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DIVISION II
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STATE OF WASHINGTON
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NO. 49588-1-II

COURT OF APPEALS, DIVISION II

OF THE STATE OF WASHINGTON

RANDY REYNOLDS & ASSOCIATES, INC.

Appellant

v.

KASEY HARMON,

Respondent.

BRIEF OF APPELLANT

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INTRODUCTION

This is an unlawful detainer action. The tenancy was residential. Appellant is the landlord. Respondent is the tenant. Thurston County Superior Court Commissioner Rebekah Zinn heard an ex parte motion brought by the tenant seeking a stay of execution of a writ of restitution and granted a stay.[1] Under RCW 59.18.390(1), as a condition precedent to a stay, the tenant must post a bond. The court waived the bond. There are two overarching issues: First, does a court have authority to hear an ex parte motion to stay execution of a writ of restitution. Second, does a court have authority to waive the bond.

ASSIGNMENTS OF ERROR

1. The court erred when it heard the ex parte motion to stay execution of the writ and granted the stay.

2. The court erred when it waived the bond required by RCW 59.18.390(1).

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[1] A ruling by a superior court commissioner is appealable as a final judgment. It is not necessary to seek review of the commissioner's ruling by a superior court judge before appealing to the Court of Appeals. RCW 2.24.050; Tegland, 2A Washington Practice Rules Practice Eighth ed. (2014) page 100; *Guardianship of Bellanich*, 43 Wn. App. 345, 348 - 349, 717 P.2d 307 (1986) overruled on other grounds by *Brouillet v. Cowles Pub. Co.*, 114 Wn.2d 788, 791 P.2d 526 (1990).

ISSUES PERTAINING TO THE ASSIGNMENTS OF ERROR

1. Although the case is moot, is the test for hearing a moot case met? (Assignments of error 1 and 2).

2. Were the tenant's motion, supporting documents and argument ex parte communication prohibited by Canon 2.9(A) of the Code of Judicial Conduct? (Assignment of error 1).

3. Was the tenant's motion properly before the court under CR5(a)? (Assignment of error 1).

4. Was the stay void *ab initio* under the common law? (Assignment of error 1).

5. Were the hearing and the stay *ultra vires* under RCW 59.18.390(1)? (Assignments of error 1 and 2).

6. Was the landlord denied procedural due process? (Assignment of error 1).

7. Did the hearing violate Canon 2.6(A) of the Code of Judicial Conduct? (Assignment of error 1).

8. Is the landlord entitled to attorney fees on appeal? (Assignments of error 1 and 2).

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STATEMENT OF THE CASE

The deadline for receipt of an answer to the complaint was September 15, 2016 (CP 3). Landlord's counsel did not receive a timely answer (CP 16 - 17). On September 16, the court entered an order of default and judgment (CP 18 - 22). The judgment granted a writ of restitution (CP 21 line 9). The writ was posted by the sheriff September 19 (CP 75). That day, the tenant brought an ex parte motion to stay execution of the writ (CP 24).[2] Landlord's counsel had no notice of the motion or the hearing (CP 40 lines 13 - 14). The court stayed execution of the writ on the basis that "the defendant alleges she answered before this case was filed and default taken" (CP 24 lines 16 - 17).

The tenant prepared an answer dated September 9, but did not mail it until September 14, the day before the deadline for receipt of an answer (CP 42 - 45, CP 83 lines 7 - 9). Landlord's counsel received the answer September 20 (CP 82 lines 9 - 10). That was five days after the deadline for receipt of the answer, four days after the order of default and judgment were entered, and one day after the writ was posted by the sheriff (CP3, CP 18 - 22 and CP 75).

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2 There is no verbatim report of the ex parte hearing. A court reporter is not present during the ex parte calendar and the hearings are not recorded.

As a condition precedent to a stay, RCW 59.18.390(1) requires a tenant who obtains a stay to post a bond set by the court. The court waived the bond and set a show cause hearing (CP 24). At the show cause hearing the court held that "the defendant did not present a legally sufficient defense to the complaint," lifted the stay and granted a supplemental judgment of $1,662 for attorney fees and costs (CP 82 lines 20 - 21, CP 83 line 18 and CP 84 lines 5 - 7). The writ was then executed (CP 75).

FACTS PERTINENT TO WHETHER THE COURT SHOULD HEAR THIS MOOT CASE

The longstanding policy of the Thurston County superior court bench is to hear motions to stay execution of writs of restitution ex parte (Appendix "A" page 1 line 16 - page 2 line 1).[3] Since 2012, at least ten ex parte motions to stay execution of a writ of restitution were entertained without notice to landlord's counsel.[4] In nine of those instances, landlord's counsel had no

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3 In an order entered February 17, 2017, the Court of Appeals Commissioner authorized Appellant to supplement the record with declarations of attorneys Mary Ann Strickler and Michael G. Gusa. The declarations are attached hereto as Appendix "A" and "B" respectively.

4 This case, twice in linked case Hawthorne v. Pomerleau - Court of Appeals Cause 48745-4-II, six times identified in the declaration of Strickler (Appendix "A") and one time identified in the declaration of Gusa (Appendix "B").

opportunity to oppose the motion.[5] In one instance, landlord's counsel happened to be in the courtroom for an unrelated matter and was able to oppose the motion (Appendix "B" page 2 line 17 - page 3 line 5). That motion was denied (*Id.* page 3 lines 2 - 3 and Exhibit "D" thereto). In the nine other instances a stay was granted.[6]

The practice of the Thurston County bench is to waive the bond required by RCW 59.18.390(1)(Appendix "A" page 2 lines 2 - 3). In the nine instances that a stay was granted, the court did not require a bond.[7] This practice is evidenced by the form order often used by the court which states "Bond is waived until the hearing on the merits of this motion" (CP24 and Appendix "A," declaration of Strickler " and Exhibits "B," "D," "E" and "F" thereto). At two bench bar meetings, the bar objected to granting stays ex parte and to waiving the bond under RCW 59.28.390(1) with no result (Appendix "A declaration of Strickler page 2 lines 5 - 6).

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5 This case, twice in Hawthorne v. Pomerleau and six times identified in the declaration of Strickler (Appendix "A").

6 See footnote 5.

7 See footnote 5.

ARGUMENT

1. ALTHOUGH THE CASE IS MOOT, THE TEST FOR HEARING A MOOT CASE IS MET

This case is moot. It became moot when the sheriff executed the writ. However, the case raises important issues involving interpretation and application of the Code of Judicial Conduct, the civil rules, RCW 59.18.390(1), the common law, and the due process clauses of both the Washington and United States constitutions.

Appellate courts have discretion to review cases that are technically moot but involve "issues of continuing and substantial public interest." *In re Detention of M.W.*, 185 Wn.2d 633, 648, 374 P.3d 1123 (2016) (citing *State v. Beaver*, 184 Wn.2d 321, 330, 358 P.3d 385 (2015)). When considering whether a case involves issues of continuing and substantial public interest a court looks at three factors:

> (1) the public or private nature of the question presented, (2) the desirability of an authoritative determination for the future guidance of public officers, and (3) the likelihood of future recurrence of the question.

