# CIVIL RULES

Current with amendments received through 1/15/2005

## INTRODUCTION TO THE CIVIL RULES

In 1990, Congress passed the Civil Justice Reform Act directing each judicial district to develop means to reduce costs and delay in civil cases. In keeping with this mandate, the judges for this district adopted a Civil Justice Expense and Delay Reduction Plan in July 1993. The Plan has the product of a thorough study of the causes of excessive costs and delay in civil litigation. The study reported a consensus among attorneys that the leading causes of excessive costs in this district related to discovery and the failure to individualize case management.

The judges of this district are committed to assisting the bar and litigants to reduce costs in civil cases. It is the obligation of all counsel, as officers of the court, to work towards the prompt completion of each case and to minimize the costs of discovery. The local rules provide the judges and attorneys with basic tools for the management of civil cases, including discovery. Attorneys and litigants are urged to use these tools creatively and cooperatively to manage civil cases on a cost-effective basis and to develop a cost-effective case management plan in each case.

While no list is exhaustive, attorneys and litigants should consider the following means for reducing costs: (a) limiting discovery and phasing discovery and motions to bring on for early resolution potentially dispositive issues; (b) the availability of judges to resolve discovery disputes by telephone or informal conference; (c) scheduling discovery or case management conferences with the judge assigned to the case as necessary; (d) the use of Magistrate Judges to manage discovery or for settlement conferences; (e) early referral to mediation through Local Rule 39.1 or other alternative dispute resolution mechanism; (f) the use of an abbreviated pretrial order; and (g) consenting to the assignment of the case to a United States Magistrate Judge for the conduct of all proceedings pursuant to 28 U.S.C. § 636(c). The judges will support the use of these tools and, if necessary, impose them, when appropriate and helpful to reduce costs or more effectively manage and resolve civil cases.

Along with the cost of civil litigation, the judges of this district are very concerned about professionalism among attorneys, especially in the conduct of discovery. The judges of this district expect a high degree of professionalism from the lawyers practicing before them. The orders issued by judges of this district at the outset of a case to govern conduct and scheduling of written discovery and depositions express those expectations. There should be no difference between the professional conduct of counsel when appearing before the court and when engaged outside it whether in discovery or any other phase of a case.

[Effective July 1, 1997.]

**CR 1 AND 2. [RESERVED]**

U. S. Dist. Ct. Rules W.D.Wash., CR 1

## CR 3. COMMENCEMENT OF ACTION

**(a) Civil Cover Sheet Required.** Every complaint shall be accompanied by a Civil Cover Sheet, Form JS-44 revised. Form JS-44 revised with instruction sheet may be obtained from the clerk.

**(b) Proceedings In Forma Pauperis.** At the time application is made under 28 U.S.C. § 1915 or other applicable acts of Congress, for leave to commence any civil action or to file any petition or motion without being required to prepay fees and costs or give security for them, each petitioner, movant or plaintiff shall:

(1) Complete the in forma pauperis affidavit approved for use in this district; and

(2) File a written consent that the recovery, if any, in the action, to such amount as the court may direct, shall be paid to the clerk who may pay therefrom all unpaid fees and costs taxed against the plaintiff, and to his attorney the amount which the court allows or approves as compensation for the attorney's services.

(3) In all proceedings in forma pauperis, for a writ of habeas corpus, or under 28 U.S.C. § 2255, the marshal shall pay all fees of witnesses for the party authorized to proceed in forma pauperis, upon the certificate of the judge.

[Effective May 1, 1992; amended effective July 1, 1997; January 1, 2002.]

## CR 4. SUMMONS

**(a) Form of Summons.** It is the obligation of a party seeking the issuance of a summons by the clerk to present the summons to the clerk in the proper form, prepared for issuance, with sufficient copies for service. Forms of summons may be obtained from the clerk.

**(b) Reserved.**

**(c) Service with Complaint; by Whom Made.** Except as provided for herein, the United States Marshals Service is relieved from any and all civil process serving responsibilities within this district on behalf of private litigants. The private litigant or attorney of record for the private litigant shall make appropriate arrangements with a person authorized to serve process. Upon order of this court or pursuant to an express statutory provision, however, the United States Marshals Service shall make service of civil process on behalf of a private litigant or his attorney of record.

**(d) to (n) Reserved.**

[Effective May 1, 1992; amended effective July 1, 1997; January 1, 2002.]

## CR 4.1 SERVICE OF OTHER PROCESS

**(a) Service of Other Process by United States Marshals Service.** As set forth in CR 4, the United States Marshals Service is relieved from any and all civil process serving responsibilities within this district on behalf of private litigants but may make service under the circumstances set forth in the rule. The United States Marshals Service shall, however, serve warrants and other process as prescribed in the supplemental Admiralty Rules.

**(b) Reserved.**

[Effective January 1, 2002.]

## CR 5. SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS

**(a) Service.** Whenever the court has made an ex parte order, the party obtaining it shall serve a copy of the order, and of the papers upon which it was based, within two days after entry of the ex parte order, upon each party who has appeared in the cause; except that an order to show cause shall be served within the time fixed by the order.

**(b) Reserved.**

**(c) Reserved**

**(d) Reserved**

**(e) Place of Filing and Trial.**

(1) In all civil cases in which all defendants reside, or in which the claim arose, in the counties of Clallam, Clark, Cowlitz, Grays Harbor, Jefferson, Kitsap, Lewis, Mason, Pacific, Pierce, Skamania, Thurston, and Wahkiakum, the case file will be maintained in Tacoma. The same criteria as set out above shall be used to determine the location of the file when cases are removed from state courts.

(2) In some circumstances, a judge of the court will order that a case which would otherwise be considered a Tacoma case under CR 5(e)(1) be assigned to a Seattle judge, and *vice versa*. When that happens, the files will be maintained in the city where the assigned judge maintains an office.

(3) If papers are filed in a city other than that where the assigned judge maintains an office, the judge may not receive the papers until the next day.

**(f) Proof of Service.** Proof of service of all papers required or permitted to be served, other than those for which a method of proof is prescribed in the Federal Rules of Civil Procedure, shall be made by a certificate or acknowledgment of service on the document itself, or by a separate filing if necessary. Failure to make the proof of service required by this subdivision does not affect the validity of the service and the court may at any time allow the proof of service to be amended or supplied unless it clearly appears that to do so would result in material prejudice to any party.

**(g) Sealing of Court Records.**

(1) This rule sets forth a uniform procedure for sealing court files, cases, records, exhibits, specified documents, or materials in a court file or record. There is a strong presumption of public access to the court's files and records which may be overcome only on a compelling showing that the public's right of access is outweighed by the interests of the public and the parties in protecting files, records, or documents from public review. Nothing in this rule shall be construed to expand or restrict statutory

provisions for the sealing of files, records, or documents.

(2) The court may order the sealing of any files and records on motion of any party, on stipulation and order, or on the court's own motion. If no defendant has appeared in the case, the motion to seal may be presented ex parte. The law requires, and the motion and the proposed order shall include, a clear statement of the facts justifying a seal and overcoming the strong presumption in favor of public access.

(3) Each document to be filed under seal must be submitted in a separate envelope, clearly identifying the enclosed document and stating that the document is "FILED UNDER SEAL." For example, if both the motion and the accompanying affidavit should be filed under seal, the two documents must be submitted in separate, clearly marked envelopes so that each may be entered on the docket. If only one exhibit or document needs to be filed under seal, only that exhibit or document should be submitted in an envelope.

(4) Sealed files and records, or any part thereof, shall remain sealed until the court orders unsealing on stipulation of the parties, motion by any party or intervenor, or the court's own motion. Any party opposing the unsealing must make a compelling showing that the interests of the parties in protecting files, records, or documents from public review continue to outweigh the public's right of access.

(5) If the court orders the sealing of any files or documents pursuant to the above provisions, the clerk shall:

(A) file the order to seal;

(B) seal the file, record, or documents designated in the order to seal and secure it from public access;

(C) in civil actions in which only portions of the file have been placed under seal, return sealed documents to the submitting counsel or party after the case has concluded and the time for appeal has run;

(D) in civil actions in which the entire file has been placed under seal, destroy the sealed file after the case has concluded, the time for appeal has run, and the parties have been given sixty days' notice of the proposed destruction.

[Effective May 1, 1992; amended effective July 1, 1997; December 1, 2000; January 1, 2002.]

**CR 6. TIME**

**(a) to (d) [Reserved].**

**(e)** Motions to shorten time are hereby abolished.

[Effective May 1, 1992; amended effective July 1, 1997; January 1, 2002.]

## CR 7. PLEADINGS ALLOWED; FORM AND SCHEDULING OF MOTIONS

### (a) Reserved.

### (b) Motions and Other Papers.

(1) *Obligations of Movant.* The moving party shall serve the motion and a proposed order on each party that has appeared in the action, and shall file the motion and lodge the proposed order with the clerk. The argument in support of the motion shall not be made in a separate document but shall be submitted as part of the motion itself. If the motion requires consideration of facts not appearing of record, the movant shall also serve and file copies of all affidavits, declarations, photographic or other evidence presented in support of the motion.

All motions shall include in the caption (immediately below the title of the motion) the date the motion is to be noted for consideration upon the court's motion calendar. See CR 7(d) for scheduling motions and briefing deadlines. The form for this notation shall be as follows:

NOTE ON MOTION CALENDAR: [insert date noted for consideration]

(2) *Obligation of Opponent.* Each party opposing the motion shall, within the time prescribed in CR 7(d), file with the clerk, and serve on each party that has appeared in the action, a brief in opposition to the motion, together with any supporting material of the type described in subsection (1). If a party fails to file papers in opposition to a motion, such failure may be considered by the court as an admission that the motion has merit.

(3) *Reply Brief.* The moving party may, within the time prescribed in CR 7(d), file with the clerk, and serve on each party that has appeared in the action, a reply brief in support of the motion, together with any supporting material of the type described in subsection (1).

(4) *Oral Argument.* Unless otherwise ordered by the court, all motions will be decided by the court without oral argument. Counsel shall not appear on the date the motion is noted unless directed by the court. A party desiring oral argument shall so indicate by typing ORAL ARGUMENT REQUESTED in the caption of its motion or responsive memorandum. If a request for oral argument is granted, the clerk will notify the parties of the date and time for argument.

(5) *Decisions on Motions.* All motions will be decided as soon as practicable, and normally within thirty days following the noting date. The court encourages counsel to call the assigned judge's in-court deputy clerk to verify that a motion is scheduled for determination if a decision on the motion has not been received within 45 days of the noting date.

**(c)** Reserved.

**(d) Consideration of Motions and Briefing Schedules.** Unless otherwise provided by rule or court order, motions shall be noted for consideration as follows:

(1) Stipulations and agreed motions (see CR 10(g)), motions to file over-length motions or briefs (see CR 7(f)), motions for reconsideration (see CR 7(h)), joint submissions pursuant to the optional procedure established in CR 37(a)(2)(B), motions for default (see CR 55(a)), requests for the clerk to enter default judgment (see CR 55(b)(1)), and motions for the court to enter default judgment where the opposing party has not appeared (see CR 55(b)(2)), shall be noted for consideration for the day they are filed.

(2) The following motions may be noted for consideration no earlier than seven judicial days after filing:

(A) motions for relief from a deadline or limit imposed by an order, federal rule or local rule;

(B) motions to amend pleadings;

(C) motions to quash;

(D) motions for protective orders;

(E) motions to withdraw (see GR 2(f)(4));

(F) motions to tax and retax costs (see CR 54(d)); and

(G) motions for default judgment by the court pursuant to CR 55(b)(2) where the opposing party has appeared in the action.

For any motion brought pursuant to this subsection, the moving party shall ensure that the motion papers are received by the opposing party on or before the filing date. Unless otherwise provided by court rule, any papers opposing motions of the type described in this subsection shall be filed and received by the moving party no later than three judicial days before the noting date. Any reply papers shall be filed, and shall be received by the opposing party, no later than the noting date. Service under this subsection may be by facsimile or electronic transmission only upon prior agreement of the parties. All motions filed in a case in which a party is under civil or criminal confinement shall be subject to the briefing schedule under Rule 7(d)(1) or 7(d)(3), not this subsection.

(3) All other motions shall be noted for consideration for a Friday. Unless otherwise specified in this rule, all discovery motions not using the option under CR 37(a)(2)(B), and all other nondispositive motions shall be noted for consideration no earlier than the

third Friday after filing and service of the motion; and all dispositive motions shall be noted for consideration no earlier than the fourth Friday after filing and service of the motion. Any opposition papers shall be filed and served not later than the Monday before the noting date. If service is by mail, the opposition papers shall be mailed not later than the Friday preceding the noting date. Any reply papers shall be filed and served no later than the noting date.

**(e) Length of Motions and Briefs.** Except as otherwise provided by court order or rule, the length of motions and briefs shall be as follows:

(1) Motions noted under CR 7(d)(1) shall not exceed six pages.

(2) Motions noted under CR 7(d)(2) and briefs in opposition shall not exceed twelve pages. Reply briefs shall not exceed six pages.

(3) Motions for summary judgment, motions to dismiss, motions for class certification and motions for preliminary injunction and briefs in opposition shall not exceed twenty-four pages. Reply briefs shall not exceed twelve pages.

(4) All other motions noted under CR 7(d)(3) and briefs in opposition shall not exceed twelve pages. Reply briefs shall not exceed six pages.

**(f) Motions to File Over-length Motions or Briefs.** Motions seeking approval to file an over-length motion or brief are disfavored but may be filed subject to the following:

(1) The motion shall be filed at least three judicial days before the underlying motion or brief is due, and shall be noted for consideration for the day on which it is filed, pursuant to CR 7(d)(1).

(2) The motion shall be no more than two pages in length and shall request a specific number of additional pages.

(3) No opposition to the motion shall be filed unless requested by the court.

(4) If the court grants leave to file an over-length motion, the brief in opposition will automatically be allowed an equal number of additional pages. In all cases, the reply brief shall not exceed one-half the total length of the brief filed in opposition.

**(g) Requests to Strike Material Contained in Motion or Briefs.** Requests to strike material contained in or attached to submissions of opposing parties shall not be presented in a separate motion to strike, but shall instead be included in the responsive brief, and will be considered with the underlying motion. The single exception to this rule is for requests to strike material contained in or attached to a reply brief, in which case the opposing party may file a surreply requesting that the court strike the material, subject to the following:

(1) That party must notify all parties (by telephone or facsimile) and the assigned judge's chambers (by telephone) as soon after receiving the reply brief as practicable that a surreply will be filed.

