matter of law the technical merits of fundamental due process of this case, listed in this brief as issues number; I.A., I.A.1,I.B.2, and issues II, should have declined Petitioner/Appellee Motion To Quash Service of Summons by the Third District Court.

Judicial discretion should not have allowed the forward movement of this case, passed the November 17, 2003 oral hearing. Wherefore, continuing this case without conformity to this chapter by adding “Communication between the Courts” (UCA 110)(this issues number IV.), III.A.7 “take the matter under advisement and contact the court in Washington”, IV.A.3 “*The court has reviewed the pleadings of the parties and the entire file, and heard oral argument, concludes as follows.*”, and further “STAYED” (III.A.14) this ruling and order “finding this is an inconvenient forum under UCA 78-45c-207” (III.A.14), therefore, as a matter of UCCJEA law, moving forward and basing any parts of the Third District Court ruling and order on above issues number IV. of this brief, is an act of bad faith that violates Respondent/Appellant’s due process of law. Furthermore; Respondent/Appellant’s brought forth the following argument in his **Memorandum** In Support To Decline Petitioners Motion To Quash; Service of Summons: Page 32, (XII): (XII) (also see **addendum “e”**) “*This Court should Communicate with the Washington State court and concur in a decline of Petitioner's,*

“Motion To Quash Service of Summons”. Before a ruling and order determination was to be made, courtesy of the Third District Court should have *“communicated”* with the Washington State court and concur that, by matter of UCCJEA law, bad faith simultaneous proceeding where occurring in both courts. And that the basis of the Petitioners/Appellee’s fact, evidence and filing of arguments in both Utah and Washington state courts, which relate to non-jurisdictional evidentiary standards (also a matter of UCCJEA law), and is more of an action of bad faith to forum shop in the state of Washington.

IV.A – 2. Notice to persons outside state as a matter of UCCJEA law

Petitioner/Appellee failed to give “notice to” and “service” of the hearing that she and/or her attorney attended and took place on November 24, 2003, above fact IV.A.5 (see **addendum “f”**, transcript), along with the failure to serve and give notice of written arguments (see **addendum “g”**, letter), letter dated November 20, 2003, sent to “The Honorable Helen L. Halpert”, and then was forward and submitted via *“faxed”* to the Honorable Bruce C. Lubeck at the Third District Court. These failures to give notice and service to the Respondent/Appellant is a matter of UCCJEA law, **mandated under Utah Codes Ann. 78-45c-108 (1)(2) (UCA 108)**,

Washington RCW 26.27.081 (1)(2)(which are verbatim with both states statutes). And further stated on page 17 of 55 of the NCCUSL final draft, under prefatory note, states this leading comment regarding section 108 (UCA 108)(see **addendum “b”**):

Whereby as a matter of UCCJEA law, failure to give *“Notice required for the exercise of*

jurisdiction when a person is outside this state” and “Proof of service” under UCA 108, by the Petitioner/Appellee for which created an **ex-parte hearing and written argument** that could not be fairly and fully argued against by the Respondent/Appellant, was an act of bad faith that negatively effected the outcome for the Respondent/Appellant of the Third District Courts decision, whereby violating the Respondents/Appellant rights to due process.

IV.A – 3. Ex-parte Communication Between Courts as a matter of law

Petitioner/Appellee demanded in her “Memorandum in Support of Motion To Quash Service of Summons”, facts number IV.A.1 and IV.A.2, that “court-to-court communication” take place between the Honorable Helen L. Halpert of the State of Washington and the Honorable Bruce C. Lubeck of the Utah Third District Court. The communication between courts hearing took place on November 24, 2003, fact IV.A.5 (see **addendum “f”**, transcript). Petitioner/Appellee in bad faith, failed to give notice and/or server notice (above argument 2) of her attorney intended participation of said hearing to Respondent/Appellant, and where at said hearing oral and written (see **addendum “g”**, letter) arguments were presented in person by attorney for Petitioner/Appellee Mr. Henry C. Hansen, thus creating a before, during and after one sided ex-parte hearing and argument.

