WASHINGTON STATE BAR ASSOCIATION

CIVIL LITIGATION RULES DRAFTING TASK FORCE

AGENDA

April 26, 2018
9:30 a.m. – 12:00 p.m.

Conference Call: 1-866-577-9294, Code: 52824#

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1. Approval of March 29, 2018 Minutes **(*Supplemental Materials*)**

Subcommittee Reports/Draft Rules (Redline & Comments)

1. Mediation **(pp. 1-16)**
- Subcommittee Chair Averil Rothrock
  - i. New Rule: Early Mandatory Mediation Requirement
  - ii. Recommended ADR Practices

2. Initial Case Schedule **(pp. 17-27)**
- Subcommittee Chair Roger Wynne
  - i. New Rule: CR 3.1
  - ii. CR 26

3. Early Discovery Conferences **(pp. 28-36)**
- Subcommittee Chair Judge John Ruhl
  - i. CR 26(f)
  - ii. CR 37(e)
  - iii. New Rule: CRLJ 26(h)

4. Individual Judicial Assignment and Pretrial Conferences **(pp. 37-56)**
- Subcommittee Chair Hillary Evans Graber
  - i. CR 16
  - ii. CR 77

5. Initial Disclosures **(pp. 57-65)**
- Subcommittee Chair Rebecca Glasgow
  - i. CR 26
  - ii. CRLJ 26

6. Cooperation **(pp. 66-91)**
- Subcommittee Chair Jane Morrow
  - i. CR 1
  - ii. CR 11
  - iii. CR 26
  - iv. CR 37
  - v. CRLJ 1
  - vi. CRLJ 11
  - vii. CRLJ 26

SUGGESTED AMENDMENT
SUPERIOR COURT CIVIL RULES (CR)

New Rule: Early Mandatory Mediation Requirement

(a) Scope. This rule applies if a case schedule or court order requires mediation. On a party's motion for good cause or on its own initiative, the court may order any parties to mediate pursuant to this rule even where not otherwise required.

(b) Qualified Mediators.

(1) Judges shall be considered qualified mediators. They may serve as a mediator by agreement.

(2) The court shall maintain a list of other qualified mediators and has discretion to modify the list. A person seeking to be on the list of qualified mediators agrees to follow the procedures of this rule if appointed and to accept appointment to one mediation per calendar year on a pro bono basis. Refusal to accept a pro bono appointment may result in removal from the list. A qualified mediator shall demonstrate:

(A) Completion of mediation training; or

(B) Experience mediating at least five matters as a mediator.

(3) The list of qualified mediators must include the following for each mediator:

(A) Name;

(B) Physical and electronic mail addresses;

(C) Telephone number;

(D) Fee schedule;

(E) Whether the mediator is qualified by training, experience or both; and

(F) Preferred legal subject matters, if any.

(4) Each court by county shall establish a recommended fee schedule for assigned mediators and update it annually.

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Seattle, WA 98101-2539

(5) No person who has provided mediation services for an action shall serve as an arbitrator of that action. No person who has been engaged as an arbitrator in an action shall serve as a mediator for that action.

(c) Selection of Mediator.

(1) *Joint Selection of Mediator*. Parties may by agreement select any person as mediator, even if not on the court's list of qualified mediators. If the parties jointly select a mediator, the plaintiff shall file a notice of joint selection of mediator that includes the name and contact information of the mediator jointly selected, and serve a copy upon the mediator.

(2) *Assignment of Mediator*. If the plaintiff fails to file the notice of joint selection of mediator by a deadline provided by a case schedule or court order, the court shall promptly assign a mediator from the approved list and notify the mediator and the parties of the assignment. If the mediator is unable to serve, the mediator shall so notify the court within five days and the court shall appoint a new mediator.

(3) *Pro Bono Mediator*. A party who believes that any party is unable to afford mediation may file a motion requesting assignment of a *pro bono* mediator by a deadline provided by a case schedule or court order. If the court approves the request for a pro bono mediator, the court shall promptly assign a mediator on a pro bono basis.

(d) Mediation Procedure, Attendance.

(1) *Mediation Procedure*. The mediator has authority to determine the procedure of the mediation, for example its form, length, and content. The mediator shall consult the suggested best mediation practices and confer with the parties to learn their needs, preferences and

recommendations for a successful process. The mediator shall hold a mediation the mediator considers appropriate in light of the circumstances and input from the parties.

(2) *Attendance.* All persons necessary to settle the matter and who have the necessary settlement authority must attend. The mediator has the authority to determine all other issues of attendance after consulting the parties, including whether any individual may attend by telephone.

(e) Notice of Compliance. No later than 5 days after commencement of mediation, the plaintiff shall file with the court a notice of compliance with this rule indicating that the parties held or commenced a mediation. The parties may continue mediation efforts after an initial session and need not represent that mediation efforts are completed. The notice of compliance shall be in the following or a substantially similar form:

IN THE SUPERIOR COURT OF THE
STATE OF WASHINGTON IN AND FOR THE
COUNTY OF . . . . . .

(Plaintiff Name). . . . . Cause No. . . . . .
. . . . . .,

Plaintiff.
vs.

NOTICE OF COMPLIANCE WITH EARLY MANDATORY MEDIATION REQUIREMENT (CR __)

(Defendant Name). . . .. . .
. . . . . .,

Defendant.

. . . .

Plaintiff hereby notifies the Court that on (Date/Dates), all parties met for mediation in compliance with CR (#__[this rule])..

SUGGESTED AMENDMENT
SUPERIOR COURT CIVIL RULES (CR)
New Rule: Early Mandatory Mediation Requirement

Date: . . . . . .

Attorney for Plaintiff . . . . . .
.,

_____

(Signature)
WSBA #

(f) Mediator Compensation. The parties shall pay the mediator's reasonable fees unless a court order provides otherwise. Unless otherwise ordered by the court or agreed by the parties, each party is responsible for his, her or its proportional share of the reasonable mediation fee. The court has authority to resolve in its discretion any fee dispute upon motion of any party, including the reasonableness of the mediation fee.

(g) Extension of Applicable Deadline for Specific Objectives. If any party in good faith believes that completion of specific discovery or exchange of specific information is necessary before mediation, and if that specific discovery or exchange of specific information is not likely to be completed within applicable deadlines, then that party may seek to extend the mediation deadline by raising the issue at the Initial Discovery Conference and incorporating the same into the Discovery Plan and Status Report. The court may extend an applicable deadline for mediation by a maximum of 60 days in such circumstances and incorporate any such extension into the Case Schedule. The availability of this extension is without prejudice to an extension of, or exemption from, any case schedule otherwise available.

(h) Sanctions for Failure to Comply. The court, upon motion or upon its own initiative, may impose an appropriate sanction on any party or attorney for refusal to participate in mediation or comply with any of the requirements of this rule, for willful delay in completing

mediation or for participation in bad faith. The sanction may include, but is not limited to, an order to pay a fee sufficient to deter the conduct and an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the sanctionable conduct. The court shall not entertain any motion with respect to this subsection unless the parties have conferred with respect to the motion. The moving party shall arrange for a mutually convenient conference in person or by telephone. The court may apply sanctions if the court finds that any party or its counsel, upon whom a motion with respect to matters covered by such rules has been served, has willfully refused or failed to confer in good faith. Any motion seeking sanctions under this subsection shall include a certification that the conference requirements of this rule have been met.

RECOMMENDED ADR PRACTICES

1. MEDIATION

(a) Parties should consider engaging in mediation at an earlier stage than required by the rules. Certain types of cases typically require little discovery. Very early mediation can be fruitful in such cases.

(b) Parties should consider engaging in limited-scope mediation focused on specific issues:

i. Even when there is little possibility of settling all issues in a dispute, or of settling issues before conducting discovery, the parties should consider mediating particular issues that might be resolved.

ii. In cases where discovery is likely to be extensive or contentious, the parties should consider mediating the scope and conduct of discovery.

(c) Parties and mediators should consider varying the format of mediation, depending on the needs of the case and disposition of the parties:

i. Conducting mediation as a series of sessions rather than a one-day event; or

ii. Using shuttle-style mediation, in which the mediator meets with the parties individually to identify areas of potential settlement before the parties' positions are entrenched.

(d) Mediators should consider pre-session meetings, in person or by phone:

i. With counsel; or

ii. With counsel and client.

2. PRIVATE ARBITRATION

(a) The arbitrator should identify the scope of arbitration with input from the parties.

(b) Parties should consider limiting or eliminating the length and number of depositions and the extent of expert discovery.

(c) Parties should consider voluntarily narrowing the scope of arbitration at outset. For example, selecting a single arbitrator; conducting focused single-issue arbitration; establishing specific limitations on relief.

(d) If not already contractually agreed among the parties, arbitrators should consider scheduling planning and coordinating meetings upon selection to set the terms and conditions of the arbitration process.

(e) An arbitration contract should address the following topics; if they are not, the arbitrator or panel should address them in early rulings:

i. Whether there is a challenge to arbitration;

ii. Whether arbitration should be global, addressing and resolving all issues, or whether its scope should be limited to one or more specific issues;

iii. What procedural rules will govern conduct and location of proceedings (for example, AAA, JAMS, JDR, or some other protocol);

iv. What limits will be placed on discovery, for example, lay-down discovery or e-discovery rules. Without some discovery limits, arbitration comes to resemble full-scale litigation;

v. The body of substantive law that will govern resolution of the dispute;

vi. Whether mediation is required either before arbitration or early in arbitration, and, if so, on what schedule;

vii. What interim relief, if any, will be available, whether injunctive or otherwise;

viii. Whether to allow expedited electronic exchange of briefs, submittals, and other documents;

ix. Whether to allow pre-hearing motions for summary judgment or partial summary judgment;

x. What timing should be required for the arbitration process: (1) mandate either to conduct or consider early mediation; (2) date(s) to commence and complete discovery; (3) date for final coordinating conference prior to hearing on the merits; (4) date to commence hearing on the merits; (5) duration of the hearing day, and possible imposition of time limits on presentation of evidence and argument; and

xi. Details concerning a final award: (1) time limit on the arbitrator or panel between completion of hearing and issuance of award; (2) form of award (basic, reasoned, or detailed findings and conclusions), including a specific statement if the parties do not want a compromise or "split the baby" award; (3) what permanent relief may be granted (legal or equitable); (4) whether to allow award of costs and fees; and (5) whether to allow judicial review.

From: David Alvarez
To: Civil Litigation Task Force
Cc: Pam Loginsky; Nichols, Mark (Pros.); Wendt, Brian
Subject: Mandatory early mediation
Date: Monday, April 09, 2018 11:14:40 AM

To the Task Force:

This is the opinion of one civil practitioner who has been practicing civil law on behalf of local governments in WA for 19 years and before that 9 years in NJ.

This is my opinion and not the official opinion of the Clallam County Prosecuting Attorney's Office.

I see that it is not mandatory unless the parties to a litigation want it. BUT….

For local governments, I don't see that early mandatory mediation is a tool that will have much purpose or usefulness.

For example, in the land use arena, mediation won't be useful because any result of any settlement or mediation STILL MUST conform to the existing zoning regulations.

This means any local government can't accept or agree to the end result of a mediation that allows greater residential density or reduced buffers unless there is a mechanism in the existing regulations or comprehensive plan that allows this variance from what is required OR authorized.

Such a deal arrived at through mediation that impacts the development of land may be seen as a "back room" deal when GMA and other land use statutes require "early and continuous" participation (transparency) before the County legislature makes policy decisions.

So mediation can't result in what amounts to a policy decision.

The squeaky wheel applicant or organization that goes to litigation should not obtain a special deal from the local government via mediation.

I have participated in mediation in land use matters twice and both times the

most the mediator could do was force one side or the other to interpret the existing rules differently or modify their proposal to the satisfaction of the aggrieved neighbor.

And most torts, particularly personal injury cases, already have mandatory arbitration, at least I think they do.

And if the matter to go to mediation is related to a personnel matter or job or work place conditions, wouldn't that be the subject of a collective bargaining agreement with the local government that would have built into it a grievance process, making mediation not necessary and probably an unfair labor practice?

