WSR 21-09-026
RULES OF COURT
STATE SUPREME COURT
[April 7, 2021]

IN THE MATTER OF THE SUGGESTED AMENDMENTS RELATED TO THE TASK FORCE ON THE ESCALATING COST OF CIVIL LITIGATION: NEW CR 3.1—INITIAL CASE SCHEDULES; CR 16—PRETRIAL PROCEDURE AND FORMULATING ISSUES; CR 26—GENERAL PROVISIONS GOVERNING DISCOVERY; CR 77—SUPERIOR COURTS AND JUDICIAL OFFICERS	)	ORDER NO. 25700-A-1343

The Washington State Bar Association, having recommended the suggested amendments related to the task force on the escalating cost of civil litigation: NEW R 3.1—Initial Case Schedules; CR 16—Pretrial Procedure and Formulating Issues; CR 26—General Provisions Governing Discovery; CR 77—Superior Courts and Judicial Officers, and the Court having approved the suggested amendments for publication;

Now, therefore, it is hereby

ORDERED:

(a) That pursuant to the provisions of GR 9(g), the suggested amendments shown below are to be published for comment in the Washington Reports, Washington Register, Washington State Bar Association and Administrative Office of the Court's websites in January 2022.

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

(c) Comments are to be submitted to the Clerk of the Supreme Court by either U.S. Mail or Internet E-Mail by no later than April 30, 2022. Comments may be sent to the following addresses: P.O. Box 40929, Olympia, Washington 98504-0929, or supreme@courts.wa.gov. Comments submitted by e-mail message must be limited to 1500 words.

DATED at Olympia, Washington this 7th day of April, 2021.

For the Court

Gonzalez, C.J.

CHIEF JUSTICE

GR 9 COVER SHEET

Suggested Amendments to

SUPERIOR COURT CIVIL RULES

Suggested New CR 3.1 and Suggested Amendments to CR 16, 26, 77

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C. Purpose

The proponent recommends adoption of suggested amendments to the Superior Court Civil Rules (CR) with a focus on modifying discovery rules to decrease the cost of litigation.

I. History of the Suggested Amendments

Escalating Cost of Civil Litigation Task Force

In 2011, the WSBA Board of Governors (Board) chartered a task force titled the Task Force on the Escalating Cost of Civil Litigation (ECCL Task Force). The Board charged the ECCL Task Force with analyzing civil litigation processes in Washington courts and to make recommendations that would improve access and reduce costs.[1] The ECCL Task Force studied the issues for several years and submitted recommendations to the Board in June 2015.[2] In its final report, the ECCL Task Force offered a variety of rule revision options that the Task Force expected would reduce barriers to access or costs or both.[3]

At its June 2016 meeting, the Board voted on each of the ECCL Task Force recommended options, approving some and rejecting others. In July 2016, the Board issued its Report on the Recommendations of the Escalating Costs of Civil Litigation Task Force, which explained its decision on each option.[4] Among the Board-approved options were provisions for initial case schedules, individual judicial case assignments, mandatory discovery conferences, mandatory initial disclosures, cooperation as a guiding principle, pretrial conferences, and mandatory early alternative dispute resolution.[5]

Civil Litigation Rules Drafting Task Force

On November 18, 2016, in the wake of its vote on the ECCL Task Force recommendations, the Board chartered the Civil Litigation Rules Drafting (Rules Drafting) Task Force. The purpose of the Rules Drafting Task Force was to draft proposed civil rules to implement the ECCL options ratified by the Board.[6] The Rules Drafting Task Force was further charged with soliciting and receiving input from stakeholders, including lawyers, judges, and other interested persons or entities, on its suggested amendments.

Over the next fifteen months, the Rules Drafting Task Force met, drafted, and received input from stakeholders. Although some stakeholder input reflected disagreement with decisions previously made by the Board, the drafting work of the Task Force focused on implementing the options ratified by the Board in June 2016.

After a first reading in July 2018, the Rules Drafting Task Force submitted its suggested rule amendments for approval at the Board's September 27-28, 2018 meeting.[7]

At that meeting, citing concern that there had been insufficient stakeholder input on the Task Force recommendations, the Board elected to postpone action on the draft amendments and to convene a work group to gather additional stakeholder input and report back to the Board.

