Tracy, Mary

From: OFFICE RECEPTIONIST, CLERK
Sent: Thursday, January 05, 2017 2:36 PM
To: Tracy, Mary
Subject: FW: Opposition from attorney Michael Sheehan to proposed rule change to GR 30 ("Electronic Filing and Service")

Forwarding.

From: Mike Sheehan [mailto:michaeldsheehan@hotmail.com]
Sent: Thursday, January 05, 2017 2:26 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Opposition from attorney Michael Sheehan to proposed rule change to GR 30 ("Electronic Filing and Service")

Esteemed members of the Court:

I object to the proposal to strike the phrase "only by agreement" from the language of General Rule 30. Permitting plaintiffs and prosecuting attorneys to serve me electronically will create an incentive for plaintiffs and prosecuting attorneys to wait until the last minute before serving me with discovery and other items to which I am entitled by law.

Like attorney Dan Samas, who earlier posted a comment on this site, I represent clients who receive speeding and traffic tickets. I can confirm the accuracy of Mr. Samas's comment. As Mr. Samas wrote: According to the Infraction Rules for Limited Jurisdiction, discovery may be served by the prosecutor until one day before the hearing unless prejudice can be shown (which is extremely difficult to do). Both my peers and I have had situations where we can have more than 40 infraction cases scheduled on a single day. If the rule change is implemented, discovery for 40+ cases can be emailed or faxed to defense counsel without consent on the day (even in the afternoon or evening) before the hearing. If "only by agreement is eliminated" the prosecution can argue that they complied with both GR 30 and the discovery rule under IRLJ 3.1(b) . If defense counsel did not have adequate time to prepare, he or she either would have to show prejudice for 40+ clients or request a continuance which the judge may not grant. Even if defense is allowed to continue in this scenario, this would be contrary to IRLJ 1.1(b) Purpose. These rules (referring to the infraction rules) shall be construed to secure the just, speedy, and inexpensive determination of every infraction case.

Under this scenario, defense counsel may be unwillingly put in a situation where they do not have enough time to provide competent representation for their clients. This ultimately could lead to the attorney being reprimanded or even disbarred if things go wrong as a result of the proposed rule change. Equally or even more important, this could deny the defendant's access to justice where the attorney is put in a situation where they do not have adequate time to prepare the best defense for their client.

Moreover, electronic service is not a reliable of service. Emails are often blocked or sent to junk-mail (spam) folders by email-program filters. The sender does not know whether or not the email ended up in the recipient's "In Box" or in a junk-mail folder. In addition, the sender will have little or no incentive to check to see if the recipient is still using the same email address as in the past. What if the recipient wants to open and rely upon a new email address? How many "In Box"'s would a recipient be responsible for checking on a daily or weekly basis? In this, an "electronic" address is very different from a physical or mailing address. Electronic addresses are, and should remain, more transient that a physical or mailing address. Potential recipients should not be forced to monitor old email address(es) due to the possibility and/or likelihood that a sender will attempt to serve the recipient electronically. Email service would thus be cumbersome and unreliable, in my opinion.

Thank you for your time and consideration of this comment.

Regards,

Michael Sheehan, WSBA #27357