WASHINGTON STATE ASSOCIATION for JUSTICE™

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April 29, 2016

SENT VIA EMAIL TO supreme@courts.wa.gov

Clerk of the Supreme Court
PO Box 40929
Olympia WA 98504-0929

Re: ***Proposed Changes to CRLJ 26(g)***

To the Justices of the Court:

On behalf of the members of the Washington State Association for Justice (WSAJ), we write to comment on the proposed amendment to CRLJ 26(g). We greatly respect the District and Municipal Courts Judges' Association. But the WSAJ is very concerned that the proposed amendment, although well meaning, would not serve its intended purposes. We anticipate that it would instead result in delay and discovery abuse. It would also eliminate a major distinguishing feature of district court—a discovery deadline that induces speedy resolution of smaller claims. The end result would be many fewer cases being filed in district court instead of superior court. The WSAJ and its members oppose the proposed amendment.

A. Removing the Discovery Deadline Would Decrease Judicial Efficiency

The limited discovery available to parties in district court highlights the streamlined civil-litigation process that distinguishes district court from superior court. The jurisdictional limits and expedient discovery processes of district court allow parties to efficiently resolve their disputes without needless waste of time and resources of both the judiciary and the parties. District court provides a forum in which parties with smaller claims can commence the litigation process and then achieve a just result within a reasonable period of time.

The current discovery deadlines are consistent with the spirit of justice and efficiency that pervades the Civil Rules of Limited Jurisdiction. CRLJ 26(g) provides that parties can conduct discovery until 60 days from the service of the first discovery request or 90 days from the service of the summons and complaint, whichever is longer. Because CRLJ 26(b)-(e) establishes presumptive limits on the amount of discovery that one party can seek from another party, it is appropriate to expect and require the parties to complete that limited discovery in a limited time period. Additional time for discovery would not result in more-developed cases or more cases being settled, because the amount of information that can be requested through discovery would remain exactly the same. The proposed change would

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simply allow the parties to take their time in requesting this information instead of getting discovery completed expediently. As a result, cases would linger on court dockets for longer periods of time.

The removal of discovery deadlines would prejudice plaintiffs seeking just and efficient resolution of their legal claims. Without discovery deadlines, there would be nothing to prevent a defendant from delaying a resolution by delaying in requesting discovery. The only tool a plaintiff would have to combat this delay would be demanding and setting a date for trial.

Without a discovery deadline, however, there would be nothing to prevent defendants from waiting until the last minute, perhaps even within weeks of trial, to send discovery requests or note depositions. Defendants would then be able to petition courts to continue trials for the same reasons that they currently petition the courts to extend the discovery deadline: they need to obtain more discovery to adequately prepare for trial.

Pushing back trial dates not only works against judicial efficiency, but also against the interests of low income plaintiffs. These individuals are often seeking damages to pay for outstanding medical bills and other expenses incurred as a result of another's negligence. As time passes, interest on these bills accrues, and as our membership observes far too often, our clients are forced to settle short of what the merits of their claim is worth. That is not justice, and that is not the intent of the rules.

Removing the discovery deadline would not "improve court efficiency by requiring motions only where the parties are seeking to expand the discovery limitations (three depositions, 15 interrogatories, etc.), rather than the time constraints." While removal of discovery deadlines would necessarily result in fewer motions to extend those deadlines, it would significantly increase the number of motions to continue trials. As a result, removing discovery deadlines would result in a simple trade: fewer motions to extend discovery in exchange for more motions to continue trial so as to allow for additional discovery.

Regardless, having fewer motions in a fraction of cases would not outweigh the benefit of having a presumptive deadline for all cases. Unlimited time to conduct limited discovery would work against the expediency and efficiency of district court. The discovery process would slow to a crawl, resulting in motions to continue and greater time between the date of filing and trial. Such a delay would disproportionately burden plaintiffs seeking to have their claims resolved.

