

Faulk, Camilla

From: Jerry Kimball [jkimballaw@seanet.com]
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To: Faulk, Camilla
Subject: FLCR

Ms. Faulk:

The committee comments indicate an intent not to change substantive law. Certain proposals do just. FLCR 16 (d) lumps together marital actions and non-marital actions inappropriately. Dissolution, legal separation and invalidity arise by statute. Meretricious relationships and remedies available on cessation of that relationship arise from case law. The Supreme Court made that clear in *Francisco v. Connell*. RCW 26.09.060 governs entry of a restraining order in the statutory actions and requires notice or a reason for lack of notice and **hearing**. An evidentiary basis (declaration) is required for the request to be considered. This is the statutory law written by the legislature that the automatic restraining order contemplated by the rule violates. If this change is desirable, the legislative action necessary to make the change should be sought.

In a non-statutory action a temporary restraining order is subject the CR 65 requirement that actual irreparable harm be shown as probable.

A temporary restraining order may be granted without written or oral notice to the adverse party or his attorney only if (1) it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or his attorney can be heard in opposition, and (2) the applicants attorney certifies to the court in writing the efforts, if any, which have been made to give the notice and the reasons supporting his claim that notice should not be required.

How the automatic entry of a restraining order in the proposed FLCR squares with CR 65 is an issue that needs to be more fully addressed. Incidents of the non-statutory action are so disparate from a statutory action to resolve a statutorily authorized relationship that they should not be lumped together. A dissolution dissolves an existing marriage. A meretricious relationship action first establishes a relationship exists or does not exist and if one does, provides a far more limited scope of relief (division only of jointly owned property, no spousal support and no maintenance as opposed to division of all property, maintenance and attorney fees). The effect of the proposed rule would be to automatically restrict a person's right to alienate any of his or her property without a hearing, without a showing of any right in the property by the opposing party (or even a desire that restraints exist). Adopting such a rule has serious due process implications.

While it may feel expedient to automatically lump all actions involving persons who have had a relationship, statutory or not, together in a set of rules, the fact is they are highly different actions, possibly more dissimilar than similar.

These rules need substantial revision before implementation.

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