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March 23, 2020

Chief Justice Deborah Stephens
Washington State Supreme Court
P.O. Box 40929
Olympia, WA 98504-0929

Via email to Supreme@courts.wa.gov

Dear Chief Justice Stephens,

Thank you for taking decisive action in Order Number 25700-B-607 to create a uniform and consistent approach to court operations during the ongoing COVID-19 pandemic. In the current public health crisis, this approach is necessary to protect the overall health and safety of our communities and to maintain equitable access to justice.

The Northwest Justice Project, Columbia Legal Services, Office of Civil Legal Aid, Disability Rights Washington, Legal Voice, Sexual Violence Law Center, American Civil Liberties Union of Washington, Clark County Volunteer Lawyer Program, Kitsap Legal Services, Thurston County Volunteer Legal Services, and the Blue Mountain Action Council Pro Bono Program request that this Court provide additional guidance that will ensure that low-income civil litigants in emergency situations have continuing access to the courts, and to address remaining gaps and inconsistencies in court process. We have attached a proposed order incorporating our suggestions.

Low-income civil-litigants and courts would benefit from guidance on what constitutes an emergency matter.

While non-emergent matters have been stayed until after April 24, 2020 per this Court's order of March 18, courts across Washington continue to take different approaches in declaring what is an emergent civil matter and how to handle these emergent matters. A more detailed approach would benefit litigants (particularly low-income litigants who are proceeding without the assistance of counsel), practitioners, and the courts.

As of March 19th, courts across the state were taking significantly different approaches to this Court's order to continue all non-emergency motions. Some Courts limit emergency motions

to particular types of cases; others are encouraging parties to come to agreement as to what constitutes an emergency; still others are permitting all motions to be filed and denying without prejudice all motions that the Court has determined are not an emergency. This puts pro-se litigants, who now implicitly have to plead why their case is emergent, without the benefit of any standard.

As a general rule, emergent matters should be limited to those actions necessary to protect the safety, health, and basic welfare of individuals. This necessarily includes:

- All protection orders, including vulnerable adult protection orders (RCW 74.34), sexual assault protection orders (RCW 7.90), domestic violence protection orders (RCW 26.50), stalking protection orders, (RCW 7.92), extreme risk protection orders (RCW 7.94) and anti-harassment protection orders (RCW 10.14).
- Return hearings on temporary restraining orders where personal safety is at risk
- Restraining orders in family law cases involving an immediate risk of harm
- Motions for temporary orders or adequate cause in family law cases where child safety is at risk, a risk of child abduction, or a party's basic financial survival is at issue (ability to maintain housing, basic necessities, and critical health care)
- Return on warrant hearings
- Writs of habeas corpus, mandamus, or prohibition and returns on writs
- Weapons surrender orders and compliance
- Temporary restraining orders or emergency orders to prevent termination of critical public benefits or secure access to life saving benefits, such as continued nursing care.
- Child in Need of Services, when a child's safety is paramount.
- Emancipation petitions, when the petition would further a child's access to housing or medical care, or protect the child from parental abuse.
- Actions seeking to prevent a landlord from summarily evicting, or "locking out", a tenant.
- Proceedings where a party is seeking findings for Special Immigrant Juvenile Status, including motions for default, motions to serve by publication, dependency petitions, vulnerable youth guardianships, motions for Special Immigrant Juvenile Status findings, and other necessary motions; and
 - the child will turn 18 or 21 before July 31, 2020, or
 - an immigration authority has scheduled a hearing or appointment with the child between today's date and July 31, 2020.

In all other cases, providing a general definition of emergency matters will enable litigants and counsel to effectively present their case.

Moreover, given this Court's amended order on March 20th, 2020, litigants would also benefit from a description of those non-emergent matters that can "appropriately" be heard telephonically. This court should clarify that unlawful detainers and default judgments are

not ones that can appropriately be heard telephonically. This action would be consistent with the Governor's moratorium on evictions, as would clarifying that it is necessarily an emergency proceeding if tenant is seeking to challenge a landlord attempt to circumvent the eviction moratorium and summarily lock out a tenant.

