

No. 65052-1-I

COURT OF APPEALS,
DIVISION I,
OF THE STATE OF WASHINGTON

2

WOODINVILLE ASSOCIATES, LLC, a Washington
limited liability company,

Plaintiff-Appellant,

v.

CITY OF WOODINVILLE, a Washington municipal
corporation,

Defendant-Respondent.

RESPONDENT'S MOTION ON THE MERITS
TO AFFIRM DECISION BELOW

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ORIGINAL

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A. IDENTITY OF MOVING PARTY

Respondent City of Woodinville files this Motion on the Merits to **affirm** the decision below and dismiss this appeal.

B. RELIEF SOUGHT

Respondent City of Woodinville respectfully requests that this Court grant this Motion on the Merits and **affirm** the trial court's March 5, 2010, Order denying Woodinville Associates LLC's Motion to Vacate pursuant to CR 60(b).

C. FACTS RELEVANT TO MOTION

On June 5, 2009, Judge Craighead of the King County Superior Court heard oral argument on the City of Woodinville's CR 12(b)(6) motion to dismiss. The central issue for the Court to decide was whether an administrative interpretation made by the Woodinville City Manager on April 13, 2009, was a "land use decision" for purposes of LUPA, and if so, whether Plaintiff's complaint, filed and served 22 days after the April 13 decision, was untimely under LUPA's strict 21-day statute of limitations.

Before the hearing, both Plaintiff and Defendant had filed and served proposed orders to be signed by Judge Craighead as required by the

local rules, KCLCR 7(b)(5)(C). *See* App. H, *Decl. of Greg Rubstello filed with the Court of Appeals.*

After the hearing, Judge Craighead took the matter under advisement. On June 30, 2009, she issued and mailed to the parties' counsel a letter opinion ruling in the City's favor, concluding that Plaintiff's Complaint was untimely because it had been filed outside the 21-day state of limitations for a LUPA appeal. Judge Craighead included an executed copy of the City's Order of Dismissal in the same envelope as her letter opinion to counsel for the parties.¹ According to opposing counsel's own sworn admissions in his Opening Brief, p. 4, and in his Declaration attached as App. D, he failed to see the Order of Dismissal, although it was indisputably mailed to him with the superior court's letter opinion.

Appellant then filed his first Notice of Appeal on August 3, 2009, one (1) day *after* the 30-day time limit to file an appeal had passed.² App. F. The Court of Appeals noted this problem. On August 14, 2009, at the Court of Appeal's direction, Appellant moved the Court of Appeals for an order to "Confirm Timely Filing of Notice of Appeal And/Or For a One-

¹ Plaintiff refers to the Order of Dismissal as a "judgment" of dismissal, but the word "judgment" does not appear anywhere upon this document.

² The Notice of Appeal was filed 33 days after the Order of Dismissal was entered, but due to the intervening weekend, it was only one day late.
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Day Extension of Time to File Notice of Appeal.” In this Motion, Appellant made the same arguments now presented to this Court regarding the trial court’s alleged “failure” to follow the procedures of CR 54(e) and CR 54(f). The Court of Appeals denied the Motion to Confirm Timely Filing on November 20, 2009. App. G. The Order specifically stated that, after considering the motion, the response, the reply, and the declarations, the court concluded that “Woodinville Associates’ notice of appeal was not timely filed.” On December 17, 2009, the Court of Appeals denied Appellant’s Motion for Reconsideration based upon similar arguments to those made in the Motion to Confirm Timely Filing.

Appellant then filed a Petition for Discretionary Review with the Supreme Court, seeking review of the Court of Appeals’ December 17, 2009 Order, denying reconsideration of the Motion to Confirm Timely Filing. The Supreme Court Commissioner ruled on March 31, 2010, denying the Petition for Review. App. I. The Supreme Court Commissioner specifically concluded that the procedures required by KCLCR 7(b)(5)(C) met the minimum notice requirements of CR 54(e) and CR 54(f)(2) and that Appellant did not suffer any prejudice based on an alleged “failure” to follow CR 54. App. I. Appellant currently has a

Motion to Modify pending before the Supreme Court to modify the Supreme Court Commissioner's Ruling.

Because its appeal continued to be denied on all fronts, Appellant went back to the trial court to try another tactic. Thus, in addition to his pending appeal, Appellant filed a CR 60 Motion to Vacate with the trial court on January 5, 2010, asking the court to vacate the order from which Appellant had filed a late appeal, reenter the same order, and allow Appellant to file a new (timely) appeal. Again, as the basis for its Motion to vacate, Appellant argued that the trial court's original Order of Dismissal was allegedly void for failure to follow the procedures of CR 54(e) and (f). Oral argument was conducted on March 5, 2010, and Judge Craighead immediately issued an Order denying Appellant's Motion to Vacate, from which Appellant's current appeal is taken.³ App. A.

D. ISSUES PRESENTED FOR REVIEW

1. Whether the trial court correctly held, in accordance with settled law, that CR 54(e) and CR 54(f) did not require an additional five days notice of presentment when, during the course of motions

³ In denying Appellant's CR 60 Motion to Vacate, Judge Craighead noted that the Court of Appeals (and now the State Supreme Court) had already heard, considered, and rejected Appellant's argument that the original order of dismissal was void based upon an alleged failure of the trial court to comply with CR 54(e) and (f). Judge Craighead did not believe it would be appropriate for her to contradict the Court of Appeals.
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practice, the parties had already submitted proposed orders to the court in advance of oral argument pursuant to KCLCR 7(b)(5)(C)?

2. Whether the law of the case doctrine prevents this Court from entering an inconsistent order to that already issued by the Court of Appeals?

E. GROUND FOR RELIEF SOUGHT

According to the criteria governing Motions on the Merits established in RAP 18.14(e)(1), Appellant's appeal is clearly without merit. The issues on review are clearly controlled by settled law, as described below.⁴

1. Procedures required by KCLCR 7(b)(5)(C) to serve and file proposed orders before the hearing meet the notice requirements of CR 54(e) and (f); the trial court's Order of Dismissal was not void.

Appellant argues that the trial court's original Order of Dismissal is void because it was supposedly entered without 5 days notice of presentation as required pursuant to CR 54. CR 54(e) provides that the attorney of record for the prevailing party shall prepare and present a proposed form of order or judgment *not later than* 15 days after the entry

⁴ The RAP 18.14(e)(1) factors for consideration when granting a motion on the merits to affirm a trial court decision are whether the issues on review (a) are clearly controlled by settled law, (b) are factual and supported by the evidence, or (c) are matters of judicial discretion and the decision was clearly within the discretion of the trial court or administrative agency.
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of the verdict or decision, or *at any other time as the court may direct*. CR 54(f) states: “No order or judgment shall be signed or entered until opposing counsel have been given 5 days’ notice of presentation and served with a copy of the proposed order or judgment”

But Appellant’s argument ignores the fact that the obligation to give opposing counsel an *additional* 5 days notice of presentation post-hearing is not required for regular motions practice, certainly not in King County Superior Court, where proposed orders are presented *before* the hearing date. KCLCR 7(b)(5)(C), governing civil motions, requires that a moving party and any party opposing a civil motion shall attach to their moving documents a proposed order. Additionally, the original of each order must be delivered to the hearing judge prior to the hearing in accordance with the time allowed for serving and filing motions in KCLCR 7(b)(4).

Appellant has suggested the *additional* 5-days notice of presentation requirement can only be waived for non-dispositive motions scheduled without oral argument. But this contention was properly rejected previously by the Court of Appeals, and should likewise be rejected now based upon a plain reading of the local rule. The plain language of the rule can be interpreted in only one way – the requirement

to include proposed orders with civil motions applies to *all* motions, not just non-dispositive motions scheduled without oral argument. *See* KCLCR 7(b)(5)(C). Only one particular additional requirement applies to motions set without oral argument, and that is the requirement to include a self-addressed stamped envelope with the motion.

Appellant's Counsel himself included a proposed order in his Response Motion to Defendants CR 12(b)(6) motion. *See* App. H, *Declaration of Greg A. Rubstello*, filed with the Court of Appeals in response to Appellant's Motion to Confirm Timely Filing in the Court of Appeals.

Clearly, the King County local rule complies with CR 54(e); first, the proposed order is received well before the deadline (the deadline to present an order is 15 days after the decision is entered); and second, the requirement to file and serve proposed orders before the hearing is consistent with CR 54(e)'s provision that it be filed "at any other time as the court may direct." Once the motion is heard and taken under advisement, as happened here, neither the parties nor the court are required to give yet another 5 days notice of entry of one of the previously filed orders. Those proposed orders have already been provided with *more* than 5 days notice, which exceeds the minimum notice requirements

in CR 54. Because the procedures of KCLCR 7(b)(5)(C) meet the minimum notice requirements of CR 54(e) and (f), the King County Local Rules do not create an exception to and do not conflict with CR 54. Therefore, following the procedure of KCLCR 7(b)(5)(C) gave opposing counsel sufficient notice under CR 54 of the contents of proposed orders with respect to the motion.

Cases cited by Appellant are inapposite. In *Burton v. Ascol*, 105 Wn.2d 344, 346, 715 P.2d 110 (1986), the Court held that the order was improperly entered without 5 days notice following *trial*, where quite naturally, presentment of orders is required post-trial to give adequate notice of their contents, including the trial judge's findings of fact and conclusions of law. It hardly needs to be noted that parties do not prepare, exchange or file proposed orders prior to trial. On the other hand, additional notice of presentment is *not* required when proposed orders are submitted with a civil motion in advance of the hearing pursuant to KCLCR 7(b)(5)(C).

Soper v. Knafllich, 26 Wn. App. 678, 681, 613 P.2d 1209 (1980), is also not analogous because the court there entered a "corrected" order granting partial summary judgment, *ex parte*, after entering an improper first order. Accordingly, 5 days notice was required because notice of the

contents of the “corrected” order had not previously been given to all the parties. *Seattle v. Sage*, 11 Wn. App. 481, 482-83, 523 P.2d 942 (1974), presented the same factual situation. There, the trial court entered an order ex parte without notice to the city. (*Sage* is additionally distinguishable as it is a criminal matter subject to differing criminal procedures.) Accordingly, CR 54(e) applied. Similarly in *State v. Napier*, 49 Wn. App. 783, 785, 746 P.2d 832 (1987), counsel lacked notice of the contents of the order vacated by the court because it was an agreed or stipulated order presented to the court without notice given to all parties. In this case, Appellant had adequate notice – more than 5 days notice – of the contents of all proposed orders submitted to the court.

