THE SUPREME COURT OF WASHINGTON

IN THE MATTER OF THE SUGGESTED AMENDMENTS TO CR 12—DEFENSES AND OBJECTIONS

O R D E R

NO. 25700-A-1617

The Gender and Justice Commission, having recommended the suggested amendments to CR 12—Defenses and Objections, and the Court having approved the suggested amendments for publication;

Now, therefore, it is hereby

ORDERED:

(a) That pursuant to the provisions of GR 9(g), the suggested amendments as attached hereto are to be published for comment in the Washington Reports, Washington Register, Washington State Bar Association and Administrative Office of the Court's websites in January 2025.

(b) The purpose statement as required by GR 9(e) is published solely for the information of the Bench, Bar and other interested parties.

(c) Comments are to be submitted to the Clerk of the Supreme Court by either U.S. Mail or Internet E-Mail by no later than April 30, 2025. Comments may be sent to the following addresses: P.O. Box 40929, Olympia, Washington 98504-0929, or supreme@courts.wa.gov. Comments submitted by e-mail message must be limited to 1500 words.

DATED at Olympia, Washington this 5th day of December, 2024.

For the Court

González C.J.
CHIEF JUSTICE

GR 9 COVER SHEET

Suggested Amendment to the SUPERIOR COURT CIVIL RULES (CR)

CR 12: DEFENSES AND OBJECTIONS

Submitted by the Gender and Justice Commission

A. **Name of Proponent:** Gender and Justice Commission

B. **Spokesperson:** Elizabeth Hendren
elizabeth@svlawcenter.org

C. **Purpose:**

This request is based upon recommendations from the chapter authors of the 2021: How Gender and Race Affect Justice Now report.

Incarceration can have lifelong adverse consequences for incarcerated parents, their children, their loved ones, and their children's caregivers. Strict timelines, along with barriers to obtaining court documents, mandatory court forms, and access to legal advice and information, can lead to an inability to participate in court processes which results in negative consequences for incarcerated parents in family law cases, especially for mothers. Incarcerated mothers are significantly more likely than incarcerated fathers to be primary caregivers prior to their incarceration. When incarcerated parent litigants are unable to respond and participate in court proceedings due to procedural barriers imposed by their incarceration, courts lack complete information. In fact, they are often forced to enter default orders. We can do better.

Civil Rule 12 governs response deadlines in family law cases as well as other civil cases. It provides generally 20 days for respondents who are personally served within the state of Washington to file a response. Incarcerated litigants often find it impossible to meet this deadline because they cannot access forms and legal information while incarcerated.

Federal funding restrictions on legal aid prohibit organizations that receive federal Legal Services Corporation funding from representing incarcerated litigants in court proceedings. In Washington, Northwest Justice Project, the largest statewide legal aid provider in Washington, receives federal Legal Services Corporation funding and is therefore prohibited from providing court representation to incarcerated litigants. Other statewide legal aid providers rely on other sources of funding to serve incarcerated individuals, but those providers

do not represent parents in family law matters. As a result, incarcerated indigent parents in Washington usually must represent themselves.

But pro se litigants in jail, detention facilities, and prisons are unable to access mandatory court forms, legal information, and legal assistance in the same timely manner as other pro se litigants.

The Washington State Department of Corrections does not permit incarcerated litigants to access the internet due to safety concerns. This severely hampers the ability of pro se litigants to access the mandatory family law forms located on the courts' website or free pro se assistance resources like WashingtonLawHelp. As a result, incarcerated litigants often must send written requests via regular mail to courts, legal services providers and other resources to obtain the forms and information necessary to respond to their legal actions.

While some state prisons have law libraries, the needed legal information within them is inaccessible in a timely manner to many litigants. Department of Corrections policy 590.500 prioritizes use of the law library for incarcerated individuals challenging their criminal sentence and/or confinement, civil rights, or dependency matters. Family law and other civil issues are not priority matters under the policy. Individuals wishing to use the law library for family law and other civil matters must wait behind individuals with what the Department of Corrections has deemed more urgent matters, a process that in some circumstances can take weeks. Four prisons in Washington do not have law libraries at all, so individuals in those facilities must request a transfer to use the law library at a facility that has one. Many jails and detention facilities similarly do not have law libraries or legal access at all.

Within this context, many incarcerated parent litigants are unable to respond to their family law matters within the 20 days dictated by Civil Rule 12. As a result, stakeholders and incarcerated parents report that many final orders are entered by default. Without the incarcerated parent's response, the court lacks information about the facts surrounding a parent's incarceration, their role prior to incarceration in their child's life, and the options to remain engaged in their child's life while incarcerated. This can result in dramatically less contact between a child and incarcerated parent than the full facts of the situation and best interests of the child require, not only for the period in which they are incarcerated but long after their release as well. Courts should have access to the full set of facts so that decisions can be based on the merits of each case.

