

Snohomish County Superior Court

Local Court Rule-Change

Emergency Rule Effective June 23, 2010

SCLSPR 94.04 FAMILY LAW PROCEEDINGS

(a) Applicability of the Rule. Unless otherwise specified, this rule applies to all family law proceedings, including paternity actions and non-parental custody and/or visitation actions, defined as follows: Any proceeding in which the court is requested to adjudicate or enforce the rights of the parties or their children regarding the determination or modification of child custody, visitation, parenting plan, child support or spousal maintenance, or the temporary distribution of property or obligations.

(b) Court's Automatic Temporary Order Upon Filing of Certain Family Law Cases.

(1) Application. This rule shall apply to the following types of cases filed after May 1, 2010:

- A. All family law petitions seeking dissolution of marriage, legal separation, parentage, or declaration of invalidity; and
- B. Actions brought by parties to committed intimate relationships or state registered domestic partnerships, involving parenting or distribution of assets/liabilities.

(2) Court's Automatic Temporary Order In Dissolution, Legal Separation, Invalidity, Committed Intimate Relationship, or State Registered Domestic Partnership Actions. Upon the filing of a Summons and Petition in any dissolution, legal separation, invalidity, committed intimate relationship, or state registered domestic partnership action, the court on its own motion shall automatically issue a Temporary Order that includes the following provisions:

- A. The parties shall be restrained from transferring, removing, encumbering, concealing, damaging, or in any way disposing of any property except in the usual course of business or for the necessities of life or as agreed in writing by the parties. Each party shall notify the other party of any extraordinary expenditure made after the order is issued.

B. The parties shall be restrained from assigning, transferring, borrowing, lapsing, surrendering, or changing entitlement of any insurance policies of either or both parties, or of any dependent children whether medical, health, life, or auto insurance, except as agreed in writing by the parties.

C. Each party shall be immediately responsible for his or her own future debts whether incurred by credit card, loan, security interest, or mortgage, except as agreed in writing by the parties.

D. Both parties shall have access to all tax, financial, legal, and household records. Reasonable access to records shall not be denied. This provision does not apply to documents protected by the attorney-client or attorney work product privilege.

(3) Court's Automatic Temporary Order In Actions Involving Minor Child(ren). Upon the filing of a Summons and Petition in any action specified in Sections (b)(1)(A) or (b)(1)(b) that involves minor children, the court on its own motion shall automatically issue a Temporary Order that includes the following provisions:

A. Under the automatic temporary order, the term "parent" is limited only to those persons listed on a valid birth certificate or a presumed father under RCW 26.26.116.

B. Each parent shall be restrained from changing the residence of the child(ren) until further court order, except as agreed in writing by the parties. Subsequent orders regarding parenting issues supersede previously issued orders to the extent that the orders may be inconsistent.

C. Each parent shall have full access to the child(ren)'s educational and medical records, unless otherwise limited by court order.

D. Each parent shall ensure that the child(ren) not be exposed to negative comments about the other parent. Neither parent shall make negative comments about the other parent in the presence of the child(ren).

(4) Service of Automatic Temporary Order. It is the responsibility of the Petitioner to serve a copy of the Automatic Temporary Order on the Respondent.

(c) Family Law Proceedings-Courtroom Calendars and Procedures.

(1) Trial Date in Family Law Cases. In all family law cases, unless a trial date was previously set, the Court will set a trial date on its own motion so long as proper service of the petition was made and one-hundred and fifty (150) days have passed after the filing of the case.

A. Trial Continuances in Family Law Cases. In all family law cases, a motion or stipulation for trial continuance shall list the date(s) upon which trial was previously set.

B. Dismissal for Unconfirmed Trial Dates in Family Law Cases. In all family law cases, the Court on its own motion may dismiss any case in which the trial date was not confirmed pursuant to SCLCR 40(c)(1) or was properly confirmed but the parties failed to appear on the date of trial, unless a motion for continuance has been previously granted. This provision applies to all cases filed on or after January 1, 2010.

(2) Family Law Proceedings Motions.

A. Except as otherwise provided in this rule, all motions and returns on orders to show cause shall be as set forth in SCLCR 7 or SCLCR 56.

