THE SUPREME COURT OF WASHINGTON

IN THE MATTER OF THE SUGGESTED AMENDMENTS TO CRLJ 4, CRLJ 8, CRLJ 13, CRLJ 15, CRLJ 17, CRLJ 18, CRLJ 19, CRLJ 20, CRLJ 22, CRLJ 24, CRLJ 25, CRLJ 40, CRLJ 41, CRLJ 43, CRLJ 44.1, CRLJ 46, CRLJ 47, CRLJ 49, CRLJ 51, CRLJ 54, CRLJ 55, CRLJ 56, CRLJ 58, CRLJ 59, CRLJ 73, AND CRLJ 75	)	**O R D E R** NO. 25700-A-1391

The Washington State Bar Association Court Rules Committee, having recommended the suggested amendments to CRLJ 4, CRLJ 8, CRLJ 13, CRLJ 15, CRLJ 17, CRLJ 18, CRLJ 19, CRLJ 20, CRLJ 22, CRLJ 24, CRLJ 25, CRLJ 40, CRLJ 41, CRLJ 43, CRLJ 44.1, CRLJ 46, CRLJ 47, CRLJ 49, CRLJ 51, CRLJ 54, CRLJ 55, CRLJ 56, CRLJ 58, CRLJ 59, CRLJ 73, and CRLJ 75, and the Court having approved the suggested amendments for publication;

Now, therefore, it is hereby

ORDERED:

(a) That pursuant to the provisions of GR 9(g), the suggested amendments as attached hereto are to be published for comment in the Washington Reports, Washington Register, Washington State Bar Association and Administrative Office of the Court's websites in January 2022.

(b) The purpose statement as required by GR 9(e), is published solely for the information of the Bench, Bar and other interested parties.

(c) Comments are to be submitted to the Clerk of the Supreme Court by either U.S. Mail or Internet E-Mail by no later than April 30, 2022. Comments may be sent to the following

addresses: P.O. Box 40929, Olympia, Washington 98504-0929, or supreme@courts.wa.gov.

Comments submitted by e-mail message must be limited to 1500 words.

DATED at Olympia, Washington this 5th day of November, 2021.

For the Court

González, C.J.
González, C.J.

GR 9 COVER SHEET

Suggested Amendments

CRLJ 4, CRLJ 8, CRLJ 13, CRLJ 15, CRLJ 17, CRLJ 18, CRLJ 19, CRLJ 20, CRLJ 22, CRLJ 24, CRLJ 25, CRLJ 40, CRLJ 41, CRLJ 43, CRLJ 44.1, CRLJ 46, CRLJ 47, CRLJ 49, CRLJ 51, CRLJ 54, CRLJ 55, CRLJ 56, CRLJ 58, CRLJ 59, CRLJ 73, and CRLJ 75

A. **Proponent:** WSBA Court Rules and Procedures Committee

B. **Spokesperson:** Isham Reavis, Chair – WSBA Court Rules and Procedures Committee

C. **Purpose:** The Superior Court Civil Rules were amended a few years ago to make the rules gender neutral. The same was not done for the Civil Rules for Courts of Limited Jurisdiction. The proposed amendments make the rules gender neutral.

D. **Hearing:** The proponent does not believe that a public hearing is necessary.

E. **Expedited Consideration:** Expedited consideration is not requested.

SUGGESTED AMENDMENT
CRLJ 4
PROCESS

(a) Summons—Issuance.

(1) The summons must be signed and dated by the plaintiff or ~~his~~ the plaintiff's attorney, and directed to the defendant requiring ~~him~~ the defendant to defend the action and to serve a copy of ~~his~~ the defendant's appearance or defense on the person whose name is signed on the summons, and to file a copy of ~~his~~ the defendant's appearance or defense with the court.

(2) Unless a statute or rule provides for a different time requirement, the summons shall require the defendant to serve and file a copy of ~~his defense~~ the answer within 20 days after the service of summons, exclusive of the day of service. If a statute or rule other than this rule provides for a different time to serve a defense, that time shall be stated in the summons.

(3) A notice of appearance, if made, shall be in writing, shall be signed by the defendant or ~~his~~ the defendant's attorney, and shall be served upon the person whose name is signed on the summons and filed with the court.

(4) No summons is necessary for a counterclaim or cross claim for any person who previously has been made a party. Counterclaims and cross claims against an existing party may be served as provided in rule 5.

(b) Summons.

(1) *Contents*. The summons for personal service shall contain:

(i) the title of the cause, specifying the name of the court in which the action is brought, the name of the county designated by the plaintiff as the place of trial, and the names of the parties to the action, plaintiff and defendant;

(ii) a direction to the defendant summoning ~~him~~ the defendant to serve a copy of ~~his defense~~ the answer within a time stated in the summons and to file with the court a copy of ~~his defense~~ the answer within the time stated in the summons;

(2) *Form*. The summons for personal service in the state shall be substantially in the following form:

(NAME AND LOCATION OF COURT)

_____,)
Plaintiff,) No.
v.)
_____,) SUMMONS (20 days)
Defendant.)

TO THE DEFENDANT: A lawsuit has been started against you in the above entitled court by , plaintiff. Plaintiff's claim is stated in the written complaint, a copy of which is served upon you with this summons.

In order to defend against this lawsuit, you must respond to the complaint by stating your defense in writing, and serve a copy upon the person signing this summons within 20 days after the service of this summons, excluding the day of service, or a default judgment may be entered against you without notice. A default judgment is one where plaintiff is entitled to what ~~he~~ plaintiff asks for because you have not responded. If you serve a notice of appearance on the undersigned person you are entitled to notice before a default judgment may be entered.

Any response or notice of appearance which you serve on any party to this lawsuit must also be filed by you with the court within 20 days after the service of summons, excluding the day of service.

If you wish to seek the advice of an attorney in this matter, you should do so promptly so that your written response, if any, may be served on time.

This summons is issued pursuant to rule 4 of the Civil Rules for Courts of Limited Jurisdiction.

(signed)

Print or Type Name
( ) Plaintiff ( ) Plaintiff's Attorney
P. O. Address

Dated Telephone Number

(c) By Whom Served. Service of summons and complaint may be made by the sheriff or a deputy of the county or district in which the court is located or by any person over the age of 18 years and who is competent to be a witness and is not a party to the action.

(d) Service.

(1) *Of Summons and Complaint*. The summons and complaint shall be served together.

(2) *Personal in State*. Personal service of summons and other process shall be as provided in RCW 4.28.080-.090, 23B.05.040, 23B.15.100, 46.64.040, and 48.05.200 and .210, and other statutes which provide for personal service

(e) Service by Publication and Personal Service Out of the Jurisdiction.

(1) When the defendant cannot be found within the territorial jurisdiction of the court (of which the return of the sheriff of the county in which the action is brought, that the defendant cannot be found in the county, is prima facie evidence), and upon filing of an affidavit of the plaintiff, ~~his~~ the plaintiff's agent, or attorney, with the court stating that ~~he~~ the plaintiff believes that the defendant is not a resident of the county, or cannot be found therein, and that ~~he~~ the plaintiff has deposited a copy of the summons (substantially in the form prescribed in this rule) and complaint in the post office, directed to the defendant at ~~his~~ the defendant's place of residence, unless it is stated in the affidavit that such

residence is not known to the affiant, and stating the existence of one of the cases hereinafter specified, the service may be made by publication of the summons by the plaintiff or ~~his~~ the plaintiff's attorney in any of the following cases:

(i) when the defendant is a foreign corporation, and has property within the county;

(ii) when the defendant, being a resident of the county, has departed therefrom with intent to defraud ~~his~~ the defendant's creditors, or to avoid the service of a notice and complaint, or ~~keep himself~~ the defendant remains concealed therein with like intent;

(iii) when the defendant is not a resident of the county, but has property therein which has been brought under the control of the court by seizure or some equivalent act;

(iv) when the subject of the action is personal property in the county, and the defendant has or claims a lien or interest, actual or contingent, therein, and the relief demanded consists wholly, or partially, in excluding the defendant from any interest or lien therein;

(v) when the action is brought under RCW 4.08.160 and 4.08.170 to determine conflicting claims to personal property in the county.

(2) The publication shall be made in the same manner and in the same form as a summons by publication in superior court (see RCW 4.28.100), with appropriate adjustments for the name and location of the court.

(3) Personal service on the defendant out of the territorial jurisdiction of the court shall be equivalent to service by publication, and the notice to the defendant out of the county shall contain the same as the notice by publication and shall require the defendant to appear at a time and place certain which shall not be less than 30 days from the date of service.

(4) Service made in the modes provided in this section 4(e) shall not alone be taken and held to give the court jurisdiction over the person of the defendant. By such service the court only acquires jurisdiction to give a judgment which is effective as to property or debts attached or garnished in connection with the suit or other property which properly forms the basis of jurisdiction of the court. If the defendant appears in a suit commenced by such service the court shall have jurisdiction over ~~his person~~ the defendant. The defendant may appear specially and solely to challenge jurisdiction over property or debts attached or garnished or other property within the jurisdiction of the court.

(f) Alternative to Service by Publication. In circumstances justifying service by publication, if the serving party files an affidavit stating facts from which the court determines that service by mail is just as likely to give actual notice as service by publication, the court may order that service be made by any person over 18 years of age, who is competent to be a witness, other than a party, by mailing copies of the summons and other process to the party to be served at ~~his~~ the party's last known address or any other address determined by the court to be appropriate. Two copies shall be mailed, postage prepaid, one by ordinary first class mail and the other by a form of mail requiring a signed receipt showing when and to whom it was delivered. The envelopes must bear the return address of the sender. The summons shall contain the date it was deposited in the mail and shall require the defendant to appear and answer the complaint within 90 days from the date of mailing. Service under this subsection has the same jurisdictional effect as service by publication.

(g) Appearance. A voluntary appearance of a defendant does not preclude ~~his~~ the defendant's right to challenge lack of jurisdiction over ~~his~~ the defendant, insufficiency of process, or insufficiency of service of process pursuant to rule 12(b).

(h) Territorial Limits of Effective Service. All process other than a subpoena may be served anywhere within the territorial limits of the state, and when a statute or these rules so provide beyond the territorial limits of the state. A subpoena may be served within the territorial limits provided in rule 45 and RCW 5.56.010.

(i) Return of Service. Proof of service shall be as follows:

(1) If served by the sheriff or ~~his~~ the sheriff's deputy, the return of the sheriff or ~~his~~ the sheriff's deputy endorsed upon or attached to the summons;

(2) If served by any other person, ~~his~~ the person's affidavit of service endorsed upon or attached to the summons; or

(3) If served by publication, the affidavit of the publisher, foreman, principal clerk, or business manager of the newspaper showing the same, together with a printed copy of the summons as published; or

(4) If served as provided in section (f), the affidavit of the serving party stating that copies of the summons and other process were sent by mail in accordance with the rule and directions by the court, and stating to whom, and when, the envelopes were mailed;

(5) The written acceptance or admission of the defendant, ~~his~~ the defendant's agent or attorney;

(6) In case of personal service out of the state, the affidavit of the person making the service, sworn to before a notary public, with a seal attached, or before a clerk of a court of record;

(7) In case of service otherwise than by publication, the return, acceptance, admission, or affidavit must state the time, place, and manner of service. Failure to make proof of service does not affect the validity of the service.

(j) Amendment of Process. At any time in its discretion and upon such terms as it deems just, the court may allow any process or proof of service thereof to be amended, unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the process is issued.

[Amended effective September 1, 1994; September 1, 1996; September 1, 2000.]

CRLJ 8
GENERAL RULES OF PLEADING

(1) **Claims for Relief.** A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross claim, or third party claim shall contain (1) a short and plain statement of the claim showing that the pleader is entitled to relief, and (2) a demand for judgment for the relief to which ~~he deems himself entitled~~ the pleader claims entitlement. Relief in the alternative or of several different types may be demanded.

(2) **Defenses; Form of Denials.** A party shall state in short and plain terms the defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies. If a party is without knowledge or information sufficient to form a belief as to the truth of an averment, the party shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the averments denied. When a pleader intends in good faith to deny only a part or a qualification of an averment, the pleader shall specify so much of it as is true and material and shall deny only the remainder. Unless the pleader intends in good faith to controvert all the averments of the preceding pleading, the pleader may make denials as specific denials of designated averments or paragraphs, or the pleader may generally deny all the averments except such designated averments or paragraphs as the pleader expressly admits; but, when the pleader does so intend to controvert all its averments, the pleader may do so by general denial subject to the obligations set forth in rule 11.

(3) **Affirmative Defenses.** In pleading to a preceding pleading, a party shall set forth affirmatively accord and satisfaction, arbitration and award, assumption of risk, contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fault of a nonparty, fraud, illegality, injury by fellow servant, laches, license, payment, release, res judicata, statute of frauds, statute of limitation, waiver, and any other matter constituting an avoidance or affirmative defense. When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the court on terms, if justice so requires, shall treat the pleading as if there had been a proper designation.

(4) **Effect of Failure To Deny.** Averments in a pleading to which responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading. Averments in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided.

(5) Pleading To Be Concise and Direct: Consistency.

- Each averment of a pleading shall be simple, concise, and direct. No technical forms of pleadings or motions are required.

- A party may set forth two or more statements of a claim or defense alternately or hypothetically, either in one count or defense or in separate counts or defenses. When two or more statements are made in the alternative and one of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. A party may also state as many separate claims or defenses as the party has regardless of consistency and whether based on legal or on equitable grounds or on both. All statements shall be made subject to the obligations set forth in rule 11.

(f) Construction of Pleadings. All pleadings shall be so construed as to do substantial justice.

[Adopted effective September 1 1984; Amended effective September 1, 1989; September 1, 1994.]

CRLJ 13
COUNTERCLAIM AND CROSS CLAIM

(6) **Compulsory Counterclaims.** A pleading shall state as a counterclaim any claim which at the time of serving the pleading the pleader has against any opposing party, if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction. But the pleader need not state the claim if (1) at the time the action was commenced the claim was the subject of another pending action, or (2) the opposing party brought suit upon the claim by attachment or other process by which the court did not acquire jurisdiction to render a personal judgment on that claim, and the pleader is not stating any counterclaim under this rule.

(7) **Permissive Counterclaims.** A pleading may state as a counterclaim any claim against an opposing party not arising out of the transaction or occurrence that is the subject matter of the opposing party's claim.

(8) **Counterclaim Exceeding Opposing Claim.** A counterclaim may or may not diminish or defeat the recovery sought by the opposing party. It may claim relief exceeding in amount or different in kind from that sought in the pleading of the opposing party.

(9) **Counterclaim Against the State.** These rules shall not be construed to enlarge beyond the limits now fixed by law the right to assert counterclaims, or to claim credits against the State or an officer or agency thereof.

(10) **Counterclaim Maturing or Acquired After Pleading.** A claim which either matured or was acquired by the pleader after serving the pleading may, with the permission of the court, be presented as a counterclaim by supplemental pleading.

(11) **Omitted Counterclaim.** When a pleader fails to set up a counterclaim through oversight, inadvertence, or excusable neglect, or when justice requires, the pleader may by leave of court set up the counterclaim by amendment.

(12) **Cross Claim Against Coparty.** A pleading may state as a cross claim any claim by one party against a coparty arising out of the transaction or occurrence that is the subject matter either of the original action or of a counterclaim therein or relating to any property that is the subject matter of the original action. Such cross claim may include a claim that the party against whom it is asserted is or may be liable to the cross claimant for all or part of a claim asserted in the action against the cross claimant.

(13) **Joinder of Additional Parties.** Persons other than those made parties to the original action may be made parties to a counterclaim or cross claim in accordance with the provisions of rules 19 and 20.

(14) **Separate Trials; Separate Judgment.** If the court orders separate trials as provided in rule 42(b), judgment on a counterclaim or cross claim may be rendered in accordance with the terms of rule 54(b), even if the claims of the opposing party have been dismissed or otherwise disposed of.

(15) **Setoff Against Assignee.** The defendant in a civil action upon a contract express or implied, other than upon a negotiable promissory note or bill of exchange, negotiated in good faith and without notice before due, which has been assigned to the plaintiff, may set off a demand of a like nature existing against the person to whom the defendant was originally liable, or any assignee prior to the plaintiff, of such contract, provided such demand existed at the time of the assignment thereof, and belonging to the defendant in good faith, before notice of such assignment, and was such a demand as might have been set off against such person to whom the defendant was originally liable, or such assignee while the contract belonged to ~~him~~ such person or assignee.

