

Court Rules and Procedures Committee

AGENDA
August 23, 2021
11:30 a.m. – 1:00 p.m.

Call-In Number: +1 (646) 749-3335

Meeting ID: 918-183-741

Call to Order

- Approval of Minutes
 - July 23, 2021
- Subcommittee Reports
 - Subcommittee X – Subcommittee Chair Tony DiTommaso
 - CRLJ's: 4, 8, 13, 15, 18, 19, 20, 22, 24, 25, 40, 41, 43, 46, 47, 49, 51, 54, 55, 56, 58, 59, and 73
 - RAP Subcommittee – Subcommittee Chair Brian Esler
 - RAP 2.2
 - RALJ Subcommittee – Subcommittee Chair Claire Carden
 - Review of RALJ 8.1
 - RALJ 6.2, 6.3.1, 9.2, 10.2, 10.3, 11.1, 11.2, 11.7
- Equity and Disparity Workgroup Update
- Request from the Civil Litigation Committee of the Court Recovery Task Force re [GR 40](#) and [CR 39](#)
- Other Business for the Good of the Order

Adjourn

The next meeting is scheduled for September 13, 2021.



WASHINGTON STATE BAR ASSOCIATION

Court Rules and Procedures Committee

Meeting Minutes

July 23, 2021

Members Present: Chair Isham Reavis, Magda Baker, Claire Carden, Paul Crisalli, Tony DiTommaso, Duffy Graham, Ofelia Granados, Richard Greene, Karen Knutsen, Eric Lindberg, Sarah Nagy, Ashton Rezayat, James Smith, Ann Summers, and Emory Wogenstahl.

Members Excused: Kristin Ballinger, Jody Cloutier, Stephanie Dikeakos, Brian Esler, John Ledford, Margaret Macrae, Sara Mooney, Tim Moran, Rachel Reynolds, Jeff Sbaih, Kathleen SHircliff, Elena Skillicorn, Mara Snyder, Jon Zimmerman, and Lauren Boyd (BOG Liaison).

Also Attending: J Benway (AOC Liaison), Nicole Gustine (WSBA Assistant General Counsel) and Kyla Jones (WSBA Paralegal).

The meeting was called to order at 12:08 p.m. once a quorum was established.

1. Approval of Minutes

A motion was made and seconded to approve the May 10, 2021 meeting minutes. The motion passed unanimously.

2. Subcommittee Reports

a. RAP Subcommittee

No report.

b. RALJ Subcommittee

Subcommittee Chair Claire Carden reported on the comments received from stakeholders. The subcommittee is going to meet to review RALJ 8.2 again and present to the Committee at the next meeting. The Committee will meet in August to take action on the RALJ proposals.

c. Subcommittee X

Subcommittee Chair Tony DiTommaso reported on the comments received in response to the proposed changes to the CRLJ's. The Committee will meet in August to take action on these items.

3. Equity and Disparity Workgroup Update

Chair Isham Reavis reported on the Equity and Disparity Workgroup.

4. Other Business for the Good of the Order

The Committee lost quorum and plans to meet on August 9, 2021 to take action on the agenda items. The meeting adjourned at 12:30 p.m.

Comments Received
CRLJ Proposals
Subcommittee X



From: [Chad A. Jenks](#)
To: [WSBA CourtRules](#)
Subject: Judgment spelling
Date: Thursday, May 13, 2021 2:56:01 PM
Attachments: [image001.jpg](#)
[2021.05.13 Court Rules Committee Proposed Changes for Stakeholders.pdf](#)

Just a consistency issue...

Pg. 33 of the PDF: The title is shown as “CRLJ 54 JUDGEMENTS; COSTS”

The remaining section of that rule spells it correctly as “judgment” (without the “e”). I get the “judgement” spelling may have been the original British spelling centuries ago, and somewhat accepted today in the UK, but I’m guessing it was more of an oversight, as the rest of the rule has the US spelling.

Other parts with same issue:

1. Pg. 34 (CRLJ 55(b))
2. Pg. 35 (CRLJ 55(e))
3. Pg 36 (CRLJ 56 header)

Sorry for being picky

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From: [Kevin McDowell](#)
To: [WSBA CourtRules](#)
Subject: Review of Civil Rule proposed changes
Date: Thursday, May 13, 2021 2:39:37 PM
Attachments: [2021.05.13 Court Rules Committee Proposed Changes for Stakeholders.pdf](#)

Dear Sir or Madam:

I have two suggested revisions to the proposed Civil Rule changes. The comment marked on Rule 59 corrects an error that is present in the proposed revision.

