

WSR 22-21-111
RULES OF COURT
STATE SUPREME COURT
[October 13, 2022]

IN THE MATTER OF THE) ORDER
SUGGESTED AMENDMENTS TO) NO. 25700-A-1472
COURT OF APPEALS)
ADMINISTRATIVE RULES CAR 7—)
APPORTIONMENT OF BUSINESS;)
CAR 8—CHIEF JUDGE; CAR 9—)
ACTING CHIEF JUDGE; CAR 13—)
MINUTES—COURT BUSINESS)
MEETINGS; CAR 16—MINUTES—)
COURT PERSONNEL; AND)
SUPPLEMENTAL COURT OF)
APPEALS ADMINISTRATIVE RULE)

The Washington State Court of Appeals Rules Committee, having recommended the adoption of the suggested amendments to Court of Appeals Administrative Rules CAR 7—Apportionment of Business; CAR 8—Chief Judge; CAR 9—Acting Chief Judge; CAR 13—Minutes—Court Business Meetings; CAR 16—Minutes—Court Personnel; and Supplemental Court of Appeals Administrative Rule, and the Court having considered the suggested amendments, and having determined that the suggested amendments will aid in the prompt and orderly administration of justice;

Now, therefore, it is hereby

ORDERED:

(a) That the suggested amendments as shown below are adopted.

(b) That pursuant to the emergency provisions of GR 9 (j) (1), the suggested amendments will be expeditiously published in the Washington Reports and will become effective upon publication.

DATED at Olympia, Washington this 13th day of October, 2022.

Johnson, J.
Madsen, J.
Owens, J.
Stephens, J.
Gonzalez, C.J.
Gordon McCloud, J.
Yu, J.
Montoya-Lewis, J.
Whitener, J.

GR 9 COVER SHEET
Suggested Amendment
Court of Appeals Administrative Rules
Rule 7 - Apportionment of Business

A. Proponent: Washington State Court of Appeals Rules Committee

B. Spokesperson: Judge Bradley Maxa, Chair

C. Purpose: This is one of five administrative rules that the judges of the Court of Appeals seek to have amended to (1) better reflect actual practice, (2) identify elements of uniformity and divisional choice in the roles and responsibilities of the divisions' chief and acting chief judges, and (3) revise the appointment process and role of the presiding chief judge. The proposed changes were approved by a vote of the judges at their most recent business meeting.

CAR 7 provides that the Chief Judge of the division shall apportion cases fairly among the judges. This is closely related to a duty of the Chief Judge imposed by CAR 8: to assign judges to panels. CAR 8 provides that the latter duty applies only in divisions having more

than four judges, however. It should be a Chief Judge responsibility in all divisions, however many judges they have.

Proposed CAR 7 will address the Chief Judge's panel assignment responsibility within this closely-related rule and make it a responsibility of all Chief Judges.

This amendment is technical in nature and not of general public interest.

D. Hearing: Not requested.

E. Expedited Consideration: Not requested

F. Supporting Material: Suggested rule amendment.

CAR 7 - APPORTIONMENT OF BUSINESS

The Chief Judge shall assign judges to panels and apportion cases fairly among all judges of the division.

GR 9 COVER SHEET

**Suggested Amendment
Court of Appeals Administrative Rules
Rule 8 - Chief Judge**

A. Proponent: Washington State Court of Appeals Rules Committee

B. Spokesperson: Judge Bradley Maxa, Chair

C. Purpose: This is one of five administrative rules that the judges of the Court of Appeals seek to have amended to (1) better reflect actual practice, (2) identify elements of uniformity and divisional choice in the roles and responsibilities of the divisions' chief and acting chief judges, and (3) revise the appointment process and role of the presiding chief judge. The proposed changes were approved by a vote of the judges at their most recent business meeting.

CAR 8 presently deals only with the divisions' Chief Judges. It provides that the judges of each division will select its chief judge and that "generally" the Chief Judge shall be the member of the court, not newly-elected or appointed, who will next stand for election. This is no longer the criteria by which chief judges are generally selected.

For many years, the judges of the divisions have had a coordinated process for selecting their Chief Judge and Acting Chief Judge. Yet selection of the Acting Chief Judge is addressed separately, and differently, in CAR 9.

CAR 8 also provides, "In a division having more than four judges, the Chief Judge shall assign the judges to panels." Presently, all of the divisions have more than four judges, but this should be a chief judge responsibility in all divisions, however many judges they have. While this responsibility appears in CAR 8, the Chief Judge's closely-related responsibility to apportion cases fairly among the judge appears in CAR 7.