(b) Setoff Against Beneficiary of Trust Estate. If the plaintiff be a trustee to any other, or if the action be in a name of a plaintiff which has no real interest in the contract upon which the action is founded, so much a demand existing against those whom the plaintiff represents or for whose benefit the action is brought may be set off as will satisfy the plaintiffs debt, if the same might have been set off in an action brought against those beneficially interested.

(c) Setoff Must Be Pleaded. To entitle a defendant to a setoff under this rule, the defendant must set forth the same in the answer.

[Adopted effective September 1, 1984; Amended effective September 1, 1989.]

CRLJ 15
AMENDED AND SUPPLEMENTAL PLEADINGS

(a) Amendments. A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, the party may so amend it at any time within 20 days after it is served. Otherwise, a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. If a party moves to amend a pleading, a copy of the proposed amended pleading, denominated "proposed" and unsigned, shall be attached to the motion. If a motion to amend is granted, the moving party shall thereafter file the amended pleading and, pursuant to rule 5, serve a copy thereof on all other parties. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within 10 days after service or notice of the amended pleading, whichever period may be the longer, unless the court otherwise orders.

(b) Amendments to Conform to the Evidence. When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure so to amend does not affect the result of the trial of these issues. If the evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the court that the admission of such evidence would prejudice ~~him~~ that party in maintaining ~~his~~ an action or defense upon the merits. The court may grant a continuance to enable the objecting party to meet such evidence.

(c) Relation Back of Amendments. Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading the amendment relates back to the date of the original pleading. An amendment changing the party against whom a claim is asserted relates back if the foregoing provision is satisfied and, within the period provided by law for commencing the action ~~against him~~ against the original party, the party to be brought in by amendment (1) has received such notice of the institution of the action that ~~he~~ the new party will not be prejudiced in maintaining ~~his~~ a defense on the merits, and (2) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against ~~him~~ the new party.

(d) Supplemental Pleadings. Upon motion of a party the court may, upon reasonable notice and upon such terms as are just, permit ~~him~~ the party to serve a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented. Permission may be granted even though the original pleading is defective in its statement of a claim for relief or defense. If the court deems it advisable that the adverse party plead to the supplemental pleading, it shall so order, specifying the time therefor.

(e) Interlineations. No amendments shall be made to any pleading by erasing or adding words to the original on file, without first obtaining leave of the court.

CRLJ 17
PARTIES PLAINTIFF AND DEFENDANT; CAPACITY

(-) Designation of Parties. The party commencing the action shall be known as the plaintiff, and the opposite party as the defendant.

(a) Real Party in Interest. Every action shall be prosecuted in the name of the real party in interest. An executor, administrator, guardian, bailee, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in ~~his~~ the party's own name without joining ~~with him~~ the party for whose benefit the action is brought. No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.

(b) Infants or Incompetent Persons.

(1) When an infant is a party ~~he~~ the infant shall appear by guardian, or if ~~he~~ the infant has no guardian, or in the opinion of the court the guardian is an improper person, the court shall appoint a guardian ad litem. The guardian shall be appointed:

(i) when the infant is plaintiff, upon the application of the infant, if ~~he~~ the infant be of the age of 14 years, or if under the age, upon the application of a relative or friend of the infant;

(ii) when the infant is defendant, upon the application of the infant, if ~~he~~ the infant be of the age of 14 years, and applies within the time ~~he~~ the infant is to appear; if ~~he~~ the infant be under the age of 14, or neglects to apply, then upon the application of any other party to the action, or of a relative or friend of the infant.

(2) When an insane person is a party to an action ~~he~~ that person shall appear by guardian, or if ~~he~~ that person has no guardian, or in the opinion of the court the guardian is an improper person, the court shall appoint one to act as guardian ad litem. Said guardian shall be appointed:

(i) when the insane person is plaintiff, upon the application of a relative or friend of the insane person;

(ii) when the insane person is defendant, upon the application of a relative or friend of such insane person, such application shall be made within the time ~~he~~ the defendant is to appear. If no such application be made within the time above limited, application may be made by any party to the action.

CRLJ 18

JOINDER OF CLAIMS AND REMEDIES

(a) **Joinder of Claims.** A party asserting a claim to relief as an original claim, counterclaim, cross claim, or third party claim, may join, either as independent or as alternate claims, as many claims as ~~he~~ the party has against an opposing party.

(b) **Joinder of Remedies.** Whenever a claim is one heretofore cognizable only after another claim has been prosecuted to a conclusion, the two claims may be joined in a single action; but the court shall grant relief in that action only in accordance with the relative substantive rights of the parties.

CRLJ 19
JOINDER OF PERSONS NEEDED FOR JUST ADJUDICATION

(a) Persons To Be Joined if Feasible. A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in ~~his~~ the person's absence complete relief cannot be accorded among those already parties, or (2) ~~he~~ the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in ~~his~~ the person's absence may (i) as a practical matter impair or impede ~~his~~ the person's ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of ~~his~~ the person's claimed interest. If ~~he~~ the person has not been so joined, the court shall order that ~~he~~ the person be made a party. If ~~he~~ the person should join as a plaintiff but refuses to do so, ~~he~~ the person may be made a defendant, or, in a proper case, an involuntary plaintiff. If the joined party objects to venue and ~~his~~ the person's joinder would render the venue of the action improper, ~~he~~ the joined party shall be dismissed from the action.

(b) Determination by Court Whenever Joinder Not Feasible. If a person joinable under (1) or (2) of section (a) hereof cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the court include:

(1) to what extent a judgment rendered in the persons absence might be prejudicial to ~~him~~ the person or those already parties;

(2) the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided;

(3) whether a judgment rendered in the person's absence will be adequate;

(4) whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

(c) Pleading Reasons for Nonjoinder. A pleading asserting a claim for relief shall state the names, if known to the pleader, of any persons joinable under (1) or (2) of section (a) hereof who are not joined, and the reasons why ~~they~~ those persons are not joined.

(d) [Reserved.]

(e) Husband and Wife Must Join--Exceptions. RCW 4.08.030 applies to the joinder of spouses.

CRLJ 20
PERMISSIVE JOINDER OF PARTIES

(a) Permissive Joinder. All persons may join in one action as plaintiffs if they assert any right to relief jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence or series of transactions or occurrences and if any question of law or fact common to all of these persons will arise in the action. All persons may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all of them will arise in the action. A plaintiff or defendant need not be interested in obtaining or defending against all the relief demanded. Judgment may be given for one or more of the plaintiffs according to their respective rights to relief, and against one or more defendants according to their respective liabilities.

(b) Separate Trials. The court may make such orders as will prevent a party from being embarrassed, delayed, or put to expense by the inclusion of a party against whom ~~he~~ a party asserts no claim and who asserts no claim against ~~him~~ the party, and may order separate trials or make other orders to prevent delay or prejudice.

(c) When Husband and Wife May Join. (Reserved. See RCW 4.08.040.)

(d) Service on Joint Defendants; Procedure After Service. When the action is against two or more defendants and the summons is served on one or more but not on all of them, the plaintiff may proceed as follows:

(1) If the action is against the defendants jointly indebted upon a contract, ~~he~~ the plaintiff may proceed against the defendants served unless the court otherwise directs; and if ~~he~~ the plaintiff recovers judgment it may be entered against all the defendants thus jointly indebted so far only as it may be enforced against the joint property of all and the separate property of the defendants served.

(2) If the action is against defendants severally liable, ~~he~~ the plaintiff may proceed against the defendants served in the same manner as if they were the only defendants.

(3) Though all the defendants may have been served with the summons, judgment may be taken against any of them severally, when the plaintiff would be entitled to judgment against such defendants if the action had been against them alone.

(e) Procedure To Bind Joint Debtor. RCW 4.68 applies to the enforcement of a judgment against a joint debtor.

CRLJ 22
INTERPLEADER

(a) Rule. Persons having claims against the plaintiff may be joined as defendants and required to interplead when their claims are such that the plaintiff is or may be exposed to double or multiple liability. It is not ground for objection to the joinder that the claims of the several claimants or the titles on which their claims depend do not have a common origin or are not identical but are adverse to and independent of one another, or that the plaintiff avers that ~~he~~ the plaintiff is not liable in whole or in part to any or all of the claimants. A defendant exposed to similar liability may obtain such interpleader by way of cross claim or counterclaim. The provisions of this rule supplement and do not in any way limit the joinder of parties permitted under other rules and statutes.

(b) Statutes. The remedy herein provided is in addition to and in no way supersedes or limits the remedy provided by RCW 4.08.150 to 4.08.180, inclusive.

CRLJ 24
INTERVENTIO
N

(a) Intervention of Right. Upon timely application, anyone shall be permitted to intervene in an action:

(1) when a statute confers an unconditional right to intervene; or

(2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and ~~he~~ the applicant is so situated that the disposition of the action may as a practical matter impair or impede ~~his~~ the applicant's ability to protect that interest, unless the applicants interest is adequately represented by existing parties.

(b) Permissive Intervention. Upon timely application, anyone may be permitted to intervene in an action:

(1) when a statute confers a conditional right to intervene; or

(2) when an applicants claim or defense and the main action have a question of law or fact in common. When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a federal or state governmental officer or agency or upon any regulation, order, requirements, or agreement issued or made pursuant to the statute or executive order, the officer or agency upon timely application may be permitted to intervene in the action. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

(c) Procedure. A person desiring to intervene shall serve a motion to intervene upon all parties as provided in rule 5. The motion shall state the grounds therefor and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought.

CRLJ 25
SUBSTITUTION OF PARTIES

(a) Death.

(1) *Procedur*e. If a party dies and the claim is not thereby extinguished, the court may order substitution of the proper parties. The motion for substitution may be made by the successors or representatives of the deceased party or by any party and, together with the notice of hearing, shall be served on the parties as provided by rule 5 for service of notices, and upon persons not parties in the manner provided by statute or by rule for the service of a summons. If substitution is not made within the time authorized by law, the action may be dismissed as to the deceased party.

(2) *Partial Abatement*. In the event of the death of one or more of the plaintiffs or one or more of the defendants in an action in which the right sought to be enforced survives only to the surviving plaintiffs or only against the surviving defendants, the action does not abate. The death shall be suggested upon the record and the action shall proceed in favor of or against the surviving parties.

(b) Incompetency. If a party becomes incompetent, the court upon motion served as provided in section (a) of this rule may allow the action to be continued by or against ~~his~~ the party's representative.

(c) Transfer of Interest. In case of any transfer of interest, the action may be continued by or against the original party unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party. Service of the motion shall be made as provided in section (a) of this rule.

(d) Public Offices; Death or Separation From Office. [Reserved.]

RULE 40. ASSIGNMENT OF CASES

(a) **Notice of Trial--Note of Issue**.

(1) *Of Fact*. At any time after the issues of fact are completed in any case by the service of complaint and answer or reply when necessary, as herein provided, either party may cause the issues of fact to be brought on for trial, by serving upon the opposite party a notice of trial at least 3 days before any day provided by rules of court for setting causes for trial, which notice shall give the title of the cause as in the pleadings, and notify the opposite party that the issues in such action will be brought on for trial at the time set by the court; and the party giving such notice of trial shall, at least 5 days before the day of setting such causes for trial, file with the clerk of the court a note of issue containing the title of the action, the names of the attorneys and the date when the last pleading was served; and the clerk shall thereupon enter the cause upon the trial docket according to the date of the issue.

(2) *Of Law*. In case an issue of law raised upon the pleadings is desired to be brought on for argument, either party shall, at least 5 days before the day set apart by the court under its rules for hearing issues of law, serve upon the opposite party a like notice of trial and furnish the clerk of the court with a note of issue as above provided, which note of issue shall specify that the issue to be tried is an issue of law; and the clerk of the court shall thereupon enter such action upon the motion docket of the court.

(3) *Adjournments*. When a cause has once been placed upon either docket of the court, if not tried or argued at the time for which notice was given, it need not be noticed for a subsequent session or day, but shall remain upon the docket from session to session or from law day to law day until final disposition or stricken off by the court.

(4) *Filing Note by Opposite Party*. The party upon whom notice of trial is served may file the note of issue and cause the action to be placed upon the calendar without further notice ~~on his part~~ by the served party.

(5) *Issue May Be Brought to Trial by Either Party.* Either party, after the notice of trial, whether given by ~~himself or the adverse~~ either party, may bring the issue to trial, and in the absence of the adverse party, unless the court for good cause otherwise directs, may proceed with ~~his~~ the case, and take a dismissal of the action, or a verdict or judgment, as the case may require.

(b) **Methods.** Each court of limited jurisdiction may provide by local rule for placing of actions upon the trial calendar (1) without request of the parties or (2) upon request of a party and notice to the other parties or (3) in such other manner as the court deems expedient.

(c) **Preferences.** In setting cases for trial, unless otherwise provided by statute, preference shall be given to criminal over civil cases, and cases where the defendant or a witness is in confinement shall have preference over other cases.

(d) **Trials.** When a cause is set and called for trial, it shall be tried or dismissed, unless good cause is shown for a continuance. The court may in a proper case, and upon terms, reset the same.

(e) **Continuances.** A motion to continue a trial on the ground of the absence of evidence shall only be made upon affidavit showing the materiality of the evidence expected to be obtained, and that due diligence has been used to procure it, and also the name and address of the witness or witnesses. The court may also require the moving party to state upon affidavit the evidence which ~~he~~ that party expects to obtain; and if the adverse party admits that such evidence would be given, and that it be considered as actually given on the trial, or offered and overruled as improper, the trial shall not be continued. The court, upon its allowance of the motion, may impose terms or conditions upon the moving party.

(f) Change of Judge. In any case pending in any court of limited jurisdiction, unless otherwise provided by law, the judge thereof shall be deemed disqualified to hear and try the case when ~~he~~ the judge is in anywise interested or prejudiced. The judge, of ~~his~~ the judge's own initiative, may enter an order ~~disqualifying himself~~ of self disqualification;. A judge ~~and he~~ shall also self disqualify ~~himself~~ under the provisions of this rule if, before the jury is sworn or the trial is commenced, a party files an affidavit that such party cannot have a fair and impartial trial by reason of the interest or prejudice of the judge or for other ground provided by law. Only one such affidavit shall be filed by the same party in the case and such affidavit shall be made as to only one of the judges of said court.

All right to an affidavit of prejudice will be considered waived where filed more than 10 days after the case is set for trial, unless the affidavit alleges a particular incident, conversation or utterance by the judge, which was not known to the party or ~~his~~ the party's attorney within the 10-day period. In multiple judge courts, or where a pro tempore or visiting judge is designated as the trial judge, the 10-day period shall commence on the date that the defendant or ~~his~~ the defendant's attorney has actual notice of assignment or reassignment to a designated trial judge.

RULE 41. DISMISSAL OF ACTIONS

(a) Voluntary Dismissal.

(1) *Mandatory*. Any action shall be dismissed by the court:

(i) By Stipulation. When all parties who have appeared so stipulate in writing; or

(ii) By Plaintiff Before Resting. Upon motion of the plaintiff at any time before plaintiff rests at the conclusion of ~~his~~ plaintiff's opening case.

(2) *Permissive*. After plaintiff rests after ~~his~~ plaintiff's opening case, plaintiff may move for a voluntary dismissal without prejudice upon good cause shown and upon such terms and conditions as the court deems proper.

(3) *Counterclaim*. If a counterclaim has been pleaded by a defendant prior to the service upon ~~him~~ the defendant of plaintiff's motion for dismissal, the action shall not be dismissed against the defendant's objection unless the counterclaim can remain pending for independent adjudication by the court.

(4) *Effect*. Unless otherwise stated in the order of dismissal, the dismissal is without prejudice, except that an order of dismissal operates as an adjudication upon the merits when obtained by a plaintiff who has once dismissed an action based on or including the same claim in any court of the United States or of any state.

(b) **Involuntary Dismissal; Effect.** For failure of the plaintiff to prosecute or to comply with these rules or any order of the court, a defendant may move for dismissal of an action or of any claim against ~~him or her~~ that defendant.

(1) *Want of Prosecution on Motion of Party*. Any civil action shall be dismissed, without prejudice, for want of prosecution whenever the plaintiff, counterclaimant, cross claimant, or third party plaintiff neglects to note the action for trial or hearing within 1 year after any issue of law or fact has been joined, unless the failure to bring the same on for trial or hearing was caused by the party who makes the motion to dismiss. Such motion to dismiss shall come on for hearing only after 10 days' notice to the adverse party. If the case is noted for trial before the hearing on the motion, the action shall not be dismissed.