Best,

Kevin A. McDowell
Deputy Prosecuting Attorney
Lewis County Prosecutor's Office
345 West Main Street, 2nd Floor
Chehalis, WA 98532
Direct: (360) 740-1246
Facsimile: (360) 740-1497

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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 party's attorney has actual notice of assignment or reassignment to a designated trial judge.

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 in 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 chance 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

From: [Benway, Jennifer](#)
To: [WSBA CourtRules](#)
Cc: [Goodwin, Jeffrey](#); [Kyla Jones](#)
Subject: Input re WSBA Court Rules and Procedures Committee: Rule Change Proposals
Date: Tuesday, June 29, 2021 2:01:28 PM
Attachments: [image001.png](#)
[image002.png](#)

Hello,

The DMCJA Court Rules Committee [supports](#) these proposals.

The Committee would like to draw your attention to what they believe to be a typo, at the bottom of page 26 of the PDF. The last few words of CRLJ 43(f)(3)(1) appear to be cut off. It currently reads, "This rule shall not be construed: (i) to compel any person to answer any question where such answer might tend to be 5 him;" and the rule currently reads, "This rule shall not be construed: (i) to compel any person to answer any question where such answer might tend to incriminate him." I imagine the suggestion by the Committee was, "(i) to compel any person to answer any question where such answer might tend to incriminate him be incriminating." Again, the Committee wanted you to be aware of the anomaly.

The Committee appreciates the opportunity to comment on these proposals.

Please let me know if you have any questions.

Thank you!

From: Kyla Jones [mailto:Kylaj@wsba.org]

Sent: Thursday, May 13, 2021 1:01 PM

To: Benway, Jennifer <Jennifer.Benway@courts.wa.gov>; Appelwick, Marlin <J_M.Appelwick@courts.wa.gov>; Maxa, Bradley <J_B.Maxa@courts.wa.gov>; coa2 <coa2@courts.wa.gov>; Siddoway, Laurel <Laurel.Siddoway@courts.wa.gov>; Judge Gibson <blaine.gibson@co.yakima.wa.us>; mgehlsen@kingcounty.gov; Myetter@kentwa.gov; Trish.Kinlow@tukwilawa.gov; mike@montgomeryscarp.com; hinman@sohalang.com; akrashan@schwabe.com; celia@riverallawoffices.com; greg@priceinjurylaw.com; chris@pcvalaw.com; michael@haroldcarrattorney.com; Cesart@nwjustice.org; info@wacdl.org; shelby@appeal-law.com; valerie@washingtonappeals.com; wda@defensenet.org; heather_carroll@fd.org; andrew.chamberlin@elliswinters.com; mkurzak@iadclaw.org; pamloginsky@waprosecutors.org; rbrown@waprosecutors.org; jwalker@marysville.gov; lisa.daugaard@defender.org; andra@sheridanlawfirm.com; mstorms@aclu-wa.org; Nick.Allen@ColumbiaLegal.org; president@abaw.org; john.fetters@stokeslaw.com; john.laney@stoel.com; serin@soundfamilysolutions.com; asb@bmatlaw.com; jgoltermann@bbllaw.com; cardozo@jewishinseattle.org; president@filipinolawyers.org; john.laney@stoel.com; lindsayappleton@gmail.com; gail.manuguid@gmail.com; president@q-law.org; president-elect@q-law.org; kabawaboard@gmail.com; president@lbaw.org; president-elect@lbaw.org; president@lmba.net; lgreaves4.1@gmail.com; raina.wagner@klgates.com; president@melaw.org; alicenoman@gmail.com; dua.abudiab@kingcounty.gov; lhurl@foum.law; amy.klosterman@gmail.com; katie@levy-law.com; president@mamaseattle.org; anthonyjones@perkinscoie.com; dhedden@uidaho.edu; slawson@schwabe.com; desiree@dshlg.com; doris@walkins-law.com; keith@stronginternationallaw.com; Barry@WallisLawFirm.com; narora@perkinscoie.com; vabawpresident@gmail.com; amyphantaylor@gmail.com; mwilliams@cedarlawgroup.com; Jonathan.ko@gmail.com;

Comments Received
RALJ Proposals
RALJ Subcommittee



From: [Guthrie, Stephanie](#)
To: [WSBA CourtRules](#)
Subject: RE: WSBA Court Rules and Procedures Committee: Suggested Changes to RALJs
Date: Tuesday, April 27, 2021 1:51:45 PM
Attachments: [image003.png](#)
[image004.png](#)

I support making these very sensible changes!