Appellant suggests that the procedures of KCLCR 7(b)(5)(C) are informal and relaxed in comparison to the carefully defined procedure of CR 54(f). Appellant wonders about the manner in which already-signed orders are mailed to the parties, whether proof of mailing is required, and how transmittal of an already-signed order should occur to bring its attention to counsel. However, these ruminations ignore the fact that CR 54 does not require the prevailing party to notify the other parties of the date that the order or judgment is actually entered. CR 54(f) only requires notice of the presentation of a proposed order, and has nothing to do with

how a non-prevailing party receives notice that the court's final order was actually entered. Accordingly, non-prevailing parties have an "obligation to monitor the entry of the judgment, so that any post-trial motions or appeals are timely." 4 Karl B. Tegland, *Washington Practice* CR 54 (5th ed. 2006).⁵ For purposes of determining the time to file a notice of appeal, the clerk's entry of the order starts the clock. *See* CR 58(b) (judgments shall be deemed entered for all procedural purposes from the time of delivery to the clerk for filing, unless the judge earlier accepts the judgment for filing with the judge as authorized by CR 5(e); RAP 5.2(a) (a notice of appeal must be filed in the trial court within 30 days after the entry of the decision of the trial court which the party filing the notice wants reviewed). Thus, the method or manner of service, or even whether the Appellant received the Order at all, is simply not relevant.

Appellant incorrectly notes that the purpose and goal of CR 54(f)(2) is to let counsel know when the 30-day time period to file a notice of appeal begins to run. Opening Brief, p. 16. Rather, the *sole* purpose of the CR 54(f) requirement is to provide notice of the contents of proposed

⁵ Because non-prevailing parties have an obligation to monitor the entry of judgment, CR 60(b)(11) (extraordinary circumstances) also should not apply to relieve Appellant of the Order simply because the trial court failed to mention a signed and entered judgment of dismissal was included in the envelope with its Memorandum Decision. This situation does not present an "extraordinary circumstance," as the obligation to monitor fell on the Appellant.

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orders, and Appellant had notice of the proposed orders' contents when they were served prior to the hearing pursuant to KCLCR 7(b)(5)(C). 4 *Washington Practice* CR 54 (“The purpose of the rule is to give opposing counsel an opportunity to object to the form or content of the judgment before it is entered.”).

Finally, even if the court concludes that an additional CR 54(e) and (f) presentation was required, an order entered without the notice required by CR 54 is not invalid where the complaining party shows no resulting prejudice. *Burton v. Ascol*, 105 Wn.2d 344, 352, 715 P.2d 110 (1986) (finding no prejudice because the party was allowed to argue all issues on appeal). Here, Appellant was not prejudiced by the alleged “failure” to follow CR 54(f)(2) because opposing counsel *admitted receiving an actual copy of the order* by no later than July 6, 2009, 25 days before the appeal deadline of July 31, 2009. Clearly, Appellant’s law firm had inadequate procedures in place to ensure that all court documents were opened, reviewed, and calendared. These inadequate procedures caused any hardship experienced by the Appellant — not a failure to follow the procedures of CR 54. *See, e.g., Beckman ex rel. Beckman v. Sate, Dept. of Soc. and Health Servs.*, 102 Wn. App. 687, 695-96, 11 P.3d 313 (2000) (no extraordinary circumstances where lawyer’s office lacked any

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reasonable procedures for calendaring; it is incumbent upon any attorney to institute internal office procedures sufficient to calendar hearings). In addition, Appellant had ample notice of the contents of proposed orders served with the CR 12(b)(6) motion. Therefore, the trial court correctly concluded in denying the CR 60(b) motion to vacate that the Appellant did not suffer prejudice as a result of the alleged “failure” to follow the notice procedures of CR 54(f). In addition, this lack of prejudice should render CR 60(b)(11) (extraordinary circumstances) inapplicable to the present case.

2. According to the law of the case doctrine, the Court of Appeals’ previous ruling on the same issues presented here should be binding upon this court.

According to the law of the case doctrine, “when a court once announces a principle of law to be applied to the case under consideration, it will generally apply that principle to the same issue in later proceedings in the same case, and if it is an inferior court, it will be required to follow the determination made by its reviewing court.” 14A Karl B. Tegland, *Washington Practice* § 35:55. The doctrine of stare decisis is applicable as between two or more cases, as are, generally, the doctrines of res

judicata and collateral estoppel.⁶ On the other hand, “the operation of the ‘law of the case,’ properly considered, is typically confined to the successive proceedings had within the framework of a single case.” *Id.* The courts apply the doctrine in order “to avoid indefinite relitigation of the same issue, to obtain consistent results in the same litigation, to afford one opportunity for argument and decision of the matter at issue, and to assure the obedience of lower courts to the decisions of appellate courts.” *State v. Harrison*, 148 Wn.2d 550, 562, 61 P.3d 1104 (2003) (quoting 5 Am.Jur.2d Appellate Review § 605 (2d ed.1995)). “[O]nce there is an appellate holding enunciating a principle of law, that holding will be followed in subsequent stages of the same litigation.” Phillip A. Trautman, *Claim and Issue Preclusion in Civil Litigation in Washington*,

⁶ Generally, the doctrine of collateral estoppel is applied as between two or more cases. However, in *Lutheran Day Care v. Snohomish County*, 119 Wn.2d 91, 829 P.2d 746 (1992), the court applied the doctrine as between a trial court’s determination in certiorari proceedings that the denial of a conditional use permit was arbitrary and capricious and subsequent damages proceedings under Chapter 64.40 RCW. The Court concluded that because certiorari proceedings cannot be used to determine damages, the phases of the same case could be considered “different cases” for purposes of collateral estoppel. The Court also clearly determined that law of the case doctrine was inapplicable because there was no appellate court determination. *Id.* at 113-14. The Respondent City of Woodinville believes that the appellate court’s denial of Appellant’s Motion to Confirm Timely filing constitutes an appellate decision binding in subsequent stages of the same litigation under the law of the case doctrine. However, should this Court determine that collateral estoppel is the appropriate doctrine, the Respondent relies upon *Lutheran Day Care* for the proposition that the appellate court’s denial of a Motion to Confirm Timely filing is sufficiently a “different case” for purposes of collateral estoppel.

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60 Wash. L. Rev. 805, 810 (1985); *Roberson v. Perez*, 156 Wn.2d 33, 41, 123 P.3d 844 (2005).

In the present case, Appellant's appeal of the trial court's Order denying its Motion to Vacate should be barred by the principles of the law of the case because the appellate court has already ruled upon the merits of this motion in its Order denying Appellant's Motion to Confirm Timely Filing issued on November 20, 2009, and its Order denying Appellant's Motion for Reconsideration on December 17, 2009. In the Motion to Confirm Timely Filing, Appellant argued that the trial court's July 1, 2009 Order was entered in violation of CR 54(e) and (f). Specifically, Appellant's Counsel argued that he anticipated a motion for presentation or an invitation to agree to an order pursuant to CR 54(e) and (f) as a precursor to the entry of a judgment dismissing Appellant's complaint. App. D, *Decl. of Charles Watts*, p. 4. Appellant also argued that the trial court's July 1, 2009 Order failed to follow the procedures of CR 54(e) and (f). *See* Appellant's Motion to Confirm Timely Filing of Notice of Appeal and/or For a One-Day Extension of Time to File Notice of Appeal, pp. 5-8.

Appellant's argument pursuant to CR 60(a) (clerical error) and CR 60(b)(1) and CR 60(b)(5) are all predicated upon the trial court's alleged

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failure to follow CR 54(e) and (f), which the Court of Appeals necessarily concluded did not excuse timely filing of a Notice of Appeal. Inherent in the Court of Appeals' November 20, 2009 Order, concluding that Appellant's notice of appeal was not timely filed, was the determination that the trial court's entry of the order was proper, without procedural errors, to begin the 30-day time period to file the notice of appeal. Otherwise, the Court of Appeals would have granted Appellant's Motion to Confirm Timely Filing or remanded to the trial court to enter a "proper" order. *See Beckman ex rel. Beckman v. State, Dept. of Soc. and Health Servs.*, 102 Wn. App. 687, 11 P.3d 313 (2000) (Assuming the prevailing party has given proper notice of presentation of the judgment, the time for an appeal begins upon the entry of judgment).

F. CONCLUSION

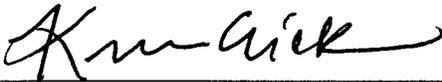
In conclusion, the issues presented by Appellant are clearly controlled by settled law. The Order entered by the trial court was not void or voidable based upon an alleged failure to comply with the procedures of CR 54(e) and (f). Moreover, the law of the case doctrine applies such that the Washington State Supreme Court and Court of Appeals' prior Orders denying Appellant's previous motions are controlling.

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RESPECTFULLY SUBMITTED this 26th day of May, 2010.

Respectfully submitted,

OGDEN MURPHY WALLACE, P.L.L.C.

By 

Greg A. Rubstello, WSBA #6271

Kristin N. Eick, WSBA #40794

Attorneys for Defendant-Respondent

Appendix H

No. 63953-6-I

COURT OF APPEALS,
DIVISION I,
OF THE STATE OF WASHINGTON

WOODINVILLE ASSOCIATES, LLC, a Washington
limited liability company,

Plaintiff-Appellant,

v.

CITY OF WOODINVILLE, a Washington municipal
corporation,

Defendant-Respondent.

DECLARATION OF GREG A. RUBSTELLO

Greg A. Rubstello, WSBA #6271
Attorney for Defendant-Respondent
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1601 Fifth Avenue, Suite 2100
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COPY

I, Greg A. Rubstello, declare as follows:

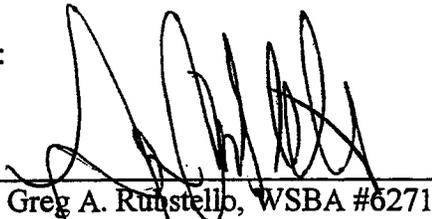
1. I am the attorney of record for the Respondent City of Woodinville in the above-entitled and numbered cause. This declaration is based upon my personal knowledge.
2. I received on June 3, 2009, Plaintiff-Appellant's Response Motion to the City of Woodinville's CR 12(b)(6) Motion to Dismiss for Failure to State a Claim based upon the 21-day statute of limitations under LUPA.
3. Attached to Plaintiff-Appellant's Motion was a proposed "Order Denying Defendant's CR 12(b)(6) Motion." A true and correct copy of this proposed order is attached hereto as Exhibit A.
4. The Defendant-Respondent City of Woodinville similarly included a proposed "Order Granting Defendant City of Woodinville's CR 12(b)(6) Motion to Dismiss for Failure to State a Claim" with its motion. A true and correct copy of this proposed order is attached hereto as Exhibit B.
5. Respondent City of Woodinville served and filed the proposed Order of Dismissal actually signed by the trial court with its Reply Brief.

