Part IV
RULES FOR SUPERIOR COURT

Title of Rules	Abbreviation	Formerly
Superior Court Administrative Rules	(AR)	———
Superior Court Civil Rules	(CR)	(RPPP–Part)
Superior Court Special Proceedings Rules	(SPR)	(RPPP–Part)
Superior Court Criminal Rules	(CrR)	(RPPP–Part)
Superior Court Mental Proceedings Rules	(MPR)	———
Juvenile Court Rules	(JuCR)	———
Appendix to Part IV: Court Orders and Tables		

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(Formerly: Administrative Rules for Superior Court)

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(b) Report of Appeal.

Rule 1 Reporting of criminal cases

(a) Report of Disposition. Within five court days after disposition by the superior court of a criminal charge, whether the disposition be a plea of guilty or by deferral or suspension of imposition of sentence, or a finding of guilty, or not guilty after trial, or by dismissal of the charge, the court clerk shall report such disposition to the Washington State Patrol Section on Identification on a disposition form approved by the Administrator for the Courts. When a sentence has been deferred or suspended, the report to the Section shall indicate the length of time over which such suspension or deferral is to be effective. At the conclusion of the time period for deferral or suspension of sentence, the court clerk shall forward an amended disposition form to the Section showing the actual disposition of the case.

(b) Report of Appeal. If an appeal is taken from the disposition made by the superior court, the court clerk shall, within five court days of the taking of the appeal, notify the Section on an amended disposition form. In the event that the result of any proceeding changes or otherwise makes inaccurate the information forwarded on the original disposition report, the court clerk shall prepare and forward to the Section a supplemental disposition report on a form approved by the Administrator for the Courts indicating thereon the information necessary to correct the current status of the disposition of charges against the subject maintained in the records of the Section. [Adopted Jan. 17, 1974; effective March 1, 1974.]

SUPERIOR COURT CIVIL RULES (CR)

(Formerly: Civil Rules for Superior Court (CR); Rules of Pleading, Practice and Procedure, RPPP.)

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I. INTRODUCTORY (RULES 1–2A)

Rule 1 Scope of rules These rules govern the procedure in the superior court in all suits of a civil nature whether cognizable as cases at law or in equity with the exceptions stated in Rule 81. They shall be construed to secure the just, speedy, and inexpensive determination of every action. [Adopted May 5, 1967, effective July 1, 1967.]

Comment by the Court. This rule is similar to FRCP 1.

Rule 2 One form of action There shall be one form of action to be known as "civil action." [Adopted May 5, 1967, effective July 1, 1967.]

Comment by the Court. This rule is identical to FRCP 2. It supersedes RCW 4.04.020.

Rule 2A Stipulations No agreement or consent between parties or attorneys in respect to the proceedings in a cause, the purport of which is disputed, will be regarded by the court unless the same shall have been made and assented to in open court before a court reporter, or entered in the minutes, or unless the evidence thereof shall be in writing and subscribed by the attorneys denying the same. [Adopted May 5, 1967, amended June 28, 1967, effective July 1, 1967.]

Comment by the Court. Rule 2A is identical to and supersedes RPPP 89.04W.

II. COMMENCEMENT OF ACTION; SERVICE OF PROCESS, PLEADINGS, MOTIONS AND ORDERS (RULES 3–6)

Rule 3 Commencement of action

(a) Methods. A civil action is commenced by service of a summons as provided in Rule 4 or by filing a complaint. If no service of summons is had upon a defendant before the complaint is filed, one or more defendants shall be served personally, or service by publication shall be commenced within 90 days after complaint is filed. Upon written demand by any other party, the plaintiff instituting the action forthwith, shall pay the filing fee and file the summons and complaint. If the summons was served without the complaint being attached, the plaintiff shall file the complaint within 5 days after the first service of the summons upon a defendant. An action shall not be deemed commenced for the purpose of tolling any statute of limitations unless pursuant to the provisions of RCW 4.16.170.

Comment by the Court. Subdivision (a) follows and supersedes RCW 4.28.010 except for the addition of the last three sentences. For sanctions see Rule 5(d); for venue provisions see Rule 82.

(b) Tolling Statute. [Reserved——See RCW 4.16.170.]

(c) Obtaining Jurisdiction. [Reserved——See RCW 4.28.020.]

Comment by the Court. The last sentence of RCW 4.28.020 is superseded by Rule 4(d)(4).

(d) Lis Pendens. [Reserved——See RCW 4.28.320 and 4.28.160.] [Adopted May 5, 1967, effective July 1, 1967; amended, adopted Feb. 24, 1972, effective July 1, 1972.]

Rule 4 Process

(–) What Is Process. A summons is deemed to be process under these rules. These Rules do not exclude the use of other forms of process authorized by law.

(a) Summons; Issuance. The summons must be subscribed by the plaintiff or his attorney, and directed to the defendant requiring him to appear and defend, and serve a copy of his appearance or defense on the person whose name is subscribed to the summons at a place within the state therein specified in which there is a post office, within 20 days after the service of the summons, exclusive of the day of service. 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.

Comment by the Court. Subdivision (a) follows and supersedes RCW 4.28.030.

(b) Summons.

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

(A) 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.

(B) A direction to the defendants summoning them to appear within 20 days after service of the summons, exclusive of the day of service, and defend the action.

(C) A notice that, in case of failure so to do, judgment will be rendered against them according to the demand of the complaint. It shall be subscribed by the plaintiff, or his attorney, with the addition of his post office address, at which the papers in the action may be served on him by mail.

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

SUPERIOR COURT OF WASHINGTON
FOR ---------- COUNTY

Richard Roe, Plaintiff,
vs. No. -----
James Moe, Defendant SUMMONS

The State of Washington, ----------, to the said ----------, Defendant:

You are hereby summoned to appear within 20 days after service of this summons, exclusive of the day of service, and defend the above entitled action by serving a copy of your written appearance or defense upon the undersigned. If you fail to appear and defend, judgment will be rendered against you, according to the demand of the complaint, which has been or will be filed with the clerk of the court, or a copy of which is herewith served upon you.

John Doe, Plaintiff's Attorney
P.O. Address
[Telephone No.]

Comment by the Court. Paragraph (1) follows and supersedes RCW 4.28.040. Paragraph (2) follows and supersedes RCW 4.28-.050 with minor clarifying changes.

(c) By Whom Served. Service of summons and process, except when service is by publication, shall be by the sheriff of the county wherein the service is made, or by his deputy, or by any person over 18 years of age who is competent to be a witness in the action, other than a party. Subpoenas may be served as provided in Rule 45. [Adopted May 5, 1967, amended June 28, 1967, effective July 1, 1967; amended, adopted Sept. 27, 1971, effective Nov. 9, 1971; amended, adopted Nov. 29, 1971, effective Jan. 1, 1972.]

Comment by the Court. Subdivision (c) follows and supersedes RCW 4.28.070.

(d) Service.

(1) *Of Summons and/or Complaint.* The summons and complaint shall be served together unless the complaint has been or is filed within 5 days after service of summons. When a summons is served without a complaint, the summons must notify the defendant that a complaint has been or will be filed prior to service of the summons or will be filed within 5 days after the service. If the defendant appears within 10 days after the service of the summons, the plaintiff must serve a copy of the complaint on the defendant or his attorney within 10 days after the notice of such appearance, and the defendant shall have at least 10 days thereafter to answer the same; and no judgment shall be entered against him for want of an answer in such case until the expiration of the time.

(2) *Personal in State.* Personal service of summons and other process shall be as provided in RCW 4.28-.080, 4.28.081, 4.28.090, 23A.08.110, 23A.32.100, 46.64-.040, 48.05.200 and 48.05.210, and other statutes which provide for personal service.

(3) *By Publication.* Service of summons and other process by publication shall be as provided in RCW 4.28.100, 4.28.110, 13.04.080, and 26.32.080, and other statutes which provide for service by publication.

(4) *Appearance.* A voluntary appearance of a defendant does not preclude his right to challenge lack of jurisdiction over his person, insufficiency of process, or insufficiency of service of process pursuant to Rule 12(b).

Comment by the Court. Paragraph (1) supersedes RCW 4.28.060. The rule should be read in connection with Rule 3. Paragraph (4) supersedes the last sentence of RCW 4.28.020.

(e) Other Service.

(1) *Generally.* Whenever a statute or an order of court thereunder provides for service of a summons, or of a notice, or of an order in lieu of summons upon a party not an inhabitant of or not found within the state, service may be made under the circumstances and in the manner prescribed by the statute or order, or if there is no provision prescribing the manner of service, in a manner prescribed by this rule.

(2) *Personal Service Out of State——Generally.* [Reserved——See RCW 4.28.180.]

(3) *Personal Service Out of State——Acts Submitting Person to Jurisdiction of Courts.* [Reserved——See RCW 4.28.185.]

(4) *Non-Resident Motorist.* [Reserved——See RCW 46.64.040.]

Comment by the Court. Paragraph (1) follows FRCP 4(e) as amended with appropriate changes.

(f) 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.

Comment by the Court. Subdivision (f) follows FRCP 4(f) with appropriate changes. This subdivision is similar to the first sentence of RCW 2.08.210.

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

(1) If served by the sheriff or his deputy, the return of the sheriff or his deputy indorsed upon or attached to the summons;

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

(3) If served by publication, the affidavit of the printer, 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) The written acceptance or admission of the defendant, his agent or attorney;

(5) In case of personal service out of 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.

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.

Comment by the Court. Subdivision (g) follows RCW 4.28.310 which is superseded. The last sentence of FRCP 4(g) is added.

(h) 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 issued.

Comment by the Court. Subdivision (h) is identical to FRCP 4(h).

(i) Alternative Provisions for Service in a Foreign Country.

(1) *Manner.* When a statute or rule authorizes service upon a party not an inhabitant of or found within the state, and service is to be effected upon the party in a foreign country, it is also sufficient if service of the summons and complaint is made: (A) in the manner prescribed by law of the foreign country for service in that country in an action in any of its courts of general jurisdiction; or (B) as directed by the foreign authority in response to a letter rogatory, when service in either case is reasonably calculated to give actual notice; or (C) upon an individual, by delivery to him personally, and upon a corporation or partnership or association, by delivery to an officer, a managing or general agent; or (D) by any form of mail, requiring a signed receipt, to be addressed and mailed to the party to be served; or (E) as directed by order of the court. Service under (C) or (E) above may be made by any person who is not a

party and is not less than 21 years of age or who is designated by order of the court or by the foreign court.

(2) *Return.* Proof of service may be made as prescribed by subdivision (g) of this rule, or by the law of the foreign country, or by order of the court. When service is made pursuant to subparagraph (1)(D) of this subdivision, proof of service shall include a receipt signed by the addressee or other evidence of delivery to the addressee satisfactory to the court.

Comment by the Court. Subdivision (i) follows FRCP 4(i).

Rule 5 Service and filing of pleadings and other papers

(a) Service: When required. Except as otherwise provided in these rules, every order required by its terms to be served, every pleading subsequent to the original complaint unless the court otherwise orders because of numerous defendants, every paper relating to discovery required to be served upon a party unless the court otherwise orders, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment, designation of record on appeal, and similar paper shall be served upon each of the parties. No service need be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons in Rule 4.

In an action begun by seizure of property, in which no person need be or is named as defendant, any service required to be made prior to the filing of an answer, claim, or appearance shall be made upon the person having custody or possession of the property at the time of its seizure.

Comment by the Court. Subdivision (a) follows FRCP 5(a), and supersedes the third sentence of RPPP 8.04W(1).

(b) Service; How Made.

(1) *On Attorney or Party.* Whenever under these rules service is required or permitted to be made upon a party represented by an attorney the service shall be made upon the attorney unless service upon the party himself is ordered by the court. Service upon the attorney or upon a party shall be made by delivering a copy to him or by mailing it to him at his last known address or, if no address is known, by leaving it with the clerk of the court. Delivery of a copy within this rule means: handing it to the attorney or to the party; or leaving it at his office with his clerk or other person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein.

(2) *Service by Mail.*

(A) How Made. If service is made by mail, the papers shall be deposited in the post office addressed to the person on whom they are being served, with the postage prepaid. The service shall be deemed complete upon the third day following the day upon which they are placed in the mail, unless the third day falls on a Saturday, Sunday or legal holiday, in which event service shall be deemed complete on the first day other than a Saturday, Sunday or legal holiday, following the third day.

(B) Proof of Service by Mail. Proof of service of all papers permitted to be mailed may be by written acknowledgment of service, by affidavit of the person who mailed the papers, or by certificate of an attorney. The certificate of an attorney may be in form substantially as follows:

CERTIFICATE

I certify that I mailed a copy of the foregoing ---------- to [*John Smith*], [*plaintiff's*] attorney, at [*office address or residence*], and to [*Joseph Doe*], an additional [*defendant's*] attorney [*or attorneys*] at [*office address or residence*], postage prepaid, on [*date*].

[*John Brown*], Attorney for
[*Defendant*] William Noe

(3) *Service on Non-Residents.* Where a plaintiff or defendant who has appeared resides outside the state and has no attorney in the action, the service may be made by mail if his residence is known; if not known, on the clerk of court for him. Where a party, whether resident or non-resident, has an attorney in the action, the service of papers shall be upon the attorney instead of the party. If the attorney does not have an office within the state or has removed his residence from the state, the service may be upon him personally either within or without the state, or by mail to him at either his place of residence or his office, if either is known, and if not known, then by mail upon the party, if his residence is known, whether within or without the state. If the residence of neither the party nor his attorney, nor the office address of the attorney is known, the service may be upon the clerk of court for the attorney.

Comment by the Court. Paragraphs (1) and (2) supersede RCW 4.28.240, 4.28.250, 4.28.260 and 4.28.280. Paragraph (3) is similar to and supersedes RCW 4.28.270.

(c) Service; Numerous Defendants. In any action in which there are unusually large numbers of defendants, the court, upon motion or of its own initiative, may order that service of the pleadings of the defendants and replies thereto need not be made as between the defendants and that any cross-claim, counterclaim, or matter constituting an avoidance or affirmative defense contained therein shall be deemed to be denied or avoided by all other parties and that the filing of any such pleading and service thereof upon the plaintiff constitutes due notice of it to the parties. A copy of every such order shall be served upon the parties in such manner and form as the court directs.

Comment by the Court. Subdivision (c) is identical to FRCP 5(c).

(d) Filing.

(1) *Time.* All pleadings and other papers after the complaint required to be served upon a party shall be filed with the court either before service or promptly thereafter. Complaints shall be filed as provided in Rule 3(a) or Rule 4(d)(1).

(2) *Default.* If a party fails to pay the filing fee or to file the complaint after demand, pursuant to Rule 3(a), or fails to file any other pleading or paper under this

rule, the court upon 5 days' notice of motion for sanctions may dismiss the action or strike the pleading or other paper and grant judgment against the defaulting party for costs and terms including a reasonable attorneys' fee unless good cause is shown for, or justice requires, the granting of an extension of time.

(3) *Limitation.* No sanction shall be imposed if prior to the hearing the filing fee is paid and the pleading or other paper is filed and the moving attorney is notified of the payment and filing before he leaves his office for the hearing.

(4) *Non-Payment.* No further action shall be taken in the pending action and no subsequent pleading or other paper shall be filed until the judgment is paid. No subsequent action shall be commenced upon the same subject matter until the judgment has been paid.

Comment by the Court. Subdivision (d) supersedes RPPP 8.04W(2) and RCW 4.32.260.

(e) Filing with the Court Defined. The filing of pleadings and other papers with the court as required by these rules shall be made by filing them with the clerk of the court, except that the judge may permit the papers to be filed with him, in which event he shall note thereon the filing date and forthwith transmit them to the office of the clerk.

Comment by the Court. Subdivision (e) is identical to FRCP 5(e) as amended.

(f) Other Methods of Service. Service of all papers other than the summons and other process may also be made as authorized by statutes other than RCW 4.28.230, 4.28.240, 4.28.250, 4.28.260, 4.28.270, and 4.28.280, which are superseded by these rules.

(g) Certified Mail. Whenever the use of "registered" mail is authorized by statutes relating to judicial proceedings or by rule of court, "certified" mail, with return receipt requested, may be used.

Comment by the Court. Subdivision (g) is similar to and supersedes RPPP 5.04W.

(h) Service of Papers by Telegraph. Any writ or order in any civil suit or proceeding, and all the papers requiring service, may be transmitted by telegraph for service in any place, and the telegraphic copy of such writ or order so transmitted may be served or executed by the officer or person to whom it is sent for that purpose, and returned by him, if any return be requisite, in the same manner, and with the same force and effect, in all respects, as the original thereof might be, if delivered to him, and the officer or person serving or executing the same shall have the same authority and be subject to the same liabilities as if the said copy were the original. The original, when a writ or order, shall also be filed in the court from which it was issued, and a certified copy thereof shall be preserved in the telegraph office from which it was sent. In sending it, either the original or certified copy may be used by the operator for that purpose. [Adopted May 5, 1967, amended May 26, 1972, effective July 1, 1972.]

Comment by the Court. Subdivision (h) follows and supersedes RCW 4.28.300. For Statutes relating to Telegraphic Communications, see RCW 5.52.

Rule 6 Time

(a) Computation. In computing any period of time prescribed or allowed by these rules, by the local rules of any superior court, by order of court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday or a legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, a Sunday nor a legal holiday. Legal holidays are prescribed in RCW 1.16.050. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation.

(b) Enlargement. When by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion, (1) with or without motion or notice, over the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order or, (2) upon motion made after the expiration of the specified period, permit the act to be done where the failure to act was the result of excusable neglect; but it may not extend the time for taking any action under Rules 50(b), 52(b), 59(b), 59(d) and 60(b).

Comment by the Court. Subdivision (b) follows FRCP 6(b). RCW 4.32.250 is a related statutory provision. See also RCW 4.32.240.

(c) Proceeding Not to Fail for Want of Judge or Session of Court. No proceeding in a court of justice in any action, suit, or proceeding pending therein, is affected by a vacancy in the office of any or all of the judges or by the failure of a session of the court.

Comment by the Court. Subdivision (c) is identical to and supersedes RCW 2.28.130.

(d) For Motions——Affidavits. A written motion, other than one which may be heard ex parte, and notice of the hearing thereof shall be served not later than 5 days before the time specified for the hearing, unless a different period is fixed by these rules or by order of the court. Such an order may for cause shown be made on ex parte application. When a motion is supported by affidavit, the affidavit shall be served with the motion; and, except as otherwise provided in Rule 59(c), opposing affidavits may be served not later than 1 day before the hearing, unless the court permits them to be served at some other time.

Comment by the Court. Subdivision (d) is identical to FRCP 6(d) which supersedes subdivision (1) of RPPP 8.08W. See also Rule 43(e)(2).

(e) Additional Time After Service by Mail. Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him by mail, 3 days shall be added to the prescribed period. [Adopted May 5, 1967, amended June 28, 1967, effective July 1, 1967.]

Comment by the Court. Subdivision (e) is identical with FRCP 6(e).

III. PLEADINGS AND MOTIONS (RULES 7–16)

Rule 7 Pleadings allowed; form of motions

(a) Pleadings. There shall be a complaint and an answer; a reply to a counterclaim denominated as such; an answer to a cross–claim, if the answer contains a cross–claim; a third–party complaint, if a person who was not an original party is summoned under the provisions of Rule 14; and a third–party answer, if a third–party complaint is served. No other pleading shall be allowed, except that the court may order a reply to an answer or a third–party answer.

Comment by the Court. Subdivision (a) is identical with FRCP 7(a).

(b) Motions and Other Papers.

(1) *How Made.* An application to the court for an order shall be by motion which, unless made during a hearing or trial, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion.

(2) *Form.* The rules applicable to captions, signing, and other matters of form of pleadings apply to all motions and other papers provided for by these rules.

(3) *Identification of Evidence.* When a motion is supported by affidavits or other papers, it shall specify the papers to be used by the moving party.

Comment by the Court. Paragraphs (1) and (2) are identical to FRCP 7(b) except for insertions of subheadings. Paragraph (3) follows and supersedes RPPP 8.08W(1). See Rule 43(e) for evidence to be used on motions.

(c) Demurrers, Pleas, etc., Abolished. Demurrers, pleas and exceptions for insufficiency of a pleading shall not be used.

(d) Security for Costs. [Reserved——See RCW 4.84-.210 et seq.] [Adopted May 5, 1967, effective July 1, 1967.]

Comment by the Court. Rule 7 alone, or Rule 7 combined with various other rules, supersedes RCW 4.32.020, 4.32.030, 4.32.010 (by Rules 7 through 15), 4.32.050 (by Rules 7 and 12), 4.32.060 (by Rules 7 and 12), 4.32.180 (by Rules 7 and 12), 4.32.190 (by Rules 7 and 12), 4.32.200 (by Rules 7 and 12), 4.32.210 (by Rules 7 and 8), 4.32.220 (by Rules 7 and 12), 4.40.020 (by Rules 7, 12, and 56), 4.40.030 (by Rules 7, 8, 12 and 56) and 4.56.180 (by Rules 7 and 12). In addition, Rule 7 modifies or supersedes the following statutes insofar as they relate to demurrers: RCW 2.08.190, 2.08.200, 4.16.010, 4.28.210, 4.36.010, 4.56.020.

Rule 8 General rules of pleading

(a) 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. Relief in the alternative or of several different types may be demanded.

(b) Defenses; Form of Denials. A party shall state in short and plain terms his defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies. If he is without knowledge or information sufficient to form a belief as to the truth of an averment, he 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, he 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, he may make his denials as specific denials of designated averments or paragraphs, or he may generally deny all the averments except such designated averments or paragraphs as he expressly admits; but, when he does so intend to controvert all its averments, he may do so by general denial subject to the obligations set forth in Rule 11.

(c) 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, fraud, illegality, injury by fellow servant, laches, license, payment, release, res judicata, statute of frauds, statute of limitations, 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.

(d) Effect of Failure to Deny. Averments in a pleading to which a 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.

(e) Pleading to Be Concise and Direct; Consistency.

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

(2) 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 he 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.

The adoption of this rule shall not be considered an adoption or approval of the forms of pleading in the Appendix of Forms approved in Rule 84, Federal Rules of Civil Procedure. [Adopted May 5, 1967, effective July 1, 1967. Prior: RPPP Rule 8.]

Comment by the Court. Rule 8 combined with other rules supersedes RCW 4.36.050, 4.32.050 (by Rules 8 and 10), 4.32.080 (by Rules 8, 12 and 13), 4.32.090 (by Rules 8, 10, 12 and 13), 4.36.040

(by Rules 8 and 12), and 4.36.160 (by Rules 8 and 12). In addition, the following statutes are modified or superseded in part by Rule 8: RCW 4.16.010 (and by Rules 7, 12, and 56), 4.36.120, 4.36.220 (and by Rule 12). See also comment at the end of Rule 7 for statutes superseded by Rule 8 and other rules.

Rule 9 Pleading special matters

(a) Capacity. It is not necessary to aver the capacity of a party to sue or be sued or the authority of a party to sue or be sued in a representative capacity or the legal existence of an organized association of persons that is made a party. When a party desires to raise an issue as to the legal existence of any party or the capacity of any party to sue or be sued or the authority or a party to sue or be sued in a representative capacity, he shall do so by specific negative averment which shall include such supporting particulars as are peculiarly within the pleader's knowledge.

(b) Fraud, Mistake, Condition of the Mind. In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity. Malice, intent, knowledge, and other condition of mind of a person may be averred generally.

(c) Condition Precedent. In pleading the performance or occurrence of conditions precedent, it is sufficient to aver generally that all conditions precedent have been performed or have occurred. A denial of performance or occurrence shall be made specifically and with particularity.

Comment by the Court. Subdivision (c) supersedes RCW 4.36.080 insofar as the statute governs pleading but not to the extent that the statute specifies which party shall have the burden of proof.

(d) Official Document or Act. In pleading an official document or official act, it is sufficient to aver that the document was issued or the act done in compliance with law.

(e) Judgment. In pleading a judgment or decision of a domestic or foreign court, judicial or quasi-judicial tribunal, or of a board or officer, it is sufficient to aver the judgment or decision without setting forth matter showing jurisdiction to render it.

Comment by the Court. Subdivision (e) supersedes RCW 4.36.070 insofar as the statute governs pleading but not to the extent that it specifies which party shall have the burden of proof.

(f) Time and Place. For the purpose of testing the sufficiency of a pleading, averments of time and place are material and shall be considered like all other averments of material matter.

(g) Special Damage. When items of special damage are claimed, they shall be specifically stated.

(h) Pleading Existence of City or Town. In pleading the existence of any city or town in this state, it shall be sufficient to state in such pleading that the same is an existing city or town, incorporated or organized under the laws of Washington.

Comment by the Court. Subdivision (h) is identical to and supersedes RCW 4.36.100.

(i) Pleading Ordinance. In pleading any ordinance of a city or town in this state it shall be sufficient to state the title of such ordinance and the date of its passage, whereupon the court shall take judicial notice of the existence of such ordinance and the tenor and effect thereof.

Comment by the Court. Subdivision (i) follows and supersedes RCW 4.36.110.

(j) Pleading Private Statutes. In pleading a private statute, or a right derived therefrom, it shall be sufficient to refer to such statute by its title, and the day of its passage, and the court shall thereupon take judicial notice thereof.

Comment by the Court. Subdivision (j) is identical to and supersedes RCW 4.36.090.

(k) Foreign Law. [Reserved——See RCW 5.24.010 through 5.24.070.]

(l) Burden of Proof. Nothing in this rule shall be construed to shift or alter the burden of proof. [Adopted May 5, 1967, effective July 1, 1967. Prior: RPPP Rule 9.]

Rule 10 Form of pleadings and other papers

(a) Caption. Every pleading shall contain a caption setting forth the name of the court, the title of the action, the file number if known to the person signing it, and an identification as to the nature of the pleading or other paper.

(1) *Names of Parties.* In the complaint the title of the action shall include the names of all the parties, but in other pleadings it is sufficient to state the name of the first party on each side with an appropriate indication of other parties.

(2) *Unknown Names.* When the plaintiff is ignorant of the name of the defendant, it shall be so stated in his pleading, and such defendant may be designated in any pleading or proceeding by any name, and when his true name shall be discovered, the pleading or proceeding may be amended accordingly.

(3) *Unknown Heirs.* When the heirs of any deceased person are proper parties defendant to any action relating to real property in this state, and when the names and residences of such heirs are unknown, such heirs may be proceeded against under the name and title of the "unknown heirs" of the deceased. In any action brought to determine any adverse claim, estate, lien, or interest in real property, or to quiet title to real property, unknown parties shall be designated as "also all other persons or parties unknown claiming any right, title, estate, lien, or interest in the real estate described in the complaint herein."

Comment by the Court. Subdivision (a) is similar to former FRCP 10(a) and former RPPP 10(a) except for insertion of headings. See, also, RCW 4.28.140. RCW 4.28.130 is superseded.

(b) Paragraphs; Separate Statements. All averments of claim or defense shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a statement of a single set of circumstances; and a paragraph may be referred to by number in all succeeding pleadings. Each claim founded upon a separate transaction or occurrence, and each defense other than denials, shall be stated in a separate count or defense whenever a separation facilitates the clear presentation of the matters set forth.

(c) Adoption by Reference; Exhibits. Statements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading or in any motion. A copy of any written instrument which is an exhibit to a pleading is a part thereof for all purposes.

(d) Paper Size. All pleadings, motions, and other papers shall be plainly written or printed, and the use of letter-size paper (8 1/2 x 11 inches) is optional.

Comment by the Court. Use of letter size paper for jury instructions is mandatory. See CR Rule 51(c).

(e) Format Recommendations. It is recommended that all pleadings and other papers include or provide for the following:

(1) *Service and Filing.* Space should be left at the top of the first page to provide on the right half space for the clerk's filing stamp, and space at the left half for acknowledging the receipt of copies.

(2) *Title.* All pleadings under the space under the docket number should contain a title indicating their purpose and party presenting them. For example:

USE	DO NOT USE
Complaint for Divorce	Complaint
Defendant's Motion for Support, Etc.	Motion
Order for Support	Order
Plaintiff's Trial Brief	Trial Brief

(3) *Bottom Notation.* At the left side of the bottom of each page of all pleadings and other papers an abbreviated name of the pleading or other paper should be repeated, followed by the page number. At the right side of the bottom of the first page of each pleading or other paper the name, mailing address and telephone number of the attorney or firm preparing the paper should be printed or typed.

(4) *Typed Names.* The name of all persons signing a pleading or other paper should be typed under his signature.

(5) *Headings and Subheadings.* Headings and subheadings should be used for all paragraphs which shall be numbered with Roman and/or Arabic numerals.

(6) *Numbered Paper.* Use numbered paper. [Adopted May 5, 1967, amended June 28, 1967, effective July 1, 1967. Prior: 10(a) through 10(c), RPPP Rule 10; 10(e), RPPP Rule 8.04(1) 1st and 2nd sentences.]

Comment by the Court. Rule 10 supersedes RCW 4.36.230. See, also, comment at the end of Rule 8 for additional statutes superseded by Rule 10 and other rules.

Rule 11 Signing of pleadings Every pleading of a party represented by an attorney shall be dated and signed by at least one attorney of record in his individual name, whose address shall be stated. A party who is not represented by an attorney shall sign and date his pleading and state his address. Petitions for dissolution of marriage, separation, declarations concerning the validity of a marriage, custody, and modification of decrees issued as a result of any of the foregoing petitions shall be verified. Other pleadings need not, but may be, verified or accompanied by affidavit. The signature of a party or of an attorney constitutes a certificate by him that he has read the pleading; that to the best of his knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay. If a pleading is not signed or is signed with intent to defeat the purpose of this rule, it may be stricken as sham and false and the action may proceed as though the pleading had not been served. For a wilful violation of this rule an attorney may be subjected to appropriate action as for contempt. Similar action may be taken if scandalous or indecent matter is inserted. [Adopted May 5, 1967, effective July 1, 1967; amended, adopted, Dec. 7, 1973, effective January 1, 1974. Prior: RPPP Rule 11.]

Comment by the Court. The rule supersedes RCW 4.36.010, 4.36-.020 and 4.36.030.

Rule 12 Defenses and objections

(a) When Presented. A defendant shall serve his answer within the following periods:

(1) within 20 days, exclusive of the day of service, after the service of the summons and complaint upon him pursuant to Rule 4;

(2) within 20 days, exclusive of the day of service, after the service of the summons without the complaint upon him pursuant to Rule 4(d), if he fails to appear within 10 days after such service of summons;

(3) within 10 days after the service of the complaint upon him or his attorney where the defendant has appeared after service of summons and the complaint has been served in accordance with Rule 4(d);

(4) within 60 days from the date of the first publication of the summons if the summons is served by publication in accordance with Rule 4(d)(3);

(5) within 60 days after the service of the summons upon him if the summons is served upon him personally out of the state in accordance with RCW 4.28.180 and 4.28.185 or on the Secretary of State as provided by RCW 46.64.040;

(6) within the period fixed by any other applicable statutes or rules.

A party served with a pleading stating a cross-claim against him shall serve an answer thereto within 20 days after the service upon him. The plaintiff shall serve his reply to a counterclaim in the answer within 20 days after service of the answer or, if a reply is ordered by the court, within 20 days after service of the order, unless the order otherwise directs. The service of a motion permitted under this rule alters these periods of time as follows, unless a different time is fixed by order of the court;

(A) if the court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within 10 days after notice of the court's action.

(B) if the court grants a motion for a more definite statement, the responsive pleading shall be served within 10 days after the service of the more definite statement.

Comment by the Court. Subdivision (a) follows RPPP 12(a) except that references to statutes have been deleted and cross references to comparable new rules have been inserted.

(b) How Presented. Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) improper venue, (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state a claim upon which relief can be granted, (7) failure to join a party under Rule 19. A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, he may assert at the trial any defense in law or fact to that claim for relief. If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

(c) Motion for Judgment on the Pleadings. After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

(d) Preliminary Hearings. The defenses specifically enumerated (1)-(7) in subdivision (b) of this rule, whether made in a pleading or by motion, and the motion for judgment mentioned in subdivision (c) of this rule shall be heard and determined before trial on application of any party, unless the court orders that the hearing and determination thereof be deferred until the trial.

Comment by the Court. Subdivision (d) follows FRCP 12(d).

(e) Motion for More Definite Statement. If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, or if more particularity in that pleading will further the efficient economical disposition of the action, he may move for a more definite statement before interposing his responsive pleading. The motion shall point out the defects complained of and the details desired. If the motion is granted and the order of the court is not obeyed within 10 days after the notice of the order or within such order time as the court may fix, the court may strike the pleading to which the motion was directed or make such order as it deems just.

Comment by the Court. Subdivision (e) supersedes RCW 4.36.060.

(f) Motion to Strike. Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion made by a party within 20 days after the service of the pleading upon him or upon the court's own initiative at any time, the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.

(g) Consolidation of Defenses in Motion. A party who makes a motion under this rule may join with it any other motions herein provided for and then available to him. If a party makes a motion under this rule but omits therefrom any defense or objection then available to him which this rule permits to be raised by motion, he shall not thereafter make a motion based on the defense or objection so omitted, except a motion as provided in subdivision (h)(2) hereof on any of the grounds there stated.

(h) Waiver or Preservation of Certain Defenses.

(1) A defense of lack of jurisdiction over the person, improper venue, insufficiency of process, or insufficiency of service of process is waived (A) if omitted from a motion in the circumstances described in subdivision (g), or (B) if it is neither made by motion under this rule nor included in a responsive pleading or an amendment thereof permitted by Rule 15(a) to be made as a matter of course.

(2) A defense of failure to state a claim upon which relief can be granted, a defense of failure to join a party indispensable under Rule 19, and an objection of failure to state a legal defense to a claim may be made in any pleading permitted or ordered under Rule 7(a), or by motion for judgment on the pleadings, or at the trial on the merits.

(3) Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action. [Adopted May 5, 1967, effective July 1, 1967; subd. (a)(5) amended, adopted Nov. 29, 1971, effective Jan. 1, 1972. Prior: RPPP Rule 12.]

Rule 13 Counterclaim and cross-claim

(a) 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 his 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 13.

(b) 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.

(c) 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.

(d) 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.

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

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

(g) Cross-Claim Against Co-Party. A pleading may state as a cross-claim any claim by one party against a co-party 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.

(h) 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.

(i) 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.

(j) 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 he 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 he was originally liable, or such assignee while the contract belonged to him.

Comment by the Court. Subdivision (j) is a revision of RCW 4.32.110. RCW 4.32.110 is superseded.

(k) Other Setoff Rules. [Reserved——See RCW 4.32.120 through 4.32.150 and RCW 4.56.050 through 4.56.075.] [Adopted May 5, 1967, effective July 1, 1967. Prior: RPPP Rule 13.]

Comment by the Court. In addition to RCW 4.32.110 mentioned above, Rule 13 supersedes RCW 4.32.100. For statutes superseded by Rule 13 and other rules, see comment at the end of Rule 8. Rule 13 modifies or supersedes the following statutes in part: RCW 4.56.060, 4.56.070 and 4.56.075.

Rule 14 Third-party practice

(a) When Defendant May Bring in Third Party. At any time after commencement of the action a defending party, as a third-party plaintiff, may cause a summons and complaint to be served upon a person not a party to the action who is or may be liable to him for all or part of the plaintiff's claim against him. The third-party plaintiff need not obtain leave to make the service if he files the third-party complaint not later than 10 days after he serves his original answer. Otherwise he must obtain leave on motion upon notice to all parties to the action. The person served with the summons and third-party complaint, hereinafter called the third-party defendant, shall make his defenses to the third-party plaintiff's claim as provided in Rule 12 and his counterclaims against the third-party plaintiff and cross-claims against other third-party defendants as provided in Rule 13. The third-party defendant may assert against the plaintiff any defenses which the third-party plaintiff has to the plaintiff's claim. The third-party defendant may also assert claim against the plaintiff arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff. The plaintiff may assert any claim against the third-party defendant arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff, and the third-party defendant thereupon shall assert his defenses as provided in Rule 12 and his counterclaims and cross-claims as provided in Rule 13. Any party may move to strike the third-party claim, or for its severance or separate trial. A third-party defendant may proceed under this rule against any person not a party to the action who is or may be liable to him for all or part of the claim made in the action against the third-party defendant.

(b) When Plaintiff May Bring in Third Party. When a counterclaim is asserted against a plaintiff, he may cause a third party to be brought in under circumstances which under this rule would entitle a defendant to do so.

(c) Tort Cases. This rule shall not be applied in tort cases, to permit the joinder of a liability or indemnity insurance company, unless such company is by statute or contract directly liable to the person injured or damaged. [Adopted May 5, 1967, effective July 1, 1967. Prior: RPPP Rule 14.]

Rule 15 Amended and supplemental pleadings

(a) Amendments. A party may amend his 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, he may so amend it at any time within 20 days after it is served. Otherwise, a party may amend his pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. 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 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 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 in maintaining his 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, the party to be brought in by amendment (1) has received such notice of the institution of the action that he will not be prejudiced in maintaining his 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.

(d) Supplemental Pleadings. Upon motion of a party the court may, upon reasonable notice and upon such terms as are just, permit him 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 court. [Adopted May 5, 1967, effective July 1, 1967.]

Comment by the Court. Subdivision (e) follows and supersedes RPPP 15.04W. Rule 15 supersedes RCW 4.32.160, 4.32.240 (and by Rules 6 and 60), 4.36.190, and 4.36.250.

Rule 16 Pre-trial procedure and formulating issues

(a) Hearing Matters Considered. By order, or on the motion of any party, the court may in its discretion direct the attorneys for the parties to appear before it for a conference to consider:

(1) The simplification of the issues;

(2) The necessity or desirability of amendments to the pleadings;

(3) The possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof;

(4) The limitation of the number of expert witnesses;

(5) Such other matters as may aid in the disposition of the action.

(b) Pre-Trial Order. The court shall make an order which recites the action taken at the conference, the amendments allowed to the pleadings, and the agreements made by the parties as to any of the matters considered, and which limits the issues for trial to those not disposed of by admissions or agreements of counsel; and such order when entered controls the subsequent course of the action, unless modified at the trial to prevent manifest injustice. The court in its discretion may establish by rule a pre-trial calendar on which actions may be placed for consideration as above provided and may either confine the calendar to jury actions or to nonjury actions or extend it to all actions. [Adopted May 5, 1967, effective July 1, 1967.]

Comment by the Court. Subdivision (b) is identical to the last paragraph of FRCP 16 except for the addition of the subheading.

IV. PARTIES
(RULES 17-25)

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.

Comment by the Court. Subdivision (-) is identical to and supersedes RCW 4.04.030.

(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 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) Capacity to Sue or Be Sued. [Reserved]
Comment by the Court. For pleading capacity see Rule 9(a).

(c) Infants, or Incompetent Persons.
(1) *Scope.* Generally this rule does not affect statutes and rules concerning the capacity of infants and incompetents to sue or be sued.
(2) *Guardian Ad Litem for Infant.* [Reserved——See RCW 4.08.050.]
(3) *Guardian Ad Litem for Incompetents.* [Reserved——See RCW 4.08.060.]

(d) Actions on Assigned Choses in Action. [Reserved——See RCW 4.08.080.]

(e) Public Corporations.
(1) *Actions By.* [Reserved——See RCW 4.08.110.]
(2) *Actions Against.* [Reserved——See RCW 4.08.120.]

(f) Tort Actions Against State. [Reserved——See RCW 4.92.] [Adopted May 5, 1967, effective July 1, 1967. Prior: RPPP Rule 17.]

Rule 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, legal, equitable, or maritime, as he has against an opposing party.

(b) Joinder of Remedies; Fraudulent Conveyances. 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. In particular, a plaintiff may state a claim for money and a claim to have set aside a conveyance fraudulent as to him, without first having obtained a judgment establishing the claim for money. [Adopted May 5, 1967, effective July 1, 1967. Prior: RPPP Rule 18.]
Comment by the Court. Rule 18 supersedes RCW 4.36.150.

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

(b) Determination by Court Whenever Joinder Not Feasible. If a person joinable under (1) or (2) of subdivision (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 person's absence might be prejudicial to him 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 subdivision (a) hereof who are not joined, and the reasons why they are not joined.

(d) Exception of Class Actions. This rule is subject to the provisions of Rule 23.

(e) Husband and Wife Must Join——Exceptions. When a married woman is a party, her husband must be joined with her, except:
(1) When the action concerns her separate property, or her right or claim to the homestead property, she may sue alone.
(2) When the action is between herself and her husband, she may sue or be sued alone.
(3) When she is living separate and apart from her husband, she may sue or be sued alone. [Adopted May 5, 1967, effective July 1, 1967. Prior: RPPP Rule 19.]
Comment by the Court. Subdivision (e) is identical to and supersedes RCW 4.08.030. Together with Rule 20 and Rule 21, Rule 19 supersedes RCW 4.08.130.

Rule 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 defendants 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.

Comment by the Court. Subdivision (a) follows FRCP 20(a) and supersedes RCW 4.08.090.

(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 asserts no claim and who asserts no claim against him, and may order separate trials or make other orders to prevent delay or prejudice.

Comment by the Court. Subdivision (b) is identical to FRCP 20(b).

(c) When Husband and Wife May Join. Husband and wife may join in all causes of action arising from injuries to the person or character of either or both of them, or from injuries to the property of either or both of them, or arising out of any contract in favor of either or both of them. If a husband and wife be sued together, the wife may defend for her own right, and if the husband neglects to defend, she may defend for his right also. She may defend in all cases in which she is interested, whether she is sued with her husband or not.

Comment of the Court. Subdivision (c) follows and supersedes 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 may proceed against the defendants served unless the court otherwise directs; and if he 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 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.

Comment by the Court. Subdivision (d) is identical to and supersedes RCW 4.28.190.

(e) Procedure to Bind Joint Debtor. [Reserved——See RCW 4.68.] [Adopted May 5, 1967, effective July 1, 1967. Prior: RPPP Rule 20.]

Comment by the Court. Together with Rules 19 and 21, Rule 20 supersedes RCW 4.08.130.

Rule 21 Misjoinder and non-joinder of parties Misjoinder of parties is not ground for dismissal of an action. Parties may be dropped or added by order of the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just. Any claim against a party may be severed and proceeded with separately. [Adopted May 5, 1967, effective July 1, 1967. Prior: RPPP Rule 21.]

Comment by the Court. Rule 21 is identical to FRCP 21.

Rule 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 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. [Adopted May 5, 1967, effective July 1, 1967.]

Comment by the Court. Rule 22 follows and supersedes RPPP 22.

Rule 23 Class actions

(a) Prerequisites to a Class Action. One or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

(b) Class Actions Maintainable. An action may be maintained as a class action if the prerequisites of subdivision (a) are satisfied, and in addition:

(1) The prosecution of separate actions by or against individual members of the class would create a risk of

(A) inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible stands of conduct for the party opposing the class, or

(B) adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests; or

(2) The party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or

(3) The court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to the findings include: (A) the interest of members of the class in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning

the controversy already commenced by or against members of the class; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; (D) the difficulties likely to be encountered in the management of a class action.

(c) Determination by Order Whether Class Action to Be Maintained; Notice; Judgment; Actions Conducted Partially as Class Actions.

(1) As soon as practicable after the commencement of an action brought as a class action, the court shall determine by order whether it is to be so maintained. An order under this subdivision may be conditional, and may be altered or amended before the decision on the merits.

(2) In any class action maintained under paragraph (b)(3), the court shall direct to the members of the class the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice shall advise each member that (A) the court will exclude him from the class if he so requests by a specified date; (B) the judgment, whether favorable or not, will include all members who do not request exclusion; and (C) any member who does not request exclusion may, if he desires, enter an appearance through his counsel.

(3) The judgment in an action maintained as a class action under paragraph (b)(1) or (b)(2), whether or not favorable to the class, shall include and describe those whom the court finds to be members of the class. The judgment in an action maintained as a class action under paragraph (b)(3), whether or not favorable to the class, shall include and specify or describe those to whom the notice provided in paragraph (c)(2) was directed, and who have not requested exclusion, and whom the court finds to be members of the class.

(4) When appropriate, (A) an action may be brought or maintained as a class action with respect to particular issues, or (B) a class may be divided into subclasses and each subclass treated as a class, and the provisions of this rule shall then be construed and applied accordingly.

(d) Orders in Conduct of Actions. In the conduct of actions to which this rule applies, the court may make appropriate orders: (1) determining the course of proceedings or prescribing measures to prevent undue repetition or complication in the presentation of evidence or argument; (2) requiring, for the protection of the members of the class or otherwise for the fair conduct of the action, that notice be given in such manner as the court may direct to some or all of the members of any step in the action, or of the proposed extent of the judgment, or of the opportunity of members to signify whether they consider the representation fair and adequate, to intervene and present claims or defenses, or otherwise to come into the action; (3) imposing conditions on the representative parties or on intervenors; (4) requiring that the pleadings be amended to eliminate therefrom allegations as to representation of absent persons, and that the action proceed accordingly; (5) dealing with similar procedural matters. The orders may be combined with an order under Rule 16, and may be altered or amended as may be desirable from time to time.

(e) Dismissal or Compromise. A class action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the court directs. [Adopted May 5, 1967, effective July 1, 1967. Prior: RPPP Rule 23.]

Rule 23.1 Derivative actions by shareholders In a derivative action brought by one or more shareholders or members to enforce a right of a corporation or of an unincorporated association, the corporation or association having failed to enforce a right which may properly be asserted by it, the complaint shall be verified and shall allege (a) that the plaintiff was a shareholder or member at the time of the transaction of which he complains or that his share or membership thereafter devolved on him by operation of law, and (b) that the action is not a collusive one to confer jurisdiction on a court of this state which it would not otherwise have. The complaint shall also allege with particularity the efforts, if any, made by the plaintiff to obtain the action he desires from the directors or comparable authority and, if necessary, from the shareholders or members, and the reasons for his failure to obtain the action or for not making the effort. The derivative action may not be maintained if it appears that the plaintiff does not fairly and adequately represent the interests of the shareholders or members similarly situated in enforcing the right of the corporation or association. The action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to shareholders or members in such manner as the court directs. [Adopted May 5, 1967, effective July 1, 1967. Prior: RPPP Rule 23(b) part.]

Rule 23.2 Actions relating to unincorporated associations An action brought by or against the members of an unincorporated association as a class by naming certain members as representative parties may be maintained only if it appears that the representative parties will fairly and adequately protect the interests of the association and its members. In the conduct of the action the court may make appropriate orders corresponding with those described in Rule 23(d), and the procedure for dismissal or compromise of the action shall correspond with that provided in Rule 23(e). [Adopted May 5, 1967, effective July 1, 1967. Prior: RPPP Rule 23(b) part.]

Rule 24 Intervention

(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 is so situated that the disposition

of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's 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 applicant's 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 the 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. [Adopted May 5, 1967, effective July 1, 1967. Prior: RPPP Rule 24.]

Comment by the Court. Subdivision (c) is amended to restore and reflect adoption of FRCP 5. Rule 24 supersedes RCW 4.08.190 and 4.08.020.

Rule 25 Substitution of parties

(a) Death.

(1) *Procedure.* 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 of 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 subdivision (a) of this rule may allow the action to be continued by or against his 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 subdivision (a) of this rule.

(d) Public Offices; Death or Separation from Office. [Reserved] [Adopted May 5, 1967, effective July 1, 1967. Prior: RPPP Rule 25.]

V. DEPOSITIONS AND DISCOVERY (RULES 26–37)

Rule 26 General provisions governing discovery

(a) Discovery Methods. Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property, for inspection and other purposes; physical and mental examinations; and requests for admission. Unless the court orders otherwise under subdivision (c) of this rule, the frequency of use of these methods is not limited.

(b) Scope of Discovery. Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

(1) *In General.* Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(2) *Insurance Agreements.* A party may obtain discovery of the existence and contents of any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment. Information concerning the insurance agreement is not by reason of disclosure admissible in evidence at trial. For purposes of this paragraph, an application for insurance shall not be treated as part of an insurance agreement.

(3) *Trial Preparation: Materials.* Subject to the provisions of subdivision (b)(4) of this rule, a party may obtain discovery of documents and tangible things otherwise discoverable under subdivision (b)(1) of this rule and prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including his attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of his case and that he is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In

ordering discovery of such materials when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.

A party may obtain without the required showing a statement concerning the action or its subject matter previously made by that party. Upon request, a person not a party may obtain without the required showing a statement concerning the action or its subject matter previously made by that person. If the request is refused, the person may move for a court order. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion. For purposes of this paragraph, a statement previously made is (A) a written statement signed or otherwise adopted or approved by the person making it, or (B) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

(4) *Trial Preparation: Experts.* Discovery of facts known and opinions held by experts, otherwise discoverable under the provisions of subdivison (b)(1) of this rule and acquired or developed in anticipation of litigation or for trial, may be obtained only as follows:

(A)(i) A party may through interrogatories require any other party to identify each person whom the other party expects to call as an expert witness at trial, to state the subject matter on which the expert is expected to testify, and to state the substance of the facts and opinion to which the expert is expected to testify and a summary of the grounds for each opinion. (ii) Upon motion, the court may order further discovery by other means, subject to such restrictions as to scope and such provisions, pursuant to subdivision (b)(4)(C) of this rule, concerning fees and expenses as the court may deem appropriate.

(B) A party may discover facts known or opinions held by an expert who is not expected to be called as a witness at trial, only as provided in Rule 35(b) or upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.

(C) Unless manifest injustice would result, (i) the court shall require that the party seeking discovery pay the expert a reasonable fee for time spent in responding to discovery under subdivisions (b)(4)(A)(ii) and (b)(4)(B) of this rule; and (ii) with respect to discovery obtained under subdivisions (b)(4)(A)(ii) of this rule the court may require, and with respect to discovery obtained under subdivision (b)(4)(B) of this rule the court shall require, the party seeking discovery to pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert.

(c) Protective Orders. Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the court in which the action is pending or alternatively, on matters relating to a deposition, the court in the county where the deposition is to be taken may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: (1) that the discovery not be had; (2) that the discovery may be had only on specified terms and conditions, including a designation of the time or place; (3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery; (4) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters; (5) that discovery be conducted with no one present except persons designated by the court; (6) that a deposition after being sealed be opened only by order of the court; (7) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way; (8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court.

If the motion for a protective order is denied in whole or in part, the court may, on such terms and conditions as are just, order that any party or person provide or permit discovery. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.

(d) Sequence and Timing of Discovery. Unless the court upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery.

(e) Supplementation of Responses. A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement his response to include information thereafter acquired, except as follows:

(1) A party is under a duty seasonably to supplement his response with respect to any question directly addressed to (A) the identity and location of persons having knowledge of discoverable matters, and (B) the identity of each person expected to be called as an expert witness at trial, the subject matter on which he is expected to testify, and the substance of his testimony.

(2) A party is under a duty seasonably to amend a prior response if he obtains information upon the basis of which (A) he knows that the response was incorrect when made, or (B) he knows that the response though correct when made is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

(3) A duty to supplement responses may be imposed by order if the court, agreement of the parties, or at any time prior to trial through new requests for supplementation of prior responses.

(4) Failure to seasonably supplement in accordance with this rule will subject the party to such terms and conditions as the trial court may deem appropriate.

[Adopted May 5, 1967, amended May 26, 1972, effective July 1, 1972. Prior: RPPP Rule 26.]

Rule 27 Perpetuation of testimony

(a) Perpetuation Before Action.

(1) *Petition.* A person who desires to perpetuate his own testimony or that of another person regarding any matter that may be cognizable in any superior court may file a verified petition in the superior court in the county of the residence of any expected adverse party. The petition shall be entitled in the name of the petitioner and shall show:

(A) that the petitioner expects to be a party to an action cognizable in a superior court but is presently unable to bring it or cause it to be brought,

(B) the subject matter of the expected action and his interest therein,

(C) the facts which he desires to establish by the proposed testimony and his reasons for desiring to perpetuate it,

(D) the names or a description of the persons he expects will be adverse parties and their addresses so far as known, and

(E) the names and addresses of the persons to be examined and the substance of the testimony which he expects to elicit from each, and shall ask for an order authorizing the petitioner to take the depositions of the persons to be examined named in the petition, for the purpose of perpetuating their testimony.

(2) *Notice and Service.* The petitioner shall thereafter serve a notice upon each person named in the petition as an expected adverse party, together with a copy of the petition, stating that the petitioner will apply to the court, at a time and place named therein, for the order described in the petition. At least 20 days before the date of hearing the notice shall be served in the manner provided by law for service of summons; but if such service cannot with due diligence be made upon any expected adverse party named in the petition, the court may make such order as is just for service by publication or otherwise, and shall appoint, for persons not served personally in the manner provided by law, an attorney who shall represent them and, in case they are not otherwise represented, shall cross-examine the deponent. If any expected adverse party is a minor or incompetent, the court shall make such order as deemed appropriate for the protection of the minor or incompetent as provided in RCW 4.08.050 and 4.08.060.

(3) *Order and Examination.* If the court is satisfied that the perpetuation of the testimony may prevent a failure or delay of justice, it shall make an order designating or describing the persons whose depositions may be taken and specifying the subject matter of the examination and whether the depositions shall be taken upon oral examination or written interrogatories. The depositions may then be taken in accordance with these rules; and the court may make orders of the character provided for by Rules 34 and 35. For the purpose of applying these rules to depositions for perpetuating testimony, each reference therein to the court in which the action is pending shall be deemed to refer to the court in which the petition for such deposition was filed.

(4) *Use of Deposition.* If a deposition to perpetuate testimony is taken under these rules or if, although not so taken, it would be admissible in evidence in the courts of the state in which it is taken, it may be used in any action involving the same subject matter subsequently brought in a superior court of this state.

(b) Perpetuation Pending Appeal. If an appeal has been taken from a judgment of a superior court or before the taking of an appeal if the time therefor has not expired, the superior court in which the judgment was rendered may allow the taking of the depositions of witnesses to perpetuate their testimony for use in the event of further proceedings in the superior court. In such case the party who desires to perpetuate the testimony may make a motion in the superior court for leave to take the depositions, upon the same notice and service thereof as if the action was pending in the superior court. The motion shall show (1) the names and addresses of the persons to be examined and the substance of the testimony which he expects to elicit from each; (2) the reasons for perpetuating their testimony. If the court finds that the perpetuation of the testimony is proper to avoid a failure or delay of justice, it may make an order allowing the depositions to be taken and may make orders of the character provided for by Rules 34 and 35, and thereupon the depositions may be taken and used in the same manner and under the same conditions as are prescribed in these rules for depositions taken in actions pending in the superior court.

(c) Perpetuation by Action. This rule does not limit the power of a court to entertain an action to perpetuate testimony. [Adopted May 5, 1967, effective July 1, 1967. Prior: RPPP Rule 27.]

Rule 28 Persons before whom depositions may be taken

(–) Within the State. Depositions within the state may be taken before the following officers:

(1) *Court Commissioners.* [Reserved——See RCW 2.24.040 (9) and (10).]

(2) *Superior Courts.* [Reserved——See RCW 2.28.010(7).]

(3) *Judicial Officers.* [Reserved——See RCW 2.28.060.]

(4) *Judges of Supreme and Superior Courts.* [Reserved——See RCW 2.28.080(3).]

(5) *Inferior Judicial Officers.* [Reserved——See RCW 2.28.090.]

(6) *Notaries Public.* [Reserved——See RCW 42.28.040(3).]

(7) *Special Commissions.* [Reserved——See RCW 11.20.030.]

(a) Within the United States. Within the United States or within a territory or insular possession subject to the dominion of the United States, depositions shall be taken before an officer authorized to administer oaths by the laws of the United States or of the place

where the examination is held, or before a person appointed by the court in which the action is pending. A person so appointed has power to administer oaths and take testimony.

(b) In Foreign Countries. In a foreign country, depositions may be taken (1) on notice before a person authorized to administer oaths in the place in which the examination is held, either by the law thereof or by the law of the United States, or (2) before a person commissioned by the court, and a person so commissioned shall have the power by virtue of his commission to administer any necessary oath and take testimony, or (3) pursuant to a letter rogatory. A commission or a letter rogatory shall be issued on application and notice, and on terms that are just and appropriate. It is not requisite to the issuance of a commission or a letter rogatory that the taking of the deposition in any other manner is impracticable or inconvenient; and both a commission and a letter rogatory may be issued in proper cases. A notice or commission may designate the person before whom the deposition is to be taken either by name or descriptive title. A letter rogatory may be addressed "To the Appropriate Authority in [here name the country]." Evidence obtained in response to a letter rogatory need not be excluded merely for the reason that it is not a verbatim transcript or that the testimony was not taken under oath or for any similar departure from the requirements for depositions taken within the United States under these rules.

(c) Disqualification for Interest. No deposition shall be taken before a person who is a relative or employee or attorney or counsel of any of the parties, or is a relative or employee of such attorney or counsel, or is financially interested in the action. [Adopted May 5, 1967, effective July 1, 1967. Prior: RPPP Rule 28.]

Rule 29 Stipulations regarding discovery procedure Unless the court orders otherwise, the parties may by written stipulation (1) provide that depositions may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used like other depositions, and (2) modify the procedures provided by these rules for other methods of discovery. [Adopted May 5, 1967, amended May 26, 1972, effective July 1, 1972. Prior: RPPP Rule 29.]

Rule 30 Depositions upon oral examination

(a) When Depositions May be Taken. After the summons and a copy of the complaint are served, or the complaint is filed, whichever shall first occur, any party may take the testimony of any person, including a party, by deposition upon oral examination. Leave of court, granted with or without notice, must be obtained only if the plaintiff seeks to take a deposition prior to the expiration of 30 days after service of the summons and complaint upon any defendant or service made under Rule 4(e), except that leave is not required (1) if a defendant has served a notice of taking deposition or otherwise sought discovery, or (2) if special notice is given as provided in subdivision (b)(2) of this rule. The attendance of witnesses may be compelled by subpoena as provided in Rule 45. The deposition of a person confined in prison may be taken only by leave of court on such terms as the court prescribes.

(b) Notice of Examination: General Requirements; Special Notice; Non-stenographic Recording; Production of Documents and Things; Deposition of Organization.