Civil Litigation Rules Revision Work Group

In September 2019, the Board chartered a second drafting entity, the Civil Litigation Rules Revision (Rules Revision) Work Group, to solicit and incorporate additional stakeholder input, with a particular emphasis on stakeholders with civil litigation experience and sophistication. The Board tasked the Rules Revision Work Group with revising, as appropriate, the Task Force's suggested amendments to reflect the additional stakeholder input.

At the Board's September 17-18, 2020 meeting, the Rules Revision Work Group submitted revised suggested amendments.[8] The Board unanimously approved the suggested amendments. With the exception of one CR 26 subsection regarding privilege logs, the proposed amendments were endorsed by all stakeholders.

II. SUGGESTED AMENDMENTS

The following observations explain the purpose of the suggested rule amendments. In addition, to provide context about development of the suggested amendments, Section III identifies and explains a number of potential suggested amendments that ultimately were not approved by the Board for submission as part of the suggested rule set.

New CR 3.1: Adopting a statewide case schedule. Suggested CR 3.1 is a new rule that would impose a statewide initial case schedule. Suggested CR 3.1(a) incorporates some aspects of the King County and Pierce County local rules regarding case schedules, including requiring disclosure of expert witnesses and a discovery deadline. Suggested CR 3.1(a) provides for case-schedule deadlines stated in terms of weeks before the trial date, which would be set for 52 weeks after the action is commenced. Suggested sections (b)-(d) of CR 3.1 are procedural, dictating the timing of case schedule deadlines, service requirements, and the availability of modifications to the case schedule. Suggested sections (e)-(f) of CR 3.1 provide for exemptions from the initial case-schedule requirement for specific types of actions; in other matters, exemptions may be granted on motion or the court's initiative. CR 3.1(g) sets forth a party's ongoing obligation to timely respond to discovery requests.

CR 16: Adopting new statewide pretrial procedures. It is widely agreed that pretrial scheduling orders used in King and Pierce counties, as well as in the federal district courts, achieve significant time savings at trial. Accordingly, suggested new CR 16(a) would require that parties submit a joint pretrial report to the court. Under the suggested rule, the pretrial report must include a summary of the case, agreed material facts, the material issues in dispute, a list of expert witnesses, an exhibit index, the estimated length of trial, suggestions for shortening the trial, and a statement regarding whether alternative dispute resolution would be useful. Suggested amendments to current CR 16(a) (renumbered as CR 16(b)) modify and add to the topics the trial judge may consider at a pretrial conference. Existing CR 16(b) is consequently renumbered as CR 16(c) with additional clarifying revisions.

CR 26 (b)(5): Curbing abuse of case schedule deadlines. Many observers agree that, regrettably, parties in many instances manipulate the discovery process by refusing to respond to discovery requests until the case-schedule deadline. Such conduct impedes discovery, subverting the purpose of case schedules to create a bright-line cutoff for completion of the discovery process. The rules should not enable a party flatly to refuse to respond to appropriate discovery requests until the case-schedule deadline. Thus, suggested amendments to CR 26

(b)(5) make it clear that the tactic is inappropriate, enabling trial courts to deter abusive discovery conduct. *See also* suggested CR 3.1(g).

CR 26(e): Continuing duty to supplement discovery responses. Existing CR 26(e) defines the extent to which a party has a duty to supplement responses previously given in response to discovery requests. The rule specifies that a party has no continuing duty to supplement responses, but then defines a number of exceptions to the general rule where supplementation is required under specified circumstances. Under the current system, to obtain supplementation a party often must either expressly demand it or propound new discovery specifically requesting supplementation. Suggested amendments to CR 26(e) would impose a general, continuing duty to supplement all discovery responses, expediting the discovery process, making more discoverable information available sooner, and better ensuring full disclosure before trial.

