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THE ALLIANCE
for Equal Justice

MEMBER

January 26, 2023

Honorable Charles W. Johnson, Chair

Honorable Mary I. Yu, Chair

Supreme Court Rules Committee

Temple of Justice

P.O. Box 40929

Olympia, WA 98504-0929

Sent via email to supreme@courts.wa.gov

Re: Proposed Superior Court Special Proceedings Rule 98.24W

Dear Justice Johnson and Justice Yu:

I write to express the Access to Justice Board's support of SPR 98.24W related to appointment of counsel in unlawful detainer actions.

In 2021, the Washington State Legislature passed SB 5160 and became the first state in the nation to pass a law granting the right to an attorney to tenants facing eviction. Codified under RCW 59.18.640, the law creates a civil *Gideon* for those at risk of losing their housing. The swift implementation of the law marked a tremendous expansion of access to justice in the civil legal system by entitling low-income renters facing eviction the right to representation through appointed counsel. Although a statutory right to appointed counsel is a huge step in and of itself to improve equity in the legal system, the statute alone does not confer the fair and consistent application of the law across the state.

As we strive to build equitable access to the judicial system, we must consider how people become involved in the process and what happens when they get there. SPR 98.24W puts forth reasonable safeguards to ensure that those who are seeking legal representation are able to exercise their statutory right regardless of what jurisdiction they reside in and how their court operations are handled.

The scope of statewide right to counsel makes Supreme Court intervention appropriate and necessary. In Washington, thirty seven percent of residents are renters and twenty one percent of those rental households are considered "severely burdened," meaning that they spend more than half of their income on housing costs.¹ In 2017, there were 17,551 filed eviction cases in Washington State.² As stated on the GR 9 cover sheet for SPR 98.24W, the limited data available that compares race of tenants with those

¹ *Congressional District Housing Profile*, National Low Income Housing Coalition, <https://nlihc.org/sites/default/files/Housing-Profiles/Congressional-District-Housing-Profile-WA.pdf>, last accessed January 26, 2023.

² Thomas, Toomet, Kennedy, and Ramiller, *The State of Evictions: Results from the University of Washington Evictions Project*, <https://evictionresearch.net/washington/index.html>, last accessed January 26, 2023.

who experience eviction shows that evictions, and the consequent loss of housing, disproportionately impact non-white members of our community.³

The comments put forth by the Superior Court Judges' Association are disheartening to those of us who strive to transform our "legal system" into a true "justice system." The proposed rule does not abrogate the rights of plaintiffs in unlawful detainer actions and the framework it lays out only seeks to create uniform processes for each court to follow so that tenants, regardless of jurisdiction, have an equal opportunity to obtain representation. To the extent that the proposed rule mandates appointment of counsel before an action can proceed, the ATJ Board would support any modifications to the proposed rule that better harmonize the mandate for appointment with RCW 59.18.640. The Board would also support revisions that adds a notice provision to the automatic order to stay proposed in Section 2; the ultimate goal of the proposed order is to build consistency and uniformity in the unlawful detainer process. Thus, it makes sense that the process of obtaining a stay of a writ of restitution would track with the existing guidelines under the Residential Landlord Tenant Act. Other concerns cited by the SCJA, such as the 14-day return period, could also be resolved with minor modifications to the proposal that this Board would support. **For these and other concerns posed by the SCJA, the ATJ Board requests an extension of the public comment period so the proponents of the rule may work with the SCJA to discuss further and try to reach a more mutually agreeable resolution.**

The right to appointed counsel in eviction cases is new and courts, legal providers, landlord representatives, and countless other stakeholders have been diligently working to build a sustainable system to implement this new law. Because of the enormous change that this law represents, changes in how eviction cases are handled is inevitable but creating a baseline level of uniformity through the adoption of this court rule benefits courts, tenants, and counsel for both parties by establishing standard guidelines for unlawful detainer actions.

In its 2020 [Letter to Members of the Judiciary and the Legal Community](#), this Court recognized how pervasive systemic inequity continues to manifest itself through legal processes, and the responsibility of the legal profession to address these harms. One year into Washington's law mandating appointed counsel for indigent tenants, we ask the Court to support a rule that builds an administrative infrastructure into this groundbreaking program that changes court operations in a way that better effectuates a tenant's ability to exercise their statutory right to appointed counsel.

Sincerely,



Terry Price, Chair
Access to Justice Board

³ See *id.*

Page 3

Cc: Terra Nevitt, Executive Director, Washington State Bar Association

From: [OFFICE RECEPTIONIST, CLERK](#)
To: [Martinez, Jacquelynn](#)
Subject: FW: Access to Justice Board Comment Regarding Proposed Superior Court Special Proceedings Rule 98.24W
Date: Thursday, January 26, 2023 4:15:22 PM
Attachments: [image001.png](#)
[2023.1.26.ATJ Board Comment.Rule 98.24W.pdf](#)

From: Bonnie Sterken <bonnies@wsba.org>
Sent: Thursday, January 26, 2023 3:27 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Cc: Terry J. Price <tprice@uw.edu>; Michelle Lucas <michelle.lucas@nwjustice.org>; Terra Nevitt <terran@wsba.org>; Diana Singleton <dianas@wsba.org>
Subject: Access to Justice Board Comment Regarding Proposed Superior Court Special Proceedings Rule 98.24W

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Good afternoon,

Attached, please find a comment from the Access to Justice Board regarding the proposed Superior Court Special Proceedings Rule 98.24W.

Thank you,



Bonnie Middleton Sterken | Equity and Justice Specialist
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