

WSBA Eblast Request
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Litigation Section

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LOCAL RULE UPDATES

Greetings from the WSBA Litigation Section! After a brief hiatus, the Litigation Section has revamped its newsletter and anticipates regular newsletters in the upcoming year. We welcome feedback from Section members on topics or submissions for future issues. Please email Litigation Section Chair [Tiffany Wilke](#) with your comments or questions.

CLE RECAP – ESSENTIAL PRIMER ON PRACTICE TIPS FROM THE SECTION

On Oct. 15, 2024, the WSBA Litigation Section hosted a CLE seminar for the first time in several years. The one-hour program primarily discussed the nuances of, and recent changes to, the various local rules for superior courts in a number of Washington counties.

The CLE Seminar opened on the theme of “Strangers in a Strange Land,” as it was designed to assist Washington litigators to put their best foot forward in any county in which they are practicing. The idea arose from a discussion in the Litigation Section’s meetings, based upon the members’ shared experiences with various local rules. Counties across Washington have disparate practices on serving documents, filing motions, instituting a matter, etc. To make things even more confusing, many of these formalities do not mirror practices in federal court. Thus, practitioners who find themselves in a “foreign” county, or federal as opposed to state court, might take a couple of tumbles before they find their footing.

The CLE covered particularities in King, Pierce, Thurston, Spokane, and Western District of Washington. The Litigation Section focused on the above-mentioned counties and districts given that these jurisdictions contain the most populous cities in Washington. The CLE highlighted the differences between (1) instituting a matter, (2) the timing and the form of discovery, and (3) the form and timing of motions. An accompanying appendix provided links to each county’s local rules and indicated whether said county uses electronic filing. The presentation included further detail on the particularities for each county and the federal district court. A recording of the CLE as well as the materials can be found on the WSBA website.

The seminar was a hit and exceeded the expected attendance, with over 600 members joining live. The aim was to provide practical tips and advice for lawyers practicing throughout the state. By highlighting the foregoing rules and practices in this CLE seminar, the Litigation Section’s speakers, Rob Wilke, Ian Leifer, Janelle Elysee, and Bil Childress, provided informative and detailed analysis that may be useful to any practitioner.

The Litigation Section intends on putting on another CLE in the spring or early summer. This CLE will focus on seeking discovery from residents in states outside of Washington as well as international discovery.

Join the discussion and follow along with updates, including future CLEs, from the WSBA Litigation Section on our new LinkedIn Page: <https://www.linkedin.com/company/wsba-litigation-section/>.

SECTION UPDATES

- From October 2023-October 2024, the Litigation Section Executive Committee welcomed new members and reengaged in regular monthly meetings.
- In the spring of 2024, the Litigation Section awarded scholarships to law students from Seattle University, University of Washington, and Gonzaga University who demonstrated an interest and commitment to a career in litigation.
- Over the summer of 2024, the Litigation Section was also able to match a number of young or emerging lawyers with mentors who will help advise and guide them through the start of their litigation careers.
- On June 14, 2024, the Executive Committee met with many of the justices from the Washington Supreme Court for dinner and discussion of litigation practice in the state.
- In addition to putting on the aforementioned CLE on Oct. 15, 2024, the Executive Committee held elections and welcomed our new Section chair, Tiffany Wilke, as well as several new at-large members.
- The Litigation Section is in the process of planning additional events and continuing legal education, as well as continuing to pair mentees with mentors practicing litigation throughout the state. For more information, visit the WSBA Litigation Section website and keep an eye out for more newsletters going forward.

CASE LAW & LEGISLATIVE UPDATES

Spencer v. Franklin Hills Health-Spokane, LLC

In May 2024, the Washington Supreme Court expanded the definition of “managing agent” under RCW 4.28.080(9) when a corporation’s human resources manager accepted a summons and complaint. The plaintiff filed a personal injury action against Franklin Hills Health, LLC. The process server attempted to serve the registered agent for Franklin Hills, but instead served the human resources and payroll manager because the registered agent was unavailable. Franklin Hills challenged sufficiency of service and moved to dismiss the lawsuit, arguing that the HR manager lacked formal permission to accept service of process and was not in charge of the entire office.

