

Randall K. Gaylord
SAN JUAN COUNTY PROSECUTING ATTORNEY
350 Court Street • P.O. Box 760 • Friday Harbor, WA 98250
(360) 378-4101 (tel) • (360) 378-3180 (fax)

Victim Services
Audrey Hansen
Nancy Vejvoda

Deputies
Jonathan W. Cain
Amy S. Vira
Teresa Barnett
Lindsey Callahan

MEMORANDUM

May 10, 2022

TO: Hon. Kathryn Loring
FROM: Randall K. Gaylord 
RE: Comment to Proposed Local Court Rules

BACKGROUND

Thank you for the invitation to comment to the proposed local court rules. We offer this comment regarding proposed rule LCR 77. In addition to the written comments below, we would be happy to discuss if you have any questions.

PROPOSED RULE LCR 77(o)

As proposed, LCR 77 (o) is contrary to the enabling statute for visiting judges, RCW 2.08.150 insofar that the rule directs that the home county of the visiting judge will serve as the default location for hearings.

Pursuant to RCW 2.08.150, a “visiting judge” is a judge who travels to another county “to hold a session of the superior court of the county of the judge ...which shall have made the request, **at the seat of judicial business of such county.**” RCW 2.08.150.

This statute makes plain that the a “visiting judge” travels to the county seat in Friday Harbor. Litigants, their attorneys and witnesses should not be given the burden to prove prejudice in a judicial decision made out of San Juan County due to the convenience of the visiting judge. We believe the rule is written this way because the citizens of San Juan County and the general public have a right to attend San Juan County cases at the San Juan County courthouse, in person if they choose. It is unfair to require them to learn the systems and schedules of other superior courts and then commit all day to travel to observe or attend San Juan County matters.

Another statute that applies is RCW 2.08.190 which states that superior court judges have power:

(3) to decide and rule upon all motions, demurrers, issues of fact, or other matters that may have been submitted to him or her in any other county. All such rulings and decisions shall be in writing and shall be filed immediately with the clerk of the proper county: PROVIDED, That nothing herein contained shall authorize the judge to hear any matter outside of the county wherein the cause or proceeding is pending, except by consent of the parties.

RCW 2.08.190 (emphasis added).

That statute was discussed in *Toney v. Lewis County*, 197 Wn. App 1056 (2017) (unreported). In *Toney*, a Lewis County case came on for summary judgment proceedings in front of a visiting judge from Cowlitz County. *Id.* The hearing on the motion was heard in Cowlitz County.

In upholding the ruling because they found no prejudice, the Court noted that without the consent of the parties, the proceeding “was irregular and not authorized by statute.” *Id.* at Part II of Slip Opinion.

The use of the visiting judge local rule should not lead to a default “change in venue” to the county of the judge assigned to the case. Other specific rules apply to change of venue. For example, in criminal cases, venue is controlled by RCW 4.12.040(2) and the case “shall not be sent for trial to any court outside the county unless the accused shall waive his or her right to a trial by a jury of the county in which the offense is alleged to have been committed.” “Try” or “trial” should be viewed broadly and includes any fact-finding hearing including [summary judgment] trial, and post-trial proceedings. *State v. Duran-Madrigal*, 163 Wn. App 608, 261 P.3d 194 (2011).

RCW 4.12.040 (1) further supports the interpretation we are applying. This rule discusses disqualification, and when that occurs states that upon disqualification, a judge shall be “called in from some other court.” (emphasis supplied). As LCR 77(o) is written the parties are “sent out” to judge in another county and told to use the court administrator, equipment and facilities of that court.

SUGGESTED ALTERNATIVE TO LCR 77 (o)

To be consistent with the above law, we urge that LCR 77(o) be modified to read as follows:

Strike everything that is proposed and insert the following:

(o)

(1) After duly appointing a visiting judge pursuant to Article 4 Section 7 of the Washington Constitution and RCW 2.08.150, the visiting judge shall hold session(s) of the San Juan County Superior Court at the seat of judicial business in Friday Harbor. RCW 2.08.150. The visiting judge shall use the physical quarters, and when appropriate and consistent with these rules, equipment for remote appearances provided for the San Juan County Superior Court.

(2) The parties shall coordinate the date and time for hearings with the visiting judge, the court administrator for the visiting judge and the court administrator in San Juan County.

(3) When a hearing involves the presentation or consideration of factual matters such as trial, guilty plea, summary judgment, motions to dismiss or other dispositive motions, the hearing will take place, in person, in San Juan County, unless all parties agree to an alternative hearing arrangement.

(4) Unless the visiting judge directs otherwise, courtesy copies for a visiting judge shall be provided to the court administrator of the Superior Court of the visiting judge.