

## LCR 40      ASSIGNMENT OF CASES

### **(b) Methods.**

(4) *Scheduling of Trials and Final Hearings on Appeal.* This rule applies to trials and “final hearings.” “Final hearing” means the final adjudication by a Superior Court judge of an appeal from an administrative agency, District Court, Municipal Court, or other lower tribunal. Trials and final hearings are scheduled through an administrative procedure called a “trial setting date.” Parties do not appear on the trial setting date, and they may not communicate with the court regarding scheduling trials or final hearings in any manner except through the scheduling questionnaire or a motion to the assigned judge. This prohibition applies to cases in which a continuance is sought or granted. On or after the trial setting date, the court will review the case for readiness and will review any scheduling questionnaires that the parties submit. The court will attempt to resolve conflicts administratively. The court will issue a case schedule order if the case is ready, as explained in section (6).

(5) *Scheduling Questionnaire.* A scheduling questionnaire is a form that allows parties to present information that is relevant to creating a case schedule order. The form is found on the websites for the court and clerk, and at the clerk’s office. There are special scheduling questionnaires for ballot title appeals and recall petitions. Scheduling questionnaires ask questions such as the anticipated length of the trial or final hearing, whether a jury demand has been filed, and dates on which the parties and counsel are unavailable for the trial or final hearing. All parties are strongly encouraged to complete a scheduling questionnaire. The questionnaire is the sole means to communicate with the court about information related to scheduling the trial or final hearing, as well as the deadlines in the case schedule order. Failure to timely file the questionnaire is not grounds to continue the trial setting date.

(A) Service of notice of assignment, notice of trial setting, and blank scheduling questionnaire.

(i) Generally. In all cases subject to this rule except ballot title appeals and recall petitions, the plaintiff or petitioner shall serve the notice of assignment, notice of trial setting, and a blank scheduling questionnaire to all defendants and respondents at least 14 calendar days before the trial setting date for the case. A counterclaimant or cross-claimant shall also serve all responsive parties to the counterclaim or cross-claim at least 14 calendar days before the trial setting date for the case.

(ii) Ballot title appeals. In a ballot title appeal, the petitioner shall serve a “notice of ballot title appeal deadlines” and a blank ballot title scheduling questionnaire within one business day of filing the petition to the attorney general and to the person proposing the measure (i.e., the sponsor) if the appeal is initiated by someone other than that person. For purposes of notice under this rule (LCR 40), the initiative sponsor may be served at the email address that the sponsor provided to the Secretary of State.

(iii) Recall petitions. In a recall petition, the petitioner shall serve a “notice of recall petition deadlines” and a blank recall petition scheduling questionnaire within one business day of filing the petition to the person who filed the statement of charges (i.e., the recall proponent) with the elections officer and the officer subject to recall. For purposes of notice under this rule (LCR 40), the recall proponent may be served at the email address that the recall proponent provided to the elections officer.

(B) Deadlines for completing scheduling questionnaires.

(i) Generally. In all cases subject to this rule except for ballot title appeals and recall petitions, the plaintiff or petitioner must file and serve any completed scheduling questionnaire five business days before the trial setting date. Respondents, defendants, and all other parties must file and serve any completed scheduling questionnaire two business days before the trial setting date by 12:00 p.m. Agreed scheduling questionnaires may also be submitted two business days before the trial setting date by 12:00 p.m. Parties are encouraged to meet and confer about case scheduling before submitting scheduling questionnaires and are encouraged to submit agreed scheduling questionnaires.

(ii) Ballot title appeals. In a ballot title appeal, the petitioner must file and serve any completed scheduling questionnaire within one business day of filing the petition. Respondents, sponsors, and all other parties must file and serve any completed scheduling questionnaire four business days after the petition was filed.

(ii) Recall petitions. In a recall petition, the petitioner must file and serve any completed scheduling questionnaire within one business day of filing the petition. The officer subject to recall, proponents, and all other parties must file and serve any completed scheduling questionnaire four business days after the petition was filed.

(6) *Readiness for Scheduling*. The court will enter a case schedule order only if the case is ready to be scheduled. If a case is not ready on the trial setting date, the court will strike the matter from the administrative docket and will not continue it.

(A) Readiness generally. A case is not ready to be scheduled unless there is timely proof of service of the scheduling questionnaire on all defendants or respondents. A case may be ready regardless of whether any party has timely completed and filed a questionnaire. The court will enter a case schedule order without input from parties if they have not completed and filed questionnaires.

(B) Civil litigation. Civil litigation is not ready to be scheduled unless:

(i) for each defendant, there is either proof of service or an answer or responsive pleading in the file; and

(ii) at least one answer or responsive pleading has been filed.

(C) Appeals from administrative agencies, district court, and municipal courts. Cases in which the court is sitting in an appellate capacity are ready to be scheduled only after the appellate record has been delivered to the clerk or the appellant certifies that the record at this court is complete. Additionally, the court may determine that the appeal is not ready if the administrative record was submitted in a form that does not substantially comply with these local court rules.

