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2010 AUG 11 PM 3:04

CIRCUIT COURT
MULTNOMAH COUNTY

4 IN THE CIRCUIT COURT OF THE STATE OF OREGON

5 FOR THE COUNTY OF MULTNOMAH

6 Family Law Department

7 In the Matter of the Marriage of:

8 KAINE ANDREW HORMAN,

9 Petitioner,

10 and

11 TERRI LYNN MOULTON HORMAN,

12 Respondent
13

Case Number: 1006-66084

OBJECTION TO RESPONDENT'S
MOTION TO HOLD CASE IN
ABATEMENT; AND COUNTER
MOTION FOR ATTORNEY FEES

14 Petitioner, Kaine Andrew Horman, by and through his attorneys, Laura E. Rackner
15 and Gearing, Rackner, and Engel LLP, responds to *Respondent's Motion to Hold Case in*
16 *Abatement* as follows:

17 **I. OBJECTION TO MOTION TO HOLD CASE IN ABATEMENT**

18 Petitioner / Husband objects to the abatement of the dissolution case or a bifurcation
19 of any issues. Respondent's / Wife's Motion essentially asks the Court to abate and bifurcate
20 the dissolution proceeding by delaying the proceeding until the conclusion of any possible
21 criminal investigation against Wife or, in the alternative, by granting the parties' divorce, but
22 *not* the specific relief requested by Husband and authorized by ORS §107.105. This includes
23 a timely determination of legal and physical custody of a minor child, parenting time, child
24 support, and the division of property and debts.

1 There is no authority or basis for Wife's request to postpone resolution of the parties'
2 divorce and Husband's claims for relief. Such delay would be detrimental to the welfare of
3 the involved children and would violate Husband's due process right to the administration of
4 justice without delay under Article I, Section 10, of the Oregon Constitution.

5 **A. General authority allowing an abatement or bifurcation of issues in**
6 **limited instances.**

7 An abatement may be appropriate when there are external activities that may have an
8 effect on the outcome or conduct of the proceeding. SLR 1.015 (1). For example, abatements
9 are typically used when there is a need to stay a proceeding pending arbitration, *see Motsigner*
10 *v. Lithia Rose-Ft., Inc.*, 211 Or App 610 (2007); to stay enforcement of a judgment pending
11 appeal (ORS §19.330); to stay a proceeding pending bankruptcy (11 USC §362); or to allow
12 additional time contingent upon the occurrence of an event (Oregon Civil Litigation Manual
13 §15.44, §15.46). In those circumstances, the court is awaiting a decision from another entity
14 on parallel issues involving the same parties, such as an arbitration; or the entire claim for
15 relief is deferred until a specific event occurs, such as when damages can be accurately
16 established. None of these circumstances apply here.

17 Bifurcations may be permitted at the discretion of the trial court, but only if the
18 bifurcation is conducive to expedition and economy or would further convenience or avert
19 prejudice. ORCP 53(B); *Bremner v. Charles, M.D.*, 312 Or 274, 279 (1991). The Oregon
20 Supreme Court has held that "[b]ifurcation of issues for trial is not to be ordered routinely;
21 rather, a decision to bifurcate should be made only as a result of an informed exercise of
22 discretion" of the trial court. *Taylor v. Ramsay-Gerding Construction Company*, 233 Or App
23 272, 292 (2010).

24 ///

1 B. An abatement or bifurcation would be contrary to Oregon policy
2 regarding the adjudication of divorce proceedings and the welfare of
3 children.

4 Oregon legislative and judicial policy requires the expeditious adjudication of family
5 law proceedings and custody determinations. *See* SLR 8.017(5) ("[d]issolution, annulment
6 and separation cases shall proceed to trial within eight months of the date of filing, except
7 upon application * * * to the Chief Family Law Judge"); *see Watson v. Watson*, 213 Or 182
8 (1958) (indicating that the court in a divorce proceeding is obligated to make a custody award
9 within a reasonable time); *see also Stonebrink v. Stonebrink*, 2 Or App 328, 233 (1970)
10 (stating that a delay or "reservation of a decision on custody * * * should be used only in
11 exceptional cases where the best interest of the child requires it and should be for the shortest
12 practicable period"). The court's articulated goal is to provide finality and disentangle the
13 parties' affairs. *See Slauson and Slauson*, 29 Or App 177, 183-84 (1977) (highlighting the
14 court's objectives in a dissolution proceeding to provide finality and "place the parties in a
15 position so that they can begin anew"); *see Haguewood and Haguewood*, 292 Or 197, 207
16 (1981) (emphasizing the court's goal of disentangling the parties' financial affairs to the
17 greatest extent possible).