Id. (citing *State v. Hunley*, 175 Wn.2d 901, 907, 287 P.3d 584 (2012)).

Moot cases heard on appeal usually involve constitutional or statutory interpretation. *In re Mines*, 146 Wn.2d 279, 285, 45 P.3d 535 (2002). Such

issues tend to be more public in nature, are more likely to recur, and the decisions help guide public officials. *Id.* In *Kim v. Lakeside Adult Family Home*, 185 Wn.2d 532, 554, 374 P.3d 121 (2016) the supreme court reasoned that a moot issue should be reviewed, in part, because a similar issue had been raised at least once before. The issues are public issues. Authoritative determination will provide important guidance to judicial officers.

Counsel has found no case authority that directly addresses whether under the Code of Judicial Conduct, the civil rules, the common law, RCW 59.18.390(1) and the due process clauses of the Washington and United States constitutions, a court has authority to hear an *ex parte* motion to stay a writ. Whether the court has authority to waive the bond required by RCW 59.18.390(1) is an issue of first impression.

Since 2012, the Thurston county Superior Court bench has entertained at least ten ex parte motions to stay execution of a writ of restitution when landlord's counsel had no prior notice.[8] In nine of the instances, landlord's counsel had no opportunity to oppose the motion.[9] In the tenth, landlord's counsel happened to be in the courtroom for an unrelated matter and was able

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8 See footnote 4.

9 See footnote 5.

to oppose the motion (Appendix "B" page 2 line 17 - page 3 line 5).

In the nine instances when landlord's counsel had no opportunity to oppose the motion, a stay was granted.[10] The one time that landlord's counsel had an opportunity to argue against a stay, the motion was denied (Appendix "B" page 2 line 17 - page 3 line 5 and Exhibit "D" thereto). In the nine instances when a stay was granted, the court did not require a bond).[11] These issues will undoubtedly recur in the future. They are matters of continuing and substantial public interest that are public in nature and for which authoritative determination is highly desirable.

A court can also "consider the likelihood" that unless the case is heard, "the issue will escape review because the facts of the controversy are short lived." *Marriage of Horner*, 151 Wn.2d 884, 892, 93 P.3d 124 (2004)(citing *Westerman v. Cary*, 125 Wn.2d 277, 287, 892 P.2d 1067 (1994)). These issues have escaped review for more than a decade (Appendix "A" page 4 lines 3 - 4). If this case is not heard, these issues will probably continue to escape review. Moreover, because this case has been fully adjudicated, there is a complete record. That would not exist in a future case

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10 See footnote 5.

11 See footnote 5.

considered on discretionary review. The test for hearing a moot case is met. Review is well warranted.

2. THE STANDARD OF REVIEW IS DE NOVO

A court reviews "both the interpretation and the application of court rules de novo." *In re Dependency of M.H.P.,* 184 Wn.2d 741, 753, 364 P.3d 94 (2015)(citing *State v. McEnroe*, 174 Wn.2d 795, 800, 279 P.3d 861 (2012)). The meaning of a statute is a question of law that is reviewed de novo. *Jongeward v. BNSF R. Co.,* 174 Wn.2d 586, 592, 278 P.3d 157 (2012)(citing *State v. Breazeale*, 144 Wn.2d 829, 837, 31 P.3d 1155 (2001)). A claim of denial of a constitutional right is reviewed de novo. *State* v. *Drum,* 168 Wn.2d 23, 31, 225 P.3d 237 (2010)(citing *Brown v. State,* 155 Wn.2d 254, 261, 119 P3d 341 (2005). Review is de novo.

3. PRINCIPLES FOR INTERPRETATION OF STATUTES AND COURT RULES

"When the words in a statute are clear and unequivocal" the court must "assume the Legislature meant exactly what it said and apply the statute as written." *Town of Woodway v. Snohomish County*, 180 Wn.2d 165, 174, 322 P.3d 1219 (2014). A court cannot add words to or delete words from a statute. *State v. J.P.,* 149 Wn.2d 444, 450, 69 P.3d 318 (2003)). All the language used by the legislature is "given effect, without rendering any part

of the statute meaningless or superfluous." *Id.* Court rules are interpreted using the same principles. *Jafar v. Webb*, 177 Wn.2d 520, 527, 303 P.3d 1042 (2013).

4. THE COURT CONSIDERED PROHIBITED EX PARTE COMMUNICATION

The tenant's motion, supporting documents and argument were prohibited ex parte communication. Ex parte communication is communication made by or to a judicial officer without prior notice to a party. *State v. Watson*, 155 Wn.2d 574, 579, 122 P.3d 903 (2005)(citing *State v. Bourgeois,* 133 Wn.2d 389, 407 - 408, 945 P.2d 1120 (1997)). Canon 2.9(A) of the Code of Judicial Conduct, which governs ex parte communication, provides that:

> A judge shall not initiate, permit, or consider ex parte communications made to the judge outside the presence of the parties or their lawyers, concerning a pending or impending matter before that judge's court except as follows:
>
> (1) When circumstances require it, ex parte communication for scheduling, administrative, or emergency purposes, which does not address substantive matters, or ex parte communication pursuant to a written policy or rule for a mental health court, drug court, or other therapeutic court, is permitted, provided:
>
> (a) the judge reasonably believes that no party will gain a procedural, substantive, or tactical advantage as a result of the ex parte communication ...

In *State v. Davis,* 175 Wn.2d 287, 290 P.3d 43 (2012) the trial court "on his own and without consulting the parties," decided to change a trial date. *Id.* at 304. Later, the judge asked deputy prosecuting attorneys to prepare a revised scheduling order, "approve it, and then give defense counsel a copy for signature." *Id.* Former Canon 3(A)4 (1995) prohibited "judges from engaging in ex parte contact". *Id.* at 305. The court denied the defendant's motion to recuse due to the ex parte contact. *Id.*

On appeal, the defendant argued that the court abused its discretion by refusing to recuse. *Id.* The state conceded that ex parte contact occurred, but denied that the contact required recusal. *Id.* There was no showing of bias on the part of the judge or prejudice to the defendant. *Id.* at 307. In the absence of such a showing, the supreme court held that the judge's decision not to recuse was not reversible error. *Id.* at 309.

Here, because landlord's counsel had no notice of the hearing, the motion, the supporting documents and the tenant's argument were prohibited ex parte communication unless an exception in Canon 2.9(A) applied. Subsection (1) of the Canon allows "ex parte communication for scheduling, administrative, or emergency purposes. Setting the show cause hearing was allowed scheduling. Granting the stay was not scheduling or an

administrative purpose.

The tenant may well have claimed that the situation was an emergency. However, the tenant's decision to wait five days to mail her answer and to mail it the day before the deadline for its receipt resulted in a situation of the tenant's own making. In any event, ex parte communication for "emergency purposes" is allowed only if the communication does "not address substantive matters". A stay is certainly a substantive matter.

Moreover, ex parte communication for emergency purposes is allowed only if the judicial officer "reasonably believes that no party will gain a procedural, substantive, or tactical advantage as a result of the ex parte communication." The stay was itself an advantage. It allowed the tenant to remain in the dwelling, and do so without paying rent. The court could not reasonably have believed that a stay was not a procedural, substantive or tactical advantage. The exception that allows ex parte communication for scheduling, administrative, or emergency purposes did not apply. The motion, supporting documents and argument were prohibited ex parte communication.