(1) A party desiring to take the deposition of any person upon oral examination shall give reasonable notice in writing of not less than 5 days (exclusive of the day of service, Saturdays, Sundays and court holidays) to every other party to the action. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs. If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to or included in the notice.

(2) Leave of court is not required for the taking of a deposition by plaintiff if the notice (A) states that the person to be examined is about to go out of the state and will be unavailable for examination unless his deposition is taken before expiration of the 30-day period, and (B) sets forth facts to support the statement. The plaintiff's attorney shall sign the notice, and his signature constitutes a certification by him that to the best of his knowledge, information, and belief the statement and supporting facts are true. The sanctions provided by Rule 11 are applicable to the certification.

If a party shows that when he was served with notice under this subdivision (b)(2) he was unable through the exercise of diligence to obtain counsel to represent him at the taking of the deposition, the deposition may not be used against him.

(3) The court may for cause shown enlarge or shorten the time for taking the deposition.

(4) The court may upon motion order that the testimony at a deposition be recorded by other than stenographic means. In which event the order shall designate the manner of recording, preserving, and filing the deposition, and may include other provisions to assure that the recorded testimony will be accurate and trustworthy. If the order is made, a party may nevertheless arrange to have a stenographic transcription made at his own expense.

(5) The notice to a party deponent may be accompanied by a request made in compliance with Rule 34 for the production of documents and tangible things at the taking of the deposition. The procedure of Rule 34 shall apply to the request.

(6) A party may in his notice and in a subpoena name as the deponent a public or private corporation or a partnership or association or governmental agency and designate with reasonable particularity the matters on which examination is requested. In that event the organization so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters known on

which he will testify. A subpoena shall advise a nonparty organization of its duty to make such a designation. The persons so designated shall testify as to the matters known or reasonably available to the organization. This subdivision (b)(6) does not preclude taking a deposition by any other procedure authorized in these rules.

(c) Examination and Cross-Examination; Record of Examination; Oath; Objections. Examination and cross-examination of witnesses may proceed as permitted at the trial under the provisions of Rule 43(b). The officer before whom the deposition is to be taken shall put the witness on oath and shall personally, or by someone acting under his direction and in his presence, record the testimony of the witness. The testimony shall be taken stenographically or recorded by any other means ordered in accordance with subdivision (b)(4) of this rule. If requested by one of the parties, the testimony shall be transcribed.

All objections made at the time of the examination to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings, shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objections. In lieu of participating in the oral examination, parties may serve written questions in a sealed envelope on the party taking the deposition and he shall transmit them to the officer, who shall propound them to the witness and record the answers verbatim.

(d) Motion to Terminate or Limit Examination. At any time during the taking of the deposition, on motion of a party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the court in which the action is pending or the court in the county where the deposition is being taken may order the officer conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in Rule 26(c). If the order made terminates the examination, it shall be resumed thereafter only upon the order of the court in which the action is pending. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.

(e) Submission to Witness; Changes; Signing. When the testimony is fully transcribed the deposition shall be submitted to the witness for examination and shall be read to or by him, unless such examination and reading are waived by the witness and by the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness within 15 days of its submission to him, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed unless on a motion to suppress under Rule 32(d)(4) the court holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

(f) Certification and Filing by Officer; Exhibits; Copies; Notice of Filing.

(1) The officer shall certify on the deposition that the witness was duly sworn by him and that the deposition is a true record of the testimony given by the witness. He shall then securely seal the deposition in an envelope endorsed with the title of the action and marked "Deposition of [here insert name of witness]" and shall promptly file it with the court in which the action is pending or send it by registered mail to the clerk thereof for filing. Documents and things produced for inspection during the examination of the witness, shall, upon the request of a party, be marked for identification and annexed to and returned with the deposition, and may be inspected and copied by any party, except that (A) the person producing the materials may substitute copies to be marked for identification, if he affords to all parties fair opportunity to verify the copies by comparison with the originals, and (B) if the person producing the materials requests their return, the officer shall mark them, give each party an opportunity to inspect and copy them, and return them to the person producing them, and the materials may then be used in the same manner as if annexed to and returned with the deposition. Any party may move for an order that the original be annexed to and returned with the deposition to the court, pending final disposition of the case.

(2) Upon payment of reasonable charges therefor, the officer shall furnish a copy of the deposition to any party or the deponent.

(3) The officer filing the deposition shall give prompt notice of its filing to all parties.

(g) Failure to Attend or to Serve Subpoena; Expenses.

(1) If the party giving the notice of the taking of a deposition fails to attend and proceed therewith and another party attends in person or by attorney pursuant to the notice, the court may order the party giving the notice to pay to such other party the reasonable expenses incurred by him and his attorney in attending, including reasonable attorney's fees.

(2) If the party giving the notice of the taking of a deposition of a witness fails to serve a subpoena upon him and the witness because of such failure does not attend, and if another party attends in person or by attorney because he expects the deposition of that witness to be taken, the court may order the party giving the notice to pay to such other party the reasonable expenses incurred by him and his attorney in attending, including reasonable attorney's fees. [Adopted May 5, 1967, amended May 26, 1972, effective July 1, 1972. Prior: RPPP Rule 30.]

Rule 31 Depositions upon written questions

(a) Serving Questions; Notice. After the summons and a copy of the complaint are served, or the complaint is filed, whichever shall first occur, any party may take the testimony of any person, including a party, by deposition upon written questions. The attendance of witnesses may be compelled by the use of subpoena as provided in Rule 45. The deposition of a person confined in prison may be taken only by leave of court on such terms as the court prescribes.

A party desiring to take a deposition upon written questions shall serve them upon every other party with a notice stating (1) the name and address of the person who is to answer them, if known, and if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs, and (2) the name or descriptive title and address of the officer before whom the deposition is to be taken. A deposition upon written questions may be taken of a public or private corporation or a partnership or association or governmental agency in accordance with the provisions of Rule 30(b)(6).

Within 15 days after the notice and written questions are served, a party may serve cross questions upon all other parties. Within 10 days after being served with cross questions, a party may serve redirect questions upon all other parties. Within 10 days after being served with redirect questions, a party may serve recross questions upon all other parties. The court may for cause shown enlarge or shorten the time.

(b) Officer to Take Responses and Prepare Record. A copy of the notice and copies of all questions served shall be delivered by the party taking the deposition to the officer designated in the notice, who shall proceed promptly, in the manner provided by Rule 30(c), (e), and (f), to take the testimony of the witness in response to the questions and to prepare, certify, and file or mail the deposition, attaching thereto the copy of the notice and the questions received by him.

(c) Notice of Filing. When the deposition is filed, the officer filing it shall promptly give notice thereof to all parties. [Adopted May 5, 1967, amended May 26, 1972, effective July 1, 1972. Prior: RPPP Rule 31.]

Rule 32 Use of depositions in court proceedings

(a) Use of Depositions. At the trial or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the rules of evidence applied as though the witness were then present and testifying, may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof, in accordance with any of the following provisions:

(1) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of deponent as a witness.

(2) The deposition of a party or of anyone who at the time of taking the deposition was an officer, director, or managing agent, or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a public or private corporation, partnership or association or governmental agency which is a party may be used by an adverse party for any purpose.

(3) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the court finds: (A) that the witness is dead; or (B) that the witness resides out of the county and more than 20 miles from the place of trial, unless it appears that the absence of the witness was procured by the party offering the deposition; or (C) that the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment; or (D) that the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or (E) upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used.

(4) If only part of a deposition is offered in evidence by a party, an adverse party may require him to introduce any other part which ought in fairness to be considered with the part introduced, and any party may introduce any other parts.

Substitution of parties pursuant to Rule 25 does not affect the right to use depositions previously taken; and, when an action in any court of the United States or of any State has been dismissed and another action involving the same issues and subject matter is afterward brought between the same parties or their representatives or successors in interest, all depositions lawfully taken and duly filed in the former action may be used in the latter as if originally taken therefor.

(b) Objections to Admissibility. Subject to the provisions of Rule 28(b) and subdivision (d)(3) of this rule, objection may be made at the trial or hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying.

(c) Effect of Taking or Using Depositions. A party does not make a person his own witness for any purpose by taking his deposition. The introduction in evidence of the deposition or any part thereof for any purpose other than that of contradicting or impeaching the deponent makes the deponent the witness of the party introducing the deposition, but this shall not apply to the use by an adverse party of a deposition under subdivision (a)(2) of this rule. At the trial or hearing any party may rebut any relevant evidence contained in a deposition whether introduced by him or by any other party.

(d) Effect of Errors and Irregularities in Depositions.

(1) *As to Notice.* All errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served upon the party giving the notice.

(2) *As to Disqualification of Officer.* Objection to taking a deposition because of disqualification of the officer before whom it is to be taken is waived unless made before the taking of the deposition begins or as

soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

(3) *As to Taking of Deposition.*

(A) Objections to the competency of a witness or to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at that time.

(B) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties, and errors of any kind which might be obviated, removed, or cured if promptly presented, are waived unless seasonable objection thereto is made at the taking of the deposition.

(C) Objections to the form of written questions submitted under Rule 31 are waived unless served in writing upon the party propounding them within the time allowed for serving the succeeding cross or other questions and within 5 days after service of the last questions authorized.

(4) *As to Completion and Return of Deposition.* Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, endorsed, transmitted, filed, or otherwise dealt with by the officer under Rules 30 and 31 are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, ascertained. [Adopted May 5, 1967, amended May 26, 1972, effective July 1, 1972. Prior: RPPP Rule 32.]

Rule 33 Interrogatories to parties

(a) Availability; Procedures for Use. Any party may serve upon any other party written interrogatories to be answered by the party served or, if the party served is a public or private corporation or a partnership or association or governmental agency, by any officer or agent, who shall furnish such information as is available to the party. Interrogatories may, without leave of court, be served upon the plaintiff after the summons and a copy of the complaint are served upon the defendant, or the complaint is filed, whichever shall first occur, and upon any other party with or after service of the summons and complaint upon that party.

Interrogatories shall be so arranged that after each separate question there shall appear a blank space reasonably calculated to enable the answering party to have his answer typed in. Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answers are to be signed by the person making them, and the objections signed by the attorney making them. The party upon whom the interrogatories have been served shall serve a copy of the answers, and objections if any, within 20 days after the service of the interrogatories, except that a defendant may serve answers or objections within 40 days after service of the summons and complaint upon that defendant. The parties may stipulate or the party submitting the interrogatories may move for an order under Rule 37(a) with respect to any objection to or other failure to answer an interrogatory.

(b) Scope; Use at Trial. Interrogatories may relate to any matters which can be inquired into under Rule 26(b), and the answers may be used to the extent permitted by the rules of evidence.

An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact, but the court may order that such an interrogatory need not be answered until after designated discovery has been completed or until a pretrial conference or other later time.

(c) Option to Produce Business Records. Where the answer to an interrogatory may be derived or ascertained from the business records of the party upon whom the interrogatory has been served or from an examination, audit or inspection of such business records, or from a compilation, abstract or summary based thereon, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit or inspect such records and to make copies, compilations, abstracts or summaries. [Adopted May 5, 1967, amended May 26, 1972, effective July 1, 1972. Prior: RPPP Rule 33.]

Rule 34 Production of documents and things and entry upon land for inspection and other purposes

(a) Scope. Any party may serve on any other party a request (1) to produce and permit the party making the request, or someone acting on his behalf, to inspect and copy, any designated documents (including writings, drawings, graphs, charts, photographs, phonorecords, and other data compilations from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form), or to inspect and copy, test, or sample any tangible things which constitute or contain matters within the scope of Rule 26(b) and which are in the possession, custody or control of the party upon whom the request is served; or (2) to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of Rule 26(b).

(b) Procedure. The request may, without leave of court, be served upon the plaintiff after the summons and a copy of the complaint are served upon the defendant, or the complaint is filed, whichever shall first occur, and upon any other party with or after service of summons and complaint upon that party. The request shall set forth the items to be inspected either by individual item or by category, and describe each item and

category with reasonable particularity. The request shall specify a reasonable time, place and manner of making the inspection and performing the related acts.

The party upon whom the request is served shall serve a written response within 20 days after the service of the request, except that a defendant may serve a response within 40 days after service of the summons and complaint upon that defendant. The parties may stipulate or the court may allow a shorter or longer time. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. If objection is made to part of an item or category, the part shall be specified. The party submitting the request may move for an order under Rule 37(a) with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested.

(c) Persons not Parties. This rule does not preclude an independent action against a person not a party for production of documents and things and permission to enter upon land. [Adopted May 5, 1967, amended May 26, 1972, effective July 1, 1972. Prior: RPPP Rule 34.]

Rule 35 Physical and mental examination of persons

(a) Order for Examination. When the mental or physical condition (including the blood group) of a party, or of a person in the custody or under the legal control of a party, is in controversy, the court in which the action is pending may order the party to submit to a physical or mental examination by a physician or to produce for examination the person in his custody or legal control. The order may be made only on motion for good cause shown and upon notice to the person to be examined and to all parties and shall specify the time, place, manner, conditions, and scope of the examination and the person or persons by whom it is to be made.

(b) Report of Examining Physician.

(1) If requested by the party against whom an order is made under Rule 35(a) or the person examined, the party causing the examination to be made shall deliver to him a copy of a detailed written report of the examining physician setting out his finding, including results of all tests made, diagnosis and conclusions, together with like reports of all earlier examinations of the same condition. After delivery the party causing the examination shall be entitled upon request to receive from the party against whom the order is made a like report of any examination, previously or thereafter made, of the same condition, unless, in the case of a report of examination of a person not a party, the party shows that he is unable to obtain it. The court on motion may make an order against a party requiring delivery of a report on such terms as are just, and if a physician fails or refuses to make a report the court may exclude his testimony if offered at the trial.

(2) By requesting and obtaining a report of the examination so ordered or by taking the deposition of the examiner, the party examined waives any privilege he may have in that action or any other involving the same controversy regarding the testimony of every other person who has examined or may thereafter examine him in respect of the same mental or physical condition.

(3) This subdivision applies to examinations made by agreement of the parties, unless the agreement expressly provides otherwise. This subdivision does not preclude discovery of a report of an examining physician or the taking of a deposition of the physician in accordance with the provisions of any other rule. [Adopted May 5, 1967, amended May 26, 1972, effective July 1, 1972. Prior: RPPP Rule 35.]

Rule 36 Requests for admission

(a) Request for Admission. A party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the truth of any matters within the scope of Rule 26(b) set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. The request may, without leave of court, be served upon the plaintiff after the summons and a copy of the complaint are served upon the defendant, or the complaint is filed, whichever shall first occur, and upon any other party with or after service of the summons and complaint upon that party.

Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within 20 days after service of the request, or within such shorter or longer time as the court may allow the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by his attorney, but, unless the court shortens the time, a defendant shall not be required to serve answers or objections before the expiration of 40 days after service of the summons and complaint upon him. If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify his answer or deny only a part of the matter of which an admission is requested, he shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless he states that he has made reasonable inquiry and that the information known or readily obtainable by him is insufficient to enable him to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; he may, subject to the provisions of Rule 37(c), deny the matter or set forth reasons why he cannot admit or deny it.

The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the court determines that an objection is justified, it shall order that an answer be served. If the

court determines that an answer does not comply with the requirements of this rule, it may order either that the matter is admitted or that an amended answer be served. The court may, in lieu of these orders, determine that final disposition of the request be made at a pretrial conference or at a designated time prior to trial. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.

(b) Effect of Admission. Any matter admitted under this rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission. Subject to the provisions of Rule 16 governing amendment of a pretrial order, the court may permit withdrawal or amendment when the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice him in maintaining his action or defense on the merits. Any admission made by a party under this rule is for the purpose of the pending action only and is not an admission by him for any other purpose nor may it be used against him in any other proceeding. [Adopted May 5, 1967, amended May 26, 1972, effective July 1, 1972. Prior: RPPP Rule 36.]

Rule 37 Failure to make discovery: Sanctions

(a) Motion for Order Compelling Discovery. A party, upon reasonable notice to other parties and all persons affected thereby, may apply to the court in the county where the deposition was taken, or in the county where the action is pending, for an order compelling discovery as follows:

(1) *Appropriate Court.* An application for an order to a party may be made to the court in which the action is pending, or on matters relating to a deposition, to the court in the county where the deposition is being taken. An application for an order to a deponent who is not a party shall be made to the court in the county where the deposition is being taken.

(2) *Motion.* If a deponent fails to answer a question propounded or submitted under Rules 30 or 31, or a corporation or other entity fails to make a designation under Rule 30(b)(6) or 31(a), or a party fails to answer an interrogatory submitted under Rule 33, or if a party, in response to a request for inspection submitted under Rule 34, fails to respond that inspection will be permitted as requested or fails to permit inspection as requested, the discovering party may move for an order compelling an answer or a designation, or an order compelling inspection in accordance with the request. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before he applies for an order.

If the court denies the motion in whole or in part, it may make such protective order as it would have been empowered to make on a motion made pursuant to Rule 26(c).

(3) *Evasive or Incomplete Answer.* For purposes of this subdivision an evasive or incomplete answer is to be treated as a failure to answer.

(4) *Award of Expenses of Motion.* If the motion is granted, the court shall, after opportunity for hearing, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney's fees, unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is denied, the court shall, after opportunity for hearing, require the moving party or the attorney advising the motion or both of them to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including attorney's fees, unless the court finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is granted in part and denied in part, the court may apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner.

(b) Failure to Comply with Order.

(1) *Sanctions by Court in District Where Deposition is Taken.* If a deponent fails to be sworn or to answer a question after being directed to do so by the court in the county in which the deposition is being taken, the failure may be considered a contempt of that court.

(2) *Sanctions by Court in Which Action is Pending.* If a party or an officer, director, or managing agent of a party or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under subdivision (a) of this rule or Rule 35, the court in which the action is pending may make such orders in regard to the failure as are just, and among others the following:

(A) An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

(B) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing designated matters in evidence;

(C) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceedings or any part thereof, or rendering a judgment by default against the disobedient party;

(D) In lieu of any of the foregoing orders or in addition thereto, an order treating as a contempt of court the failure to obey any orders except an order to submit to physical or mental examination;

(E) Where a party has failed to comply with an order under Rule 35(a) requiring him to produce another for examination such orders as are listed in paragraphs (A), (B), and (C) of this subdivision, unless the party failing to comply shows that he is unable to produce such person for examination.

In lieu of any of the foregoing orders or in addition thereto, the court shall require the party failing to obey the order or the attorney advising him or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

(c) Expenses on Failure to Admit. If a party fails to admit the genuineness of any document or the truth of any matter as requested under Rule 36, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, he may apply to the court for an order requiring the other party to pay him the reasonable expenses incurred in making that proof, including reasonable attorney's fees. The court shall make the order unless it finds that (1) the request was held objectionable pursuant to Rule 36(a), or (2) the admission sought was of no substantial importance, or (3) the party failing to admit had reasonable ground to believe the fact was not true or the document was not genuine, or (4) there was other good reason for the failure to admit.

(d) Failure of Party to Attend at Own Deposition or Serve Answers to Interrogatories or Respond to Request for Inspection. If a party or an officer, director, or managing agent of a party or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a party fails (1) to appear before the officer who is to take his deposition, after being served with a proper notice, or (2) to serve answers or objections to interrogatories, or (3) to serve a written response to a request for inspection submitted under Rule 34, after proper service of the request, the court in which the action is pending on motion may make such orders in regard to the failure as are just, and among others it may take any action authorized under paragraphs (A), (B), and (C) of subdivision (b)(2) of this rule. In lieu of any order or in addition thereto, the court shall require the party failing to act or the attorney advising him or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

The failure to act described in this subdivision may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has applied for a protective order as provided by Rule 26(c). [Adopted May 5, 1967, amended May 26, 1972, effective July 1, 1972. Prior: RPPP Rule 37.]

VI. TRIALS (RULES 38–53)

Rule 38 Jury trial of right

(–) Defined. A trial is the judicial examination of the issues between the parties, whether they are issues of law or of fact.

Comment by the Court. This subdivision is identical to and supersedes RCW 4.44.010.

(a) Right of Jury Trial Preserved. The right of trial by jury as declared in Article 1 § 21 of the Constitution or as given by a statute shall be preserved to the parties inviolate.

Comment by the Court. Subdivision (a) follows FRCP 38(a) except that reference is changed to the state constitution and reference to United States statutes is deleted.

(b) Demand for Jury. At or prior to the time the case is called to be set for trial, any party may demand a trial by jury of any issue triable of right by a jury by serving upon the other parties a demand therefor in writing, by filing the demand with the clerk, and by paying the jury fee required by law. If before the case is called to be set for trial no party serves or files a demand that the case be tried by a jury of twelve, it shall be tried by a jury of six members with the concurrence of five being required to reach a verdict.

Comment by the Court. Subdivision (b) supersedes RCW 4.44.100.

(c) Specification of Issues. In his demand a party may specify the issues which he wishes so tried; otherwise he shall be deemed to have demanded trial by jury for all the issues so triable. If he has demanded trial by jury for only some of the issues, any other party within 10 days after service of the demand or such lesser time as the court may order, may serve a demand for trial by jury of any other or all of the issues of fact in the action.

Comment by the Court. Subdivision (c) is identical to FRCP 38(c).

(d) Waiver of Jury. The failure of a party to serve a demand as required by this rule, to file it as required by this rule, and to pay the jury fee required by law in accordance with this rule, constitutes a waiver by him of trial by jury. A demand for trial by jury made as herein provided may not be withdrawn without the consent of the parties.

Comment by the Court. Subdivision (d) is similar to FRCP 38(d). This subdivision supersedes the second sentence of RCW 4.44.100.

(e) Return of Jury Fee——When Forfeited. Whenever a case has been set for trial with a jury and the jury fee deposit has been made and such case is settled out of court prior to the time that it is called to be heard upon trial, such jury deposit shall not be returned to the party depositing the same unless the court is notified of the settlement of the case not less than 3 court days before the trial date. [Adopted May 5, 1967, amended June 28, 1967, effective July 1, 1967; amended, adopted Sept. 27, 1971, effective Nov. 9, 1971; subd. (b) amended, adopted Nov. 29, 1971, effective Jan. 1, 1972; subd. (e) amended, adopted July 20, 1973, effective July 20, 1973.]

Comment by the Court. Subdivision (e) follows and supersedes RPPP 38.04W and supersedes the proviso to RCW 4.44.100.

Rule 39 Trial by jury or by the court

(–) Issues——How Tried. [Reserved——See RCW 4.40.010 through 4.40.070.]

(a) By Jury.

(1) *Rule.* When trial by jury has been demanded as provided in Rule 38, the action shall be designated

upon the docket as a jury action. The trial of all issues so demanded shall be by jury, unless (A) the parties or their attorneys of record, by written stipulation filed with the court or by an oral stipulation made in open court and entered in the record, consent to trial by the court sitting without a jury or (B) the court upon motion or of its own initiative finds that a right of trial by jury of some or all of those issues does not exist under the constitution or statutes of the state.

(2) *Questions of Fact for Jury.* [Reserved——See RCW 4.44.090.]

Comment by the Court. Paragraph (1) is identical to FRCP 39(a) except for change of reference from United States to the state.

(b) By the Court.

(1) *Rule.* Issues not demanded for trial by jury as provided in Rule 38 shall be tried by the court; but, notwithstanding the failure of a party to demand a jury in an action in which such a demand might have been made of right, the court in its discretion upon motion may order a trial by a jury or any or all issues.

(2) *Questions of Law to Be Decided by Court.* [Reserved——See RCW 4.44.080.]

Comment by the Court. Paragraph (1) is identical to FRCP 39(b).

(c) Advisory Jury and Trial by Consent. In all actions not triable of right by a jury the court, upon motion or of its own initiative, may try an issue with an advisory jury or it may, with the consent of both parties, order a trial with a jury whose verdict has the same effect as if the trial by jury had been a matter of right. [Adopted May 5, 1967, effective July 1, 1967.]

Comment by the Court. Subdivision (c) follows FRCP 39(c) except that references to actions against the United States are deleted.

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.

(5) *Issue May Be Brought to Trial by Either Party.* Either party, after the notice of trial, whether given by himself or the adverse 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 case, and take a dismissal of the action, or a verdict or judgment, as the case may require.

Comment by the Court. Paragraphs (1) through (4) follow RCW 4.44.020. Paragraph (5) is identical to and supersedes RCW 4.44.030.

(b) Methods. Each superior court 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.

Comment by the Court. Subdivision (b) follows FRCP 40, but omits the last sentence which gives preference to certain actions under United States statutes.

(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.

Comment by the Court. Subdivision (c) follows subdivision (2) of RPPP 40.04W.

(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.

Comment by the Court. Subdivision (d) follows and supersedes subdivision (1) of RPPP 40.04W.

(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 residence of the witness or witnesses. The court may also require the moving party to state upon affidavit the evidence which he 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.

Comment by the Court. Subdivision (e) follows and supersedes RCW 4.44.040.

(f) Change of Judge. [Reserved——See RCW 4.12.040 and 4.12.050.] [Adopted May 5, 1967, effective July 1, 1967.]

Rule 41 Dismissal of actions

(a) Voluntary Dismissal.

(1) *Mandatory.* Subject to the provisions of Rule 23(e) and 23.1, any action shall be dismissed by the court:

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

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

(2) *Permissive.* After plaintiff rests after his 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 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.

Comment by the Court. Subparagraph (1)(A) follows FRCP 41(a)(1)(ii). Subparagraph (1)(B) and paragraph (2) follow and supersede RPPP 41.08W. Paragraphs (3) and (4) follow similar provisions in FRCP 41(a).

(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.

(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.*

(A) Notice. In all civil cases wherein there has been no action of record during the 12 months just past, the clerk of the superior court shall mail notice to the attorneys of record that such case will be dismissed by the court for want of prosecution unless within 30 days following said mailing, action of record is made or an application in writing is made to the court and good cause shown why it should be continued as a pending case. If such application is not made or good cause is not shown, the court shall dismiss each such case without prejudice. The cost of filing such order of dismissal with the clerk shall not be assessed against either party.

(B) Mailing Notice. The notice shall be mailed in every eligible case not later than 30 days before June 15th and December 15th of each year, and all such cases shall be presented to the court by the clerk for action thereon on or before June 30th and December 31st of each year. These deadlines shall not be interpreted as a prohibition against mailing of notice and dismissal thereon as cases may become eligible for dismissal under this rule.

(C) Applicable Date. This dismissal procedure is mandatory as to all cases filed after January 1, 1959, and permissive as to all cases filed before that date. This rule is not a limitation upon any other power that the court may have to dismiss 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 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 Rule 52(a). Unless the court in its order for dismissal otherwise specifies, a dismissal under this paragraph 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.

Comment by the Court. Paragraph (2) is similar to RPPP 41.04W, which is superseded. Paragraph (3) is similar to FRCP 41(b).

(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 paragraph (1) of subdivision (a) 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.

Comment by the Court. Subdivision (c) is identical to FRCP 41(c).

(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.

Comment by the Court. Subdivision (d) is similar to FRCP 41(d).

(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. [Adopted May 5, 1967, effective July 1, 1967; amended, subdivision (e) added June 28, 1967, effective July 1, 1967.]

Comment by the Court. Subdivision (e) is added to enable the courts to make fuller use of all court facilities.

Rule 42 Consolidation; separate trials

(a) Consolidation. When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

Comment by the Court. Subdivision (a) is identical to FRCP 42(a).

(b) Separate Trials. The court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy, may order a separate trial of any claim, cross–claim, counterclaim, or third–party claim, or of any separate issue or of any number of claims, cross–claims, counterclaims, third–party claims, or issues, always preserving inviolate the right of trial by jury. [Adopted May 5, 1967, effective July 1, 1967.]

Comment by the Court. Subdivision (b) follows FRCP 42(b) and supersedes RPPP 42(a).

Rule 43 Evidence

(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.

Comment by the Court. Paragraph (2) follows and supersedes RPPP 43.08W.

(b) Scope of Examination and Cross–Examination. A party may interrogate any unwilling or hostile witness by leading questions. A party may call an adverse party or an officer, director, or managing agent of a public or private corporation or of a partnership or association which is an adverse party, and interrogate him by leading questions and contradict and impeach him in all respects as if he had been called by the adverse party.

Comment by the Court. Subdivision (b) is identical to FRCP 43(b) except that the last two clauses have been deleted.

(c) Record of Excluded Evidence [Offer of Proof]. In an action tried by a jury, if an objection to a question propounded to a witness is sustained by the court, the examining attorney may make a specific offer of what he expects to prove by the answer of the witness. The court may require the offer to be made out of the hearing of the jury. The court, in the absence of the jury, may add such other or further statement as clearly shows the character of the evidence, the form in which it was offered, the objection made, and the ruling thereon. In actions tried without a jury the same procedure may be followed, except that the court upon request shall take and report the evidence in full, unless it clearly appears that the evidence is not admissible on any ground or that the witness is privileged.

Comment by the Court. Subdivision (c) is identical to FRCP 43(c), except that the words "in the absence of the jury" have been added in the third sentence.

(d) Oaths of Witnesses.

(1) *Administration.* The oaths of all witnesses in the superior court

(A) shall be administered by the judge;

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

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

(2) *Applicability.* This rule shall not apply to civil ex parte proceedings or default divorce cases and in such cases the manner of swearing witnesses shall be as each superior 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.

Comment by the Court. Paragraphs (1) and (2) follow and supersede RPPP 77.04W. Paragraph (3) is identical to FRCP 43(d).

(e) Evidence on Motions.

(1) *Generally.* 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.

(2) *For Injunctions, etc.* On application for injunction or motion to dissolve an injunction or discharge an attachment, or to appoint or discharge a receiver, the notice thereof shall designate the kind of evidence to be introduced on the hearing. If the application is to be heard on affidavits, copies thereof must be served by the moving party upon the adverse party at least 3 days before the hearing. Oral testimony shall not be taken on such hearing unless permission of the court is first obtained and notice of such permission served upon the adverse party at least 3 days before the hearing. This rule shall not be construed as pertaining to applications for restraining orders or for appointment of temporary receivers.

Comment by the Court. Paragraph (1) is identical to FRCP 43(e). See also Rules 6(d) and 12(d). Paragraph (2) follows and supersedes RPPP 66.08W.

(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 which 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 Rule 30(a) 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 Rule 30(b), 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 filed 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. The testimony of an adverse party or managing agent at the trial or on deposition or interrogatories shall not bind his adversary but 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 deposition or at the trial after notice served as prescribed in Rule 30(a), 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:

(A) to compel any person to answer any question where such answer might tend to incriminate him;

(B) nor 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

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

Comment by the Court. Subdivision (f) follows and supersedes RPPP 43.04W.

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

Comment by the Court. Subdivision (g) follows and supersedes RPPP 43.12W.

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

Comment by the Court. Subdivision (h) follows FRCP 80(c).

(i) Testimony at Former Trial. If the judge finds a witness at a former trial or proceeding to be unavailable as a witness within the conditions set forth in Rule 26(d)(3) governing the use of depositions, the testimony of such witness on the former occasion shall be admitted for use as testimony in a trial or proceeding involving substantially the same matter when (1) the testimony is offered against a party who offered it in his own behalf on the former occasion, or against the successor in interest of such party, or (2) the testimony is offered against a party against whom, or against whose predecessor in interest, it was offered on the former occasion.

Comment by the Court. Subdivision (i) is identical to and supersedes RPPP 43.16W.

(j) Statement of Facts in Retrial of Non-Jury 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 duly certified as the statement of facts upon appeal, 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 statement of facts as the testimony in said cause upon its second hearing, to the same effect as if the witnesses called by him 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 statement of facts for further cross-examination. [Adopted May 5, 1967, effective July 1, 1967.]

Comment by the Court. Subdivision (j) follows and supersedes RPPP 80.04W.

Rule 44 Proof of official record

(a) Authentication.

(1) *Domestic.* An official record kept within the United States, or any state, district, commonwealth, territory, or insular possession thereof, or within the Panama Canal Zone, the Trust Territory of the Pacific Islands, or the Ryukyu Islands, or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his deputy, and accompanied by a certificate that such officer has the custody. The certificate may be made by a judge of a court of record of the district or political subdivision in which the record is kept, authenticated by the seal of the court, or may be made by any public officer having a seal of office or official custody of the seal of the political subdivision and having official duties in the district or political subdivision in which the record is kept, authenticated by the seal of his office or the seal of the political subdivision.

(2) *Foreign.* A foreign official record, or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof; or a copy thereof, attested by a person authorized to make the attestation, and accompanied by a final certification as to the genuineness of the signature and official position (A) of the attesting person, or (B) of any foreign official whose certificate of genuineness of signature and official position relates to the attestation or is in a chain of certificates of genuineness of signature and official position relating to the attestation. A final certification may be made by a secretary of embassy or legation, consul general, consul, vice consul, or consular agent of the United States, or a diplomatic or consular official of the foreign country assigned or accredited to the United States. If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of the documents, the court may, for good cause shown, either admit an attested copy without final certification or permit the foreign official record to be evidenced by

an attested summary with or without a final certification.

(b) Lack of Record. A written statement that after diligent search no record or entry of a specified tenor is found to exist in the records, designated by the statement, authenticated as provided in paragraph (a)(1) of this rule in the case of a domestic record, or complying with the requirements of paragraph (a)(2) of this rule for a summary in the case of a foreign record, is admissible as evidence that the records contain no such record or entry.

(c) Other Proof. This rule does not prevent the proof of official records or of entry or lack of entry therein by any other method authorized by law. [Adopted May 5, 1967, amended June 28, 1967, effective July 1, 1967. Prior: RPPP Rule 44.]

Rule 44.1 Determination of foreign law [Reserved——See RCW 5.24.010 thru 5.24.070.]

Rule 45 Subpoena

(a) For Attendance of Witnesses. The subpoena shall be issued as follows:

(1) *Form.* To require attendance before a court of record or at the trial of an issue therein, such subpoena may be issued in the name of the state of Washington and be under the seal of the court before which the attendance is required or in which the issue is pending: *Provided,* That such subpoena may be issued with like effect by the attorney of record of the party to the action in whose behalf the witness is required to appear, and the form of such subpoena in each case may be the same as when issued by the court except that it shall only be subscribed by the signature of such attorney.

(2) *Issuance for Trial.* To require attendance before a court of record or at the trial of an issue of fact, the subpoena may be issued by the clerk in response to a praecipe or by an attorney of record.

(3) *Issuance for Deposition.* To require attendance out of such court before a judge, justice of the peace, commissioner, referee or other officer authorized to administer oaths or to take testimony in any matter under the laws of this state, it shall be issued by an attorney of record or by such judge, justice of the peace, commissioner, referee or other officer before whom the attendance is required.

Comment by the Court. This subdivision supersedes RCW 5.56-.020 (1) and (2).

(b) For Production of Documentary Evidence. A subpoena may also command the person to whom it is directed to produce the books, papers, documents, or tangible things designated therein; but the court, upon motion made promptly and in any event at or before the time specified in the subpoena for compliance therewith, may (1) quash or modify the subpoena if it is unreasonable and oppressive or (2) condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, or tangible things.

Comment by the Court. Subdivision (b) is identical to FRCP 45(b), and supersedes RCW 5.56.030.

(c) Service. A subpoena may be served by any suitable person over 18 years of age, by exhibiting and reading it to the witness, or by giving him a copy thereof, or by leaving such copy at the place of his abode. When service is made by any other person than an officer authorized to serve process, proof of service shall be made by affidavit.

Comment by the Court. Subdivision (c) is identical to RCW 5.56-.040, which is superseded.

(d) Subpoena for Taking Depositions; Place of Examination.

(1) *Authorization.* Proof of service of a notice to take a deposition as provided in Rules 30(b) and 31(a) constitutes a sufficient authorization for the issuance by the attorney of record or the officer taking the deposition of subpoenas for the persons named or described therein. The subpoena may command the person to whom it is directed to produce and permit inspection and copying of designated books, papers, documents, or tangible things which constitute or contain matters within the scope of the examination permitted by Rule 26(b), but in that event the subpoena will be subject to the provisions of Rule 26(c) and subdivision (b) of this rule.

The person to whom the subpoena is directed may, within 10 days after the service thereof or on or before the time specified in the subpoena for compliance if such time is less than 10 days after service, serve upon the attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials except pursuant to an order of the court from which the subpoena was issued. The party serving the subpoena may, if objection has been made, move upon notice to the deponent for an order at any time before or during the taking of the deposition.

(2) *Place of Examination.* A resident of the state may be required to attend an examination only in the county wherein he resides or is employed or transacts his business in person, or at such other convenient place as is fixed by an order of the court. A nonresident of the state may be required to attend only in the county wherein he is served with a subpoena, or within 40 miles from the place of service or at such other convenient place as is fixed by an order of the court.

(3) *Foreign Depositions for Local Actions.* When the place of examination is in another state, territory, or country, the party desiring to take the deposition may secure the issuance of a subpoena or equivalent process in accordance with the laws of such state, territory or country to require the deponent to attend the examination.

(4) *Local Depositions for Foreign Actions.* When any officer or person is authorized to take depositions in this state by the law of another state, territory or country, with or without a commission, a subpoena to require attendance before such officer or person may be issued by any judge or justice of the peace of this state for attendance at any places within his jurisdiction.

Comment by the Court. Subdivision (d) supersedes RCW 5.56.020(3).

(e) Subpoena for Hearing or Trial. [Reserved——See RCW 5.56.010.]

(f) Contempt. Failure by any person without adequate excuse to obey a subpoena served upon him may be deemed a contempt of the court from which the subpoena issued. [Adopted May 5, 1967, amended May 26, 1972, effective July 1, 1972.]

Comment by the Court. Subdivision (f) is identical to FRCP 45(f) and complements RCW 5.56.061, et seq. See also RCW 2.28.020 and 2.28.070.

Rule 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 he desires the court to take or his objection to the action of the court and 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. [Adopted May 5, 1967, effective July 1, 1967.]

Comment by the Court. The rule is identical to FRCP 46 and supersedes RPPP 46.04W.

Rule 47 Jurors

(a) Examination of Jurors. The court may examine the prospective jurors to the extent it deems appropriate, and shall permit the parties or their attorneys to ask reasonable questions.

Comment by the Court. Subdivision (a) is intended to preserve the present Washington practice.

(b) Alternate Jurors. The court may direct that not more than 6 jurors in addition to the regular jury be called and impanelled to sit as alternate jurors. Alternate jurors in the order in which they are called shall replace jurors who, prior to the time the jury retires to consider its verdict, become or are found to be unable or disqualified to perform their duties. Alternate jurors shall be drawn in the same manner, shall have the same qualifications, shall be subject to the same examination and challenges, shall take the same oath, and shall have the same functions, powers, facilities and privileges as the regular jurors. An alternate juror who does not replace a regular juror shall be discharged after the jury retires to consider its verdict. Each side is entitled to 1 peremptory challenge in addition to those otherwise allowed by law if 1 or 2 alternate jurors are to be impanelled, 2 peremptory challenges if 3 or 4 alternate jurors are to be impanelled, and 3 peremptory challenges if 5 or 6 alternate jurors are to be impanelled. The additional peremptory challenges may be used against an alternate juror only, and the other peremptory challenges allowed by law shall not be used against an alternate juror.

(c) Procedure When Juror Becomes Ill. [Reserved——See RCW 4.44.290.]

(d) Impanelling Jury. [Reserved——See RCW 4.44.120.]

(e) Challenge.

(1) *Kind and Number.* [Reserved——See RCW 4.44.130.]

(2) *Peremptory Challenges Defined.* [Reserved——See RCW 4.44.140.]

(3) *Challenges for Cause.* [Reserved——See RCW 4.44.150.]

(4) *General Causes of Challenge.* [Reserved——See RCW 4.44.160.]

(5) *Particular Causes of Challenge.* [Reserved——See RCW 4.44.170.]

(6) *Implied Bias Defined.* [Reserved——See RCW 4.44.180.]

(7) *Challenge for Actual Bias.* [Reserved——See RCW 4.44.190.]

(8) *Exemption not Cause of Challenge.* [Reserved——See RCW 4.44.200.]

(9) Peremptory Challenges. [Reserved——See RCW 4.44.210.]

(10) *Order of Taking Challenges.* [Reserved——See RCW 4.44.220.]

(11) *Objections to Challenges.* [Reserved——See RCW 4.44.230.]

(12) *Trial of Challenge.* [Reserved——See RCW 4.44.240.]

(13) *Challenge, Objection and Denial May Be Oral.* [Reserved——See RCW 4.44.250.]

(f) Oath of Jurors. [Reserved——See RCW 4.44.260.]

(g) View of Premises by Jury. [Reserved——See RCW 4.44.270.]

(h) Admonitions to Jurors. [Reserved——See RCW 4.44.280.]

(i) Care of Jury While Deliberating. [Reserved——See RCW 4.44.300.]

(j) Note-taking by Jurors. With the permission of the trial judge, jurors may take written notes regarding the evidence presented to them and keep these notes with them when they retire for their deliberation. Such notes should be treated as confidential between the jurors making them and their fellow jurors, and shall be destroyed immediately after the verdict is rendered. [Adopted May 5, 1967, effective July 1, 1967; subd. (j) adopted April 9, 1974, effective July 1, 1974.]

Rule 48 Juries of less than twelve The parties may stipulate that the jury shall consist of any number less than 12 or that a verdict or a finding of a stated majority of the jurors shall be taken as the verdict or finding of the jury. [Adopted May 5, 1967, effective July 1, 1967.]

Comment by the Court. This rule is identical to FRCP 48. See Washington Constitution Article I § 21.

Rule 49 Verdicts

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

Comment by the Court. Subdivision (–) is identical to and supersedes the second sentence of RCW 4.44.410.

(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 rights to a trial by jury of the issue so omitted unless before the jury retires he 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.

Comment by the Court. Subdivision (a) is identical to FRCP 49(a) and supersedes the third sentence of RCW 4.44.410.

(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 or 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.

Comment by the Court. Subdivision (b) is identical to FRCP 49(b).

(c) Discharge of Jury.

(1) *Without Verdict.* [Reserved——See RCW 4.44.330.]

(2) *Effect of Discharge.* [Reserved——See RCW 4.44.340.]

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

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

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

(g) Ten 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 4.44.460.] [Adopted May 5, 1967, effective July 1, 1967. Prior: Rule 49(a) and (b), RPPP.]

Rule 50 Motion for a directed verdict and for judgment notwithstanding the verdict

(a) Motion for Directed Verdict; When Made; Effect. A party who moves for a directed verdict at the close of the evidence offered by an opponent may offer evidence in the event that the motion is not granted, without having reserved the right so to do and to the same extent as if the motion had not been made. A motion for a directed verdict which is not granted is not a waiver of trial by jury even though all parties to the action have moved for directed verdicts. A motion for a directed verdict shall state the specific ground therefor.

Comment by the Court. Subdivision (a) is similar to FRCP 50(a) and supersedes RPPP 50. Subdivision (a) does not supersede RCW 4.56.150.

(b) Motion for Judgment Notwithstanding the Verdict. Not later than 5 days after the entry of verdict or after the jury is discharged if no verdict is returned, whether or not he has moved for a directed verdict and whether or not a verdict was returned, a party may move for judgment notwithstanding the verdict. A motion in the alternative for a new trial may be joined with this motion.

(c) Alternative Motions for Judgment Notwithstanding Verdict or for a New Trial——Effect of Appeal. Whenever a motion for a judgment notwithstanding the verdict and, in the alternative, for a new trial shall be filed and submitted in any superior court in any civil cause tried before a jury, and such superior court shall enter an order granting such motion for judgment notwithstanding the verdict, such court shall at the same time, in the alternative, pass upon and decide in the same order such motion for a new trial; such ruling upon said motion for a new trial not to become effective unless and until the order granting the motion for judgment notwithstanding the verdict shall thereafter be reversed, vacated, or set aside in the manner provided by law. An appeal to the Supreme Court from a judgment granted on a motion for judgment notwithstanding the verdict shall, of itself, without the necessity of a cross–appeal, bring up for review the ruling of the trial court on the motion for a new trial; and the Supreme Court shall, if it reverses the judgment entered notwithstanding the verdict, review and determine the validity of the ruling on the motion for a new trial. [Adopted May 5, 1967,

amended June 28, 1967, effective July 1, 1967. Prior: 50(a), RPPP Rule 50; 50(c) and (d), RPPP Rule 59.08W.]

Rule 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.

Comment by the Court. Subdivision (a) follows paragraph (1) and supersedes paragraphs (1) and (2) of RPPP 51.04W.

(b) Submission. Submission of proposed instructions shall be by delivering the original and 3 or more copies as required by the trial judge, by filing 1 copy with the clerk, identified as the party's proposed instructions, and by serving 1 copy upon each opposing counsel.

Comment by the Court. Subdivision (b) follows and supersedes paragraph (1) of RPPP 51.04W.

(c) Form. Each proposed instruction shall be typewritten or printed on a separate sheet of lettersize (8 1/2 x 11 inches) paper. Except for 1 copy of each, the instructions delivered to the trial court shall not be numbered or identified as to the proposed 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.

Comment by the Court. Except for requiring instructions to be on lettersize paper, subdivision (c) follows and supersedes paragraph (3) of RPPP 51.04W.

(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 (c) of this rule, in the form he 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 Appeal.* Where the refusal to give a requested instruction is ground for appeal, the appealing party shall place a copy of the requested instruction in the statement of facts.

(3) *Local Option.* Any superior court may adopt a local rule to substitute for CR 51(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.

Comment by the Court. Subdivision (e) follows and supersedes paragraph (4) of RPPP 51.04W.

(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 objects and the grounds of his objection, specifying the number, paragraph or particular part of the instruction to be given or refused and to which objection is made.

Comment by the Court. Subdivision (f) follows and supersedes RPPP 51.08W and 51.16W.

(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 court's instructions; after which the adverse party may address the jury; followed by the rebuttal of the party first addressing the jury.

Comment by the Court. Subdivision (g) follows and supersedes RPPP 51.08W.

(h) Deliberation. After argument, the jury shall retire to consider their verdict. In addition to the written instructions given, the jury shall take with them all exhibits received in evidence, except depositions. Copies may be substituted for 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.

Comment by the Court. Subdivision (h) follows and supersedes RPPP 51.12W and 51.08W.

(i) Further Instructions. After retirement for deliberation, if the jury desires to be informed on any point of law, the judge may require the officer having them in charge to conduct them into court. Upon the jury being brought into court, the information requested, if given, shall be given in the presence of, or after notice to the parties or their counsel. Any additional instruction upon any point of law shall be given in writing.

Comment by the Court. Subdivision (i) follows and supersedes RCW 4.44.320.

(j) Comments Upon Evidence. Judges shall not instruct with respect to matters of fact, nor comment thereon. [Adopted March 31, 1967, effective April 7, 1967. Readopted May 5, 1967, amended June 28, 1967, effective July 1, 1967. Subsection (d) amended, adopted October 27, 1967, effective November 3, 1967. Subsection (d)(3) adopted March 12, 1968, effective March 29, 1968.]

Comment by the Court. Subdivision (j) follows Article 4 § 16 of the Washington Constitution.

New Civil Rule 51——Supersedes: RPPP 51.04W, 51.12W and 51.16W; and RCW 4.44.320.

Rule 52 Decisions, findings and conclusions

(a) Requirements.

(1) *Generally.* In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law. Judgment shall be entered pursuant to Rule 58 and may be entered at the same time as the entry of the findings of fact and the conclusions of law.

(2) *Specifically Required.* Without in any way limiting the requirements of paragraph (1), findings and conclusions are required:

(A) Temporary Injunctions. In granting or refusing temporary injunctions.

(B) Domestic Relations. In connection with all final decisions in adoption, custody, and divorce proceedings, whether heard ex parte or not.

(C) Other. In connection with any other decision where findings and conclusions are specifically required by statute, by another rule, or by a local rule of the superior court.

(3) *Proposed.* Requests for proposed findings of fact are not necessary for review.

(4) *Form.* If a written opinion or memorandum of decision is filed, it will be sufficient if formal findings of fact and conclusions of law are included.

(5) *When Unnecessary.* Findings of fact and conclusions of law are not necessary:

(A) Stipulation. Where all parties stipulate in writing that there will be no appeal.

(B) Decision on Motions. On decisions of motions under Rules 12 or 56 or any other motion, except as provided in Rules 41(b)(3) and 55(b)(2).

(C) Temporary Restraining Orders. On the issuance of temporary restraining orders issued ex parte.

Comment by the Court. Subdivision (a) follows FRCP 52(a) as amended.

(b) Amendment of Findings. Upon motion of a party made not later than 5 days after entry of judgment the court may amend its findings or make additional findings and may amend the judgment accordingly. The motion may be made with a motion for a new trial pursuant to Rule 59. When findings of fact are made in actions tried by the court without a jury, the question of the sufficiency of the evidence to support the findings may thereafter be raised whether or not the party raising the question has made in the court an objection to such findings or has made a motion to amend them or a motion for judgment.

(c) Presentation. Unless an emergency is shown to exist, the court shall not sign findings of fact or conclusions of law until the defeated party or parties have received 5 days' notice of the time and place of the submission, and have been served with copies of the proposed findings and conclusions.

(d) Judgment Without Findings, etc. A judgment entered in a case tried to the court where findings are required, without findings of fact having been made, is subject to a motion to vacate within the time for the taking of an appeal. After vacation, the judgment shall not be re-entered until findings are entered pursuant to this rule.

(e) Time Limit for Decision. [Reserved——See RCW 2.08.240.] [Adopted May 5, 1967, effective July 1, 1967. Prior: 52(a)(1), RPPP Rule 52.04W; 52(c) and (d), RPPP Rule 52.08W.]

Rule 53 Masters [Reserved]

Rule 53.1 Referees

(a) Referees——Definitions and Powers. [Reserved——See RCW 2.24.060.]

(b) Reference by Consent——Right to Jury Trial. [Reserved——See RCW 4.48.010.]

(c) Reference Without Consent. [Reserved——See RCW 4.48.020.]

(d) To Whom Reference May Be Ordered. [Reserved——See RCW 4.48.030.]

(e) Qualifications of Referees. [Reserved——See RCW 4.48.040.]

(f) Challenges to Referees. [Reserved——See RCW 4.48.050.]

(g) Trial Procedure——Powers of Referee. [Reserved——See RCW 4.48.060.]

(h) Referee's Report——Contents——Evidence, Filing of, Frivolous. [Reserved——See RCW 4.48.070.]

(i) Proceedings on Filing of Report. [Reserved——See RCW 4.48.080.]

(j) Judgment on Referee's Report. [Reserved——See RCW 4.48.090.]

(k) Fees of Referees. [Reserved——See RCW 4.48.100.]

Rule 53.2 Court commissioners

(a) Appointment of Court Commissioners——Qualifications——Term of Office. [Reserved——See RCW 2.24.010.]

(b) Oath. [Reserved——See RCW 2.24.020.]

(c) Salary. [Reserved——See RCW 2.24.030.]

(d) Powers of Commissioners——Fees. [Reserved——See RCW 2.24.040 as amended 1963.]

(e) Revision by Court. [Reserved——See RCW 2.24.050.]

VII. JUDGMENT (RULES 54–63)

Rule 54 Judgments and costs

(a) Definitions.

(1) *Judgment.* A judgment is the final determination of the rights of the parties in the action and includes any decree and order from which an appeal lies. A judgment shall be in writing and signed by the judge and filed forthwith as provided in Rule 58.

(2) *Order.* Every direction of a court or judge, made or entered in writing, not included in a judgment, is denominated an order.

Comment by the Court. Paragraph (1) combines RCW 4.56.010 and FRCP 54(a) and supersedes RCW 4.56.010.

(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.

Comment by the Court. Except for the addition of the words "in the judgment," subdivision (b) is identical to FRCP 54(b) and supersedes RPPP 42(c), and also supersedes RCW 4.56.030 and 4.56.040. For judgments on setoffs, see RCW 4.32.120 through 4.32.150 and RCW 4.56.050 through 4.56.075. It should be noted that RCW 4.56.050 applies to RCW 4.32.130; RCW 4.56.060 and 4.56.070 apply to RCW 4.32.110 (in part superseded), 4.32.120, 4.32.130 and 4.32.140; and RCW 4.56.075 applies to RCW 4.32-.130 and 4.32.140.

(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 pleadings.

Comment by the Court. Subdivision (c) is identical to FRCP 54(c).

(d) Costs. Costs shall be fixed and allowed as provided in RCW ch. 4.84 or by any other applicable statute.

(e) Preparation of Order or Judgment. The attorney of record for the prevailing party shall prepare and present a proposed form of order or judgment not later than 15 days after the entry of the verdict or decision, or at any other time as the court may direct. Where the prevailing party is represented by an attorney of record, no order or judgment may be entered for the prevailing party unless presented or approved by the attorney of record. If both the prevailing party and his attorney of record fail to prepare and present the form of order or judgment within the prescribed time, any other party may do so, without the approval of the attorney of record of the prevailing party upon notice of presentation as provided in paragraph (f)(2).

(f) Presentation.

(1) *Time.* Judgments may be presented at the same time as the findings of fact and conclusions of law under Rule 52.

(2) *Notice of Presentation.* No order or judgment shall be signed or entered until opposing counsel have been given 5 days' notice of presentation and served with a copy of the proposed order or judgment unless:

(A) Emergency. An emergency is shown to exist.

(B) Approval. Opposing counsel has approved in writing the entry of the proposed order or judgment or waived notice of presentation.

(C) After Verdict, etc. If presentation is made after entry of verdict or findings and while opposing counsel is in open court. [Adopted May 5, 1967, effective July 1, 1967. Prior: 54(e), RPPP Rule 54.04W and Rule 77.08W (1st sentence).]

Rule 55 Default and judgment

(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 had appeared or not. If the party had appeared before the motion is filed, he may respond to the pleading or otherwise defend at any time before the hearing on the motion. If the party had not appeared before the motion is filed he 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 Rule 55(f)(2)(A).

Comment by the Court. Paragraph (1) follows FRCP 55(a). Paragraph (2) supersedes RPPP 55.04W. Paragraph (3) supersedes RCW 4.28.220.

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

(1) *When Amount Certain.* When the claim against a party, whose default has been entered under subdivision (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 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 paragraph 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 paragraph.

(3) *When Service by Publication.* In an action where the service of the summons was by publication, the plaintiff, upon the expiration of the time for answering, may, upon proof of service by publication, apply for judgment; and the court must thereupon require proof of the demand mentioned in the complaint, and must require the plaintiff or his agent to be examined on oath respecting any payments that have been made to the plaintiff, or to any one for his use on account of such demand, and may render judgment for the amount which he is entitled to recover, or for such other relief as he 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.

Comment by the Court. Paragraph (1) follows FRCP 55(b)(1) and supersedes RCW 4.56.160(1). Paragraph (2) follows the third sentence of FRCP 55(b)(2) and supersedes RCW 4.56.160(2). Paragraph (3) follows and supersedes RCW 4.56.160(3).

(c) Setting Aside Default. 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).

Comment by the Court. Subdivision (c) follows FRCP 55(c) and supersedes RCW 4.56.170.

(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).

Comment by the Court. Subdivision (d) is identical to FRCP 55(d).

(e) Judgment Against State. [Reserved.]

(f) How Made After Elapse of Year.

(1) *Notice.* When more than one 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:

(A) by service upon the attorney of record;

(B) 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

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

(D) If service of notice cannot be made under subparagraphs (A) and (C), 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 May 5, 1967, effective July 1, 1967.]

Comment by the Court. Subdivision (f) follows and supersedes RPPP 55.08W.

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 shall be served at least 10 days before the time fixed for the hearing. The adverse party, prior to the day of hearing, may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, 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. 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 or by further affidavits.

(f) When Affidavits Are Unavailable. Should it appear from the affidavits of a party opposing the motion that he 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 attorneys' fees, and any offending party or attorney may be adjudged guilty of contempt. [Adopted May 5, 1967, effective July 1, 1967.]

Comment by the Court. Rule 56 is identical to RPPP 56, which is superseded.

Rule 57 Declaratory judgments The procedure for obtaining a declaratory judgment pursuant to the Uniform Declaratory Judgment Act, RCW 7.24, shall be in accordance with these rules, and the right to trial by jury may be demanded under the circumstances and in the manner provided in Rules 38 and 39. The existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate. The court may order a speedy hearing of an action for a declaratory judgment and may advance it on the calendar. [Adopted May 5, 1967, effective July 1, 1967.]

Comment by the Court. This rule is identical to FRCP 57 except that reference is made to the Washington Uniform Declaratory Judgment Act. See also RCW 34.04.070.

Rule 58 Entry of judgment

(a) When. Unless the court otherwise directs and subject to the provisions of Rule 54(b), all judgments shall be entered immediately after they are signed by the judge.

(b) Effective Time. Judgments shall be deemed entered for all procedural purposes from the time of delivery to the clerk for filing, unless the judge earlier permits the judgment to be filed with him as authorized by Rule 5(e).

(c) Notice of Entry. [Reserved——See Rule 54(f).]

(d) [Reserved]

Comment by the Court. Subdivisions (a) and (b) together with Rule 59(b) supersede RCW 4.64.010.

(e) Judgment by Confession. [Reserved——See RCW 4.60.]

(f) Assignment of Judgment. [Reserved——See RCW 4.56.090.]

(g) Interest on Judgments. [Reserved——See RCW 4.56.110.]

(h) Satisfaction of Judgments. [Reserved——See RCW 4.56.100.]

(i) Lien of Judgment. [Reserved——See RCW 4.56.190.]

(j) Commencement of Lien on Real Estate. [Reserved——See RCW 4.56.200.]

(k) Cessation of Lien——Extension Prohibited. [Reserved——See RCW 4.56.210.]

(l) Revival of Judgments. [Reserved——See RCW 4.56.225.] [Adopted May 5, 1967, effective July 1, 1967.]

Rule 59 New trial and amendment of judgments

(a) Grounds for Reconsideration or New Trial. The verdict or other decision may be vacated and a new trial granted to all or any of the parties and on all or part of the issues when such issues are clearly and fairly separable and distinct, on the motion of the party aggrieved 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 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 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;

(9) That substantial justice has not been done.

