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Subject: FW: Comment re: Proposed Changes to CR 3.1, CR 16, CR 26
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From: Tyler Hinckley [mailto:tyler@montoyalegal.com]
Sent: Wednesday, February 23, 2022 2:05 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
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To Whom it May Concern:
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CR 3.1:?? Whether to adopt a standard case schedule should be left to the discretion of the superior court for each county.?? A ???one size fits all??? approach to case scheduling fails to take into consideration the unique circumstances and case schedules in each county.?? Moreover, the case schedules will result in arbitrarily imposed deadlines that do not actually have anything to do with the actual trial date in counties like Yakima, where it is nearly unheard of for a civil case to go to trial at its first setting on the docket.
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CR 16:?? A statewide requirement for a case scheduling order like those used in federal court and King and Pierce County is unnecessary in many, if not most civil cases, and will lead to additional expense for clients in smaller cases that may deter people from bringing valid claims and may serve as an unnecessary additional expense for those defending claims, particularly with smaller amounts in controversy.?? The purported justification for requiring joint pretrial status reports is that it ???is widely agreed that pretrial scheduling orders used in King and Pierce counties, as well as in the federal district courts, achieve significant time savings at trial.???? I disagree that holds true in most cases.?? Moreover, the vast majority of civil cases do not go to trial.?? Additionally, in counties like Yakima, it is rare, if not unheard of, that civil cases are heard on the first setting.?? ??
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CR 26(g): ??Privilege logs should not be mandatory. Rather, the superior courts of each county should retain discretion to order privilege logs in appropriate cases.?? Preparing a privilege log requires a significant expenditure of time and additional expense and, in some instances, is overly burdensome and unnecessary expensive.?? Nothing in the proposed changes to CR 26 contains any proportionality requirement, as in Fed. R. Civ. P. 26.?? In smaller cases, the expenses of discovery can serve to discourage access to the courts.?? A party who believes that they are entitled to certain documents, or an explanation as to why certain documents are being withheld, or a party desiring to withhold documents on the basis of privilege, can bring a motion to compel or a motion for a protective order according to the

discovery rules already in place.?? Courts should retain the discretion to require a privilege log on a case-by-case basis as necessary and reasonable in relation to the amount in controversy and other relevant concerns.?? ??

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