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December 5, 2022

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](mailto:supreme@courts.wa.gov)

Dear Justice Johnson and Justice Yu:

Re: Proposed new Superior Court Special Proceedings Rule 98.24W

On behalf of the Superior Court Judges' Association (SCJA), I thank you for the opportunity to review and provide comments on proposed new Superior Court Special Proceedings Rule (SPR) 98.24W. This rule contemplates specific actions from superior courts in unlawful detainer proceedings. The SCJA appreciates the intention behind the rule to ensure access to justice. Indeed, SCJA has worked closely with stakeholders to stand up and support the Eviction Resolution Pilot Program (ERPP) over the past two years, which has successfully been diverting unlawful detainer cases based on nonpayment of rent away from the courts and toward amiable resolution.

The ERPP Judicial Leadership Team and SCJA Civil Law and Rules Committee have both reviewed the proposed rule and GR 9 cover sheet, and arrived at the same conclusion. In the experience of judicial officers implementing unlawful detainer proceedings, the challenges described by the proponents of the rule are not found to be significant, and the SCJA does not believe a new rule is necessary and does not support its adoption. As written, SPR 98.24W creates conflict with existing law, removes judicial discretion to address the individualized needs of tenants and landlords, and creates substantive policy that is most appropriately addressed by the Legislature.

### Conflict with Existing Law and Legal Protections

There are several sections in SPR 98.24W that conflict with the plain language of Chapter 59.18 RCW, otherwise known as the Residential Landlord-Tenant Act. Section 1 of the proposed rule is in conflict 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 [emphasis added].*" 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 result in the entry of court orders that court not be enforced. Additionally, the mandatory ten day stay period contemplated by the proposed rule is outside the

existing provisions for the appointment of counsel process outlined in RCW 59.18.640. Any guidance specific to the process of appointing lawyers for indigent tenants should be made in coordination with the Legislature.

SPR 98.24W also creates significant due process concerns. Section 2 allows a tenant to make an *ex parte* motion to stay a writ of restitution without requiring notice. It is silent on requirements of the Residential Landlord-Tenant Act and existing case law on notice to the landlord, the landlord's attorney, or the law enforcement charged with enforcing the original writ. As a consequence, the landlord has no opportunity to be heard on the issue of the stay and law enforcement may enforce the writ before being advised of the stay.

### Judicial Discretion

SPR 98.24W removes all opportunities for judicial discretion currently afforded by the law, including those instances in which relief should be appropriately tailored to the relevant case circumstances. For example, Section 1(d) sets a mandatory continuance of fourteen days. The courts are given no discretion to order a continuance for any other length of time. In counties with large unlawful detainer caseloads, the court is able to set a return hearing within seven days. In courts such as these, continuing the hearing for fourteen days is not only unnecessary, it may be prejudicial to landlords seeking relief pursuant to the law. This section also does not recognize local court authority to promulgate rules to ensure the orderly conduct of the proceedings before them (see RCW 2.28.010).

RCW 59.18.410(3) and (4) provides the factors judicial officers can use in making the discretionary decision to stay a writ of restitution. As written, Section 2 of SPR 98.24W removes all judicial discretion to craft a remedy fitting the individual circumstances of the case, and advances requirements not found in the law. Without this discretion, courts will not be able to make allowances in cases where the record indicates there is no substantive basis to oppose the action, such as proper notice under RCW 59.18.650 for selling the property. Nor does this section recognize local court rules currently in place regarding emergency motions and presentation of *ex parte* matters, and may be in direct conflict with those rules.

### Role of the Courts

Finally, Section 3 appears to contemplate a role for the courts in screening tenants for indigency criteria. These screenings are conducted by the agencies assigned in each jurisdiction to provide indigent representation. In many counties, these agencies are not able to assist the tenant within ten days, and the proposed rule does not adequately address next steps.

The SCJA is keenly aware of the challenges facing unrepresented litigants. In fact, increasing access to justice for litigants without legal representation has been a major priority under my leadership as SCJA President, and I serve as Chair of the SCJA Unrepresented Litigant Ad Hoc Workgroup. While we appreciate the position of those advancing this proposed rule, the state court rules are not the appropriate venue to advance policy objectives to supersede the Residential Landlord Tenant Act and existing case law.

December 5, 2022

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The SCJA respectfully asks the Court not to adopt the proposed rule SPR 98.24W. We will provide additional feedback during the public comment process.

Sincerely,

A handwritten signature in blue ink that reads "Jennifer Forbes". The signature is written in a cursive, flowing style.

Judge Jennifer Forbes, President  
Superior Court Judges' Association

cc: SCJA Board of Trustees  
Ms. Allison Lee Muller

**From:** [Linford, Tera](#)  
**To:** [Martinez, Jacquelynn](#)  
**Cc:** [Tracy, Mary](#)  
**Subject:** FW: Public Comment to SPR 98.24W  
**Date:** Monday, December 5, 2022 9:59:07 AM  
**Attachments:** [SCJA Public Comment to SPR 98.24W.pdf](#)

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**From:** OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>  
**Sent:** Monday, December 5, 2022 9:56 AM  
**To:** Linford, Tera <Tera.Linford@courts.wa.gov>  
**Subject:** FW: Public Comment to SPR 98.24W

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**From:** Valdez, Andrea <[Andrea.Valdez@courts.wa.gov](mailto:Andrea.Valdez@courts.wa.gov)>  
**Sent:** Monday, December 5, 2022 9:51 AM  
**To:** OFFICE RECEPTIONIST, CLERK <[SUPREME@COURTS.WA.GOV](mailto:SUPREME@COURTS.WA.GOV)>  
**Cc:** 'Jennifer Forbes' <[jforbes@kitsap.gov](mailto:jforbes@kitsap.gov)>; Lee Muller, Allison <[Allison.LeeMuller@courts.wa.gov](mailto:Allison.LeeMuller@courts.wa.gov)>  
**Subject:** Public Comment to SPR 98.24W

Good morning,

On behalf of the Superior Court Judges' Association, I respectfully submit the attached public comment to SPR 98.24W. Please contact Judge Jennifer Forbes if you have any questions.

Thank you,

Andrea Valdez, MPA (she/her/hers)  
Senior Policy Analyst  
Superior Court Judges' Association  
Administrative Office of the Courts  
[Andrea.valdez@courts.wa.gov](mailto:Andrea.valdez@courts.wa.gov)