B. Generally. Absent prior authorization from the court, the entirety of all declarations and affidavits from the parties and any non-expert witness in support of motions shall be limited to a sum total of twenty-five (25) pages. The entirety of all declarations and affidavits submitted in response to motions shall be limited to a sum of twenty-five (25) pages. The entirety of all declarations and affidavits submitted in reply shall be limited to a sum total of five (5) pages. All declarations and affidavits must be legibly hand printed or typed in at least twelve (12) point type, double-spaced, and comply with GR14. All pages, including attached declarations and affidavits shall be sequentially numbered. Working copies of previously filed documents/orders are excluded from page limitation.

C. Exhibits. Exhibits that consist of declarations or affidavits of parties or witnesses shall count towards the above page limit. All other exhibits attached to a declaration or affidavits shall not be counted toward the page limit.

D. Financial Declarations. Financial declarations and financial documents do not count toward the page limit.

E. Expert Reports and Evaluations. Declarations, affidavits, and reports from Family Court Investigation, guardians ad litem, police reports, substance abuse evaluations, psychological evaluations and other expert witnesses do not count toward the page limitation.

F. Sanctions. Failure to comply with this rule may result in sanctions that may include, but are not limited to, striking over limit pleadings.

[Amended effective June 20, 2008.]

(3) Paternity actions brought by the prosecutor shall be heard as set forth in an administrative order of the court.

(4) Return on Show Cause actions in Domestic Violence cases shall be heard as set forth in an administrative order of the court.

(d) Child Custody or Parenting Plan Proceedings.

(1) Information Required. In child custody, visitation or parenting plan cases, each party shall timely submit all information, forms, and worksheets required by statute. Any such forms or worksheets that are not complete may be stricken or other sanctions imposed.

(2) Evaluations. The court may order a custody or parenting or residential evaluation, mental health evaluation, alcohol or drug evaluation, mediation, treatment, counseling investigation and/or physical examination. The issue of costs shall be addressed in the order requiring such evaluation, and shall contain an hourly rate and maximum payment if the cost is to be at public expense. Any order failing to comply will be void.

(3) Reference to Family Court; Counseling.

(A) Duties of Parties. It shall be the responsibility of the parties or their counsel to utilize and complete such form as required by the court for reference to Family Court for investigation or other services. The completed and signed order shall be immediately submitted to the Family Court. Such services will not be required or undertaken until such form has been properly and timely submitted.

(B) The completed Family Court report shall be filed with the Court clerk. The attorneys for the parties, or party pro se shall receive one copy of such report.

(4) Child Advocate.

(A) Appointment. Upon motion the court may appoint a guardian ad litem or special advocate. The order shall be on a form as approved by the court and shall designate the appointee, the duties, and make provisions for payment of fees.

(B) Notice. The guardian ad litem or child advocate shall receive notice and copies of all discovery and hearings.

(C) Discharge. The guardian ad litem or child advocate shall be discharged only by order of the court.

(5) Parenting Seminars.

(A) Definition of Applicable Cases. This rule applies to all cases filed under Ch. 26.09, 26.10 or Ch. 26.26 of the RCW filed after September 1, 1994, including dissolutions, legal separations, major modifications and paternity actions (in which paternity has been established) where the parties are parents of children under the age of 18, and where a parenting plan or residential plan is required which involves more than purely financial issues.

(B) Parenting Seminars; Mandatory Attendance. In all cases referred to in Section (A) above, and in those additional cases arising under Title 26 RCW where a court makes a discretionary finding that a parenting seminar would be in the best interest of the children, both parents, and such non-parent parties as the court may direct, shall participate in, and successfully complete, an approved parenting seminar within 60 days after service of a petition, or an initiating motion, on the responding party. Standards for an approved parenting seminar shall be established by Administrative Order of this court. Successful completion shall be evidenced by a certificate of attendance filed by the provider agency with the court.

(C) Special Considerations/Waiver.

(1) In no case shall opposing parties be required to attend a seminar together.