6. Counsel for both parties consequently had ample opportunity to review the proposed orders submitted to the trial court.
7. A true and correct copy of KCLCR 7, referenced in Respondent's Motion is attached hereto as Exhibit C.

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

DATED this 19th day of August, 2009 at Seattle, Washington.

By:



Greg A. Rinstello, WSBA #6271

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2
3 EXHIBIT A

ATTORNEY'S COPY

Judge Susan Craighead
Trial Date: 10/25/2010
Hearing 6/5/09
With Oral Argument

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5
6 SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

7 WOODINVILLE ASSOCIATES, LLC, a
8 Washington limited liability company,

9 Plaintiff,

10 v.

11 CITY OF WOODINVILLE, a Washington
12 municipal corporation,

13 Defendant.

No. 09-2-18636-7 SEA

ORDER DENYING
DEFENDANT'S CR 12(b)(6)
MOTION

[PROPOSED]

14 IT IS HEREBY ORDERED that the court concludes that the Land Use Petition Act
15 (LUPA), RCW Ch. 36.70(C) does not apply to the plaintiff's Complaint in this action and that,
16 therefore, the Motion of Defendant City of Woodinville for dismissal of the plaintiff's Complaint
17 pursuant to CR 12(b)(6) based upon the application of the LUPA statute should be, and is hereby
18 DENIED.

19 DONE and DATED this _____ day of _____, 2009.

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21
22 THE HONORABLE SUSAN CRAIGHEAD

ORDER DENYING DEFENDANT'S CR 12(b)(6)
MOTION -1

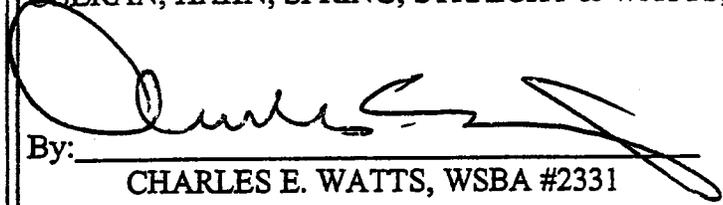
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1 Presented by:

2 OSERAN, HAHN, SPRING, STRAIGHT & WATTS, P.S.

3 

4 By: _____
5 CHARLES E. WATTS, WSBA #2331
6 Attorney for Defendant Entezar
7 Development Group, Inc.

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EXHIBIT B

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR KING COUNTY

WOODINVILLE ASSOCIATES, LLC, a
Washington limited liability company,

Plaintiff,

v.

CITY OF WOODINVILLE, a Washington
municipal corporation,

Defendant.

NO. 09-2-18636-7 SEA

[PROPOSED] ORDER GRANTING
DEFENDANT CITY OF WOODINVILLE'S
CR 12(B)(6) MOTION TO DISMISS FOR
FAILURE TO STATE A CLAIM

This Matter having come before the Court on Defendant City of Woodinville's CR 12(b)(6) Motion to Dismiss for Failure to State a Claim, and the Court having reviewed the documents in support of and in opposition to the Motion, and after hearing the arguments of the parties agrees with the arguments of the Defendant, and hereby ORDERS as follows:

1. Defendant City of Woodinville's CR 12(b)(6) Motion to Dismiss for Failure to State a Claim is granted.

DATED this ___ day of _____, 2009.

Judge Susan Craighead

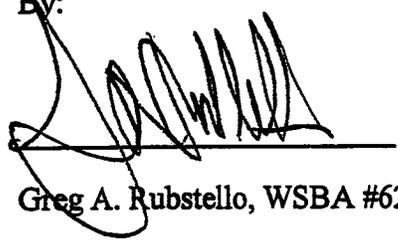
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Presented by:

OGDEN MURPHY WALLACE, P.L.L.C.

By:



Greg A. Rubstello, WSBA #6271

Attorney for Defendant, The City Of Woodinville



LCR 7. CIVIL MOTIONS

(b) Motions and Other Documents.

(1) Scope of Rules. Except when specifically provided in another rule, this rule governs all motions in civil cases. See, for example, LCR26, LCR 40, LCR 56, and the LFLR's.

(2) Hearing Times and Places. Hearing times and places will also be available from the Clerk's Office/Department of Judicial Administration (E609 King County Courthouse, Seattle, WA 98104 or 401 Fourth Avenue North, Room 2C, Maleng Regional Justice Center, Kent WA 98032; or for Juvenile Court at 1211 East Alder, Room 307, Seattle, WA 98122) by telephone at (206) 296-9300 or by accessing <http://www.kingcounty.gov/kcsc/>. Schedules for all regular calendars (family law motions, ex parte, chief civil, etc.) will be available at the information desk in the King County Courthouse and the Court Administration Office in Room 2D of the Regional Justice Center.

(3) Argument. All nondispositive motions and motions for orders of default and default judgment shall be ruled on without oral argument, except for the following:

- (A) Motions for revision of Commissioners' rulings;
- (B) Motions for temporary restraining orders and preliminary injunctions;
- (C) Family Law motions under LFLR 5;
- (D) Motions before Ex Parte Commissioners;
- (E) Motions for which the Court allows oral argument.

(4) Dates of Filing, Hearing and Consideration.

(A) Filing and Scheduling of Motion. The moving party shall serve and file all motion documents no later than six court days before the date the party wishes the motion to be considered. A motion must be scheduled by a party for hearing on a judicial day. For cases assigned to a judge, if the motion is set for oral argument on a non-judicial day, the moving party must reschedule it with the judge's staff; for motions without oral argument, the assigned judge will consider the motion on the next judicial day.

(B) Scheduling Oral Argument on Dispositive Motions. The time and date for hearing shall be scheduled in advance by contacting the staff of the hearing judge.

(C) Oral Argument Requested on All Other Motions. Any party may request oral argument by placing "ORAL ARGUMENT REQUESTED" on the upper right hand corner of the first page of the motion or opposition.

(D) Opposing Documents. Any party opposing a motion shall file and serve the original responsive papers in opposition to a motion, serve copies on parties and deliver copies to the hearing judge via the judges' mailroom in the courthouse in which the judge is located, no later than 12:00 noon two court days before the date the motion is to be considered.

(E) Reply. Any documents in strict reply shall be filed and served no later than 12:00 noon on the court day before the hearing.

(F) Working Copies. Working copies of the motion and all documents in support or opposition shall be delivered to the hearing judge no later than on the day they are to be served on all parties. The working copies shall be marked on the upper right corner of the first page with the date of consideration or hearing and the name of the hearing judge and shall be delivered to the judges' mailroom in the courthouse in which the judge is located.

(G) Terms. Any material offered at a time later than required by this rule, and any reply material which is not in strict reply, will not be considered by the court over objection of counsel except upon the imposition of appropriate terms, unless the court orders otherwise.

(H) Confirmation and Cancellation. Confirmation is not necessary, but if the motion is stricken, the parties shall immediately notify the opposing parties and notify the staff of the hearing judge.

(5) Form of Motion and Responsive Pleadings.

(A) Note for Motion. A Note for Motion shall be filed with the motion. The Note shall identify the moving party, the title of the motion, the name of the hearing judge, the trial date, the date for hearing, and the time of the hearing if it is a motion for which oral argument will be held. A Note for Motion form is available from the Clerk's Office.

(B) Form of Motion and of Responsive Pleadings. The motion shall be combined with the memorandum of authorities into a single document, and shall conform to the following format:

(i) Relief Requested. The specific relief the court is requested to grant or deny.

(ii) Statement of Facts. A succinct statement of the facts contended to be material.

(iii) Statement of Issues. A concise statement of the issue or issues of law upon which the Court is requested to rule.

(iv) Evidence Relied Upon. The evidence on which the motion or opposition is based must be specified with particularity. Deposition testimony, discovery pleadings, and documentary evidence relied upon must be quoted verbatim or a photocopy of relevant pages must be attached to an affidavit identifying the documents. Parties should highlight those parts upon which they place substantial reliance. Copies of cases shall not be attached to original pleadings. Responsive pleadings shall conform to this format.

(v) Authority. Any legal authority relied upon must be cited. Copies of all cited non-Washington authorities upon which parties place substantial reliance shall be provided to the hearing Judge and to counsel or parties, but shall not be filed with the Clerk.

(vi) Page Limits. The initial motion and opposing memorandum shall not exceed 12 pages without authority of the court; reply memoranda shall not exceed five pages without the authority of the court.

(C) Form of Proposed Orders; Mailing Envelopes. The moving party and any party opposing the motion shall attach to their documents a proposed order. The original of each proposed order shall be delivered to the hearing judge but shall not be filed with the Clerk. For motions without oral argument, the

moving party shall also provide the court with pre-addressed stamped envelopes addressed to each party/counsel.

(D) Presentation by Mail. Counsel may present agreed orders and ex parte orders based upon the record in the file, addressed either to the court or to the Clerk. When signed, the judge/commissioner will file such order with the Clerk. When rejected, the judge/commissioner may return the papers to the counsel. An addressed stamped envelope shall be provided for return of any conformed materials and/or rejected orders.

(6) Motions to Reconsider. See LCR 59.

(7) Reopening Motions. No party shall remake the same motion to a different judge without showing by affidavit what motion was previously made, when and to which judge, what the order or decision was, and any new facts or other circumstances that would justify seeking a different ruling from another judge.

(8) Motions for Revision of a Commissioner's Order. For all cases except juvenile and mental illness proceedings:

(A) A motion for revision of a commissioner's order shall be served and filed within 10 days of entry of the written order, as provided in RCW 2.24.050, along with a written notice of hearing that gives the other parties at least six days notice of the time, date and place of the hearing on the motion for revision. The motion shall identify the error claimed.

(B) A hearing on a motion for revision of a commissioner's order shall be scheduled within 21 days of entry of the commissioner's order, unless the assigned Judge or, for unassigned cases, the Chief Civil Judge, orders otherwise.