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5. UNDER CR5(a) THE MOTION WAS NOT PROPERLY BEFORE THE COURT

CR5(a) states that "every written motion other than one which may be heard ex parte ... shall be served upon each of the parties." As discussed in § 4 above, the motion for a stay was prohibited ex parte communication. CR 5(a) is clear on its face. Notice of the motion and the hearing were required. Notice may not be dispensed with. *Marriage of Mahalingam*, 21 Wn. App. 228, 230, 584 P.2d 971 (rehearing denied 1978) citing *Loveless v. Yantis*, 82 Wn.2d 754, 513 P.2d 1023 (1973)). The motion was not properly before the court. The proper course was to set a hearing on shortened time and require service on landlord's counsel.

6. THE STAY WAS VOID AB INITIO UNDER THE COMMON LAW

Under the common law, the stay was void *ab initio*. An order "based on a hearing in which there was not adequate notice or opportunity to be heard is void." *Esmieu v. Schrag,* 88 Wn.2d 490, 497, 563 P.2d 203 (1977). Because landlord's counsel had no notice of the hearing and no opportunity to be heard, the stay was void *ab initio.*

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7. THE STAY WAS ULTRA VIRES UNDER RCW 59.18.390(1)

A. The Stay Was Ultra Vires Because The Court Waived The Required Bond

Under RCW 59.18.390(1), a tenant who wishes to stay a writ and continue to occupy the premises while the litigation is pending must post a bond. *Housing Authority v Pleasant*, 126 Wn. App. 382, 390, 109 P.3d 422 (2005), Stoebuck and Weaver, 17 *Washington Practice Real Estate: Property Law* Second ed. § 6.81 page 450 (2004). RCW 59.18.390(1) provides that:

> The sheriff shall, upon receiving the writ of restitution, forthwith serve a copy thereof upon the defendant, his or her agent, or attorney, or a person in possession of the premises, and shall not execute the same for three days thereafter, and **the defendant, or person in possession of the premises within three days after the service of the writ of restitution may execute to the plaintiff a bond to be filed with and approved by the clerk of the court in such sum as may be fixed by the judge, with sufficient surety to be approved by the clerk of the court, conditioned that they will pay to the plaintiff such sum as the plaintiff may recover for the use and occupation of the premises, or any rent found to be due, together with all damages the plaintiff may sustain by reason of the defendant occupying or keeping possession of the premises, together with all damages which the court theretofore has awarded to the plaintiff as provided in this chapter, and also all the costs of the action.**

(emphasis supplied).

The purpose of the bond "is to secure the landlord against losses

during the pendency of the proceedings when the tenant continues to occupy the premises." *Pleasant*, 126 Wn. App. at 390. RCW 59.18.390(1) is clear on its face. A bond is required when a court stays a writ. Nothing in the language of RCW 59.18.390(1) authorizes the trial court to waive the bond. Nonetheless, the court waived the bond (CP 24 line 25).

When the court later lifted the stay it entered a supplemental judgment of $1,662 for attorney fees and costs of suit (CP 81 - 84). By waiving the bond, the court deprived the landlord of the means of satisfying the judgment mandated by the statute. The very fate that the legislature sought to avoid.

B. The Stay Was Ultra Vires Because The Landlord Did Not Have Statutorily Required Notice Of The Hearing And Opportunity To Be Heard Regarding The Bond

Separate and distinct from CR5(a), RCW 59.18.390(1) provides that:

> The plaintiff, his or her agent or attorneys, shall have notice of the time and place where the court or judge thereof shall fix the amount of the defendant's bond, and shall have notice and a reasonable opportunity to examine into the qualification and sufficiency of the sureties upon the bond before the bond shall be approved by the clerk.

The statute is clear on its face. The landlord is entitled to notice of the hearing and an opportunity to be heard regarding the bond. By hearing the ex parte motion the court deprived the landlord of the notice and opportunity to be heard to which he was statutorily entitled. Nothing in RCW

59.18.390(1) allows the court to waive these rights.

In *State v. Schwab,* 103 Wn.2d 542, 551, 693 P.2d 108 (1985) the supreme court opined that the history of the Residential Landlord-Tenant Act "shows the care exercised by the Legislature in writing the act and in delineating the specific rights, duties and remedies of both landlords and tenants." By hearing the motion ex parte and waiving the bond, the court ignored this careful delineation of the rights of the landlord and tenant.

8. THE COURT DENIED THE LANDLORD THE RIGHT TO BE HEARD ACCORDING TO LAW

Canon 2.6(A) of the Code of Judicial Conduct states that "A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law." By hearing prohibited ex parte communication as discussed in § 4 above, the court denied the landlord his right to be heard. As discussed in § 5 above, the court denied landlord the right to be heard under CR5(a). As discussed in § 6 above, the court denied the landlord the common law right to be heard. As discussed in § 7(B) above, the court denied the landlord the right to be heard regarding the bond. In this manner the court denied the landlord his right to be heard according to law and violated Canon 2.6(A).

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9. THE LANDLORD WAS DENIED PROCEDURAL DUE PROCESS

Article I, section 3 of the Washington Constitution guarantees that "[n]o person shall be deprived of life, liberty, or property, without due process of law." The United States Constitution guarantees that state government will not deprive an individual of life, liberty, or property without due process of law. *State v. Shelton*, 194 Wn. App. 660, 666, 378 P.3d 230 (2016). The procedural elements of the constitutional guarantee of Article 1 § 3 of the Washington State Constitution are "notice and the opportunity to be heard and defend." *Esmieu v. Schrag*, 15 Wn. App. 260, 265, 548 P.2d 581 (1976)(*Affd.* 88 Wn.2d at 490 (1977)).

Notice and an opportunity to be heard on matters that "materially affect a litigant's rights are essential elements of due process that may not be disregarded." *Marriage of Mahalingam*, 21 Wn. App. at 230. Orders entered in a proceeding that fails to afford procedural due process are void. *Marriage of Ebbighausen*, 42 Wn. App. 99, 102, 708 P.2d 1220 (1985). Because the landlord did not have notice of the hearing and an opportunity to be heard, the hearing did not afford procedural due process and the order is void.

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10. THE LANDLORD WAS SUBSTANTIALLY PREJUDICED

A party is prejudiced by a lack of actual notice and opportunity to provide countervailing oral argument and submit authority. *Zimny v. Lovric*, 59 Wn. App. 737, 740, 801 P.2d 259 (1990)(citing *Goucher v. J.R. Simplot Co.*, 104 Wn.2d 662, 665, 709 P.2d 774 (1985)). Having no opportunity to argue and submit authority that there was no basis for a stay, and that if a stay was granted a bond was required, the landlord was substantially prejudiced.

11. THE LANDLORD IS ENTITLED TO ATTORNEY FEES AND COSTS ON APPEAL

When a rental agreement provides that the prevailing party is entitled to reasonable attorney fees and costs, that includes attorney fees and costs on appeal. *Western Plaza v. Tison*, 184 Wn.2d 702, 718, 364 P.3d 76 (2015). Under paragraph 12 of the rental agreement, the landlord is entitled to attorney fees (CP 13).