Comment by the Court. Subdivision (a) follows the first paragraph of RPPP 59.04W.

(b) Time for Motion. A motion for reconsideration and/or for a new trial may be served and filed after the verdict is received in a case tried by a jury or after the oral or written decision in a case tried to the court. No motion for reconsideration or for a new trial may be served more than 5 days after the entry of the verdict or oral or written decision.

Comment by the Court. Subdivision (b) supersedes RCW 4.64.010.

(c) Time for Serving Affidavits. When a motion for new trial is based upon affidavits they shall be served with the motion. The opposing party has 5 days after such service within which to serve opposing affidavits, which period may be extended for an additional period not exceeding 20 days either by the court for good cause shown or by the parties by written stipulation. The court may permit reply affidavits.

Comment by the Court. Subdivision (c) follows FRCP 59(c).

(d) On Initiative of Court. Not later than 5 days after entry of judgment, the court of 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, and in the order shall specify the grounds thereof.

Comment by the Court. Subdivision (d) follows FRCP 59(d).

(e) Hearing on Motion. When a motion for reconsideration or for a new trial is served and filed, the judge by whom it is to be heard may on his 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.

Comment by the Court. Subdivision (e) supersedes RPPP 8.08W(3).

(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, state whether the order is based upon the record or upon facts and circumstances outside the record which 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.

Comment by the Court. Subdivision (f) supersedes the next to the last paragraph of RPPP 59.04W.

(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 conclusion of law or make new findings and conclusions, and direct the entry of a new judgment.

Comment by the Court. Subdivision (g) is identical to the last sentence of FRCP 59(a).

(h) Motion to Alter or Amend Judgment. A motion to alter or amend the judgment shall be served not later than 5 days after entry of the judgment.

Comment by the Court. Subdivision (h) follows FRCP 59(e).

(i) Alternative Motions, etc. Alternative motions for judgment notwithstanding the verdict and for a new trial may be made in accordance with Rule 50(c) and (d).

(j) Limit on Motions. If a motion for reconsideration, or for a new trial, or for judgment notwithstanding the verdict, is made and heard before the entry of the judgment, no further motion may be made for a new trial nor pursuant to subdivisions (g), (h), and (i) of this rule, nor under Rule 52(b), without leave of court first obtained for good cause shown. [Adopted May 5, 1967, effective July 1, 1967. Prior: 59(a), 59(b) and 59(f), RPPP Rule 59.04W; 59(e), RPPP Rule 8.08W(3); 59(i), RPPP Rule 59.08W Part.]

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. During the pendency of an appeal, such mistakes may be so corrected before the appeal is filed in the appellate court, and thereafter while the appeal is pending may be so corrected with leave of the appellate court having jurisdiction of the cause.

Comment by the Court. Subdivision (a) follows FRCP 60(a) and supersedes RPPP 60.

(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 this subdivision (b) does not affect the finality of the judgment or suspend its operation.

Comment by the Court. Subdivision (b) follows FRCP 60(b), except that paragraph (2) and paragraphs (7) through (10), and part of paragraph (1), have been added from RCW 4.72.010. The last sentence of FRCP 60(b) has been separated into subdivisions (c) and (d), respectively. Subdivision (b) supersedes RCW 4.32.240, 4.72.010, 4.72.020, 4.72.030, and 4.72.040, to the extent that those sections cover relief from judgments.

(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.

Comment by the Court. Subdivision (d) follows the last sentence of FRCP 60(b).

(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.

(4) *Statutes.* Except as modified by this rule, RCW 4.72.010-.090 shall remain in full force and effect. [Adopted May 5, 1967, effective July 1, 1967; amended Sept. 26, 1972, effective Sept. 26, 1972.]

Comment by the Court. Subdivision (e) follows and supersedes RPPP 60.04W and RCW 4.72.040. Reference to "petition" in RCW 4.72.050 is superseded. RCW 4.32.240 is superseded.

Rule 61 Harmless Error [Reserved.]

Rule 62 Stay of proceedings to enforce a judgment

(a) Automatic Stays. No execution shall issue upon a judgment nor shall proceedings be taken for its enforcement until the expiration of 5 days after its entry. Unless otherwise ordered, an interlocutory or final judgment in an action for an injunction or in a receivership action, shall not be stayed during the period after its entry and until an appeal is taken or during the pendency of an appeal. The provisions of subdivision (c) of this rule govern the suspending, modifying, restoring, or granting of an injunction during the pendency of an appeal.

Comment by the Court. Subdivision (a) follows FRCP 62(a).

(b) Stay on Motion for New Trial or for Judgment. In its discretion and on such conditions for the security of the adverse party as are proper, the court may stay the execution of or any proceedings to enforce a judgment pending the disposition of a motion for a new trial or to alter or amend a judgment made pursuant to Rule 59, or of a motion for relief from a judgment in accordance with a motion for a directed verdict made pursuant to Rule 50, or of a motion for amendment to the findings or for additional findings made pursuant to Rule 52(b).

Comment by the Court. Subdivision (b) follows FRCP 62(b).

(c) Injunction Pending Appeal. Except as provided in Rule on Appeal 24, when an appeal is taken from an interlocutory or final judgment granting, dissolving, or denying an injunction, the court in its discretion may suspend, modify, restore, or grant an injunction during the pendency of the appeal upon such terms as to bond or otherwise as it considers proper for the security of the rights of the adverse party.

Comment by the Court. Subdivision (c) follows the first sentence of FRCP 62(c).

(d) Stay Upon Appeal. When an appeal is taken, the appellant by giving a supersedeas bond may obtain a stay subject to the exceptions contained in subdivision (a) of this rule.

Comment by the Court. Subdivision (d) follows FRCP 62(d). See Rule on Appeal 23.

(e) Stay in Favor of State. When an appeal is taken by the state or an officer or agency thereof or by direction of any department of the state and the operation or enforcement of the judgment is stayed, no bond, obligation, or other security shall be required from the appellant.

Comment by the Court. Subdivision (e) follows FRCP 62(e).

(f) Other Stays. This rule does not limit the right of a party to stay otherwise provided by statute or rule.

Comment by the Court. Subdivision (f) follows FRCP 62(f). See also RCW 6.08.

(g) Power of Supreme Court Not Limited. The provisions in this rule do not limit any power of the supreme court or of a judge thereof to stay proceedings during the pendency of an appeal or to suspend, modify, restore, or grant an injunction during the pendency of an appeal or to make any order appropriate to preserve the status quo or the effectiveness of the judgment subsequently to be entered.

Comment by the Court. Subdivision (g) follows FRCP 62(g).

(h) Multiple Claims or Multiple Parties. When a court has ordered a final judgment under the conditions stated in Rule 54(b), the court may stay enforcement of that judgment until the entering of a subsequent judgment or judgments and may prescribe such conditions as are necessary to secure the benefit thereof to the party in whose favor the judgment is entered. [Adopted May 5, 1967, effective July 1, 1967.]

Comment by the Court. Subdivision (h) follows FRCP 62(h) and supersedes RPPP 42(c).

Rule 63 Judges

(a) Powers. See Rule 77.

(b) Disability of a Judge. If by reason of death, sickness, or other disability, a judge before whom an action has been tried is unable to perform the duties to be performed by the court under these rules after a verdict is returned or findings of fact and conclusions of law are filed, then any other judge regularly sitting in or assigned to the court in which the action was tried may perform those duties; but if such other judge is satisfied that he cannot perform those duties because he did not preside at the trial or for any other reason, he may in his discretion grant a new trial. [Adopted May 5, 1967, effective July 1, 1967.]

Comment by the Court. Subdivision (b) is identical to FRCP 63.

VIII. PROVISIONAL AND FINAL REMEDIES (RULES 64–71)

Rule 64 Seizure of person or property At the commencement of and during the course of an action, all remedies providing for seizure of person or property for the purpose of securing satisfaction of the judgment ultimately to be entered in the action are available under the circumstances and in the manner provided by the law existing at the time the remedy is sought. The remedies thus available include arrest, attachment, garnishment, replevin, sequestration, and other corresponding or equivalent remedies, however designated and regardless of whether the remedy is ancillary to an action or must be obtained by an independent action. [Adopted May 5, 1967, effective July 1, 1967.]

Comment by the Court. This rule follows FRCP 64.

Rule 65 Injunctions

(a) Preliminary Injunction.

(1) *Notice.* No preliminary injunction shall be issued without notice to the adverse party.

(2) *Consolidation of Hearing With Trial on Merits.* Before or after the commencement of the hearing of an application for a preliminary injunction, the court may order the trial of the action on the merits to be advanced and consolidated with the hearing of the application. Even when this consolidation is not ordered, any evidence received upon an application for a preliminary injunction which would be admissible upon the trial on the merits becomes part of the record on the trial and need not be repeated upon the trial. This paragraph shall be so construed and applied as to save to the parties any rights they may have to trial by jury.

(b) Temporary Restraining Order; Notice; Hearing; Duration. A temporary restraining order may be granted without written or oral notice to the adverse party or his attorney only if (1) it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or his attorney can be heard in opposition, and (2) the applicant's attorney certifies to the court in writing the efforts, if any, which have been made to give the notice and the reasons supporting his claim that notice should not be required. Every temporary restraining order granted without notice shall be endorsed with the date and hour of issuance; shall be filed forthwith in the clerk's office and entered of record; shall define the injury and state why it is irreparable and why the order was granted without notice; and shall expire by its terms within such time after entry, not to exceed 10 days, as the court fixes, unless within the time so fixed the order, for good cause shown, is extended for a like period or unless the party against whom the order is directed consents that it may be extended for a longer period. The reasons for the extension shall be entered of record. In case a temporary restraining order is granted without notice, the motion for a preliminary injunction shall be set down for hearing at the earliest possible time and takes precedence of all matters except older matters of the same character; and when the motion comes on for hearing the party who obtained the temporary restraining order shall proceed with the application for a preliminary injunction and, if he does not do so, the court shall dissolve the temporary restraining order. On 2 days' notice to the party who obtained the temporary restraining order without notice or on such shorter notice to that party as the court may prescribe, the adverse party may appear and move its dissolution or modification and in that event the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

(c) Security. Except where the court in issuing orders pursuant to Laws of 1973, 1st Ex. Sess., Ch. 157 directs otherwise, no restraining order or preliminary injunction shall issue except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained. No such security shall be required of the United States or of an officer or agency thereof. Pursuant to RCW 4.92.080 no security shall be required of the State of Washington, municipal corporations or political subdivisions of the State of Washington.

The provisions of Rule 65.1 apply to a surety upon a bond or undertaking under this rule.

Comment by the Court. Subdivisions (a), (b), and (c) follow FRCP 65(a), (b), and (c).

(d) Form and Scope. Every order granting an injunction and every restraining order shall set forth the reasons for its issuance; shall be specific in terms; shall

describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained; and is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.

(e) Statutes. These rules are intended to supplement and not to modify any statute prescribing the basis for obtaining injunctive relief. These rules shall prevail over statutes if there are procedural conflicts. [Adopted May 5, 1967, effective July 1, 1967; Subd. (c) amended, adopted April 9, 1974, effective July 1, 1974.]

Rule 65.1 Security: Proceedings against sureties Whenever these rules require or permit the giving of security by a party, and security is given in the form of a bond or stipulation or other undertaking with one or more sureties, each surety submits himself to the jurisdiction of the court and irrevocably appoints the clerk of the court as his agent upon whom any papers affecting his liability on the bond or undertaking may be served. His liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the court prescribes may be served on the clerk of the court, who shall forthwith mail copies to the sureties if their addresses are known. [Adopted May 5, 1967, effective July 1, 1967.]

Comment by the Court. This rule follows FRCP 65.1.

Rule 66 Receivership proceedings

(a) Generally. Receivership proceedings shall be in accordance with the practice heretofore followed in the superior court or as provided by local rules. In all other respects, the action in which the receiver is sought or which is brought by or against a receiver is governed by these rules.

Comment by the Court. Subdivision (a) follows the second and third sentences of FRCP 66.

(b) Dismissal. An action wherein a receiver has been appointed shall not be dismissed except by order of the court.

Comment by the Court. Subdivision (b) follows the first sentence of FRCP 66.

(c) Notice to Creditors. A general receiver appointed to liquidate and wind up affairs shall, under the direction of the court, give notice to the creditors of the corporation, of the copartnership, or of the individual, by publication in a newspaper of general circulation in the county in which the action is pending, once each week for 3 weeks, requiring such creditors to file their claims, duly verified, with the receiver, his attorney, or the clerk of the court, within 30 days from the date of first publication of such notice. If necessary to afford proper notice to such creditors, the court may by order enlarge the time for such publication or direct publication of such notice in other counties. In addition to such publication, the receiver shall give actual notice by mail at their last known addresses to all persons and parties to him known to be or to claim to be creditors.

Comment by the Court. Subdivision (c) is identical to RPPP 66.04W(1) which is superseded.

(d) Request for Special Notices. At any time after a receiver is appointed, any person interested in said receivership as a party, creditor, or otherwise, may serve upon the receiver (or upon the attorney for such receiver) and file with the clerk a written request stating that he desires special notice of any and all of the following named matters, steps or proceedings in the administration of said receivership, to-wit:

(1) Filing of petitions for sales, leases, or mortgages of any property in the receivership.

(2) Filing of accounts.

(3) Filing of petitions for removal or discharge of receiver.

(4) Such other matters as are officially requested and approved by the court.

Such request shall state the post-office address of such person, or his attorney.

Comment by the Court. Subdivision (d) follows the first paragraph of RPPP 66.04W(2) which is superseded.

(e) Notices and Hearings. Notice of any of the proceedings set out in subdivision (d) of the rule (except petitions for the sale of perishable property, or other personal property, the keeping of which will involve expense or loss) shall be addressed to such person, or his attorney, at his stated post office address, and deposited in the United States Post Office, with the postage thereon prepaid, at least 5 days before the hearing on any of the matters above described; or personal service of such notice may be made on such person or his attorney not less than 5 days before such hearing; and proof of mailing or personal service must be filed with the clerk before the hearing. If upon the hearing it appears to the satisfaction of the court that the notice has been regularly given, the court shall so find in its order of judgment, and such judgment shall be final and conclusive. [Adopted May 5, 1967, effective July 1, 1967.]

Comment by the Court. Subdivision (e) follows the second paragraph of RPPP 66.04W(2) which is superseded.

Rule 67 Deposit in court In an action in which any part of the relief sought is a judgment for a sum of money or the disposition of a sum of money or the disposition of any other thing capable of delivery, a party, upon notice to every other party, and by leave of court, may deposit with the court all or any part of such sum or thing. Money paid into court under this rule shall be deposited and withdrawn in accordance with the provisions of RCW 4.44.480 through 4.44.500 or any like statute or rule. [Adopted May 5, 1967, effective July 1, 1967.]

Comment by the Court. This rule follows FRCP 67.

Rule 68 Offer of judgment At any time more than 10 days before the trial begins, a party defending against a claim may serve upon the adverse party an offer to allow judgment to be taken against him for the money or property or to the effect specified in his offer, with costs then accrued. If within 10 days after the service of the offer the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service thereof and thereupon the court shall enter

judgment. An offer not accepted shall be deemed withdrawn and evidence thereof is not admissible except in a proceeding to determine costs. If the judgment finally obtained by the offeree is not more favorable than the offer, the offeree must pay the costs incurred after the making of the offer. The fact that an offer is made but not accepted does not preclude a subsequent offer. When the liability of one party to another has been determined by verdict or order or judgment, but the amount or extent of the liability remains to be determined by further proceedings, the party adjudged liable may make an offer of judgment, which shall have the same effect as an offer made before trial if it is served within a reasonable time not less than 10 days prior to the commencement of hearings to determine the amount or extent of liability. [Adopted May 5, 1967, effective July 1, 1967.]

Comment by the Court. This rule follows FRCP 68.

Rule 69 Execution

(a) Procedure. The procedure on execution, in proceedings supplementary to and in aid of a judgment, and in proceedings on and in aid of execution shall be in accordance with the practice and procedure of the state as authorized in RCW 6.04, 6.08, 6.12, 6.16, 6.20, 6.24, 6.32, 6.36, and any other applicable statutes.

(b) Supplemental Proceedings. In aid of the judgment or execution, the judgment creditor or his successor in interest when that interest appears of record, may examine any person, including the judgment debtor, in the manner provided in these rules for taking depositions or in the manner provided by RCW 6.32. [Adopted May 5, 1967, effective July 1, 1967.]

Comment by the Court. This rule follows FRCP 69(a).

Rule 70 Judgment for specific acts; vesting title If a judgment directs a party to execute a conveyance of land or to deliver deeds or other documents or to perform any other specific act and the party fails to comply within the time specified, the court may direct the act to be done at the cost of the disobedient party by some other person appointed by the court and the act when so done has like effect as if done by the party. On application of the party entitled to performance, the clerk shall issue a writ of attachment or sequestration against the property of the disobedient party to compel obedience to the judgment. The court may also in proper cases adjudge the party in contempt. If real or personal property is within the state, the court in lieu of directing a conveyance thereof may enter a judgment divesting the title of any party and vesting it in others and such judgment has the effect of a conveyance executed in due form of law. When any order or judgment is for the delivery of possession, the party in whose favor it is entered is entitled to a writ of execution or assistance upon application to the clerk. [Adopted May 5, 1967, effective July 1, 1967. Prior: RPPP Rule 70.]

Comment by the Court. This rule follows FRCP 70. See also RCW 6.28.

Rule 71 [Reserved]

IX. APPEALS (RULES 72–76) [RESERVED]

X. SUPERIOR COURTS AND CLERKS (RULES 77–80)

Rule 77 Superior courts and judicial officers

(a) Original Jurisdiction. [Reserved——See RCW 2.08.010.]

(b) Powers of Superior Courts.

(1) *Powers of Court in Conduct of Judicial Proceedings.* [Reserved——See RCW 2.28.010.]

(2) *Punishment for Contempt.* [Reserved——See RCW 2.28.020.]

(3) *Implied Powers.* [Reserved——See RCW 2.28.150.]

(c) Powers of Judicial Officers.

(1) *Judges Distinguished from Court.* [Reserved——See RCW 2.28.050.]

(2) *Judicial Officers Defined——When Disqualified.* [Reserved——See RCW 2.28.030.] See also Rule 40(e) for change of Judge.

(3) *Powers of Judicial Officers.* [Reserved——See RCW 2.28.060.]

(4) *Judicial Officer May Punish for Contempt.* [Reserved——See RCW 2.28.070.]

(5) *Powers of Judges of Supreme and Superior Courts.* [Reserved——See RCW 2.28.080.]

(6) *Powers of Inferior Judicial Officers.* [Reserved——See RCW 2.28.090.]

(7) *Powers of Judge in Counties of His District.* [Reserved——See RCW 2.08.190.]

(8) *Visiting Judges.*

(A) Assignments.

(i) Visiting Judges at Direction of Governor. [Reserved——See RCW 2.08.140.]

(ii) Visiting Judges at Request of judge or judges. [Reserved——See RCW 2.08.140 and 2.08.150.]

(iii) Court Administrator——Make Recommendations. [Reserved——See RCW 2.56.030.]

(iv) Duty of Judges to Comply with Chief Justice's Direction. [Reserved——See RCW 2.56.040.]

(B) Powers. Whenever a visiting judge has heard or tried any case or matter and has departed from the county, he may require the argument on any post–trial motion to be submitted to him on briefs at such place within the state as he may designate and he may sign findings of fact, conclusions of law, judgments and post–trial orders anywhere within the state. See also RCW 2.08.140 and 2.08.150.

(9) *Judges Pro Tempore.* [Reserved——See RCW 2.08.180.]

(10) *Change of Judge.* [Reserved——See RCW 4.12-.040 and 4.12.050.]

(11) *Court May Fix Amount of Bond in Civil Actions.* [Reserved——See RCW 4.44.470.]

(d) Superior Courts Always Open. The superior courts are courts of record, and shall be always open, except on non-judicial days.

(e) No Court on Legal Holidays——Exceptions. [Reserved——See RCW 2.28.100.]

(f) Sessions. The superior courts shall hold regular and special sessions at the county seats of the several counties at such times as the judges may determine.

(g) Adjournments.
(1) *Power.* [Reserved——See RCW 2.28.120.]
(2) *Automatic.* [Reserved——See RCW 2.28.110.]
(3) *Effect.* [Reserved——See RCW 2.08.040.]

(h) Summer Recess. No cases shall be tried between the first day of July and the first day of September of each year except by order of the court or by consent of all parties and of the court.

(i) Sessions Where More Than One Judge Sits——Effect of Decrees, Orders, etc. [Reserved——See RCW 2.08.160.]

(j) Trials and Hearings; Orders in Chambers. Except as otherwise authorized by these rules or by statute, all trials upon the merits shall be conducted in open court and so far as convenient in a regular court room. All other acts or proceedings may be done or conducted by a judge in chambers, without the attendance of the clerk or other court officials and at any place either within or without the county; but no hearing, other than one ex parte, shall be conducted outside the county in which the cause or proceedings is pending without the consent of all parties affected thereby.

(k) Motion Day——Local Rules. Unless local conditions make it impracticable, the superior court in each county shall establish regular times and places, at intervals sufficiently frequent for the prompt dispatch of business, at which motions requiring notice and hearing may be heard and disposed of; but the judge at any time or place and on such notice, if any, as he considers reasonable may make orders for the advancement, conduct, and hearing of actions.

(l) Submission on Briefs. To expedite its business, the court may make provision by rule or order for the submission and determination of motions without oral hearing upon brief written statements of reasons in support and opposition.

(m) Stipulations. See Rule 16(c).

(n) Seal of Court. [Reserved——See RCW 2.08.050.] [Adopted May 5, 1967, amended June 28, 1967, effective July 1, 1967. Prior: 77(h) and 77(k), RPPP 77.24W and 78.04W.]

Rule 78 Clerks

(a) Powers and Duties of Clerks. [Reserved——See RCW 2.32.050.]

(b) Office Hours. The clerk's office with the clerk or a deputy in attendance shall be open during business hours on all days except Saturdays, Sundays, and legal holidays.

Comment by the Court. Subdivision (b) follows the first sentence of FRCP 77(c). See also RCW 1.16.050.

(c) Orders by Clerk. All motions and applications in the clerk's office for issuing mesne process, for issuing final process to enforce and execute judgments, and for other proceedings which do not require allowance or order of the court are grantable of course by the clerk; but his action may be suspended or altered or rescinded by the court upon cause shown.

Comment by the Court. Subdivision (c) follows the second sentence of FRCP 77(c).

(d) Receipt and Publication of Depositions. Upon the receipt of a deposition in any case, the clerk shall forthwith endorse the date of the reception upon the wrapper thereof, and shall enter the same upon the appearance docket. Such deposition shall remain unopened until the court shall order the same to be published, which will be at the request of either party. When publication is ordered, the clerk shall endorse upon the same: "This deposition filed [giving the date on the wrapper] and published this ----- day ----------, 19--." The wrapper shall be preserved by the clerk without unnecessary mutilation.

Comment by the Court. Subdivision (d) is identical to and supersedes RPPP 77.16W(1).

(e) Entry of Judgments and Costs. The clerk shall enter judgment or decree pursuant to the provisions of Rule 58 and the same shall then be entered for the sum found due or the relief awarded, with costs and disbursements, if any, to be taxed. Entry of judgment shall not be delayed for the taxing of costs. If no cost bill is filed by the party to whom costs are awarded within 10 days after the entry of the judgment or decree, the clerk shall proceed to tax the following costs and disbursements, namely:
(1) The statutory attorneys' fee,
(2) The clerk's fee,
(3) The sheriff's fee, and
(4) Other disbursements, the amount whereof plainly appears on the papers in the case, and shall enter the sum thereof in the judgment entry and execution docket. If a cost bill is filed, he shall enter as the amount to be recovered the amount claimed in such cost bill, and no motion to retax costs shall be considered unless the same be filed within 6 days after the filing of the cost bill.

Comment by the Court. Subdivision (e) follows and supersedes RPPP 77.16W(2).

(f) Bonds. The clerk shall at once upon the filing of a bond (except bond for costs) enter the same at large upon the journal. The clerk shall endorse upon every affidavit or undertaking filed to procure a writ of attachment, the day, hour, and minute of filing thereof. [Adopted May 5, 1967, effective July 1, 1967.]

Comment by the Court. Subdivision (f) is identical to and supersedes RPPP 77.16W(3).

Rule 79 Books and records kept by the clerk.

(a) Civil Docket. [Reserved.]

(b) Civil Judgments and Orders.
(1) *Generally.* [Reserved.]

(2) *Entry of Judgment in Journal.* [Reserved——See RCW 4.64.030.]

(3) *Judgment Roll.* [Reserved——See RCW 4.64.040.]

(4) *Identification of Judgment Roll.* [Reserved——See RCW 4.64.050.]

(5) *Execution Docket.* [Reserved——See RCW 4.64.060.

(6) *Entry of Verdict in Execution Docket.* [Reserved——See RCW 4.64.020.

(7) *Entries in Execution Docket.* [Reserved——See RCW 4.64.080.]

(8) *Transcript of Justice Docket.* [Reserved——See RCW 4.64.110.]

(9) *Entry of Abstract or Transcript of Judgment.* [Reserved——See RCW 4.64.120.]

(10) *Abstract of Judgment.* [Reserved——See RCW 4.64.090.]

(11) *Abstract of Verdict——Cessation of Lien.* [Reserved——See RCW 4.64.100.]

(c) Indices; Calendars. [Reserved.]

(d) Other Books and Records of Clerk. [Reserved.]

(e) Destruction of Records. [Reserved——See RCW 36.23.070.]

(f) List of Pending Decisions. The Clerk of each county shall maintain a permanent, public record showing each case submitted to a judge and not yet decided. Said list shall clearly show what, if any, further action is to be taken by any party or counsel and when said action should be taken. Said list shall be called to the attention of every judge in said county on the first Monday of each calendar month. Any case which shall have been submitted to any visiting judge and not yet decided shall be called to the attention of such visiting judge by mail on said dates. [Adopted May 5, 1967, amended June 28, 1967, effective July 1, 1967; subsection (f) adopted Nov. 25, 1968, effective Nov. 25, 1968.]

Rule 80 Court reporters

(a) [Reserved.]

(b) Electronic Recording. In any civil or criminal proceedings, electronic or mechanical recording devices may be used to record oral testimony and other oral proceedings in lieu of or supplementary to causing shorthand notes thereof to be taken. In ex parte matters the use of such a device shall rest within the sole discretion of the court. In controverted matters, the use of recording devices shall be at the discretion of the court, unless a party of record or his counsel makes timely objection prior to the commencement of the proceedings. [Adopted May 5, 1967, amended June 28, 1967, effective July 1, 1967.]

XI. GENERAL PROVISIONS (RULES 81–86)

Rule 81 Applicability in general

(a) To What Proceedings Applicable. Except where inconsistent with rules or statutes applicable to special proceedings, these rules shall govern all civil proceedings. Where statutes relating to special proceedings provide for procedure under former statutes applicable generally to civil actions, the procedure shall be governed by these rules.

(b) Conflicting Statutes and Rules. Subject to the provisions of subdivision (a) of this rule, these rules supersede all procedural statutes and other rules that may be in conflict. [Adopted May 5, 1967, effective July 1, 1967.]

Comment by the Court. Subdivision (b) follows RPPP 86.

Rule 82 Venue

(a) Non-Resident. An action against a non-resident of this state may be brought:

(1) In any county in which service of process may be had, or

(2) In a county in which the acts, or any of them, were done which gave rise to service under RCW 4.28-.180 and 4.28.185, or

(3) In the county in which the plaintiffs, or any of them, reside.

Comment by the Court. Subdivision (a) is identical to and supersedes RPPP 82.04W(b).

(b) Request——Waiver. If an action is brought in the wrong county, the action may nevertheless be tried therein unless the defendant, pursuant to the provisions of Rule 12, request that the trial be held in the proper county and files an affidavit of merits. [Adopted May 5, 1967, effective July 1, 1967.]

Rule 83 Local rules of superior court

(a) Adoption. Each superior court by action of a majority of the judges may from time to time make and amend local rules governing its practice not inconsistent with these rules.

Comment by the Court. Subdivision (a) follows the first sentence of FRCP 83 and supersedes RPPP 83.04W.

(b) Format. All local rules shall conform in numbering system and in format to these rules to facilitate their use.

(c) Copies. Copies of all local rules and amendments immediately after adoption shall be supplied to the court administrator in such quantities as he shall require. [Adopted May 5, 1967, effective July 1, 1967.]

Rule 84 Forms [Reserved.]

Rule 85 Title of rules These rules shall be known and cited as the Civil Rules for Superior Court. CR is the official abbreviation. [Adopted May 5, 1967, effective July 1, 1967.]

Rule 86 Effective dates

Generally——Pending Actions. These rules and amendments promulgated pursuant to authority granted to the Supreme Court shall govern all proceedings in actions after they take effect, and also all further proceedings in actions pending on their effective dates, except to the extent that in the opinion of the superior

court, expressed by its order, the application of rules in a particular action pending when the rules take effect would not be feasible or would work injustice, in which event the procedure existing at the time the action was brought applies. [Adopted May 5, 1967, effective July 1, 1967. CF prior RPPP Rule 86.]

SPECIAL PROCEEDINGS RULES FOR SUPERIOR COURT (SPR)

(Formerly: Special Proceedings Rules for Superior Court)

RULE 90.04W Attachments——Duties of the Sheriff

RULE 91.04W Garnishments——Service, Objections, etc.
- (a) Methods of Service
- (b) Irregularities
- (c) Objections
- (d) Judgment Against Garnishee
- (e) Proof of Service
- (f) Applicability

RULE 93.04W Disposition of Reports——Adoptions

RULE 94.04W Divorce Actions
- (a) Defaults——Proof of Service
- (b) Subpoenas by Prosecutor
- (c) Fees
- (d) Entry of Decree
- (e) Approval of Orders etc. by Attorney of Record

RULE 94.05 Continuation of Action——RCW Chapter 26.08
- (a) Domestic Relations
- (b) Termination of Temporary Orders
- (c) Supersession

RULE 98.04W Estates——Probate——Notices to Heirs, Etc. (Abrogated)

RULE 98.05W Probate Proceedings——Inventory (Abrogated)

RULE 98.08W Estates——Settlement of Claims by Executors, Administrators and Receivers

RULE 98.10W Estates——Receivership——Reports

RULE 98.12W Estates Generally——Fees

RULE 98.16W Estates——Guardianship——Settlement of Claims of Minors
- (a) Representation
- (b) Hearing
- (c) Deposit in Court and Disbursements
- (d) Control of Remaining Funds
  - (1) Under $5,000
  - (2) Over $5,000
- (e) Deposit of Minor's Funds

RULE 98.20W Estates——Guardianships——Authorization of Expenditures

EXPLANATION BY THE COURT

Format. When adopting the format of the rule numbering and subdivision organization of the Federal Rules it was necessary to remove all miscellaneous rules applicable to special proceedings. This had been partially accomplished because many of these miscellaneous rules had been assigned rule numbers between 87 and 99. These rule numbers continue to be reserved for this purpose and all the miscellaneous rules relating to special proceedings, except Criminal, are now renumbered in this series. Other than the addition of subheadings, no major revisions have been undertaken in the Special Proceedings Rules.

Statutes. No attempt has been made to cross-reference applicable statutes.

Abbreviation. These "Special Proceedings Rules for Superior Court" may be cited as "SPRs".

Rule 90.04W Attachments——Duties of the sheriff Immediately upon the receipt of a writ of attachment, the sheriff shall endorse thereon, in ink, the day, hour, and minute when the same first came into his hands. [Adopted May 5, 1967, effective July 1, 1967.]

Comment by the Court. This rule is identical to and supersedes RPPP 77.20W.

Rule 91.04W Garnishments——Service, objections, etc.

(a) Methods of Service. In any case where a writ of garnishment has issued, the party at whose instance the writ was issued shall, on or before the day of the service of the writ on the garnishee, mail, or cause to be mailed, by certified mail, a copy of the writ to the defendant or judgment debtor in said cause at his last known post office address; or, in the alternative, a copy of the writ shall be served upon the defendant or judgment debtor in the same manner as is required for personal service of summons upon a party to an action on or before the day of the service of said writ on the garnishee defendant or within 2 days thereafter.

(b) Irregularities. This requirement shall not be deemed jurisdictional, but if the copy is not mailed or served as herein provided, or any irregularity shall appear with respect to the mailing or service, the court may, in its discretion on motion of the defendant or judgment debtor promptly made and supported by affidavit showing that he has suffered substantial injury from the failure to mail said copy, set aside the said garnishment.

(c) Objections. The judgment debtor shall make any objections to the entry of judgment based upon the answer of a garnishee prior to the expiration of the time within which the garnishment should have been answered.

(d) Judgment Against Garnishee. No judgment based on the answer of the garnishee, or upon failure to answer shall be entered prior to the expiration of the time within which the garnishee is required to answer.

(e) Proof of Service. The date of service of the writ of garnishment on the defendant and on the garnishee

shall be determined by proof of service or by such other evidence deemed by the court to be satisfactory.

(f) Applicability. This rule shall apply to garnishments in both the superior courts and justice courts in the State of Washington and shall supplement RCW 7.32-.120 and 12.32.060. [Adopted May 5, 1967, amended June 28, 1967, effective July 1, 1967.]

Comment by the Court. Amendments to RPPP 96.04W are made to conform to 1967 Amendments to Garnishment Statutes.

Rule 93.04W Disposition of reports——Adoptions Any report filed by the next friend of the child in any adoption proceeding insofar as it affects or concerns the adopters shall be open to inspection by the adopter and his attorney. Such report at the close of the entire proceeding shall be sealed and filed by the clerk in the record of the adoption proceeding, or in the discretion of the court shall be destroyed and, in any event, it shall not be disclosed to any person without a special order therefor in writing by the judge, and shall thereafter be sealed as before. [Adopted May 5, 1967, amended June 28, 1967, effective July 1, 1967.]

Comment by the Court. This rule is identical to RPPP 92.04W.

Rule 94.04W Divorce actions. [Adopted May 5, 1967, effective July 1, 1967.] By an order dated November 6, 1974, the Supreme Court rescinded SPR 94.04W, effective January 1, 1975, it appearing that the purpose of the rule has been superseded by RCW Chapter 26.09.

Rule 94.05 Continuation of actions——RCW Chapter 26.08

[Adopted June 28, 1973, effective July 16, 1973. Rescinded April 9, 1974, effective April 9, 1974.]

Rule 98.04W Estates——Probate——Notices to heirs, etc. [Adopted May 5, 1967, amended June 28, 1967, effective July 1, 1967. Abrogated June 5, 1969, effective June 13, 1969.]

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

IN THE MATTER OF THE ABROGATION
OF SPECIAL PROCEEDINGS RULE FOR
SUPERIOR COURT (SPR) 98.04W

No. 25700-A——120
ORDER

WHEREAS Chapter 70 of the 1969 Session Laws supersedes the provisions of Special Proceedings Rule for Superior Court (SPR) 98.04W; it is hereby

ORDERED that Special Proceedings Rule for Superior Court (SPR) 98.04W is hereby abrogated effective on publication of the notice of abrogation in Washington Decisions.

Dated at Olympia, Washington this 5th day of June, 1969.

Rule 98.06W Probate proceedings——Inventory [Adopted May 5, 1967, effective July 1, 1967. Prior: RPPP Rule 93.06W. Abrogated June 28, 1967, effective July 1, 1967.]

Rule 98.08W Estates——Settlement of claims by executors, administrators and receivers In all actions or proceedings in which executors, administrators, receivers, or other persons having charge or settlement of any estate, apply to the court for an order allowing a claim to be compromised and settled for less than its face value, the court shall appoint a day not less than 5 days after such application for hearing the same, unless for good cause shown less time should intervene, and direct the giving of such notice as may be deemed proper. [Adopted May 5, 1967, effective July 1, 1967.]

Comment by the Court. This rule is identical to the first paragraph of RPPP 98.08W.

Rule 98.10W Estates——Receivership——Reports All reports of receivers which involve an accounting shall be filed at least 10 days before the hearing. On filing and presentation of such report the court will appoint a time for hearing the same and will direct such notice to be given as will most likely advise all interested parties of such hearing. [Adopted May 5, 1967, effective July 1, 1967.]

Comment by the Court. This rule is identical to the second paragraph of RPPP 98.08W.

Rule 98.12W Estates generally——Fees Before compensation shall be allowed to any executor, administrator, guardian, or attorney in connection with any probate matter or proceeding, or to any receiver or his attorney, and before any agreement therefor shall be approved, the amount of compensation claimed shall be definitely and clearly set forth in the application therefor, and all parties interested in the matter shall be given notice of the amount claimed in such manner as shall be fixed by statute, or, in the absence of statute, as shall be directed by the court; unless such application

be filed with or made a part of a report or final account of such executor, administrator, guardian, or receiver. [Adopted May 5, 1967, effective July 1, 1967. Prior: RPPP 98.12W.]

Comment by the Court. No change is made in this rule.

Rule 98.16W Estates——Guardianship——Settlement of claims of minors

(a) Representation. In every case where there is a settlement involving a beneficial interest or claim of a person under the age of eighteen, hereinafter referred to as a minor, the court must appoint an independent guardian ad litem to investigate the adequacy of the offered settlement and file a written report. Said guardian ad litem shall be an attorney-at-law and shall serve in said capacity with the authority to withdraw funds on order of the court after ex parte hearing on petition setting forth the grounds therefor, on behalf of the minor by order until the minor attains the age of eighteen or until relieved by the court. The court may dispense with the appointment of the guardian ad litem if a general guardian has been previously appointed or if the court affirmatively finds that the minor is represented by independent counsel.

(b) Hearing. At the time the petition for approval of the settlement is heard, the allowance and taxation of all fees, costs, and other charges incident to the settlement of the minor's claim shall be considered and disposed of by the court.

(c) Deposit in Court and Disbursements. The total judgment shall be paid into the registry of the court. All sums deductible therefrom including costs, attorneys' fees, hospital and medical expenses, and any other expense, shall be paid upon approval of the court.

(d) Control of Remaining Funds.

(1) *Under $5,000.* If the money or the value of other property remaining is $5,000 or less and there is no general guardian of the ward, the court shall require that (A) the money be deposited in a bank or trust company or be invested in an account in an insured financial institution for the benefit of the ward subject to withdrawal only upon the order of the court as a part of the original proceeding, or (B) a general guardian be appointed and the money or other property be paid or delivered to such guardian.

(2) *Over $5,000.* If the money or the value of other property remaining exceeds $5,000, and there is no general guardian of the ward, the court in the order or judgment shall require that a general guardian be appointed.

(e) Deposit of Minor's Funds. Checks for funds that go to the minor may be made out by the clerk jointly to the depository bank, trust company, or insured financial institution and the independent attorney for the minor, guardian ad litem or general guardian and deposit shall be made in a blocked account for the minor with provision that withdrawals cannot be made without court order. A deposit receipt to that effect must be forthwith filed with the court by the attorney or guardian. [Adopted May 5, 1967, amended May 26, 1972, effective July 1, 1972, amended April 14, 1974, effective July 1, 1974.]

Rule 98.20W Estates——Guardianships——Authorization of expenditures Judges of the superior court in charge of probate, in directing and authorizing a guardian of the estate of the ward to make expenditures from the estate in monthly or other periodic installments, shall limit the term of such order to a period not greater than 12 month. [Adopted May 5, 1967, effective July 1, 1967.]

Comment by the Court. This rule is identical to RPPP 98.20W.

SUPERIOR COURT CRIMINAL RULES (CRR)

(Formerly: Criminal Rules for Superior Court)

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CHAPTER I—SCOPE, PURPOSE AND CONSTRUCTION

Rule 1.1 Scope. These rules govern the procedure in the courts of general jurisdiction of the State of Washington in all criminal proceedings and supersede all procedural statutes and rules that may be in conflict and shall be interpreted and supplemented in light of the common law and the decisional law of this State. These rules shall not be construed to affect or derogate from the constitutional rights of any defendant. [Adopted Apr. 18, 1973, effective July 1, 1973.]

Rule 1.2 Purpose and construction. These rules are intended to provide for the just determination of every criminal proceeding. They shall be construed to secure simplicity in procedure, fairness in administration, effective justice, and the elimination of unjustifiable expenses and delay. [Adopted Apr. 18, 1973, effective July 1, 1973.]

Rule 1.3 Effect. Except as otherwise provided elsewhere in these rules, on their effective date:

(a) Any acts done before the effective date in any proceedings then pending or any action taken in any proceeding pending under rules of procedure in effect prior to the effective date of these rules and any constitutional right are not impaired by these rules.

(b) These rules also apply to any proceedings in court then pending or thereafter commenced regardless of when the proceedings were commenced, except to the extent that in the opinion of the court, the former procedure should continue to be made applicable in a particular case in the interest of justice or because of infeasibility or application of the procedures of these rules. [Adopted Apr. 18, 1973, effective July 1, 1973.]

Rule 1.4 Prosecuting attorney—Definition. Whenever used in these rules, prosecuting attorney shall include deputy prosecuting attorneys, or such other

person as may be designated by statute. [Adopted Apr. 18, 1973, effective July 1, 1973.]

CHAPTER 2—PROCEDURES PRIOR TO ARREST AND OTHER SPECIAL PROCEEDINGS

Rule 2.1 The indictment and the information.

(a) Use of Indictment or Information. The initial pleading by the state shall be an indictment or an information in all criminal proceedings filed by the prosecuting attorney.

(b) Nature and Contents. The indictment or the information shall be a plain, concise and definite written statement of the essential facts constituting the offense charged. It shall be signed by the prosecuting attorney. Allegations made in one count may incorporated by reference in another count. It may be alleged that the means by which the defendant committed the offense are unknown or that he committed it by one or more specified means. The indictment or information shall state for each count the official or customary citation of the statute, rule, regulation or other provision of law which the defendant is alleged therein to have violated. Error in the citation or its omission shall not be ground for dismissal of the indictment or information or for reversal of a conviction if the error or omission did not mislead the defendant to his prejudice.

(c) Surplusage. The court on motion of the defendant may strike surplusage from the indictment or information.

(d) Amendment of Information. The court may permit any information to be amended at any time before verdict or finding if substantial rights of the defendant are not prejudiced.

(e) Bill of Particulars. The court may direct the filing of a bill of particulars. A motion for a bill of particulars may be made before arraignment or within 10 days after arraignment or at such later time as the court may permit. A bill of particulars may be amended at any time subject to such conditions as justice requires. [Adopted Apr. 19, 1973, effective July 1, 1973.]

Comment: Supersedes RCW 10.37.020, 10.37.025, 10.37.026, 10-.37.035, 10.37.180; RCW 10.40.080; RCW 10.46.170.

Rule 2.2 Warrant upon indictment or information.

(a) When Warrant to Issue. When an indictment is found or an information is filed, the court may direct the clerk to issue a warrant for the arrest of the defendant, returnable forthwith, or direct the clerk to issue a summons commanding the defendant to appear at a specified time and place.

(b) Issuance of Summons in Lieu of Warrant.

(1) *When summons must issue.* If the indictment or information charges only the commission of a misdemeanor or a gross misdemeanor, the court shall direct the clerk to issue a summons instead of a warrant unless it finds reasonable cause to believe that the defendant will not appear in response to a summons, or that arrest is necessary to prevent serious bodily harm to the accused or another, in which case it may issue a warrant.

(2) *Failure to appear on summons.* If a person fails to appear in response to a summons, or if service is not effected within a reasonable time, a warrant for arrest may issue.

(c) Requisites of a Warrant.

(1) *Warrant.* The warrant shall be in writing and in the name of the State of Washington, shall be signed by the clerk with the title of his office, and shall state the date when issued and the county where issued. It shall specify the name of the defendant, or if his name is unknown, any name or description by which he can be identified with reasonable certainty. The Warrant shall specify the offense charged against the defendant and shall command that the defendant be arrested and brought forthwith before the court issuing the warrant. If the offense is bailable, the judge issuing the warrant shall set forth thereon conditions for release pursuant to Rule 3.2.

(d) Execution; Service.

(1) *Execution of warrant.* The warrant shall be directed to all peace officers in the state and shall be executed only by a peace officer.

(2) *Service of summons.* The summons may be served any place within the state. It shall be served by a peace officer who shall deliver a copy of the same to the defendant personally, or it may be served by mailing the same, postage prepaid, to the defendant at his address.

(e) Return. The officer executing a warrant shall make return thereof to the court before whom the defendant is brought pursuant to these rules. At the request of the prosecuting attorney any unexecuted warrant shall be returned to the judge by whom issued and shall be cancelled by him. The person to whom a summons has been delivered for service shall, on or before the return date, file a return thereof with the judge before whom summons is returnable. For reasonable cause, the judge may order that the warrant be returned to him.

(f) Defective Warrant or Summons.

(1) *Amendment.* No person arrested under a warrant or appearing in response to a summons shall be discharged from custody or dismissed because of any irregularity in the warrant or summons, but the warrant or summons may be amended so as to remedy any such irregularity.

(2) *Issuance of new warrant or summons.* If during the preliminary examination of any person arrested under a warrant or appearing in response to a summons, it appears that the warrant or summons does not properly name or describe the defendant or the offense with which he is charged, or that although not guilty of the offense specified in the warrant or summons, there is reasonable ground to believe that he is guilty of some other offense, the judge shall not discharge or dismiss the defendant but may allow a new indictment or information to be filed and shall thereupon issue a new warrant or summons. [Adopted Apr. 18, 1973, effective July 1, 1973.]

Comment: Supersedes RCW 10.31.010, 10.31.020.

Rule 2.3 Search and seizure.

(a) Authority to Issue Warrant. A search warrant authorized by this rule may be issued by the court upon request of a peace officer or a prosecuting attorney.

(b) Property Which May Be Seized With a Warrant. A warrant may be issued under this rule to search for and seize any (1) evidence of a crime; or (2) contraband, the fruits of crime, or things otherwise criminally possessed; or (3) weapons or other things by means of which a crime has been committed or reasonably appears about to be committed.

(c) Issuance and Contents. A warrant shall issue only on an affidavit or affidavits establishing the grounds for issuing the warrant. Such affidavit or affidavits may consist of an officer's sworn telephonic statement to the judge; provided, however, such sworn telephonic testimony must be electronically recorded by the judge on a recording device in the custody of the judge at the time transmitted and the recording shall be retained in the court records and reduced to writing as soon as possible thereafter. If the judge finds that probable cause for the issuance of a warrant exists, he shall issue a warrant or direct an individual whom he authorizes for such purpose to affix his signature to a warrant identifying the property and naming or describing the person, place or thing to be searched. The finding of probable cause shall be based on evidence, which may be hearsay in whole or in part provided there is a substantial basis for believing the source of the hearsay to be credible and for believing that there is factual basis for the information furnished. Before ruling on a request for a warrant the court may require the affiant to appear personally and may examine under oath the affiant and any witnesses he may produce. The judge shall record a summary of any additional evidence on which he relies. The warrant shall be directed to any peace officer. It shall command the officer to search, within a specified period of time not to exceed 10 days, the person, place, or thing named for the property specified. It shall designate a magistrate to whom it shall be returned. The warrant may be served at any time.

(d) Execution and Return With Inventory. The peace officer taking property under the warrant shall give to the person from whom or from whose premises the property is taken a copy of the warrant and a receipt for the property taken. If no such person is present, the officer may post a copy of the search warrant and receipt. The return shall be made promptly and shall be accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the person from whose possession or premises the property is taken, or in the presence of at least one person other than the officer. The judge shall upon request deliver a copy of the inventory to the person from whom or from whose premises the property was taken and to the applicant for the warrant.

(e) Motion for Return of Property. A person aggrieved by an unlawful search and seizure may move the court for the return of the property on the ground that the property was illegally seized and that he is lawfully entitled to possession thereof. If the motion is granted the property shall be returned. If a motion for return of property is made or comes on for hearing after an indictment or information is filed in the court in which the motion is pending, it shall be treated as a motion to suppress. [Adopted Apr. 18, 1973, effective July 1, 1973.]

Comment: Supersedes RCW 10.79.010, 10.79.030.

CHAPTER 3——RIGHTS OF DEFENDANTS

Rule 3.1 Right to and assignment of counsel.

(a) Types of Proceedings.

(1) The right to counsel shall extend to all criminal proceedings for offenses punishable by loss of liberty regardless of their denomination as felonies, misdemeanors, or otherwise.

(b) Stage of Proceedings.

(1) The right to counsel shall accrue as soon as feasible after the defendant is taken into custody, when he appears before a committing magistrate, or when he is formally charged, whichever occurs earliest.

(2) Counsel shall be provided at every stage of the proceedings, including sentencing, appeal, and post-conviction review. Counsel initially appointed shall continue to represent the defendant through all stages of the proceedings unless a new appointment is made by the court following withdrawal of original counsel pursuant to subsection (e) because geographical considerations or other factors make it necessary.

(c) Explaining the Availability of a Lawyer.

(1) When a person is taken into custody he shall immediately be advised of his right to counsel. Such advice shall be made in words easily understood, and it shall be stated expressly that a person who is unable to pay a lawyer is entitled to have one provided without charge.

(2) At the earliest opportunity a person in custody who desires counsel shall be provided access to a telephone, the telephone number of the public defender or official responsible for assigning counsel, and any other means necessary to place him in communication with a lawyer.

(d) Assignment of Counsel.

(1) Unless waived, counsel shall be provided to any person who is financially unable to obtain one without causing substantial hardship to himself or his family. Counsel shall not be denied to any person merely because his friends or relatives have resources adequate to retain counsel or because he has posted or is capable of posting bond.

(2) The ability to pay part of the cost of counsel shall not preclude assignment. The assignment of counsel may be conditioned upon part payment pursuant to an established method of collection.

(e) Withdrawal of Attorneys. Whenever a criminal cause has been set for trial, no attorney shall be allowed

to withdraw from said cause, except upon written consent of the court, for good and sufficient reason shown.

(f) Services Other Than Counsel. Counsel for a defendant who is financially unable to obtain investigative, expert, or other services necessary to an adequate defense in his case may request them by a motion. Upon finding that the services are necessary and that the defendant is financially unable to obtain them, the court shall authorize counsel to obtain the services on behalf of the defendant. The courts, in the interest of justice and on a finding that timely procurement of necessary services could not await prior authorization, shall ratify such services after they have been obtained.

The court shall determine reasonable compensation for the services and direct payment to the organization or person who rendered them upon the filing of a claim for compensation supported by affidavit specifying the time expended and the services, and expenses incurred on behalf of the defendant, and the compensation received in the same case or for the same services from any other source. [Adopted Apr. 18, 1973, effective July 1, 1973.]

Comment: Supersedes RCW 10.01.110; RCW 10.40.030; RCW 10.46.050.

Rule 3.2 Pretrial release.

(a) Personal Recognizance. Any defendant charged with an offense shall at his first court appearance be ordered released on his personal recognizance pending trial unless the court determines that such recognizance will not reasonably assure his appearance, when required. When such a determination is made, the court shall impose the least restrictive of the following conditions that will reasonably assure his appearance or if no single condition gives that assurance, any combination of the following conditions:

(1) place the defendant in the custody of a designated person or organization agreeing to supervise him;

(2) place restrictions on the travel, association, or place of abode of the defendant during the period of release;

(3) require the execution of an unsecured appearance bond in a specified amount;

(4) require the execution of an appearance bond in a specified amount and the deposit in the registry of the court in cash or other security as directed, of a sum not to exceed 10 per centum of the amount of the bond, such deposit to be returned upon the performance of the conditions of release;

(5) require the execution of an appearance bond with sufficient solvent sureties, or the deposit of cash in lieu thereof;

(6) require the defendant return to custody during specified hours; or

(7) impose any condition other than detention deemed reasonably necessary to assure appearance as required.

(b) Relevant Factors. In determining which conditions of release will reasonably assure the defendant's appearance, the court shall, on the available information, consider the relevant facts including: the length and character of the defendant's residence in the community; his employment status and history and financial condition; his family ties and relationships; his reputation, character and mental condition; his history of response to legal process; his prior criminal record; the willingness of responsible members of the community to vouch for the defendant's reliability and assist him in appearing in court; the nature of the charge; and any other factors indicating the defendant's ties to the community.

(c) Conditions of Release. Upon a showing that there exists a substantial danger that the defendant will commit a serious crime or that the defendant's physical condition is such to jeopardize his safety or that of others or that he will seek to intimidate witnesses, or otherwise unlawfully interfere with the administration of justice, the court, upon the defendant's release, may impose one or more of the following conditions:

(1) prohibit him from approaching or communicating with particular persons or classes of persons;

(2) prohibit him from going to certain geographical areas or premises;

(3) prohibit him from possessing any dangerous weapons, or engaging in certain described activities or indulging in intoxicating liquors or in certain drugs;

(4) require him to report regularly to and remain under the supervision of an officer of the court or other person or agency;

(5) detain him until his physical condition permits his release.

(d) Order for Release. A court authorizing the release of the defendant under this rule shall issue and appropriate order containing a statement of the conditions imposed, if any, shall inform him of the penalties applicable to violations of the conditions imposed, if any, shall inform him of the penalties applicable to violations of the conditions of his release and shall advise him that a warrant for his arrest may be issued immediately upon any such violation.

(e) Review of Conditions. Upon determining the conditions of release, the court, upon request, after twenty-four hours from the time of release, may review the conditions previously imposed.

(f) Amendment of Order. The court ordering the release of a defendant on any condition specified in this rule may at any time on change of circumstances or showing of good cause amend its order to impose additional or different conditions for release.

(g) Revocation of Release. Upon the court's own motion or a verified application by the prosecuting attorney alleging with specificity that a defendant has willfully violated a condition of his release, a court shall order the defendant to appear for immediate hearing or issue a warrant directing the arrest of the defendant for immediate hearing. A law enforcement officer having probable cause to believe that a defendant released pending trial for a felony is about to leave the state or that he has violated a condition of such release, imposed pursuant to section (c), under circumstances rendering the securing of a warrant impracticable, may

arrest the defendant and take him forthwith before the court.

(h) Release after Verdict. A defendant (1) who is charged with a capital offense, or (2) who has been found guilty of a felony and is either awaiting sentence or has filed an appeal, shall be released pursuant to this rule, unless the court finds that the defendant may flee the state or pose a substantial danger to another or to the community. If such a risk of flight or danger exists, the defendant may be ordered detained.

(i) Evidence. Information stated in, or offered in connection with, any order entered pursuant to this rule need not conform to the rules pertaining to the admissibility of evidence in a court of law.

(j) Forfeiture. Nothing contained in this rule shall be construed to prevent the disposition of any case or class of cases by forfeiture of collateral security where such disposition is authorized by the court.

(k) Defendant Discharged on Recognizance or Bail——Absence——Forfeiture. If the defendant has been discharged on his own recognizance, on bail, or has deposited money instead thereof, and does not appear when his personal appearance is necessary, the court, in addition to the forfeiture of the recognizance, or of the money deposited, may direct the clerk to issue a bench warrant for his arrest. [Adopted Apr. 18, 1973, effective July 1, 1973.]

Comment: Supersedes RCW 10.16.190; RCW 10.19.010, 10.19-.020, 10.19.025, 10.19.050, 10.19.070, 10.19.080; RCW 10.40.130; RCW 10.46.170; RCW 10.64.035.

Rule 3.3 Speedy trial.

(a) Responsibility of Court. It shall be the responsibility of the court to insure to each person charged with crime a speedy trial in accordance with the provisions of this rule.

(b) Time Limit. A criminal charge shall be brought to trial within 90 days following the preliminary appearance.

(c) Priority Over Civil Cases. Criminal trials shall take precedence over civil. A defendant unable to obtain pretrial release shall have priority and the charge shall be brought to trial within 60 days following the preliminary appearance.

(d) Excluded Periods. The following periods shall be excluded in computing the time for trial:

(1) All proceedings relating to the competency of the defendant to stand trial.

(2) Preliminary proceedings and trial on another charge.

(3) Delay granted by the court pursuant to section (e).

(4) Delay in justice court resulting from a stipulated continuance made of record.

(5) Delay resulting from the absence of the defendant.

(6) The time between the dismissal and the refiling of the same charge.

(e) Continuances. Continuances or other delays may be granted as follows:

(1) On motion of the defendant on a showing of good cause.

(2) On motion of the prosecuting attorney if:

(i) the defendant expressly consents to a continuance or delay and good cause is shown; or

(ii) The state's evidence is presently unavailable, the prosecution has exercised due diligence, and there are reasonable grounds to believe that it will be available within a reasonable time; or

(iii) required in the due administration of justice and the defendant will not be substantially prejudiced in the presentation of his defense.

(3) The court on its own motion may continue the case when required in the due administration of justice and the defendant will not be substantially prejudiced in the presentation of his defense.

(f) Dismissal With Prejudice. A criminal charge not brought to trial as required by this rule shall be dismissed with prejudice. [Adopted Apr. 18, 1973, effective July 1, 1973.]

Comment: Supersedes RCW 10.40.020; RCW 10.43.010; RCW 10.46.010.

Rule 3.4 Presence of the defendant.

(a) When Necessary. The defendant shall be present at the arraignment, at every stage of the trial including the empaneling of the jury and the return of the verdict, and at the imposition of sentence, except as otherwise provided by these rules, or as excused or excluded by the court for good cause shown.

(b) Effect of Voluntary Absence. In prosecutions for offenses not punishable by death, the defendant's voluntary absence after the trial has commenced in his presence shall not prevent continuing the trial to and including the return of the verdict. A corporation may appear by counsel for all purposes. In prosecutions for offenses punishable by fine only, the court, with the written consent of the defendant, may permit arraignment, plea, trial and imposition of sentence in the defendant's absence.

(c) Defendant Not Present. If in any case the defendant is not present when his personal attendance is necessary, the court may order the clerk to issue a warrant for his arrest, which may be served as a warrant of arrest in other cases. [Adopted Apr. 18, 1973, effective July 1, 1973.]

Comment: Supersedes RCW 10.01.080; RCW 10.46.120, 10.46-.130; RCW 10.64.020, 10.64.030.

Rule 3.5 Confession procedure.

