

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

In re the Custody of:	)	
	)	
TRINA M. HALLS, JEFFREY C.	)	<b>No. 30761-8-II</b>
HALLS, JR., and SELMA HALLS,	)	
Minor Children,	)	MOTION TO PUBLISH
	)	[RAP 12.3(e)]
and	)	
JEFFREY C. HALLS, SR.,	)	
Respondent,	)	
	)	
and	)	
JUNE ARDEN,	)	
Appellant.	)	

---

I. IDENTITY OF MOVING PARTY AND RELIEF SOUGHT

Pursuant to RAP 12.3(e), Appellant, June Arden; *amicus curiae*, the Committee for Indigent Representation and Civil Legal Equality (“CIRCLE”); and *amicus curiae*, Northwest Women’s Law Center (“NWLC”) request that the Court publish the opinion in this case filed on February 8, 2005 because of the decision’s important precedential value.

II. INTEREST OF AMICI CURIAE

CIRCLE is a committee comprised of individuals and organizations committed to the principle that equal justice for all is fundamental to the justice system. CIRCLE embraces the principle that the right to representation by competent counsel in judicial proceedings is fundamental and cannot be denied for want of adequate funds. CIRCLE is committed to ensuring the rights of indigent persons to competent representation in non-criminal judicial proceedings.

The Northwest Women's Law Center is a regional non-profit public interest organization that works to advance the legal rights of all women through litigation, legislation, and the provision of legal information and referral services. Since its founding in 1978, the NWLC has participated as counsel and as *amicus curiae* in cases throughout the country, and it is currently involved in numerous legislative and litigation efforts. The NWLC has developed expertise in many areas of law pertaining to women's rights, including family law, and was an instrumental stakeholder in drafting and lobbying efforts surrounding the Parenting Act's relocation provisions. Of additional significance to this case, the NWLC serves as a regional expert on the impact of gender inequity and domestic violence in the family law context. As such, the NWLC has developed expertise on the constitutional importance of meaningful access to the legal system, an issue directly raised in this matter.

### III. STATEMENT OF FACTS RELEVANT TO THIS MOTION

On February 8, 2005, this Court filed an unpublished opinion in which three contempt orders were vacated due to the trial court's failure to appoint counsel for Appellant. This decision addresses the right to court-appointed counsel for indigent defendants in civil contempt proceedings – an issue of great importance to public and private interests in this State. *See* Attached Declarations of Donald J. Horowitz and Paul A. Bastine.

### IV. GROUNDS FOR RELIEF AND ARGUMENT

Pursuant to RCW 2.06.040, “[a]ll decisions of the court having precedential value shall be published as opinions of the court.” In determining whether to publish an opinion, RAP 12.3(d) directs the Court to consider whether the decision (1) determines an unsettled or new question of law or constitutional principle, (2) modifies, clarifies, or reverses an established principle of law, (3) is of general public interest or importance, or (4) is in conflict with prior opinions of the Court of Appeals. *See also State v. Fitzpatrick*, 5 Wn. App. 661, 669, 491 P.2d 262 (1971) (noting these criteria and adding a fifth: whether the decision is not unanimous).

The Court's decision in this case satisfies the second and third criteria: it clarifies an established principle of law and is of general public interest and importance.

**A. This Court’s Decision Clarifies the Scope of the Right to Counsel in Civil Contempt Proceedings.**

The Court’s decision in this case would be the first published Washington appellate opinion to clarify the extent of the right to court-appointed counsel for civil contempt proceedings identified in *Tetro v. Tetro*, 86 Wn.2d 252, 544 P.2d 17 (1975). This Court’s statement that Ms. Arden was entitled to appointed counsel for the full duration of all of the contempt proceedings leaves no question that once a *Tetro*-based right to counsel attaches, that right carries throughout the duration of the proceeding. This is a valuable clarification of the law that justifies publication of this important opinion. It will result in substantial beneficial changes to the way civil contempt hearings are conducted.

This decision is the first to directly address the extent and duration of the right to counsel identified in *Tetro*. In *Tetro*, the Washington Supreme Court held that the right of indigent defendants in civil contempt proceedings to court-appointed counsel is triggered “wherever a contempt adjudication may result in incarceration . . . .” *Tetro*, 86 Wn.2d at 255. The Court did not define the extent, duration, or scope of such representation, only holding that “[t]he threat of imprisonment . . . must be immediate.” *Tetro*, 86 Wn.2d at 255, n. 1. Subsequent Washington cases affirming *Tetro* have not addressed this question. *See, e.g., In re the Marriage of*

*Wulfsberg*, 42 Wn. App. 627, 713 P.2d 132 (1986). This Court's decision is the first to do so.

