

WSR 24-05-010
RULES OF COURT
STATE SUPREME COURT
[February 7, 2024]

IN THE MATTER OF THE) ORDER
SUGGESTED AMENDMENTS TO) NO. 25700-A-1565
RAP 17.7—OBJECTION TO RULING)
—REVIEW OF DECISION ON)
MOTION; RAP 18.13—)
ACCELERATED REVIEW OF)
DISPOSITIONS IN JUVENILE)
OFFENSE PROCEEDINGS; AND RAP)
18.13A—ACCELERATED REVIEW)
OF JUVENILE DEPENDENCY)
DISPOSITION ORDERS, ORDERS)
TERMINATING PARENTAL RIGHTS,)
DEPENDENCY GUARDIANSHIP)
ORDERS, AND ORDERS ENTERED)
IN DEPENDENCY AND)
DEPENDENCY GUARDIANSHIP)
PROCEEDINGS)

Attorney Catherine Smith, having recommended the suggested amendments to RAP 17.7—Objection to Ruling—Review of Decision on Motion; RAP 18.13—Accelerated Review of Dispositions in Juvenile Offense Proceedings; and RAP 18.13A—Accelerated Review of Juvenile Dependency Disposition Orders, Orders Terminating Parental Rights, Dependency Guardianship Orders, and Orders Entered in Dependency and Dependency Guardianship Proceedings, and the Court having approved the suggested amendments for publication;

Now, therefore, it is hereby

ORDERED:

(a) That pursuant to the provisions of GR 9(g), the suggested amendments as shown below are to be published for comment in the Washington Reports, Washington Register, Washington State Bar Association and Administrative Office of the Court's websites in January 2025.

(b) The purpose statement as required by GR 9(e) is published solely for the information of the Bench, Bar and other interested parties.

(c) Comments are to be submitted to the Clerk of the Supreme Court by either U.S. Mail or Internet E-Mail by no later than April 30, 2025. Comments may be sent to the following addresses: P.O. Box 40929, Olympia, Washington 98504-0929, or supreme@courts.wa.gov. Comments submitted by e-mail message must be limited to 1500 words.

DATED at Olympia, Washington this 7th day of February, 2024.

For the Court

Gonzalez, C.J.

CHIEF JUSTICE

Proposed Change to RAP 17.7 Cover Page

Name of Proponent: Catherine W. Smith
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Purpose: To shorten and make uniform the time to move to modify all appellate court commissioners' rulings. The reasons the rule should be changed are explained in more detail in the attached article from the September 2023 King County Bar Bulletin, *always Appealing: RAP 17.7*.

Hearing: The proponent does not believe a hearing on the proposed rule change is necessary.

Expedited Consideration: The proponent does not believe expedited consideration is necessary.

always Appealing: RAP 17.7

Posted on: Sep 1, 2023

Bar Bulletin Blog: General

The clerks and commissioners of our state's appellate courts are responsible for much of the day-to-day operation of the court. Issues concerning, among others, perfection of the record, stays, extensions of time, overlength briefing, and the amount of cost and fee awards are handled by these "lower court" personnel in each of the three divisions of the Court of Appeals and in the state Supreme Court.

The "lower courts" generally do a wonderful job of keeping the wheels of appellate justice running smoothly. The commissioners also perform an important gate-keeping role in deciding whether discretionary review should be granted under RAP 2.3(b) of a trial court decision that is not appealable as a matter of right—a decision which requires close analysis of the substantive law governing the challenged decision.

Any appellate court commissioner or clerk ruling is subject to de novo review by a panel of elected judges, just as a commissioner's decision in the superior court is subject to de novo review by an elected superior court judge. The relevant rule is RAP 17.7. Unlike the revision provisions, which limit the record to that before the commissioner, there are no formal limitations on additional information being provided to the panel—although it is best practice, generally, to keep to the record before the commissioner.

When RAP 17.7 was first promulgated in 1976, a party had 10 days to move to modify a ruling of the clerk or commissioner, just as a motion for revision must be made within 10 days. Since 1994, however, "[a]n aggrieved person may object to a ruling of a commissioner or clerk . . . not later than 30 days after the ruling is filed." The reasons for this change are anachronistic, have long outlived their purpose, and the rule is ripe for change.

This time limit for filing a motion to modify was expanded to 30 days because of the suggestion of an attorney in Port Orchard. The WSBA Rules Committee agreed with the concerns raised that "[b]y the time the ruling is received by counsel, there may only be seven days to contact the client, prepare the motion to modify, and get it filed." The comments continued:

This places a difficult burden on counsel both in criminal cases (if the client is incarcerated) and in civil cases (if a business client, for example is out of town).

