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Supreme Court Case No. 95575-1

Court of Appeals, Division II, Case No. 49588-1-II

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**IN THE SUPREME COURT  
OF THE STATE OF WASHINGTON**

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RANDY REYNOLDS & ASSOCIATES, INC.,

Appellant,

v.

KASEY HARMON, ET AL.,

Respondents.

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**AMICUS CURIAE MEMORANDUM OF THE TACOMA-PIERCE  
COUNTY HOUSING JUSTICE PROJECT IN SUPPORT OF  
PETITION FOR REVIEW**

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**TABLE OF CONTENTS**

I. IDENTITY AND INTEREST OF AMICUS CURIAE ..... 1

II. STATEMENT OF ISSUE PRESENTED FOR REVIEW ..... 2

III. STATEMENT OF THE CASE ..... 2

IV. ARGUMENT

    A. Application of Proper Court Procedure to Default Judgments is  
    An Issue of Substantial Public Importance to Tenants Facing  
    Unlawful Detainer Proceedings in Pierce County ..... 2

    B. The Court of Appeals Erred by Applying RCW 59.18.390 to  
    Harmon’s Motion to Vacate Default Judgment and Stay of  
    Writ of Restitution ..... 3

    C. The Court of Appeals Erred by Failing to Consider Civil Rules  
    Directly Applicable to Default Judgments ..... 6

V. CONCLUSION ..... 10

**TABLE OF AUTHORITIES**

**Cases**

*Carlstrom v. Hanline*, 98 Wn.App 780, 990 P.2d 986 (2000) . . . . . 4

*Dep't of Ecology v. Campbell & Gwinn, LLC*,  
146 Wn.2d 1, 43 P.3d 4 (2002) . . . . . 4

*Housing Auth. of City of Pasco & Franklin County v. Pleasant*,  
126 Wn.App 382, 109 P.3d 422 (2005) . . . . . 5

*Meadow Park Garden Assoc. v. Canley*,  
54 Wn.App 371, 773 P.2d 875 (1989) . . . . . 4

*Reynolds v. Harmon*, 1 Wn.App.2d 239, 404 P.3d 602 (2017) . . . . . 3, 5, 8

*Sorenson v. City of Bellingham*, 80 Wn.2d 547, 496 P.2d 512 (1972) . . . . . 2

**Statutes**

RCW 59.18.370 . . . . . 4

RCW 59.18.380 . . . . . 4

RCW 59.18.390(1) . . . . . 5, 9, 10

RCW 59.18.410 . . . . . 5

**Court Rules**

CR 5(a) . . . . . 8

CR 55 . . . . . 6

CR 55(c)(1) . . . . . 6, 7

CR 60(e)(1)-(3) .....	7
CR 62(b) .....	7
PCLR 7(a)(3)(A) .....	10

## I. INTRODUCTION AND INTEREST OF AMICUS CURIAE

The Tacoma-Pierce County Housing Justice Project (“HJP”) is a program of Tacoma Pro Bono, a 501(c)(3) non-profit in Pierce County. Under the supervision and direction of HJP staff, the HJP marshals the contributions of local volunteer attorneys to provide pro bono limited representation to low-income tenants facing eviction proceedings and other housing-related matters throughout Pierce County. A low-income tenant qualifies for HJP assistance if the tenant’s income is below 200% of federal poverty guidelines or 400% of federal poverty guidelines for military veterans. The scope of the HJP’s pro bono representations to low-income tenants range from legal advice on housing issues, to direct representation during unlawful detainer show cause hearings and motions to vacate default judgments, through unlawful detainer trials and appeals.<sup>1</sup>

Since low-income tenants are particularly encumbered regarding housing choices and availability, the HJP has a direct interest in ensuring the rights provided to all tenants under general civil rules and the Residential-Landlord Tenant Act, 59.18 RCW, are protected and enforced.

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<sup>1</sup> The services the HJP provides to any particular low-income tenant can include just one aspect of this list of services or multiple aspects.