Why have a list of "qualified mediators" if it is also possible for two litigants to choose someone NOT on that list to be their mediator?

How will a Judge impose sanctions on a litigant who doesn't comply with these "early mandatory mediation" rules?

There is a fine line between being cantankerous and not participating in mediation or not having resources (sanctioned) and not participating because the parties don't see any chance that early mandatory mediation will succeed (not sanctioned?).

And why is a firm or person making a living at mediation going to agree to some kind of court imposed fee schedule?

How are the courts qualified to set such a fee schedule?

Does "early mandatory mediation" amount to another way that civil litigation becomes more expensive and less accessible to the "working poor?"

I think mediation is a great idea, but there need not be a formal rule around "early mandatory mediation."

Not broken, don't fix it.

David Alvarez

Chief Civil Deputy Prosecuting Attorney, Clallam County

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Port Angeles WA 98362

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From: Deane Minor
To: Civil Litigation Task Force
Subject: new mediation rule
Date: Monday, April 09, 2018 6:24:40 PM

I agree with the concept and the rule looks fine with one exception:

A rule prohibiting a mediator from serving as an arbitrator is unnecessarily restrictive. I would suggest that if the parties are all represented by counsel that they should be able to stipulate to having the mediator move into the arbitrator rule if the mediator was willing to do so. In a case with smaller stakes, this can avoid incurring costs out of proportion to the value of the case.

Deane W. Minor

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From:	Ione S. George
To:	Civil Litigation Task Force
Subject:	RE: Feedback Requested: WSBA Civil Litigation Rules Drafting Task Force/ New Civil Rule re Early Mandatory Mediation
Date:	Monday, April 09, 2018 1:19:40 PM
Attachments:	image001.png

I am responding to the request for feedback regarding the proposed mandatory early mediation rule.

I do agree that certain cases may benefit from such a proposal. However, I believe that implementation of a mandatory requirement in all cases will do little but instigate a flurry of 'busy work' in efforts to avoid the mandatory requirement in the greater portion of the cases where such resolution in not yet realistic. As a representative of a governmental entity, I routinely look for ways to achieve early resolution, but my ability to obtain sufficient information to assess my entity's potential liability, exposure, or identify my best defenses is just not possible at the initial disclosure phase of a litigation. At that point I cannot fairly advise my client what resolution is in its best interest, and therefore, I cannot mediate a resolution. To that end, if I were faced with a mandatory mediation, my only option would be to spend time and resources, in virtually every case, justifying why I was not prepared to mediate. Thus, the proposed rule just adds one more step of not moving forward with my case, not benefitting my client, and wasting resources.

I think a better plan would be to provide the option, perhaps provide some kind of benefit for those who are able to capitalize on this early opportunity (reduced rates for court appointed mediators?) and make it somehow more accessible, rather than mandatory.

Thanks for hearing me out.

-Ione George

Ione S. George
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>>> Sherry Lindner <sherryl@wsba.org> 4/9/2018 9:50 AM >>>
Greetings,

The Civil Litigation Rules Drafting Task Force is proposing to create a new civil rule to require early mandatory mediation. The Task Force is reaching out to stakeholders for comments and feedback on its proposal.

Stakeholder input is crucially important in rulemaking process and assists the Task Force in making an informed decision.

Attached please find Ms. Rothrock's letter and draft proposal.

Please submit your feedback/comments to CLTF@wsba.org by May 21, 2018

Thank you,

Sherry Lindner | Paralegal |Office of General Counsel
Washington State Bar Association |**T** 206-733-5941 | **F** 206-727-8314 | sherryl@wsba.org
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From: Ryan Brown
To: Civil Litigation Task Force
Cc: David Sparks; Ryan Lukson
Subject: Comments to Proposed Early Mediation Rule
Date: Monday, April 09, 2018 11:09:02 AM

To Whom It Concerns,

I represent a public entity (a mid-sized Eastern Washington county), and my staff and I have engaged in numerous successful mediations on its behalf.

I applaud the concept being proposed and, with the exception of one minor provision, strongly support the proposed rule as written.

The one exception is under section (d), Mediation Procedure, Attendance. Under subsection (d)(2), the proposed rule says "[a]ll persons necessary to settle the matter and who have the necessary settlement authority must attend . . . ."

While I concur that language is appropriate for private litigants, it is problematic for public entities that are subject to the Open Public Meetings Act. For these entities, that provision would require the governing board to determine, in open session, the maximum amount of settlement authority its representative shall be given. Obviously, having that information in the public domain and potentially available to the opposing party is unacceptable.

I have participated in numerous successful mediations on behalf of Benton County, and in none of them did we comply with subsection (d)(2). Instead, we discuss the matter ahead of time with our governing board in executive session to get a sense of what type of settlement the board would likely look favorably upon, and then attend the mediation usually with one board member. At the beginning of the mediation, we make clear that the board member does not have final settlement authority, but will agree to terms that he or she believes he can sell to a majority of the other board members.

Using this procedure, we have not in my experience had any settlements fall through after what we believed was a successful mediation.

With this in mind, I suggest and request that an exception to subsection (d)(2) be crafted for public entities that are subject to the Open Meetings Act. Failure to do so will, in at least certain circumstances, put public entity litigants at a disadvantage and possible result in unnecessary expenditure of tax dollars.

Thank you for your consideration of these comments.

Ryan K. Brown
Chief Deputy Pros. Attorney, Civil
Benton Co. Pros. Attorney's Office
Phone: (509) 735-3591
Fax: (509) 222-3705

From: Matt Purcell
To: Civil Litigation Task Force
Subject: Civil rule care out domestic application
Date: Wednesday, April 11, 2018 12:03:30 AM
Attachments: image001.png

Can you please carve out an exception for Domestic Cases? Please? For example, mediators will often arbitrate a domestic case and that proves to be VERY helpful and cost effective given the unique application to family law. As a matter of fact, it would be great if that was taken into consideration when coming up with so many of these rules that apply because civil rules on the whole apply to domestic cases yet no one seems to consider that when drafting the rules…

I would write more but it seems like no matter how much time gets put into these comments they never seem to go anywhere… hopelessly hoping I guess with this one.

Truly,

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Please be aware that Domestic Court is held Monday morning, Tuesday all day and Wednesday morning each week; my ability to respond to email is limited during those days/times.

Heather Martinez: HM@PurcellFamilyLaw.com
Maria Diaz: MD@PurcellFamilyLaw.com
Mark Von Weber: MV@PurcellFamilyLaw.com

Office Hours: Monday-Thursday from 9:00 a.m. to 5:00 p.m. Friday from 9:00 a.m. to 4:00 p.m.
Closed for lunch from 12:00 p.m. – 1:00 p.m.

SUGGESTED AMENDMENT
SUPERIOR COURT CIVIL RULES (CR)
New CR 3.1 – INITIAL CASE SCHEDULE

(a) When a summons and complaint are filed, and unless exempted pursuant to this rule, the court shall issue an initial case schedule with at least the following deadlines:

1. Initial Discovery Conference. The parties shall hold an initial discovery conference no later than 45 weeks before the trial commencement date.

2. Discovery Plan and Status Report. The parties shall file a discovery plan and status report no later than 43 weeks before the trial commencement date.

3. Initial Disclosures. The parties shall serve initial disclosures no later than 39 weeks before the trial commencement date.

4. Joint Selection of Mediator, if Any. If the parties intend to jointly select a mediator, the plaintiff shall file a joint selection of mediator no later than 37 weeks before the trial commencement date.

5. Appointment of Mediator if Parties Do Not Jointly Select. If the plaintiff does not timely file a joint selection of mediator, the court shall appoint a mediator and notify the parties and the mediator no later than 36 weeks before the trial commencement date.

6. Notice of Compliance with the Early Mandatory Mediation Requirement. The plaintiff shall file a notice of compliance with the early mandatory mediation requirement no later than 32 weeks before the trial commencement date.

7. Expert Witness Disclosures.

   A. Each party shall serve its primary expert witness disclosures no later than 26 weeks before the trial commencement date.

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B. Each party shall serve its rebuttal expert witness disclosures no later than 20 weeks before the trial commencement date.

8. Discovery Cutoff. The parties shall complete discovery no later than 13 weeks before the trial commencement date.

9. Dispositive Motions. The parties shall file dispositive motions no later than nine weeks before the trial commencement date.

10. Pretrial Report. The parties shall file a pretrial report no later than four weeks before the trial commencement date.

11. Pretrial Conference. The court shall conduct a pretrial conference no later than three weeks before the trial commencement date.

12. Trial Commencement Date. The court shall commence the trial no later than 52 weeks after the filing of the summons and complaint.

(b) If application of subsection (a) would result in a deadline falling on a Saturday, Sunday, or legal holiday, the deadline shall be the next day in the future that is neither a Saturday, Sunday, nor legal holiday.

(c) The party instituting the action shall serve a copy of the initial case schedule on all other parties no later than ten days after the court issues it.

(d) Permissive and mandatory case schedule modifications.

1. The court may modify the case schedule on its own initiative or a motion demonstrating: good cause; the action's complexity; or the impracticality of complying with this rule because of the nature of the action. At a minimum, good cause requires the moving party to demonstrate due diligence in meeting the

requirements of the case schedule. As part of any modification, the court may revise expert witness disclosure deadlines, including to require the plaintiff to serve its expert witness disclosures before the defendant if the issues in the case warrant staggered disclosures.

2. No case schedule shall require a party to violate the terms of a protection, no-contact, or other order preventing direct interaction between persons. The court shall modify the case schedule on its own initiative or a motion to enable the parties to respect the terms of such an order.

(e) The following types of actions are exempt from this rule, although nothing in this rule precludes a court from issuing an alternative case schedule for the following types of actions:

RALJ Title 7, appeal from a court of limited jurisdiction;

RCW ch. 4.24.130, change of name;

RCW ch. 4.48, proceeding referred to a referee;

RCW ch. 5.51, Uniform Interstate Depositions and Discovery Act;

RCW 4.64.090, abstract of transcript of judgment;

RCW ch. 6.36, foreign judgment;

RCW ch. 7.06, mandatory arbitration appeal;

RCW ch. 7.36, petition for writ of habeas corpus, mandamus, restitution, or review, or any other writ;

RCW ch. 7.60, receivership proceeding (when filed as an independent action and not under an existing proceeding);

RCW ch. 7.90, sexual assault;

RCW ch. 7.94, extreme risk;

RCW ch. 8.12, condemnation [*Note: Citations to sources of condemnation authority may need to be expanded in a subsequent draft.*];

RCW ch. 10.14, anti-harassment;

RCW ch. 10.77, criminally insane;

RCW Title 11, probate and trust law;

RCW ch. 12.36, small claims appeal;

RCW Title 13, juvenile courts, juvenile offenders, emancipation of a minor;

RCW ch. 26.04, marriage age waiver petition;

RCW ch. 26.21A, Uniform Interstate Family Support Act;

RCW ch. 26.33, adoption;

RCW ch. 26.50, domestic violence;

RCW 29A.72.080, ballot title or summary for a state initiative or referendum;

RCW ch. 34.05, administrative appeal;

RCW ch. 36.70C, land use petition;

RCW ch. 49.12, work permit;

RCW ch. 51.52, appeal from the board of industrial insurance appeals;

RCW ch. 59.18, unlawful detainer;

RCW ch. 70.96A, chemical dependency;

RCW ch. 70.109 (sexually violent predator commitment);

RCW ch. 71.05, civil commitment;

RCW ch. 74.20, Uniform Reciprocal Enforcement of Support Act;

RCW ch. 74.34, vulnerable adult;

SPR 98.08W, settlement of claims by guardian, receiver, or personal representative;

SPR 98.16W, settlement of claims of minors and incapacitated persons; and

WAC 246-100, isolation and quarantine.

(f) In addition to the types of actions identified in subsection (e), the court, on a motion or its own initiative, may exempt any action or type of action for which compliance with this rule is impractical.

SUGGESTED AMENDMENT
SUPERIOR COURT CIVIL RULES (CR)
CR 26 – GENERAL PROVISIONS GOVERNING DISCOVERY

[(a) unchanged.]

