

**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](#)

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**From:** Valdez, Andrea <Andrea.Valdez@courts.wa.gov>  
**Sent:** Monday, April 15, 2024 3:22 PM  
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**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)  
Senior Policy Analyst  
Superior Court Judges' Association  
Administrative Office of the Courts  
[Andrea.valdez@courts.wa.gov](mailto:Andrea.valdez@courts.wa.gov)



# Superior Court Judges' Association

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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 26

The Civil Law and Rules Committee (CLRC) of the Superior Court Judges' Association (SCJA) reviewed the proposed changes to CR 26, which reflect the revisions to a proposal originally submitted by the Washington State Bar Association (WSBA) in 2022. The original aim of the proposed changes to CR 26 were to modify the discovery procedures so as to reduce the escalating costs of civil litigation. Following our latest review of CR 26, the SCJA respectfully requests that the Supreme Court Rules Committee consider the following comments.

## **CR 26(b)(5)(A)(i)-(ii)**

In this version of the rule, changes are proposed to CR 26(b)(5)(A)(i) – (ii) to make clear that a case schedule deadline for disclosing experts does not excuse a party from timely responding to expert discovery. While this may sound like a good idea, in practice courts are required to follow a *Burnet* analysis before excluding any late disclosed experts. The *Burnet* case itself held that **violation of a scheduling order alone was not enough to exclude experts**. Thus, the CLRC concluded that this change to the rule would likely not have a major impact on litigation practice. Furthermore, there was some reluctance to make any significant changes to CR 26 because of the body of caselaw that has developed interpreting its requirements. Courts would lose the benefit of that precedent if significant changes were made to the rule. Therefore, the SCJA does not support the amendments to this section.

## **CR 26(e)**

Proposed changes to CR 26(e) would codify the duty to seasonably supplement discovery responses. In its review, the CLRC noted that this was already a requirement such that this rule change did not add anything of value, but instead may provide a basis for “gotcha” motions for alleged failure to timely or fully supplement. The CLRC also expressed concern

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that if this rule were applied to requests for production, it could increase the cost of litigation in document-intensive cases (e.g., medical malpractice, asbestos, etc.). These concerns notwithstanding, the SCJA supports the amendment to this subsection.

**CR 26(g)**

The SCJA supports the proposed amendments to CR 26(g). The proposed changes to this section clarify who must sign discovery responses and eliminates general objections. It also provides a new procedure for objections based on privilege.

Thank you for consideration of our comments.

Sincerely,



Samuel Chung, President  
Superior Court Judges' Association

cc: SCJA Board of Trustees  
Ms. Allison Lee Muller