

AGENDA

June 7, 2018
9:30 a.m. – 1:00 p.m.

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

Approval of April 26, 2018 Minutes (pp. 1-3)

Subcommittee Reports/Draft Rules (Redline & Comments)

1. Initial Case Schedule (pp. 4-23)

- Subcommittee Chair Roger Wynne
 - i. New Rule: CR 3.1 (**Voted and Passed on May 31, 2018**)
 - ii. CR 26
 - iii. CRLJ 26
 - iv. CRLJ 40
 - v. New CRLJ 3.1

2. Early Discovery Conferences (pp. 24-42)

- Subcommittee Chair Judge John Ruhl
 - i. CR 26(f)
 - ii. CR 37(e)
 - iii. New Rule: CRLJ 26(h)

3. Individual Judicial Assignment and Pretrial Conferences (pp. 43-49)

- Subcommittee Chair Hillary Evans Graber
 - i. CR 16 (**Voted and Passed on May 31, 2018**)
 - ii. CR 77

4. Initial Disclosures (pp. 50-64)

- Subcommittee Chair Rebecca Glasgow
 - i. CR 26 (**Voted and Passed on May 31, 2018**)
 - ii. CRLJ 26

5. Cooperation (pp. 65-72)

- Subcommittee Chair Jane Morrow
 - i. CR 1 (**Voted and Passed on May 31, 2018**)
 - ii. CR 11 (**Voted and Passed on May 31, 2018**)
 - iii. CR 26
 - iv. CR 37
 - v. CRLJ 1
 - vi. CRLJ 11
 - vii. CRLJ 26

6. Mediation (pp. 73-82)

- Subcommittee Chair Averil Rothrock
 - i. New Rule: Early Mandatory Mediation Requirement (**Voted and Passed on May 31, 2018**)
 - ii. Recommended ADR Practices (**Voted and Passed on May 31, 2018**)



CIVIL LITIGATION RULES DRAFTING TASK FORCE

Meeting Minutes

April 26, 2018

Members Present:

Chair Ken Masters, Roger Wynne, Jeffrey Damasiewicz (by phone), Nick Gellert, Rebecca Glasgow (by phone), Ruth Gordon (by phone), Hillary Evans Graber (by phone), Caryn Jorgensen (by phone), Shannon Kilpatrick, Jane Morrow, Roger Wynne, Averil Rothrock, Judge John Ruhl, Judge Paula McCandlis (by phone) and Judge Brad Maxa (by phone).

Members Excused or Not Attending:

Brad Smith, Stephanie Bloomfield, Hozaifa Cassubhai, Kim Gunning, Michael Subit, Judge Rebecca Robertson, Judge Aimee Maurer.

Also Attending:

Kevin Bank (WSBA Assistant General Counsel), Shannon Hinchcliffe (AOC Liaison), and Sherry Lindner (WSBA Paralegal).

Chair Ken Masters called the meeting to order at 9:30 a.m.

Minutes

The March 29, 2018 minutes were approved by consensus.

Subcommittee Reports

Initial Case Schedules

Chair Wynne asked whether subcommittee chairs should be responding to comments received from stakeholders. Ms. Lindner noted that she acknowledges receipt of comments when they come in, so there is no need for the Chairs to do that. Task Force Chair Masters stated that subcommittee chairs have discretion to respond to commenters in more detail if they wish.

Chair Wynne requested input on the extent to which the new CRLJ 3.1 (which is still being drafted) should mirror new proposed CR 3.1. There was consensus that uniformity between CRs and CRLJs is always a desirable goal, but given the differences between Superior and District Courts, it is unlikely that the rules will be identical.

Initial Discovery Conferences

The Task Force discussed the subcommittee's proposal in CRLJ 26 that the parties must file a "Joint Status Report" after the initial discovery conference. The subcommittee's proposal included a proposed "Joint Status Report" form. Discussion ensued as to how the form would be provided to the parties. AOC liaison Shannon Hinchcliffe noted that the Court's website has a long list of suggested forms covering a wide range of rules and pleadings. If the form is attached to the rule, it is considered mandatory, and it can only be amended through the rule making process. However, the forms on the website are "pattern forms" that are recommended but not required.

Chair Masters noted that a recommended form would be helpful for both the CRs and CRLJs. Some members expressed the view that because most mandatory forms are very specific and precise (i.e., a summons), requiring a particular form in the rule could be too limiting. The subcommittee will discuss the issue further.

Mr. Wynne noted that many of the Task Force's proposed amendments reference the initial case schedule, and that uniform language will be needed. He suggested using a placeholder for now, and will work on a uniform term.

Individual Judicial Assignments and Pretrial Conferences

Chair Hillary Evans Graber reported on comments already received regarding CR 77. Some comments mentioned that the term "judicial officer" would be preferable to "judge." This would encompass Court Commissioners as well as Judges. Judge Ruhl commented that Commissioners handle significant loads and can do almost everything a Judge can do. The subcommittee will consider the input.

The subcommittee has sent out the proposed amendments to CR 16 (pre-trial conferences) for comment.

Initial Disclosures

The subcommittee's proposed amendments have been sent out for comment. There was no further discussion, other than suggestions for grammatical changes.

Cooperation

Chair Jane Morrow stated that the subcommittee's proposed rule amendments have been distributed for comment. No comments have been received but she expects they will receive some later. There was no further discussion, other than suggestions for grammatical changes.

Mediation

The Task Force discussed various provisions in the current proposal. There was discussion as to whether the local county courts should set a fee schedule or fee range for mediators. Kevin Bank and Shannon Kilpatrick noted that the WSBA Court Rules and Procedures Committee had studied the way arbitrators are compensated, and offered to provide that information to the subcommittee.

There was further discussion as to whether a mediator should be allowed to act as an arbitrator in the same matter. Task members noted that there are differing views on this topic. The subcommittee will try to obtain more feedback on this issue.

Judge Ruhl raised the issue of the interplay between the sanctions provision in the proposed rule and the RCW requirement that mediation remain completely confidential. The subcommittee will look into this issue further as well.

General Matters

The Task Force discussed combining the amendments proposed by the different subcommittees to CR 26 into one version. Ms. Lindner will distribute a “combined” CR 26 draft shortly. Mr. Bank and Chair Masters also reminded the Task Force that forwarding memoranda and finalized versions of the rule amendments are due in early July.

The meeting adjourned at 12:30 p.m.

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.

(BC) 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.

(CD) 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)~~(CB)~~ 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)~~(CB)~~ 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.]

SUGGESTED AMENDMENT
SUPERIOR COURT 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. 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:

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

(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.

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

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

(e) 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, and 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.

~~(f)~~ 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.

~~(g)~~ 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, and any case schedule or court order.

