# SUPERIOR COURT OF WASHINGTON
# FOR PIERCE COUNTY

**BRYAN CHUSHCOFF**, Judge
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BY RONALD R. CARPENTER
CLERK

July 5, 2012

Clerk of the Supreme Court
ATTN: Camilla Faulk
P.O. Box 40929
Olympia, WA 98504-0929

Re: *Proposed Set of Family Law Rules*

Dear Ms. Faulk:

Please consider this letter a comment on one aspect of the proposed family law rules: the time for hearing family law motions. Rule 6 TIME says that motion documents "shall be served not later than 5 days before the time specified for the hearing." It seems to be a prohibition against serving someone with less than 5 days to go until the hearing (8 if served by mail) rather than a prohibition against serving someone more than 5 days before the hearing (which seems nonsensical).[1]

Rule 6 goes on to provide that by local rule, courts are allowed to expand this time to 14 days. Now, logically, if the 5 days is meant to be a minimum time that must expire before a matter can be heard, then expanding the time to 14 days would mean that the new minimum time would be 14 days and, in the absence of an order shortening time, would not be heard sooner than 14 days. Yet, I understand from some who have participated in formulating these rules, 14 days was meant to be a maximum period of time in which the matter was to be set and heard no later than.

If the rule is meant to set a time (like CR 65 or RCW 26.50.050) in which a motion must be heard, I respectfully oppose the rule. Perhaps awkward wording creates ambiguity; if so, this should be corrected and the rule plainly stated that Rule 6 does not create a substantive right to a specific time to have a matter heard by the court.

*Family Law.* Because litigants often resort to self-help to advantage themselves in the litigation or to hurt the other party, parties have a reasonable desire, indeed a need, to get a ruling from the court and thereby to establish the status quo early in family law litigation. Doubtless some family law motions are urgent; but not all. Motions to modify child support or spousal maintenance, for example, could be resolved by mandatory arbitration.[2]

Little in policy compels the conclusion that <u>every</u> family law matter needs to be heard on a 14 day timeline. Motions that implicate CR 65 already have such a timeline. Motions that merit rapid consideration as judged by a meritorious motion to shorten time receive timely consideration without a mandate from the rules.

*Practice.* It takes time for the court to discharge its responsibility to assure that it has reliable and pertinent information when making such important decisions and to afford due process to the litigants: a fair opportunity for <u>all</u> parties to marshal evidence, to place their dispute before the court and for them to be heard.

Commonly the point of greatest distress for parties as well as their greatest urgency to obtain a ruling from the court is at the <u>beginning</u> of litigation. But by the time the non-moving party is served with a petition for dissolution of marriage or similar family law pleading[3] and sees and retains legal representation there is little time for opposing counsel to prepare a timely response. (A summons provides <u>20 days</u> for a party to respond at the inception of a case.) Collecting tax returns, paystubs or other financial information from clients, drafting support worksheets, perhaps doing pertinent legal research and drafting a memo, editing a client's declaration (as well as those of the client's family, friends and co-workers) and otherwise assembling a response is time-consuming.

A 14-day timeframe is difficult for practitioners to adhere to and it leaves the responding party little time to do anything but prepare a response.[4] This will often mean there is little time to effectively conduct efforts to settle the matter. And, ideally, there would be time to resolve issues among the parties. An agreed order offers the chance of a

better decision because the parties are better able to consider all of the information available to them.[5]

For these reasons a 14 day timeframe would necessitate a continuance much of the time. A somewhat longer timeframe reduces the need and, thus, the frequency of continuances. Avoiding continuances is preferred since frequent continuances pose such management problems as:

- Taking up space on the court's docket thereby delaying other cases;
- Consuming the time and effort of practitioners/parties/court staff to schedule a new hearing date;
- Wasting the time of judicial officers preparing/reading motions that are not heard; and,
- Delaying the day when the continued motion is finally decided.

*Management*. The Supreme Court should be cautious of imposing across-the-board timeframes in which matters must be heard. Due process considerations in the issuance of ex parte restraining orders explain the need for such restrictions regarding CR 65. But similar factors are rarely present across an entire body of substantive law. Such regulation has implications for the deployment of judicial resources that may have unwanted and unintended consequences. To move judicial resources from one place often necessitates taking them from another.

