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STATE OF WASHINGTON
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NO. 79453-7

IN THE SUPREME COURT OF THE
STATE OF WASHINGTON

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MERRELL CLIFFORD SAGER,

Appellant,

v.

THURSTON COUNTY,

Respondent.

---

Appeal from
Thurston County Superior Court Cause No. 02-2-00746-2

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# RESPONDENT THURSTON COUNTY'S OPENING BREIF

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DONALD R. PETERS, JR., WSBA #23642
Senior Deputy Prosecuting Attorney
Thurston County Prosecuting Attorney's Office
2424 Evergreen Park Drive SW, Suite 102
Olympia WA 98502
(360) 786-5574 PHONE
(360) 709-3006 FAX

July 26, 2007

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## I. ISSUE

Did Superior Court Judge Richard Strophy properly deny Appellant's Second Motion for Reconsideration under Thurston County Local Court Rule 59?

## II. RELEVANT FACTS

[The following facts appear to be agreed by both parties.]

On May 6, 2002, Appellee Thurston County filed suit against Merrell Sager for Declaratory Judgment, Injunction, and Damages. The Complaint alleged violations of the Thurston County Code by failing to obtain the required building permit for a residential structure, the required septic permit for the disposal of sewage, and public nuisance for failing to have a permitted septic system.

Appellant defended against the allegations contained in the Complaint, acting pro se, and filed counter-claims against Thurston County on August 5, 2002. The counter-claim alleged, among other causes of action, that Thurston County had violated Appellant's civil rights in attempting to enforce the County's code provisions.

Appellant filed an action in Federal District Court on January 31, 2003, alleging violations of his civil rights as a result of Thurston County's attempt to enforce its land use provisions. The Federal District

Court, and ultimately the Ninth Circuit Court of Appeals rejected these arguments and dismissed the case.

Thurston County was granted summary judgment on its claims on May 16, 2003. Thurston County moved for summary judgment on Appellant's counter-claims on May 21, 2003. Appellant requested reconsideration from the court on the Order Granting Summary Judgment motion on May 27, 2003. Appellant also filed a "Declaration" regarding Thurston County's filing of ordinances. In his response to Thurston County's Motion for Summary Judgment on Appellant's Counter-Claims, Appellant specifically alleged the improper adoption of the county codes. Thurston County was granted summary judgment on Plaintiff's counterclaims on June 20, 2003.

[The following facts may be in dispute.]

Plaintiff appealed to the Court of Appeals, who issued a written [unpublished] opinion on July 20, 2004. In their opinion, the court considered and disregarded Appellant's assertions that the relevant provisions of the Thurston County Code were improperly adopted in footnote no. 2 at page 5 of the opinion. The Court did reverse the Superior Court on two issues. First, the Court found that an unpermitted septic system is not a nuisance "per se" under Washington's nuisance laws. There must be some evidence presented of failure or problem before

Summary Judgment may be granted. Second, the Court determined the Order on Summary Judgment was too broad in allowing unlimited entry onto Appellant's property, and that an administrative warrant should be determined on a subjective basis before entry was allowed.

The Court of Appeals denied Appellant's Motion for Reconsideration on August 18, 2004, but struck footnote no. 2. Appellant took no further action under this appeal.

Thurston County sought a Motion for Contempt of the summary judgment order on April 13, 2005. Appellant responded, again asserting improper adoption of the county codes. Appellant filed several more pleadings to this end, asserting over and over again his contention that the relevant county code provisions were improperly adopted. Ultimately, the Superior Court rejected these arguments and found Appellant in contempt of the summary judgment order on October 14, 2005. Plaintiff is currently under sanction by the court for his contempt. Appellant did not seek appeal of this decision.

On May 10, 2006, Thurston County received a "Complaint" from Appellant, once again alleging improperly filed county code provisions, filed this time in Mason County Superior Court. Thurston County ultimately was awarded summary judgment/dismissal under Civil Rule 12(b)(6) in this matter. Appellant attempted to appeal this matter to the

Supreme Court, but his appeal has failed and has been dismissed for procedural errors in a Ruling issued by this Court on April 6, 2007 by Commissioner Steven Goff, Modification denied by Chief Justice Gerry Alexander on June 7, 2007.