~~(h)~~ Time for Discovery. Unless otherwise provided by a case schedule or court order, Twenty-one days after the service of the party served with the summons and complaint, or with a 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, 21 days after service.

SUGGESTED AMENDMENT
SUPERIOR COURT CIVIL RULES
FOR COURTS OF LIMITED JURISDICTION (CRLJ)
CRLJ 40 – ASSIGNMENT OF CASES

(a) Notice of Trial— and Note of Issue [in the Absence of Case Schedule or Court Order.](#) ~~¶~~ Except as otherwise provided in a case schedule or court order, an action shall be brought on for trial as provided in this subsection (a).

(1) Of Fact. At any time after the issues of fact are completed in any case by the service of complaint and answer or reply when necessary, as herein provided, either party may cause the issues of fact to be brought on for trial, by serving upon the opposite party a notice of trial at least 3 days before any day provided by rules of court for setting causes for trial, which notice shall give the title of the cause as in the pleadings, and notify the opposite party that the issues in such action will be brought on for trial at the time set by the court; and the party giving such notice of trial shall, at least 5 days before the day of setting such causes for trial, file with the clerk of the court a note of issue containing the title of the action, the names of the attorneys and the date when the last pleading was served; and the clerk shall thereupon enter the cause upon the trial docket according to the date of the issue.

(2) Of Law. In case an issue of law raised upon the pleadings is desired to be brought on for argument, either party shall, at least 5 days before the day set apart by the court under its rules for hearing issues of law, serve upon the opposite party a like notice of trial and furnish the clerk of the court with a note of issue as above provided, which note of issue shall specify that the issue to be tried is an issue of law; and the clerk of the court shall thereupon enter such action upon the motion docket of the court.

SUGGESTED AMENDMENT
SUPERIOR COURT CIVIL RULES
FOR COURTS OF LIMITED JURISDICTION (CRLJ)
CRLJ 40 – ASSIGNMENT OF CASES

(3) Adjournments. When a cause has once been placed upon either docket of the court, if not tried or argued at the time for which notice was given, it need not be noticed for a subsequent session or day, but shall remain upon the docket from session to session or from law day to law day until final disposition or stricken off by the court.

(4) Filing Note by Opposite Party. The party upon whom notice of trial is served may file the note of issue and cause the action to be placed upon the calendar without further notice on his part.

(5) Issue May Be Brought to Trial by Either Party. Either party, after the notice of trial, whether given by himself or the adverse party, may bring the issue to trial, and in the absence of the adverse party, unless the court for good cause otherwise directs, may proceed with his case, and take a dismissal of the action, or a verdict or judgment, as the case may require.

(b) Methods. Except as otherwise provided by rule 3.1, ~~E~~each court of limited jurisdiction may provide by local rule for placing of actions upon the trial calendar: (1) without request of the parties; (2) upon request of a party and notice to the other parties; or (3) in such other manner as the court deems expedient.

(c) Preferences. In setting cases for trial, unless otherwise provided by statute or rule 3.1, preference shall be given to criminal over civil cases, and cases where the defendant or a witness is in confinement shall have preference over other cases.

SUGGESTED AMENDMENT
SUPERIOR COURT CIVIL RULES
FOR COURTS OF LIMITED JURISDICTION (CRLJ)
CRLJ 40 – ASSIGNMENT OF CASES

(d) Trials. When a cause is set and called for trial, it shall be tried or dismissed, unless good cause is shown for a continuance. The court may in a proper case, and upon terms, reset the same.

(e) Continuances. A motion to continue a trial on the ground of the absence of evidence shall only be made upon affidavit showing the materiality of the evidence expected to be obtained, and that due diligence has been used to procure it, and also the name and address of the witness or witnesses. The court may also require the moving party to state upon affidavit the evidence which he expects to obtain; and if the adverse party admits that such evidence would be given, and that it be considered as actually given on the trial, or offered and overruled as improper, the trial shall not be continued. The court, upon its allowance of the motion, may impose terms or conditions upon the moving party.

(f) Change of Judge. In any case pending in any court of limited jurisdiction, unless otherwise provided by law, the judge thereof shall be deemed disqualified to hear and try the case when he is in anywise interested or prejudiced. The judge, of his own initiative, may enter an order disqualifying himself; and he shall also disqualify himself under the provisions of this rule if, before the jury is sworn or the trial is commenced, a party files an affidavit that such party cannot have a fair and impartial trial by reason of the interest or prejudice of the judge or for other ground provided by law. Only one such affidavit shall be filed by the same party in the case and such affidavit shall be made as to only one of the judges of said court.

All right to an affidavit of prejudice will be considered waived where filed more than 10 days after the case is set for trial, unless the affidavit alleges a particular incident, conversation or

SUGGESTED AMENDMENT
SUPERIOR COURT CIVIL RULES
FOR COURTS OF LIMITED JURISDICTION (CRLJ)
CRLJ 40 – ASSIGNMENT OF CASES

utterance by the judge, which was not known to the party or his attorney within the 10-day period. In multiple judge courts, or where a pro tempore or visiting judge is designated as the trial judge, the 10-day period shall commence on the date that the defendant or his attorney has actual notice of assignment or reassignment to a designated trial judge.

SUGGESTED AMENDMENT
SUPERIOR COURT CIVIL RULES
FOR COURTS OF LIMITED JURISDICTION (CRLJ)
New CRLJ 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. Expert Witness Disclosures.
 - A. Each party shall serve its primary expert witness disclosures no later than 26 weeks before the trial commencement date.
 - B. Each party shall serve its rebuttal expert witness disclosures no later than 20 weeks before the trial commencement date.
 5. Discovery Cutoff. The parties shall complete discovery no later than 13 weeks before the trial commencement date.
 6. Dispositive Motions. The parties shall file dispositive motions no later than nine weeks before the trial commencement date.
 7. Pretrial Report. The parties shall file a pretrial report no later than four weeks before the trial commencement date.
 8. Pretrial Conference. The court shall conduct a pretrial conference no later than three weeks before the trial commencement date.

SUGGESTED AMENDMENT
SUPERIOR COURT CIVIL RULES
FOR COURTS OF LIMITED JURISDICTION (CRLJ)
New CRLJ 3.1 – INITIAL CASE SCHEDULE

9. Trial Commencement Date. The court shall commence the trial no later than 52 weeks after the filing of the 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.

SUGGESTED AMENDMENT
SUPERIOR COURT CIVIL RULES
FOR COURTS OF LIMITED JURISDICTION (CRLJ)
New CRLJ 3.1 – INITIAL CASE SCHEDULE

(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.

New CR 3.1(e); changes to the exemption list since stakeholder draft

....

