

THE SUPREME COURT OF WASHINGTON

IN THE MATTER OF THE PROPOSED
AMENDMENTS TO CRLJ 17—PARTIES
PLAINTIFF AND DEFENDANT; CAPACITY;
CRLJ 56—SUMMARY JUDGMENT; CRLJ 60—
RELIEF FROM JUDGMENT AND ORDER; ER
413—IMMIGRATION STATUS

ORDER

NO. 25700-A-1370

The Washington State Bar Association Court Rules and Procedures Committee having recommended the adoption of the proposed amendments to CRLJ 17—Parties Plaintiff and Defendant; Capacity; CRLJ 56—Summary Judgment; CRLJ 60—Relief From Judgment and Order; ER 413—Immigration Status , and the Court having considered the proposed amendments, and having determined that the proposed amendments will aid in the prompt and orderly administration of justice;

Now, therefore, it is hereby


ORDERED:

- (a) That the proposed amendments as attached hereto are adopted.
- (b) That pursuant to the emergency provisions of GR 9(j)(1), the proposed amendments will be expeditiously published in the Washington Reports and will become effective upon publication.

ORDER

IN THE MATTER OF THE PROPOSED AMENDMENTS TO CRLJ 17—PARTIES
PLAINTIFF AND DEFENDANT; CAPACITY; CRLJ 56—SUMMARY JUDGMENT; CRLJ
60—RELIEF FROM JUDGMENT AND ORDER; ER 413—IMMIGRATION STATUS

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



Johnson, J.




González, C.J.



Gordon McCloud, J.



Madsen, J.



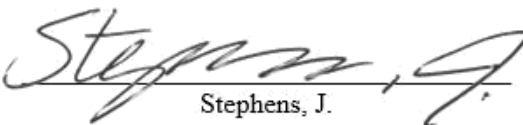
Yu, J.



Owens, J.



Montoya-Lewis, J.



Stephens, J.



Whitener, J.

PROPOSED AMENDMENTS

CRLJ 17

PARTIES PLAINTIFF AND DEFENDANT; CAPACITY

(-) Designation of Parties. [Unchanged.]

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

(b) ~~Infants~~ Minors or ~~Incompetent~~ Incapacitated Persons.

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

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

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

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

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

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

CRLJ 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~~ the party's favor upon all or any part thereof.

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

(c) Motion and Proceedings. The motion and any supporting affidavits, memoranda of law, or other documentation shall be filed and served not later than 15 days before the hearing. The adverse party may file and serve opposing affidavits, memoranda of law, and other documentation not later than 3 days before the hearing. The moving party may file and serve any rebuttal documents not later than the day prior to the hearing. Summary judgment motions shall be heard more than 14 days before the date set for trial unless leave of the court is granted to allow otherwise. The judgment sought shall be rendered forthwith if the pleadings, answers to interrogatories, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

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

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

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

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

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

CRLJ 60
RELIEF FROM JUDGMENT OR ORDER

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

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

(1)—(10) [Unchanged.]

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

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(c)—(e) [Unchanged.]

ER 413
IMMIGRATION STATUS

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

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

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

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

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

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

(b) Civil Cases; Evidence Generally Inadmissible. Except as provided in subsection (b)(1), evidence of a party's or a witness's immigration status shall not be admissible unless immigration status is an essential fact to prove an element of a party's cause of action.

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

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

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

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