18 If this case is abated, it would be placed under a two-year stay order pursuant to SLR
19 1.015(1). If Wife's asserted claims for relief are accepted by the Court, the proceedings could
20 theoretically be stayed *indefinitely*. There is no guarantee when the criminal aspects of this
21 case will be resolved (i.e. in one, two, five, or even ten years) or how long media interest will
22 continue. If this case is bifurcated, Husband would be officially "divorced," but the welfare
23 of his children would be jeopardized and the balance of his legal rights as a party to the
24 marriage would remain unresolved.

///

- 1 i. Any delay of this proceeding would be contrary to the best interests of
2 the children.

3 This Court has a legislatively mandated duty to make a custody determination and
4 develop a parenting plan that reflects the public policy in ORS 107.149, and the directives set
5 forth in ORS 107.101 and ORS 107.147, all of which emphasize the court's obligation to
6 focus on "the best interests of the children." Wife's motion seeks abatement for, apparently,
7 her convenience. Wife's motion, essentially, places her own convenience and needs over the
8 children's welfare and safety. Kiara and Kyron Horman have a need and right to have this
9 matter resolved as quickly and efficiently as possible so that their physical and emotional
10 safety is not jeopardized, they have a secure home, and they have a consistent predictable
11 routine and schedule. Wife's Motion and the supporting Declaration of her attorney fail to
12 address the children's welfare and needs. The extraordinary relief Wife has requested is not
13 contemplated by ORS 107 et. seq. and is contrary to the legislative goals set forth in those
14 statutes.

- 15 ii. Husband's rights and interest would be substantially prejudiced by the
16 abatement or bifurcation of this case.

17 Whether an abatement is fixed in time or indefinite, or if Husband is nominally
18 granted a dissolution without the underlying substantive relief, Husband's legal rights will be
19 irreparably harmed as described herein:

20 a) A divorced person is entitled to exercise property rights and make
21 decisions about his or her financial future without restriction or conditions placed by a former
22 spouse. These parties own real and personal property, retirement accounts, and they have
23 debts and liabilities that need to be divided equitably. Postponing this division indefinitely
24 would leave the parties financially enmeshed, unable to act independently in their own best
 interests as unmarried persons.

1 b) Delay of the economic and financial aspects of this case would directly
2 affect Husband's ability to provide stability and consistency for the parties' daughter Kiara
3 and his son Kyron. Such stability comes not only from providing a safe and secure home
4 environment, but also includes the children's rights to health insurance and financial support
5 under the Oregon child support guidelines.

6 c) Abatement or bifurcation of this matter would create a virtual mine
7 field of problems related to the property division and the parties' financial affairs. Wife
8 overlooks the following complications her proposed delay would create: the possible
9 continuation of a mutual financial restraining order until the parties' property rights can be
10 addressed; intestacy rights, inheritance, and estate-planning considerations; the disposition of
11 real and personal property, including the associated rights and obligations to manage, use, and
12 dispose of the property as a party may deem appropriate; health and life insurances issues for
13 the joint child; and determination of support obligations. Under Wife's proposal, Husband is
14 required to maintain the status quo indefinitely and be restricted in his ability to move forward
15 with any financial planning or decision-making.

16 C. **There is no legal or factual basis supporting Wife's request.**

17 Wife makes no substantive argument justifying an abatement in a family law context.
18 Wife has not demonstrated why her personal interests should outweigh the best interests of
19 the children.

