KATHRYN JENKINS
ATTORNEY AT LAW

April 20, 2021

VIA ELECTRONIC MAIL

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

Re: Comment on proposed amendment to Civil Rule 71

Dear Clerk of the Court;

As a member of the Domestic Relations Attorneys of Washington (D.R.A.W.) and after review and consideration, I am writing to express my opposition to PORTIONS OF the proposed Amendments to Civil Rule 71 ("Amendment") as follows :

I have eight concerns with the proposed Amendment:

First, the Amendment could result in unnecessary fees by adding a new layer of bureaucracy to the Withdrawal process. For instance, the proposal builds in the additional step of "further proceedings" (proposed amended section 4), thus creating the situation where a court could conceivably order - sua sponte - a hearing. Further, the Amendment permits a court - again sua sponte - to decide to deny the request for Withdrawal. Thus, the decision-maker could improperly stand in the shoes of a party.

Second, the Amendment does not seem to contemplate occasions when a Client ends the attorney- client relationship. In such cases, the Amendment could result in court interference in confidential matters. The court does not know what conversations have occurred or if the attorney and client are estranged. Yet, the client would have contemplated the consequences of his decision when ending the relationship.

Third, pursuant to the current rules, a remedy to improper Withdrawal already exists. The client receives notice of an intended Withdrawal, presumably before anyone else. Any party may object to the withdrawal, which protects the rights of all involved. The current remedy is appropriate and works well.

Fourth, an attorney withdrawing incident to RPC 1.7 is generally restrained from saying why the attorney is withdrawing. Even mentioning "RPC 1.7" during Withdrawal may be an impermissible disclosure of a "confidence." This is particularly true when an attorney "must withdraw." The benevolent intentions of the Amendment could be thwarted if the Court is prejudiced by the airing

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of inadmissible "dirty linens" or "bad acts." In sum, CR 71 should not be allowed to conflict with RPC 1.7.

Fifth, there are both Constitutional and Due Process concerns. (U.S. Const. Am XIII, U.S.Const. Am XIV) Any rule that requires compulsory work without consent or compensation will run afoul of prohibitions against involuntary servitude. Likewise, there are potential Due Process concerns.

Sixth, the Amendment triggers significant economic problems, particularly for small or solo practitioners. Many such Practitioner's incomes fluctuate month-to-month. If an attorney is "compelled" to take a case to trial without pay, the attorney's income for that month may be zero (given the consuming nature of trial litigation - prep-time, briefing, pre-trial hearing, pretrial motions, trial time, and drafting orders). A $0.00 income in a month can result in inability to pay staff, inability to pay bills, impaired credit, and so on. The court should not have the ability to do this because it will only further dwindle the number of attorneys willing to work with lower income clients.

Seventh, other options are better tailored to reducing costs of litigation. Namely, sanctions for bad faith, frivolous motions, and discovery abuses could reduce the cost of litigation more than the proposed Amendment. In particular, I support sanctions where there is intransigence. Courts can also use reasonable fee awards as allowed by statute, court rule, or case law, to discourage litigiousness. Use of fee awards, sanctions, or both, will reduce the number of clients driven to poverty by a litigious opponent. In turn, clients who are not financially broken will continue to retain counsel, who will not be forced to withdraw. Litigants who learn that abusive tactics will not work are more likely to settle, which will reduce judicial caseloads.

Eighth, each county adopts deadlines by which mediation is to occur. I am concerned that if attorneys are induced to withdraw before the 90-day date. any mediations scheduled less than 90 days before trial are less likely to settle. As a result, more cases would go to trial, not less. This frustrates the very intent that the sponsors seek to avoid.

That said, I do agree with the proposed pattern form and the requirement to provide a link to Court Rules and copy of Case Scheduling Order to the Party and a courtesy copy of the Withdrawal to the assigned judge 's department.

Yours very truly,

KATHRYN JENKINS

From: OFFICE RECEPTIONIST, CLERK
To: Linford, Tera
Subject: FW: Amendment to CR 71
Date: Tuesday, April 20, 2021 9:20:44 AM
Attachments: Ltr CR71 signed-signed.pdf

From: Kathryn Jenkins [mailto:kjenkins@kjenkinslaw.com]
Sent: Tuesday, April 20, 2021 9:12 AM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Amendment to CR 71

Please see attached letter.

Regards,

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COVID-19 STATUS. Our office is open during the COVID-19 outbreak, but Susan and I will be working remote. The health and well-being of our clients, staff, colleagues, and community are a top priority for us. Responses to emails and telephone messages may be impacted. We will make every effort to provide timely responses to all phone calls, voicemails, and emails. Our office phone number is (206) 679-4935. However, email is the preferred method of communication. During the Phase 3 period please make any deliveries electronically if possible. Otherwise, please provide notice If you are planning a hand delivery to our offices (via messenger or otherwise) so that we may make appropriate arrangements.

Office Hours - Monday through Thursday - 9:00 a.m. until 5:00 p.m. We are out on Fridays.