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HUMAN

MAY 4 1999

**FAX COVER SHEET**

RESOURCES

TO: Clifford Fester FROM: TRF

DATE: 5/3/99 RE: Collins v. Federal Way

NUMBER OF PAGES (INCLUDING COVER SHEET): \_\_\_\_\_

FAX NUMBER TRANSMITTED TO: 206-223-2003

MESSAGE: \_\_\_\_\_

**OUR FAX NUMBER IS (253) 859-8917**

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HUMAN  
MAY 4 1999  
RESOURCES

IN THE DISTRICT COURT FOR KING COUNTY  
IN AND FOR THE STATE OF WASHINGTON  
FEDERAL WAY DIVISION

CITY OF FEDERAL WAY,

Plaintiff,

-vs-

JEROME COLLINS,

Defendant.

Cause No. CA09225FW

DEFENDANT'S MOTION FOR  
CONTEMPT CITATION AGAINST  
THOMAS VANDER ARK AND THE  
FEDERAL WAY SCHOOL DISTRICT

The defendant, by and through his attorneys, Tyler K. Firkins of Van Sicken, Stocks & Firkins, and hereby moves the above-entitled Court for the following relief,

I. MOTIONS

1.1. For an order to show cause why the Federal Way School District should not be held in contempt of Court for failing to comply with a lawful subpoena.

1.2. For an order requiring payment of attorneys fees as civil contempt sanctions against Thomas Vander Ark and the Federal Way School District.

II. STATEMENT OF FACTS

On April 22, 1999, this Court issued a subpoena duces tecum directing the Federal Way School District to produce the names addresses and telephone numbers of all students

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enrolled in Jerome Collins' 6<sup>th</sup> period P.E. class. The date set for production was to be April 29, 1999 at 9:30 a.m.. The subpoena was served on Clifford Foster, an attorney representing the school district who accepted service of said subpoena on behalf of the school district.

On April 29, 1999, no documents were produced by the school district. Instead, the attorney for the District informed the attorney for the defendant that the documents would be produced by end of business on April 30, 1999. On April 30, 1999, no documents were produced.

On May 3, 1999, the attorney for the defendant made numerous attempts to secure the information required to be produced by the subpoena. At approximately 4:00 p.m. on May 3, 1999, the names and addresses were faxed to the attorney for the defendant. No telephone numbers have been produced by the District. This motion was prepared on an emergency basis.

### III. AUTHORITY AND ARGUMENT

#### 3.1 THE DISTRICT IS IN CONTEMPT

CrRLJ 4.8 authorizes the issuance of contempt citations where personal service is demonstrated by way of a proof of service. In this particular case, the District was served and accepted service of the subpoena issued by this Court through its attorney of record, Clifford Foster. Further evidence of the District's receipt of the subpoena is the partial production of material requested. (See attached exhibit "A").

1 Because the District has had adequate time to respond to the subpoena, and further the  
2 District has not moved to quash the subpoena, it has an absolute duty to comply with this  
3 Court's lawful order. The District has failed to comply and is in contempt.  
4

5 **3.2 ATTORNEYS FEES ARE AN APPROPRIATE REMEDY**

6 In some instances, a trial court may sanction the intentional and purposeful failure to  
7 obey trial court discovery orders by finding the defendant in contempt. *State v. Nelson*, 14  
8 Wn.App. 658, 545 P.2d 36 (1975). RCW 7.20.040 provides:  
9

10 "In cases other than those mentioned in RCW 7.20.030, before any proceedings can be  
11 taken therein, the facts constituting the contempt must be shown by an affidavit  
12 presented to the court or judicial officer, and thereupon such court or officer may either  
13 make an order upon the person charged to show cause why he should not be arrested to  
14 answer, or issue a warrant of arrest to bring such person to answer in the first  
15 instance."

16 This statute has been held to permit the award of attorneys' fees to aggrieved parties in  
17 contempt cases. *Ramstead v. Hauge*, 73 Wash.2d 162, 437 P.2d 402 (1968); *State ex rel.*  
18 *Seattle Bowlers Ass'n v. Flora Co.*, 169 Wash. 120, 13 P.2d 467 (1932). *Johnston v.*  
19 *Beneficial Management Corp. of America*, 26 Wn.App. 671, 614 P.2d 661 (1980)

20 In the present case, the District accepted service of the subpoena but has failed to  
21 comply with this Court's formal order. This Court should enter an order to show cause why  
22 the Federal Way School District should not be held in contempt and made to pay attorneys  
23 fees.  
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**IV. CONCLUSION**

For all the forgoing reasons, an order to show cause should be entered by this Court and a contempt citation issued, together with an award of attorney fees incurred by Collins in the bringing of this action.