## II. STATEMENT OF ISSUE PRESENTED FOR REVIEW

The HJP supports Petitioner Harmon's Issues Presented for Review in her Petition, and particularly urges this Court to grant review on whether the Court of Appeals' failure to consider CR 62 and the trial court's inherent equitable authority as a basis for the trial court's decision as a matter of substantial public importance. *See* Petition, at 2 (Issue 3).

## III. STATEMENT OF THE CASE

The HJP adopts the facts set forth in Harmon's Petition for Review. *See* Petition, 2-5.

## IV. ARGUMENT

### **A. Application of Proper Court Procedure to Default Judgments Is An Issue of Substantial Public Importance to Tenants Facing Unlawful Detainer Proceedings in Pierce County.**

While the underlying unlawful detainer action in this case is moot, the HJP urges this Court to grant review because the issue of applying proper superior court procedure to motions to vacate default judgments in unlawful detainer actions is an issue of substantial public importance for tenants residing in Pierce County. *Sorenson v. City of Bellingham*, 80 Wn.2d 547, 558, 496 P.2d 512 (1972) (moot cases may be heard on appeal depending upon the public or private nature of the question; the need for future guidance to public officers; and the likelihood of future recurrences of the issue).

In 2017, there were 3,238 unlawful detainer actions filed in Pierce County. Of these cases, 1,476 resulted in default judgments issuing writs of restitution. *See* Appendix A. Therefore, this is an issue potentially impacting nearly forty-five percent of the total unlawful detainers filed in Pierce County.

**B. The Court of Appeals Erred by Applying RCW 59.18.390 to Harmon's Motion to Vacate Default Judgment and Stay Writ of Restitution.**

The Court of Appeals erred by holding that RCW 59.18.390(1) required Reynolds to receive notice and an opportunity to inquire into the sufficiency of a bond when Harmon moved the superior court to vacate Reynolds' default judgment and stay the writ of restitution. *Reynolds v. Harmon*, 1 Wn.App.2d 239, 250-53, 404 P.3d 602 (2017).

RCW 59.18.390(1) does not contemplate or apply to stays of writs of restitution made pursuant to CR 62 and a motion to vacate default judgment under CR 60. The subject matter contemplated by RCW 59.18.390(1) is whether a tenant may retain possession of the premises pending trial after the issuance of a writ of restitution at unlawful detainer show cause hearing. While RCW 59.18.390(1) applies generally to unlawful detainer proceedings, default judgments are the *only* aspect of unlawful detainer litigation in which RCW 59.18.390(1) *does not* apply. Neither the plain language nor the related statutory scheme of 59.18 RCW



supports the Court of Appeals application of RCW 59.18.390(1). *Dep't of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 10-11, 43 P.3d 4 (2002) (legislative intent derived from plain language, considering the text of the provision, the context of the statute in which the provision is found, related provisions, and the statutory scheme as a whole).

Understanding the unlawful detainer process is crucial to properly applying RCW 59.18.390(1). At any time during an unlawful detainer proceeding the landlord may apply to the court for an order directing the tenant to appear and show cause why a writ of restitution should not issue restoring the landlord to possession of the property. RCW 59.18.370. At show cause hearing the court examines the parties to ascertain the merits of the complaint against the tenant's answer. RCW 59.18.380. Whether or not the court issues a writ of restitution at show cause hearing, the court is required to enter an order directing the matter to proceed to trial. RCW 59.18.380 ("The court shall also enter an order directing the parties to proceed to trial on the complaint and answer in the usual manner"); *Meadow Park Garden Assoc. v. Canley*, 54 Wn.App 371, 375, 773 P.2d 875 (1989). This is because "[the] show cause hearing is not the final determination of the rights of the parties in an unlawful detainer action." *Carlstrom v. Hanline*, 98 Wn.App 780, 788, 990 P.2d 986 (2000). The final determination of the rights of the parties occurs once the court issues

final judgment after trial. RCW 59.18.410 (“If upon the trial the verdict of the jury or, if the case be tried without a jury, the finding of the court be in favor of the plaintiff . . . judgment shall be entered for the restitution of the premises”); *Housing Auth. of City of Pasco & Franklin County v. Pleasant*, 126 Wn.App 382, 393, 109 P.3d 422 (2005).