(b) Discovery Scope and Limits. Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

[(b)(1) – (b)(4) unchanged.]

(5) Trial Preparation: Experts. Discovery of facts known and opinions held by experts, otherwise discoverable under the provisions of subsection (b)(1) of this rule and acquired or developed in anticipation of litigation or for trial, may be obtained only as follows:

(A)(i) A party may through interrogatories require any other party to identify each person whom the other party expects to call as an expert witness at trial, to state the subject matter on which the expert is expected to testify, to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion, and to state such other information about the expert as may be discoverable under these rules. (ii) Unless earlier required by these rules, and in no event later than the deadline for primary or rebuttal expert witness disclosures provided by a case schedule or court order, each party shall identify each person whom that party expects to call as a primary or rebuttal expert witness at trial, state the subject matter on which the expert is expected to testify, state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion, and state such other information about the expert as may be discoverable under these rules.

SUGGESTED AMENDMENT
SUPERIOR COURT CIVIL RULES (CR)
CR 26 – GENERAL PROVISIONS GOVERNING DISCOVERY

(B) A party may, subject to the provisions of this rule and of rules 30 and 31, depose each person whom any other party expects to call as an expert witness at trial.

(~~B~~C) A party may discover facts known or opinions held by an expert who is not expected to be called as a witness at trial, only as provided in rule 35(b) or upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.

(~~C~~D) Unless manifest injustice would result:~~,~~ (i) the court shall require that the party seeking discovery pay the expert a reasonable fee for time spent in responding to discovery under subsections (b)(5)(B)~~(A)(ii)~~ and (b)(5)(C~~B~~) of this rule; and (ii) with respect to discovery obtained under subsection (b)(5)(B)~~(A)(ii)~~ of this rule the court may require, and with respect to discovery obtained under subsection (b)(5)(C~~B~~) of this rule the court shall require the party seeking discovery to pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert.

[(b)(6) – (b)(8) unchanged.]

[(c) – (j) unchanged.]

From: Mark Baumann (Mark)
To: Civil Litigation Task Force
Subject: CR 3.1 question
Date: Wednesday, April 11, 2018 6:13:12 PM

Dear Task Force,

Am I reading CR 3.1 correctly to say that all Washington counties are required to have these case schedules, and that Court's are free to adopt local rules exempting certain case types out of the rule?

I am concerned about such a rule in family law cases in Clallam County, population under 100,000.

Warm regards,

Mark Baumann
WSBA #18632
Port Angeles

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From: Alan L. Miles
To: Civil Litigation Task Force
Cc: Sherry Lindner; pamloginsky@waprosecutors.org; Greg Zempel; Christopher Horner
Subject: RE: Comment on New Civil Rule 3.1
Date: Monday, April 16, 2018 3:20:34 PM

Dear WSBA: The Office of the Kitsap County Prosecuting Attorney joins in the comment of the Kittitas prosecutor's office on proposed new CR 3.1 with respect to property tax foreclosure actions filed pursuant to chapter 84.64 RCW.

Moreover, actions filed pursuant to chapter 35.50 RCW (local improvement foreclosure) should be automatically exempted from the requirements for the same reasons.

If you have any questions regarding our comments, please let us know.

Thank you for your consideration.

Very truly yours,

Alan Miles

Alan L. Miles, Senior Deputy Prosecuting Attorney
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From: Christopher Horner [mailto:christopher.horner@co.kittitas.wa.us]
Sent: Monday, April 16, 2018 1:41 PM
To: 'CLTF@wsba.org' <CLTF@wsba.org>
Cc: 'sherryl@wsba.org' <sherryl@wsba.org>; pamloginsky@waprosecutors.org; Greg Zempel <greg.zempel@co.kittitas.wa.us>; Alan L. Miles <AMiles@co.kitsap.wa.us>
Subject: Comment on New Civil Rule 3.1

I submit this comment in response to the proposed CR 3.1:

Each year Kittitas County, and several other counties, maintain property tax foreclosure actions under chapter 84.64 RCW. Kittitas County's practice is to file a notice, summons, and complaint when initiating the property tax foreclosure action. Typically, Kittitas County's property tax foreclosure action is no more than 5-6 months in duration, and is resolved by motion, not by trial.

As such, it is impracticable to comply with CR 3.1 in property tax foreclosure actions, so I believe foreclosure actions under chapter 84.64 RCW should be exempted from the proposed CR 3.1.

Sincerely,

Chris Horner
Deputy Prosecuting Attorney
Kittitas County

From:	Christopher Horner
To:	Civil Litigation Task Force
Cc:	Sherry Lindner; pamloginsky@waprosecutors.org; Greg Zempel; amiles@co.kitsap.wa.us
Subject:	Comment on New Civil Rule 3.1
Date:	Monday, April 16, 2018 1:41:21 PM

I submit this comment in response to the proposed CR 3.1:

Each year Kittitas County, and several other counties, maintain property tax foreclosure actions under chapter 84.64 RCW. Kittitas County's practice is to file a notice, summons, and complaint when initiating the property tax foreclosure action. Typically, Kittitas County's property tax foreclosure action is no more than 5-6 months in duration, and is resolved by motion, not by trial.

As such, it is impracticable to comply with CR 3.1 in property tax foreclosure actions, so I believe foreclosure actions under chapter 84.64 RCW should be exempted from the proposed CR 3.1.

Sincerely,

Chris Horner
Deputy Prosecuting Attorney
Kittitas County

SUGGESTED AMENDMENT TO
SUPERIOR COURT CIVIL RULES (CR)
CR 26 – GENERAL PROVISSIONS GOVERNING DISCOVERY

(a) - (e) [Unchanged]

(f) Discovery Conference.

(1) *Timing of Initial Discovery Conference*. Not later than 14 days after all mandatory pleadings have been filed and served, and except in a case exempted from the initial discovery conference requirement as listed in rule 3.1, or when the court orders otherwise, the plaintiff or petitioner shall schedule and conduct an initial in-person or telephonic discovery conference for all parties that have appeared in the case. Each party or each party's attorney shall reasonably cooperate in scheduling and conducting the initial discovery conference.

(2) *Subjects to Be Discussed at Initial Discovery Conference*. At the initial discovery conference, the parties shall consider the following:

(A) Joinder of additional parties and amendments to pleadings;

(B) Amendments to the Initial Case Schedule;

(C) Possibilities for promptly resolving the case;

(D) Scheduling of an early mediation session as required by rule ___;

(E) Admissions and stipulations about facts;

(F) Agreements as to what discovery may be conducted and in what order, and any limitations to be placed on discovery;

(G) Preservation and production of discoverable information, including documents and electronically stored information;

(H) Agreements for asserting privilege regarding materials to be produced or protective orders regarding the same;

(I) Other ways to facilitate the just, speedy, and inexpensive disposition of the action.

(3) *Joint Status Report*. Not later than 14 days after the initial discovery conference, the plaintiff or petitioner shall file and serve a joint status report, stating the parties' positions

and proposals on the subjects set forth in CR 26(f)(2). The joint status report shall be signed by all parties or their counsel and shall certify that the parties reasonably cooperated to reach agreement on the matters set forth in the joint status report.

~~(f)~~ (4) *Discovery Conference With the Court*. At any time after commencement of an action the court may direct the attorneys for the parties to appear before it for a conference on the subject of discovery. The court shall do so upon motion by the attorney for any party if the motion includes:

~~(1)~~ (A) A statement of the issues as they then appear;

~~(2)~~ (B) A proposed plan and schedule of discovery;

~~(3)~~ (C) Any limitations proposed to be placed on discovery;

~~(4)~~ (D) Any other proposed orders with respect to discovery; and

~~(5)~~ (E) A statement showing that the attorney making the motion has cooperated reasonably to reach agreement with opposing parties or their attorneys on the matters set forth in the motion.

(5) *Duty to Reasonably Cooperate.* Each party and each party's attorney ~~are under a duty to participate in good faith~~ shall reasonably cooperate in the framing of a discovery plan if a plan is proposed by the attorney for any party.

(6) *Notice of Discovery Conference.* Notice of the motion shall be served on all parties. Objections or additions to matters set forth in the motion shall be served not later than 10 days after service of the motion.

(7) *Order on Discovery Conference.* Following ~~the~~ any discovery conference with the court, the court shall enter an order tentatively identifying the issues for discovery purposes, establishing a plan and schedule for discovery, setting limitations on discovery, if any, and determining such other matters, including the allocation of expenses, as are necessary for the

proper management of discovery in the action. An order may be altered or amended whenever justice so requires.

(8) *Pretrial Conference.* Subject to the right of a party who properly moves for a discovery conference to prompt convening of the conference, the court may combine the discovery conference with a pretrial conference authorized by rule 16.

(g)-(j) [Unchanged]

Washington State Bar Association
1325 Fourth Ave - Suite 600
Seattle, WA 98101-2539

SUGGESTED AMENDMENT TO
SUPERIOR COURT CIVIL RULES (CR)
CR 37 – FAILURE TO MAKE DISCOVERY: SANCTIONS

(a) - (d) [Unchanged]

(e) Failure To ~~Participate in~~ Reasonably Cooperate Regarding a Discovery Plan. If a party or a party's attorney fails to ~~participate in good faith~~ reasonably cooperate in scheduling or conducting a discovery conference, or drafting a joint status report, or ~~the~~ framing a discovery plan by agreement as is required by rule 26(f), the court may, after opportunity for hearing, require such party or such party's attorney to pay to any other party the reasonable expenses, including attorney fees, caused by the failure.

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SUGGESTED AMENDMENT TO
CIVIL RULES FOR COURTS OF LIMITED JURISDICTION (CRLJ)

CRLJ 26 - DISCOVERY

(a) - (g) [Unchanged]

(h) Discovery Conference.

(1) *Timing of Initial Discovery Conference*. Upon the filing of each case governed by these rules, and unless exempted by these rules, the court shall issue an Initial Case Schedule requiring the parties to conduct an initial discovery conference within the earlier of 14 days of service of the last pleading responsive to the complaint or 45 days of service of the last notice of appearance. Each party or each party's attorney shall reasonably cooperate in scheduling and conducting the initial discovery conference.

(2) *Subjects To Be Discussed at Initial Discovery Conference.* At the initial discovery conference, the parties shall consider the following subjects:

(A) A statement of the issues as they then appear;

(B) A proposed discovery plan, including a schedule for discovery in accordance with these rules;

(C) Any proposed order with respect to limitations to be placed on discovery, in addition to those limits already contained within these rules;

(D) Any proposed order with respect to additional discovery in conformity with these rules;

(E) Any proposed order to amend the Initial Case Schedule

(F) Other ways to facilitate the just, speedy, and inexpensive disposition of the action

(3) *Joint Status Report*. Not later than 14 days after the initial discovery conference, the plaintiff shall file and serve a joint status report, stating the parties' positions and proposals on the subjects set forth in CRLJ 26(g)(2). The joint status report shall be signed by all parties or

their counsel and shall certify that the parties reasonably cooperated to reach agreement on the matters set forth in the joint status report

(4) *Other Discovery Conference*. Any party proposing a discovery plan under this rule shall serve the proposed discovery plan on all parties within 90 days of service of the summons and complaint, or counterclaim, or cross complaint, whichever is longer. Any such proposed discovery plan shall be deemed approved by the Court if no objection or counter proposal is served and filed within 14 days after the proposed discovery plan is filed and served. If an objection or other proposed discovery plan is filed and served within 14 days of the filing and service of a proposed discovery plan, the court shall schedule a discovery conference.

(5) *Duty to Cooperate*. Each party and each party's attorney shall reasonably cooperate at a discovery conference and in framing a discovery plan if a plan is proposed by an attorney for any party. If a party or a party's attorney fails to do so, the court may, after opportunity for hearing, require such party or such party's attorney to pay to any other party the reasonable expenses, including attorney fees, caused by the failure.

(6) *Additional Discovery*. Nothing in this rule shall restrict a party from seeking or the court from ordering additional discovery pursuant to CRLJ 26(e).

(7) *No Ex Parte Fee*. No ex parte fee will be charged with respect to any joint status report or any discovery plan.