On May 26, 2006, Thurston County obtained an Order from the Thurston County Superior Court authorizing the County Clerk to issue a Warrant of Abatement for the code violations existing on Appellant's property. [CP 208-210].

On June 8, 2006, Appellant sought a Motion for Reconsideration of the issuance of the Warrant of Abatement. That motion was struck down as being untimely filed by the Court in a written ruling issued July 7, 2006. [See Attached Exhibit No. 1].

On July 13, 2006, Appellant filed a second "Motion for Reconsideration" addressing the Court's July 7 decision in striking the previous "Motion for Reconsideration" and the May 26, 2006 Order authorizing the County Clerk to issue a Warrant of Abatement. [CP 279-329]. That Motion was ultimately denied by the court in a written Order issued October 12, 2006. The basis of the denial was that Appellant had not met his burden under Local Court Rule 59(a)(3) requiring the moving party to establish "manifest error, new facts or legal authorities which

could not have been brought to the court's attention earlier with responsible diligence." [CP 235-237].

Appellant filed his "Notice of Appeal" to the Supreme Court on November 8, 2006. The only issue decided by the Superior Court since the written ruling is Appellant's Motion for a stay of proceedings. That issue is not pertinent to this briefing as having previously been ruled upon by this Court in a Ruling by Supreme Court Commissioner Stephen Goff on April 6, 2007, and Motion to Modify being denied by Chief Justice Gerry Alexander on June 7, 2007.

## III. ARGUMENT

Appellant has filed an expansive brief, alleging and arguing most issues that he has asserted since Thurston County filed its Complaint back in 2002. The voluminous amount of pleadings filed by Appellant since this case began makes it difficult at times to follow in a direct line the issues and rulings made by the courts.

However, the issues that are before this Court are actually very narrow in scope. The only Orders issued by the Superior Court that was timely appealed by Appellant is the written Order authored by Judge Richard Strophy on October 12, 2006, denying Appellants second Motion for Reconsideration of the Warrant of Abatement. The Superior Court also authored an "amended" Order of Abatement on July 7, 2006. This

amendment only corrected a clerical error and did not substantively change any portion of the previous Order signed on May 26, 2006.

**A. Timeliness of Appeal.**

The Rules of Appellate Procedure at 5.2(a) require a notice of appeal to be filed no later than 30 days after the entry of the decision of the trial court which the party filing the notice is appealing. One exception to that rule is found at RAP 5.2(e) where 30 days for appeal is allowed after a motion for reconsideration, which presumably comes after a post-judgment motion.

In this case, the issue is the timeliness of the appeal in relation to the motions for reconsideration. The October 12 written decision by Judge Strophy addressed a "Motion for Reconsideration" filed by Appellant on July 13, 2006. This was actually the second "Motion for Reconsideration" filed by Appellant. The first was filed on June 8, 2006, and was struck by written Order as being untimely filed in an Order dated July 7, 2006. [Exhibit 1 and addressed at CP 235-237]. The basis for the striking down of this first "Motion for Reconsideration" was the untimeliness of its filing pursuant to Civil Rule 59. Civil Rule 59(b) requires a Motion for Reconsideration to be filed no later than 10 days after the entry of judgment, order or other decision. The Order directing issuance of a Warrant of Abatement was signed by the Court on May 26,

2006. The first Motion for Reconsideration was filed by Appellant on June 8, 14 days after the entry of the order at issue.

**B. <u>The Motions for Reconsideration and Local Rule 59</u>.**

The first Order striking/denying Appellant's "Motion for Reconsideration" struck the motion for being untimely, but also in the interlineations denied the Motion for substantive reasons pursuant to CR 59 and Local Rule 59. Appellant does not question the timeliness issue in his briefing, so that issue is not before the court.