(i) For cases assigned to an individual Judge, the time and date for the hearing shall be scheduled in advance with the staff of the assigned Judge.

(ii) For cases not assigned to an individual Judge, the hearing shall be scheduled by the Chief Civil Department for Seattle case assignment area cases. For Kent case assignment area cases, the hearing shall be scheduled by the Maleng Regional Justice Center Chief Judge. For family law cases involving children the hearing shall be scheduled by the Chief Unified Family Court Judge.

(iii) All motions for revision of a commissioner's order shall be based on the written materials and evidence submitted to the commissioner, including documents and pleadings in the court file. The moving party shall provide the assigned judge a working copy of all materials submitted to the commissioner in support of and in opposition to the motion, as well as a copy of the electronic recording, if the motion before the commissioner was recorded. Oral arguments on motions to revise shall be limited to 10 minutes per side.

(iv) The commissioner's written order shall remain in effect pending the hearing on revision unless ordered otherwise by the assigned Judge, or, for unassigned cases, the Chief Judge.

(v) The party seeking revision shall, at least 5 days before the hearing, deliver to the judges' mailroom, for the assigned judge or Chief Judge, the motion, notice of hearing and copies of all documents submitted by all parties to the commissioner.

(vi) For cases in which a timely motion for reconsideration of the commissioner's order has been filed, the time for filing

a motion for revision of the commissioner's order shall commence on the date of the filing of the commissioner's written order of judgment on reconsideration.

(9) Motion for Order to Show Cause. Motions for Order to Show Cause may be heard in the ex parte department. For cases where the return on the order to show cause is before the hearing judge, the moving party shall obtain a date for such hearing from the staff of the assigned judge before appearing in the ex parte department.

(10) Motion Shortening Time.

(A) The time for notice and hearing of a motion may be shortened only for good cause upon written application to the court in conformance with this rule.

(B) A motion for order shortening time may not be incorporated into any other pleading.

(C) As soon as the moving party is aware that he or she will be seeking an order shortening time, that party must contact the opposing party to give notice in the form most likely to result in actual notice of the pending motion to shorten time. The declaration in support of the motion must indicate what efforts have been made to notify the other side.

(D) Except for emergency situations, the court will not rule on a motion to shorten time until the close of the next business day following filing of the motion (and service of the motion on the opposing party) to permit the opposing party to file a response. If the moving party asserts that exigent circumstances make it impossible to comply with this requirement, the moving party shall contact the bailiff of the judge assigned the case for trial to arrange for a conference call, so that the opposing party may respond orally and the court can make an immediate decision.

(E) Proposed agreed orders to shorten time: if the parties agree to a briefing schedule on motion to be heard on shortened time, the order may be presented by way of a proposed stipulated order, which may be granted, denied or modified at the discretion of the court.

(F) The court may deny or grant the motion and impose such conditions as the court deems reasonable. All other rules pertaining to confirmation, notice and working papers for the hearing on the motion for which time was shortened remain in effect, except to the extent that they are specifically dispensed with by the court.

[Amended effective September 1, 1984; May 1, 1988; September 1, 1992; September 1, 1993; September 1, 1994, March 1, 1996; September 1, 1996; April 14, 1997; September 1, 1997; September 1, 1999; September 1, 2001; September 1, 2002; September 1, 2004; September 1, 2006; September 1, 2007; September 1, 2008.]

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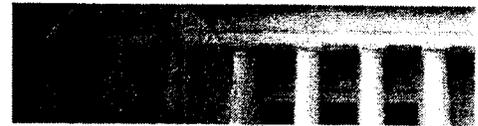
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APPENDIX 21

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RULE 4.2
DIRECT REVIEW OF SUPERIOR COURT DECISION
BY SUPREME COURT

(a) **Type of Cases Reviewed Directly.** A party may seek review in the Supreme Court of a decision of a superior court which is subject to review as provided in Title 2 only in the following types of cases:

(1) **Authorized by Statute.** A case in which a statute authorizes direct review in the Supreme Court.

(2) **Law Unconstitutional.** A case in which the trial court has held invalid a statute, ordinance, tax, impost, assessment, or toll, upon the ground that it is repugnant to the United States Constitution, the Washington State Constitution, a statute of the United States, or a treaty.

(3) **Conflicting Decisions.** A case involving an issue in which there is a conflict among decisions of the Court of Appeals or an inconsistency in decisions of the Supreme Court.

(4) **Public Issues.** A case involving a fundamental and urgent issue of broad public import which requires prompt and ultimate determination.

(5) **Action Against State Officer.** An action against a state officer in the nature of quo warranto, prohibition, injunction, or mandamus.

(6) **Death Penalty.** A case in which the death penalty has been decreed.

(b) **Service and Filing of Statement of Grounds for Direct Review.** A party seeking direct review of a superior court decision in the Supreme Court must within 15 days after filing the notice of appeal or notice for discretionary review, serve on all other parties and file in the Supreme Court a statement of grounds for direct review in the form provided in section (c).

(c) **Form of Statement of Grounds for Direct Review.** The statement should be captioned "Statement of Grounds for Direct Review," contain the title of the case as provided in rule 3.4, and contain under appropriate headings and in the order here indicated:

(1) **Nature of the Case and Decision.** A short statement of the substance of the case below and the basis for the superior court decision;

(2) **Issues Presented for Review.** A statement of each issue the party intends to present for review; and

(3) **Grounds for Direct Review.** The grounds upon which the party contends direct review should be granted.

The statement of grounds for direct review should not exceed 15 pages, exclusive of appendices and the title sheet.

(d) Answer to Statement of Grounds for Direct Review. A respondent may file an answer to the statement of grounds for direct review. In an appeal, the answer should be filed within 14 days after service of the statement on respondent. In a discretionary review, the answer should be filed with any response to the motion for discretionary review. The answer should not exceed 15 pages, exclusive of appendices and the title sheet.

(e) Effect of Denial of Direct Review.

(1) Appealable Decision. If the Supreme Court denies direct review of a superior court decision appealable as a matter of right, the case will be transferred without prejudice and without costs to the Court of Appeals for determination.

(2) Discretionary Review. A motion for discretionary review in the Supreme Court of a superior court decision may be granted, denied, or transferred to the Court of Appeals for determination. If the Supreme Court denies a motion for discretionary review of a superior court decision, the moving party may not file the same motion in the Court of Appeals.

References Form 4, Statement of Grounds for Direct Review.

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RAP RULE 5.2
TIME ALLOWED TO FILE NOTICE

(a) Notice of Appeal. Except as provided in rules 3.2(e) and 5.2(d) and (f), a notice of appeal must be filed in the trial court within the longer of (1) 30 days after the entry of the decision of the trial court which the party filing the notice wants reviewed, or (2) the time provided in section (e).

(b) Notice for Discretionary Review. Except as provided in rules 3.2(e) and 5.2(d) and (f), a notice for discretionary review must be filed in the trial court within 30 days after the act of the trial court which the party filing the notice wants reviewed.

(c) Date Time Begins To Run. The date of entry of a trial court decision is determined by CR 5(e) and 58.

(d) Time Requirements Set by Statute Govern. If a statute provides that a notice of appeal, a petition for extraordinary writ, or a notice for discretionary review must be filed within a time period other than 30 days after entry of the decision, the notice required by these rules must be filed within the time period established by the statute.

(e) Effect of Certain Motions Decided After Entry of Appealable Order. A notice of appeal of orders deciding certain timely motions designated in this section must be filed in the trial court within (1) 30 days after the entry of the order, or (2) if a statute provides that a notice of appeal, a petition for extraordinary writ, or a notice for discretionary review must be filed within a time period other than 30 days after entry of the decision to which the motion is directed, the number of days after the entry of the order deciding the motion established by the statute for initiating review. The motions to which this rule applies are a motion for arrest of judgment under CrR 7.4, a motion for new trial under CrR 7.5, a motion for judgment as a matter of law under CR 50(b), a motion to amend findings under CR 52(b), a motion for reconsideration or new trial under CR 59, and a motion for amendment of judgment under CR 59.

(f) Subsequent Notice by Other Parties. If a timely notice of appeal or a timely notice for discretionary review is filed by a party, any other party who wants relief from the decision must file a notice of appeal or notice for discretionary review with the trial court clerk within the later of (1) 14 days after service of the notice filed by the other party, or (2) the time within which notice must be given as provided in sections (a), (b), (d) or (e).

(g) Effect of Premature Notice. A notice of appeal or notice for discretionary review filed after the announcement of a decision but before entry of the decision will be treated as filed on the day following the entry of the decision.

References

Rule 2.2, Decisions of the Superior Court Which May Be Appealed, (d) Multiple parties or multiple claims or counts; Rule 15.2, Determination of Indigency and Rights of Indigent Party, (a) Motion for order of indigency; Rule 18.8, Waiver of Rules and Extension and Reduction of Time, (b) Restriction on extension of time; CR 5, Service and Filing of Pleadings and Other Papers; CR 58, Entry of Judgment.

[Amended effective September 1, 2006.]

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RULE 13.5
DISCRETIONARY REVIEW OF INTERLOCUTORY DECISION

(a) How To Seek Review. A party seeking review by the Supreme Court of an interlocutory decision of the Court of Appeals must file a motion for discretionary review in the Supreme Court and a copy in the Court of Appeals within 30 days after the decision is filed.

(b) Considerations Governing Acceptance of Review. Discretionary review of an interlocutory decision of the Court of Appeals will be accepted by the Supreme Court only:

(1) If the Court of Appeals has committed an obvious error which would render further proceedings useless; or

(2) If the Court of Appeals has committed probable error and the decision of the Court of Appeals substantially alters the status quo or substantially limits the freedom of a party to act; or

(3) If the Court of Appeals has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a trial court or administrative agency, as to call for the exercise of revisory jurisdiction by the Supreme Court.

(c) Motion Procedure. The procedure for and the form of the motion for discretionary review is as provided in Title 17. A motion for discretionary review under this rule, and any response, should not exceed 20 pages double spaced, excluding appendices.

(d) Effect of Denial. Denial of discretionary review of a decision does not affect the right of a party to obtain later review of the Court of Appeals decision or the issues pertaining to that decision.

References

Form 3, Motion for Discretionary Review.