Since a plaintiff may move the court at any time for the summary issuance of a writ of restitution at show cause hearing pending final determination and judgment, RCW 59.18.390(1) provides tenants the additional substantive protection of allowing a tenant to continue to occupy the premises after a summary determination that a writ shall issue following show cause hearing. For a tenant to exercise the option of continuing to occupy the premises pending trial, the tenant “may execute to the plaintiff a bond to be filed with . . . the court.” RCW 59.18.390. In turn, the plaintiff “shall have notice of the time and place where the court or judge thereof shall fix the amount of the defendant’s bond.” *Id.*

In this case, without addressing or analyzing the RLTA’s statutory scheme, the Court of Appeals applied RCW 59.18.390 as a standalone provision and incorrectly concluded “the superior court commissioner erred as a matter of law when the commissioner waived the bond in violation of [RCW 59.18.390]”. *Reynolds*, 1 Wn.App.2d at 252.

However, RCW 59.18.390(1) did not apply, much less control. In this case, there was no unlawful detainer show cause hearing, nor was the unlawful detainer set for trial. Harmon was moving the court under CR 60 to argue the default judgment improperly issued based upon Harmon's alleged appearance prior to the deadline for default, not that Harmon should continue to occupy the premises after show cause hearing and pending trial. Since Harmon was moving the court to stay the writ of restitution pending a hearing on the merits of Harmon's motion to vacate default judgment, RCW 59.18.390(1) and its notice requirements were inapplicable, and the court had discretionary authority to set the conditions under which Harmon could proceed to a hearing on her motion to vacate. CR 62(b) ("In its discretion and on such conditions for the security of the adverse party as are proper, the court may stay the execution of or any proceedings to enforce a judgment pending . . . a motion for relief from judgment or order made pursuant to rule 60").

**C. The Court of Appeals Erred by Failing to Consider Civil Rules Directly Applicable to Default Judgments.**

CR 55 governs the entry of orders of default and default judgments. In addition, CR 55 provides discretionary authority for courts to set aside default judgments in accordance with CR 60(b) "for good

cause shown and *upon such terms as the court deems just.*” CR 55(c)(1) (italics added).

In turn, CR 60 provides a specific motion and notice procedure by which a defendant may move to vacate a judgment:

*Motion: Application shall be made by motion filed in the cause* stating the grounds upon which relief is asked, and supported by the affidavit of the applicant . . . setting forth a concise statement of the facts of errors upon which the motion is based . . .

*Notice: Upon the filing of the motion and affidavit, the court shall enter an order fixing the time and place of the hearing thereof* and directing all parties to the action or proceedings who may be affected thereby to appear and show cause why the relief asked for should not be granted.

*Service: The motion, affidavit, and the order to show cause shall be served upon all parties* affected in the same manner as in the case of summons in a civil action at such time before the date fixed or the hearing *as the order shall provide.*

CR 60(e)(1)-(3) (italics added). Last, CR 62 specifically authorizes courts the discretion to stay execution of default judgments:

*In its discretion and on such conditions for the security of the adverse party as are proper,* the court may stay the execution of or any proceedings to enforce a judgment pending the disposition . . . of a motion for relief from a judgment or order *made pursuant to rule 60.*

CR 62(b) (italics added). Piecing together CR 55, 60, and 62, a defendant initially moves a court to vacate a default judgment through a filed motion with a supporting affidavit asserting the legal basis. Upon defendant’s

filing, the court has discretion—under such terms as the court deems just—to enter an order setting the time and place in which the merits of the motion to vacate will be determined. Only then are the motion, affidavit, and order to show cause required to be served upon the plaintiff.