SUGGESTED JOINT STATUS REPORT
FOR CRLJ 26(h) INITIAL DISCOVERY CONRERENCES

IN THE _____ DISTRICT COURT, IN AND FOR THE COUNTY OF _____
STATE OF WASHINGTON

Plaintiff(s),	)	No.
v.	)	JOINT STATUS REPORT (CRLJ 26(h))
Defendant(s).	)	

The plaintiff must file and serve this Joint Status Report no later than 14 days after the initial discovery conference between the parties.

The parties jointly represent that on the ____ day of _____, 20__, pursuant to CRLJ 26(h), they conducted an initial discovery conference and conferred regarding the following subjects. The parties submit this joint status report, as required by CRLJ 26(h)(3).

1. Statement of the Issues

_____
_____
_____

2. Discovery Plan. Check each applicable box below. For each box checked, provide the information requested.

[ ] The parties intend to serve interrogatories and requests for production, as permitted by CRLJ 26(b). If this box is checked, state when each party intends to serve interrogatories and requests for production:

_____.

[ ] The parties intend to take depositions, as permitted by CRLJ 26(c). If this box is checked, state when the parties intend to take depositions, and which persons, besides the opposing party, each party intends to depose.

_____
_____
_____

[ ] The parties intend to serve requests for admission, as permitted by CRLJ 26(d). If this box is checked, state when the parties intend to serve requests for admission.

_____
_____
_____

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SUGGESTED JOINT STATUS REPORT
FOR CRLJ 26(h) INITIAL DISCOVERY CONRERENCES

3. Limitations on Discovery.

[ ] The parties agree that limitations should be placed on discovery, in addition to the limits set forth in the Rules for Courts of Limited Jurisdiction, including, but not limited to, the limits set forth in CRLJ 26. If this box is checked, describe all agreed limitations on discovery.

_____
_____
_____

[ ] Plaintiff proposes limitations on discovery to which defendant does not agree. If this box is checked, describe plaintiff's proposed limitations on discovery.

_____
_____
_____

[ ] Defendant proposes limitations on discovery to which plaintiff does not agree. If this box is checked, describe plaintiff's proposed limitations on discovery.

_____
_____
_____

4. Additional Discovery.

[ ] The parties agree to jointly seek leave of court to permit additional discovery, beyond the discovery permitted by CRLJ 26(a)-(d). If this box is checked, describe what additional discovery the parties agree is required.

_____
_____
_____

[ ] Plaintiff intends to seek leave of court to permit additional discovery, beyond the discovery permitted by CRLJ 26(a)-(d), which defendant opposes. If this box is checked, describe the additional discovery plaintiff believes is required.

_____
_____
_____

[ ] Defendant intends to seek leave of court to permit additional discovery, beyond the discovery permitted by CRLJ 26(a)-(d), which plaintiff opposes. If this box is checked, describe the additional discovery plaintiff believes is required.

_____
_____
_____

5. Amendments to Initial Case Schedule.

[ ] At this time, the parties do not plan to seek leave of court to amend the Initial Case Schedule.

SUGGESTED JOINT STATUS REPORT
FOR CRLJ 26(h) INITIAL DISCOVERY CONRERENCES

[ ] At this time, either or both parties plans to seek leave of court to amend the Initial Case Schedule. If this box is checked, describe any such amendments.

_____
_____
_____

6. Other. Describe any proposals by either or both parties that would facilitate the just, speedy, and inexpensive disposition of this action. For each such proposal, indicate if the parties agree.

_____
_____
_____

The undersigned certify that the parties reasonably cooperated to reach agreement on the matters set forth in this Joint Status Report.

Date: _____

For the Plaintiff:

Signature: _____
Printed Name: _____
Title (and WSBA number if applicable): _____

For the Defendant:

Signature: _____
Printed Name: _____
Title (and WSBA number if applicable): _____

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1325 Fourth Ave - Suite 600
Seattle, WA 98101-2539

SUGGESTED AMENDMENT
SUPERIOR COURT CIVIL RULES (CR)
CR 16 – PRETRIAL PROCEDURE AN FORMULATING ISSUES

~~(a) **Hearing Matters Considered**. By order, or on the motion of any party, the court may in its discretion direct the attorneys for the parties to appear before it for a conference to consider:~~

~~(1) The simplification of the issues;~~

~~(2) The necessity or desirability of amendments to the pleadings;~~

~~(3) The possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof;~~

~~(4) The limitation of the number of expert witnesses;~~

~~(5) Such other matters as may aid in the disposition of the action.~~

(a) Pretrial Report. All parties in the case shall confer in completing a joint pretrial report no later than the date provided in the case schedule or court order. The pretrial report shall contain:

(1) A brief non-argumentative summary of the case;

(2) The material issues in dispute;

(3) The agreed material facts;

(4) The names of all lay and expert witnesses, excluding rebuttal witnesses;

(5) An exhibit index (excluding rebuttal or impeachment exhibits);

(6) The estimated length of trial and suggestions by either party for shortening the trial; and

(7) A statement whether additional alternative dispute resolution would be useful before trial.

SUGGESTED AMENDMENT
SUPERIOR COURT CIVIL RULES (CR)
CR 16 – PRETRIAL PROCEDURE AN FORMULATING ISSUES

(b) Pretrial Conference. Each attorney with principal responsibility for trying the case, or each unrepresented party, shall attend a pretrial conference, if scheduled. At the pretrial conference, the court may consider and take appropriate action on the following matters:

(1) Formulating and simplifying the issues and eliminating claims or defenses;

(2) Obtaining admissions and stipulations about facts and documents to avoid unnecessary proof and addressing evidentiary issues;

(3) Adopting special procedures for managing complex issues, multiple parties, difficult legal questions, or unusual proof problems;

(4) Establishing reasonable parameters on the time to present evidence;

(5) Establishing deadlines for trial briefs, motions in limine, deposition designations for unavailable witnesses, proposed jury instructions, or any other pretrial motions, briefs, or documents;

(6) Resolving any pretrial or trial scheduling issues; and

(7) Facilitating in other ways the just, speedy, and inexpensive disposition of the action.

~~(b)~~ **(c) Pretrial Order.** The court shall ~~make~~ enter an order which recites the action taken at the conference, the amendments allowed to the pleadings, and the agreements made by the parties as to any of the matters considered, and which limits the issues for trial to those not disposed of by admissions or agreements of counsel; and such order when entered controls the subsequent course of the action, unless modified at the trial to prevent manifest injustice. The court in its discretion may establish by rule a pretrial calendar on which actions may be placed for consideration as above provided and may either confine the calendar to jury actions or to nonjury actions or extend it to all actions.

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SUGGESTED AMENDMENT
SUPERIOR COURT CIVIL RULES (CR)
CR 77 – Superior Courts and Judicial Officers

[(a)-(h) unchanged.]

(i) ~~**Sessions Where More than One Judge Sits – Effect of Decrees, Orders, etc.**~~ ~~[Reserved. See RCW 2.08.160.]~~ Judicial Assignment. A judge should be assigned to each case upon filing. The assigned judge shall conduct all proceedings in the case unless the case is reassigned to a different judge on a temporary or permanent basis. In counties where local conditions make routine judicial assignment impracticable, the court may assign any case to a specific judge upon written motion of any party or on the court's own motion.

[(j)-(n) unchanged.]

Washington State Bar Association
1325 Fourth Ave - Suite 600
Seattle, WA 98101-2539

From: Scott Marinella
To: Civil Litigation Task Force
Subject: CR 16
Date: Friday, April 20, 2018 4:57:46 PM

Taking the discretion away from the trial court judge is something that is outside the purview of the Bar, and I am not in favor of the change proposed.

G. Scott Marinella
Marinella & Boggs
P.O. Box 7, 338 E. Main Street
Dayton, WA 99328
(509)382-2541
FAX (509)382-4634
scott@smkb-law.com

From: Craig Liebler
To: Civil Litigation Task Force
Cc: Ron St. Hilaire
Subject: CR77
Date: Sunday, February 25, 2018 1:45:45 PM

It's about time. Although I am now retired (former bar # 6891) pre assignment was encouraged by me as local Bar president and in my Bench Bar communications over the last 20 years of my 38 year active practice. My concern is giving counties with a lot of judges the "out" of impracticability. Also the rule change copy I reviewed apparently said " A judge should be assigned to each se (case??) upon filing. I am not sure if this applies to domestic cases (which are generally handled by a court commissioner in my former counties) or similar civil cases
(i.e. probate, guardianship, estate,) which are designed to be under TEDRA resolution. The Domestic and Criminal Dockets in my former counties take up 90+% or the judicial time already, and it would be nice to be able to hear motions etc.by one judge throughout the process. The Federal Courts do this and I see no real reason why multi judicial counties cannot.

As an aside, another way to increase judicial efficiency and mitigate the costs of litigation is to increase the mandatory arbitration threshold to at least $100,000.

My 2 cents. Respectfully Craig M. Liebler.

From: Duane Crandall
To: Civil Litigation Task Force
Subject: FW: Feedback on Draft Proposal to Amend CR 77
Date: Tuesday, February 27, 2018 10:13:59 AM
Attachments: image001.png
Proposed Rule Changes to CR 77.pdf

Hillary Graber,

Duane Crandall is agreeable with the proposed "Suggested Amendment" regarding CR 77 as written.

Thank you,

Sylvia

Sylvia Archibald
Legal Assistant to Duane Crandall
Crandall, O'Neill, Imboden & Styve, P.S.
1447 Third Ave., Ste. A/PO Box 336
Longview, WA 98632
P: (360) 425-4470
F: (360) 425-4477

From: CWBA [mailto:cowwahbar@gmail.com]
Sent: Sunday, February 25, 2018 8:50 AM
To: Lisa Waldvogel
Subject: Fwd: Feedback on Draft Proposal to Amend CR 77

Hello everyone,

Please see the attached request for feedback on a proposed amendment to CR 77 regarding judicial assignments.

Please send your comments directly to Hillary Graber at CLTF@wsba.org by April 1, 2018.

Best,
Meredith

---------- Forwarded message ----------
From: **Sherry Lindner** <sherryl@wsba.org>
Date: Fri, Feb 23, 2018 at 12:35 PM
Subject: RE: Stakeholder Feedback on Draft Proposal to Amend CR 77
To: "steve@sackmannlaw.com" <steve@sackmannlaw.com>, "khawkins@clarkandfeeney.com" <khawkins@clarkandfeeney.com>, "diana.ruff@co.benton.wa.us" <diana.ruff@co.benton.wa.us>, "travis@brandtlaw.net" <travis@brandtlaw.net>, "stephaniehyatt@icloud.com" <stephaniehyatt@icloud.com>, "mark@sampath-law.com" <mark@sampath-law.com>, "cowwahbar@gmail.com"

<cowwahbar@gmail.com>, "cpirnke@insleebest.com" <cpirnke@insleebest.com>, "Lamatt50@yahoo.com" <Lamatt50@yahoo.com>, "trevor@huberdeaulaw.com" <trevor@huberdeaulaw.com>, Jean Cotton <walawj99@yahoo.com>, "president@islandcountybar.com" <president@islandcountybar.com>, "eileen@AIMwisely.com" <eileen@aimwisely.com>, "AndrewP@KCBA.org" <AndrewP@kcba.org>, "amaron@scblaw.com" <amaron@scblaw.com>, "tweaver@tomweaverlaw.com" <tweaver@tomweaverlaw.com>, "jufkes@johnufkeslaw.com" <jufkes@johnufkeslaw.com>, "j.gallagher.law@gmail.com" <j.gallagher.law@gmail.com>, "sam@chehalislaw.com" <sam@chehalislaw.com>, "rmcguire@cmd-lawfirm.com" <rmcguire@cmd-lawfirm.com>, "julie@whitehousenichols.com" <julie@whitehousenichols.com>, "tedreinbold@gmail.com" <tedreinbold@gmail.com>, "edwardpenoyar@gmail.com" <edwardpenoyar@gmail.com>, "hwebb@glpattorneys.com" <hwebb@glpattorneys.com>, "omearalawoffice@gmail.com" <omearalawoffice@gmail.com>, "ksmythe@robinsontait.com" <ksmythe@robinsontait.com>, "lynn@spokanebar.org" <lynn@spokanebar.org>, "marlah@feltmanewing.com" <marlah@feltmanewing.com>, "nforce@co.stevens.wa.us" <nforce@co.stevens.wa.us>, "tpcba1@aol.com" <tpcba1@aol.com>, "dclarks@co.pierce.wa.us" <dclarks@co.pierce.wa.us>, "tzandell@phillipsburgesslaw.com" <tzandell@phillipsburgesslaw.com>, "mmulhern@co.walla-wall.wa.us" <mmulhern@co.walla-wall.wa.us>, "dbrown@brettlaw.com" <dbrown@brettlaw.com>, "luke@baumgartenlaw.com" <luke@baumgartenlaw.com>, "qdalan@ywcayakima.org" <qdalan@ywcayakima.org>

Apologies, but there was a typo in the proposed draft language. Attached please find the correct version.