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RULE 18.8
WAIVER OF RULES AND EXTENSION AND REDUCTION
OF TIME

(a) Generally. The appellate court may, on its own initiative or on motion of a party, waive or alter the provisions of any of these rules and enlarge or shorten the time within which an act must be done in a particular case in order to serve the ends of justice, subject to the restrictions in sections (b) and (c).

(b) Restriction on Extension of Time. The appellate court will only in extraordinary circumstances and to prevent a gross miscarriage of justice extend the time within which a party must file a notice of appeal, a notice for discretionary review, a motion for discretionary review of a decision of the Court of Appeals, a petition for review, or a motion for reconsideration. The appellate court will ordinarily hold that the desirability of finality of decisions outweighs the privilege of a litigant to obtain an extension of time under this section. The motion to extend time is determined by the appellate court to which the untimely notice, motion or petition is directed.

(c) Restriction on Changing Decision. The appellate court will not enlarge the time provided in rule 12.7 within which the appellate court may change or modify its decision.

(d) Terms. The remedy for violation of these rules is set forth in rule 18.9. The court may condition the exercise of its authority under this rule by imposing terms or awarding compensatory damages, or both, as provided in rule 18.9.

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LCR 7. CIVIL MOTIONS

(b) Motions and Other Documents.

(1) Scope of Rules. Except when specifically provided in another rule, this rule governs all motions in civil cases. See, for example, LCR 26, LCR 40, LCR 56, and the LFLR's.

(2) Hearing Times and Places. Hearing times and places will also be available from the Clerk's Office/Department of Judicial Administration (E609 King County Courthouse, Seattle, WA 98104 or 401 Fourth Avenue North, Room 2C, Maleng Regional Justice Center, Kent WA 98032; or for Juvenile Court at 1211 East Alder, Room 307, Seattle, WA 98122) by telephone at (206) 296-9300 or by accessing <http://www.kingcounty.gov/courts/clerk>. Schedules for all regular calendars (family law motions, ex parte, chief civil, etc.) will be available at the information desk in the King County Courthouse and the Court Administration Office in Room 2D of the Regional Justice Center.

(3) Argument. All nondispositive motions and motions for orders of default and default judgment shall be ruled on without oral argument, except for the following:

- (A) Motions for revision of Commissioners' rulings;
- (B) Motions for temporary restraining orders and preliminary injunctions;
- (C) Family Law motions under LFLR 5;
- (D) Motions to be presented in person to the Ex Parte and Probate Department pursuant to the Ex Parte and Probate Department Presentation of Motions and Hearings Manual ("Motions and Hearings Manual") issued by the Clerk;
- (E) Motions for which the Court allows oral argument.

(4) Dates of Filing, Hearing and Consideration.

(A) Filing and Scheduling of Motion. The moving party shall serve and file all motion documents no later than six court days before the date the party wishes the motion to be considered. A motion must be scheduled by a party for hearing on a judicial day. For cases assigned to a judge, if the motion is set for oral argument on a non-judicial day, the moving party must reschedule it with the judge's staff; for motions without oral argument, the assigned judge will consider the motion on the next judicial day.

(B) Scheduling Oral Argument on Dispositive Motions. The time and date for hearing shall be scheduled in advance by contacting the staff of the hearing judge.

(C) Oral Argument Requested on All Other Motions. Any party may request oral argument by placing "ORAL ARGUMENT REQUESTED" on the upper right corner of the first page of the motion or opposition.

(D) Opposing Documents. Any party opposing a

motion shall file and serve the original responsive papers in opposition to a motion, serve copies on parties, and deliver working copies to the hearing judge no later than 12:00 noon two court days before the date the motion is to be considered. Working copies shall be submitted pursuant to the requirements in this rule.

(E) Reply. Any documents in strict reply shall be similarly filed and served no later than 12:00 noon on the court day before the hearing.

(F) Working Copies. Working copies of the motion and all documents in support or opposition shall be delivered to the hearing judge, commissioner, or appropriate judicial department no later than on the day they are to be served on all parties. Working copies shall be submitted as follows:

(i) Electronic Submission of Working Copies. Judges' working copies of an e-filed motion and all documents in support or opposition may be electronically submitted using the Clerk's e-filing system. The Clerk may assess a fee for the electronic submission of working copies.

(ii) E-Filed Documents For Which Working Copies Shall Not Be Electronically Submitted. Judges' working copies shall not be electronically submitted for any document of 100 pages or more in length, summary judgment motions, or for any documents filed in paper form. These working copies must be submitted in paper form pursuant to the requirements in this rule.

(iii) Delivery of Working Copies in Paper Form. The upper right corner of all judges' working copies submitted in paper form shall be marked "working copies" and note the date of consideration or hearing, and the name of the hearing judge or commissioner or the name of the calendar on which the motion is to be heard, by whom the documents are being presented ("moving party," "opposing party," or other descriptive or identifying term), and shall be delivered to the judges' mailroom or appropriate department in the courthouse in which the judge or commissioner is located.

(G) Terms. Any material offered at a time later than required by this rule, and any reply material which is not in strict reply, will not be considered by the court over objection of counsel except upon the imposition of appropriate terms, unless the court orders otherwise.

(H) Confirmation and Cancellation. Confirmation is not necessary, but if the motion is stricken, the parties shall immediately notify the opposing parties and notify the staff of the hearing judge.

(5) Form of Motion and Responsive Pleadings.

(A) Note for Motion. A Note for Motion shall be filed with the motion. The Note shall identify the moving party, the title of the motion, the name of the hearing judge, the trial date, the date for hearing, and the time of the hearing if it is a motion for which oral argument will be held. A Note for Motion form is available from the Clerk's Office.

(B) Form of Motion and of Responsive Pleadings. The motion shall be combined with the memorandum of authorities into a single document, and shall conform to the following format:

(i) Relief Requested. The specific relief the court is requested to grant or deny.

(ii) Statement of Facts. A succinct statement of the facts contended to be material.

(iii) Statement of Issues. A concise statement of the issue or issues of law upon which the Court is requested to rule.

(iv) Evidence Relied Upon. The evidence on which the motion or opposition is based must be specified with particularity. Deposition testimony, discovery pleadings, and documentary evidence relied upon must be quoted verbatim or a photocopy of relevant pages must be attached to an affidavit identifying the documents. Parties should highlight those parts upon which they place substantial reliance. Copies of cases shall not be attached to original pleadings. Responsive pleadings shall conform to this format.

(v) Authority. Any legal authority relied upon must be cited. Copies of all cited non-Washington authorities upon which parties place substantial reliance shall be provided to the hearing Judge and to counsel or parties, but shall not be filed with the Clerk.

(vi) Page Limits. The initial motion and opposing memorandum shall not exceed 12 pages without authority of the court; reply memoranda shall not exceed five pages without the authority of the court.

(C) Form of Proposed Orders; Mailing

Envelopes. The moving party and any party opposing the motion shall attach a proposed order to the working copies of their documents. The original of each proposed order shall be submitted to the hearing judge but shall not be filed with the Clerk. For motions without oral argument for which working copies are submitted in paper form, the moving party shall also provide the court with pre-addressed stamped envelopes addressed to each party/counsel. Envelopes are not necessary when submitting working copies electronically via the Clerk's system.

(D) Presentation by Mail. With respect only to those matters that must be presented to the assigned judge, the chief judge of the Regional Justice Center or the Chief Judge of the Unified Family Court Department, parties may present agreed orders and ex parte orders based upon the record in the file by mail, addressed to the court. When signed, the judge/commissioner will file such order with the Clerk. For agreed orders presented in paper form, an addressed stamped envelope shall be provided for return of any conformed materials.

(6) Motions to Reconsider. See LCR 59.

(7) Reopening Motions. No party shall remake the same motion to a different judge without showing by affidavit what motion was previously made, when and to which judge, what the order or decision was, and any new facts or other circumstances that would justify seeking a different ruling from another judge.

(8) Motions for Revision of a Commissioner's Order. For all cases except juvenile and mental illness proceedings:

(A) A motion for revision of a commissioner's order shall be served and filed within 10 days of entry of the written order, as provided in RCW 2.24.050, along with a written notice of hearing that gives the other parties at least six days notice of the time, date and place of the hearing on the motion for revision. The motion shall identify the error claimed.

(B) A hearing on a motion for revision of a commissioner's order shall be scheduled within 21 days of entry of the commissioner's order, unless the assigned Judge or, for unassigned cases, the Chief Civil Judge, orders otherwise.

(i) For cases assigned to an individual Judge, the time and date for the hearing shall be scheduled in advance with the staff of the assigned Judge.

(ii) For cases not assigned to an individual Judge, the hearing shall be scheduled by the Chief Civil Department for Seattle case assignment area cases. For Kent case assignment area cases, the hearing shall be scheduled by the Maleng Regional Justice Center Chief Judge. For family law cases involving children the hearing shall be scheduled by the Chief Unified Family Court Judge.

(iii) All motions for revision of a commissioner's order shall be based on the written materials and evidence submitted to the commissioner, including documents and pleadings in the court file. The moving party shall provide the assigned judge a working copy of all materials submitted to the commissioner in support of and in opposition to the motion, as well as a copy of the electronic recording, if the motion before the commissioner was recorded. Oral arguments on motions to revise shall be limited to 10 minutes per side. Working copies shall be submitted pursuant to the requirements of LCR 7(b).

(iv) The commissioner's written order shall remain in effect pending the hearing on revision unless ordered otherwise by the assigned Judge, or, for unassigned cases, the Chief Judge.

(v) The party seeking revision shall, at least 5 days before the hearing, deliver to the assigned judge or Chief Judge working copies of the motion, notice of hearing, and copies of all documents submitted by all parties to the commissioner, pursuant to LCR 7(b).

(vi) For cases in which a timely motion for reconsideration of the commissioner's order has been filed, the time for filing a motion for revision of the commissioner's order shall commence on the date of the filing of the commissioner's written order of judgment on reconsideration.

(9) Motion for Order to Show Cause. Motions for Order to Show Cause shall be presented without oral argument to the Ex Parte and Probate Department through the Clerk's office. For cases where the return on the order to show cause is before the hearing judge, the moving party shall obtain a date for such hearing from the staff of the assigned judge before presenting the motion to the Ex Parte and Probate Department.

(10) Motion Shortening Time.

(A) The time for notice and hearing of a motion may be shortened only for good cause upon written application to the court in conformance with this rule.

(B) A motion for order shortening time may not be incorporated into any other pleading.