The proposed change would allow incarcerated litigants more time to access law libraries, courts, legal services providers and other resources to obtain the mandatory forms and legal information necessary to respond to their legal actions while incarcerated. The proposed change would afford incarcerated litigants the same extended time period of 60 days that is afforded to respondents served out of state and by publication.

D. **Hearing:** A hearing is not requested.

E. **Expedited Consideration:** Expedited consideration is not requested.

CR 12
DEFENSES AND OBJECTIONS

(a) When Presented. A defendant shall serve an answer within the following periods:

(1) Within 20 days, exclusive of the day of service, after the service of the summons and complaint upon the defendant pursuant to rule 4;

(2) Within 60 days from the date of the first publication of the summons if the summons is served by publication in accordance with rule 4(d)(3);

(3) Within 60 days after the service of the summons upon the defendant if the summons is served upon the defendant personally out of the state in accordance with RCW 4.28.180 and 4.28.185 or on the Secretary of State as provided by RCW 46.64.040.

(4) Within 60 days after the service of the summons upon the defendant if the summons is served in a jail, detention facility, or prison facility pursuant to rule 4.

(5) ~~(4)~~ Within the period fixed by any other applicable statutes or rules.

A party served with a pleading stating a cross claim against another party shall serve an answer thereto within 20 days after the service upon that other party. The plaintiff shall serve a reply to a counterclaim in the answer within 20 days after service of the answer or, if a reply is ordered by the court, within 20 days after service of the order, unless the order otherwise directs. The service of a motion permitted under this rule alters these periods of time as follows, unless a different time is fixed by order of the court.

(A) If the court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within 10 days after notice of the court's action.

(B) If the court grants a motion for a more definite statement, the responsive pleading shall be served within 10 days after the service of the more definite statement.

(b) How Presented. Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross claim, or third party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion:

(1) lack of jurisdiction over the subject matter,

(2) lack of jurisdiction over the person,

(3) improper venue,

(4) insufficiency of process,

(5) insufficiency of service of process,

(6) failure to state a claim upon which relief can be granted,

(7) failure to join a party under rule 19. A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, the pleader may assert at the trial any defense in law or fact to that claim for relief. If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by rule 56.

(c) Motion for Judgment on the Pleadings. After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by rule 56.

(d) Preliminary Hearings. The defenses specifically enumerated (1)-(7) in section (b) of this rule, whether made in a pleading or by motion, and the motion for judgment mentioned in section (c) of this rule shall be heard and determined before trial on application of any party, unless the court orders that the hearing and determination thereof be deferred until the trial.

(e) Motion for More Definite Statement. If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, or if more particularity in that pleading will further the efficient economical disposition of the action, the party may move for a more definite statement before interposing a responsive pleading. The motion shall point out the defects complained of and the details desired. If the motion is granted and the order of the court is not obeyed within 10 days after the notice of the order or within such other time as the court may fix, the court may strike the pleading to which the motion was directed or make such order as it deems just.

(f) Motion To Strike. Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion made by a party within 20 days after the service of the pleading upon the party or upon the courts own initiative at any time, the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.

(g) Consolidation of Defenses in Motion. A party who makes a motion under this rule may join with it any other motions herein provided for and then available to the party. If a party makes a motion under this rule but omits therefrom any defense or objection then available to the party which this rule permits to be raised by motion, the party shall not thereafter make a motion based on the defense or objection so omitted, except a motion as provided in subsection (h)(2) hereof on any of the grounds there stated.

(h) Waiver or Preservation of Certain Defenses.

(1) A defense of lack of jurisdiction over the person, improper venue, insufficiency of process, or insufficiency of service of process is waived,

(A) if omitted from a motion in the circumstances described in section (g), or

(B) if it is neither made by motion under this rule nor included in a responsive pleading or an amendment thereof permitted by rule 15(a) to be made as a matter of course.

(2) A defense of failure to state a claim upon which relief can be granted, a defense of failure to join a party indispensable under rule 19, and an objection of failure to state a legal defense to a claim may be made in any pleading permitted or ordered under rule 7(a), or by motion for judgment on the pleadings, or at the trial on the merits.

(3)Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.

(i) Nonparty at Fault. Whenever a defendant or a third party defendant intends to claim for purposes of RCW 4.22.070(1) that a nonparty is at fault, such claim is an affirmative defense which shall be affirmatively pleaded by the party making the claim. The identity of any nonparty claimed to be at fault, if known to the party making the claim, shall also be affirmatively pleaded.

[Adopted effective July 1, 1967; Amended effective January 1, 1972; January 1, 1980; September 18, 1992; April 28, 2015.]