

THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR KITSAP COUNTY

614 DIVISION STREET, MS-24  
PORT ORCHARD, WASHINGTON 98366  
(360) 337-7140

JEANETTE M. DALTON, JUDGE  
DEPARTMENT NO. 1

LEILA MILLS, JUDGE  
DEPARTMENT NO. 2

ANNA M. LAURIE, JUDGE  
DEPARTMENT NO. 3

THEODORE SPEARMAN, JUDGE  
DEPARTMENT NO. 4

JAY B. ROOF, JUDGE  
DEPARTMENT NO. 5

RUSSELL W. HARTMAN, JUDGE  
DEPARTMENT NO. 6

M. KARLYNN HABERLY, JUDGE  
DEPARTMENT NO. 7

SALLY F. OLSEN, JUDGE  
DEPARTMENT NO. 8

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THURMAN W. LOWANS  
COURT COMMISSIONER

FRANK A. MAIOCCO, JR.  
COURT ADM NISTRATOR

**MEMORANDUM**

March 19, 2010

To: Members of the Kitsap County Bar Association

From: Russell W. Hartman, Presiding Judge

Re: Proposed Amendments to the Kitsap County Superior Court Local Court Rules

Attached you will find a copy of proposed amendments, and/or newly-proposed additions, to the local Superior Court rules that are presently under consideration by the Kitsap County Superior Court Judges:

KCLCR 40(b)(4)(B)	Assignment of Cases
KCLCR 59(l)	Collateral Attack Upon Criminal Judgment
KCLCR 78(g)(2)	Clerks: Fax Fees
KCLCR 80(a)(5)(A)	Administration: Guardian ad Litem Registry for Guardianships: Fees

KCLCrR 3.2(b)	Release of Accused; Bail Bond Transfer
KCLCrR 7.8	Collateral Attack Upon Criminal Judgment

Please forward any comments, concerns or suggestions to me or Frank Maiocco, Superior Court Administrator, no later than Friday, May 14, 2010.

In keeping with KCLCR 83(a)(6), and subject to any written comments, criticisms, objections or suggestions received in the interim, these proposed rule amendments will be approved and enacted **effective July 1, 2010.**

cc: Frank Maiocco

*PROPOSED RULE AMENDMENT:*

**VI. TRIALS (Rules 38–53.2)**

**KCLCR 40. ASSIGNMENT OF CASES**

**(b) Methods.**

(4) Standby Calendar. In the event that a case cannot be heard on the date set for trial it will be held on a standby calendar and counsel will be given a minimum of two (2) hours notice for trial.

(A) Notification. The Court Scheduler shall contact the attorney or persons appearing without counsel to advise them of the standby status of their case.

~~(B) Judge Pro Tempore. Standby cases shall have the option to proceed before a judge pro tempore and those cases shall be given a priority for trial.~~

~~(C)~~(B) Standby Calendar at Counsel Request. A standby calendar at counsel request may be created with the following conditions and addressed to the Court Scheduler.

(i) *Trial - Kitsap County Superior Court*. If an attorney is in another trial in Kitsap County Superior Court.

(ii) *Trial - Other Courts*. If an attorney has a conflict with another Superior Court, Appellate Court, or Federal Court, with the approval of the Presiding Judge.

(iii) *Emergency*. If an illness or other emergency situation arises involving the litigants, witnesses, or lawyers, with the approval of the Presiding Judge.

(iv) *Other Requests*. Any other request must be made to the Presiding Judge.

(v) *Pending Settlement*. Cases pending settlement will not be placed on standby at counsel request, but may be reset.

*PROPOSED RULE AMENDMENTS:*

**KCLCR 59. NEW TRIAL, RECONSIDERATION, AMENDMENT OF JUDGMENTS AND MOTIONS FOR REVISION**

**(b) Motion for Reconsideration; Time for Motion; Contents of Motion.** A motion for reconsideration shall be filed, noted, and served on all parties and the trial judge not later than ten (10) days after entry of the judgment, decree, or order. The motion shall be noted on the trial judge's departmental motion docket to be heard not sooner than thirty (30) but not later than forty (40) days after entry of the judgment, decree, or order, unless the court directs otherwise. The bench copy shall be delivered to the trial judge's law clerk at the Superior Court office and shall contain the date the judgment, decree, or order was entered, and the names and addresses of opposing counsel.

**(e) Hearing on Motion for Reconsideration.** A motion for reconsideration shall be submitted on briefs and affidavits of the moving party only. No response shall be submitted by the opposing party, nor shall oral argument be heard, unless the court so directs. The court shall notify the parties, not later than ten (10) days before the hearing, whether: (1) the motion has been denied and the hearing stricken; or (2) oral argument and/or responsive pleadings will be allowed.

**(k) Motions for Revision.** A motion to revise a court commissioner's decision under RCW 2.24.050 shall be noted on the Presiding Domestic Relation Judge's departmental calendar.