Appellant does address Local Rule 59, a copy of which is provided to this court as a courtesy as Exhibit No. 2 to this memorandum. LCR 59(a)(3) cited the standards for Motions for Reconsideration:

> Motions for Reconsideration are disfavored. The court will ordinarily deny such motions in the absence of a showing of manifest error in the prior ruling or a showing of new facts or legal authorities which could not have been brought to its attention earlier with reasonable diligence.

This is nearly verbatim the basis for denial of Appellant's second Motion for Reconsideration contained in the ruling of Judge Strophy. [CP 235-237]. Appellant's first assignment of error claims that LCR 59 and CR 59 are inconsistent.

CR 83(a) allows each court to "make and amend local rules governing its practice not inconsistent with these [CR] rules." CR 59

establishes 9 bases for a Motion for Reconsideration. LCR 59 encapsulates those bases into two prongs, essentially "manifest error" or "new facts/authorities." In his October 12, 2006 ruling, Superior Court Judge Strophy specifically states that he does not find a basis for reconsideration under either prong.

Appellant in his first assignment of error claims that the LCR 59 "shortens" or "eliminates" the criteria for reconsideration as found in CR 59. The threshold question for review pursuant to CR 83(a) is if the local rule is "inconsistent" with the Civil Rule? Appellant does not cite any case law in support of his contention. Appellant does cite the holding of *King County v. Williamson*, 66 Wn. App. 10, 830 P.2d 392 (1992). A further examination of that case reveals that "The ultimate testis whether the two rules can be reconciled and both given effect." *Id* at 12-13 citing *Seattle v. Marshall*, 54 Wn. App. 829, 833, 776 P.2d 174 (1989). "In general, court rules are 'inconsistent' only when they are 'so antithetical that it is impossible as a matter of law that they can both be effective.'" *King County v. Williamson* at 12 citing *Heaney v Seattle Mun. Court*, 35 Wn. App. 150, 155, 655 P.2d 918 (1983), *review denied*, 101 Wn.2d 1004 (1984); *Hessler Constr. Co. v. Looney*, 52 Wn. App. 110, 112, 757 P.2d 988 *review denied*, 111 Wn.2d 1029 (1988); *State v. Chavez*, 111 Wn.2d 548, 555, 761 P.2d 607 (1988).

Here there is no inconsistency approaching the standard cited above. The local rule simply abridges and encapsulates the Civil Rule. It does not specifically exclude or eliminate any of the criteria found in CR 59, and in fact all but the "newly discovered evidence" provisions fit nicely under the prong of "manifest error." The Local rules are not inconsistent with the state civil rules and Appellant has not met his burden as to this assignment of error.

### C. **The Order Directing Warrant of Abatement and Amendment.**

One issue that may be confusing to the court is the timelines for the entry of the Order on the Warrant of Abatement and subsequent Motions for Reconsideration. The initial Order for Warrant of Abatement was signed by the court on May 26, 2006. [CP 208-210]. The first Motion for Reconsideration was struck as untimely at a hearing on July 7, 2006. At that same hearing, an amended Order for Warrant of Abatement was presented and signed by the court. This amendment was presented to correct a clerical error on the first page of the document. [See Declaration, CP 211-212].

Appellant claims that the deputy prosecutor committed misconduct and intended to mislead him. The Amended Order corrects an improper date on page one of the document, changing "March 31" to "May 26." It

also removes a portion of page two related to a finding of nuisance that had been struck through and initialed prior to signature by the court. It has continued to remain unclear to Thurston County how these corrections constitute misconduct or error.

The entry of an amended Order creates issues as to timeliness of the Motions for Reconsideration and what exactly is reviewable by the Court. The original Order was signed May 26, 2007. The first Motion for Reconsideration was struck as untimely on July 7. An Amended Order was entered also on July 7 that changed only a clerical error. A second Motion for Reconsideration was filed July 13.

"A notice of appeal must be filed within 30 days of the decision which the party filing the notice wants reviewed, or within 30 days of the entry of an Order deciding a timely motion for reconsideration." *Griffin v. Draper*, 32 Wn. App. 611, 613, 649 P.2d 123, *review denied*, 98 Wn. 2d 1004 (1982).