(2) *Dismissal on Clerk's Motion*.

(i) Notice. In all civil cases in which no action of record has occurred during the previous 12 months, the clerk of the court shall notify the attorneys of record by mail that the court will dismiss the case unless, within 30 days following the mailing of such notice, a party takes action of record or files a status report with the court indicating the reason for inactivity and projecting future activity and a case completion date. If the court does not receive such a status report, it shall, on motion of the clerk, dismiss the case without prejudice and without cost to any party.

(ii) Mailing Notice; Reinstatement. The clerk shall mail notice of impending dismissal not later than 30 days after the case becomes eligible for dismissal because of inactivity. A party who

does not receive the clerk's notice shall be entitled to reinstatement of the case, without cost, upon motion brought within a reasonable time after learning of the dismissal.

(iii) Discovery in Process. The filing of a document indicating that discovery is occurring between the parties shall constitute action of record for purposes of this rule.

(iv) Other Grounds for Dismissal and Reinstatement. This rule is not a limitation upon any other power that the court may have to dismiss or reinstate any action upon motion or otherwise.

(3) *Defendant's Motion After Plaintiff Rests*. After the plaintiff, in an action tried by the court without a jury, has completed the presentation of ~~his~~ evidence, the defendant, without waiving ~~his~~ the right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. The court as trier of the facts may then determine them and render judgment against the plaintiff or may decline to render any judgment until the close of all the evidence. If the court renders judgment on the merits against the plaintiff, the court shall make findings as provided in RALJ 5.2. Unless the court in its order for dismissal otherwise specifies, a dismissal under this subsection and any dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction, for improper venue, or for failure to join a party under rule 19, operates as an adjudication upon the merits.

(c) **Dismissal of Counterclaim, Cross Claim, or Third Party Claim.** The provisions of this rule apply to the dismissal of any counterclaim, cross claim, or third party claim. A voluntary dismissal by the claimant alone pursuant to subsection (a)(1) of this rule shall be made before a responsive pleading is served or, if there is none, before the introduction of evidence at the trial or hearing.

(d) **Costs of Previously Dismissed Action.** If a plaintiff who has once dismissed an action in any court commences an action based upon or including the same claim against the same defendant, the court may make such order for the payment of taxable costs of the action previously dismissed as it may deem proper and may stay the proceedings in the action until the plaintiff has complied with the order.

(e) **Notice of Settlements.** If a case is settled after it has been assigned for trial, it shall be the duty of the attorneys or of any party appearing pro se to notify the court promptly of the settlement. If the settlement is made within 5 days before the trial date, the notice shall be made by telephone or in person. All notices of settlement shall be confirmed in writing to the clerk.

CRLJ 43
TAKING OF TESTIMONY

(a) Testimony.

(1) *Generally*. In all trials the testimony of witnesses shall be taken orally in open court, unless otherwise directed by the court or provided by rule or statute.

(2) *Multiple Examinations*. When two or more attorneys are upon the same side trying a case, the attorney conducting the examination of a witness shall continue until the witness is excused from the stand; and all objections and offers of proof made during the examination of such witness shall be made or announced by the attorney who is conducting the examination or cross examination.

(b) and (c) [Reserved. See ER 103 and 611.]

(d) Oaths of Witnesses.

(1) *Administration*. The oaths of all witnesses

(i) shall be administered by the judge;

(ii) shall be administered to each witness individually; and

(iii) the witness shall stand while the oath is administered.

(2) *Applicability*. This rule shall not apply to civil ex parte proceedings, and in such cases the manner of swearing witnesses shall be as each court may prescribe.

(3) *Affirmation in Lieu of Oath*. Whenever under these rules an oath is required to be taken, a solemn affirmation may be accepted in lieu thereof.

(e) Evidence on Motions. When a motion is based on facts not appearing of record the court may hear the matter on affidavits presented by the respective parties, but the court may direct that the matter be heard wholly or partly on oral testimony or depositions.

(f) Adverse Party as Witness.

(1) *Party or Managing Agent as Adverse Witness*. A party, or anyone who at the time of the notice is an officer, director, or other managing agent (herein collectively referred to as "managing agent") of a public or private corporation, partnership or association that is a party to an action or proceeding may be examined at the instance of any adverse party. Attendance of such deponent or witness may be compelled solely by notice (in lieu of a subpoena) given in the manner prescribed in CR 30(b)(1) to opposing counsel of record. Notices for the attendance of a party or of a managing agent at the trial shall be given not less than 10 days before trial (exclusive of the day of service, Saturdays, Sundays, and court holidays). For good cause shown in the manner prescribed in CR 26(c), the court may make orders for the protection of the party or managing agent to be examined.

(2) *Effect of Discovery, etc*. A party who has served interrogatories to be answered by the adverse party or who has taken the deposition of an adverse party or of the managing agent of an adverse party shall not be precluded for that reason from examining such adverse party or managing agent at the trial. Matters admitted by an adverse party or managing agent in interrogatory answers, deposition testimony, or trial testimony are not conclusively established and may be rebutted.

(3) *Refusal To Attend and Testify; Penalties*. If a party or a managing agent refuses to attend and testify before the officer designated to take ~~his~~ that person's deposition or at the trial after notice served as prescribed in CR 30(b)(1), the complaint, answer, or reply of the party may be stricken and judgment taken against the party, and the contumacious party or managing agent may also be proceeded against as in other cases of contempt. This rule shall not be construed:

(i) to compel any person to answer any question where such answer might tend to be incriminating~~e him~~;

(ii) to prevent a party from using a subpoena to compel the attendance of any party or managing agent to give testimony by deposition or at the trial; nor

(iii) to limit the applicability of any other sanctions or penalties provided in CR 37 or otherwise for failure to attend and give testimony.

(g) Attorney as Witness. If any attorney offers ~~himself as~~to be a witness on behalf of ~~his~~ the attorney's client and gives evidence on the merits, ~~he~~ the attorney shall not argue the case to the jury, unless by permission of the court.

(h) Recording as Evidence. Whenever the testimony of a witness at a trial or hearing which was recorded is admissible in evidence at a later trial, it may be proved by the recording thereof duly certified by the person who recorded the testimony.

(i) [Reserved. See ER 804.]

(j) Record in Retrial of Nonjury Cases. In the event a cause has been remanded by the court for a new trial or the taking of further testimony, and such cause shall have been tried without a jury, and the testimony in such cause shall have been taken in full and used as the record upon review, either party upon the retrial of such cause or the taking of further testimony therein shall have the right, provided the court shall so order after an application on 10 days' notice to the opposing party or parties, to submit said record as the testimony in said cause upon its second hearing, to the same effect as if the witnesses called by ~~him~~ either party in the earlier hearing had been called, sworn, and testified in the further hearing; but no party shall be denied the right to submit other or further testimony upon such retrial or further hearing, and the party having the right of cross examination shall have the privilege of subpoenaing any witness whose testimony is contained in such record for further cross examination.

(k) Juror Questions for Witnesses. The court shall permit jurors to submit to the court written questions directed to witnesses. Counsel shall be given an opportunity to object to such questions in a manner that does not inform the jury that an objection was made. The court shall establish procedures for submitting, objecting to, and answering questions from jurors to

witnesses. The court may rephrase or reword questions from jurors to witnesses. The court may refuse on its own motion to allow a particular question from a juror to a witness.

[Adopted effective September 1, 1984; Amended effective September 1, 1989; October 1, 2002; September 1, 2006.]

CRLJ 44.1
DETERMINATION OF FOREIGN LAW

(a) Pleading. A party who intends to raise an issue concerning the law of a state, territory, or other jurisdiction of the United States, or a foreign country shall give notice in ~~his~~ the party's pleadings in accordance with rule 9(k).

(b) United States Jurisdictions. The law of a state, territory, or other jurisdiction of the United States shall be determined as provided in RCW 5.24.

(c) Other Jurisdictions. The court, in determining the law of any jurisdiction other than a state, territory, or other jurisdiction of the United States, may consider any relevant written material or other source, including testimony, having due regard for their trustworthiness, whether or not submitted by a party and whether or not admissible under the Rules of Evidence. If the court considers any material or source not received in open court, prior to its determination the court shall:

(1) Identity in the record such material or source;

(2) Summarize in the record any unwritten information received; and

(3) Afford the parties an opportunity to respond thereto. The court's determination shall be treated as a ruling on a question of law.

[Adopted effective September 1, 1984; Amended effective September 1, 1989.]

CRLJ 46
EXCEPTIONS UNNECESSARY

Formal exceptions to rulings or orders of the court are unnecessary; but for all purposes for which an exception has heretofore been necessary it is sufficient that a party, at the time the ruling or order of the court is made or sought, makes known to the court the action which the party~~he~~ desires the court to take or ~~his~~ the party's objection to the action of the court and the ~~his~~ grounds therefor; and, if a party has no opportunity to object to a ruling or order at the time it is made, the absence of an objection does not thereafter prejudice ~~him~~the party.

[Adopted effective September 1, 1984; Amended effective September 1, 1989.]

CRLJ 47
JURORS

(a) **Examination, Selection, etc.** See rule 38.

(b) Care of Jury While Deliberating.

(1) *Generally*. During trial and deliberations the jury may be allowed to separate unless good cause is shown, on the record, for sequestration of the jury.

(2) *Communication Restricted.* Unless the jury is allowed to separate, the jurors shall be kept together under the charge of one or more officers until they agree upon their verdict or are discharged by the court. The officer shall keep the jurors separate from other persons and shall not allow any communication which may affect the case to be made to the jurors, nor shall the officer make any ~~himself~~such communication, unless by order of the court, except to ask the jurors if they have agreed upon their verdict. The officer shall not, before the verdict is rendered, communicate to any person the state of the jurors' deliberations or their verdict.

(3) *Motions.* Any motions or proceedings concerning the separation or sequestration of the jury shall be made out of the presence of the jury.

[Adopted effective September 1, 1984; Amended effective September 1, 1989.]

CRLJ 49
TAKING OF TESTIMONY

(-) **General Verdict.** A general verdict is that by which the jury pronounces generally upon all or any of the issues in favor of either the plaintiff or defendant.

(a) Special Verdict. The court may require a jury to return only a special verdict in the form of a special written finding upon each issue of fact. In that event the court may submit to the jury written questions susceptible of categorical or other brief answer or may submit written forms of the several special findings which might properly be made under the pleadings and evidence; or it may use such other method of submitting the issues and requiring the written findings thereon as it deems most appropriate. The court shall give to the jury such explanation and instruction concerning the matter thus submitted as may be necessary to enable the jury to make its findings upon each issue. If in so doing the court omits any issue of fact raised by the pleadings or by the evidence, each party waives ~~his~~ the right~~s~~ to a trial by jury of the issue so omitted unless before the jury retires ~~he~~ the party demands its submission to the jury. As to an issue omitted without such demand the court may make a finding; or, if it fails to do so, it shall be deemed to have made a finding in accord with the judgment on the special verdict.

(b) General Verdict Accompanied by Answer to Interrogatories. The court may submit to the jury, together with appropriate forms for a general verdict, written interrogatories upon one or more issues of fact the decision of which is necessary to a verdict. The court shall give such explanation or instruction as may be necessary to enable the jury both to make answers to the interrogatories and to render a general verdict, and the court shall direct the jury both to make written answers and to render a general verdict. When the general verdict and the answers are harmonious, the appropriate judgment upon the verdict and answers shall be entered pursuant to rule 58. When the answers are consistent with each other but one or more is inconsistent with the general verdict, judgment may be entered pursuant to rule 58 in accordance with the answers, notwithstanding the general verdict, or the court may return the jury for further consideration of its answers and verdict or may order a new trial. When the answers are inconsistent with each other and one or more is likewise inconsistent with the general verdict, judgment shall not be entered, but the court shall return the jury for further consideration of its answers and verdict or shall order a new trial.

(c) Discharge of Jury. [Reserved. See RCW 12.12.080 and 12.12.090.]

(d) Court Recess During Deliberation. [Reserved. See RCW 4.44.350.]

(e) Proceedings When Jury Has Agreed. [Reserved. See RCW 4.44.360.]

(f) Manner of Giving Verdict. [Reserved. See RCW 4.44.370.]

(g) Verdict by Five Jurors in Civil Cases. [Reserved. See RCW 4.44.380.]

(h) Jury May Be Polled. [Reserved. See RCW 4.44.390]

(i) Correction of Informal Verdict. [Reserved. See RCW 4.44.400.]

(j) Jury To Assess Amount of Recovery. [Reserved. See RCW 4.44.450]

(k) Receiving Verdict and Discharging Jury. [Reserved. See RCW 12.12.080 and 12.12.090.]

[Adopted effective September 1, 1984; Amended effective September 1, 1989.]

CRLJ 51
INSTRUCTIONS TO JURY AND DELIBERATION

(a) Proposed. Unless otherwise requested by the trial judge on timely notice to counsel, proposed instructions shall be submitted when the case is called for trial. Proposed instructions upon questions of law developed by the evidence, which could not reasonably be anticipated, may be submitted at any time before the court has instructed the jury.

(b) Submission. Submission of proposed instructions shall be by delivering the original and three or more copies as required by the trial judge, by filing one copy with the clerk, identified as the party's proposed instructions, and by serving one copy upon each opposing counsel.

(c) Form. Each proposed instruction shall be typewritten or printed on a separate sheet of letter-size (8-1/2 by 11 inches) paper. Except for one copy of each, the instructions delivered to the trial court shall not be numbered or identified as to the proposing party. One copy delivered to the trial court, and the copy filed with the clerk, and copies served on each opposing counsel shall be numbered and identified as to proposing party, and may contain supporting annotations.

(d) Published Instructions.

(1) *Request*. Any instruction appearing in the Washington Pattern Instructions (WPI) may be requested by counsel who must submit the proper number of copies of the requested instruction, identified by number as in section (c) of this rule, in the form ~~he~~ counsel wishes it read to the jury. If the instruction in WPI allows or provides for a choice of wording by the use of brackets or otherwise, the written requested instruction shall use the choice of wording which is being requested.

(2) *Record on Review*. Where the refusal to give a requested instruction is an asserted error on review, a copy of the requested instruction shall be placed in the record on review.

(3) *Local Option*. Any court of limited jurisdiction may adopt a local rule to substitute for subsection (d)(1) and to allow instructions appearing in the Washington Pattern Instructions (WPI) to be requested by reference to the published number. If the instruction in WPI allows or provides for a choice of wording by the use of brackets or otherwise, the local rule must require that the written request which designates the number of the instruction shall also designate the choice of wording which is being requested.

(e) Disregarding Requests. The trial court may disregard any proposed instruction not submitted in accordance with this rule.

(f) Objections to Instruction. Before instructing the jury, the court shall supply counsel with copies of its proposed instructions which shall be numbered. Counsel shall then be afforded an opportunity in the absence of the jury to make objections to the giving of any instruction and to the refusal to give a requested instruction. The objector shall state distinctly the matter to which ~~he~~ counsel objects and the grounds ~~of his~~ for the objection, specifying the number, paragraph or particular part of the instruction to be given or refused and to which objection is made.

(g) Instructing the Jury and Argument. After counsel have completed their objections and the court has made any modifications deemed appropriate, the court shall then provide each counsel with a copy of the instructions in their final form. The court shall then read the instructions to the jury. The plaintiff or party having the burden of proof may then address the jury upon the evidence, and the law as contained in the courts instructions; after which the adverse party may address the jury; followed by the rebuttal of the party first addressing the jury.

(h) Deliberation. After argument, the jury shall retire to consider its verdict. In addition to the written instructions given, the jury shall take with it all exhibits received in evidence, except deposition. Copies may be substituted or any parts of public records or private documents as ought not, in the opinion of the court, to be taken from the person having them in possession. Pleadings shall not go to the jury room.

(i) Questions from Jury During Deliberations. The jury shall be instructed that any question it wishes to ask the court about the instructions or evidence should be signed, dated and submitted in writing to the bailiff without any indication of the status of the jury's deliberations. The court shall notify the parties of the contents of the questions and provide them an opportunity to comment upon an appropriate response. Written questions from the jury, the court's response and any objections thereto shall be made a part of the record. The court shall respond to all questions from a deliberating jury in open court or in writing. In its discretion, the court may grant a jury's request to rehear or replay evidence, but should do so in a way that is least likely to be seen as a comment on the evidence, in a way that is not unfairly prejudicial and in a way that minimizes the possibility that jurors will give undue weight to such evidence. Any additional instruction upon any point of law shall be given in writing.