(2) The surreply must be filed within five judicial days of the filing of the reply brief, and shall be strictly limited to addressing the request to strike.

(3) The surreply shall not exceed three pages.

(4) No response shall be filed unless requested by the court.

**(h) Motions for Reconsideration.**

(1) *Standard.* Motions for reconsideration are disfavored. The court will ordinarily deny such motions in the absence of a showing of manifest error in the prior ruling or a showing of new facts or legal authority which could not have been brought to its attention earlier with reasonable diligence.

(2) *Procedure and Timing.* A motion for reconsideration shall be plainly labeled as such. The motion shall be filed within ten judicial days following the order to which it relates. The motion shall be noted for consideration for the day it is filed. The motion shall point out with specificity the matters which the movant believes were overlooked or misapprehended by the court, any new matters being brought to the court's attention for the first time, and the particular modifications being sought in the court's prior ruling. Failure to comply with this subsection may be grounds for denial of the motion. The pendency of a motion for reconsideration shall not stay discovery or any other procedure.

(3) *Response.* No response to a motion for reconsideration shall be filed unless requested by the court. No motion for reconsideration will be granted without such a request. The request will set a time when the response is due, and may limit briefing to particular issues or points raised by the motion, may authorize a reply, and may prescribe page limitations.

**(i) Telephonic Motions.** Upon the request of any party, and with the court's approval, a motion may be heard by telephone without the filing of motion papers. No request for a telephonic motion shall be considered unless all counsel participate in the call making the request, or unless it is represented by counsel making the call that reasonable efforts have been made to include all counsel in the call, and that such efforts were unavailing. Whether such telephonic motions will be considered, what procedural requirements will be imposed, and the type of relief granted are within the sole discretion of the court.

[Effective May 1, 1992; amended effective July 1, 1997; January 1, 2002; January 1, 2005.]

**CR 8. [RESERVED]**

U. S. Dist. Ct. Rules W.D.Wash., CR 8

## CR 9. PLEADING ADMIRALTY AND OTHER SPECIAL MATTERS

**(a) to (g) [Reserved].**

**(h) Admiralty and Maritime Claims.** The words "IN ADMIRALTY" shall be typed in capital letters above the cause number on the first page of a pleading setting forth a claim which is cognizable only in admiralty. The words "AT LAW AND IN ADMIRALTY" shall be typed in capital letters above the cause number on the first page of a pleading setting forth a claim for relief within the admiralty and maritime jurisdiction that is also within the jurisdiction of the court on some other ground.

**(i) Three Judge Court.** If the case is such that any party contends that it will require a hearing before a three judge court, the words "THREE JUDGE COURT" shall be typed in capital letters on the first page of the complaint, answer, or other pleading making such allegation immediately below the name of the pleading to the right of the name of the cause, and the original and three copies of the complaint or other pleadings shall be left with the clerk and all other pleadings and papers filed in the cause shall be submitted in quadruplicate, unless the court rules that the cause is not properly before a three judge court.

[Effective May 1, 1992; amended effective July 1, 1997.]

**CR 10. FORM OF PLEADINGS**

**(a) to (c) [Reserved].**

**(d) Paper Size and Legibility.** All pleadings, motions and other papers shall be upon 8 1/2 x 11 inch white paper of good quality, and shall be plainly typewritten, printed or prepared by a clearly legible duplicating process, and double spaced, except for quoted material. Document facsimiles, including complaints, will be accepted for filing by the Clerk subject to the following administrative rules:

A. *Definitions.*

1. "Facsimile transmission" means the transmission of a copy of a document by a system that encodes a document into electronic signals, transmits these electronic signals over a telephone line, and reconstructs the signals to print a duplicate of the original document at the receiving end.

2. "Facsimile filing" or "filing by fax" means the facsimile transmission of a document to a fax filing agency who will then file that document with the court. Facsimile transmissions are *not* made directly to the court.

3. A "fax filing agency" is a private entity (business, law firm, etc.) that receives facsimile transmission of documents to be filed with the court. The fax filing agency acts similar to a messenger service, filing a hard copy facsimile transmission as if it were the original with the court.

4. "Fax" is an abbreviation for "facsimile" and refers, as indicated by the context, to a facsimile transmission or to a document so transmitted.

5. "Transmission record" means the document printed by the sending facsimile machine stating the telephone number of the receiving machine, the number of pages sent, the transmission time, and an indication of errors in transmission.

B. *Transmission Does Not Constitute Filing.* Electronic transmission of a document via facsimile machine does not constitute filing; filing is complete when the document is filed with the Clerk.

C. *Technical Requirements.* Only plain paper (no thermal paper) facsimile machines may be used. All documents to be filed with the court shall be on size 8 1/2 " x 11" bond.

D. *Original Signature.* The image of the original manual signature on the fax copy will constitute an original signature for all court purposes. The original signed document shall *not* be substituted, except by court order. The original signed document shall be maintained by the attorney of record or the party originating the document, for a period

no less than the maximum allowable time to complete the appellate process. Upon request, the original document must be provided to other parties for review.

E. *Transmission Record.* The sending party is required to maintain a transmission record in the event fax filing later becomes an issue.

F. *Fax Filing Agency as Intermediary.* A fax filing agency may file fax transmitted pleadings on behalf of the parties or their counsel. NO DOCUMENTS MAY BE TRANSMITTED DIRECTLY TO THE CLERK BY FAX FOR FILING. ANY DOCUMENTS SO TRANSMITTED SHALL BE REJECTED AND NOT FILED. The following requirements shall apply:

1. The fax filing agency acts as the agent of the filing party and not as agent of the court. A document shall be deemed to be filed when it is submitted by the fax filing agency, received in the Clerk's office, and filed by the Clerk. Mere transmission to or receipt by the fax filing agency will not be construed as filing.

2. The fax filing agency must meet all technical requirements under "C" of these guidelines.

3. Counsel or parties utilizing a fax filing agency will:

3.1 Ensure that additional copies necessary for filing shall be reproduced by the fax filing agency;

3.2 Ensure that the document(s) are taken to the court and filed with the court;

3.3 Ensure that on behalf of the client, attorney or litigant, pay any applicable filing fee.

**(e) Format.** All pleadings should include the following:

(1) *Margins and Fonts.* No less than three inches of space should be left at the top of the first page for the clerk's filing stamp. All other margins should be at least one inch wide, although formatted lines and numbering, attorney information, the name of the judge(s) to whom copies should be sent, and footers may be placed in the margins. Examples of correctly formatted pages are attached as Appendix A. The text of any typed or printed brief must be 12 point or larger and must, with the exception of quotations, be double spaced. Footnotes must be 10 point or larger and may be single spaced.

(2) *Title.* Each pleading shall contain the words "United States District Court, Western District of Washington" on the first page and, in the space below the docket number, a title indicating the purpose of the paper and the party presenting it.

(3) *Bottom Notation.* At the left side of the bottom of each page, an abbreviated title of the pleading should be repeated, followed by the case number. The page number should be placed after the abbreviated title or in the middle of the bottom of each page. At the right side of the bottom of each page, the law firm (if any), mailing address and telephone number of the attorney or party preparing the paper should be printed or typed.

(4) *Dates and Signature Lines.* All pleadings shall be dated, signed as provided by Rule 11 of the Federal Rules of Civil Procedure and as provided in the Electronic Filing Procedures adopted by the Court, and have the signors' names printed or typed under all signature lines.

(5) *Numbered Paper.* Each pleading shall bear line numbers in the left margin, leaving at least one-half inch of space to the left of the numbers.

(6) *Citation to Line Numbers.* In all cases where the court is to review the proceedings of an administrative agency, transcripts, deposition testimony, etc., the parties shall, insofar as possible, cite the page and line of any part of the transcript or record to which their pleadings refer.

(7) Any document requiring the signature of the court shall bear the signature of the attorney(s) presenting it preceded by the words "Presented by" on the left-hand side of the last page and shall provide as follows:

"Dated this _____ day of (Insert Month), 20(insert year).

"_____

"UNITED STATES DISTRICT JUDGE [or UNITED STATES MAGISTRATE JUDGE]"

(8) *Filing of Documents.* All documents filed with the Court shall be in accordance with the Electronic Filing Procedures for Civil and Criminal Cases adopted by General Order of the Court. The Electronic Filing Procedures are available on the Court's web site at *www.wawd.uscourts.gov* and from the Clerk's Office.

When documents that exceed 100 pages in length are filed electronically, a paper copy of the document shall be delivered to the Clerk's Office for chambers. The copy for chambers shall be clearly marked with the words "Courtesy Copy of Electronic Filing for Chambers." The copies of all papers must indicate in the upper right-hand corner of the first page the name of the district judge or magistrate judge to whom the copies are to be delivered.

Unless the court otherwise directs, the parties shall not provide duplicate copies of state court records in prisoner cases or of an administrative record filed pursuant to CR 79(h).

(9) *Format of Originals.* Originals of documents filed with the court shall not contain double-sided pages or items other than 8 1/2 x 11 inch paper, unless double-sided or larger original documents are being filed as exhibits.

(10) *Format of Copies.* The judge's courtesy copies of documents filed with the court shall contain no items other than 8 1/2 x 11 inch paper, unless larger original documents are being filed as exhibits. Unlike originals, copies may be filed in binders, and the use of tabs as dividers and exhibit markers is not only permitted, but encouraged. The judge's copy shall not be delivered directly to chambers unless the judge has so instructed.

(11) *Exhibits.* All exhibits submitted in support of or opposition to a motion must be clearly marked with light-colored dividers or tabs as set forth in paragraphs (9) and (10). References in the parties' pleadings to such exhibits should be as specific as possible (i.e., the reference should cite specific page numbers, paragraphs, line numbers, etc.). The judge's copy of the exhibits should be highlighted to reflect testimony or evidence referred to in the parties' pleadings. Copies of exhibits served on other parties need not be highlighted.

**(f) Name and Address of Parties and Attorneys.** Any attorney representing any party or any party not represented by an attorney must notify the court, by praecipe, of any change in address or telephone number. Such notice must be received by the clerk's office within ten days of the change. All subsequent pleadings shall reflect the new address and telephone number. The address and telephone number of the party or his attorney, noted on the first pleadings or as changed by individual praecipe, shall be conclusively taken as the last known address and telephone number of said party or attorney.

**(g) Stipulated Orders.** If a stipulation or agreed motion would alter dates or schedules previously set by the court, the parties shall clearly state the reasons justifying the proposed change. Such stipulations or agreed motions should rarely be necessary, and are disfavored by the court. Stipulations and agreed motions shall be binding on the court only if adopted by the court through its endorsement of the proposed order. An order based upon a stipulation shall be sufficient if the words "It is so ordered," or their equivalent, are endorsed on the stipulation at the close thereof and if this endorsement is signed by the court.

[Effective May 1, 1992; amended effective September 30, 1994; July 1, 1997; January 1, 2002; January 1, 2005.]

**CR 11 THROUGH 15. [RESERVED]**

U. S. Dist. Ct. Rules W.D.Wash., CR 11

## CR 16. PRETRIAL CONFERENCES; SCHEDULING; MANAGEMENT

**(a) Scheduling Conference or Joint Status Report.** As soon as practicable after a case is filed, the court shall convene a scheduling conference, or order the submission of a joint status report, or both. Counsel with principal responsibility for a case shall attend the scheduling conference. Counsel shall be prepared to discuss at the scheduling conference those matters listed in Rule 16(c) of the Federal Rules of Civil Procedure and to state whether there is a significant possibility that early and inexpensive resolution of the case would be fostered by any alternative dispute resolution ("ADR") procedure, as described in Rule 39.1 of these rules. Counsel should identify any appropriate ADR procedure, and suggest at what stage of the case it should be employed.

**(b) Later Recommendations of Parties for ADR Proceedings.** As the case proceeds, if counsel for any party concludes that an ADR procedure would have a significant possibility of fostering an early and inexpensive resolution of the case, that counsel shall so advise the court and all other counsel in writing. Whenever possible, such reports should be submitted jointly by counsel for all parties.

**(c) Orders for Further Conference, Reports, or ADR Procedures.** At any stage of the case, the court may do one or more of the following:

> (1) schedule a conference, for some or all of the purposes prescribed for the initial scheduling conference;
>
> (2) direct a written report from the parties as to the advisability of employing any ADR procedure;
>
> (3) direct the parties to participate in an ADR procedure; provided, that the court shall order participation in an arbitration or a summary jury trial only with the agreement of all parties.

**(d) Scheduling Order.** In each case, the court shall enter a scheduling order, as prescribed in Rule 16(b) of the Federal Rules of Civil Procedure, as soon as practicable after the scheduling conference or receipt of the joint status report.

**(e) Lodging Date for Proposed Pretrial Order.** The proposed pretrial order shall be lodged ("lodging date") 30 days prior to the scheduled trial date, unless otherwise ordered by the court.

**(f) Completion of Discovery.** Not later than 120 days prior to the trial date, unless otherwise ordered by the court, all counsel shall exhaust the discovery procedures provided for in Rules 26 through 37, Federal Rules of Civil Procedure. Interrogatories, requests for admissions or production, etc., must be served sufficiently early that all responses are due before this deadline. Any motion to compel discovery shall also be filed and served on or before this deadline.

**(g) Dispositive Motions.** Not later than 90 days prior to the trial date, unless otherwise ordered

by the court, counsel shall file all motions to dismiss, motions for summary judgment, other dispositive motions, and other reasonably foreseeable motions, together with supporting papers.

**(h) Plaintiff's Pretrial Statement.** Not later than 30 days prior to the lodging date, counsel for plaintiff(s) shall serve upon counsel for all other parties a brief statement as to:

(1) Federal jurisdiction;

(2) Which claims for relief plaintiff intends to pursue at trial, stated in summary fashion;

(3) Relevant facts about which plaintiff asserts there is no dispute and which plaintiff is prepared to admit;

(4) Plaintiff's factual contentions, which shall be stated in a summary fashion, omitting evidentiary detail. Unless otherwise ordered by the court, the factual contentions of a party shall not exceed two pages in length. Examples of properly and improperly drafted contentions are set forth in Local Rule CR 16.1;

(5) Issues of law;

(6) The names and addresses of all witnesses who might be called by plaintiff, and the general nature of the expected testimony of each. As to each witness, plaintiff shall indicate "will testify" or "possible witness only." Rebuttal witnesses, the necessity of whose testimony cannot reasonably be anticipated before trial, need not be named;

(7) A list of all exhibits which will be offered by plaintiff at the time of trial, except exhibits to be used for impeachment only. The exhibits shall be numbered in the manner set forth in Local Rule CR 16.1.