Thank you,

Sherry Lindner | Paralegal | Office of General Counsel

Washington State Bar Association |**T** 206.733.5941|**F** 206.727.8314| sherryl@wsba.org

1325 Fourth Avenue, Suite 600|Seattle, WA 98101-2539

From: Civil Litigation Task Force
Sent: Friday, February 23, 2018 11:50 AM
To: 'steve@sackmannlaw.com'; 'khawkins@clarkandfeeney.com'; 'diana.ruff@co.benton.wa.us'; 'travis@brandtlaw.net'; 'stephaniehyatt@icloud.com'; 'mark@sampath-law.com'; 'cowwahbar@gmail.com'; 'cpirnke@insleebest.com'; 'Lamatt50@yahoo.com'; 'trevor@huberdeaulaw.com'; Jean Cotton; 'president@islandcountybar.com'; 'eileen@AIMwisely.com'; 'AndrewP@KCBA.org'; 'amaron@scblaw.com'; 'tweaver@tomweaverlaw.com'; 'jufkes@johnufkeslaw.com'; 'j.gallagher.law@gmail.com'; 'sam@chehalislaw.com'; 'rmcguire@cmd-

lawfirm.com'; 'julie@whitehousenichols.com'; 'tedreinbold@gmail.com'; 'edwardpenoyar@gmail.com'; 'hwebb@glpattorneys.com'; 'omearalawoffice@gmail.com'; 'ksmythe@robinsontait.com'; 'lynn@spokanebar.org'; 'marlah@feltmanewing.com'; 'nforce@co.stevens.wa.us'; 'tpcba1@aol.com'; 'dclarks@co.pierce.wa.us'; 'tzandell@phillipsburgesslaw.com'; 'mmulhern@co.walla-wall.wa.us'; 'dbrown@brettlaw.com'; 'luke@baumgartenlaw.com'; 'qdalan@ywcayakima.org'
Cc: Ken Masters; Kevin Bank; Hillary Evans Graber
Subject: Stakeholder Feedback on Draft Proposal to Amend CR 77

Greetings,

The Civil Litigation Rules Drafting Task Force is proposing to amend Civil Rule 77. The Task Force is reaching out to stakeholders for comments and feedback on its proposal.

Stakeholder input is crucially important in rulemaking process and assists the Task Force in making an informed decision.

Attached please find Ms. Graber's letter and a redline copy of the CR 77.

Please submit your feedback/comments to CLTF@wsba.org by April 1, 2018.

Thank you,

Sherry Lindner | Paralegal |Office of General Counsel

Washington State Bar Association |**T** 206-733-5941 | **F** 206-727-8314 | sherryl@wsba.org

1325 Fourth Avenue, Suite 600 | Seattle, WA 98101-2539 | www.wsba.org

The WSBA is committed to full access and participation by persons with disabilities. If you have questions about accessibility or require accommodation please contact julies@wsba.org.

From: George Steele
To: Civil Litigation Task Force
Subject: CR 77
Date: Thursday, March 01, 2018 10:14:56 AM

A good rule to follow is if something is not broken, do not fix it. I would think that making it the norm, instead of the exception, to require courts to pre-assign a case is foolish. We should assume that local control of our courts, by the judges, can result in solutions that work for that particular court.

From: James S. Berg
To: Civil Litigation Task Force
Subject: Comment on proposed change to CR 77
Date: Tuesday, February 27, 2018 12:02:48 PM

Dear Hillary:

I am in support of the proposed change to Rule 77. It makes a lot of sense to me.

Very truly yours,

JAMES S. BERG

LARSON BERG & PERKINS PLLC

105 North 3rd Street
P.O. Box 550
Yakima, WA 98907
Phone: (509) 457-1515
Fax: (509) 457-1027
E-mail: jsberg@lbplaw.com

From: James Elliott
To: Civil Litigation Task Force
Subject: Draft CR 77
Date: Friday, March 16, 2018 8:10:50 AM

I fully support this idea of having one judge assigned

HALVERSON NORTHWEST

James S. Elliott, Attorney

p. 509.248.6030 f. 509.453.6880
jelliott@hnw.law

405 E. Lincoln Avenue, Yakima, WA 98901
halversonNW.com

From: Blaine Gibson
To: Civil Litigation Task Force
Subject: Proposed Amendment to CR 77(i)
Date: Tuesday, March 20, 2018 11:44:30 AM

Hillary,

I do not see how this proposed amendment changes anything. Presently, some counties automatically pre-assign civil cases and others do not. Some do it only on a motion from the parties or on the court's own motion. Every county has weighed the pros and cons of pre-assignment and made a decision that best fits that county's situation. The proposal does not require any county to do anything different from what it is already doing.

A rule amendment that changes nothing is not necessary.

Judge Blaine Gibson
Yakima County Superior Court

From: Robert McSeveney
To: Civil Litigation Task Force
Subject: FW: Comment before April 1?
Date: Thursday, March 29, 2018 2:51:32 PM

Dear Ms. Graber,

A local attorney and one of our court commissioners contacted me about proposed rule CR77. Her comments and our discussion below identifies areas of concern. My suggestion is for the committee to include language that is inclusive of court commissioners/pro tem judges who are authorized under RCW 2.08/2.24 to hear cases . GR 29 vests the presiding judge with the exclusive authority to delegate the courts caseload. It is my opinion that the proposed rule may be conflict with GR 29.

Thank you.

Judge Robert McSeveney
Chelan County Superior Court

From: Rani Sampson [mailto:Rani@overcastlaw.com]
Sent: Thursday, March 29, 2018 2:38 PM
To: Robert McSeveney <Robert.McSeveney@CO.CHELAN.WA.US>
Subject: RE: Comment before April 1?

Yes. That's an efficient way to comment. Smart.

Rani K. Sampson
Overcast Law Offices, PS | Attorney
23 S Wenatchee Ave Suite 320 Wenatchee WA 98801 | (509) 663-5588 ext 108

From: Robert McSeveney [mailto:Robert.McSeveney@CO.CHELAN.WA.US]
Sent: Thursday, March 29, 2018 2:35 PM
To: Rani Sampson
Subject: RE: Comment before April 1?

Are you ok with me forwarding our conversation on to the WSBA contact?

From: Rani Sampson [mailto:Rani@overcastlaw.com]
Sent: Thursday, March 29, 2018 2:33 PM
To: Robert McSeveney <Robert.McSeveney@CO.CHELAN.WA.US>
Subject: RE: Comment before April 1?

I think you're right.

The Board of Governors intends to increase judicial efficiency by having "one judge assigned to a civil case from start to finish." *See* Cover Sheet. The BOG might not have considered "judicial officers" when drafting this proposed rule.

Rani K. Sampson
Overcast Law Offices, PS | Attorney
23 S Wenatchee Ave Suite 320 Wenatchee WA 98801 | (509) 663-5588 ext 108

From: Robert McSeveney [mailto:Robert.McSeveney@CO.CHELAN.WA.US]
Sent: Thursday, March 29, 2018 2:23 PM
To: Rani Sampson
Subject: RE: Comment before April 1?

I think the bigger problem is that this rule conflicts with the powers of the presiding judge under GR 29 (f). Take a look at it.

(f) Duties and Authority. The judicial and administrative duties set forth in this rule cannot be delegated to persons in either the legislative or executive branches of government. A Presiding Judge may delegate the performance of ministerial duties to court employees; however, it is still the Presiding Judge's responsibility to ensure they are performed in accordance with this rule. In addition to exercising general administrative supervision over the court, except those duties assigned to clerks of the superior court pursuant to law, the Presiding Judge shall:

(1) Supervise the business of the judicial district and judicial officers in such manner as to ensure the expeditious and efficient processing of all cases and equitable distribution of the workload among judicial officers;

(2) Assign judicial officers to hear cases pursuant to statute or rule. The court may establish general policies governing the assignment of judges;

(3) Coordinate judicial officers' vacations, attendance at education programs, and similar matters;

(4) Develop and coordinate statistical and management information;

(5) Supervise the daily operation of the court including:

(a) All personnel assigned to perform court functions; and

(b) All personnel employed under the judicial branch of government, including but not limited to working conditions, hiring, discipline, and termination decisions except wages, or benefits directly related to wages; and

(c) The court administrator, or equivalent employee, who shall report directly to the Presiding Judge.

From: Rani Sampson [mailto:Rani@overcastlaw.com]
Sent: Thursday, March 29, 2018 2:20 PM
To: Robert McSeveney <Robert.McSeveney@CO.CHELAN.WA.US>
Subject: RE: Comment before April 1?

You're the fastest statute/rule investigator I know!

I'd be more comfortable with the rule if it were the "assigned judicial officer" instead of the "assigned judge."

Rani K. Sampson
Overcast Law Offices, PS | Attorney
23 S Wenatchee Ave Suite 320 Wenatchee WA 98801 | (509) 663-5588 ext 108

From: Robert McSeveney [mailto:Robert.McSeveney@CO.CHELAN.WA.US]
Sent: Thursday, March 29, 2018 2:17 PM
To: Rani Sampson
Subject: RE: Comment before April 1?

Doesn't this cover your concern?

RCW 2.28.030
Judicial officer defined—When disqualified.

A judicial officer is a person authorized to act as a judge in a court of justice….

From: Rani Sampson [mailto:Rani@overcastlaw.com]
Sent: Thursday, March 29, 2018 2:09 PM
To: Robert McSeveney <Robert.McSeveney@CO.CHELAN.WA.US>
Subject: Comment before April 1?

Dear Judge McSeveney:

The WSBA is accepting comments today and tomorrow on proposed Civil Rule 77. I am concerned that the proposed requirement that the "assigned judge shall conduct all proceedings in the case" might preclude commissioners from conducting hearings because a commissioner is rarely the "assigned judge." Such an interpretation would hamper the effective administration of justice.

But I might be interpreting the proposed rule incorrectly.

Would you please review the rule and submit a comment if you believe that would be helpful?

Thank you,

Rani K. Sampson
Overcast Law Offices, PS | Attorney
23 S Wenatchee Ave Suite 320 Wenatchee WA 98801 | (509) 663-5588 ext 108

From: Kerry Lawrence
To: Civil Litigation Task Force
Subject: Proposed Amendment to CR 77
Date: Monday, February 26, 2018 10:50:15 AM

Hilary: I think the proposal is great, but there is a strange typo in the suggested amendment. I do not think you intended it to read:

"...judge should be assigned to each se upon filing."

I live in Benton County, but almost all of my litigation is in King County with assigned judges. When King County went to assigned judges I noticed a number of favorable impacts with: fewer overall motions, more summary judgments granted, and lawyers being a bit less hostile toward each other.

Benton County is a nightmare to litigate in, and I do my best to refer out cases here because I do not want to have to deal with the court administration, overwhelmed judges and lawyers who only make things worse for the litigants.

Kerry

Kerry C. Lawrence
Pillar Law PLLC
1420 Fifth Avenue, Suite 3369
Seattle, WA 98101
Phone: 425-941-6887
kerry@pillar-law.com

Superior Court of the State of Washington
For Thurston County

2000 Lakeridge Drive SW • Building Two • Olympia WA 98502
Telephone: (360) 786-5560 **Website:** www.co.thurston.wa.us/superior

March 22, 2018

To: Ms. Hillary Graber
Civil Litigation Rules Drafting Task Force
sent via email to CLTF@wsba.org

Re: Draft Proposal to Amend Civil Rule 77

Dear Ms. Graber,

The Thurston County Superior Court appreciates that you reached out to stakeholders regarding the draft proposal for Civil Rule 77. As a busy trial court, we are interested in increasing efficiencies and fairness in civil cases. We voluntarily developed a local practice of pre-assigning judges, and want to share that rule with the Task Force and also raise some concerns.