As a matter of law, the **Utah Code Ann. 78-45c-110 (2) (UCA 110)**, Washington RCW 26.27.101 (2)(which are verbatim with both states statutes) Communication Between Courts, states the following: (2) “*If the parties are not able to participate in the communication, the parties shall be given the opportunity to present facts and legal*

arguments before a decision on jurisdiction is made.”

And specifically stated on Page 19, and 20 of 55 of the NCCUSL final draft, under prefatory note, these comment regarding section UCA 110 (**addendum “b”**):

“Communication between courts is required under Sections 204, 206, and 306 and strongly suggested in applying Section 207. Apart from those sections, there may be less need under this Act for courts to communicate concerning jurisdiction due to the prioritization of home state jurisdiction. Emphasis added.

And continues:

“The second sentence of subsection (b) protects the parties against unauthorized ex parte communications. The parties’ participation in the communication may amount to a hearing if there is an opportunity to present facts and jurisdictional arguments. However, absent such an opportunity, the participation of the parties should not to be considered a substitute for a hearing and the parties must be given an opportunity to fairly and fully present facts and arguments on the “jurisdictional issue” before a determination is made. This may be done through a hearing or, if appropriate, by affidavit or memorandum. The court is expected to set forth the basis for its jurisdictional decision, including any court-to-court communication which may have been a factor in the decision.” Emphasis added.

Both the Utah and Washington trial court judges had enough dialogue between themselves at the pre-hearing conference call on November 17, 2003, regarding scheduling of the hearing on November 24, 2003 to invite all parties, whereby either serve and notify

and/or require to serve and notify all included parties as a matter of law before the hearing. Or, stop the hearing as a matter of law and proceed with correct due process of civil and UCCJEA procedures, thereby avoiding any ex-parte hearings.

Therefore, as a matter of law under this chapter, including UCCJEA UCA 110., the Third District Court statements contained above in IV.A.3, and IV.A.4, summary of its ruling and order is un-true. As an act of bad faith, the Third District Court failed to allow the Respondent/Appellant “ the opportunity to present facts and legal arguments before a decision on jurisdiction is made. ”. Furthermore; without representation of the Respondent/Appellant at the November 24, 2003 hearing, the solo bad faith appearance by Mr. Hansen had influence any court-to-court communication which may have been a factor in the decision. ”, of judgment in advance and after, causing a negative outcome for the Respondent/Appellant by way of the Utah District Court making a determination to stay the motion, and move jurisdiction from Utah to Washington state, and where as a matter of law, the Respondent/Appellant was wronged by both states trial courts lack of due process, and the bad faith actions of Mr. Hansen.

IV.A – 4. Notice Opportunity to be heard – Joinder as a matter of UCCJEA law

When Petitioner/Appellee failed to give “notice to” and “service” of the hearing that she and/or her attorney attended and took place on November 24, 2003, fact IV.A.5 (see **addendum “f”**, transcript), including the failure to serve and give notice of written arguments (see **addendum “g”**, letter), letter dated November 20, 2003, sent to “The Honorable Helen L. Halpert”, and then was forward and submitted via “*faxed*” to the Honorable Bruce C. Lubeck at the Third District Court, thus creating a

before, during and after one sided ex-parte hearing and argument (listed as a matter of law, above argument 2 and 3, UCA 108 and UCA 110).

Wherefore, the Third District Court failed to notice serve or allow the Respondent/Appellant the opportunity to fully present facts, and fairly argue against the Petitioner/Appellee's ex-parte oral and written argument before a decision and/or determination on jurisdiction was made, thus the Third District Court ruling and order of this case to is not be entitled to full faith and credit as a matter of laws under the governing UCCJEA PKPA § 1738A(e), and as stated with **Utah Code Ann. 78-45c-205 (1)(3)(UCA 205)**, Washington RCW 26.27.241 (1)(3) (which are verbatim with both states statutes) Notice – Opportunity to be heard – Joinder.

