

WSR 23-21-015

RULES COORDINATOR

TACOMA COMMUNITY COLLEGE

[Filed October 6, 2023, 9:42 a.m.]

Pursuant to RCW 34.05.312, the rules coordinator for Tacoma Community College is Natalie Boes, 6501 South 19th Street, Tacoma, WA 98466, phone 253-566-5169, email nboes@tacomacc.edu.

Natalie Boes
Senior Executive Assistant to the President
Rules Coordinator

WSR 23-21-017

NOTICE OF PUBLIC MEETINGS

STATUTE LAW COMMITTEE

[Filed October 6, 2023, 10:11 a.m.]

The statute law committee meeting scheduled for Tuesday, November 28, 2023, has changed.

From: Tuesday, November 28, 2023, at 11:00 a.m.

To: Monday, November 27, 2023, at noon.

The meeting will remain a hybrid meeting with in-person in Room B15/B18, JLOB Building, and via Zoom, and will begin at noon.

Shayne O'Grady or Kathleen Buchli are the contact persons for information concerning this meeting, including Zoom access information, and can be reached at 360-786-6777 or CROFrontDesk@leg.wa.gov.

WSR 23-21-018
RULES OF COURT
STATE SUPREME COURT
[October 3, 2023]

IN THE MATTER OF THE PROPOSED) ORDER
NEW SUPERIOR COURT SPECIAL) NO. 25700-A-1531
PROCEEDINGS RULE (SPR 98.___)—)
UNLAWFUL DETAINERS—)
APPOINTMENT OF ATTORNEY)
[REVISED])

A Consortium (Northwest Justice Project, Access to Justice Board, Spokane Volunteer Lawyers Program, Snohomish County Legal Services, Tacoma Pro Bono, King County Bar Association Housing Justice Project, Kitsap Legal Services, Yakima Volunteer Attorney Services, Chelan-Douglas Volunteer Attorney Services, Thurston County Volunteer Lawyer Services, Skagit Volunteer Lawyers Program, Clark County Volunteer Lawyers Program), having recommended the adoption of the proposed new Superior Court Special Proceedings Rule (SPR 98.___)—Unlawful Detainers—Appointment of Attorney [Revised], and the Court having considered the proposed new rule, and having determined that the proposed new rule will aid in the prompt and orderly administration of justice;

Now, therefore, it is hereby

ORDERED:

(a) That the proposed new rule as shown below is adopted.

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

DATED at Olympia, Washington this 3rd day of October, 2023.

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

[PROPOSED] SPR 98.24W
UNLAWFUL DETAINERS—APPOINTMENT OF ATTORNEY

In all unlawful detainer cases where an individual qualifies for an attorney at public expense in accordance with RCW 59.18.640, the following protocols shall be followed:

- 1. If the tenant appears without an attorney, before taking any action in the case, the court shall:
a. Advise the tenant that if they are indigent, they have a statutory right to be represented by an attorney at public expense;
b. If applicable, refer the tenant for appointment of counsel pursuant to any local order or established procedure consistent with RCW 59.18.640; and
c. Continue the hearing for a reasonable period of time so that counsel may be obtained.
2. If the tenant is unrepresented and the court issues a writ of restitution before judgment or by default, the tenant may file a motion requesting that the court appoint an attorney at any time before law enforcement executes the writ. During this time, a lawyer seeking

appointment may file an ex parte motion for appointment and request that the court stay the execution of the writ for 10 days. The lawyer seeking appointment shall establish by declaration that good faith efforts were made to notify the other party or, if no efforts were made, why notice could not be provided prior to the application for an ex parte stay, and describing the immediate or irreparable harm that may result if an immediate stay is not granted.

3. A stay issued under this rule will be set to expire 10 days after entry without further order from the court. If new information arises and the court finds the tenant is not eligible for appointment of a lawyer, the court may lift the stay.

[PROPOSED] SPR 98. _____ W

UNLAWFUL DETAINERS—APPOINTMENT OF ATTORNEY

In all unlawful detainer cases where an individual qualifies for an attorney at public expense in accordance with RCW 59.18.640 ~~applies to appoint attorneys for indigent tenants,~~ the following protocols shall be followed:

1. If the tenant appears without an attorney, before taking any action in the case, the court ~~must~~ shall:

a. ~~Inform~~ Advise the tenant that if they are indigent, they have a statutory right to be represented by an attorney at public expense ~~if they are indigent;~~

b. ~~Ask the tenant if they want the court to appoint an attorney if they are eligible;~~

b. If applicable, Refer the tenant for appointment of counsel pursuant to any local order or established procedure consistent with RCW 59.18.640; and

c. Continue the hearing for at least 14 days a reasonable period of time so that counsel may be obtained.