"The effect of filing such a [timely] motion [for reconsideration] is to postpone the running of the 30-day appeal period for review of the judgment on the merits until the motion is resolved by an order." *Brower v. Pierce County*, 96 Wn. App. 559, 562, 984 P.2d 1036 (1999); citing *Buckner, Inc. v. Berkley Irrigation Supply*, 89 Wn. App. 906 912, 951 P.2d 338 (1998).

It is undisputed that the initial Order for Warrant of Abatement was not timely appealed. It is undisputed that the first Motion for Reconsideration was not timely filed. Thurston County agrees that Appellant filed his Notice of Appeal within the time period prescribed by rule for both the Amended Order for Warrant of Abatement and the Second Motion for Reconsideration. The issue becomes: what, then is Appellant allowed to seek review for.

The County admits to a scarcity of case law as to multiple motions for reconsideration. It would only be fair and logical to allow Appellant to seek review of what was timely when the Notice of Appeal was filed. However, the Order for Warrant of Abatement that was subject to appeal when Appellant filed his notice was the *Amended* Order. This order only changed a scrivener's error and cleaned up a strike-through from the original. It does not seem fair or just that Appellant should be allowed a second bite of the apple considering the failure to timely appeal the original Order. All that was substantial and unchanged about that Order was time-barred from Appellant to seek review on November 8, 2006. Appellant should only be allowed to seek review of what was changed from the original Order, specifically, one date and the omission of a struck-through portion. Limiting the appeal to those criteria, Appellant cannot prevail on appeal.

### D. Substantive Issues Concerning the Order Authorizing Abatement and Reconsideration.

If the Court believes that Appellant does indeed have the right to seek review of the substantive content of the Order of Abatement and Reconsideration, Appellant's arguments fail as being unsupported by law, untimely raised, previously raised and ruled upon, previously disposed of on appeal and/or misapplication of facts and/or law.

#### i) Order of Abatement.

The Court of Appeals noted in their unpublished opinion at page 5 that the Thurston County Building Code authorizes abatement for failing to obtain a building permit. The ruling of the Court of Appeals was not appealed further. The Order of Abatement notes that Summary Judgment had previously been granted, an Order of Contempt was previously entered, that appellant was in violation of the Building Code for failing to obtain proper permits, that more than 60 days had elapsed from the time of the entry of the Order of Summary Judgment, and that the violations still existed on the property.

Appellant freely admits that he has constructed a residence and septic system on his property without first obtaining permits and inspections. [Appellant's Brief, page 9]. In his briefing, Appellant argues that there is no legal authority for the issuance of administrative

"warrants," and cited several cases and treatises in support of this contention. The cited cases [*Seattle v. McCready* I and II, *Bosteder*] deal with the issue of administrative *search* warrants, not warrants of abatement. This is a significant difference that Appellant does not seem to grasp.

**ii) Alleged Improper Adoption of Building Codes.**

Since well before the granting of Summary Judgment, Appellant has raised the issue of improper adoption of Thurston County's building codes. Time and time again, this argument has been defeated. Appellant admits in his own briefing that this argument was at issue prior to his seeking review by the Court of Appeals, and has remained an issue that he has argued ever since. Appellant did not seek revision, reconsideration, or appeal of the Court of Appeals failure to comment on the issue. He has failed to seek appellate review each and every time he has subsequently raised and lost on the issue until now. Appellant argues without any legal authority that because the Court of Appeals did not comment on this issue on appeal, that it is somehow still "in play." The issue of summary judgment is final. It was reviewed by an appellate court, and that decision was not appealed further. Appellant cannot continue to challenge an underlying basis [validity of code provisions] for the granting of summary

judgment ad infinitem. He is time-barred from seeking any further review.

Even if the court believes that there is reviewable validity to Appellant's invalid codes claim, the adoption of local codes is a local administrative procedure with its own set of rules. RCW 36.32.330 requires that appeals from the actions of a board of county commissioners ". . . be taken within twenty days after the decision or order, and the appellant shall within that time serve notice of appeal on the county commissioners." Plaintiff is alleging improper action on behalf of the Thurston County Board of Commissioners occurring in November of 1971. Plaintiff is well past the time allowed to appeal that decision, and this Court cannot grant relief to Plaintiff under any set of circumstances.

