



Superior Court Judges' Association

Judith H. Ramseyer
President

King County Superior Court
1211 E Alder St
Seattle, WA 98122-5553
206-477-1605

David G. Estudillo
President Elect

Grant County Superior Court
35 C St NW, Fl 2
Ephrata, WA 98823-1685
509-754-2011 Ext. 4144

Kitty-Ann van Doorninck
Immediate Past President

Pierce County Superior Court
930 Tacoma Ave S, Rm 334
Tacoma, WA 98402-2108
425-388-3075

Jackie Shea-Brown
Secretary

Benton/Franklin Co Superior Courts
7122 W Okanogan Pl, Bldg A
Kennewick, WA 99336-2359
509-736-3071

Bryan E. Chushcoff
Treasurer

Pierce County Superior Court
930 Tacoma Ave S, Rm 334
Tacoma, WA 98402-2108
253-798-7574

Board of Trustees

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King County Superior Court
401 4th Ave N, Rm 2D
Kent, WA 98032-3720
206-477-1453

Rachelle Anderson

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1116 W Broadway Ave
Spokane, WA 99260-0350
509-477-5702

Karen Donohue

King County Superior Court
516 3rd Ave, Rm C-203
Seattle, WA 98104-2361
206-477-3720

Edmund Murphy

Pierce County Superior Court
930 Tacoma Ave S, Rm 334
Tacoma, WA 98402-2108
253-798-3655

Joely A. O'Rourke

Lewis County Superior Court
345 W Main St, Fl 4
Chehalis, WA 98532-0336
360-740-1333

Laura M. Riquelme

Skagit County Superior Court
205 W Kincaid St, Rm 202
Mount Vernon, WA 98273-4225
360-416-1200

Samuel P. Swanberg

Benton/Franklin Co Superior Courts
7122 W Okanogan Pl, Bldg A
Kennewick, WA 99336-2359
509-736-3071

September 28, 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

Dear Justice Johnson:

Re: (1) CR 30 - Depositions Upon Oral Examination - WCRA Proposed Amendments- Support and Oppose and (2) CR 30 - Depositions Upon Oral Examination - Aderant CompuLaw Proposed Amendments - Support with Modification

1. CR 30 - Depositions Upon Oral Examination - WCRA Proposed Amendments - Support and Oppose

The amendments to CR 30(c) would allow court reporters and other officers to place a deposition witness under oath remotely. Currently, Washington Court Rules do not allow a court reporter to administer an oath remotely. As a result, litigants in Washington wishing to conduct a remote deposition must arrange for a court reporter to place the deponent under oath in the deponent's physical presence. The proposed amendments to CR 30 would clarify the rule to allow a court reporter to perform his or her duties remotely from the deponent. The proposal would further require, however, that the court reporter be physically located in Washington to conduct the remote deposition.

The SCJA supports allowing court reporters to conduct remote depositions, but opposes WCRA's proposed amendment to CR 30(c) that requires the court reporter to be physically located in Washington to conduct the remote deposition. Even before the current coronavirus public health crisis, the use of telephonic and videoconference depositions was widespread and increasing. Washington courts should allow court reporting to adapt to technological changes. More critical to the current moment, amending CR 30(c) to permit court reporters to place deposition witnesses under oath remotely would better enable depositions to proceed without incurring the increased risk of viral transmission via in-person meetings. On the other hand, there is no clear rationale for the WCRA's proposed requirement that a Washington-licensed court reporter be physically located in Washington to conduct the remote deposition. Indeed, the restriction seems to run counter to the whole notion of allowing remote depositions.

2. CR 30 - Depositions Upon Oral Examination - Aderant CompuLaw Proposed Amendments - Support with Modification

The proposed amendment to CR 30(b)(1) argues that language describing the days that should be excluded from computation of the period of time required for notice should be deleted as duplicative and confusing.

While CR 6 deals directly how to count days for notice purposes, the SCJA disagrees that deleting all reference from CR 30 is the best solution. If the descriptive language is removed from the rule without any reference to CR 6, it may unnecessarily cause confusion. Any potential confusion is eliminated by a simple reference to CR 6.

For this reason, the SCJA recommends an alternative amendment that refers to CR 6.

- (1) A party desiring to take the deposition of any person upon oral examination shall give reasonable notice in writing of not less than 5 days **(exclusive of the day of service, Saturdays, Sundays and court holidays) pursuant to CR 6** to every other party to the action and to the deponent, if not a party or a managing agent of a party. Notice to a deponent who is not a party or a managing agent of a party may be given by mail or by any means reasonably likely to provide actual notice. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify the deponent or the particular class or group to which the deponent belongs. If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to or included in the notice. A party seeking to compel the attendance of a deponent who is not a party or a managing agent of a party must serve a subpoena on that deponent in accordance with rule 45. Failure to give 5 days, notice to a deponent who is not a party or a managing agent of a party may be grounds for the imposition of sanctions in favor of the deponent, but shall not constitute grounds for quashing the subpoena.

The SCJA respectfully asks the Court to adopt the above modification to the proposed amendment to CR 30(b)(1).

Thank you for your consideration of SCJA's comments to proposed amendments to CR 30. 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 - CR 30
Date: Monday, September 28, 2020 3:28:56 PM
Attachments: [CR 30 Depositions Upon Oral Examination - SC 09282020.pdf](#)

From: Ireland, Shelley
Sent: Monday, September 28, 2020 3:24 PM
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>
Subject: Rules Comments from SCJA - CR 30

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
PO Box 41170 , Olympia WA 98504-1170
360-704-1924 or Shelley.Ireland@courts.wa.gov

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