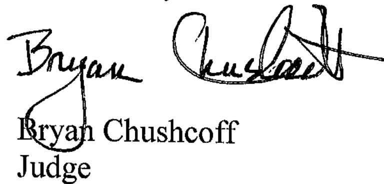
Management of a court requires matching the available and limited human and financial resources to the work. When family law hearings are not being heard, judicial officers have other duties too: criminal case processing, domestic violence hearings, dependency, paternity, probate, guardianship, unlawful detainer, uncontested dissolutions and other matters.[6]

The work of superior court is dynamic. Changes in the law affect the work we do and how we do it. Whole causes of action may be created by the legislature and the court must adapt. Appellate courts may alter the due process to be provided thereby adding time or complexity to the work. The work of the court also changes as social conditions or law enforcement priorities change or have effect. Superior courts have to be nimble to

adapt to such change. Interpreting Rule 6 to mandate that family law hearings take place within 14 days straitjackets management of the court with a result that other matters deserving greater priority are not timely heard.

For the foregoing reasons, if adopted, Rule 6 should be changed to make clear that it is not intended to require that hearings on family law matters <u>must</u> be heard within 14 days. Stated another way, Rule 6 does not create a substantive right to a specific time to have a family law matter heard by the court. Thank you for your consideration of this lengthy comment.

Respectfully,



Bryan Chushcoff
Judge

[1] **RULE 6 TIME**

**(d) For Motions – Declarations or Affidavits.** A written motion, motion other than one which may be heard ex parte, and notice of the hearing thereof, <u>shall be served not later than 5 days before the time specified for the hearing, unless a different period is fixed by these rules or by order of the court</u>. Such an order may for cause be made on ex parte application. When a motion is supported by affidavits or declarations the affidavits or declarations shall be served with the motion; and, except as otherwise provided in rule 59(c), opposing affidavits may be served not later than 1 day before the hearing, unless the court permits them to be served at some other time. <u>Any county may expand the time frames set forth herein to allow for additional time of up to fourteen (14) days for the original notice as well as for responsive and reply documents</u>.

(1) *Motion to Shorten Time.* For good cause shown by motion of a party, the court may alter the time periods set forth in this rule to allow for the hearing of an emergent matter. All such motions shall be supported by a written affidavit or declaration setting forth the basis for the good cause and emergent nature of the matter justifying the waiver of time to allow the granting of the motion to shorten time and setting forth the efforts to provide advance notice to the opposing party. Local courts pursuant to rule 83 may impose procedural requirements associated with such motions, such as before whom the motion must be presented. As soon as the moving party is aware that he or she will be seeking an order shortening time, that party must make reasonable efforts to contact all opposing parties to give notice in the form most likely to provide actual notice

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> **(e) Additional Time After Service by Mail.** Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him by mail, 3 days shall be added to the prescribed period.

Emphasis added.

[2] RCW 7.06.020(2) permits local courts to require mandatory arbitration for actions "in which the sole relief sought is the establishment, termination or modification of maintenance or child support payments . . .."

[3] For clarity I use the existing lexicon until the rule and new nomenclature is adopted.

[4] While the proposed rule provides for service of the response to take place no later than 1 day prior to the hearing it also indicates that a different response/reply time may be adopted by local rule. Current PCLSPR 94.04(c)(3) provides the responding party must file their materials 4 days prior to the hearing. Such a time, works well in Pierce County (when adhered to) but provides still less time to formulate a response.

[5] Compared with information available to the parties, the information provided to the court is likely to be less well-understood and less comprehensive both in quality and in kind after it is filtered by the rules of evidence, the argument of counsel and given the limits of human communication. A salutary by-product of an agreed outcome is that the resulting orders are likely to be better adhered to by the parties.

[6] Pierce County Superior Court has the largest caseload for dependency and domestic violence matters in the state. It may also have the largest caseload of criminal cases.

"Judicial Workload in Washington State" prepared by the Permanency Planning for Children Department of the National Council of Juvenile and Family Court Judges, University of Nevada, Reno completed in August 2011 assessed judicial workload and resources in relation to hearing quality of dependency matters in Washington State. It concluded Pierce County needs 1.44 additional judicial officers for "sufficient" dependency case processing. By the report's reckoning, this is the greatest disparity of workload to resources on dependency matters of any county in Washington State.

AOC reports that in 2011 Pierce County had 4,500 domestic violence petitions filed; King County had 2,664.