Proposed CAR 8 addresses the divisional judges' selection of their Chief Judge and Acting Chief Judge. It deletes the outdated identification of how the Chief Judge will "generally" be selected. It also deletes the Chief Judge's panel assignment responsibility in divisions having more than four judges; that responsibility has been made uniform and moved to closely-related CAR 7 (Apportionment of Business).

This amendment is technical in nature and not of general public interest.

D. Hearing: Not requested.

E. Expedited Consideration: Not requested

F. Supporting Material: Suggested rule amendment.

CAR 8 - CHIEF JUDGE AND ACTING CHIEF JUDGE

~~The judges of each division will select its Chief Judge and Acting Chief Judge by a process determined by the judges of the division. The selection process shall take place no less frequently than biennially, but can allow for the judges to be retained in the Chief Judge and Acting Chief Judge position for additional terms. The judges of a division may reduce their Chief Judge's and Acting Chief Judge's duties as panel members to adjust for their management duties, subject to any limitations imposed by the Court of Appeals as a whole. Generally the judge of each division having the shortest term to serve not holding his office by appointment or election to fill a vacancy shall be the Chief Judge and in case there shall be two judges having the same short term, the other judges of the division shall determine which of them shall be Chief Judge. In a division having more than four judges, the Chief Judge shall assign the judges to panels.~~

Reviser's note: The typographical errors in the above material occurred in the copy filed by the State Supreme Court and appear in the Register pursuant to the requirements of RCW 34.08.040.

GR 9 COVER SHEET

Suggested Amendment
Court of Appeals Administrative Rules
Rule 9 - Acting Chief Judge

A. Proponent: Washington State Court of Appeals Rules Committee

B. Spokesperson: Judge Bradley Maxa, Chair

C. Purpose: This is one of five administrative rules that the judges of the Court of Appeals seek to have amended to (1) better reflect actual practice, (2) identify elements of uniformity and divisional choice in the roles and responsibilities of the divisions' chief and acting chief judges, and (3) revise the appointment process and role of the presiding chief judge. The proposed changes were approved by a vote of the judges at their most recent business meeting.

CAR 9 provides that an Acting Chief Judge shall be elected from time to time and "shall perform the duties and exercise the powers of the Chief Judge during the absence or inability of the Chief Judge to act." For many years, however, the judges of the divisions have had a coordinated process for selecting their Chief Judge and Acting Chief Judge and have assigned administrative responsibilities to their Acting Chief Judge.

Proposed CAR 9 deletes the reference to the Acting Chief Judge being "elect[ed] "from time to time;" the Acting Chief Judge's selection is proposed to be addressed with the selection process of the Chief Judge in CAR 8. Proposed CAR 9 will now describe the duties of the Acting Chief Judges as being to act for the Chief Judge in that judge's absence and to perform the duties "assigned . . . by the judges of the division."

This amendment is technical in nature and not of general public interest.

D. Hearing: Not requested.

E. Expedited Consideration: Not requested

F. Supporting Material: Suggested rule amendment.

CAR 9 - ACTING CHIEF JUDGE

~~Each division shall elect from time to time an Acting Chief Judge. The Acting Chief Judge shall perform the duties assigned to that judge by the judges of the division and exercise the powers of~~

the Chief Judge during the absence or inability of the Chief Judge to act.

GR 9 COVER SHEET

Suggested Amendment
Court of Appeals Administrative Rules
Rule 13 - Minutes—Court Business Meetings

- A. Proponent:** Washington State Court of Appeals Rules Committee
B. Spokesperson: Judge Bradley Maxa, Chair
C. Purpose:

CAR 13 provides that minutes of all Court of Appeals business meetings will be recorded "in a book kept for the purpose." Minutes now are stored electronically rather than "in a book." The amendment reflects that change in practice.

This amendment is technical in nature and not of general public interest.

- D. Hearing:** Not requested.
E. Expedited Consideration: Not requested
F. Supporting Material: Suggested rule amendment.

CAR 13 - MINUTES—COURT BUSINESS MEETINGS

The court will cause to be recorded ~~in a book kept for the purpose~~ minutes of all business meetings.

GR 9 COVER SHEET

Suggested Amendment
Court of Appeals Administrative Rules
Rule 16 - Court Personnel

- A. Proponent:** Washington State Court of Appeals Rules Committee
B. Spokesperson: Judge Bradley Maxa, Chair
C. Purpose: This is one of five administrative rules that the

judges of the Court of Appeals seek to have amended to (1) better reflect actual practice, (2) identify elements of uniformity and divisional choice in the roles and responsibilities of the divisions' chief and acting chief judges, and (3) revise the appointment process and role of the presiding chief judge. The proposed changes were approved by a vote of the judges at their most recent business meeting.