Courts should be ordered to provide telephonic or remote access in emergency cases free of charge

Order Number 25700-B-607 appropriately requires all emergency matters that must be heard before April 24, 2020 to be heard by telephone, video, or other remote means, unless impossible. Litigants should not bear the costs of these remote appearances. Yet, several counties in Washington exclusively use CourtCall for telephonic appearances, and charge litigants a fee (often \$65 to \$70) to use this service.¹ Until March 18th, some courts in Washington were continuing to charge litigants for use of CourtCall to make telephonic appearances, notwithstanding the ongoing public health emergency. All courts should provide for free telephonic appearances either by paying the CourtCall cost themselves or by making other arrangements for telephonic appearances. Courts may also conduct remote hearings with other technology such as zoom or skype where possible to allow for video appearances.

Courts should also allow litigants in emergent matters to file remotely. In many counties, pro-se litigants and people seeking to file ex-parte are required to file in person at the clerk's office. We suggest that Courts enable filing of complaints and ex-parte petitions through:

- E-file: Many Washington courts already allow for e-filing but do not accept ex parte filings through this means.
- Filing by email: Courts do not consistently accept emailed documents as filing. Under current circumstances, every court should establish an email for filing that is publicly available for submitting documents.
- Filing by fax: Many courts have established a method to accept filings by fax, but litigants must often be pre-approved or pay per page for fax filings. We ask that the cost of faxing be waived and petitioners be publicly offered this option as well.
- In-person drop box: In some situations, a petitioner may still want to file in person, to protect their personal safety. This is particularly likely for domestic violence victims whose abusers monitor their communications. We urge courts to establish a drop box at the clerk's office that allows for social distancing while filing.

In addition, some County Clerks charge "presentment fees" to litigants who want to have a proposed order presented to the Court ex parte. For example, one NJP client is currently unable to file an appeal, because the court is not hearing motions for fee waivers on its ex-parte docket and the Clerk will not present the motion for a fee waiver without a \$30 presentment fee. No person should have to pay to access the courts without physically

¹ See <https://courtcall.com/participating-courts/> (Click on the map to view participating Washington counties and the rates charged).

appearing in this crisis, and no person's rights should be prejudiced because of the court's necessary change in operations.

This Court has a long history of ensuring that low-income people have equitable access to the Judicial System.² To ensure that low-income people with emergency cases remain able to access the Court during the appropriate limit on in person appearances, this Court should order all courts in Washington to enable telephonic and remote appearances at no cost to the litigants.

Courts should ensure individuals using interpreter services continue to have meaningful access to the courts.

This Court should also order measures necessary to ensure that people using interpreter services, including but not limited to limited English proficient (LEP) and Deaf individuals, continue to have meaningful access to the courts. This includes:

- Equal access to all case types being calendared. As courts limit the case types that are being calendared, it is important that individuals who utilize interpreter services do not face additional restrictions on case types.
- Timely hearings. Using interpreter calendars that are weekly or limited in availability overly restricts access for individuals based on national origin or disability status. Courts must ensure that the use of interpreter calendars does not lead to a delay.
- Telephonic hearings. Individuals requiring interpreter services should have the full ability to participate in hearings by telephone – with provision of Washington Court credentialed interpreters via remote methods such as telephone or video. RCW 2.42 and 2.43 require courts to appoint interpreters holding Washington court interpreting credentials, unless good cause is shown. Courts must also take extra measures to ensure that all parties can meaningfully participate through this medium, by complying whenever possible with the American Bar Association Standards for Language Access in Courts.³
- If a court deems remote access to a hearing “impossible” for individuals who need interpreters, courts should still consider allowing the interpreter to appear remotely via phone or video, to ensure maximum social distancing and avoid unnecessary risk.⁴
- Translation of vital court information. Courts should translate information about case types being calendared and the use of telephone hearings into the top 15 languages in their county. This information should be posted on the court website and in all points of contact with the public in the court building itself. A sample tagline message could read: “Until at least April 24, 2020, court hearings are only available for the following matters: [Insert list of matters.] These hearings will be done by telephone, unless it is

² See, e.g., General Rule 34; *Jafar v. Webb*, 177 Wn. 2d 520, 531 (2013) (affirming that “the administration of justice demands that the doors of the judicial system be open to the indigent” and that “financial inability to pay the costs of pursuing a legal remedy will not operate to bar one from this state’s system of justice.”)

