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April 15, 2024

Honorable Charles W. Johnson, Chair

Honorable Mary I. Yu, Chair

Washington State Supreme Court Rules Committee

Temple of Justice

P.O. Box 40929

Olympia, WA 98504-0929

Dear Justice Johnson and Justice Yu:

Re: Proposed Changes to CR 28 and 30

The Civil Law and Rules Committee (CLRC) of the Superior Court Judges' Association (SCJA) reviewed the proposed changes to Civil Rules (CR) 28 and 30, submitted on behalf of a private litigation services firm. Taken together, the changes to these two rules seek to limit who can record civil depositions. The SCJA has concerns about these proposed rule changes and respectfully requests the Supreme Court to reject both proposals. We will provide a review of additional changes proposed to CR 30 and other rules as submitted by the BJA Remote Proceedings Work Group in a separate letter.

CR 28

This rule proposes changes to CR 28(a), (c), (d), and (e) to include a person who records a deposition in the definition of the term "officer", and requires videographers to follow the same requirements as court reporters. The stated purpose of the changes, based on non-Washington cases, is to "ensur[e] the integrity of the [deposition] process." However, in analyzing the effect of the proposed changes, it appears the intent may be related to a wish for greater job security for court reporters.

Currently, the standard practice in Washington is that attorneys may record depositions themselves, or have a paralegal or associate record it for no charge. Alternatively, depending on the value of the case or the type of deposition being taken, the attorney may hire a professional videographer to record the deposition. A court reporter is still needed to provide the official transcript. This practice is supported by the permissive language of our civil rules.

CR 29 provides:

Unless the court orders otherwise, the parties may by written stipulation (1) provide that depositions may be taken **before any person, at any time or place, upon any notice and in any manner and when so taken may be used like other depositions, and (2) modify the procedures provided by these rules for other methods of discovery.**

(Emphasis added.)

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CR 30(b)(4) also provides:

The parties may stipulate in writing or the court may upon motion order that the testimony at a deposition be recorded by other than stenographic means. **The stipulation or the order shall designate the person before whom the deposition shall be taken, the manner of recording, preserving, and filing the deposition, and may include other provisions to assure that the recorded testimony will be accurate and trustworthy.**

(Emphasis added.)

CR 30

The proposed change to CR 30(b)(8)(H) further prohibits a person recording a deposition from being an attorney or any other representative of their office. Again, this is contrary to current practices in Washington state and existing court rules.

If the proposed changes to CR 28 and 30 are approved, parties would have to limit who records the deposition to conform to the definition of “officer” proposed in CR 28. This would effectively require that parties hire court reporters to record (in addition to transcribe) depositions. This would increase the cost of litigation.

Thank you for consideration of our comments.

Sincerely,



Samuel Chung, President
Superior Court Judges' Association

cc: SCJA Board of Trustees
Ms. Allison Lee Muller

From: [OFFICE RECEPTIONIST, CLERK](#)
To: [Martinez, Jacquelynn](#)
Subject: FW: SCJA Public Comment Letters
Date: Monday, April 15, 2024 3:36:16 PM
Attachments: [SCJA Public Comment APR 11.pdf](#)
[SCJA Public Comment GALRs.pdf](#)
[SCJA Public Comment RAP 18.25.pdf](#)
[SCJA Public Comment CrR 4.7.pdf](#)
[SCJA Public Comment CrR 8.3.pdf](#)
[SCJA Public Comment CR 26.pdf](#)
[SCJA Public Comment CR 28 CR 30.pdf](#)
[SCJA Public Comment BJA Remote Proceedings WG Rules.pdf](#)

From: Valdez, Andrea <Andrea.Valdez@courts.wa.gov>
Sent: Monday, April 15, 2024 3:22 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Cc: 'Chung, Samuel' <Samuel.Chung@kingcounty.gov>; Lee Muller, Allison <Allison.LeeMuller@courts.wa.gov>; Ireland, Shelley <Shelley.Ireland@courts.wa.gov>; Green, Heidi <Heidi.Green@courts.wa.gov>
Subject: SCJA Public Comment Letters

Good afternoon.

Please see the attached comment letters on behalf of the Superior Court Judges' Association. The proposed rules we are commenting at this time are:

- APR 11
- GALR 1, 2, 4, 5, 6, and 7
- RAP 18.25
- CrR 4.7
- CrR 8.3
- CR 26
- CR 28 & 30
- CrR 3.4, CR 1, CR 7, CR 26, CR 30, CR 39, CR 43, CR 45, GR 11.3, and JuCR 11.23 (Remote Proceedings)

Thank you,
Andrea Valdez, MPA (she/her/hers)
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Administrative Office of the Courts
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