Our Court requires, under Local Court Rule 3 (attached), that almost all civil cases are assigned to a trial judge at the time of filing. This had brought clarity and consistency to case management. Our court is a medium sized one with five judges assigned to the civil caseload at a given time. This works well for our court, but we can understand that much larger or smaller courts may have different needs. We hope you fully hear those needs from the diverse courts in our State.

We strive to have all matters in a civil case heard by the assigned judge. It is our internal goal to have matters heard by the judge assigned to the case. However, flexibility is important. Requiring "reassign[ment] to a different judge on a temporary or permanent basis" seems to create a procedural hurtle for the court to generate, file, and serve a notice of reassignment (twice, probably). This is burdensome and erodes the court's discretion to manage its cases.

Further, our Court has determined that certain types of civil cases should not be pre-assigned to a judge. This discretion should be maintained. "Civil cases" are an extremely broad category in the law. Many types of civil cases will be extremely unlikely to or will never go to trial and will be resolved in one motion. For this reason, we have excluded from assignment tax warrants, foreign subpoenas, and the like. Some cases that are civil cases fall under the ambit of our Court's management of criminal matters, such as department of licensing appeals and the unlawful detainer docket. Whether these exclusions from judge assignments make sense in our individual court is an ongoing discussion that has generated changes through the years as the court's case management changes.

Assigning judges to civil cases, in a medium-sized court like ours, is a helpful tool for case management. This court urges you, however, to consider the various needs of different types of courts. The court also asks for flexibility and discretion in any rule that is ultimately proposed to the Supreme Court.

Sincerely,

Christine Schaller,
Presiding Judge
Thurston County Superior Court

attached: Thurston County Local Court Rule 3

(e) Procedures at Time of Filing. The following procedures shall be followed when a civil case is filed, unless a special procedure applies or otherwise directed by the court.

(1) *Assignment and Reassignment of Judge*.

(A) Cases that are assigned to a judge. All civil cases shall be assigned to a trial judge, unless these rules provide otherwise. The County Clerk will assign the case by random selection to a judge in the trial department, who will hear and decide all issues in the case unless the assigned judge or the court's presiding judge directs otherwise. The case will be reassigned if the assigned judge recuses, is disqualified from hearing the case, or is no longer assigned to the trial department. The court will not individually notify parties when a case is reassigned because a judge is no longer assigned to the trial department. The court will instead make public notices about such reassignments.

(B) Cases that are not assigned to a judge. The clerk will not assign a judge for the following types of cases:

(i) Unlawful detainer cases;
(ii) Appeals from a department of licensing revocation;
(iii) Civil, non-traffic infraction appeal cases;
(iv) Civil, traffic infraction appeal cases;
(v) Tax warrants;
(vi) Petitions for relief from registration as a sex or kidnapping offender;
(vii) Petitions to restore firearm rights; and
(viii) Foreign subpoenas.

A party may file a motion to ask for a judge assignment for these cases. The court may also direct the clerk to issue a judge assignment on its own motion.

. . .

[Adopted effective September 1, 2010; amended effective September 1, 2011, September 1, 2013, September 1, 2014, September 1, 2017.]

SUGGESTED AMENDMENT
SUPERIOR COURT CIVIL RULES (CR)
CR 26 – GENERAL PROVISIONS GOVERNING DISCOVERY

(a) [Unchanged]

(b) Initial Disclosures.

(1) *Content of Initial Disclosures*. Where initial disclosures are required by case schedule or court order, a party shall provide to the other parties, without awaiting a discovery request:

(A) the name, address, and telephone number of each individual that possesses any relevant information that supports the disclosing party's claims or defenses;

(B) a copy of each document and other relevant evidence supporting the disclosing party's claims or defenses, but if a document or other relevant evidence cannot easily be copied, the disclosing party shall make the item reasonably available for inspection by the other parties;

(C) a copy of each document the disclosing party refers to in its pleadings;

(D) a description and computation of each category of damages claimed by the disclosing party, but only a description, not a computation, is required for general and noneconomic damages;

(E) the declarations page of any insurance agreement under which an insurance business may be liable to satisfy all or part of a judgment that may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment; and

(F) in any action where insurance coverage is or may be contested, a copy of the agreement and all letters from the insurer regarding coverage.

(2) Parties Later Joined or Served. A party joined or served after the other parties have made their initial disclosures shall comply with this rule within sixty days of being joined or served, unless the court orders otherwise.

(3) *Basis for Initial Disclosures; Unacceptable Excuses.* A party shall make its initial disclosures based on information known or reasonably available to that party. A party is not excused from making its disclosures because it has failed to fully investigate the case, it challenges the sufficiency of another party's disclosures, or another party has failed to make required disclosures.

(4) *Sanctions for Failure to Disclose.* The parties shall reasonably cooperate. A party that fails to cooperate or fails to timely make the disclosures required by this rule may be sanctioned as provided in these rules. The sanction may include an order to pay the reasonable expenses, including attorney fees, caused by the violation.

(~~b~~ c) [Unchanged]

(~~c~~ d) [Unchanged]

(~~d~~ e) [Unchanged]

(~~e~~ f) Supplementation ~~of Responses~~. A party who has provided initial disclosures or responded to a request for discovery where the disclosure or response ~~that~~ was complete when made is under no duty to supplement the disclosure or response to include information thereafter acquired, except as follows:

(1) A party is under a duty seasonably to supplement the disclosure or response with respect to any question directly addressed to:

(A) the identity and location of persons having knowledge of discoverable matters; and

(B) the identity of each person expected to be called as an expert witness at trial, the subject matter on which the expert witness is expected to testify, and the substance of the expert witness's testimony.

(2) A party is under a duty seasonably to amend a prior disclosure or response if the party obtains information upon the basis of which:

(A) the party knows that the disclosure or response was incorrect when made; or

(B) the party knows that the disclosure or response though correct when made is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

(3) A duty to supplement disclosures or responses may be imposed by order of the court, agreement of the parties, or at any time prior to trial through new requests for supplementation of prior responses.

(4) Failure to seasonably supplement in accordance with this rule will subject the party to such terms and conditions as the trial court may deem appropriate.

(~~f~~ g) [Unchanged]

(~~g~~ h) Signing of Discovery Requests, Responses, and Objections.

Every initial disclosure, request for discovery, or response or objection thereto made by a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, whose address shall be stated. A party who is not represented by an attorney shall sign the initial disclosure, request, response, or objection and state the party's address. The signature of the attorney or party constitutes a certification that the attorney or party has read the

initial disclosure, request, response, or objection, and that to the best of their knowledge, information, and belief formed after a reasonable inquiry it is:

(1) consistent with these rules and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law;

(2) not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and

(3) not unreasonable or unduly burdensome or expensive, given the needs of the case, the discovery already had in the case, the amount in controversy, and the importance of the issues at stake in the litigation. If a request, response, or objection is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the party making the request, response, or objection and a party shall not be obligated to take any action with respect to it until it is signed.

If a certification is made in violation of the rule, the court, upon motion or upon its own initiative, shall impose upon the person who made the certification, the party on whose behalf the initial disclosure, request, response, or objection is made, or both, an appropriate sanction, which may include an order to pay the amount of the reasonable expenses incurred because of the violation, including reasonable attorney fees.

SUGGESTED AMENDMENT

CIVIL RULES FOR COURTS OF LIMITED JURISDICTION (CRLJ)

CRLJ 26 - DISCOVERY

Discovery in courts of limited jurisdiction shall be permitted as follows:

(a) ~~**Specification of Damages**~~ **Initial Disclosures.** A party shall provide to the other parties, without waiting a discovery request: ~~may demand a specification of damages under RCW4.28.360.~~

(1) the name, address, and telephone number of each individual that possess any relevant information that supports the disclosing party's claims or defenses;

(2) a copy of each document and other relevant evidence supporting the disclosing party's claims or defenses, but if a document or other relevant evidence cannot easily be copied, the disclosing party shall make the item reasonably available for inspection by the other parties;

(3) a copy of each document the disclosing party refers to in its pleadings;

(4) a description and computation of each category of damages claimed by the disclosing party, but only a description, not a computation, is required for general and noneconomic damages;

(5) the declarations page of any insurance agreement under which an insurance business may be liable to satisfy all or part of a judgment that may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment; and

(6) in any action where insurance coverage is or may be contested, a copy of the agreement and all letters from the insurer regarding coverage.

(7) Sanctions for Failure to Disclose. The parties shall reasonably cooperate. A party that fails to cooperate or fails to timely make the disclosures required by this rule may be

sanctioned as provided in these rules. The sanction may include an order to pay the reasonable expenses, including attorney fees, caused by the violation.

(b) Interrogatories and Request for Production.

(1) ~~The following interrogatories may be submitted by any party:~~

~~(A) State the amount of general damages being claimed.~~

~~(B) State each item of special damages being claimed and the amount thereof.~~

~~(C) List the name, address, and telephone number of each person having any knowledge of facts regarding liability.~~

~~(D) List the name, address, and telephone number of each person having any knowledge of facts regarding the damages claimed.~~

~~(E) List the name, address and telephone number of each expert you intend to call as a witness at trial. For each expert, state the subject matter on which the expert is expected to testify. State the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion.~~

~~(2) In addition to the section (b)(1),~~ ~~a~~A~~n~~y party may serve upon any other party not more than two sets of written interrogatories containing not more than 20 questions per set without prior permission of the court. Separate sections, paragraphs or categories contained within one interrogatory shall be considered separate questions for the purpose of this rule. The interrogatories shall conform to the provisions of CR 33.

(~~3~~2) ~~The following requests for production may be submitted by any party:~~

~~(A) Produce a copy of any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of any judgment which may be entered in this action, or to indemnify or reimburse the payments made to satisfy the judgment.~~

~~(B) Produce a copy of any agreement, contract or other document upon which this claim is being made.~~

~~(C) Produce a copy of any bill or estimate for items for which special damage is being claimed.~~

~~(4) In addition to section (b)(3), a~~Any party may submit to any other party a request for production of up to five separate sets of groups of documents or things without prior permission of the court. The requests for production shall conform to the provisions of CR 34.

(c) Depositions.

(1) A party may take the deposition of any other party, unless the court orders otherwise.

(2) Each party may take the deposition of two additional persons without prior permission of the court. The deposition shall conform to the provisions of CR 30.

(d) Requests for Admission.

(1) A party may serve upon any other party up to 15 written requests for admission without prior permission of the court. Separate sections, paragraphs or categories contained within one request for admission shall be considered separate requests for purposes of this rule.

(2) The requests for admission shall conform to the provisions of CR 36.

SUGGESTED AMENDMENT

CIVIL RULES FOR COURTS OF LIMITED JURISDICTION (CRLJ)

CRLJ 26 - DISCOVERY

(e) Other Discovery at Discretion of Court. No additional discovery shall be allowed, except as the court may order. The court shall have discretion to decide whether to permit any additional discovery. In exercising such discretion the court shall consider (1) whether all parties are represented by counsel, (2) whether undue expense or delay in bringing the case to trial will result and (3) whether the interests of justice will be promoted.

(f) How Discovery to Be Conducted. Any discovery authorized pursuant to this rule shall be conducted in accordance with Superior Court Civil Rules 26 through 37, as governed by CRLJ 26.

(g) Time for Discovery. Twenty-one days after the service of the summons and complaint, or counterclaim, or cross complaint, the served party must produce the discovery set forth in section (a) of this rule and may demand the discovery set forth in sections (~~a~~b)-(d) of this rule, or request additional discovery pursuant to section (e) of this rule.