(j) Comments Upon Evidence. Judges shall not instruct with respect to matters of fact, nor comment thereon.

[Adopted effective September 1, 1984; Amended effective October 1, 2002.]

CRLJ 54
JUDGEMENTS; COSTS

(a) Definition; Form. "Judgment" as used in these rules includes a decree and any final order from which an appeal lies. A judgment shall not contain a recital of pleadings or the record of prior proceedings. Judgments may be in writing signed by the court or may be oral confirmed by an entry in the record.

(b) Judgment Upon Multiple Claims or Involving Multiple Parties. When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross claim, or third party claim, or when multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination in the judgment that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

(c) Demand for Judgment. A judgment by default shall not be different in kind from or exceed in amount that prayed for in the demand for judgment. Except as to a party against whom a judgment is entered by default, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in ~~his~~ the party's pleadings.

(d) Costs. Costs shall be fixed and allowed as provided in RCW 12.20.060 or by any other applicable statute.

[Adopted effective September 1, 1984; Amended effective September 1, 1989.]

CRLJ 55
DEFAULT

(a) Entry of Default.

(1) *Motion*. When a party against whom a judgment for affirmative relief is sought has failed to appear, plead, or otherwise defend as provided by these rules and that fact is made to appear by motion and affidavit, a motion for default may be made.

(2) *Pleading After Default*. Any party may respond to any pleading or otherwise defend at any time before a motion for default and supporting affidavit is filed, whether the party previously has appeared or not. If the party has appeared before the motion is filed, ~~he~~ the party may respond to the pleading or otherwise defend at any time before the hearing on the motion. If the party has not appeared before the motion is filed ~~he~~ the party may not respond to the pleading nor otherwise defend without leave of court. Any appearances for any purpose in the action shall be for all purposes under this rule 55.

(3) *Notice*. Any party who has appeared in the action for any purpose, shall be served with a written notice of motion for default and the supporting affidavit at least 5 days before the hearing on the motion. Any party who has not appeared before the motion for default and supporting affidavit are filed is not entitled to a notice of the motion, except as provided in subsection (f)(2)(i).

(4) *Venue*. A motion for default shall include a statement of the basis for venue in the action. A default shall not be entered if it clearly appears to the court from the papers on file that the action was brought in an improper district.

(b) Entry of Default Judgement. As limited in rule 54(c), judgment after default may be entered as follows, if proof of service is on file as required by subsection (b)(4):

(1) *When Amount Certain*. When the claim against a party, whose default has been entered under section (a), is for a sum certain or for a sum which can by computation be made certain, the court upon motion and affidavit of the amount due shall enter judgment for that amount and costs against the party in default, if ~~he~~ the party is not an infant or incompetent person. No judgment by default shall be entered against an infant or incompetent person unless represented by a general guardian or guardian ad litem. Findings of fact and conclusions of law are not necessary under this subsection even though reasonable attorney fees are requested and allowed.

(2) *When Amount Uncertain*. If, in order to enable the court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the court may conduct such hearings as are deemed necessary or, when required by statute, shall have such matters resolved by a jury. Findings of fact and conclusions of law are required under this subsection.

(3) *When Service by Publication or Mail*. In an action where the service of the summons was by publication, or by mail under rule 4(d)(4), the plaintiff, upon the expiration of the time for answering, may, upon proof of service, apply for judgment. The court must thereupon require

proof of the demand mentioned in the complaint, and must require the plaintiff or ~~his~~ the plaintiff's agent to be examined on oath respecting any payments that have been made to the plaintiff, or to anyone for ~~his~~ the plaintiff's use on account of such demand, and may render judgment for the amount which ~~he~~ the plaintiff is entitled to recover, or for such other relief as ~~he~~ the plaintiff may be entitled to.

(4) *Costs and Proof of Service*. Costs shall not be awarded and default judgment shall not be rendered unless proof of service is on file with the court.

(c) Setting Aside Default.

(1) *Generally*. For good cause shown and upon such terms as the court deems just, the court may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with rule 60(b).

(2) *When Venue Is Improper*. A default judgment entered in a district of improper venue is valid but will on motion be vacated for irregularity pursuant to rule 60(b)(1). A party who procures the entry of the judgment shall, in the vacation proceedings, be required to pay to the party seeking vacation the costs and reasonable attorney fees incurred by the party in seeking vacation if the party procuring the judgment could have determined the district of proper venue with reasonable diligence. This subsection does not apply if either (i) the parties stipulate in writing to venue after commencement of the action, or (ii) the defendant has appeared, has been given written notice of the motion for an order of default, and does not object to venue before the entry of the default order.

(d) Plaintiffs, Counterclaimants, Cross Claimants. The provisions of this rule apply whether the party entitled to the judgment by default is a plaintiff, a third party plaintiff, or a party who has pleaded a cross claim or counterclaim. In all cases a judgment by default is subject to the limitations of rule 54(c).

(e) Judgement Against State. [Reserved.]

(f) How Made After Elapse of Year.

(1) *Notice*. When more than 1 year has elapsed after service of summons with no appearance being made, the court shall not sign an order of default or enter a judgment until a notice of the time and place of the application for the order or judgment is served on the party in default, not less than 10 days prior to the entry. Proof by affidavit of the service of the notice shall be filed before entry of the judgment.

(2) *Service*. Service of notice of the time and place on the application for the order of default or default judgment shall be made as follows:

(i) by service upon the attorney of record;

(ii) if there is no attorney of record, then by service upon the defendant by certified mail with return receipt of said service to be attached to the affidavit in support of the application; or

(iii) by a personal service upon the defendant in the same manner provided for service of process.

(iv) If service of notice cannot be made under sections (i) and (iii), the notice may be given by publication in a newspaper of general circulation in the county in which the action is pending for one publication, and by mailing a copy to the last known address of each defendant. Both the publication and mailing shall be done 10 days prior to the hearing.

[Adopted effective September 1, 1984; Amended effective September 1, 1989.]

CRLJ 56
SUMMARY JUDG~~E~~MENT

(a) For Claimant. A party seeking to recover upon a claim, counterclaim, or cross claim, or to obtain a declaratory judgment may, at any time after the expiration of the period within which the defendant is required to appear, or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in ~~his~~ the party's favor upon all or any part thereof.

(b) For Defending Party. A party against whom a claim, counterclaim, or cross claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in ~~his~~ such party's favor as to all or any part thereof.

(c) Motion and Proceedings. The motion and any supporting affidavits, memoranda of law, or other documentation shall be filed and served not later than 15 days before the hearing. The adverse party may file and serve opposing affidavits, memoranda of law, and other documentation not later than three days before the hearing. The moving party may file and serve any rebuttal documents not later than the day prior to the hearing. Summary judgment motions shall be heard more than 14 days before the date set for trial unless leave of the court is granted to allow otherwise. The judgment sought shall be rendered forthwith if the pleadings, answers to interrogatories, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

(d) Case Not Fully Adjudicated on Motion. If on motion under the rule judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action, the facts so specified shall be deemed established, and the trial shall be conducted accordingly.

(e) Form of Affidavits; Further Testimony; Defense Required. Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials ~~of~~in ~~his~~ a pleading, but ~~his~~ a response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If ~~he~~ the adverse party does not so respond, summary judgment, if appropriate, shall be entered against ~~him~~the adverse party.

(f) When Affidavits Are Unavailable. Should it appear from the affidavits of a party opposing the motion that ~~he cannot,~~ for reasons stated the party cannot~~,~~ present by affidavit facts essential to justify ~~his~~ the party's opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

(g) Affidavits Made in Bad Faith. Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused ~~him~~ the other party to incur, including reasonable attorney fees, and any offending party or attorney may be adjudged guilty of contempt.

(h) Rulings by Court. In granting or denying the motion for summary judgment, the court shall designate the documents and other evidence considered in its rulings.

[Adopted effective September 1, 1984; Amended effective September 1, 1989.]

RULE 58. ENTRY OF JUDGMENT

Upon the verdict of a jury, the court shall immediately render judgment thereon. If the trial is by the judge, judgment shall be entered immediately after the close of the trial, unless ~~he or she~~ the judge reserves decision, in which event the decision shall be rendered within 45 days.

RULE 59. NEW TRIAL, RECONSIDERATION, AND AMENDMENT OF JUDGMENTS

(a) Grounds for New Trial or Reconsideration. On the motion of the party aggrieved, a verdict may be vacated and a new trial granted to all or any of the parties, and on all the issues, or on some of the issues when such issues are clearly and fairly separable and distinct, or any other decision or order may be vacated and reconsideration granted. Such motion may be granted for any one of the following causes materially affecting the substantial rights of such parties:

(1) Irregularity in the proceedings of the court, jury or adverse party, or any order of the court, or abuse of discretion, by which such party was prevented from having a fair trial;

(2) Misconduct of prevailing party or jury; and whenever any one or more of the jurors shall have been induced to assent to any general or special verdict or to a finding on any question or questions submitted to the jury by the court, other and different from ~~his~~ the courts own conclusions, and arrived at by a resort to the determination of change or lot, such misconduct may be proved by the affidavits of one or more of the jurors;

(3) Accident or surprise which ordinary prudence could not have guarded against;

(4) Newly discovered evidence, material for the party making the application, which ~~he~~ the party could not with reasonable diligence have discovered and produced at the trial;

(5) Damages so excessive or inadequate as unmistakably to indicate that the verdict must have been the result of passion or prejudice;

(6) Error in the assessment of the amount of recovery whether too large or too small, when the action is upon a contract, or for the injury or detention of property;

(7) That there is no evidence or reasonable inference from the evidence to justify the verdict or the decision, or that it is contrary to law;

(8) Error in law occurring at the trial and objected to at the time by the party making the application; or

(9) That substantial justice has been done.

(b) Time for Motion: Contents of Motion. A motion for a new trial or for reconsideration shall be filed not later than 10 days after the entry of the judgment, order, or other decision. The motion shall be noted at the time it is filed, to be heard or otherwise considered within 30 days after entry of the judgment, order, or other decision, unless the court directs otherwise.

A motion for a new trial or for reconsideration shall identify the specific reasons in fact and law as to each ground on which the motion is based.

(c) Time for Serving Affidavits. When a motion for new trial is based on affidavits, they shall be filed with the motion. The opposing party has 10 days after service to file opposing affidavits, but that period may be extended for up to 20 days, either by the court for good cause or by the parties' written stipulation. The court may permit reply affidavits.

(d) On Initiative of Court. Not later than 10 days after entry of judgment, the court on its own initiative may order a hearing on its proposed order for a new trial for any reason for which it might have granted a new trial on motion of a party. After giving the parties notice and an opportunity to be heard, the court may grant a timely motion for a new trial for a reason not

stated in the motion. When granting a new trial on its own initiative or for a reason not stated in the motion, the court shall specify the grounds in its order.

(e) Hearing on Motion. When a motion for reconsideration or for a new trial is filed, the judge by whom it is to be heard may on the judge's own motion or on application determine:

(1) *Time of Hearing.* Whether the motion shall be heard before the entry of judgment;

(2) *Consolidation of Hearings.* Whether the motion shall be heard before or at the same time as the presentation of the findings and conclusions and/or judgment, and the hearing on any other pending motion; and

(3) *Nature of Hearing.* Whether the motion or motions and presentation shall be heard on oral argument or submitted on briefs, and if on briefs, shall fix the time within which the briefs shall be served and filed.

(f) Statement of Reasons. In all cases where the trial court grants a motion for a new trial, it shall, in the order granting the motion for a new trial, it shall, in the order granting the motion, state whether the order is based upon the record or upon facts and circumstances outside the record that cannot be made a part thereof. If the order is based upon the record, the court shall give definite reasons of law and facts for its order. If the order is based upon matters outside the record, the court shall state the facts and circumstances upon which it relied.

(g) Reopening Judgment. On a motion for a new trial in an action tried without a jury, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law, and direct the entry of a new judgment.

(h) Motion to Alter or Amend Judgment. A motion to alter or amend the judgment shall be filed not later than 10 days after entry of the judgment.

(i) Alternative Motions, etc. Alternative motions for judgment as a matter of law and for a new trial may be made in accordance with rule 50(c).

(j) Limit on Motions. If a motion or reconsideration, or for a new trial, or for judgment as a matter of law, is made and heard before the entry of the judgment, no further motion may be made, without leave of the court first obtained for good cause shown: (1) for a new trial, or (2) pursuant to sections (g), (h), and (i) of this rule.

RULE 73. TRIAL DE NOVO

(a) Scope of Rule . This rule applies only to proceedings which are not subject to appellate review under the Rules for Appeal of Decisions of Courts of Limited Jurisdiction. The proceedings to which those rules apply are defined by RALJ 1.1.

(b) Filing Notice of Appeal Service.

(1) A party appealing a judgment or decision subject to this rule must file in the court of limited jurisdiction a notice of appeal within 30 days after the judgment is rendered or decision made. Filing the notice of appeal is the only jurisdictional requirement for an appeal.

(2) The statutory filing fee for superior court must be paid to the clerk of the limited jurisdiction court at the time the notice of appeal is filed, unless the party is excused from paying a filing fee by statute or by the constitution.

(3) The clerk of the court of limited jurisdiction shall immediately upon filing of a notice of appeal and payment of the filing fee, if required, file a copy of the notice with the superior court.

(4) A party filing a notice of appeal shall also, within the same 30 days, serve a copy of the notice of appeal on all other parties or their lawyers and file an acknowledgment or affidavit of service in the court of limited jurisdiction.

(c) Bond. A bond or undertaking shall be executed on the part of the appellant, except when the appellant is a county, city, town or school district, and filed with and approved by the court of limited jurisdiction with one or more sureties, in the sum of $100, conditioned that the appellant will pay all costs that may be awarded against ~~him~~ appellant on appeal; or if a stay of proceedings in the court of limited jurisdiction be claimed, except by a county, city, town or school district, a bond or undertaking, with two or more personal sureties, or a surety company as surety, to be approved by the court of limited jurisdiction, in a sum equal to twice the amount of the judgment and costs, conditioned that the appellant will pay such judgment, including costs, as may be rendered against ~~him~~ appellant on appeal, be so executed and filed.

(d) Stay of Proceedings. Upon an appeal being taken and a bond filed to stay all proceedings, the court of limited jurisdiction shall allow the same and make an entry of such allowance, and all further proceedings on the judgment in such court shall thereupon be suspended; and if in the meantime execution shall have been issued, such court shall give the appellant a certificate that such appeal has been allowed.

(e)) Release of Property Taken on Execution. On such certificate being presented to the officer holding the execution, ~~he~~ the officer shall forthwith release the property of the judgment debtor that may have been taken on execution.

(f) No Dismissal for Defective Bond. No appeal allowed by a court of limited jurisdiction shall be dismissed on account of any defect in the bond on appeal, if the appellant, before the motion is determined, shall execute and file in the superior court such bond as ~~he~~ the appellant should have executed at the time of taking the appeal, and pay all costs that may have accrued by reason of such defect.

(g) Judgment Against Appellant and Sure ties. In all cases of appeal to the superior court, if on the trial anew in such court, the judgment be against the appellant in

whole or in part, such judgment shall be rendered against ~~him~~ the appellant and ~~his~~ sureties on the bond on appeal.

RULE 75. RECORD ON TRIAL DE NOVO

(a) **Scope of Rule.** This rule applies only to proceedings which are not subject to appellate review under the Rules for Appeal of Decisions of Courts of Limited Jurisdiction. The proceedings to which those rules apply are defined by RALJ 1.1.

(b) **Transcript; Procedure in Superior Court; Pleadings in Superior Court.** Within 14 days after the notice of appeal has been filed in a civil action or proceeding, including a small claims appeal pursuant to chapter 12.40 RCW, the appellant shall file with the clerk of the superior court a transcript of all entries made in the docket of the court of limited jurisdiction relating to the case, together with all the process and other papers relating to the case filed in the court of limited jurisdiction which shall be made and certified by such court to be correct upon the payment of the fees allowed by law therefor, and upon the filing of such transcript the superior court shall become possessed of the cause, and shall proceed in the same manner, as near as may be, as in actions originally commenced in that court, except as provided in these rules. The issue before the court of limited jurisdiction shall be tried in the superior court without other or new pleadings, unless otherwise directed by the superior court.