CONCLUSION

The supreme court recently observed that:

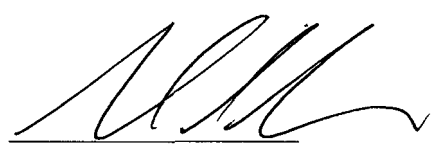
> The proper functioning of the adversary system depends on both parties having an opportunity to be heard when the court makes decisions related to a case. Failing to apprise all parties of pending motions can result in the court's making errors.

In re Dependency of M.H.P, 184 Wn.2d at 763. This case shows the harm that can result when a party is denied notice of a hearing and an opportunity to be heard, and when a court waives a party's statutory rights without a lawful basis to do so. If a court can waive notice and an opportunity to be heard before staying a writ, and when granting a stay can waive the bond required by RCW 59.18.390(1), what right possessed by a landlord is beyond the power of a court to waive?

The landlord respectfully requests the court enter a published opinion which holds that there is no lawful basis to hear ex parte motions to stay writs of restitution and no lawful basis to waive the bond required by RCW 59.18.390(1).

March 8, 2017

Respectfully submitted,



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Appendix "A"

Declaration of Mary Ann Strickler

IN THE COURT OF APPEALS OF WASHINGTON
DIVISION II

RANDY REYNOLDS & ASSOCIATES, INC. Appellant, vs. KASEY HARMON, Respondent.	No. 49588-1-II DECLARATION OF MARY ANN STRICKLER

I am an attorney. Landlord - tenant law is the primary focus of my practice. Although this case is moot, I urge the Court of Appeals to hear the important issues it presents.

I typically have around 50 unlawful detainer cases in Thurston county each year. I am thoroughly familiar with the policies and practices of the Thurston County Superior Court in unlawful detainer cases. The policy of the Thurston County Superior Court is to hear motions to stay execution of writs of restitution ex parte. In the last ten years I have never received notice of any kind prior to a hearing on a motion for a stay. A handful of lawyers do most of the unlawful detainer work for landlords. We talk. I am generally aware of their experiences. To my knowledge, in the last ten years, no plaintiff's lawyer has received notice of any kind before a motion for a stay was

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heard.

In RCW 59.18.390(1) the Residential Landlord-Tenant Act requires a bond as a condition precedent to granting a stay. The practice of the Thurston County bench is to waive the bond. When granting a stay the court customarily uses a pre-printed form order which states "Bond is waived until the hearing on the merits of this motion." At bench bar meetings, the bar has objected to granting stays ex parte and to waiving the bond, with no result.

Since 2012, tenants obtained stays in at least six of my cases. On September 20, 2012, I obtained a default judgment and writ of restitution in Thurston County cause 12-2-01931-0. After the writ was posted by the Sheriff, the defendant appeared ex parte, without notice to me, and obtained a stay. A copy of the order signed by Commissioner Zinn is attached hereto as Exhibit "A". I had no opportunity to oppose the motion. The court did not require the defendant to post the bond required by statute (*Id.*). The defendant failed to appear at an October 5 hearing and the stay was lifted.

On August 9, 2013, an agreed order was entered in Thurston County cause 13-2-01585-1 that allowed the tenant to remain at the premises and make payments on back rent owed. The order allowed entry of an ex parte order of default and issuance of a writ upon affidavit of counsel that the agreement was breached. On October 31, the court granted a writ based upon the defendant's breach. After the writ was posted by the Sheriff, the defendant appeared ex parte without notice to me and obtained a stay. A copy of the order signed by Commissioner Zinn is attached hereto as Exhibit "B". I had no opportunity to oppose the motion. The court waived the required bond (*Id.* page 1 line 23). At a November 15 hearing, the court found that the tenant had no defense and quashed the stay.

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Olympia, WA 98502
Phone (360) 705-3342

On February 5, 2014, in Thurston County cause 14-2-00224-3 I obtained a default judgment and writ of restitution. After the Sheriff posted the writ, the defendant appeared ex parte, without notice to me, and obtained a stay. A copy of the order signed by Judge Dixon is attached hereto as Exhibit "C". I had no opportunity to oppose the motion. The court did not require the defendant to post a bond. The defendant failed to appear at a February 14 show cause hearing and the stay was quashed.

On May 23, 2014, in Thurston County cause 14-2-00943-4 the parties entered into a stipulation. On July 14, a judgment was entered and a writ granted based upon the defendant's failure to comply with the stipulation. After the Sheriff posted the writ, the defendants appeared ex parte, without notice to me, and obtained a stay. A copy of the order signed by Commissioner Zinn is attached hereto as Exhibit "D". The order waived the required bond (*Id.* page 1 line 25). I had no opportunity to oppose the motion. At an August 1 hearing the stay was quashed.

On July 8, 2014, in Thurston County cause 14-2-01316-4 I obtained a default judgment and a writ. After the Sheriff posted the writ, the defendants appeared ex parte, without notice to me, and obtained a stay. A copy of the order signed by Commissioner Zinn is attached hereto as Exhibit "E". I had no opportunity to oppose the motion. The order waved the required bond (*Id.* page 1 line 25). On July 25, the court set the matter for trial on the condition that the tenants tender one month's rent into the court registry. When the tenants failed to make that tender, the court quashed the stay.

On July 24, 2015, in Thurston County cause 15-2-01402-9 I obtained a default judgment and a writ. After the Sheriff posted the writ, the defendants appeared ex parte, without notice to me, and obtained a stay. A copy of the order signed by Commisioner Zinn is attached hereto as Exhibit "F". I had no opportunity to oppose the motion. The order waived the required bond (*Id.* page 1 line 25).

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On August 14, the court lifted the stay.

The issues raised in the appeal are matters of continuing and substantial public interest that are public in nature and for which authoritative determination is highly desirable. These issues have escaped review for more than a decade. Unless this case is heard these issues are likely to continue to escape review because unlawful detainer cases are tried quickly and quickly become moot, precluding interlocutory review. I respectfully request that the Court of Appeals hear this case.

I DECLARE UNDER PENALTY OF PERJURY OF THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF

Dated this 9th day of February 2017 at Tumwater, Washington.

Mary Ann Strickler

Gusa Law Office
3025 Limited Lane N.W. Suite 104
Olympia, WA 98502
Phone (360) 705-3342

2

FILED
SUPERIOR COURT
THURSTON COUNTY, WA

2012 OCT -1 PM 4:55

BETTY J. GOULD, CLERK

☐ EXPEDITE (if filing within 5 court days of hearing)
☐ Hearing is set:
Date: _____
Time: _____
Judge/Calendar: _____

SUPERIOR COURT OF WASHINGTON FOR THURSTON COUNTY

~~[illegible]~~ LARSON
Plaintiff/Petitioner,

vs.

~~[illegible]~~ WESTBY
Defendant/Respondent.

NO. 12 2 01931 0

ORDER STAYING EXECUTION (OR) OF WRIT OF RESTITUTION

I. BASIS

II. FINDINGS

After reviewing the case record to date, and the basis for the motion, the court finds that:

THE RESPONDENT HAS SHOWN GOOD CAUSE TO STAY EXECUTION OF THE WRIT OF RESTITUTION FILED ON SEPTEMBER 20, 2012.