(a) Requirement For and Time of Hearing. When a statement of the accused is to be offered in evidence, the judge at the time of the omnibus hearing shall hold or set the time for a hearing, if not previously held, for the purpose of determining whether the statement is admissable. A court reporter or a court approved electronic recording device shall record the evidence adduced at this hearing.

(b) Duty of Court to Inform Defendant. It shall be the duty of the court to inform the defendant that: (1) he may, but need not, testify at the hearing on the circumstances surrounding the statement; (2) if he does testify at the hearing, he will be subject to cross examination with respect to the circumstances surrounding the statement and with respect to his credibility; (3) if he does testify at the hearing, he does not by so testifying waive his right to remain silent during the trial; and (4) if he does testify at the hearing, neither this fact nor his testimony at the hearing shall be mentioned to the jury unless he testifies concerning the statement at trial.

(c) Duty of Court to Make a Record. After the hearing, the court shall set forth in writing: (1) the undisputed facts; (2) the disputed facts; (3) conclusions as to the disputed facts; and (4) conclusion as to whether the statement is admissible and the reasons therefor.

(d) Rights of Defendant When Statement Is Ruled Admissible. If the court rules that the statement is admissible, and it is offered in evidence: (1) the defense may offer evidence or cross–examine the witnesses, with respect to the statement without waiving an objection to the admissibility of the statement; (2) unless the defendant testifies at the trial concerning the statement, no reference shall be made to the fact, if it be so, that the defendant testified at the preliminary hearing on the admissibility of the confession; (3) if the defendant becomes a witness on this issue, he shall be subject to cross–examination to the same extent as would any other witness; and, (4) if the defense raises the issue of voluntariness under subsection (1) above, the jury shall be instructed that they may give such weight and credibility to the confession in view of the surrounding circumstances, as they see fit. [Adopted Apr. 18, 1973, effective July 1, 1973.]

CHAPTER 4—PROCEDURES PRIOR TO TRIAL

Rule 4.1 Arraignment.

(a) Time. Promptly after the indictment or information has been filed, the defendant shall be arraigned thereon in open court.

(b) Counsel. If the defendant appears without counsel, the court shall inform him of his right to have counsel before being arraigned. The court shall inquire if he has counsel. If he is not represented and is unable to obtain counsel, counsel shall be assigned to him by the court, unless otherwise provided.

(c) Waiver of Counsel. If the defendant chooses to proceed without counsel, the court shall ascertain whether this waiver is made voluntarily, competently and with knowledge of the consequences. If the court finds the waiver valid, an appropriate finding shall be entered in the minutes. Unless the waiver is valid, the court shall not proceed with the arraignment until counsel is provided. Waiver of counsel at arraignment shall not preclude the defendant from claiming his right to counsel in subsequent proceedings in the cause, and the defendant shall be so informed. If such claim for counsel is not timely, the court shall appoint counsel but may deny or limit a continuance.

(d) Name. Defendant shall be asked his true name. If he alleges that his true name is one other than that by which he is charged, it must be entered in the minutes of the court, and subsequent proceedings shall be had against him by that name or other names relevant to the proceedings.

(e) Reading. The indictment or information shall be read to defendant. [Adopted Apr. 18, 1973, effective July 1, 1973.]

Comment: Supersedes RCW 10.40.010, 10.40.030, 10.40.040; RCW 10.46.030 in part, 10.46.040.

Rule 4.2 Pleas.

(a) Types. A defendant may plead not guilty, not guilty by reason of insanity or guilty.

(b) Multiple Offenses. Where the indictment or information charges two or more offenses in separate counts the defendant shall plead separately to each.

(c) Pleading Insanity. When it is desired to interpose the defense of insanity or mental irresponsibility on behalf of one charged with a crime the defendant, his counsel or other person authorized by law to appear and act for him, shall at the time of pleading to the information or indictment file a plea in writing in addition to the plea or pleas required or permitted by other laws than this setting up (1) his insanity or mental irresponsibility at the time of the commission of the crime charged, and (2) whether the insanity or mental irresponsibility still exists, or (3) whether the defendant has become sane or mentally responsible between the time of the commission of the crime and the time of the trial. The plea may be interposed at any time thereafter, before the submission of the cause to the jury if it be proven that the insanity or mental irresponsibility of the defendant at the time of the crime was not before known to any person authorized to interpose a plea.

(d) Voluntariness. The court shall not accept a plea of guilty, without first determining that it is made voluntarily, competently and with an understanding of the nature of the charge and the consequences of the plea. The court shall not enter a judgment upon a plea of guilty unless it is satisfied that there is a factual basis for the plea.

(e) Agreements. If a plea of guilty is based upon an agreement between the defendant and the prosecuting attorney, such agreement must be made a part of the record at the time the plea is entered. No agreement shall be made which specifies what action the judge shall take on or pursuant to the plea or which attempts to control the exercise of his discretion, and the court shall so advise the defendant.

(f) Withdrawal of Plea. The court shall allow a defendant to withdraw his plea of guilty whenever it appears that the withdrawal is necessary to correct a manifest injustice.

(g) Written Statement. A written statement of the defendant in substantially the form set forth below shall be filed on a plea of guilty:

SUPERIOR COURT OF WASHINGTON
FOR ---------- COUNTY

STATE OF WASHINGTON, Plaintiff, vs. ---------------, Defendant.	NO. ----- STATEMENT OF DEFENDANT ON PLEA OF GUILTY

1. My true name is -----------------.
2. My age is -----------------------.
3. My lawyer is --------------------.
4. The court has told me that I am charged with the crime of ---------------, the maximum sentence for which is ---------------.
5. The court has told me that:
   (a) I have the right to have counsel (a lawyer), and that if I cannot afford to pay for counsel, one will be provided at no expense to me.
   (b) I have the right to a trial by jury.
   (c) I have the right to hear and question witnesses who testify against me.
   (d) I have the right to have witnesses testify for me. These witnesses can be made to appear at no expense to me.
   (e) The charge must be proven beyond a reasonable doubt.
6. I plead ---------- to the crime of ---------- as charged in the information, a copy of which I have received.
7. I make this plea freely and voluntarily.
8. No one has threatened harm of any kind to me or to any other person to cause me to make this plea.
9. No person has made promises of any kind to cause me to enter this plea except as set forth in this statement.
10. I have been told the Prosecuting Attorney will take the following action and make the following recommendation to the court:

----

11. I have been told and fully understand that the court does not have to follow the Prosecuting Attorney's recommendation as to sentence. The court is completely free to give me any sentence it sees fit no matter what the Prosecuting Attorney recommends.
12. The court has told me that if I am sentenced to prison the Judge must sentence me to the maximum term required by the law, which in this case is ---------------. The minimum term of sentence is set by the Board of Prison Terms and Paroles. The Judge and Prosecuting Attorney may recommend a minimum sentence to the Board but the Board does not have to follow their recommendation. I have been further advised that the crime with which I am charged carries a mandatory minimum of ----- years. (If not applicable, this sentence shall be stricken and initialed by the defendant and the judge.)
13. The court has asked me to state briefly in my own words what I did that resulted in my being charged with the crime in the information. This is my statement: ----------------------------------

----

14. I have read or have had read to me all of the numbered sections above (1 through 14) and have received a copy of "Statement of Defendant on Plea of Guilty." I have no further questions to ask of the court.

The above statement was read by or read to the defendant and signed by the defendant in the presence of his attorney, ---------------, Prosecuting Attorney ---------------, and the undersigned Judge in open court.

DATED THIS ----- day of ----------, 19--.

Judge

[Adopted Apr. 18, 1973, effective July 1, 1973.]

Comment: Supersedes RCW 10.40.150, 10.40.160, 10.40.175.

Rule 4.3 Joinder of offenses and defendants.

(a) Joinder of Offenses.

Two or more offenses may be joined in one charge, with each offense stated in a separate count, when the offenses, whether felonies or misdemeanors or both:

(1) are of the same or similar character, even if not part of a single scheme or plan; or

(2) are based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan;

(3) improper joinder of offenses or defendants shall not preclude subsequent prosecution on the same charge for the charge or defendant improperly joined.

(b) Joinder of Defendants.

Two or more defendants may be joined in the same charge:

(1) when each of the defendants is charged with accountability for each offense included;

(2) when each of the defendants is charge with conspiracy and one or more of the defendants is also charge with one or more offenses alleged to be in furtherance of the conspiracy; or

(3) when, even if conspiracy is not charged and all of the defendants are not charged in each count, it is alleged that the several offenses charged:

(i) were part of a common scheme or plan; or

(ii) were so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the others.

(c) Failure to Join Related Offenses.

(1) Two or more offenses are related offenses, for purposes of this rule, if they are within the jurisdiction and venue of the same court and are based on the same conduct.

(2) When a defendant has been charged with two or more related offenses, his timely motion to join them for trial should be granted unless the court determines that because the prosecuting attorney does not have sufficient evidence to warrant trying some of the offenses at that time, or for some other reason, the ends of justice would be defeated if the motion were granted. A defendant's failure to so move constitutes a waiver of any right of joinder as to related offenses with which the defendant knew he was charged.

(3) A defendant who has been tried for one offense may thereafter move to dismiss a charge for a related offense, unless a motion for joinder of these offenses was previously denied or the right of joinder was waived as provided in section (b). The motion to dismiss must be made prior to the second trial, and shall be granted unless the court determines that because the prosecuting attorney was unaware of the facts constituting the related offense or did not have sufficient evidence to warrant trying this offense at the time of the first trial, or for some other reason, the ends of justice would be defeated if the motion were granted.

(4) Entry of a plea of guilty to one offense does not bar the subsequent prosecution of a related offense unless the plea of guilty was entered on the basis of a plea agreement in which the prosecuting attorney agreed to seek or not to oppose dismissal of other related charges or not to prosecute other potential related charges.

(d) Authority of Court to Act on Own Motion.

The court may order consolidation for trial of two or more indictments or informations if the offenses or defendants could have been joined in a single charge. [Adopted Apr. 18, 1973, effective July 1, 1973.]

Rule 4.4 Severance of offenses and defendants.

(a) Timeliness of Motion; Waiver.

(1) A defendant's motion for severance of offenses or defendants must be made before trial, except that a motion for severance may be made before or at the close of all the evidence if the interests of justice require. Severance is waived if the motion is not made at the appropriate time.

(2) If a defendant's pretrial motion for severance was overruled he may renew the motion on the same ground before or at the close of all the evidence. Severance is waived by failure to renew the motion.

(b) Severance of Offenses.

(1) The court, on application of the prosecuting attorney, or on application of the defendant other than under section (a), shall grant a severance of offenses whenever before trial or during trial with consent of the defendant, the court determines that severance will promote a fair determination of the defendant's guilt or innocence of each offense.

(c) Severance of Defendants.

(1) A defendant's motion for severance on the ground that an out–of–court statement of a co–defendant referring to him is inadmissible against him shall be granted unless:

(i) The prosecuting attorney elects not to offer the statement in the case in chief.

(ii) Deletion of all references to the moving defendant will eliminate any prejudice to him from the admission of the statement.

(2) The court, on application of the prosecuting attorney, or on application of the defendant other than under subsection (i), should grant a severance of defendants whenever:

(i) if before trial, it is deemed necessary to protect a defendant's rights to a speedy trial, or it is deemed appropriate to promote a fair determination of the guilt or innocence of a defendant; or

(ii) if during trial upon consent of the severed defendant, it is deemed necessary to achieve a fair determination of the guilt or innocence of a defendant.

(3) When such information would assist the court in ruling on a motion for severance of defendants, the court may order the prosecuting attorney to disclose any statement made by the defendants which he intends to introduce in evidence at the trial.

(d) Failure to Prove Ground for Joinder of Defendants.

If, pursuant to section (a), a defendant moves to be severed at the conclusion of the prosecution's case or of all the evidence, and there is not sufficient evidence to support the grounds upon which the moving defendant was joined or previously denied severance, the court shall grant a severance if, in view of this lack of evidence, failure to sever prejudices the moving defendant.

(e) Authority of Court to Act on Own Motion. The court may order a severance of offenses or defendants before trial if a severance could be obtained on motion of a defendant or the prosecution. [Adopted Apr. 18, 1973, effective July 1, 1973.]

Comment: Supersedes RCW 10.46.100.

Rule 4.5 Omnibus hearing.

(a) When Required. When a plea of not guilty is entered, the court may set a time for an omnibus hearing.

(b) Time. the time set for the omnibus hearing shall allow sufficient time for counsel to (i) initiate and complete discovery; (ii) conduct further investigation of the case, as needed; and (iii) continue plea discussions.

(c) Checklist. At the omnibus hearing, the trial court on its own initiative, utilizing a checklist substantially in the form of the omnibus application by plaintiff and defendant (see section (h)) shall:

(i) ensure that standards regarding provision of counsel have been complied with;

(ii) ascertain whether the parties have completed discovery and, if not, make orders appropriate to expedite completion;

(iii) make rulings on any motions, other requests then pending, and ascertain whether any additional motions, or requests will be made at the hearing or continued portions thereof;

(iv) ascertain whether there are any procedural or constitutional issues which should be considered;

(v) upon agreement of counsel, or upon a finding that the trial is likely to be protracted or otherwise unusually complicated, set a time for a pretrial conference; and

(vi) permit defendant to change his plea.

(d) Motions. All motions and other requests prior to trial should ordinarily be reserved for and presented orally at the omnibus hearing unless the court otherwise directs. Failure to raise or give notice at the hearing of any error or issue of which the party concerned has

knowledge may constitute waiver of such error or issue. Checklist forms substantially like the memorandum required by section (h) shall be made available by the court and utilized at the hearing to ensure that all requests, errors and issues are then considered.

(e) Continuance. Any and all issues should be raised either by counsel or by the court without prior notice, and if appropriate, informally disposed of. If additional discovery, investigation or preparation, or evidentiary hearing, or formal presentation is necessary for a fair and orderly determination of any issue, the omnibus hearing should be continued from time to time until all matters raised are properly disposed of.

(f) Record. A verbatim record, (electronic, mechanical or otherwise), shall be made of all proceedings at the hearing.

(g) Stipulations. Stipulations by any party shall be binding upon that party at trial unless set aside or modified by the court in the interests of justice.

(h) Memorandum. At the conclusion of the hearing, a summary memorandum shall be made indicating disclosure made, rulings and orders of the court, stipulations, and any other matters determined or pending. Such summary memorandum shall be in substantially the following form:

Copy Received   Date Filed by Clerk

SUPERIOR COURT OF WASHINGTON
FOR ---------- COUNTY

STATE OF WASHINGTON, Plaintiff,	NO. -----
vs.	OMNIBUS APPLICATION BY PLAINTIFF AND DEFENDANT
--------------, Defendant.	

Date ----------------------------
Notice to -------------------------
Purpose: To prepare for trial or plea and to determine the extent of discovery to be granted to each party.

I.
MOTION BY DEFENDANT

Comes now the defendant and makes the applications or motions checked off below:

1. To dismiss for failure of the indictment (or information) to state an offense. Granted ----- Denied -----.
2. To sever defendant's case and for separate trial.
3. To sever counts and for a separate trial.
4. To make more definite and certain.
5. For discovery of all oral, written or recorded statements made by defendant to investigating officers or to third parties and in the possession of the plaintiff.
6. For discovery of the names and addresses of plaintiff's witnesses and their statements.
7. To inspect physical or documentary evidence in plaintiff's possession.
8. To suppress physical evidence in plaintiff's possession because of (1) illegal search, (2) illegal arrest. Hearing set for ----------.
9. For a hearing under Rule 3.5.
10. To suppress evidence of the identification of the defendant.
11. To take the deposition of witnesses.
12. To secure the appearance of a witness at trial or hearing.
13. To inquire into the conditions of pretrial release. Affirmed ---------- Modified to ----------.

To Require the Prosecution

14. To state——
   (a) If there was an informer involved;
   (b) Whether he will be called as a witness at the trial; and
   (c) To state the name and address of the informer or claim the privilege.
15. To disclose evidence in plaintiff's possession, favorable to defendant on the issue of guilt.
16. To disclose whether it will rely on prior acts or convictions of a similar nature for proof of knowledge or intent.
17. To advise whether any expert witness will be called, and if so, supply——
   (a) Name of witness, qualifications and subject of testimony;
   (b) Report.
18. To supply any reports or tests of physical or mental examinations in the control of the prosecution.
19. To supply any reports of scientific tests, experiments, or comparisons and other reports to experts in the control of the prosecution, pertaining to this case.
20. To permit inspection and copying of any books, papers, documents, photographs or tangible objects which the prosecution——
   (a) Obtained from or belonging to the defendant, or
   (b) Which will be used at the hearing or trial.
21. To supply any information known concerning a prior conviction of persons whom the prosecution intends to call as witnesses at the hearing or trial.
22. To inform the defendant of any information he has indicating entrapment of the defendant.

Dated: ----------   -----------------------
Attorney for Defendant

II.
MOTION BY PLAINTIFF

The plaintiff makes the application or motions checked:

1. Defendant to state the general nature of his defense.
2. Defendant to state whether or not he will rely on an alibi and, if so, to furnish a list of his alibi witnesses and their addresses. Granted ---------- Denied ----------.
3. Defendant to state whether or not he will rely on a defense of insanity at the time of the offense.
   (a) If so, defendant to supply the name(s) of his witness(es) on the issue, both lay and professional.

(b) If so, defendant to permit the prosecution to inspect and copy all medical reports under his control or the control of his attorney.

(c) Defendant will also state whether or not he will submit to a psychiatric examination by a doctor selected by the prosecution.

4. Defendant to furnish results of scientific tests, experiments or comparisons and the names of persons who conducted the tests.
5. Defendant to appear in a lineup.
6. Defendant to speak for voice identification by witnesses.
7. Defendant to be fingerprinted.
8. Defendant to pose for photographs (not involving a reenactment of the crime).
9. Defendant to try on articles of clothing.
10. Defendant to permit taking of specimens of material under fingernails.
11. Defendant to permit taking of samples of blood, hair and other materials of his body which involve no unreasonable intrusion thereof.
12. Defendant to provide samples of his handwriting.
13. Defendant to submit to a physical external inspection of his body.
14. Defendant to state whether there is any claim of incompetency to stand trial.
15. For discovery of the names and addresses of defendant's witnesses and their statements.
16. To inspect physical or documentary evidence in defendant's possession.
17. To take the deposition(s) of witness(es).
18. To secure the appearance of a witness at trial or hearing.
19. Defendant to state whether his prior convictions will be stipulated or need be proved.
20. Defendant to state whether he will stipulate to the continuous chain of custody of evidence from acquisition to trial.

Dated: ______________

____

Prosecuting Attorney

It is so ordered this _____ day of __________.

____

Judge

[Adopted Apr. 18, 1973, effective July 1, 1973.]

Comment: Supersedes RCW 10.46.030 in part.

Rule 4.6 Depositions.

(a) When Taken. Upon a showing that a prospective witness may be unable to attend or prevented from attending a trial or hearing or if a witness refuses to discuss the case with either counsel and that his testimony is material and that it is necessary to take his deposition in order to prevent a failure of justice, the court at any time after the filing of an indictment or information may upon motion of a party and notice to the parties order that his testimony be taken by deposition and that any designated books, papers, documents or tangible objects, not privileged, be produced at the same time and place.

(b) Notice of Taking. The party at whose instance a deposition is to be taken shall give to every other party reasonable written notice of the time and place for taking the deposition. The notice shall state the name and address of each person to be examined. On motion of a party upon whom the notice is served, the court for cause shown may extend or shorten the time and may change the place of taking.

(c) How Taken. A deposition shall be taken in the manner provided in civil actions. No deposition shall be used in evidence against any defendant who has not had notice of and an opportunity to participate in or be present at the taking thereof.

(d) Use. At the trial or upon any hearing, a part or all of a deposition so far as otherwise admissible under the rules of evidence may be used if it appears: that the witness is dead; or that the witness is unavailable, unless it appears that his unavailability was procured by the party offering the deposition; or that the witness is unable to attend or testify because of sickness or infirmity; or that the party offering the deposition has been unable to procure the attendance of the witness by subpoena. Any deposition may also be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness.

(e) Objections to Admissibility. Objections to receiving in evidence a deposition or part thereof may be made as provided in civil actions. [Adopted Apr. 18, 1973, effective July 1, 1973.]

Rule 4.7 Discovery.

(a) Prosecutor's Obligations.

(1) Except as otherwise provided by protective orders or as to matters not subject to disclosure, the prosecuting attorney shall disclose to the defendant the following material and information within his possession or control no later than the omnibus hearing:

(i) The names and addresses of persons whom the prosecuting attorney intends to call as witnesses at the hearing or trial, together with any written or recorded statements and the substance of any oral statements of such witnesses;

(ii) Any written or recorded statements and the substance of any oral statements made by the defendant, or made by a codefendant if the trial is to be a joint one;

(iii) When authorized by the court, those portions of grand jury minutes containing testimony of the defendant, relevant testimony of persons whom the prosecuting attorney intends to call as witnesses at the hearing or trial, and any relevant testimony that has not been transcribed.

(iv) Any reports or statements of experts made in connection with the particular case, including results of physical or mental examinations and scientific tests, experiments, or comparisons;

(v) Any books, papers, documents, photographs, or tangible objects, which the prosecuting attorney intends to use in the hearing or trial or which were obtained from or belonged to the defendant; and

(vi) Any record or prior criminal convictions known to the prosecuting attorney of the defendant and of persons whom the prosecuting attorney intends to call as witnesses at the hearing or trial.

(2) The prosecuting attorney shall disclose to the defendant:

(i) Any electronic surveillance, including wiretapping, of the defendant's premises or conversations to which the defendant was a party and any record thereof;

(ii) Any expert witnesses whom the prosecuting attorney will call at the hearing or trial, the subject of their testimony, and any reports they have submitted to the prosecuting attorney;

(iii) Any information which the prosecuting attorney has indicating entrapment of the defendant.

(3) Except as is otherwise provided as to protective orders, the prosecuting attorney shall disclose to defendant's counsel any material or information within his knowledge which tends to negate defendant's guilt as to the offense charged.

(4) The prosecuting attorney's obligation under this section is limited to material and information within the knowledge, possession or control of members of his staff.

(b) Defendant's Obligations.

(1) Except as is otherwise provided as to matters not subject to disclosure and protective orders, the defendant shall disclose to the prosecuting attorney the following material and information within his control no later than the omnibus hearing:

(i) The names and addresses of persons whom the defendant intends to call as witnesses at the hearing or trial, together with any written or recorded statements and the substance of any oral statements of such witness.

(2) Notwithstanding the initiation of judicial proceedings, and subject to constitutional limitations, the court on motion of the prosecuting attorney or the defendant, may require or allow the defendant to:

(i) Appear in a lineup;

(ii) Speak for identification by a witness to an offense;

(iii) Be fingerprinted;

(iv) Pose for photographs not involving reenactment of the crime charged;

(v) Try on articles of clothing;

(vi) Permit the taking of samples of or from his blood, hair, and other materials of his body including materials under his fingernails which involve no unreasonable intrusion thereof;

(vii) Provide specimens of his handwriting;

(viii) Submit to a reasonable physical, medical, or psychiatric inspection or examination;

(ix) State whether there is any claim of incompetency to stand trial;

(x) Allow inspection of physical or documentary evidence in defendents' possession;

(xi) To state whether his prior convictions will be stipulated or need to be proved;

(xii) To state whether or not he will rely on an alibi and, if so, furnish a list of alibi witnesses and their addresses;

(xiii) To state whether or not he will rely on a defense of insanity at the time of the offense;

(xiv) To state the general nature of his defense.

(3) Provisions may be made for appearance for the foregoing purposes in an order for pretrial release.

(c) Additional Disclosures Upon Request and Specification. Except as is otherwise provided as to matters not subject to disclosure the prosecuting attorney shall, upon request of the defendant, disclose any relevant material and information regarding:

(1) specified searches and seizures;

(2) the acquisition of specified statements from the defendant; and

(3) the relationship, if any, of specified persons to the prosecuting authority.

(d) Material Held by Others. Upon defendant's request and designation of material or information in the knowledge, possession or control of other persons which would be discoverable if in the knowledge, possession or control of the prosecuting attorney, the prosecuting attorney shall attempt to cause such material or information to be made available to the defendant. If the prosecuting attorney's efforts are unsuccessful and if such material or persons are subject to the jurisdiction of the court, the court shall issue suitable subpoenas or orders to cause such material to be made available to the defendant.

(e) Discretionary Disclosures.

(1) Upon a showing of materiality to the preparation of the defense, and if the request is reasonable, the court in its discretion may require disclosure to the defendant of the relevant material and information not covered by sections (a), (c) and (d).

(2) The court may condition or deny disclosure authorized by this rule if it finds that there is a substantial risk to any person of physical harm, intimidation, bribery, economic reprisals or unnecessary annoyance or embarrassment, resulting from such disclosure, which outweigh any usefulness of the disclosure to the defendant.

(f) Matters Not Subject to Disclosure.

(1) *Work product.* Disclosure shall not be required of legal research or of records, correspondence, reports or memoranda to the extent that they contain the opinions, theories or conclusions of investigating or prosecuting agencies except as to material discoverable under (a)(1)(iv).

(2) *Informants.* Disclosure of an informant's identity shall not be required where his identity is a prosecution secret and a failure to disclose will not infringe upon the constitutional rights of the defendant. Disclosure of the identity of witnesses to be produced at a hearing or trial shall not be denied.

(g) Medical and Scientific Reports. Subject to constitutional limitations, the court may require the defendant to disclose any reports or results, or testimony relative thereto, of physical or mental examinations or

of scientific tests, experiments or comparisons, or any other reports or statements of experts which the defendant intends to use at a hearing or trial.

(h) Regulation of Discovery.

(1) *Investigations not to be impeded.* Except as is otherwise provided with respect to protective orders and matters not subject to disclosure, neither the counsel for the parties nor other prosecution or defense personnel shall advise persons other than the defendant having relevant material or information to refrain from discussing the case with opposing counsel or showing opposing counsel any relevant material, nor shall they otherwise impede opposing counsel's investigation of the case.

(2) *Continuing duty to disclose.* If, after compliance with these standards or orders pursuant thereto, a party discovers additional material or information which is subject to disclosure, he shall promptly notify the other party or his counsel of the existence of such additional material, and if the additional material or information is discovered during trial, the court shall also be notified.

(3) *Custody of materials.* Any materials furnished to an attorney pursuant to these standards shall remain in his exclusive custody and be used only for the purposes of conducting his side of the case, and shall be subject to such other terms and conditions as the court may provide.

(4) *Protective orders.* Upon a showing of cause, the court may at any time order that specified disclosure be restricted or deferred, or make such other order as is appropriate, provided that all material and information to which a party is entitled must be disclosed in time to permit his counsel to make beneficial use thereof.

(5) *Excision.* When some parts of certain material are discoverable under this rule, and other parts not discoverable, as much of the material shall be disclosed as is consistent with this rule. Material excised pursuant to judicial order shall be sealed and preserved in the records of the court, to be made available to the appellate court in the event of an appeal.

(6) *In camera proceedings.* Upon request of any person, the court may permit any showing of cause for denial or regulation of disclosure, or portion of such showing, to be made in camera. A record shall be made of such proceedings. If the court enters an order granting relief following a showing in camera, the entire record of such showing shall be sealed and preserved in the records of the court, to be made available to the appellate court in the event of an appeal.

(7) *Sanctions.*

(i) If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with an applicable discovery rule or an order issued pursuant thereto, the court may order such party to permit the discovery of material and information not previously disclosed, grant a continuance, dismiss the action or enter such other order as it deems just under the circumstances.

(ii) Willful violation by counsel of an applicable discovery rule or an order issued pursuant thereto may subject counsel to appropriate sanctions by the court. [Adopted Apr. 18, 1973, effective July 1, 1973.]

Comment: Supersedes RCW 10.37.030, 10.37.033; RCW 10.46-.030 in part.

Rule 4.8 Subpoenas. Subpoenas shall be issued in the same manner as in civil actions. [Adopted Apr. 18, 1973, effective July 1, 1973.]

Comment: Supersedes RCW 10.46.030 in part; RCW 10.46.050.

Rule 4.9 Pretrial conference. At any time after the filing of the indictment or information the court upon motion of any party or upon its own motion may order one or more conferences to consider such matters as will promote a fair and expeditious trial. The defendant and his attorney shall be present at any such conference, unless the defendant makes an intelligent written waiver of his right to be present. A memorandum of the matters agreed upon shall be signed by counsel, the defendant personally, and the court, and shall be filed. No admission made by the defendant or his attorney at the conference shall be used against the defendant unless it is included in such signed memorandum. Any admissions contained in the memorandum shall be binding only for the purpose of the case in which the conference is held. No conference shall be held if the defendant is not represented by counsel. Any conference held shall be reported. If possible, the judge who conducts the conference should try the case. [Adopted Apr. 18, 1973, effective July 1, 1973.]

CHAPTER 5——VENUE

Rule 5.1 Commencement of actions.

(a) Where Commenced. All actions shall be commenced:

(1) In the county where the offense was committed.

(2) In any county wherein an element of the offense was committed or occurred.

(b) Two or More Counties. When there is reasonable doubt whether an offense has been committed in one of two or more counties, the action may be commenced in any such county.

(c) Right to Change. When a case is filed pursuant to (b) of this rule, the defendant shall have the right to change venue to any other county in which the offense may have been committed. Any objection to venue must be made as soon after the initial pleading is filed as the defendant has knowledge upon which to make it. [Adopted Apr. 18, 1973, effective July 1, 1973.]

Comment: Supersedes RCW 10.25.010, 10.25.020, 10.25.030, 10-.25.040, 10.25.050, 10.25.060, 10.25.110.

Rule 5.2 Change of venue.

(a) When Ordered——Improper County. The court shall order a change of venue upon motion and showing that the action has not been prosecuted in the proper county.

(b) When Ordered——On Motion of Party. The court may order a change of venue to any county in the state:

(1) Upon written agreement of the prosecuting attorney and the defendant.

(2) Upon motion of the defendant, supported by affidavit that he believes he cannot receive a fair trial in the county where the action is pending.

(c) Discharge of Jury. When the court orders a change of venue it shall discharge the jury, if any, without prejudice to the prosecution, and direct that all the papers and proceedings be certified to the superior court of the proper county and direct the defendant and the witnesses to appear at such court. [Adopted Apr. 18, 1973, effective July 1, 1973.]

Comment: Supersedes RCW 10.25.080, 10.25.090, 10.25.100; RCW 10.46.180.

CHAPTER 6—PROCEDURES AT TRIAL

Comment: RCW 10.46.070 is superseded in part by all of Rule 6.

Rule 6.1 Trial by jury or by the court.

(a) Trial by Jury. Cases required to be tried by jury shall be so tried unless the defendant files a written waiver of a jury trial, and has consent of the court.

(b) Jury of Less Than Twelve.

(1) If prior to trial on a noncapital case, all defendants so elect, the case shall be tried by a jury of six, or by the court.

(2) If a juror is unable to continue and if no alternate jurors have been selected or if none is available, all defendants may elect to continue with the remaining jurors; otherwise a mistrial may be granted on motion of any defendant.

(c) Trial Without Jury. In a case tried without a jury the court, shall enter findings of fact and conclusions of law. In giving the decision, the facts found and the conclusions of law shall be separately stated. The court shall enter such findings of fact and conclusions of law only upon five days notice of presentation to the parties. [Adopted Apr. 18, 1973, effective July 1, 1973.]

Comment; Supersedes RCW 10.49.020.

Rule 6.2 Jurors' orientation. All jurors will be given a general orientation when they report for duty.

(a) Juror Handbook. A copy of the Uniform Washington Juror's Handbook as prepared by the Washington Supreme Court Committee on Jury Instructions shall be provided to all petit jurors by the court in which they are to serve.

(b) Juror Information Sheet. Prior to the commencement of a petit juror's term of service, a juror information sheet shall be furnished to him by the court in which he is to serve. The format of the information sheet shall be consistent with recommendations of the Administrator for the Courts. [Adopted Apr. 18, 1973, effective July 1, 1973; amended, adopted April 9, 1974, effective July 1, 1974.]

Rule 6.3 Selecting the Jury. When the action is called for trial, the clerk shall prepare separate ballots containing the names of the jurors summoned who have appeared and not been excused, and deposit them in a box. He shall draw the required number of names for purposes of voir dire examination. Any necessary additions to the panel shall be drawn from the clerk's list of qualified jurors. The clerk shall thereupon prepare separate ballots and deposit them in the trial jury box. [Adopted Apr. 18, 1973, effective July 1, 1973.]

Rule 6.4 Challenges.

(a) Challenges to the Entire Panel. Challenges to the entire panel shall only be sustained for a material departure from the procedures prescribed by law for their selection.

(b) Voir Dire. A voir dire examination shall be conducted for the purpose of discovering any basis for challenge for cause and for the purpose of gaining knowledge to enable an intelligent exercise of peremptory challenges. The judge shall initiate the voir dire examination by identifying the parties and their respective counsel and by briefly outlining the nature of the case. The judge and counsel may then ask the prospective jurors questions touching their qualifications to serve as jurors in the case, subject to the supervision of the court as appropriate to the facts of the case.

(c) Challenges for Cause.

(1) If the judge after examination of any juror is of the opinion that grounds for challenge are present, he shall excuse that juror from the trial of the case. If the judge does not excuse the juror, any party may challenge the juror for cause.

(2) RCW 4.44.150 through 4.44.200 shall govern challenges for cause.

(d) Exceptions to Challenge.

(1) *Determination.* The challenge may be excepted to by the adverse party for insufficiency and, if so, the court shall determine the sufficiency thereof, assuming the facts alleged therein to be true. The challenge may be denied by the adverse party and, if so, the court shall try the issue and determine the law and the facts.

(2) *Trial of challenge.* Upon trial of a challenge, the rules of evidence applicable to testimony offered upon the trial of an ordinary issue of fact shall govern. The juror challenged, or any other person otherwise competent, may be examined as a witness by either party. If a challenge be determined to be sufficient, or if found to be true, as the case may be, it shall be allowed, and the juror to whom it was taken excluded; but if not so determined or found otherwise, it shall be disallowed.

(e) Peremptory Challenges.

(1) *Peremptory challenges defined.* A peremptory challenge is an objection to a juror for which there is no reason given, but upon which the court shall exclude him. In prosecutions for capital offenses the defense and the state may challenge peremptorily twelve jurors each; in prosecution for offenses punishable by imprisonment in a penitentiary six jurors each; in all other prosecutions, three jurors each. When several defendants are on trial together, each defendant shall be entitled to one challenge in addition to the number of challenges provided above, with discretion in the trial

judge to afford the prosecution such additional challenges as circumstances warrant.

(2) *Peremptory challenges——how taken.* After prospective jurors have been passed for cause, peremptory challenges shall be exercised alternately first by the prosecution then by each defendant until the peremptory challenges are exhausted or the jury accepted. Acceptance of the jury as presently constituted shall not waive any remaining peremptory challenges to jurors subsequently called. [Adopted Apr. 18, 1973, effective July 1, 1973.]

Comment: Supersedes RCW 10.49.030, 10.49.040, 10.49.050, 10.49.060.

Rule 6.5 Alternate jurors. When the jury is selected the court may direct the selection of one or more additional jurors, in its discretion, to be known as alternate jurors. Each party shall be entitled to one peremptory challenge for each alternate juror to be selected. When several defendants are on trial together, each defendant shall be to one challenge in addition to the challenge provided above, with discretion in the trial judge to afford the prosecution such additional challenges as circumstances warrant. If at any time before submission of the case to the jury a juror is found unable to perform his duties the court shall order him discharged, and the clerk shall draw the name of an alternate who shall take his place on the jury. [Adopted Apr. 18, 1973, effective July 1, 1973.]

Comment: Supersedes RCW 10.49.070.

Rule 6.6 Jurors' oath. The jury shall be sworn or affirmed well and truly to try the issue between the state and the defendant, according to the evidence and instructions by the court. [Adopted Apr. 18, 1973, effective July 1, 1973.]

Comment: Supersedes RCW 10.49.100.

Rule 6.7 Custody of jury. The jury shall be allowed to separate unless the court finds that such would jeopardize a fair trial. Any motions or proceedings concerning the separation of the jury shall be made out of the presence of the jury. [Adopted Apr. 18, 1973, effective July 1, 1973.]

Comment: Supersedes RCW 10.49.110.

Rule 6.8 Note-taking by jurors. With permission of the trial judge, jurors may take notes regarding the evidence presented to them and keep these notes with them when they retire for their deliberation. Such notes should be treated as confidential between the jurors making them and their fellow jurors, and be destroyed immediately after the verdict is rendered. [Adopted Apr. 18, 1973, effective July 1, 1973.]

Rule 6.9 View of premises by jury. The court may allow the jury to view the place in which any material fact occurred. In such event it shall order the jury to be conducted in a body, in the custody of a proper officer of the court to the place which shall be shown to them by the judge. The defendant shall be present at the view. During the view, no person other than the judge or person authorized by him shall speak to the jury on any subject relating to the trial. [Adopted Apr. 18, 1973, effective July 1, 1973.]

Rule 6.10 Discharge of the jury. The jury may be discharged by the court on consent of both parties or when it appears that there is no reasonable probability of their reaching agreement. [Adopted Apr. 18, 1973, effective July 1, 1973.]

Rule 6.11 Judge——Disability.

(a) Disability of Judge During Jury Trial. If, before the judge submits the case to the jury, he is unable to continue with the trial, any other judge assigned to or regularly sitting in the court, upon familiarizing himself with the record of the trial, may proceed with the trial. Upon defendant's objection to the replacement, a mistrial shall be granted. If, after the judge submits the case to the jury, he is unable to continue, the case shall proceed before another judge.

(b) Disability of Judge During Nonjury Trial. If a judge before whom trial without jury has commenced is unable to proceed with the trial, a mistrial shall be granted. [Adopted Apr. 18, 1973, effective July 1, 1973.]

Rule 6.12 Witnesses.

(a) Who May Testify. Any person may be a witness in any action or proceeding under these rules except as hereinafter provided.

(b) When Excused. A witness subpoenaed to attend in a criminal case is dismissed and excused from further attendance as soon as he has given his testimony-in-chief and has been cross-examined thereon, unless either party makes requests in open court that the witness remain in attendance; and witness fees will not be allowed any witness after the day on which his testimony is given, except when the witness has in open court been required to remain in further attendance, and when so required the clerk shall note that fact in his journal.

(c) Persons Incompetent to Testify. The following persons are incompetent to testify: (1) Those who are of unsound mind, or intoxicated at the time of their production for examination; and (2) Children who do not have the capacity of receiving just impressions of the facts about which they are examined or who do not have the capacity of relating them truly. This shall not affect any recognized privileges.

(d) Not Excluded on Grounds of Interest. No person offered as a witness shall be excluded from giving evidence by reason of his interest in the result of the action, as a party thereto or otherwise, but such interest may be shown to affect his credibility. [Adopted Apr. 18, 1973, effective July 1, 1973.]

Comment: (See RCW 10.01.130).

Rule 6.13 Material witnesses. On motion of the prosecuting attorney or the defendant a witness may be compelled to attend a hearing to determine whether his testimony is material. Upon request, the court shall appoint counsel for a witness who is financially unable to

obtain one. Upon a determination that his testimony is material, and that it appears probable that a witness will not voluntarily appear at the trial, the court shall order the taking of his deposition. Pending the taking of the deposition the provisions of Rule 3.2 shall apply. [Adopted Apr. 18, 1973, effective July 1, 1973.]

Comment: Supersedes RCW 10.16.140, probably supersedes RCW 10.16.145, 10.16.150; modifies if not supersedes RCW 10-.16.160; supersedes in part RCW 10.52.040.

Rule 6.14 Immunity. In any case the court on motion of the prosecuting attorney, may order that a witness shall not be excused from giving testimony or producing any papers, documents or things, on the ground that his testimony may tend to incriminate or subject him to penalty or forfeiture; but he shall not be prosecuted or subjected to criminal penalty or forfeiture for or on account of any transaction, matter, or fact concerning which he has been ordered to testify pursuant to this rule. He may nevertheless be prosecuted for failing to comply with the order to answer, or for perjury or the giving of false evidence. [Adopted Apr. 18, 1973, effective July 1, 1973.]

Rule 6.15 Instructions and argument.

(a) Proposed Instructions. Proposed jury instructions shall be served and filed when a case is called for trial be serving one copy upon counsel for each party, by filing one copy with the clerk, and by delivering the original and one additional copy for each party to the trial judge. Additional instructions, which could not be reasonably anticipated, shall be served and filed at any time before the court has instructed the jury.

Not less than ten days before the date of trial, the court may order counsel to serve and file proposed instructions not less than three days before the trial date.

Each proposed instruction shall be on a separate sheet of paper. The original shall not be numbered nor include citations of authority.

Any superior court may adopt special rules permitting certain instructions to be requested by number from any published book of instructions.

(b) Statute Abrogated. That portion of RCW 10.52-.040, reading as follows, is hereby abrogated:

"And provided further, that it shall be the duty of the court to instruct the jury that no inference of guilt shall arise against the accused if the accused shall fail or refuse to testify as a witness in his or her own behalf."

(c) Objection to Instructions. Before instructing the jury, the court shall supply counsel with copies of the proposed numbered instructions, verdict and special finding forms. The court shall afford to counsel an opportunity in the absence of the jury to object to the giving of any instructions and the refusal to give a requested instruction or submission of a verdict or special finding form. The party objecting shall state the reasons for his objection, specifying the number, paragraph, and particular part of the instruction to be given or refused. The court shall provide counsel for each party with a copy of the instructions in their final form.

(d) Instructing the Jury and Argument of Counsel. The court shall read the instruction to the jury. The prosecution may then address the jury after which the defense may address the jury followed by the prosecution's rebuttal.

(e) Deliberation. After argument, the jury shall retire to consider the verdict. The jury shall take with them the instructions given, all exhibits received in evidence and a verdict form or forms.

(f) Additional or Subsequent Instructions.

(1) After retirement for deliberation, if the jury desires to be informed on any point of law, the judge may require the officer having them in charge to conduct them into court. Upon the jury being brought into court, the information requested, if given, shall be given in the presence of, or after notice to the parties or their counsel. Any additional instruction upon any point of law shall be given in writing.

(2) After jury deliberations have begun, the court shall not instruct the jury in such a way as to suggest the need for agreement, the consequences of no agreement, or the length of time a jury will be required to deliberate.

(g) Several Offenses. The verdict forms for an offense charged or necessarily included in the offense charged or an attempt to commit either the offense charged or any offense necessarily included therein may be submitted to the jury. [Adopted Apr. 18, 1973, effective July 1, 1973; amended, adopted Aug. 22, 1973, effective Jan. 2, 1974.]

Rule 6.16 Verdicts and findings.

(a) Verdicts.

(1) *Several defendants.* If there are two or more defendants, the jury at any time during its deliberations may return a verdict or verdicts with respect to a defendant or defendants as to whom it has agreed; if a jury cannot agree with respect to all, the defendant or defendants as to whom it does not agree may be tried again.

(2) *Return of verdict.* When all members of the jury agree upon a verdict, the foreman shall complete and sign the verdict form and return it to the judge in open court.

(3) *Poll of jurors.* When a verdict or special finding is returned and before it is recorded, the jury shall be polled at the request of any party or upon the court's own motion. If at the conclusion of the poll, all of the jurors do not concur, the jury may be directed to return for further deliberations or may be discharged by the court.

(b) Special Findings. The court may submit to the jury forms for such special findings which may be required or authorized by law. The court shall give such instruction as may be necessary to enable the jury both to make these special findings or verdicts and to render a general verdict. When a special finding is inconsistent with another special finding or with the general verdict, the court may order the jury to retire for further consideration.

(c) Forms.

(1) *Verdict.* The verdict of the jury may be in substantially the following form:

We, the jury, find the defendant guilty [or not guilty] of the crime of ____________ as charged in count number (_______).

Signature of Foreman

(2) *Special findings.* Special findings may be substantially in the following form:

Was the defendant (name) armed with a deadly weapon at the time of the commission of the crime charged? [in count number _______.] Yes ( ) No ( ).

[Adopted Apr. 18, 1973, effective July 1, 1973.]

Comment: Supersedes RCW 10.61.030, 10.61.035 in part, 10.61-.040, 10.61.050.

CHAPTER 7—PROCEDURES FOLLOWING CONVICTION

Rule 7.1 Sentencing.

(a) Sentencing.

(1) *Imposition of sentence.* Sentence shall be imposed or an order deferring sentence shall be entered without unreasonable delay. Pending such action the court may release or commit the defendant, pursuant to Rule 3.2. Before disposition the court shall afford counsel an opportunity to speak and shall ask the defendant if he wishes to make a statement in his own behalf and to present any information in mitigation of punishment.

(b) Procedure at Time of Sentencing. The court shall, at the time of sentencing, unless the judgment and sentence are based on a plea of guilty, advise the defendant:

(1) of his right to appeal;

(2) that unless a notice of appeal is filed within 30 days after the entry of the judgment or order appealed from, the right of appeal is irrevocably waived;

(3) that the court clerk will, if requested by defendant appearing without counsel, file a notice of appeal in his behalf; and

(4) of his right, if unable to pay the costs thereof, to have counsel appointed and portions of the trial record necessary for review of assigned errors transcribed at public expense for an appeal. These proceedings shall be made a part of the record.

(c) Withdrawal of Plea of Guilty. A motion to withdraw a plea of guilty may be made only before sentence is imposed or imposition of sentence is suspended or deferred; but to correct manifest injustice the court, after sentence may set aside the judgment of conviction and permit the defendant to withdraw his plea. [Adopted Apr. 18, 1973, effective July 1, 1973.]

Comment: Supersedes RCW 10.64.010, 10.64.040.

Rule 7.2 Presentence investigation.

(a) When Made. The court shall order the Department of Social and Health Services, Division of Institutions, to make a presentence investigation and report to the court before the imposition of sentence or the granting of probation, except that the court may dispense with a presentence report if:

(1) the maximum penalty is one year or less;

(2) the defendant has two or more prior felony convictions;

(3) the defendant refuses to be interviewed by the probation department or requests that disposition be made without a presentence report;

(4) it is impractical to verify the background of the defendant;

(5) the court finds in writing, with reasons stated, that the report would be of no practical use.

(b) Report. The report of the presentence investigation shall contain any prior criminal record of the defendant and such information about his characteristics, his financial condition and the circumstances affecting his behavior as may be helpful in imposing sentence or in granting probation or in the correctional treatment of the defendant, and such other information as may be required by the court.

(c) Disclosure.

(1) Before imposing sentence the court shall permit the defendant to read the report of the presentence investigation unless in the opinion of the court the report contains information which if disclosed would be harmful to the defendant or other persons; and the court shall afford the defendant or his counsel an opportunity for comment or rebuttal.

(2) If the court is of the view that there is information in the presentence report, disclosure of which would be harmful to the defendant or to other persons, the court in lieu of making the report or part thereof available shall state orally or in writing a summary of the factual information contained therein to be relied on in determining sentence, and shall give the defendant or his counsel an opportunity for comment or rebuttal. The statement may be made to the parties in camera.

(3) Any material disclosed to the defendant or his counsel shall also be disclosed to the prosecuting attorney. [Adopted Apr. 18, 1973, effective July 1, 1973.]

Comment: Supersedes RCW 10.49.010.

Rule 7.3 Judgment. A judgment of conviction shall set forth whether defendant was represented by counsel or validly waived counsel, the plea, the verdict or findings, and the adjudication and sentence. If the defendant is found not guilty or for any other reason is entitled to be discharged, judgment shall be entered accordingly. The judgment shall be signed by the judge and entered by the clerk. [Adopted Apr. 18, 1973, effective July 1, 1973.]

Rule 7.4 Arrest of Judgment.

(a) Arrest of Judgments. Judgment may be arrested on the motion of the defendant for the following causes: (1) lack of jurisdiction of the person or offense; (2) the indictment or information does not charge a crime; or (3) insufficiency of the proof of a material element of the crime.

(b) Time for Motion. A motion for arrest of judgment must be served and filed within five days after the verdict or decision. The court on application of the defendant or on its own motion may in its discretion extend the time.

(c) New Charges After Arrest of Judgments. When judgment is arrested and there is reasonable ground to believe that the defendant can be convicted of an offense properly charged, the court may order the defendant to be recommitted or released to answer a new indictment or information. If judgment was arrested because there was no proof of the material element of the crime the defendant shall be dismissed.

(d) Rulings on Alternative Motions in Arrest of Judgment or for a New Trial.

(1) *Rulings on alternative motions in arrest of judgment or for a new trial in superior court.* Whenever a motion in arrest of a judgment and, in the alternative, for a new trial is filed and submitted in any superior court in any criminal cause tried before a jury, and the superior court enters an order granting the motion in arrest of judgment, the court shall, at the same time, in the alternative, pass upon and decide in the same order the motion for a new trial. The ruling upon the motion for a new trial shall not become effective unless and until the order granting the motion in arrest of judgment is reversed, vacated, or set aside in the manner provided by law.

(2) *Rulings on alternative motions in arrest of judgment or for a new trial in supreme court or court of appeals.* An appeal from an order granting a motion in arrest of judgment shall, of itself, without the necessity of a cross–appeal, bring up for review the ruling of the trial court on the motion for a new trial. The appellate court shall, if it reverses the order granting the motion in arrest of judgment, review and determine the validity of the ruling on the motion for a new trial. [Adopted Apr. 18, 1973, effective July 1, 1973.]

Rule 7.5 Probation.

(a) Probation. After conviction of an offense the defendant may be placed on probation as provided by law.

(b) Revocation of Probation. The court shall not revoke probation except after a hearing in which the defendant shall be present and apprised of the grounds on which such action is proposed. The defendant is entitled to be represented by counsel and may be released pursuant to Rule 3.2 pending such hearing. Counsel shall be appointed for a defendant financially unable to obtain counsel. [Adopted Apr. 18, 1973, effective July 1, 1973.]

Rule 7.6 New trial.

(a) Grounds for New Trial. The court on motion of defendant may grant a new trial for any one of the following causes when it affirmatively appears that a substantial right of the defendant was materially affected:

(1) Receipt by the jury of any evidence, paper, document or book not allowed by the court;

(2) Misconduct of the prosecution or jury;

(3) Newly discovered evidence material for the defendant, which he could not have discovered with reasonable diligence and produced at the trial;

(4) Accident or surprise;

(5) Irregularity in the proceedings of the court, jury or prosecution, or any order of court, or abuse of discretion, by which the defendant was prevented from having a fair trial;

(6) Error of law occurring at the trial and excepted to at the time by the defendant;

(7) That the verdict or decision is contrary to law and the evidence;

(8) That substantial justice has not been done. When the motion is based on matters outside the record, the facts shall be shown by affidavit.

(b) Time for Motion. A motion for new trial must be served and filed within five days after the verdict or decision. The court on application of the defendant or on its own motion may in its discretion extend the time.

(c) Time for Affidavits. When a motion for a new trial is based upon affidavits they shall be served with the motion. The prosecution has five days after such service within which to serve opposing affidavits. The court may extend the period for submitting affidavits to a time certain for good cause shown or upon stipulation.

(d) Statement of Reasons. In all cases where the court grants a 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 which 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.

(e) Disposition of Motion. The motion shall be disposed of before judgment and sentence or order deferring sentence. [Adopted Apr. 18, 1973, effective July 1, 1973.]

Comment: Probably supersedes the entirety of Ch. 10.67 RCW.

Rule 7.7 Post–conviction relief.

(a) Petition. A petition for post–conviction relief may be filed by a person under any disability resulting from a sentence or order of a court who claims a right to relief upon the ground that such disability was imposed in violation of the Constitution or Laws of the United States or of the State of Washington or is otherwise subject to collateral attack. Such petition shall be directed to the chief judge of the court of appeals in the district in which the court that imposed the sentence or order is located and shall be filed on a standard form approved by the supreme court and appearing as section (j) of this rule.

(b) Prompt Hearing. If the petition appears to have any basis in fact or law, or is not on its face frivolous, the chief judge shall cause the petition to be transmitted

to the superior court in which the petitioner was originally tried for a prompt hearing on the merits of the petitioner's claim.

(c) Hearing Judge. The hearing on the petition in the superior court may be before any judge except the judge who imposed the sentence or other order, unless the petitioner assents to a hearing before such judge.

(d) Purpose of Hearing. The purpose of the hearing will be to determine whether the petitioner is entitled to release or other appropriate relief. The rules of evidence applicable at trial shall be followed at this hearing.

(e) Right to Counsel. The petitioner may be represented by counsel at such hearing, and where the court finds that the petitioner is indigent, counsel shall be provided at the state's expense.

(f) Presence of Petitioner. A court may hear the petition without requiring the presence of the petitioner at the hearing. Upon timely motion and a showing of good cause, the court may order the petitioner's presence at the hearing.

(g) Relief Upon Proper Finding. If at the hearing on the petition the court finds:

(1) that the conviction was obtained or sentence or order imposed in violation of the Constitution of the United States or the Constitution or laws of the State of Washington; or

(2) that the court entering the sentence or order was without jurisdiction over the person of the petitioner or the subject matter; or

(3) that material facts exist not theretofore presented and heard, which require vacation of the conviction, sentence or other order in the interest of justice; or

(4) that there has been a significant change in law, whether substantive or procedural, material to the conviction, sentence or other order and sufficient reasons exist to require retroactive application of the changed legal standard, it shall order the appropriate relief.

(h) Appeal. Either party may appeal the ruling of the superior court. The appeal shall be governed by the rules of appeal in criminal matters. Counsel appointed by the superior court to represent an indigent shall continue to represent him on the appeal unless, for good cause shown, he is relieved by the court.

(i) Successive Motions. A second or successive motion for similar relief on behalf of the same petitioner shall not be entertained without good cause shown.

(j) APPLICATION FOR POST-CONVICTION RELIEF PURSUANT TO RULE 7.7

I, --,
Name (First) (Middle) (Last)
apply for relief from any sentence:

PART A

The sentence from which I seek relief was as follows:

1. (a) The court in which I was sentenced is: -------
   (b) Case number, if known: -----------------
2. Date of sentence: -------------------------
3. Terms of sentence: -------------------------

----

4. Name of sentencing judge: ------------------
5. I -------- now in custody serving this sentence.
   (am, am not)

Where? --

6. I was convicted of the crime(s) of: ------------

----

7. I was sentenced:
   (a) after plea of guilty -----------------------
   (b) after trial ----------------------------
8. My lawyer was ----------------------------
   (Name)

(Address)

9. I ------------ appeal. To what court or courts?
   (did, did not)

(Name of court(s))

10. I --------------- sought further relief from my
   (have, have not)

conviction in other courts. If so, what court? ---------
Relief Rule in the past. What result? ---------------

----

11. My lawyer on appeal was --------------------
   (Name) (if none, write "none")

(Address)

12. An opinion --- written by the appellate court(s).
Citation(s) -----------------------------------

PART B

(If you have more than one ground for relief, attach a separate sheet for each ground. Answer the four questions below as to each additional ground, labeled SECOND GROUND, THIRD GROUND, etc.)

I believe that I have -----(number)----- grounds for relief from the conviction and sentence described in Part A. This is the first ground.

1. I was deprived of the following rights or privileges in my case:
2. I was deprived of those rights or privileges by ---------- who made the following errors:
3. The following cases (include citations if possible) are very close factually to mine and are an example of the errors I believe occurred in my case:
4. I can prove the facts state in Question No. 2 above in the following manner:

PART C

The statements I have made are true to the best of my knowledge and belief. I believe I am entitled to relief. I hereby apply to have counsel appointed to represent me. I do not possess any money or property except the following: (If none, state "none")

-------------- ----------------------
Date Signature

[Adopted Apr. 18, 1973, effective July 1, 1973.]

CHAPTER 8——MISCELLANEOUS

Rule 8.1 Time. Time shall be computed and enlarged in accordance with Civil Rule 6. [Adopted Apr. 18, 1973, effective July 1, 1973.]

Rule 8.2 Motions. Civil Rule 7(b) shall govern motions in criminal cases. [Adopted Apr. 18, 1973, effective July 1, 1973.]

Rule 8.3 Dismissal.

(a) On Motion of Prosecution. The court may, in its discretion, upon written motion of the prosecuting attorney setting forth the reason therefore, dismiss an indictment, information or complaint.

(b) On Motion of Court. The court on its own motion in the furtherance of justice, after notice and hearing, may dismiss any criminal prosecution and shall set forth its reasons in a written order. [Adopted Apr. 18, 1973, effective July 1, 1973.]

Comment: Supersedes RCW 10.46.090.

Rule 8.4 Service and Filing of Papers. Civil Rule 5 shall govern service and filing of written motions (except those heard ex parte) in criminal causes. [Adopted Apr. 18, 1973, effective July 1, 1973.]

Rule 8.5 Calendars. In setting cases for trial, unless otherwise provided by statute, preference shall be given to criminal over civil cases, and criminal cases where the defendant or a witness is in confinement shall have preference over other criminal cases. [Adopted Apr. 18, 1973, effective July 1, 1973.]

Rule 8.6 Exceptions Unnecessary. Civil Rule 46 shall govern exceptions to rulings and orders in criminal cases. [Adopted Apr. 18, 1973, effective July 1, 1973.]

Rule 8.7 Objections. Objections in criminal causes shall be taken as in civil causes. [Adopted Apr. 18, 1973, effective July 1, 1973.]

Rule 8.8 Discharge. Upon acquittal, or whenever the court shall direct any criminal prosecution to be dismissed, the defendant shall be released from custody or conditions of release on such charge and any bail shall be exonerated. [Adopted Apr. 18, 1973, effective July 1, 1973.]

Comment: Supersedes RCW 10.64.090.

EVIDENCE RULES (ER)

(None, but see CR's 43 and 44)

SUPERIOR COURT MENTAL PROCEEDINGS RULES (MPR)

Introduction

The following rules have been designed and promulgated to give full force and effect to Laws of 1973, 1st Ex. Sess., ch. 142. Any future amendments which may be enacted will be dealt with in rules as the need may arise.

Section 62 of the act directs the Supreme Court to adopt rules with respect to court procedures and proceedings. Adoption of these rules is not to be construed as approval of what could be a breach of the separation of powers of government. While the legislature may recommend rule making as to particular matters, it may not mandate rule making which is an inherent power of the judicial branch.