(1) “Before a child custody determination is made under this chapter, notice and an opportunity to be heard ...”

And specifically stated as a matter of laws within the NCCUSL final draft, page 31 of 55, under prefatory note, it states this leading comment regarding section 205

(addendum “b”): “ Parents whose parental rights have not been previously terminated and persons having physical custody of the child are specifically mentioned as persons who must be given notice. The PKPA, § 1738A(e), requires that they be given notice in order for the custody determination to be entitled to full faith and credit under that Act.”

Emphasis added.

As an act of bad faith, the Petitioner/Appellee and the Third District Court failed to give notice to the Respondent/Appellant, regarding fact IV.A.5, and related arguments IV- 2,

3 and 4 listed above. Furthermore, the Third District Court failed to allow the Respondent/Appellant an opportunity to be heard, regarding fact IV.A.5, and related arguments 2, 3 and 4 above, before this cases child custody determination on jurisdiction was made in its ruling and order, whereby these failures violated the Respondent/Appellant's rights to due process as a matter of law under UCA 205. Therefore, under this chapter, and as a matter of UCCJEA UCA 205, and the PKPA § 1738A(e) law, full faith and credit can not be given to the Third District Courts ruling and order, because as an action of bad faith, it failed to give notice or the opportunity to be heard, thus, violating the Respondents/Appellant rights to due process.

Issue Number Five

V. Issue: Jurisdiction Declined By Reason Of Conduct, U.C.A. 78-45c-208, (UCA 208)

V.A – 1. Jurisdiction Declined By Reason Of Conduct as a matter of UCCJEA law

This argument pertains to the Petitioner/Appellee bad faith unjustified conduct that “invokes the jurisdiction of the court”, and where it “applies to those situations where jurisdiction exists because of the unjustified conduct of the” Petitioner/Appellee “seeking to invoke it.”

Above item V.A.1, is an excerpt of the context within the Respondent/Appellant's **Memorandum** In Support To Decline Petitioners Motion To Quash; Service Of Summons (**addendum “e”**). Pages 18 through 25 list the entire fact relating to Utah Code Section 78-45c-208 (UCA 208). Jurisdiction declined by reason of conduct. Unjustifiable conduct is specifically stated as a matter of laws within the NCCUSL final draft, page 36 and 37 of 55, under prefatory note, states this leading comment regarding

section 208 (see **addendum “b”**):

“Since there is no longer a multiplicity of jurisdictions which could take cognizance of a child-custody proceeding, there is less of a concern that one parent will take the child to another jurisdiction in an attempt to find a more favorable forum. Most of the jurisdictional problems generated by abducting parents should be solved by the prioritization of home State in Section 201; the exclusive, continuing jurisdiction provisions of Section 202; and the ban on modification in Section 203.” Emphasis added. But further states:

“ This section ensures that abducting parents will not receive an advantage for their unjustifiable conduct. If the conduct that creates the jurisdiction is unjustified, courts must decline to exercise jurisdiction that is inappropriately invoked by one of the parties. Emphasis added. And concludes with:

“The attorney’s fee standard for this section is patterned after the International Child Abduction Remedies Act, 42 U.S.C. § 11607(b)(3). The assessed costs and fees are to be paid to the respondent who established that jurisdiction was based on unjustifiable conduct.” Emphasis added.

The Petitioner/Appellee acted in bad faith with her unjustifiable conduct of filling her Utah “Motion to Quash Service of Summon”, additional motion in Washington State, committed fraud, miss-represented herself, failed prioritized and present jurisdictional evidentiary fact, evidence, and arguments.

