

Greetings,

Below is the email I sent this morning to Chief Justice Stephens regarding input as to statutory changes that may be necessary to allow us to continue to effectively do our work. Immediately following my correspondence on this thread is a prompt response from her. - Kevin

March 24, 2020

Greetings Chief Justice Stephens,

Thank you for the invitation to provide input on statutes that may present problems for the court system because of the COVID-19 pandemic. While there is not agreement amongst lawyers in Kitsap about all of the changes that are suggested below, I do want you to know what practitioners in Kitsap are thinking. The general tone and tenor of the recommendations are:

1. to provide for extensions of statutory deadlines;
2. to provide for means of alternative service, and;
3. to accommodate the ability to continue to do work remotely using video conferencing tools.

The following suggestions have been proposed by the members of the Kitsap Bar who have chosen to provide input:

ESTATE PLANNING / NOTARIZATION

Please put into effect the new RCW 42.45.280 allowing live videoconferencing for notarial acts (Currently scheduled to be effective in Oct.) and live videoconferencing notarization (RCW 42.45.040).

Similarly, allowing the two witnesses to a will (RCW 11.12.020) and to a health care directive (RCW 70.122.030) to do so via live videoconferencing under the same requirements.

The ability to complete these essential documents safely for both the witnesses and testators/principals is essential under the current situation.

VAPO

74.34.120 (1) Currently a hearing is to be set within 14 days. This should to be changed to 28 days to conform with the emergency court rule.

74.34.120 (2) and (3) require personal service on the respondent and the vulnerable adult. This may not be

possible and may jeopardize people unnecessarily. Request emergency statutory change to authorize service by certified and regular mail (both).

DV / SAPO / ANTI-HARASSMENT / ORDERS FOR PERSONAL AND COMMUNITY SAFETY

Statutory requirements regarding the time for hearing and personal service should be similarly extended and / or modified to allow for more time and provide for alternative service (using both regular and certified mail).

GUARDIANSHIP

11.88.040 requires personal service of the Petition for Guardianship on the Respondent. This may not be possible or may jeopardize people unnecessarily. Request emergency statutory change to authorize service by certified and regular mail (both).

New Guardianship Statute and Pending Legislation (SSB 5604 adopted in 2019-2020, and SSB 6287 sent to Governor for signature on March 12, 2020): The Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act, signed by Governor Inslee on May 21, 2019, becomes effective January 1, 2021. Changes to that legislation in SSB 6287 were sent to him for signature on March 12, 2020, but does not appear to have been signed yet. The Act replaces RCW 26.10 in its entirety on its date of effectiveness and eliminates over 15 years of significant constitutional jurisprudence related to parental rights. RCW 26.10 cases that are still pending were being pushed through to conclusion before the end of this calendar year prior to this pandemic and now the ability to do so will be severely impacted by the loss of time to conclude these matters before the new legislation becomes effective January 1, 2021. A stay of effectiveness of the new Act, as to be amended by SSB 6287 is necessary, if possible, to prevent this harm, or at least granting an extension of the time allowed to wrap-up pending RCW 26.10 cases under the applicable law may be necessary to prevent harm to existing litigants. This legislation has been strongly opposed by the Superior Court Judges' Association and other organizations.

CIVIL LAWSUITS - SERVICE / STATUTE OF LIMITATIONS

1. An emergency order extending deadlines to serve the Summons and Complaint. Plaintiffs are having difficulty getting parties served and are running up against the 90-day deadline - either because the process servers are not accepting service jobs due to fear of exposure or, in many cases, the party being served is likely home but not answering the door, probably due to COVID-19 concerns. When

counsel goes through the Secretary of State for service, there is concern that the State may not be adequately staffed to accept service in time under the statute (when counsel has exhausted their efforts and get to the point of showing due diligence, etc.).

2. 4.28.080, 4.28.100, 4.28.185, 26.26A.410 and other statutes regarding service: Modes and methods of personal service on both individuals and agencies will become difficult because of the personal contact required in doing so; and for government agencies because the designated office might be closed. Thought could be given as to whether or not service by certified mail should be authorized in the interim without necessity of leave of court? (I believe that notice/response time frames and default judgments are generally dealt with by Court Rule not requiring executive action to amend.)
3. Tolling Statutes of Limitations. Meeting the statute of limitations may become more problematic with the “stay at home” order.

UNLAWFUL DETAINER

59.12.070 - Suspend language allowing UD summons returnable in less than 30 days.

59.18.370 - Suspend requirement that the court set a hearing not more than 30 days out from the service of the order to show cause.

59.18.380 - Suspend requirement that the court enter an order setting trial within 30 days.

FIVE DAY RESPONSE TIME – PUBLIC RECORDS

42.56.520: The five-day initial response time for agencies served with public records requests might become impossible. I would expect that the AG would be addressing agency issues by requesting an extension of time for mandated action, if there isn't already an emergency mechanism in place.

RELOCATION

1. The 30-day response time for responding to a notice of intent to relocate in RCW 26.09.480 should be extended.

Again, these recommendations should not be read through the lens of unanimity amongst Kitsap practitioners and judges. These recommendations represent the feedback I received. Thank you very much for you and Governor Inslee’s efforts examining the statutory roadblocks that may exist due to the COVID-19 pandemic. It is appreciated!

Finally, is it possible to receive some clarification from Governor Inslee whether attorneys are “essential” as contemplated by his “Stay at Home” Order? Because courts have been deemed “essential” I’m of the personal belief that lawyers are essential as well. But that is solely my own take on that issue.

Yours, Kevin
Kevin Hull
Presiding Judge
Kitsap County Superior Court

Response from Chief Justice Stephens:

Thank you, Kevin, for these excellent suggestions. We're working now on how best to address some of the most urgent issues. I hope to immediately address remote notarization and service issues, which likely requires a court order.

As to your question about lawyers being essential, I think they are clearly encompassed among those who "participate in essential activities."