Washington State Bar Association
1325 Fourth Ave - Suite 600
Seattle, WA 98101-2539

From: Deane Minor
To: Civil Litigation Task Force
Subject: suggested change to CR 26
Date: Monday, April 09, 2018 6:18:27 PM

I agree with the suggested change to CR 26.

I have no opinion on the suggested change to the criminal rule.

Thank you to the task force for your hard work.

Deane W. Minor

Tuohy Minor Kruse PLLC
2821 Wetmore Avenue
Everett, Washington 98201
Phone: (425) 259-9194
Fax: (425) 259-6240
Website: www.tuohyminorkruse.com

SUGGESTED AMENDMENT
SUPERIOR COURT CIVIL RULES (CR)
CR 1 – SCOPE AND PURPOSE OF RULES

These rules govern the procedure in the superior court in all suits of a civil nature whether cognizable as cases at law or in equity with the exceptions stated in rule 81. All parties and their legal counsel shall reasonably cooperate with each other and the court in all matters. ~~They~~ These rules shall be construed and administered to be consistent with this principle and to secure the just, speedy, and inexpensive determination of every action.

Washington State Bar Association
1325 Fourth Ave - Suite 600
Seattle, WA 98101-2539

SUGGESTED AMENDMENT
SUPERIOR COURT CIVIL RULES (CR)

CR 11 - SIGNING AND DRAFTING OF PLEADINGS, MOTIONS, AND LEGAL MEMORANDA; SANCTIONS

(a) Every pleading, motion, and legal memorandum of a party represented by an attorney shall be dated and signed by at least one attorney of record in the attorney's individual name, whose address and Washington State Bar Association membership number shall be stated. A party who is not represented by an attorney shall sign and date the party's pleading, motion, or legal memorandum and state the party's address. Petitions for dissolution of marriage, separation, declarations concerning the validity of a marriage, custody, and modification of decrees issued as a result of any of the foregoing petitions shall be verified. Other pleadings need not, but may be, verified or accompanied by affidavit. The signature of a party or of an attorney constitutes a certificate by the party or attorney that the party or attorney has read the pleading, motion, or legal memorandum, and that to the best of the party's or attorney's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances: (1) it is well grounded in fact; (2) it is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law or the establishment of new law; (3) it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief. If a pleading, motion, or legal memorandum is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a pleading, motion, or legal memorandum is signed in violation of this rule, the court, upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable

expenses incurred because of the filing of the pleading, motion, or legal memorandum, including a reasonable attorney fee.

(b) In helping to draft a pleading, motion or document filed by the otherwise self-represented person, the attorney certifies that the attorney has read the pleading, motion, or legal memorandum, and that to the best of the attorney's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances: (1) it is well grounded in fact, (2) it is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law or the establishment of new law, (3) it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation, and (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief. The attorney in providing such drafting assistance may rely on the otherwise self-represented person's representation of facts, unless the attorney has reason to believe that such representations are false or materially insufficient, in which instance the attorney shall make an independent reasonable inquiry into the facts.

(c) Consistent with the overall purpose of these rules as set forth in CR 1, the court, upon motion or upon its own initiative, may impose an appropriate sanction on any party or attorney who violates the mandate of reasonable cooperation set forth in CR 1, which sanction may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the lack of cooperation, including a reasonable attorney fee. The court will not entertain any motion with respect to this subsection unless the parties have conferred with respect to the

motion. The moving party shall arrange for a mutually convenient conference in person or by telephone. The court may apply sanctions if the court finds that any party or its counsel, upon whom a motion with respect to matters covered by such rules has been served, has willfully refused or failed to confer in good faith. Any motion seeking sanctions under this subsection shall include a certification that the conference requirements of this rule have been met.

SUGGESTED AMENDMENT
SUPERIOR COURT CIVIL RULES (CR)
CR 26 – GENERAL PROVISIONS GOVERNING DISCOVERY

(a) Discovery Methods and Cooperation. Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property, for inspection and other purposes; physical and mental examinations; and requests for admission. Consistent with the general obligation to cooperate set forth in CR 1, the court expects the parties and their counsel to reasonably cooperate with each other in using discovery methods; exchanging discoverable information; scheduling depositions, inspections, and examinations; and reducing the costs of discovery.

(b) Discovery Scope and Limits. Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

(1) *In General.* Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

The frequency or extent of use of the discovery methods set forth in section (a) shall be limited by the court if it determines that: (A) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or

less expensive; (B) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or (C) the discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the litigation. The court may act upon its own initiative after reasonable notice or pursuant to a motion under section (c).

(2) *Insurance Agreements.* A party may obtain discovery and production of: (i) the existence and contents of any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment; and (ii) any documents affecting coverage (such as denying coverage, extending coverage, or reserving rights) from or on behalf of such person to the covered person or the covered person's representative. Information concerning the insurance agreement is not by reason of disclosure admissible in evidence at trial. For purposes of this section, an application for insurance shall not be treated as part of an insurance agreement.

(3) *Structured Settlements and Awards.* In a case where a settlement or final award provides for all or part of the recovery to be paid in the future, a party entitled to such payments may obtain disclosure of the actual cost to the defendant of making such payments. This disclosure may be obtained during settlement negotiations upon written demand by a party entitled to such payments. If disclosure of cost is demanded, the defendant may withdraw the offer of a structured settlement at any time before the offer is accepted.

(4) *Trial Preparation: Materials.* Subject to the provisions of subsection (b)(5) of this rule, a party may obtain discovery of documents and tangible things otherwise discoverable under

subsection (b)(1) of this rule and prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including a party's attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of such party's case and that the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.

A party may obtain without the required showing a statement concerning the action or its subject matter previously made by that party. Upon request, a person not a party may obtain without the required showing a statement concerning the action or its subject matter previously made by that person. If the request is refused, the person may move for a court order. The provisions of rule 37(a)(4) apply to the award of expenses incurred in relation to the motion. For purposes of this section, a statement previously made is:

(A) a written statement signed or otherwise adopted or approved by the person making it; or

(B) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

(5) *Trial Preparation: Experts.* Discovery of facts known and opinions held by experts, otherwise discoverable under the provisions of subsection (b)(1) of this rule and acquired or developed in anticipation of litigation or for trial, may be obtained only as follows:

(A)(i) A party may through interrogatories require any other party to identify each person whom the other party expects to call as an expert witness at trial, to state the subject matter on which the expert is expected to testify, to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion, and to state such other information about the expert as may be discoverable under these rules. (ii) A party may, subject to the provisions of this rule and of rules 30 and 31, depose each person whom any other party expects to call as an expert witness at trial.

(B) A party may discover facts known or opinions held by an expert who is not expected to be called as a witness at trial, only as provided in rule 35(b) or upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.

(C) Unless manifest injustice would result, (i) the court shall require that the party seeking discovery pay the expert a reasonable fee for time spent in responding to discovery under subsections (b)(5)(A)(ii) and (b)(5)(B) of this rule; and (ii) with respect to discovery obtained under subsection (b)(5)(A)(ii) of this rule the court may require, and with respect to discovery obtained under subsection (b)(5)(B) of this rule the court shall require the party seeking discovery to pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert.

(6) *Claims of Privilege or Protection as Trial-Preparation Materials for Information Produced.* If information produced in discovery is subject to a claim of privilege or of protection as trial-preparation material, the party making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return,

sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; and must take reasonable steps to retrieve the information if the party disclosed it before being notified. Either party may promptly present the information in camera to the court for a determination of the claim. The producing party must preserve the information until the claim is resolved.

(7) *Discovery From Treating Health Care Providers.* The party seeking discovery from a treating health care provider shall pay a reasonable fee for the reasonable time spent in responding to the discovery. If no agreement for the amount of the fee is reached in advance, absent an order to the contrary under section (c), the discovery shall occur and the health care provider or any party may later seek an order setting the amount of the fee to be paid by the party who sought the discovery. This subsection shall not apply to the provision of records under RCW 70.02 or any similar statute, nor to discovery authorized under any rules for criminal matters.

(8) *Treaties or Conventions.* If the methods of discovery provided by applicable treaty or convention are inadequate or inequitable and additional discovery is not prohibited by the treaty or convention, a party may employ the discovery methods described in these rules to supplement the discovery method provided by such treaty or convention.

(c) Protective Orders. Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the court in which the action is pending or alternatively, on matters relating to a deposition, the court in the county where the deposition is to be taken may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: (1) that the discovery not be had; (2) that the discovery may be had only on specified terms and conditions,

including a designation of the time or place; (3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery; (4) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters; (5) that discovery be conducted with no one present except persons designated by the court; (6) that the contents of a deposition not be disclosed or be disclosed only in a designated way; (7) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way; (8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court.

If the motion for a protective order is denied in whole or in part, the court may, on such terms and conditions as are just, order that any party or person provide or permit discovery. The provisions of rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.

(d) Sequence and Timing of Discovery. Unless the court upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery.

(e) Supplementation of Responses. A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement the response to include information thereafter acquired, except as follows:

(1) A party is under a duty seasonably to supplement his response with respect to any question directly addressed to:

(A) the identity and location of persons having knowledge of discoverable matters, and

(B) the identity of each person expected to be called as an expert witness at trial, the subject matter on which the expert witness is expected to testify, and the substance of the expert witness's testimony.

(2) A party is under a duty seasonably to amend a prior response if the party obtains information upon the basis of which:

(A) the party knows that the response was incorrect when made, or

(B) the party knows that the response though correct when made is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

(3) A duty to supplement responses may be imposed by order of the court, agreement of the parties, or at any time prior to trial through new requests for supplementation of prior responses.

(4) Failure to seasonably supplement in accordance with this rule will subject the party to such terms and conditions as the trial court may deem appropriate.

(f) Discovery Conference. At any time after commencement of an action the court may direct the attorneys for the parties to appear before it for a conference on the subject of discovery. The court shall do so upon motion by the attorney for any party if the motion includes:

(1) A statement of the issues as they then appear;

(2) A proposed plan and schedule of discovery;

(3) Any limitations proposed to be placed on discovery;

(4) Any other proposed orders with respect to discovery; and

(5) A statement showing that the attorney making the motion has made a reasonable effort to reach agreement with opposing attorneys on the matters set forth in the motion.

Each party and each party's attorney are under a duty to participate in good faith in the framing of a discovery plan if a plan is proposed by the attorney for any party.

Notice of the motion shall be served on all parties. Objections or additions to matters set forth in the motion shall be served not later than 10 days after service of the motion.

Following the discovery conference, the court shall enter an order tentatively identifying the issues for discovery purposes, establishing a plan and schedule for discovery, setting limitations on discovery, if any, and determining such other matters, including the allocation of expenses, as are necessary for the proper management of discovery in the action. An order may be altered or amended whenever justice so requires.

Subject to the right of a party who properly moves for a discovery conference to prompt convening of the conference, the court may combine the discovery conference with a pretrial conference authorized by rule 16.

(g) Signing of Discovery Requests, Responses, and Objections. Every request for discovery or response or objection thereto made by a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, whose address shall be stated. A party who is not represented by an attorney shall sign the request, response, or objection and state the party's address. The signature of the attorney or party constitutes a certification that the attorney or the party has read the request, response, or objection, and that to the best of their knowledge, information, and belief formed after a reasonable inquiry it is:

(1) consistent with these rules and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law;

(2) not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and

(3) not unreasonable or unduly burdensome or expensive, given the needs of the case, the discovery already had in the case, the amount in controversy, and the importance of the issues at stake in the litigation. If a request, response, or objection is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the party making the request, response, or objection and a party shall not be obligated to take any action with respect to it until it is signed.

If a certification is made in violation of the rule, the court, upon motion or upon its own initiative, shall impose upon the person who made the certification, the party on whose behalf the request, response, or objection is made, or both, an appropriate sanction, which may include an order to pay the amount of the reasonable expenses incurred because of the violation, including a reasonable attorney fee.

(h) Use of Discovery Materials. A party filing discovery materials on order of the court or for use in a proceeding or trial shall file only those portions upon which the party relies and may file a copy in lieu of the original.

