

The 'Fast Track' is approaching

On Jan. 1, 1990, new King County Local Rules go into effect that will dramatically alter trial practice in King County. The purpose of this column is to make you aware of the general nature of the rule changes and some procedures and tactics you might find effective under the new rules.

The "Fast Track" rules were created by the King County Bench/Bar Task Force On Court Congestion. The Task Force was made up of judges, attorneys, representatives from the clerk's office, court personnel, and other interested persons. By my count, the 42 member Task Force contained 11 WSTLA members.

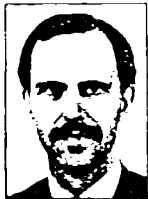
The Task Force spent more than a year analyzing the problem of court congestion in King County. The Task Force also reviewed successful delay reduction programs from all over the country before proposing the local rule changes that will be known as "Fast Track."

The cornerstone of successful delay reduction programs around the country has been courts taking control of their calendars. Under successful delay reduction programs, reasonable steps are taken to see that cases proceed through the system promptly while still ensuring the parties adequate time to complete discovery and to prepare for trial. Steps are taken to encourage settlement earlier in the process and to encourage both sides to make realistic evaluations of their cases. I believe the new King County Local Rules will be successful in reducing court congestion and will promote the earlier settlement of personal injury cases. I urge you to support these rules and to make your best efforts to comply with them.

What follows is an overview of the major local rule changes.

Clerk's Original Case Schedule—LR4

When you file a case, the clerk will provide you with a document entitled "Clerk's Original Case Schedule." This document will list the significant "milestones" in the case and will set deadlines by which each of these



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Practice Tips

milestones must be accomplished. The case schedule sets deadlines for obtaining service upon the defendants, joinder of parties, claims and defenses, disclosure of witnesses, a discovery cut-off, and other matters.

The plaintiff is responsible for serving a copy of the case schedule upon other parties. LR 4(b). The deadlines on the case schedule are spaced out over the time to trial and allow a reasonable amount of time to accomplish each task. Sanctions and terms may be imposed for failure to comply with the deadlines on the case schedule. LR 4(h). Relief is available if the deadlines set by the court are not realistic given the needs of the case. LR 4(c). Trial dates are expected to be more certain and continuances will remain difficult to obtain.

Practice tip: Immediately after receiving the case schedule, you should enter into your tickler system the dates on the case schedule and allow yourself sufficient time to complete each task before the deadline arrives. It will be even more important now for you to space out your case filings. If you file three lawsuits on the same day you will end up with three cases scheduled for trial on the same day.

Motion For Default

Under the new rules the plaintiff shall promptly move for entry of default if an answer is more than 20 days past due. LR 12(a). Terms will ordinarily be assessed against a defendant whose failure to answer requires a plaintiff to file a motion for default. Comment to LR 4.

Practice tip: If you do not move for default, this will be picked up by the Court's monitoring system approximately six months after filing, and you will have to explain to the Court why you have not moved for default when the rule requires you to.

Confirmation of Service

The case schedule will set a date by which plaintiff must file a form entitled "Confirmation of Service." LR 4.2. This form will indicate whether all named defendants have been served. If all defendants have not been served, then you will need to describe in writing what efforts will be made in order to obtain service.

Practice tip: To save yourself the effort of explaining to the Court why service hasn't been obtained by the date allowed in the case schedule, you should try to learn the location of all defendants before filing suit so they will be easy to serve.

Confirmation of Joinder of Parties, Claims, and Defenses

The case schedule will set a deadline for both sides in the lawsuit to confirm that all parties have been joined, all claims made, and all defenses raised. LR 16.1. The purpose for the rule is to eliminate the delay that occurs when a new party or new claim or defense is raised long after the case has been filed.

You comply with the rule by filing a form entitled "Confirmation of Joinder of Parties, Claims, and Defenses." If parties remain to be joined, or claims or defenses raised, then a status conference is held with a judge at this early stage in the case to determine how discovery will proceed and to enter orders that will assist in obtaining fair and orderly discovery.

Practice tip: In order to confirm that you have joined all parties and raised all claims, you must do your discovery early in the case. Under this rule you will also find the defense being more aggressive in completing their discovery, since they must also disclose all defenses.

The new rule should also give plaintiffs ammunition for dealing with some of the "empty chair" problems created by tort reform. RCW 4.22.070 allows a defendant to seek to attribute and apportion fault among unnamed parties and entities. You may find the following steps helpful in removing "empty chair" problems from a case, or at least find out whether there is any evidence to support the defense allegations. First, get interrogatories out to the defense asking what evidence there is to support their allegation that any unnamed parties or entities caused or contributed to the plaintiff's injuries. Second, after receiving no response, or the response "discovery is continuing," send a letter to the defense indicating that their answers are necessary to allow you to comply with the rules requiring confirmation of joinder of parties, claims, and defenses. Third, if you still do not get an answer from the defense then you may refuse to sign the "Confirmation of Joinder of Parties, Claims, and Defenses" form. A status conference with a judge will then be held, at which time you can argue for reasonable deadlines for the defense to disclose their evidence, if any.

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