

WSR 23-21-018
RULES OF COURT
STATE SUPREME COURT
[October 3, 2023]

IN THE MATTER OF THE PROPOSED) ORDER
NEW SUPERIOR COURT SPECIAL) NO. 25700-A-1531
PROCEEDINGS RULE (SPR 98.___)—)
UNLAWFUL DETAINERS—)
APPOINTMENT OF ATTORNEY)
[REVISED])

A Consortium (Northwest Justice Project, Access to Justice Board, Spokane Volunteer Lawyers Program, Snohomish County Legal Services, Tacoma Pro Bono, King County Bar Association Housing Justice Project, Kitsap Legal Services, Yakima Volunteer Attorney Services, Chelan-Douglas Volunteer Attorney Services, Thurston County Volunteer Lawyer Services, Skagit Volunteer Lawyers Program, Clark County Volunteer Lawyers Program), having recommended the adoption of the proposed new Superior Court Special Proceedings Rule (SPR 98.___)—Unlawful Detainers—Appointment of Attorney [Revised], and the Court having considered the proposed new rule, and having determined that the proposed new rule will aid in the prompt and orderly administration of justice;

Now, therefore, it is hereby

ORDERED:

(a) That the proposed new rule as shown below is adopted.

(b) That pursuant to the emergency provisions of GR 9 (j) (1), the proposed new rule will be expeditiously published in the Washington Reports and will become effective upon publication.

DATED at Olympia, Washington this 3rd day of October, 2023.

Johnson, J.
Madsen, J.
Owens, J.
Stephens, J.
Gonzalez, C.J.
Gordon McCloud, J.
Yu, J.
Montoya-Lewis, J.
Whitener, J.

[PROPOSED] SPR 98.24W

UNLAWFUL DETAINERS—APPOINTMENT OF ATTORNEY

In all unlawful detainer cases where an individual qualifies for an attorney at public expense in accordance with RCW 59.18.640, the following protocols shall be followed:

- 1. If the tenant appears without an attorney, before taking any action in the case, the court shall:
a. Advise the tenant that if they are indigent, they have a statutory right to be represented by an attorney at public expense;
b. If applicable, refer the tenant for appointment of counsel pursuant to any local order or established procedure consistent with RCW 59.18.640; and
c. Continue the hearing for a reasonable period of time so that counsel may be obtained.
2. If the tenant is unrepresented and the court issues a writ of restitution before judgment or by default, the tenant may file a motion requesting that the court appoint an attorney at any time before law enforcement executes the writ. During this time, a lawyer seeking

appointment may file an ex parte motion for appointment and request that the court stay the execution of the writ for 10 days. The lawyer seeking appointment shall establish by declaration that good faith efforts were made to notify the other party or, if no efforts were made, why notice could not be provided prior to the application for an ex parte stay, and describing the immediate or irreparable harm that may result if an immediate stay is not granted.

3. A stay issued under this rule will be set to expire 10 days after entry without further order from the court. If new information arises and the court finds the tenant is not eligible for appointment of a lawyer, the court may lift the stay.

[PROPOSED] SPR 98. _____ W

UNLAWFUL DETAINERS—APPOINTMENT OF ATTORNEY

In all unlawful detainer cases where an individual qualifies for an attorney at public expense in accordance with RCW 59.18.640 ~~applies to appoint attorneys for indigent tenants,~~ the following protocols shall be followed:

1. If the tenant appears without an attorney, before taking any action in the case, the court ~~must~~ shall:

a. ~~Inform~~ Advise the tenant that if they are indigent, they have a statutory right to be represented by an attorney at public expense ~~if they are indigent;~~

b. ~~Ask the tenant if they want the court to appoint an attorney if they are eligible;~~

b. If applicable, Refer the tenant for appointment of counsel pursuant to any local order or established procedure consistent with RCW 59.18.640; and

c. Continue the hearing for at least 14 days a reasonable period of time so that counsel may be obtained.

2. If the tenant is unrepresented and the court issues a writ of restitution before judgment or by default, the tenant may ~~move to file~~ file a motion requesting that the court appoint an attorney at any time before law enforcement executes the writ. During this time, a lawyer seeking appointment may ~~make~~ file an ex parte motion for appointment and ~~to request that the court~~ stay the execution of the writ for ten days. Upon such motion, the court shall appoint the lawyer and stay the writ for ten days. The lawyer seeking appointment shall establish by declaration that good faith efforts were made to notify the other party or, if no efforts were made, why notice could not be provided prior to the application for an ex parte stay, and describing the immediate or irreparable harm that may result if an immediate stay is not granted.

3. A stay issued under this rule will be set to expire ten days after entry without further order from the court. If new information arises and the court finds the tenant is not eligible for appointment of a lawyer, the court ~~shall~~ may lift the stay ~~immediately~~.