- (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 before~~ a referee;

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

~~RCW 4.64.090, abstract of transcript of judgment;~~ **... This does not appear to be an action of any sort.]**

RCW ch. 6.36, ~~Uniform Enforcement of Foreign Judgments Act;~~

RCW ch. 7.06, mandatory arbitration appeal;

~~RCW ch. 7.16, writs;~~ **... This is the catch-all. Broken out from the reference to 7.36.]**

~~RCW ch. 7.24, Uniform Declaratory Judgments Act;~~ **... These are facial challenges usually resolved on cross motions for summary judgment.]**

RCW ch. 7.36, ~~petition for writ of habeas corpus, mandamus, restitution, or review, or any other writ;~~ **... This chapter is about habeus only.]**

RCW ch. 7.60, ~~appointment of receiver if not combined with, or ancillary to, an action seeking a money judgment or other relief-receivership proceeding (when filed as an independent action and not under an existing proceeding);~~ **... Borrows language from**

RCW 7.60.025(1)(a).]

RCW ch. 7.90, sexual assault protection order;

RCW ch. 7.94, extreme risk protection order;

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New CR 3.1(e); changes to the exemption list since stakeholder draft

RCW ~~ch. 8.12, Title 8, eminent domain condemnation~~ [Note: Citations to sources of condemnation authority may need to be expanded in a subsequent draft.] [. . . Title 8 covers all manner of public entities. Chapter 8.12 is just cities.]

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RCW ch. 10.14, anti-harassment protection order;

RCW ch. 10.77, criminally insane procedures; [. . . That's the title of the chapter.]

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RCW Title 11, probate and trust law;

RCW ch. 12.36, small claims appeal;

RCW Title 13, juvenile courts, juvenile offenders, ~~etc. emancipation of a minor~~; [. . .

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The Title covers more than courts, offenders, and minors. The title is named "Juvenile Courts and Juvenile Offenders," so use that with "etc." The idea is for everything in Title 13 to be exempt.]

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RCW ~~ch. 26.04.010~~, marriage age waiver petition;

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

RCW ch. 26.33, adoption;

RCW ch. 26.09, dissolution proceedings and legal separation; [. . . Based on comments.]

RCW ch. 26.50, ~~d~~Domestic ~~v~~Violence Protection Act;

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

RCW ch. 34.05, ~~administrative appeal~~ Administrative Procedure Act petition;

RCW ch. 35.50, local improvement assessment foreclosure; [. . . Based on comments.]

RCW ch. 36.70C, land use petition;

~~RCW ch. 49.12, work permit~~; [. . . Work permits show up only in terms of waivers,

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which are granted administratively, not judicially. The rest of the chapter seems to govern serious employment litigation that this rule should cover.]

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

New CR 3.1(e); changes to the exemption list since stakeholder draft

RCW ch. 59.128, unlawful detainer;

RCW ch. 59.18, Residential Landlord-Tenant Act; [. . . We had the wrong cite for unlawful detainer, and RLTA has the writ of restitution proceeding, which we had intended to exempt above.]

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RCW ch. 70.09, sexually violent predator commitment; [. . . We had the wrong cite below; moved up here to be in numerical order.]

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RCW ch. 70.96A, ~~chemical dependency~~ treatment for alcoholism, intoxication, and drug addiction; [. . . That's the title of the chapter.]

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RCW ch. 70.109 (sexually violent predator commitment);

RCW ch. 71.05, ~~civil commitment~~ mental illness; [. . . That's the title, and it appears to cover more than commitments.]

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RCW ch. 74.20, ~~support of dependent children~~Uniform Reciprocal Enforcement of

Support Act; [Reviser's note to RCW 74.20.210: "The "Uniform Reciprocal Enforcement of Support Act" was redesignated the "Uniform Interstate Family Support Act" by 1993 c 318." That Uniform Act is what we cite above as RCW ch. 26.21A. We should continue to exempt 74.20 because is provides for petitions for specific things.]

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RCW ch. 74.34, abuse of vulnerable adults;

RCW ch. 84.64, lien foreclosure; [. . . Based on comments.]

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.

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.

SUGGESTED AMENDMENT
SUPERIOR COURT CIVIL RULES (CR)

New CR 3.1 – INITIAL CASE SCHEDULE

- 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

SUGGESTED AMENDMENT
SUPERIOR COURT CIVIL RULES (CR)

New CR 3.1 – INITIAL CASE SCHEDULE

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 before a referee;

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

RCW ch. 6.36, Uniform Enforcement of Foreign Judgments Act;

RCW ch. 7.06, mandatory arbitration appeal;

RCW ch. 7.16, writs;

RCW ch. 7.24, Uniform Declaratory Judgments Act;

RCW ch. 7.36, habeas corpus;

RCW ch. 7.60, appointment of receiver if not combined with, or ancillary to, an action seeking a money judgment or other relief;

**SUGGESTED AMENDMENT
SUPERIOR COURT CIVIL RULES (CR)**

New CR 3.1 – INITIAL CASE SCHEDULE

RCW ch. 7.90, sexual assault protection order;

RCW ch. 7.94, extreme risk protection order;

RCW Title 8, eminent domain;

RCW ch. 10.14, anti-harassment protection order;

RCW ch. 10.77, criminally insane procedures;

RCW Title 11, probate and trust law;

RCW ch. 12.36, small claims appeal;

RCW Title 13, juvenile courts, juvenile offenders, etc.;

RCW 26.04.010, marriage age waiver petition;

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

RCW ch. 26.33, adoption;

RCW ch. 26.09, dissolution proceedings and legal separation;

RCW ch. 26.50, Domestic Violence Protection Act;

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

RCW ch. 34.05, Administrative Procedure Act petition;

RCW ch. 35.50, local improvement assessment foreclosure;

RCW ch. 36.70C, land use petition;

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

RCW ch. 59.12, unlawful detainer;

RCW ch. 59.18, Residential Landlord-Tenant Act;

RCW ch. 70.09, sexually violent predator commitment;

**SUGGESTED AMENDMENT
SUPERIOR COURT CIVIL RULES (CR)**

New CR 3.1 – INITIAL CASE SCHEDULE

RCW ch. 70.96A, treatment for alcoholism, intoxication, and drug addiction;

RCW ch. 71.05, mental illness;

RCW ch. 74.20, support of dependent children;

RCW ch. 74.34, abuse of vulnerable adults;

RCW ch. 84.64, lien foreclosure;

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 TO
SUPERIOR COURT CIVIL RULES (CR)**

CR 26 – GENERAL PROVISIONS GOVERNING DISCOVERY

Rule 26 – General Provisions Governing(a) - (e) [Unchanged]

(f) Discovery Conferences.

(1) ~~(f)~~ — Initial Discovery Conference

(A) *Timing of Initial Discovery Conference.* No later than a date provided by a case schedule or court order, the plaintiff shall schedule and all parties that have appeared in the case shall conduct an initial in-person or telephonic discovery conference. Each party or each party’s attorney shall reasonably cooperate in scheduling and conducting the initial discovery conference.