2. If the tenant is unrepresented and the court issues a writ of restitution before judgment or by default, the tenant may ~~move to file~~ file a motion requesting that the court appoint an attorney at any time before law enforcement executes the writ. During this time, a lawyer seeking appointment may ~~make~~ file an ex parte motion for appointment and ~~to request that the court~~ stay the execution of the writ for ten days. Upon such motion, the court shall appoint the lawyer and stay the writ for ten days. The lawyer seeking appointment shall establish by declaration that good faith efforts were made to notify the other party or, if no efforts were made, why notice could not be provided prior to the application for an ex parte stay, and describing the immediate or irreparable harm that may result if an immediate stay is not granted.

3. A stay issued under this rule will be set to expire ten days after entry without further order from the court. If new information arises and the court finds the tenant is not eligible for appointment of a lawyer, the court ~~shall~~ may lift the stay ~~immediately~~.

WSR 23-21-019
RULES OF COURT
STATE SUPREME COURT
[October 3, 2023]

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the [23-23](#) issue of the Register.

WSR 23-21-020
RULES OF COURT
STATE SUPREME COURT
[October 3, 2023]

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the [23-22](#) issue of the Register.

WSR 23-21-021
RULES OF COURT
STATE SUPREME COURT
[October 3, 2023]

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the [23-22](#) issue of the Register.

WSR 23-21-022
RULES OF COURT
STATE SUPREME COURT
[October 3, 2023]

IN THE MATTER OF THE) ORDER
SUGGESTED AMENDMENTS TO) NO. 25700-A-1535
THE CERTIFICATE OF APPOINTED)
COUNSEL OF COMPLIANCE WITH)
STANDARDS FORM [REQUIRED BY)
CrR 3.1; CrRLJ 3.1; JuCR 9.2; AND)
MPR 2.1])

The Washington State Bar Association, having recommended the adoption of the suggested amendments to the Certification of Appointed Counsel of Compliance with Standards Form [Required by CrR 3.1; CrRLJ 3.1; JuCR 9.2; and MPR 2.1], 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 3rd day of October, 2023.

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 Amendments to

SUPERIOR COURT CRIMINAL RULES; CRIMINAL RULES FOR COURTS OF LIMITED JURISDICTION; JUVENILE COURT RULES; MENTAL PROCEEDINGS RULES
REVISED CrR 3.1/CrRLJ 3.1/JUCR 9.2/MPR 2.1

A. Name of Proponent:

Washington State Bar Association

B. Spokespersons:

Dan Clark, President, Washington State Bar Association, 1325 Fourth Avenue, Suite 600, Seattle, WA 98101-2539 (telephone (509) 969-4731)

Jason Schwarz, Chair, Council on Public Defense, Washington State Bar Association, Seattle, WA 98101-2539 (telephone (425) 388-3032)

Bonnie Sterken, Equity and Justice Lead, Washington State Bar Association, Seattle, WA 98101-2539 (telephone (206) 727-8293)

C. Purpose:

The proponent recommends suggested revisions to the Certification of Appointed Counsel of Compliance with Standards required by CrR 3.1/CrRLJ 3.1/JUCR 9.2/MPR 2.1. The existing form has been interpreted inconsistently by practitioners who are not always clear on what they are to report. The proposed revised form simplifies and clarifies what lawyers are to report.

1. History

The issue came to the WSBA Council on Public Defense's attention when the Washington Office of Public Defense expressed concerns about inconsistent compliance with the certification rule and because of individual examples of lawyers who failed to file or filed incomplete certification forms.

In areas of the state with rural and small jurisdictions, defense attorneys often engage in both public defense and privately retained work. Moreover, their public defense work is often comprised of assigned cases from multiple jurisdictions. Such "stacking" of cases can (and does) result in attorneys exceeding caseload limits. Certification forms are received and reviewed on an individual jurisdiction basis. The current form makes it very ambiguous as to what an attorney's full caseload looks like. As a result, there are attorneys who exceed caseload standards, but certification forms don't reflect that. Less time per case results in less time with client communication investigation, case preparation, and litigation.

