**From:** OFFICE RECEPTIONIST, CLERK
**To:** Linford, Tera
**Subject:** FW: Proposed CR 71 Amendment
**Date:** Monday, April 19, 2021 8:22:20 AM

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-----Original Message-----
From: Mark A. Morenz-Harbinger [mailto:mark@harbingerandassociates.com]
Sent: Sunday, April 18, 2021 3:53 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Proposed CR 71 Amendment



Dear Justices,

I write to respond to the proposed amendment to Civil Rule 71.

Most withdrawals from Family Law cases, in my experience (100s of cases, 1000s of consultations--across 18 counties in three different states), are from a lack of cooperation from the client. RPC 1.16(b)(6). The smaller proportion is due to non-payment. RPC 1.16(b)(5). I personally have never had an objection to a withdrawal. But, the current rules certainly do provide for clients to object if they feel that the withdrawal is improper. And, indeed, current rules also provide for judicial intervention if it is deemed to be necessary.

I also believe the imposition of a state-wide time-frame for additional steps/procedures in an attorney withdrawal will have varied and disparate negative effects for both parties and attorneys. Therefore, based on my experience, I would oppose this rule change.

First, in any jurisdiction, clients often make noise as though they want to settle...right up until they decide not to. In those instances, counsel who took on the case in a 'low bono' stance, being brought on for the purpose of reaching settlement, cannot ethically drop out, until the client reveals their lack of cooperation. Similarly, clients in the normal process of litigation even sometimes drop off and stop cooperating later in the process. Or, conversely, the opposite is also
true: hell-bent clients who are quite cooperative finally, and quite suddenly, decide to reach agreement. This happens often at the Courthouse steps, under the strong advice of counsel, the very day of trial or soon before. All of these scenarios require that the practitioner can read and respond to the situation as it exists in the moment. The proposed rule change implements a 'Sword of Damocles' that will shade (or preclude) many such professional judgments.

Also, this will run afoul of clients and their counsel being able to forecast their legal costs based on local rules/procedures: King County barely has a three months window after the adequate cause hearing to a trial for a modification on a parenting plan. Another county, for example, has mandatory settlement conferences for DR cases and its local rules mandate a trial date no later than 120 days after the conference.
So, when there is no settlement, this now gives a client less than 30 days to now come up with an additional retainer typically many times larger than what they have paid to get to that stage, and, then, upon failing that, for the attorney to withdraw based on that. Knowing all of this will actually prejudice parties with attorneys. This is because they will feel disproportionate pressure to settle, whereas pro se litigants have no such compunctions. While this dynamic already exists…the proposed change exacerbates that. Plus, clever clients might intuit that they can try to "object" their way to free counsel.

But, for the most part, I would predict 3 things in response to this change: that more attorneys will limit their engagements in such a fashion so as to not risk bumping up against the 90-day window at all; that far fewer practitioners will end up going to trial; and, consequently, that far fewer people will have practical access to counsel at trial.

If the Bench wants more entirely pro se' trials, it seems to me that this is an effective way to cause that. But, beyond that, it is unclear to me how these changes will accomplish the Bench's stated goals.

Thank you very much for your time and consideration.

Best,
_Mark

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