III. ORDER

IT IS ORDERED that: THE WRIT OF RESTITUTION IS HEREBY STAYED UNTIL FRIDAY, OCTOBER 5. THE PARTIES SHALL APPEAR AT 10:00 AM ON OCTOBER 5, 2012 TO SHOW CAUSE WHY THE STAY SHOULD NOT BE LIFTED. ROBERT WESTBY MUST SERVE THIS ORDER ON THE PLAINTIFF'S ATTORNEY BY 5 PM ON OCTOBER 2, 2012. THE HEARING ON FRIDAY WILL BE HELD ON SHORTENED TIME UNLESS THE PLAINTIFF CHOOSES TO CONTINUE IT. THE CLERK SHALL WAIVE THE FEE FOR A CERTIFIED COPY OF THIS ORDER

DATED this 1ST day of OCTOBER, 2012.

~~JUDGE~~ / COURT COMMISSIONER

Presented by:

_____
ORDER

F:\FORMS\MC\ORDER.DOC, 11/3/09

12-9-01112-8

Exhibit "H"
Page 1 of 1

FILED
SUPERIOR COURT
THURSTON COUNTY, WA
2013 NOV -5 PM 4:56
BETTY J. GOULD, CLERK

Copy Received

Clerk's Stamp

SUPERIOR COURT OF WASHINGTON
IN AND FOR THURSTON COUNTY

PRM Property Management, Plaintiff, vs. Brenda Kennedy, et al Respondents.	No. 13-2-01585-1 **ORDER STAYING WRIT OF RESTITUTION AND ORDERING SHOW CAUSE HEARING** **(Clerk's Action Required)**

The court has reviewed this file and pleadings presented to it, including the motion to stay execution of the writ of restitution. The court finds good cause to stay execution of the writ of restitution until a hearing can be held on this matter. Specifically, the tenant shows that she may have a defense to the claim that she violated the agreed order because she allegedly paid October rent on time.

Therefore, it is hereby ordered that the writ of restitution is stayed until Friday, November 15, 2013 at 5:00 p.m. The parties shall appear before the unlawful detainer judge at Thurston County Superior Court at 10:00 a.m. on November 15, 2013. At the hearing, the tenant shall show cause why this stay shall not be lifted. The parties may agree to continue the hearing and continue the duration of the stay until a hearing can be held. Bond is waived until the hearing on the merits of this motion.

IT IS SO ORDERED.

Done on November 5, 2013.

REBEKAH ZINN
COURT COMMISSIONER

Court Commissioner Rebekah Zinn

THURSTON COUNTY SUPERIOR COURT
2000 Lakeridge Dr. S.W.
Olympia, WA 98502
(360) 786-5560
Fax: (360) 754-4060

13-9-01075-8

Exhibit "B"
Page 1 of 1

☐ **EXPEDITE** (If filing within 5 court days of hearing)
☐ Hearing is set:
Date: _____
Time: _____
Judge/Calendar: _____

FILED
SUPERIOR COURT
THURSTON COUNTY, WA
2014 FEB -7 PM 4:45
BETTY J. GOULD, CLERK

SUPERIOR COURT OF WASHINGTON FOR THURSTON COUNTY

PATRICIA PEARSON
Plaintiff/Petitioner,
vs.
ERIC COUTTS / LYNSEY COUTTS
Defendant/Respondent.

NO.
ORDER (OR) STAYING WRIT OF RESTITUTION
~~14-2-00224-3~~
14-2-00224-3

I. BASIS

Respondent's motion for Stay filed February 7, 2014

II. FINDINGS

After reviewing the case record to date, and the basis for the motion, the court finds that:
Respondent was served with Summons indicating written response due 2.9.14

III. ORDER

IT IS ORDERED that: the WRIT of RESTITUTION entered February 5, 2014, is hereby STAYED. It is further ORDERED that both parties shall appear February 14, 2014 at 10:00 A.M on Unlawful Detainer calendar and Plaintiff shall show cause why STAY should not remain. It is further ORDERED that Respondent shall provide a copy of this Order to Plaintiffs counsel, by fax, no later than 2.10.14

DATED this 7 day of February, 2014.

Presented by: Eric Coutts

JUDGE / COURT COMMISSIONER
James J. Dixon

ORDER

F:\FORMS\MC\ORDER.DOC, 11/3/09

14-9-00111-1

Exhibit "C"
Page 1 of 1

FILED
SUPERIOR COURT
THURSTON COUNTY, WA

2014 JUL 17 PM 5:03

BETTY J. GOULD, CLERK

Copy Received | Clerk's Stamp

SUPERIOR COURT OF WASHINGTON
IN AND FOR THURSTON COUNTY

Noel Investment, plaintiff

vs.

Keller, defendants.

No. 14-2-00943-4

ORDER STAYING EXECUTION OF WRIT OF RESTITUTION AND ORDERING SHOW CAUSE HEARING
EX PARTE

(Clerk's Action Required)

The court has reviewed this file and pleadings presented to it, including the motion to stay execution of the writ of restitution. The court finds good cause to stay execution of the writ of restitution until a full hearing can be held with notice to the plaintiff. Specifically, the court finds: there is a disputed issue of whether the stipulation was complied with. The court notes that the plaintiff filed a declaration of counsel only, not a declaration by the landlord, to support noncompliance.

Therefore, it is hereby ordered that the writ of restitution is stayed until Friday, August 1, 2014 at 5 p.m. The parties shall appear before the unlawful detainer judge at Thurston County Superior Court, 2000 Lakeridge Drive NW, Building Two, Olympia, Washington 98502 at 10:00 a.m. on August 1, 2014. At the hearing, the tenant/occupant shall show cause why the writ of restitution should be vacated or the stay should continue. The parties may agree to continue the hearing and continue the duration of the stay. The tenant/occupant must timely serve a copy of this order on the plaintiff and must file proof of service. Bond is waived until the hearing on the merits of this motion.

Signed in open court on July 17, 2014.

Mr. Keller alleges that he is having hip surgery on Tuesday and will be disabled 6 weeks. The court advised him to work with Ms. Strickler on a continuance and/or seek a disability accommodation through court administration.

Court Commissioner Rebekah Zinn

THURSTON COUNTY SUPERIOR COURT
2000 Lakeridge Dr. S.W., Building Two
Olympia, WA 98502
(360) 786-5560
Fax: (360) 754-4060

14-9-00589-2

Exhibit "D"
Page 1 of 1

FILED
SUPERIOR COURT
THURSTON COUNTY, WA

2014 JUL 15 PM 4:46

BETTY J. GOULD, CLERK

Copy Received | Clerk's Stamp

SUPERIOR COURT OF WASHINGTON
IN AND FOR THURSTON COUNTY

NOEL INVESTMENTS, plaintiff vs. BUCKINGHAM, defendants.	No. 14-2-01316-4 **ORDER STAYING EXECUTION OF WRIT OF RESTITUTION AND ORDERING SHOW CAUSE HEARING** **(Clerk's Action Required)**

The court has reviewed this file and pleadings presented to it, including the motion to stay execution of the writ of restitution. The court finds good cause to stay execution of the writ of restitution until a full hearing can be held with notice to the plaintiff. Specifically, the court finds: the defendants present defenses to eviction.