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

- i. *Joinder of additional parties and amendments to pleadings;*
- ii. *Amendments to the case schedule, if any;*
- iii. *Possibilities for promptly resolving the case;*
- iv. *Scheduling early mediation;*
- v. *Admissions and stipulations about facts;*
- vi. *Agreements as to what discovery may be conducted and in what order, and any limitations to be placed on discovery;*
- vii. *Preservation and production of discoverable information, including documents and electronically stored information;*
- viii. *Agreements for asserting privilege regarding materials to be produced or protective orders regarding the same; and*
- ix. *Other ways to facilitate the just, speedy, and inexpensive disposition of the action.*

(C) *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’

**SUGGESTED AMENDMENT TO
SUPERIOR COURT CIVIL RULES (CR)**

CR 26 – GENERAL PROVISIONS GOVERNING DISCOVERY

positions and proposals on the subjects set forth in CR 26(f)(2). The joint status report shall be in a form that substantially complies with any joint status report form that may be prescribed by the court, shall 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.

(D) *Discovery Prior to Initial Discovery Conference.* Nothing in this rule shall prevent any party from initiating discovery prior to the initial discovery conference; nor shall this rule excuse any party from responding to another party's discovery requests or otherwise participating in discovery initiated by another party prior to the initial discovery conference.

(2) *Discovery Conference With the Court*

(A) *Subjects to Be Discussed at 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:

- i. ~~(1)~~ — A statement of the issues as they then appear;
- ii. ~~(2)~~ — A proposed plan and schedule of discovery;
- iii. ~~(3)~~ — Any limitations proposed to be placed on discovery;
- iv. ~~(4)~~ — Any other proposed orders with respect to
discovery; and
- v. ~~(5)~~ — 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.

~~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.~~

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

(B) *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.

(C) *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.

(D) *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]

**SUGGESTED AMENDMENT TO
SUPERIOR COURT CIVIL RULES (CR)**

CR 26 – GENERAL PROVISIONS GOVERNING DISCOVERY

(a) - (e) [Unchanged]

(f) Discovery Conferences.

(1) Initial Discovery Conference

(A) *Timing of Initial Discovery Conference.* No later than a date provided by a case schedule or court order, the plaintiff shall schedule and all parties that have appeared in the case shall conduct an initial in-person or telephonic discovery conference. Each party or each party's attorney shall reasonably cooperate in scheduling and conducting the initial discovery conference.

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

- i. Joinder of additional parties and amendments to pleadings;
- ii. Amendments to the case schedule, if any;
- iii. Possibilities for promptly resolving the case;
- iv. Scheduling early mediation;
- v. Admissions and stipulations about facts;
- vi. Agreements as to what discovery may be conducted and in what order, and any limitations to be placed on discovery;
- vii. Preservation and production of discoverable information, including documents and electronically stored information;
- viii. Agreements for asserting privilege regarding materials to be produced or protective orders regarding the same; and
- ix. Other ways to facilitate the just, speedy, and inexpensive disposition of the action.

(C) *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'

**SUGGESTED AMENDMENT TO
SUPERIOR COURT CIVIL RULES (CR)**

CR 26 – GENERAL PROVISIONS GOVERNING DISCOVERY

positions and proposals on the subjects set forth in CR 26(f)(2). The joint status report shall be in a form that substantially complies with any joint status report form that may be prescribed by the court, shall 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.

(D) *Discovery Prior to Initial Discovery Conference.* Nothing in this rule shall prevent any party from initiating discovery prior to the initial discovery conference; nor shall this rule excuse any party from responding to another party’s discovery requests or otherwise participating in discovery initiated by another party prior to the initial discovery conference.

(2) Discovery Conference With the Court

(A) *Subjects to Be Discussed at 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:

- i. A statement of the issues as they then appear;
- ii. A proposed plan and schedule of discovery;
- iii. Any limitations proposed to be placed on discovery;
- iv. Any other proposed orders with respect to discovery; and
- v. 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.

(B) *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.

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

(C) *Order on Discovery Conference.* Following 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.

(D) *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]

SUGGESTED JOINT STATUS REPORT FOR CR 26(f) INITIAL DISCOVERY CONFERENCES

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

)	No.
)	
Plaintiff(s),)	
)	JOINT STATUS REPORT (CR 26(f))
v.)	
)	
)	
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 CR 26(f), they conducted an initial discovery conference and conferred regarding the subjects set forth in CR 26(f)(2). The parties submit this joint status report stating their positions and proposals on these subjects, as required by CR 26(f)(1)(C).

1. Joinder of Additional Parties.

At this time, the parties do not believe that any additional parties should be joined.

At this time, one or more parties plan to seek leave of court to join an additional party or parties. If this box is checked, describe any such proposed joinder of additional parties.

2. Amendments to Pleadings.

At this time, the parties do not plan on amending the pleadings.

At this time, either or both parties plan to seek leave of court to amend their pleading. If this box is checked, describe any potential amendments.

SUGGESTED JOINT STATUS REPORT FOR CR 26(f) INITIAL DISCOVERY CONFERENCES

3. Amendments to the Case Schedule, If Any.

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

At this time, one or more of the parties plan to seek leave of court to amend the Initial Case Schedule. If this box is checked, describe any such amendments.

4. Possibilities for Promptly Resolving the Case.

The parties do do not agree that there are possibilities for promptly resolving the case. If the parties do agree, describe any such possibilities and the timing contemplated by the parties as to determining whether prompt resolution is possible.

5. Scheduling of Early Mediation.

The parties do do not agree that early mediation is appropriate in this case. If the parties do agree, describe when the parties believe the mediation should be scheduled and any attempts the parties have made to schedule mediation.

6. Admissions and Stipulations About Facts.

The parties do do not agree that there are facts which are either admitted or which can be addressed in a stipulation. If the parties do agree, list any such facts.

7. Agreements as to What Discovery May Be Conducted, and In What Order, and Any Limitations on Discovery.

The parties have have not agreed on a discovery plan as to the scope of discovery, the order in which discovery will be conducted, and any limitations on discovery. If the parties do agree, describe the agreed discovery plan. If the parties do not agree, describe the points on which the parties agree and the points on which the parties disagree and when the parties intend to present this issue to the Court for resolution.

SUGGESTED JOINT STATUS REPORT FOR CR 26(f) INITIAL DISCOVERY CONFERENCES

8. Preservation and Production of Discoverable Information, Including Documents and Electronically Stored Information. Describe the parties' agreement, if any, as to preservation and production of discoverable information. If the parties do not agree, describe the scope of the disagreement to be resolved by the Court and when the parties intend to present this issue to the Court for resolution.