The Supreme Court rejected that argument, emphasizing that a “[m]anaging agent” is a broad term that describes a person with a managerial role within the corporation, either generally or in a particular area.” The court held that “a person may be a managing agent if they are in charge of a single department of the corporation’s business, if they work at a place other than its principal office, and even if their discretion is controlled somewhat by a superior—provided that they have substantial managerial responsibilities and authority to act on behalf of the corporation in general or with respect to an area of the corporation’s business.”

As a practice takeaway from this case, any lawyer representing a corporation or similar entity should emphasize that their client immediately notify them of service of any summons, complaint, or other pleadings, regardless of who receives them. Companies will be limited in arguing that service was not made on a managing agent, and any organization that disregards such pleadings in reliance upon such a defense run the risk of a default judgment or the expenditure of extensive legal fees challenging service.

Amendments to Rules of Procedure

Civil Rule 26

Effective Sept. 5, 2024, there were several changes to Rule 26, the rule addressing “general provisions governing discovery.” The amendment modified 26(b)(5)(A)(i), (e), and (g).

The change to Rule 26(b)(5)(A)(i) includes additional language, which is underlined below:

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. Except for special proceedings, a case schedule deadline to disclose experts does not excuse a party from timely responding to expert discovery to the extent responsive information is available. (ii) Unless these rules impose an earlier deadline, and in no event later than the deadline for primary or rebuttal expert witness disclosures imposed 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.

The change now provides that a litigant cannot simply point to the expert disclosure deadline as a basis for not responding to expert discovery. It also sets the deadline for identifying the expert whom the litigant expects to call at trial, along with the subject matter of the testimony, the summary of the grounds of the opinion, and the facts and opinions which the expert is expected to testify on as no later than the disclosure of the expert witness.

The next change was to Rule 26(e), the subsection relating to supplementing discovery responses. The changes both delete and add language, which is provided below:

(e) Supplementation of Responses. *A party who has responded to a request for discovery with a response has a duty to seasonably supplement or correct that response with information thereafter acquired. Supplementation or correction shall clearly set forth the information being supplemented or corrected. ~~that was complete when made is under no duty to supplement the response to include information thereafter acquired, except as follows:~~*

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

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

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

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

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

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

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

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

This amendment shifts the onus on supplementation away from the party that propounds discovery requests and shifts them onto the party that is under an obligation to respond. Previously, Rule 26(e) obligated a party to supplement its discovery response under certain circumstances, if the parties agreed to the supplement, or if the party was ordered to supplement. It now provides that a party has an affirmative duty to amend discovery responses and such supplements must be clearly noted as a supplemental response.

The final amendment was to Rule 26(g). Subsection (g) relates to signing discovery requests and responses, as well as making objections against discovery requests. The changes are as follows:

Every request for discovery or response or objection thereto made by a party represented party ~~by an attorney~~ shall be signed by at least one attorney of record in the attorney's ~~individual~~ name., ~~whose address shall be stated.~~ A ~~party who is not represented by an attorney shall sign the~~ request, response, or objection by a nonrepresented party shall be signed by that party

and state the party's address. Objections shall be in response to the specific request objected to. General objections shall not be made. A party making an objection based on privilege shall describe the grounds for the objection and, where consistent with subsection (b)(1), shall identify all matters the objecting party contends are subject to the privilege including sufficient information to allow other parties to evaluate the claim of privilege without disclosing protected content. [. . .]

The biggest change is the express prohibition on the use of general objections. In other words, the objections must be individually stated in response to each discovery request. Additionally, the amended Rule 26(g) requires a privilege log for every assertion of privilege.

More information about the basis for the changes to Rule 26 can be found [here](#).

Civil Rule 30

The majority of the changes to Rule 30 relate to procedures for taking a deposition by remote means. The changes are housed within subsections (b) and (h) as shown below:

(b)(1) . . . If the deposition will be conducted by remote means, the notice shall provide the information and instructions necessary to appear and attend remotely. . . .