(c) **Small Claims Appeals; Trial De Novo on the Record.** Small claims appeals pursuant to chapter 12.40 RCW shall be tried by the superior court de novo on the record. Within 14 days after the notice of appeal has been filed in a small claims proceeding, appellant shall make necessary arrangements with the district court to directly transmit a verbatim electronic recording of the trial and any exhibits from the trial to the clerk of the superior court. The electronic recording shall be made and certified by the district court to be correct upon the payment of the fees allowed by law therefor.

(d) **Transcript; Procedure on Failure To Make and Certify; Amendment.** If upon an appeal being taken the court of limited jurisdiction fails, neglects or refuses, upon the tender or payment of the fees allowed by law, to make and certify the transcript, the appellant may make application, supported by affidavit, to the superior court and the court shall issue an order directing the court of limited jurisdiction to make and certify such transcript upon the payment of such fees. Whenever it appears to the satisfaction of the superior court that the return of the court of limited jurisdiction to such order is substantially erroneous or defective it may order the court of limited jurisdiction to amend the same. If the judge of the court of limited jurisdiction fails, neglects or refuses to comply with any order issued under the provisions of this section ~~he~~ the judge may be cited and punished for contempt of court.

GR 9 COVER SHEET

Suggested Amendments

CRLJ 4, CRLJ 8, CRLJ 13, CRLJ 15, CRLJ 17, CRLJ 18, CRLJ 19, CRLJ 20, CRLJ 22, CRLJ 24, CRLJ 25, CRLJ 40, CRLJ 41, CRLJ 43, CRLJ 44.1, CRLJ 46, CRLJ 47, CRLJ 49, CRLJ 51, CRLJ 54, CRLJ 55, CRLJ 56, CRLJ 58, CRLJ 59, CRLJ 73, and CRLJ 75

A. **Proponent:** WSBA Court Rules and Procedures Committee

B. **Spokesperson:** Isham Reavis, Chair – WSBA Court Rules and Procedures Committee

C. **Purpose:** The Superior Court Civil Rules were amended a few years ago to make the rules gender neutral. The same was not done for the Civil Rules for Courts of Limited Jurisdiction. The proposed amendments make the rules gender neutral.

D. **Hearing:** The proponent does not believe that a public hearing is necessary.

E. **Expedited Consideration:** Expedited consideration is not requested.

SUGGESTED AMENDMENT
CRLJ 4
PROCESS

(a) Summons—Issuance.

(1) The summons must be signed and dated by the plaintiff or ~~his~~ the plaintiff's attorney, and directed to the defendant requiring ~~him~~ the defendant to defend the action and to serve a copy of ~~his~~ the defendant's appearance or defense on the person whose name is signed on the summons, and to file a copy of ~~his~~ the defendant's appearance or defense with the court.

(2) Unless a statute or rule provides for a different time requirement, the summons shall require the defendant to serve and file a copy of ~~his defense~~ the answer within 20 days after the service of summons, exclusive of the day of service. If a statute or rule other than this rule provides for a different time to serve a defense, that time shall be stated in the summons.

(3) A notice of appearance, if made, shall be in writing, shall be signed by the defendant or ~~his~~ the defendant's attorney, and shall be served upon the person whose name is signed on the summons and filed with the court.

(4) No summons is necessary for a counterclaim or cross claim for any person who previously has been made a party. Counterclaims and cross claims against an existing party may be served as provided in rule 5.

(b) Summons.

(1) *Contents*. The summons for personal service shall contain:

(i) the title of the cause, specifying the name of the court in which the action is brought, the name of the county designated by the plaintiff as the place of trial, and the names of the parties to the action, plaintiff and defendant;

(ii) a direction to the defendant summoning ~~him~~ the defendant to serve a copy of ~~his defense~~ the answer within a time stated in the summons and to file with the court a copy of ~~his defense~~ the answer within the time stated in the summons;

(2) *Form*. The summons for personal service in the state shall be substantially in the following form:

(NAME AND LOCATION OF COURT)

_____,)
Plaintiff,) No.
v.)
_____,) SUMMONS (20 days)
Defendant.)

TO THE DEFENDANT: A lawsuit has been started against you in the above entitled court by , plaintiff. Plaintiff's claim is stated in the written complaint, a copy of which is served upon you with this summons.

In order to defend against this lawsuit, you must respond to the complaint by stating your defense in writing, and serve a copy upon the person signing this summons within 20 days after the service of this summons, excluding the day of service, or a default judgment may be entered against you without notice. A default judgment is one where plaintiff is entitled to what ~~he~~ plaintiff asks for because you have not responded. If you serve a notice of appearance on the undersigned person you are entitled to notice before a default judgment may be entered.

Any response or notice of appearance which you serve on any party to this lawsuit must also be filed by you with the court within 20 days after the service of summons, excluding the day of service.

If you wish to seek the advice of an attorney in this matter, you should do so promptly so that your written response, if any, may be served on time.

This summons is issued pursuant to rule 4 of the Civil Rules for Courts of Limited Jurisdiction.

(signed)

Print or Type Name
( ) Plaintiff ( ) Plaintiff's Attorney
P. O. Address

Dated Telephone Number

(c) By Whom Served. Service of summons and complaint may be made by the sheriff or a deputy of the county or district in which the court is located or by any person over the age of 18 years and who is competent to be a witness and is not a party to the action.

(d) Service.

(1) *Of Summons and Complaint*. The summons and complaint shall be served together.

(2) *Personal in State*. Personal service of summons and other process shall be as provided in RCW 4.28.080-.090, 23B.05.040, 23B.15.100, 46.64.040, and 48.05.200 and .210, and other statutes which provide for personal service

(e) Service by Publication and Personal Service Out of the Jurisdiction.

(1) When the defendant cannot be found within the territorial jurisdiction of the court (of which the return of the sheriff of the county in which the action is brought, that the defendant cannot be found in the county, is prima facie evidence), and upon filing of an affidavit of the plaintiff, ~~his~~ the plaintiff's agent, or attorney, with the court stating that ~~he~~ the plaintiff believes that the defendant is not a resident of the county, or cannot be found therein, and that ~~he~~ the plaintiff has deposited a copy of the summons (substantially in the form prescribed in this rule) and complaint in the post office, directed to the defendant at ~~his~~ the defendant's place of residence, unless it is stated in the affidavit that such

residence is not known to the affiant, and stating the existence of one of the cases hereinafter specified, the service may be made by publication of the summons by the plaintiff or ~~his~~ the plaintiff's attorney in any of the following cases:

(i) when the defendant is a foreign corporation, and has property within the county;

(ii) when the defendant, being a resident of the county, has departed therefrom with intent to defraud ~~his~~ the defendant's creditors, or to avoid the service of a notice and complaint, or ~~keep himself~~ the defendant remains concealed therein with like intent;

(iii) when the defendant is not a resident of the county, but has property therein which has been brought under the control of the court by seizure or some equivalent act;

(iv) when the subject of the action is personal property in the county, and the defendant has or claims a lien or interest, actual or contingent, therein, and the relief demanded consists wholly, or partially, in excluding the defendant from any interest or lien therein;

(v) when the action is brought under RCW 4.08.160 and 4.08.170 to determine conflicting claims to personal property in the county.

(2) The publication shall be made in the same manner and in the same form as a summons by publication in superior court (see RCW 4.28.100), with appropriate adjustments for the name and location of the court.

(3) Personal service on the defendant out of the territorial jurisdiction of the court shall be equivalent to service by publication, and the notice to the defendant out of the county shall contain the same as the notice by publication and shall require the defendant to appear at a time and place certain which shall not be less than 30 days from the date of service.

(4) Service made in the modes provided in this section 4(e) shall not alone be taken and held to give the court jurisdiction over the person of the defendant. By such service the court only acquires jurisdiction to give a judgment which is effective as to property or debts attached or garnished in connection with the suit or other property which properly forms the basis of jurisdiction of the court. If the defendant appears in a suit commenced by such service the court shall have jurisdiction over ~~his person~~ the defendant. The defendant may appear specially and solely to challenge jurisdiction over property or debts attached or garnished or other property within the jurisdiction of the court.

(f) Alternative to Service by Publication. In circumstances justifying service by publication, if the serving party files an affidavit stating facts from which the court determines that service by mail is just as likely to give actual notice as service by publication, the court may order that service be made by any person over 18 years of age, who is competent to be a witness, other than a party, by mailing copies of the summons and other process to the party to be served at ~~his~~ the party's last known address or any other address determined by the court to be appropriate. Two copies shall be mailed, postage prepaid, one by ordinary first class mail and the other by a form of mail requiring a signed receipt showing when and to whom it was delivered. The envelopes must bear the return address of the sender. The summons shall contain the date it was deposited in the mail and shall require the defendant to appear and answer the complaint within 90 days from the date of mailing. Service under this subsection has the same jurisdictional effect as service by publication.

(g) Appearance. A voluntary appearance of a defendant does not preclude ~~his~~ the defendant's right to challenge lack of jurisdiction over ~~his~~ the defendant, insufficiency of process, or insufficiency of service of process pursuant to rule 12(b).

(h) Territorial Limits of Effective Service. All process other than a subpoena may be served anywhere within the territorial limits of the state, and when a statute or these rules so provide beyond the territorial limits of the state. A subpoena may be served within the territorial limits provided in rule 45 and RCW 5.56.010.

(i) Return of Service. Proof of service shall be as follows:

(1) If served by the sheriff or ~~his~~ the sheriff's deputy, the return of the sheriff or ~~his~~ the sheriff's deputy endorsed upon or attached to the summons;

(2) If served by any other person, ~~his~~ the person's affidavit of service endorsed upon or attached to the summons; or

(3) If served by publication, the affidavit of the publisher, foreman, principal clerk, or business manager of the newspaper showing the same, together with a printed copy of the summons as published; or

(4) If served as provided in section (f), the affidavit of the serving party stating that copies of the summons and other process were sent by mail in accordance with the rule and directions by the court, and stating to whom, and when, the envelopes were mailed;

(5) The written acceptance or admission of the defendant, ~~his~~ the defendant's agent or attorney;

(6) In case of personal service out of the state, the affidavit of the person making the service, sworn to before a notary public, with a seal attached, or before a clerk of a court of record;

(7) In case of service otherwise than by publication, the return, acceptance, admission, or affidavit must state the time, place, and manner of service. Failure to make proof of service does not affect the validity of the service.

(j) Amendment of Process. At any time in its discretion and upon such terms as it deems just, the court may allow any process or proof of service thereof to be amended, unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the process is issued.

[Amended effective September 1, 1994; September 1, 1996; September 1, 2000.]

CRLJ 8
GENERAL RULES OF PLEADING

(1) **Claims for Relief.** A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross claim, or third party claim shall contain (1) a short and plain statement of the claim showing that the pleader is entitled to relief, and (2) a demand for judgment for the relief to which ~~he deems himself entitled~~ the pleader claims entitlement. Relief in the alternative or of several different types may be demanded.

(2) **Defenses; Form of Denials.** A party shall state in short and plain terms the defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies. If a party is without knowledge or information sufficient to form a belief as to the truth of an averment, the party shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the averments denied. When a pleader intends in good faith to deny only a part or a qualification of an averment, the pleader shall specify so much of it as is true and material and shall deny only the remainder. Unless the pleader intends in good faith to controvert all the averments of the preceding pleading, the pleader may make denials as specific denials of designated averments or paragraphs, or the pleader may generally deny all the averments except such designated averments or paragraphs as the pleader expressly admits; but, when the pleader does so intend to controvert all its averments, the pleader may do so by general denial subject to the obligations set forth in rule 11.

(3) **Affirmative Defenses.** In pleading to a preceding pleading, a party shall set forth affirmatively accord and satisfaction, arbitration and award, assumption of risk, contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fault of a nonparty, fraud, illegality, injury by fellow servant, laches, license, payment, release, res judicata, statute of frauds, statute of limitation, waiver, and any other matter constituting an avoidance or affirmative defense. When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the court on terms, if justice so requires, shall treat the pleading as if there had been a proper designation.

(4) **Effect of Failure To Deny.** Averments in a pleading to which responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading. Averments in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided.

(5) Pleading To Be Concise and Direct: Consistency.

- Each averment of a pleading shall be simple, concise, and direct. No technical forms of pleadings or motions are required.

- A party may set forth two or more statements of a claim or defense alternately or hypothetically, either in one count or defense or in separate counts or defenses. When two or more statements are made in the alternative and one of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. A party may also state as many separate claims or defenses as the party has regardless of consistency and whether based on legal or on equitable grounds or on both. All statements shall be made subject to the obligations set forth in rule 11.

(f) Construction of Pleadings. All pleadings shall be so construed as to do substantial justice.

[Adopted effective September 1 1984; Amended effective September 1, 1989; September 1, 1994.]

CRLJ 13
COUNTERCLAIM AND CROSS CLAIM

(6) **Compulsory Counterclaims.** A pleading shall state as a counterclaim any claim which at the time of serving the pleading the pleader has against any opposing party, if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction. But the pleader need not state the claim if (1) at the time the action was commenced the claim was the subject of another pending action, or (2) the opposing party brought suit upon the claim by attachment or other process by which the court did not acquire jurisdiction to render a personal judgment on that claim, and the pleader is not stating any counterclaim under this rule.

(7) **Permissive Counterclaims.** A pleading may state as a counterclaim any claim against an opposing party not arising out of the transaction or occurrence that is the subject matter of the opposing party's claim.

(8) **Counterclaim Exceeding Opposing Claim.** A counterclaim may or may not diminish or defeat the recovery sought by the opposing party. It may claim relief exceeding in amount or different in kind from that sought in the pleading of the opposing party.

(9) **Counterclaim Against the State.** These rules shall not be construed to enlarge beyond the limits now fixed by law the right to assert counterclaims, or to claim credits against the State or an officer or agency thereof.

(10) **Counterclaim Maturing or Acquired After Pleading.** A claim which either matured or was acquired by the pleader after serving the pleading may, with the permission of the court, be presented as a counterclaim by supplemental pleading.

(11) **Omitted Counterclaim.** When a pleader fails to set up a counterclaim through oversight, inadvertence, or excusable neglect, or when justice requires, the pleader may by leave of court set up the counterclaim by amendment.

(12) **Cross Claim Against Coparty.** A pleading may state as a cross claim any claim by one party against a coparty arising out of the transaction or occurrence that is the subject matter either of the original action or of a counterclaim therein or relating to any property that is the subject matter of the original action. Such cross claim may include a claim that the party against whom it is asserted is or may be liable to the cross claimant for all or part of a claim asserted in the action against the cross claimant.

(13) **Joinder of Additional Parties.** Persons other than those made parties to the original action may be made parties to a counterclaim or cross claim in accordance with the provisions of rules 19 and 20.

(14) **Separate Trials; Separate Judgment.** If the court orders separate trials as provided in rule 42(b), judgment on a counterclaim or cross claim may be rendered in accordance with the terms of rule 54(b), even if the claims of the opposing party have been dismissed or otherwise disposed of.

(15) **Setoff Against Assignee.** The defendant in a civil action upon a contract express or implied, other than upon a negotiable promissory note or bill of exchange, negotiated in good faith and without notice before due, which has been assigned to the plaintiff, may set off a demand of a like nature existing against the person to whom the defendant was originally liable, or any assignee prior to the plaintiff, of such contract, provided such demand existed at the time of the assignment thereof, and belonging to the defendant in good faith, before notice of such assignment, and was such a demand as might have been set off against such person to whom the defendant was originally liable, or such assignee while the contract belonged to ~~him~~ such person or assignee.

(b) Setoff Against Beneficiary of Trust Estate. If the plaintiff be a trustee to any other, or if the action be in a name of a plaintiff which has no real interest in the contract upon which the action is founded, so much a demand existing against those whom the plaintiff represents or for whose benefit the action is brought may be set off as will satisfy the plaintiffs debt, if the same might have been set off in an action brought against those beneficially interested.

(c) Setoff Must Be Pleaded. To entitle a defendant to a setoff under this rule, the defendant must set forth the same in the answer.

[Adopted effective September 1, 1984; Amended effective September 1, 1989.]

CRLJ 15
AMENDED AND SUPPLEMENTAL PLEADINGS

(a) Amendments. A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, the party may so amend it at any time within 20 days after it is served. Otherwise, a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. If a party moves to amend a pleading, a copy of the proposed amended pleading, denominated "proposed" and unsigned, shall be attached to the motion. If a motion to amend is granted, the moving party shall thereafter file the amended pleading and, pursuant to rule 5, serve a copy thereof on all other parties. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within 10 days after service or notice of the amended pleading, whichever period may be the longer, unless the court otherwise orders.

