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Subject: FW: Proposed changes to CR 71 and withdrawal of attorneys
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From: Elizabeth Thompson [mailto:ethompson@elizabeththompsonlaw.com]
Sent: Friday, April 23, 2021 10:18 AM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Proposed changes to CR 71 and withdrawal of attorneys

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Good morning:

I am writing, as a member of the Washington State Bar Association and an officer of the Court in Washington State for 23 years, to oppose the proposed amendments to Civil Rule 71 and the Rules for Enforcement of Lawyer Conduct (the ELCs).

Recently I established my solo practice, after practicing with firms in private practice for more than 20 years. One of the reasons I decided to do so was to have the flexibility to keep my billing rate as low as possible and be able to work with clients cooperatively, in terms of payment of my fees. This allows me to continue working on a case, even if the client cannot pay at the time. Most of the time, my experience with clients has been rewarding and gratifying. However, there are occasions when the relationship can become difficult, to the point where continued representation by the attorney is actually counterproductive to the client. This may happen for many reasons; however, often the most prudent thing is for the attorney to withdraw and allow the client to seek more suitable representation.

The proposed Amendment would make it more challenging for attorneys to withdraw during certain periods. I think one of the unintended consequences will be that, in an abundance of caution, attorneys who are on the fence about representation may withdraw ahead of the new restrictions, whereas they might not otherwise. The result is likely to be clients facing the need to secure representation three months before trial, which is challenging in the best of situations. In my experience, attorneys try to continue with a client as long as feasible. When they decide to withdraw, there are usually circumstances that make the withdrawal not only necessary, but in the best interests of the client. Forcing an attorney to participate in a hearing prior to a withdrawal only makes it more difficult. Generally, an attorney is not at liberty to disclose the nature of the relationship or communications with the client that resulted in the decision, due to the attorney-client privilege. The attorney will be significantly handicapped during a hearing, in terms of revealing the reasons or need for withdrawal.

Not allowing withdrawals during a trial makes abundant sense. However, three months before a trial (which trial date is often moved or continued) will only hurt clients in the long run. It never serves a client (or attorney) to be forced to move forward when the relationship between attorney and client is strained or subject to trust issues. The best people to determine whether a client-attorney relationship should continue are the attorney and the client, ultimately. It is a very personal relationship – the State should limit its involvement with the decision to only what is absolutely necessary.

I hope the Court will think carefully and review and consider the comments by experienced attorneys before taking this step. Thank you.

With regard,

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SPECIAL NOTICE REGARDING OPERATIONS AND COVID-19:

We see our community as working together to address this grave health challenge. Our hearts go out to those who have been directly impacted, or are weighted by concerns for themselves and their family members. We adhere to the belief that voluntarily respecting the goal of absolute minimal contact is the prudent and compassionate course.

Per governmental order and the practice of the courts, most activities involved in our general practice are limited to those that can be performed virtually without in-person contact. The nature of our practice lends itself well to virtual operation. Our firm has always offered a wide range of virtual options and we will be both using our existing systems and exploring new ones in the continual effort to best serve our clients. We are instituting these protocols for your safety and that of your family, and our greater community.

For those with court actions, at this time the courts are operating under significant restrictions. We anticipate that all proceedings we are involved in will be done telephonically or some other virtual method. To accommodate their limited operations the courts have temporarily suspended any non-emergency hearings. That does not mean that we cannot further your case, including the ability to continue activity outside court appearances. We will advise you as we go as to how these would impact any particular action. We will help you best plot the course of your matter in the current alternate reality.

As an example, in line with our goals of helping clients towards a cooperative resolution as the ultimate positive outcome to any dispute wherever possible, we have been in touch with mediators who provide expanded virtual services so that the process of exploring resolution can continue. We see this as an opportunity to help our clients (and indeed, society) reflect and seek resolution while the usual course of litigation pauses. Particularly in this time, we encourage you to consider this: resolving the disputes that we can control will inevitably help heal the impact of those challenges we cannot. That does not mean we will forgo court action

when helpful or necessary to a case; but resolution always remains an option and there are the tools to help you towards that end.

For our small business clients, feel free to explore with us some alternative approaches to your services that enable you to respond to the current needs and limitations. We are not business development advisers, but as a fellow small business are happy to support this community in any way we can, including the sharing of ideas.

We are here to support you.