In the present case, Ms. Arden was faced with incarceration for contempt during three hearings, but in the last hearing the request for jail time was withdrawn. Nonetheless, in reviewing her situation, this Court wrote:

At one hearing, the public defender initially represented her, but then withdrew before the hearing concluded. At another hearing, her attorney was present but did not represent her explaining that he was withdrawing and was not prepared to represent her. *The court should have appointed counsel to represent Arden throughout these hearings.*

(opinion at 11 emphasis added.) Thus, in vacating the contempt orders, this Court announces a clear rule: once a *Tetro*-based right to counsel attaches, representation of the accused must continue until the resolution of the proceeding. Publication of this rule will provide clear, meaningful dimensions to the *Tetro* right to counsel and thereby guide those involved in civil contempt proceedings.

**B. A Clear Statement on the Right to Counsel in Civil Contempt Proceedings Is of Great Importance to the Judiciary, Public Defenders, and All Parties to Civil Contempt Proceedings.**

When published, this Court's clarification of the extent of the *Tetro* right to counsel to civil contempt proceedings will provide guidance to judges, public defenders, and all parties involved in civil contempt

proceedings. As the attached declaration of Donald J. Horowitz, former King County Superior Court Judge, attests: “The opinion provides important and valuable guidance by clarifying the responsibilities, both immediate and ongoing, of public defenders and trial judges when issues of civil contempt arise or are present.”

The beneficial value of publication is not speculative; according to the attached declaration of former Spokane County Superior Court Judge Paul A. Bastine, “This case presents a common fact pattern. In my experience, it is common practice for public defenders and appointed counsel to immediately seek withdrawal once a civil contempt issue has been resolved in a particular hearing.”

In summary, the decision in this case will have a direct impact on the way civil contempt proceedings are currently conducted by clarifying both the rights of the accused and the responsibilities of public defenders and trial judges. As a matter of public interest and importance, this decision should be published.

V. CONCLUSION


For the foregoing reasons, the appellant and *amici* respectfully request that the Court publish its important opinion pursuant to RAP 12.3(c).

DATED this 28<sup>th</sup> day of February, 2005.

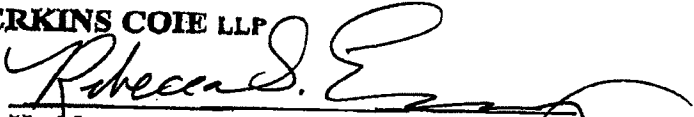
NORTHWEST JUSTICE PROJECT

By   
Jason T. Vail, WSBA #32244  
Attorney for Appellant June Arden

GORDON, THOMAS, HONEYWELL,  
MALANCA, PETERSON & DAHEIM,  
LLP

By   
Salvador A. Mungia, WSBA #14807  
Colin Folawn, WSBA #34211  
Attorneys for Amicus Curiae CIRCLE.

PERKINS COIE LLP

By   
Kathleen M. O'Sullivan, WSBA #27850  
Sally L. Morgan, WSBA #33140  
Katherine E. Page, WSBA #32903  
Rebecca S. Engrav, WSBA #33275  
Attorneys for Amicus Curiae Northwest  
Women's Law Center

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

In re the Custody of: Trina M Halls, Jeffery  
C. Halls, Jr., and Selma Halls, Minor  
Children,

vs.

Jeffery C. Halls, Sr.,  
Respondent,

And

June Arden,  
Appellant.

No. 30761-8 II

DECLARATION OF DONALD J  
HOROWITZ IN SUPPORT OF  
MOTION TO PUBLISH

I, , declare as follows:

1. I am an attorney and a former King County Superior Court Judge.

I was admitted to the Washington State Bar in 1960, and remain an active member of the Bar, currently dividing my time between involvement in alternative dispute resolution (both mediation and arbitration), and public and pro bono service mostly with the

DECLARATION OF DONALD J HOROWITZ



Washington State Bar Association and the Washington State Access to Justice Board. I have for the last two years been a member of the Amicus Curiae Committee of the Washington State Bar Association.

2. Both as a judge and a practicing attorney, I have had substantial experience in child custody matters and hearings, and in contempt of courts issues and hearings. While a trial court judge, I sat on the Domestic Relations calendar involving temporary custody issues, visitation and such, support and support enforcement, and contempt and associated matters numbers of times as well as conducting many domestic relations trials and modification hearings involving the same issues, except not only on a temporary but on a so-called permanent basis. During my early and middle years in private practice, I handled many such cases and issues as well.

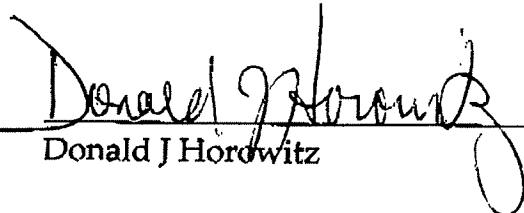
3. Based on my experience, I believe this case has considerable significance to public defenders, trial court judges, those accused of contempt, and other parties, participants and counsel in such cases.

I support the motion to publish the opinion in this case.

