



J. Chad Mitchell

Creating Opportunities for Early Resolution of Lawsuits

Desert Bar, November 15, 2017

I. RULES UPDATE



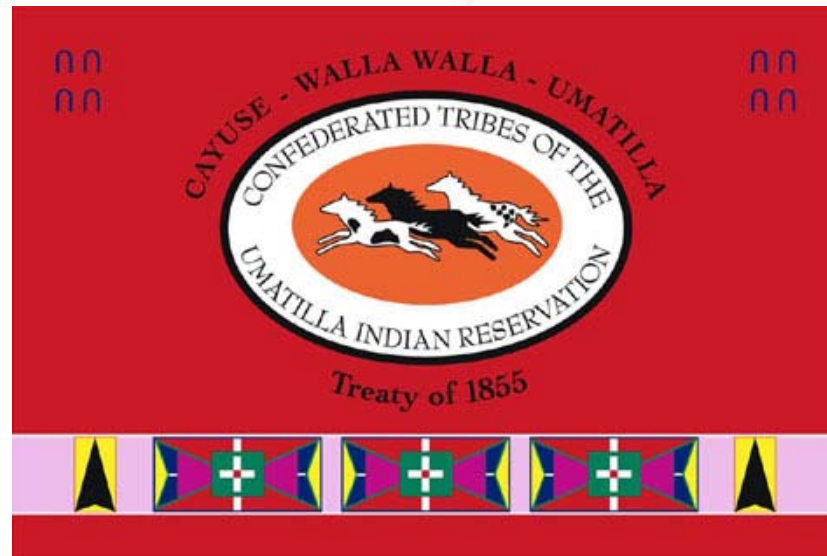
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RULES UPDATE

Federal Rules of Civil Procedure

Local Rules of the Eastern District of WA

Rules Update - FRCP



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Rule 26(b)(1) – proportionality

Judge Shea:

- Make sure proportionality issues are identified and discussed early on
- Not just between counsel
 - Rule 26(f) conference

But with court too

- Rule 16 conferences

Rule 26(b)(1) – proportionality

“Has the party emphasized proportionality? Your math is part of your persuasion.”

- Allison Stanton, Director of
E-Discovery, DOJ Civil Division

Rules Update – LR EDWA

(a) In General.

A civil action is commenced by filing a complaint with the Clerk of Court in compliance with Fed. R. Civ. P. 3 and these rules. Every civil complaint shall be accompanied by a Civil Cover Sheet (JS-44) and properly completed summons forms for each defendant. These forms may be obtained from the Clerk of Court or from the website <http://www.waed.uscourts.gov>.

(b) Filing of Pleadings.

Effective January 1, 2005, the Clerk of Court will maintain a public electronic filing system for all civil and criminal case filings by e-filing and scan-and-upload. All civil and criminal cases into the electronic filing system on or after January 1, 2005, unless otherwise permitted by the Administrative Office of the U.S. Courts. Filing or unless otherwise authorized by the Clerk of Court for filing on or after April 5, 2005 in all civil and criminal cases.

General. Parties proceeding pro se, the filing of pleadings, motions, and other documents shall be governed by the Court's Administrative Office's Electronic Case Filing System. All civil cases shall be filed electronically. The Electronic Case Filing System may be obtained from the Clerk of Court or found on the Court's public website www.waed.uscourts.gov.

2) Paper Filings. All paper pleadings, motions, and other documents filed pursuant to an exception to the Court's Administrative Office's Electronic Case Filing System shall be delivered to the Clerk's office in Spang, Richland, or Yakima, Washington. Filings shall be delivered to the Clerk of Court or a deputy clerk in or out of court hours while court is in session.

LR-3.2

18 U.S.C. § 1962 - RACKETEERING CASE STATEMENT

Original complaint filed under 18 U.S.C. § 1961 et seq., the Racketeer Influence and Corrupt Organizations Act (RICO). The party asserting such claims shall, within 14 days of the filing of the complaint (or whichever is later), file and serve a RICO Case Statement as hereinafter provided.

The Case Statement shall set forth the facts the plaintiff is relying upon to support the complaint as a result of the racketeering activity alleged by FED. R. CIV. P. 8(b)(1)(C). The Case Statement shall be in a form which shall be prescribed by the Administrative Office of the U.S. Courts and shall include with specificity the following:

- (a) State whether the plaintiff is asserting claims under 18 U.S.C. § 1962(a), (b), (c), and/or (d).
- (b) List each defendant and state the alleged misconduct and basis of liability of each defendant.
- (c) List the alleged wrongdoers, other than the defendants listed above, and state the alleged misconduct of each wrongdoer.
- (d) List the alleged victims and state how each victim was allegedly injured.
- (e) Describe in detail the pattern of racketeering activity or collection of unlawful debts alleged.

Rules Update – LR EDWA

Two significant proposed changes:

- LCivR 16(a)(5)(C) – Mediation
- LCivR 83.1(j) – Civility Code



Creating Opportunities for Early Resolution of Lawsuits



*“Your attitude towards anything in life
is completely under your control.”*

- Micah Lacerte

Summit's approach

- What is my client's business goal(s)?
- Early case assessment (ECA)
 - Case analysis
 - Budget
 - Decision tree/probability analysis
- Similar to DOE's Staffing & Resource Plan (10 C.F.R. § 719.15)

Minimizing surprises



**THE GOOD, THE BAD,
AND THE UGLY**

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BATNA

Best

Alternative

To a

Negotiated

Agreement

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Early mediation

- gives you a “negotiated agreement” for your BATNA analysis
- pressure tests your ECA
- narrows issues
- minimizes surprises
- opens settlement channels

After Action Reviews




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After Action Reviews



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“The Debrief is the most amazing thing we do, ensuring we grow tomorrow from today. Not just lessons experienced, but lessons learned (and shared). It’s a learning device, not a personal blame game.”

- Colonel Stricklin, USAF, Ret.



Questions?

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