(C) As soon as the moving party is aware that he or she will be seeking an order shortening time, that party must contact the opposing party to give notice in the form most likely to result in actual notice of the pending motion to shorten time. The declaration in support of the motion must indicate what efforts have been made to notify the other side.

(D) Except for emergency situations, the court will not rule on a motion to shorten time until the close of the next business day following filing of the motion (and service of the motion on the opposing party) to permit the opposing party to file a response. If the moving party asserts that exigent circumstances make it impossible to comply with this requirement, the moving party shall contact the bailiff of the judge assigned the case for trial to arrange for a conference call, so that the opposing party may respond orally and the court can make an immediate decision.

(E) Proposed agreed orders to shorten time: if the parties agree to a briefing schedule on motion to be heard on shortened time, the order may be presented by way of a proposed stipulated order, which may be granted, denied or modified at the discretion of the court.

(F) The court may deny or grant the motion and impose such conditions as the court deems reasonable. All other rules pertaining to confirmation, notice and working papers for the hearing on the motion for which time was shortened remain in effect, except to the extent that they are specifically dispensed with by the court.

[Amended effective September 1, 1984; May 1, 1988; September 1, 1992; September 1, 1993; September 1, 1994, March 1, 1996; September 1, 1996; April 14, 1997; September 1, 1997; September 1, 1999; September 1, 2001; September 1, 2002; September 1, 2004; September 1, 2006; September 1, 2007; September 1, 2008; January 1, 2009; June 1, 2009.]

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RULE CR 5
SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS

(a) Service--When Required. Except as otherwise provided in these rules, every order required by its terms to be served, every pleading subsequent to the original complaint unless the court otherwise orders because of numerous defendants, every paper relating to discovery required to be served upon a party unless the court otherwise orders, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment, designation of record on appeal, and similar paper shall be served upon each of the parties. No service need be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons in rule 4.

In an action begun by seizure of property, in which no person need be or is named as defendant, any service required to be made prior to the filing of an answer, claim, or appearance shall be made upon the person having custody or possession of the property at the time of its seizure.

(b) Service--How Made.

(1) On Attorney or Party. Whenever under these rules service is required or permitted to be made upon a party represented by an attorney the service shall be made upon the attorney unless service upon the party himself is ordered by the court. Service upon the attorney or upon a party shall be made by delivering a copy to him or by mailing it to him at his last known address or, if no address is known, filing with the clerk of the court an affidavit of attempt to serve. Delivery of a copy within this rule means: handing it to the attorney or to the party; or leaving it at his office with his clerk or other person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. Service on an attorney is subject to the restrictions in subsections (b) (4) and (5) of this rule and in rule 71, Withdrawal by Attorneys.

(2) Service by Mail.

(A) How made. If service is made by mail, the papers shall be deposited in the post office addressed to the person on whom they are being served, with the postage prepaid. The service shall be deemed complete upon the third day following the day upon which they are placed in the mail, unless the third day falls on a Saturday, Sunday or legal holiday, in which event service shall be deemed complete on the first day other than a Saturday, Sunday or legal holiday, following the third day.

(B) Proof of service by mail. Proof of service of all papers permitted to be mailed may be by written acknowledgment of service, by affidavit of

the person who mailed the papers, or by certificate of an attorney. The certificate of an attorney may be in form substantially as follows:

CERTIFICATE

I certify that I mailed a copy of the foregoing _____ to (John Smith), (plaintiff's) attorney, at (office address or residence), and to (Joseph Doe), an additional (defendant's) attorney (or attorneys) at (office address or residence), postage prepaid, on (date).

(John Brown)

Attorney for (Defendant) William Noe

(3) Service on Nonresidents. Where a plaintiff or defendant who has appeared resides outside the state and has no attorney in the action, the service may be made by mail if his residence is known; if not known, on the clerk of the court for him. Where a party, whether resident or nonresident, has an attorney in the action, the service of papers shall be upon the attorney instead of the party. If the attorney does not have an office within the state or has removed his residence from the state, the service may be upon him personally either within or without the state, or by mail to him at either his place of residence or his office, if either is known, and if not known, then by mail upon the party, if his residence is known, whether within or without the state. If the residence of neither the party nor his attorney, nor the office address of the attorney is known, an affidavit of the attempt to serve shall be filed with the clerk of the court.

(4) Service on Attorney Restricted After Final Judgment. A party, rather than the party's attorney, must be served if the final judgment or decree has been entered and the time for filing an appeal has expired, or if an appeal has been taken (i) after the final judgment or decree upon remand has been entered or (ii) after the mandate has been issued affirming the judgment or decree or disposing of the case in a manner calling for no further action by the trial court. This rule is subject to the exceptions defined in subsection (b) (6).

(5) Required Notice to Party. If a party is served under circumstances described in subsection (b) (4), the paper shall (i) include a notice to the party of the right to file written opposition or a response, the time within which such opposition or response must be filed, and the place where it must be filed; (ii) state that failure to respond may result in the requested relief being granted; and (iii) state that the paper has not been served on that party's lawyer.

(6) Exceptions. An attorney may be served notwithstanding subsection (b) (4) of this rule if (i) fewer than 63 days have elapsed since the filing of any paper or the issuance of any process in the action or proceeding or (ii) if the attorney has filed a notice of continuing representation.

(7) Service by Other Means. Service under this rule may be made by delivering a copy by any other means, including facsimile or electronic means, consented to in writing by the person served. Service by facsimile or electronic means is complete on transmission when made prior to 5:00 p.m. on a judicial day. Service made on a Saturday, Sunday, holiday or after 5:00 p.m. on any other day shall be deemed complete at 9:00 a.m. on the first judicial day thereafter; Service by other consented means is complete when the person making service delivers the copy to the agency

designated to make delivery. Service under this subsection is not effective if the party making service learns that the attempted service did not reach the person to be served.

(c) Service--Numerous Defendants. In any action in which there are unusually large numbers of defendants, the court, upon motion or of its own initiative, may order that service of the pleadings of the defendants and replies thereto need not be made as between the defendants and that any cross claim, counterclaim, or matter constituting an avoidance or affirmative defense contained therein shall be deemed to be denied or avoided by all other parties and that the filing of any such pleading and service thereof upon the plaintiff constitutes due notice of it to the parties. A copy of every such order shall be served upon the parties in such manner and form as the court directs.

(d) Filing.

(1) Time. Complaints shall be filed as provided in rule 3(a). Except as provided for discovery materials in section (i) of this rule and for documents accompanying a notice under ER 904(b), all pleadings and other papers after the complaint required to be served upon a party shall be filed with the court either before service or promptly thereafter.

(2) Sanctions. The effect of failing to file a complaint is governed by rule 3. If a party fails to file any other pleading or paper under this rule, the court upon 5 days' notice of motion for sanctions may dismiss the action or strike the pleading or other paper and grant judgment against the defaulting party for costs and terms including a reasonable attorney fee unless good cause is shown for, or justice requires, the granting of an extension of time.

(3) Limitation. No sanction shall be imposed if prior to the hearing the pleading or paper other than the complaint is filed and the moving attorney is notified of the filing before he leaves his office for the hearing.

(4) Nonpayment. No further action shall be taken in the pending action and no subsequent pleading or other paper shall be filed until the judgment is paid. No subsequent action shall be commenced upon the same subject matter until the judgment has been paid.

(e) Filing With the Court Defined. The filing of pleadings and other papers with the court as required by these rules shall be made by filing them with the clerk of the court, except that the judge may permit the papers to be filed with him or her, in which event the judge shall note thereon the filing date and forthwith transmit them to the office of the clerk. Papers may be filed by facsimile transmission if permitted elsewhere in these or other rules of court, or if authorized by the clerk of the receiving court. The clerk may refuse to accept for filing any paper presented for that purpose because it is not presented in proper form as required by these rules or any local rules or practices.

(f) Other Methods of Service. Service of all papers other than the summons and other process may also be made as authorized by statute.

(g) Certified Mail. Whenever the use of "registered" mail is authorized by statutes relating to judicial proceedings or by rule of court, "certified" mail, with return receipt requested, may be used.

(h) Service of Papers by Telegraph. [Rescinded.]

(i) Discovery Material Not To Be Filed; Exceptions. Depositions upon oral examinations, depositions upon written questions, interrogatories and responses thereto, requests for production or inspection and responses thereto, requests for admission and responses thereto, and other discovery requests and responses thereto shall not be filed with the court unless for use in a proceeding or trial or on order of the court.

(j) Filing by Facsimile. (Reserved. See GR 17--Facsimile Transmission.)

[Amended effective July 1, 1972; September 1, 1978; September 1, 1983; September 1, 1988; September 1, 1993; September 17, 1993; October 29, 1993; September 1, 2005.]

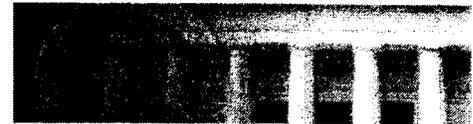
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RULE 6
TIME

(a) Computation. In computing any period of time prescribed or allowed by these rules, by the local rules of any superior court, by order of court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday or a legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, a Sunday nor a legal holiday. Legal holidays are prescribed in RCW 1.16.050. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation.

(b) Enlargement. When by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion, (1) with or without motion or notice, order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order or, (2) upon motion made after the expiration of the specified period, permit the act to be done where the failure to act was the result of excusable neglect; but it may not extend the time for taking any action under rules 50(b), 52(b), 59(b), 59(d), and 60(b).

(c) Proceeding Not To Fail for Want of Judge or Session of Court. No proceeding in a court of justice in any action, suit, or proceeding pending therein, is affected by a vacancy in the office of any or all of the judges or by the failure of a session of the court.

(d) For Motions--Affidavits. A written motion, other than one which may be heard ex parte, and notice of the hearing thereof 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. Such an order may for cause shown be made on ex parte application. When a motion is supported by affidavit, the affidavit 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.

(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.

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RULE 12
DEFENSES AND OBJECTIONS

(a) When Presented. A defendant shall serve his answer within the following periods:

(1) Within 20 days, exclusive of the day of service, after the service of the summons and complaint upon him pursuant to rule 4;

(2) Within 60 days from the date of the first publication of the summons if the summons is served by publication in accordance with rule 4(d)(3);

(3) Within 60 days after the service of the summons upon him if the summons is served upon him personally out of the state in accordance with RCW 4.28.180 and 4.28.185 or on the Secretary of State as provided by RCW 46.64.040.