**(i) Defendant's Pretrial Statement.** Not later than 20 days prior to the lodging date, each defense counsel shall serve upon counsel for all other parties a brief statement as to:

(1) Objections, additions or changes which defendant believes should be made to plaintiff's statement on federal jurisdiction and admitted facts;

(2) Which affirmative defenses and/or claims for relief defendant intends to pursue at trial, stated in summary fashion;

(3) Defendant's factual contentions, which shall be stated in a summary fashion, omitting evidentiary detail. Unless otherwise ordered by the court, the factual contentions of a party shall not exceed two pages in length. Examples of properly and improperly drafted contentions are set forth below, in Local Rule CR 16.1;

(4) Objections, additions or changes which defendant believes should be made to plaintiff's statement of issues of law;

(5) The names and addresses of all witnesses who might be called by defendant, and the general nature of the expected testimony of each. As to each witness, defendant shall indicate "will testify" or "possible witness only." Rebuttal witnesses, the necessity of whose testimony cannot reasonably be anticipated before trial, need not be named;

(6) A list of all exhibits which will be offered by defendant at the time of trial, and which have not already been listed by plaintiff; but excluding exhibits to be used for impeachment only. The exhibits shall be numbered in the manner set forth in Local Rule CR 16.1.

No party is required to list any exhibit which is listed by another party.

**(j) Review of Exhibits.** Each exhibit listed in the pretrial statement of a party shall be promptly made available for inspection and copying upon request by counsel for any other party. Prior to the conference of attorneys, counsel for each party shall review every exhibit to be offered by any other party, and shall provide counsel for all other parties with a list stating whether, as to each exhibit, the party will (1) stipulate to admissibility, (2) stipulate to authenticity but not admissibility, or (3) dispute authenticity and admissibility.

**(k) Conference of Attorneys.** Not later than ten days prior to the lodging date, there shall be a conference of attorneys for the purpose of accomplishing the requirements of this rule. It shall be the duty of counsel for the plaintiff to arrange for the conference. The attorney principally responsible for trying the case on behalf of each party shall attend the conference. Each attorney shall be completely familiar with all aspects of the case in advance of the conference, and be prepared to enter into stipulations with reference to as many facts and issues and exhibits as possible, and to discuss the possibility of settlement. At the conference, counsel shall cooperate in developing a proposed pretrial order which can be signed by counsel for all parties. Except in land condemnation cases, the order shall, insofar as possible, be in the form set forth below in Local Rule CR 16.1. Plaintiff's factual contentions may be set forth on separate pages from defendant's contentions. Similarly, the parties' witness lists may be on separate pages. Counsel shall assemble a single pretrial order, properly paginated.

**(l) Lodging of Pretrial Order.** An agreed proposed pretrial order, bearing the signatures of counsel for each party, shall be lodged with the clerk on or before the lodging date. A copy of the proposed pretrial order should be delivered to the clerk at the same time, for forwarding to the district judge or magistrate judge before whom the case is pending, and shall be marked with his or her name in the upper right-hand corner. The copy shall reflect that the original was signed by counsel for all parties.

**(m) Final Pretrial Conference.** The court may, in its discretion, schedule a final pretrial conference. Counsel who will have principal responsibility for trying the case for each party shall attend, together with any party proceeding pro se. At the final pretrial conference, the court may consider and take action with respect to:

(1) The sufficiency of the proposed pretrial order;

(2) Any matters which may be presented relative to parties, process, pleading or proof, with a view to simplifying the issues and bringing about a just, speedy and inexpensive determination of the case;

(3) In jury cases, whether the parties desire to stipulate that a verdict or a finding of a stated majority of the jurors shall be taken as the verdict or finding of the jury;

(4) Requirements with respect to trial briefs;

(5) Requirements with respect to requests for instruction and suggested questions to be asked by the court on voir dire in cases to be tried by jury;

(6) The number of expert witnesses to be permitted to testify on any one subject;

(7) The possibility of settlement; but nothing with respect thereto shall be incorporated in the pretrial order, and any discussion with respect to settlement shall be entirely without prejudice, and may not be referred to during the trial of the case or in any arguments or motions.

**(n) Other General Provisions.**

(1) In order to accomplish effective pretrial procedures and to avoid wasting the time of the parties, counsel, and the court, the provisions of this rule will be strictly enforced. Sanctions and penalties for failure to comply are set forth in GR 3 and in the Federal Rules of Civil Procedure.

(2) The court may, by order in a specific case, modify or forego any of the procedures or deadlines set forth in this rule.

(3) A party proceeding without counsel shall comply in all respects with obligations imposed upon "counsel" under this rule.

(4) The full-time magistrate judges of this court are authorized to conduct pretrial conferences, enter and modify scheduling orders, and perform all other functions performed by district judges under Fed.R.Civ.P. 16 and this rule.

[Effective May 1, 1992; amended effective September 30, 1994; July 1, 1997.]

**CR 16.1 FORM OF PRETRIAL ORDER**

The following form of pretrial order shall be used, insofar as possible, in the trial of all cases except those involving land condemnation.

Hon. [name of judge]

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT _____

| | | |
|---|---|---|
| _____ | ) | |
| | ) | |
| Plaintiff, | ) | No. _____ |
| | ) | |
| vs. | ) | PRETRIAL ORDER |
| | ) | |
| _____ | ) | |
| | ) | |
| Defendant. | ) | |
| _____ | ) | |

JURISDICTION

Jurisdiction is vested in this court by virtue of: (State the facts and cite the statutes whereby jurisdiction of the case is vested in this court).

CLAIMS AND DEFENSES

The plaintiff will pursue at trial the following claims: (E.g., breach of contract, violation of 28 U.S.C. § 1983). The defendant will pursue the following affirmative defenses and/or claims: (E.g., accord and satisfaction, estoppel, waiver).

ADMITTED FACTS

The following facts are admitted by the parties: (Enumerate every agreed fact, irrespective of admissibility, but with notation of objections as to admissibility. List 1, 2, 3, etc.)

The plaintiff contends as follows: (List 1, 2, 3, etc.)

The defendant contends as follows: (List 1, 2, 3, etc.)

(State contentions in summary fashion, omitting evidentiary detail. Unless otherwise ordered by the court, the factual contentions of a party shall not exceed two pages in length. Examples of properly and improperly drafted contentions are set forth below.

ISSUES OF LAW

The following are the issues of law to be determined by the court: (List 1, 2, 3, etc., and state each issue of law involved. A simple statement of the ultimate issue to be decided by the court,

such as "Is the plaintiff entitled to recover?" will not be accepted.) If the parties cannot agree on the issues of law, separate statements may be given in the pretrial order.

## EXPERT WITNESSES

(a) Each party shall be limited to _____ expert witness(es) on the issues of _____.

(b) The name(s) and addresses of the expert witness(es) to be used by each party at the trial and the issue upon which each will testify is:

(1) On behalf of plaintiff;

(2) On behalf of defendant.

## OTHER WITNESSES

The names and addresses of witnesses, other than experts, to be used by each party at the time of trial and the general nature of the testimony of each are:

(a) On behalf of plaintiff: (E.g., Jane Doe, 10 Elm Street, Seattle, WA; will testify concerning formation of the parties' contract, performance, breach and damage to plaintiff.)

(b) On behalf of defendant: (follow same format).

(As to each witness, expert or others, indicate "will testify," or "possible witness only." Also indicate which witnesses, if any, will testify by deposition. Rebuttal witnesses, the necessity of whose testimony cannot reasonably be anticipated before trial, need not be named.)

## EXHIBITS

(a) Admissibility stipulated:

Plaintiff's Exhibits

1. Photo of port side of ship. (Examples)

2. Photo of crane motor.

3. Photo of crane.

Defendant's Exhibits

A-1. Weather report. (Examples)

A-2. Log book.

A-3. X-ray of plaintiff's foot.

A-4. X-ray of wrist.

(b) Authenticity stipulated, admissibility disputed:

Plaintiff's Exhibits

4. Inventory Report. (Examples)

Defendant's Exhibits

A-5. Photograph. (Examples)

(c) Authenticity and admissibility disputed:

Plaintiff's Exhibits

5. Accountant's report. (Examples)

Defendant's Exhibits

A-6. Ship's log.

(No party is required to list any exhibit which is listed by another party, or any exhibit to be used for impeachment only. See below for further explanation of numbering of exhibits).

ACTION BY THE COURT

(a) This case is scheduled for trial (before a jury) (without a jury) on _____, 20___, at _____.

(b) Trial briefs shall be submitted to the court on or before _____.

(c) (Omit this subparagraph in non-jury case). Jury instructions requested by either party shall be submitted to the court on or before _____. Suggested questions of either party to be asked of the jury by the court on voir dire shall be submitted to the court on or before _____.

(d) (Insert any other ruling made by the court at or before pretrial conference.)

This order has been approved by the parties as evidenced by the signatures of their counsel. This order shall control the subsequent course of the action unless modified by a subsequent

order. This order shall not be amended except by order of the court pursuant to agreement of the parties or to prevent manifest injustice.

DATED this ____ day of [insert month], 20[insert year].

_____

United States District Judge/ Magistrate Judge

FORM APPROVED

_____
Attorney for Plaintiff

_____
Attorney for Defendant

**(2) Drafting of Contentions.** Statements of contentions as to disputed facts should be brief and generally worded. The purpose of this section of the order is to apprise the court and the other parties of the general position of each party on major fact issues. Lengthy recitals and evidentiary detail are of little assistance, and serve only to impose unnecessary burdens upon the lawyer drafting them.

For example:

Proper:

> 1. Correspondence between the parties in November and December, 1982, established the price, quantity and time of delivery of the goods.

Improper:

> 1. On November 3, plaintiff wrote to defendant, stating _____ (etc.)
>
> 2. On November 7, 1982, defendant responded _____ (etc.)
>
> 3. On November 12, 1982, plaintiff replied _____ (etc.)

Proper:

> 1. Defendant was negligent in that: (a) the stabilizer on the aircraft was defectively designed; and (b) the airline was not given proper instructions as to maintenance and inspection of the stabilizer.

Improper:

1. The stabilizer on the aircraft was 117 inches in length and _____ (etc.)

2. Accepted industry standards provide that stabilizers must be _____ (etc.)

3. At an air speed of 570 mph, a stabilizer _____ (etc.)

4. Defendant distributed service bulletins on the stabilizer on _____ (etc.)

Proper:

1. Plaintiff's discharge was due to unsatisfactory performance of her job and insubordination to her supervisors. It was unrelated to her sex.

Improper:

1. Plaintiff made an error in balancing accounts on July 5, 1980, resulting in cost of $7,300 to defendant.

2. Defendant attempted to provide plaintiff training and counseling about this incident, but she refused.

3. On August 13, 1980, plaintiff again _____ (etc.)

4. Plaintiff told Mr. Wilson on June 15, 1980, that she refused to _____ (etc.)

**3. Numbering of Exhibits.** The pretrial order identifies each exhibit with a number. This becomes the number for the exhibit at the trial, and appears on the exhibit tag. Plaintiff's exhibits are to be numbered 1, 2, 3, etc. Defendant's exhibits are to be numbered A-1, A-2, A-3, etc.

[Effective May 1, 1992; amended effective March 30, 1995; July 1, 1997; January 1, 2002.]

## CR 17. PARTIES PLAINTIFF AND DEFENDANT, CAPACITY

**(a) and (b) [Reserved].**

**(c) Infants or Incompetent Persons.** In every case where the court is requested to approve a settlement involving the claim of a minor or incompetent, an independent guardian ad litem, who shall be an attorney-at-law, must be appointed by the court, and said guardian ad litem shall investigate the adequacy of the offered settlement and report thereon; provided, however, that the court may dispense with the appointment of the guardian ad litem if a general guardian has been previously appointed for such minor or incompetent, or if the court affirmatively finds that the minor or incompetent is represented by independent counsel.

The allowance and taxation of all fees, costs and other charges incident to the settlement of any such claim shall be considered and disposed of by the court at the time the petition for approval of the settlement is heard. The total judgment shall be paid into the registry of the court. All sums deductible therefrom, including costs, attorneys' fees, hospital and medical expenses, and any other expense, shall be paid upon approval of the court.

If the money or the value of other property remaining is $5,000 or less and there is no general guardian of the ward, the court shall require (1) that the money be deposited in a bank or trust company or be invested in an account in an insured savings and loan association for the benefit of the ward subject to withdrawal only upon order of the court as a part of the original proceeding, or (2) that a general guardian be appointed and the money or other property be paid or delivered to such guardian.

If the money or the value of other property remaining exceeds $5,000, and there is no general guardian of the ward, the court in said order or judgment shall require that a general guardian be appointed.

[Effective May 1, 1992; amended effective July 1, 1997.]

**CR 18 THROUGH 22. [RESERVED]**

U. S. Dist. Ct. Rules W.D.Wash., CR 18

**CR 23. CLASS ACTIONS**

**(a) through (e) [Reserved].**

**(f) Format and Time Limits.** In any case sought to be maintained as a class action:

(1) The complaint shall bear next to its caption the legend, "Complaint-- Class Action."

(2) The complaint shall contain under a separate heading, styled "Class Action Allegations":

(a) A reference to the portion or portions of Rule 23 Fed.R.Civ.P., under which it is claimed that the suit is properly maintainable as a class action.

(b) Appropriate allegations thought to justify such claim, including, but not necessarily limited to:

1. The size (or approximate size) and definition of the alleged class,

2. The basis upon which the plaintiff (or plaintiffs) claims

(i) to be an adequate representative of the class, or

(ii) if the class is composed of defendants, that those named as parties are adequate representatives of the class.

3. The alleged questions of law and fact claimed to be common to the class, and

4. In actions claimed to be maintainable as class actions under subdivision (b)(3) of Rule 23, Fed.R.Civ.P., allegations thought to support the findings required by that subdivision.

(3) Within one hundred eighty days after the filing of a complaint in a class action, unless otherwise ordered by the court or provided by statute, the plaintiff shall move for a determination under Fed. R. Civ. P. 23(c)(1), as to whether the case is to be maintained as a class action. This period may be extended on motion for good cause. The court may certify the class, may disallow and strike the class allegations, or may order postponement of the determination pending discovery or such other preliminary procedures as appear appropriate and necessary in the circumstances. Whenever possible, where the determination is postponed, a date will be fixed by the court for renewal of the motion.

(4) The foregoing provisions shall apply, with appropriate adaptations, to any counterclaim or cross claim alleged to be brought for or against a class.

[Effective May 1, 1992;  amended effective July 1, 1997;  January 1, 2002.]