(b) Amendments to Conform to the Evidence. When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure so to amend does not affect the result of the trial of these issues. If the evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the court that the admission of such evidence would prejudice ~~him~~ that party in maintaining ~~his~~ an action or defense upon the merits. The court may grant a continuance to enable the objecting party to meet such evidence.

(c) Relation Back of Amendments. Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading the amendment relates back to the date of the original pleading. An amendment changing the party against whom a claim is asserted relates back if the foregoing provision is satisfied and, within the period provided by law for commencing the action ~~against him~~ against the original party, the party to be brought in by amendment (1) has received such notice of the institution of the action that ~~he~~ the new party will not be prejudiced in maintaining ~~his~~ a defense on the merits, and (2) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against ~~him~~ the new party.

(d) Supplemental Pleadings. Upon motion of a party the court may, upon reasonable notice and upon such terms as are just, permit ~~him~~ the party to serve a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented. Permission may be granted even though the original pleading is defective in its statement of a claim for relief or defense. If the court deems it advisable that the adverse party plead to the supplemental pleading, it shall so order, specifying the time therefor.

(e) Interlineations. No amendments shall be made to any pleading by erasing or adding words to the original on file, without first obtaining leave of the court.

CRLJ 17
PARTIES PLAINTIFF AND DEFENDANT; CAPACITY

(-) Designation of Parties. The party commencing the action shall be known as the plaintiff, and the opposite party as the defendant.

(a) Real Party in Interest. Every action shall be prosecuted in the name of the real party in interest. An executor, administrator, guardian, bailee, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in ~~his~~ the party's own name without joining ~~with him~~ the party for whose benefit the action is brought. No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.

(b) Infants or Incompetent Persons.

(1) When an infant is a party ~~he~~ the infant shall appear by guardian, or if ~~he~~ the infant has no guardian, or in the opinion of the court the guardian is an improper person, the court shall appoint a guardian ad litem. The guardian shall be appointed:

(i) when the infant is plaintiff, upon the application of the infant, if ~~he~~ the infant be of the age of 14 years, or if under the age, upon the application of a relative or friend of the infant;

(ii) when the infant is defendant, upon the application of the infant, if ~~he~~ the infant be of the age of 14 years, and applies within the time ~~he~~ the infant is to appear; if ~~he~~ the infant be under the age of 14, or neglects to apply, then upon the application of any other party to the action, or of a relative or friend of the infant.

(2) When an insane person is a party to an action ~~he~~ that person shall appear by guardian, or if ~~he~~ that person has no guardian, or in the opinion of the court the guardian is an improper person, the court shall appoint one to act as guardian ad litem. Said guardian shall be appointed:

(i) when the insane person is plaintiff, upon the application of a relative or friend of the insane person;

(ii) when the insane person is defendant, upon the application of a relative or friend of such insane person, such application shall be made within the time ~~he~~ the defendant is to appear. If no such application be made within the time above limited, application may be made by any party to the action.

CRLJ 18

JOINDER OF CLAIMS AND REMEDIES

(a) **Joinder of Claims.** A party asserting a claim to relief as an original claim, counterclaim, cross claim, or third party claim, may join, either as independent or as alternate claims, as many claims as ~~he~~ the party has against an opposing party.

(b) **Joinder of Remedies.** Whenever a claim is one heretofore cognizable only after another claim has been prosecuted to a conclusion, the two claims may be joined in a single action; but the court shall grant relief in that action only in accordance with the relative substantive rights of the parties.

CRLJ 19
JOINDER OF PERSONS NEEDED FOR JUST ADJUDICATION

(a) Persons To Be Joined if Feasible. A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in ~~his~~ the person's absence complete relief cannot be accorded among those already parties, or (2) ~~he~~ the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in ~~his~~ the person's absence may (i) as a practical matter impair or impede ~~his~~ the person's ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of ~~his~~ the person's claimed interest. If ~~he~~ the person has not been so joined, the court shall order that ~~he~~ the person be made a party. If ~~he~~ the person should join as a plaintiff but refuses to do so, ~~he~~ the person may be made a defendant, or, in a proper case, an involuntary plaintiff. If the joined party objects to venue and ~~his~~ the person's joinder would render the venue of the action improper, ~~he~~ the joined party shall be dismissed from the action.

(b) Determination by Court Whenever Joinder Not Feasible. If a person joinable under (1) or (2) of section (a) hereof cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the court include:

(1) to what extent a judgment rendered in the persons absence might be prejudicial to ~~him~~ the person or those already parties;

(2) the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided;

(3) whether a judgment rendered in the person's absence will be adequate;

(4) whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

(c) Pleading Reasons for Nonjoinder. A pleading asserting a claim for relief shall state the names, if known to the pleader, of any persons joinable under (1) or (2) of section (a) hereof who are not joined, and the reasons why ~~they~~ those persons are not joined.

(d) [Reserved.]

(e) Husband and Wife Must Join--Exceptions. RCW 4.08.030 applies to the joinder of spouses.

CRLJ 20
PERMISSIVE JOINDER OF PARTIES

(a) Permissive Joinder. All persons may join in one action as plaintiffs if they assert any right to relief jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence or series of transactions or occurrences and if any question of law or fact common to all of these persons will arise in the action. All persons may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all of them will arise in the action. A plaintiff or defendant need not be interested in obtaining or defending against all the relief demanded. Judgment may be given for one or more of the plaintiffs according to their respective rights to relief, and against one or more defendants according to their respective liabilities.

(b) Separate Trials. The court may make such orders as will prevent a party from being embarrassed, delayed, or put to expense by the inclusion of a party against whom ~~he~~ a party asserts no claim and who asserts no claim against ~~him~~ the party, and may order separate trials or make other orders to prevent delay or prejudice.

(c) When Husband and Wife May Join. (Reserved. See RCW 4.08.040.)

(d) Service on Joint Defendants; Procedure After Service. When the action is against two or more defendants and the summons is served on one or more but not on all of them, the plaintiff may proceed as follows:

(1) If the action is against the defendants jointly indebted upon a contract, ~~he~~ the plaintiff may proceed against the defendants served unless the court otherwise directs; and if ~~he~~ the plaintiff recovers judgment it may be entered against all the defendants thus jointly indebted so far only as it may be enforced against the joint property of all and the separate property of the defendants served.

(2) If the action is against defendants severally liable, ~~he~~ the plaintiff may proceed against the defendants served in the same manner as if they were the only defendants.

(3) Though all the defendants may have been served with the summons, judgment may be taken against any of them severally, when the plaintiff would be entitled to judgment against such defendants if the action had been against them alone.

(e) Procedure To Bind Joint Debtor. RCW 4.68 applies to the enforcement of a judgment against a joint debtor.

CRLJ 22
INTERPLEADER

(a) Rule. Persons having claims against the plaintiff may be joined as defendants and required to interplead when their claims are such that the plaintiff is or may be exposed to double or multiple liability. It is not ground for objection to the joinder that the claims of the several claimants or the titles on which their claims depend do not have a common origin or are not identical but are adverse to and independent of one another, or that the plaintiff avers that ~~he~~ the plaintiff is not liable in whole or in part to any or all of the claimants. A defendant exposed to similar liability may obtain such interpleader by way of cross claim or counterclaim. The provisions of this rule supplement and do not in any way limit the joinder of parties permitted under other rules and statutes.

(b) Statutes. The remedy herein provided is in addition to and in no way supersedes or limits the remedy provided by RCW 4.08.150 to 4.08.180, inclusive.

CRLJ 24
INTERVENTIO
N

(a) Intervention of Right. Upon timely application, anyone shall be permitted to intervene in an action:

(1) when a statute confers an unconditional right to intervene; or

(2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and ~~he~~ the applicant is so situated that the disposition of the action may as a practical matter impair or impede ~~his~~ the applicant's ability to protect that interest, unless the applicants interest is adequately represented by existing parties.

(b) Permissive Intervention. Upon timely application, anyone may be permitted to intervene in an action:

(1) when a statute confers a conditional right to intervene; or

(2) when an applicants claim or defense and the main action have a question of law or fact in common. When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a federal or state governmental officer or agency or upon any regulation, order, requirements, or agreement issued or made pursuant to the statute or executive order, the officer or agency upon timely application may be permitted to intervene in the action. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

(c) Procedure. A person desiring to intervene shall serve a motion to intervene upon all parties as provided in rule 5. The motion shall state the grounds therefor and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought.

CRLJ 25
SUBSTITUTION OF PARTIES

(a) Death.

(1) *Procedur*e. If a party dies and the claim is not thereby extinguished, the court may order substitution of the proper parties. The motion for substitution may be made by the successors or representatives of the deceased party or by any party and, together with the notice of hearing, shall be served on the parties as provided by rule 5 for service of notices, and upon persons not parties in the manner provided by statute or by rule for the service of a summons. If substitution is not made within the time authorized by law, the action may be dismissed as to the deceased party.

(2) *Partial Abatement*. In the event of the death of one or more of the plaintiffs or one or more of the defendants in an action in which the right sought to be enforced survives only to the surviving plaintiffs or only against the surviving defendants, the action does not abate. The death shall be suggested upon the record and the action shall proceed in favor of or against the surviving parties.

(b) Incompetency. If a party becomes incompetent, the court upon motion served as provided in section (a) of this rule may allow the action to be continued by or against ~~his~~ the party's representative.

(c) Transfer of Interest. In case of any transfer of interest, the action may be continued by or against the original party unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party. Service of the motion shall be made as provided in section (a) of this rule.

(d) Public Offices; Death or Separation From Office. [Reserved.]

RULE 40. ASSIGNMENT OF CASES

(a) **Notice of Trial--Note of Issue**.

(1) *Of Fact*. At any time after the issues of fact are completed in any case by the service of complaint and answer or reply when necessary, as herein provided, either party may cause the issues of fact to be brought on for trial, by serving upon the opposite party a notice of trial at least 3 days before any day provided by rules of court for setting causes for trial, which notice shall give the title of the cause as in the pleadings, and notify the opposite party that the issues in such action will be brought on for trial at the time set by the court; and the party giving such notice of trial shall, at least 5 days before the day of setting such causes for trial, file with the clerk of the court a note of issue containing the title of the action, the names of the attorneys and the date when the last pleading was served; and the clerk shall thereupon enter the cause upon the trial docket according to the date of the issue.

(2) *Of Law*. In case an issue of law raised upon the pleadings is desired to be brought on for argument, either party shall, at least 5 days before the day set apart by the court under its rules for hearing issues of law, serve upon the opposite party a like notice of trial and furnish the clerk of the court with a note of issue as above provided, which note of issue shall specify that the issue to be tried is an issue of law; and the clerk of the court shall thereupon enter such action upon the motion docket of the court.

(3) *Adjournments*. When a cause has once been placed upon either docket of the court, if not tried or argued at the time for which notice was given, it need not be noticed for a subsequent session or day, but shall remain upon the docket from session to session or from law day to law day until final disposition or stricken off by the court.

(4) *Filing Note by Opposite Party*. The party upon whom notice of trial is served may file the note of issue and cause the action to be placed upon the calendar without further notice ~~on his part~~ by the served party.

(5) *Issue May Be Brought to Trial by Either Party.* Either party, after the notice of trial, whether given by ~~himself or the adverse~~ either party, may bring the issue to trial, and in the absence of the adverse party, unless the court for good cause otherwise directs, may proceed with ~~his~~ the case, and take a dismissal of the action, or a verdict or judgment, as the case may require.

(b) **Methods.** Each court of limited jurisdiction may provide by local rule for placing of actions upon the trial calendar (1) without request of the parties or (2) upon request of a party and notice to the other parties or (3) in such other manner as the court deems expedient.

(c) **Preferences.** In setting cases for trial, unless otherwise provided by statute, preference shall be given to criminal over civil cases, and cases where the defendant or a witness is in confinement shall have preference over other cases.

(d) **Trials.** When a cause is set and called for trial, it shall be tried or dismissed, unless good cause is shown for a continuance. The court may in a proper case, and upon terms, reset the same.

(e) **Continuances.** A motion to continue a trial on the ground of the absence of evidence shall only be made upon affidavit showing the materiality of the evidence expected to be obtained, and that due diligence has been used to procure it, and also the name and address of the witness or witnesses. The court may also require the moving party to state upon affidavit the evidence which ~~he~~ that party expects to obtain; and if the adverse party admits that such evidence would be given, and that it be considered as actually given on the trial, or offered and overruled as improper, the trial shall not be continued. The court, upon its allowance of the motion, may impose terms or conditions upon the moving party.

(f) Change of Judge. In any case pending in any court of limited jurisdiction, unless otherwise provided by law, the judge thereof shall be deemed disqualified to hear and try the case when ~~he~~ the judge is in anywise interested or prejudiced. The judge, of ~~his~~ the judge's own initiative, may enter an order ~~disqualifying himself~~ of self disqualification;. A judge ~~and he~~ shall also self disqualify ~~himself~~ under the provisions of this rule if, before the jury is sworn or the trial is commenced, a party files an affidavit that such party cannot have a fair and impartial trial by reason of the interest or prejudice of the judge or for other ground provided by law. Only one such affidavit shall be filed by the same party in the case and such affidavit shall be made as to only one of the judges of said court.

All right to an affidavit of prejudice will be considered waived where filed more than 10 days after the case is set for trial, unless the affidavit alleges a particular incident, conversation or utterance by the judge, which was not known to the party or ~~his~~ the party's attorney within the 10-day period. In multiple judge courts, or where a pro tempore or visiting judge is designated as the trial judge, the 10-day period shall commence on the date that the defendant or ~~his~~ the defendant's attorney has actual notice of assignment or reassignment to a designated trial judge.

RULE 41. DISMISSAL OF ACTIONS

(a) Voluntary Dismissal.

(1) *Mandatory*. Any action shall be dismissed by the court:

(i) By Stipulation. When all parties who have appeared so stipulate in writing; or

(ii) By Plaintiff Before Resting. Upon motion of the plaintiff at any time before plaintiff rests at the conclusion of ~~his~~ plaintiff's opening case.

(2) *Permissive*. After plaintiff rests after ~~his~~ plaintiff's opening case, plaintiff may move for a voluntary dismissal without prejudice upon good cause shown and upon such terms and conditions as the court deems proper.

(3) *Counterclaim*. If a counterclaim has been pleaded by a defendant prior to the service upon ~~him~~ the defendant of plaintiff's motion for dismissal, the action shall not be dismissed against the defendant's objection unless the counterclaim can remain pending for independent adjudication by the court.

(4) *Effect*. Unless otherwise stated in the order of dismissal, the dismissal is without prejudice, except that an order of dismissal operates as an adjudication upon the merits when obtained by a plaintiff who has once dismissed an action based on or including the same claim in any court of the United States or of any state.

(b) **Involuntary Dismissal; Effect.** For failure of the plaintiff to prosecute or to comply with these rules or any order of the court, a defendant may move for dismissal of an action or of any claim against ~~him or her~~ that defendant.

(1) *Want of Prosecution on Motion of Party*. Any civil action shall be dismissed, without prejudice, for want of prosecution whenever the plaintiff, counterclaimant, cross claimant, or third party plaintiff neglects to note the action for trial or hearing within 1 year after any issue of law or fact has been joined, unless the failure to bring the same on for trial or hearing was caused by the party who makes the motion to dismiss. Such motion to dismiss shall come on for hearing only after 10 days' notice to the adverse party. If the case is noted for trial before the hearing on the motion, the action shall not be dismissed.

(2) *Dismissal on Clerk's Motion*.

(i) Notice. In all civil cases in which no action of record has occurred during the previous 12 months, the clerk of the court shall notify the attorneys of record by mail that the court will dismiss the case unless, within 30 days following the mailing of such notice, a party takes action of record or files a status report with the court indicating the reason for inactivity and projecting future activity and a case completion date. If the court does not receive such a status report, it shall, on motion of the clerk, dismiss the case without prejudice and without cost to any party.

(ii) Mailing Notice; Reinstatement. The clerk shall mail notice of impending dismissal not later than 30 days after the case becomes eligible for dismissal because of inactivity. A party who

does not receive the clerk's notice shall be entitled to reinstatement of the case, without cost, upon motion brought within a reasonable time after learning of the dismissal.

(iii) Discovery in Process. The filing of a document indicating that discovery is occurring between the parties shall constitute action of record for purposes of this rule.