DATED this the 3<sup>rd</sup> day of May, 1999, at Auburn, Washington,

**VAN SICLEN, STOCKS & FIRKINS**

  
 \_\_\_\_\_  
 Tyler K. Perkins, WSHA 20964  
 Attorney for the defendant

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# STATEMENT

CASE  
NUMBER

Date: 02 26 99

Time Taken: 1011

Officer: W.L. Jones

Location Taken: [REDACTED]

Statement Of: [REDACTED]

Date of Birth: [REDACTED]

DURING THE FIRST SEMESTER THIS YEAR I HAD [REDACTED] FOR TEAMSPORTS FOR ABOUT 2 WEEKS. HE SAID STUFF LIKE "HURRY UP & TURN 10 SO I CAN TAKE YOU OUT AND STILL BE LEGAL." HE ALSO SAID "I'VE HEARD STORIES BOUT YOU. I WISH I WAS IN YOUR BOYFRIEND'S SHOES I HEARD <sup>BY</sup> YOU WERE GOOD IN BED." HE ALSO MADE REPEATED COMMENTS LIKE "YOU'RE PRETTY" & "YOU LOOK NICE TODAY." I DROPPED THE CLASS AFTER 10 WEEKS BECAUSE I COULDN'T STAND IT ANYMORE. DURING THE 2ND SEMESTER I NEEDED CREDITS FOR P.E. BUT I WAS PREGNANT. HE WAS THE ONLY TEACHER WHO WOULD GIVE ME P.E. CREDIT EVEN THOUGH I COULDN'T DO MUCH BECAUSE I WAS PREGNANT. I GOT TO BE A TA. FOR HIM I HAD HIM TWICE A DAY 11<sup>TH</sup> PERIOD & 6<sup>TH</sup> PERIOD. AFTER THE 1<sup>ST</sup> WEEK OF THE SECOND SEMESTER HE TOLD ME "HURRY UP HAVE YOUR BABY SO I CAN COME INSIDE YOU" OR "HURRY UP & HAVE YOUR BABY SO I CAN GET IN THERE." I'M NOT SURE WHICH. ONCE I HAD A DR'S APPOINTMENT AT THE END OF THE DAY. I ASKED [REDACTED] IF I COULD LEAVE EARLY. HE SAID "NO. I DON'T WANT TO GET SUED IF SOMETHING WAS TO HAPPEN TO YOU... YOU NEED AN OFF CAMPUS PASS. I SAID, "ALTHOUGH I NEED THE MONEY, I WOULDN'T SUE YOU." HE SAID, "YOU NEED MONEY? I'M THE MAN WITH MONEY. YOU NEED SOMETHING FROM ME AND I DEFINITELY WANT SOMETHING FROM YOU, MAYBE WE CAN WORK SOMETHING OUT." A COUPLE OF WEEKS AGO HE FOLLOWED ME FROM 1<sup>ST</sup> PERIOD. I WALKED FAST BUT HE CAUGHT UP ON

This statement was prepared by W.L. Jones in my presence. I have reviewed it and find it to be true and accurate to the best of my knowledge. I am willing to testify in court regarding the facts contained in this statement.

Signature: [REDACTED]

Date: 2/26/99

Page 1 of 2

FEDERAL WAY DEPARTMENT OF PUBLIC SAFETY  
STATEMENT CONTINUATION

CASE  
NUMBER 91-25311

<sup>08</sup>  
... HE BRIEFLY PUT HIS ARM AROUND ME & WALKED ME TO CLASS. HE SAID "WHAT'S WRONG? WHY DON'T YOU WANT ME AROUND YOU?" THIS MONDAY THE 22ND I WAS WALKING TO CLASS IN THE UPPER GYM WHEN I MET [REDACTED] COLLINS ON THE STAIRS BY THE GYM. HE ASKED HOW MY VACATION WAS. HE PULLED ME CLOSE & SAID "LET ME SEE HOW BIG YOU ARE GETTING." HE PUT HIS LEFT ARM AROUND MY WAIST AND USED HIS RIGHT HAND TO RUB MY STOMACH. I PUSHED HIS HAND AWAY. I SAID "WHATEVER! DON'T TOUCH ME." WHEN I WAS SITTING AT THE DESK AT THE TOP OF THE STAIRS HE CAME UP & SAID "WHAT'S WRONG? DON'T YOU LOVE ME ANYMORE? WHERE'S MY KISS?" I SAID "I'VE NEVER KISSED YOU BEFORE... WHAT ARE YOU TALKING ABOUT." HE SAID "I WANT A KISS. COME HERE." I FELT HIM LEANING TOWARDS ME ACROSS THE DESK. I LEANED BACK AWAY FROM HIM BUT HE LEANED FURTHER OVER THE DESK AND KISSED ME ON MY RIGHT CHEEK WHEN I TURNED MY HEAD FROM HIM. HE THEN SAID "MMM.". HE TOLD ME TO TAKE A ROLL BECAUSE HE HAD "SOMETHING TO DO." LATER I LEFT CLASS BECAUSE I DIDN'T WANT TO BE AROUND HIM. WE PASSED AS I WAS WALKING DOWN THE STAIRS. I TOLD HIM I WAS SICK & GOING TO THE NURSE'S OFFICE. ALSO THIS SEMESTER HE ASKED IF I WOULD EVER CONSIDER GOING OUT WITH HIM. I SAID, "NO - YOU'RE TOO OLD & I'M TOO YOUNG." HE TOLD ME HE WAS 35 BUT IT WAS A LIE. HE'S CLOSE.

This statement was prepared by WC JONES In my presence. I have reviewed it and find it to be true and accurate to the best of my knowledge. I am willing to testify in court regarding the facts contained in this statement.

Signature [REDACTED]

Date: 2/26/99