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César E. Torres
Executive Director

Northwest Justice Project

August 30, 2023

Honorable Charles W. Johnson, Co-Chair
Honorable Mary I. Yu, Co-Chair
Supreme Court Rules Committee
Temple of Justice
Sent via email to supreme@courts.wa.gov

Re: Support for proposed new Superior Court Special Proceedings Rule 98.24W

Dear Justice Yu and Justice Johnson,

Since Washington's groundbreaking right to counsel law was enacted in 2021, Northwest Justice Project has represented thousands of tenants in eviction proceedings across the state. Our attorneys are assigned if a tenant who asks for an attorney goes through a screening process and qualifies, and only if a tenant has already received an eviction summons.

This Court has recognized that landlords in Washington have the "upper hand, which is especially strong in times of housing shortages." *Silver v. Rudeen Mgmt. Co.*, 197 Wn.2d 535, 548, 484 P.3d 1251 (2021). Washington continues to suffer profound shortages of rental housing. *See* United States Census Bureau, *Quarterly Residential Vacancies and Homeownership, Second Quarter 2023* (national vacancy rates for rental housing computed at 6.3%)[1]; The Washington Center for Real Estate Research, *Rental Housing Market Data—Q2 2023* (data showing that, of 93 communities surveyed, only 10 had rental vacancy rates higher than the national average, and another 10 had vacancy rates lower than 2.5%).[2] The "upper hand" is especially strong when it comes to Black tenants in Washington, who are evicted at a rate *seven times* the rate of White tenants. Timothy A. Thomas, Ott Toomet, Ian Kennedy, and Alex Ramiller, *The State of*

[1] *Available at* https://www.census.gov/housing/hvs/current/index.html
[2] *Available at* https://wcrer.be.uw.edu/housing-market-data-toolkit/rental-market/

Evictions: Results from the University of Washington Evictions Project (published Jan. 6, 2020; data comparing eviction rates for Pierce and King Counties only).[3]

Part of the purpose of the Residential Landlord-Tenant Act, RCW 59.18, is to protect tenant interests susceptible to the landlord's upper hand. *Silver*, 197 Wn.2d at 548. When a tenant is not represented by counsel and the landlord is, the tenant is placed at a great disadvantage; the governing statutes can be complex and it takes a trained lawyer to spot defects in notice and process, and to advocate for a trial when there are disputed facts. To level the playing field in these proceedings, the legislature amended the RLTA in 2021 to add the right to counsel. RCW 59.18.640. Washington was the first state in the nation to pass appointed representation in eviction cases statewide.

But the right to counsel is not worth much to a tenant who does not know about it. Poverty correlates with rates of literacy proficiency. Many of our tenant clients have low literacy levels, suffer from mental or physical health conditions, face language barriers, or are impacted by the myriad of issues associated with living in poverty, such that their ability to retain information given to them on paper is minimal. Although the information on how to be screened for an attorney is included in the eviction summons, being served with legal paperwork is stressful and overwhelming, even for a person who does not face significant access barriers. Having a judicial officer tell these tenants in court that they have a right to counsel is essential to them having an opportunity to exercise that right. Most of the judicial officers in the state already do this; the rule would just make the practice uniform.

Further, often due to these same kinds of considerations, some of our clients do not request an attorney before the show cause hearing and do not appear at that hearing. These defaulting tenants are typically not given a second chance, and the court immediately issues a writ of restitution. Once that writ issues, the sheriff can—and in many counties, does—execute that writ within less than a week of the court order. At the point that the sheriff notifies the tenant of the writ, it is already an emergency for the tenant (and, of course, for all the individuals who live with the named tenant—frequently children).

In criminal law, it is well-established that an indigent individual has a right to be assisted by an attorney at every critical stage of the proceedings. Our

[3] *Available at* https://evictionresearch.net/washington/

Supreme Court in *State v. Heddrick* stated, "A critical stage is one 'in which a defendant's rights may be lost, defenses waived, privileges claimed or waived, or in which the outcome of the case is otherwise substantially affected.'" *State v. Heddrick,* 166 Wash.2d 898, 910, 215 P.3d 201 (2009). In the context of eviction cases, the Washington State Court of Appeals determined it was reversible error to proceed with an eviction matter without allowing an eligible tenant to be appointed an attorney. *Nichole Payton v. Samantha Nelson*, No. 38568-0-III, 2023 WL 21-2-00139-9, at *245 (Wash. Ct. App. Mar. 7, 2023), 525 P.3d 244.