(iv) Other Grounds for Dismissal and Reinstatement. This rule is not a limitation upon any other power that the court may have to dismiss or reinstate any action upon motion or otherwise.

(3) *Defendant's Motion After Plaintiff Rests*. After the plaintiff, in an action tried by the court without a jury, has completed the presentation of ~~his~~ evidence, the defendant, without waiving ~~his~~ the right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. The court as trier of the facts may then determine them and render judgment against the plaintiff or may decline to render any judgment until the close of all the evidence. If the court renders judgment on the merits against the plaintiff, the court shall make findings as provided in RALJ 5.2. Unless the court in its order for dismissal otherwise specifies, a dismissal under this subsection and any dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction, for improper venue, or for failure to join a party under rule 19, operates as an adjudication upon the merits.

(c) **Dismissal of Counterclaim, Cross Claim, or Third Party Claim.** The provisions of this rule apply to the dismissal of any counterclaim, cross claim, or third party claim. A voluntary dismissal by the claimant alone pursuant to subsection (a)(1) of this rule shall be made before a responsive pleading is served or, if there is none, before the introduction of evidence at the trial or hearing.

(d) **Costs of Previously Dismissed Action.** If a plaintiff who has once dismissed an action in any court commences an action based upon or including the same claim against the same defendant, the court may make such order for the payment of taxable costs of the action previously dismissed as it may deem proper and may stay the proceedings in the action until the plaintiff has complied with the order.

(e) **Notice of Settlements.** If a case is settled after it has been assigned for trial, it shall be the duty of the attorneys or of any party appearing pro se to notify the court promptly of the settlement. If the settlement is made within 5 days before the trial date, the notice shall be made by telephone or in person. All notices of settlement shall be confirmed in writing to the clerk.

CRLJ 43
TAKING OF TESTIMONY

(a) Testimony.

(1) *Generally*. In all trials the testimony of witnesses shall be taken orally in open court, unless otherwise directed by the court or provided by rule or statute.

(2) *Multiple Examinations*. When two or more attorneys are upon the same side trying a case, the attorney conducting the examination of a witness shall continue until the witness is excused from the stand; and all objections and offers of proof made during the examination of such witness shall be made or announced by the attorney who is conducting the examination or cross examination.

(b) and (c) [Reserved. See ER 103 and 611.]

(d) Oaths of Witnesses.

(1) *Administration*. The oaths of all witnesses

(i) shall be administered by the judge;

(ii) shall be administered to each witness individually; and

(iii) the witness shall stand while the oath is administered.

(2) *Applicability*. This rule shall not apply to civil ex parte proceedings, and in such cases the manner of swearing witnesses shall be as each court may prescribe.

(3) *Affirmation in Lieu of Oath*. Whenever under these rules an oath is required to be taken, a solemn affirmation may be accepted in lieu thereof.

(e) Evidence on Motions. When a motion is based on facts not appearing of record the court may hear the matter on affidavits presented by the respective parties, but the court may direct that the matter be heard wholly or partly on oral testimony or depositions.

(f) Adverse Party as Witness.

(1) *Party or Managing Agent as Adverse Witness*. A party, or anyone who at the time of the notice is an officer, director, or other managing agent (herein collectively referred to as "managing agent") of a public or private corporation, partnership or association that is a party to an action or proceeding may be examined at the instance of any adverse party. Attendance of such deponent or witness may be compelled solely by notice (in lieu of a subpoena) given in the manner prescribed in CR 30(b)(1) to opposing counsel of record. Notices for the attendance of a party or of a managing agent at the trial shall be given not less than 10 days before trial (exclusive of the day of service, Saturdays, Sundays, and court holidays). For good cause shown in the manner prescribed in CR 26(c), the court may make orders for the protection of the party or managing agent to be examined.

(2) *Effect of Discovery, etc*. A party who has served interrogatories to be answered by the adverse party or who has taken the deposition of an adverse party or of the managing agent of an adverse party shall not be precluded for that reason from examining such adverse party or managing agent at the trial. Matters admitted by an adverse party or managing agent in interrogatory answers, deposition testimony, or trial testimony are not conclusively established and may be rebutted.

(3) *Refusal To Attend and Testify; Penalties*. If a party or a managing agent refuses to attend and testify before the officer designated to take ~~his~~ that person's deposition or at the trial after notice served as prescribed in CR 30(b)(1), the complaint, answer, or reply of the party may be stricken and judgment taken against the party, and the contumacious party or managing agent may also be proceeded against as in other cases of contempt. This rule shall not be construed:

(i) to compel any person to answer any question where such answer might tend to be incriminating~~e him~~;

(ii) to prevent a party from using a subpoena to compel the attendance of any party or managing agent to give testimony by deposition or at the trial; nor

(iii) to limit the applicability of any other sanctions or penalties provided in CR 37 or otherwise for failure to attend and give testimony.

(g) Attorney as Witness. If any attorney offers ~~himself as~~to be a witness on behalf of ~~his~~ the attorney's client and gives evidence on the merits, ~~he~~ the attorney shall not argue the case to the jury, unless by permission of the court.

(h) Recording as Evidence. Whenever the testimony of a witness at a trial or hearing which was recorded is admissible in evidence at a later trial, it may be proved by the recording thereof duly certified by the person who recorded the testimony.

(i) [Reserved. See ER 804.]

(j) Record in Retrial of Nonjury Cases. In the event a cause has been remanded by the court for a new trial or the taking of further testimony, and such cause shall have been tried without a jury, and the testimony in such cause shall have been taken in full and used as the record upon review, either party upon the retrial of such cause or the taking of further testimony therein shall have the right, provided the court shall so order after an application on 10 days' notice to the opposing party or parties, to submit said record as the testimony in said cause upon its second hearing, to the same effect as if the witnesses called by ~~him~~ either party in the earlier hearing had been called, sworn, and testified in the further hearing; but no party shall be denied the right to submit other or further testimony upon such retrial or further hearing, and the party having the right of cross examination shall have the privilege of subpoenaing any witness whose testimony is contained in such record for further cross examination.

(k) Juror Questions for Witnesses. The court shall permit jurors to submit to the court written questions directed to witnesses. Counsel shall be given an opportunity to object to such questions in a manner that does not inform the jury that an objection was made. The court shall establish procedures for submitting, objecting to, and answering questions from jurors to

witnesses. The court may rephrase or reword questions from jurors to witnesses. The court may refuse on its own motion to allow a particular question from a juror to a witness.

[Adopted effective September 1, 1984; Amended effective September 1, 1989; October 1, 2002; September 1, 2006.]

CRLJ 44.1
DETERMINATION OF FOREIGN LAW

(a) Pleading. A party who intends to raise an issue concerning the law of a state, territory, or other jurisdiction of the United States, or a foreign country shall give notice in ~~his~~ the party's pleadings in accordance with rule 9(k).

(b) United States Jurisdictions. The law of a state, territory, or other jurisdiction of the United States shall be determined as provided in RCW 5.24.

(c) Other Jurisdictions. The court, in determining the law of any jurisdiction other than a state, territory, or other jurisdiction of the United States, may consider any relevant written material or other source, including testimony, having due regard for their trustworthiness, whether or not submitted by a party and whether or not admissible under the Rules of Evidence. If the court considers any material or source not received in open court, prior to its determination the court shall:

(1) Identity in the record such material or source;

(2) Summarize in the record any unwritten information received; and

(3) Afford the parties an opportunity to respond thereto. The court's determination shall be treated as a ruling on a question of law.

[Adopted effective September 1, 1984; Amended effective September 1, 1989.]

CRLJ 46
EXCEPTIONS UNNECESSARY

Formal exceptions to rulings or orders of the court are unnecessary; but for all purposes for which an exception has heretofore been necessary it is sufficient that a party, at the time the ruling or order of the court is made or sought, makes known to the court the action which the party~~he~~ desires the court to take or ~~his~~ the party's objection to the action of the court and the ~~his~~ grounds therefor; and, if a party has no opportunity to object to a ruling or order at the time it is made, the absence of an objection does not thereafter prejudice ~~him~~the party.

[Adopted effective September 1, 1984; Amended effective September 1, 1989.]

CRLJ 47
JURORS

(a) **Examination, Selection, etc.** See rule 38.

(b) Care of Jury While Deliberating.

(1) *Generally*. During trial and deliberations the jury may be allowed to separate unless good cause is shown, on the record, for sequestration of the jury.

(2) *Communication Restricted.* Unless the jury is allowed to separate, the jurors shall be kept together under the charge of one or more officers until they agree upon their verdict or are discharged by the court. The officer shall keep the jurors separate from other persons and shall not allow any communication which may affect the case to be made to the jurors, nor shall the officer make any ~~himself~~such communication, unless by order of the court, except to ask the jurors if they have agreed upon their verdict. The officer shall not, before the verdict is rendered, communicate to any person the state of the jurors' deliberations or their verdict.

(3) *Motions.* Any motions or proceedings concerning the separation or sequestration of the jury shall be made out of the presence of the jury.

[Adopted effective September 1, 1984; Amended effective September 1, 1989.]

CRLJ 49
TAKING OF TESTIMONY

(-) **General Verdict.** A general verdict is that by which the jury pronounces generally upon all or any of the issues in favor of either the plaintiff or defendant.

(a) Special Verdict. The court may require a jury to return only a special verdict in the form of a special written finding upon each issue of fact. In that event the court may submit to the jury written questions susceptible of categorical or other brief answer or may submit written forms of the several special findings which might properly be made under the pleadings and evidence; or it may use such other method of submitting the issues and requiring the written findings thereon as it deems most appropriate. The court shall give to the jury such explanation and instruction concerning the matter thus submitted as may be necessary to enable the jury to make its findings upon each issue. If in so doing the court omits any issue of fact raised by the pleadings or by the evidence, each party waives ~~his~~ the right~~s~~ to a trial by jury of the issue so omitted unless before the jury retires ~~he~~ the party demands its submission to the jury. As to an issue omitted without such demand the court may make a finding; or, if it fails to do so, it shall be deemed to have made a finding in accord with the judgment on the special verdict.

(b) General Verdict Accompanied by Answer to Interrogatories. The court may submit to the jury, together with appropriate forms for a general verdict, written interrogatories upon one or more issues of fact the decision of which is necessary to a verdict. The court shall give such explanation or instruction as may be necessary to enable the jury both to make answers to the interrogatories and to render a general verdict, and the court shall direct the jury both to make written answers and to render a general verdict. When the general verdict and the answers are harmonious, the appropriate judgment upon the verdict and answers shall be entered pursuant to rule 58. When the answers are consistent with each other but one or more is inconsistent with the general verdict, judgment may be entered pursuant to rule 58 in accordance with the answers, notwithstanding the general verdict, or the court may return the jury for further consideration of its answers and verdict or may order a new trial. When the answers are inconsistent with each other and one or more is likewise inconsistent with the general verdict, judgment shall not be entered, but the court shall return the jury for further consideration of its answers and verdict or shall order a new trial.

(c) Discharge of Jury. [Reserved. See RCW 12.12.080 and 12.12.090.]

(d) Court Recess During Deliberation. [Reserved. See RCW 4.44.350.]

(e) Proceedings When Jury Has Agreed. [Reserved. See RCW 4.44.360.]

(f) Manner of Giving Verdict. [Reserved. See RCW 4.44.370.]

(g) Verdict by Five Jurors in Civil Cases. [Reserved. See RCW 4.44.380.]

(h) Jury May Be Polled. [Reserved. See RCW 4.44.390]

(i) Correction of Informal Verdict. [Reserved. See RCW 4.44.400.]

(j) Jury To Assess Amount of Recovery. [Reserved. See RCW 4.44.450]

(k) Receiving Verdict and Discharging Jury. [Reserved. See RCW 12.12.080 and 12.12.090.]

[Adopted effective September 1, 1984; Amended effective September 1, 1989.]

CRLJ 51
INSTRUCTIONS TO JURY AND DELIBERATION

(a) Proposed. Unless otherwise requested by the trial judge on timely notice to counsel, proposed instructions shall be submitted when the case is called for trial. Proposed instructions upon questions of law developed by the evidence, which could not reasonably be anticipated, may be submitted at any time before the court has instructed the jury.

(b) Submission. Submission of proposed instructions shall be by delivering the original and three or more copies as required by the trial judge, by filing one copy with the clerk, identified as the party's proposed instructions, and by serving one copy upon each opposing counsel.

(c) Form. Each proposed instruction shall be typewritten or printed on a separate sheet of letter-size (8-1/2 by 11 inches) paper. Except for one copy of each, the instructions delivered to the trial court shall not be numbered or identified as to the proposing party. One copy delivered to the trial court, and the copy filed with the clerk, and copies served on each opposing counsel shall be numbered and identified as to proposing party, and may contain supporting annotations.

(d) Published Instructions.

(1) *Request*. Any instruction appearing in the Washington Pattern Instructions (WPI) may be requested by counsel who must submit the proper number of copies of the requested instruction, identified by number as in section (c) of this rule, in the form ~~he~~ counsel wishes it read to the jury. If the instruction in WPI allows or provides for a choice of wording by the use of brackets or otherwise, the written requested instruction shall use the choice of wording which is being requested.

(2) *Record on Review*. Where the refusal to give a requested instruction is an asserted error on review, a copy of the requested instruction shall be placed in the record on review.

(3) *Local Option*. Any court of limited jurisdiction may adopt a local rule to substitute for subsection (d)(1) and to allow instructions appearing in the Washington Pattern Instructions (WPI) to be requested by reference to the published number. If the instruction in WPI allows or provides for a choice of wording by the use of brackets or otherwise, the local rule must require that the written request which designates the number of the instruction shall also designate the choice of wording which is being requested.

(e) Disregarding Requests. The trial court may disregard any proposed instruction not submitted in accordance with this rule.

(f) Objections to Instruction. Before instructing the jury, the court shall supply counsel with copies of its proposed instructions which shall be numbered. Counsel shall then be afforded an opportunity in the absence of the jury to make objections to the giving of any instruction and to the refusal to give a requested instruction. The objector shall state distinctly the matter to which ~~he~~ counsel objects and the grounds ~~of his~~ for the objection, specifying the number, paragraph or particular part of the instruction to be given or refused and to which objection is made.

(g) Instructing the Jury and Argument. After counsel have completed their objections and the court has made any modifications deemed appropriate, the court shall then provide each counsel with a copy of the instructions in their final form. The court shall then read the instructions to the jury. The plaintiff or party having the burden of proof may then address the jury upon the evidence, and the law as contained in the courts instructions; after which the adverse party may address the jury; followed by the rebuttal of the party first addressing the jury.

(h) Deliberation. After argument, the jury shall retire to consider its verdict. In addition to the written instructions given, the jury shall take with it all exhibits received in evidence, except deposition. Copies may be substituted or any parts of public records or private documents as ought not, in the opinion of the court, to be taken from the person having them in possession. Pleadings shall not go to the jury room.

(i) Questions from Jury During Deliberations. The jury shall be instructed that any question it wishes to ask the court about the instructions or evidence should be signed, dated and submitted in writing to the bailiff without any indication of the status of the jury's deliberations. The court shall notify the parties of the contents of the questions and provide them an opportunity to comment upon an appropriate response. Written questions from the jury, the court's response and any objections thereto shall be made a part of the record. The court shall respond to all questions from a deliberating jury in open court or in writing. In its discretion, the court may grant a jury's request to rehear or replay evidence, but should do so in a way that is least likely to be seen as a comment on the evidence, in a way that is not unfairly prejudicial and in a way that minimizes the possibility that jurors will give undue weight to such evidence. Any additional instruction upon any point of law shall be given in writing.

(j) Comments Upon Evidence. Judges shall not instruct with respect to matters of fact, nor comment thereon.

[Adopted effective September 1, 1984; Amended effective October 1, 2002.]

CRLJ 54
JUDGEMENTS; COSTS

(a) Definition; Form. "Judgment" as used in these rules includes a decree and any final order from which an appeal lies. A judgment shall not contain a recital of pleadings or the record of prior proceedings. Judgments may be in writing signed by the court or may be oral confirmed by an entry in the record.

(b) Judgment Upon Multiple Claims or Involving Multiple Parties. When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross claim, or third party claim, or when multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination in the judgment that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

(c) Demand for Judgment. A judgment by default shall not be different in kind from or exceed in amount that prayed for in the demand for judgment. Except as to a party against whom a judgment is entered by default, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in ~~his~~ the party's pleadings.

(d) Costs. Costs shall be fixed and allowed as provided in RCW 12.20.060 or by any other applicable statute.

