From: OFFICE RECEPTIONIST, CLERK
To: Martinez, Jacquelynn
Subject: FW: Comment to Proposed Changes to GR 3.2 and CR 59
Date: Tuesday, April 30, 2024 3:38:16 PM

From: Tim Feulner <tim@feulnerlawoffice.com>
Sent: Tuesday, April 30, 2024 3:24 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Comment to Proposed Changes to GR 3.2 and CR 59

External Email Warning! This email has originated from outside of the Washington State Courts Network. Do not click links or open attachments unless you recognize the sender, are expecting the email, and know the content is safe. If a link sends you to a website where you are asked to validate using your Account and Password, **DO NOT DO SO!** Instead, report the incident.

Below are comments regarding the proposed changes to GR 3.2 and CR 59:

The amendments to GR 3.2 and CR 59 should not be adopted and instead the Court should take a closer look at this issue prior to making any changes. The proposed rules would adjust the time for filing a motion for reconsideration for incarcerated individuals to 21 days. Undoubtedly, the time for filing motions for reconsideration in Washington is relatively short (10 days compared to longer periods in federal court). Presumably, this timeline is fairly short because motions for reconsideration are intended to be used judiciously and should not be filed as a matter of course. The purpose statement of the rule suggests that rule change is necessary because orders are allegedly not received by incarcerated individuals in a timely manner. According to the purpose statement, that means that a motion for reconsideration cannot be submitted in a timely manner. A party, however, is not required to have a copy of the court's order to file a motion for reconsideration. Presumably, the party has attended the hearing and heard the decision rendered by the superior court. That would generally be enough to draft an appropriate reconsideration motion. Reconsideration motions also are generally not an opportunity to raise new arguments or simply reiterate old arguments. Given that, it does not appear that the change is necessary to allow a meaningful chance at a meritorious motion for reconsideration. Additionally, a party does not have to file a motion for reconsideration to file an appeal of an issue. In my experience, the more common problem is an incarcerated litigant files a timely motion for reconsideration but fails to properly note the motion. Under current case law, this timely motion for reconsideration has the potential to toll the time for an appeal, potentially for an indefinite period. That results in unnecessary delay for the parties and cases lingering on superior court dockets. Of course, even without this change, incarcerated individuals will continue to benefit from the mailbox rule in GR 3.1.

At this point, the Court does not have sufficient information to decipher whether this rule solves an actual, systemic problem and what other impacts this issue may have on courts and other litigants. Beyond the purpose statement from one individual, there does not appear to be any evidence submitted about the mailing timelines for documents or the period required to mail a document. As the comments from the Civil Survival Project suggest, additional

information from impacted individuals could be useful prior to making such a change. Moreover, this change has the potential to have a significant impact on the opposing party. The rule would apply to every single motion for reconsideration, not just reconsideration of final decisions. This means that every single discovery or pre-trial order may take two months or more to resolve. That will slow down cases involving incarcerated individuals and will burden the opposing parties and the courts. Furthermore, it is important that all litigants be treated fairly and equitably. Incarcerated individuals already have a significant benefit in the mailbox rule contained in GR 3.1. Even assuming that the timelines provided in the purpose statement are accurate, the proposed rule would give incarcerated individuals more time than any other party to file motions for reconsideration. Ultimately, there is very little information about the impetus for the change provided. The only information comes from incarcerated individual, Robert Jesse Hill. Although a review of court dockets suggest that Mr. Hill is a frequent utilizer of the court system, the Court should study the matter further and gather more information from a broader perspective of stakeholders prior to adopting a change that has the potential to create significant delays in some cases. As part of this review, the Court could consider whether it makes sense to extend the deadline for motions for reconsideration for all litigants to 21 days.

Finally, one comment suggested that the Court should adopt a rule that allows courts to extend the timeline for motions for reconsideration for good cause. This proposal should not be adopted either at this point. To do so would require an amendment of CR 6(b) because that rule prohibits enlargement of the time for motions for reconsideration. There is no current proposal to amend CR 6. Moreover, as written, it would also create confusion in terms of whether a party would need to obtain that extension before the deadline or can also obtain the deadline after the fact. For final decisions, that might create a trap for the unwary if the party tries to file a motion for extension after the fact and is denied such an extension. That being said, such a proposal could be part of the broader discussion if the Court declines to adopt this amendment at this time and decides to look more closely at this issue over the next year.

Tim Feulner
Feulner Law Office, PLLC
360-615-2490
tim@feulnerlawoffice.com

This email may contain information that is privileged. If you have received this email in error, please notify me immediately and delete this message. Thank you for your cooperation in this matter.