

WSR 21-23-025
RULES OF COURT
STATE SUPREME COURT
[November 5, 2021]

IN THE MATTER OF THE) ORDER
SUGGESTED AMENDMENT TO RAP) NO. 25700-A-1386
2.2—DECISIONS OF THE SUPERIOR)
COURT THAT MAY BE APPEALED)

The Washington State Bar Association Court Rules Committee, having recommended the suggested amendment to RAP 2.2—Decisions of the Superior Court That May Be Appealed, and the Court having approved the suggested amendment for publication;

Now, therefore, it is hereby

ORDERED:

(a) That pursuant to the provisions of GR 9(g), the suggested amendment as shown below is 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 2022.

(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, 2022. 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 5th day of November, 2021.

For the Court

Gonzalez, C.J.

CHIEF JUSTICE

GR 9 COVER SHEET

Suggested Amendment

RAP 2.2 - DECISIONS OF THE SUPERIOR COURT THAT MAY BE APPEALED

- A. Proponent: WSBA Court Rules and Procedures Committee
B. Spokesperson: Isham Reavis, Chair - WSBA Court Rules and Procedures Committee
C. Purpose: Recently, in Denney v. City of Richland, 195 Wn.2d 649 (2020), the Court noted that although the RAPs clearly differentiate between rulings on the merits of a legal claim and rulings on costs for purposes of the time for appeal, the interaction of CR 54 with the RAPs can create confusion. This proposed amendment adds a comment, taken from the Court's conclusion in Denney, that provides guidance to litigants as to when the notice of appeal from a summary judgment ruling disposing of all claims is due.
D. Hearing: The proponent does not believe that a public hearing is necessary.
E. Expedited Consideration: Not requested.

SUGGESTED AMENDMENT

Rule 2.2 Decisions of the Superior Court That May Be Appealed

(a) Generally. Unless otherwise prohibited by statute or court rule and except as provided in sections (b) and (c), a party may appeal from only the following superior court decisions:

(1) *Final Judgment.* The final judgment entered in any action or proceeding, regardless of whether the judgment reserves for future determination an award of attorney fees or costs.

(2) [Reserved.]

(3) *Decision Determining Action.* Any written decision affecting a substantial right in a civil case that in effect determines the action and prevents a final judgment or discontinues the action.

(4) *Order of Public Use and Necessity.* An order of public use and necessity in a condemnation case.

(5) *Juvenile Court Disposition.* The disposition decision following a finding of dependency by a juvenile court, or a disposition decision following a finding of guilt in a juvenile offense proceeding.

(6) *Termination of All Parental Rights.* A decision depriving a person of all parental rights with respect to a child.

(7) *Order of Incompetency.* A decision declaring an adult legally incompetent, or an order establishing a conservatorship or guardianship for an adult.

(8) *Order of Commitment.* A decision ordering commitment, entered after a sanity hearing or after a sexual predator hearing.

(9) *Order on Motion for New Trial or Amendment of Judgment.* An order granting or denying a motion for new trial or amendment of judgment.

(10) *Order on Motion for Vacation of Judgment.* An order granting or denying a motion to vacate a judgment.

(11) *Order on Motion for Arrest of Judgment.* An order arresting or denying arrest of a judgment in a criminal case.

(12) *Order Denying Motion to Vacate Order of Arrest of a Person.* An order denying a motion to vacate an order of arrest of a person in a civil case.

(13) *Final Order after Judgment.* Any final order made after judgment that affects a substantial right.

(b) Appeal by State or a Local Government in Criminal Case. Except as provided in section (c), the State or a local government may appeal in a criminal case only from the following superior court decisions and only if the appeal will not place the defendant in double jeopardy:

(1) *Final Decision, Except Not Guilty.* A decision that in effect abates, discontinues, or determines the case other than by a judgment or verdict of not guilty, including but not limited to a decision setting aside, quashing, or dismissing an indictment or information, or a decision granting a motion to dismiss under CrR 8.3(c).

(2) *Pretrial Order Suppressing Evidence.* A pretrial order suppressing evidence, if the trial court expressly finds that the practical effect of the order is to terminate the case.

(3) *Arrest or Vacation of Judgment.* An order arresting or vacating a judgment.

(4) *New Trial.* An order granting a new trial.

(5) *Disposition in Juvenile Offense Proceeding.* A disposition in a juvenile offense proceeding that (A) is below the standard range of disposition for the offense, (B) the state or local government believes involves a miscalculation of the standard range, (C) includes provisions that are unauthorized by law, or (D) omits a provision that is required by law.

(6) *Sentence in Criminal Case.* A sentence in a criminal case that (A) is outside the standard range for the offense, (B) the state or local government believes involves a miscalculation of the standard range, (C) includes provisions that are unauthorized by law, or (D) omits a provision that is required by law.

(c) Superior Court Decision on Review of Decision of Court of Limited Jurisdiction. If the superior court decision has been entered after a proceeding to review a decision of a court of limited jurisdiction, a party may appeal only if the review proceeding was a trial de novo. Appeal is not available if (1) the final judgment is a finding that a traffic infraction has been committed or (2) the claim originated in a small claims court operating under chapter 12.40 RCW.

(d) Multiple Parties or Multiple Claims or Counts. In any case with multiple parties or multiple claims for relief, or in a criminal case with multiple counts, an appeal may be taken from a final judgment that does not dispose of all the claims or counts as to all the parties, but only after an express direction by the trial court for entry of judgment and an express determination in the judgment, supported by written findings, that there is no just reason for delay. The findings may be made at the time of entry of judgment or thereafter on the court's own motion or on motion of any party. The time for filing notice of appeal begins to run from the entry of the required findings. In the absence of the required findings, determination and direction, a judgment that adjudicates less than all the claims or counts, or adjudicates the rights and liabilities of less than all the parties, is subject only to discretionary review until the entry of a final judgment adjudicating all the claims, counts, rights, and liabilities of all the parties.

COMMENT

[1] A summary judgment order disposing of all claims constitutes a final judgment, thereby starting the 30-day appeal deadline even if an award of fees and costs is deferred until after the deadline. *Denney v. City of Richland*, 195 Wn.2d 649, 659, 462 P.3d 842 (2020).