(2) Upon a showing of domestic violence or abuse which would not require mutual decision-making pursuant to RCW 26.09.191, or that a parent's attendance at a seminar is not in the children's best interest, the court shall either:

- [a] waive the requirement of completion of the seminar; or
- [b] provide an alternative voluntary parenting seminar for battered spouses.

(3) The court may waive the seminar requirement for one or both parents in any case for good cause shown.

(D) Failure to Comply. Delay, refusal or default by one parent does not excuse timely compliance by the other parent. However, a parent who fails to complete the parenting seminar, shall be precluded from confirming the case for trial or presenting any final order affecting the parenting/residential plan, and may be precluded from seeking affirmative relief in this or subsequent proceedings in this file, until the parenting seminar has been successfully completed. Refusal or delay by either parent may constitute contempt of court and result in sanctions imposed by the court, or may result in the imposition of monetary terms, default and/or striking of pleadings.

(6) Judicial Information System background checks. Prior to presenting a permanent parenting plan to the court for entry, the party or parties presenting the final parenting plan shall submit a completed judicial information service (JIS) background check form to Snohomish County Superior Court Family Court Investigations. Such request must be submitted no less than fourteen days prior to the date of presentation of the final parenting plan. Upon receipt of a completed JIS background check form, Family Court Investigations shall complete a search of the Judicial Information System for the existence of any information and proceedings relevant to the placement of the child. This search shall be performed no more than 14 days prior to the proposed date of presentation of the permanent parenting plan. The results of such search shall be available to the judicial officer presiding over the entry of the permanent parenting plan at least two court days prior to the proposed presentation date.

[Amended effective November 14, 2007; Amended effective October 14, 2009]

(e) Petitioner and Respondent-Affidavits of Income. Any application or response regarding child support shall be by motion and shall include a completed child support worksheet and other information which might be required by statute. Any application or response regarding spousal maintenance, attorney's fees, or any other financial relief, except child support, shall be by motion and shall include a Financial Affidavit in the form approved by the court. Each party shall attach to this Financial Affidavit copies of

sufficient W-2 forms, 1040 forms and copies of wage stubs for prior periods to adequately prove income.

All orders establishing, setting or modifying any temporary or permanent child support obligation must be in the form of a separate order, on mandatory forms where appropriate, with the adopted child support worksheet attached.

(f) Restraining Orders.

(1) Where Presented. Applications for Temporary Restraining Orders may be presented ex parte. Motions for relief to be effective during the pendency of litigation shall be noted for hearing on a commissioner's calendar. Agreed restraining orders may be presented ex parte.

(2) Notice to Opponent. If an appearance has been made by a party, notice to the party pro se or counsel must be given prior to application for any immediate temporary restraining order which will be heard by a commissioner ex parte.

(3) Mutual Orders. All immediate temporary restraining orders shall be made mutual where appropriate.

(4) Motions to Quash or Terminate Temporary Restraining Orders. A motion to quash a temporary restraining order or to terminate a restraining order shall be noted for hearing on a commissioner's calendar.

(5) Temporary Restraining Orders; Testimony. No temporary order removing a person from or restraining a person from entering premises in which that person then resides, or has resided within fourteen (14) days of the application; or which affects the custody of a minor child in which another person has parental rights; or which grants to a person possession of property in the name or possession of another; shall be issued except: (a) after a hearing of which the adverse party has been given prior notice deemed adequate by the court hearing the same; or (b) at which sworn testimony or statement is received from a person or persons having personal knowledge of the facts, and the court waives the notice requirement. In general, an ex parte order establishing, vacating or changing child custody or residence may only be entered under one or more of the following circumstances:

A. There is already an existing order entered in a different cause or proceeding, and this order is merely to confirm the status quo in this proceeding;

B. The parties have been separated more than fourteen (14) days, and the moving party has had the actual uninterrupted custody of the children for the last fourteen (14) days, or the other party has

voluntarily vacated the family residence more than fourteen (14) days hence;

C. Less than fourteen (14) days have elapsed since separation of the parties, but during this time, the responding party has voluntarily acceded to the present arrangement by removing himself/herself from the family residence, or by leaving the children behind in the physical custody of the moving party; or

D. The parties have not as yet separated or have only recently done so, and there are substantial, documented allegations of physical, emotional, or sexual abuse of the other party or of the children which present a substantial danger of immediate irreparable harm such that an emergency order without notice ought to be entered. The applicant for such an order is expected to appear personally before a commissioner and give testimony in support of the request.

