THE SUPREME COURT OF WASHINGTON

IN THE MATTER OF THE SUGGESTED AMENDMENTS TO CRLJ 17—PARTIES PLAINTIFF AND DEFENDANT; CAPACITY; CRLJ 56—SUMMARY JUDGMENT; CRLJ 60—RELIEF FROM JUDGMENT AND ORDER; ER 413—IMMIGRATION STATUS	)	**ORDER** NO. 25700-A-1339

The Washington State Bar Association Court Rules and Procedures Committee, having recommended the suggested amendments to CRLJ 17—Parties Plaintiff and Defendant; Capacity; CRLJ 56—Summary Judgment; CRLJ 60—Relief from Judgment and Order; ER 413—Immigration Status, 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 on May 1, 2021.

(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 July 1, 2021. 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 7th day of April, 2021.

For the Court

González C.J.
CHIEF JUSTICE

GR 9 COVER SHEET

Suggested Amendment

CRLJ 17 – PARTIES PLAINTIFF AND DEFENDANT; CAPACITY

A. Proponent: WSBA Court Rules and Procedures Committee
B. Spokesperson: Jefferson Coulter Chair, WSBA Court Rules and Procedures Committee
C. Purpose: Change all references to "insane" and "incompetent" to "incapacitated." This makes the rule consistent with the language of RCW 4.08.060. It also modernizes the language of the rule.
D. Hearing: The proponent does not believe that a public hearing is necessary.
E. Expedited Consideration: The proponent does not believe there is a need for expedited consideration.

SUGGESTED AMENDMENT

Rule 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~~ their own name without joining with ~~him~~ them 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~~ Minors or ~~Incompetent~~ Incapacitated Persons.

(1) When ~~an infant~~ a minor is a party ~~he~~ they shall appear by guardian, or if ~~he has~~ they have 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~~ minor is plaintiff, upon the application of the ~~infant~~ minor, if ~~he~~ they be of the age of 14 years, or if under the age, upon the application of a relative or friend of the ~~infant~~ minor;

(ii) when the ~~infant~~ minor is defendant, upon the application of the ~~infant~~ minor, if ~~he~~ they be of the age of 14 years, and ~~applies~~ apply within the time ~~he is~~ they are to appear; if ~~he~~ they be under

the age of 14, or ~~neglects~~ neglect to apply, then upon the application of any other party to the action, or of a relative or friend of the ~~infant~~ minor.

(2) When an ~~insane~~ incapacitated person is a party to an action ~~he~~ they shall appear by guardian, or if ~~he has~~ they have 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~~ incapacitated person is plaintiff, upon the application of a relative or friend of the ~~insane~~ incapacitated person;

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

GR 9 COVER SHEET

Suggested Amendment

CRLJ 56 – SUMMARY JUDGMENT

A. Proponent: WSBA Court Rules and Procedures Committee
B. Spokesperson: Claire Carden, CRLJ Subcommittee Chair, WSBA Court Rules and Procedures Committee
C. Purpose: To make the rule read consistently change "he" to "the party." This makes the rule consistent with CR 56 and the remainder of CRLJ 56. It also allows easier understanding.
D. Hearing: The proponent does not believe that a public hearing is necessary.
E. Expedited Consideration: The proponent does not believe there is a need for expedited consideration.

SUGGESTED AMENDMENT

Rule 56. SUMMARY JUDGMENT

(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 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 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 his pleading, but his 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 does not so respond, summary judgment, if appropriate, shall be entered against him.

(f) When Affidavits Are Unavailable. Should it appear from the affidavits of a party opposing the motion that ~~he~~ the party cannot, for reasons stated, present by affidavit facts essential to justify his 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 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; September 1, 2016.]

GR 9 COVER SHEET

Suggested Amendment

CRLJ 60 – RELIEF FROM JUDGMENT OR ORDER

A. Proponent: WSBA Court Rules and Procedures Committee
B. Spokesperson: Claire Carden, CRLJ Subcommittee Chair, WSBA Court Rules and Procedures Committee
C. Purpose: Separate the last two sentences of CRLJ 60(b)(11) from (b)(11). Those two sentences apply to all of CR 60(b) not just (b)(11). They should be clearly separated.
D. Hearing: The proponent does not believe that a public hearing is necessary.
E. Expedited Consideration: The proponent does not believe there is a need for expedited consideration.

SUGGESTED AMENDMENT

RULE 60. RELIEF FROM JUDGMENT OR ORDER

(a) Clerical Mistakes. Clerical mistakes in judgments, orders, or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. Such mistakes may be so corrected before review is accepted by an appellate court, and thereafter may be corrected pursuant to RALJ 4.1(b).