**iii) Motion for Reconsideration on Substantive Issues.**

Appellant's second motion for reconsideration fails for satisfying any of the criteria found in CR 59 or LCR 59. Judge Strophy denied the second reconsideration for failing to establish any "manifest error, new facts or legal authorities which could not have been brought to the court's attention earlier with responsible diligence," citing LCR 59(a)(3).

Appellant's July 13, 2006 Second Motion for Reconsideration [CP 279 –329] argues 1) lack of jurisdiction; 2) prosecutor misconduct; 3)

warrants not allowed in non-criminal building code violations; 4) reasonableness; 5) survey of the Law of Building Codes; 6) incorrect RCW; 7) inapplicable statute; 8) prosecutor misconduct [again]; 9) same; 10) same; 11) ex post facto application of law; 12) other considerations; and 13) his pending Mason County case. Appellant has not established that any of these items were newly discovered and/or could not have been discovered with due diligence.

The issues of jurisdiction, prosecutor misconduct as to the Order on Warrant of Abatement, and administrative search warrants have been argued above. Appellant argued that the prosecutor improperly used RCW 10.31.060 to serve the warrant by telegraph or teletype. It is unclear what the gist of this argument is and it has never been fleshed out by Appellant.

Appellant in the July 13 Motion for Reconsideration claims that the prosecutor relied on nuisance statutes to seek abatement, which is untrue. As argued previously, the authority to abate the structure is found in the Thurston County Building Code. Appellant claims in the reconsideration motion that the [deputy] prosecutor indicated that the Court of Appeals found that the structures were a nuisance. This statement is unsupported hearsay in the Motion and is not addressed further in Appellant's Supreme Court brief.

Appellant raises the issue of "ex post facto" in the second motion for reconsideration. This issue is not carried on into the Supreme Court briefing, and there is no argument as to why this would be a new or previously undiscovered issue.

There are no issues raised in the motion for reconsideration that satisfy any of the requirements of CR 59 or LCR 59, and Appellant cannot prevail on any substantive issues related his Appeal of second Motion for Reconsideration.

**E. New Issues Raised on Appeal.**

Appellant raises some new issues in his briefing that have not yet been addressed. Appellant seeks relief from the Order on Abatement because 1) no charging document; 2) prosecutorial misconduct occurring in 2005; 3) excessive and/or unreasonable damages; 4) limitation of actions; and 5) reasonableness.

The issues related to charging documents limitations and/or "limitations of actions" had a time and place for review, and that was prior to or in appeal of the Order of Summary Judgment. Summary Judgment was granted on May 16, 2003. As stated above, Appellant is time-barred by RAP 5.2 from seeking appeal on these issues at this late date.

As to the alleged actions of a deputy prosecutor in 2005, which occurred during an action for contempt, the proper remedy would have

been to seek appeal of the final order on contempt. Appellant did not, and again is time-barred from now seeking remedy on appeal.

Finally, Appellant addresses the issue of excessive or unreasonable actions of the County by seeking abatement of the code violations. This case began as a civil infraction in 2000. Summary judgment was obtained in 2003. Appellant has argued this case in Thurston County District Court, Thurston County Superior Court, Mason County Superior Court, U.S. District Court, the 9th Circuit Court of Appeals, the Washington Court of Appeals and now the Washington State Supreme Court. He is currently under an order of Contempt where sanctions continue to be imposed daily, and has had an Order authorizing Warrant of Abatement issued against him. The warrant of abatement is a last resort, as all other coercive sanctions have failed. Thurston County has no other civil remedies it can seek.

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## IV. CONCLUSION

For all of the reasons stated above, this appeal should be denied as wholly lacking merit, and the case should be remanded to the Superior Court for further proceedings.

Respectfully submitted this 26th day of July, 2007.