Although the courts generally do not pass upon the wisdom or the workability of statutes, they are concerned with their constitutionality. The adoption of these rules, which are merely designed to give effect to the statute as it is written, does not in any manner indicate an opinion of the court that the statute is or is not constitutional in any respect. In promulgating them, the court does not in any manner obviate further consideration of any portion of the statute or these rules in a proper case.

Because of the complicated nature of the statute necessitating these rules and the need that they be effective January 1, 1974, the court has promulgated them without submitting them for comment, and now invites comment from the bench and bar. [Adopted Dec. 17, 1973, effective Jan. 1, 1974.]

Superior Court Mental Proceedings Rules (MPR)

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GENERAL

Rule 1.1 Notice——General Whenever any notice or document pursuant to the provisions of RCW 71.05 is required to be served on a person who is detained or committed, such notice or document shall be provided in addition to any other person provided by statute, to the person's attorney, guardian, if any, and, if the person is under eighteen years of age, to any person, entity, or institution having actual custody.

(a) **Notice to Prosecutor.** In any judicial proceeding, under RCW 71.05, for involuntary commitment or detention, or in any proceeding challenging such commitment or detention, the prosecuting attorney shall be served by the party initiating the proceedings with written notice of the proceedings and copies of the initiating papers.

(b) **Notice of Release.** Whenever a person committed or detained under RCW 71.05, is released or conditionally released, the court ordering such commitment shall be notified immediately in writing of the release by the superintendent or professional person in charge of the facility from which the person is released. [Adopted Dec. 17, 1973, effective Jan. 1, 1974.]

Rule 1.2 Continuance or postponement In any judicial proceeding held pursuant to RCW 71.05 for involuntary commitment or detention, or for challenging such commitment or detention, the court may continue or postpone such proceeding for a reasonable time on the following grounds:

(a) On motion of the respondent on a showing of good cause;

(b) On motion of the prosecuting attorney if:

(1) the respondent expressly consents to a continuance or delay and good cause is shown; or

(2) required in the due administration of justice and the respondent will not be substantially prejudiced in the presentation of his case;

(c) The court on its own motion may continue the case when required in the due administration of justice and when the respondent will not be substantially prejudiced in the presentation of his case.

An order granting continuance shall state whether detention will be extended and the grounds therefor. [Adopted Dec. 17, 1973, effective Jan. 1, 1974.]

Rule 1.3 Confidentiality of proceedings Proceedings had pursuant to RCW 71.05 shall not be open to the public, unless the person who is the subject of the proceedings or his attorney files with the court a written request that the proceedings be public. The court in its discretion may permit a limited number of persons to observe the proceedings as a part of a training program of a facility devoted to the healing arts or of an accredited educational institution within the state. [Adopted Dec. 17, 1973, effective Jan. 1, 1974.]

Rule 1.4 Alternative less restrictive treatment (a) As an alternative to detention, where the court makes a finding or a special verdict is returned that the respondent should receive less restrictive alternative treatment, the court may order such less restrictive alternative treatment for no longer than the period for which the respondent could have been committed at the hearing.

(b) If the court orders less restrictive alternative treatment, the order shall specify the terms and conditions of the alternative treatment and a copy shall be delivered to the respondent. [Adopted Dec. 17, 1973, effective Jan. 1, 1974; amended, adopted June 21, 1974, effective July 1, 1974.]

PROCEEDINGS FOR INITIAL DETENTION

Rule 2.1 Summons The summons issued pursuant to RCW 71.05.150 shall include the following:

(a) The date and time for appearance, not less than twenty–four hours from the time at which the summons is served, at an evaluation and treatment facility.

(b) The address of the evaluation and treatment facility.

(c) The business address and business telephone number of the designated mental health professional.

(d) A statement that the person summoned may be detained at the evaluation and treatment facility for up to seventy-two hours.

(e) A statement that if the person summoned fails to appear at the evaluation and treatment facility on or before the date and time indicated, he may be taken into custody.

(f) A statement that an attorney will be appointed for the person summoned unless the person has retained his own attorney.

(g) The name, business address and business telephone number of the designated attorney.

(h) The summons shall be in substantially the following form:

The State of Washington to (*name person to be detained*):

It is alleged that because of mental disorder you present a likelihood of serious harm to yourself or other persons, or are gravely disabled.

You are hereby summoned to appear in person at (*address of evaluation and treatment facility*) in (*city*), Washington on or before (*hour*) on (*month, day, year*) for evaluation and possible treatment. You may be detained without court order for evaluation and possible treatment for not more than seventy-two hours. If you fail to appear in person on or before the time and date stated above, you may be taken into custody.

You have the right to have an attorney. (*name, address, telephone number*) will be appointed as your attorney unless you make arrangements to be represented by another attorney.

(signed) ________________________
Mental Health Professional
____________ County, Washington
Address: ________________________
Telephone: ______________________

[Adopted Dec. 17, 1973, effective Jan. 1, 1974.]

Rule 2.2 Authorization and notice of detention At the time when any person is taken into custody or as soon as possible thereafter pursuant to RCW 71.05.150(1)(d) or RCW 71.05.150(2) regardless of whether a summons has been issued pursuant to Rule 2.1 written authorization to do so shall be served upon such person. A copy of the authorization and a notice of detention shall be filed with the court. The authorization and notice of detention shall include:

(a) The name of the person to be taken into custody.

(b) A statement that the person authorized to take custody is authorized pursuant to RCW 71.05.150(1)(d) or RCW 71.05.150(2).

(c) A statement that the person is to be taken into custody for the purpose of delivering such person to an evaluation and treatment facility for a period up to seventy-two hours.

(d) A statement specifying the name and location of the evaluation and treatment facility where such person will be detained.

(e) The authorization and notice of detention shall be in substantially the following form:

To: Any Peace Officer or Mental Health Professional (*name of person*) ☐ has failed to appear in response to summons issued by me pursuant to RCW 71.05.150 a copy of which is attached, or ☐ as a result of mental disorder presents an imminent likelihood of serious harm to himself or others. You are notified to take or to cause such person to be taken forthwith into custody and placed in (*name and location of evaluation and treatment facility*) for evaluation and treatment for not more than seventy-two hours, or such further time as a court may order.

Dated: __________

(signed) ________________________
Mental Health Professional,
____________ County, Washington

(*Respondent*) has been detained (*name and location of evaluation and treatment facility.*)

[Adopted Dec. 17, 1973, effective Jan. 1, 1974; amended, adopted June 21, 1974, effective July 1, 1974.]

Rule 2.2A Notice of emergency detention The notice of emergency detention required to be filed with the court and served upon the designated attorney of the detained person pursuant to RCW 71.05.160 shall include a statement specifying the name and location of the evaluation and treatment facility where the person taken into custody has been detained.

The notice of emergency detention shall be in substantially the following form:

(*Repsondent*) has been detained in (*name of evaluation and treatment facility*).

Dated: __________

Time: ________________________
(signed) ________________________
Mental Health Professional
(*name*) County, Washington

[Adopted June 21, 1974, effective July 1, 1974.]

Rule 2.3 Right to copy court files Prior to and at the hearing provided for in RCW 71.05.200, 71.05.240, 71-.05.250 the attorney for any detained person who will be a respondent at such hearing shall be permitted to view and copy all documents relating to the detained person, which have been filed with the court. [Adopted Dec. 17, 1973, effective Jan. 1, 1974.]

Rule 2.4 Probable cause hearing

(a) Notice. If notice to the court and the prosecuting attorney of the probable cause hearing as required by RCW 71.05.150(1)(c), includes the date and time of the initial detention of any person involuntarily detained, no additional notice to the court shall be required pursuant to RCW 71.05.170.

(b) Procedure.

(1) The probable cause hearing provided in RCW 71.05.200(1) shall be held in accordance with the provisions of RCW 71.05.200(1), 71.05.240 and 71.05.250.

(2) The probable cause hearing shall proceed as in other civil actions, except that the court, in its discretion, may dispense with opening statements and final arguments.

(3) The court shall be advised of any medications administered to the respondent within the prior twenty-four hour period, and if it appears that the person detained has refused medication twenty-four hours before the hearing, but was nevertheless forced to receive medication during that period, the court may continue the hearing for twenty-four hours, and may order that no medication shall be administered to the person detained during such period.

(4) At the conclusion of the hearing, the court shall make written findings of fact and conclusions of law, and enter an order for release or for detention for an additional fourteen days in an evaluation and treatment facility, or such lesser treatment as shall to the court appear proper. A copy of the order shall be served upon the evaluation and treatment facility and on the mental health professional who signed the petition. [Adopted Dec. 17, 1973, effective Jan. 1, 1974.]

Rule 2.5 Juvenile court proceedings (a) Minors over thirteen years of age involuntarily committed pursuant to RCW 72.23.070(3)(c) shall be released from such involuntary detention at the expiration of one year unless a new petition is filed pursuant to RCW 72.23.070(3)(b).

(b) The term "clearly" as used in RCW 72.23.070 shall describe the standard, "clear, cogent, and convincing."

(c) An order shall be "necessary" or in the "best interests" of a minor, as those terms are used in RCW 72.23.070, when the minor is gravely disabled or presents a likelihood of serious harm to others or himself.

(d) In the event the professional person in charge of the facility or his designee seeks to prevent the release of a voluntarily committed minor seeking release pursuant to RCW 72.23.070, the petition or written objections required to be filed by him with the juvenile court shall be the same as a petition for initial involuntary detention of minors. (Rule 6.1A) [Adopted June 21, 1974, effective July 1, 1974.]

PROCEEDINGS FOR NINETY OR ONE HUNDRED EIGHTY DAY COMMITMENT

Rule 3.1 First court appearance For purposes of proceedings for ninety day commitment, the phrase "first court appearance" provided in RCW 71.05.310 shall refer to the appearance provided for in RCW 71-.05.300 of that act. [Adopted Dec. 17, 1973, effective Jan. 1, 1974.]

Rule 3.2 Preliminary appearance Prior to the hearing provided for in RCW 71.05.320(2), the committed person shall be brought before the court for an appearance which shall be the same as that provided in RCW 71-.05.300 of that act. [Adopted Dec. 17, 1973, effective Jan. 1, 1974.]

Rule 3.3 Jury demand

(a) When Available. A jury is available only in a hearing for ninety or one hundred eighty day commitment proceedings pursuant to RCW 71.05.300 and RCW 71.05.320.

(b) Procedure for Demand. Within two judicial days after the person detained is advised in open court of his right to a jury trial as provided in RCW 71.05.300 the person detained may demand a trial by jury in the hearing on the petition for ninety day or one hundred eighty day detention by serving upon the prosecuting attorney a demand therefor in writing, by filing the demand therefor with the clerk. No jury fee shall be required. If no party, within the time above specified, serves and files a demand for jury trial, the matter shall be heard without a jury. If no party, within the time above specified, serves or files a demand that the matter be tried by a jury of twelve, it shall be tried by a jury of six members, with concurrence of five being required to reach a verdict. [Adopted Dec. 17, 1973, effective Jan. 1, 1974.]

Rule 3.4 Hearing

(a) Procedure. The hearing shall be proceeded with as in any other civil action.

(b) Findings and Conclusions. Unless the matter is tried to a jury, the court shall make and enter findings of fact and conclusions of law.

(c) Verdict. If the matter is tried to a jury, the court shall instruct the jury to bring in a special verdict, which shall be in terms of the issues specified in RCW 71.05.320. [Adopted Dec. 17, 1973, effective Jan. 1, 1974.]

PROCEEDINGS FOR CONDITIONAL RELEASE AND REVOCATION OR MODIFICATION

Rule 4.1 Notice of conditions Any person conditionally released pursuant to RCW 71.05.340 shall be notified in writing of the terms and conditions of the release and shall be notified in writing of any modifications of such terms and conditions. Such notification shall also be given in writing to the court which ordered the person's commitment. [Adopted Dec. 17, 1973, effective Jan. 1, 1974.]

Rule 4.2 Authorization for apprehension and detention At the time of taking any person into custody for failure to adhere to the terms and conditions of release under RCW 71.05.340, an order of apprehension and detention shall be served upon the person. The order of apprehension and detention shall include:

(a) The name of the person taken into custody;

(b) That it is issued pursuant to revocation of conditional release;

(c) The date on which the order of commitment was entered and the number of days for which the person was ordered committed;

(d) The authorization shall be in substantially the following form:

To: Any Peace Officer or Mental Health Professional
You are authorized to take or cause to be taken (*name of person*) who was conditionally released from an order of commitment for (*number*) days by (*name of court*) which order was entered on (*date*), and the authority for which conditional release has been revoked, into custody and place such person in (*name and location of evaluation and treatment facility*) for detention, pursuant to RCW 71.05.340.
Date: ....

(signed) ....
☐ Secretary, Department of Social and Health Services, State of Washington, or His Designee, ☐ Mental Health Professional for (*name*) County.

[Adopted Dec. 17, 1973, effective Jan. 1, 1974; amended, adopted June 21, 1974, effective July 1, 1974.]

Rule 4.3 Petition and order of apprehension and detention——Service Unless otherwise ordered by the court, the petition and order of apprehension and detention required in RCW 71.05.340, shall be served on the person to be apprehended and detained, at the time of apprehension, and on his guardian, if any, and his attorney, if any, as soon as possible.

Where no order of apprehension and detention has been issued, a petition shall be filed with the court within seventy-two hours and the person, his attorney, if any, and his guardian, if any, shall be served with a copy of the petition within twenty-four hours after the petition is filed with the court. At the time the petition is served on the person, notice shall be filed with the court and served on the person that a hearing will be held within fifteen days. [Adopted Dec. 17, 1973, effective Jan. 1, 1974; amended, adopted June 21, 1974, effective July 1, 1974.]

Rule 4.4 Petition for initial detention The granting of a conditional release pursuant to RCW 71.05.340, shall not preclude a mental health professional from commencing new proceedings pursuant to RCW 71.05.150. [Adopted Dec. 17, 1973, effective Jan. 1, 1974.]

Rule 4.5 Hearing

(a) Burden of Proof. Before entering an order returning any person for involuntary treatment on an inpatient basis as a result of failure to adhere to the terms and conditions of conditional release pursuant to RCW 71.05.340, the court shall find at the hearing that there is clear, cogent, and convincing evidence that such person did not adhere to the terms and conditions of release, and that such person is likely to injure himself or other persons if not returned for involuntary treatment on an inpatient basis.

(b) Waiver. Waiver of the hearing provided for in RCW 71.05.340 shall be in writing signed by all persons required to waive under that section. A copy of the waiver shall be filed with the court in which the notice of apprehension and detention was filed. [Adopted Dec. 17, 1973, effective Jan. 1, 1974.]

VENUE

Rule 5.1 General Proceedings pursuant to RCW 71.05, shall be brought in the superior court of the county in which the person is being detained. The court, for good cause, may transfer a proceeding to the county of respondent's residence, or to the county in which the alleged conduct evidencing need for treatment occurred. [Adopted Dec. 17, 1973, effective Jan. 1, 1974; amended, adopted June 21, 1974, effective July 1, 1974.]

Rule 5.2 Conditional release hearing The notice of apprehension and detention and the petition for hearing required in RCW 71.05.340, shall be filed in the county ordering the commitment from which the person was conditionally released. Upon motion for good cause, the court may order the proceeding transferred to the court in the county in which the person was receiving outpatient care or the county of the person's residence. [Adopted Dec. 17, 1973, effective Jan. 1, 1974.]

Rule 5.3 Release of records A proceeding for the release of records or files pursuant to RCW 71.05.390, shall be in the court maintaining such records or files. [Adopted Dec. 17, 1973, effective Jan. 1, 1974.]

Rule 5.4 [Reserved] [Adopted Dec. 17, 1973, effective Jan. 1, 1974; rescinded effective July 1, 1974.]

PETITIONS

Rule 6.1 Petition for initial detention The petition for initial detention shall contain the following:

(a) Identification of the petitioner as a peace officer or designated mental health professional.

(b) A statement describing the circumstances under which the condition of the respondent was brought to the petitioner's attention.

(c) A statement that as a result of the petitioner's personal observation or investigation, the petitioner believes that the actions of the respondent constitute a likelihood of harm to himself or others, or that he is gravely disabled.

(d) A statement of the specific facts known to the petitioner upon which he bases his belief that respondent should be detained for the purposes and under the authority of RCW 71.05.

(e) A request that the respondent be detained at an evaluation and treatment facility for no more than a 72-hour treatment and evaluation period.

(f) The date and the signature of the petitioner.

SUPERIOR COURT OF WASHINGTON
FOR ---------- COUNTY

In re the Detention of Petitioner: and Respondent:	No. PETITION FOR INITIAL DETENTION RCW ----------

Pursuant to RCW 71.05 petitioner ☐ a peace officer or ☐ mental health professional designated by the county alleges under penalty of perjury that:

Respondent, ----------, was brought to my attention under the following circumstances:

As a result of my personal observation or investigation I believe that the actions of the respondent constitute a likelihood of serious harm to himself or others or that he is gravely disabled.

The specific facts known to me as a result of personal observation or investigation, upon which I base the belief that the respondent should be detained for the purposes and under the authority of RCW 71.05 are:

Therefore the petitioner requests that the respondent be detained at an evaluation and treatment facility for no more than a 72 hour evaluation and treatment period.

Dated this ---------- day of ----------, 19--.

Petitioner

Sworn and Subscribed on --------------

Notary Public for the State of Washington Residing at

My commission expires on

[Adopted Dec. 17, 1973, effective Jan. 1, 1974.]

Rule 6.1A Petition for initial involuntary detention of minors The petition for initial detention of a minor shall contain the following:

(a) The name and address of the petitioner(s) and that the petitioner(s) is (are) the parent, parents, conservator or guardian of the respondent, or that the petitioner is the juvenile court.

(b) The name, address, age, and sex of the respondent.

(c) A statement that the respondent is or is not in detention at the time the petition is filed, and, if so, the name and location of the place of detention.

(d) A statement that the respondent, as a result of mental disorder, presents a likelihood of serious harm to himself or others, or is gravely disabled.

(e) The facts upon which the allegations of the petition are based.

(f) A statement of the alternative courses of treatment which have been considered and that no alternative less restrictive than detention is in the best interest of the respondent.

(g) The name and location of the facility in which respondent will be detained and a statement that such facility is certified by the department of social and health services to provide evaluation and treatment to persons under eighteen years of age suffering from mental disorders.

(h) A demand that a hearing be held to determine whether respondent shall be committed or whether in alternative less restrictive treatment exists.

(i) The petition shall be in substantially the following form:

SUPERIOR COURT OF WASHINGTON
FOR ---------- COUNTY

In re the Detention of Respondent.	No. PETITION FOR INITIAL INVOLUNTARY DETENTION OF A MINOR RCW 72.23.070

(*Petitioner(s)*) is (*are*) ☐ parent ☐ parents, ☐ conservator, ☐ guardian of (respondent), or ☐ juvenile court for ---------- County. Petitioner(s)'s address is ------------------------------------

----

(*Respondent*), residing at (*address*) in (*city or town*) Washington is a ☐ male ☐ female, ----- years of age.

At the time of filing this petition, respondent ☐ is ☐ is not in detention pursuant to RCW 72.23.070. (If respondent is in detention.) The name and location of the facility in which respondent is in detention are ------

----

Respondent, as a result of mental disorder, ☐ presents a likelihood of serious harm to himself, ☐ presents a likelihood of serious harm to others, ☐ is gravely disabled.

The facts upon which the allegations of this petition are based are: ----------------------------------

----

The following alternative courses of treatment have been considered: ------------------------------

----

No alternative less restrictive than detention is in the best interests of the respondent.

The facility in which respondent will be detained is (*name and location*), certified by the Washington State Department of Social and Health Services to provide

evaluation and treatment to persons under eighteen years of age suffering from mental disorders.

The petitioner(s) request(s) that a hearing be held in the above named court to determine whether respondent shall be involuntarily committed pursuant to RCW 72.23 or whether there shall be an alternative less restrictive treatment.

Petitioner

Petitioner

Sworn and Subscribed on --------------

Notary Public for the State of Washington Residing at

My commission expires on

[Adopted June 21, 1974, effective July 1, 1974.]

Rule 6.2 Petition for fourteen day involuntary treatment The petition for fourteen-day involuntary treatment shall contain the following:

(a) The name and address of the petitioner(s).

(b) The name of the person alleged, as a result of mental disorder, to present a likelihood of serious harm to others or himself, or to be gravely disabled, and, if known to the petitioner, the address, age, sex, marital status and occupation of the person. Such person shall be denominated the respondent.

(c) The facts upon which the allegations of the petition are based.

(d) The name of every person known or believed by the petitioner to be legally responsible for the care, support, and maintenance of the person alleged, as a result of mental disorder, to present a likelihood of serious harm to others or himself, or to be gravely disabled, and the address of each such person if known to the petitioner.

(e) A statement that the professional staff of the evaluation and treatment facility has examined and analyzed respondent's condition and finds that as a result of mental disorder respondent presents a likelihood of serious harm to himself or others or is gravely disabled.

(f) A statement that the respondent has been advised of the need for, but has not accepted, voluntary treatment.

(g) A statement that the facility providing intensive treatment is certified to provide such treatment by the Department of Social and Health Services of the State of Washington.

(h) A statement that there is no less restrictive alternative to detention in the best interests of respondent or others, or that a less restrictive alternative is sought and a specification of what that alternative is.

(i) A demand that a probable cause hearing be held within seventy-two hours of detention, unless the person is sooner released, on the issue of whether the respondent shall be detained for an additional fourteen days' involuntary treatment or whether such person shall be treated under less restrictive alternatives.

(j) The petition shall be in substantially the following form:

SUPERIOR COURT OF WASHINGTON
FOR ---------- COUNTY

In re the Detention of:	No. PETITION FOR FOURTEEN DAY INVOLUNTARY TREATMENT
Respondents:	RCW ---------

(*Petitioner(s)*), ☐ mental health professional for ---------- county, ☐ member(s) of professional staff of ---------- agency or facility, alleges that:

(*Respondent*), residing at (*address*) in (*city or town*) is a ☐ single, ☐ married, ☐ widowed, ☐ divorced, ☐ male, ☐ female, aged ----------.

(*Respondent's*) occupation is ---------------.

The professional staff of the evaluation agency or facility has examined respondent's condition and finds that as a result of mental disorder (*respondent*) presents:

☐ a likelihood of serious harm to others,

☐ a likelihood of serious harm to himself,

☐ is gravely disabled.

The facts upon which the allegations of this petition are based are as follows: ------------------------

----

(use back of page if necessary)

The person(s) legally responsible for the care, support, and maintenance of (*respondent*), and their relationship to him are, so far as known to the petitioner, as follows: (Give names, addresses, and relationship of persons named as respondents) --------------------

----

(use back of page if necessary)

The respondent has been advised of the need for, but has not accepted voluntary treatment.

The facility providing intensive treatment is certified to provide such treatment by the Department of Social and Health Services.

The petitioner(s) request(s) that a hearing be held before (*time and date*) unless the respondent is sooner released, to determine whether (*respondent*) ☐ shall be detained for fourteen days' involuntary treatment because there is no less restrictive alternative to detention in the best interests of respondent or others, or ☐ shall be required to comply with the following less restrictive alternative ----------------------------------.

Petitioner ☐ physician ☐ MHP

Petitioner ☐ physician ☐ MHP

Address

Sworn and subscribed on ----------.

Notary Public for the State of
Washington Residing at

My commission expires on

Petition (Fourteen Day Detention)

[Adopted Dec. 17, 1973, effective Jan. 1, 1974; amended, adopted June 21, 1974, effective July 1, 1974.]

Rule 6.3 Petition for ninety day involuntary treatment The petition for ninety day involuntary treatment shall contain the following:

(a) The name and address of the petitioner.

(b) The name and address of the person alleged, as a result of mental disorder, to present a likelihood of serious harm to himself or others because such person (1) has threatened, attempted, or inflicted physical harm upon the person of another or himself after having been taken into custody for evaluation and treatment, or (2) was taken into custody as a result of conduct in which he attempted or inflicted physical harm upon the person of another or himself, or (3) is gravely disabled, or (4) is in custody because he has committed acts constituting a felony, and presents substantial likelihood of repeating similar acts. Such person shall be denominated the respondent.

(c) A statement that petitioner is the professional person in charge or his professional designee, or the county mental health professional of (*name*) county, of a treatment facility in which the respondent is detained pursuant to court order for fourteen day involuntary treatment.

(d) The name of the court ordering fourteen day involuntary treatment and the date on which such order was entered.

(e) A summary of the facts supporting the allegations of the petition.

(f) A demand that a hearing be held within five judicial days of the first court appearance after the probable cause hearing unless the person named in the petition requests a jury trial, in which case trial shall commence within ten judicial days of the filing of the petition for ninety day treatment on the issue of whether the person alleged, as a result of mental disorder, to present a likelihood of serious harm, to himself or others, shall be detained for involuntary treatment for a period not to exceed ninety days.

(g) A statement that the petition is supported by accompanying affidavits and the names of the persons signing such affidavits.

(h) The petition shall be in substantially the following form:

SUPERIOR COURT OF WASHINGTON
FOR ---------- COUNTY

In re the Detention of:	No.
	PETITION FOR NINETY DAY INVOLUNTARY TREATMENT
Respondent.	RCW ----------

(*Petitioner*), ☐ the professional person in charge, or ☐ his professional designee, or ☐ the county mental health professional for (*name*) county, of (*name of facility*) in which (*respondent*) is detained for (*number*) days pursuant to an order of (*name or court*) entered on (*date*) alleges that:

(*Respondent*), residing at (*address*) in (*city or town*) is a ☐ single, ☐ married, ☐ widowed, ☐ divorced, ☐ male, ☐ female, aged ----------.

As a result of mental disorder (*respondent*) presents a likelihood of serious harm to himself or others because he ☐ has threatened, attempted, or inflicted physical harm upon the person of another or himself during the period in which he was detained pursuant to court order for fourteen day involuntary treatment, or ☐ was taken into custody as a result of conduct in which he threatened, attempted or inflicted physicial harm upon the person of another or himself, or ☐ is gravely disabled, or ☐ is in custody because he has committed acts constituting a felony, and as a result of mental disorder, presents a substantial likelihood of repeating similar acts.

The facts upon which the allegations of this petition are based are summarized as follows: ---------------

----

The allegations are supported by the accompanying affidavits signed by -----------------------------

----

The petitioner requests that a hearing be held to determine whether (*respondent*) shall be detained for involuntary treatment for a period not to exceed ninety days.

Petitioner

Sworn and Subscribed on ---------

Notary Public for the State of
Washington Residing at

My commission expires on

Petition (Ninety Day Dentention)

[Adopted Dec. 17, 1973, effective Jan. 1, 1974; amended, adopted June 21, 1974, effective July 1, 1974.]

Rule 6.4 Petition for one hundred eighty day involuntary treatment The petition for one hundred eighty day involuntary treatment shall contain the following:

(a) The name and address of the person filing the petition and the statement that petitioner is the superintendent or professional person in charge of the facility in which the person who is alleged, as a result of mental disorder, to present a likelihood of serious to others, is detained.

(b) The name and address of the person alleged, as a result of mental disorder to present a likelihood of serious harm to others because such person, (1) during his period of involuntary treatment, has threatened, attempted or actually inflicted physical harm on another, or (2) continues to be gravely disabled, or (3) is in custody because he has committed acts constituting a felony, and presents a substantial likelihood of repeating similar acts. Such person shall denominated the respondent.

(c) The name of the court ordering involuntary treatment for which the respondent is presently detained, and the date on which such order was entered.

(d) A summary of the facts supporting the allegations of the petition.

(e) A demand that a hearing be held within five judicial days of the first court appearance after the probable cause hearing unless the person named in the petition requests a jury trial, in which case trial shall commence within ten judicial days of the filing of the petition for one hundred eighty day treatment on the issue of whether the person alleged, as a result of mental disorder, to present a likelihood of serious harm to others, shall be detained for involuntary treatment for a period not to exceed one hundred eighty days.

(f) A statement that a form of treatment less restrictive than involuntary detention is not in the best interest of the respondent or others.

(g) The petition shall be in substantially the following form:

SUPERIOR COURT OF WASHINGTON
FOR ---------- COUNTY

In re the Detention of:	No.
	PETITION FOR ONE HUNDRED EIGHTY DAY INVOLUNTARY TREATMENT
Respondent.	RCW ----------

(*Petitioner*), the superintendent or professional person in charge of (*name of facility*) in which (*respondent*) is detained for (*number*) days pursuant to an order of (*name of court*) entered on (*date*) alleges that:

(*Respondent*), residing at (*address*) in (*city or town*) is a ☐ single, ☐ married, ☐ widowed, ☐ divorced, ☐ male, ☐ female, aged ----------.

(*Respondent*) ☐ has threatened, attempted or actually inflicted harm on another person during the period in which he has been involuntarily detained pursuant to court order and as a result of mental disorder presents a likelihood of serious harm to others, or ☐ continues to be gravely disabled or ☐ is in custody because he has committed acts constituting a felony and as a result of mental disorder presents a substantial likelihood of repeating similar acts.

The facts upon which the allegations of this petition are based are as follows:

A form of treatment less restrictive than involuntary detention is not in the best interest of the respondent or others.

The petitioner requests that a hearing be held to determine whether (*respondent*) shall be detained for involuntary treatment for a period not to exceed one hundred eighty days.

Petitioner

Sworn and Subscribed on ----------

Notary Public for the State of Washington Residing at

My commission expires on

Petition (One Hundred Eighty Day Detention)

[Adopted Dec. 17, 1973, effective Jan. 1, 1974; amended, adopted June 21, 1974, effective July 1, 1974.]

Rule 6.5 Petition for revocation of conditional release The petition for revocation of conditional release shall contain the following:

(a) The name and address of the petitioner and the statement that petitioner is the Secretary of the Department of Social and Health Services, State of Washington, or is the county mental health professional for (*name*) county.

(b) The name and address of the person alleged to have failed to adhere to the terms and conditions of release and to be likely to injure himself or other persons if not returned for involuntary treatment on an inpatient basis. Such person shall be the respondent.

(c) The facts upon which the allegations of the petition are based.

(d) A statement that respondent was released under terms and conditions, a copy of which terms and conditions is attached to the petition, from detention pursuant to court order for involuntary treatment and the date the order was entered, number of days for which effective, and the court entering such order.

(e) The date, time and place of detention of the respondent if he is detained pursuant to an order of the secretary, or whether such an order has been or will be issued.

(f) A demand that a hearing be held within five days of the date on which respondent was detained pursuant to an order of the secretary, or not less than fifteen days from the date of service of the petition on the respondent, on the issues of whether the respondent failed to adhere to the terms and conditions of release, or whether the conditions of the release should be modified, or the person should be returned to the facility.

(g) The petition shall be in substantially the following form:

SUPERIOR COURT OF WASHINGTON
FOR ---------- COUNTY

In re the Detention of:	No.
	PETITION FOR REVOCATION OF CONDITIONAL RELEASE
Respondent.	RCW ----------

(*Petitioner*), ☐ Secretary of the Department of Social and Health Services, State of Washington, or ☐ county mental health professional for (*name*) county alleges that:

(*Respondent*), residing at (*address*) in (*city or town*) is a ☐ single, ☐ married, ☐ widowed, ☐ divorced, ☐ male, ☐ female, aged ----------.

Pursuant to an order of (*name*) court entered on (*date*), respondent was detained for involuntary treatment for a period not to exceed (*number*) days in (*name of facility*).

(*Respondent*) was conditionally released from inpatient care at (*name of facility*) prior to expiration of the court ordered period of detention, under terms and conditions for such release copies of which, including modifications, are attached and were filed in (*name*) court on (*date(s)*).

During the period of conditional release respondent was receiving outpatient care from (*name of facility*) located in (*city or town*), (*name*) county.

Pursuant to RCW ----------, petitioner ☐ has ☐ has not issued an order for the apprehension and detention of respondent and respondent ☐ is not detained ☐ is detained in (*name of facility*) located in (*city, town*), (*name*) county.

(*Respondent*) has failed to adhere to the terms and conditions of his release from involuntary detention and ☐ the conditions of release should be modified or ☐ the person should be returned to the facility.

The facts upon which the allegations of this petition are based are as follows: ------------------------

----

The petitioner requests that a hearing be held to determine whether repondent has failed to adhere to the terms and conditions of release, and whether the respondent shall be returned for involuntary treatment on an inpatient basis or whether the terms and conditions of release shall be modified.

Petitioner

Sworn and Subscribed on ----------

Notary Public for the State of Washington Residing at

My commission expires on

Petition (Revocation of Conditional Release)

[Adopted Dec. 17, 1973, effective Jan 1, 1974; amended, adopted June 21, 1974, effective July 1, 1974.]

JUVENILE COURT RULES (JUCR)

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I. SCOPE OF RULES

Rule 1.1 Scope of rules. These rules shall govern the procedure of all matters within the jurisdiction of the Juvenile Court, including actions taken by probation officers, and shall supplement the applicable statutes. [Adopted Dec. 31, 1968, effective Jan. 10, 1969.]

Rule 1.2 Jurisdiction of juvenile court. The jurisdiction of the Juvenile Court is defined by RCW 13.04.010. "Juvenile Court" is defined by RCW 13.04.030. [Adopted Dec. 31, 1968, effective Jan. 10, 1969.]

Rule 1.3 Definition of probation officer. "Probation Officer" means any probation counselor appointed or designated pursuant to RCW 13.04.040. [Adopted Dec. 31, 1968, effective Jan. 10, 1969.]

II. INTAKE

Rule 2.1 Petitions.

(a) Petition Alleging Delinquency.

(1) *Who May File.* Any person may file with the Clerk of the Superior Court, pursuant to RCW 13.04.060, a verified petition to invoke the jurisdiction of the Juvenile Court.

(2) *Contents.* The petition shall conform to RCW 13.04.060. It shall be entitled "In Re the Welfare of ----------------." The petition shall contain:

(i) *Identification of Child.* Name, age, sex and residence of the child, so far as known to the petitioner. If not known, the petition shall so state.

(ii) *Identification of Parent or Custodian.* Name, marital status and residence of the parent or parents, custodian or other person responsible for the care of the child, or person with whom the child is residing, so far as known to the petitioner. If not known, the petition shall so state.

(iii) *Statement of Facts.* A statement of facts which gives the court jurisdiction over the child and over the subject matter of the proceedings, stated in plain language and with reasonable definiteness and particularity.

(iv) *Request for Inquiry.* A request that the court inquire into the welfare of the child and make such order as the court shall find to be in the best interests of the child.

(b) Citation Petition. The petition provided for in RCW 13.04.060 may be in the form of the citation and notice to appear provided for in JCrR 2.01 and the complaint and citation provided for in JTR T2.01

(c) Amendment. A petition may be amended at any time. The court shall grant additional time if necessary to insure a full and fair hearing on any new allegations in an amended petition.

(d) Answer. Any party may, but need not, file a written answer to a petition unless ordered to do so by the court or by local rule. [Adopted Dec. 31, 1968, effective Jan. 10, 1969. Prior: JuCR Rule 1, superseded by JuCR Rule 2.1(b).]

Rule 2.2 Referral of complaints. Any petition or any complaint to the Juvenile Court shall first be referred to the probation officer who is responsible for intake procedure, if the county has a paid probation officer. Pursuant to RCW 13.04.060, that officer shall advise any person making a complaint to the Juvenile Court whether or not a petition is reasonably justifiable. If the person making the complaint does not file a petition, the intake officer shall decide whether to file a petition or to follow other procedures pursuant to these rules. [Adopted Dec. 31, 1968, effective Jan. 10, 1969.]

Rule 2.3 Intake interview.

(a) Child not in Detention. Upon receipt of a complaint, or upon the filing of a petition relating to a child

who is not in detention, the probation officer who is responsible for intake procedure may request by telephone or letter that the child, parent or interested parties appear for an intake interview.

(b) Child in Detention. If a child is in detention, the probation officer shall interview the child and shall invite the parent or custodian to appear for an intake interview.

(c) To be Voluntary. Any intake interview shall be voluntary. [Adopted Dec. 31, 1968, effective Jan. 10, 1969.]

Rule 2.4 Intake procedure.

(a) When No Petition is Filed. Upon receipt of a complaint where no petition has been filed, the probation officer shall inform the child and parent or custodian of the nature of the complaint and explain the court procedures.

(b) Delivery of Petition. Upon the filing of a petition, the probation officer shall promptly deliver a copy of the petition to the child and parent or custodian.

(c) Notice of Rights. Upon the filing of a petition, or upon the admission of any child to detention, the probation officer shall deliver to the child and parent or custodian a written statement which gives notice of the following rights:

(1) the right to remain silent as set forth in Rule 7.1;

(2) the right to be represented by an attorney of their own choosing in all proceedings and to have an attorney appointed in certain cases as set forth in Rule 7.2; and

(3) the right to have a fact finding hearing on any petition, if they dispute the allegations made in the petition. [Adopted Dec. 31, 1968, effective Jan. 10, 1969.]

Rule 2.5 Informal adjustment. Instead of filing a petition, the probation officer or the judge may make an informal adjustment or disposition of any complaint or referral, pursuant to RCW 13.04.056. [Adopted Dec. 31, 1968, effective Jan. 10, 1969.]

III. DETENTION PRIOR TO DISPOSITION

Rule 3.1 Arrest of child. Any child who is taken into custody and who is not released to his parent, guardian, custodian or a responsible relative, pursuant to RCW 13.04.120, shall be taken directly before the Juvenile Court or placed in the detention facility under the jurisdiction of that court, or into the custody of a probation officer. [Adopted Dec. 31, 1968, effective Jan. 10, 1969.]

Rule 3.2 Admission to detention. The probation officer who is responsible for intake procedure shall have the authority to admit any child to detention. [Adopted Dec. 31, 1968, effective Jan. 10, 1969.]

Rule 3.3 Notice to parent or custodian. Unless the arresting officer has already done so, the probation officer shall immediately use all reasonable means to notify the parent or custodian that the child has been placed in detention. [Adopted Dec. 31, 1968, effective Jan. 10, 1969.]

Rule 3.4 Time limitations on detention. As provided in RCW 13.04.053, no child shall be held in detention or shelter longer than 72 hours, excluding Sundays and holidays, unless a petition has been filed. No child may be held longer than 72 hours after the filing of a petition unless a court order has been entered for such continued detention or shelter. No child shall be detained for longer than 30 days unless the detention is authorized by a court order setting forth the findings upon which continued detention is based. [Adopted Dec. 31, 1968, effective Jan. 10, 1969.]

Rule 3.5 Notice of preliminary detention hearing. The child and parent or custodian shall be informed that they have a right to a preliminary detention hearing. The court shall hold a preliminary detention hearing if one is requested. The child and parent or custodian shall be given notice of the time, place and purpose of the hearing. [Adopted Dec. 31, 1968, effective Jan. 10, 1969.]

Rule 3.6 Preliminary detention hearing. If the written notice of rights and copy of the petition have not already been given to the child and parent or custodian pursuant to Rule 2.4, the judge shall do so at the preliminary detention hearing. At any preliminary detention hearing the child and parent or custodian shall have an opportunity to present evidence and be heard on the issue of temporary detention. [Adopted Dec. 31, 1968, effective Jan. 10, 1969.]

Rule 3.7 Waiver of preliminary detention hearing. If neither the child nor parent or custodian requests a preliminary detention hearing, the order for continued temporary detention or shelter may be signed without a hearing. [Adopted Dec. 31, 1968, effective Jan. 10, 1969.]

Rule 3.8 Release from detention. The court or the probation officer may release a child from detention at any time. [Adopted Dec. 31, 1968, effective Jan. 10, 1969.]

Rule 3.9 Release on citation. See JuCR 2.1(b). [Adopted Dec. 31, 1968, effective Jan. 10, 1969.]

IV. FACT FINDING HEARING

Rule 4.1 Scheduling of fact finding hearing. If the child or parent or custodian disputes the allegations made in the petition, the court shall schedule a fact finding hearing with reasonable speed, giving preference to cases where the child is held in detention. [Adopted Dec. 31, 1968, effective Jan. 10, 1969.]

Rule 4.2 Notice and summons.

(a) Manner of Service. Notice and summons shall issue and be served pursuant to RCW 13.04.070, or published pursuant to RCW 13.04.080.

(b) On Whom Served. Notice and summons shall be served upon the child in addition to the persons designated by statute.

(c) Time of Service. Notice and summons shall be served at least three days before the hearing.

(d) Contents. In addition to the statutory summons, the notice shall include:
(1) notice of the time and place of the hearing;
(2) a specific reference to the petition on file and to the copy thereof delivered pursuant to Rule 2.4;
(3) a statement that the purpose of the hearing is to consider the petition and hear evidence thereon;
(4) notice of the right to remain silent as set forth in Rule 7.1, and of the right to be represented by an attorney of their own choosing in all proceedings and to have an attorney appointed in certain cases, as set forth in Rule 7.2. [Adopted Dec. 31, 1968, effective Jan. 10, 1969.]

Rule 4.3 Issue at fact finding hearing. The fact finding hearing shall be a trial on the allegations of fact made in the petition. [Adopted Dec. 31, 1968, effective Jan. 10, 1969.]

Rule 4.4 Fact finding hearing.

(a) Evidence. The rules of evidence shall be followed in the conduct of the hearing. No social file or social study shall be considered by the court in connection with the fact finding hearing.

(b) Degree of Proof. In a fact finding hearing on a petition alleging delinquency, the facts alleged must be proved beyond a reasonable doubt. In a fact finding hearing on a petition alleging dependency, the facts alleged must be proved by a preponderance of the evidence.

(c) Findings of Fact. If the court dismisses the petition, no findings of fact are necessary. If the court decides to retain and exercise jurisdiction, it shall make written findings of fact.

(d) Disposition. In the discretion of the court, the matter of disposition may be considered at the hearing after the court has announced its findings of fact.

(e) Continuance. If the case is continued for a disposition hearing, the court shall decide whether or not the child should be held in detention pending final disposition. Notice of the time and place of the continued hearing may be given in open court.

(f) Duty of Prosecuting Attorney. It shall be the duty of the prosecuting attorney or his deputy to present the evidence supporting any petition where the facts are contested, whenever requested to do so by the court. [Adopted Dec. 31, 1968, effective Jan. 10, 1969.]

Rule 4.5 Facts not disputed. If neither the child nor the parent or custodian disputes the allegations made in the petition, the rules for contested fact finding hearings shall not apply, and the court may schedule a formal hearing on the agreed facts to be combined with the disposition hearing. [Adopted Dec. 31, 1968, effective Jan. 10, 1969.]

V. DISPOSITION HEARING

Rule 5.1 Notice and summons for disposition hearing. Notice and summons for a disposition hearing shall issue and be served pursuant to Rule 4.2 only if no notice and summons on the petition has previously been served. All parties shall be notified orally or by mail of the time and place of any continued hearing. [Adopted Dec. 31, 1968, effective Jan. 10, 1969.]

Rule 5.2 Social study.

(a) Social Study for Disposition Hearing. To aid the court in its decision on disposition, a social study, consisting of an investigation and evaluation of the child, shall be made by the probation department, unless waived by the court in a particular case. The probation department shall make a written report which shall state the results of the study and shall include all social records that are to be made available to the court.

(b) Right of Access to Social File. An attorney for any interested party shall have a right to inspect the social file and the social study a reasonable time prior to the disposition hearing, unless the court in a particular case decides that release of certain information would be detrimental to the best interests of the child. [Adopted Dec. 31, 1968, effective Jan. 10, 1969.]

Rule 5.3 Disposition hearing.

(a) Judge's Statement. The judge shall inform the parties of the purpose of the hearing. He shall inform the parties of the new status of the child either as a result of the fact finding hearing or as a result of their agreement with the facts alleged in the petition.

(b) Social Study. The court shall consider the social file and social study in addition to evidence produced at the hearing.

(c) Findings and Conclusions. The court shall make written findings of fact and conclusions of law in connection with an order of disposition, if they have not already been made at a fact finding hearing.

(d) Deferred Findings. With the agreement of the child and parent or custodian, the court may enter an order which defers the entry of any findings of fact whenever such deferral is in the best interests of the child. Along with such an agreed order deferring the findings of fact, the court may enter an order of disposition which is agreed to by the child and parent or custodian, or the court may defer the entry of any order of disposition, subject to conditions set by the court. If the conditions are met, the court, in its discretion may

later dismiss the petition. [Adopted Dec. 31, 1968, effective Jan. 10, 1969.]

Rule 5.4 Direct to court hearing.

(a) Scheduling of Direct to Court Hearing. If the probation officer or the judge decides that an intake interview, preliminary investigation or social study would not be justified, the petition may be scheduled directly to court for a combined fact finding and disposition hearing.

(b) Notice and Summons for Direct to Court Hearing. Notice and summons for such a hearing shall be given pursuant to Rule 4.2.

(c) Referral to Probation Department. If it appears to the court at the direct to court hearing that disposition of the matter at that hearing would not be in the best interests of the child, the court may refer the matter back to the probation department for further action and hearing pursuant to these rules. [Adopted Dec. 31, 1968, effective Jan. 10, 1969.]

VI. DECLINE OF JURISDICTION——ALLOWING CRIMINAL PROSECUTION

Rule 6.1 Scheduling of hearing on decline of jurisdiction. When a delinquency petition has been filed alleging violation of the law and it appears to the probation officer or the judge that retaining jurisdiction over the child in the Juvenile Court may be contrary to the best interests of the child or the public, the court shall schedule a hearing to determine whether or not to decline jurisdiction. In any case where declining jurisdiction would allow criminal prosecution for a felony, the decline hearing shall be scheduled within seven days after the filing of the petition, unless further continued by the court for good cause. [Adopted Dec. 31, 1968, effective Jan. 10, 1969.]

Rule 6.2 Notice of hearing on decline of jurisdiction. The child and parent or custodian shall be given a copy of the petition and notice of the time, place and purpose of the hearing. [Adopted Dec. 31, 1968, effective Jan. 10, 1969.]

Rule 6.3 Investigation for decline hearing. When the court has scheduled a hearing in a case where a decline of jurisdiction would allow criminal prosecution for a felony, the probation department shall make an investigation and evaluation of the matter and make a report to the court. The decline investigation report shall include all social records that are to be made available to the court at the decline hearing. Any party or his attorney shall have a right to inspect a copy of the report of the decline investigation a reasonable time prior to the hearing. [Adopted Dec. 31, 1968, effective Jan. 10, 1969.]

Rule 6.4 Hearing on decline of jurisdiction. At any hearing where a decline of jurisdiction would allow criminal prosecution for a felony, the court shall consider the decline investigation report in addition to evidence produced at the hearing and shall make written findings of fact and conclusions of law in support of its decision. [Adopted Dec. 31, 1968, effective Jan. 10, 1969.]

Rule 6.5 Decline of jurisdiction in traffic cases. The court shall have discretion to decline jurisdiction, without a hearing, in connection with an alleged violation of the traffic laws. [Adopted Dec. 31, 1968, effective Jan. 10, 1969.]

VII. SELF-INCRIMINATION AND RIGHT TO COUNSEL

Rule 7.1 Right to remain silent. A child who is the subject of court proceedings has a right to remain silent and may refuse to answer any questions. No other party or witness shall be compelled to testify, if the testimony might tend to incriminate him in any criminal proceeding, or to establish jurisdiction over him in any Juvenile Court proceeding. Whatever any person says after being warned of his rights may be used against him. [Adopted Dec. 31, 1968, effective Jan. 10, 1969.]

Rule 7.2 Right to counsel.

(a) Retained Counsel. Any party has a right to be represented by an attorney of his own choosing in all proceedings.

(b) Court Appointed——Indigents. Any child whose parent, guardian or custodian is indigent has a right to have an attorney appointed by the court to represent him in any proceeding where the child may be subject to a decline of Juvenile Court jurisdiction which would allow criminal prosecution for a felony, or where the matter is serious enough that the court might consider removing the child from the custody of his parents or custodian, or committing the child to the Department of Institutions.

(c) Court Appointed——Other. The court shall appoint an attorney for any child where the court feels that the welfare of the child requires an attorney for any reason. [Adopted Dec. 31, 1968, effective Jan. 10, 1969.]

Rule 7.3 Waiver of rights. Any right which a child has under these rules may be waived by an express waiver intelligently made by the child and his parent or custodian after they have been fully informed of the right being waived. [Adopted Dec. 31, 1968, effective Jan. 10, 1969.]

Rule 7.4 Child under 12. Whenever these rules refer to waiver, consent or agreement by a child or refer to any notice, summons or petition being given to or served upon a child, the word child shall be construed to refer to a child who is at least 12 years of age. If a child is under 12 years of age, his parent or parents, or

the adult having his actual custody, shall receive the notice, summons or petition or give any waiver, consent or agreement contemplated by these rules unless the interests of the child and the parent or custodian are in conflict. In that event, or if no parent or custodian is available for a child under 12 years of age, the court shall appoint a guardian ad litem or attorney, or both, to protect the interests of the child and stand in the place of a parent or custodian. [Adopted Dec. 31, 1968, effective Jan. 10, 1969.]

LOCAL RULES OF SUPERIOR COURT (LR)
(Not published herein)

APPENDIX TO PART IV: COURT ORDERS AND TABLES

Table of Contents

1. Order Adopting Rules——May 5, 1967 (including Table RPPP to New Rules).
2. Explanation by the Court.
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4. Table of Distribution of General Rules of Superior Courts in Effect Prior to January 1, 1960, into the Rules of Pleading, Practice and Procedure which were superseded on July 1, 1967.
5. Table of Distribution of Rules of Pleading, Practice and Procedure in Effect Prior to January 1, 1960, into the Rules of Pleading, Practice and Procedure which were superseded on July 1, 1967.

1. ORDER ADOPTING RULES——MAY 5, 1967.

(Effective July 1, 1967)
SUPREME COURT OF WASHINGTON

IN THE MATTER OF THE ADOPTION of RULES OF COURT	Paper No. 25700-A ORDER ADOPTING (1) Classification System for Court Rules (2) Amendments to Rules on Appeal (3) Civil Rules for Superior Court (4) Special Proceedings Rules for Superior Court (5) Criminal Rules for Superior Court

WHEREAS, the legislature enacted Laws of 1925, chapter 118, relating generally to rules of procedure; and

WHEREAS, authority to promulgate and adopt uniform rules of procedure for the courts in the state of Washington is vested in the Supreme Court of Washington under the decision in *State ex rel. Foster-Wyman Lbr. Co. v. Superior Court*, 148 Wash. 1, 267 Pac. 770 (1928); and

WHEREAS, the Supreme Court of Washington requested technical assistance, advice, and counsel from the Judicial Council, that a comprehensive study be made, and that proposed civil rules for Superior Court be drafted and submitted by the Judicial Council for consideration by the Supreme Court; and

WHEREAS, the Judicial Council established an advisory committee to do research and drafting, and to submit initial drafts of proposed civil rules for Superior Court.

WHEREAS, The advisory committee, after years of study, submitted to the Judicial Council an enlarged proposal made necessary by the revision of the civil rules consisting of:

(1) Classification System for Court Rules
(2) Amendments to Rules on Appeal
(3) Civil Rules for Superior Court
(4) Special Proceedings Rules for Superior Court (as renumbered)
(5) Criminal Rules for Superior Court (as renumbered)

WHEREAS, the Judicial Council caused copies of the proposed changes in rules to be distributed to interested individuals throughout the state, inviting and requesting comments and suggestions; and, after due consideration and careful revision by individual members of the Judicial Council, and by the council as a whole, the proposed changes in rules, as finally revised and unanimously approved by the Judicial Council, were submitted to the Supreme Court; and

WHEREAS, all written comment and criticism filed with the Judicial Council was evaluated and given due consideration by the Judicial Council; and

WHEREAS, these proposed civil rules for Superior Court together with the other necessary proposed changes in rules were considered by individual members of the Supreme Court and by the Supreme Court as a whole; NOW THEREFORE,

IT IS ORDERED THAT:

1. *Classification System for Court Rules.*

The following classification system for court rules is adopted and the titles to existing Court Rules are amended to conform:

(See Part I, General Rules, Rule 1)

[The above classification was amended by order of the court dated June 28, 1967. Such classification as amended is now General Rules, Rule 1.]

2. *Proposed Amendments to Rules on Appeal.*

The Judicial Council has proposed amendments to the Rules on Appeal, all appearing appropriate to coordinate the Rules on Appeal with changes made by the New Civil Rules For Superior Court. Action by the Supreme Court on these proposals is temporarily deferred for further study.

3. *Rules of Pleading, Practice and Procedure.*

The Rules of Pleading, Practice and Procedure are superseded by the following rules entitled as follows:

Civil Rules for Superior Court
Special Proceedings Rules for Superior Court
Criminal Rules for Superior Court

which are hereby adopted. The text for the newly adopted rules are annexed and by this reference are made a part of this order. There follows a table of cross references from the "RPPPs" to the new Rules.

CROSS REFERENCES FROM FORMER RPPPs TO NEW ROAs, CRs and SPRs

RPPP Nos.	*New Rules*
Rule 5.04W	CR 5(g)
Rule 7	CR 7
Rule 8	CR 8
Rule 8.04(1), 1st and 2nd sentence	CR 10(e)
Rule 8.04(1), 3rd sentence	CR 5(a)
Rule 8.04(1), 4th sentence	Not Readopted
Rule 8.04W(2)	CR 5(d)
Rule 8.08W(1)	CR 6(d)& 7(b)(3)
Rule 8.08W(2)	Not Readopted
Rule 8.08W(3)	CR 59(e)
Rule 9	CR 9
Rule 10	CR 10
Rule 11	CR 10
Rule 12	CR 12
Rule 13	CR 13
Rule 14	CR 14
Rule 15	CR 15

RPPP Nos.	New Rules
Rule 15.04W	CR 15(e)
Rule 16	CR 16
Rule 17	CR 17
Rule 18	CR 18
Rule 19	CR 19
Rule 20	CR 20
Rule 21	CR 21
Rule 22	CR 22
Rule 23	CR 23
Rule 23(b)	CR 23.1
Rule 23(b)	CR 23.2
Rule 24	CR 24
Rule 25	CR 25
Rule 26	CR 26
Rule 27	CR 27
Rule 28	CR 28
Rule 29	CR 29
Rule 30	CR 30
Rule 31	CR 31
Rule 32	CR 32
Rule 33	CR 33
Rule 34	CR 34
Rule 35	CR 35
Rule 36	CR 36
Rule 37	CR 37
Rule 38.04W	CR 38(e)
Rule 40.04W(1)	CR 40(d)
Rule 40.04W(2)	CR 40(c)
Rule 41.04W(a)	CR 41(b)(1)
Rule 41.04W(b)	CR 41(b)(2)
Rule 41.08W	CR 41(a)
Rule 42(a)	CR 42(b)
Rule 42(b)	CR 54(b)
Rule 42(c)	CR 62(h)
Rule 43.04W	CR 43(f)
Rule 43.08W	CR 43(a)(2)
Rule 43.12W	CR 43(g)
Rule 43.16W	CR 43(i)
Rule 44	CR 44
Rule 46.04W	CR 46
Rule 49	CR 49(a)&(b)
Rule 50	CR 50(a)
Rule 51.04W	CR 51(a) thru (e)
Rule 51.08W	CR 51(f) thru (h)
Rule 51.12W	CR 51(h)
Rule 51.16W	CR 51(f)
Rule 52.04W	CR 52(a)(1)
Rule 52.08W, 1st paragraph	CR 52(c)
Rule 52.08W, 2nd paragraph	CR 52(d)
Rule 54.04W	CR 54(e)
Rule 55.04W	CR 55(a)&(b)
Rule 55.08W	CR 55(f)
Rule 56	CR 56
Rule 59.04W	CR 59(a)&(b)
Rule 59.08W	CR 59(i), 50(c) and (d), ROA 16
Rule 60	CR 60(a)
Rule 60.04W	CR 60(e)
Rule 63.04W	Not Readopted
Rule 66.04W	CR 66(c) thru (e)
Rule 66.08W	CR 43(e)(2)
Rule 68	CR 68
Rule 70	CR 70
Rule 77.04W	CR 43(d)
Rule 77.08W, 1st sentence	CR 54(e)
Rule 77.08W, 2nd sentence	SPR 94.04W(e)
Rule 77.12W	Not Readopted
Rule 77.16W(1) thru (3)	CR 78(d) thru (f)
Rule 77.16W(4)	ROA 40(b)
Rule 77.20W	SPR 90.04W
Rule 77.24W	CR 77(h)
Rule 78.04W	CR 77(k)
Rule 80.04W	CR 43(j)
Rule 82.04W	CR 82
Rule 83.04W	CR 83(a)
Rule 86	CR 86(a)
Rule 89.04W	CR 2A
Rule 91.04W	SPR 94.04W
Rule 92.04W	SPR 93.04W
Rule 93.04W	SPR 98.16W
Rule 93.06W [98.06W]	(Abrogated)
Rule 96.04W	SPR 91.04W
Rule 96.08W	CrR 100.04W
Rule 98.04W	SPR 98.04W
Rule 98.08W, 1st paragraph	SPR 98.08W
Rule 98.08W, 2nd paragraph	SPR 98.10W
Rule 98.12W	SPR 98.12W
Rule 98.16W	SPR 98.20W
Rule 101.04W	CrR 101.04W
Rule 101.08W	CrR 101.08W
Rule 101.12W	CrR 101.12W
Rule 101.16W	CrR 101.16W
Rule 101.20W	CrR 101.20W
Rule 101.24W	CrR 101.24W

Reviser's note: For table of distribution of rules in effect prior to January 1, 1960, see the Appendix to Part IV, No. 4 infra.

4. *Public Inspection.*

This order and copies of the aforesaid rules be made available for public inspection as in the case of other orders and public records of the Supreme Court; and

5. *Publication and Requests for Comments, etc.*

The aforesaid Court Rules shall be published expeditiously in the Washington Decisions, together with notice that, for the purpose of due consideration and evaluation by the Supreme Court, comment, criticism, or objection to the aforesaid rules may be filed in writing not later than June 1, 1967, in the office of the Clerk of the Supreme court; and

6. *Effective Date.*

The rules referred to and incorporated herein by this order, be adopted subject only to further consideration and such revision as may be made by order of this Court, and become effective on July 1, 1967.