In an unlawful detainer action, the show cause hearing is typically the most critical stage for an indigent tenant. For an indigent tenant, we must remember that the decision issued at a show cause hearing is beyond critical. It is life changing. Secure housing positively impacts all other facets of an individual's life. Unsecure housing has the opposite effect:

> "Having access to acceptable housing is not just a compelling interest on its own, but practically speaking, it is also necessary to secure other fundamental rights and interests. Access to employment, education, voting, health care, and most other public and private interests is greatly diminished, if not eliminated, when stable, suitable housing is unavailable."

Hundtofte v. Encarnacion, 181 Wn.2d 1, 23-24, 330 P.3d 168 (2014) (Gonzalez, J., dissenting).

Because the Residential Landlord-Tenant Act requires a trial court to appoint an attorney in an unlawful detainer action, it makes sense to implement a uniform, statewide process to ensure that indigent individuals receive meaningful assistance by an attorney before a trial court makes a critical decision at a show cause hearing. The proposed rule provides a common-sense approach that balances a trial court's need to protect its calendar with an indigent tenant's right to receive critical-stage advice from a well-informed attorney.

It has been the experience of our attorneys that different courts in different jurisdictions engage in differing levels of scrutiny of a landlord's request for a default writ of restitution. Some judicial officers carefully ensure that the plaintiff landlord has appropriately invoked the subject matter jurisdiction of the court through proper notice and service of process and has provided admissible evidence of a good cause to evict under RCW 59.18.650(2). But often our attorneys find that the landlord has not provided proper notice, or there is no admissible evidence supporting a writ in the record, and the court has issued the

writ regardless. Without an ability to contest these jurisdictional and evidentiary defects, the tenant risks losing their right to a home based on an order that was without basis in fact or in law.

The revised proposed rule advances the interest of tenants, who often suffer from disability and literacy disadvantages, in not being summarily evicted based on a failure to appear. The proposed rule also advances the interests of the court in achieving an accurate result. Default judgments are not favored under the law, *Griggs v. Averbeck Realty, Inc.*, 92 Wn.2d 576, 581, 599 P.2d 1289 (1979), and default writs of restitution, which have the effect of removing a person from their own home, should be even less favored than money judgments. The proposed rule at least gives defaulting tenants some time to work with counsel to see if the order was properly issued on the merits.

The revised proposed rule also adequately protects the landlord's property interests. The stay in sections 2 and 3 is not mandatory. Notice is required to be given to the landlord's attorney. That means that if a tenant was causing ongoing property damage, or safety risks for other tenants, for example, the landlord would have an opportunity to argue against a stay of the writ for those reasons.

Sincerely,

NORTHWEST JUSTICE PROJECT

Abigail Daquiz, Director of Advocacy

From: OFFICE RECEPTIONIST, CLERK
To: Martinez, Jacquelynn
Subject: FW: Northwest Justice Project comment regarding Proposed SPR 98.24W
Date: Wednesday, August 30, 2023 4:15:49 PM
Attachments: image001.png
2023-08-30 NJP Support for SPR 98.24W.pdf

From: Michelle Lucas <michelle.lucas@nwjustice.org>
Sent: Wednesday, August 30, 2023 4:05 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Cc: Abigail G. Daquiz <abigail.daquiz@nwjustice.org>; Tyler Graber <tylerg@nwjustice.org>; Carrie Graf <carrie.graf@nwjustice.org>
Subject: Northwest Justice Project comment regarding Proposed SPR 98.24W

Good afternoon:

Attached please find Northwest Justice Project's comment in support of proposed Supreme Court Rule 98.24W.

Michelle Lucas (she/her)
Managing Attorney | Eviction Prevention Unit
Northwest Justice Project
Phone | 206.670.9962

www.nwjustice.org | www.washingtonlawhelp.org

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