[Adopted effective September 1, 1984; Amended effective September 1, 1989.]

CRLJ 55
DEFAULT

(a) Entry of Default.

(1) *Motion*. When a party against whom a judgment for affirmative relief is sought has failed to appear, plead, or otherwise defend as provided by these rules and that fact is made to appear by motion and affidavit, a motion for default may be made.

(2) *Pleading After Default*. Any party may respond to any pleading or otherwise defend at any time before a motion for default and supporting affidavit is filed, whether the party previously has appeared or not. If the party has appeared before the motion is filed, ~~he~~ the party may respond to the pleading or otherwise defend at any time before the hearing on the motion. If the party has not appeared before the motion is filed ~~he~~ the party may not respond to the pleading nor otherwise defend without leave of court. Any appearances for any purpose in the action shall be for all purposes under this rule 55.

(3) *Notice*. Any party who has appeared in the action for any purpose, shall be served with a written notice of motion for default and the supporting affidavit at least 5 days before the hearing on the motion. Any party who has not appeared before the motion for default and supporting affidavit are filed is not entitled to a notice of the motion, except as provided in subsection (f)(2)(i).

(4) *Venue*. A motion for default shall include a statement of the basis for venue in the action. A default shall not be entered if it clearly appears to the court from the papers on file that the action was brought in an improper district.

(b) Entry of Default Judgement. As limited in rule 54(c), judgment after default may be entered as follows, if proof of service is on file as required by subsection (b)(4):

(1) *When Amount Certain*. When the claim against a party, whose default has been entered under section (a), is for a sum certain or for a sum which can by computation be made certain, the court upon motion and affidavit of the amount due shall enter judgment for that amount and costs against the party in default, if ~~he~~ the party is not an infant or incompetent person. No judgment by default shall be entered against an infant or incompetent person unless represented by a general guardian or guardian ad litem. Findings of fact and conclusions of law are not necessary under this subsection even though reasonable attorney fees are requested and allowed.

(2) *When Amount Uncertain*. If, in order to enable the court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the court may conduct such hearings as are deemed necessary or, when required by statute, shall have such matters resolved by a jury. Findings of fact and conclusions of law are required under this subsection.

(3) *When Service by Publication or Mail*. In an action where the service of the summons was by publication, or by mail under rule 4(d)(4), the plaintiff, upon the expiration of the time for answering, may, upon proof of service, apply for judgment. The court must thereupon require

proof of the demand mentioned in the complaint, and must require the plaintiff or ~~his~~ the plaintiff's agent to be examined on oath respecting any payments that have been made to the plaintiff, or to anyone for ~~his~~ the plaintiff's use on account of such demand, and may render judgment for the amount which ~~he~~ the plaintiff is entitled to recover, or for such other relief as ~~he~~ the plaintiff may be entitled to.

(4) *Costs and Proof of Service*. Costs shall not be awarded and default judgment shall not be rendered unless proof of service is on file with the court.

(c) Setting Aside Default.

(1) *Generally*. For good cause shown and upon such terms as the court deems just, the court may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with rule 60(b).

(2) *When Venue Is Improper*. A default judgment entered in a district of improper venue is valid but will on motion be vacated for irregularity pursuant to rule 60(b)(1). A party who procures the entry of the judgment shall, in the vacation proceedings, be required to pay to the party seeking vacation the costs and reasonable attorney fees incurred by the party in seeking vacation if the party procuring the judgment could have determined the district of proper venue with reasonable diligence. This subsection does not apply if either (i) the parties stipulate in writing to venue after commencement of the action, or (ii) the defendant has appeared, has been given written notice of the motion for an order of default, and does not object to venue before the entry of the default order.

(d) Plaintiffs, Counterclaimants, Cross Claimants. The provisions of this rule apply whether the party entitled to the judgment by default is a plaintiff, a third party plaintiff, or a party who has pleaded a cross claim or counterclaim. In all cases a judgment by default is subject to the limitations of rule 54(c).

(e) Judgement Against State. [Reserved.]

(f) How Made After Elapse of Year.

(1) *Notice*. When more than 1 year has elapsed after service of summons with no appearance being made, the court shall not sign an order of default or enter a judgment until a notice of the time and place of the application for the order or judgment is served on the party in default, not less than 10 days prior to the entry. Proof by affidavit of the service of the notice shall be filed before entry of the judgment.

(2) *Service*. Service of notice of the time and place on the application for the order of default or default judgment shall be made as follows:

(i) by service upon the attorney of record;

(ii) if there is no attorney of record, then by service upon the defendant by certified mail with return receipt of said service to be attached to the affidavit in support of the application; or

(iii) by a personal service upon the defendant in the same manner provided for service of process.

(iv) If service of notice cannot be made under sections (i) and (iii), the notice may be given by publication in a newspaper of general circulation in the county in which the action is pending for one publication, and by mailing a copy to the last known address of each defendant. Both the publication and mailing shall be done 10 days prior to the hearing.

[Adopted effective September 1, 1984; Amended effective September 1, 1989.]

CRLJ 56
SUMMARY JUDG~~E~~MENT

(a) For Claimant. A party seeking to recover upon a claim, counterclaim, or cross claim, or to obtain a declaratory judgment may, at any time after the expiration of the period within which the defendant is required to appear, or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in ~~his~~ the party's favor upon all or any part thereof.

(b) For Defending Party. A party against whom a claim, counterclaim, or cross claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in ~~his~~ such party's favor as to all or any part thereof.

(c) Motion and Proceedings. The motion and any supporting affidavits, memoranda of law, or other documentation shall be filed and served not later than 15 days before the hearing. The adverse party may file and serve opposing affidavits, memoranda of law, and other documentation not later than three days before the hearing. The moving party may file and serve any rebuttal documents not later than the day prior to the hearing. Summary judgment motions shall be heard more than 14 days before the date set for trial unless leave of the court is granted to allow otherwise. The judgment sought shall be rendered forthwith if the pleadings, answers to interrogatories, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

(d) Case Not Fully Adjudicated on Motion. If on motion under the rule judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action, the facts so specified shall be deemed established, and the trial shall be conducted accordingly.

(e) Form of Affidavits; Further Testimony; Defense Required. Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials ~~of~~in ~~his~~ a pleading, but ~~his~~ a response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If ~~he~~ the adverse party does not so respond, summary judgment, if appropriate, shall be entered against ~~him~~the adverse party.

(f) When Affidavits Are Unavailable. Should it appear from the affidavits of a party opposing the motion that ~~he cannot,~~ for reasons stated the party cannot~~,~~ present by affidavit facts essential to justify ~~his~~ the party's opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

(g) Affidavits Made in Bad Faith. Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused ~~him~~ the other party to incur, including reasonable attorney fees, and any offending party or attorney may be adjudged guilty of contempt.

(h) Rulings by Court. In granting or denying the motion for summary judgment, the court shall designate the documents and other evidence considered in its rulings.

[Adopted effective September 1, 1984; Amended effective September 1, 1989.]

RULE 58. ENTRY OF JUDGMENT

Upon the verdict of a jury, the court shall immediately render judgment thereon. If the trial is by the judge, judgment shall be entered immediately after the close of the trial, unless ~~he or she~~ the judge reserves decision, in which event the decision shall be rendered within 45 days.

RULE 59. NEW TRIAL, RECONSIDERATION, AND AMENDMENT OF JUDGMENTS

(a) Grounds for New Trial or Reconsideration. On the motion of the party aggrieved, a verdict may be vacated and a new trial granted to all or any of the parties, and on all the issues, or on some of the issues when such issues are clearly and fairly separable and distinct, or any other decision or order may be vacated and reconsideration granted. Such motion may be granted for any one of the following causes materially affecting the substantial rights of such parties:

(1) Irregularity in the proceedings of the court, jury or adverse party, or any order of the court, or abuse of discretion, by which such party was prevented from having a fair trial;

(2) Misconduct of prevailing party or jury; and whenever any one or more of the jurors shall have been induced to assent to any general or special verdict or to a finding on any question or questions submitted to the jury by the court, other and different from ~~his~~ the courts own conclusions, and arrived at by a resort to the determination of change or lot, such misconduct may be proved by the affidavits of one or more of the jurors;

(3) Accident or surprise which ordinary prudence could not have guarded against;

(4) Newly discovered evidence, material for the party making the application, which ~~he~~ the party could not with reasonable diligence have discovered and produced at the trial;

(5) Damages so excessive or inadequate as unmistakably to indicate that the verdict must have been the result of passion or prejudice;

(6) Error in the assessment of the amount of recovery whether too large or too small, when the action is upon a contract, or for the injury or detention of property;

(7) That there is no evidence or reasonable inference from the evidence to justify the verdict or the decision, or that it is contrary to law;

(8) Error in law occurring at the trial and objected to at the time by the party making the application; or

(9) That substantial justice has been done.

(b) Time for Motion: Contents of Motion. A motion for a new trial or for reconsideration shall be filed not later than 10 days after the entry of the judgment, order, or other decision. The motion shall be noted at the time it is filed, to be heard or otherwise considered within 30 days after entry of the judgment, order, or other decision, unless the court directs otherwise.

A motion for a new trial or for reconsideration shall identify the specific reasons in fact and law as to each ground on which the motion is based.

(c) Time for Serving Affidavits. When a motion for new trial is based on affidavits, they shall be filed with the motion. The opposing party has 10 days after service to file opposing affidavits, but that period may be extended for up to 20 days, either by the court for good cause or by the parties' written stipulation. The court may permit reply affidavits.

(d) On Initiative of Court. Not later than 10 days after entry of judgment, the court on its own initiative may order a hearing on its proposed order for a new trial for any reason for which it might have granted a new trial on motion of a party. After giving the parties notice and an opportunity to be heard, the court may grant a timely motion for a new trial for a reason not

stated in the motion. When granting a new trial on its own initiative or for a reason not stated in the motion, the court shall specify the grounds in its order.

(e) Hearing on Motion. When a motion for reconsideration or for a new trial is filed, the judge by whom it is to be heard may on the judge's own motion or on application determine:

(1) *Time of Hearing.* Whether the motion shall be heard before the entry of judgment;

(2) *Consolidation of Hearings.* Whether the motion shall be heard before or at the same time as the presentation of the findings and conclusions and/or judgment, and the hearing on any other pending motion; and

(3) *Nature of Hearing.* Whether the motion or motions and presentation shall be heard on oral argument or submitted on briefs, and if on briefs, shall fix the time within which the briefs shall be served and filed.

(f) Statement of Reasons. In all cases where the trial court grants a motion for a new trial, it shall, in the order granting the motion for a new trial, it shall, in the order granting the motion, state whether the order is based upon the record or upon facts and circumstances outside the record that cannot be made a part thereof. If the order is based upon the record, the court shall give definite reasons of law and facts for its order. If the order is based upon matters outside the record, the court shall state the facts and circumstances upon which it relied.

(g) Reopening Judgment. On a motion for a new trial in an action tried without a jury, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law, and direct the entry of a new judgment.

(h) Motion to Alter or Amend Judgment. A motion to alter or amend the judgment shall be filed not later than 10 days after entry of the judgment.

(i) Alternative Motions, etc. Alternative motions for judgment as a matter of law and for a new trial may be made in accordance with rule 50(c).

(j) Limit on Motions. If a motion or reconsideration, or for a new trial, or for judgment as a matter of law, is made and heard before the entry of the judgment, no further motion may be made, without leave of the court first obtained for good cause shown: (1) for a new trial, or (2) pursuant to sections (g), (h), and (i) of this rule.

RULE 73. TRIAL DE NOVO

(a) Scope of Rule . This rule applies only to proceedings which are not subject to appellate review under the Rules for Appeal of Decisions of Courts of Limited Jurisdiction. The proceedings to which those rules apply are defined by RALJ 1.1.

(b) Filing Notice of Appeal Service.

(1) A party appealing a judgment or decision subject to this rule must file in the court of limited jurisdiction a notice of appeal within 30 days after the judgment is rendered or decision made. Filing the notice of appeal is the only jurisdictional requirement for an appeal.

(2) The statutory filing fee for superior court must be paid to the clerk of the limited jurisdiction court at the time the notice of appeal is filed, unless the party is excused from paying a filing fee by statute or by the constitution.

(3) The clerk of the court of limited jurisdiction shall immediately upon filing of a notice of appeal and payment of the filing fee, if required, file a copy of the notice with the superior court.

(4) A party filing a notice of appeal shall also, within the same 30 days, serve a copy of the notice of appeal on all other parties or their lawyers and file an acknowledgment or affidavit of service in the court of limited jurisdiction.

(c) Bond. A bond or undertaking shall be executed on the part of the appellant, except when the appellant is a county, city, town or school district, and filed with and approved by the court of limited jurisdiction with one or more sureties, in the sum of $100, conditioned that the appellant will pay all costs that may be awarded against ~~him~~ appellant on appeal; or if a stay of proceedings in the court of limited jurisdiction be claimed, except by a county, city, town or school district, a bond or undertaking, with two or more personal sureties, or a surety company as surety, to be approved by the court of limited jurisdiction, in a sum equal to twice the amount of the judgment and costs, conditioned that the appellant will pay such judgment, including costs, as may be rendered against ~~him~~ appellant on appeal, be so executed and filed.

(d) Stay of Proceedings. Upon an appeal being taken and a bond filed to stay all proceedings, the court of limited jurisdiction shall allow the same and make an entry of such allowance, and all further proceedings on the judgment in such court shall thereupon be suspended; and if in the meantime execution shall have been issued, such court shall give the appellant a certificate that such appeal has been allowed.

(e)) Release of Property Taken on Execution. On such certificate being presented to the officer holding the execution, ~~he~~ the officer shall forthwith release the property of the judgment debtor that may have been taken on execution.

(f) No Dismissal for Defective Bond. No appeal allowed by a court of limited jurisdiction shall be dismissed on account of any defect in the bond on appeal, if the appellant, before the motion is determined, shall execute and file in the superior court such bond as ~~he~~ the appellant should have executed at the time of taking the appeal, and pay all costs that may have accrued by reason of such defect.

(g) Judgment Against Appellant and Sure ties. In all cases of appeal to the superior court, if on the trial anew in such court, the judgment be against the appellant in

whole or in part, such judgment shall be rendered against ~~him~~ the appellant and ~~his~~ sureties on the bond on appeal.

RULE 75. RECORD ON TRIAL DE NOVO

(a) **Scope of Rule.** This rule applies only to proceedings which are not subject to appellate review under the Rules for Appeal of Decisions of Courts of Limited Jurisdiction. The proceedings to which those rules apply are defined by RALJ 1.1.

(b) **Transcript; Procedure in Superior Court; Pleadings in Superior Court.** Within 14 days after the notice of appeal has been filed in a civil action or proceeding, including a small claims appeal pursuant to chapter 12.40 RCW, the appellant shall file with the clerk of the superior court a transcript of all entries made in the docket of the court of limited jurisdiction relating to the case, together with all the process and other papers relating to the case filed in the court of limited jurisdiction which shall be made and certified by such court to be correct upon the payment of the fees allowed by law therefor, and upon the filing of such transcript the superior court shall become possessed of the cause, and shall proceed in the same manner, as near as may be, as in actions originally commenced in that court, except as provided in these rules. The issue before the court of limited jurisdiction shall be tried in the superior court without other or new pleadings, unless otherwise directed by the superior court.

(c) **Small Claims Appeals; Trial De Novo on the Record.** Small claims appeals pursuant to chapter 12.40 RCW shall be tried by the superior court de novo on the record. Within 14 days after the notice of appeal has been filed in a small claims proceeding, appellant shall make necessary arrangements with the district court to directly transmit a verbatim electronic recording of the trial and any exhibits from the trial to the clerk of the superior court. The electronic recording shall be made and certified by the district court to be correct upon the payment of the fees allowed by law therefor.

(d) **Transcript; Procedure on Failure To Make and Certify; Amendment.** If upon an appeal being taken the court of limited jurisdiction fails, neglects or refuses, upon the tender or payment of the fees allowed by law, to make and certify the transcript, the appellant may make application, supported by affidavit, to the superior court and the court shall issue an order directing the court of limited jurisdiction to make and certify such transcript upon the payment of such fees. Whenever it appears to the satisfaction of the superior court that the return of the court of limited jurisdiction to such order is substantially erroneous or defective it may order the court of limited jurisdiction to amend the same. If the judge of the court of limited jurisdiction fails, neglects or refuses to comply with any order issued under the provisions of this section ~~he~~ the judge may be cited and punished for contempt of court.