(i) Motions; Conference of Counsel Required. The court will not entertain any motion or objection with respect to rules 26 through 37 unless counsel have conferred with respect to the motion or objection. Counsel for the moving or objecting party shall arrange for a mutually convenient conference in person or by telephone. If the court finds that counsel for any party, upon whom a motion or objection in respect to matters covered by such rules has been served, has willfully refused or failed to confer in good faith, the court may apply the sanctions provided

under rule 37(b). Any motion seeking an order to compel discovery or obtain protection shall include counsel's certification that the conference requirements of this rule have been met.

(j) Access to Discovery Materials Under RCW 4.24.

(1) *In General.* For purposes of this rule, "discovery materials" means depositions, answers to interrogatories, documents or electronic data produced and physically exchanged in response to requests for production, and admissions pursuant to rules 26-37.

(2) *Motion.* The motion for access to discovery materials under the provisions of RCW 4.24 shall be filed in the court that heard the action in which the discovery took place. The person seeking access shall serve a copy of the motion on every party to the action, and on nonparties if ordered by the court.

(3) *Decision.* The provisions of RCW 4.24 shall determine whether the motion for access to discovery materials should be granted.

SUGGESTED AMENDMENT
SUPERIOR COURT CIVIL RULES (CR)
CR 37 - FAILURE TO MAKE DISCOVERY: SANCTIONS

(a) Motion for Order Compelling Discovery. A party, upon reasonable notice to other parties and all persons affected thereby, and upon a showing of compliance with rule 26(i), may apply to the court in the county where the deposition was taken, or in the county where the action is pending, for an order compelling discovery as follows:

(1) *Appropriate Court.* An application for an order to a party may be made to the court in which the action is pending, or on matters relating to a deposition, to the court in the county where the deposition is being taken. An application for an order to a deponent who is not a party shall be made to the court in the county where the deposition is being taken.

(2) *Motion.* If a deponent fails to answer a question propounded or submitted under rules 30 or 31, or a corporation or other entity fails to make a designation under rule 30(b)(6) or 31(a), or a party fails to answer an interrogatory submitted under rule 33, or if a party, in response to a request for inspection submitted under rule 34, fails to respond that inspection will be permitted as requested or fails to permit inspection as requested, any party may move for an order compelling an answer or a designation, or an order compelling inspection in accordance with the request. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before the proponent applies for an order.

If the court denies the motion in whole or in part, it may make such protective order as it would have been empowered to make on a motion made pursuant to rule 26(c).

(3) *Evasive or Incomplete Answer.* For purposes of this section an evasive or incomplete answer is to be treated as a failure to answer.

(4) *Award of Expenses of Motion.* If the motion is granted, the court shall, after opportunity for hearing, require the party or deponent whose conduct necessitated the motion or the party or

attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney fees, unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is denied, the court shall, after opportunity for hearing, require the moving party or the attorney advising the motion or both of them to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including attorney fees, unless the court finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is granted in part and denied in part, the court may apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner.

(b) Failure to Comply With Order.

(1) *Sanctions by Court in County Where Deposition Is Taken.* If a deponent fails to be sworn or to answer a question after being directed to do so by the court in the county in which the deposition is being taken, the failure may be considered a contempt of that court.

(2) *Sanctions by Court in Which Action Is Pending.* If a party or an officer, director, or managing agent of a party or a person designated under rule 30(b)(6) or 31(a) to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under section (a) of this rule or rule 35, or if a party fails to obey an order entered under rule 26(f), the court in which the action is pending may make such orders in regard to the failure as are just, and among others the following:

(A) An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

(B) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting the disobedient party from introducing designated matters in evidence;

(C) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceedings or any part thereof, or rendering a judgment by default against the disobedient party;

(D) In lieu of any of the foregoing orders or in addition thereto, an order treating as a contempt of court the failure to obey any orders except an order to submit to physical or mental examination;

(E) Where a party has failed to comply with an order under rule 35(a) requiring the party to produce another for examination such orders as are listed in sections (A), (B), and (C) of this subsection, unless the party failing to comply shows that the party is unable to produce such person for examination.

In lieu of any of the foregoing orders or in addition thereto, the court shall require the party failing to obey the order or the attorney advising him or her or both to pay the reasonable expenses, including attorney fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

(c) Expenses on Failure to Admit. If a party fails to admit the genuineness of any document or the truth of any matter as requested under rule 36, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, the party may apply

to the court for an order requiring the other party to pay the requesting party the reasonable expenses incurred in making that proof, including reasonable attorney fees. The court shall make the order unless it finds that (1) the request was held objectionable pursuant to rule 36(a), or (2) the admission sought was of no substantial importance, or (3) the party failing to admit had reasonable ground to believe the fact was not true or the document was not genuine, or (4) there was other good reason for the failure to admit.

(d) Failure of Party to Attend at Own Deposition or Serve Answers to Interrogatories or Respond to Request for Production or Inspection. If a party or an officer, director, or managing agent of a party or a person designated under rule 30(b)(6) or 31(a) to testify on behalf of a party fails (1) to appear before the officer who is to take his or her deposition, after being served with a proper notice, or (2) to serve answers or objections to interrogatories submitted under rule 33, after proper service of the interrogatories, or (3) to serve a written response to a request for production of documents or inspection submitted under rule 34, after proper service of the request, the court in which the action is pending on motion may make such orders in regard to the failure as are just, and among others it may take any action authorized under sections (A), (B), and (C) of subsection (b)(2) of this rule. In lieu of any order or in addition thereto, the court shall require the party failing to act or the attorney advising the party or both to pay the reasonable expenses, including attorney fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

The failure to act described in this subsection may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has applied for a protective order

as provided by rule 26(c). For purposes of this section, an evasive or misleading answer is to be treated as a failure to answer.

(e) Failure to Participate in the Framing of a Discovery Plan. If a party or a party's attorney fails to participate in good faith in the framing of a discovery plan by agreement as is required by rule 26(f), the court may, after opportunity for hearing, require such party or such party's attorney to pay to any other party the reasonable expenses, including attorney fees, caused by the failure.

(f) Failure to Reasonably Cooperate. If a party or a party's attorney fails to reasonably cooperate as required in CR 1 or CR 26(a) regarding any discovery matter, the court may, after opportunity for hearing, require the party or the party's attorney to pay the other party's reasonable expenses, including attorney fees, caused by the failure.

SUGGESTED AMENDMENT

CIVIL RULES FOR COURTS OF LIMITED JURISDICTION (CRLJ)

CRLJ 1 – SCOPE AND PURPOSE OF RULES

These rules govern the procedure in all trial courts of limited jurisdiction in all suits of a civil nature, with the exceptions stated in rule 81. All parties and their legal counsel shall reasonably cooperate with each other and the court in all matters. These~~y –~~ rules shall be construed and administered to be consistent with this principle and to secure the just, speedy, and inexpensive determination of every action.

SUGGESTED AMENDMENT
CIVIL RULES FOR COURTS OF LIMITED JURISDICTION (CRLJ)

CRLJ 11 – SIGNING AND DRAFTING OF PLEADINGS, MOTIONS, AND LEGAL MEMORANDA: SANCTIONS

(a) Every pleading, motion, and legal memorandum of a party represented by an attorney shall be dated and signed by at least one attorney of record in the attorney's individual name, whose address and Washington State Bar Association membership number shall be stated. A party who is not represented by an attorney shall sign and date the party's pleading, motion, or legal memorandum and state the party's address. Pleadings need not, but may be, verified or accompanied by affidavit. The signature of a party or of an attorney constitutes a certificate by the party or attorney that the party or attorney has read the pleading, motion, or legal memorandum, and that to the best of the party's or attorney's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances; (1) it is well grounded in fact; (2) is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law or the establishment of new law, (3) it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief. If a pleading, motion, or legal memorandum is not signed shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a pleading, motion, or legal memorandum is signed in violation of this rule, the court upon motion or upon its own initiative may impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or legal memorandum, including a

reasonable attorney fee.

(b) In helping to draft a pleading, motion or document filed by the otherwise self-represented person, the attorney certifies that the attorney has read the pleading , motion, or legal memorandum, and that to the best of the attorney's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances: (1) it is well grounded in fact, (2) it is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law or the establishment of new law, (3) it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation, and (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief. The attorney in providing such drafting assistance may rely on the otherwise self-represented person's representation of facts, unless the attorney has reason to believe that such representations are false or materially insufficient, in which instance the attorney shall make an independent reasonable inquiry into the facts.

(c) Consistent with the overall purpose of these rules as set forth in CRLJ 1, the court, upon motion or upon its own initiative, may impose an appropriate sanction on any party or attorney who violates the mandate of reasonable cooperation set forth in CRLJ 1, which sanction may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the lack of cooperation, including a reasonable attorney fee. The court will not entertain any motion with respect to this subsection unless the parties have conferred with

respect to the motion. The moving party shall arrange for a mutually convenient conference in person or by telephone. The court may apply sanctions if the court finds that any party or its counsel, upon whom a motion with respect to matters covered by such rules has been served, has willfully refused or failed to confer in good faith. Any motion seeking sanctions under this subsection shall include a certification that the conference requirements of this rule have been met.

SUGGESTED AMENDMENT
CIVIL RULES FOR COURTS OF LIMITED JURISDICTION (CRLJ)
CRLJ 26 – DISCOVERY

Consistent with the general obligation to cooperate set forth in CRLJ 1, the court expects the parties and their counsel to cooperate with each other in using discovery methods; exchanging discoverable information; scheduling depositions, inspections and examinations; and reducing the costs of discovery. Discovery in courts of limited jurisdiction shall be permitted as follows:

(a) Specification of Damages. A party may demand a specification of damages under RCW 4.28.360.

(b) Interrogatories and Requests for Production.

(1) The following interrogatories may be submitted by any party:

(A) State the amount of general damages being claimed.

(B) State each item of special damages being claimed and the amount thereof.

(C) List the name, address, and telephone number of each person having any knowledge of facts regarding liability.

(D) List the name, address, and telephone number of each person having any knowledge of facts regarding the damages claimed.

(E) List the name, address and telephone number of each expert you intend to call as a witness at trial. For each expert, state the subject matter on which the expert is expected to testify. State the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion.

(2) In addition to section (b)(1), any party may serve upon any other party not more than two sets of written interrogatories containing not more than 20 questions per

set without prior permission of the court. Separate sections, paragraphs or categories contained within one interrogatory shall be considered separate questions for the purpose of this rule. The interrogatories shall conform to the provisions of CR 33.

(3) The following requests for production may be submitted by any party:

(A) Produce a copy of any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of any judgment which may be entered in this action, or to indemnify or reimburse the payments made to satisfy the judgment.

(B) Produce a copy of any agreement, contract or other document upon which this claim is being made.

(C) Produce a copy of any bill or estimate for items for which special damage is being claimed.

(4) In addition to section (b)(3), any party may submit to any other party a request for production of up to five separate sets of groups of documents or things without prior permission of the court. The requests for production shall conform to the provisions of CR 34.

(c) Depositions.

(1) A party may take the deposition of any other party, unless the court orders otherwise.

(2) Each party may take the deposition of two additional persons without prior permission of the court. The deposition shall conform to the provisions of CR 30.

(d) Requests for Admission.

(1) A party may serve upon any other party up to 15 written requests for admission without prior permission of the court. Separate sections, paragraphs or categories contained within one request for admission shall be considered separate requests for purposes of this rule.

(2) The requests for admission shall conform to the provisions of CR 36.

(e) Other Discovery at Discretion of Court. No additional discovery shall be allowed, except as the court may order. The court shall have discretion to decide whether to permit any additional discovery. In exercising such discretion the court shall consider (1) whether all parties are represented by counsel, (2) whether undue expense or delay in bringing the case to trial will result and (3) whether the interests of justice will be promoted.

(f) How Discovery to Be Conducted. Any discovery authorized pursuant to this rule shall be conducted in accordance with Superior Court Civil Rules 26 through 37, as governed by CRLJ 26.

(g) Time for Discovery. Twenty-one days after the service of the summons and complaint, or counterclaim, or cross complaint, the served party may demand the discovery set forth in sections (a)-(d) of this rule, or request additional discovery pursuant to section (e) of this rule.

[Amended effective September 1, 1994; September 1, 1999; September 1, 2005; September 1, 2016.]