(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud; etc. On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:

(1) Mistakes, inadvertence, surprise, excusable neglect or irregularity in obtaining a judgment or order;

(2) For erroneous proceedings against a minor or person of unsound mind, when the condition of such defendant does not appear in the record, nor the error in the proceedings;

(3) Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under rule 59(b);

(4) Fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;

(5) The judgment is void;

(6) The judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application;

(7) If the defendant was served by publication, relief may be granted as prescribed in RCW 4.28.200;

(8) Death of one of the parties before the judgment in the action;

(9) Unavoidable casualty or misfortune preventing the party from prosecuting or defending;

(10) Error in judgment shown by a minor, within 12 months after arriving at full age; or

(11) Any other reason justifying relief from the operation of the judgment. ~~The motion shall be made within a reasonable time and for reasons (1), (2) or (3) not more than 1 year after the judgment, order, or proceeding was entered or taken. If the party entitled to relief is a minor or a person of unsound mind, the motion shall be made within 1 year after the disability ceases. A motion under section (b) does not affect the finality of the judgment or suspend its operation.~~

The motion shall be made within a reasonable time and for reasons (1), (2) or (3) not more than 1 year after the judgment, order, or proceeding was entered or taken. If the party entitled to relief is a minor or a person of unsound mind, the motion shall be made within 1 year after the disability ceases. A motion under section (b) does not affect the finality of the judgment or suspend its operation.

(c) Other Remedies. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding.

(d) Writs Abolished—Procedure. Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review are abolished. The procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

(e) Procedure on Vacation of Judgment.

(1) Motion. Application shall be made by motion filed in the cause stating the grounds upon which relief is asked, and supported by the affidavit of the applicant or his attorney setting forth a concise statement of the facts or errors upon which the motion is based, and if the moving party be a defendant, the facts constituting a defense to the action or proceeding.

(2) Notice. Upon the filing of the motion and affidavit, the court shall enter an order fixing the time and place of the hearing thereof and directing all parties to the action or proceeding who may be affected thereby to appear and show cause why the relief asked for should not be granted.

(3) Service. The motion, affidavit, and the order to show cause shall be served upon all parties affected in the same manner as in the case of summons in a civil action at such time before the date fixed for the hearing as the order shall provide; but in case such service cannot be made, the order shall be published in the manner and for such time as may be ordered by the court, and in such case a copy of the motion, affidavit, and order shall be mailed to such parties at their last

known post office address and a copy thereof served upon the attorneys of record of such parties in such action or proceeding such time prior to the hearing as the court may direct.

GR 9 Cover Sheet
Proposal to Amend ER 413
Concerning Evidence of Immigration Status

Submitted by the Washington State Bar Association
Committee on Court Rules and Procedures
Chair: Jefferson Coulter

1. Purpose

ER 413 was adopted in September 2018 for the purpose of making evidence of immigration status inadmissible except for limited circumstances described in the rule. The rule was proposed in a joint submission of Columbia Legal Services, Northwest Immigrant Rights Project, Legal Voice, and the Washington Association of Prosecuting Attorneys. The proposed amendment would make collections to the language of the current rule to conform it to the intent of the current rule's original proponents.

The proposed amendment makes two changes; one to subsection (a)(5), and one to subsection (b)(l).

Subsection (a)(5)

Subsection (a) applies to criminal cases. In the original GR 9 coversheet, the rule's proponents wrote (emphasis added to the description of the purpose of subsection (a)(5)):

> Subsection (a) provides that immigration status is inadmissible unless (1) status is an essential fact to prove an element of a criminal offense or to defend against the alleged offense or (2) to show bias or prejudice of a witness for impeachment. The subsections of (a) set forth the procedures for using immigration status: (1) a written pretrial motion that includes an offer of proof (2) an affidavit supporting the offer of proof (3) a court hearing outside the presence of the jury if the offer of proof is sufficient (4) admissibility of immigration status to show bias or prejudice if the evidence is reliable and relevant and the probative value of the evidence outweighs the prejudice from immigration status. This procedure is similar to that adopted in RCW 9A.44.020 (3).
>
> *Subsection (a)(5) clarifies that subsection (a) shall not be construed to prohibit cross-examination regarding immigration status if doing so would violate a criminal defendant's constitutional rights.* There is a similar provision in Fed. R. of Evid. 412(b)(1)(C).