DATED this 5th day of May, 1967.

ROBERT C. FINLEY,
Chief Justice

Approved:
MATTHEW W. HILL
CHARLES T. DONWORTH
FRANK P. WEAVER
HUGH J. ROSELLINI
ROBERT T. HUNTER
ORRIS L. HAMILTON
FRANK HALE

FOREWORD
(to rules adopted May 5, 1967)

In January of 1961 Judge Donworth suggested to the Washington Judicial Council that certain civil rules for superior court be clarified. This resulted in a committee report in October of that year, recommending the adoption of five federal rules. Further suggestions for the adoption of certain federal rules were received about that time from Washington state attorneys and judges. By June of 1962 more than a dozen federal rules had been studied and their adoptions proposed. It was then decided to do an intensive study of the federal rules and to incorporate numerous suggestions that had been received from members of the Council, from judges and from attorneys. By this time it had become apparent to the Council's committee that in many areas Washington practice was preferable to federal practice.

By January 1964 the Sixth Draft had been prepared by the committee and considered by the Council at numerous meetings. This Draft was published as a service to the Bench and Bar by the West Publishing Company and widely distributed throughout that state to judges and local bar associations for their study, suggestions, and

criticisms. The superior court judges of the state, at their annual Judicial Conference, discussed the proposed rules at length and submitted suggestions to the Judicial Council. Letters were received from bar associations and from individual attorneys suggesting various changes. These suggestions were considered at several meetings of the Judicial Council during 1965 and resulted in the Seventh Draft, which was submitted to the Supreme Court for its consideration.

The rules are designed to accomplish the following objectives:

(1) To provide a single trial manual with ready references to the procedural rules and statutes relating to the trial of cases in the Superior Court of Washington;

(2) To conform to the federal practice in all situations where there are no compelling reasons for perpetuating Washington practice, especially in the many situations where the Washington statutes, rules, and case law are confusing, obscure, or nonexistent;

(3) To preserve the Washington practice in all situations where the Washington practice is believed to be superior or where the matter is not adequately covered by federal rules;

(4) To eliminate many procedural traps now existing in Washington practice;

(5) To conform the Civil Rules for the Superior Court to the Civil Rules for the Justice Courts which also follow the format of the federal rules;

(6) To make available a ready reference to all authorities discussing the comparable federal rules.

The Court expresses its appreciation to the members of the committee of the Judicial Council who drafted the proposed rules. This committee, consisting of Judge Frank D. James, Senator Fred H. Dore, and Dan Reaugh, chairman, with the assistance of Professor Robert Meisenholder of the University of Washington School of Law as reporter, devoted many hours and much labor to this complex and extensive compilation. We are likewise grateful to the many lawyers and judges whose helpful suggestions have added materially in the formulation of the rules as now presented.

A final note is that most of the 1966 Amendments to the Federal Rules of Civil Procedure have been incorporated into the comparable Civil Rule.

ROBERT C. FINLEY, *Chief Justice*

2. EXPLANATION BY THE COURT

Format. So that the many text books on the Federal Rules will be readily usable in researching these Civil Rules for Superior Court, every effort has been made to maintain the format of the Rule Number and subdivision organization of the Federal Rules. Therefore, even though the text of a given subdivision of a Federal Rule is not adopted, the comparable text of the Washington Rule is included where appropriate under the comparable Federal subdivision. Where the Federal Rules contain no comparable subdivision for a Washington Rule, and when the subject of the Washington subdivision logically should be placed before a subdivision "(a)" of the applicable Federal Rule, the hyphen symbol "(–)" is used to identify the inserted subparagraph. For examples see Rules 4(–) and 17(–). In other words, the hyphen (–) subdivision always precedes an (a) subdivision. When a Washington subdivision logically follows the last subdivision of a Federal Rule, the Washington subdivision is added after the last Federal subdivision. For examples see subdivisions (e) of Rule 15, and (i), (j), (k) and (l) of Rule 9. If there is no comparable Washington subdivision for a Federal subdivision, the Federal subdivision is included and designated as "[Reserved]".

Statutes. Where a Washington procedural statute, not superseded by a rule, logically comes within the scope of the Format of the subject matter of the Federal Rules, a cross–reference is added after the most appropriate "[Reserved]" subdivision. For examples see subdivision (b), (c), and (d) of Rule 3 and (d), (e) and (f) of Rule 17. The inclusion of a cross–reference to a statute does not imply that there are no other pertinent statutes.

Comments by the court. Where it appears that all or part of a statute has been superseded by a Rule, a statement to that effect is included in the Comments. Statutes not superseded continue to be effective. The Comments also identify the sources of the Rules.

Abbreviations. These "Civil Rules for Superior Court" may be cited as "CRs".

3. ORDER CORRECTING AND AMENDING RULES—JUNE 28, 1967

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

IN THE MATTER OF THE ADOPTION OF RULES OF COURT	Paper No. 25700A–104 CORRECTIONS and AMENDMENTS TO ORDER ADOPTING (1) Classification System for Court Rules (2) Amendments to Rules on Appeal (3) Civil Rules for Superior Court (4) Special Proceedings Rules for Superior Court (5) Criminal Rules for Superior Court

WHEREAS, The Supreme Court of Washington on May 5, 1967, issued and published in 71 W.D. 2d No. 1A, new court rules primarily applicable to the Superior Court, to become effective on July 1, 1967, and

WHEREAS, the Supreme Court individually, and in executive session, has received and considered comments, suggestions, and objections as requested in the May 5, 1967 order, and

WHEREAS, most suggestions and objections not adopted will be referred to the Judicial Council for further study,

NOW, THEREFORE, it is ORDERED that:

1. A new General Rule 1 relating to the classification of Court Rules is adopted to read:

(Reviser's note: See Part I, GENERAL RULES, Rule 1) The titles to all Court Rules are amended to conform.

2. On page vi of the May 5, 1967, order, the table of cross–references is amended by deleting "Rule 93.06W [98.06W] . . SPR 98.06W."

3. The Rules on Appeal (ROA) are amended as follows:

(a) ROA 15, entitled *"Jurisdiction, Effect of Appeal on"*, is amended by substituting:

> "A party may appeal from any order, judgment or decree enumerated in ROA 14 by giving notice of appeal as provided in ROA 33 and ROA 46. Except when the running of time for appeal is suspended as otherwise provided in these rules,"
>
> for:
>
> "A party may appeal from any order, judgment, or decree enumerated in Rule 14 by giving notice of appeal as provided in Rule 33, and"

Comment. The amendment coordinates with other rules such as ROA 33(6) and 46(b)(1) the suspending or extending the running of the time for filing the notice of appeal when certain post–trial motions are pending.

(b) ROA 16, entitled *"Powers of Supreme Court"*, is amended by adding at the end a new paragraph reading:

> "An appeal to the Supreme Court from a judgment granted on a motion for judgment notwithstanding the verdict shall, of itself, without the necessity of a cross–appeal, bring up for review the ruling of the trial court on the motion for a new trial; and the Supreme Court shall, if it reverses the judgment entered notwithstanding the verdict, review and determine the validity of the ruling on the motion for a new trial."

Comment. The paragraph added is identical to the last sentence from RPPP 59.08W which is superseded.

(c) In heading and in text of ROA 27, entitled *"Exception to Surety"*, change "Exception" to "Objection" and "except" to "object" and "excepts" to "objects."

Comment. This change from exceptions to objections is consistent with the Proposed CR-46 relation to objections.

(d) Paragraph (6) of ROA 33, entitled *"Notice of Appeal and Cross-appeal in Civil Cases"* is amended to read:

"(6) *Extension of Time for Filing Notice of Appeal.* If a timely motion is made for judgment notwithstanding the verdict under CR 50(b), for the amendment of findings under CR 52(b), for vacation of judgment under CR 52(d), and/or for reconsideration, etc., under CR 59, the notice of appeal may be filed within 30 days after the entry of the order granting or denying the motion."

Comment. Paragraph (6) is amended to clarify the effect on the running of the time for appeal when the enumerated motions are pending in the superior court.

(e) ROA 35, entitled *"Statement of Facts, What Constitutes"*, is amended by adding in the first sentence "any objections or" between "and" and "exceptions in the cause".

Comment. The phrase "exceptions in the cause" is not deleted because some statutes relating to the review of administrative ruling require "statements of exceptions".

(f) ROA 40, entitled *"Return of Statement of Facts"*, is amended by:

(1) Changing title to *"Statement of Facts"*.
(2) The present text of Rule on Appeal 40 is designated as subdivision (b) with the subtitle of *"(b) Use by Counsel"*.
(3) Adding new subdivisions (a) and (c) and comment reading:

"(a) *Notice of Filing.* When the proposed statement of facts is received by the clerk of the superior court, the clerk shall promptly notify the Supreme Court of the filing.

"(c) *Forwarding to Supreme Court.* The clerk of the superior court shall not forward the statement of facts to the clerk of the Supreme Court until the time for filing the respondent's brief has elapsed, except by consent in writing of respondent's counsel."

"*Comment.* Subdivision (c) follows and supersedes RPPP 77.16W(4)."

4. The Civil Rules for Superior Court (CRs) are amended as follows:

Page in 71 W.D. 2d No 1A	*CR*	*Line*	*Amendment*
xxix	Table of Contents	——	Prior to "Rule 81" insert "XI GENERAL PROVISIONS (Rule 81-86) ... 119"
2	2A	4th	after "open court" strike "and" and insert: "before a court reporter, or"
5	4(d)(1)	1st	In subheading delete "with" and insert "and/or"
6	4(d)(2)	1st	Delete "23.52.051-056" and insert "23A.08.110 and 23A.32.100"
13	6(a)	——	Strike last sentence
21	10(e)(4)	1st	Change "each attorney" to "all persons".
63	38(b)	——	Strike the last sentence
69	41(e)	——	Add a new subdivision reading: "(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." *Comment.* Subdivision (e) is added to enable the courts to make fuller use of all court facilities.
75	44(a)(1)	13th & 15th	After "office" in line 13, insert "or official custody of the seal of the political subdivision", and at the end add: "or the seal of the political subdivision."
83	50(a)	——	At end of comment delete "it supersedes RCW 4.56-.150" and insert "Subdivision (a) does not supersede RCW 4.56.150."
83	50(b)	2nd	Delete "judgment" and insert "verdict"
85	51(d)(1)	——	At end add following sentence: "If the instruction in WPI allows or provides for a choice of wording by the use of brackets or otherwise, the written request which designates the number of the instruction shall also designate the choice of wording which is being requested."
114	77(c)(8)(A)(ii)	1st	Insert "i" in "Visiting"
118	79(e)	——	Add a new subsection reading: "(e) *Destruction of Records.* [Reserved——See RCW 36.23.070.]
119	80	——	Last sentence is amended to read: "In controverted matters, the use of recording devices shall be at the direction of the court, unless a party of record or his counsel makes timely objection prior to the commencement of the proceedings."
119	81-86	——	Prior to "Rule 81" insert "XI GENERAL PROVISIONS (Rules 81-86)"

5. The Special Proceedings Rules (SPRs) for Superior Court are amended as follows:

Page in 71 W.D. 2d No 1A	*SPR*	*Line*	*Amendment*
123-129	all	——	In all comments references to "former Rule" and "Rule" should be changed to "RPPP".

Page in 71 W.D. 2d No 1A	SPR	Line	Amendment
123	91.04W	———	After "91.04" add "W"
123	91.04W(a)	4th	Delete "defendant"
124	91.04W(c)	3d	Delete "defendant"
124	91.04W(d)	1, 2 & 4th	Delete "defendant"
124	91.04W(e)	2d	After "garnishment" insert: "on the defendant and on the garnishee"
124	91.04W(all)	———	Amend comment at end to read: "*Comment.* Amendments to RPPP 96.04W are made to conform to 1967 Amendments to Garnishment Statutes."
125	93.04W	1st	Between "proceeding" and "shall" insert "insofar as it affects or concerns the adopters".
126	98.04W(a)	5th	Delete "distributee" and insert "legatee and devisee".
126	98.04W(b)	7th	Delete "of" and insert "to".
126	98.06W	all	Delete the Rule since it expires on July 1, 1967.

6. The Criminal Rules for Superior Court (CrRs) are amended as follows:

Page in 71 W.D. 2d No 1A	CrR	Line	Amendment
131–136	all	———	In all comments references to "former Rule" should be changed to "RPPP"
131	101.04W(a)	1 & 2d	Delete "Rem. Rev. Stat. § 2148 [P.C. 9214]" and insert "RCW 10.52.040".

7. *Effective Date.* The amendments provided by this order shall become effective on July 1, 1967.

Dated this 28th day of June, 1967

ROBERT C. FINLEY
Chief Justice

MATTHEW W. HILL	HUGH J. ROSELLINI
CHARLES T. DONWORTH	ROBERT T. HUNTER
MARSHALL A. NEILL	ORRIS L. HAMILTON
FRANK HALE	FRANK P. WEAVER

4. Table of distribution of general rules of superior courts in effect prior to January 1, 1960 into the rules of pleading, practice and procedure which were superseded on July 1, 1967.

GRSC Number	RPPP Number
1	8.04W
2	15.04W
3	Superseded
4	55.04W
5	91.04W
6	8.08W
7	78.04W
8	40.04W
9	43.08W
10	89.04W
11	101.12W
12	43.12W
13	51.04W
14	77.08W
15	52.08W
16	Superseded by old RPPP 45. Appears as 59.04W
17	52.04W
18	66.08W
19	98.08W
20	96.08W
21	98.12W
22	54.04W
23	77.12W
24	77.16W
25	77.20W
26	77.24W
27	101.16W
28	83.04W
29	92.04W
30	55.08W
31	63.04W
32	93.04W
33	101.20W
34	101.24W

5. Table of distribution of rules of pleading, practice and procedure in effect prior to January 1, 1960 into the rules of pleading, practice and procedure which were superseded on July 1, 1967.

Old RPPP Number	RPPP Number
1	82.04W
2	Superseded
3	41.04W
4	41.08W
5	96.04W
6	Superseded
7	60
8	51.08W
9	51.12W
10	51.16W
11	46.04W
12	101.04W
13	60.04W
14	59.08W
15	101.08W
16	16
17	80.04W
18	18(b)
19	
sub. 1.	56
sub. 2.	12(c)
20	50
21	68
22	22
23	70
24	98.16W
25	77.04W
26–37	26–37
38	44
39	66.04W
40	38.04W
41	98.04W
42	43.04W
43	49
44	None (Old rule abrogated certain statutes which statutes were

Old RPPP Number	RPPP Number subsequently repealed by Chapter 50, Laws of 1957)
45	59.04W

INDEX FOR RULES OF COURT PARTS I–IV

INDEX KEY

Abbreviation

APR	Admission to Practice Rules
AR	Superior Court Administrative Rules
CAR	Court of Appeals Administrative Rules
CAROA	Court of Appeals Rules on Appeal
CJC	Code of Judicial Conduct
CPR	Code of Professional Responsibility
CR	Superior Court Civil Rules
CrR	Superior Court Criminal Rules
DRA	Discipline Rules for Attorneys
JuCR	Juvenile Court Rules
MPR	Superior Court Mental Proceedings Rules
ROA	Supreme Court Rules on Appeal
SAR	Supreme Court Administrative Rules
SPR	Superior Court Special Proceedings Rules

—A—

	Rule	Number
Accident or Surprise		
New trial, grounds	CR	59(a)
Accord and Satisfaction		
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Formal Complaint

	Rule	Number
Discipline of attorney	DRA	3.1(a)

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	Rule	Number
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	Rule	Number
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	Rule	Number
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	Rule	Number
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Guardian

	Rule	Number
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Appointed for minor in estate, probate matters	SPR	98.16W(a)
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Incompetent person	CR	17(c)(3)
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Authorization of expenditures for minor	SPR	98.20W
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Application	SPR	98.12W
Discipline of attorney		
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Fee	DRA	11.4(b)
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	Rule	Number
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	Rule	Number
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Discipline of attorney		
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Commitment		
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Entry	Rule	Number
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Appointment	DRA	2.3(a)
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Administration of oath	DRA	3.2(h)
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Discipline of attorney, procedure after	DRA	V
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Pleading, caption	CR	10(a)(3)
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Joinder		
Of parties, exceptions	CR	19(e)
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Illegality		
Affirmative defense, pleading	CR	8(c)
Incompetence		
Adverse party, perpetuation of testimony	CR	27(a)(2)
Attorney		
Grounds	DRA	I
Hearing	DRA	3.2
Mental	DRA	4.2
Capacity to sue, be sued	CR	17(c)
Mental, attorney	DRA	4.2
Substitution of parties	CR	25(b)
Indictment		
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Information, amendment	CrR	2.1(d)
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Execution	CrR	2.1(d)(1)
Issuance in lieu of warrant	CrR	2.2(b)
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When issued	CrR	2.2(a)
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Representation	APR	7B
Indigent Case		
Appeal, reproduction of briefs	ROA	I–46(f)
	CAROA	46(f)
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Capacity to sue, be sued	CR	17(c)
Form of petition to take charge of child	JuCR	2.1
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Part V
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RULE JAR 1

QUALIFYING EXAMINATION OF LAY CANDIDATES FOR JUSTICE OF THE PEACE.

(a) Examining Committee. The qualifying examination for lay candidates for justice of the peace under RCW 3.34.060(2)(c) shall be prepared and administered in each county in which the statute is in force by a committee composed of the Administrator for the Courts, the Executive Secretary of the Judicial Council, and the President of the Magistrates, Association, under the supervision of the Chief Justice of the Supreme Court. The Administrator for the Courts shall be the chairman of the committee.

(b) Committee Responsibilities. The committee shall:

(1) *Study syllabus.* Promulgate a syllabus for study by candidates to prepare them for the responsibilities of a justice of the peace. The syllabus shall include, but is not necessarily limited to, constitutional and statutory provisions and Supreme Court Rules relating to the conduct of justice of the peace courts, state statutes governing the operation of motor vehicles, basic rules of evidence, and rights of a criminal defendant.

(2) *Examination.* Prepare an examination to determine the level of proficiency of candidates on subjects included in the study syllabus. The examination shall require written responses to written interrogatories, and may also include an oral portion.

(3) *Administration.* Announce the time and place for the examination and provide for monitoring and security during the examination.

(4) *Grading.* Arrange for the grading of the examination papers and determine a level of adequate competence.

(5) *Certification.* Certify to the auditor of the county in which the applicant resides the names of those applicants qualified by examination for performing the duties of a justice of the peace.

(c) Unsuccessful Candidates. A candidate who fails to pass the qualifying examination may, on petition to the Committee, be given additional examinations at times and places set by the committee. [Adopted June 21, 1962, effective June 21, 1962.]

RULE JAR 2

SCOPE OF RULES.

These rules shall govern the procedure of civil, criminal, and traffic cases in all courts of limited jurisdiction inferior to the superior court. They shall be construed to secure the just, speedy, and inexpensive determination of every action. Failure to set forth herein any provisions of common law or statute, not inconsistent with these rules, shall not be construed as an implied repeal thereof. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE JAR 3

DEFINITION OF TERMS.

As used in these rules, unless the context clearly requires otherwise:

(1) "Court" means any court inferior to the superior court.

(2) "Judge" shall mean Justice of the Peace, Municipal Court Judge, Police Court Judge, and the judge of any court inferior to the superior court which may be hereafter established.

(3) "Oaths" include affirmations.

(4) "Prosecuting Attorney" or "prosecutor" includes deputy prosecuting attorneys, and city attorneys, corporation counsels, and their deputies and assistants.

(5) "Offenses against the State" shall, wherever appropriate, include offenses against a county or a city by virtue of violation of an ordinance or resolution.

(6) "City" shall be construed to include towns.

(7) "State" whenever appropriate, shall include a city or town. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE JAR 4

CANONS OF JUDICIAL ETHICS.

(1) The Canons of Judicial Ethics as adopted by the Supreme Court of Washington shall apply to the judge of each court subject to these rules, whether or not such judge has been admitted to the bar. It shall be the obligation of each such judge to conduct his court and his professional and personal relationships in accordance with the same standards as are required of judges of courts of record, except that Canon 31, prohibiting judges from practicing law, shall not apply to attorney–justices of courts of limited jurisdiction who have been specifically authorized by statute to practice law.

(2) The taking of photographs in the courtroom or radio or television broadcasting or transmitting of judicial proceedings from the courtroom during the progress of judicial proceedings shall be governed by the Canons of Judicial Ethics. [Adopted Feb. 13, 1963, amended June 14, 1963, effective July 1, 1963.]

RULE JAR 5

PRESIDING JUDGE, MULTIPLE JUDGE JUSTICE COURT DISTRICT.

(a) Appointment. In all justice court districts having more than one judge, the judicial business of the district shall be supervised by one of those judges to be known as the "Presiding Judge," who shall be elected by the judges of such district for a term not to exceed one year subject to re–election. In the same manner, the judges shall elect another judge of said district to serve as Acting Presiding Judge during the temporary absence or disability of the Presiding Judge. Interim vacancies in the office of Presiding Judge or Acting Presiding Judge shall be filled as in the original election above described.

The Presiding Judge so elected shall send notice of the election of such Presiding Judge and Acting Presiding Judge to the Chief Justice of the Supreme Court on or before May 1, 1963, and thereafter on or before March 15th of each year. If the judges of a district shall fail or refuse to elect and certify to the Chief Justice of the Supreme Court, the Supreme Court shall by appointment designate the Presiding Judge and Acting Presiding Judge.

(b) Duties. The duties of the Presiding Judge shall include the supervision of the business of the judicial district in such manner as to assure the expeditious and efficient handling of all cases and equal distribution of the work load among the several judges; assigning the justices of the peace to departments, if the court is departmentalized; presiding at meetings of the justices of the peace of the district; supervising the preparation and filing of reports required by statute or rule of court; and such other duties as may be assigned by statute or by rule. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE JAR 6

RECORDS: SEPARATE DOCKETS——CONTENTS.

(a) Every court having criminal jurisdiction shall keep such records as are required by law.

(b) Separate dockets shall be kept for criminal, traffic, civil, and small claims actions. In such dockets shall be entered:

(1) The title of all actions.

(2) The object of the action or proceeding.

(3) All filing, return, trial, and appearance dates.

(4) An abstract of every motion, rule, order and decision of the court.

(5) Every continuance, and for whom granted.

(6) All demands for a trial by jury, and by whom.

(7) The names of the jurors who appear and are sworn; the names of witnesses sworn, and at whose request.

(8) An abstract of the verdict of the jury when received and other proceedings in connection with the jury.

(9) An abstract of the judgment of the court and the amount thereof, and all costs granted in connection therewith.

(10) The time of issuing execution, and an account of the debt and costs, and the fees due to each person separately.

(11) The fact of a notice of appeal and the date thereof.

(12) Satisfaction of the judgment, or any money paid thereon and the date thereof.

(13) Such other entries as may be material. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE JAR 7

VIOLATION OF RULES——CONTEMPT——WHEN.

Any wilful failure to apply the provision of these rules in his court, the failure to amend or vacate local court rules contradictory to those herein set forth, or the continuation of practices expressly forbidden in these rules by the judge of any court subject thereto who has received actual notice of their adoption may be considered a contempt of the Supreme Court of Washington and punishable as such. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE JAR 8

REPORTING OF CRIMINAL CASES.

(a) Report of Disposition. Within five court days after the disposition by a court of limited jurisdiction of a felony or gross misdemeanor charge or misdemeanor charges which have been reported to the Washington State Patrol Section on Identification, whether the disposition be a plea of guilty or by deferral or suspension of imposition of sentence, or a finding of guilty, or not guilty after trial, or by a dismissal of the charge, the court clerk shall report such disposition to the Section on a disposition form approved by the Administrator for the Courts. When a sentence has been deferred or suspended, the report to the Section shall indicate the length of time over which such suspension or deferral is to be effective. At the conclusion of the time period for deferral or suspension of sentence, the court clerk shall forward an amended disposition form to the Section showing the actual disposition of the case.

(b) Report of Appeal. If an appeal is taken from the disposition made by a court of limited jurisdiction, the court clerk shall, within five court days of the taking of the appeal, notify the Section on an amended disposition form. In the event that the result of any proceeding changes or otherwise makes inaccurate the information forwarded on the original disposition report, the court clerk shall prepare and forward to the Section a supplemental disposition report on a form approved by the Administrator for the Courts indicating thereon the information necessary to correct the current status of the disposition of charges against the subject maintained in the records of the Section. [Adopted Jan. 17, 1974, effective Mar. 1, 1974.]

JUSTICE COURT CIVIL RULES (JCR)

(Formerly: Civil Rules for Justice Court; Civil Rules for Courts of Limited Jurisdiction.)

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SCOPE OF RULES.

See Rule JAR 2. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE 2

ONE FORM OF ACTION.

There shall be one form of action to be known as "civil action." [Adopted Feb. 13, 1963, effective July 1, 1963.]

II. COMMENCEMENT OF ACTION; SERVICE OF PROCESS, PLEADINGS, MOTIONS AND ORDERS (RULES 3-6)

RULE 3

COMMENCEMENT OF ACTION.

A civil action is commenced by filing with the court a complaint signed as required by Rule 11. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE 4

PROCESS.

(a) Notice: Issuance. Any person desiring to commence a civil action shall do so by filing a written complaint with the court, and when such complaint is so filed, upon payment of a fee, a notice shall issue.

(b) Notice: Form. (1) First. The first notice shall notify the defendant to appear in person or by attorney at the time and place stated in the notice, which shall not be less than six days or more than twenty days from the date the complaint was filed.

(2) Additional. Upon affidavit of the plaintiff or his attorney that service of the notice was not perfected, additional notices may be issued directing the defendant to appear in not less than six days nor more than twenty days, provided that the maximum period of any return date shall not be more than sixty days from the date the complaint was filed.

(c) The notice shall be signed by the judge or clerk and be substantially in the following form:

(NAME AND LOCATION OF COURT)

Plaintiff
vs. No. ----------
Defendant NOTICE OF SUIT

To ---------------------------------- (Defendants)

On ----------, 19--, above-named plaintiff(s) filed a claim against you, a copy of which is attached.

You are notified to appear in person or by attorney on or at any time before ---------- at the office of the clerk of the above entitled court at ---------- (address of court) and admit or deny the above claim. If you deny any part of the claim, then the court clerk will set the case for trial at a future date.

If you fail to appear or to answer, judgment will be taken against you by default as demanded in the claim.

Issued: --------------------------------------.

(Name and address of plaintiff or his attorney)

(Judge or Clerk)

(d) Notice: By Whom Served. Service of notice and complaint may be made by the sheriff or some constable of the county or district in which the court is located or by any citizen of the State of Washington over the age of eighteen years and who is competent to be a witness and is not a party to the action.

(e) Notice: Personal Service. The notice shall be attached to the complaint and a copy of the notice and complaint shall be served together upon the defendant at least 5 days before the return day stated in the notice. The plaintiff shall furnish the person making service with such copies as are necessary. Service shall be

made within the territorial jurisdiction of the court as follows:

(1) If the action be against any county in this state, to the county auditor.

(2) If against any town or incorporated city in the state, to the mayor, manager or clerk thereof.

(3) If against a school district, to the clerk thereof.

(4) If against a railroad corporation, to any station, freight, ticket or other agent thereof.

(5) If against a corporation owning or operating sleeping cars, or hotel cars, to any person having charge of any of its cars or any agent found.

(6) If against a domestic insurance company, to any agent authorized by such company to solicit insurance.

(7) If against a foreign or alien insurance company as provided in RCW 48.05.200 and 48.05.210.

(8) If against a company or corporation doing any express business, to any agent authorized by said company or corporation to receive and deliver express matters and collect pay therefor.

(9) If the suit be against a company or corporation other than those designated in the preceding subdivisions of this section, to the president or other head of the company or corporation, secretary, cashier or managing agent of the company or corporation or branch or local office or to the secretary, stenographer or office assistant of such individuals.

(10) If the suit be against a foreign corporation or nonresident joint stock company, partnership or association doing business within this state, to any agent, cashier or secretary thereof.

(11) If against a minor under the age of 14 years, to such minor personally, and also to his father, mother, guardian, or if there be none within the jurisdiction then to any person having the care or control of such minor, or with whom he resides, or in whose service he is employed, if such there be.

(12) If against any person for whom a guardian has been appointed for any cause, then to such guardian.

(13) In all other cases, to the defendant personally, or by leaving complaint and notice at the house of his usual abode with some person of suitable age and discretion then resident therein.

(14) Whenever any domestic or foreign corporation, which has been doing business in this state, has been placed in the hands of a receiver and the receiver is in possession of any of the property or assets of such corporation, service of all process upon such corporation may be made upon the receiver thereof.

Service made in the modes provided in this rule 4(e) shall be taken and held to be personal service.

(f) Notice: 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 the filing of an affidavit of the plaintiff, his agent, or attorney, with the court stating that he believes that the defendant is not a resident of the county, or cannot be found therein, and that he has deposited a copy of the notice (substantially in the form prescribed in this rule) and complaint in the post office, directed to the defendant at his 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 notice by the plaintiff or his 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 creditors, or to avoid the service of a notice and complaint, or keeps himself 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 a newspaper authorized to publish a summons in superior court and shall not be published until after the filing of the complaint. The notice must be subscribed by the judge or clerk, it shall notify the defendant to appear in person or by attorney on a date certain, and it shall contain a brief statement of the object of the action. Said notice shall be published not less than once a week for 3 weeks prior to the time fixed for the hearing of the cause, which shall not be less than 4 weeks from the time of first publication of such notice; and publication shall be deemed complete on the seventh day following the last publication.

The notice shall be substantially in the following form:

(NAME AND LOCATION OF COURT)

Plaintiff
vs. No. ----------
Defendant NOTICE OF SUIT

To ---------------------------------- (Defendants)

On ----------, 19--, above-named plaintiff(s) filed a claim against you.

You are notified to appear in person or by attorney on or at any time before ---------- at the office of the clerk of the above entitled court at ---------- (address of court) and admit or deny the above claim. If you deny any part of the claim, then the court clerk will set the case for trial at a future date.

If you fail to appear or to answer, judgment will be taken against you be default as demanded in the claim. (Insert here a brief statement of the object of the action.)

Issued: ------------------------------------
(Name and address of plaintiff or his attorney)

(Judge or Clerk)

(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 the 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 rule 4(f) 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 may appear specially and solely to challenge jurisdiction over property or debts attached or garnished or other property within the jurisdiction of the court.

(g) Territorial Limits of Effective Service. The complaint and notice may be served anywhere within the county or counties in which the district of the court is located.

(h) Return (1) The person serving the complaint and notice shall make proof of service thereof to the court promptly and in any event within the time during which the person served must respond to the notice.

(2) Proof of service shall be as follows:

(i) If served by the sheriff or his deputy or a constable, the return of the officer indorsed upon or attached to a copy of the notice; or

(ii) If served by any other person, his affidavit of service indorsed upon or attached to a copy of the notice; or

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

(iv) Written admission of the defendant indorsed upon a copy of the notice.

In case of service otherwise than by publication, the return, affidavit, or admission must state the time, place and manner of service.

(3) Costs shall not be awarded and a default judgment shall not be rendered unless proof of service is on file with the court.

(i) Amendment. 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 issued. [Adopted Feb. 13, 1963, effective July 1, 1963; amended, adopted Feb. 24, 1972, effective July 1, 1972.]

RULE 5

Service and Filing of Pleadings and Other Papers.

(a) Service: When Required. Every order required by its terms to be served, every written pleading subsequent to the original complaint, every written motion, and every written notice, appearance, demand, offer of judgment, or other paper shall be served upon all parties, but no service need be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of notice and complaint in Rule 4.

(b) Same: How Made. Whenever under these rules service of papers other than the complaint and notice is required or permitted the rules governing the manner of service of such papers in superior courts shall govern.*

(c) Filing. When pleadings or motions are oral the substance of them shall be entered in the records. All papers after the complaint required to be served upon a party shall be filed with the court either before service or within a reasonable time thereafter and a reference shall be made to them in the record of the court.

(d) Filing With the Court Defined. The filing of pleadings and other papers with the court as required by these rules shall be made by filing them with the judge or with his authorized clerk and the filing date shall be noted thereon at the time of filing. [Adopted Feb. 13, 1963, effective July 1, 1963.]

**Note by the Court: See RCW 4.28.230–4.28.280.*

RULE 6

Time.

(a) Computation. The time within which an act is to be done, as herein provided, shall be computed by excluding the first day, and including the last, unless the last day is a holiday or Sunday, and then it is also excluded.

(b) For Motions——Affidavits. A written motion, other than one which may be heard ex parte, and notice of the hearing thereof shall be served not later than 3 days before the time specified for the hearing, unless a different period is fixed by these rules or by order of the court. Such an order may for cause shown be made on ex parte application. When a motion is supported by affidavit, the affidavit shall be served with the motion; and, except as otherwise provided in any of these rules, opposing affidavits may be served not later than 1 day before the hearing, unless the court permits them to be served at some other time. [Adopted Feb. 13, 1963, effective July 1, 1963.]

III. PLEADINGS AND MOTIONS (RULES 7–16)

RULE 7

PLEADINGS ALLOWED: FORM OF MOTIONS.

(a) Pleadings. There shall be a complaint and an answer; and there shall be a reply to a counterclaim denominated as such; an answer to a cross–claim, if the answer contains a cross–claim; a third–party complaint, if leave is given under rule 14 to summon a person who was not an original party; and there shall be a third–party answer, if a third–party complaint is served. No other pleadings shall be allowed.

The complaints, counterclaims, cross–claims and third–party claims shall be in writing. A reply to a counterclaim and answers may be written or oral. When pleadings are oral the substance of them shall be entered in the docket.

(b) Motions and Other Papers. (1) An application to the court for an order shall be by motion. Motions may be oral or written. Motions need not be in any special form but must be such as to enable a person of common understanding to know what is intended.

(2) The rules applicable to captions, signing, and other matters of form of written pleadings apply to all written motions and other papers provided for by these rules.

(c) Demurrers, Pleas, etc., Abolished. Demurrers, pleas and exceptions for insufficiency of a pleading shall not be used. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE 8

GENERAL RULES OF PLEADING.

(a) Claims for Relief. A complaint, 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. Relief in the alternative or of several different types may be demanded.

(b) Defenses; Form of Denials. A party shall state his defenses, denials and objections to each claim asserted against him in any form which will enable a person of common understanding to know what is intended. If he is without knowledge or information sufficient to form a belief as to the truth of an averment, he shall so state and this has the effect of a denial.

(c) Affirmative Defenses. In a written answer to a complaint, cross–claim or third–party claim and in a written reply to a counterclaim, 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, fraud, illegality, injury by fellow servant, laches, license, payment, release, res judicata, statute of frauds, statute of limitations, 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.

(d) Effect of Failure to Deny. Statements in a pleading to which responsive pleading is required, other than those as to the amount of damage, are admitted when not denied by responsive pleading. Statements of an answer to a complaint, cross–claim, or third–party complaint, or a reply to a counterclaim shall be taken as denied or avoided.

(e) Pleading to Be Concise and Direct; Consistency. (1) No technical forms of pleadings or motions are required. Pleadings and motions shall be stated so as to enable a person of common understanding to know what is intended.

(2) 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 he 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 Feb. 13, 1963, effective July 1, 1963.]

RULE 9

(RESERVED)

RULE 10

FORM OF PLEADINGS.

(a) Caption; Names of Parties. Every written pleading shall contain a caption setting forth the name of the court, the title of the action, the file number if known to the person signing it, and a designation as in rule 7(a). In the complaint the title of the action shall include the names of all the parties, but in other written pleadings it is sufficient to state the name of the first party on each side with an appropriate indication of other parties. When the plaintiff is ignorant of the name of the defendant, it shall be so stated in his pleading, and such defendant may be designated in any pleading or proceeding by any name, and when his true name shall be discovered, the pleading or proceeding may be amended accordingly.

(b) Adoption by Reference; Exhibits. Statements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading or in any motion. A copy of any written instrument which is an exhibit to a pleading is a part thereof for all purposes.

(c) Form. All notices, pleadings, motions, and other papers filed shall be plainly written or typed. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE 11

VERIFICATION AND SIGNING OF PLEADINGS.

(1) Every complaint, answer or reply shall be verified by the oath of the party pleading; or if he be not present, by the oath of his attorney or agent, to the effect that he believes it to be true. The verification shall be oral, or in writing, in conformity with the pleading verified.

(2) All other pleadings of a party represented by an attorney shall be signed by at least one attorney of record in his individual name, whose address shall be stated. A party who is not represented by an attorney shall sign his pleading and state his address. The signature of a party or an attorney constitutes a certificate by him that he has read the pleading; that to the best of his knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE 12

DEFENSES AND OBJECTIONS——WHEN AND HOW PRESENTED——BY PLEADING OR MOTION——MOTION FOR JUDGMENT ON PLEADINGS.

(a) When Presented. If the answer is oral, a defendant shall make the oral answer on or before the time he is required to appear in answer to the notice as indicated in rule 4. If the answer is written a defendant shall serve his answer on or before the time he is required to appear in answer to the notice as indicated in rule 4. A party served with a pleading stating a cross–claim against him shall answer thereto on the return date fixed in a notice which shall accompany the pleading. The plaintiff shall reply to a counterclaim not less than three days prior to trial. If the court denies a motion permitted under this rule or postpones its disposition until the trial on the merits, the court may set the case for trial at the same time and also fix a time for the responsive pleading. If the court grants a motion for more definite statement the court may set the case for trial at the same time and fix the date for making the more definite statement and for the responsive pleading to the more definite statement.

(b) How Presented. Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross–claim, or third–party claim, shall be asserted by the responsive pleading thereto, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) insufficiency of process, (4) insufficiency of service of process, (5) failure to state a claim upon which relief can be granted, (6) failure to join an indispensable party. A motion making any of these defenses shall be made before pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, he may assert at the trial any defense in law or fact to that claim for relief. If, on a motion asserting the defense numbered (5) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in rule 56 of the Civil Rules for Superior Court, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by said rule 56.*

(c) Preliminary Hearings. The defenses specifically enumerated (1)–(6) in subdivision (b) of this rule, whether made in a pleading or by motion, shall be heard and determined before trial on application of any party, unless the court orders that the hearing and determination thereof be deferred until the trial.

(d) Motion for More Definite Statement. If a pleading to which a responsive pleading is permitted (for example, the complaint) is so vague or ambiguous that a person of common understanding cannot know what is intended, he may move for a more definite statement before interposing his responsive pleading. The motion shall point out the defects complained of and the details desired. If the motion is granted and the order of the court is not obeyed within 10 days after the order or within such other time as the court may fix, the court may strike the pleading to which the motion was directed or make such order as it deems just.

(e) Motion to Strike. Upon motion made by a party not less than three days prior to trial or upon the court's own initiative at any time the court may order stricken from the complaint any impertinent or scandalous matter.

(f) Consolidation of Defenses. A party who makes a motion under this rule may join with it the other motions herein provided for and then available to him. If a party makes a motion under this rule and does not include therein all defenses and objections then available to him which this rule permits to be raised by motions, he shall not thereafter make a motion based on any of the defenses or objections so omitted, except as provided in subdivision (g) of this rule.

(g) Waiver of Defenses. A party waives all defenses and objections which he does not present either by motion as hereinbefore provided or, if he has made no motion, in his answer or reply, except (1) that the defense of failure to state a claim upon which relief can be granted, the defense of failure to join an indispensable party, and the objection of failure to state a legal defense to a claim may also be made by a later pleading, if one is permitted, or by motion for judgment on the pleadings or at the trial on the merits, and except (2) that, whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action. The objection or defense, if made at the trial, shall be disposed of as provided in rule 15(b) in the light of any evidence that

may have been received. [Adopted Feb. 13, 1963, effective July 1, 1963.]

*Note by the Court: Motions for change of venue are not governed by rule 12. See RCW 3.66.050, RCW 3.66.090, RCW 3.20.070, RCW 3.20.100, RCW 3.20.110.

RULE 13

COUNTERCLAIM AND CROSS-CLAIM.

(a) **Permissive Counterclaims.** A pleading may state as a counterclaim any claim against an opposing party.

(b) **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.

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

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

(e) **Cross-Claim Against Co-Party.** A pleading may state as a cross-claim any claim by one party against a co-party 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.

(f) **Additional Parties May Be Brought In.** When the presence of parties other than those to the original action is required for the granting of complete relief in the determination of a counterclaim or cross-claim, the court shall order them to be brought in as defendants as provided in these rules, if jurisdiction of them can be obtained.

(g) **Separate Trials; Separate Judgment.** If the court orders separate trials as provided in rule 42(a), judgment on a counterclaim or cross-claim may be rendered in accordance with the terms of rule 42(b), even if the claims of the opposing party have been dismissed or otherwise disposed of. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE 13.04

SETOFFS AGAINST ASSIGNEES.

(a) **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 he 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 he was originally liable, or such assignee while the contract belonged to him.

(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 of 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 plaintiff's 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, he must set forth the same in his answer. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE 14

THIRD-PARTY PRACTICE.

(a) **When Defendant May Bring in Third Party.** Before making his answer, a defendant may move ex parte or, after answering, on notice to the plaintiff, for leave as a third-party plaintiff to serve a notice and complaint upon a person not a party to the action who is or may be liable to him for all or part of the plaintiff's claim against him. If the motion is granted and the notice and complaint are served, the person so served, hereinafter called the third-party defendant, shall make his defenses to the third-party plaintiff's claim as provided in rule 12 and his counterclaims against the third-party plaintiff and cross-claims against other third-party defendants as provided in rule 13. The third-party defendant may assert against the plaintiff any defenses which the third-party plaintiff has to the plaintiff's claim. The third-party defendant may also assert any claim against the plaintiff arising out of the transaction or occurence that is the subject matter of the plaintiff's claim against the third-party plaintiff. The plaintiff may assert any claim against the third-party defendant arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff, and the third-party defendant thereupon shall assert his defenses as provided in rule 12. A third-party defendant may proceed under this rule against any person not a party to the action who is or may be liable to him for all or part of the claim made in the action against the third-party defendant.

(b) **When Plaintiff May Bring in Third Party.** When a counterclaim is asserted against a plaintiff, he may cause a third party to be brought in under circumstances which under this rule would entitle a defendant to do so.

(c) **Tort Cases.** This rule shall not be applied, in tort cases, so as to permit the joinder of a liability or indemnity insurance company, unless such company is by statute or contract directly liable to the person injured

or damaged. [Adopted Feb. 13, 1963, effective July 1, 1963.]

Removal of certain actions to Superior Court. See Chapter 4.14. RCW.

RULE 15

AMENDED AND SUPPLEMENTAL PLEADINGS.

(a) Amendments Prior to Trial. A party may amend a complaint, counterclaim, cross-claim or third-party complaint once as a matter of course at any time before a responsive pleading is made, or, if the pleading is an answer or a reply to a counterclaim he may so amend it at any time within 20 days after it is served, provided it is amended prior to trial. Otherwise, prior to trail a party may amend his pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. 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 At or After the Trial. 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 in maintaining his 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.

(d) Supplemental Pleadings. Upon motion of a party, the court may, upon reasonable notice and upon such terms as are just, permit him to serve or make a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented. If the court deems it advisable that the adverse party plead thereto, 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, except by permission of the court. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE 16

GARNISHMENTS.

Garnishments are governed by RCW 12.32.010 through 12.32.040, inclusive. Provided, that judges, or their clerks, may issue writs of garnishment in accordance with the provisions therein. [Adopted July 14, 1966, effective August 1, 1966.]

IV. PARTIES (RULES 17-25)

RULE 17

PARTIES PLAINTIFF AND DEFENDANT; CAPACITY.

(a) Real Party in Interest. Every action shall be prosecuted in the name of the real party in interest; but an executor, administrator, guardian, 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 own name without joining with him the party for whose benefit the action is brought.

(b) Infants or Incompetent Persons. (1) When an infant is a party he shall appear by guardian, or if he 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 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 be of the age of 14 years, and applies within the time he is to appear; if he be under the age of fourteen, 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 shall appear by guardian, or if he 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 is to appear. If no such application be made within the time above limited, application may be made by any party to the action. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE 18

JOINDER OF CLAIMS AND REMEDIES.

(a) Joinder of Claims. The plaintiff in his complaint or in reply setting forth a counterclaim and the defendant in an answer setting forth a counterclaim may join either as independent or as alternate claims as many claims either legal or equitable or both as he may have against an opposing party. There may be a like joinder

of claims when there are multiple parties if the requirements of rules 19, 20 and 22 are satisfied. There may be a like joinder of cross-claims or third-party claims if the requirements of rules 13 and 14 respectively are satisfied.

(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. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE 19

NECESSARY JOINDER OF PARTIES.

(a) Necessary Joinder. Subject to the provisions of subdivision (b) of this rule, persons having a joint interest shall be made parties and be joined on the same side as plaintiffs or defendants. When a person who should join as a plaintiff refuses to do so, he may be made a defendant.

(b) Effect of Failure to Join. When persons who are not indispensable but who ought to be parties if complete relief is to be accorded between those already parties, have not been made parties and are subject to the jurisdiction of the court as to both service of process and venue, the court shall order them summoned to appear in the action. The court in its discretion may proceed in the action without making such persons parties, if its jurisdiction over them as to either service of process or venue can be acquired only by their consent or voluntary appearance; but the judgment rendered therein does not affect the rights or liabilities of absent persons.

(c) Same: Names of Omitted Persons and Reasons for Nonjoinder to be Pleaded. In any pleading in which relief is asked, the pleader shall set forth the names, if known to him, of persons who ought to be parties if complete relief is to be accorded between those already parties, but who are not joined, and shall state why they are omitted. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE 20

PERMISSIVE JOINDER OF PARTIES.

(a) Permissive Joinder. All person 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 them 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 for 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.

RCW 4.08.040 applies to joinder of husband and wife.

(b) Separate Trials. The court may make such orders as will prevent a party from being embarrassed, delayed, or put the expense by the inclusion of a party against whom he asserts no claim and who asserts no claim against him, and may order separate trials or make other orders to prevent delay or prejudice. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE 21

MISJOINDER AND NONJOINDER OF PARTIES.

Misjoinder of parties is not ground for dismissal of an action. Parties may be dropped or added by order of the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just. Any claim against a party may be severed and proceeded with separately. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE 22

INTERPLEADER.

(a) Scope. 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 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) Other Remedies. 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. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE 23

(RESERVED)

RULE 24

INTERVENTION.

(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 representation of the applicant's interest by existing parties is or may be inadequate and the applicant is or may be bound by a judgment in the action; or (3) when the applicant is so situated as to be

adversely affected by a distribution or other disposition of property which is in the custody or subject to the control or disposition of the court.

(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 applicant's 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 affected thereby. The motion shall state the ground therefor and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE 25

SUBSTITUTION OF PARTIES.

(a) Death. (1) 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 statute for service of notices, and upon persons not parties in the manner provided by these rules for the service of notice and complaint. If substitution is not made within a reasonable time, the action may be dismissed as to the deceased party.

(2) 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 fact of death shall be noted in the docket 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 subdivision (a) of this rule may allow the action to be continued by or against his 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 subdivision (a) of this rule. [Adopted Feb. 13, 1963, effective July 1, 1963.]

V. DEPOSITIONS AND DISCOVERY (RULES 26–37)

RULE 26

DEPOSITIONS PENDING ACTION.

The taking of depositions, the requesting of admissions and all other procedures authorized by rules 26 through 37 of the Civil Rules for Superior Court applicable for use in the superior court may be available only upon prior permission of the court. The court shall have absolute discretion to decide whether to permit any such procedures. In exercising such discretion the court shall consider (1) whether all parties are represented by counsel, (2) whether undue delay in bringing the case to trial will result and (3) whether the interests of justice will be promoted. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULES 27–37

(RESERVED)

VI. TRIALS (RULES 38–53)

RULE 38

JURY TRIAL.

(a) Demand and Selection. After the appearance of the defendant, and before the court shall proceed to inquire into the merits of the cause, either party may demand a jury to try the action. The selection and other matters concerning jury trials are governed by RCW 12.12.030–12.12.100 inclusive. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE 39

TRIAL BY JURY OR BY THE COURT.

(a) By Jury. In a civil case, when a jury is demanded, it shall be allowed and tried with all reasonable speed. All issues of fact shall be tried by the jury.

(b) By the Court. All questions of law including the admissibility of testimony, the facts preliminary to such admission, and the construction of statutes and other writings, and other rules of evidence, are to be decided by the judge, and all discussions of law addressed to him. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE 40

ASSIGNMENT OF CASES FOR TRIAL——JUDGE, DISQUALIFICATION.

(a) Assignment for Trial. When the pleadings of the parties have taken place a case shall be tried, but cases may be continued by the court to a date certain. Continuances may not be granted for a longer period than sixty days each.

(b) Disqualification. 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 is in anywise interested or prejudiced. The judge, of his own initiative, may enter an order disqualifying himself; and he shall also 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 grounds 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 ten (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 attorney within the ten (10) day period. In multiple-judge courts, or where a pro tem or visiting judge is designated as the trial judge, the 10 day period shall commence on the date that the defendant or his attorney has actual notice of assignment or reassignment to a designated trial judge. [Adopted Feb. 13, 1963, effective July 1, 1963; amended, adopted Dec. 17, 1970, effective Apr. 16, 1971.]

RULE 41

Dismissal of Actions.

(a) Without Prejudice. Judgment that the action be dismissed, without prejudice to a new action, may be entered, with costs, in the following cases:

(1) When the plaintiff voluntarily dismisses the action before it is finally submitted.

(2) When plaintiff fails to appear at the time set for trial or other hearing.

(b) Limitation. If a counterclaim has been pleaded by defendant, the action shall not be dismissed against defendant's objection unless the counterclaim can remain pending for independent adjudication by the court.

(c) Counterclaims, etc. The provisions of this rule apply to the dismissal of any counterclaim, setoff, cross-claim, or third-party claim. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE 42

Consolidation; Separate Trials.

(a) Consolidation. When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

(b) Separate Trials. The court in furtherance of convenience or to avoid prejudice may order a separate trial of any claim, cross-claim, counterclaim, or third-party claim, or of any separate issue or of any number of claims, cross-claims, counterclaims, third-party claims, or issues. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE 43

Evidence.

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

(a-1) 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) Scope of Examination and Cross-Examination. A party may interrogate any unwilling or hostile witness by leading questions. A party may call an adverse party or an officer, director, or managing agent of a public or private corporation or of a partnership or association which is an adverse party, and interrogate him by leading questions and contradict and impeach him in all respects as if he had been called by the adverse party, and the witness thus called may be contradicted and impeached by or on behalf of the adverse party also, and may be cross-examined by the adverse party only upon the subject matter or his examination in chief.

(c) 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.

(d) 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 which 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 to opposing counsel of record. Notices for the attendance of a party or a managing agent at the trial shall be given a reasonable time before the trial of not less than 10 days (exclusive of the day of service, Saturdays, Sundays and court holidays). For good cause shown, 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 filed 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. The testimony of an adverse party or managing agent at the trial or on depositions or interrogatories shall not bind his adversary but 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 deposition or at the trial after notice served, 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: (1) to compel any person to answer any question where such answer might tend to incriminate him; or (2) 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; or (3) to limit the applicability of any other sanctions or penalties.

(e) Attorneys as Witnesses. If an attorney offers himself as a witness on behalf of his client and gives evidence on the merits, he shall not argue the case to the jury, unless by permission of the court. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE 44

PROOF OF OFFICIAL RECORD.

(a) Authentication of Copy. An official record or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his deputy, and accompanied with a certificate that such officer has the custody. If the office in which the record is kept is within the United States or within a territory or insular possession subject to the dominion of the United States, the certificate may be made by a judge of a court of record of the district or political subdivision in which the record is kept, authenticated by the seal of the court, or may be made by any public officer having a seal of office and having official duties in the district or political subdivision in which the record is kept, authenticated by the seal of his office. If the office in which the record is kept is in a foreign state or country, the certificate may be made by a secretary of embassy or legation, consul general, consul, vice–consul, or consular agent or by any officer in the foreign service of the United States stationed in the foreign state or country in which the record is kept, and authenticated by the seal of his office.

(b) Proof of Lack of Record. A written statement signed by an officer having the custody of an official record or by his deputy that after diligent search no record or entry of a specified tenor is found to exist in the records of his office, accompanied by a certificate as above provided, is admissible as evidence that the records of his office contain no such record or entry.

(c) Other Proof. This rule does not prevent the proof of official records or of entry or lack of entry therein by any method authorized by an applicable statute, or by the rules of evidence at common law. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE 45

SUBPOENA.

Subpoenas are governed by RCW 12.16.010 through 12.16.050, inclusive. Provided, that subpoenas may be issued with like effect by the attorney of record of the party to the action in whose behalf the witness is required to appear, and the form of such subpoena in each case shall be the same as when issued by the court except that it shall only be subscribed by the signature of such attorney. [Adopted Feb. 13, 1963, effective July 1, 1963; amended July 14, 1966, effective August 1, 1966.]

RULES 46–50

(RESERVED)

RULE 51

INSTRUCTIONS TO JURY; OBJECTIONS.

At the close of the evidence the court on its own motion, or on the request of either party, shall instruct the jury on the law either orally or in writing or both. Any party may file written request that the court instruct the jury. At the same time copies of requested instructions shall be furnished to adverse parties. The court need not grant any requested instruction if the matter is fairly covered by the instruction given. The court shall not instruct with respect to matters of fact or comment upon the evidence. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE 52

FINDINGS BY THE COURT.

If a jury trial is not demanded, the judge shall hear the evidence, and decide all questions of fact and law and render judgment accordingly. He is not required to make findings of fact or conclusions of law. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE 53

(RESERVED)

VII. JUDGMENTS (RULES 54–63)

RULE 54

JUDGMENTS; 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 a writing signed by the court or may be oral confirmed by an entry in the record.

(b) Judgment Upon Multiple Claims. When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross–claim, or third–party claim, the court may direct the entry of a final judgment upon one or more but less than all of the claims only upon an express determination 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 decisions, however designated, which adjudicates less than all the claims shall not terminate the action as to any of the

claims, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims.

(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. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE 55

DEFAULT.

(a) **Judgment.** When the defendant fails to appear and plead before or at the time specified in the notice, or within one hour thereafter, or upon continuance, or for trial, judgment shall be given on motion of the plaintiff as follows: When the defendant has been served with a true copy of the complaint, judgment shall be given upon proof satisfactory to the court. In those cases where interest and attorney's fees are claimed by virtue of a written instrument, a copy of said instrument shall be filed and the court shall set a reasonable attorney's fee.

(b) **Setting Aside Default.** The court shall have full power at any time after a judgment has been given by default to vacate and set aside said judgment for any good cause and upon such terms as the court shall deem sufficient and proper. Such judgment shall be set aside only upon 5 days notice in writing served upon the plaintiff or the plaintiff's attorney and filed with the court within 20 days after the entry of the judgment. The court shall hear the application to set aside such judgment either upon affidavits or oral testimony as the court may deem proper. In case such judgment is set aside the making of the application for setting the same aside shall be considered an entry of general appearance in the case by the applicant, and the case shall duly proceed to a trial upon the merits. No court shall issue a transcript or pay out or turn over money or property received by the court by virtue of any default judgment until the expiration of the said 20 days for moving to set aside such default judgment.

Nothing herein contained shall limit the power of the court to set aside a judgment, at any time, where the court lacked jurisdiction to enter the judgment, or where the judgment was obtained by fraud.

(c) **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. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULES 56–57

(RESERVED)

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 reserves his decision, in which event the trail shall be continued to a day certain, but not longer than 15 days. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE 59

(RESERVED)

RULE 60

RELIEF FROM JUDGMENT OR ORDER.

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. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE 61

(RESERVED)

RULE 62

STAY OF PROCEEDINGS TO ENFORCE A JUDGMENT.

When the court has ordered a final judgment on some but not all the claims presented in the action, under the conditions stated in rule 54(b), the court may stay enforcement of that judgment until the entering of a subsequent judgment or judgments and may prescribe such conditions as are necessary to secure the benefit thereof to the party in whose favor the judgment is entered. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE 63

(RESERVED)

VIII. PROVISIONAL AND FINAL REMEDIES AND SPECIAL PROCEEDINGS (RULES 64–71)

RULE 64

GARNISHMENT.

Chapter 12.32 of the Revised Code of Washington and Special Proceedings Rules for Superior Court Rule 91.04W "Service of copy of writ of garnishment on defendant or judgment debtor" shall continue in full force and effect and shall be fully applicable to garnishment in courts of limited jurisdiction. [Adopted June 14, 1963, effective July 1, 1963.]

RULES 65–67

(RESERVED)

RULE 68

OFFER OF JUDGMENT.

At any time more than 5 days before the trial begins, a party defending against a claim may serve upon the adverse party an offer to allow judgment to be taken against him for the money or property or to the effect specified in his offer, with costs then accrued. If within

5 days after the service of the offer the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service thereof and thereupon the court shall enter judgment. An offer not accepted shall be deemed withdrawn and evidence thereof is not admissible except in a proceeding to determine costs. If the judgment finally obtained by the offeree is not more favorable then the offer, the offeree must pay the cost incurred after the making of the offer. The fact that an offer is made but not accepted does not preclude a subsequent offer. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULES 69–71

(RESERVED)

IX. APPEALS (RULES 72–76)

RULE 72

(RESERVED)

RULE 73

APPEAL TO A SUPERIOR COURT.

(a) When and How Taken. When an appeal is permitted by law from a court of limited jurisdiction to a superior court such appeal shall be taken by serving a copy of notice of appeal on the adverse party or his attorney, and filing, within 20 days after the judgment is rendered or decision made, the original notice of appeal with acknowledgement or affidavit of service in the court of limited jurisdiction and, unless such appeal be by a county, city, town or school district, filing a bond or undertaking, as herein provided. No appeal, except when such appeal is by a county, city, town or school district, shall be allowed in any case unless a bond or undertaking shall be executed on the part of the appellant and filed with and approved by the court of limited jurisdiction with one or more sureties, in the sum of one hundred dollars, conditioned that the appellant will pay all costs that may be awarded against him 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 on appeal, be so executed and filed.

