SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

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| IN RE THE MATTER OF:  AMICUS APPEARANCE OF THE KING COUNTY PROSECUTING ATTORNEY’S OFFICE IN FIREARM PROTECTION ORDER MATTERS |  | )  ) ) ) ) ) ) ) ) ) )  ) | No.  MOTION FOR GENERAL ORDER TO APPEAR AS AMICUS CURIAE AT FIREARM COMPLIANCE REVIEW CALENDAR AND EXTREME RISK PROTECTION ORDER CALENDAR |

1. MOTION

The King County Prosecutor’s Office (“KCPAO”) hereby moves for a general order permitting the prosecutor’s office to participate as amicus curiae (1) at the firearms compliance review calendar, and (2) at the extreme risk protection order calendar. As amicus, KCPAO will endeavor to provide the court with relevant factual information and its legal analysis regarding 1) compliance review hearings under RCW Ch. 9.41, and 2) Extreme Risk Protection Order matters.

1. INTEREST OF KCPAO

Under RCW 36.27.020(11), county prosecutors have a duty to “[s]eek to reform and improve the administration of criminal justice *and stimulate efforts to remedy inadequacies or injustice in substantive or procedural law*.” (Emphasis added). With regard to Washington’s firearms surrender laws, KCPAO has a particular public safety interest relating to firearms ordered to be surrendered and orders prohibiting possession of firearms. It also has an interest in the proper administration of justice with regard to those laws, including the fair treatment of litigants.

In 2013-2014 study, 54% of perpetrators in a domestic violence related shooting death were **prohibited** from owning guns under Washington State law.[[1]](#footnote-1) At some point, these perpetrators were ordered not to possess firearms, but did so anyway. There is a clear public safety interest in ensuring that respondents ordered to surrender weapons actually do so.

Furthermore, research shows that when a gun is present in a domestic violence situation, it increases the risk of homicide for women by 500 percent.[[2]](#footnote-2) In Washington State, domestic violence homicide perpetrators use guns more often than all other weapons combined. Additionally, domestic violence calls lead to more police fatalities than any other type of law enforcement response.[[3]](#footnote-3)

A woman's risk of homicide is highest when she is trying to end the relationship. According to the highly-respected Ontario Domestic Assault Risk Assessment (ODARA), the single most important red flag to predict a lethal response was “recent separation.” 45% of DV homicides occur within 90 days of separation, most within the first few days. The best available research shows that the most important element in preventing fatalities is to remove the firearm from the situation.[[4]](#footnote-4)

1. LEGAL AUTHORITY FOR AMICUS

Trial courts have discretion to allow amicus curiae to appear if the trial court finds it helpful to the issues at bar. Parsons v. State, Dep't of Soc. & Health Servs., 129 Wn. App. 293, 118 P.3d 930 (2005) (holding that although no specific rule permits amicus participation in the trial court, there is no rule prohibiting it, and there is no reason a trial judge should not have discretion to permit such participation if it may be helpful to the court). Due to the transitory nature of firearms surrender proceedings, a case-by-case approach to determining participation by amicus would be unnecessarily cumbersome and delay the court’s rapid action in these matters. A general order provides an appropriate mechanism for allowing KCPAO participation in these cases, especially since the interests of KCPAO are general to all cases.

A Superior Court’s authority to grant amicus participation is broad. In Parsons, the trial court allowed the Washington Protection and Advocacy System, a non-profit organization designated by the governor, to appear as amicus and provide legal argument, analysis, and information in the form of reports and studies. Id. at 298. On appeal, the court held that there was no rule prohibiting amicus to appear before a trial court. Id. at 302. The court also held that allowing amicus to submit information fell within the trial court’s discretion. “We are confident the trial courts are equally able to sort out what materials are proper for the court’s consideration.” Id.

As mentioned above, the King County Prosecutor’s Office has an interest in ensuring compliance and the proper administration of justice in cases where orders to surrender weapons have been issued or are being contemplated by the court. Toward these purposes, KCPAO has resources not readily available to the court, which it can use to provide relevant information to the court. For example, the King County Prosecutor’s Office can run a respondent’s firearm purchase history and obtain documentation from local law enforcement regarding firearm surrenders. In many cases, we are able to confirm a respondent’s compliance, where the court does not have the resources or ability to do so. We can also provide the court with information regarding outstanding firearms.

The King County Prosecutor’s Office also has a public safety interest in assisting the court and local law enforcement with Extreme Risk Protection Orders. Given the newness of the law allowing for these types of orders, our recent practice has shown that both local law enforcement and the court have benefitted from our presence at the calendar – both in assistance in filing the proper orders and in the legal analysis regarding the fact-specific situations.

IV. CONCLUSION

For these reasons, the King County Prosecutor’s Office hereby moves the court for a general order allowing KCPAO’s appearance as amicus at the firearms compliance review calendar and the extreme risk protection order calendar. A county prosecutor, due to the statutory duties in RCW 36.27.020, has a special responsibility to assist with the administration of justice, especially in circumstances where a new law imposes additional (and sometimes) uncertain duties on the court.

A proposed order is attached. Per the proposed order, KCPAO recognizes that it may be appropriate to grant general amicus status to other organizations should they make an appropriate showing to the court.

DATED this \_\_\_\_ day of August, 2018.

DAN SATTERBERG

King County Prosecuting Attorney

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Mark Larson, WSBA# 15328

Deputy Prosecuting Attorney

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

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| In re the Matter of :  AMICUS APPEARANCE OF THE KING COUNTY PROSECUTING ATTORNEY’S OFFICE IN FIREARM PROTECTION ORDER MATTERS |  | )  ) ) ) ) ) ) ) ) ) )  ) | No.  GENERAL ORDER ALLOWING  KING COUNTY PROSECUTOR’S OFFICE TO APPEAR AS AMICUS AT FIREARM COMPLIANCE REVIEW HEARINGS AND EXTREME RISK PROTECTION ORDER HEARINGS |

THIS MATTER came before the Presiding Judge upon the motion of the King County Prosecutor’s Office for a general order allowing KCPAO to appear as amicus curiae at the firearm compliance review calendar and the extreme risk protection order calendar. Having considered KCPAO’s motion and finding that KCPAO’s participation as amicus could assist the court,

IT IS HEREBY ORDERED that the King County Prosecutor’s Office may appear as amicus curiae at the firearm compliance review calendar and the extreme risk protection order calendar without the need to file individual amicus requests in each case. Any other party also wishing to appear in these matters as amicus may submit a motion for consideration by the Presiding Judge.

DONE IN OPEN COURT this \_\_\_\_\_\_\_ day of August, 2018,

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Chief Presiding Judge

1. Washington State Coalition Against Domestic Violence [↑](#footnote-ref-1)
2. J.C. Campbell, D.W. Webster, J. Koziol-McLain, et al., “Risk factors for femicide within physically abusive intimate relationships: results from a multi-site case control study,” 93 Amer. J. of Public Health 1089-1097 (2003). [↑](#footnote-ref-2)
3. National Law Enforcement Officers Memorial Fund [↑](#footnote-ref-3)
4. New England Journal of Medicine [↑](#footnote-ref-4)