EDWARD G. HOLM
PROSECUTING ATTORNEY

DONALD R. PETERS, JR., WSBA #23642
Senior Deputy Prosecuting Attorney
Attorney for Respondent

☐ EXPEDITE

X Hearing is set
Date _____
Time _____
Judge/Calendar Richard A Strophy

FILED
SUPERIOR COURT
THURSTON CO WA

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BY _____ DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF THURSTON

| | |
|---|---|
| THURSTON COUNTY,<br><br>Plaintiff,<br><br>v<br><br>MERRELL CLIFFORD SAGER,<br><br>Defendant | NO 02-2-00746-2<br><br>ORDER TO STRIKE DEFENDANT'S MOTION FOR RECONSIDERATION |

THIS MATTER came before the Court on the motion of Plaintiff Thurston County for an Order to Strike Defendant's Motion for Reconsideration

Based on argument of Donald R Peters, Jr , Deputy Prosecution Attorney, appearing for Thurston County, the moving party, and with the Defendant Merrell Clifford Sager appearing pro se, the pleadings presented, the court finds that the hearing on Defendant's Motion for Reconsideration is not timely and therefore should be stricken

Based on the foregoing findings, It is Ordered

1 Plaintiff Thurston County's Motion is granted

2 Defendant's Motion for Reconsideration is not timely and is therefore stricken



EDWARD G HOLM
Thurston County Prosecuting Attorney
Civil Division
2424 Evergreen Park Dr SW Suite 102
Olympia WA 98502
360/786 5536 FAX 360/709 3006

SCANNED

EXHIBIT 1

3. Motion would also be denied for substantive reasons contained in the briefing filed by the parties and pursuant to LCR 59 and CR 59

DONE IN OPEN COURT this 07 day of July, 2006

JUDGE

RICHARD A STROPHY

Presented by

EDWARD G HOLM
PROSECUTING ATTORNEY

DONALD R PETERS, JR , WSBA #23642
Deputy Prosecuting Attorney

Approved as to form

MERRELL CLIFFORD SAGER
Defendant

A copy of this document was properly addressed and mailed, postage prepaid to the following individual(s) on _____ 2006

Merrell Clifford Sager
9845 Littlerock Road SW
Olympia WA 98512

I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct
Olympia, Washington

Date _____

Signature _____



EDWARD G HOLM
Thurston County Prosecuting Attorney
Civil Division
2424 Evergreen Park Dr SW Suite 102
Olympia WA 98502
360/786 5536 FAX 360/709 3006

SCANNED

THURSTON COUNTY SUPERIOR COURT
LOCAL COURT RULES

TO BE EFFECTIVE SEPTEMBER 1, 2006

EXHIBIT 2

LCR 59 MOTIONS FOR RECONSIDERATION / REVISION

(a) Motions for Reconsideration.

(1) *Procedures*

(A) *Civil and Criminal Orders.* At the time a motion for reconsideration is filed, working copies of the motion, brief, affidavit, proposed order, and notice of issue shall be provided to the judge's judicial assistant. All briefs and materials in support of a motion for reconsideration shall be filed at the time the motion is filed. At the time of filing, the motion for reconsideration shall be noted for a hearing to be held within 14 days. Briefs and materials in opposition to a motion for reconsideration, and reply briefs and materials shall be filed in accordance with LCR 5(b)(2). Each judge reserves the right to strike the hearing and decide the motion without oral argument. At the time of filing, the clerk of the court shall provide a copy of the first page of all motions for reconsideration to the judicial assistant for the assigned judge.

(B) *Family and Juvenile Law Orders.* At the time a motion for reconsideration is filed and served, working copies of the motion, brief, affidavit/declaration and proposed order shall be provided to court administration for delivery to the appropriate judicial officer. The motion for reconsideration shall not be noted for a hearing by a party. No response or reply shall be filed unless the judicial officer to whom the motion is directed causes the court to set a hearing. The judicial officer shall decide within 14 days of the filing of a motion for reconsideration whether it will be denied without a response, reply or hearing. If a hearing is necessary, it shall be scheduled within 28 days of the filing of the motion for reconsideration. If a hearing is scheduled by the court, response and reply materials shall be submitted in accordance with LCR 5(b)(2). The judicial officer may strike the hearing and decide the motion within 28 days of the filing of the motion for reconsideration without a hearing after responsive and reply materials are filed.

