



Bob Ferguson  
**ATTORNEY GENERAL OF WASHINGTON**

Administration Division  
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April 29, 2019

*Sent via email to: [supreme@courts.wa.gov](mailto:supreme@courts.wa.gov)*

Clerk of the Washington State Supreme Court  
P.O. Box 40929  
Olympia, WA 98504-0929

RE: November 2018 Request for Comment on Proposed Changes to CR 82.5

Dear Clerk of the Washington State Supreme Court:

Thank you for the opportunity to comment on the proposed amendments to Civil Rule (CR) 82.5. This rule addresses tribal court jurisdiction and the proposed changes would improve communication between state courts and tribal courts regarding enforcement of judgements. The Attorney General's Office offers the following comments to ensure that litigants understand the new procedures.

The term "co-occurring proceedings" in the proposed subsection (d)(1) appears to refer to active ongoing cases with persons or entities in common between the state court and tribal court proceeding. We are unsure whether this is the intended meaning of the proposed language. The existing language of section (c) refers to enforcement of orders, judgements, and decrees which typically arise when litigation is concluded in one forum. Similarly, proposed section (d)(6) refers to orders prohibiting contact between parties. Often the proceeding in which such an order was issued will have concluded when the issues envisioned in the rule arise. We suggest clarifying proposed subsection (d)(1) to indicate whether the section applies only to open and active proceedings or whether it also applies to enforcement of orders that were previously issued in a proceeding that has concluded.

To improve clarity regarding the recordkeeping requirements, we suggest using parallel language in proposed subsections (d)(3) and (d)(4). This would include amending the second sentence of proposed subsection (d)(3) to: "The superior court need not make a record of the communication under this section." Similarly, it would be helpful to amend the third sentence of proposed subsection (d)(3) to: "The Indian tribal court's procedures shall determine whether and how a record is made in their court."



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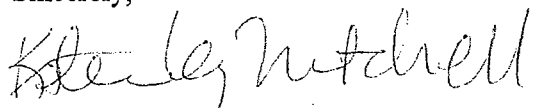
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Our final comment is that it would be helpful to include required content in the definition of the term "record," as it is defined in proposed subsection (d)(5). It appears the purpose of the definition is to provide maximum flexibility to superior courts. We believe it would be easier for litigants and courts to uniformly comply with the rule if they know what is to be contained in the record.

Thank you again for the opportunity to provide comment.

Sincerely,

A handwritten signature in cursive script that reads "Kristen K. Mitchell". The signature is written in dark ink and is positioned above the typed name.

KRISTEN K. MITCHELL  
Deputy Attorney General

KKM/eg

**Tracy, Mary**

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**From:** OFFICE RECEPTIONIST, CLERK  
**Sent:** Monday, April 29, 2019 1:21 PM  
**To:** Tracy, Mary  
**Subject:** FW: November 2018 Request for Comment on Proposed Changes to CR 82.5  
**Attachments:** scan-04292019011103.pdf

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**From:** Ganga, Elaine L (ATG) [mailto:elaine.ganga@atg.wa.gov]  
**Sent:** Monday, April 29, 2019 1:20 PM  
**To:** OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>  
**Subject:** November 2018 Request for Comment on Proposed Changes to CR 82.5