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Sent: Tuesday, May 31, 2022 11:39 AM
To: Megan Frazier <m.frazier@islandcountywa.gov>
Cc: Carolyn Cliff <c.cliff@islandcountywa.gov>; Christon Skinner <c.skinner@islandcountywa.gov>; Kristin LeClercq <K.LeClercq@islandcountywa.gov>
Subject: RE: Local Court Rules for Public Comment

Hello Megan,

Here are my comments on the proposed local civil rules. Please note that I submitted substantially similar comments regarding proposed amendments to LCR 5 last year, after the comment period deadline. As I received no response after I submitted them, I was not sure whether they were considered last year. I am re-submitting them, ostensibly as comments to this year's proposals. I am happy to discuss these further with you and the judges, if there are any questions.

I realize that my comments are directed at changes that have already been adopted, for the most part. If my comments won't be considered now, I would appreciate a response advising me of such. If they can't be considered this year as comments on the proposed rule, I would like for them to be considered as proposed amendments to the local rules.

My office expects to submit comments to proposed LCrR 3.4 by separate email.

LCR 5 – Formatting. There appears to be a formatting problem at the start of LCR 5, in the “clean copy” that was distributed. I think the text “Commencement of Action; Service of Process, Pleadings, Motions and Orders (Rule 3-6)” should be centered on the page, like the text “Introductory (Rules 1-2A)” above them, and “Pleadings and Motions (Rules 7-16)” below them. Either that or the column flow needs to be fixed. This comment is not intended for publication, as it doesn't go to the substance of the rules.

LCR 5(b)(1) – I suggest that a sentence stating words to the effect of: “In the event that counsel does not provide an email address as required by this subsection, opposing parties and the Court may serve counsel at any email address associated with counsel on the WSBA lawyer directory, or any public facing webpage published by counsel or counsel's firm.”

I'm glad to see that you included the word “summons” in LCR 5(b)(1). I suggest adopting corresponding changes to LCR 4 and LCR 4.1 mandating the inclusion of an email address on the summons forms.

LCR 5(b)(3) – Please include an option for sending documents via secure FTP server, and not just as email attachments. Many email servers block attachments above a certain size. It often happens that records, for example a summary judgment motion with voluminous appendices, will exceed the 10 MB limit. Some email servers aggressively block or disable attachments if they are perceived to be spam or malware. Also, there are quirks about Adobe's Acrobat product, and other applications that convert to PDF, that introduce great variability in the size of the documents

created. One applicant may convert a 50-page document into a PDF of under 1 MB, while another may convert a 50-page document into a 25 MB behemoth. Sometimes adding a single image file to a PDF can balloon the size to greater than 10 MB. Modern users, particularly litigators, utilize FTP servers like DropBox, ShareFile, SharePoint, and proprietary programs (like the PbK program used by the Prosecutor's office for transmitting all pleadings and discovery). Constraining service to email is an outdated and unreliable means of moving documents securely.

Without FTP service, both senders and receivers will have to break up files into multiple emails, creating logistical and proof-of-service headaches for everyone. Also, FTP servers provide for confirmation of when the recipient received and downloaded the served documents.

Here is my proposal for LCR 5(b)(3) and LCR 5(b)(4). This will require renumbering existing LCR 5(b)(4)-(6), if they are retained:

- (3) How Served. Documents Pleadings and other papers shall be served either:
- (i) By email by attaching each document to one or more emails, By emailing electronic documents attached to one or more emails, with no one email to exceed ten (10) megabytes. The email must be sent from an email address at which the sending party will receive service from opposing parties; or
 - (ii) Through the use of a secure file transfer service, such as DropBox, ShareFile, Google Drive, or One Drive. The sender may transmit a secure link to the document or documents from the sending party's own email, or using the internal file share function of the file transfer service. If a link is transmitted using the file transfer service's internal share function, the body of the transmittal email must include the sender's email address. Other than page limits elsewhere in the Civil Rules or these Local Rules, there are no specific electronic file size limits when using a file transfer service.

- (4) Electronic File Format and Contents.
- each Each attachment document served under this rule shall be in "portable document format" (PDF). Each PDF file shall contain only one pleading or other document, including appendices. Each PDF file shall be of sufficient resolution and clarity that it is legible on ordinary digital devices and when printed on paper. and each attachment shall be separately labeled with a description of the document. Each PDF file shall be named to adequately identify the specific pleading or document it contains. (For example: "Second Motion for Summary Judgment.pdf" is adequate. "Motion.pdf" is not adequate.)

The Subject field of each transmittal email under subsection (3)(i) or (3)(ii) of this rule shall indicate the name and cause number of the case to which it pertains. Each transmittal email may serve documents for only one case. Each transmittal email shall include, in the body of the email, a list of the electronic documents attached or linked on the file transfer server. The sending transmittal email shall include, in the body of

the email, complete contact information of the sender, including name, phone number, and a reply email address if different from the sending address. contain at a minimum a phone number to which any difficulty in receipt or transmission may be reported.

LCR 5(b)(4) and LCR 5(b)(5): I propose that LCR 5(b)(4) and LCR 5(b)(5) be rescinded in their entirety. There is no reason to deliver the same documents twice. They create extra and unnecessary work for both sender and receiver. They will also create potential issues on determining the date of service. Is it the delivery of the hard copy, or the voicemail or phone call? This can be crucial where a responsive pleading must be filed within a deadline triggered by the initial motion. What if a phone call is received by an answering service? Several firms my office interacts with use live-person third-party answering services to screen their phone calls. In multiparty litigation, the barrage of phone calls required after service of each pleading is a trap for the unwary or unlucky.

I notice neither King County's rules nor the federal civil rules require telephonic confirmation or back-up hardcopy service. I understand the desire to have a fallback mechanism when implementing new rules and processes. After all, matters in litigation are serious and service or notice mishaps can unjustly harm litigants. But here, others have proofed the technology for us, and we don't need the extra insurance of phone calls and hard copies. These technologies work, and the profession and the public are accustomed to relying on electronic delivery in many important endeavors.

I also think that ethical attorneys have a duty under RPC 1.3 to maintain adequate modern office systems to perform their work diligently. That includes computers and email. The prospect of lost or mis-delivered documents has always existed, and I don't believe the risk is any greater for electronic documents than for the snail mailed documents we used in the past.

Thank you for considering my comments and proposals.

Sincerely,

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