**CR 24 AND 25. [RESERVED]**

U. S. Dist. Ct. Rules W.D.Wash., CR 24

**CR 26. GENERAL PROVISIONS GOVERNING DISCOVERY; DUTY OF DISCLOSURE**

**(a) Required Disclosures; Methods to Discover Additional Matter.**

(1) *[Reserved]*.

(2) *[Reserved]*.

(3) *Pretrial Disclosures.* Unless otherwise directed by the court, the disclosures listed in Fed.R.Civ.P. 26(a)(3) shall be made in the manner and in accordance with the schedule prescribed in CR 16. A party shall state any objections to exhibits in the manner prescribed in that rule. Objections not so disclosed, other than objections under Rules 402 and 403 of the Federal Rules of Evidence, shall be deemed waived unless excused by the court for good cause shown.

(4) *[Reserved]*.

**(b) [Reserved].**

**(c) [Reserved].**

**(d) [Reserved].**

**(e) [Reserved].**

**(f) [Reserved].**

**(g) [Reserved].**

[Adopted effective September 30, 1994; amended effective July 1, 1997; December 1, 2000.]

# GENERAL ORDER OF NOVEMBER 17, 2000

## ORDER ADOPTING AMENDMENTS TO LOCAL CIVIL RULES CR 5 AND CR 26 THROUGH 37, INCLUSIVE

## LOCAL CIVIL RULES GOVERNING DISCOVERY AND PRETRIAL PROCEDURE

Pursuant to 28 U.S.C. § 2071, and to Rule 83 of the Federal Rules of Civil Procedure ("Fed. R. Civ. P."), it is hereby ORDERED, that local civil rules CR 5 and CR 26 through 37, inclusive, are amended as set forth in the attachment to this Order.

These amendments shall be effective as of 12:01 a.m. on December 1, 2000. The amendments are required, in light of amendments to the Federal Rules of Civil Procedure which take effect that day. The federal and local rules as amended will apply in full to all cases filed with this court, or removed to this court from state court, on or after December 1, 2000. The balance of this order defines the applicability of the amended rules to cases filed in this court, or removed to this court from state court, prior to December 1, 2000.

While this order specifically addresses the applicability of certain rules, it does not discuss all of the rules. All parties remain responsible for familiarity with the federal and local rules, as amended.

The following provisions of the federal and local rules shall NOT apply to civil cases filed in this court, or removed to this court from state court, prior to December 1, 2000, unless otherwise ordered by the court in a specific case:

(1) Delay of Commencement of Discovery. Fed. R. Civ. P. 26(d).

(2) Meeting of Parties and Preparation of Discovery Plan. Fed. R. Civ. P. 26(f).

(3) Initial Disclosures, as required by Fed. R. Civ. P. 26(a)(1).

**The following provisions of the federal and local rules shall apply as provided below to civil cases filed in this court, or removed to this court from state court, prior to December 1, 2000**, **unless otherwise ordered by the court in a specific case:**

(4) Expert Witness Disclosures. If, prior to December 1, 2000, a party has made the disclosures required by Local Rule CR 26(a)(2) then in effect, the party need not make the disclosures required by Fed. R. Civ. P. 26(a)(2).

(5) Number of Depositions. Fed. R. Civ. P. 30(a). No party may take more than ten depositions on or after December 1, 2000, without specific authorization from the court. Depositions taken prior to December 1, 2000 shall not be counted against the limitation in the rule, unless the court otherwise orders.

(6) Number of Interrogatories. Fed. R. Civ. P. 33(a). Without specific authorization from the court, no party may propound more than 25 interrogatories, including all discrete subparts, on or after December 1, 2000. In addition, in a civil case filed in this court or removed to this court from state court prior to December 1, 2000, no party may propound at any time more than 35 interrogatories, including all discrete subparts.

**Except as set forth in this Order, or as ordered by the court in a specific case, the rules as amended effective December 1, 2000, shall apply IN FULL to civil cases filed in this court, or removed to this court from state court, prior to that date. The following are examples of provisions of the federal and local rules that apply to such cases:**

(7) Scope of Discovery. Fed. R. Civ. P. 26(b).

(8) Limit on Length of Depositions: One Day of Seven Hours. Fed. R. Civ. P. 30(d).

(9) Procedure for Introduction of Depositions into Evidence. Local Rule CR 32(e).

(10) Meaning of Requirement that Parties "Confer" Before Bringing a Discovery Motion. Local Rule CR 37(a).

(11) Sanctions for Failure to Disclose. Fed. R. Civ. P. 37(c)(1).

(12) Filing of Discovery Materials. Fed. R. Civ. P. 5(d) and 30(f).

DATED this 16th day of November, 2000.

Comment

The most significant of the 12/1/93 amendments to the Federal Rules of Civil Procedure were those requiring initial "laydown disclosures" by all parties at the outset of the case. These rules are set forth in the new Fed.R.Civ.Pro. 26(a)(1). The federal rule authorizes districts to "opt out" of these provisions, and the W.D.Wn. has done so. Accordingly, Local Rule CR 26(a)(1) contains instead the provisions of the new federal rule 26(a)(5).

New federal rule 26(a)(2) requires each party to disclose specific information as to each expert witness it intends to call at trial. It also requires that party to furnish the other parties a written report from each such expert. The W.D.Wn. requires the identification of experts and the furnishing of certain information about them, but has "opted out" of the requirement for furnishing written reports. Under the local rule, counsel is required to furnish other parties a statement which contains essentially the same information as would have been contained in the expert's report. The local rule deletes the requirement for a listing of cases in which the expert has testified. It has also altered the time schedule prescribed in the federal rule for identifying expert witnesses and providing information about them.

Rule 26(a)(3) requires disclosure of other witnesses and exhibits, and timely statement of any

objections by another party. The local rule changes the timing for these disclosures, and for any objections, to fit the district's procedure under CR 16 for preparing the proposed pretrial order.

Rule 26(a)(4) modifies the federal rule by providing that discovery disclosures served on other parties are not to be filed with the court.

Local Rule CR 26(b), "Discovery Scope and Limits," reflects the federal rule of the same number, as amended, with only very minor changes in (b)(2) and (b)(4)(A).

Local Rule CR 26(c), "Protective Orders," is identical to the federal rule of the same number, as amended.

New federal rule 26(d) prohibits the commencement of discovery until the parties have met and conferred, and have formulated a proposed discovery plan, as required by new federal rule 26(f). Because W.D.Wn. does not require the parties to meet and confer at the outset of the case, or to submit a proposed discovery plan, these rules delete the limitation in 26(d) on the commencement of discovery, and all the provisions of 26(f).

Rule 26(g), "Signing of Disclosures, Discovery Requests, Responses and Objections" reflects the federal rule of the same number, with only a modification in (g)(1) to delete the reference to disclosures under 26(a)(1).

[Comment adopted effective September 30, 1994.]

## CR 27. DEPOSITIONS BEFORE ACTION OR PENDING APPEAL [RESERVED]

[Reserved effective December 1, 2000.]

## CR 28. PERSONS BEFORE WHOM DEPOSITIONS MAY BE TAKEN [RESERVED]

[Reserved effective December 1, 2000.]

## CR 29. STIPULATIONS REGARDING DISCOVERY PROCEDURE [RESERVED]

[Reserved effective December 1, 2000.]

## CR 30. DEPOSITIONS UPON ORAL EXAMINATION

### (a) When Depositions May Be Taken; When Leave Required.

(1) Reserved.

(2) If a party wishes to take the deposition of a person in custody, the party shall attempt to reach agreement with officials of the institution as to date, time, place, and maximum duration of the deposition. If agreement is reached, the party taking the deposition shall give notice as provided in Fed. R. Civ. P. 30(b), and no further order of the court is required. If agreement is not reached, the party noting the deposition shall serve a notice, at least 14 days before the proposed deposition, on the deponent, all other parties, the superintendent of the institution, and the attorney for the institution (e.g., the Washington Attorney General for a state prisoner, or the United States Attorney for a federal prisoner). Not later than three judicial days before the proposed deposition, the attorney for the institution may file, serve and note a motion objecting to the proposed deposition. In that event, the deposition shall not proceed until the court has ruled on the motion. In the absence of a timely motion, the deposition may proceed as noted without further order of the court.

[Effective January 1, 2002.]

## CR 31. DEPOSITIONS UPON WRITTEN QUESTIONS [RESERVED]

[Reserved effective December 1, 2000.]

**CR 32. USE OF DEPOSITIONS IN COURT PROCEEDINGS**

**(a) [Reserved].**

**(b) [Reserved].**

**(c) [Reserved].**

**(d) [Reserved].**

**(e) Offering Portions of Depositions.** If a party intends to offer a deposition instead of live testimony at trial, the party shall provide to all other parties a transcript of the deposition with the relevant portions highlighted. Other parties may offer other portions of the deposition by highlighting them. The parties shall submit to the court, along with the proposed pretrial order, a single copy of the deposition transcript, setting for the all designated testimony, and indication any objections and responses to objections in the margin. A failure to designate an objection in this manner shall constitute a waiver, even if the objection was previously stated at the deposition. A party shall enter all highlighting of testimony, all objections, and all responses to objections in a single color, used only by that party. After the court has ruled on the objection, the deposition will be filed as part of the record.

[Effective May 1, 1992; amended September 30, 1994; July 1, 1997; December 1, 2000.]

Comment

The local rule and the federal rule, as amended in 1993, are identical through subsection (d). Local Rule CR 32(e) has been added, to reflect a local procedure for offering portions of depositions.

[Comment adopted effective September 30, 1994.]

## CR 33. INTERROGATORIES TO PARTIES [RESERVED]

[Reserved December 1, 2000.]

## CR 34. PRODUCTION OF DOCUMENTS AND THINGS AND ENTRY UPON LAND FOR INSPECTION AND OTHER PURPOSES [RESERVED]

[Reserved effective December 1, 2000.]

## CR 35. PHYSICAL AND MENTAL EXAMINATION OF PERSONS [RESERVED]

[Reserved effective December 1, 2000.]

## CR 36. REQUESTS FOR ADMISSION [RESERVED]

[Reserved effective December 1, 2000.]

## CR 37. FAILURE TO MAKE DISCLOSURE OR COOPERATE IN DISCOVERY: SANCTIONS

### (a)(2) Motion for Order Compelling Disclosure or Discovery.

(A) A good faith effort to confer with a party or person not making a disclosure or discovery requires a face-to-face meeting or a telephone conference. If the court finds that counsel for any party, or a party proceeding pro se, willfully refuses to confer, fails to confer in good faith, or fails to respond on a timely basis to a request to confer, the court may take action as stated in GR 3 of these rules.

(B) Motion. A motion for an order compelling disclosure or discovery may be filed and noted in the manner prescribed in CR 7(d)(3). Alternatively, the parties may, by agreement, utilize the expedited procedure set forth in this subsection. If the parties utilize this procedure, the motion may be noted for consideration for the day the motion is filed. After the parties have conferred, a party may submit any unresolved discovery dispute to the court through the following procedure:

(i) The moving party shall be responsible for preparing and filing a joint CR 37 submission to the court. An example of a CR 37 submission is attached as Appendix B.

(ii) The moving party may draft an introductory statement, setting forth the context in which the dispute arose and the relief requested. Each disputed discovery request and the opposing party's objection/response thereto shall be set forth in the submission. Immediately below that, the moving party shall describe its position and the legal authority which supports the requested relief.

The moving party shall provide the opposing party with a draft of the CR 37 submission and shall also make the submission available in computer-readable format.

(iii) Within five judicial days of receipt of the CR 37 submission from the moving party, the opposing party shall serve a rebuttal to the moving party's position for each of the disputed discovery requests identified in the motion. The opposing party may also include its own introductory statement. The opposing party's rebuttal for each disputed discovery request shall be made in the same document and immediately following the moving party's statement in support of the relief requested. If the opposing party no longer objects to the relief requested, it shall so state and respond as requested within five judicial days from the date the party received the draft CR 37 submission. If the opposing party fails to respond, the moving party may file the CR 37 submission with the court and state that no response was received.

(iv) The moving party's reply, if any, in support of a disputed discovery request

shall follow the opposing party's rebuttal for such request in the joint submission and shall not exceed one half page for each reply.

(v) The total text that each side may contribute to a joint CR 37 submission shall not exceed twelve pages. This limit shall include all introductory or position statements, and statements in support of, or in opposition to, a particular request, but shall not include the discovery request itself.

(vi) Each party may submit declarations for the purpose of attaching documents to be considered in connection with the submission and to provide sufficient information to permit the court to assess expenses and sanctions, if appropriate. If a party fails to include information sufficient to justify an award of fees, it shall be presumed that any request for fees has been waived. A declaration shall not contain any argument.

(vii) The moving party shall prepare a proposed order that identifies each of the discovery requests at issue, with space following each of the requests for the court's decision. This proposed form of order shall be provided to the court in a computer-readable format to be specified by the court.

(viii) The moving party shall be responsible for filing the motion containing both parties' positions on the discovery disputes, any declarations submitted by the parties, and the proposed form of order. The moving party shall certify in the motion that it has complied with these requirements. The submission shall be noted for consideration on the date of filing and shall be described as a "CR 37 Joint Submission."

**(b) [Reserved].**

**(c) [Reserved].**

**(d) [Reserved].**

**(e) [Reserved].**

**(f) [Reserved].**

**(g) [Reserved].**

[Effective May 1, 1992; amended effective September 30, 1994; July 1, 1997; December 1, 2000; January 1, 2002.]

Comment

Local Rule CR 37, sub-sections (a) through (d), are substantially identical to the corresponding portions of the federal rule, as amended in 1993. The local rule deletes requirements in federal rules 37(a)(2)(A) and (B), and 37(d), that the parties "meet and confer" before bringing certain discovery motions. Local rule 37(h) imposes that requirement as to virtually all discovery motions. Local rule 37(b)(2) also deletes a reference to rule 26(f). Sub-sections (e) and (f) of the federal rule no longer exist. W.D.Wn. has deleted sub-section (g) of the federal rule because, in this district, the parties are not required to meet, confer and develop a discovery plan at the outset of the case.

[Comment adopted effective September 30, 1994.]

**CR 38. JURY TRIAL OF RIGHT**

**(a) [Reserved].**

**(b) Demand.** Where jury trial is demanded in or by endorsement upon a pleading as permitted by Rule 38 of the Federal Rules of Civil Procedure, the words "JURY DEMAND" shall be typed in capital letters on the first page immediately below the name of the pleading to the right of the name of the cause.

Any party demanding a jury trial of the issues of fact tendered by a third party complaint shall file a JURY DEMAND. If such demand be made by endorsement upon a pleading, it shall be made in the manner herein provided.