CR 26(e): Clarifying the form of supplements. Often when a party supplements a discovery response, the supplementing party includes the totality of the prior discovery response, including all the unchanged responses. This places an unnecessary burden on the responding party to search out and find supplemental information, an expenditure of time that serves no useful purpose. An additional suggested amendment to CR 26(e) specifies that supplemental responses shall include only the supplemental information.

CR 26(g): Prohibiting general objections. Parties routinely make so-called general objections. At present, the Civil Rules require each objection to interrogatories and requests for production be answered specifically. CR 33(a) ("the reasons" for objection to an interrogatory must be stated in lieu of an answer); CR 34 (b)(3)(B) (party must state a "specific objection" to a request for production of documents, including the reasons). Despite these specificity requirements, because the rules do not expressly prohibit general objections, some parties assert that they are appropriate. A recipient of a general objection is typically obliged to wrangle with the objection proponent over the validity of the objection. This temporarily thwarts the requesting party's ability to obtain complete responses, delays the discovery process, and can lead to an increase in discovery motions.

For these reasons, an express and overarching prohibition on the use of general objections is warranted. Federal case law rejects the use of general objections. *See, e.g.*, *Hager v. Graham*, 267 F.R.D. 486, 492 (N.D.W. Va. 2010) ("General objections to discovery, without more, do not satisfy the burden of the responding party under the [FRCP] to justify objections to discovery because they cannot be applied with sufficient specificity to enable courts to evaluate their merits."); *Burlington N. & Santa Fe Ry. Co. v. U.S. Dist. Ct. of the Dist. of Mont.*, 408 F.3d 1142, 1149 (9th Cir. 2005) ("Blanket refusals inserted in to a response … are insufficient to assert a privilege."); *Chubb Integrated Sys., Ltd. v. Nat'l Bank of Wash.*, 103 F.R.D. 52, 58 (D.D.C. 1984) ("[A] general objection [does not] fulfill [a party's] burden to explain its objections."). The suggested amendment to CR 26(g) makes it clear that general objections are inappropriate.

CR 26(g): Requiring a privilege log. Washington case law has made clear that when otherwise discoverable material is withheld based on an assertion of privilege, a "privilege log" should be provided. Parties infrequently provide a privilege log unless it is requested, and it takes additional time to prepare and obtain a previously unprovided privilege log, sometimes weeks or months, delaying the discovery process. In some instances, the parties are in dispute about whether a

privilege log must be provided and, if so, what its content should be, requiring judicial intervention and further delaying the discovery process. Accordingly, an additional suggested amendment to CR 26(g) requires a privilege log as a part of any response in which documents or information are being withheld on grounds of privilege. Codifying the necessity of a privilege log will expedite discovery and deter non-meritorious assertions of privilege. The language for the suggested amendment to CR 26(g) is taken almost verbatim from *Rental Housing Ass'n of Puget Sound v. City of Des Moines*, 165 Wn.2d 525, 538, 199 P.3d 393 (2009).

CR 77(i): Assigning a judge. Assignment of a specific judge to a specific case creates efficiencies through the development of ongoing knowledge and experience developed by the assigned judge in a particular case. This can save substantial time otherwise needed to educate the judge about the case when the parties come before the court on motions and certainly at trial. A suggested amendment to CR 77(i) requires the assignment of a specific judge to every case, but provides for alternatives in the event that pre-assignment is not feasible in a particular jurisdiction.

III. AMENDMENTS CONSIDERED BUT NOT SUGGESTED

The Board declined to endorse several ECCL Task Force recommendations on grounds that they would have unintended consequences or would not effectively promote efficiencies and cost reductions. What follows is a brief explanation of those proposals.

Duty of cooperation. To further the overarching goal of cost reduction through cooperation among parties, the Rules Drafting Task Force proposed a number of amendments, including language in CR 1 requiring parties to reasonably cooperate with one another and the court, as well as a provision in CR 11 authorizing imposition of sanctions for failure to reasonably cooperate. The term cooperation was not defined. These amendments were not approved for submission because of the absence of a workable definition of cooperation, the sufficiency of existing remedies for noncooperation, and the potential for the cost of litigation to increase owing to an increase in disputes about whether a party sufficiently cooperated. Despite the importance of cooperation, it was concluded that its codification as a rule would not decrease litigation costs and would likely generate unintended and undesirable outcomes.