(D) Mandatory arbitration. Cases subject to the mandatory arbitration rule shall be transferred to mandatory arbitration before the trial setting date for the case, according to the procedure outlined in the local mandatory arbitration rules.

(E) Ballot title appeals. Ballot title appeals will receive a trial setting date six business days after the petition is filed. These appeals are ready to be scheduled if:

(i) the appeal deadline for filing a ballot title appeal has passed; and

(ii) there is proof of service of the notice of assignment and notice of ballot title appeal deadlines on the attorney general and the sponsor unless the sponsor is also the petitioner.

(F) Recall petitions. Recall petitions will receive a hearing (trial) setting date six business days after the petition is filed. The court shall conduct a hearing within 15 days of the date the petition is filed.

(7) *Striking Trial Setting Dates.* The court will strike a trial setting date if the case is not ready to be scheduled. The court will not notify parties that the scheduling date has been stricken. A party must consult the case file to determine whether the scheduling date was stricken or to view a case schedule order that the party has not yet received.

If a matter is stricken, a party must schedule a new trial setting date in order to receive a case schedule order. The court will not continue trial setting dates on the ground that the case is not ready to be scheduled. A party in a ballot title appeal or recall petition may be sanctioned by the court, after prior notice and an opportunity to be heard, if the case was not ready to be scheduled on the trial setting date. Sanctions may include dismissal of the petition, costs, attorney fees, and other sanctions deemed appropriate by the court.

(8) *Parties May Obtain a Trial Setting Date.* For most cases, the clerk will issue a trial setting date when the case is filed.

(A) A party may also obtain a trial setting date by filing and serving the clerk's form for notice of hearing for civil motions (selecting "Trial Setting under LCR 40") and scheduling questionnaires in the following situations:

(i) when the court has struck a trial setting date under section (7) and the case is now ready to be scheduled;

(ii) when a judge has ordered a trial continuance or otherwise stricken the case schedule order; or

(iii) when the clerk did not issue a trial setting date.

(B) Any party may request that a trial setting date be rescheduled by filing a motion before the assigned judge.

(9) *Special Scheduling Procedures and Deadlines.* These local court rules do not replace or modify scheduling procedures or deadlines that are required by law, such as the Land Use Petition Act or Trust and Estate Dispute Resolution Act.

(10) *Entry and Modification of Case Schedule Order.* On or after the trial setting date, the judicial assistant will present the case schedule order to the assigned judge for entry without further notice. Amendments to the schedule may be obtained only by obtaining an amended case schedule order. Agreed amendments to change any date in the case schedule order may be presented ex parte to the assigned judge. Agreed amendments to change the deadline for any date on the case schedule order other than the trial date must contain the parties' certification that the agreement will not serve as a basis to change the trial date, unless expressly waived by the assigned judge. Contested motions to amend and motions to amend the deadline for dispositive motions, alternative dispute resolution, or trial must be ruled on by on the assigned judge. Contested motions must be noted on the assigned judge's civil motion calendar, while agreed motions may either be noted or presented ex parte. The court may amend deadlines affecting the court, including the trial date, on its own motion. In that event, the judicial assistant will prepare, file, and serve the amended case schedule order.

(11) *Additional Parties.* Any party who joins an additional party to an action shall be responsible for serving the additional party with a current case schedule order, together with all other pleadings required by law.

**(e) Continuances.**

(1) *Form of the Motion.* A motion to continue a trial must be timely filed and served not less than ten calendar days before the trial date. A motion for continuance must

(A) contain written acknowledgment of the motion by the client,

(B) be accompanied by an affidavit or declaration containing specific reasons necessitating a continuance, and

(C) if agreed or uncontested, contain written acknowledgment of the motion by all parties to the case.

(2) *Presentation of Motion.* A motion to continue a deadline on the case schedule order must be presented in the manner described in this rule regarding “Entry and Modification of Case Schedule Order.”

(3) *Conditions of Order for Continuance.* A continuance will be ordered only for good cause. The court may impose terms upon a party or counsel who is not prepared for trial. When a continuance is sought after a jury has been summoned, and where the cause for continuance was or should have been known earlier, terms may be imposed to defray the court’s costs incurred in summoning a jury for trial. If the trial is continued, a new trial date must be established in an amended case schedule order.

(4) *Obtaining a New Trial Date.* If a motion for continuance is granted, parties may obtain a new trial date by following the procedure outlined above in the section entitled “Parties May Obtain a Trial Setting Date.” The prohibition on contacting the court regarding trial setting matters applies to continuances, as provided in section (b)(4), above.

**(f) Change of Judge.**

(1) *Judges.* To seek disqualification of a judge, a timely notice of disqualification (affidavit of prejudice) is filed pursuant to RCW 4.12.050. The party(ies) seeking the disqualification of a judge shall provide a copy of the notice of disqualification to court administration.

(2) *Commissioners.* Court commissioners are not subject to disqualification and a notice of disqualification will not be recognized pursuant to RCW 4.12.050.

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