³ See

https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_standards_for_language_access_proposal.pdf. See pages 52-54 and 117 for details on telephonic interpretation. See also National Association of Judiciary Interpreters and Translators, Telephonic Interpreting in Legal Settings, at <https://najit.org/wp-content/uploads/2016/09/Telephone-Interpreting-1.pdf>

⁴ See ABA Standards, supra n. 3. At 52-54.

not possible to do so. Give the court a phone number you can be reached at and the court will call you at your hearing date and time. The court will provide a court certified interpreter over the phone for this hearing, free of charge. If you have questions, call [Insert: local court phone number].”

- Ensure all court staff interacting with the public have access to telephonic interpreter services and are trained to use those services. For emergency orders, most cases begin with filing pleadings with the court clerk. Those offices must be able to communicate with LEP individuals to explain the changed processes and how to access the hearing remotely. If there is a court information line, as envisioned above, staff answering that phone line need access to interpreter services. If the number provides audio recordings only, then providing that recorded information in multiple languages is appropriate.

This Court should remove barriers for survivors of violence seeking temporary and permanent protection orders.

The quarantines and social distancing ordered by Governor Inslee and recommended by health experts, while necessary to stop the spread of COVID-19, pose serious dangers to domestic violence survivors in accessing services and seeking protection.⁵ Order Number 25700-B-607 appropriately clarifies that Courts should issue temporary protection orders ex parte and permits (but does not require) courts to extend temporary ex parte orders until a hearing can be held. As of March 19, 2020, there is significant variation in how courts approach extension of temporary ex parte orders: some courts are silent on the issue, while some extend the orders for 28 days. We request this Court provide additional guidance specifically directing Courts to extend the return hearing on an ex parte order to 35 days after the issuance of the ex parte order or April 24, 2020 (whichever is later). This will ensure that ex parte temporary orders are set for hearing on a rolling basis after April 24, 2020. All reissuances of temporary orders should also be extended to 35 days. All orders continuing and reissuing the temporary orders can be served by mail on the parties.

Courts should not require that protection order cases be confirmed by the petitioner. This is an unnecessary barrier that some courts have put in place and it will result in protection orders being dismissed due to the failure to confirm a hearing.

Courts should be mindful of not requiring unnecessary information that would put a victim’s safety at risk. At this time, law enforcement continues to serve protection orders; this may change as this health emergency continues. A Law Enforcement Information Sheet (LEIS) is required for service of protection orders, but in the interest of victim safety and confidentiality, petitioners for protection orders should not be required to include their confidential addresses on the LEIS. This information is unnecessary for service of these orders.

⁵ <https://wrex.com/2020/03/16/covid-19-isolation-poses-dangers-to-domestic-violence-survivors/>; <https://time.com/5801897/women-affected-covid-19/>; https://www.wdrb.com/news/domestic-violence-cases-expected-to-spike-during-coronavirus-outbreak/article_59fdde22-68b7-11ea-a389-0b706e769194.html.

Criminal Proceedings that impact low-income and vulnerable Washingtonians.

Although NJP is prohibited by Federal and Washington funding from representing defendants in criminal matters, it does represent the rights of crime victims in criminal proceedings. It also represents defendants who have served their sentences, but are unable to pay court debt judgments because of their indigence.

In addition to the matters covered in that Order, we also suggest that this Court reconsider the many people incarcerated pre-trial and post-release simply because they lack the ability to pay money bail, court debt, or failed to appear at a hearing. Exposing people to potential infection because they cannot afford a cash bond, LFO payment, or failed to appear at a review or financial hearing threatens the safety of law enforcement, court staff, and the community by exacerbating a growing pandemic. We urge the court to consider quashing outstanding warrants for failure to pay or failure to appear for LFO hearings, and other hearings regarding conditions of release unrelated to public safety.

Conclusion

These small changes would be enormously protective to public health and safety. They simultaneously balance the interests of the victimized, protect the indigent, and maintain public safety and the integrity of our legal system. Thank you for your consideration.

Sincerely,

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