(2) *Timing.* A motion for reconsideration of a judicial officer's order must be filed and served within 10 days after the written order is entered.

(3) *Standards.* Motions for reconsideration are disfavored. The court will ordinarily deny such motions in the absence of a showing of manifest error in the prior ruling or a showing of new facts or legal authority which could not have been brought to its attention earlier with reasonable diligence.

(b) Motions for Revision of Court Commissioners' Orders.

(1) *Filing and Service Deadline.* A motion for revision must be filed and served within 10 days after the commissioner's written order is entered.

(2) *Findings of Fact and Conclusions of Law.*

(A) A party moving for revision shall present to the court commissioner proposed findings of fact and conclusions of law to support the order or judgment. Other parties may submit their proposals at the time for presentation.

(B) Findings of fact and conclusions of law shall be entered before the hearing on the motion for revision.

(C) The AOC approved form Order of Child Support and Child Support Worksheets may constitute findings of fact and conclusions of law for motions for revision on issues of child support.

(3) *Form of Motion.* A motion for revision shall:

(A) Specify each alleged error; and

(B) Identify each document in the court file related to the issues raised by the motion for revision

(4) *Hearing on Motion.* At the time a motion for revision is filed, the moving party shall schedule a hearing on the Family and Juvenile Court revisions calendar by filing a notice of issue. The hearing on the motion for revision shall be scheduled to occur within 30 days after

the motion for revision is filed.

(5) *The Record.*

(A) The motion for revision shall be heard upon the record before the court commissioner. No new factual material may be filed without permission of the court for good cause shown. Materials filed with a motion for reconsideration shall not be considered on revision unless the Court has allowed a response to the motion for reconsideration and held a hearing on that motion.

(B) In all juvenile offender proceedings and other proceedings for which a tape recording of live testimony is made, the party moving for revision shall make arrangements through the Family and Juvenile Court Supervisor for a transcript or a copy of the tape recording of the proceedings to be provided to the court within 5 calendar days after filing the motion. A transcript shall be required if the tape recording is more than 20 minutes in length. Where a transcript is required, the party moving for revision shall be responsible for arranging for payment for the transcript and ensuring that the transcript of proceedings is filed with the court not later than 5 calendar days before the scheduled hearing.

(6) *Scope of Motion.*

(A) The court may revise any order or judgment that is related to the issues raised by the motion for revision, for example, all issues related to child support or all issues related to the parenting plan. The court will not consider issues that are not related to the motion for revision without a separate motion, except the court may consider requests for attorneys' fees by either party for the revision proceedings.

(B) When a motion for revision is filed as to an order denying a motion for reconsideration, the court may consider only whether the commissioner made a manifest error in the original ruling (without considering any newly discovered facts or legal authority presented with the motion for reconsideration) or whether there were new facts or legal authority that, with reasonable diligence, could not have been brought to the commissioner's attention earlier.

(7) *Effect of Motion.*

(A) When a motion for revision is timely filed, the court commissioner loses jurisdiction to conduct further proceedings or enter orders on issues that are the subject of the revision proceeding until the revision proceeding is completed, except findings of fact and conclusions of law required by this rule.

(B) A court commissioner's order shall be effective upon entry of a written order unless stayed by court order pending hearing on a motion for revision.

[Amended effective September 1, 1994; September 1, 1997; February 9, 1999; September 1, 2000; Amended Effective September 1, 2003; Amended Effective September 1, 2004, amended effective September 1, 2006.]

I CERTIFY THAT THE FOREGOING COPY OF THURSTON COUNTY LOCAL RULE 59 IS THE TRUE AND CORRECT COPY OF THE RULE AS DOWNLOADED AND PRINTED FROM THE THURSTON COUNTY SUPERIOR COURT WEBSITE.

DATED: JULY 26, 2007

Linda L. Olsen
Paralegal