

THE SUPREME COURT OF WASHINGTON

IN THE MATTER OF THE SUGGESTED
AMENDMENT TO CR 65—INJUNCTIONS

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ORDER

NO. 25700-A-1423

Jack Fiander, having recommended the suggested amendment to CR 65—Injunctions,
and the Court having approved the suggested amendment for publication;

Now, therefore, it is hereby

ORDERED:

(a) That pursuant to the provisions of GR 9(g), the suggested amendment as attached hereto is to be published for comment in the Washington Reports, Washington Register, Washington State Bar Association and Administrative Office of the Court's websites in January 2023.

(b) The purpose statement as required by GR 9(e), is published solely for the information of the Bench, Bar and other interested parties.

(c) Comments are to be submitted to the Clerk of the Supreme Court by either U.S. Mail or Internet E-Mail by no later than April 30, 2023. Comments may be sent to the following addresses: P.O. Box 40929, Olympia, Washington 98504-0929, or supreme@courts.wa.gov.

Comments submitted by e-mail message must be limited to 1500 words.

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ORDER
IN THE MATTER OF THE SUGGESTED AMENDMENT TO CR 65—INJUNCTIONS

DATED at Olympia, Washington this 31st day of March, 2022.

For the Court


González, C.J.

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January 27, 2022

Members, Washington State Supreme Court
Temple of Justice
Olympia, WA 98504

Re: CR 65 (c), Proposed Amendment – GR 9 Submission

Honorable Justices:

I have now had the opportunity to review Washington State Supreme Court General Rule 9, subsection (e) of which describes the proper process for amendment of a Court Rule.

Enclosed herewith is the language of the proposed amendment to CR 65 (c) in the required 8 ½ x 11 inch line-numbered format with the amended language in legislative style. Please consider my January 26, 2022 letter (attached below) as the Cover Letter required by General Rule 9.

Although whether to require public comment or a hearing is within the discretion of the Supreme Court per Rule 9. However, my belief is that a hearing is not required as the amendment would merely make a technical housekeeping change for the inclusion of a governmental entity which was not purposely omitted from the original version of CR 65 (c) and is consistent with the purpose of CR 65.

However, if you deem that Public Comment or Hearing is helpful, rather than attach a comprehensive list of all affected bodies, I suggest that notice of the proposed rule be forwarded to craig.bill@goia.wa.gov, Executive Director of the Governor's Office of Indian Affairs, for distribution to all federally recognized tribal nations in the State of Washington, to the Washington State Bar Association governing body, and to all members of the Washington judiciary per GR 9.

Thank you for your consideration.

Yours truly,
S/ Jack W. Fiander
Attorney at Law
WSBA No. 13116

Thank you for allowing us to assist you.
Towtnuk Law Offices is an Indian Preference Contractor
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January 26, 2022

Steven C. Gonzales, Chief Justice
Members, Washington State Supreme Court
Temple of Justice
Olympia, WA 98504

Re: CR 65 (c), Proposed Amendment

Honorable Justices:

According to RCW 2.04.190, the Washington State Supreme Court has the power to prescribe court rules. In 1967, the Court did so, adopting Superior Court Civil Rules “to secure the just, speedy, and inexpensive determination of every action”, as set forth in CR 1

Since June 4, 2020, the Court has made great progress in eliminating conscious, and unconscious, bias in our judicial system. Notwithstanding such efforts, the first inhabitants of this state and the tribal nations from which they are inseparable have long been reluctant to initiate legal proceedings in Washington state courts due to fear of unjust results.

Given such factors as the high incarceration rate of tribal people in comparison to their percentage of state population, historic conflicts between state and tribal governments over Treaty Rights, taxation, jurisdiction and child welfare, their fear of unfair treatment is not unwarranted. As one of a few members of the legal community regularly representing tribal nations, the default position is for them to seek redress in United States courts rather than risk placing their precious rights before the Washington State judiciary. During my nearly 40 years as a member of the bar there is one impediment to the fair treatment of tribal litigants that has also seemed unjust to me.

Superior Court Civil Rule 65 (c) states as follows:

(c) Security. Except as otherwise provided by statute, no restraining order or preliminary injunction shall issue except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained. No such security shall be required of the United States or of an officer or agency thereof. Pursuant to RCW 4.92.080 no security shall be required of the State of Washington, municipal corporations or political subdivisions of the State of Washington.

Honorable Supreme Court
January 26, 2022
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Our peoples have mutually resided in this state for some 200 years and, more recently, have resolved numerous conflicts cooperatively through mutual respect and governmental consultation. Why, then, does CR 65 (c) exempt only federal, state and local governments from the posting of a bond requirement for obtaining temporary injunctive relief? Given the sophistication and official nature of tribal governments the provision seems discriminatory, implying that tribal nations unlike other governments are likely to renege or default upon just debts.

On many occasions as a litigant representative of tribal nations I have had to inform them to post a bond as security or, alternatively, have had to engage in the unpleasantness with a wink and a nod to the court to fashion and agree to a bond so nominal in amount as to be merely a fiction in order to comply with the rule. I am no longer willing to engage in such a fiction.

This Court's June 4, 2020 letter to members of the legal community obligates all of us to be wary of, and seek to remedy, bias in our justice system. In fulfillment of this solemn obligation I would be grateful if you would consider amending CR 65 (c) to read as follows:

(c) Security. Except as otherwise provided by statute, no restraining order or preliminary injunction shall issue except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained. No such security shall be required of the United States or of an officer or agency thereof or of an Indian tribe within the State of Washington with a governing body duly recognized by the United States Secretary of Interior. Pursuant to RCW 4.92.080 no security shall be required of the State of Washington, municipal corporations or political subdivisions of the State of Washington.

Thank you for your efforts in eliminating bias in our adjudicatory proceedings.

Yours truly,

S/ Jack W. Fiander

Attorney at Law
WSBA No. 13116

1 AMENDMENT TO SUPERIOR COURT CIVIL RULE 65

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3 (c) **Security.** Except as otherwise provided by statute, no restraining order or

4 preliminary injunction shall issue except upon the giving of security by the applicant, in such

5 sum as the court deems proper, for the payment of such costs and damages as may be incurred

6 or suffered by any party who is found to have been wrongfully enjoined or restrained. No such

7 security shall be required of the United States or of an officer or agency thereof or of an Indian

8 tribe within the State of Washington with a governing body duly recognized by the United

9 States Secretary of Interior. Pursuant to RCW 4.92.080 no security shall be required of the

10 State of Washington, municipal corporations or political subdivisions of the State of

11 Washington.

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14 The provisions of rule 65.1 apply to a surety upon a bond or undertaking under this rule

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