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To: LR Comments <LRComments@kingcounty.gov>
Cc: Kimberly Todaro <KimT@kcba.org>
Subject: Comment on LFLR 12

Hello!

Please see DV LEAD's attached comment on this matter.

Thank you!

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Comment on LFLR 12

King County Bar Association Domestic Violence Legal Advocacy Project ("DV LEAD") is part of the King County Bar Association's Pro Bono Services Department. DV LEAD is a program dedicated to representing survivors of domestic violence through protection order proceedings and family law cases. DV LEAD employs both staff and volunteer attorneys to advocate for survivors, specifically focusing on cases where children are at risk due to domestic violence and where survivors face additional barriers to justice in accessing the court system. Our program would like to comment on the proposed LFLR 12.

We are encouraged that the proposed rule LFLR 12(j) acknowledges the fundamental purpose behind the Civil Protection Order Act (CPOA), chapter 7.105 RCW, which is to "help ensure that protection orders and corresponding court processes are more easily accessible to all litigants, particularly parties who may experience higher barriers to accessing justice." RCW 7.105.900(5). Our goal is to offer constructive input on how the proposed rule might more fully align with that intent.

Legislative Intent and Judicial Discretion

As currently drafted, the Order appears to curtail the court's ability to tailor procedures to the specific needs of each case. Civil protection orders are special proceedings deliberately designed by the legislature to be accessible and flexible: the rules of evidence need not be applied; parties cannot be compelled to testify; discovery is disfavored and can only be granted by court order; and no deadlines or evidence limits are imposed.

RCW 7.105.200(1) instructs courts to evaluate procedures based on the totality of circumstances, including disparities in parties' resources and legal representation. Local rules may not conflict with the statute. *Harbor Enterprises, Inc. v. Gunnar Gudjonsson*, 116 Wn.2d 283, 293, 803 P.2d 798 (1991).

Given that most parties proceed pro se and often under urgent circumstances, adding procedural complexity—even through seemingly minor rules—risks creating unnecessary barriers, thereby undermining the legislature's intent to provide "easy, quick and effective" access to protection orders. Flexibility and broad judicial discretion are essential to ensuring equitable access, especially for those navigating trauma and legal systems without support.

With that framework in mind, we ask the court to consider the following, organized in near alignment with the outline of the Order.

Evidentiary Limitations

Under ER 1101, the rules of evidence need not be applied in protection order proceedings. As the court recognized in *Blackmon v. Blackmon*, 155 Wn. App. 715, 722, 230 P.3d 233 (2010),

competent evidence may include hearsay or consist entirely of documents. Because these proceedings often rely heavily on written evidence, it is essential that petitioners be allowed to submit sufficient declarations to fully present the material facts of their case.

Petitioners frequently file initial pleadings pro se, often under time pressure and emotional distress, and frequently on the recommendation of a non-attorney service provider. In such circumstances, the initial petition may be incomplete. When counsel is retained after filing (which is often the case when petitioners retain civil legal aid or pro bono counsel), supplemental declarations are often essential to complete the petitioner's case-in-chief.

As written, the current rules are not clear as to whether petitioners are entitled to a supplemental declaration. And in our experience, different judicial officers have different practices on whether a supplemental declaration is permissible, and what constitutes a supplemental declaration. This unnecessarily increases the risk of attorney malpractice while undermining the court's ability to make a decision based on a complete record. We would ask LFLR 12(e) to be clear that petitioners are entitled to a supplemental declaration in addition to the petition, and that the court is liberal in offering the opportunity to prepare supplemental materials with attorney assistance.

As established in the general rule and proposed LFLR 12(e), petitioners are entitled to file a reply. However, the page limit of that reply is only three pages. Respondents have no limit for their response declaration. Three pages is not enough room to fully reply to a response declaration that can be any page length. For example, as written, a respondent could file a 30-page response and the petitioner will only have three pages (and 48 hours) to address that declaration. Petitioners bear the burden of proof and need to have the opportunity to fully reply in writing. We would ask that LFLR 12(e) remove the page limit for reply declarations. In the alternative, we would ask LFLR 12(e) to increase the page limit to six pages.

Deadlines

The CPOA contains no statutory filing deadlines, reflecting the legislature's intent for courts to recognize the ongoing and evolving harms that are unique to domestic violence, sexual assault, stalking and harassment. In this way, the legislature recognized that courts are in the best position to impose deadlines pursuant to the needs of the parties before them on a case-by-case basis.

The Order's deadlines—requiring respondents to file four judicial days before hearing and petitioners' rebuttals only two judicial days prior—creates undue hardship, particularly on pro se litigants and litigants who require the use of an interpreter. We have seen petitioners struggle to respond to voluminous filings (sometimes over 200 pages). A two-day turnaround conflicts with legislative intent and encourages additional motions and continuances, increasing risks to victims by prolonging litigation. See *Smith v. Smith*, 1 Wn. App. 2d 122, 136, 404 P.3d 101 (2017).

A two-day turnaround is incredibly challenging, especially for parties balancing work, childcare, healthcare appointments, and other responsibilities. Even with legal counsel, more time is needed to confer with our clients, prepare evidence, and coordinate witnesses. Rigid deadlines disproportionately affect low-income litigants, while also placing a heavy burden on civil legal aid providers and increasing burnout rates. These deadlines also disproportionately impact petitioners

who require the use of an interpreter to review materials and prepare materials and must do so in a limited amount of time. Further, such rigid deadlines prohibit counsel from agreed upon deadlines, which can prevent additional continuances and undermine judicial efficiency. We would ask that LFLR 12(g) remove these rigid deadlines and establish a briefing schedule on a case-by-case basis.

Oral Argument

As written, the current rule allows five minutes each side for oral argument at the hearing. However, the rule is silent on whether that time increases when an interpreter is employed during the hearing. Under the general order now, some judicial officers allow for five minutes each side with interpretation, while others allow for ten minutes each side with interpretation. This inconsistent practice is unfair for petitioners who are limited in argument, especially pro se litigants who need to address key issues through testimony at the full hearing. Further, interpreters often require repetition for clarity, and this time is often counted towards argument. It is untenable for a petitioner to present their case with interpretation, and reply, all within five minutes. The inconsistent practice also makes it challenging for attorneys to prepare for a case with an interpreter when they are unsure of what time limit the court will impose.

We would ask that LFLR 12(h) make it clear that the time limits for oral argument are five minutes of argument without an interpreter, and ten minutes of argument with an interpreter. And to allow for additional time if repetition for the interpreter is necessary.

Conclusion

The CPOA recognizes that "civil protection orders are essential tools designed to address significant harms impacting individuals as well as communities." RCW 7.105.900(3). As attorneys and advocates for petitioners, we have witnessed the impact of easily accessible proceedings on increasing petitioner safety and access to justice, while reducing lethality.

We offer these comments with respect and in the spirit of supporting the court's work to ensure fairness and access to justice in civil protection order cases.

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