RAP 17.7 Drafters' Comment, 1994 Amendment, reproduced in 3 Washington Practice.

Although I had my doubts even at the time, at least on the civil side (we DID have fax machines in 1994!), these concerns may have been valid when the rule was changed in 1994. But they have long outlived their whatever deficiencies in the U.S. Mail system that was used for

service in the mid-1990s may have been the reason for the rule change. Virtually all rulings are now transmitted instantaneously to the parties; lawyers admitted to practice in Washington must use the appellate courts' internet portal, and anyone can register and set up a free account for filing and service through the portal. And because a motion to modify is not subject to RAP 18.8's restrictions on extensions of time on notices of appeal and petitions for review, if for some reason a shorter time limit does not give a party sufficient time to prepare a motion to modify, a party could ask for additional time.

There are many good reasons to shorten the time in which a motion to modify must be filed. First, many of the rulings subject to the rule are purely administrative and do not affect a substantial right of a party. But because any ruling is subject to modification, and review de novo by a panel of judges, practitioners and parties intent on using the rules for improper purposes can effect at least some uncertainty about the ruling simply by filing a motion to modify within 30 days. The party opposing a motion to modify then has only 10 days to respond, and the moving party another three days to reply, adding another two weeks to the delay.

Further, there is no articulated mechanism for a panel's consideration of motions to modify. The appellate judges do not generally sit together on any sort of formal motions calendar. Two months or more can go by before a motion to modify is denied—as they usually are.

In addition, when the ruling is one of some substantive significance, such as a grant of discretionary review, the long delay can cause the parties to be in the position of being obligated to perfect the record, and even brief on the merits, while there is some question whether review will in fact be accepted. And when review is denied, the same two-month period of uncertainty whether the case will go forward remains.

There is an easy fix to the rule, and one that could make the RAPs less complicated to follow. Recognizing that speedier resolution of disposition in juvenile offense and dependency proceedings was necessary, the rules governing those types of decisions, RAP 18.13 and RAP 18.13A, require any motion to modify a commissioner's decision terminating review be filed within 15 days. If the time to file all motions to modify were changed to 15 days, it is possible that not only RAP 17.7(b), but RAP 18.13 (c) (1), RAP 18.13A (j) (2), could be rescinded.

I'll be proposing this rule change this month.

Catherine W. Smith is a principal in Smith Goodfriend. She founded the Washington Appellate Lawyers Association and is a Past President of the American Academy of Appellate Lawyers. She can be reached at cate@washingtonappeals.com.

RAP 17.7

OBJECTION TO RULING—REVIEW OF DECISION ON MOTION

(a) Motion to modify. An aggrieved person may object to a ruling of a commissioner or clerk, including transfer of the case to the Court of Appeals under rule 17.2(c), only by a motion to modify the ruling directed to the judges of the court served by the commissioner or clerk. Except as set forth in subsection (b), the motion to modify the ruling must be served on all persons entitled to notice of the original motion and filed in the appellate court not later than ~~30~~ 15 days after the ruling is filed. A motion to the Justices in the Su-

preme Court will be decided by a panel of five Justices unless the court directs a hearing by the court en banc.

~~(b) RAP 18.13 and RAP 18.13A. A motion to modify a Court of Appeals commissioner's ruling terminating review of a motion for accelerated review filed pursuant to RAP 18.13 or RAP 18.13A is governed by the provisions of those rules.~~

References

Form 20, Motion To Modify Ruling.

[Adopted effective July 1, 1976; Amended effective September 1, 1994; September 1, 2018.]

Proposed Change to RAP 18.13 Cover Page

Name of Proponent: Catherine W. Smith
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Spokesperson: Catherine W. Smith

Purpose: This subsection of the rule is no longer necessary if the time to move to modify all commissioners' rulings is reduced to 15 days, as proposed in proposed changes to RAP 17.7.

Hearing: The proponent does not believe a hearing on the proposed rule change is necessary.

Expedited Consideration: The proponent does not believe expedited consideration is necessary.

RAP 18.13

ACCELERATED REVIEW OF DISPOSITIONS IN JUVENILE OFFENSE PROCEEDINGS

(a) Generally. Dispositions in a juvenile offense proceeding beyond the standard range for such offenses shall be reviewed on the merits by accelerated review as provided in this rule.

(b) Accelerated Review by Motion. The accelerated review of the disposition shall be done by motion. The motion must include (1) the name of the party filing the motion; (2) the offense in a juvenile offense proceeding; (3) the disposition of the trial court; (4) the standard range for the offense; (5) a statement of the disposition urged by the moving party; (6) copies of the clerk's papers and a written verbatim report of those portions of the disposition proceeding that are material to the motion; (7) an argument for the relief the party seeks; and (8) a statement of any other issues to be decided in the review proceeding.