Stephanie Finn Guthrie (she/her)

Senior Deputy Prosecuting Attorney, Appellate Unit
King County Prosecuting Attorney's Office
516 3rd Avenue | Seattle | WA | 98104
Phone: (206) 477-9527
Email: stephanie.guthrie@kingcounty.gov

From: Pam Loginsky <pamloginsky@waprosecutors.org>
Sent: Tuesday, April 27, 2021 1:30 PM
To: WAPA RALJ <WAPA_RALJ@waprosecutors.org>; WAPA Appeals <WAPA_Appells@waprosecutors.org>; WAPA Appellate Committee <WAPA_AppellateCommittee@waprosecutors.org>
Subject: FW: WSBA Court Rules and Procedures Committee: Suggested Changes to RALJs

[EXTERNAL Email Notice!] External communication is important to us. Be cautious of phishing attempts. Do not click or open suspicious links or attachments.

You all have two options—

1. Send your comments directly to Ms. Jones
2. Send your comments to me and I will aggregated them for submission

Which ever option you select, please weigh in—even if all you say is “I like the suggested changes.”

Pam

From: Kyla Jones <Kylaj@wsba.org>
Sent: Tuesday, April 27, 2021 12:13 PM
To: Benway, Jennifer <Jennifer.Benway@courts.wa.gov>; Marlin.appelwick@courts.wa.gov; Judge Bradley Maxa <J_B.Maxa@courts.wa.gov>; coa2@courts.wa.gov; laurel.siddoway@courts.wa.gov; Judge Gibson <blaine.gibson@co.yakima.wa.us>; mgehlsen@kingcounty.gov; Myetter@kentwa.gov; Trish.Kinlow@tukwilawa.gov; mike@montgomeryscarp.com; hinman@sohalang.com; akrashan@schwabe.com; celia@riverallawoffices.com; greg@priceinjurylaw.com; chris@pcvalaw.com; michael@haroldcarrattorney.com; Cesart@nwjustice.org; WACDL <info@wacdl.org>; shelby@appeal-law.com; valerie@washingtonappeals.com; wda@defensenet.org; heather_carroll@fd.org; andrew.chamberlin@elliswinters.com; mkurzak@iadclaw.org; Pam Loginsky <pamloginsky@waprosecutors.org>; Russell Brown

From: [Benway, Jennifer](#)
To: [Kyla Jones](#)
Cc: [Goodwin, Jeffrey](#); "michelle.gehlsen@kingcounty.gov"; [Charles D Short](#)
Subject: DMCJA Rules Committee comment on proposed RALJ amendments
Date: Monday, June 14, 2021 6:15:54 PM

To the WSBA Court Rules Committee:

I am writing on behalf of the DMCJA Rules Committee. Thank you for the opportunity to comment on the proposed amendments to the RALJ. In general, the DMJCA Rules Committee is supportive of the amendments. However, the Committee has some concern with the proposal to amend RALJ 8.1, which would read: "A represented party of record may present oral argument only if the party has filed a brief." The consensus of the DMCJA Rules Committee is that the judge should retain some amount of discretion regarding whether oral argument may be allowed. A suggested revision would be, "A represented party of record may present oral argument only if the party has filed a brief; otherwise, leave of court is required for any party seeking to present oral argument." Thank you again for the opportunity to comment on these proposals. Please let me know if I can provide any further assistance.

Thank you!

J Benway

Legal Services Principal Analyst
Administrative Office of the Courts
360-357-2126

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WASHINGTON STATE BAR ASSOCIATION

Board of Governors

Kyle D. Sciuchetti, President

August 9, 2021

Chair Isham Reavis
Court Rules and Procedures Committee
Via Email: isham@aokilaw.com

Dear Isham:

The Civil Litigation Committee of the Court Recovery Task Force formed by the Washington Supreme Court is working on revisions to GR40 and CR39, with an eye on remote trials, remote testimony, and remote jurors by Zoom or similar technology. Justice Stephens asked that relevant WSBA entities interested in these topics consider forwarding comments to the committee. We are reaching out to invite you to provide comment on these topics. To learn more about the Court Recovery Task Force please follow this [link](#).

Any comments may be emailed to Luke Phifer at lphifer@lawschool.gonzaga.edu, who is assisting Justice Stephens with the Committee. He will in turn distribute comments to the committee members. It would be helpful if comments were available by Sept. 15 or earlier.

Note that we have also forwarded this letter to the Access to Justice Board, the WSBA Criminal Law, Family Law, Real Property Probate and Trust, Litigation, Creditor/Debtor Rights, and Solo Small Practice Sections. If the Court Rules and Procedures Committee does decide to comment, you may wish to coordinate with those entities. Thank you for your consideration.

Sincerely,



Kyle D. Sciuchetti
WSBA President



Terra Nevitt
WSBA Executive Director

Cc: Gov. Lauren Boyd, BOG Liaison
Nicole Gustine, Staff Liaison