(b)(7) ~~The parties may stipulate in writing or the court may upon motion order that a deposition be taken by telephone or by other electronic means.~~ For the purposes of this rule and rules 37(a)(1), 37(b)(1), and 45(d), a deposition taken by ~~telephone or by other electronic~~ remote means is taken at the place where the deponent is to answer the propounded questions. Any party may take a deposition in person or by remote means. Parties are strongly encouraged to agree to the mode and manner of deposition, in person or remote, before notice is served. The deposition shall proceed as noticed unless within three days of receipt of notice an objecting party or the deponent files a motion objecting to the notice. In determining whether a deposition shall proceed in person or by remote means, the court may consider the following non-exclusive factors and any other factor the court deems appropriate: (a) the role of the witness in the case, (b) the complexity of the case, (c) whether there will be prejudice to any party or the witness

if testimony by remote means is permitted, (d) whether the witness is subject to the court's subpoena power and, thus, whether a party will at any point have the opportunity to question the witness in person, and (e) whether the noted mode of deposition serves the purposes of CR 1.

[. . .]

(h)(7) *Depositions by Remote Means*. In any deposition taken by remote means, in addition to the above rules, the following provisions apply:

(A) The witness's demeanor and appearance shall remain their own as if they were in person and shall not be manipulated or altered.

(B) Each person physically present in the room with the deponent during a remote deposition shall remain audible and visible for the duration of the deposition.

(C) During the deposition, unless specifically requested to do so by the examining attorney, the deponent shall not refer to any notes, or any electronic or other means used for communication, such as e-mail and messaging.

(D) No one shall attempt to influence the deponent's response to an examiner's question in any manner, including visually, verbally, and in writing, such as notes, text message, e-mail, and electronic chat functions.

The amendments in Rule 30 are designed to encourage the parties to speak ahead of noticing the deposition so as to avoid motion practice before the judge. The amendment also sets several factors for a judge to consider when deciding whether a deposition should be conducted remotely. The final significant change to Rule 30 is the addition of subsection (h)(7). This subsection dictates how a deposition conducted by remote means should proceed.

More information about the basis for the changes to Rule 30 can be found [here](#).

If you are interested in keeping track of the Washington Supreme Court rule-related court orders, we recommend following this page: <https://www.courts.wa.gov/courtrules/rulesrelatedCourtOrder.cfm>.

LOCAL RULES UPDATES

Local rules across Washington have been updated this past year, at both the federal and state level. We have compiled a list of counties that amended their local rules, as well as the date of the change.

<u>County</u>	<u>Effective Date</u>
<u>Adams</u>	September 1, 2024
<u>Asotin, Columbia, and Garfield</u> ¹	July 1, 2024
<u>Benton and Franklin</u> ²	September 1, 2024
<u>Clallam</u>	September 1, 2024
<u>Clark</u>	September 1, 2024
<u>Cowlitz</u>	July 1, 2024
<u>Grant</u>	September 1, 2024
<u>Grays Harbor</u>	September 1, 2024
<u>Island</u>	September 1, 2024
<u>Kitsap</u>	September 1, 2024
<u>Pierce</u>	September 1, 2024
<u>San Juan</u>	September 1, 2024
<u>Snohomish</u>	September 1, 2024 with Emergent Rules effective October 9, 2024
<u>Spokane</u>	September 1, 2024
<u>Thurston</u>	September 1, 2024
<u>Western District of Washington (federal)</u>	April 26, 2024
<u>Whatcom</u>	September 1, 2024
<u>Whitman</u>	September 1, 2024 with Emergent Rules effective October 3, 2024
<u>Yakima</u>	September 1, 2024

¹ Asotin, Columbia, and Garfield share the same local rules.

² Benton and Franklin share the same local rules.

Learn more about the WSBA Litigation Section by visiting our [webpage](#).

2024-2025 Litigation Section Executive Committee Members

Chair: [Tiffany Wilke](#)

Secretary/Treasurer: [Janelle Elysee](#)

Immediate Past Chair: [Rob Wilke](#)

Committee Members: Mike Brandenburg, Ric Jacobs, Cole Douglas, Ian Leifer

Young Lawyer Liaison: Matthew Audish