Therefore, it is hereby ordered that the writ of restitution is stayed until Friday, July 25, 2014 at 5 p.m. The parties shall appear before the unlawful detainer judge at Thurston County Superior Court, 2000 Lakeridge Drive NW, Building Two, Olympia, Washington 98502 at 10:00 a.m. on July 25, 2014. At the hearing, the tenant/occupant shall show cause why the writ of restitution should be vacated or the stay should continue. The parties may agree to continue the hearing and continue the duration of the stay. The tenant/occupant must timely serve a copy of this order on the plaintiff and must file proof of service. Bond is waived until the hearing on the merits of this motion.
THE COURT WAIVES THE COPY & CERTIFIED COPY FEES.

Signed in open court on July 15, 2014.

R

Court Commissioner Rebekah Zinn

THURSTON COUNTY SUPERIOR COURT
2000 Lakeridge Dr. S.W., Building Two
Olympia, WA 98502
(360) 786-5560
Fax: (360) 754-4060

14-9-00576-1

Exhibit "E"
Page 1 of 1

FILED
SUPERIOR COURT
THURSTON COUNTY, WA

2015 JUL 31 PM 1:31

Linda Myhre Enlow
Thurston County Clerk

Copy Received | Clerk's Stamp

SUPERIOR COURT OF WASHINGTON
IN AND FOR THURSTON COUNTY

TTT PARK, Plaintiff,

vs.

Sturtze, defendants.

No. 15-2-01402-9

ORDER STAYING WRIT OF RESTITUTION AND ORDERING SHOW CAUSE HEARING

(Clerk's Action Required)

The court has reviewed this file and pleadings presented to it, including the motion to stay execution of the writ of restitution. The court finds good cause to stay execution of the writ of restitution until a hearing can be held on this matter. Specifically, the court finds that: the defendant is presenting defenses and has not had a hearing

Therefore, it is hereby ordered that the writ of restitution is stayed until Friday, 8/14/15 at 5 p.m. The parties shall appear before the unlawful detainer judge at Thurston County Superior Court, 2000 Lakeridge Drive NW, Building 2, Olympia, WA 98502 on Friday, 8/14/15 at 10:00 a.m.. At the hearing, the tenant/occupant shall show cause why the writ of restitution should be vacated or the stay should continue. The parties may agree to continue the hearing and continue the duration of the stay until a hearing can be held. The tenant/occupant must timely serve a copy of this order, the motion to stay, and all evidence presented to the court on the plaintiff/landlord, and must file proof of service. Bond is waived until the hearing on the merits of this motion. the Clerk SHALL WAIVE THE CERTIFIED COPY FEE.

Signed in open court on 7/31/15.

~~JUDGE~~ / COMMISSIONER
REBEKAH ZINN
COURT COMMISSIONER

THURSTON COUNTY SUPERIOR COURT
2000 Lakeridge Dr. S.W.
Olympia, WA 98502
(360) 786-5560
Fax: (360) 754-4060

15-9-00554-8

Exhibit "F"
Page 1 of 1

Appendix "B"

Declaration of Michael G. Gusa

IN THE COURT OF APPEALS OF WASHINGTON
DIVISION II

RANDY REYNOLDS & ASSOCIATES, INC.	]	
	]	
Appellant,	]	
	]	No. 49588-1-II
vs.	]	
	]	DECLARATION OF
KASEY HARMON,	]	MICHAEL G. GUSA
	]	
Respondent.	]	

I am the attorney for the Appellant. Landlord - tenant law is a primary focus of my practice. Most of my cases are in Thurston county. Although this case is moot, I urge the Court of Appeals to hear the important issues it presents. To the extent that it is within my knowledge, I adopt and incorporate herein the declaration of attorney Mary Ann Strickler. In the last ten years I have never received notice of any kind prior to a hearing where a motion to stay execution of a writ of restitution was heard.

In 2016, a tenant obtained stays of two separate writs granted in one case, Hawthorne v. Pomerleau, Thurston County cause 16-2-00038-34. That case is before the Court of Appeals in

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Phone (360) 705-3342

cause 49588-1-II. In that case, a judgment granted a writ of restitution. After the writ was posted by the sheriff, without notice to me, the tenant brought an ex parte motion for a stay. Commissioner Zinn granted the stay, waived the bond required by RCW 59.18.390(1) and set a February 12 show cause hearing. A copy of the order is attached hereto as Exhibit "A".

During the show cause hearing, the tenant claimed that she was not served. To resolve that claim without an evidentiary hearing, the court ordered the landlord to re-serve a summons and complaint. The tenant was again served with a summons and a complaint and subsequently ordered to appear March 4 and show cause why a judgment should not be entered and a writ should not be issued. At that hearing, a second writ was granted. After that writ was posted by the sheriff, without notice to me, the tenant sought another stay ex parte. Commissioner Zinn again granted a stay, waived the required bond and set a March 16 show cause hearing. A copy of the order is attached hereto as Exhibit "B". At the show cause hearing the court lifted the stay and the writ was executed.

The tenant was subsequently ordered to show cause why she should not be held in contempt. During the contempt hearing the court held the tenant in contempt of court, finding that statements the tenant made in prior hearings "were false and she knew they were false." A copy of the order on show cause is attached hereto as Exhibit "C".

In AFE-Evergreen Limited Partnership v. Maher, Thurston County cause 16-2-02211-34, a writ was granted after contested hearings June 17, 2016 and July 1 during which the defendant was represented by counsel. After the writ was posted by the Sheriff, without notice to me, the defendant appeared ex parte and sought a stay. Judge Anne Hirsch entertained the motion. Fortuitously, I happened to be in the courtroom to present a motion in an unrelated matter. Initially, I did not

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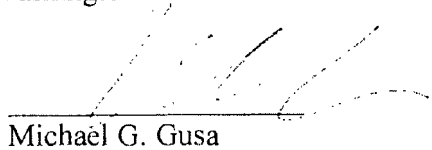
recognize Ms. Maher or realize who was seeking the stay. However, when Judge Hirsch addressed Ms. Maher by name I realized what was happening and asked to be heard. The court allowed me to argue against the motion and it was denied. A copy of the order that denied the motion is attached hereto a Exhibit "D". Had I not happened to be in the courtroom and realize what was happening, I would have had no opportunity to oppose the motion.

The issues raised in this appeal are matters of continuing and substantial public interest that are public in nature and for which authoritative determination is highly desirable. These issues have escaped review for years. Unless this case is heard these issues are likely to escape review because unlawful detainer cases are tried quickly and quickly become moot, precluding interlocutory review. I respectfully request that the Court of Appeals hear this case.

I DECLARE UNDER PENALTY OF PERJURY OF THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF

Dated this 14th day of February 2017 at Olympia, Washington.