9. Agreements for Asserting Privilege Regarding Materials to Be Produced.

The parties have agreed on a procedure for asserting privilege regarding materials to be produced in this case. If this box is checked, describe the agreed procedure.

The parties have not agreed on a procedure for asserting privilege regarding materials to be produced in this case. If this box is checked, describe the parties' disagreement and when the parties intend to present this issue to the Court for resolution.

10. Agreements for Protective Orders Regarding Materials to Be Produced.

The parties agree that a protective order should be entered regarding certain information and documents to be produced. If this box is checked, describe when the parties intend to present a proposed protective order to the Court.

The parties do not agree that a protective order should be entered in this case. If this box is checked, describe the parties' disagreement and when the parties intend to present this issue to the Court for resolution.

11. Other. Describe any proposals by one or more 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: _____

SUGGESTED JOINT STATUS REPORT FOR CR 26(f) INITIAL DISCOVERY CONFERENCES

For the Plaintiff:

Signature: _____

Printed Name: _____

Title (and WSBA number if applicable): _____

For the Defendant:

Signature: _____

Printed Name: _____

Title (and WSBA number if applicable): _____

**SUGGESTED AMENDMENT TO
SUPERIOR COURT CIVIL RULE 37
CR 37(e) FAILURE TO REASONABLY COOPERATE
REGARDING A DISCOVERY PLAN**

CR 37 Failure to Make Discovery: Sanctions

[CR 37(a)-(d) unchanged]

CR 37(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.

**SUGGESTED AMENDMENT TO
SUPERIOR COURT CIVIL RULE 37**

CR 37(e) FAILURE TO PARTICIPATE IN THE FRAMING OF A DISCOVERY PLAN

CR 37 Failure to Make Discovery: Sanctions

[CR 37(a)-(d) unchanged]

CR 37(e) Failure To Reasonably Cooperate Regarding a Discovery Plan. If a party or a party's attorney fails to participate in good faith in 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.

**SUGGESTED AMENDMENT TO
COURTS OF LIMITED JURISDICTION CIVIL RULE 26
CRLJ 26(h) Discovery Conference**

Rule 26: Discovery

[CRLJ 26(a)-(g) not changed]

CRLJ 26(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(h)(2). The joint status report shall be in a form that substantially complies with any joint status report form that may be prescribed by the court, 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

**SUGGESTED AMENDMENT TO
COURTS OF LIMITED JURISDICTION CIVIL RULE 26
CRLJ 26(h) Discovery Conference**

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) *Discovery Prior to Discovery Conference.* Nothing in this rule shall prevent any party from initiating discovery prior to the initial discovery conference; nor shall this rule excuse any party from responding to another party's discovery requests or otherwise participating in discovery initiated by another party prior to the initial discovery conference.

~~(7)~~(8) *No Ex Parte Fee.* No ex parte fee will be charged with respect to any joint status report or any discovery plan.

**SUGGESTED AMENDMENT TO
COURTS OF LIMITED JURISDICTION CIVIL RULE 26
CRLJ 26(h) Discovery Conference**

Rule 26: Discovery

[CRLJ 26(a)-(g) not changed]

CRLJ 26(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(h)(2). The joint status report shall be in a form that substantially complies with any joint status report form that may be prescribed by the court, 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

**SUGGESTED AMENDMENT TO
COURTS OF LIMITED JURISDICTION CIVIL RULE 26
CRLJ 26(h) Discovery Conference**

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) *Discovery Prior to Discovery Conference.* Nothing in this rule shall prevent any party from initiating discovery prior to the initial discovery conference; nor shall this rule excuse any party from responding to another party's discovery requests or otherwise participating in discovery initiated by another party prior to the initial discovery conference.

(8) *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

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

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

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.

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): _____

Comments to proposed CR 77

Name	Organization (if any)	Comment	Response
Rani Sampson	Overcast Law in Wenatchee	In Chelan County, there's a commissioner who hears all family law motions, would this impact that?	The "should," as opposed to a "shall," should allow for this practice to continue.
Kerry Lawrence		"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."	
Judge Robert McSeveney	Chelan Co. Superior Court	"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."	GR 29(f)(2) provides the Presiding Judge shall: "Assign judicial officers to hear cases pursuant to statute or rule. The court may establish general policies governing the assignment of judges;" We don't see any inherent conflict.
Judge Blaine Gibson	Yakima Co. Superior Court	"A rule amendment that changes nothing is not necessary."	He's not wrong.
James Elliot		"fully support this idea"	
James Berg		"in support of the proposed change"	
George Steele		"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."	The "should," as opposed to a "shall," should allow for just this.
Duane Crandall	Member of CWBA	Is "agreeable" with the proposed change	
Craig Liebler		"It's about time."	

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

1 **[(a)-(h) unchanged.]**

2 **(i) ~~Sessions Where More than One Judge Sits—Effect of Decrees, Orders, etc.~~**

3 ~~[Reserved. See RCW 2.08.160.]~~ **Judicial Assignment.** A judge should be assigned to each case
4 upon filing. The assigned judge shall conduct all proceedings in the case unless the case is
5 reassigned to a different judicial officer on a temporary or permanent basis. In counties where
6 local conditions make routine judicial assignment impracticable, the court may assign any case to
7 a specific judicial officer upon written motion of any party or on the court’s own motion.

8 **[(j)-(n) unchanged.]**

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DRAFT

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

1 **[(a)-(h) unchanged.]**

2 **(i) Judicial Assignment.** A judge should be assigned to each case upon filing. The
3 assigned judge shall conduct all proceedings in the case unless the case is reassigned to a
4 different judicial officer on a temporary or permanent basis. In counties where local conditions
5 make routine judicial assignment impracticable, the court may assign any case to a specific
6 judicial officer upon written motion of any party or on the court’s own motion.

7 **[(j)-(n) unchanged.]**

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DRAFT

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

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

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

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

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

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

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

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

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

14 (2) The material issues in dispute;

15 (3) The agreed material facts;

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

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

18 (6) The estimated length of trial and suggestions for shortening the trial; and

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

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

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

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

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

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

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

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

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

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

15 ~~(b)~~ **(c) Pretrial Order.** The court shall ~~make~~ enter an order that recites the action taken at the
16 conference, the amendments allowed to the pleadings, and the agreements made by the parties as
17 to any of the matters considered, and ~~which~~ limits the issues for trial to those not disposed of by
18 admissions or agreements of counsel; and such order when entered controls the subsequent
19 course of the action, unless modified at the trial to prevent manifest injustice. The court in its
20 discretion may establish by rule a pretrial calendar on which actions may be placed for
21 consideration as above provided and may either confine the calendar to jury actions or to nonjury
22 actions or extend it to all actions.
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SUGGESTED AMENDMENT
SUPERIOR COURT CIVIL RULES (CR)
CR 16 – PRETRIAL PROCEDURE AND FORMULATING ISSUES

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

- 4 (1) A brief non-argumentative summary of the case;
- 5 (2) The material issues in dispute;
- 6 (3) The agreed material facts;
- 7 (4) The names of all lay and expert witnesses, excluding rebuttal witnesses;
- 8 (5) An exhibit index (excluding rebuttal or impeachment exhibits);
- 9 (6) The estimated length of trial and suggestions for shortening the trial; and
- 10 (7) A statement whether additional alternative dispute resolution would be useful before
11 trial.