The Third District Court should have from the on set of this case denied

Petitioners/Appellee's Motion to Quash Service of Summon based on the matter of UCCJEA law as an unjustifiable conduct under UCA 208, and further held the Petitioner/Appellee accountable for these actions and fine her for all and/or other relief, at law and in equity, to which Respondent/Appellant should have been, and still is justly entitled to.

CONCLUSION

All of the following case references apply to all issues listed as, I, II, III, IV and V. (see **addendum "n"**, for the full context of reference):

Kingdon v. Kingdon, filed October 2, 2003, (2003 UT App. 326) Case No. 20020631-CA, Determining Jurisdiction over custody matters is a question of law. See, e.g. In re D.S.K., 792 P.2d 118, 123 (Utah Ct. App. 1990) (citing Dragoo v. Dragoo, 298 N.W.2d 231, 232 (1980)).

In re Brilliat, No. 08-01-00054-CV, Court of appeals of Texas, Eighth District. El Paso, 86 S.W.3d 680; 2002 Tex. App. Lexis 4390, June 20, 2002, Decided, Released for Publication October 7, 2002.

The Respondent/Appellant was doing right by filing his June 30, 2003 Petition To Modify the parties Decree of Divorce, whereby asking help of the Third District Court in stabilizing the Petitioner/Appellee 8 move in 5 years, and to further stabilize the well fair (best interest) of the minor child for being move to a difference school every year of her life. The motive behind the Petitioner/Appellee filing her Motion to Quash Service of Summons (see course of proceedings, page iii) was to deliberately obstruct and/or stop the Respondent/Appellant Petition Modify, and to "receive an advantage" of her ongoing

unjustifiable conduct. The Petitioner/Appellee inexcusable conduct continued again this past year. While this case has been in the appeal process, the Petitioner/Appellee once again moved the parties minor child and pull her out of school for the last month of the school year (May 2003). Whereby this move was not, or could not have been challenged by the Respondent/Appellant do to the jurisdiction limbo cause by the Third District Courts wrongful actions of this case.

The following further summarizes the unjustifiable acts of the Petitioner/Appellee.

In this case, the Petitioner/Appellee

- 1) acted in bad faith for filing her Motion To Quash Service of Summons.
- 2) miss-represented the fact, evidence, and argument of this case
- 3) committed fraud to the State of Utah and Washington
- 4) act in bad faith with the un-justifiable conduct of filing simultaneous proceeding in two State.
- 5) failed to prioritize and/or use evidentiary standards in this proceedings.
- 6) failed to give notice to Respondent/Appellant
- 7) force an ex-parte hearing with the Utah and Washington courts
- 8) acted in bad faith by way of forum shopping the State of Washington
- 9) demanded un-necessary communications with two courts
- 10) committed bad faith collusion with the courts of Utah and Washington States

In this case, the Third District Court abused its discretion in

- 1) elevating its local powers to a status superior to the Federal Rules of PKPA

- 2) acted in bad faith by ignoring Utah non-uniform UCA 101 chapter
- 3) committing fraud to the State of Washington by way of selling under false pretenses
- 4) failure to follow standard due process procedures
- 5) discriminated and disenfranchised a Utah citizen
- 6) failed to prioritize and/or use evidentiary standards in this UCCJEA proceedings.
- 7) ignored jurisdictional standards
- 8) ignored Simultaneous proceeding where, and still are occurring
- 9) ignored ex-parte hearing where occurring, and/or stopping the hearing in progress
- 10) failed to allow the Respondent/Appellant an opportunity to be heard
- 11) disregarding the effects of his action has on the parties jurisdictional stability
- 12) allowed the Petitioner/Appellee to forum shop a jurisdiction to her liking
- 13) subverted and circumvented UCCJEA law and evidentiary standards
- 14) failed to familiarize him-self with the parties case file and jurisdictional evidence
- 15) and, committed the unlawful conduct and bad faith act of collusion with the following persons and/or law firms: Petitioner/Appellee, attorneys for the Petitioner/Appellee Nancy Mismash and Scott T. Poston of TeschGraham P.C. Park City, Utah, attorney for the Petitioner/Appellee Henry R. Hanssen Jr. of the law office's of Inslee, Best, Doezie & Ryder, P.S. Bellevue Washington, and the Honorable Judge Helen L. Halpert of the Superior Court of the State of Washington for the County of King. Whereby the action of those who participated in the inappropriate and unlawfully conducted of collusion violated as a matter of law, federal and state constitution due process procedure, including fraud, miss-representation, and discrimination rights against the