(6) Show Cause Hearings; Testimony. All show cause hearings, except for contempt, domestic violence, and anti-harassment hearings, shall be by affidavit and declaration only. In anti-harassment and domestic violence actions only the parties may testify without cross examination, or make statements as allowed by the court. The court may take testimony if it appears to the court necessary for an adequate determination of the matter.

(7) Agreed or Non-contested Orders and Decrees. In any case in which the respondent has appeared, pro se or through counsel, prior to the entry of an order of default, all orders, findings, or decrees shall be endorsed by the non-presenting party or his/her attorney and shall indicate approval or waiver of notice of presentation.

(g) Modification Proceedings.

(1) Modification of Temporary Orders. Temporary orders may be modified by motion based upon a change of circumstances.

(2) Entry of Modified Decree by Default. No permanent decree of modification of support, maintenance, visitation, parenting plan, or custody shall be entered by default unless the adverse party was served with at least twenty (20) days notice of such proceedings (sixty (60) days if out of state), together with copies of pleadings.

(3) Custody, Parenting, or Visitation Modifications.

(A) Commencement. A proceeding to modify custody, a parenting plan, visitation or support is commenced by the filing of such documents as is required by various statutes.

(B) Threshold Hearings-Temporary Relief. Any party may, by motion or show cause order, request temporary relief or a threshold hearing based on affidavits. Responsive documents shall be served on the moving party as required by SCLCR 7.

(C) Disposition. Contested matters involving modification of support or maintenance only will be set for arbitration, unless a trial by affidavit is approved by the court upon motion.

(h) Alternative Dispute Resolution Required In Family Law.

1. *Alternative dispute resolution required in family law.* All contested issues in the following cases shall be submitted to settlement conference, mediation, or other ADR process with a neutral third party: petitions filed under RCW 26.09; 26.10; 26.26 and committed intimate relationship cases and petitions for modifications of final orders exclusive of Child Support/Maintenance Modification actions which are in mandatory arbitration. If a guardian ad litem (GAL) has been appointed, the parties shall provide the GAL with the date of ADR at least ten (10) days prior to its scheduled occurrence.

2. *When alternative dispute resolution is not required.* ADR shall NOT be required in the following cases:

A. For good cause shown upon motion and approval by the court.

B. Where a domestic violence restraining order or protection order (excluding Ex-Parte orders) involving the parties has been entered by a court at any time within the previous twelve (12) months.

C. Where a domestic violence no contact order exists pursuant to RCW 10.99;

D. Where the court upon motion finds that domestic abuse has occurred between the parties and that such abuse would interfere with arm's-length mediation.

3. *Alternative dispute resolution timing.* In all matters filed after May 1, 2010, in which ADR is required, the parties must complete ADR within 90 days after the filing of the answer or response; except in paternity actions, where ADR must be completed within 90 days of the paternity

determination. However, this time period may be extended by order of the court upon motion by either party.

4. *Failure to comply.* Failure to comply with Alternative Dispute Resolution when required shall result in the case not being confirmed for trial. Refusal or delay by either party may constitute contempt of court and result in sanctions imposed by the court, including the imposition of monetary terms.

5. *Division of costs.* The parties shall be equally responsible for the cost of ADR unless a different division of the cost is ordered by the court or agreed upon by the parties.

6. *Where to bring motions.* Motions to waive ADR shall be noted before the Presiding Judge at 9:00 a.m. Motions to extend the ADR time period or change the division of the cost shall be noted on the Commissioner's Family Law Calendar.

Notwithstanding the foregoing, either party may by motion seek a court order requiring mandatory mediation in a case where it would not be required as set forth in (2)(B), (2)(C) or (2)(D) above if the moving party believes that the parties would be able to mediate their dispute fairly under the particular circumstances of the case.

[Amended effective September 1, 1999; Amended effective September 1, 2005; Amended emergency effective June 23, 2010; Amended permanent effective September 1, 2010]