(b) 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.

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

(d) 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 should have executed at the time of taking the appeal, and pay all costs that may have accrued by reason of such defect.

(e) Judgment Against Appellant and Sureties. 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 and his sureties on the bond on appeal. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE 74

(RESERVED)

RULE 75

RECORD ON APPEAL TO A SUPERIOR COURT.

(a) Transcript; Procedure in Superior Court; Pleadings in Superior Court. Within 10 days after the appeal has been taken in a civil action or proceeding, 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.

(b) 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 may be cited and punished

for contempt of court. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE 76

(RESERVED)

X. COURT AND CLERKS (RULES 77–80)

RULE 77

(RESERVED)

RULE 77.04

ADMINISTRATION OF OATH.

The oaths or affirmations of all witnesses

(1) Shall be administered by the judge;

(2) Shall be administered to each witness on coming to the stand, not to a group and in advance; and

(3) The witness shall stand while the oath or affirmation is pronounced. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULES 78–80

(RESERVED)

XI. GENERAL PROVISIONS (RULES 81–86)

RULE 81

(RESERVED)

RULE 82

JURISDICTION AND VENUE——UNAFFECTED.

These rules shall not be construed to extend or limit the jurisdiction of the courts of limited jurisdiction or the venue of actions therein. Jurisdiction and venue shall be governed by RCW 3.20.100, 3.20.110, 3.34.110, 3.50.280, 3.66.040 and 3.66.050. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULES 83–84

(RESERVED)

RULE 85

TITLE.

These rules may be known and cited as Civil Rules for Courts of Limited Jurisdiction and they may be referred to as JCR.* [Adopted Feb. 13, 1963, effective July 1, 1963.]

***Reviser's note:** By order of Supreme Court dated May 5, 1967, effective July 1, 1967, these rules were redesignated Civil Rules for Justice Court and may be referred to as JCR.

RULE 86

EFFECTIVE DATE.

These rules take effect on the dates specified by the Supreme Court and thereafter all procedural laws in conflict therewith shall be of no further force and effect. They govern all proceedings in actions after they take effect, and also all further proceedings in actions pending on their effective dates, except to the extent that in the opinion of the court, expressed by its order, the application of rules in a particular action pending when the rules take effect would not be feasible or would work injustice, in which event the procedure existing at the time the action was brought applies. [Adopted Feb. 13, 1963, effective July 1, 1963.]

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(RESERVED)

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CHAPTER 1——SCOPE, PURPOSE AND CONSTRUCTION

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RULE 1.02

PURPOSE AND CONSTRUCTION.

See Rule JAR 2. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE 1.03

LOCAL COURT RULES——AVAILABILITY.

Courts of limited jurisdiction may adopt such special rules not inconsistent with these general rules as they may deem necessary for their respective courts. The court, upon the adoption of such rules, shall (a) arrange for the duplication and distribution of such rules, (b) send a copy of such rules to (1) the Administrator for the Courts, (2) the Recording Secretary of the Judicial Council, (3) the President of the Magistrates' Association, (4) the State Law Library, and (5) the Clerk of the Supreme Court, and (c) keep a copy of such rules readily available for inspection. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE 1.04

STYLE AND FORM.

The complaint, warrant, summons, motions, briefs, orders, decisions of the court and all other papers or forms required by or employed under these rules shall be plainly written typed or printed. [Adopted Feb. 13, 1963, effective July 1, 1963.]

CHAPTER 2——PRELIMINARY PROCEEDINGS

RULE 2.01

COMPLAINT——CITATION AND NOTICE.

(a) Complaint.

(1) *Initiation.* Except as otherwise provided in this rule, all criminal proceedings shall be initiated by a complaint.

(2) *Contents.* The complaint shall be in writing and shall set forth:

(i) the name of the court;

(ii) the title of the action and the name of the offense charged;

(iii) the name of the person charged; and

(iv) the offense charged, in the language of the statute, together with a statement as to the time, place, person, and property involved to enable the defendant to understand the character of the offense charged.

(3) *Verification.* The complaint shall be signed under oath by the Prosecuting Attorney or other authorized officer.

(b) Citation and Notice to Appear.

(1) *Issuance.* Whenever a person is arrested for a violation of law which is punishable as a misdemeanor or gross misdemeanor the arresting officer, or any other authorized peace officer, may serve upon the arrested person a citation and notice to appear in court, in lieu of continued custody. In determining whether to issue a citation and notice to appear, a peace officer may consider the following factors:

(i) whether the person has identified himself satisfactorily;

(ii) whether detention appears reasonably necessary to prevent imminent bodily harm to himself or to another, injury to property, or breach of the peace;

(iii) whether the person has ties to the community reasonably sufficient to assure his appearance or whether there is substantial likelihood that he will refuse to respond to the citation; and

(iv) whether the person previously has failed to appear in response to a citation issued pursuant to this section or to other lawful process.

(2) *Contents.* The citation and notice shall contain substantially the same information as the "Uniform Traffic Ticket and Complaint," sponsored by the American Bar Association Traffic Court Program, adopted in JTRT 2.01, and shall include:

(i) the name of the court and a space for the court's docket, case or file number;

(ii) the name of the person, his address, date of birth, and sex;

(iii) the date, time, place and description of the offense charged, the date on which the citation was issued, and the name of the citing officer;

(iv) the time and place at which the person is to appear in court which need not be a time certain, but may

be within 72 hours or within a greater period of time not to exceed 15 days after the date of the citation;

(v) a space for the person to sign a promise to appear.

(3) *Release.* To secure his release, the person must give his written promise to appear in court as required by the citation and notice served.

(4) *Certificate.* The citation and notice to appear shall contain a form of certificate by the citing official that he certifies, under penalties of perjury, as provided by RCW 3.50.140, and any law amendatory thereof, that he has reasonable grounds to believe, and does believe, the person committed the offense contrary to law. The certificate need not be made before a magistrate or any other person. Such citation and notice when signed by the citing officer and filed with a court of competent jurisdiction shall be deemed a lawful complaint for the purpose of initiating prosecution of the offense charged therein.

(5) *Additional Information.* The citation and notice may also contain such identifying and additional information as may be necessary and appropriate for law enforcement agencies in the state.

(6) *Approval of Form.* To insure uniformity, the format and use of the citation and notice, provided herein, shall be subject to approval by the office of Administrator for the Courts.

(c) Citizen Complaints. Any person wishing to make a complaint shall appear before the judge empowered to commit persons charged with offenses against the state. The judge shall examine on oath the complainant and any witnesses he may require, take their statements, and cause the statements and the complaint to be subscribed under oath by the person or persons making it.

(1) *Citizen's Complaint——Alternate Method.* The judge may consider any complaint on the basis of an affidavit sworn to before the judge, a clerk, commissioner or notary public where the judge is satisfied that probable cause exists, that the complaining witness is aware of the gravity of initiating a criminal complaint, the necessity of a court appearance for himself and witnesses, the possible liability for false arrest and consequences of perjury, such affidavit may be in substantially the form as provided herein.

STATE OF WASHINGTON }
COUNTY OF ______________ } ss. No. _____

AFFIDAVIT OF COMPLAINING WITNESS

DEFENDANT:

Name __________________ Name __________________
Address ________________ Address ________________
Phone ______ Bus. _______ Phone ______ Bus. ________

WITNESSES:

Name __________________ Name __________________
Address ________________ Address ________________
Phone ______ Bus. _______ Phone ______ Bus. ________

Name __________________ Name __________________
Address ________________ Address ________________
Phone ______ Bus. _______ Phone ______ Bus. ________

I, the undersigned complainant understand that I have the choice of complaining to a prosecuting authority rather than signing this affidavit. I elect to use this method to start criminal proceedings. I understand that the following are some but not all of the consequences of my signing a criminal complaint: (1) the defendant may be arrested and placed in custody. (2) the arrest if proved false may result in a lawsuit against me. (3) if I have sworn falsely I may be prosecuted for perjury. (4) this charge will be prosecuted even though I might later change my mind. (5) witnesses and complainant will be required to appear in court on the trial date regardless of inconvenience, school, job, etc.

Following is a true statement of the events that led to filing this charge. I (have) (have not) consulted with a prosecuting authority concerning this incident.

On the day of , 19__, at __________________________
(location)

____

____

Signed ________________

SUBSCRIBED AND SWORN TO before me this _____ day of __________ 19__.

Court Commissioner, Clerk,
Judge or Notary Public

(d) Filing. The original of the complaint or citation and notice, shall be filed with the clerk of the court, and sufficient copies shall be prepared in order to provide a copy for each defendant.

(e) Exceptions. Traffic cases shall be processed as provided in the Traffic Rules for Justice Courts, and public intoxication cases may be processed under existing procedure, by Citation and Notice or by Uniform Traffic Ticket and Complaint. [Adopted Feb. 13, 1963, amended June 14, 1963, effective July 1, 1963. Amended June 28, 1968, effective July 5, 1968. Amended Oct. 23, 1969, effective Nov. 7, 1969.]

RULE 2.02

WARRANT OR SUMMONS UPON COMPLAINT.

(a) Issuance of Warrant of Arrest. If it appears from the complaint or from an affidavit or affidavits filed therewith, that there is reasonable cause to believe that an offense has been committed and that the defendant has committed it, the judge, except as otherwise provided in 2.02(b), shall issue a warrant for the arrest of the defendant unless he has already been arrested in connection with the offense charged and is in custody or has been released on obligation to appear in court. Before ruling on a request for a warrant the judge may require the complainant to appear personally and may examine under oath the complainant and any witnesses he may produce.

(b) Issuance of Summons in Lieu of Warrant of Arrest.

(1) *Where summons may issue.* In any case in which the judge finds sufficient grounds for issuing a warrant pursuant to 2.02(a), he may issue a summons commanding the defendant to appear in lieu of a warrant.

(2) *When summons must issue.* If the complaint charges the commission of one or more misdemeanors

or gross misdemeanors, the judge shall issue a summons instead of a warrant unless he has reasonable cause to believe that the defendant will not appear in response to a summons, or that arrest is necessary to prevent serious bodily harm to the accused or another, in which case he may issue a warrant.

(3) *Failure to appear on summons.* If a person summoned fails to appear in response to the summons, or if service is unsuccessful, a warrant for his arrest may issue.

(c) Form. (1) *Warrant.* The warrant shall be in writing and in the name of the State of Washington, shall be signed by the judge with the title of his office, and shall state the date when issued and the municipality or county where issued. It shall specify the name of the defendant, or if his name is unknown, any name or description by which he can be identified with reasonable certainty. It shall describe the offense charged against the defendant; if the offense charged is triable in the county in which the warrant issues, the warrant shall command that the defendant be arrested and brought forthwith before the the judge issuing the warrant. If the offense is bailable, the warrant shall contain the release provisions then fixed by the judge pursuant to JCrR 2.09.

(2) *Summons.* The summons shall be in the same form as the warrant except that it shall summon the defendant to appear before the judge issuing it at a stated time and place.

(d) Execution or Service.

(1) *Execution of warrant.* The warrant shall be directed to all peace officers in the state and shall be executed only by a peace officer.

(2) *Service of summons.* The summons may be served any place within the state. It shall be served by a peace officer who shall deliver a copy of the same to the defendant personally, or it may be served by mailing the same, postage prepaid, to the defendant at his address.

(e) Return. The officer executing a warrant shall make return thereof to the court before whom the defendant is brought pursuant to Rule 2.03. At the request of the prosecuting attorney any unexecuted warrant shall be returned to the judge by whom issued and shall be cancelled by him. The person to whom a summons has been delivered for service shall, on or before the return date, make return thereof to the judge before whom the summons is returnable. The judge for reasonable cause can also order that the warrant be returned to him.

(f) Defective Warrant or Summons.

(1) *Amendment.* No person arrested under a warrant or appearing in response to a summons shall be discharged from custody or dismissed because of any irregularity in the warrant or summons, but the warrant or summons may be amended so as to remedy any such irregularity.

(2) *Issuance of new warrant or summons.* If during the preliminary examination of any person arrested under a warrant or appearing in response to a summons, it appears that the warrant or summons does not properly name or describe the defendant, or the offense with which he is charged, or that although not guilty of the offense specified in the warrant or summons there is reasonable ground to believe that he is guilty of some other offense, the judge shall not discharge or dismiss the defendant but may allow a new complaint to be filed and shall thereupon issue a new warrant or summons. [Adopted April 18, 1973, effective July 1, 1973. Prior: Adopted Feb. 13, 1963, effective July 1, 1963.]

Comment: supersedes RCW 10.04.010, 10.04.030; RCW 10.16.010.

RULE 2.03

PROCEEDINGS BEFORE THE JUDGE——PROCEDURE FOLLOWING EXECUTION OF A WARRANT, OR ARREST WITHOUT A WARRANT——BAIL——PRELIMINARY HEARING.

(a) Preliminary Appearance.

(1) Any person arrested for any offense, including capital cases and other felonies and not released shall be taken without unnecessary delay before a judge. The term "without unnecessary delay" means as soon aa practically possible. In any event, delay beyond the close of business of the judicial day next following the day of arrest shall be deemed unnecessary. The court may, for good cause shown and recited in the order, enlarge the time prior to preliminary appearance.

(2) The judge shall inform the person of the crime for which he is arrested and of the rights of a person charged with a crime and shall provide for pretrial release pursuant to Rule 2.09.

(b) Filing of Complaint. When a person arrested without a warrant is brought before a judge, a complaint shall be filed within twenty-four hours after appearance before the court, or within such further time as the court shall specify.

(c) Effect of Failure to Grant Preliminary Appearance or File Complaint.

(1) If a person arrested and not released is not afforded preliminary appearance within the time prescribed by section (a), including any enlargement, the court shall order such a person brought before the court forthwith, and in default thereof, the court shall order his immediate release, unless good cause to the contrary be shown.

(2) If a complaint is not filed as provided by section (b), the court shall order the immediate release of such person.

(d) Preliminary Hearing.

(1) When a felony complaint is filed, the court may conduct a preliminary hearing to determine whether there is probable cause to believe that the defendant has committed a felony.

(2) If the court finds probable cause, or if the parties waive preliminary hearing, the court shall bind the defendant over to the superior court. If the court finds probable cause, an information shall be filed without unnecessary delay or, if it is not, the defendant shall be discharged. The court shall file the transcript in superior court promptly after notice that the information has

been filed. The transcript shall include, but not be limited to, the bond and any exhibits filed in the court of limited jurisdiction. Jurisdiction shall vest in the superior court when the information is filed.

(3) After the preliminary hearing, or a waiver thereof, the court may defer a bind-over order if the parties stipulate in writing that the case shall remain in the court of limited jurisdiction for a specified time not exceeding 30 days.

(4) A preliminary hearing shall be conducted as follows:

(i) The defendant may as a matter of right be present at such hearing.

(ii) The court shall inform the defendant of the charge unless the defendant waives such reading.

(iii) Witnesses shall be examined under oath and may be cross-examined.

(iv) The defendant may testify and call witnesses in his behalf.

(5) If a preliminary hearing on the felony complaint is held and the court finds that probable cause does not exist, the charge shall be dismissed, and may be refiled only if a motion to set aside the finding is granted by the superior court. The superior court shall determine whether, at the time of the hearing on such motion, there is probable cause to believe that the defendant has committed a felony. [Adopted April 18, 1973, effective July 1, 1973. Prior: Adopted Feb. 13, 1963, amended June 14, 1963, effective July 1, 1963.]

Comment: supersedes RCW 10.04.030, modifies if not supersedes RCW 10.16.090.

RULE 2.04

COMPLAINT AND CITATION——SUFFICIENCIES.

(a) Complaint. The complaint shall not be deemed insufficient for lack of a formal caption or commencement, or a formal conclusion, or any other matter not necessary to a plain, concise and definite statement of the essential facts constituting the specific offense or offenses with which the defendant is charged, nor for lack of any other matter not necessary to such statement, nor need it negative any exception, excuse or proviso contained in any statute creating or defining the offense charged. Allegations made in one count may be incorporated by reference in another count. It may be alleged in any count that the means by which the defendant committed the offense are unknown or that he committed it by one or more specified means. Unnecessary allegations may be disregarded as surplusage and on motion of the defendant prior to trial may be stricken from the complaint by the court. The complaint shall state for each count the official or customary citation of any applicable statute, rule, regulation, ordinance, or other provision of law which the defendant is alleged therein to have violated; but, error in the citation or its omission shall not be ground for dismissal of the complaint or for reversal of a conviction unless the error or omission mislead the defendant to his prejudice.

(b) Citation and Notice. No citation and notice issued pursuant to the provision of Rule 2.01(b) shall be deemed insufficient for failure to contain a definite statement of the essential facts constituting the specific offense with which the defendant is charged, nor by reason of defects or imperfections which do not tend to prejudice substantial rights of the defendant. Any defendant upon request shall be entitled as a matter of right to a bill of particulars. [Adopted Feb. 13, 1963, effective July 1, 1963. Amended June 28, 1968, effective July 5, 1968.]

RULE 2.05

COMPLAINT——JOINDER OF OFFENSES AND DEFENDANTS.

(a) Joinder of Offenses. Two or more offenses may be charged in the same complaint in a separate count for each offense if the offenses charged are of the same or similar character or are based on the same act or transaction or on two or more acts or connected transactions or transactions constituting parts of a common scheme or plan.

(b) Joinder of Defendants. Two or more defendants may be charged in the same complaint if they are alleged to have participated in the same act or transaction or in the same series of acts or transactions constituting an offense or offenses. Such defendants may be charged in one or more counts together or separately and it shall not be necessary to charge all the defendants in each count. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE 2.06

SEVERAL COMPLAINTS FOR SAME OFFENSE——JURISDICTION——CONSOLIDATION.

(a) Several Complaints for Same Offense——Same Court. If two or more complaints are filed against the same defendant in the same court for the same offense, the court shall order the complaints to be consolidated.

(b) Several Complaints for Same Offense——Different Courts. If two or more complaints are filed against the same defendant for the same offense in different courts, and if each court has jurisdiction, the court in which the first complaint was filed shall try the case and upon motion by either party, or the judge, the second or several complaints shall be forwarded to the court in which a complaint was first filed for consolidation and trial. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE 2.07

COMPLAINT——LOSS OR DESTRUCTION——COPY.

When a complaint has been lost or destroyed a copy thereof certified by the court may be substituted and the case shall proceed without delay from that cause. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE 2.08

PROCEDURE ON FAILURE TO OBEY CITATION AND NOTICE TO APPEAR.

(a) Residents. The court shall issue a warrant for the arrest of any defendant who is a resident of this state and who has failed to appear before the court either in

person or by counsel in answer to a citation and notice to appear upon which he has given his written promise to appear. If the warrant is not executed within 30 days after issue, the court shall make an entry of the notification on the docket, and may add a charge against the defendant for failure to appear after a written promise to do so, and mark the case closed, subject to being reopened when the appearance of the defendant is thereafter obtained.

(b) Nonresidents. If a nonresident defendant fails to appear before the court either in person or by counsel in answer to a citation and notice to appear upon which he has given his written promise to appear, the court shall mail a notice to the defendant at the address stated in the citation and notice to appear requesting him to abide by his promise and appear in person or by counsel on a day certain, and notifying him that he may also be charged for his failure to appear after a written promise to do so. If the nonresident defendant fails to respond within 30 days after the date set in the notice, the court shall issue a warrant for his arrest, and shall make an entry of the notification on the docket, and may add a charge against the defendant for failure to appear after a written promise to do so, and mark the case closed, subject to being reopened when the appearance of the defendant is thereafter obtained. [Adopted June 28, 1968, effective July 5, 1968.]

RULE 2.09

PRETRIAL RELEASE.

(a) Any defendant charged with an offense shall at his first court appearance be ordered released on his personal recognizance pending trial unless the court determines that such recognizance will not reasonably assure his appearance, when required. When such a determination is made, the court shall impose the least restrictive of the following conditions that will reasonably assure his appearance or if no single condition gives that assurance, any combination of the following conditions:

(1) place the defendant in the custody of a designated person or organization agreeing to supervise him;

(2) place restrictions on the travel, association, or place of abode of the defendant during the period of release;

(3) require the execution of an unsecured appearance bond in a specified amount;

(4) require the execution of an appearance bond in a specified amount and the deposit in the registry of the court in cash or other security as directed, of a sum not to exceed 10 per centum of the amount of the bond, such deposit to be returned upon the performance of the conditions of release;

(5) require the execution of an appearance bond with sufficient solvent sureties, or the deposit of cash in lieu thereof;

(6) require the defendant return to custody during specified hours; or

(7) impose any condition other than detention deemed reasonably necessary to assure appearance as required.

(b) In determining which conditions of release will reasonably assure the defendant's appearance, the court shall, on the available information, consider the relevant facts including: the length and character of the defendant's residence in the community, his employment status and history and financial condition; his family ties and relationships; his reputation, character and mental condition; his history of response to legal process, his prior criminal record; the willingness of responsible members of the community to vouch for the defendant's reliability and assist him in appearing in court; the nature of the charge; and any other factors indicating the defendant's ties to the community.

(c) Conditions of Release. Upon a showing that there exists a substantial danger that the defendant will commit a serious crime or that the defendant's physical condition is such to jeopardize his safety or that of others or that he will seek to intimidate witnesses, or otherwise unlawfully interfere with the administration of justice, the court, upon the defendant's release, may impose one or more of the following conditions:

(1) prohibit him from approaching or communicating with particular persons or classes of persons;

(2) prohibit him from going to certain geographical areas or premises;

(3) prohibit him from possessing any dangerous weapons, or engaging in certain described activities or indulging in intoxicating liquors or in certain drugs;

(4) require him to report regularly to and remain under the supervision of an officer of the court or other person or agency;

(5) detain him until his physical condition permits his release.

(d) A court authorizing the release of the defendant under this rule shall issue an appropriate order containing a statement of the conditions imposed, if any, shall inform him of the penalties applicable to violations of the conditions of his release and shall advise him that a warrant for his arrest may be issued immediately upon any such violation.

(e) Review of Conditions. Upon determining the conditions of release, the court, upon request, after twenty-four hours from the time of release, may review the conditions previously imposed.

(f) Amendment of Order. The court ordering the release of a defendant on any condition specified in this rule may at any time on change of circumstances or showing of good cause amend its order to impose additional or different conditions for release.

(g) Upon a verified application by the prosecuting attorney alleging with specificity that a defendant has willfully violated a condition of his release, a court shall order the defendant to appear for immediate hearing or issue a warrant directing the arrest of the defendant for immediate hearing. A law enforcement officer having probable cause to believe that a defendant released pending trial for a felony is about to leave the state or that he has violated a condition of such release, imposed pursuant to section (c), under circumstances rendering the securing of a warrant impracticable, may

arrest the defendant and take him forthwith before the court.

(h) Release After Verdict. A defendant (1) who is charged with a capital offense, or (2) who has been found guilty of a felony and is either awaiting sentence or has filed an appeal, shall be released pursuant to this rule, unless the court finds that the defendant may flee the state or pose a substantial danger to another or to the community. If such a risk of flight or danger exists, the defendant may be ordered detained.

(i) Information stated in, or offered in connection with, any order entered pursuant to this rule need not conform to the rules pertaining to the admissibility of evidence in a court of law.

(j) Nothing contained in this rule shall be construed to prevent the disposition of any case or class of cases by forfeiture of collateral security where such disposition is authorized by the court.

(k) Defendant Discharged on Recognizance or Bail——Absence——Forfeiture.

If the defendant has been discharged on his own recognizance, on bail, or has deposited money instead thereof, and does not appear for judgment when his personal appearance is necessary, the court, in addition to the forfeiture of the recognizance, or of the money deposited, may direct the clerk to issue a bench warrant for his arrest. [Adopted April 18, 1973, effective July 1, 1973.]

Comment: supersedes RCW 10.04.030; RCW 10.16.030, 10.16-.040, 10.16.070.

RULE 2.10

SEARCH AND SEIZURE.

(a) Authority to Issue Warrant. A search warrant authorized by this rule may be issued by a magistrate upon request of a peace officer or prosecuting attorney.

(b) Property Which May be Seized With a Warrant. A warrant may be issued under this rule to search for and seize any (1) evidence of a crime; or (2) contraband, the fruits of crime, or things otherwise criminally possessed; or (3) weapons or other things by means of which a crime has been committed or reasonably appears about to be committed.

(c) Issuance and Contents. A warrant shall issue only on an affidavit or affidavits establishing the grounds for issuing the warrant. Such affidavit or affidavits may consist of an officer's sworn telephonic statement to the judge; provided, however, such sworn telephonic testimony must be electronically recorded at the time transmitted and retained in the court records and reduced to writing as soon as possible thereafter. If the magistrate finds that probable cause for the issuance of a warrant exists, he shall issue a warrant or direct an individual whom he authorizes for such purpose to affix his signature to a warrant identifying the property and naming or describing the person or place or thing to be searched. The finding of probable cause shall be based on evidence, which may be hearsay in whole or in part, provided there is a substantial basis for believing the source of the hearsay to be credible and for believing that there is factual basis for the information furnished. Before ruling on a request for a warrant the court may require the affiant to appear personally and may examine under oath the affiant and any witnesses he may produce. The judge shall record a summary of any additional evidence on which he relies. The warrant shall be directed to any peace officer. It shall command the officer to search, within a specified period of time not to exceed 10 days, the person, place, or thing named for the property specified. It shall designate a magistrate to whom it shall be returned. The warrant may be served at any time.

(d) Execution and Return With Inventory. The peace officer taking property under the warrant shall give to the person from whom or from whose premises the property is taken a copy of the warrant and a receipt for the property taken. The return shall be made promptly and shall be accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the person from whose possession or premises the property is taken, or in the presence of at least one person other than the officer. The magistrate shall upon request deliver a copy of the inventory to the person from whom or from whose premises the property was taken and to the applicant for the warrant.

(e) Motion for Return of Property. A person aggrieved by an unlawful search and seizure may move the court for the return of the property on the ground that the property was illegally seized and that he is lawfully entitled to possession thereof. If the motion is granted, the property shall be returned. If a motion for return of property is made or comes on for hearing after an indictment or information is filed in the court in which the motion is pending, it shall be treated as a motion to suppress. [Adopted April 18, 1973, effective July 1, 1973.]

RULE 2.11

RIGHT TO AND ASSIGNMENT OF COUNSEL.

(a) Types of Proceedings.

(1) The right to counsel shall extend to all criminal proceedings for offenses punishable by loss of liberty regardless of their denomination as felonies, misdemeanors, or otherwise.

(b) Stage of Proceedings.

(1) The right to counsel shall accrue as soon as feasible after the defendant is taken into custody, when he appears before a committing magistrate, or when he is formally charged, whichever occurs earliest.

(2) Counsel shall be provided at every stage of the proceedings, including sentencing, appeal, and post-conviction review. Counsel initially appointed shall continue to represent the defendant through all stages of the proceedings unless a new appointment is made because geographical considerations or other factors make it necessary.

(c) Explaining the Availability of a Lawyer.

(1) When a person is taken into custody he shall immediately be advised of his right to counsel. Such advice shall be made in words easily understood, and it shall be stated expressly that a person who is unable to pay a lawyer is entitled to have one provided without charge.

(2) At the earliest opportunity a person in custody who desires counsel shall be provided access to a telephone, the telephone number of the public defender or official responsible for assigning counsel, and any other means necessary to place him in communication with a lawyer.

(d) Assignment of Counsel.

(1) Unless waived, counsel shall be provided to any person who is financially unable to obtain one without causing substantial hardship to himself or his family. Counsel shall not be denied to any person merely because his friends or relatives have resources adequate to retain counsel or because he has posted or is capable of posting bond.

(2) The ability to pay part of the cost of counsel shall not preclude assignment. The assignment of counsel may be conditioned upon part payment pursuant to an established method of collection.

(e) Withdrawal of Attorneys. Whenever a criminal cause has been set for trial, no attorney shall be allowed to withdraw from said cause, except upon written consent of the court, for good and sufficient reason shown.

(f) Services Other Than Counsel. Counsel for a defendant who is financially unable to obtain investigative, expert, or other services necessary to an adequate defense in his case may request them by a motion. Upon finding that the services are necessary and that the defendant is financially unable to obtain them, the court shall authorize counsel to obtain the services on behalf of the defendant. The courts, in the interest of justice and on a finding that timely procurement of necessary services could not await prior authorization, shall ratify such services after they have been obtained.

The court shall determine reasonable compensation for the services and direct payment to the organization or person who rendered them upon the filing of a claim for compensation supported by an affidavit specifying the time expended and the services and expenses incurred on behalf of the defendant, and the compensation received in the same cases or for the same services from any other source. [Adopted April 18, 1973, effective July 1, 1973.]

Comment: supersedes RCW 10.01.110.

CHAPTER 3——ARRAIGNMENT AND PREPARATION FOR TRIAL

RULE 3.01

ARRAIGNMENT.

Arraignment shall be conducted in open court and shall consist of reading the complaint to the defendant or stating to him the substance of the charge, and calling on him to plead thereto. He shall be given a copy of the complaint before he is called upon to plead. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE 3.02

ARRAIGNMENT——TIME TO DETERMINE PLEA AND TO CONSULT COUNSEL.

The defendant shall not be required to plead to the complaint until he shall have had a reasonable time to examine the complaint. If the defendant appears in court without counsel, the court shall advise him of his right to counsel, and, if available his right to trial by jury, enter this fact on the record, and, if time is requested to consult counsel, grant the defendant a reasonable time to consult counsel and determine his plea. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE 3.03

ARRAIGNMENT——APPEARANCE BY COUNSEL ONLY.

If the complaint is for a misdemeanor punishable by fine only, the defendant may appear upon arraignment by counsel. Any court may adopt a local rule, not limited to misdemeanors, substantially as follows: attorneys-at-law may enter a plea of not guilty in writing on all (here insert type of case) cases. No further arraignment shall be required. [Adopted Feb. 13, 1963, effective July 1, 1963; amended May 12, 1969, effective July 1, 1969.]

RULE 3.04

ARRAIGNMENT——PROCEDURES——EFFECT OF.

(a) Upon arraignment, the court shall ask the defendant his true name and, if it has been incorrectly stated in the complaint, order the complaint corrected accordingly.

(b) The defendant may move to set aside the complaint on the grounds that the complaint:

(1) does not satisfy the requirements of these Rules, or

(2) does not set forth facts constituting a crime, or

(3) contains matter which, if true, would constitute a defense or other legal bar to the action.

(c) If the motion is well taken, the court shall order appropriate amendments or corrections to be made, if permitted under Rule 2.04; otherwise, the court shall order the complaint dismissed.

(d) If the motion of dismissal is sustained because the complaint contains matter which is a legal defense or bar to the action, the judgment shall be final and the defendant must be discharged; if sustained for any other reason, the dismissal shall not bar another prosecution for the same offense.

(e) If the motion is overruled, or well taken, followed by appropriate amendments or corrections, the defendant shall enter his plea. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE 3.06

ARRAIGNMENT——PLEAS.

(1) The defendant may plead not guilty, former conviction, dismissal under Rule 3.04(d), or acquittal, which may be pleaded with or without the plea of not guilty, or guilty. The plea of guilty can be made only by the defendant in open court. The court may refuse to accept a plea of guilty and shall not accept such plea without first determining of record that the plea is made voluntarily and with understanding of the nature of the charge. If the defendant fails or refuses to plead to the complaint, or the court refuses to accept a plea of guilty, a plea of not guilty shall be entered by the court.

(2) The court may, at any time before judgment, permit any plea to be withdrawn and an appropriate plea substituted, if it deems such action necessary in the interest of justice.

(3) The plea of not guilty is a denial of every material allegation in the complaint. All matters of fact may be given in evidence under it, except a former conviction or acquittal. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE 3.07

COMPLAINTS——WHEN TRIED.

The defendant, charged by complaint, may be tried, with his consent, immediately following his plea to the complaint, or on the first available court day, unless in either case the trial be continued to a day certain for good cause. [Adopted Feb. 13, 1963, effective July 1, 1963; rule amended July 14, 1966, effective August 1, 1966.]

RULE 3.08

CONTINUANCES——TRIAL WITHIN SIXTY DAYS——DISMISSAL.

Continuances may be granted to either party for good cause shown. Also, the court, on its own motion, may postpone the trial for good and sufficient reason. In either case, the continuance or postponement must be to a date certain. If the defendant is not brought to trial within 60 days from the date of appearance, except where the postponement was requested by the defendant, the court shall order the complaint to be dismissed, unless good cause to the contrary is shown. Dismissal under such circumstances shall be a bar to further prosecution for the offense charged. [Adopted Feb. 13, 1963, effective July 1, 1963; rule amended July 14, 1966, effective August 1, 1966.]

RULE 3.10

WITNESSES——PROCESS——SUBPOENA.

(a) Before trial, upon request of the defendant, the prosecuting attorney shall file with the court the names of the witnesses he intends to call at the trial and shall provide a copy of the list for the defendant or his counsel.

(b) Both the prosecution and the defendant are entitled to subpoena such witnesses as are necessary, such process to be issued by the judge or the clerk of the court and directed to the sheriff of any county or any peace officer of any municipality in the state in which such witness may be.

(c) When so required by the court, the applicant for subpoena, either in person or by counsel, shall show to the satisfaction of the court, the materiality of the testimony which is expected to be obtained from such witness.

See CrR 101.16W.

(d) The procedure for compelling attendance of witnesses shall be as established in Chapter 5.56 RCW, RCW 10.04.060, 10.16.010, 10.16.140, 10.16.145, 10.16-.150, 10.16.160, 10.16.190; and 12.16.010 and 12.16.040. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE 3.11

WITNESSES——CONTINUED OBLIGATION TO ATTEND——DISMISSAL.

When a witness has been subpoenaed he shall remain in attendance until the case is disposed of, unless he be excused or dismissed as provided in CrR 101.12W, Witnesses in Criminal Cases; and he shall be liable for contempt for any default or failure to appear. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE 3.12

SUBPOENA DUCES TECUM——MOTION TO QUASH——PRODUCTION AND INSPECTION.

(a) A subpoena duces tecum may be issued by the court upon application of either party, commanding the person to whom it is directed to produce the books, papers, documents or other objects designated therein. The court, on motion made promptly, may quash or modify the subpoena if compliance would be illegal, unreasonable or oppressive.

(b) The court may direct that books, papers, documents or objects designated in the subpoena be produced before the court at a time prior to the trial or prior to the time when they are to be offered in evidence and may, upon their production, permit the books, papers, documents or objects or portions thereof to be inspected by the parties and their attorneys. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE 3.13

PROCESS——CRIMINAL.

The court may issue criminal process to any person anywhere in the state. [Adopted Feb. 13, 1963, effective July 1, 1963.]

CHAPTER 4——TRIAL

RULE 4.01

CONDUCT OF TRIAL.

All judicial proceedings and trials shall be held in open court, and shall be conducted in accordance with these rules. Questions pertaining to the conduct of the

trial and not covered by these rules or appropriate statutes shall be determined by the trial judge acting within his sound discretion. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE 4.02

PROCEDURE UPON A PLEA OF GUILTY.

If the defendant pleads guilty, the judge may, if he wishes or if he has any doubts as to the plea, examine a witness or witnesses concerning the circumstances of the charge. If he is satisfied, either with or without the examination of witnesses, that the defendant is guilty, the judge shall assess the punishment and enter judgment accordingly. If, after an examination of a witness or witnesses, he is not satisfied as to the guilt of the defendant, he may, in his discretion, refuse to accept the plea and enter a plea of not guilty. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE 4.03

PROCEDURE ON A PLEA OF NOT GUILTY, OR, OF FORMER ACQUITTAL OR CONVICTION, OR BOTH.

The proceedings upon the trial of criminal and traffic offenses with respect to a plea of not guilty, or, of former acquittal or conviction, or both, in all courts of limited jurisdiction shall be the same as those which apply to the trial of criminal cases in superior court except as altered by these rules or by statute. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE 4.04

TRIAL TOGETHER OF COMPLAINTS.

The court may order two or more complaints to be tried together if the offenses, and the defendants if there is more than one, could have been joined in a single complaint. The procedure shall be the same as if the prosecution were under a single complaint. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE 4.05

RELIEF FROM PREJUDICIAL JOINDER.

If it appears that a defendant or the state is prejudiced by a joinder of offenses or of defendants in a complaint by such joinder for trial together, the court may order a separate trial of counts, grant a severance of defendants, or provide whatever other relief justice requires. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE 4.06

PRESENCE OF THE DEFENDANT.

The defendant shall be present during the trial. A person being prosecuted for an offense punishable only by a fine may with the approval of the court be absent if with the approval of the court some responsible person undertakes to be bail for stay of execution and payment of the fine and costs that may be assessed against the defendant. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE 4.07

TRIAL BY JURY OR BY THE COURT.

(a) Trial By Jury——Waiver. When a trial by jury is authorized by the constitution, statutes or decisions of the Supreme Court, either the state or the defendant may demand a jury, which shall consist of six or less citizens of the state, who shall be impaneled and sworn as required by law. Demand for jury trial must be made at the time the defendant's plea is entered; otherwise, it shall be deemed waived, unless the court rules to the contrary.

(b) Trial By Jury——Selection. A jury shall be selected as follows: the judge shall write in a panel the names of eighteen persons, citizens of the county, from which the defendant, or his attorney, must strike one name, the prosecuting attorney one, and so on alternately until each party shall have stricken six names, and the remaining six names shall constitute the jury to try such case; and if either party neglect or refuse to aid in striking the jury as aforesaid the judge shall strike the name in behalf of such party.

(c) Trial By the Court. Unless the court refuses to assent, the parties may waive the right to trial by jury either explicitly or by failing to demand a jury trial in a timely manner, and trial shall be by the court. In trials for violation of municipal ordinances, except as indicated in rule 4.07 (a), trial shall be by the court without a jury. Where trial is by the court, the court shall make a general finding and may, in its discretion, find the facts specifically.

(d) Issues of Law. The court shall decide all questions of law which shall arise in the course of a trial. The judge may, with the consent of all parties, answer questions asked by jurors pertaining to the law applicable to the case.

(e) Issues of Fact——Judge May Charge Jury as to Law. Issues of fact shall be tried by the jury in jury cases and by the judge in nonjury cases. In cases tried by a jury, the judge shall not comment on the evidence; however, the court shall instruct the jury either orally or in writing as to the law governing the case. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE 4.08

ORDER OF TRIAL.

(a) The order of trial in jury cases shall be as follows:

(1) Where trial by jury is requested, and authorized, a qualified jury, selected as provided by law, shall be sworn well and truly to try the case.

(2) Unless both parties waive opening statements, the prosecutor shall make the opening statement outlining the evidence which will be offered by the prosecution, and the defendant or his counsel may immediately thereafter make the opening statement for the defendant or such opening statement may be reserved until after the conclusion of the prosecution's case–in–chief.

(3) The prosecutor shall submit evidence in support of the prosecution.

(4) Defendant's attorney may challenge the sufficiency of the evidence at the close of the prosecution's case–in–chief, and, if sustained, the case shall be dismissed; otherwise, the defendant may then offer evidence in defense.

(5) If the defendant's counsel shall have reserved his opening statement until the close of the prosecution's case–in–chief, he may then state the case for the defense; if such statement has already been made, he may then offer evidence in support thereof or he may, by proper motion, challenge the sufficiency of the prosecution's case–in–chief to sustain a conviction.

(6) The parties may thereafter respectively offer testimony in rebuttal only unless the court, for good cause shown or believing that the interests of justice will be best served thereby, permits the parties to offer evidence upon their original cases.

(7) If the jury is instructed, the instructions shall be given prior to argument by counsel.

(8) Unless both parties waive argument and agree that the cause be decided by the court or submitted to the jury without argument, the prosecutor shall make the opening argument and the counsel for the defendant may follow and the prosecutor may conclude the argument. The length of time of all arguments shall be fixed by the court in its discretion and announced before the arguments are commenced. Equal time shall be allowed each party.

(b) The order of trial in nonjury cases shall be the same as in subsection (a) except as to such portions as are not applicable to nonjury cases. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE 4.09

EVIDENCE.

Until such time as rules of evidence for the trial of criminal cases in all courts are promulgated, the rules evidence in civil actions, so far as practicable, shall be applied to criminal prosecutions.

With respect to confessions, in jury cases, the procedure set forth in CrR 101.20W shall apply, upon demand of the defendant. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE 4.10

AMENDMENTS TO COMPLAINT——CONTINUANCE.

The court may permit a complaint to be amended at any time before judgment if no additional or different offense is charged, and if substantial rights of the defendant are not thereby prejudiced. A continuance shall not be granted upon such amendment unless the defendant shall satisfy the court that the amendment has made it necessary for him to have additional time in which to prepare his defense. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE 4.11

MOTION FOR JUDGMENT OF DISMISSAL.

Motions for directed verdict are abolished and motions for judgment of dismissal are substituted in their place. The court either on motion of a defendant, or on its own motion, shall order entry of judgment of dismissal of one or more offenses charged by complaint if, after the evidence on either side is closed, the court concludes as a matter of law that such evidence is not sufficient to sustain a judgment of conviction of such offense or offenses. If a defendant's motion for judgment of dismissal at the close of the prosecution's case–in–chief, is not granted, the defendant may offer evidence without having reserved the right. If defendant's motion is granted, the state shall have the right to appeal from the court's ruling. [Adopted Feb. 13, 1963, effective July 1, 1963.]

CHAPTER 5——VERDICT, JUDGMENT AND SENTENCE

RULE 5.01

TRIAL BY THE COURT.

Where trial is by the court, the court shall make a general finding and may, in its discretion, find the facts specifically. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE 5.02

VERDICT OF JURY.

(a) When all members of the jury have agreed upon a verdict of guilty or not guilty, it must be signed by the foreman and returned by the jury to the judge in open court.

(b) When a verdict is returned and before it is recorded, the jury shall be polled at the request of any party or upon the court's own motion. If at the conclusion of the poll all of the jurors do not concur, the jury may be directed to retire for further deliberations or may be discharged by the court. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE 5.03

BAIL, SENTENCE AND JUDGMENT.

(a) Bail. Pending sentence, the court may commit the defendant or continue or alter the bail.

(b) Sentence. Before imposing sentence, the court shall afford the defendant, and the prosecution, an opportunity to make a statement and to present information in extenuation, mitigation, or aggravation of punishment. Upon a finding of guilty, in courts established under RCW 3.30 through 3.74, the sentence shall be determined and imposed by the court. In other courts of limited jurisdiction, unless the case is tried without a jury, the jury imposes the sentence.

(c) Judgment. The judgment of conviction shall set forth the plea, the verdict or findings, and the adjudication and sentence. If the defendant is found not guilty or for any other reason is entitled to be discharged, the judgment shall be entered accordingly. [Adopted Feb. 13, 1963, amended June 14, 1963, effective July 1, 1963; amended, adopted Dec. 17, 1970 also March 26, 1971, effective Apr. 16, 1971.]

RULE 5.04

JUDGMENT AND SENTENCE——PRESENCE OF DEFENDANT——WARRANT FOR ARREST.

The defendant must be personally present when sentence and judgment are pronounced unless the court, upon request, consents to the absence of the defendant. If the defendant is in custody, he must be brought before the court for judgment and sentence; if he is not present when his personal attendance is necessary, the court may order the issuance of a warrant for his arrest. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE 5.05

JUDGMENT AND SENTENCE——DUTY OF JUDGE AND CLERK.

Whenever a judgment upon a conviction shall be rendered in any court, the judge or clerk of such court shall enter such judgment on the court record, stating briefly the offense for which such conviction shall have been had; but the omission of this duty, either by the judge or clerk, shall not affect or impair the validity of the judgment. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE 5.06

JUDGMENT SET ASIDE.

The court may for cause, on its own initiative, or on motion of the defendant set aside a judgment of conviction and order a new trial at any time before the time for appeal has expired and before an appeal has been taken. [Adopted Feb. 13, 1963, effective July 1, 1963.]

CHAPTER 6——APPEALS

RULE 6.01

APPEALS——PERFECTING OF.

(a) Venue. Appeals shall be to the superior court of the county in which the court of limited jurisdiction is located. The appeal from a justice court located in a joint justice court district shall be made to the superior court of the county where the offense was alleged to have been committed.

(b) Notice of Appeal. The appeal shall be taken by serving a copy of a written notice of appeal containing the address of the appellant and his attorney upon the attorney for the party in whose favor judgment was entered and by filing the original thereof with acknowledgment or affidavit of service thereof with the court in which the case was tried within 10 days after entry of judgment. If a motion for a new trial or for arrest of judgment has been timely made, such notice and proof of service may be filed within 10 days after entry of the order denying the motion.

(c) The Record. After a notice of appeal is filed, the justice court shall immediately, and in no event later than 10 days thereafter, file with the clerk of the superior court in which the appeal is pending a transcript duly certified by such justice court, furnished without charge, containing a copy of all written pleadings and docket entries, and including exhibits introduced into evidence in the trial before the justice court. A cash bail or bail bond filed in the justice court shall at the same time be transferred to the superior court, there to be held pending disposition of the appeal. Evidence not offered in trial in the superior court shall be returned to the justice court.

(d) Notice of Filing. The justice court shall give prompt notice of the filing or mailing to the respondent and appellant, giving such particulars as date of filing or mailing and superior court file number, if known. Where the justice court is not located at the county court house, such filing may be made by certified mail, in which case the justice court shall advise appellant and respondent of the date of mailing.

(e) Noting for Trial. Within 20 days after the transcript is filed, appellant shall note the case for trial and otherwise diligently prosecute the appeal. [Adopted Dec. 23, 1968, effective Jan. 3, 1969; amended May 12, 1969, effective July 1, 1969. Prior: Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE 6.02

IMPOSITION OF SENTENCE PENDING APPEAL.

(a) Stay of Sentence. All sentences shall be stayed if an appeal is taken and the defendant posts cash bail or his bond to the state which shall be deposited with the clerk of the court, in such reasonable sum with sureties as the lower court judge may require, upon the following conditions: that he will diligently prosecute the appeal, that he will within 10 days after the same is filed in the superior court note the case for trial, and will appear at the court appealed to and comply with any sentence of the superior court, and will, if the appeal is dismissed for any reason, comply with the sentence of the lower court.

(b) Impositions of Sentence. If the appellant fails to provide security, sentence imposed shall be executed. [Adopted Dec. 23, 1968, effective Jan. 3, 1969. Prior: Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE 6.03

APPEAL——PROSECUTION THEREOF.

(a) Failure to Certify Transcript. If the lower court fails, neglects or refuses to make and certify the transcript within the time allowed, the appellant may make application to the superior court not later than twenty days after the filing of the notice of appeal and the superior court shall issue an order to make and certify the transcript.

(b) Dismissal for Want of Prosecution. Where the cause has not been noted for trial within 20 days after filing of the transcript, the superior court clerk shall forthwith note the appeal for dismissal for want of prosecution. If, after a hearing, it is determined that appellant has not met time requirements, the cause shall

be dismissed. Upon dismissal of the appeal for failure of appellant to proceed diligently with the appeal as herein required, or for any other cause, the judgment of the lower court shall be enforced by the judge thereof. If, at the time of such dismissal, cash deposit or appeal bond as hereinafter required has been furnished and is in the custody of the superior court, the same shall be returned to the lower court. The lower court shall have power to forfeit the cash bail or appeal bond and issue execution thereon for breach of any condition under which it is furnished.

(c) **Dismissal on Clerk's Motion.** In all justice court appeals wherein there has been no action of record during the ninety days just past, the clerk of the superior court shall mail notice to the appellant and counsel at the addresses contained in the notice of appeal and such appeal will be dismissed by the court for want of prosecution unless within thirty days following such mailing, action of record is made for an application in writing to the court and good cause shown why it should be continued as a pending case. If the appeal is dismissed, the clerk of the court will proceed as per section (b) above. [Adopted Dec. 23, 1968, effective Jan. 3, 1969; amended June 23, 1969, effective July 1, 1969. Prior: Adopted Feb. 13, 1963, effective July 1, 1963.]

CHAPTER 8——DISQUALIFICATION OF JUDGE, CLERICAL MISTAKES, CONDUCT OF COURT

RULE 8.01

JUDGE, DISQUALIFICATION.

(a) **Disqualification.** 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 is in anywise interested or prejudiced. The judge, of his own initiative, may enter an order disqualifying himself; and he shall also disqualify himself under the provisions of this rule if, before the jury is sworn or the trial is commenced, a party or his attorney of record 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 on behalf of the same party in the case and such affidavit shall be made as to only one of the judges of said court.

(b) **Affidavit of Prejudice.** All right to an affidavit of prejudice will be considered waived where filed more than ten (10) days after the defendant's plea is entered, or the case is set for trial which ever should occur first, unless the affidavit alleges a particular incident, conversation or utterance by the judge, which was not known to the party or his attorney within the ten (10) day period. In multiple judge courts, or where a pro tem or visiting judge is designated as the trial judge, the ten (10) day period shall commence on the date that the defendant or his attorney has actual notice of assignment or reassignment to a designated trial judge. [Adopted Feb. 13, 1963, effective July 1, 1963; amended, adopted Dec. 17, 1970 also March 25, 1971, effective Apr. 16, 1971.]

RULE 8.02

JUDGE, DISQUALIFICATION——ANOTHER JUDGE.

When ever a justice of the peace is disqualified, said judge shall forthwith make an order transferring and removing the case to another judge authorized by law to hear such case. RCW 3.50.280 shall apply to municipal courts. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE 8.03

CLERICAL MISTAKES.

Clerical mistakes in judgments, orders or other parts of the record and errors in the record arising from oversight or omission may be corrected by the court at any time and after such notice, if any, as the court may order. If an appeal has been taken, such mistakes may be so corrected until the record has been filed in the appellate court, and thereafter while the appeal is pending may be so corrected with the leave of the appellate court. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE 8.04

RULES OF COURT.

If no procedure is specifically prescribed by rule, the court may proceed in any lawful manner not inconsistent with these rules, or with any applicable statute. [Adopted Feb. 13, 1963, effective July 1, 1963.]

CHAPTER 10——MISCELLANEOUS

RULE 10.01

TIME——RULES FOR COMPUTING.

(a) In computing any period of time prescribed or allowed by these rules, by order of court or by any applicable law, the day of the act, event or default after which the designated period of time begins to run is not to be counted or included, and the last day of the prescribed or allowed period so computed is to be counted and included, unless such last day be a Sunday or a legal holiday, in which event the period runs until the end of the next day which is neither a Sunday nor a legal holiday. When the allowed period is less than 7 days, intermediate Sundays and legal holidays, if any, shall be excluded in the computation.

(b) Whenever by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the court, for cause shown, may at any time in its discretion: (1) with or without motion or notice order the period enlarged if application therefor is made before the expiration of the period originally prescribed or as extended by a previous order; or (2) upon motion and notice permit the act to be done after the expiration of

the specified period where the failure to act was the result of excusable neglect; but the court may not enlarge the period for taking an appeal as provided for in these rules. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE 10.02

MOTIONS AND APPLICATIONS——NOTICE——SERVICE.

Reasonable notice shall be given to the opposing party or attorney of record of all motions and applications other than those ex parte. Where a motion or application is supported by an affidavit, a copy of such affidavit shall be served with the motion or application. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE 10.03

TITLE OF RULES.

These rules may be known and cited as Criminal Rules for Courts of Limited Jurisdiction, and they may be referred to as J Crim. R.* [Adopted Feb. 13, 1963, effective July 1, 1963.]

***Reviser's note:** By order dated May 5, 1967, effective July 1, 1967, these rules were redesignated as Criminal Rules for Justice Court and may be referred to as JCrR.

JUSTICE COURT TRAFFIC RULES (JTR)

(**Formerly:** Traffic Rules for Justice Court; Traffic Rules for Courts of Limited Jurisdiction.)

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See Rule JAR 2. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE T1.03

LOCAL COURT RULES——AVAILABILITY.

Local rules of any court to which these rules apply shall be supplementary to and consistent with these rules. The judge of each court shall (a) arrange for the duplication and distribution of such local rules, (b) send a copy of such rules to (1) the Administrator for the Courts, (2) the Recording Secretary of the Judicial Council, (3) the Chief of the State Patrol, (4) the President of the Magistrates' Association, (5) the Supreme Court Law Library, and (6) the local county law library, and (c) keep a copy of such rules readily available for inspection. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE T1.04

DEFINITIONS.

As used in these rules, unless the context, and substantive or statutory law, requires otherwise:

(1) "Traffic Offense" means any violation, other than a felony, of a statute relating to the licensing of vehicle operators, any violation, other than a felony, of a statute, ordinance, or resolution of a county or municipal corporation or regulation relating to the operation or use of motor vehicles and any violation, other than a felony, of a statute, ordinance, resolution, or regulation relating to the use of streets and highways by pedestrians or by the operation of any vehicle; except non-moving traffic offenses under county or municipal ordinance, resolution, or regulation.

(2) "Non-Moving Traffic Offense" means any parking or standing of vehicles in violation of a statute, ordinance or regulation and any violation of a statute, ordinance, or regulation while the vehicle is not in operation.

(3) "Traffic Case" means a court case involving a traffic offense.

(4) Where reference is made in these rules to any section of RCW Title 46, Motor Vehicles, the reference is intended to mean and to include comparable provisions of municipal ordinances and county ordinances and resolutions. [Adopted Feb. 13, 1963, effective July 1, 1963.]

CHAPTER T2——PRELIMINARY PROCEEDINGS

RULE T2.01

COMPLAINT AND CITATION——FORM AND USE——DEFECTS.

(a) In traffic cases the complaint and citation shall be substantially in the form known as the "Uniform Traffic Ticket and Complaint" sponsored by the American Bar Association Traffic Court Program. The Uniform Traffic Ticket and Complaint shall consist of at least four parts. Additional parts may be inserted by law enforcement agencies for administrative use. Except when electronic data processing equipment is being used, the required parts, which must be the original, the first, the second, and the last carbon respectively, are:

(1) The complaint, printed on white paper;

(2) The abstract of court record for the state licensing authority, which shall be a copy of the complaint, printed on yellow paper;

(3) The traffic citation, printed on green paper; and

(4) The police record, which shall be a copy of the complaint, printed on pink paper.

In the case of law enforcement agencies utilizing electronic data processing equipment, or desiring to use such format, the required parts, which must be the original, the first, the second, and the last carbon respectively, are:

(1) The abstract of court record for the state licensing authority, which shall be identical to the complaint and printed on yellow paper;

(2) The traffic citation, printed on green paper;

(3) The police record, which shall be identical to the complaint and printed on pink paper; and

(4) The complaint, printed on a white card.

(b) Each of the parts shall contain the following information or blanks in which such information shall be entered:

(1) The name of the court and a space for the court's docket, case or file number;

(2) The name of the person cited, his address, date of birth, sex, operator's license number, his vehicle's make, year, type, license number and state in which licensed;

(3) The offense of which he is charged, the date, the time and place at which the offense occurred, the date on which the citation was issued, and the name of the citing officer. Several offenses may be cited on one ticket;

(4) In all cases where the person is not arrested, the time and place at which the person cited is to appear in court or the traffic violations bureau need not be to a time certain but may be within 72 hours or within a greater period of time not to exceed 15 days after the date of the citation.

(5) A space for the person cited to sign a promise to appear; and

(6) A space for the entry of bail in accordance with the established bail schedule.

(c) Each of the parts may also contain such identifying and additional information as may be necessary or apporpriate for law enforcement agencies in the state.

(d) (1) *Complaint——Officers.* The complaint shall contain a form of certificate by the citing official to the effect that he certifies, under penalties of perjury, as provided by RCW 3.50.140, and any law amendatory thereof, he has reasonable grounds to believe, and does believe, the person cited committed the offense(s) contrary to law. The certificate need not be made before a magistrate or any other person. Such complaint when signed by the citing officer and filed with a court, or traffic violations bureau, of competent jurisdiction shall be deemed a lawful complaint for the purpose of prosecuting the traffic offenses charged therein.

(2) *Complaint by others.* Where a person other than a police officer wishes to make a traffic violation charge, he shall do so by filling out and signing a complaint on the form provided for by these rules. He shall fill out the form and sign it before a magistrate. Such complaint when prepared in compliance with this rule and

filed with a court of competent jurisdiction shall be deemed a lawful complaint for the purpose of prosecuting the traffic offenses charged therein.

(e) The reverse side of the complaint may be used to record court action, and may, together with the complaint, constitute the docket of the court of all traffic cases. If not so used, then the docket shall be maintained as required by statute or other court rule.

(f) The reverse side of the abstract of court record shall contain such matters as may be necessary to bring the disposition of the complaint to the attention of the Director of Motor Vehicles.

(g) The reverse side of the police record may contain the police report of action on the case.

(h) The traffic citation shall also contain a notice to the person cited that the complaint will be filed. The reverse side of the traffic citation shall set forth information as to his right to deposit bail and to a trial, or to forfeit bail and the consequences thereof.

(i) To insure uniformity, the format and use of the uniform complaint and citation, provided herein, shall be subject to approval by the office of Administrator for the Courts. [Adopted Feb. 13, 1963, effective July 1, 1963; subd. (b)(4) amended July 14, 1966, effective Aug. 1, 1966; subd. (i)(1), (2), (3) deleted July 14, 1966, effective Aug. 1, 1966; subd. (j) renumbered as subd. (i) July 14, 1966, effective Aug. 1, 1966; amended June 23, 1967, effective July 1, 1967.]

RULE T2.02

COMPLAINT AND CITATION——ARREST BY WARRANT——CHARGE WITHOUT ARREST——PROCEDURE.

(a) All traffic violations shall be prosecuted by complaint in the form provided in rule T2.01 and applicable state statutes.

(b) Whenever any person is arrested by an officer for any violation of the traffic laws or regulations of the state, a county or a city, the officer shall fill out the complaint and citation form in accordance with rule T2.01 and applicable statutes. The arresting officer shall serve a copy of the complaint and citation on the person and either

(1) Take the person arrested directly and without delay before an officer authorized to accept bail, or a judge, for deposit of bail; or

(2) if bail is not deposited, before a judge as hereinafter provided; or

(3) permit the person charged with the violation to give his written promise to appear in court or traffic violations bureau by signing the original traffic citation prepared by the officer, in which event the officer shall deliver the violator's copy of the citation to the person, and thereupon the officer shall release the person from custody.