**(c) through (f) [Reserved].**

[Effective May 1, 1992; amended effective July 1, 1997.]

## CR 39. TRIAL BY JURY OR BY THE COURT

**(a) through (c) [Reserved].**

**(d) Unnecessary Jury Panels.** Where cases set for trial by jury are settled or agreed to be tried without a jury, notice of such agreement shall be filed in the clerk's office at least three (3) days before the day on which the case is set; otherwise jury expenses incurred by the government, if any, shall be paid to the clerk by the parties agreeing to such settlement or waiver. And where a continuance of such a case shall be applied for by one side, and resisted by the other, and granted by the court, the payment of jury expenses incurred by the government, if any, by the party applying for the continuance shall in all cases be one of the conditions of the continuance unless such continuance be granted as a matter of right and was not due to any fault of the moving party.

[Effective May 1, 1992; amended effective July 1, 1997.]

## CR 39.1 ALTERNATIVE DISPUTE RESOLUTION

### (a) Alternative Dispute Resolution Program.

(1) *Objective.* This rule constitutes the alternative dispute resolution program authorized by the court pursuant to the Alternative Dispute Resolution Act of 1998, 28 U.S.C. § 651 et seq. The rule encourages and promotes the early and inexpensive resolution of disputes through one or more alternative dispute resolution procedures, as defined below. The court finds that the use of alternative dispute resolution procedures promotes timely and affordable justice while reducing calendar congestion.

(2) *Rule Administration.* The alternative dispute resolution program shall be administered by the clerk of the court with the cooperation and assistance of the Alternative Dispute Resolution Committee (the "Alternative Dispute Resolution Committee") of the Federal Bar Association of the Western District of Washington. The clerk and the Alternative Dispute Resolution Committee shall compile and revise materials describing various ADR procedures available hereunder. The clerk shall make such materials available to the parties in civil cases as directed by the court.

(3) *Definition.* For purposes of this rule, an alternative dispute resolution procedure ("ADR procedure") includes any process or procedure, other than an adjudication by a presiding judge, in which one or more neutral third parties participate to assist in the resolution of issues in controversy. Such procedures include the procedures available under sections (c)--(e) of this rule, as well as such other alternative dispute resolution procedures as the court may approve under section (f) of this rule.

(4) *Actions Subject to Rule.* Unless otherwise ordered by the court in a specific case, this rule applies to all civil actions in this court, including adversary proceedings in bankruptcy, except prisoner petitions, suits involving entitlement to social security benefits, and suits to recover student loan defaults or deficiencies. The court may exempt specific cases from this rule if and to the extent the court finds that use of ADR procedures in the action would not be appropriate.

(5) *Consideration of Alternative Dispute Resolution.* Litigants in all civil cases subject to this rule shall consider the use of ADR procedures at all appropriate stages in the litigation, including the early stages of the litigation.

(6) *Confidentiality.* Except as otherwise required by law or agreed by the litigants, or otherwise provided by this rule, all ADR proceedings under this rule, including communications, statements, disclosures and representations made by any party, attorney or other participant in the course of such proceeding, shall, in all respects, be confidential, and shall not be reported, recorded, placed in evidence, disclosed to anyone not a party to the litigation, made known to the trial court or jury, or construed for any purpose as an admission or declaration against interest. No party shall be bound by anything done or said during such proceedings unless a settlement or other agreement is

reached.

(7) *Immunities and Protections.* All persons serving as neutrals under this rule shall be accorded the immunities and protections that the law provides to persons serving in a quasi-judicial capacity.

**(b) Attorney Neutrals.**

(1) The clerk of the court, with the cooperation and assistance of the Alternative Dispute Resolution Committee, shall establish and maintain a register of qualified attorneys who have agreed to serve as neutrals under this rule. The attorneys so registered shall be approved by the court from lists of qualified attorneys at law, who are members of the bar of this court, and who are recommended by the Alternative Dispute Resolution Committee. The Alternative Dispute Resolution Committee shall request the county bar associations within the geographical boundaries of the district to cooperate with the Committee in obtaining well-qualified attorneys for the register.

(2) To qualify for service as a neutral under this rule, an attorney shall certify that he or she:

(A) Has been a member of the bar of a Federal district court for at least seven years or has had at least seven years of judicial experience;

(B) Is a member of the bar of the United States District Court for the Western District of Washington;

(C) Has devoted a substantial portion of his or her practice to litigation; and

(D) Has met such training requirement as the court may direct by general order.

(E) Agree to accept appointment to serve as a neutral on a pro bono basis when appropriate.

(3) If all parties so agree, the court may appoint a neutral who is not listed in the register.

(4) The Alternative Dispute Resolution Committee shall assist the court in determining that the register of qualified attorneys is duly maintained and that such attorneys have certified that they have necessary training and/or experience as required by the rule.

(5) Neutrals serving under this rule should disclose any interest or relationship likely to affect their impartiality or that might reasonably create an appearance that they are biased against one party or favorable to another. When parties, with knowledge of such disclosures, nevertheless desire a particular neutral to serve and affirmatively waive such disclosures, the neutral may serve; provided, however, that nothing in this provision shall affect the obligations of any District Judge or Magistrate Judge under 28 U.S.C. §

455.

(6) Neutrals serving under this rule shall be eligible to receive compensation for their services and reimbursement for expenses incurred, within limits set by the court, subject to regulations approved by the Judicial Conference of the United States and/or the Administrative Office of the United States Courts. Notwithstanding the foregoing, the parties may agree in writing to provide additional compensation to neutrals.

**(c) Mediation**.

(1) *Designation and Scheduling.* The court may designate any civil case for mediation under this rule, and may schedule the required steps so as to maximize the prospects of early settlement. The parties may file a written stipulation for mediation under this rule at any time.

(2) *Settlement Conference.* In every civil action designated by the court for mediation under this rule, the attorneys for all parties to the action, except nominal parties and stakeholders, shall meet at least once, preferably in person, and engage in a good faith attempt to negotiate a settlement of the action. Unless the court sets a different date, such conference shall take place no later than 30 days prior to the mediation conference.

(3) *Selection of Mediator.* If, after meeting, the parties are unable to agree upon a settlement, they shall attempt to agree upon the selection of a single mediator for settlement purposes from the register of attorneys. If they agree upon a selection, they shall file notice of their selection with the clerk of the court and shall send a copy of that notice to the selected attorney, who will thereupon be the mediator for that action unless he or she is unwilling or unable to so act. If the parties cannot agree upon the selection of a mediator, the attorney for the plaintiff shall promptly apply to the court for the designation of a mediator. The court shall thereupon promptly designate a mediator from the register and shall send notice of that designation to the mediator and to all attorneys of record in the action. The mediator will serve without compensation unless the parties agree otherwise.

(4) *Mediation Procedure.* Promptly upon the designation of a mediator, the plaintiff shall arrange a conference call among the mediator and counsel for each party to discuss procedural aspects of the mediation. Except to the extent the mediator directs otherwise, the following procedures shall apply:

(A) Copy of Pretrial Order or Pleadings. Upon selection of a mediator the parties shall provide the mediator with a copy of the Pretrial Order, if one has been lodged in the cause. If a Pretrial Order has not been lodged, they shall provide the mediator with copies of their relevant pleadings.

(B) Notice of Time and Place. The mediator shall fix a time and place for the mediation conference, and all adjourned sessions, that is reasonably convenient

for the parties and shall give them at least 14 days written notice of the initial conference. In giving notice the mediator may use a form provided by the court.

(C) Memoranda. Each party shall provide the mediator with a memorandum presenting in concise form its contentions relative to both liability and damages. This memorandum shall not exceed 10 pages in length. Copies of the memorandum shall be delivered to the mediator and served upon all other parties at least 7 days before the mediation conference. In addition, each party shall deliver to the mediator a confidential statement of its current offer or demand; this statement shall not be served on the other parties.

(D) Attendance and Preparation Required. The attorney who is primarily responsible for each party's case shall personally attend the mediation conference and any adjourned sessions of that conference. The attorney for each party shall come prepared to discuss the following matters in detail and in good faith:

1. All liability issues.

2. All damage issues.

3. The position of his or her client relative to settlement.

(E) Parties to Attend. In addition to counsel, parties and insurers having authority to settle, and to adjust pre-existing settlement authority if necessary, must attend the mediation in person. The mediator may in his or her discretion, but only in exceptional cases, excuse a party or insurer from personally attending a mediation conference. If a party or representative of an insurer is excused from personal attendance by the mediator, the party or representative shall be on call by telephone during the conference.

(F) Failure to Attend. Willful or negligent failure to attend the mediation conference, or to comply with this rule or with the directions of the mediator, shall be reported to the court by the mediator in writing and may result in the imposition of such sanctions as the court may find appropriate.

(5) *Notice to Clients of Mediator's Suggestions.* Counsel shall comply promptly with any request by the mediator that a party be advised of the mediator's suggestions as to settlement.

The mediator shall have no obligation to make any written comments or recommendations but may in his or her discretion provide the attorneys for the parties with a written settlement recommendation memorandum. No copy of any such memorandum shall be filed with the clerk or made available in whole or in part, directly or indirectly, either to the court or to the jury.

The attorneys for the parties shall forward copies of any such memorandum to their clients and shall advise them of the fact that the mediator is a qualified attorney who has agreed to act as an impartial mediator in an attempt to help the parties reach agreement and avoid the time, expense and uncertainty of trial.

(6) *Notice to Court.* The mediator shall provide the judge, the clerk's office, and the parties with a pleading stating (1) when the mediation occurred and (2) whether the case is resolved. The mediator also may submit a letter to the judge and the parties, not filed with the clerk, expressing the mediator's views as to whether the appointment of a settlement judge, or the use of other alternative dispute resolution procedures, would be advisable. In no event shall the mediator disclose any communication made between the mediator and the parties or their counsel.

**(d) Arbitration.**

(1) *Voluntary Submission to Arbitration.* Subject to the limitations of subsection (2) of this section, the parties to any civil action in this court, including an adversary proceeding in bankruptcy, may jointly request, or consent to, arbitration proceedings. All such proceedings shall be governed by the provisions of 28 U.S.C. §§ 651-658 relating to voluntary arbitration, for so long as those sections remain in effect and by this rule.

(2) *Eligible Cases.* The parties may consent to arbitration in any case, including an adversary proceeding in bankruptcy, except where:

(A) the case is based on an alleged violation of a right secured by the Constitution of the United States;

(B) jurisdiction is based in whole or in part on 28 U.S.C. § 1343, or

(C) the relief sought consists of monetary damages in an amount greater than $150,000.

For purposes of subsection (C) above, the court shall presume that damages are not greater than $150,000 unless counsel certifies that damages exceed that amount.

Notwithstanding the above, the court may decline to refer to arbitration any case in which the objectives of arbitration would not be realized:

(A) because the case involves complex or novel legal issues,

(B) because legal issues predominate over factual issues, or

(C) for other good cause.

(3) *Agreement and Order for Arbitration.* The parties may agree in writing to submit all or part of their claims to arbitration. Alternatively, the parties may prepare and submit their own form of agreement, and may thereby modify any of the provisions applicable to arbitration under this rule, subject to the approval of the court. Any agreement shall include a certification that the parties have been provided access to materials describing the arbitration program, and agree to arbitration freely and knowingly. If the parties agree that the arbitration is to be final and conclusive, with trial de novo waived, the agreement shall specifically so provide. A case shall be referred to arbitration only upon entry of an order to that effect by the judge to whom the case is assigned.

(4) *No Prejudice for Refusal.* A case shall be considered by a judge for reference to arbitration under this rule only if a consent form executed without limitation or qualification on behalf of every party has been received by the clerk. The plaintiff shall be responsible for securing the execution of consent forms by the parties and for filing such forms with the clerk of court. No consent will be made available, nor will its contents be made known to any judge, unless all parties have consented to the reference to arbitration. No party or attorney shall be pressured to consent to arbitration, or prejudiced in any way for refusing consent.

(5) *Scheduling in Arbitration Cases.* Prior to the arbitration hearing, the court shall:

> (A) set a trial date, which shall be no later than if the case had not been submitted for arbitration;
>
> (B) set a deadline for completion of all discovery. No discovery will be permitted during the period beginning ten days before the arbitration hearing and ending on the date the award is issued;
>
> (C) set a deadline for the commencement of the arbitration hearing, consistent with 28 U.S.C. § 653(b); and
>
> (D) set a deadline for the filing of pre-arbitration motions.

(6) *Number of Arbitrators.* Cases shall be heard by a single arbitrator unless the court orders otherwise.

(7) *Selection of Arbitrators.* All arbitrators shall be drawn from the register of neutrals unless the court orders otherwise in a particular case. The parties may secure a current register from the clerk. Within 14 days after the court orders arbitration, the parties may notify the clerk that they agree to nominate a specific arbitrator, and that the nominee has advised the parties that he or she is willing to serve. In the absence of such a nomination, the clerk shall nominate the arbitrator. In either event, the judge shall make the final appointment, and shall notify the arbitrator and the parties.

(8) *Oath or Affirmation and Powers of Arbitrator.* The arbitrator shall take an oath or

affirmation as prescribed by 28 U.S.C. § 453. The arbitrator shall have the power to conduct arbitration hearings, to administer oaths and affirmations, and to make awards.

(9) *Date and Place of Arbitration Hearing.* The arbitrator shall notify the parties of the date, time and place of the hearing. The hearing shall be scheduled in accordance with the deadline set by the court and for as early a date as possible, consistent with the parties' needs to complete their preparation.

(10) *Procedure at Arbitration Hearing.* The arbitrator shall provide directions to the parties as to the procedure at the hearing, including the length of time allotted to each side and whether pre-hearing memoranda are required. All testimony shall be given under oath or affirmation administered by the arbitrator. In receiving evidence, the arbitrator shall apply the Federal Rules of Evidence. Attendance of witnesses and production of documents may be compelled in accordance with Rule 45, Federal Rules of Civil Procedure. The arbitrator may make reasonable rules and issue orders necessary for the fair and efficient conduct of the hearing and prehearing proceedings. Failure, without good cause, to comply with the arbitrator's rules and orders shall be reported to the court for its imposition of sanctions as provided in Rule 37 of the Federal Rules of Civil Procedures and Local Rule GR 2 of this court.

(11) *Transcript or Recording.* A party may cause a transcript or recording to be made of the proceedings at its expense but shall, at the request of the opposing party, make a copy available to any other party upon the payment by that party of the cost of the copy.