B. CRLJ 26(g)'s Time Limits Are Consistent with District Court Discovery Processes

The discovery processes allowed under CRLJ 26 can be effectively utilized within the current time limits of CRLJ 26(g). The statement that the current rule is inconsistent with the discovery devices allowed by CRLJ 26 assumes three propositions: (1) that every method of discovery under CRLJ 26 is necessary in most civil cases filed in district court; (2) that depositions cannot be scheduled until responses to interrogatories and requests for production are received in most civil cases filed in district court; and (3) that requests for admission cannot be served until responses to interrogatories and requests for production are received in most civil cases filed in district court. None of these propositions are true.

The Mandatory Arbitration system in superior court is a prime example of how parties can take depositions and propound requests for admission without first receiving responses to interrogatories and requests for production. MAR 4.2 allows parties only to send requests for admission and depose other parties. All other discovery, including interrogatories, requests for production, or examinations under CR 35, must be ordered by the arbitrator. Despite these

discovery restrictions, the parties are able to proceed with an arbitration hearing that most often results in a final resolution of the case.

There is no reason that parties cannot obtain sufficient discovery regarding the substances of claims and defenses within the current discovery deadlines. Upon the expiration of the 21 day period after the summons and complaint are served, parties can send various discovery requests and set deposition dates. Thereafter, they even have time for follow-up requests before the expiration of the discovery deadline. In some complex cases, there will certainly be a need for the discovery deadline to be extended, but these exceptions should not dictate the general rule.

C. Removing the Discovery Deadline Will Not Provide Unrepresented Parties Additional Time to Seek Counsel

The existence of time limits for propounding discovery requests has no bearing on the time during which an unrepresented party may seek legal representation in civil cases filed in district court. A defendant has 20 days to file an answer after a complaint has been filed pursuant to CRLJ 12(a)(1). If a defendant fails to file an answer, then the defendant is deemed to have admitted the allegations of the Complaint pursuant to CRLJ 8(d). Default judgment can then be entered against that defendant pursuant to CRLJ 55.

The current discovery deadline of CRLJ 26(g) has no effect whatsoever on these consequences. They can occur regardless of whether any discovery has been requested or whether the discovery deadline has lapsed. As a result, striking the discovery deadlines altogether would have no effect on the prejudice that a party could suffer if that party does not obtain representation early in litigation.

Furthermore, cases in which parties fail to expediently obtain counsel are likely to head to motions practice by virtue of the party obtaining late representation. If a motion for default has been granted, then the defendant will already need to seek relief from the court to proceed. An extension of the discovery deadline can easily be included (and will often be stipulated to) in that very same motion.

The time an unrepresented party has to seek counsel is not determined by the time that party has to request discovery. Instead, it is determined by the pleading deadlines in the case and the consequences of failing to meet those deadlines as indicated in the civil rules. Because discovery deadlines have no effect on an unrepresented party's time or ability to seek legal counsel, that issue does not serve as adequate justification for abolishing all discovery deadlines..

D. Conclusion

Abolishing the discovery deadlines would do more harm than good. These deadlines ensure that cases progress towards resolution rather than linger on a court's docket. We believe the public has a strong interest in preserving and strengthening district court as an alternative to superior court for quickly resolving smaller claims. The legislature appears to agree, having recently increased the jurisdictional limits. Eliminating the discovery deadlines, however, would reduce the number of cases filed in district court and harm the cases filed there. WSAJ is opposed to the suggested amendment to CRLJ 26(g).

Thank you for your consideration. We look forward to working with you to continue to promote judicial efficiency and just resolution of disputes.

Very truly yours,

Victoria L. Vreeland
WSAJ President

Gary Manca
Chair WSAJ Court Rules Committee

Tracy, Mary

From: OFFICE RECEPTIONIST, CLERK
Sent: Friday, April 29, 2016 11:28 AM
To: Tracy, Mary
Subject: FW: WSAJ Letter re: Proposed Rules Changes
Attachments: Proposed Changes to CRLJ 26g April 2016 Letter.pdf

For you. ☺

Supreme Court Clerk's Office

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

From: Gerhard Letzing [mailto:gerhard@washingtonjustice.org]
Sent: Friday, April 29, 2016 11:28 AM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: WSAJ Letter re: Proposed Rules Changes

Please accept the attached letter from WSAJ re: proposed rule changes. Hard copy is in the mail.
Gerhard Letzing