20 Wife's only stated basis for a delay or bifurcation of the divorce proceedings is the
21 "intense scrutiny" resulting from "unflattering" media reports and local law enforcement's
22 investigation of Kyron Horman. There is no explanation how or why this "intense scrutiny"
23 affects Wife's ability to conduct and exchange discovery, participate in any evaluations
24 pertaining to custody and parenting time, challenge Husband's requests for economic relief,

1 or otherwise defend herself in a *civil* proceeding involving the parties' rights as husband and
2 wife and father and mother. Despite Wife's claims otherwise, the parties could have a
3 confidential evaluation on custody and parenting time if necessary, which could be sealed
4 from public disclosure.

5 Although not directly asserted by Wife, it is understood that her primary basis for
6 stalling the dissolution proceeding is to avoid possible self-incrimination as to the ongoing
7 law enforcement investigation into the disappearance of her stepson. Certainly, Wife has the
8 right under the Fifth Amendment of the United States Constitution not to testify if she feels
9 her testimony will potentially incriminate her. *See Kastinger v. United States*, 406 US 441,
10 444-45 (1972) (the privilege against self-incrimination may be asserted in a civil or criminal
11 proceeding). Exercise of the Fifth Amendment is a voluntary act. It allows specific
12 protections (i.e., the right to silence) to avoid disclosures of information that could lead to
13 criminal charges or sanctions. However, the Fifth Amendment cannot be invoked by a party
14 to discharge her burden to present evidence or testimony to prove or defend her case. In
15 *Dep't of Human Servs. v. K.L.R (In Re R.C)*, 235 Or App 1, 8 (2010) the Oregon Supreme
16 Court relied on *In re S.*, 66 Misc 2d 683, 690, 322 NYS2d 170, 177-78 (1971), which
17 addressed this issue in a juvenile dependency proceeding, and explained:

18 There is no mandatory requirement that [a parent] take the stand and testify. That
19 would be unconstitutional. The constraint upon [the parents] to give testimony
20 arises * * * simply from the force of circumstances and not from any form of
21 compulsion forbidden by the constitution.

22 * * * *

23 * * * It may be a difficult decision for the [parents] and their attorneys. It is a question
24 of procedure and legal options for the defense, not one of the constitutionality of
incrimination.

Further, the Fifth Amendment rights do not extend to give Wife the right to delay the

1 adjudication of a civil matter, particularly one involving the welfare of a child. *Dep't of*
2 *Human Servs.*, 235 Or App at 9 (delaying a juvenile dependency proceeding to accommodate
3 a parent's Fifth Amendment right against self-incrimination "is not palatable for the obvious
4 reason that prompt disposition of child dependency proceedings is essential"). *See also D.A.*
5 *v. State (state ex rel. S.A)*, 2001 UT App 307, 37 P3d 1166, 432 Utah Adv Rep 21 (the best
6 interests of children are not served when juvenile proceedings are stayed pending the outcome
7 of criminal prosecutions); *Tedeschi v. Grover*, 39 Ohio App 3d 109, 529 NE2d 480 (1988)
8 (affirming the trial court's refusal to grant a civil defendant a pre-trial stay of a contracts suit
9 based on his claim that criminal investigations prevented him from testifying on his behalf).

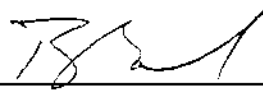
10 **D. Conclusion**

11 Wife's argument that her own convenience takes priority over the best interest of a
12 child is repugnant to public policy. The fact that this case is subject to media attention does
13 not prevent its timely adjudication. Delay is not consistent with the children's, Husband's, or
14 the State's and public interest in this proceeding. Justice and equity requires that this case
15 proceed in as normal a fashion as possible, and as expeditiously as possible.

16 **II. COUNTER MOTION FOR ATTORNEYS FEES**

17 Husband requests an award of his reasonable attorneys fees and costs in this
18 proceeding pursuant to ORS §107.105, §107.405, and ORCP 68.