In this case, the Court of Appeals held that CR 5(a) entitled Reynolds to be served the motion to vacate default judgment *prior* to Harmon moving the court to set a show cause hearing on Harmon’s motion to vacate the default judgment. *Reynolds v. Harmon*, 1 Wn.App.2d 239, 246, 404 P.3d 602 (2017). Yet the Court of Appeals does not mention—much less apply—the specific procedure contained in CR 55 and 60 to initiate a motion to vacate default judgment. See CR 5(a) (“*Except as otherwise provided in these rules . . . every written motion . . . shall be served upon each of the parties*”) (italics added).

The Court of Appeals then leverages Reynolds’ lack of notice into an analysis of *ex parte* contact under CJC Rule 2.9(A), stating, “The motion here addressed substantive matters because the matter impacted Reynolds’ right to regain possession of its property under the writ of restitution.” *Reynolds*, 1 Wn.App.2d at 250. However, the question confronted by the superior court in Harmon’s motion to vacate default judgment was not whether Reynolds’ right to possession of the property was impacted, but whether Reynolds properly obtained a default judgment

against Harmon. If the default judgment was improperly obtained, Reynold's right to *any remedy* from the default would be improper.

The Court of Appeals holding has ramifications for all tenants facing default judgments in Pierce County. Prior to the Court of Appeals holding, a tenant seeking to challenge an unlawful detainer default judgment in Pierce County would present a motion and affidavit, as permitted by CR 55 and 60. The court would then weigh multiple factors, including the alleged lease violation, the reason for failing to appear in the action, the underlying unlawful detainer defense, and the availability of the non-moving party, before then making a decision on whether to grant a show cause hearing on the motion to vacate or deny the tenant's motion.

If a show cause hearing was granted, the court would also make a discretionary determination as to terms a tenant must meet prior to a hearing on the merits. For example, if the unlawful detainer was based upon non-payment of rent, the court may require payment of some portion of the rent arrearage into the court's registry. But if the unlawful detainer was based upon service that was defective on its face, the court may impose no terms at all based upon the likelihood that the default judgment would be vacated at the show cause hearing requested by the motion. In sum, the Pierce County Superior Court was properly applying the procedure and discretion authorized under CR 55, 60, and 62.

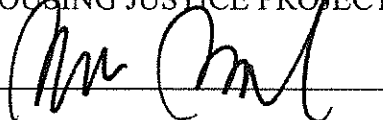
Even more perilous for tenants in Pierce County, the Court of Appeals holding may make timely review of an unlawful detainer default judgment impractical, if not impossible, regardless of whether the default judgment was properly or improperly issued. Pierce County Local Rules require motions to be served upon the opposing party no later than the close of business on the sixth court day before the hearing. PCLR 7(a)(3)(A). Yet a writ of restitution can be executed upon three days after the sheriff's service of the writ. RCW 59.18.390(1). Put simply, the required time for service under CR 5(a) far exceeds the amount of time a tenant has available before the sheriff executes the writ of restitution. Therefore, a tenant who has been improperly defaulted may suffer an eviction before the soonest date that tenant could appear before the court to challenge the improper default.

#### V. CONCLUSION

Based upon the foregoing reasons, the Tacoma-Pierce County Housing Justice Project requests this Court grant the Petition for Review.

RESPECTFULLY SUBMITTED this 23<sup>rd</sup> day of April, 2018.

TACOMA-PIERCE COUNTY HOUSING JUSTICE PROJECT

By 

Mark Morzol, WSBA No. 43457  
Email: markm@tacomaprobono.org

# APPENDIX A



I, Ashley Duckworth, declare under the penalty of perjury pursuant to the laws of the State of Washington that the following are true and correct to the best of my personal knowledge and belief:

1. I am a paralegal with the Tacoma-Pierce County Housing Justice Project;
2. I received the attached email correspondence from Janine Cavalier, a business analyst with the Pierce County Superior Court;
3. The attached emails correspondence contained the total number of unlawful detainer actions filed in Pierce County, as well as the individual case numbers of every unlawful detainer filed in Pierce County;
4. Because the listed filing type of the unlawful detainer does not always identify whether an unlawful detainer action included a default judgment, I personally examined each of the total unlawful detainers filings in Legal Information Network Exchange ("LINX") to identify the exact amount of unlawful detainer filings that included default judgments in 2017.

