



April 13, 2022

Erin L. Lennon  
Clerk of the Supreme Court  
P.O. Box 40929  
Olympia, WA 98504-0929  
[supreme@courts.wa.gov](mailto:supreme@courts.wa.gov)

Re: Proposed Rule Change to CR 16, CR 26, CR 3.1, and CR 77

Dear Ms. Lennon:

This letter is submitted as a comment to the Supreme Court's April 2021 – Proposed Rules Published for Comment regarding CR 16, CR 26, CR 3.1, and CR 77. The King County Bar Association Judiciary and Litigation Committee submits this comment to support these proposed rules, and also to address the manner by which the proposals have been brought to the Court.

The King County Bar Association Judiciary and Litigation Committee (Committee) has followed the work of the Task Force on the Escalating Cost of Civil Litigation (ECCL) for many years and has participated in every step of the process which resulted in the current proposed rules. Our Committee met with the ECCL Task Force while it developed its initial recommendations; submitted memoranda to the ECCL Taskforce, the ECCL Civil Litigation Rules Drafting Task Force, and the ECCL Civil Litigation Rules Revision Work Group addressing various rule proposals; and members of our Committee have testified throughout the years on several of the rule proposals as they have been presented over time. During the last years of the ECCL Civil Litigation Rules Revision Work Group, a member of our Committee attended the Rules Revision Work Group meetings and assisted in crafting the final version of some of the rules that are now presented for comment.

Our Committee now submits this comment to support the final results of the process which began with the chartering of the ECCL Task Force in April 2011. Not all of our Committee's suggestions are reflected in the proposed rules, but our input was considered in each stage of the process. We respect the process and support its results.

However, because of our Committee's experience with and respect for the process which produced these proposed rules, we noted with particular interest in the following two paragraphs in the accompanying GR 9 cover sheet (with emphasis added):

***Civil Litigation Rules Revision Work Group***

*In September 2019, the Board chartered a second drafting entity, the Civil Litigation Rules Revision (Rules Revision) Work Group, **to solicit and incorporate additional stakeholder input, with a particular emphasis on stakeholders with civil litigation experience and***

**sophistication.** *The Board tasked the Rules Revision Work Group with revising, as appropriate, the Task Force’s suggested amendments to reflect the additional stakeholder input.*

*At the Board’s September 17-18, 2020 meeting, the Rules Revision Work Group submitted revised suggested amendments. The Board unanimously approved the suggested amendments. With the exception of one CR 26 subsection regarding privilege logs, **the proposed amendments were endorsed by all stakeholders.***

To the extent the emphasized passage in the first paragraph could be read as implying that “stakeholders with civil litigation experience and sophistication” only became involved in the ECCL process in September 2019, we wish to correct the record. Beyond our Committee, experienced and sophisticated stakeholder organizations such as the Washington State Association for Justice, the Washington Defense Trial Lawyers, the Damages Attorney Roundtable, WSBA Minority Bar Associations, and civil litigation related WSBA sections were also involved and provided input from the outset of the ECCL process. Dozens of other stakeholder organizations and hundreds of Washington attorneys also took time to comment on the initial ECCL proposals, and on draft rules at each stage of the process. As with our Committee, not every position these stakeholders advanced is reflected in the current proposals. But, the contributions of these stakeholders should be noted.

Regarding the passage in the second paragraph, our Committee does not agree that amendments made by the Rules Revision workgroup were “endorsed by all stakeholders.” Various proposals were supported by some of the stakeholders, while others received neither an endorsement nor a vote of opposition, as some of the stakeholders, including our Committee, abstained on some of the provisions. Further, it was clear that other individuals who attended the Civil Litigation Rules Revision Work Group were not there to endorse the proposed amendments on behalf of their associations, but rather to report back to their organizations, and their presence at the meetings should not be interpreted as a general endorsement of these proposed rules.

After a decade of following the attempts at changing the civil rules to reduce the cost of civil litigation it is important to correctly document the history of the process that has resulted in these proposals. Many of the hundreds of attorneys who have contributed their views over the course of the ECCL process have most likely not commented on these proposals. Our Committee simply asks that in considering these rules, that the Court also consider the type and number of shareholders who have actually contributed to the proposals now before the Court.

Sincerely,

*s/Isham M. Reavis*

Isham Reavis  
Co-chair, KCBA Judiciary & Litigation Committee

Sincerely,

*s/Katie J. Comstock*

Katie J. Comstock  
Co-chair, KCBA Judiciary & Litigation Committee

**From:** [OFFICE RECEPTIONIST, CLERK](#)  
**To:** [Tracy, Mary](#)  
**Subject:** FW: Comment regarding CR 16, CR 26, CR 3.1, & CR 77  
**Date:** Wednesday, April 13, 2022 4:57:01 PM  
**Attachments:** [image001.png](#)  
[2022-04-13 KCBA letter re CR 16, 26, 3.1, & 77.pdf](#)

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**From:** Isham Reavis [mailto:Isham@aokilaw.com]  
**Sent:** Wednesday, April 13, 2022 4:53 PM  
**To:** OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>  
**Cc:** Katie@levy-law.com; Connie Watts <conniew@kcba.org>  
**Subject:** Comment regarding CR 16, CR 26, CR 3.1, & CR 77

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Good afternoon:

Attached please find a letter containing the comments of the King County Bar Association Judiciary & Litigation Committee regarding the proposed amendments to these rules. Please don't hesitate to let me know if you have any questions or issues with the attachment. Thank you,

Isham Reavis



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