19 DATED this 11 day of August, 2010.

20 
21 _____
22 Laura E. Rackner, OSB#843280
23 Brett E. Engel, OSB#95257
24 Of Attorneys for Petitioner

CERTIFICATE OF SERVICE

I, Laura Rackner, do hereby certify that I served a true copy of the *Objection to Respondent's Motion to Hold Case in Abatement* on STEPHEN HOUZE and PETER BUNCH, attorneys of record for Respondent, as follows:

Peter Bunch
Attorney at Law
808 SW Third Avenue
Suite 570
Portland, Oregon 97204-2428

Stephen Houze
Attorney at Law
1211 SW Fifth Avenue
Suite 1240
Portland, Oregon 97204

Fax: (503) 961-1559

Fax: (503) 299-6428

X by **mailing** a full, true, and correct copy thereof in a sealed, first class postage-prepaid envelope, to the address(es) shown above which is/are the last known office address(es) of the person(s), and deposited with the United States Postal Service at Portland, Oregon on the date set forth below.

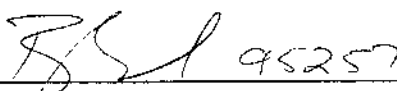
___ by causing a full, true, and correct copy thereof to be **hand delivered** to the person(s) at the person's(s') last known address listed above on the date set forth below.

___ by sending a full, true, and correct copy thereof via **overnight courier** in a sealed, prepaid envelope, addressed to the person(s) as shown above, which is the last known address, on the date set forth below.

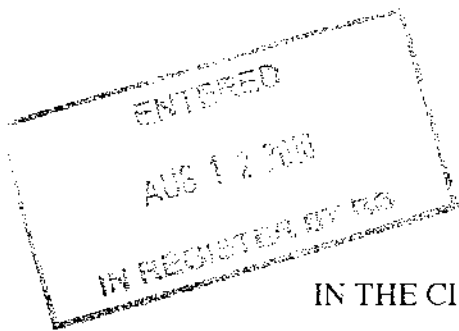
X by **faxing** a full, true, and correct copy thereof to the person(s) at the fax number(s) shown above, which is/are the last known fax number for the person's(s') office, on the date set forth below. The receiving fax machine was operating at the time of service and the transmission was properly completed.

Dated this 11 day of August, 2010.

GEARING RACKNER AND ENGEL LLP



Laura E. Rackner, OSB 843280
Of Attorneys for Petitioner
laura@gre-law.com



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Case Number: 1006-66084

PETITIONER'S REPLY TO
RESPONDENT'S RESPONSE AND
COUNTERCLAIM

13 Petitioner, Kaine Horman by and through his attorney Laura E. Rackner and Gearing,
14 Rackner, and Engel LLP, replies to *Respondent's Response to Petitioner's Motion and Order*
15 *to Show Cause Regarding Suit Money* as follows:

16 1.

17 As to Respondent's First Affirmative Defense: Petitioner denies the allegations
18 contained in Paragraph 2. Respondent's own written statement indicates that it cost
19 \$350,000 to hire her criminal attorney, Stephen Houze, as evidenced in her text messages to
20 Michael Cook, the pertinent parts of which are attached hereto as Exhibit "A."¹ If
21 Respondent's prior written statement is, as Mr. Bunch claims, "grossly inaccurate,"
22 Respondent must prove that to the Court through testimony and documented evidence.
23

24 ¹ Petitioner's attorney has the complete copy of the actual cell phone-related documents provided by law
enforcement, which can be made available for examination by the Court *in camera*.
Page 1 - PETITIONER'S REPLY TO RESPONDENT'S RESPONSE
AND COUNTERCLAIM

1 Nevertheless, any funds paid to Mr. Houze are presumed to be marital property, must be fully
2 disclosed in this proceeding, and are within the Court's dispositional authority. ORS 107.105
3 (requiring in a divorce case the "full disclosure of all assets by the parties" in order to
4 "arriv[e] at a just property division"). These funds are subject to disclosure and distribution
5 regardless of when or how they were acquired, or whether or not Respondent contends that
6 the money furnished to her attorney is a marital liability. *See Kunze and Kunze*, 337 OR 122,
7 133, 92 P3d 100 (2004) (the court is empowered to "distribute any real or personal property
8 that either or both of the parties hold at the time of dissolution, including property that the
9 parties had brought into the marriage"). Despite repeated requests, Respondent has refused to
10 provide Petitioner with any documentation or concrete information about the money furnished
11 to Mr. Houze.