(4) Within the period fixed by any other applicable statutes or rules. A party served with a pleading stating a cross claim against him shall serve an answer thereto within 20 days after the service upon him. The plaintiff shall serve his reply to a counterclaim in the answer within 20 days after service of the answer or, if a reply is ordered by the court, within 20 days after service of the order, unless the order otherwise directs. The service of a motion permitted under this rule alters these periods of time as follows, unless a different time is fixed by order of the court.

(A) If the court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within 10 days after notice of the court's action.

(B) If the court grants a motion for a more definite statement, the responsive pleading shall be served within 10 days after the service of the more definite statement.

(b) How Presented. Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross claim, or third party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) improper venue, (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state a claim upon which relief can be granted, (7) failure to join a party under rule 19. A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, he may assert at the trial any defense in law or fact to that claim for relief. If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by rule 56.

(c) Motion for Judgment on the Pleadings. After the pleadings are

closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by rule 56.

(d) Preliminary Hearings. The defenses specifically enumerated (1)-(7) in section (b) of this rule, whether made in a pleading or by motion, and the motion for judgment mentioned in section (c) of this rule shall be heard and determined before trial on application of any party, unless the court orders that the hearing and determination thereof be deferred until the trial.

(e) Motion for More Definite Statement. If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, or if more particularity in that pleading will further the efficient economical disposition of the action, he may move for a more definite statement before interposing his responsive pleading. The motion shall point out the defects complained of and the details desired. If the motion is granted and the order of the court is not obeyed within 10 days after the notice of the order or within such other time as the court may fix, the court may strike the pleading to which the motion was directed or make such order as it deems just.

(f) Motion To Strike. Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion made by a party within 20 days after the service of the pleading upon him or upon the courts own initiative at any time, the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.

(g) Consolidation of Defenses in Motion. A party who makes a motion under this rule may join with it any other motions herein provided for and then available to him. If a party makes a motion under this rule but omits therefrom any defense or objection then available to him which this rule permits to be raised by motion, he shall not thereafter make a motion based on the defense or objection so omitted, except a motion as provided in subsection (h)(2) hereof on any of the grounds there stated.

(h) Waiver or Preservation of Certain Defenses.

(1) A defense of lack of jurisdiction over the person, improper venue, insufficiency of process, or insufficiency of service of process is waived (A) if omitted from a motion in the circumstances described in section (g), or (B) if it is neither made by motion under this rule nor included in a responsive pleading or an amendment thereof permitted by rule 15(a) to be made as a matter of course.

(2) A defense of failure to state a claim upon which relief can be granted, a defense of failure to join a party indispensable under rule 19, and an objection of failure to state a legal defense to a claim may be made in any pleading permitted or ordered under rule 7(a), or by motion for judgment on the pleadings, or at the trial on the merits.

(3) Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.

(i) Nonparty at Fault. Whenever a defendant or a third party defendant intends to claim for purposes of RCW 4.22.070(1) that a nonparty is at fault, such claim is an affirmative defense which shall be affirmatively pleaded by the party making the claim. The identity of any nonparty claimed to be at fault, if known to the party making the claim, shall also be affirmatively pleaded.

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RULE 54
JUDGMENTS AND COSTS

- (a) Definitions.
- (1) Judgment. A judgment is the final determination of the rights of the parties in the action and includes any decree and order from which an appeal lies. A judgment shall be in writing and signed by the judge and filed forthwith as provided in rule 58.
- (2) Order. Every direction of a court or judge, made or entered in writing, not included in a judgment, is denominated an order.
- (b) Judgment Upon Multiple Claims or Involving Multiple Parties. When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross claim, or third party claim, or when multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination in the judgment, supported by written findings, that there is no just reason for delay and upon an express direction for the entry of judgment. The findings may be made at the time of entry of judgment or thereafter on the courts own motion or on motion of any party. In the absence of such findings, determination and direction, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.
- (c) Demand for Judgment. A judgment by default shall not be different in kind from or exceed in amount that prayed for in the demand for judgment. Except as to a party against whom a judgment is entered by default, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleadings.
- (d) Costs, Disbursements, Attorney's Fees, and Expenses.
- (1) Costs and Disbursements. Costs and disbursements shall be fixed and allowed as provided in RCW 4.84 or by any other applicable statute. If the party to whom costs are awarded does not file a cost bill or an affidavit detailing disbursements within 10 days after the entry of the judgment, the clerk shall tax costs and disbursements pursuant to CR 78(e).
- (2) Attorney's Fees and Expenses. Claims for attorney's fees and expenses, other than costs and disbursements, shall be made by motion unless the substantive law governing the action provides for the recovery of such fees and expenses as an element of damages to be proved at trial. Unless otherwise provided by statute or order of the

court, the motion must be filed no later than 10 days after entry of judgment.

- (e) Preparation of Order or Judgment. The attorney of record for the prevailing party shall prepare and present a proposed form of order or judgment not later than 15 days after the entry of the verdict or decision, or at any other time as the court may direct. Where the prevailing party is represented by an attorney of record, no order or judgment may be entered for the prevailing party unless presented or approved by the attorney of record. If both the prevailing party and his attorney of record fail to prepare and present the form of order or judgment within the prescribed time, any other party may do so, without the approval of the attorney of record of the prevailing party upon notice of presentation as provided in subsection (f) (2).
- (f) Presentation.
 - (1) Time. Judgments may be presented at the same time as the findings of fact and conclusions of law under rule 52.
 - (2) Notice of Presentation. No order or judgment shall be signed or entered until opposing counsel have been given 5 days' notice of presentation and served with a copy of the proposed order or judgment unless:
 - (A) Emergency. An emergency is shown to exist.
 - (B) Approval. Opposing counsel has approved in writing the entry of the proposed order or judgment or waived notice of presentation.
 - (C) After verdict, etc. If presentation is made after entry of verdict or findings and while opposing counsel is in open court.

[Amended effective September 1, 1989; September 1, 2007.]

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RULE 58
ENTRY OF JUDGMENT

(a) When. Unless the court otherwise directs and subject to the provisions of rule 54(b), all judgments shall be entered immediately after they are signed by the judge.

(b) Effective Time. Judgments shall be deemed entered for all procedural purposes from the time of delivery to the clerk for filing, unless the judge earlier permits the judgment to be filed with him as authorized by rule 5(e).

(c) Notice of Entry. (Reserved. See rule 54(f).)

(d) (Reserved.)

(e) Judgment by Confession. (Reserved. See RCW 4.60.)

(f) Assignment of Judgment. (Reserved. See RCW 4.56.090.)

(g) Interest on Judgment. (Reserved. See RCW 4.56.110.)

(h) Satisfaction of Judgment. (Reserved. See RCW 4.56.100.)

(i) Lien of Judgment. (Reserved. See RCW 4.56.190.)

(j) Commencement of Lien on Real Estate. (Reserved. See RCW 4.56.200.)

(k) Cessation of Lien--Extension Prohibited. (Reserved. See RCW 4.56.210.)

(l) Revival of Judgments. (Reserved.)

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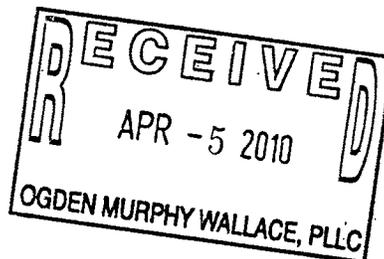
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March 31, 2010



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Honorable Richard Johnson, Clerk
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Seattle, WA 98101

Re: Supreme Court No. 84206-0 - Woodinville Associates, L.L.C. v. City of Woodinville
Court of Appeals No. 63953-6-I

Clerk and Counsel:

Enclosed is a copy of the RULING DENYING REVIEW, signed by the Supreme Court
Commissioner, Steven Goff, on March 31, 2010, in the above entitled cause.

Sincerely,

Ronald R. Carpenter
Supreme Court Clerk

RRC:daf
Enclosure

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

WOODINVILLE ASSOCIATES, LLC, a
Washington limited liability company,

Petitioner,

v.

CITY OF WOODINVILLE, a
Washington municipal corporation,

Respondent.

NO. 84206-0

RULING DENYING REVIEW

2009 JUN 31 P 3:06
E
SUPERIOR COURT
WOODINVILLE

Woodinville Associates, LLC, moves for discretionary review of a Court of Appeals order providing that its notice of appeal was not timely filed and denying an extension of time to file the notice.

The developer of a mixed use project in the city of Woodinville, Woodinville Associates brought this lawsuit against the city following a decision of the city manager with which it disagreed. The city moved to dismiss the action on grounds that the Land Use Petition Act applied and the action was filed more than 21 days after the city manager issued his decision. The parties submitted written argument on the subject, and in accordance with a local rule on motion practice, KCLCR 7(5)(c), attached proposed orders. Following oral argument the court took the matter under advisement. On June 30, 2009, the court sent a letter to the parties agreeing with the city's argument that LUPA applies and stating that the action was dismissed with prejudice. Included with the letter was a signed copy of the city's proposed judgment of dismissal, with the word "proposed" crossed out. The judgment was entered by the superior court clerk the next day, July 1, 2009.

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On August 3, 2009, Woodinville Associates filed a notice of appeal directed to Division One of the Court of Appeals. That court responded with a letter pointing out that the notice was untimely and directing counsel to file a motion for extension of time. Counsel filed a motion, arguing that the notice was timely because three days had to be added to the prescribed filing period following service pursuant to CR 6(e). Counsel urged alternatively that an extension should be granted and that the trial court's judgment was invalid in any event. He suggested that the signed order must have been overlooked when his office received the trial court's letter on July 6 (perhaps because at the time he may have been suffering from atrial fibrillation), that he had waited for submission of an agreed order or notice of presentation of an order pursuant to CR 54(e) and (f), that signing of the order without notice of presentation under CR 54(f) was improper and should be remedied by resubmitting the order, that he was surprised to learn on August 3 that the order had already been entered, that the city would not be prejudiced by granting an extension of time, and that the appeal involved novel and important issues of first impression regarding whether LUPA applies to decisions related to development agreements.

Court of Appeals Commissioner Neel referred Woodinville Associates' motion to a panel of judges for decision. On November 20, 2009, the court entered an order dismissing review, concluding that the notice of appeal was not timely filed and that Woodinville Associates had not demonstrated the extraordinary circumstances required by RAP 18.8(b) to grant an extension of time. Woodinville Associates has now filed a "petition for discretionary review" of the Court of Appeals decision.

