From:	OFFICE RECEPTIONIST, CLERK
To:	Martinez, Jacquelynn
Subject:	FW: Proposed changes to CR 26 - experts and supplementation or correction of discovery responses
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From: Alan Michael Singer <asinger@tseytlinlaw.com>
Sent: Wednesday, February 21, 2024 2:17 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Proposed changes to CR 26 - experts and supplementation or correction of discovery responses

I write to offer comments on the rule 26 changes at https://www.courts.wa.gov/court_rules/?fa=court_rules.proposed.

1. As to changes regarding experts

I have two main comments.

First, as this Court knows, a great many trial court hours are spent on disputes concerning expert disclosure. I think many such hours can be spared by greater consonance with the federal rule: Fed. R. Civ. Proc. 26(a)(2)(B), by also requiring production of information that seems to frequently be the topic of motions and argument consuming the courts' time. So while I appreciate the proposed rule language adopting King County's LCR 26, and I'm sure most also will welcome this clarity, I also want to suggest, now that this rule is being now considered for changes, I want to also require additional language. This would add further written disclosure requirements so they match what's already required for some key information that's long been required to be disclosed – and affirmatively, and in writing – in Washington federal courts under federal rule 26(a)(2)(B).

Second, I also understand well the challenges both a plaintiff and a defense counsel faces to assemble all the information to disclose. Accordingly, for fairness to the parties and the courts, I also propose the rule also include language that allows parties needing more time to ask for it, but in advance, so courts can manage their dockets.

So, for CR 26(b)(5)(A)(1), please consider re-phrasing the proposed language below, as follows:

"A case schedule deadline to disclose experts does not excuse a party timely responding to expert discovery. (ii) Unless these rules impose an earlier deadline, and in no event later than the deadline for primary or rebuttal expert witness disclosures imposed by a case schedule or court order, as to each person whom that party expects to call as a primary or rebuttal expert witness at trial, each party: (a) shall identify in writing each person whom that party expects to call as a primary or rebuttal expert witness at trial, (b) shall disclose in writing the subject matter on which the expert is

expected to testify, (c) shall disclose in writing the substance of the facts and opinions to which the expert is expected to testify, (d) shall disclose in writing a summary of the grounds for each opinion, (e) shall disclose in writing the witness's qualifications, including a list of all publications authored in the previous 10 years, (f) shall disclose in writing a list of all other cases in which, during the previous 4 years, the witness testified as an expert at trial or by deposition, and (g) shall disclose in writing a statement of the compensation to be paid for the study and testimony in the case. If either party requires more time to meet these requirements, the parties may stipulate or move the court to grant such relief, provided that such stipulation or motion shall be made prior to the deadline, and that such stipulation or motion may be granted for good cause shown."

2. <u>As to changes clarifying the duty to supplement or correct discovery responses</u>

I think if a party does supplement or correct a response to a request for discovery as the rule contemplates, then the rule should clarify that the corrected or supplemented response cannot be impeached by prior answers. Let me explain why.

After years of working for insurers, I now work for people, many of whom speak English only a little or only as a second language. Learning facts is far more challenging than I had ever contemplated – not because of plaintiffs committing fraud or making false claims or false statements, but only because of the language barrier, the lack of knowledge of the legal system, and the communication challenges. I am concerned the changes proposed will be used by the defense to punish those who comply in god faith by attempting to use a prior answer against a plaintiff by implying the person is not credible because they gave a prior answer under oath, and now gave a "corrected" or "supplemented" or any 'new' answer. Instead of encouraging this kind of "gotcha" litigation, I think the changes aim to have the best and most complete discovery responses timely given. To encourage the aim of the rule, I offer an added sentence below.

Please consider adding this proposed second to last sentence in CR 26(e):

"When a responding party seasonably supplements or corrects any response to a request for discovery in good faith, no other party may attempt to use against the responding party any prior discovery responses for any purpose, absent a showing of compelling good cause."

Thank you for considering my comments.

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