

*Mary Schultz & Associates, P.S.*

Attorneys at Law

810 Lincoln Building  
818 West Riverside  
Spokane, Washington 99201

[www.mschultz.com](http://www.mschultz.com)

PHONE (509) 458-2750  
FAX (509) 458-2730  
1-800-949-2360

April 30, 2007

Via Email: [Camilla.Faulk@courts.wa.gov](mailto:Camilla.Faulk@courts.wa.gov)

The Supreme Court of Washington  
P.O. Box 40929  
Olympia, WA 98504 - 0929

**Comment re: Proposed CR 45 changes.**

Your Honors:

Comments were invited on the proposed amendment to CR 45, which disallows the use of the CR 45 subpoena duces tecum on parties to an action. My comment would be that this court should retain the allowed use of CR 45 on parties.

Applying CR 45 document production subpoenas to parties in state court actions seems necessary and appropriate, as the nature of some state court actions differs quite dramatically from federal actions. In state court family law actions, for instance, subpoenas of documents from parties are often necessary in time crunch matters, such as in objections to relocations, temporary hearings for material orders, depositions related to ongoing developments, and even family law trials – which are usually set up on shorter time schedules than other kinds of cases, and have very lax compliance timelines (which trial judges may or may not enforce). A subpoena duces tecum is often required on shortened time to receive crucial documents under the control of only one of the parties, and disclosed late. As an example, out of necessity, often a parties' deposition is taken just prior to a discovery cut off, and if new documentary evidence comes to light, no time remains for additional interrogatories to be sent. A CR 45 subpoena is the only remaining means to receive the evidence. SDTs are also issued during trial if information materializes necessitating such, as it is not at all unusual that a party will try and introduce new documents right before, or even during, trial, and trial courts will often allow those documents to be admitted. A CR 45 subpoena thus become critical

Obviously, large productions would continue to be requested under CR 34 production mechanisms, allowing a party no less than 30 days to respond. But where specific documents are discovered to be under the control of a party during the last 30 days of discovery, or close to or during trial, the only way to receive those documents is

CLERK

BY RONALD R. CARPENTER

2007 MAY -1 A 9:19

STATE OF WASHINGTON  
SUPREME COURT

FILED

through a CR 45 subpoena directed to that party. Absent the ability to use a CR 45 subpoena on a party, injustice could result.

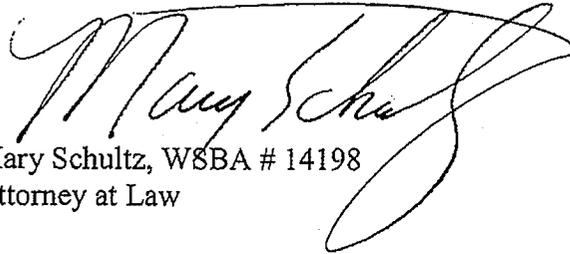
Finally, eradicating the ability to use CR 45 SDTs on parties also creates inequities for non-party witnesses. Should the proposed CR 45 version be adopted, non-party witnesses under CR 45 will have more onerous time compliance burdens than the parties themselves have under CR 34. As well, a CR 45 subpoena act as an *order* of the court, thus engendering a greater threat of contempt for non-parties if not honored. Such requirements for non-parties that are not required of parties in a litigation would seem quite questionable to the public.

We respectfully submit that Washington State Supreme Court retain CR 45's use as properly directed to parties.

Respectfully submitted,



Amy Rimov, WSBA # 30613  
Attorney at Law



Mary Schultz, WSBA # 14198  
Attorney at Law