Michael G. Gusa

Gusa Law Office
3025 Limited Lane N.W. Suite 104
Olympia, WA 98502
Phone (360) 705-3342

16-2-00038-34
OR
Order
107645

SUPERIOR COURT
THURSTON COUNTY, WA

2016 FEB -4 PM 1:23

Thurston County Clerk

Copy Received | Clerk's Stamp

SUPERIOR COURT OF WASHINGTON
IN AND FOR THURSTON COUNTY

HAWTHORN, Plaintiff,

vs.

POMERLEAU, defendants.

No. 16-2-00038-34

ORDER STAYING WRIT OF RESTITUTION AND ORDERING SHOW CAUSE HEARING

(Clerk's Action Required)

The court has reviewed this file and pleadings presented to it, including the motion to stay execution of the writ of restitution. The court finds good cause to stay execution of the writ of restitution until a hearing can be held on this matter. Specifically, the court finds that:

there is a dispute about service of process.

Therefore, it is hereby ordered that the writ of restitution is stayed until Friday, ~~2/4/16~~ 2/12/16 at 5 p.m. The parties shall appear before the unlawful detainer judge at Thurston County Superior Court, 2000 Lakeridge Drive NW, Building 2, Olympia, WA 98502 on Friday, 2/12/16 at 10:00 a.m.. At the hearing, the tenant/occupant shall show cause why the writ of restitution should be vacated or the stay should continue. The parties may agree to continue the hearing and continue the duration of the stay until a hearing can be held. The tenant/occupant must timely serve a copy of this order, the motion to stay, and all evidence presented to the court on the plaintiff/landlord, and must file proof of service. Bond is waived until the hearing on the merits of this motion.

Signed in open court on 2/4/16.

~~JUDGE~~ / COMMISSIONER
REBEKAH ZINN
COURT COMMISSIONER
THURSTON COUNTY SUPERIOR COURT
2000 Lakeridge Dr. S.W.
Olympia, WA 98502
(360) 786-5560
Fax: (360) 754-4060

Exhibit "A"
Page 1 of 1

☐ **EXPEDITE** (if filing within 5 court days of hearing)
☐ Hearing is set:
Date: _____
Time: _____
Judge/Calendar: _____

2016 FEB 22 PM 2:02
Thurston County Clerk

16-2-00038-34
ORTSC
Order to Show Cause
126682

SUPERIOR COURT OF WASHINGTON FOR THURSTON COUNTY

Hawthorne
Plaintiff(s)

vs.

Pomeleau
Defendant(s)

NO. 16-2-00038-34

ORDER TO SHOW CAUSE
RE: UNLAWFUL DETAINER (ORTSC)

(Clerk's Action Required)

EX PARTE

This matter comes before the Court upon the Plaintiff(s) Motion for an Order to Show Cause. The court has considered Plaintiff's Declaration in support of said Motion and finds that there is sufficient reason to grant the Motion. Accordingly, it is hereby

ORDERED that the Defendant(s) shall appear at the above-entitled Court, courtroom of ~~Judge~~ the unlawful detainer calendar, 2000 Lakeridge Drive SE, Building 2, Olympia, Washington on the 4th day of March, 2016, at the hour of _____, or as soon thereafter as the matter may be heard, and shall then and there show cause, if any they have, why the relief requested in the complaint and/or a Writ of Restitution should not be issued restoring Plaintiff(s) to possession of the subject premises located at the following address: 1123 A - 4th Ave East, Olympia, WA. This order may be served by mail & post.

IF YOU FAIL TO APPEAR AND SHOW CAUSE AT THE TIME AND PLACE SPECIFIED BY THIS ORDER, THE COURT MAY ORDER THE SHERIFF TO RESTORE POSSESSION OF THE PROPERTY TO THE PLAINTIFFS AND MAY GRANT SUCH OTHER RELIEF AS PRAYED FOR IN THE COMPLAINT AND PROVIDED BY CHAPTER 59.12 RCW, et. seq.

DATED this 22nd day of Feb., 2016

Presented by:

Michael G. Bugni
Print Name
400 Union Avenue S.E. Suite 200
Address
Olympia, WA 98501
(360) 705-3342
Telephone

~~Judge~~/Commissioner

REBEKAH ZINN
COURT COMMISSIONER

Exhibit "B"
Page 1 of 1

(2)

FILED
SUPERIOR COURT
THURSTON COUNTY, WA

2016 APR -1 AM 11:38

Linda Myhre Enlow
Thurston County Clerk

16-2-00038-34
ORSC
Order on Show Cause
180595

IN THE SUPERIOR COURT OF WASHINGTON FOR THURSTON COUNTY

JOHN C. HAWTHORNE,	]	
	]	
Plaintiff,	]	No. 16-2-00038-34
	]	
vs.	]	ORDER ON SHOW CAUSE
	]	
KRISTINA POMERLEAU,	]	
	]	
Defendants.	]	

This matter was heard this day on ORDER TO SHOW CAUSE. The plaintiff was represented by Michael G. Gusa, Attorney at Law. The defendant appeared/failed to appear at the show cause hearing in response to this Court's order to appear and show cause. Proof of service of the Order to Show Cause is on file. NOW THEREFORE, the Court enters the following:

(R2)

FINDINGS

1. On January 14, while the defendant was incarcerated in the City of Olympia jail, plaintiff's counsel served the defendant with an amended summons, complaint and amended notice under RCW 59.18.375. Security camera photographs from the jail show Ms. Pomerleau being

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Olympia, WA 98501
Phone (360) 705-3342

Exhibit "C"

served.

2. On January 19 the defendant was served with an order to appear on the January 29 unlawful detainer calendar and show cause why judgment should not be entered and a writ should not issue.

3. The defendant ~~elected~~ did not ~~to~~ respond to the amended summons, answer the complaint or respond to the amended notice under RCW 59.18.375. However, the plaintiff did not seek a default judgment or judgment under RCW 59.18.375. Instead, the plaintiff obtained a judgment and writ at the January 29 show cause hearing. Ms. Pomerleau ~~elected~~ did not ~~to~~ appear at the hearing.

4. Having ~~elected~~ not ~~to~~ respond ed to the amended summons, answer the complaint, respond to the amended notice under RCW 59.18.375 or appear at the January 29 hearing, on February 4, Ms. Pomerleau brought an *ex parte* motion to stay the writ.

5. In the motion, Ms. Pomerleau claimed:

> I received a notice of writ this morning on my door saying I was to be out by the 5th, this friday. there was no follow of due process, the only other pape work I got was back in december. it was a 3 day pay or vacate I had already paid and put it in my mailbox the next door neighbor attmited to taking my mail I moved in October 14. I asked that day to have mr. Hawthorn fix my mail box so it would lock. he did so in December an orginization paid the partial October & November plus security Deposit. I have proof of paying December and Jan. I only got the order of writ yesterday morning. And no other services.

That claim was false and the defendant knew it was false.

6. In reliance on the false claim referenced in Finding No. 5, the court stayed the writ on the basis that "there is a dispute about service of process".

7. During a February 12 show cause hearing the defendant testified under oath as

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follows:

DIRECT EXAMINATION

BY MR. CROSS:

Q Ms. Pomerleau, do you recall Mr. Gusa coming to the jail in Olympia on January 14th?

A Yes.

Q Can you explain to the Court what happened at that time?

