

## Faulk, Camilla

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**From:** Adams, Kate (ATG) [KateA@ATG.WA.GOV]  
**Sent:** Wednesday, April 08, 2009 10:23 AM  
**To:** Faulk, Camilla  
**Subject:** RE: Proposed Changes to CR 26

Ms. Faulk:

Regarding the proposed changes to CR 26, and consistent with my suggestions for CR 45, I suggest the following revisions to the new section 6:

(6) *Claims of Privilege or Protection as Trial-Preparation Materials for Information Produced.* If information produced in discovery is subject to a claim of privilege or of protection as trial-preparation material, the ~~person-party~~ making the claim may notify any party ~~that received the information~~ of the claim and the basis for it. After being notified, a party receiving the information must promptly return, ~~sequester,~~ or destroy the specified information and any copies it has, or may promptly present all copies of the information in camera to the court for a determination of the claim. ~~;- must not use or disclose the information until the claim is resolved; and must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information in camera to the court for a determination of the claim.~~ The person responding to the subpoena must preserve the information until the claim is resolved. A party, other than the claimant, may ~~must not use or disclose the information until the claim is resolved; and must take reasonable steps to retrieve~~ or protect the information if the party disclosed it before being notified.;

Kate M. Adams

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**From:** Adams, Kate (ATG)  
**Sent:** Wednesday, April 08, 2009 9:39 AM  
**To:** 'Camilla.Faulk@courts.wa.gov'  
**Subject:** Proposed Changes to CR 45

Ms. Faulk:

Regarding the proposed changes to CR 45, I suggest the following revisions to section B, for the reasons identified.

(B) If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party ~~that received the information~~ of the claim and the basis for it. After being notified, a party receiving the information (n.1) must promptly return, ~~sequester,~~ (n.2) or destroy the specified information and any copies it has, or may promptly present all copies of the information in camera to the court for a determination of the claim. (n.3) ~~;- must not use or disclose the information until the claim is resolved; and must take reasonable steps to retrieve the information if the party~~

~~disclosed it before being notified; and may promptly present the information in camera to the court for a determination of the claim. (n.4) The person responding to the subpoena must preserve the information until the claim is resolved. A party, other than the claimant, may ~~must~~ not use or disclose the information until the claim is resolved; and must take reasonable steps to retrieve or protect the information if the party disclosed it before being notified. (n.4)~~

## Notes

1. The section appears to be drafted to allow persons other than the respondent to the subpoena to make a claim of privilege. If this is the intent of the section, then that person should have to notify both the person requesting the information, and the person responding to the subpoena.
2. How does one "sequester" information?
3. These items must be presented in the alternative, otherwise, they are in conflict, because if a person must destroy the information, then the person is unable to present it to the court in camera.
4. Again, the section is drafted to allow persons other than the respondent to the subpoena to make a claim of privilege. If this is the intent of the section, then all parties (other than the claimant), should be prohibited from use or disclosure.

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