CAR 16 identifies core staffing for each division of the court: a clerk and clerk's office personnel, law clerks and secretaries for judges, and one or more court commissioners. It sets forth detailed duties and assistance that commissioners may perform or provide. In many cases the duties or assistance identified for commissioners are not ones they are asked to provide.

Proposed CAR 16 strikes the rule's identification of duties and assistance the court commissioners may perform, other than their role in hearing and deciding motions authorized by the Rules of Appellate Procedure or assigned by the court. It provides instead that the commissioners shall perform other duties for the benefit of the court as a whole, with such duties to be identified by the judges of the division and assigned by the Chief Judge or Acting Chief Judge, or at their direction. It provides examples of duties that are more generally described than those in the existing rule and more reflective of actual practice.

Proposed CAR 16 also substitutes the term "Judicial Assistant" for the outdated term "Secretary."

This amendment is technical in nature and not of general public interest.

D. Hearing: Not requested.

E. Expedited Consideration: Not requested

F. Supporting Material: Suggested rule amendment.

CAR 16 - COURT PERSONNEL

Court of Appeals personnel will be appointed by and serve at the pleasure of the division of the court to which they report.

(a) Clerk's Office. Each division shall have a clerk and such other personnel for the operation of the office as are authorized by each Division. Before undertaking the duties, the clerk shall file with the Secretary of State an oath of office.

(b) Law Clerks and Secretaries Judicial Assistants. Each judge and Chief Judge is entitled to not less than two law clerks and one secretary judicial assistant.

(c) Commissioner. To promote the effective administration of justice, the judges of each division of the Court of Appeals will appoint one or more commissioners of the court. The salary of the commissioners will be fixed by the court.

(1) *Deciding Motions.* The commissioners will hear and decide those motions authorized by the Rules of Appellate Procedure and any additional motions that may be assigned to the commissioners by the court.

~~(2) *Screening for the Court.* The commissioners may screen appeals to the Court of Appeals and recommend whether a case should be disposed of by a published or unpublished opinion.~~

~~(3) *Assisting Chief Judge.* The commissioners may assist the Chief Judges in the initial consideration of personal restraint petitions and such other administrative and research duties as may be assigned.~~

~~(4) *Judicial Law Clerks.* The commissioners may assist the judges of the Court of Appeals with the selection of judicial law clerks, as desired by each judge. The commissioners will present an annual orientation for the new law clerks. The commissioners will prepare and periodically revise a manual for use by the judicial law clerks.~~

~~(5) *Improving Administration of Justice.* The commissioners will make recommendations to the court regarding procedures and the more effective use of judicial manpower in a particular division. The commissioners will serve on court committees when appointed thereto by the Chief Judges.~~

~~(6) *Assistants.* The commissioners may supervise and train staff attorneys and other personnel to assist the commissioners in carrying out the duties of the commissioner's offices as directed by the judges of each Division.~~

~~(7) *Duties To Benefit Full Court.* All duties performed by the commissioners are for the benefit of the court as a whole. The court may alter or add to the duties of the commissioners. In the performance of these duties the commissioners are responsible to the Chief Judges as executive officers of the court.~~

(2) *Other Duties.* The commissioners shall perform other duties for the benefit of the court as a whole, with such duties to be identified by the judges of the division and assigned by the Chief Judge or Acting Chief Judge, or at their direction. Such duties may include, for example, screening appeals; considering personal restraint petitions; research, drafting, and training duties as may be assigned; presenting an annual orientation for new law clerks; and preparing and periodically revising a law clerk manual.

GR 9 COVER SHEET

Suggested Amendment**Supplemental Court of Appeals Administrative Rule
Presiding Chief Judge - Executive Committee**

A. Proponent: Washington State Court of Appeals Rules Committee

B. Spokesperson: Judge Bradley Maxa, Chair

C. Purpose: This is one of five administrative rules that the judges of the Court of Appeals seek to have amended to (1) better reflect actual practice, (2) identify elements of uniformity and divisional choice in the roles and responsibilities of the divisions' chief and acting chief judges, and (3) revise the appointment process and role of the presiding chief judge. The proposed changes were approved by a vote of all of the judges at their most recent business meeting.

The SCAR describes the makeup and duties of the Court of Appeals' Executive Committee and the selection and duties of the court's Presiding Chief Judge. The Executive Committee is made up of the Presiding Chief Judge and the chief judges and acting chief judges of the three divisions. The position of Presiding Chief Judge rotates annually. The Presiding Chief Judge has often been someone other than a division's chief judge or acting chief judge; when that is the case, the rule provides that the Presiding Chief Judge is a non-voting member of the Executive Committee.