(12) *Filing of Arbitrator's Award.* The arbitrator shall file his or her award with the clerk promptly after the hearing. The clerk shall transmit copies of the award to all parties. The award shall state clearly and concisely the name or names of the prevailing party or parties and the party or parties against which it is rendered, and the precise amount of money and other relief, if any, which is awarded. Unless otherwise required by the agreement to arbitrate, the award need not disclose the facts or reasons in support of the award. The award shall be in writing and signed by the arbitrator.

(13) *Effect of Award.* If the parties' agreement to arbitrate did not waive trial de novo the award shall be entered as the judgment of the court after the time has expired for requesting a trial de novo. The judgment so entered shall be subject to the same provisions of law and shall have the same force and effect as a judgment of the court in a civil action, except that the judgment shall not be subject to review in any other court by appeal or otherwise. If the parties' agreement to arbitrate specified that trial de novo was waived, the filing of the award shall be treated as a motion to confirm the award under 9 U.S.C. § 9, which motion shall automatically be deemed granted unless a motion to vacate, modify or correct the award for any of the grounds specified in 9 U.S.C. §§ 10 and 11 is served and filed within the time for requesting a trial de novo.

(14) *Sealing of Award.* The contents of any arbitration award shall not be made known to any judge who might be assigned to the case:

(A) except as necessary for the court to determine whether to assess costs of attorneys fees;

(B) until the district court has entered final judgment in the action or the action has been otherwise terminated; or

(C) except for purposes of preparing required reports.

(15) *Trial De Novo.*

(A) Time for Demand. Unless the agreement to arbitrate waived trial de novo, any party may, within 30 days of the filing of the award, serve and file a written demand for trial de novo. The case will then be treated for all purposes as if it had not been referred to arbitration.

(B) The trial de novo shall be conducted as though no arbitration proceeding had occurred. No reference shall be made to the arbitration award in any pleading, brief, or other written or oral statement to the trial court or jury either before or during the trial, nor, in a jury trial, shall the jury be informed that there has been an arbitration proceeding.

(C) Testimony given during the arbitration proceeding is admissible in subsequent proceedings by stipulation of the parties, or to the extent allowed by the Rules of Evidence, but the testimony shall not be identified as having been given in an arbitration proceeding.

(D) Costs and Attorney's Fees. Following the trial de novo, the court may assess costs, pursuant to 28 U.S.C. § 1920, and reasonable attorney fees against a party demanding the trial de novo if (i) that party fails to obtain a judgment more favorable to it than was the arbitration award and (ii) the court determines that the party's conduct in seeking a trial de novo was in bad faith.

(16) *Mediation Under Rule 39.1(c).* If the parties have participated in an arbitration hearing under this rule they will not be required to participate in mediation under Rule 39.1(c). They may choose to participate in such mediation, however.

**(e) Judicial Settlement Conferences.** In any case, the court may appoint a settlement judge who may conduct a settlement conference in such manner as that settlement judge may deem appropriate. Unless otherwise ordered by the court, a judicial settlement conference will only be held in a case where the parties have already participated in mediation, but have been unable to reach a settlement.

**(f) Other Alternative Dispute Resolution Procedures.** Upon application of the parties, the court may approve for use under this rule other ADR procedures if the court concludes that such procedures appear reasonably calculated to further the objectives of this rule. Such ADR

procedures include, but are not limited to, the following:

(1) *Early Neutral Evaluation.* This is an ADR procedure whereby the parties shall select a neutral from the register early in the case to provide an evaluation of the position of the parties regarding liability and damages. The early neutral evaluation shall be conducted according to procedures agreed to by the parties and determined by the neutral. The parties and their attorneys must attend such proceedings.

(2) *Summary Trial.* This is an ADR procedure whereby the parties make a presentation to a neutral, selected by them from the register, according to such procedures as may be agreed to by the parties and determined by the neutral. The parties and their attorneys must attend such proceedings. The summary trial may be with or without a jury. If a jury is used it is the responsibility of the parties to secure the availability of jurors to serve. After the trier of fact renders a decision in such summary trial proceeding, the attorneys and parties may conduct, under such terms as are determined by the neutral, interviews of the trier of fact and of the neutral. The summary trial may be followed, if the parties so agree, by another ADR procedure provided by this rule.

(3) *No Limitation on Use of ADR Alternatives.* Nothing herein is intended to prevent the parties from agreeing to use another dispute resolution alternative, subject to court approval as required by this rule. Nothing herein shall limit the ability of consent of parties to enter into arbitration agreements that are otherwise valid and enforceable under the Federal Arbitration Act, 9 U.S.C. § 1 et seq., RCW 7.04.010 et seq., or other comparable authority.

[Effective May 1, 1992; amended effective July 1, 1997; October 2, 2000; January 1, 2002; January 1, 2005.]

## CR 40. ASSIGNMENT OF CASES FOR TRIAL

**(a) Orders by Court.** The court may make such orders as may facilitate the prompt and just disposition of any action. If an action is at issue the court may order a pretrial conference under Rule 16 of the Federal Rules of Civil Procedure, or may order it set down for final disposition on a specified date, or may place it on a calendar for trial or hearing in due course.

**(b) Responsibility of Attorney.** Responsibility for the appearance of attorneys, parties and witnesses in court in readiness for trial is on the attorneys of record and is not on the clerk. Attorneys of record shall advise the clerk, upon request, regarding their readiness for trial, probable duration of trial, and such other matters within their knowledge as may facilitate the performance of the clerk's duties and the prompt trial of causes.

[Effective May 1, 1992; amended effective July 1, 1997.]

**CR 41. DISMISSAL OF ACTIONS**

**(a) [Reserved].**

**(b) Involuntary Dismissal; Effect Thereof.**

(1) Any case that has been pending in this court for more than one year without any proceeding of record having been taken may be dismissed by the court on its own motion for lack of prosecution. The plaintiff in any such action will be given an opportunity to show cause in writing, or at the court's election in open court, why the case should not be dismissed. A dismissal under this subparagraph will operate as an adjudication on the merits, as provided for in Fed.R.Civ.P. 41(b), unless the court orders otherwise.

(2) A party proceeding pro se shall keep the court and opposing parties advised as to his current address. If mail directed to a pro se plaintiff by the clerk is returned by the Post Office, and if such plaintiff fails to notify the court and opposing parties within 60 days thereafter of his current address, the court may dismiss the action without prejudice for failure to prosecute.

[Effective May 1, 1992; amended effective July 1, 1997.]

**CR 42. [RESERVED]**

U. S. Dist. Ct. Rules W.D.Wash., CR 42

**CR 43. EVIDENCE**

**(a) to (f) [Reserved].**

**(g) Marking of Exhibits.** Unless otherwise ordered by the court, on the morning of trial each party appearing shall present marked and tagged trial exhibits to the clerk. Exhibits shall be marked in accordance with the Pretrial Order. The clerk shall be provided with an original and a copy of each exhibit; provided, that leave may be sought from the court to dispense with providing copies of exhibits where bulk or other considerations would make copying, or the use of copies, impractical.

**(h) Procedure at Trial.**

(1) In the trial of an action the party having the affirmative of the issue shall open the cause by stating generally what he expects to prove. The opposite party shall either then, or after the opening party has closed his evidence in chief, state generally what he expects to prove. After all the evidence on each side is in, the party having the affirmative of the issue shall argue the cause to the court or jury, as the case may be, and shall, during such argument, state fully all of his points and refer to all of his authorities, or be precluded from a reply. The party holding the negative of the issue shall then argue his case, and the party having the affirmative shall close.

(2) Unless otherwise permitted by the court, counsel shall conduct the examination of witnesses and argument to the court or jury from the lectern, and counsel shall rise upon making objections or otherwise addressing the court.

(3) Not later than the close of each day of trial, counsel shall provide to opposing counsel a list of the witnesses he or she intends to call the following day of trial. This requirement may be modified for good cause shown.

**(i) Examination of Witnesses.** At trial only one attorney for a party shall examine or cross-examine any witness unless otherwise ordered by the court.

**(j) Expert Witnesses.** Except as otherwise ordered by the court, a party shall not be permitted to call more than one expert witness on any subject.

**(k) Attorney as Witness.** If an attorney of any party be examined as a witness on behalf of a party he represents and give testimony on the merits, he shall not argue the merits of the cause, either to the court or jury, except by the consent of the opposite party and the permission of the court.

**(l) Exclusion of Witnesses.** Counsel will be responsible for monitoring compliance with an order excluding witnesses from the courtroom during trial.

**(m) Presence of Attorneys.** It is the right and duty of attorneys to be present in the courtroom

at all times the court may be in session. If an attorney voluntarily absents himself during such times or when the jury is deliberating, he waives his right to be present and consents to such proceedings as may take place in the courtroom during his absence.

[Effective May 1, 1992; amended effective July 1, 1997.]

**CR 44 THROUGH 46. [RESERVED]**

U. S. Dist. Ct. Rules W.D.Wash., CR 44

**CR 47. JURORS**

**(a) Examination of Jurors.** The court will conduct a voir dire examination of the prospective trial jurors. To aid in the examination, counsel shall submit to the court, at such time as the court may direct, any questions they request be included in the examination. In addition, counsel may examine the prospective jurors directly if and to the extent permitted by the court.

**(b) Contacting Jurors.** Counsel shall not contact or interview jurors or cause jurors to be contacted or interviewed after trial without first having been granted leave to do so by the court.

Note

In *Smith v. Cupp*, 457 F.2d 1098 (9th Cir.1972) the Court of Appeals for the Ninth Circuit stated: "... this court has held, in a federal case, that it is improper and unethical for lawyers to interview jurors to discover what was the course of deliberation of a trial jury. *Northern Pacific Railway Co. v. Mely*, 219 F.2d 199, 202 (9th Cir.1954)."

[Effective May 1, 1992; amended effective July 1, 1997.]

**CR 48 TO 50. [RESERVED]**

U. S. Dist. Ct. Rules W.D.Wash., CR 48

## CR 51. JURY INSTRUCTIONS

**(a) Joint Instructions.** Twenty-one days before jury instructions are due, the parties shall exchange proposed jury instructions, verdict forms, and, if necessary, special interrogatories. Plaintiff is responsible for submitting proposed standard civil instructions and proposed instructions on any issue on which plaintiff bears the burden of proof. Defendant is responsible for submitting proposed instructions on any issue on which defendant bears the burden of proof. The parties shall confer with the objective of filing with the court one set of agreed-upon instructions, verdict forms, and interrogatories which addresses all elements of all claims and defenses in the case.

**(b) Disputed Instructions.** If the parties cannot agree on one complete set of instructions, verdict forms, and interrogatories, they shall file two documents with the court. The first document, titled "Joint Instructions," shall reflect all agreed-upon instructions, verdict forms, and interrogatories. The second document, titled "Joint Statement of Disputed Instructions," shall present each disputed instruction, verdict form, and/or interrogatories in the following order:

> (1) At the top of the page, the proposed language shall be set forth with an identification of the party proposing it and a statement of any legal authority in support of the proposed language (not to exceed one page);
>
> (2) Immediately following the proposed language and supporting legal authority, the opposing party shall set forth its alternative language, if any, and its objections to the proposed language along with any legal authority in support of the objections (not to exceed one page).

**(c) Format.** Each proposed instruction, whether filed jointly or under objection, shall be submitted on numbered paper. Each proposed instruction shall bear an unique instruction number and brief title at the top of the page and shall identify the source(s) of the proposed instruction at the bottom of the page.

The parties shall propose instructions from the most recent version of the Manual of Model Jury Instructions for the Ninth Circuit (see www.wawd.uscourts.gov) wherever appropriate. If Washington State law is to be applied to a particular issue and the federal model instructions are not applicable, the parties shall advise the court of any applicable portion of the Washington Pattern Jury Instructions--Civil, and either propose that instruction or explain why the court should not give it. Any modifications to instructions taken from the above sources or from any other form instructions must be specifically noted such that the court and opposing parties are able to identify each modification. Any authority supporting the modification shall also be noted.

A table of contents shall be included with all jury instructions submitted to the court. The table of contents shall set forth the following information:

(1) the number of the instruction;

(2) a brief title of the instruction;

(3) the source of the instruction;

(4) the page number of the instruction; and

(5) the proposing party(ies).

For example:

| Number | Title | Source | Page No. | Party |
|---|---|---|---|---|
| 3 | Burden of Proof | 9 [FNth] Cir. 5.1 | 4 | plaintiff |
| 4 | Disability Defined | WPIC 330.32 | 18 | defendant |

**(d) Filing.** The original "Joint Instructions" and **any** "Joint Statement of Disputed Instructions" shall be filed with the clerk. The parties shall provide a copy of the instructions for the judge. Both the original and the judge's copy shall include citations of authority. The parties are also strongly urged to provide an uncited copy for the judge in a disk format as directed by the in-court deputy or as published on the court's web site at **http:// www.wawd.uscourts.gov**. The judge may also require the parties to file printed, uncited copies.

**(e) Copy of Instructions for Jury Use.** The court will provide written copies of the instructions to the jury.

[Effective May 1, 1992; amended effective July 1, 1997; January 1, 2002.]

**CR 52 AND 53. [RESERVED]**

U. S. Dist. Ct. Rules W.D.Wash., CR 52

**CR 54. JUDGMENT**

**(a) through (c) Reserved.**

**(d) Costs.**

(1) *Motion for Costs.* The party in whose favor a judgment is rendered, and who seeks to recover costs, shall, within twenty days after the entry of judgment, file and serve a motion for costs and necessary disbursements. The motion for costs shall be noted for consideration pursuant to CR 7(d)(2). All costs shall be specified, so that the nature of the charge can be readily understood. The movant shall verify by the oath of the party or an agent having knowledge of the facts that such costs and disbursements have been necessarily incurred in the action.

If the party in whose favor judgment is rendered fails to file a motion for costs, all costs, other than statutory costs, shall be deemed to be waived.

(2) *Additional Briefing.* A party objecting to any item of costs shall file opposition papers at the time set forth in CR 7(d)(2). The moving party shall file a reply, if any, at the time set forth in CR 7(d)(2).

(3) *Taxation by Clerk.* Motions for costs shall be considered by the clerk of the court. All motions for costs will be decided by the clerk on the pleadings and without oral argument unless the clerk specifically directs the parties to appear for a hearing. The clerk shall allow such items specified in the motion which are properly chargeable as costs.

In taxing costs, the following rules shall be observed:

(A) The attendance, travel, and subsistence fees of witnesses, for actual and proper attendance, shall be allowed in accordance with 28 U.S.C. § 1821, whether such attendance was procured by subpoena or was voluntary;

(B) Reasonable premiums paid on undertakings or bonds or security stipulations shall be allowed where the same have been furnished by reason of express requirement of law, rule, or court order;

(C) Expenditures incident to the litigation which were ordered by the court as essential to a proper consideration of the case shall be allowed.;

(D) All other costs shall be taxed in accordance with 28 U.S.C. §§ 1920, 1921, 1923, 1927, and 2412.