Since the Court of Appeals denied an extension of time, and thus never accepted review, Woodinville Associates may seek review by this court only by motion for discretionary review under RAP 13.5. *See* RAP 13.3; RAP 12.3. Review is appropriate under that rule only if the Court of Appeals (1) committed an obvious

error which would render further proceedings useless; (2) committed probable error which either substantially alters the status quo or substantially limits the freedom of a party to act; or (3) so far departed from the accepted and usual course of proceedings as to call for exercise of this court's revisory jurisdiction. RAP 13.5(b).¹ The Court of Appeals did none of these things by ruling that the notice of appeal was untimely and denying an extension of time.

The notice was untimely. A notice of appeal "must be filed in the trial court within ... 30 days after the *entry* of the decision of the trial court which the party filing the notice wants reviewed." RAP 5.2(a) (emphasis added). "The date of entry of a trial court decision is determined by CR 5(e) and 58." RAP 5.2(c). Under CR 5(e), papers are to be filed with the clerk, unless the judge permits filing with the court and notes the filing date. Under CR 58(b), judgments are deemed entered when delivered to the clerk for filing. Thus, written judgments are entered when delivered to the clerk and lodged in the clerk's office for entry in the record. *Malott v. Randall*, 83 Wn.2d 259, 517 P.2d 605 (1974). The rule upon which Woodinville Associates relies, CR 6(e), plainly has no application here, since it relates to time limits triggered by the "service of a notice or some other paper," adding three days to the time period when service was by mail.² Under RAP 5.2, entry of the judgment, not service, is the act which triggers the time limit. *See In re Estate of Toth*, 138 Wn.2d 650, 654, 981 P.2d 439 (1999) ("By its plain text, CR 6(e) operates to toll the response time only in cases in which a party is required to respond within a certain time after being served or notified."); *Beckman v. Dep't of Soc. & Health Servs.*, 102 Wn. App. 687, 693, 11 P.3d 313 (2000) ("Requiring service of the judgment before the start of the running of

¹ Woodinville Associates does not mention these review criteria, or suggest how any of them is met.

² Our appellate rules include a rule for computation of time, RAP 18.6. Subsection (b) of that rule includes a provision similar to CR 6(e), providing that if the time limit applies to a party upon whom service is made, the time limit begins to run three days after the paper is mailed to the party.

the 30-day appeal period would effectively amend CR 58 and RAP 5.2(a) to require both the filing of the judgment with the clerk and service of conformed copies of the judgment before the 30 days begin to run. This is not what the rules say, nor what the rules contemplate.”); 3A KARL B. TEGLAND, WASHINGTON PRACTICE CR 6 at 149 (5th ed. 2006) (“CR 6(e) applies only when a time period is measured from the date of service.”).

The time for filing a notice of appeal will be extended only in extraordinary circumstances and to prevent a gross miscarriage of justice. RAP 18.8(b). This rule will not be waived. RAP 1.2(c). “Extraordinary circumstances” include instances in which “the filing, despite reasonable diligence, was defective due to excusable error or circumstances beyond the party’s control.” *Reichelt v. Raymark Indus., Inc.*, 52 Wn. App. 763, 765, 764 P.2d 653 (1988); *Shumway v. Payne*, 136 Wn.2d 383, 395, 964 P.2d 349 (1998). Negligence, or lack of “reasonable diligence,” does not amount to “extraordinary circumstances.” *Beckman*, 102 Wn. App. at 695. It is incumbent upon an attorney to institute internal office procedures sufficient to assure that judgments are properly handled: “The failure to take necessary steps, to that end, even during periods of unusual circumstances in an attorney’s office, is not an acceptable excuse for any resulting failure to obtain personal knowledge of the entry of judgment on the part of counsel.” *Beckman*, 102 Wn. App. at 696 (quoting *State v. One 1977 Blue Ford Pick-up Truck*, 447 A.2d 1226, 1231 (Me. 1982)). Application of this rule does not turn on prejudice to the opposing party, since if it did the court would rarely deny a motion for extension of time. *Reichelt*, 52 Wn.App. at 766. Even if the appeal raises important issues, it would be improper to consider those issues absent sufficient grounds for granting an extension of time. *Schaefco v. Columbia River Gorge Comm’n*, 121 Wn.2d 366, 368, 849 P.2d 1225 (1993). The court will ordinarily hold that the interest in finality of decisions outweighs the privilege of a

litigant to obtain an extension of time. RAP 18.8(b). In light of this policy, the standard set forth in RAP 18.8(b) is rarely satisfied. *Shumway*, 136 Wn.2d at 395; *Reichelt*, 52 Wn. App. at 765.

Here, counsel for Woodinville Associates acknowledges that his office must have received the trial court's written order along with the letter on July 6, 2009. He could not suggest otherwise, since a copy of the order was later found in his files. Even if circumstances in counsel's office at the time of receipt may have been unusual, given his hospitalization for atrial fibrillation two days later, it was incumbent on counsel to institute office procedures sufficient to assure that the order of dismissal was properly handled. The failure to take such steps is not an acceptable excuse for failure to learn of the order and file a timely notice of appeal. Since counsel knew that the court had received proposed orders from both of the parties, in accordance with local practice, it was not reasonable to wait in expectation that another order would be presented with further notice, especially since under the rule he cites such proposed orders must be presented not later than 15 days after entry of the verdict or decision. CR 54(e). Woodinville Associates does not explain why an extension was necessary to prevent a gross miscarriage of justice. Neither the claimed lack of prejudice to the city nor the claimed importance of the issue to be raised on appeal justifies an extension.

Finally, Woodinville Associates argues here, as it did in its motion for reconsideration below, that the trial court's judgment is void for lack of notice under CR 54(e) and (f)(2). Subsection (e) of CR 54 requires counsel for the prevailing party to prepare and present a proposed order or judgment not later than 15 days of the verdict or decision. Subsection (f)(2) provides that "[n]o order or judgment shall be signed or entered until opposing counsel have been given 5 days' notice of presentation and served with a copy of the proposed order or judgment unless" the

matter involves an emergency, opposing counsel's written approval, or signing of the document before opposing counsel in open court. As can be seen, the rule requires notice of presentation, not notice of entry of the order or judgment. 4 KARL B. TEGLAND, WASHINGTON PRACTICE CR 54 at 302 (5th ed. 2006) ("Although CR 54 requires notice of presentation of an order or judgment, the rule does not require the prevailing party to notify the other parties of the date that the order or judgment was actually entered. The other parties have an obligation to monitor the entry of the judgment, so that any post-trial motions or appeals are timely.") And the appeal time period begins with entry of the judgment, not service of the judgment. *Beckman*, 102 Wn.App. at 693.

Nonetheless, had the trial court truly entered this order without notice of presentation, Woodinville Associates might have a good argument for permitting its appeal to go forward, since the result otherwise would be to require presentation of the order anew with sufficient notice. *See City of Seattle v. Sage*, 11 Wn.App. 481, 523 P.2d 942 (1974); But this court has held that a judgment entered without the notice required by CR 54(f)(2) is not invalid where the complaining party fails to show he suffered prejudice as a result. *Burton v. Ascol*, 105 Wn.2d 344, 352, 715 P.2d 110 (1986). The King County local rule on motion practice requires the parties to provide proposed orders with their pleadings. KCLCR 7(5)(C) ("The moving party and any party opposing the motion shall attach a proposed order to the working copies of their documents.")³ Contrary to counsel's seeming argument, this rule applies alike to motions with and without oral argument, the only difference being that "[f]or

³ Local rules may not conflict with the civil rules. CR 83(a); *Harbor Enters., Inc. v. Gudjonsson*, 116 Wn.2d 283, 293, 803 P.2d 798 (1991); *In re Marriage of Lemon*, 118 Wn.2d 422, 423-24, 823 P.2d 1100 (1992). But a local rule and a rule promulgated by this court are "inconsistent" with one another only when they are "so antithetical that it is impossible as a matter of law that they can both be effective." *Heaney v. Seattle Mun. Court*, 35 Wn. App. 150, 155, 665 P.2d 918 (1983). Woodinville Associates does not suggest that such a conflict exists between CR 54(f) and KCLCR 7.

motions without oral argument” the party “shall also provide the court with pre-addressed stamped envelopes addressed to each” party or counsel. Plainly the purpose of the local rule is to require presentation of proposed orders on motions before the court rules on the motion, so the court can issue a written order without further hearing. Notice of the proposed order is provided by attaching it to pleadings served on opposing counsel. Further notice of presentation is not contemplated by the rule because the parties already have each side’s proposed order before the motion is heard, and fully expect the court to sign the order with which it agrees. Here, both parties presented the court with proposed orders attached to their pleadings, before oral argument, each also serving the other side with their pleadings and proposed orders. Thus, Woodinville Associates was given notice of the proposed order in early June 2009, well before entry of the order on July 1, 2009. And counsel admits that his office received the signed order on July 6, 2009, long before the time for filing a notice of appeal was to run. Under the circumstances, notice was adequate and Woodinville Associates cannot show prejudice in any event. *Burton v. Ascol*, 105 Wn.2d at 352-53. The failure to timely appeal cannot be attributed to lack of notice, but only to counsel’s failure to take steps within his office to assure that such judgments are properly handled. The judgment of dismissal was not void.

In sum, it may be debatable whether an extension of time should have been granted under these circumstances, but the Court of Appeals decision does not constitute either obvious or probable error or such a departure from accepted practice as to call for exercise of this court’s revisory jurisdiction. RAP 13.5(b). Accordingly, the motion for discretionary review is denied.


COMMISSIONER

March 31, 2010

No. 65052-1-I

COURT OF APPEALS,
DIVISION I,
OF THE STATE OF WASHINGTON

WOODINVILLE ASSOCIATES, LLC, a Washington
limited liability company,

Plaintiff-Appellant,

v.

CITY OF WOODINVILLE, a Washington municipal
corporation,

Defendant-Respondent.

DECLARATION OF SERVICE

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ORIGINAL

N. Kay Richards hereby makes the following declaration: I am now and was at all times material hereto over the age of 18 years. I am not a party to the above-entitled action and am competent to be a witness herein. I certify that on May 26, 2010, I messengered a copy of RESPONDENT'S MOTION ON THE MERITS TO AFFIRM DECISION BELOW, and this DECLARATION OF SERVICE to the following counsel:

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

5/26/10 Seattle, WA
Date and Place

N. Kay Richards
N. Kay Richards