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

- 15 (1) Formulating and simplifying the issues and eliminating claims or defenses;
- 16 (2) Obtaining admissions and stipulations about facts and documents to avoid
17 unnecessary proof and addressing evidentiary issues;
- 18 (3) Adopting special procedures for managing complex issues, multiple parties, difficult
19 legal questions, or unusual proof problems;
- 20 (4) Establishing reasonable parameters on the time to present evidence;
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SUGGESTED AMENDMENT
SUPERIOR COURT CIVIL RULES (CR)
CR 16 – PRETRIAL PROCEDURE AND FORMULATING ISSUES

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

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

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

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7 (c) **Pretrial Order.** The court shall enter an order that recites the action taken at the
8 conference, the amendments allowed to the pleadings, and the agreements made by the parties as
9 to any of the matters considered, and limits the issues for trial to those not disposed of by
10 admissions or agreements of counsel; and such order when entered controls the subsequent
11 course of the action, unless modified at the trial to prevent manifest injustice. The court in its
12 discretion may establish by rule a pretrial calendar on which actions may be placed for
13 consideration as above provided and may either confine the calendar to jury actions or to nonjury
14 actions or extend it to all actions.
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SUGGESTED AMENDMENT
CIVIL RULES FOR COURTS OF LIMITED JURISDICTION
(CRLJ)

CRLJ 26 - DISCOVERY

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

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

5 (1) the name, address, and telephone number of each individual that possess any
6 relevant information that supports the disclosing party's claims or defenses;
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8 (2) a copy of each document and other relevant evidence supporting the disclosing
9 party's claims or defenses, but if a document or other relevant evidence cannot easily be copied,
10 the disclosing party shall make the item reasonably available for inspection by the other parties;

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

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

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

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

20 (7) Sanctions for Failure to Disclose. The parties shall reasonably cooperate. A party
21 that fails to reasonably cooperate or fails to timely make the disclosures required by this rule may
22

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

CRLJ 26 - DISCOVERY

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

3 **(b) Interrogatories and Request for Production.**

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

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

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

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

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

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

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

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

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

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

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

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

8
9 ~~(4) In addition to section (b)(3), a~~Any party may submit to any other party a request for
10 production of up to five separate sets of groups of documents or things without prior permission
11 of the court. The requests for production shall conform to the provisions of CR 34.

12 **(c) Depositions.**

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

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

17 **(d) Requests for Admission.**

18 (1) A party may serve upon any other party up to 15 written requests for admission
19 without prior permission of the court. Separate sections, paragraphs or categories contained
20 within one request for admission shall be considered separate requests for purposes of this rule.
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22 (2) The requests for admission shall conform to the provisions of CR 36.
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SUGGESTED AMENDMENT
CIVIL RULES FOR COURTS OF LIMITED JURISDICTION
(CRLJ)

CRLJ 26 - DISCOVERY

1 **(e) Other Discovery at Discretion of Court.** No additional discovery shall be
2 allowed, except as the court may order. The court shall have discretion to decide whether to
3 permit any additional discovery. In exercising such discretion the court shall consider (1)
4 whether all parties are represented by counsel, (2) whether undue expense or delay in bringing
5 the case to trial will result and (3) whether the interests of justice will be promoted.
6

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

10 **(g) Time for Discovery.** Twenty-one days after the service of the summons and
11 complaint, or counterclaim, or cross complaint, the served party must produce the discovery set
12 forth in section (a) of this rule and may demand the discovery set forth in sections ~~(a)~~(d) of this
13 rule, or request additional discovery pursuant to section (e) of this rule.
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SUGGESTED AMENDMENT
CIVIL RULES FOR COURTS OF LIMITED JURISDICTION
(CRLJ)
CRLJ 26 - DISCOVERY

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

2 **(a) Initial Disclosures.** A party shall provide to the other parties, without waiting a
3 discovery request:

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

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

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

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

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

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

18 (7) Sanctions for Failure to Disclose. The parties shall reasonably cooperate. A party
19 that fails to reasonably cooperate or fails to timely make the disclosures required by this rule may
20 be sanctioned as provided in these rules. The sanction may include an order to pay the
21 reasonable expenses, including attorney fees, caused by the violation.
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SUGGESTED AMENDMENT
CIVIL RULES FOR COURTS OF LIMITED JURISDICTION
(CRLJ)

CRLJ 26 - DISCOVERY

1 **(b) Interrogatories and Request for Production.**

2 (1) Any party may serve upon any other party not more than two sets of written
3 interrogatories containing not more than 20 questions per set without prior permission of the
4 court. Separate sections, paragraphs or categories contained within one interrogatory shall be
5 considered separate questions for the purpose of this rule. The interrogatories shall conform to
6 the provisions of CR 33.

7
8 (2) Any party may submit to any other party a request for production of up to five
9 separate sets of groups of documents or things without prior permission of the court. The
10 requests for production shall conform to the provisions of CR 34.

11 **(c) Depositions.**

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

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

16
17 **(d) Requests for Admission.**

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

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

22 **(e) Other Discovery at Discretion of Court.** No additional discovery shall be
23 allowed, except as the court may order. The court shall have discretion to decide whether to
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SUGGESTED AMENDMENT
CIVIL RULES FOR COURTS OF LIMITED JURISDICTION
(CRLJ)

CRLJ 26 - DISCOVERY

1 permit any additional discovery. In exercising such discretion the court shall consider (1)
2 whether all parties are represented by counsel, (2) whether undue expense or delay in bringing
3 the case to trial will result and (3) whether the interests of justice will be promoted.