(4) *Appeal.* The taxation of costs by the clerk shall be final, unless modified on appeal to the district court judge or magistrate judge to whom the case was assigned. An appeal

may be taken by filing a motion to retax which shall be filed and served within ten days after costs have been taxed and which shall specify the ruling(s) of the clerk to which the party objects. The motion to retax shall be noted for consideration pursuant to CR 7(d)(2).

[Effective May 1, 1992; amended effective September 30, 1994; July 1, 1997; January 1, 2002.]

**CR 55. DEFAULT**

**(a) Entry of Default.** Upon motion by a party noted in accordance with CR 7(d)(1) and supported by affidavit or otherwise, the clerk shall enter the default of any party against whom a judgment for affirmative relief is sought but who has failed to plead or otherwise defend. The affidavit shall specifically show that the defaulting party was served in a manner authorized by Fed. R. Civ. P. 4. A motion for entry of default need not be served on the defaulting party. However, in the case of a defaulting party who has entered an appearance, the moving party must give the defaulting party written notice of the requesting party's intention to move for the entry of default at least five judicial days prior to filing its motion and must provide evidence that such notice has been given in the motion for entry of default.

**(b) Judgment on Default.**

(1) By the Clerk. The clerk may not enter judgment by default in the case of a defaulting party who has entered an appearance, or who is an infant or incompetent, or who is or may be in the military service. In addition, a claim for "reasonable attorney's fees" is not for a sum certain under Fed. R. Civ. P. 55(b)(1) unless the complaint states the amount of fees sought. Motions to have the clerk enter a default judgment shall be noted in accordance with CR 7(d)(1). A motion for entry of default judgment by the clerk need not be served on the defaulting party.

(2) By the Court. In all other cases, including instances where a defaulting party has entered an appearance, is an infant or incompetent, or is or may be in the military service, a motion for entry of a judgment by default must be addressed to the court. If there has been no appearance in the action by the defaulting party, the motion shall be noted in accordance with CR 7(d)(1), but it need not be served on the defaulting party and notice of the motion need not be given to the defaulting party. If the defaulting party has appeared, the motion shall be noted in accordance with CR 7(d)(2), and service of all papers filed in support of the motion must be made at the defaulting party's address of record. In the absence of an address of record, service shall be made at the defaulting party's last known address. The court may conduct such hearing or inquiry upon a motion for entry of judgment by default as it deems necessary under the circumstances of the particular case.

[Effective May 1, 1992; amended effective July 1, 1997; January 1, 2002.]

**CR 56 TO 65. [RESERVED]**

U. S. Dist. Ct. Rules W.D.Wash., CR 56

## CR 66. RECEIVERSHIPS

In the exercise of the authority vested in the district courts by Rule 66 of the Federal Rules of Civil Procedure, this rule is promulgated for the administration of estates by receivers or by other similar officers appointed by the court. In respects other than administration of the estate, any civil action in which the appointment of a receiver or other similar officer is sought, or which is brought by or against such an officer, is governed by the Federal Rules of Civil Procedure and by these rules.

**(a) Inventories.** Unless the court otherwise orders, a receiver or similar officer as soon as practicable after his appointment and not later than 20 days after he has taken possession of the estate, shall file an inventory of all the property and assets in his possession or in the possession of others who hold possession as his agent, and in a separate schedule, an inventory of the property and assets of the estate not reduced to possession by him but claimed and held by others.

**(b) Reports.** Within six months after the filing of the inventory, and at regular intervals of six months thereafter until discharged, or at such other times as the court may direct, the receiver or other similar officer shall file reports of his receipts and expenditures and of his acts and transactions in an official capacity.

**(c) Compensation of Receivers, Attorneys and Others.** The compensation of receivers or similar officers, of their counsel, and of all those who may have been appointed by the court to aid in the administration of the estate, the conduct of its business, the discovery and acquirement of its assets, the formation of reorganization plans, and the like, shall be ascertained and awarded by the court in its discretion. Such an allowance shall be made only on such notice to creditors and other persons in interest as the court may direct. The notice shall state the amount claimed by each applicant.

**(d) Administration of Estates.** In all other respects the receiver or similar officer shall administer the estate as nearly as may be in accordance with the practice in the administration of estates in bankruptcy, except as otherwise ordered by the court.

**(e) Dismissal.** No action in which a receiver has been appointed shall be dismissed by any party except by leave of court and on such notice to other parties as the court may prescribe.

[Effective May 1, 1992; amended effective July 1, 1997.]

**CR 67 THROUGH 71. [RESERVED]**

U. S. Dist. Ct. Rules W.D.Wash., CR 67

## CR 72. MAGISTRATE JUDGES; PRETRIAL ORDERS

**(a) Reserved.**

**(b) Length of Objections and Responses.** Except as otherwise provided by court order or rule, objections to a magistrate judge's recommended disposition, or any response to the objections, shall not exceed twelve pages.

[Effective January 1, 2002.]

**CR 73 THROUGH 76. [RESERVED]**

U. S. Dist. Ct. Rules W.D.Wash., CR 73

## CR 77. DISTRICT COURTS AND CLERKS

**(a) through (d) Reserved.**

[Effective July 1, 1997.]

**CR 78. [RESERVED]**

U. S. Dist. Ct. Rules W.D.Wash., CR 78

## CR 79. BOOKS AND RECORDS KEPT BY THE CLERK AND ENTRIES THEREIN

**(a) through (e) Reserved.**

**(f) Files--Custody and Withdrawal.** All files and records of the court shall remain in the custody of the clerk and no record or paper belonging to the files of the court shall be taken from the custody of the clerk without a special order of the court or judge and a proper receipt signed by the person obtaining the record or paper. No such order will be made except upon urgent grounds stated in a written application for such order.

**(g) Custody and Disposition of Exhibits, Depositions.** After being marked for identification, all exhibits, except weapons or other sensitive materials, shall be placed in the custody of the clerk during the duration of the trial, unless otherwise ordered by the court. Any weapons or other sensitive exhibits shall be held in the custody of the counsel offering the exhibits during the trial. Upon completion of the trial, all exhibits shall be returned to counsel offering them, unless otherwise ordered by the court. A party or his attorney who has custody of an exhibit shall keep it available for the use of the court or an appellate court, and shall grant the reasonable request of any party to examine or reproduce the exhibit for use in the proceeding. This obligation shall continue until any appeal has been finally resolved or time for filing a notice of appeal or petition for writ of certiorari has expired.

**(h) Judicial Review of Administrative Proceedings.** Unless an extension of time is obtained from the court on a showing of good cause, in any action seeking review of a final decision of an administrative agency, the record of the agency proceeding shall be filed (1) within thirty days of the filing of the complaint or petition when the administrative agency is the plaintiff or petitioner; or (2) with the answer or return when the administrative agency is the defendant or respondent. The record of the agency will be returned to the submitting party at the end of the litigation and after the time for appeal has run.

[Effective May 1, 1992; amended effective July 1, 1997; January 1, 2002.]

**CR 80 THROUGH 85. [RESERVED]**

U. S. Dist. Ct. Rules W.D.Wash., CR 80

## CR 86. EFFECTIVE DATE

These local rules, as amended, shall apply to every civil case pending in the Western District of Washington, without regard to when the case was filed.

[Adopted effective September 30, 1994; amended effective July 1, 1997.]

**CR 87 TO 99. [RESERVED]**

U. S. Dist. Ct. Rules W.D.Wash., CR 87

**CR 100. PETITIONS FOR HABEAS CORPUS AND MOTIONS PURSUANT TO TITLE 28 U.S.C. SECTION 2255**

**(a) Form and Content.** Upon request, the clerk shall provide blank copies of forms prescribed by this court for petitions for writs of habeas corpus and motions filed pursuant to 28 U.S.C. § 2255. The petitioner shall provide all information required by the form. This rule applies where the filing fee has been tendered or where the petitioner is requesting to proceed in forma pauperis.

**(b) Forma Pauperis.** See CR 3.

**(c) Place of Filing.** See CR 5(e).

**(d) Copies of Petition.** Petitioners shall send to the clerk an original for filing and two copies of the completed petition or motion form for service upon the party to whom such petition or motion shall be addressed.

**(e) Verification.** If a petition or motion is not made and verified by the party in custody the person making such petition or motion shall verify the same on behalf of such party in custody, and shall set forth therein the reason why it is not made and verified by the party in custody, and shall state he knows the facts set forth therein, or if upon information and belief, the sources of his information shall be stated.

[Effective May 1, 1992; amended effective July 1, 1997.]

## CR 101. CASES REMOVED FROM STATE COURTS

**(a)** If the complaint filed in state court does not set forth the dollar amount prayed for, a removal petition shall nevertheless be governed by the time limitation of 28 U.S.C. § 1446(b) if a reasonable person, reading the complaint of the plaintiff, would conclude that the plaintiff was seeking damages in an amount greater than the minimum jurisdictional amount of this court. The notice of removal shall in that event set forth the reasons which cause petitioner to have a good faith belief that the plaintiff is seeking damages in excess of the jurisdictional amount of this court notwithstanding the fact that the prayer of the complaint does not specify the dollar damages being sought.

**(b)** Each petitioner for removal under Chapter 89 of Title 28, United States Code, shall file along with his notice of removal a copy of the complaint and shall, within ten days of filing his notice of removal, file with the clerk of this court black-on-white copies of all additional records and proceedings in the state court, together with his or his counsel's verification that they are true and complete copies of all the records and proceedings in the state court proceeding. The copies need not be certified or exemplified by the state court, and the added cost of certification or exemplification will not be allowed as a cost item under 28 U.S.C. § 1920(4) unless certification is required after an opposing party challenges the accuracy of the copies. Records and proceedings in the state court, filed with the notice of removal, need not be refiled.

**(c)** If a motion is pending and undecided in the state court at the time of removal, it will not be considered unless and until the moving party notes the motion on this court's calendar in accordance with CR 7(d).

**(d)** In a case removed from state court, a party must comply with Fed.R.Civ.P. 81(c) to preserve any right to a trial by jury.

[Effective May 1, 1992; amended effective July 1, 1997; January 1, 2002.]

## CR 102. COMPLEX, MULTIPLE AND MULTIDISTRICT LITIGATION

**(a) Definitions.**

"Complex litigation," as used in these rules, includes one or more related cases which present unusual problems and which require extraordinary treatment, including but not limited to the cases ordinarily designated as "protracted" or "big."

"Multiple litigation," as used in these rules, is two or more complex civil cases with one or more common questions of fact pending in one district.

"Multidistrict litigation," as used in these rules, is two or more civil cases with one or more common questions of fact pending in more than one federal district.

The policy of the court is to identify complex, multiple and multidistrict litigation as expeditiously as possible, and to apply where appropriate the provisions of the Manual for Complex Litigation (the most current edition is maintained by the Seattle Ninth Circuit Library).

**(b) [Abrogated].** (See CR 7(a) for use of Civil Cover Sheet)

[Effective May 1, 1992; amended effective July 1, 1997; amended November 9, 1998.]

## CR 103. PRISONER COMPLAINTS UNDER CIVIL RIGHTS ACT, 42 U.S.C. § 1983

**(a) Form of Complaint.** Complaints filed pursuant to the Civil Rights Act, 42 U.S.C. § 1983 by or on behalf of prisoners, shall be typewritten or legibly handwritten, and signed by each plaintiff. Such complaints shall be on the forms supplied by the court unless the district judge or magistrate judge, upon finding that the complaint is understandable and that it conforms with the local rules and Federal Rules of Civil Procedure, in his or her discretion, accepts for filing a complaint that is not submitted on the appropriate forms.

**(b) Forma Pauperis.** See CR 3.

**(c) Place of Filing.** See CR 5(e).

**(d) Copies of Complaint.** Plaintiff shall send to the clerk an original complaint form for filing, one copy for each defendant named, plus one additional copy to be returned to plaintiff.

[Effective May 1, 1992; amended effective July 1, 1997.]

## CR 104. SUPPLEMENTAL REQUIREMENTS FOR FIRST HABEAS CORPUS PETITIONS IN CAPITAL CASES

**(a) Applicability.** This rule shall govern the procedures for a first petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254 in which petitioner seeks relief from a judgment imposing a penalty of death. A subsequent filing may be deemed a first petition under this rule if the original filing was not dismissed on the merits. This rule is intended to supplement the Rules Governing § 2254 Cases and is not intended to alter or amend those rules. The application of this rule to a particular petition may be modified by the district judge to whom the petition is assigned.

**(b) Notices From Washington Attorney General.** The Washington Attorney General shall send to the clerk of this court a monthly report summarizing the status of each case wherein a Washington court has imposed the sentence of death.

**(c) Notice From Petitioner's Counsel.** Whenever counsel determines that a petition will be filed in this court, he or she shall promptly file with the clerk of this court and send to the Washington Attorney General's Corrections Division a written notice of intention to file a petition. The notice shall state the name of the petitioner, the district in which petitioner was convicted, the place of petitioner's incarceration, and the status of petitioner's state court proceedings. The notice is for the information of the court only, and failure to file the notice shall not preclude the filing of the petition.

**(d) Counsel.**

(1) *Appointment of Counsel.* Each petitioner shall be represented by counsel, unless petitioner has clearly elected to proceed pro se and the court is satisfied, after a hearing, that petitioner's election is intelligent and voluntary.

Unless petitioner is proceeding pro se or is represented by retained counsel, counsel shall be appointed in every such case at the earliest practicable time. A panel of attorneys qualified for appointment in death penalty cases will be recruited and maintained by the Federal Public Defender. The Federal Public Defender will accept and review referrals to this panel from interested associations and bar groups.

When a death judgment is affirmed by the Washington Supreme Court and subsequent proceedings in the state courts have been concluded, if counsel is willing to continue representation in the federal habeas corpus proceedings, the Federal Public Defender shall review counsel's performance in the state courts and make a recommendation of whether that counsel should be appointed in federal court.

If state post-conviction counsel is available to continue representation in the federal court, and if he or she is deemed qualified to do so by the Federal Public Defender, there is a presumption in favor of continued representation except where state post-conviction counsel was also counsel at trial.

In light of this presumption, it is expected that appointed counsel who is willing to continue representation and who has been determined by the Federal Public Defender to be qualified to do so would ordinarily file a motion for appointment of counsel on behalf of his or her client together with the client's federal habeas corpus petition. If, however, counsel for any reason wishes to confirm his or her appointment before preparing the petition, counsel may move for appointment before filing the petition.