DATED this 23 day of April, 2018, in the City of Tacoma, Washington

Signed   
Ashley Duckworth  
Tacoma-Pierce County Housing Justice Project

**Subject:** RE: Information  
**Date:** Thursday, March 29, 2018 at 8:52:35 AM Pacific Daylight Time  
**From:** Janine Cavalier  
**To:** Ashley Duckworth  
**Attachments:** image001.png, 2017 Unlawful Detainers.xlsx

Attached are the case numbers you requested.

**From:** Ashley Duckworth [mailto:AshleyD@tacomaprobono.org]  
**Sent:** Friday, March 23, 2018 4:52 PM  
**To:** Janine Cavalier <jcavali@co.pierce.wa.us>  
**Subject:** Re: Information

Janine,

Thank you so much for getting this information over. We would like to have the case numbers for our review.

Thank you,

Ashley Duckworth

Volunteer Coordinator & Housing Justice Project Paralegal

621 Tacoma Ave South, Ste. 303 Tacoma, WA 98402

Tel: (253) 572-5134 w Fax: (253) 627-5883

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**From:** Janine Cavalier <jcavali@co.pierce.wa.us>  
**Sent:** Friday, March 23, 2018 4:32:45 PM  
**To:** Ashley Duckworth  
**Subject:** RE: Information

**We need the total number of Unlawful Detainer cases heard in Pierce County for all of 2017. Total Cases**

filed 3239

Of those cases 1220 where resolved by default judgment type filings

With 87 actual Default Judgment titled documents entered, a lot of the orders where Judgment and Order for Writ of Restitution after a motion for Default Judgement or by an Order of Default followed by an Order for Restitution.

I will be happy to provide you with the case number list for the 3239 case, and your staff can review the cases online.

Janine Cavalier  
Business Analyst  
LINX Support  
Pierce County Clerk  
253-798-7836

**From:** Ashley Duckworth [mailto:[AshleyD@tacomaprobono.org](mailto:AshleyD@tacomaprobono.org)]

**Sent:** Wednesday, March 21, 2018 8:59 AM

**To:** Janine Cavalier <[jcavali@co.pierce.wa.us](mailto:jcavali@co.pierce.wa.us)>

**Subject:** Information

Hi Janine,

We need just a bit more information about unlawful detainer cases in Pierce County. Please let me know if you are able to send this information over.

**We need the total number of Unlawful Detainer cases heard in Pierce County for all of 2017.**

**We also need the total number of Uncontested Default Judgments for Unlawful Detainers in 2017.**

The number of motions to stay seems really small so, I am not sure if this is heard on a different motion, ever, but it doesn't match up with the amount of clients we meet at our office that need a Motion to Stay their Writ of Restitution.

Thank you so much for the help- it is greatly appreciated!

**ASHLEY DUCKWORTH**  
Housing Justice Project Paralegal



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## CERTIFICATE OF SERVICE

I certify on this date I caused to be served by filing with the Court's electronic portal, and by mailing, the foregoing Amicus Curiae Memorandum of the Tacoma-Pierce County Housing Justice Project in Support of Petition for Review to:

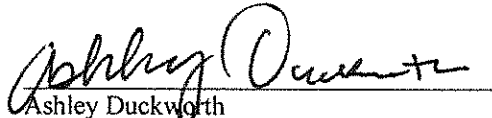
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Michael Gusa  
Gusa Law Office  
3025 Limited Lane NW Ste. 104  
Olympia, WA 98502

Dated this 23rd day of April, 2018.

  
\_\_\_\_\_  
Ashley Duckworth  
Tacoma-Pierce County  
Housing Justice Project Paralegal

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### Comments:

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