~~(l) Collateral Attack Upon Criminal Judgment.~~

~~(1) Filing. A collateral attack upon a criminal judgment and sentence, whether entitled a motion to withdraw guilty plea, a motion to arrest judgment, a motion for new trial, a motion for relief from judgment or order, a motion to vacate, or a habeas corpus petition, shall be filed with the clerk, who shall forward one copy each to the Criminal Motions Judge's law clerk and the Prosecuting Attorney. Any such collateral attack shall be filed no more than one (1) year after the judgment becomes final unless the collateral attack is based solely on one or more of the grounds listed in RCW 10.73.100. The collateral attack shall be submitted on briefs and affidavits of the moving party only, without response by the State.~~

~~(2) Disposition. Not later than twenty (20) days after the filing of the collateral attack, the Criminal Motions Judge shall:~~

- ~~(A) deny the motion, or~~
- ~~(B) transfer the motion to the court of appeals for consideration as a personal restraint petition, or~~
- ~~(C) order the State to file a written response within twenty (20) days.~~

~~(3) Response by State. If the State is ordered to respond, the Court shall, within twenty (20) days of the filing of the State's response, determine whether the motion may be resolved on the submissions of the parties, or whether an evidentiary hearing is required.~~

~~(4) Evidentiary Hearing. If an evidentiary hearing is required, the Court shall require the State to note a hearing on the criminal motions calendar (Friday, 9:00 a.m.), and arrange for the~~

~~transportation of the defendant, within thirty (30) days.~~

(NOTE: SEE *PROPOSED NEW RULE* KCLCrR 7.8 BELOW)

*PROPOSED RULE AMENDMENTS:*

**KCLCR 78. CLERKS**

**(g) Fees.**

(1) No Personal Checks. The County Clerk shall not accept personal checks except for passport applications.

~~(2) Fax Fee. The standard fee for faxing to or from the Clerk's Office shall be \$3.00 for the first page and \$1.00 for each page thereafter.~~

*PROPOSED RULE AMENDMENTS:*

**KCLCR 80. GUARDIANS AD LITEM (TITLE 11 & 26)**

**(a) Administration: Guardian ad Litem Registry for Guardianships.**

(5) Fees.

- (A) Fees paid by Kitsap County shall be at the hourly rate set by the Superior Court judges upon the recommendation of the Superior Court Administrator, and published in the Court's administrative policy. Fees shall not exceed \$500 per case in Title 11 matters or \$1,500 per case in Title 26 matters. If additional fees are requested, a motion must be made to the Court with proper notice to all parties.

*PROPOSED RULE AMENDMENTS:*

**KCLCrR 3.2(b) Release of Accused; Bail Bond Transfer**

In any case where a Defendant has arranged for a posting of a bond in District Court, and the Defendant was held under conditions of release set pursuant to CrRLJ 3.2.1 (PRELIMINARY HEARING ON FELONY COMPLAINT), and that same case has been bound over to Superior Court for proceedings under a felony information, the bond posted in District Court shall be automatically transferred over to Superior Court at no additional cost to the Defendant and the bond posted shall be applied against any bond amount required by the Superior Courts' conditions of release. In a similar manner, any bail bond posted by a defendant in Superior Court shall remain in effect at no additional cost in the event the defendant's case is transferred from Superior Court to District Court or Municipal Court. Nothing in this rule shall restrict the ability and the authority of the Superior Court, District Court, or Municipal Court to modify the conditions of release applicable in any case, to include increasing or decreasing the amount of bond required by the Superior Court, District Court or Municipal Court as the Court deems appropriate. After the case is bound over to the Superior Court, the Superior Court shall have sole authority to modify, exonerate or terminate the bond.

*PROPOSED NEW RULE:*

**KCLCrR 7.8. Collateral Attack Upon Criminal Judgment.**

(a) **Filing.** A collateral attack upon a criminal judgment and sentence, whether entitled a motion to withdraw guilty plea, a motion to arrest judgment, a motion for new trial, a motion for relief from judgment or order, a motion to vacate, or a habeas corpus petition, shall be filed with the clerk, who shall forward one copy each to the Criminal Motions Judge's law clerk and the Prosecuting Attorney. The collateral attack shall be submitted on briefs and affidavits of the moving party only, without response by the State.

(b) **Disposition.** The Criminal Motions Judge shall take the following action no later than twenty (20) days after the filing of the collateral attack:

(1) *Untimely collateral attack.* The collateral attack is timely only if filed within one (1) year after the judgment became final, or is based solely on one or more of the grounds listed in RCW 10.73.100. Untimely collateral attacks shall be transferred to the court of appeals as a personal restraint petition.

(2) *Timely collateral attack.* If the collateral attack is timely under subsection (a), it shall be transferred to the court of appeals unless either (A) the defendant has made a substantial showing that he or she is entitled to relief or (B) resolution of the collateral attack will require a factual hearing. If the collateral attack is not transferred to the court of appeals, the Court shall note a hearing on the Friday morning 9:00 a.m. criminal motions calendar within thirty (30) days prior to that hearing and arrange transportation for the defendant.

(c) **Response by State.** If the Court notes the collateral attack for a hearing pursuant to subsection (b), it shall order the State to file a written response no later than ten (10) days prior to that hearing, and to arrange transportation for the defendant.