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September 24, 2020

Honorable Charles W. Johnson, Chair
Supreme Court Rules Committee
c/o Clerk of the Supreme Court
Temple of Justice
P.O. Box 40929
Olympia, WA 98504-0929

Re: CR 43(f)(1) - Taking of Testimony - Support with Modification

Dear Justice Johnson:

The Superior Court Judges' Association Board of Trustees respectfully requests that the Supreme Court Rules committee adopt the following modification to the proposed amendment to CR 43(f)(1).

The proposed amendment to CR 43 argues that language describing the days that should be excluded from computation of the period of time required for notice is duplicative and confusing, since CR 6 essentially provides all of the necessary parameters. The proposed amendment asks that the duplicative language in CR 43(f)(1) simply be deleted.

While CR 6 does provide all the necessary parameters for computation of proper notice periods, the SCJA disagrees that deleting language from CR 43 is the best solution. If the language is simply removed from the rule without any reference to CR 6, practitioners could argue that the day of service, Saturdays, Sundays, and holidays should be counted in the computation of any time period. This could cause greater, not less, confusion.

For this reason, the SCJA recommends an alternative amendment which would reference CR 6.

(1) *Party or Managing Agent as Adverse Witness.* A party, or anyone who at the time of the notice is an officer, director, or other managing agent (herein collectively referred to as "managing agent") of a public or private corporation, partnership or association which is a party to an action or proceeding may be examined at the instance of any adverse party. Attendance of such deponent or witness may be compelled solely

by notice (in lieu of a subpoena) given in the manner prescribed in rule 30(b)(1) to opposing counsel of record. Notices for the attendance of a part or of a managing agent at the trial shall be given not less than 10 days before trial ~~(exclusive of the day of service, Saturdays, Sundays, and court holidays)~~ pursuant to CR 6. For good cause shown in the manner prescribed in rule 26(c), the court may make orders for the protection of the party or managing agent to be examined.

Thank you for your consideration of our comments. Please feel free to contact me at judith.ramseyer@kingcounty.gov or Judge Mary Sue Wilson at wilsonm@co.thurston.wa.us if you would like to discuss our comments.

Sincerely,



Judge Judith H. Ramseyer, President
Superior Court Judges' Association

cc: SCJA Board of Trustees
Judge Mary Sue Wilson
Ms. Shannon Hinchcliffe
Mr. Tom Creekpaum
Ms. Crissy Anderson

From: [OFFICE RECEPTIONIST, CLERK](#)
To: [Linford, Tera](#)
Cc: [Tracy, Mary](#)
Subject: FW: Rules Comments from SCJA
Date: Thursday, September 24, 2020 10:46:16 AM
Attachments: [CR 43\(f\)\(1\) Taking of Testimony Support with Modifications 09242020.pdf](#)

From: Ireland, Shelley
Sent: Thursday, September 24, 2020 10:23 AM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Cc: 'Ramseyer, Judith' <Judith.Ramseyer@kingcounty.gov>; 'Mary.sue.wilson@co.thurston.wa.us' <Mary.sue.wilson@co.thurston.wa.us>; Anderson, Crissy <Crissy.Anderson@courts.wa.gov>
Subject: Rules Comments from SCJA

Good afternoon,

On behalf of the Superior Court Judges' Association (SCJA) President, Judge Judith Ramseyer, please see the attached letter with rule comments from the SCJA.

Thank you,
Shelley

Shelley Ireland, Court Program Specialist
Administrative Office of the Courts, Office of Legislative and Judicial Relations
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360-704-1924 or Shelley.Ireland@courts.wa.gov

Get the most current information on the Courts' response to COVID-19 [here](#).