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

7 **(g) Time for Discovery.** Twenty-one days after the service of the summons and
8 complaint, or counterclaim, or cross complaint, the served party must produce the discovery set
9 forth in section (a) of this rule and may demand the discovery set forth in sections (b)-(d) of this
10 rule, or request additional discovery pursuant to section (e) of this rule.
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SUGGESTED AMENDMENT
SUPERIOR COURT CIVIL RULES (CR)

CR 26 – GENERAL PROVISIONS GOVERNING DISCOVERY

1 (a) [Unchanged]

2 **(b) Initial Disclosures.**

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

6 (A) the name, address, and telephone number of each individual that possesses any
7 relevant information that supports the disclosing party’s claims or defenses, excluding retained
8 experts or any witness to be used solely for impeachment;

9 (B) a copy of each document and other relevant evidence supporting the disclosing
10 party’s claims or defenses unless the use would be solely for impeachment, but if a document or
11 other relevant evidence cannot easily be copied, the disclosing party shall make the item
12 reasonably available for inspection by the other parties;

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

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

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

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

SUGGESTED AMENDMENT
SUPERIOR COURT CIVIL RULES (CR)

CR 26 – GENERAL PROVISIONS GOVERNING DISCOVERY

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

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

9 **(b c)** [Unchanged]

10 **(e d)** [Unchanged]

11 **(d e)** [Unchanged]

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

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

18 (A) the identity and location of persons having knowledge of discoverable matters;
19
20 and

21 (B) the identity of each person expected to be called as an expert witness at trial, the
22 subject matter on which the expert witness is expected to testify, and the substance of the expert
23 witness’s testimony.
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SUGGESTED AMENDMENT
SUPERIOR COURT CIVIL RULES (CR)

CR 26 – GENERAL PROVISIONS GOVERNING DISCOVERY

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

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

4 (B) the party knows that the disclosure or response though correct when made is no
5 longer true and the circumstances are such that a failure to amend the response is in substance a
6 knowing concealment.
7

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

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

13 **(f g)** [Unchanged]

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

15 Every initial disclosure, request for discovery, or response or objection thereto made by a party
16 represented by an attorney shall be signed by at least one attorney of record in the attorney's
17 individual name, whose address shall be stated. A party who is not represented by an attorney
18 shall sign the initial disclosure, request, response, or objection and state the party's address. The
19 signature of the attorney or party constitutes a certification that the attorney or party has read the
20 initial disclosure, request, response, or objection, and that to the best of their knowledge,
21 information, and belief formed after a reasonable inquiry it is:
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23 (1) consistent with these rules and warranted by existing law or a good faith argument
24 for the extension, modification, or reversal of existing law;
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SUGGESTED AMENDMENT
SUPERIOR COURT CIVIL RULES (CR)
CR 26 – GENERAL PROVISIONS GOVERNING DISCOVERY

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

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

9
10 If a certification is made in violation of the rule, the court, upon motion or upon its own
11 initiative, shall impose upon the person who made the certification, the party on whose behalf the
12 initial disclosure, request, response, or objection is made, or both, an appropriate sanction, which
13 may include an order to pay the amount of the reasonable expenses incurred because of the
14 violation, including reasonable attorney fees.
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SUGGESTED AMENDMENT
SUPERIOR COURT CIVIL RULES (CR)

CR 26 – GENERAL PROVISIONS GOVERNING DISCOVERY

1 (a) [Unchanged]

2 **(b) Initial Disclosures.**

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

6 (A) the name, address, and telephone number of each individual that possesses any
7 relevant information that supports the disclosing party’s claims or defenses, excluding retained
8 experts or any witness to be used solely for impeachment;

9 (B) a copy of each document and other relevant evidence supporting the disclosing
10 party’s claims or defenses unless the use would be solely for impeachment, but if a document or
11 other relevant evidence cannot easily be copied, the disclosing party shall make the item
12 reasonably available for inspection by the other parties;

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

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

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

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

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

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

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

9 (c) [Unchanged]

10 (d) [Unchanged]

11 (e) [Unchanged]

12 (f) **Supplementation.** A party who has provided initial disclosures or responded to a
13 request for discovery where the disclosure or response was complete when made is under no
14 duty to supplement the disclosure or response to include information thereafter acquired, except
15 as follows:
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18 (1) A party is under a duty seasonably to supplement the disclosure or response with
19 respect to any question directly addressed to:

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

22 (B) the identity of each person expected to be called as an expert witness at trial, the
23 subject matter on which the expert witness is expected to testify, and the substance of the expert
24 witness’s testimony.
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SUGGESTED AMENDMENT
SUPERIOR COURT CIVIL RULES (CR)

CR 26 – GENERAL PROVISIONS GOVERNING DISCOVERY

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

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

4 (B) the party knows that the disclosure or response though correct when made is no
5 longer true and the circumstances are such that a failure to amend the response is in substance a
6 knowing concealment.
7

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

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

13 (g) [Unchanged]

14 **(h) Signing of Discovery Requests, Responses, and Objections.**

15 Every initial disclosure, request for discovery, or response or objection thereto made by a party
16 represented by an attorney shall be signed by at least one attorney of record in the attorney's
17 individual name, whose address shall be stated. A party who is not represented by an attorney
18 shall sign the initial disclosure, request, response, or objection and state the party's address. The
19 signature of the attorney or party constitutes a certification that the attorney or party has read the
20 initial disclosure, request, response, or objection, and that to the best of their knowledge,
21 information, and belief formed after a reasonable inquiry it is:
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23 (1) consistent with these rules and warranted by existing law or a good faith argument
24 for the extension, modification, or reversal of existing law;
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SUGGESTED AMENDMENT
SUPERIOR COURT CIVIL RULES (CR)
CR 26 – GENERAL PROVISIONS GOVERNING DISCOVERY

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

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

9
10 If a certification is made in violation of the rule, the court, upon motion or upon its own
11 initiative, shall impose upon the person who made the certification, the party on whose behalf the
12 initial disclosure, request, response, or objection is made, or both, an appropriate sanction, which
13 may include an order to pay the amount of the reasonable expenses incurred because of the
14 violation, including reasonable attorney fees.
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SUGGESTED AMENDMENT

Superior Court Civil Rules, CR 26

RULE 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) – (j) [Unchanged]

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

1 (a) – (e) [Unchanged]

2 (f) Failure to Reasonably Cooperate. If a party or a party’s attorney fails to reasonably
3 cooperate as required in CR 1 or CR 26(a) regarding any discovery matter, the court may, after
4 opportunity for hearing, require the party or the party’s attorney to pay the other party’s
5 reasonable expenses, including attorney fees, caused by the failure.
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SUGGESTED AMENDMENT
CIVIL RULES FOR COURTS OF LIMITED JURISDICTION
(CRLJ)

CRLJ 1 – SCOPE **AND PURPOSE OF RULES**

1 These rules govern the procedure in all trial courts of limited jurisdiction in all suits of a civil
2 nature, with the exceptions stated in rule 81. All parties and their legal counsel shall reasonably
3 cooperate with each other and the court in all matters. Thesey- rules shall be construed and
4 administered to be consistent with this principle and to secure the just, speedy, and inexpensive
5 determination of every action.
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SUGGESTED AMENDMENT
CIVIL RULES FOR COURTS OF LIMITED JURISDICTION (CRLJ)
CRLJ 11 – SIGNING AND DRAFTING OF PLEADINGS, MOTIONS,
AND LEGAL MEMORANDA: SANCTIONS

