Roger K. Garrison
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Garrison Law Office, P.S.

516 South Seventh St. / P.O. Box 269
Sunnyside, WA 98944
Telephone (509) 837-2433
FAX (509) 837-8326
lawoffice@garrisonlawps.net

Douglas K. Garrison
Attorney at Law

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Justices of The
Washington Supreme Court
supreme@courts.wa.gov

Dear Justices of The Supreme Court:

The proposed rule creating a "right" to Counsel in unlawful detainer cases is misguided, unnecessary and by enacting such a rule circumvents the law-making process that is wholly the province of the State Legislature.

Additionally, such a rule requires the Judicial branch of Government to cross over into an executive function and make essentially, executive decisions.

Judges make daily decisions on matters of indigency in cases in which the result is the potential loss of liberty for an accused person. Such is as it should be as an unrepresented defendant in a criminal case stands no chance against the power of the State in a criminal prosecution. Such practice is woven into the fabric of the legal system dating back to the inception of the Constitution of the United States and occasionally articulated in such cases as Gideon V Wainright, and its progeny.

Proponents of this new rule created it as a response to the Covid-19 Pandemic, which resulted in mass economic disruption and the loss of employment to some persons. Loss of employment potentially leads to a loss of housing. Such is the very nature of life. It is a powerful temptation to let emotion turn into overreach. The Pandemic has receded and now appears to be on the wane and on its way to full control and eradication. Thus the "emergency" if it ever existed in the first place, is over.

The adoption of the proposed rule grants the power of the State, with its unlimited resources, to oppose property owners who frequently are retired, elderly, or of small means, who use rentals and leases as a source of supplemental income. They seldom can afford private counsel. They frequently appear pro se and are usually dismissed and excoriated by frustrated and impatient

judicial officers, who view them as vexations, when they are simply trying to get rid of miscreants and nonpaying holdovers.

The rule, even as it exists now has been perverted form its original inception and used as an unjustified haven for drug addicted miscreants destroying property and cause untold havoc, the majority of which is invisible to the Courts. To now provide taxpayer funds for lengthy court battles to ensure nonpaying tenants, most of whom were never employed in the first place, the means to continue their activities, is unjustified.

Compassion is warranted to those honest, gainfully employed people who have lost employment as a direct and continuing result of a health crisis. The proposed rule eradicates judicial discretion, assuming any existed in the first place, by using such language as "The court *must*" rather than the traditional long-standing language of "may" or "shall" that permeates our laws.

Proponents cite a 2017 "study" by the University of Washington. It is questionable how a 2017 "study" serves as justification for maintaining an army of publicly funded lawyers to aid in the consequences of a pandemic, when no one on the planet ever heard of Covid-19 prior to 2019. Diligent search of the cited "research" reveals no peer reviewed validation of the "study." The "study" when it can be located seems to center its focus on Counties West of the Cascades. Proponents of this rule cite 11 advocacy groups from 11 Counties, with no apparent input from the other 28 counties, despite obscure notice given to a minority of the legal community which already itself is a minority.

The issue must be taken with proponent's assertion that: "Unaware of their right to counsel and only seek assistance after the entry of a default judgment or the entry of a writ of restitution. Tenants often lose their homes because they do not understand the legal process they are involved in and are unaware of their right to representation. Tenants often do not understand their legal situation until they are served by law enforcement with a writ of restitution telling them they will be physically removed from their home." This is wholly untrue. The process requires a notice to quit or pay rent, a summons informing them of the consequences of not responding, the suggestion that they seek legal advice, and a complaint detailing the defalcation, and notice of hearing. To suggest in a highly patriarchal manner that adult citizens require essentially legal day care to maintain society in good order, should be discouraged, not institutionalized. I also note the near subliminal insertion into the proponents statement the foredrawn conclusion of a "right to counsel" in civil matters. No such right exists in the Federal or State Constitution outside the context of criminal law and procedure.

In that same vein, lawyers attending court sessions and soliciting claims against property owners, and hence against the taxpayers, who ultimately foot the bill should also be discouraged. Such antics which regularly occur, curiously lend themselves to their continued employment at taxpayer expense.

It cannot go entirely unnoticed that the overall carom of the proposed rule has at its core an anti-personal property tone. The ownership of personal property seems to be in some manner undesirable and therefore public policy, through expenditure of taxpayer funds, should be opposed.

Without any changes to RCW 59.18, the task of removing nonpaying holdover persons from living quarters is daunting, expensive and fraught with peril under the best of circumstances. Such mundane occurrences such as a Sherriff knocking on the wrong door, or a refusal to travel in inclement weather, or serve a friend or relative, can bring 250 years of jurisprudence to its knees with the property owner footing the bill.

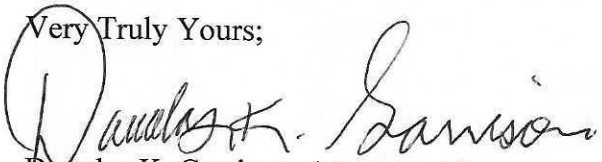
There are several sections of the proposed rule that cannot be reconciled with RCW 59.18 otherwise known as the Residential Landlord-Tenant Act. Section 1 of the proposed rule conflicts with RCW 59.18.640, which states, "Subject to the availability of amounts appropriated for this specific purpose, the court must appoint an attorney for an indigent tenant in an unlawful detainer proceeding under this chapter and chapters 59.12 and 59.20 RCW. Contrary to this, SPR 98.24W simply states the appointment is mandatory. Where funds are available, courts are already appointing attorneys pursuant to the law. In jurisdictions where funds are not available, implementation of SPR 98.24W would be ineffective and court orders could not be meaningful.

I also note that the ability of a pro-se defendant to be able to stay a Writ of Restitution without notice to anyone is beyond the proper scope of the judiciary. Any such grant of power should be brought through the State Legislature, using the legislative process, rather than granting such power to the Judicial branch through a Court Rule.

Forcing courts to expend publics funds, a legislative function, through the adoption of a court rule, without debate, review, and an opportunity to vote on such an expenditure circumvents the legislature's preeminence and proper role.

Any such sweeping change and grant of power and expenditure of funds which is wholly the province of the State Legislature should not be accomplished as an incognito Judicial fiat. I urge the Court to not adopt this rule, and further repeal to the extent that can be done the current status, which no longer has any foundation or justification to remain.

Very Truly Yours;



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