Mandatory early mediation. The Rules Drafting Task Force included a new mandatory early mediation requirement and procedures, which would have imposed an early-mediation deadline of eight months before trial, subject to modification by motion. These amendments were not approved for submission because in the great majority of cases parties would likely seek to extend the early-mediation deadline, which would only serve to increase the cost of litigation. In addition, it was concluded that early mediation could result in unjust results in some cases, such as premature settlements or failed early mediation efforts that generate the need for additional costly mediations.

Mandatory discovery disclosures. To implement the concept of mandatory discovery disclosures, the Rules Drafting Task Force drafted amendments to CR 26 that would have required mandatory initial disclosures of certain information and documents by a deadline in the initial case schedule. These amendments were not approved for submission because the "one size fits all" approach fails to account for the specific subject matter of a case, because many practitioners consider initial disclosure deadlines to be only a "check-the-box" requirement that actually increases the cost of litigation, because practitioners

believe the federal model has not achieved the goal of streamlining discovery as intended, and because even in jurisdictions that require initial disclosure, parties essentially engage in the same quantum of formal discovery.

D. Hearing:

A hearing is not requested.

E. Expedited Consideration:

Expedited consideration is not requested.

1 The ECCL Task Force Charter and related materials are available at https://www.wsba.org/connect-serve/committees-boards-other-groups/civil-litigation-rules-drafting-tf/escalating-cost-of-civil-litigation-task-force.

2 TASK FORCE ON THE ESCALATING COST OF CIVIL LITIGATION, FINAL REPORT TO THE BOARD OF GOVERNORS (June 15, 2015), https://www.wsba.org/docs/default-source/legal-community/committees/eccl-task-force/reports/eccl-final-report-06152015.pdf?sfvrsn=3a993cf1_4.

3 *Id.*at 2.

4 BOARD OF GOVERNORS, REPORT OF THE BOARD OF GOVERNORS OF THE WASHINGTON STATE BAR ASSOCIATION ON THE RECOMMENDATIONS OF THE ESCALATING COSTS OF CIVIL LITIGATION TASK FORCE (July 2016), https://www.wsba.org/docs/default-source/legal-community/committees/civil-litigation-rules-drafting-task-force/bog-response-to-eccl-report-072016.pdf?sfvrsn=e64c06f1_5.

5 *Id*. at 2-4.

6 The Civil Litigation Rules Drafting Task Force Charter and related materials are available at https://www.wsba.org/Legal-Community/Committees-Boards-and-Other-Groups/civil-litigation-rules-drafting-task-force.

7 Memorandum from the Rules Drafting Task Force Chair to Board (Sept. 12, 2018), Board Meeting Public Session Materials (Sept. 27-28, 2018), at 162-270. Past Board meeting materials are available at https://www.wsba.org/about-wsba/who-we-are/board-of-governors/board-meeting-minutes.

8 The Rules Revision Work Group Charter, its proposal to the Board, and related materials, including comments from stakeholders and a summary of those comments, are available at https://www.wsba.org/Legal-Community/Committees-Boards-and-Other-Groups/Civil-Litigation-Rules.

SUGGESTED AMENDMENT

SUPERIOR COURT CIVIL RULES (CR)

NEW CR 3.1 INITIAL CASE SCHEDULES

CR 3.1 INITIAL CASE SCHEDULES

(a) Initial Case Schedule. When a summons and complaint are filed, and unless exempted pursuant to this rule, the court shall, in addition to any Local Rule case schedule requirements, issue an initial case schedule with at least the following deadlines:

1. 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.

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

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

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

5. Trial Commencement Date. The court shall commence trial no later than 52 weeks after the summons and complaint are filed.

(b) Computation of Time. 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 that is not a Saturday, Sunday, or legal holiday.

(c) Service. 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 on a motion demonstrating (a) good cause; (b) the action's complexity; or (c) the impracticability of complying with this rule. At a minimum, good cause requires the moving party to demonstrate due diligence in meeting the case schedule requirements. 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 may require a party to violate the terms of a protection, no-contact, or other order preventing direct interaction between persons. To adhere to such orders, the court shall modify the case schedule on its own initiative or on a motion.