As stated, subsection (a)(5) was thus intended to clarify that ER 413 does not exclude evidence in a criminal case if the exclusion of evidence would result in a constitutional violation. But the current language in subsection (a)(5) does not clearly effectuate this intent. Instead, it provides that ER 413 does not exclude "evidence that would result in a

violation of a defendant's constitutional rights, "which can be read as providing that ER 413 does not prohibit evidence when the evidence itself would lead to a constitutional violation, instead of its exclusion. The proposed amendment would revise subsection (a)(5) to confirm to the intent stated by the original rule's proponents.

Subsection (b)(1)

Subsection (b) applies to civil cases. The original GR 9 coversheet describes it as follows (emphasis added to the description of the purpose of subsection (b)(1)):

> Subsection (b) provides that in a civil proceeding, immigration status evidence of a party or witness shall not be admissible except where immigration status is an element of a party's cause of action or where another exception to the general rule applies.
>
> *Subsection (b)(1) sets forth two limited circumstances where evidence of immigration status would be handled through a CR 59(h) motion. The proposed rule balances the concerns of prejudice against immigrants highlighted by the Supreme Court with the legitimate need of a defendant, in limited cases, to raise status issues where reinstatement or future lost wages are sought.*

As stated, the intent of subsection (b) was to make evidence of immigration status generally inadmissible in civil cases, except for Rule 59(h) motion raising specified circumstances having to do with wage loss or employment claims. But current subsection (b)(1) is not cabined to Rule 59(h) motions. Instead, it applies to any posttrial motion involving the described circumstance. This substantially expands the scope of the "limited" exception. For example, "posttrial motions" include motions under Rule 60, which may be filed a year or more after judgment. In contrast, Rule 59(h) motions must be brought within ten days after entry of judgment. The proposed amendment would restrict the admissibility of immigration status evidence to Rule 59(h) motions. The proposed amendment would clarify the exception applies to motions brought under CRLJ 59(h) as well as CR 59(h).

2. *Procedure*

Because the proposed amendments are technical fixes to conform ER 413 to its stated purpose, the WSBA Court Rules and Procedures Committee does not believe a further hearing is necessary. However, it will defer to the Supreme Court if a hearing would be useful to clarify the proposal. The Committee does not believe expedited consideration of this proposal is necessary.

SUGGESTED AMENDMENT
SUPERIOR COURT RULES OF EVIDENCE (ER)
RULE 413 – Immigration Status

(a) Criminal Cases; Evidence Generally Inadmissible. In any criminal matter, evidence of a party's or a witness's immigration status shall not be admissible unless immigration status is an essential fact to prove an element of, or a defense to, the criminal offense with which the defendant is charged, or to show bias or prejudice of a witness pursuant to ER 607. The following procedure shall apply prior to any such proposed uses of immigration status evidence to show bias or prejudice of a witness:

(1) A written pretrial motion shall be made that includes an offer of proof of the relevancy of the proposed evidence.

(2) The written motion shall be accompanied by an affidavit or affidavits in which the offer of proof shall be stated.

(3) (If the court finds that the offer of proof is sufficient, the court shall order a hearing outside the presence of the jury.

(4) The court may admit evidence of immigration status to show bias or prejudice if it finds that the evidence is reliable and relevant, and that its probative value outweighs the prejudicial nature of evidence of immigration status.

(5) Nothing in this section shall be construed to exclude evidence if the exclusion of that evidence would violate ~~result in the violation of~~ a defendant's constitutional rights.

(b) Civil Cases; Evidence Generally Inadmissible. Except as provided in subsection (b)(l), evidence of a party's or a witness's immigration status shall not be admissible unless immigration status is an essential fact to prove an element of a party's cause of action.

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SUGGESTED AMENDMENT
SUPERIOR COURT RULES OF EVIDENCE (ER)
RULE 413 – Immigration Status

(1) Posttrial Proceedings. Evidence of immigration status may be submitted to the court through a posttrial motion made under CR 59(h) or CRLJ 59(h):

(A) where a party, who is subject to a final order of removal in immigration proceedings, was awarded damages for future lost earnings; or

(B) where a party was awarded reinstatement to employment.

(2) Procedure to review evidence. Whenever a party seeks to use or introduce immigration status evidence, the court shall conduct an in camera review of such evidence. The motion, related papers, and record of such review may be sealed pursuant to GR 15, and shall remain under seal unless the court orders otherwise. If the court determines that the evidence may be used, the court shall make findings of fact and conclusions of law regarding the permitted use of that evidence.

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