Respondent/Appellant in this case.

Justice demands that the Respondent/Appellant have returned to him the jurisdiction that was unlawfully relinquish from Utah, and for this Utah Court of Appeals to determine proper award of fees and costs due in the recovery of the parties Utah jurisdiction.

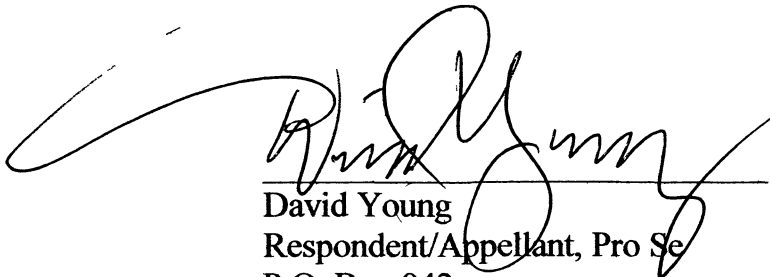
STATEMENT OF THE RELIEF SOUGHT

Respondent/Appellant request that the Third District Court's ruling and order be reversed and retain the parties jurisdiction under Utah law.

Respondent/Appellant request that the this Utah Court of Appeals and/or the Third District Court's acknowledge the bad faith action of the Petitioner/Appellee and further ordered her to monetary reimbursed the Respondent/Appellant for time and expenses incurred in defending simultaneous proceeding in the State of Utah, and Washington including this appeal, as allowed by law, or in the alternative that this mater be reversed and remanded for further proceedings before the district court, and for all other relief, at law and in equity, to which Respondent/Appellant may be justly entitled.

DATED this 2ND day of SEPTEMBER, 2004

Respectfully submitted;

A handwritten signature in black ink, appearing to read 'David Young', is written over a horizontal line. The signature is stylized with a large loop at the end.

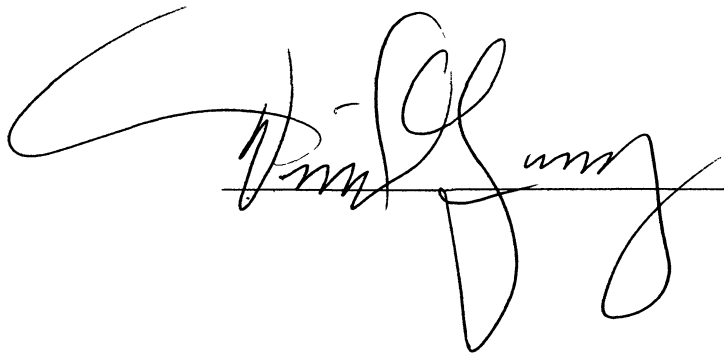
David Young
Respondent/Appellant, Pro Se
P.O. Box 942
Park City, Utah 84060

CERTIFICATE OF MAILING/DELIVERY

I hereby certify that (2) two true and correct copies of the foregoing Brief of Respondent/Appellant, was deposited in the United States Mail, postage prepaid, or (hand) delivered on

this 2nd day of SEPTEMBER, 2004

Nancy Mismash, #6615
Attorney for the Petitioner/Appellee
136 South Main Street, Suite 404
Salt Lake City, Utah 84104

A handwritten signature in black ink, appearing to read "Nancy Mismash", written over a horizontal line.

APPENDIX

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