# Superior Court of Washington

**County of Snohomish**

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| **In re the Marriage of:**  JANE A. SMITH  **Petitioner,**  **and**  JOHN B. SMITH  **Respondent.** | **No.** 55-5-55555-5  **RESPONDENT’S MOTION TO EXCLUDE DOCTOR’S TESTIMONY** |

**I. REQUESTED RELIEF**

John B. Smith (Respondent/Husband) requests the Court bar Petitioner from calling Dr. Bad as an expert.

**II. FACTS**

See subjoined declaration.

**III. ISSUES**

Whether to exclude Petitioner’s expert, Dr. Bad. Petitioner did not identify him in her original interrogatory answers, did not identify the expert in her supplemental interrogatory answers, did not identify the expert prior to the discovery cutoff, first identified the expert one week prior to trial, and then declined to supply relevant information requested in the original interrogatories about the expert’s testimony.

**IV. EVIDENCE RELIED UPON**

Subjoined declaration of counsel.

**V. LEGAL AUTHORITY**

Sanctions may be imposed against a party who fails to timely supplement discovery responses. 1 LN Practice Guide WA Civil Discovery § 13.04 (2019) (citing Barton v. Dep’t of Transp., 178 Wn.2d 193, 216 (2013); Marin v. King County, 194 Wn.App. 795, 807 (2016) (imposing sanctions when attorney failed to timely supplement discovery responses by delaying production of relevant audio recording until after deposition)). As stated in LexisNexis’s Washington Civil Discovery Practice Guide:

In one case, the [defendant] responded to an interrogatory . . . by stating that “it would produce responsive documents” and would continue “to offer any information once located.” However the defendant did not produce certain highly relevant material until nearly a year later, despite the fact that this material had been in its possession . . . .

Id. (citing Amy v. Kmart of Wash., LLC, 153 Wn.App. 846, 869-70 (2009) (upholding sanction for late discovery)).

Analogous interpretations of the Federal Rules of Civil Procedure suggest a trial court may imposed sanctions without first issuing an order to compel discovery. Id. (citing Charter House Ins. Brokers, Ltd. v. N.H. Ins. Co., 667 F.d 600, 604 (7th Cir. 1981); Robinson v. Transamerica Ins. Co., 368 F.2d 37, 39 10th Cir. 1966) (it is generally agreed that Fed. R. Civ. P. 37(d) permits an immediate sanction).

GENESIS LAW FIRM, PLLC

Dated:

SAMUEL K. DARLING, WSBA No. 40157

Attorneys for Respondent

**DECLARATION OF COUNSEL**

I, Samuel K. Darling, am one of the attorneys for Respondent in the above-captioned case, and I write this declaration regarding factual matters that I believe pertain exclusively to procedure and that are uncontested.

Petitioner did not disclose any expert witnesses in her original interrogatory answers, sent to me in September 2018. A true and correct copy of the relevant interrogatory answer page is attached as **Exhibit A**.

Similarly, Petitioner did not disclose any expert witnesses in her supplemental interrogatory answers, sent to me January 31, 2018, two business day before the discovery cutoff (it is arguable the discovery cutoff was five-business days later – the local rule for the discovery cutoff in family law matters is vague). A true and correct copy of the relevant supplemental interrogatory answer page is attached as **Exhibit B**. It reads:

INTERROGATORY NO. 102: With regard to any expert witness you intend to call at the trial of this action:

a. Identify each expert witness, establishing his or her name, address, occupation and professional training.

b. State the subject matter on which each expert witness is expected to testify, identifying the witness and the subject matter.

c. State the substance of facts concerning which the witness is expected to testify.

d. Whether such potential witness will base his or her opinion in whole or in part upon facts acquired personally by him or her in the course of investigation or examination of any of the issues of this case.

e. Each and every fact, and each and every document, item, photograph or other tangible object supplied or made available to each such potential witness.

d. State the opinion to which the expert is expected to testify including values, if values are an expected part of the expert's opinion.

e. State a summary of the grounds for each expert's opinion.

ANSWER: Petitioner reserves the right to supplement this answer.

Petitioner first identified Dr. Bad as an expert witness on February 14, 2019, one week before trial. He did so by including Dr. Bad in a February 14, 2019 Witness and Exhibit List. Attached as **Exhibit C** is a true and correct copy of the relevant portions of Petitioner’s Witness and Exhibit List. The list designates Dr. Bad as an expert witness who will testify as to Petitioner’s health.

The next morning I contacted opposing counsel by email, requesting all the information that had been sought in Interrogatory 102 (quoted above) and the related request for production. Opposing counsel said he did not have any additional information. I then asked him to obtain the information from his client.

After not receiving any updated information for three business days, I emailed opposing counsel, requesting a CR 26(i) conference. He did not provide a time he would be available for a CR 26(i) conference.

I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Signed at [City & State] on [Date].

Signature:

SAMUEL K. DARLING, WSBA #40157