A An officer brought me – had came to get me. And brought me out to a door, opened the door on the other side of the door. There was a partition in the middle. He was on the other side. I saw him, and immediately said, "No," turned around; and said, "I do not want to speak to him. I don't want to speak to him. And the officer shut the door. And we – I went back to my cell. That was the entire – he – me being around him.

Q Did Mr. Gusa hand you any papers at that time?

A No.

Q. Did anybody hand you a Summons and Complaint that day?

A No. I got no paperwork. The only paperwork I have ever received from Mr. Gusa was during the anti-harassment hearing, he did Exhibit A, which was a picture of me; and then I got a three-day pay or vacate in the mail, in December, I believe. And those are the only two documents that I received from – that, I am guessing , via Mr. Gusa.

That testimony was false and the defendant knew it was false.

8. As a result of Ms. Pomerleau's knowingly false testimony, the Court ruled:

I am going to have you re-serve her. Thank you. That is my ruling: I am going to have you re-serve her with the Summons and Complaint. And that is where we are at. So that's – I am going to enter a ruling requiring re-service --

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Olympia, WA 98501
Phone (360) 705-3342

9. In response to the Court's oral order, during the hearing, on the record, attorney Mary Ann Strickler served Ms. Pomerleau with a second amended summons, complaint and second amended notice under RCW 59.18.375.

10. During the hearing, Ms. Pomerleau acknowledged being served. The transcript states as follows:

> UNIDENTIFIED SPEAKER You are served.
>
> THE COURT: – or service in the first place, and you'll start over. Thank you.
>
> UNIDENTIFIED SPEAKER: It's over.
>
> THE COURT: Okay.
>
> MS. POMERLEAU: This – is that the – can that happen?
>
> THE COURT: What is that?
>
> So it's now up to Mr. Gusa to serve you, have you served with the Summons and Complaint, if he wants to move forward in this case. Okay?
>
> MS. POMERLEAU: Someone just walked up behind me and said, "You are served," and threw something at me.
>
> THE COURT: Okay. Perhaps you are served; I don't know, but that could happen.
>
> MS. POMERLEAU: That is not – that is not legal. I mean, if I –
>
> THE COURT: Okay. That is not up to me to decide today. I made my ruling.
>
> MS. POMERLEAU: I'm fine with that.
>
> THE COURT: Okay. Essentially you won on this one, Ms. Pomerleau.

11. Ms. Pomerleau elected not to respond to the second amended summons or answer the

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Phone (360) 705-3342

complaint served upon her February 12. On February 22, the court entered an order that Ms. Pomerleau appear on the March 4 unlawful detainer calendar and show cause why a judgment should not be entered and a writ should not be issued. Once again, Ms. Pomerleau did not appear at the hearing. Once again, a judgment was entered and a writ of restitution was issued.

12. Having failed to respond to the second amended summons, answer the complaint or appear at the March 4 hearing, on March 10, Ms. Pomerleau *ex parte* sought a stay of the writ issued March 4. In that motion Ms. Pomerleau again falsely stated that she was not served. The motion states in part:

> Again, he didn't serve me again after the court granted that he hadn't served me before obtaining a writ previously.

Ms. Pomerleau made this knowingly false claim despite having been served with the second amended summons and the complaint in response to the court's order, in open court, on the record, in front of the court and despite at the time of service having acknowledged being served.

13. Service of the Show cause order is appropriate by mail in light of the decendant's repeated evasion of service.

CONCLUSIONS OF LAW

1. In the February 4 motion for stay and March 10 motion for stay, Ms. Pomerleau violated Civil Rule 11.

2. In her February 12 testimony, Ms. Pomerleau may have committed perjury.

3. Ms. Pomerleau's conduct constituted contempt of court.

4. Under RCW 7.21.040(2)(c) the court may request that the prosecuting attorney commence an action for perjury. Good cause exists to request that the prosecuting attorney commence an action for perjury.

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ORDER

1. The defendant violated Civil Rule 11.

2. ~~The defendant committed perjury.~~ (22)

3. The defendant committed contempt of court.

4. The Court requests that the prosecuting attorney commence an action for perjury. This order shall be delivered by MR. GUSA to the PROSECUTOR'S (22) Office in order to make that Request.

DATED: 4/1/, 2016.

REBEKAH ZINN, COMMISSIONER
REBEKAH ZINN
COURT COMMISSIONER

Presented by:

Michael G. Gusa
Attorney for Plaintiff
SBA No. 24059

Approved as to form:

Gusa Law Office
400 Union Avenue S.E. Suite 200
Olympia, WA 98501
Phone (360) 705-3342

☐ EXPEDITE (if filing within 5 court days of hearing)
☐ Hearing is set:
Date: _____
Time: _____
Judge/Calendar: _____

16-2-02211-34
ORDYMT
Order Denying Motion/Petition
420839

SUPERIOR COURT OF WASHINGTON
FOR THURSTON COUNTY

AFE Ltd Partnership
Plaintiff/Petitioner,

vs.

Helene Mahan
Defendant/Respondent.

NO. 16-2-2211-34

ORDER
(OR)

I. BASIS

Defendant requested a stay of the Writ of Restitution. Counsel for Plaintiff was present for hearing

II. FINDINGS

After reviewing the case record to date, and the basis for the motion, the court finds that:

There is no basis for the court to stay the Writ which was entered, with notice, and after two hearings

III. ORDER

IT IS ORDERED that:

The request for stay is denied

DATED this 11th day of July, 2016.

JUDGE / ~~COURT COMMISSIONER~~

Presented by:

ORDER

F:\FORMS\MC\ORDER.DOC, 11/3/09

Exhibit "D"
Page 1 of 1

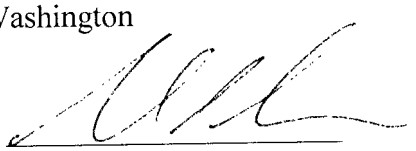
COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

RANDY REYNOLDS & ASSOCIATES, INC. dba REYNOLDS REAL ESTATE, Appellant,	]	No. 49588-1-II
vs.	]	DECLARATION OF SERVICE BY MAIL
KASEY HARMON aka KASEY HARMAN, Respondent.	]	

I am the attorney for the Appellants. On February 16, 2017, I deposited into the United States mail two properly stamped and addressed envelopes containing a copy of the Appellant's brief, directed to the Respondent, Kasey Harmon. One envelope was addressed to 803 "B" Tipsoo Loop S.E., Rainier, Washington 98576, which is the address of the tenancy that was the subject of the action. A second was addressed to P.O. Box 325, Yelm, WA 98597, which may be an alternative address. Copies of certificates of mailing for the two envelopes are attached hereto.

I DECLARE UNDER PENALTY OF PERJURY OF THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

Dated: March 8, 2017 at Olympia, Washington



Michael G. Gusa
Attorney for Appellant
WSBA No. 24059

Gusa Law Office
3025 Limited Lane N.W. Suite 104
Olympia, WA 98502
(360) 705-3342

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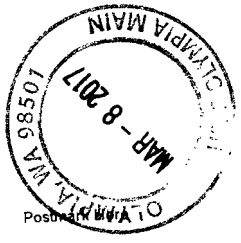
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