The proposed SCAR continues to provide for a rotating one-year term for the Presiding Chief Judge. But it provides that the Presiding Chief Judge shall be a chief judge of one of the divisions, which will ordinarily mean they are familiar with the prior year's actions of the Executive Committee. It also relieves the Presiding Chief Judge of the responsibilities for appointing court representatives to serve on judicially created committees and task forces and for appointing special committees, by shifting those responsibilities to the Executive Committee as a whole.

This amendment is technical in nature and not of general public interest.

D. Hearing: Not requested.

E. Expedited Consideration: Not requested

F. Supporting Material: Suggested rule amendment.

SCAR

PRESIDING CHIEF JUDGE - EXECUTIVE COMMITTEE

(a) Executive Committee. There is hereby created an executive committee of the Court of Appeals. It shall be made up of the ~~Presiding Chief Judge, as chair, and the remaining~~ Chief Judges and Acting Chief Judges of the divisions of the court.

(b) Duties of the Executive Committee. The executive committee shall be responsible for administering the affairs of the Court of Appeals. Decisions on the Court's budget and other important decisions shall be made by the full Court; other decisions affecting the Court as a whole may be made by the executive committee. The full Court may delegate additional authority as appropriate. The committee's duties shall include the following:

(1) Coordinating the judicial work of the court to the end that its case load can be handled expeditiously;

(2) Making budget recommendations to the full Court, submitting the approved budget to the Legislature, and administering the budget;

(3) Recommending to and implementing policies determined by the Court of Appeals as a whole;

~~(4) Appointing representatives of the court to serve on judicially related committees or task forces which may require a Court of Appeals representative;~~

~~(5) Appointing special committees for the court as necessary; and~~

~~(4) (6) Such other duties as the Court of Appeals as a whole may from time to time direct.~~

~~(5) If the Presiding Chief Judge is not serving as the Chief Judge of a division or the Acting Chief Judge of Division One, the Presiding Chief Judge shall not have a vote on the executive committee.~~

(c) Presiding Chief Judge. A Chief Judge of one of the divisions shall serve as Presiding Chief Judge. The term shall be for one year, commencing on the day of the Court's spring business meeting or, if no spring business meeting is held, on April 1. The Chief Judge of Division I shall assume the position in odd-numbered years. The position shall rotate between the Chief Judges from Divisions II and III in even-numbered years.

~~**(c) Selection of Presiding Chief Judge.** Each year, during the appellate judges' spring conference, the Court of Appeals shall select a Presiding Chief Judge for the Court of Appeals. For any year in which spring conference is not held, the selection shall be conducted by May 1.~~

~~(1) Those eligible for the position of Presiding Chief Judge shall be the Chief Judges of each of the divisions of the Court of Appeals, and any other judge who has served as a Chief Judge of any Division.~~

~~(2) The position of Presiding Chief Judge shall rotate annually, and be selected from Division I every other year~~

~~(3) The term of the Presiding Chief Judge shall be for one (1) year.~~

(d) Duties of the Presiding Chief Judge. The duties of the Presiding Chief Judge shall be to those duties delegated by the Court of Appeals as a whole or by the executive committee.

(1) Convene and preside at meetings of the Executive Committee and meetings of the Court of Appeals as a whole as directed by the Executive Committee;

~~(1) (2) Act as a liaison and representative for the Court of Appeals with all other organizations; and~~

~~(2) Appoint representatives of the court to serve on judicially related committees or task forces which may require a Court of Appeals representative;~~

~~(3) Appoint special committees for the court as necessary;~~

~~(4) (3) Perform such other duties as the executive committee or the Court of Appeals as a whole shall from time to time direct.~~

(e) Meetings and Reports. Meetings of the Court of Appeals as a whole shall be called as directed by the executive committee. At meetings, the In connection with meetings of the Executive Committee and the Court of Appeals as a whole, the Presiding Chief Judge will:

(1) Preside;

(2) Prepare an agenda and, if possible, forward the proposed agenda to all participating members of the Court of Appeals in advance of each meeting;

(3) Report to the Court of Appeals with reference to liaison activities with the organizations set forth above;

(4) Arrange for the meeting place or platform;

(5) Arrange for the recording of minutes;

(6) Arrange for maintenance of the records of all meetings of the court.

(f) Voting at Meetings of the Court of Appeals as a Whole. Members who attend a meeting, including by telephone or videoconference, may vote in that meeting.

(g) Role of Committees other than the Executive Committee. Committees other than the executive committee report to, and may make recommendations to, the executive committee. Decisions about these recommendations are to be made by the executive committee or the full Court, unless special authority is delegated to a particular committee for a particular purpose.

(h) Amendments. Amendments to this rule must be approved by a majority of the members of the Court of Appeals. An Order adopting the amendments shall be signed by the Presiding Chief Judge. The Order shall be filed in the clerk's office of each Division of the Court of Appeals and a copy provided to the Reporter of Decisions.