~~(c) Motion Procedure Controls.~~

~~(1) Unless otherwise specified in this rule, the motion procedure, including a party's response, is governed by Title 17.~~

~~(2) A motion to modify a Court of Appeals commissioner's ruling terminating review of a motion for accelerated review filed pursuant to RAP 18.13 must be served on all persons entitled to notice of the original motion and filed in the appellate court not later than 15 days after the commissioner's ruling is filed in the Court of Appeals. An answer to the motion to modify should be filed not later than 15 days after the motion to modify is filed. A party should not file a reply to an answer unless requested by the appellate court.~~

(d) Accelerated Review of Other Issues. The decision of issues other than those relating to the juvenile offense disposition may be accelerated only pursuant to rules 18.8, 18.12, or 18.13A.

(e) Supreme Court Review. A decision by the Court of Appeals on accelerated review that relates only to a juvenile offense disposition

is subject to review by the Supreme Court only by a motion for discretionary review on the terms and in the manner provided in rules 13.3(e) and 13.5A.

(f) Schedule. The accelerated review shall include a schedule for filing the record on review, the motion, response, and reply, and setting oral argument.

[Adopted effective July 1, 1976; Amended effective July 1, 1978; September 1, 1991; September 1, 1997; December 24, 2002; September 1, 2006; October 2, 2008; September 1, 2018.]

Proposed Change to RAP 18.13A Cover Page

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Purpose: This subsection of the rule is no longer necessary if the time to move to modify all commissioners' rulings is reduced to 15 days, as proposed in proposed changes to RAP 17.7.

Hearing: The proponent does not believe a hearing on the proposed rule change is necessary.

Expedited Consideration: The proponent does not believe expedited consideration is necessary.

RAP 18.13A

ACCELERATED REVIEW OF JUVENILE DEPENDENCY DISPOSITION ORDERS, ORDERS TERMINATING PARENTAL RIGHTS, DEPENDENCY GUARDIANSHIP ORDERS, AND ORDERS ENTERED IN DEPENDENCY AND DEPENDENCY GUARDIANSHIP PROCEEDINGS

(a) Generally. Juvenile dependency disposition orders and orders terminating parental rights under chapter 13.34 RCW, dependency guardianship orders under chapter 13.36 RCW, and interim orders entered in dependency and dependency guardianship cases when discretionary review has been granted, may be reviewed by a commissioner on the merits by accelerated review as provided in this rule. Review from other orders entered in juvenile dependency and termination actions are not subject to this rule. The provisions of this rule supersede all other provisions of the Rules of Appellate Procedure to the contrary, and this rule shall be construed so that appeals from juvenile dependency disposition orders and orders terminating parental rights under chapter 13.34 RCW, dependency guardianship orders under chapter 13.36 RCW, and interim orders entered in dependency and dependency guardianship cases when discretionary review has been granted shall be heard as expeditiously as possible.

(b) Notice of Appeal—Filing with Appellate Court. The notice of appeal must be filed with the trial court in compliance with Title 5 of these rules. Notwithstanding the other provisions of this rule, a timely notice of appeal shall be accepted for filing. A copy of the notice of appeal with proof of service should be filed with the appellate court by the appellant at the time it is filed with the trial court.

(c) Motion for Order of Indigency. Parties seeking review at public expense must file a motion for order of indigency in the trial court. Any order of indigency should be filed contemporaneously with the notice of appeal.

(d) Consolidation. When one or more appellants seek review of more than one dependency dispositional order, order terminating paren-

tal rights, or dependency guardianship order arising from cases tried together, each appellant may file a single statement of arrangements and a single designation of clerk's papers under the lowest trial court cause number. The appellate court normally will consolidate the appeals for purposes of review.

(e) Statement of Arrangements. A statement of arrangements should be filed contemporaneously with the notice of appeal or within seven days after discretionary review is accepted. The party seeking review should arrange for the transcription of an original and one copy of the verbatim report of proceedings. If the proceeding being reviewed was recorded electronically, transcription of the recordings shall be completed by a court-approved transcriber in accordance with the procedures developed by the Administrative Office of the Courts. An indigent party should provide the court reporter, transcriber, or court administrator a copy of the order of indigency. A non-indigent party should arrange for payment for the transcription of the report. The party seeking review must file with the trial and appellate courts and serve the statement of arrangements on all parties of record and all named court reporters and file proof of service with the appellate court. The party must indicate the date that the report of proceedings was ordered, the financial arrangements which have been made for payment of transcription costs, the name of each court reporter or other person authorized to prepare the report of proceedings who will be preparing a transcript, the hearing dates, and the trial court judge. If the party seeking review does not intend to provide a report of proceedings, a statement to that effect should be filed in lieu of a statement of arrangements and served on all parties of record. See Form 15B.

