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IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I

BRENDA LEONE KING,)	
)	
Appellant)	No. 57831-6-1
)	
v.)	MOTION OF WASHINGTON
)	STATE BAR ASSOCIATION
MICHAEL STEPHEN KING,)	FOR LEAVE TO FILE
)	<i>AMICUS CURIAE</i> BRIEF
Respondent)	

I. RELIEF REQUESTED

The Washington State Bar Association hereby requests permission to file an *amicus curiae* brief in the above-captioned case pursuant to RAP 10.6. The Brief will be in support of the position of Appellant Brenda King.

II. IDENTITY AND INTEREST OF AMICUS CURIAE

The Washington State Bar Association (“WSBA”) is an administrative arm of the Washington Supreme Court and a professional organization for members of the Washington Bar. The WSBA is authorized to take positions on issues affecting the

administration of justice and the practice of law, and to serve as a state-wide voice to the public and to “the branches of government” on matters relating to its purposes. GR 12(a)(11); GR 12(a)(2); GR 12(b)(16); *see* GR 12(c)(2). These purposes include promotion of “an effective legal system, accessible to all.” GR 12 (a)(2).

III. FAMILIARITY WITH ISSUES

The WSBA has a long-standing concern with issues of access to justice and the unmet legal needs of persons of limited or moderate income.

IV. SPECIFIC ISSUES TO BE ADDRESSED

Whether the Superior Court erred in failing to decide whether or not state and federal constitutional assurances of access to the courts and due process of law required the provision of counsel under the circumstances and whether the Superior Court erred in concluding that it lacked authority to provide an attorney for Ms. King at public expense even if the proceedings before it were constitutionally deficient without such representation for her.

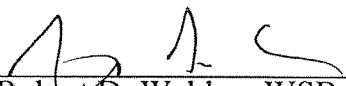
V. NEED FOR ADDITIONAL ARGUMENT

The WSBA wishes to bring to the attention of the Court some of the recent literature on pro se representation, especially in family-law cases, and on the unavailability of private counsel to undertake such cases pro bono. This perspective is unlikely to be provided by the parties or other *amici*.

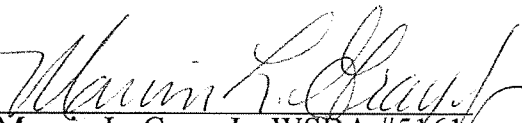
Ms. King, Mr. King and Snohomish County have consented to the filing of the brief. The WSBA therefore urges this Court to grant it leave to file an *Amicus Curiae* Brief in this appeal.

DATED this 20th day of March, 2007.

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DIVISION I

In re the Marriage of:

MICHAEL STEPHEN KING,
Respondent,

and

BRENDA LEONE KING,
Appellant.

BRIEF OF AMICUS CURIAE
WASHINGTON STATE BAR ASSOCIATION

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I. IDENTITY AND INTEREST OF AMICUS CURIAE

The Washington State Bar Association (“WSBA”) is an administrative arm of the Washington Supreme Court and a professional organization for members of the Washington Bar. The WSBA is authorized to take positions on issues affecting the administration of justice and the practice of law, and to serve as a state-wide voice to the public and to “the branches of government” on matters relating to its purposes. GR 12(a)(11); GR 12(a)(2); GR 12(b)(16); *see* GR 12(c)(2). These purposes include promotion of “an effective legal system, accessible to all.” GR 12 (a)(2).

The WSBA has a long-standing concern with issues of access to justice and the unmet legal needs of persons of limited or moderate income. Family-law matters make up a disproportionate share of these unmet legal needs, particularly those that require court appearances. *See The Washington State Civil Legal Needs Study 33-34* (Washington State Supreme Court Task Force on Civil Legal Justice Funding 2003).¹

¹ Available at <http://www.courts.wa.gov/newsinfo/content/taskforce/CivilLegalNeeds.pdf>.

II. ISSUES OF CONCERN TO AMICUS

1. Whether the Superior Court erred in failing to decide whether or not state and federal constitutional assurances of access to the courts and due process of law required the provision of counsel under the circumstances.

2. Whether the Superior Court erred in concluding that it lacked authority to provide an attorney for Ms. King at public expense even if the proceedings before it were constitutionally deficient without such representation for her.

Amicus takes no position on what parenting arrangements should have been made for the parties' minor children.

III. STATEMENT OF THE CASE

With regard to the issues of concern to *amicus*, the critical facts are these:

This was an action for dissolution of marriage, in which custody of the parties' three minor children was the principal matter in dispute. Ms. King accused her husband of anger management issues that sometimes had violent manifestations; Mr. King maintained that his wife was psychologically impaired. 2 RP 868:4-

87:23; 4 RP 102:4-108:20. Both accusations were disputed; the Trial Court made findings on neither.

Mr. King was represented by private counsel throughout the proceedings. CP 141-48. Ms. King, who had only a ninth-grade education, RP 5:17-6:7, 6:24-7:3, was unrepresented at the five-day trial. Following trial, the Superior Court (the Honorable George Bowden) ruled substantially in favor of Mr. King, awarding him primary residential care of the couple's children, sharply limiting their time of residence with their mother, and granting Mr. King sole decision-making authority with regard to the upbringing of the children while they resided with him. CP 29.

Ms. King sought a new trial where she could be represented by counsel provided at public expense. CP 41-76. Although the briefs of Mr. King and of Snohomish County suggest that Ms. King had the economic ability to obtain private counsel, that her efforts to obtain legal representation were less than diligent, and that proceeding pro se may have been a tactical decision on her part, the Trial Court made no findings on any of these issues. Instead, the Court decided not to address the constitutional issues in any

meaningful way and denied the request for counsel “simply because we don’t have the resources” to pay appointed counsel. RP Feb. 27, 2006 at 3:6-7. “[A]bsent funding from the legislature or some authorization that would permit the Court to appoint lawyers without compensation, I must deny the motion.” RP Feb. 27, 2006 at 3:15-18.

IV. ARGUMENT

In keeping with the direction of RAP 10.3(e) to avoid repetition of matters in other briefs, the WSBA will not repeat the constitutional arguments of the parties. Rather, the WSBA primarily wishes to bring to the attention of the Court some of the recent literature on pro se representation, especially in family-law cases, and on the unavailability of private counsel to undertake such cases pro bono.² The Court may properly take judicial notice of “legislative facts” such as those set forth in these materials. *Wyman v. Wallace*, 94 Wn.2d 99, 102, 615 P.2d 452 (1980); *State v. Balzer*, 91 Wn. App. 44, 58-59, 954 P.2d 931 (1998).

² The materials discussed are cited to Internet Web sites where possible. Where such Web sites were not located, the WSBA is providing electronic copies to counsel for the parties. Hard copies of these materials are not being filed with the Court because of their bulk; but they will be made available to the Court promptly upon its request.