(c) Obtaining Jurisdiction of a Person not Arrested. Whenever any person is charged with the violation of the traffic laws or regulations of the state, a county, or a city, but is not arrested, the court shall issue a summons, or in the alternative, a warrant, in the same manner as in Rule 2.02 of the Criminal Rules for Justice Court. Said summons may be served or warrant executed as provided for in said Rule 2.02 of the Criminal Rules for Justice Court. Before proceeding as above, the court may notify the defendant by mail, of the charge, of the existence of a complaint, the date and time or interval of time in which the defendant is to appear, the place to appear, whether the charge is mandatory or forfeitable, and if forfeitable, the amount of bail which may be required. Upon posting bail or upon obtaining personal recognizance, the court shall obtain jurisdiction of the person of the defendant in a like manner as if the summons had been served on the defendant or warrant executed.

(d) (1) Execution of Warrant. The warrant shall be directed to all peace officers in the state and shall be executed only by a peace officer.

(2) Service of Summons. The summons may be served any place within the state. It shall be served by a peace officer who shall deliver a copy of the same to the defendant personally, or it may be served by mailing the same, by certified mail, postage prepaid, to the defendant at his address. [Adopted Feb. 13, 1963, effective July 1, 1963; subdivisions (c) and (d) added July 14, 1966, effective Aug. 1, 1966; amended, adopted Dec. 17, 1970, effective Apr. 16, 1971.]

RULE T2.03

PROCEDURE UPON ARREST WITHOUT A WARRANT——UNDER A WARRANT——PERSONAL RECOGNIZANCE——BAIL.

(a) Bail schedules——Traffic cases. The Court Administrator shall furnish to every court of limited jurisdiction and every such court shall furnish to each law enforcement office within its jurisdiction, the bail schedule of subsections (k), (l), and (m) covering major traffic offenses. Whenever bail is required for any such traffic offense, it shall be that shown on the schedule unless the judge of the court having jurisdiction thereof shall, by written order showing the reason therefor in each case, set bail in a different amount.

Each judge, or the presiding judge in a multiple judge court, with jurisdiction to hear and determine traffic cases is authorized to establish by order of court a schedule of bail which shall be as uniform as possible for traffic offenses triable in his court which are not included in the schedule approved by the Supreme Court and found in JTR T2.03 (k), (l), and (m). A copy of such schedule shall be distributed to (1) the Administrator for the Courts, (2) the Recording Secretary of the Judicial Council, (3) the Chief of the State Patrol, (4) the President of the Magistrate's Association, (5) the prosecuting attorney and sheriff of the county, (6) the chief of police of each city or town within the court's jurisdiction, and (7) the clerk of the judge's court and with the clerk of the traffic violations bureau, if any. The order of the court establishing the bail schedule shall be prominently displayed in all places where bail may be deposited.

(b) Procedure upon arrest without a warrant——Traffic cases. Where a person is arrested without a warrant for a traffic offense committed in the officer's presence and the arresting officer proceeds under Rule

T2.02(b)(1) to take the person before a judge, or the clerk or deputy of the court, or to the county jail, or, in a proper case, to the municipal jail, the judge, or the clerk or deputy clerk or the sheriff or chief of police, or their deputies in charge of the jail is authorized to accept, and the person is entitled to deposit, bail in accordance with the schedule established under Rule T2.03(a) for his appearance at a time and place to be then made known to him. The sheriff, chief of police, any other authorized peace officer or such persons as the court may authorize, may release the defendant on personal recognizance if he is a resident of the county or has substantial local contacts.

If bail is not deposited, or the person refuses to deposit bail or he is not released on personal recognizance, he shall be taken without unnecessary delay, and in any event within twenty-four hours, exclusive of nonjudicial days, before the proper judge for arraignment upon the complaint issued under Rule T2.02(b).

(c) Procedure following execution of warrant—Traffic cases. Whether or not bail is fixed upon a warrant issued in a traffic case, the officer making an arrest thereunder shall take the person directly and without delay before the judge or an official authorized to accept and justify bail. If bail has been fixed in the warrant, the bail so set may be required of the person under arrest. If no bail was set in the warrant, then the appropriate bail schedule on file shall apply. If bail is not deposited, or the person refuses to deposit bail, he shall be taken without unnecessary delay, and in any event within twenty-four hours exclusive of nonjudicial days, before the proper judge for arraignment upon the complaint.

(d) Cash bail. Any person arrested with or without a warrant for a traffic offense may, in the place of giving bail, deposit with the official before whom he is taken, or the judge, or the clerk of the court or the traffic violations bureau to which he is held to answer, the sum of money mentioned in the warrant or set forth in the bail schedule for the offense with which he is charged. He shall be given a receipt by such official, judge or clerk.

(e) Release on bail. Upon the depositing of bail under this rule, the person shall be discharged from custody if his physical condition warrants, subject to his appearance at the time and place indicated in the citation or warrant.

(f) Personal recognizance at arraignment. Any person arrested or cited for a traffic violation and who wishes to contest such arrest or citation, shall at the time of arraignment, be released on his own personal recognizance if his physical condition warrants and if he is a resident of the county or has substantial local contacts unless there is good cause for refusal. If the judge finds the person is not a resident of the county, has insufficient local contacts or good cause for refusal is shown, he may require bail to be posted to insure the person's appearance at trial by entering a written order specifying reasons and terms thereof. Such order may be a simple docket entry.

(g) Administrative personal recognizance. If a person appears on any traffic offense at the time or within the time interval designated on the ticket or notice, and requests a trial, or if appearance is mandatory, the clerks of the court or Violations Bureau shall set the matter for arraignment or trial and grant personal recognizance unless the person is not a resident of the county, has insufficient local contacts or good cause for refusal is shown.

(h) Review. In all cases the person charged shall have the right of review by the judge of the ruling of any clerk or official as to the amount of bail or refusal to grant personal recognizance.

(i) Condition for release on personal recognizance. Whenever release on personal recognizance is granted under this rule the judge or clerk may condition such release on the defendant's signing a written promise to appear acknowledging the trial or arraignment date. Such promise may be in the following form.

Trial date __________, 19__ at _____M.
I agree to appear at that time. If I fail to appear, a warrant will be issued with bail set at $__________.
I understand that clerical personnel have no authority to grant further delay.

Dated __________,19__

____
Defendant

(j) Bail schedule. The bail schedule as set forth in sections (k), (l), and (m) below is adopted. References are to the appropriate section of the Revised Code of Washington and, if applicable, appropriate local or municipal codes may also be cited.

(k) Mandatory court appearance. Court appearance in the following cases is mandatory. Forfeiture of bail shall not constitute a final disposition for the following cases without a special order of the court showing the reasons therefor. Such order may be a simple docket entry:

	Bail + TSE* Total
1. Driving while intoxicated (DWI) (RCW 46.61.506) (mandatory)	$250
2. Reckless driving (RCW 46-.61.500) (mandatory)	$250
3. Hit and run attended vehicle (RCW 46.52.020) (mandatory)	$250
4. Wrong way on a freeway (RCW 46.61.150) (mandatory)	$250
5. Disobeying school patrol (RCW 46.61.385) (mandatory)	$ 50
6. Passing stopped school bus (RCW 46.61.370) (with lights flashing) (mandatory)	$ 50
7. Altered license and fraudulent loaning of license	

	Bail +	TSE*	Total
(RCW 46.20.336) (mandatory)			$ 50
8. Driving during period of suspension (RCW 46.20.342) (mandatory)			$250
9. Driving in violation of financial responsibility (RCW 46.20.342——46.29.625) (mandatory)			$250
10. Switching license plates (RCW 46.16.240) (mandatory)			$ 50
11. Physical control while intoxicated (RCW 46.61.506) (mandatory)			$100

(l) Qualified mandatory cases. The case may be closed and forfeiture permitted when satisfactory proof of correction is furnished for the following offenses:

	Bail +	TSE	Total
1. Driving without a license or improper license (RCW 46.20.021)	$20 +	$ 5	$ 25
2. Expired (RCW 46.16.010)	$ 5 +	$ 5	$ 10
3. Missing license plate (RCW 46.16.240)	$ 5 +	$ 5	$ 10

(m) Other violations.

	Bail +	TSE	Total
1. Speeding (RCW 46.61.400) $2 per mile for the first 14 m.p.h. over the posted limit and TSE; $3 per mile for 15 to 29 m.p.h. over the posted limit and TSE; $5 per mile for each mile over 29 m.p.h. over the posted limit and TSE			
2. Failure to stop at sign or stop light (RCW 46.61-.360)	$20 +	$ 5	$ 25
3. Failure to yield right-of-way (RCW 46.61.190)	$20 +	$ 5	$ 25
4. Following too close (RCW 46.61.145)	$20 +	$ 5	$ 25
5. Failure to signal (RCW 46-.61.305)	$10 +	$ 5	$ 15
6. Impeding traffic (RCW 46-.61.425)	$20 +	$ 5	$ 25
7. Improper lane usage or lane change (RCW 46.61.140).	$20 +	$ 5	$ 25
8. Wrong way on a one-way street (RCW 46.61.135)	$10 +	$ 5	$ 15
9. Wrong way on a freeway access (RCW 46.61.155)	$50 +	$15	$ 65
10. Negligent driving (RCW 46-.61.525)	$50 +	$15	$ 65
11. Failure to dim lights (RCW 46.37.230) (passing or following)	$10 +	$ 5	$ 15
12. Hit and run unattended vehicle (RCW 46.52.010)	$80 +	$20	$100
13. Improper passing (RCW 46-.61.100–130)	$20 +	$ 5	$ 25
14. Prohibited and improper turn (RCW 46.61.305)	$10 +	$ 5	$ 15
15. Prohibited U-turn (RCW 46.61.295)	$10 +	$ 5	$ 15
16. Crossing double yellow line (RCW 46.61.130)	$20 +	$ 5	$ 25
17. Driving on shoulder or sidewalk (RCW 46.61.100)	$15 +	$ 5	$ 20
18. Operating with obstructed vision (RCW 46.61.615)	$20 +	$ 5	$ 25
19. License not in driver's possession (RCW 46.20.190).	$ 5 +	$ 5	$ 10
20. Violation of license restriction (RCW 46.20.041) (including insurance covering wrong vehicle)	$20 +	$ 5	$ 25
21. No license (RCW 46.16.010)	$25 +	$10	$ 35
22. Defective equipment (RCW 46.37.010)	$15 +	$ 5	$ 20
23. Defective lights (RCW 46-.37.040–070)	$ 5 +	$ 5	$ 10
24. Throwing or depositing debris (RCW 46.61.650)	$100 +	$25	$125
25. Spilling or failing to secure loads (RCW 46.61.655)	$50 +	$15	$ 65
26. Failure to comply with restrictive signs (RCW 46-.61.050)	$10 +	$ 5	$ 15
27. Failure to appear	Amount in the discretion of the local court		

(n) Multiple offenses. Where multiple violations arising from one incident are charged and any one of the charges is mandatory, the total bail shall not exceed $500.

(o) Judicial Council review. This bail schedule shall be reviewed annually by the Judicial Council which shall file a written report with the Supreme Court recommending retention or modification of this schedule. [Adopted Feb. 13, 1963, effective July 1, 1963; amended, adopted Dec. 17, 1970 also Sept. 27, 1971, effective Nov. 9, 1971; amended, adopted Nov. 29, 1971, effective Jan. 1, 1972.]

**Traffic Safety Education assessment imposed by RCW 46.81*

RULE T2.04

DISPOSITION AND RECORDS OF TRAFFIC COMPLAINTS AND CITATIONS.

(a) Deposit in Court. Every traffic enforcement officer upon issuing a traffic complaint and citation to an alleged violator of any provision of the motor vehicle laws of this state or of any traffic ordinance of any city,

town or county, shall deposit the complaint and the abstract of court record copy of such traffic complaint and citation with a court having jurisdiction over the alleged offense or with its traffic violations bureau. This duty may be performed by the officer's supervisor. In either case, deposit as directed must be made within 48 hours after issuance of the traffic complaint and citation, nonjudicial days excluded.

(b) Disposal of Traffic Cases. Upon such deposit as required by subsection (a), the case may be disposed of only by trial in said court or by other official action by a judge of that court, including removal of the case to a court having jurisdiction over the particular violation as charged in the complaint, or by forfeiture of bail or by deposit of sufficient bail with or payment of a fine to the traffic violations bureau by the person to whom such traffic complaint and citation was issued.

(c) Improper Disposal of Traffic Complaint and Citation Tickets. It shall be unlawful and official misconduct for any traffic enforcement officer or other officer or public employee to dispose of a traffic complaint and citation or copies thereof or of the record of the issuance of the same in a manner other than as required herein.

(d) Duties——Chief Administrative Officer. The chief administrative officer of every traffic enforcement agency shall require the return to him of a copy of every traffic complaint and citation issued by an officer under his supervision to an alleged violator of any traffic law or ordinance and of all copies of every traffic complaint and citation which has been spoiled or upon which any entry has been made and not issued to an alleged violator. Such chief administrative officer shall also maintain or cause to be maintained in connection with every traffic complaint and citation issued by an officer under his supervision a record of the disposition of the charge by the court or its traffic violations bureau in which the original of the traffic complaint and citation was deposited, or to which it was forwarded. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE T2.05

PROCEDURE ON FAILURE TO OBEY CITATION.

(a) Residents. The court shall issue a warrant for the arrest of any defendant who is a resident of this state and who has failed to appear before the court or the traffic complaint and citation upon which he has given his written promise to appear. If the warrant is not executed within 30 days after issue, the court shall make an entry of the notification on the docket, and may add a charge against the defendant for failure to appear after a written promise to do so, and mark the case closed, subject to being reopened when the appearance of the defendant is thereafter obtained.

(b) Nonresidents. If a nonresident defendant fails to appear before the court or the traffic violations bureau either in person or by counsel in answer to a traffic complaint and citation upon which he has given his written promise to appear, the court shall mail a notice to the defendant at the address stated in the complaint and citation requesting him to abide by his promise and appear in person or by counsel on a day certain, and notifying him that his failure to appear after a written promise to do so is a misdemeanor for which he may also be charged. If the nonresident defendant fails to respond within 30 days after the date set in the notice, the court shall issue a warrant for his arrest and shall make an entry of the notification on the docket, and may add a charge against the defendant for failure to appear after a written promise to do so, and mark the case closed, subject to being reopened when the appearance of the defendant is thereafter obtained. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE T2.06

TRAFFIC VIOLATIONS BUREAU——PROCEDURE.

(a) Traffic Violations Bureau. A traffic violations bureau may be established by any city or town under the supervision of the court having jurisdiction over violations of its ordinances, and by any judge, or by the presiding judge in a multiple judge court, having jurisdiction of traffic cases to assist in the processing of traffic cases.

(b) Traffic Violations Bureau——Authority.

(1) *General.* The traffic violations bureau is authorized to process in accordance with this rule and state statute such traffic offenses under city ordinance or county ordinance or resolution or state law as may be designated by written order of the court having jurisdiction of such traffic cases.

(2) *Authority to accept bail.* The court may by its order authorize the traffic violations bureau to receive the deposit of bail for appearance in court for specified offenses under a bail schedule issued under rule T2.03. The traffic violations bureau, upon accepting the prescribed bail, shall issue (a) a receipt to the alleged violator, and (b) a notice of trial date, prepared in triplicate, the reverse side of which shall bear a legend informative of the legal consequences of bail forfeiture. The second copy of the notice of trial date shall be forwarded to the clerk of the court and the third copy shall be retained by the traffic violations bureau.

(3) *Authority to accept forfeiture of bail——Consequences.* The court may by its order authorize the traffic violations bureau (i) to accept forfeiture of bail in specified cases in accordance with a bail schedule issued under rule T2.03 in lieu of depositing bail for appearance, in which case a receipt shall be issued to the alleged violator, the reverse side of which shall contain a statement indicating that forfeiture of bail shall terminate the case and may be considered by the Director of Motor Vehicles only, and for no other purpose, as having the same effect as conviction of the offense charged; and (ii) to forfeit bail deposited for appearance on notification by the clerk of the court of failure of the defendant to appear. Forfeiture of bail under either (i) or (ii) shall be construed as payment of a fine for the offense charged only for the purpose of the distribution of the funds and shall terminate the case.

(c) **Traffic Violations Bureau——Duties.** The traffic violations bureau shall, not less than once a week or oftener as the judge directs, transfer to the clerk of the proper department of the court (1) all bail deposited for offenses where forfeiture is not authorized by court order, (2) a copy of each notice of trial date for which bail has been deposited, and on which shall appear the amount of bail deposited, and (3) a list of the names of all offenders who have forfeited bail under rule T2.06(b)(3)(i) and (ii). Once each week, on a day set by the court, the traffic violations bureau shall forward to the Director of Motor Vehicles the abstract of court record copy of the complaint and citation indicating the disposition of each case involving bail forfeiture during the previous week. [Adopted Feb. 13, 1963, effective July 1, 1963; amended June 23, 1967, effective July 1, 1967.]

CHAPTER T3——ARRAIGNMENT AND TRIAL——TRAFFIC CASES

RULE T3.01

SEPARATION OF TRAFFIC CASES.

(a) **Separate Trial.** Insofar as practicable, in the respective court or district, traffic cases shall be tried separate and apart from other cases, and may be designated as the "Traffic" section or division.

(b) **Trial by Traffic Division.** If a court sits in divisions and one division sitting in daily session has been designated as a traffic court, traffic cases shall be tried in that division only.

(c) **Trial by Traffic Session.** If a court has designated a particular session as a traffic session, traffic cases shall be tried only in that session, except for good cause shown.

(d) **Other Cases; Designation of Particular Time.** In all other cases, the court shall designate a particular day or days, or a particular hour daily on certain days, for the trial of traffic cases.

(e) **Adjournment; Bail for Release.** When a hearing is adjourned the court may detain the defendant in safe custody until the defendant is admitted to bail.

(f) **Objections Before Trial.** An objection to the validity or regularity of the complaint or process issued thereunder shall be made, orally or in writing, by the defendant before trial. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE T3.03

TRAFFIC CASES——ARRAIGNMENT AND TRIAL.

The Criminal Rules for Courts of Limited Jurisdiction, insofar as they are not inconsistent with these rules, shall govern the proceedings in traffic cases following the preliminary proceeding provided for in Chapter T2 of these rules. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE T3.04

AMENDMENT OF COMPLAINT OR CITATION——CONTINUANCE.

The court may permit a complaint or citation to be amended at any time before judgment if no additional or different offense is charged, and if substantial rights of the defendant are not thereby prejudiced. A continuance shall not be granted upon such amendment unless the defendant shall satisfy the court that the amendment has made it necessary for him to have additional time in which to prepare his defense. [Adopted July 14, 1966, effective August 1, 1966.]

RULE T3.05

BREATHALYZER.

(a) **Breathalyzer maintenance operator——Demand for testimony——Certification of machine.** In the absence of a request to produce a breathalyzer maintenance operator at least 10 days prior to trial or such lesser time as the court deems proper, certificates in the following form are admissible in any court proceeding held pursuant to RCW 46.61.506 for the purpose of determining whether a person was operating a motor vehicle while under the influence of intoxicating liquors:

BREATHALYZER MAINTENANCE AND CHEMICAL CERTIFICATION

I, __________, do certify under penalty of perjury as follows:

I am a maintenance operator possessing a valid permit or certificate issued to me by the State Toxicologist by virtue of his Rules, WAC–448, Chapter 12, and RCW 46.61.506.

On __________ (date) at __________ (time) I examined, tested and calibrated a Breathalyzer Machine with Serial No. _____, using a sealed ampoule of chemicals with Control No. _____ according to the methods established and approved by the State Toxicologist.

I further certify that said machine was, on that date, in proper working order, and that the chemicals in ampoules with the above control number are suitable for use in this machine.

____
Breathalyzer Maintenance Operator

Dated __________

(b) **Continuance.** The court at the time of trial shall hear testimony concerning the alleged offense and, if necessary, may continue the proceedings for the purpose of obtaining the maintenance operator's presence for testimony concerning the working order of the breathalyzer machine and his certification thereof. If, at the time the maintenance operator is produced, the prosecutor's breathalyzer evidence is insufficient, a motion to suppress the results of such tests shall be granted. [Adopted May 26, 1972, effective July 1, 1972.]

CHAPTER T10——MISCELLANEOUS

RULE T10.01

TITLE OF RULES.

These rules may be known and cited as Traffic Rules for Courts of Limited Jurisdiction, and they may be referred to as JTR. [Adopted Feb. 13, 1963, effective July 1, 1963.]

Reviser's note: By order of the Supreme Court dated May 5, 1967, effective July 1, 1967, these rules were redesignated Traffic Rules for Justice Court.

RULE T10.02

EFFECTIVE DATE.

These rules, insofar as applicable, take effect upon the date specified by the Supreme Court. They shall govern all proceedings in traffic cases brought after they take effect, and also all further proceedings in traffic cases then pending, except to the extent that in the opinion of the court their application in a particular action pending would not be feasible or would work injustice, in which event the former procedure would apply. [Adopted Feb. 13, 1963, effective July 1, 1963.]

APPENDIX TO PART V

1. Forward dated February 13, 1963
2. Order adopting rules for courts of limited jurisdiction dated February 13, 1963
3. Order extending effective date of rules dated April 2, 1963
4. Order amending and adding specified rules, dated June 14, 1963
5. Order reclassifying rules for courts of limited jurisdiction dated May 1, 1967

1. Forward dated February 13, 1963

On November 2, 30, and December 7, 1962, respectively, the suggested procedural rules for courts of limited jurisdiction, adopted by a majority of the members of the Judicial Council, were published. The publication invited study, suggestions, and criticisms by interested persons prior to the promulgation of the proposed rules by the Supreme Court. Many letters were received suggesting substantial changes. Several meetings were held, and some major changes, in addition to numerous less significant ones, have been made.

The principal objections to the rules were (1) that they established rules for jury trials in municipal courts in certain cases, and (2) that, under the statutory authority to adopt rules of procedure, the suggested rules contained substantive law.

As to (1), Art. 1, § 22, of the state constitution, provides in part that "In criminal prosecutions the accused shall have the right . . . to have a speedy public trial by an impartial jury . . ." Accordingly, the legislature provided for juries in the Superior Court and the Justice Court. No juries were provided by legislative enactment for Municipal Courts. This court, in *Bellingham v. Hite*, 37 Wn. (2d) 652, 225 P. (2d) 895 (1950), held that a city ordinance which did not provide for jury trial for persons charged with violation of city ordinances was not repugnant to Art. 1, § 22, of the state constitution, for the reason that the municipal court conviction became a nullity when the accused person appealed to the Superior Court, where the municipal ordinance violation was tried *de novo*, and a jury provided upon request.

The legislature, by § 77, chapter 299, Laws of 1961, RCW 3.50.280, has authorized jury trials in municipal courts in certain cases involving traffic violations and gross misdemeanors. Sections 2 and 96, chapter 299, Laws of 1961, RCW 3.30.020, 3.50.470, exclude those municipalities from the provision of chapter 299 whose governing bodies have, by resolution, decreed not to be governed by its provisions.

Therefore, rules of procedure have been prepared for the selection of juries for those municipal courts whose municipalities have qualified under chapter 299, Laws of 1961.

We have endeavored to incorporate in one rule book as much of the necessary statutory law (and have given such laws a rule number) relating to jurisdiction, process, arrest, bail, disposition of bail forfeitures, and rules of trial procedure as the judges will need in the determination of most of the causes before them. To accomplish this purpose, the law was given a rule number. The statutory law, in most instances, is set out verbatim in the rule. There is no desire or intention to abrogate the statutes dealing with substantive law, but, rather, to make them readily available.

The rules are designed to establish uniform procedure in this state for courts of limited jurisdiction. They are the first such rules promulgated by the Supreme Court for courts of limited jurisdiction. Comments, suggestions, and criticism of these proposed rules, as revised, are invited prior to April 1, 1963. If revisions are made, only the specific rule revised will be republished. The effective date of these rules and any revision thereof will be May 1, 1963.

The court expresses its appreciation to the members of the advisory committee of the Judicial Council who drafted the proposed rules previously published. We are likewise grateful to the Chief of the State Patrol, the Director of Licenses, Justice Court, Municipal Court, and Superior Court Judges, the prosecuting and city attorneys, practicing attorneys, city officials and mayors, the press, and many others, whose helpful suggestions have aided materially in the formulation of the rules as now presented.

RICHARD B. OTT
Chief Justice

2. IN THE SUPREME COURT OF THE STATE OF WASHINGTON

ORDER 25700-A Paper No. 76	IN THE MATTER OF THE ADOPTION OF RULES FOR COURTS OF LIMITED JURISDICTION (Justice of the Peace Courts, Municipal Courts, Police Courts) BY THE SUPREME COURT OF THE STATE OF WASHINGTON

WHEREAS, The Legislature enacted chapter 118, Laws of 1925, relating generally to Rules of Procedure, and chapter 299, Laws of 1961, relating to Justice Courts and other courts of limited jurisdiction in the state of Washington, and included provisions in chapter 299, Laws of 1961, pertaining to the promulgation and adoption of Rules of Procedure by the Supreme Court of Washington; and

WHEREAS, authority to promulgate and adopt uniform Rules of Procedure for the courts in the state of Washington is vested in the Supreme Court of Washington under the decision in *State ex rel. Foster-Wyman Lumber Company* v. *Superior Court for King County* (1928), 148 Wash. 1, 267 Pac. 770; and

WHEREAS, The Supreme Court of Washington requested technical assistance, advice and counsel from the Judicial Council, that a comprehensive study be made, and that proposed Rules of Procedure be drafted for the Courts of Limited Jurisdiction and submitted by the Judicial Council for consideration by the Supreme Court; and

WHEREAS, The Judicial Council established an advisory committee to do research and drafting, and to submit initial drafts of proposed Rules of Procedure for the Courts of Limited Jurisdiction, such committee being representative of all segments of the legal profession, of all the courts of Washington, and particularly representative of all judges of courts to be affected by the Proposed Rules of Procedure; and such advisory committee thus being reasonably representative of the public's interest in such matters, and, in fact, being composed of the following members:

M. Kenneth A. Cole, representing the Washington State Bar Association, and attorney for the Association of Washington Cities and Municipalities, 4th and Pike Building, Seattle, Washington;
Representative Keith H. Campbell (then Chairman), Judiciary Committee–Criminal, House of Representatives, Washington State Legislature, and member of the Washington State Judicial Council, W. 2204 Rockwell Avenue, Spokane, Washington;
Judge Ronald Danielson, Justice of the Peace, and Municipal Court Judge, City Hall, Bremerton, Washington;
Judge E. A. Davis, Justice of the Peace, (and then President of the Washington State Magistrates Association), 9714 Dawson Street, Bothell, Washington;
Mr. Walter J. Deierlein, Jr., Prosecuting Attorney, representing the Washington State Association of Prosecuting Attorneys, Legal Building, Mount Vernon, Washington;
Judge Ambrose C. Grady, Justice of the Peace, and presently President of the Washington State Magistrates Association, 112 Taylor Street, Port Townsend, Washington;
Mr. Marshall McCormick, Corporation Counsel, representing the Washington State Association of Municipal Attorneys, County–City Building, Tacoma, Washington;
Judge Ben McInturff, Justice of the Peace, Courthouse, Spokane, Washington;
Professor Robert Meisenholder, School of Law, University of Washington, Seattle 5, Washington;
Judge Solie M. Ringold, Superior Court for King County, representing the Superior Court Judges' Association, County–City Building, Seattle, Washington;
Judge Evangeline Starr, Justice of the Peace, 321 County–City Building, Seattle, Washington;
Dr. George Neff Stevens, School of Law, University of Washington, and Executive Secretary of Washington State Judicial Council, Seattle 5, Washington;
Judge Waldo Stone, Justice of the Peace, County–City Building, Tacoma, Washington;

And, WHEREAS, The advisory committee, after months of study, and liaison by its representative members with their particular organizations, including the judges of the courts of limited jurisdiction of the state of Washington, submitted proposed Rules of Procedure to the Judicial Council; and

WHEREAS, The advisory committee of the Judicial Council cause copies of the proposed Rules of Procedure to be distributed to interested individuals throughout the state, inviting and requesting comments and criticism thereon; and, after due consideration and careful revision by individual members of the Judicial Council, and by the said Council as a whole, at its regular meeting on October 12–13, 1962, the proposed Rules of Procedure, as finally revised and approved by the Judicial Council, were submitted to the Supreme Court; and

WHEREAS, the proposed Rules, designated (a) Traffic, (b) Civil, and (c) Criminal, containing general provisions respecting judicial administration, were ordered published by the Supreme Court in the Washington Advance Sheets, and were published therein on the following dates:

(a) Proposed Traffic Rules for Courts of Limited Jurisdiction, 160 Wash. Dec. No. 22, November 2, 1962;
(b) Proposed Civil Rules for Courts of Limited Jurisdiction, 160 Wash. Dec. No. 26, November 30, 1962;
(c) Proposed Criminal Rules for Courts of Limited Jurisdiction and Proposed General Rules for Courts of Limited Jurisdiction, 160 Wash. Dec. No. 27, December 7, 1962,

with a request for comment and criticism by any and all concerned, and with notice that such comment and criticism be filed, in writing, with the Supreme Court no later than thirty days after said publication; and

WHEREAS, all written comment and criticism filed with the Supreme Court was evaluated and given due consideration by the Supreme Court; and

WHEREAS, The Supreme Court, in executive session, on the 11th day of January, 1963, heard criticism and comment on the proposed Rules from all who had made request in writing to be heard, the Supreme Court having given further consideration to the proposed Rules, and having made further revisions thereof,

Now, Therefore, It is Hereby Ordered That Rules of Procedure, now designated (a) Traffic, (b) Civil, (c) Criminal, and (d) General, for the Courts of Limited Jurisdiction in the state of Washington, copies of such Rules being attached hereto and incorporated herein, be filed with this Order in the Office of the Clerk of the Supreme Court; that this Order and copies of the aforesaid Rules be made available for public inspection as in the case of other Orders and public records of the Supreme Court; and

It is further hereby *Ordered* That the aforesaid Rules be published expeditiously in the Washington Advance Sheets, together with notice therein that, for the purpose of due consideration and evaluation by the Supreme Court, comment, criticism, or objection to the aforesaid Rules may be filed in writing not later than April 1, 1963, in the Office of the Clerk of the Supreme Court.

It is further hereby *Ordered* That the Rules referred to and incorporated herein by this Order, subject only to further consideration and to such revision as may be made by Order of this Court, shall become effective as of May 1, 1963.

DATED this 13th day of February, 1963.

	RICHARD B. OTT *Chief Justice*
MATTHEW W. HILL	HUGH J. ROSELLINI
CHARLES T. DONWORTH	ROBERT T. HUNTER
ROBERT C. FINLEY	FRANK HALE
FRANK P. WEAVER	ORRIS L. HAMILTON

3. IN THE SUPREME COURT OF THE STATE OF WASHINGTON

No. 25700–A Paper No. 78 ORDER	IN THE MATTER OF EXTENDING THE EFFECTIVE DATE OF THE PROPOSED RULES FOR COURTS OF LIMITED JURISDICTION

In Vol. 161, No. 8A, of the Official Advance Sheets of the Washington Reports, dated March 1, 1963, the effective date of the proposed Rules for Courts of Limited Jurisdiction was fixed as May 1, 1963. Since the publication of the proposed rules, suggestions for material amendments to the rules have been received. In order that the court may consider suggestions received prior to May 1, 1963,

IT IS ORDERED that the effective date of the proposed Rules for Courts of Limited Jurisdiction be extended to July 1, 1963.

DATED at Olympia, Washington, this 12th day of April, 1963.

By the Court:

	RICHARD B. OTT *Chief Justice*
MATTHEW W. HILL	HUGH J. ROSELLINI
CHARLES T. DONWORTH	ROBERT T. HUNTER
ROBERT C. FINLEY	ORRIS L. HAMILTON
FRANK P. WEAVER	FRANK HALE

4. IN THE SUPREME COURT OF THE STATE OF WASHINGTON

No. 25700–A Paper No. 80 ORDER AMENDING AND ADDING SPECIFIED RULES FOR COURTS OF LIMITED JURISDICTION	IN THE MATTER OF AMENDING AND ADDING CERTAIN RULES FOR COURTS OF LIMITED JURISDICTION (Justice of the Peace Courts, Municipal Courts, Police Courts) AS ADOPTED BY THE SUPREME COURT OF THE STATE OF WASHINGTON BY ORDER DATED FEBRUARY 13, 1963

The Supreme Court of the State of Washington, in conformity with its rule-making power, herewith amends and adds the following Rules for Courts of Limited Jurisdiction as more particularly set forth in the attachments hereto:

General Rule JAR 4(1) (Canons of Judicial Ethics)
Civil Rule 64 (Garnishment)
Criminal Rule 2.01(d) (The Complaint)
Criminal Rule 2.03(b)(2) (Proceedings before the Judge . . . Where Bail has not Been Fixed——Bail Schedules.)
Criminal Rule 2.03(f) (Proceedings before the Judge . . . Preliminary Examination——Felonies.)
Criminal Rule 5.03(a) (Sentence and Judgment)

These amendments and addition to the Rules for Courts of Limited Jurisdiction shall become effective July 1, 1963.
DATED this 14th day of June, 1963.

RICHARD B. OTT
Chief Justice

MATTHEW W. HILL — HUGH J. ROSELLINI
CHARLES T. DONWORTH — ROBERT T. HUNTER
ROBERT C. FINLEY — ORRIS L. HAMILTON
FRANK P. WEAVER — FRANK HALE

For order of the Supreme Court dated May 5, 1967, redesignating certain of the Rules for Courts of Limited Jurisdiction: See appendix to Part IV.

5. Order reclassifying rules for courts of limited jurisdiction dated May 1, 1967 (See Appendix to Parts I – IV supra)

INDEX FOR RULES FOR COURTS OF LIMITED JURISDICTION

The following abbreviations are used in this index:

I. Justice Court Administrative Rules .... JAR
II. Justice Court Civil Rules .... JCR
III. Justice Court Criminal Rules .... JCrR
IV. Justice Court Traffic Rules .... JTR

I. Justice Court Administrative Rules (JAR)

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I. Justice Court Administrative Rules (JAR)——cont.

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II. Justice Court Civil Rules (JCR)

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II. Justice Court Civil Rules (JCR)——cont.

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II. Justice Court Civil Rules (JCR)——cont.

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II. Justice Court Civil Rules (JCR)——cont.

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interpleader	JCR	22
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defenses, asserting, when allowed	JCR	12
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allowed as a pleading	JCR	7(a)
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II. **Justice Court Civil Rules (JCR)—cont.**

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pleadings to be used during	JCR	75(a)
procedure in handling	JCR	75(a)
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cost for	JCR	73(a)
defects in, new bond requires	JCR	73(d)
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judgment against appellant and sureties	JCR	73(e)
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III. Justice Court Criminal Rules (JCrR)

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Administrator for the courts		
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III. Justice Court Criminal Rules (JCrR)—cont.

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stay of execution, condition for	JCrR	6.02
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prosecution	JCrR	6.03
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stay of execution, conditions for granting, pending appeal	JCrR	6.02
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time period for taking	JCrR	6.03,
	JCrR	10.01
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Appearance		
arraignment, appearance by counsel only	JCrR	3.04
citation and notice to appear		
failure to obey	JCrR	2.08
procedure and requisites	JCrR	2.01
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preliminary, failure, effect	JCrR	2.03(c)
Appellants		
bonds or cash deposit (See Appeal bond)		
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failure to prosecute appeal properly, dismissal, effect	JCrR	6.03
filing records of lower court with superior court	JCrR	6.01
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noting case for trial after filing transcript	JCrR	6.01
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Application to court, notice to opposing party required	JCrR	10.02
Arraignment		
appearance by counsel, when	JCrR	3.03
complaint, defendants name properly upon, checking if	JCrR	3.04
conducted in open court	JCrR	3.01
counsel, right to and time to consult, defendant	JCrR	3.02
defendant charged in open court	JCrR	3.01
not guilty, nature and effect of plea	JCrR	3.06
pleas		
acquittal	JCrR	3.06
dismissal	JCrR	3.06
failure to plead, effect	JCrR	3.06
former conviction	JCrR	3.06
guilty		
conditions upon which court will accept	JCrR	3.06
court's refusal to accept, effect	JCrR	3.06
made by defendant in open court	JCrR	3.06
not guilty		
entered by court	JCrR	3.06
nature and effect of plea	JCrR	3.06
substitution	JCrR	3.06
time to determine, defendant	JCrR	3.02
when entered	JCrR	3.04

III. Justice Court Criminal Rules (JCrR)—cont.

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withdrawing, court permitting	JCrR	3.06
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Arrest (See also Warrant)		
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issuance	JCrR	2.02(a)
summons issuance in lieu of	JCrR	2.02(b)
Attorney, withdrawal of, when	JCrR	2.11(d)
Bail		
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forfeiture, court's power	JCrR	6.03
pending sentence	JCrR	5.03(a)
stay of execution on appeal	JCrR	6.02
Bill of particulars pursuant to citation and notice	JCrR	2.04
Bonds		
appeal		
cash bail	JCrR	6.02
deposit procedure	JCrR	6.02
forfeiture	JCrR	6.03
stay of execution	JCrR	6.02
superior court to receive and return on dismissal	JCrR	6.03
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Certificate upon citation and notice to appear	JCrR	2.01
Challenges, opening statement, sufficiency of evidence	JCrR	4.08
Charges		
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Citation and notice to appear		
bill of particulars	JCrR	2.04
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sufficiency	JCrR	2.04
Clerk		
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allegations		
incorporation by reference from one count into another	JCrR	2.04
unnecessary, disregarding or striking	JCrR	2.04
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amendment		
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	JCrR	4.10
continuance based on	JCrR	4.10
citation deemed complaint	JCrR	2.01 (b)(4)
citizen complaints	JCrR	2.01
consolidation, same defendant and offense	JCrR	2.06
contents	JCrR	2.01
dismissal, motion to set aside	JCrR	3.04
examination, reasonable time, defendant	JCrR	3.02
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joinder		
offenses or defendants, relief from prejudicial	JCrR	4.05
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III. Justice Court Criminal Rules (JCrR)——cont.

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setting aside, grounds and effect, arraignment	JCrR	3.04
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trial		
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Computation of time, rule for	JCrR	10.01
Consolidation of complaints, same offense	JCrR	2.06
Contempt		
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witnesses failure to appear, subpoena	JCrR	3.11
Continuance		
complaint, amendment, when continuance granted	JCrR	4.10
trial, when	JCrR	3.08
Conviction		
appeal procedure	JCrR	6.01
contents of judgment	JCrR	5.03
defendant's presence required, pronouncement of sentence and judgment	JCrR	5.04
judge and clerk, duty of, effect of omission	JCrR	5.05
setting aside judgment, effect	JCrR	5.06
stay of execution, condition for granting, pending appeal	JCrR	6.02
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complaint, copy substituted for lost or destroyed	JCrR	3.01
complaint or citation, for each defendant	JCrR	2.01(d)
Counsel		
arraignment		
appearance by counsel only	JCrR	3.03
right to counsel and time to consult	JCrR	3.02
assignment of	JCrR	2.11(d)
attorneys, withdrawal	JCrR	2.11(e)
lawyer, explaining availability	JCrR	2.11(c)
proceedings		
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appeal		
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dismissal of, lower court judgment to enforce	JCrR	6.03
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superior court as tribunal, procedure of appeal	JCrR	6.01
bail		
cash deposit on appeal	JCrR	6.01
forfeiture, courts power	JCrR	6.03
stay of execution on appeal	JCrR	6.02
bond		
appeal		
cash bail	JCrR	6.01
deposit procedure	JCrR	6.01
forfeiture	JCrR	6.03
superior court to receive and return on dismissal	JCrR	6.03
bail (See bail)		
citation and notice to appear (See Citation and notice to appear)		
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dismissal, motion by court for, grounds	JCrR	4.11
disqualification of judge		
procedure	JCrR	8.01
replacement	JCrR	8.02
evidence, not to comment on, jury trial	JCrR	4.07(e)
facts, judge trying in nonjury cases	JCrR	4.07(e)
jury (see Juries)		
justice		
appeal to superior court when justice court in joint justice district	JCrR	6.01
disqualification	JCrR JCrR	8.01, 8.02
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presiding judge, appointment and duties (See rule JAR 4)		
law		
answering juror's questions	JCrR	4.07(d)
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issues of, deciding	JCrR	4.07(d)
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pleas		
acquittal, procedure	JCrR JCrR	3.06 4.03
dismissal	JCrR	3.06
failure to plead, effect	JCrR	3.06
former conviction	JCrR JCrR	3.06, 4.03
guilty		
condition upon which court will accept	JCrR	3.06
court's refusal to accept, effect	JCrR JCrR	3.06, 4.02
made only by defendant in open court	JCrR	3.06
not guilty		
entered by court, when	JCrR	3.06
entered by defendant	JCrR	3.06
nature and effect of plea	JCrR	3.06
substitution	JCrR	3.06
trial to follow defendant's plea	JCrR	3.07
when entered	JCrR	3.04
withdrawing, court's permitting	JCrR	3.06
postponement and continuance of trial, when	JCrR	3.08
process, issuance, scope	JCrR	3.13
publicity of court proceedings, governed by canon of judicial ethics (See rule JAR 4)		
rebuttal testimony after opening statement, when allowed	JCrR	4.08
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determined by court	JCrR	5.03
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duces tecum, issuance	JCrR	3.12
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superior court		
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dismissal of appeal to, grounds and effect	JCrR	6.03
mistake in lower court record, clerical, when corrected	JCrR	8.03
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time, period enlarged or act done after expiration period, when allowed	JCrR	10.01

III. Justice Court Criminal Rules (JCrR)——cont.

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Decisions, plainly written, typed or printed	JCrR	1.04
Defendant		
	JCrR	6.01,
appeal	JCrR	6.02,
	JCrR	6.03
arraignment		
charged in open court	JCrR	3.01
counsel, right to and time to consult	JCrR	3.02
name on complaint, checking at arraignment	JCrR	3.04
plea, time to determine	JCrR	3.02
arrest		
must be present for pronouncement of sentence and judgment	JCrR	5.04
warrant for	JCrR	2.02(a)
bail		
cash bail, deposit on appeal	JCrR	6.01
hearing on amount of bail	JCrR	2.02(a)
stay of execution on appeal	JCrR	6.02
bond		
appeal		
cash bail	JCrR	6.01
deposit procedure	JCrR	6.01
forfeiture	JCrR	6.03
stay of execution, conditions for	JCrR	6.02
superior court to receive and return on dismissal	JCrR	6.03
bail (See bail)		
charges, made in open court, arraignment	JCrR	3.01
citation and notice to appear		
bill of particulars	JCrR	2.04
failure to obey	JCrR	2.08
procedure and requisites	JCrR	2.01
sufficiency	JCrR	2.04
complaint		
consolidation	JCrR	2.06
continuance requested for amendment, when	JCrR	4.10
dismissal	JCrR	3.04
examination, allowing time for	JCrR	3.02
setting aside, grounds and effect	JCrR	3.04
trial together	JCrR	4.04,
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conviction, judgment		
contents of	JCrR	5.03
setting aside, effect	JCrR	5.06
counsel, informed of right to	JCrR	2.03(e)
dismissal		
motion for judgment, grounds	JCrR	4.11
trial delay, bars further prosecution, exceptions	JCrR	3.08
disqualification of judge, filing affidavit	JCrR	8.01
evidence, offer of, after judgment of dismissal denied	JCrR	4.11
former conviction, procedure	JCrR	4.03
joinder		
procedure	JCrR	2.05(b)
relief from prejudicial	JCrR	4.05
trial together of complaints	JCrR	4.04
jury trial		
demand	JCrR	4.07(a)
selection procedure	JCrR	4.07(b)
waiver	JCrR	4.07(a)
name on complaint, checking at arraignment	JCrR	3.04
not guilty, judgment	JCrR	5.03
opening statements		
challenging sufficiency of prosecution's case	JCrR	4.08
length	JCrR	4.08
procedure	JCrR	4.08
rebuttal testimony, when	JCrR	4.08

III. Justice Court Criminal Rules (JCrR)——cont.

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waiver	JCrR	4.08
pleas		
acquittal	JCrR	3.06,
	JCrR	4.02
dismissal	JCrR	3.06
failure to plead, effect	JCrR	3.06
former conviction	JCrR	3.06
guilty		
condition upon which court will accept	JCrR	3.06
court's refusal to accept	JCrR	3.06,
	JCrR	4.02
made only by defendant in open court	JCrR	3.06
procedure judge follows thereafter	JCrR	4.02
not guilty		
entered by court	JCrR	3.06
entered by defendant	JCrR	3.06
nature and effect	JCrR	3.06
procedure		
criminal offenses	JCrR	4.03
traffic offenses	JCrR	4.03
substitution	JCrR	3.06
when entered	JCrR	3.04
withdrawing, when	JCrR	3.06
presence during		
pronouncement of judgment and sentence, mandatory, exceptions	JCrR	5.04
trial mandatory, exceptions	JCrR	4.06
sentence		
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imposition by court or jury	JCrR	5.03
presence during pronouncement, exception	JCrR	5.04
statement after sentence imposed, mitigating, allowing	JCrR	5.03
setting aside of judgment of conviction, motion	JCrR	5.06
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striking unnecessary allegation in complaint, motion	JCrR	2.04
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duces tecum, inspection of objects	JCrR	3.12
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witnesses	JCrR	3.10
trial		
continuance or postponement of	JCrR	3.08
when	JCrR	3.07
witnesses		
names disclosed upon request, state witnesses	JCrR	3.10
subpoena	JCrR	3.10
Defenses		
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Denials		
plea, not guilty, denies every allegation in complaint	JCrR	3.06
Directed verdict, motion abolished, judgment of dismissal substituted	JCrR	4.11
Dismissal		
appeal, grounds and effect	JCrR	6.03
bars further prosecution, delay in bringing defendant to trial	JCrR	3.08
complaint, when	JCrR	3.04
defendant, delay in trial, effect, exception	JCrR	3.08
motion for judgment of dismissal		
grounds for granting	JCrR	4.11
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state may appeal	JCrR	4.11
plea entered by defendant	JCrR	3.06
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judges		
grounds, procedure	JCrR	8.01

III. Justice Court Criminal Rules (JCrR)—cont.

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- Dockets (See rule JAR 6)
- Documents (See also Records)
  - subpoena duces tecum ... JCrR 3.12
- Evidence
  - defendant offering, after judgment of dismissal denied ... JCrR 4.11
  - insufficient, grounds for granting motion for judgment of dismissal ... JCrR 4.11
  - judge not to comment on ... JCrR 4.07(e)
  - opening statement
    - defendant
      - challenging sufficiency of prosecution's case ... JCrR 4.08
      - procedure ... JCrR 4.08
      - reserving until close of prosecution's case JCrR 4.08
    - prosecution, procedure ... JCrR 4.08
    - rebuttal testimony, when ... JCrR 4.08
    - waiver ... JCrR 4.08
  - preliminary examination, on ... JCrR 2.03(f)
  - rules applicable ... JCrR 4.09
- Ex parte, applications to court, notice to adverse party
  - not required ... JCrR 10.02
- Examination
  - citizen complaints ... JCrR 2.01(c)
  - justice of the peace, candidates for (See rule JAR 1)
  - witnesses, upon plea of guilty ... JCrR 4.02
- Filing
  - affidavits, disqualification of judge ... JCrR 8.01
  - appeal on, transcript of lower court ... JCrR 6.01
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  - notice of appeals ... JCrR 6.01
  - records of lower court on appeal to superior court ... JCrR 6.01
  - witnesses name, state, proper court ... JCrR 3.10
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  - trial without jury ... JCrR 4.07, JCrR 5.01
- Forfeiture, bail ... JCrR 6.03
- Gross misdemeanors, citation and notice to appear ... JCrR 2.01
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- Instructions, jury ... JCrR 4.08
- Intoxication, prosecution of public intoxication cases ... JCrR 2.01
- Issues
  - facts
    - court trying in nonjury case ... JCrR 4.07(e)
    - jury to try ... JCrR 4.07(e)
  - law, court shall decide ... JCrR 4.07(d)
- Joinder
  - defendants ... JCrR 2.05(b), JCrR 4.04
  - offenses, complaint ... JCrR 2.05(a)
  - relief from prejudicial joinder of offenses or defendants ... JCrR 4.05
  - trial together of two or more complaints ... JCrR 4.04
- Judges (See also Courts)
  - appearance before, regulations ... JCrR 2.02(f)(1)
  - bail, forfeiture, courts power ... JCrR 6.03
  - conduct of trial, discretion, when ... JCrR 4.01
  - contempt (See rule JAR 7)
  - conviction, judgment, duty upon, effect of omission ... JCrR 5.05
  - definition (See rule JAR 3)
  - disqualification
    - judge disqualifying self or party asking for disqualification ... JCrR 8.01
    - justice court transferring case to another judge ... JCrR 8.02
  - ethics (See rule JAR 4)
  - evidence, not to comment on, jury trial ... JCrR 4.07(e)
  - facts, trying in nonjury cases ... JCrR 4.07(e)
  - jury selection procedure ... JCrR 4.07(b)
  - justice district, multiple judges, presiding judge, appointment and duties (See rule JAR 5)
  - law
    - instructing juries ... JCrR 4.07(e)
    - issues of, deciding ... JCrR 4.07(d)
    - juror's questions about, answering ... JCrR 4.07(d)
  - person arrested without warrant, appearance before ... JCrR 2.03(b)
  - plea of guilty, procedure judge follows thereafter ... JCrR 4.02
  - preliminary appearance, failure, effect ... JCrR 2.03(c)
  - preliminary hearing ... JCrR 2.03(d)
  - subpoena of witnesses for prosecution or defendant, issue ... JCrR 3.10
- Judgments
  - appeal procedure ... JCrR 6.01
  - conviction, contents of ... JCrR 5.03
  - defendant must be present when judgment pronounced, exceptions ... JCrR 5.03
  - discharge of defendant ... JCrR 5.03
  - dismissal
    - appeal to superior court, lower court judgment to be enforced ... JCrR 6.03
    - motion for ... JCrR 4.11
  - judge and clerk, duty upon conviction, effect of omission ... JCrR 5.05
  - mistakes, clerical, when corrected ... JCrR 8.03
  - motion for judgment of dismissal
    - grounds ... JCrR 4.11
    - replaces motion for directed verdict ... JCrR 4.11
    - state's appeal from ... JCrR 4.11
  - not guilty ... JCrR 5.03
  - setting aside a judgment of conviction, when .. JCrR 5.06
  - stay of execution, conditions for granting, pending appeal ... JCrR 6.02
- Judicial ethics (See rule JAR 4)
- Juries
  - defendant demanding jury ... JCrR 4.07(a)
  - facts, trying issues ... JCrR 4.07(e)
  - instructions given prior to counsel's argument JCrR 4.08
  - law
    - instructions on ... JCrR 4.07(e)
    - question of, court answering ... JCrR 4.07(d)
  - number, six or less ... JCrR 4.07(a)
  - order of trial ... JCrR 4.08
  - polling after verdict, effect ... JCrR 5.02
  - prosecution demanding ... JCrR 4.07(a)
  - selection ... JCrR 4.07(b)
  - state demanding ... JCrR 4.07(a)
  - swearing in ... JCrR 4.08
  - trial without ... JCrR 4.07(c), JCrR 5.01
  - verdict
    - judgment of conviction to state verdict ... JCrR 5.03
    - signed by foreman, returned to open court .. JCrR 5.02
  - waiver by defendant ... JCrR 4.07(a)
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  - complaints, several issued for same offense, different courts ... JCrR 2.06
  - scope of process ... JCrR 3.13
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  - appeal to superior court when justice court in joint justice district ... JCrR 6.01
  - disqualification
    - procedure ... JCrR 8.01
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- Lawyer, explaining availability of ... JCrR 2.11(c)

III. Justice Court Criminal Rules (JCrR)——cont.

Rule No.

- Misdemeanors
  - appearance by counsel only, when ... JCrR 3.03
  - citation and notice to appear ... JCrR 2.01
- Mistakes, clerical, court record, relief ... JCrR 8.03
- Motions
  - directed verdict abolished, judgment of dismissal substituted ... JCrR 4.11
  - dismissal, judgment of grounds ... JCrR 4.11
  - modifying subpoena duces tecum ... JCrR 3.12
  - notice to opposing party required, when ... JCrR 10.02
  - plainly written, typed or printed ... JCrR 1.04
  - quashing subpoena duces tecum ... JCrR 3.12
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    - complaint ... JCrR 3.04
    - judgment of conviction ... JCrR 5.06
  - striking unnecessary allegations in complaint ... JCrR 2.04
  - subpoena duces tecum, quash or modify ... JCrR 3.12
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- Names
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III. Justice Court Criminal Rules (JCrR)—cont.

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III. Justice Court Criminal Rules (JCrR)—cont.

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IV. Justice Court Traffic Rules (JTR)

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Bail		
adjournment of hearing, defendant held until release on bail	JTR	3.01(e)
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defendant, release on bail	JTR	2.03(e)
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forfeiture		
director of motor vehicles treated as conviction by	JTR	2.06(b)
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IV. Justice Court Traffic Rules (JTR)——cont.

	Rule	No.
Certificate, by citing officer as part of complaint	JTR	2.01
Citation		
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traffic violations bureau	JTR	2.04(a)
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Clerk, transfer of documents to by violations bureau	JTR	2.06(c)
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electronic data processing equipment, use, effect on format	JTR	2.01
failure to appear and answer, effect	JTR	2.05
form and content	JTR	2.01
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Courts		
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resident defendant who fails to appear	JTR	2.05(a)
bail		
adjournment of hearing, defendant held until release on bail	JTR	3.01(e)
cash		
depositing	JTR	2.03(d)
receipt for payment	JTR	2.03(e)
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failure to deposit upon arrest by warrant	JTR	2.03(c)
forfeiture		
payment of fine, considered as	JTR	2.06(b)
treated as a conviction by director of motor vehicles, notice	JTR	2.06(b)
posting upon arrest		
by warrant	JTR	2.02,
	JTR	2.03(c)
without warrant	JTR	2.03
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displaying	JTR	2.03(a)
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closing case subject to reopening, nonappearance of defendant	JTR	2.05
complaint		
amending	JTR	3.04
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reverse side, record of action	JTR	2.01
defendant's promise to appear in court, release from custody	JTR	2.02
disposal of cases, proper	JTR	2.04(b)
docket, complaint to constitute, when	JTR	2.01
failure of nonresident to appear, subsequent mailing of notice	JTR	2.05(b)
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nonappearance of defendant after written promise to appear	JTR	2.05
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Defendants		
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complaint and citation, service	JTR	2.02
defendant taken before judge or officer	JTR	2.02
failure to obey citation	JTR	2.05(a)
nonresident, failure to appear, issuing warrant	JTR	2.06(b)
without warrant, procedure followed	JTR	2.03(b)
bail		
adjournment of hearing, defendant held until release on bail	JTR	3.01(e)
cash		
depositing	JTR	2.03(d)
receipt for payment	JTR	2.03(e)
citation, reverse side to contain information	JTR	2.01
failure to deposit upon arrest by warrant	JTR	2.03(c)
forfeiture		
payment of fine, considered as	JTR	2.06(b)
traffic violations bureau, authority to accept	JTR	2.06(b)
treated as conviction by director of motor vehicles, notice	JTR	2.06(b)
posting upon arrest		
by warrant	JTR	2.02,
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without warrant	JTR	2.03
release upon deposit, defendant	JTR	2.03(e)
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failure		
to appear after written promise to do so, effect	JTR	2.05
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IV. Justice Court Traffic Rules (JTR)—cont.

	Rule	No.
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"traffic case"	JTR	1.04
"traffic offense"	JTR	1.04
Director of motor vehicles		
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forfeiture of bail to be treated as conviction, notice	JTR	2.06(b)
traffic violations bureau to transfer documents to	JTR	2.06(c)
Dockets (See also rule JAR 6)		
complaints, front and reverse side to constitute	JTR	2.01
Effective date of rules	JTR	10.02
Electronic data processing equipment	JTR	2.01
Execution, nonexecution of warrant of arrest	JTR	2.05(a)
Filing bail schedules, copies	JTR	2.03(a)
Fine		
bail forfeiture considered payment	JTR	2.06(b)
disposal of traffic cases	JTR	2.04(b)
Forfeiture, bail		
conviction, treated as by director of motor vehicles	JTR	2.06(b)
fine, payment of considered as	JTR	2.06(b)
traffic violations bureau, authority to accept	JTR	2.06(b)
Former acquittal or conviction, procedure on plea of (See JCrR 4.03)		
Judges		
defendant brought before	JTR	2.02
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"Nonmoving traffic offense", defined	JTR	1.04
Not guilty, procedure on plea of (See JCrR 4.03)		
Notices		
bail		
forfeiture, consequences of, traffic violations bureau	JTR	2.06(b)
forfeiture to be treated as conviction	JTR	2.06(b)
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Orders		
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Release of defendant on promise to appear	JTR	2.02
Residents, failure to obey citation, effect	JTR	2.05(a)
Rules		
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effective date	JTR	10.02
local court rules	JTR	1.03
purpose and construction	JTR	1.02

IV. Justice Court Traffic Rules (JTR)—cont.

	Rule	No.
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scope	JTR	1.01
Service, complaint and citation	JTR	2.02
Time		
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effective date of rules	JTR	10.02
traffic cases to be set for particular time when no traffic session or division	JTR	3.01(d)
Title		
traffic rules for justice court referred to as JTR	JTR	10.01
Towns, traffic violations bureau, supervising establishment	JTR	2.06(a)
"Traffic case" defined	JTR	1.04
"Traffic offense" defined	JTR	1.04
Traffic violations bureau		
appearance of defendant, failure	JTR	2.06
authority dependent upon court order	JTR	2.06(b)
bail		
authority to accept	JTR	2.06(b)
deposit with	JTR	2.02,
	JTR	2.03
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