(f) Report of Proceedings. The preparation and filing of reports of proceedings in appeals under this rule take precedence over all other appeal records. The format of the verbatim report of proceedings is governed by rule 9.2 (e) and (f). The filing and service of the report of proceedings is governed by rule 9.5, except that any motion for extension of time to file the report of proceedings must be accompanied by an affidavit from the court reporter or other person authorized to prepare the report of proceedings demonstrating exceptional circumstances. Extensions otherwise will be denied and sanctions may be imposed.

(g) Designation and Filing of Clerk's Papers. The party seeking review should file a designation of clerk's papers with the trial and appellate courts contemporaneously with the notice of appeal or within seven days after discretionary review is accepted. In appeals under this rule, the entire trial court file shall be designated as clerk's papers to be transmitted to the appellate court. All of the exhibits filed in the trial court shall also be designated and transmitted to the appellate court. When discretionary review is granted under this rule, the contents of the clerk's papers shall be governed by RAP 9.6(b). In cases appropriate for consolidation under subsection (d) of this rule, a designation of clerk's papers need only request the preparation of a single trial court file. The clerk shall prepare and transmit the clerk's papers as set forth in rules 9.7 and 9.8, except that a copy of the clerk's papers and the exhibits shall be provided to appellate counsel. The clerk should give priority to the preparation and filing of clerk's papers in appeals under this rule. See Form 15C.

(h) Briefing. Unless directed otherwise in a ruling granting discretionary review of an interim order entered in dependency and de-

pendency guardianship cases, parties shall file briefs in accordance with rules 10.3, 10.4, and 18.17.

(i) Time for Filing Briefs.

(1) Brief of Appellant. The brief of an appellant should be filed with the appellate court within 30 days after the report of proceedings is filed with the trial court; or, if the record on review does not include a report of proceedings, within 30 days after the party seeking review has received an index of clerk's papers and exhibits. Appellant shall append to the brief a copy of the trial court's findings of fact and conclusions of law.

(2) Brief of Respondent. The brief of a respondent should be filed with the appellate court within 30 days after service of the brief of appellant. When there is more than one appellant, the respondent may file one brief in response to all appellants.

(3) Reply Brief. A reply brief of an appellant should be filed with the appellate court within 15 days after service of the brief of respondent unless the court orders otherwise.

(4) Other Briefs. The appellate court may, on its own motion or on motion of a party, authorize or direct the filing of briefs on the merits other than those listed in this rule.

(5) Briefs in Consolidated Cases. In consolidated cases, a party may (i) join with one or more other parties in a single brief, or (ii) file a separate brief and adopt by reference any part of the brief of another.

~~**(j) Motion procedure controls.**~~

~~(1) Unless otherwise specified in this rule, the motion procedure, including a party's response is governed by Title 17.~~

~~(2) A motion to modify a Court of Appeals commissioner's ruling terminating review of a motion for accelerated review filed pursuant to RAP18.13A must be served on all persons entitled to notice of the original motion and filed in the appellate court not later than 15 days after the commissioner's ruling is filed in the Court of Appeals. An answer to the motion to modify should be filed not later than 15 days after the motion to modify is filed. A party should not file a reply to an answer unless requested by the appellate court.~~

(k) Supreme Court Review. A decision by the Court of Appeals on accelerated review that relates only to juvenile dependency dispositional orders or orders terminating parental rights is subject to review by the Supreme Court only by a motion for discretionary review on the terms and in the manner provided in rules 13.3(e) and 13.5A.

(l) Termination Appeals—Notice of Intent to Deliver Consent to Adoption. When an order terminating parental rights is under review, the Department of Social and Health Services or supervising agency having the right to consent to an adoption should serve a written notice of its intent to deliver consent to adoption. The notice of intent should specify the intended delivery date, and should be served on all parties to the appeal and on anyone appointed to represent the interests of the child, no fewer than 30 days before the intended delivery date. A copy of the notice of intent and a proof of service should be filed in the appellate court. After service of the notice of intent, any party may move the court in which the appeal is pending to stay the order terminating parental rights, but only to the extent it authorized consent to adoption. The department or supervising agency should not deliver its consent to adoption if any party seeks a stay before the intended delivery date, pending a ruling on the motion to stay. The appellate court will hear the motion to stay on an expedited

basis. Any stay of enforcement shall terminate upon issuance of the mandate as provided in Rule 12.5, unless otherwise directed by the appellate court. See Form 15D.

[Adopted October 2, 2008; Amended effective April 3, 2012; September 1, 2014; November 20, 2018; December 3, 2019; September 1, 2021.]

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.