1 **(a) – (b) [Unchanged]**

2 (c) Consistent with the overall purpose of these rules as set forth in CRLJ 1, the court, upon
3 motion or its own initiative, may impose an appropriate sanction on any party or attorney who
4 violates the mandate of reasonable cooperation set forth in CRLJ 1, which sanction may include
5 an order to pay to the other party or parties the amount of the reasonable expenses incurred
6 because of the lack of cooperation, including a reasonable attorney fee. The court will not
7 entertain any motion under this subsection unless the parties have conferred regarding the
8 motion. The moving party shall arrange for a mutually convenient conference in person or by
9 telephone. The court may impose sanctions if the court finds that any party or its counsel, upon
10 whom a motion with respect to matters covered by such rules has been served, has willfully
11 refused or failed to confer in good faith. Any motion seeking sanctions under this subsection
12 shall include a certification that the conference requirements of this rule have been met.
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SUGGESTED AMENDMENT
CIVIL RULES FOR COURTS OF LIMITED JURISDICTION (CRLJ)
CRLJ 26 – DISCOVERY

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

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7 **(a) – (g) [Unchanged]**
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SUGGESTED AMENDMENT
SUPERIOR COURT CIVIL RULES (CR)
CR 1 – SCOPE ~~AND PURPOSE~~ OF RULES

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2 These rules govern the procedure in the superior court in all suits of a civil nature whether
3 cognizable as cases at law or in equity with the exceptions stated in rule 81. All parties and their
4 legal counsel shall reasonably cooperate with each other and the court in all matters. They These
5 rules shall be construed and administered to be consistent with this principle and to secure the
6 just, speedy, and inexpensive determination of every action.
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SUGGESTED AMENDMENT
SUPERIOR COURT CIVIL RULES (CR)

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

(a) – (b) [Unchanged]

(c) Consistent with the overall purpose of these rules as set forth in CR 1, the court, upon motion or 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 under this subsection unless the parties have conferred regarding the motion. The moving party shall arrange for a mutually convenient conference in person or by telephone. The court may impose 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 the moving party’s certification that the conference requirements of this rule have been met, or that the moving party attempted in good faith to meet the conference requirements of this rule.

SUGGESTED AMENDMENT

Superior Court Civil Rules, CR 26

RULE 26. GENERAL PROVISIONS GOVERNING DISCOVERY

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

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11 (b) – (j) [Unchanged]

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SUGGESTED AMENDMENT
SUPERIOR COURT CIVIL RULES
CR 53.5: Early Mandatory Mediation Requirement

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

4 **(b) Qualified Mediators.**

5 (1) Judicial officers shall be considered qualified mediators. They may serve as
6 a mediator by agreement.

6 (2) The court shall maintain a list of other qualified mediators and has discretion
7 to modify the list. A qualified mediator shall demonstrate:

7 (A) Completion of mediation training; or

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

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

9 (A) Name;

9 (B) Physical and electronic mail addresses;

10 (C) Telephone number;

10 (D) Fee schedule;

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

12 (F) Preferred legal subject matters, if any.

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

14 (5) A person on the list of qualified mediators agrees to follow the procedures of
15 this rule if appointed and to accept appointment to one mediation each calendar
16 year on a pro bono basis. Refusal to accept a pro bono appointment may result
17 in removal from the list.

17 **(c) Selection of Mediator.**

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

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

23 (3) Fee Relief or Pro Bono Mediator. A party who believes that any party is
24 unable to afford mediation may request relief for that party from responsibility
25 for the mediator's fee. The Court may provide relief such as apportioning the
26 fee among the remaining parties, requiring payment on a sliding scale, and

SUGGESTED AMENDMENT
SUPERIOR COURT CIVIL RULES
CR 53.5: Early Mandatory Mediation Requirement

assigning a *pro bono* mediator, or any combination thereof. 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 may determine based on the circumstances and input from the parties the procedure of the mediation, including its form, length, and content. The mediator shall confer with the parties to learn their needs, preferences, and recommendations.

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

(e) Notice of Compliance. No later than five 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 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
WASHINGTON FOR
COUNTY

(Plaintiff Name)..... No.

.....

Plaintiff.
vs.

NOTICE OF COMPLIANCE WITH EARLY
MANDATORY MEDIATION REQUIREMENT

(Defendant Name)... CR

.....

Defendant.

....

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

Date:

SUGGESTED AMENDMENT
SUPERIOR COURT CIVIL RULES
CR 53.5: Early Mandatory Mediation Requirement

(Signature)
WSBA #
Attorney for Plaintiff(s)

(f) Mediator Compensation. The parties shall pay the mediator’s reasonable fee 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 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 imposed by an initial case schedule, then that party may seek after the initial discovery conference to extend the mediation deadline. The court may extend an applicable deadline for mediation imposed by an initial case schedule 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 any extension 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 failure to comply with the requirements of this rule. For purposes of this rule, a party may submit evidence to substantiate a claim for sanctions but may not reveal substantive communications concerning any mediation. 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 the moving party’s certification that the conference requirements of this rule have been met, or that the moving party attempted in good faith to meet the conference requirements of this rule.

SUGGESTED AMENDMENT
SUPERIOR COURT CIVIL RULES
CR 53.5: Early Mandatory Mediation Requirement

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6 a mediator by agreement.

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8 to modify the list. A qualified mediator shall demonstrate:

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13 (B) Physical and electronic mail addresses;

14 (C) Telephone number;

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

18 (F) Preferred legal subject matters, if any.

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

21 (5) A person on the list of qualified mediators agrees to follow the procedures of
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selection of mediator that includes the name and contact information of the
mediator, and serve a copy upon the mediator.

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of mediator by a deadline provided by a case schedule or court order, the court
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and the parties of the assignment. If the mediator is unable to serve, the
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SUGGESTED AMENDMENT
SUPERIOR COURT CIVIL RULES
CR 53.5: Early Mandatory Mediation Requirement

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individual may attend by other than personal attendance.

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efforts are completed. The notice of compliance shall be in the following or a
substantially similar form:

13 IN THE SUPERIOR COURT OF
14 WASHINGTON FOR _____
15 COUNTY

16 (Plaintiff Name)..... No.
.....,

17 Plaintiff. NOTICE OF COMPLIANCE WITH EARLY
18 vs. MANDATORY MEDIATION REQUIREMENT

19 (Defendant Name) . . . CR __
.....,

20 Defendant.
21

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

24 Date:

SUGGESTED AMENDMENT
SUPERIOR COURT CIVIL RULES
CR 53.5: Early Mandatory Mediation Requirement

(Signature)
WSBA #
Attorney for Plaintiff(s)

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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.
- (e) Mediators should attempt to engage the parties directly, not rely exclusively on their lawyers.

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
 - ~~i~~.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.

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- (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;
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