If state appellate counsel is not available to represent petitioner in the federal habeas corpus proceedings, or if appointment of state appellate counsel would be inappropriate for any reason, the court shall appoint counsel upon application of petitioner. The clerk of court shall have forms available for such application. A model form for such application is annexed to this rule. Counsel shall be appointed from the panel of qualified attorneys maintained by the Federal Public Defender, who may suggest one or more specific counsel for appointment. If application for appointment of counsel is made before a finalized petition has been filed, the application shall be assigned to a district judge in the same manner that a finalized petition would be assigned, and counsel shall be appointed by the assigned judge. The judge so assigned shall continue to preside over the proceedings through their conclusion.

(2) *Second Counsel.* Appointment and compensation of second counsel shall be governed by § 2.11 of Volume VII of the Guide to Judiciary Policies and Procedures, Appointment of Counsel in Criminal Cases, and by 21 U.S.C. § 848(q).

**(e) Filing.** Petitions as to which venue lies in this district shall be filed in Seattle.

Petitions shall be completed in conformance with Local Rule CR 100. All petitions (a) shall state whether petitioner has previously sought relief arising out of the same matter from this court or any other federal court, together with the ruling and reasons of such court, and (b) shall set forth any scheduled execution date. The above requirements do not apply to preliminary petitions filed under Section (h)(2), below.

An original and three copies of the petition shall be filed by counsel for the petitioner. A pro se petitioner need only file the original. No filing fee is required.

The clerk of the court will immediately notify the Washington Attorney General's Corrections Division when a petition is filed.

When a petition is filed by a petitioner who was convicted outside this district, the clerk of the court will immediately advise the clerk of the court of the district in which the petitioner was convicted.

**(f) Assignment to District Judges.** Notwithstanding the general assignment plan of this court, petitions shall be assigned to the district judges of the court as follows:

(1) The clerk of the court shall establish a separate category for these petitions, to be designated with the title "Capital Case."

(2) All active district judges of this court shall participate in the assignments without regard to intradistrict venue.

(3) Until each active district judge has one capital case, petitions in the Capital Case category shall be assigned blindly and randomly by the clerk of the court to each of the active district judges of the court. At such time as each active district judge has one capital case, the blind assignment process will start again until each active district judge has two capital cases, and so on.

(4) If the assigned district judge has filed a Certificate of Unavailability with the clerk of the court which is in effect on the date of the assignment, a new random assignment will be made to another judge immediately.

(5) If the petitioner has previously sought relief in this court with respect to the same conviction, the petition will be assigned to the district judge, if he or she is still sitting, who was assigned to the prior proceeding unless such district judge has taken senior status and has elected not to hear capital habeas corpus petitions.

(6) Pursuant to 28 U.S.C. § 636(b)(1)(B), and not inconsistent with law, United States magistrate judges may be designated by the court to perform all duties under this rule, including evidentiary hearings.

**(g) Transfer of Venue.** Subject to the provisions of 28 U.S.C. § 2241(d), it is the policy of this court that a petition should be heard in the district in which the petitioner was convicted, rather than in the district of petitioner's present confinement.

If an order for the transfer of venue is made, the district judge will order a stay of execution which shall continue until such time as the transferee court acts upon the petition or the order of stay.

**(h) Stays of Execution.**

(1) *Stay Pending Final Disposition.* Upon the filing of a first petition, unless the petition is patently frivolous, the judge will order a stay of execution pending final disposition of the petition in this court.

(2) *Temporary Stay for Appointment of Counsel.* Where counsel in the state court proceedings withdraws at the conclusion of the state court proceedings or is otherwise not available or qualified to proceed, the Federal Public Defender will designate an attorney from the panel who will assist an indigent petitioner in filing pro se applications for appointment of counsel and for temporary stay of execution. This application shall be substantially in the form annexed hereto and shall be accompanied by a statement, describing one or more federal grounds for relief, which shall be deemed to be a petition for writ of habeas corpus with leave granted a priori to amend the petition upon appointment of counsel. Upon the filing of this application and statement, the district court shall issue a temporary stay of execution and appoint counsel from the panel of attorneys certified for appointment. The temporary stay will remain in effect for forty-five (45) days unless extended by the court.

(3) *Temporary Stay for Preparation of the Petition.* Where counsel new to the case is appointed, upon counsel's application for a temporary stay of execution accompanied by a specification of nonfrivolous issues to be raised in the petition, the district court shall issue a temporary stay of execution unless only frivolous issues are presented. If no filing was made under paragraph (h)(2) above, the specification of nonfrivolous issues required under this paragraph shall be deemed to be a petition for writ of habeas corpus with leave having been granted to amend the petition. The temporary stay will remain in effect for one hundred twenty (120) days to allow newly appointed counsel to prepare and file the finalized petition. The temporary stay may be extended by the court upon a subsequent showing of good cause.

(4) *Temporary Stay for Transfer of Venue.* See paragraph (g) of this rule.

(5) *Stay Pending Appeal.* If the petition is denied and a certificate of probable cause for appeal is issued, the court will grant a stay of execution which will continue in effect until the court of appeals acts upon the appeal of the order of stay.

(6) *Notice of Stay.* Upon the granting of any stay of execution, the clerk of the court will immediately notify the Superintendent of the Washington State Penitentiary, the Washington Attorney General, and the prosecuting attorney of

the county in which the conviction was obtained. The Washington Attorney General shall ensure that the clerk of the court has a twenty-four hour telephone number to the Superintendent.

**(i) Procedures for Considering the Petition.** Unless the district judge dismisses the petition under Rule 4 of the Rules Governing § 2254 Cases, the following schedule and procedure shall apply subject to modification by the district judge for good cause shown. Requests for enlargement of any time period in this Rule shall comply with Local Rule CR 6.

(1) Respondent shall as soon as practicable, but in any event on or before twenty (20) days from the date of service of the finalized petition, lodge with the court and serve petitioner's lead counsel with the following:

(A) Transcripts of all state trial court proceedings;

(B) Appellant's and respondent's briefs on direct appeal to the Washington Supreme Court, and the opinion or orders of that court;

(C) Petitioner's and respondent's briefs in any state court post-conviction proceedings, and all opinions, orders, and transcripts of such proceedings;

(D) Copies of all pleadings, opinions, and orders in any previous federal habeas corpus proceeding filed by petitioner, or on petitioner's behalf, which arose from the same conviction;

(E) An index of all materials described in items (A) through (D) above. Such materials are to be marked and numbered so that they can be uniformly cited.

If any items identified in paragraphs (A) through (D) above are not available, respondent shall state when, if at all, such missing material can be lodged.

(2) If counsel for petitioner claims that respondent has not complied with the requirements of paragraph (1), counsel for petitioner shall immediately notify the court in writing, with a copy to respondent.

(3) As soon as practicable after the filing of the record, the court shall set a status conference to determine a schedule for further proceedings.

**(j) Evidentiary Hearing.** If an evidentiary hearing is held, the court will order the preparation of a transcript of the hearing, which is to be immediately provided to

petitioner and respondent for use in briefing and argument. Upon the preparation of the transcript, the court may establish a reasonable schedule for further briefing and argument of the issues considered at the hearing.

**(k) Rulings.** The court's rulings may be in the form of a written opinion which will be filed, or in the form of an oral opinion on the record in open court, which will be promptly transcribed and filed.

The clerk of the court will immediately notify the Superintendent of the Washington State Penitentiary, the Washington Attorney General, and the prosecutor of the county of conviction whenever relief is granted on a petition.

The clerk of the court will immediately notify the clerk of the United States Court of Appeals for the Ninth Circuit by telephone of (i) the issuance of a final order denying or dismissing a petition without a certificate of probable cause, or (ii) the denial of a stay of execution.

When a notice of appeal is filed, the clerk of the court will transmit the available records to the Court of Appeals immediately.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

| | |
|---|---|
| _____, ) | |
| ) | |
| Petitioner, ) | |
| ) | Case No. _____ |
| v. ) | |
| ) | APPLICATION FOR |
| _____, ) | WRIT OF HABEAS |
| Superintendent of Washington ) | CORPUS; APPLICA- |
| State Penitentiary, ) | TION FOR APPOINT- |
| ) | MENT OF COUNSEL; |
| Respondent. ) | REQUEST FOR STAY |
| _____ ) | OF EXECUTION |

My name is _____. I am a prisoner in state custody

under sentence of death. I was convicted and sentenced in the _____ County Superior Court. My death sentence was affirmed by the Washington Supreme Court on _____, 20___. My scheduled execution date is _____, 20___.

I was tried and I am being held in violation of my federal constitutional rights, including the following:

(1)
_____;

(2)
_____;

(3)
_____;

(Include at least one federal ground for relief)

The attorney representing me in my most recent state court proceedings in connection with my conviction and death sentence has informed me that he/she is unable to represent me in federal habeas corpus proceedings. I am indigent and have substantially no assets. I hereby request that the court appoint an attorney to represent me in my petition for writ of habeas corpus in this court.

I also request that the court stay my execution at this time until counsel has been appointed and permit me leave to amend this petition after counsel has had opportunity to assist me. I declare under penalty of perjury that the foregoing is true and correct.

DATED: _____ _____

Signature of Prisoner

[Effective May 1, 1992; amended effective July 1, 1997; January 1, 2002.]

**CIVIL RULES: APPENDIXES**

## APPENDIX A. DEFENDANT'S SECOND MOTION FOR PROTECTIVE ORDER

**See CR 10(e)(1)**

The Honorable Robert S. Lasnik

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

| | | |
|---|---|---|
| ABC CORPORATION,<br><br>Plaintiff,<br>v.<br><br>XYZ COMPANY, INC.,<br><br>Defendant. | ) | No. C00-0000L<br><br>DEFENDANT'S SECOND MOTION<br>FOR PROTECTIVE ORDER<br><br>NOTE ON MOTION CALENDAR:<br>[insert date] |

[Insert Text]

DEFENDANT'S SECOND MOTION
FOR PROTECTIVE ORDER (C00-0000L)

Law Firm of Lawyers
10,000 Fifth Avenue
Seattle, Washington 98104
(206) 555-5555

[Effective January 1, 2002.]

**CIVIL RULES: APPENDIXES**

**APPENDIX B. SUBMISSION REGARDING REQUEST FOR PRODUCTION**

**See CR 37**

The Honorable Robert S. Lasnik

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

| | | |
|---|---|---|
| JONES ACTOR, Plaintiff, | ) | No. C01-9999L |
| v. | ) | CR 37 SUBMISSION REGARDING REQUEST FOR PRODUCTION |
| BIG ROSE FLOWER COMPANY, Defendant. | ) | NO. 17<br>NOTE ON MOTION CALENDAR:<br>[insert date] |

## I. MOVING PARTY'S INTRODUCTORY STATEMENT.

Defendant Big Rose Flower Company is the moving party for this submission. Plaintiff Jones Actor is seeking more than $2.5 million in damages, claiming that at the time he purchased Big Rose stock, Big Rose allegedly failed to disclose that the property owned by Big Rose for growing flowers would be unable to produce a suitable crop in 2000. It is claimed that these alleged misstatements violated Section 10(b) of the 1934 Securities Exchange Act and the Washington Securities Act.

These allegations are untrue. Further, Actor is a director of a company that is also in the flower business, Fleurs 'R' Nous Company, and he was undoubtedly aware of the problems caused by the 1999 drought, which affected all flower producing companies in the Northwest.

## II. RESPONDING PARTY'S STATEMENT.

Jones Actor purchased nearly $3 million of stock in Big Rose--stock that is worth less than $500,000 today. He purchased this substantial amount of stock because of glowing reports from Big Rose regarding its prospects for future profits.

However, things were not as rosy as they seemed. All of Big Rose's land holdings used to produce flowers were not only severely parched by the 1999 drought, but also contaminated with chemicals because of a mistake in choosing fertilizers. Big Rose knew that it was unlikely that these chemicals could be removed from the soil in time to produce a profitable crop for 2000. When this information was finally disclosed to the public, Big Rose stock plummeted in value.

## III. DISPUTED DISCOVERY REQUESTS.

REQUEST FOR PRODUCTION 17: Please produce all income tax returns for 1995 through 2000 for the Fleurs 'R' Nous Company.

RESPONSE: Actor objects to this request on the grounds that it calls for information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Further, the information sought is confidential.

**Moving Party's Argument:**

Actor claims that he was deceived by the alleged omissions of information from Big Rose's public statements. To defend against this claim, Big Rose will show that Actor is a sophisticated individual, who was aware of the risks in the flower business and who also had information obtained by Fleurs 'R' Nous regarding the problems that Big Rose was having with its land at the time he was buying Big Rose stock. Defendants in security cases are properly allowed to obtain tax returns, because they help show the plaintiff's degree of sophistication and understanding of the risks of investment. Davis v. Big Co., 123 F.4 [FNth] 777, 788 (9 [FNth] Cir. 1999). Further, the tax return may identify individuals with knowledge of Actor's understanding of the industry.

**Responding Party's Response.**

While it is true that tax returns may be produced to show the degree of sophistication of a securities plaintiff, the tax returns sought here are not Actor's personal tax returns, but rather the tax returns for a company in which he is a director and part owner. That company is not a party to these proceedings. Non-parties should not be forced to produce their tax returns absent very compelling reasons. Westminster v. Abbey, 867 F.5 [FNth] 309, 312 (9 [FNth] Cir. 1999). No compelling reasons have been presented. Fleurs 'R' Nous is not a publicly traded company, and its financial and other information is maintained as confidential. It is a competitor of Big Rose, and disclosure of this information through discovery could be harmful.

**Moving Party's Reply.**

Actor's supposed concern about Fleurs 'R' Nous' confidential information can be addressed through a protective order. Big Rose will agree not to disclose this information to persons other than counsel and experts absent agreement of the parties or further order of the Court. While Fleurs 'R' Nous is not a party, its tax returns may contain information about money spent

addressing the drought problem that was common to several floral companies. Thus, the information could lead to the discovery of admissible evidence.

**CERTIFICATION**

I certify that the full response by the responding party has been included in this submission, and that prior to making this submission the parties conferred to attempt to resolve this discovery dispute in accordance with CR 37(a).

DATED: June 1, 2001.

_____

Ira Just (WSBA #1234) Attorneys for Big Rose Company Moving Party

CR 37 SUBMISSION
(C01-9999L)

Law Firm of Lawyers
10,000 Fifth Avenue
Seattle, Washington 98104
(206) 555-5555

[Effective January 1, 2002.]