4. This case presents a frequent fact pattern. In my experience, it is common practice for public defenders to immediately seek withdrawal once a civil contempt issue has been resolved in a particular hearing.
5. Such circumstances have not to my knowledge been addressed in any Washington Appellate Court decision.
6. The opinion provides important and valuable guidance by clarifying the responsibilities, both immediate and ongoing, of public defenders and trial judges when issues of civil contempt arise or are present.
7. If followed, I believe the decision would result in substantial beneficial change in the way civil contempt hearings are held.
8. Accordingly, I strongly urge the Court to publish this opinion. I believe there are large numbers of affected and interested persons who feel likewise.

I declare under penalty of perjury pursuant to the laws of the State of Washington that the foregoing is true and correct

Dated this 23rd day of February, 2005, at Seattle, Washington.

  
Donald J Horowitz

DECLARATION OF DONALD J HOROWITZ

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

In re the Custody of: Trina M Halls, Jeffery C. Halls, Jr., and Selma Halls,  
Minor Children, vs. Jeffery C. Halls, Sr., Respondent, And  
June Arden, Appellant. No. 30761-8 II  
DECLARATION OF IN SUPPORT OF MOTION TO PUBLISH

I, , declare as follows:

1. I am retired as as of January 10, 2005. I was one of two family law judges in Spokane County having been on that assignment for approximately four and a half years of the last six.
2. I have during that time been involved almost daily with custody and contempt cases and matters.
3. Based on my experience, I believe this case has considerable significance to public defenders, trial court judges and those accused of contempt and I support the motion to publish the opinion in this case.
4. This case presents a common fact pattern. In my experience, it is

common practice for public defenders and appointed counsel to immediately seek withdrawal once a civil contempt issue has been resolved in a particular hearing.

5. Such circumstances have not been addressed in any Washington Appellate Court decision.
6. The opinion provides critical guidance by clarifying the responsibilities of public defenders, appointed counsel and trial judges when issues of civil contempt arise.
7. If followed, I believe the decision would cause substantial beneficial change in the way civil contempt hearings are held.
8. Accordingly, I strongly urge the Court to publish this opinion and I believe there are large numbers of affected and interested person who would feel likewise.

I declare under penalty of perjury pursuant to the laws of the State of Washington that the foregoing is true and correct

Dated this 22nd day of February, 2005, at Spokane, Washington.

A handwritten signature in cursive script, reading "Paul A. Bastine", is written over a horizontal line.

Paul A. Bastine, Judge Retired

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

In re the Custody of: Trina M Halls, Jeffery  
C. Halls, Jr., and Selma Halls, Minor  
Children,

vs.

Jeffery C. Halls, Sr.,  
Respondent,

And

June Arden,  
Appellant.

No. 30761-8 II

DECLARATION OF  
WASHINGTON DEFENDER  
ASSOCIATION  
IN SUPPORT OF MOTION TO  
PUBLISH

I, Robert C. Boruchowitz, declare as follows:

1. I am Past President of The Washington Defender Association (WDA), a membership organization that represents most of the public defenders and many of the assigned counsel representing clients in criminal, juvenile, dependency, civil contempt, and civil commitment proceedings in the state of Washington. I am a public defender with 31 years of

DECLARATION OF

experience including 26 years as director of The Defender Association, the oldest public defender office in King County. The Defender Association represents clients in dependency, at risk youth, CHINS, and truancy proceedings, all of which engage issues relating to the right to counsel in contempt proceedings. On occasion, Defender attorneys have been asked by the court to represent clients on issues related to parenting plans.

2. I was a Soros Senior Fellow in 2003-2004, focusing on access to counsel in misdemeanor and juvenile proceedings. I wrote an article on the subject, "The Right to Counsel: Every Accused Person's Right", in the Washington State Bar News, January, 2004. I have spoken at CLE seminars on the subject, including a panel on Ineffective Assistance of Counsel at the Appellate Judges' Spring Program, Vancouver, Washington, March 29, 2004, and a presentation on Ethics Issues and Effective Assistance of Counsel, at the Washington Defender Association Conference, April, 2004, Sun Mountain, Washington, and a session on Right to Counsel in Juvenile Cases, Washington State Bar Criminal Justice Institute, September, 2004.
3. Based on my experience, I believe this case has considerable significance to public defenders, trial court judges and those accused of contempt. WDA's Board of Directors supports the motion to publish the opinion in this case. This case involves issues that recur. To my knowledge, similar circumstances

DECLARATION OF

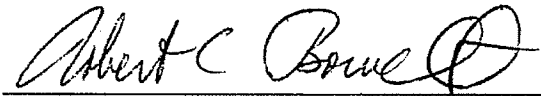
have not been addressed in any published Washington Appellate Court decision. The opinion provides critical guidance by clarifying the responsibilities of public defenders and trial judges when issues of civil contempt arise.

Publishing the decision would cause substantial beneficial change in the way civil contempt hearings are held.

The Washington Defender Association strongly urges the Court to publish this opinion.

I declare under penalty of perjury pursuant to the laws of the State of Washington that the foregoing is true and correct

Dated this 28th day of February, 2005, at Seattle, Washington.

A handwritten signature in cursive script, reading "Robert C. Boruchowitz", written over a horizontal line.

Robert C. Boruchowitz WSBA #4563

DECLARATION OF