

WSR 22-21-110
RULES OF COURT
STATE SUPREME COURT
[October 13, 2022]

IN THE MATTER OF THE ) ORDER
SUGGESTED TECHNICAL ) NO. 25700-A-1471
AMENDMENT TO ER 1101— )
APPLICABILITY OF RULES )

Washington State Supreme Court Rules Committee Staff, having recommended the adoption of the suggested technical amendment to ER 1101—Applicability of Rules, and the Court having considered the suggested technical amendment, and having determined that the suggested technical amendment will aid in the prompt and orderly administration of justice;

Now, therefore, it is hereby

ORDERED:

(a) That the suggested technical amendment as shown below is adopted.

(b) That pursuant to the emergency provisions of GR 9 (j) (1), the suggested technical amendment will be expeditiously published in the Washington Reports and will become effective upon publication.

DATED at Olympia, Washington this 13th day of October, 2022.

Johnson, J.
Madsen, J.
Owens, J.
Stephens, J.
Gonzalez, C.J.
Gordon McCloud, J.
Yu, J.
Montoya-Lewis, J.
Whitener, J.

GENERAL RULE 9
RULE AMENDMENT COVER SHEET
PROPOSED AMENDMENT TO RULES OF EVIDENCE (ER) 1101

- 1. Proponent: J Benway, WSSC Rules Committee Staff
2. Spokesperson & Contact Info: J Benway, AOC Principal Legal Analyst, Jamanda.benway@courts.wa.gov, 360-357-2126

3. Purpose of Proposed Rule Amendment:

Recent legislation repealed most of the statutes pertaining to protection orders and consolidated them into a single chapter, chapter 7.105 RCW. This impacts ER 1101, Applicability of Rules, which lists proceedings during which the evidence rules need not apply. Subsection (c) (4), which specifically pertains to applications to protection orders, needs to be updated to reflect the new legislation.

4. Is Expedited Consideration Requested? Yes, because the legislation is already in effect, as of July 1, 2022.

5. Is a Public Hearing Recommended? No, because this is a technical change that is required by legislation.

ER 1101
APPLICABILITY OF RULES

(a) Courts Generally. Except as otherwise provided in section (c), these rules apply to all actions and proceedings in the courts of the state of Washington. The terms "judge" and "court" in these rules refer to any judge of any court to which these rules apply or any oth-

er officer who is authorized by law to hold any hearing to which these rules apply.

**(b) Law With Respect to Privilege.** The law with respect to privileges applies at all stages of all actions, cases, and proceedings.

**(c) When Rules Need Not Be Applied.** The rules (other than with respect to privileges, the rape shield statute and ER 412) need not be applied in the following situations:

(1) *Preliminary Questions of Fact.* The determination of questions of fact preliminary to admissibility of evidence when the issue is to be determined by the court under rule 104(a).

(2) *Grand Jury.* Proceedings before grand juries and special inquiry judges.

(3) *Miscellaneous Proceedings.* Proceedings for extradition or rendition; detainer proceedings under RCW 9.100; preliminary determinations in criminal cases; sentencing, or granting or revoking probation; issuance of warrants for arrest, criminal summonses, and search warrants; proceedings with respect to release on bail or otherwise; contempt proceedings in which the court may act summarily; habeas corpus proceedings; small claims court; supplemental proceedings under RCW 6.32; coroners' inquests; preliminary determinations in juvenile court; juvenile court hearings on declining jurisdiction; disposition, review, and permanency planning hearings in juvenile court; dispositional determinations related to treatment for alcoholism, intoxication, or drug addiction under RCW 70.96A; and dispositional determinations under RCW 71.05 and 71.34.

(4) *Applications for Protection Orders.* Protection order proceedings under Chapters ~~7.90, 7.92, 7.94, 10.14, 26.50~~ 7.105, and 74.34 RCW. Provided when a judge proposes to consider information from a criminal or civil database, the judge shall disclose the information to each party present at the hearing; on timely request, provide each party with an opportunity to be heard; and take appropriate measures to alleviate litigants' safety concerns. The judge has discretion not to disclose information that he or she does not propose to consider.

**(d) Arbitration Hearings.** In a mandatory arbitration hearing under RCW 7.06, the admissibility of evidence is governed by MAR 5.3.