

To: Stakeholders and Interested Parties

From: Roger Wynne, Civil Litigation Rules Drafting Task Force

Re: Draft proposal to add a new Civil Rule 3.1 and amend Civil Rule 26 to require initial case schedules where appropriate

Please find enclosed for your review and comment a draft proposal to add new Civil Rule 3.1 and amend Civil Rule 26 to require initial case schedules where appropriate. This draft proposal is not final. We value and welcome your input.

This draft proposal comes from the WSBA's Civil Litigation Rules Drafting Task Force, which was formed to draft language to implement the WSBA Board of Governors' recommendations coming out of the 2015 Final Report to the WSBA Board of Governors from the Task Force on the Escalating Costs of Litigation ("ECCL"). The ECCL viewed setting an initial, 12-month case schedule as the best way to control the length of litigation. The ECCL recommended including particular deadlines, authorizing the court to modify an initial schedule, and exempting certain types of action. The Board of Governors adopted the ECCL's recommendation. The attached draft proposal attempts to implement the Board of Governors' directive.

New CR 3.1(a) would set the default requirement for a Superior Court to issue an initial case schedule with deadlines stated in terms of weeks before the trial date, which would be set for 52 weeks after the action is commenced. Attached is a chart illustrating how those deadlines would fall on a calendar for an action commenced January 2. Several of the events on the schedule (such as for a discovery plan, initial disclosures, and early mediation) do not currently exist in the Civil Rules; this proposal includes them to coordinate with proposals the Task Force is vetting separately. To add substance to the deadline for expert witness disclosures, the proposal to amend CR 26(b)(5) would require each disclosure to include the type of information required in response to an expert interrogatory.¹

New CR 3.1(b) would clarify how to set a deadline falling outside a business day, and subsection (c) would require timely service of the schedule.

Subsection (d) would authorize the court to modify an initial case schedule on its own initiative or a motion. Complexity or impracticality would be stated grounds for a motion to modify, as would "good cause" backed by a demonstration of due diligence. The court would also be required to modify the schedule to respect an order preventing direct interaction between persons.

Subsection (e) would list types of actions exempt from the rule, and subsection (f) would authorize each court to exempt any individual action or type of action for which the court deems compliance with the rule to be impractical.

¹ The Task Force subcommittee working on initial disclosures is also proposing amendments to CR 26. The Task Force will coordinate its final proposed amendments.

As part of the drafting process, the Civil Litigation Rules Drafting Task Force seeks feedback about this draft proposal. Please feel free to distribute these materials within your organization or firm, or to other people or groups who may have an interest in weighing in. Stakeholder input is crucially important in the rulemaking process and assists the Task Force in making an informed decision.

Please provide any comments to Roger Wynne at CLTF@wsba.org by **May 25, 2018**.

For more information about the Civil Litigation Rules Drafting Task Force, please visit: <https://www.wsba.org/Legal-Community/Committees-Boards-and-Other-Groups/Civil-Litigation-Rules-Drafting-Task-Force>

Please note that this proposal is one of several proposed rule changes arising out of the WSBA Board of Governors' recommendations based on the ECCL's work. The Civil Litigation Rules Drafting Task Force will vet each proposal with you in the coming months.

Illustration of a Proposed Initial Case Schedule

<i>EVENT</i>	<i>Weeks before TRIAL</i>	<i>EXAMPLE WITH DATES</i>
Filing	52	Tuesday, January 2, 2018
Initial discovery conference	45	Tuesday, February 20, 2018
Discovery plan and status report:	43	Tuesday, March 6, 2018
Initial disclosures	39	Tuesday, April 3, 2018
Joint selection of mediator, if any	37	Tuesday, April 17, 2018
Appointment of mediator if parties do not jointly select	36	Tuesday, April 24, 2018
Notice of compliance with early mediation	32	Tuesday, May 22, 2018
Expert disclosures, primary	26	Tuesday, July 3, 2018
Expert disclosures, rebuttal	20	Tuesday, August 14, 2018
Discovery cutoff	13	Tuesday, October 2, 2018
Dispositive motions, filing deadline	9	Tuesday, October 30, 2018
Pretrial report	4	Tuesday, December 4, 2018
Pretrial conference	3	Tuesday, December 11, 2018
Trial	0	Tuesday, January 1, 2019