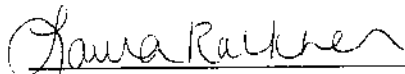
12 Petitioner has a valid claim to suit money based on Respondent's statements revealing
13 the existence of this marital property and resource. A party's access to marital property and a
14 party's financial resources are both relevant factors for the Court to consider in awarding suit
15 money. *See Haguewood and Haguewood*, 292 OR 197, 213, 638 P2d 1135 (1981); *Turner v.*
16 *Turner*, 237 OR 39, 40-41, 390 P2d 360 (1964).

17 2.

18 As to Respondent's Counterclaim, Petitioner denies the allegations contain in
19 Paragraph 3.

20 Respectfully submitted this 11 day of August, 2010

21 Gearing, Rackner, and Engel, LLP

22 
23 Laura Rackner, OSB 843280
24 Of Attorneys for Petitioner
laura@gre-law.com

1
2
3 **CERTIFICATE OF SERVICE**

4 I, Laura Rackner, do hereby certify that I served a true copy of the foregoing *Petitioner's*
5 *Reply to Respondent's Response and Counterclaim* on STEPHEN HOUZE and PETER
6 BUNCH, attorneys of record for Respondent, as follows:

7 Peter Bunch
8 Attorney at Law
9 808 SW Third Avenue
10 Suite 570
11 Portland, Oregon 97204-2428

Stephen Houze
Attorney at Law
1211 SW Fifth Avenue
Suite 1240
Portland, Oregon 97204

12 Fax: (503) 961-1559

Fax: (503) 299-6428

13 X by **mailing** a full, true, and correct copy thereof in a sealed, first class postage-prepaid
14 envelope, to the address(es) shown above which is/are the last known office address(es) of the
15 person(s), and deposited with the United States Postal Service at Portland, Oregon on the date
16 set forth below.

17 ____ by causing a full, true, and correct copy thereof to be **hand delivered** to the person(s) at
18 the person's(s') last known address listed above on the date set forth below.

19 ____ by sending a full, true, and correct copy thereof via **overnight courier** in a sealed,
20 prepaid envelope, addressed to the person(s) as shown above, which is the last know address,
21 on the date set forth below.

22 X by **faxing** a full, true, and correct copy thereof to the person(s) at the fax number(s)
23 shown above, which is/are the last known fax number for the person's(s') office, on the date
24 set forth below. The receiving fax machine was operating at the time of service and the
transmission was properly completed.

Dated this 11 day of August, 2010.

GEARING RACKNER AND ENGEL LLP



Laura E. Rackner, OSB 843280
Of Attorneys for Petitioner
laura@gre-law.com

[REDACTED] 06/30/201
0 23:18:26 [REDACTED] 0 Sent
PDT

[REDACTED] 06/30/201
0 23:20:21 [REDACTED] 0 Sent
PDT Hey on a side note,
the news channels all
just announced
you've got Stephen
Houze! That's
awesome! (it's in the
news so I figured I
can text it)

[REDACTED] 06/30/201
0 23:21:42 [REDACTED] 0 Recv
PDT

[REDACTED] 06/30/201
0 23:22:18 [REDACTED] 0 Sent
PDT

[REDACTED] 06/30/201 Yep. Guess
0 23:22:39 how much he 0 Recv
PDT costs?

[REDACTED] 06/30/201
0 23:22:58 [REDACTED] 0 Sent
PDT Zillions?

[REDACTED] 06/30/201 [REDACTED]
0 23:23:46 [REDACTED] 0 Recv
PDT

[REDACTED] 06/30/201
0 23:24:07 350 K 0 Recv
PDT

[REDACTED] 06/30/201 [REDACTED] 0 Sent
0 23:24:12 [REDACTED]
PDT

[REDACTED] 06/30/201
0 23:24:26 [REDACTED] 0 Sent
PDT

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