(e) Exemptions by Action Type. 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 4.24.130, change of name;

RCW ch. 4.48, proceeding before a referee;

RCW 4.64.090, abstract of transcript of judgment;

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;

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 procedure;

RCW Title 11, probate and trust law;

RCW ch. 12.36, small claims appeal;

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

RCW Title 26, domestic relations;

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

RCW ch. 34.05, Administrative Procedure Act;

RCW ch. 35.50, local improvement assessment foreclosure;

RCW ch. 36.70C, Land Use Petition Act;

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. 71.05, mental illness;

RCW ch. 71.09, sexually violent predator commitment;

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

(g) Timeliness of Discovery Responses. Imposition of a case schedule deadline does not excuse a party's obligation to timely re-

spond to discovery propounded under these Rules. Parties shall not respond to discovery requests indicating a response will be provided by the case schedule deadline.

SUGGESTED AMENDMENT

SUPERIOR COURT CIVIL RULES (CR)

CR 16 PRETRIAL PROCEDURE AND FORMULATING ISSUES

CR 16 PRETRIAL PROCEDURE AND FORMULATING ISSUES

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

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

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

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

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

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

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

(1) A brief nonargumentative summary of the case;

(2) The agreed material facts;

(3) The material issues in dispute;

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

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

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

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

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

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

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

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

(4) Establishing reasonable time limits for presenting evidence;

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

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

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

(c) Pretrial Order. The court shall ~~make~~ enter an order ~~which recites~~ reciting the following:

(1) the action taken at the conference~~,~~;

(2) the amendments allowed to the pleadings~~,~~; and

(3) the parties' agreements ~~made by the parties as to~~ on any ~~of the~~ matters considered~~,~~. The pretrial order ~~and which~~ limits the issues for trial to those not disposed of by admissions or agreements of

counsel~~;~~ and ~~such order when entered~~ controls the subsequent course of the action~~,~~. However, the trial court should freely amend the order at trial absent prejudice demonstrated by the amendment. ~~unless modified at the trial to prevent manifest injustice. The court in its discretion may establish by rule a pretrial calendar on which actions may be placed for consideration as above provided and may either confine the calendar to jury actions or to nonjury actions or extend it to all actions.~~

SUGGESTED AMENDMENT

SUPERIOR COURT CIVIL RULES (CR)

CR 26 GENERAL PROVISIONS GOVERNING DISCOVERY

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: (1) - (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. A case schedule deadline to disclose experts does not excuse a party timely responding to expert discovery. Delayed disclosure of an expert constitutes a violation of CR 37 if the trial court finds the responding party delayed based on a case schedule deadline. (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.

(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.

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

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

and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert.

(6) - (8) [Unchanged.]

(c) - (d) [Unchanged.]

(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 set forth only 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 his response with respect to any question directly addressed to:~~

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

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

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

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

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

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

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

(f) [Unchanged.]

(g) Signing of Discovery Requests, Responses, and Objections. 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 non-represented party ~~who is not represented by an attorney~~ shall sign the request, response, or objection ~~and state the party's address~~. Objections shall be in response to the specific request objected to. General objections shall not be made. No objection based on privilege shall be made without identifying with specificity all matters the objecting party contends are subject to the privilege including the type of item, the number of pages, and unless otherwise protected the author and recipient or if protected, other information sufficiently identifying the item without disclosing protected content. The signature of the attorney or party constitutes a certification that the attorney or the party has read the request, response, or objection, and that to the best of their knowledge, information, and belief formed after a reasonable inquiry it is:

(1) - (3) [Unchanged.]

(h) - (j) [Unchanged.]

SUGGESTED AMENDMENT

SUPERIOR COURT CIVIL RULES (CR)

CR 77 SUPERIOR COURTS AND JUDICIAL OFFICERS

CR 77 SUPERIOR COURTS AND JUDICIAL OFFICERS

(a) - (h) [Unchanged.]

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

(j) - (n) [Unchanged.]