In Washington's decentralized public defense system, the CPD seeks to ensure certain minimal standards for public defense in all jurisdictions. It is unequitable for people to receive disparate representation based on geographic jurisdiction. Higher caseloads not only result in less attorney time and focus per case, but they also create a danger that defense attorneys will triage cases, prioritizing their time and effort for some clients over others. This triage approach coupled with unconscious bias, can result in disparate representation based on clients' race or ethnicity. (Reference: https://www.yalelawjournal.org/pdf/1199_pzeey4t1.pdf)

2. Suggested Amendments

The following are summaries and explanations of each suggested amendment:

- Changes were made to add sections 1, 2, 4, and the second half of 3 as part of the certification.
 - o These changes were made to provide transparency for public defense administrators about the caseloads of their contracted public defense lawyers in other jurisdictions. Many lawyers who take public defense contract practice in multiple jurisdictions. The prior version of the Certification form made no mention of the accounting for workload generated by other jurisdictions. This form adds sections to provide a more detailed accounting of the work across jurisdictions. It allows public defense administrator to assure that they are not providing more work than is allowed by the standards.
 - o These changes will help public defense administrators assure their jurisdiction is providing effective assistance of counsel guaranteed to the accused by the 6th Amendment to the US Constitution.
- Changes were made to Section #6 "Qualifications" by merging two former sections into one section with two sentences.
 - o This is simply a matter of clarification.

D. Hearing:

A hearing is not requested.

E. Expedited Consideration:

Expedited consideration is not requested.

F. Supporting Material:

- Suggested revisions to the Certification of Appointed Counsel of Compliance with Standards required by CrR 3.1/CrRLJ 3.1/JUCR 9.2/MPR 2.1

Standards 15-18
[Reserved.]

CERTIFICATION OF COMPLIANCE

For criminal and juvenile offender cases, and civil commitment proceedings under Chapter 71.05 RCW, a signed Certification of Compliance with Applicable Standards must be filed by an appointed attorney by separate written certification on a quarterly basis in each court in which the attorney has been appointed as counsel.

The certification must be in substantially the following form:

<input type="checkbox"/> SUPERIOR COURT <input type="checkbox"/> JUVENILE DEPARTMENT <input type="checkbox"/> DISTRICT COURT <input type="checkbox"/> MUNICIPAL COURT FOR <input type="checkbox"/> CITY OF <input type="checkbox"/> COUNTY OF _____, STATE OF WASHINGTON	<input type="checkbox"/> No.: _____ <input type="checkbox"/> Administrative Filing _____
CERTIFICATION BY: [NAME], [WSBA#] FOR THE: [1ST, 2ND, 3RD, 4TH] CALENDAR QUARTER OF [YEAR]	Certification of Appointed Counsel of Compliance with Standards Required by CrR 3.1/CrRLJ 3.1/JuCR 9.2/MPR 2.1

The undersigned attorney hereby certifies:

~~1. Approximately % of my total practice time is devoted to indigent defense cases.~~

1. I am familiar with the applicable Standards for Indigent Defense adopted by the Supreme Court for which apply to attorneys appointed to represent indigent persons and that clients.:

2. I file certification forms in each court in which I provide indigent defense representation.

3. Approximately % of my total practice time is devoted to indigent defense cases.

Approximately % of my total practice time is devoted to indigent defense cases in this court.

4. I am appointed in other courts to provide indigent defense representation. My practice time in each is approximately as follows:

Not Applicable
Court: % of total practice:
Court: % of total practice:
Court: % of total practice:

5. Caseload: I limit the number of cases and mix of case types to the caseload limits required by Standards 3.2, 3.3 and 3.4. My caseload is prorated to the percentage of my practice devoted to indigent defense.

6. Qualifications: I meet the minimum basic professional qualifications in Standard 14.1. I am familiar with the specific case qualifications in Standard 14.2 and accept appointment as lead counsel only when I meet the qualifications for that case.

7. Office: I have access to an office that accommodates confidential meetings, a postal address, and adequate telephone and communication services as required by Standard 5.2.

8. Investigators: I have investigators available to me and use investigative services as appropriate, as required by Standard 6.1.

~~a. Basic Qualifications: I meet the minimum basic professional qualifications in Standard 14.1.~~

~~b. Office: I have access to an office that accommodates confidential meetings with clients, and I have a postal address and adequate telephone services to ensure prompt response to client contact, in compliance with Standard 5.2.~~

~~c. Investigators: I have investigators available to me and will use investigative services as appropriate, in compliance with Standard 6.1.~~

~~d. Caseload: I will comply with Standard 3.2 during representation of the defendant in my cases. [Effective October 1, 2013 for felony and juvenile offender caseloads; effective January 1, 2015 for misdemeanor caseloads: I should not accept a greater number of cases (or a proportional mix of different case types) than specified in Standard 3.4, prorated if the amount of time spent for indigent defense is less than full time, and taking into account the case counting and weighting system applicable in my jurisdiction.]~~

~~e. Case Specific Qualifications: I am familiar with the specific case qualifications in Standard 14.2, Sections B-K and will not accept appointment in a case as lead counsel unless I meet the qualifications for that case. [Effective October 1, 2013]~~

Signature, WSBA#

Date

CERTIFICATION OF APPOINTED COUNSEL OF COMPLIANCE WITH STANDARDS REQUIRED BY CRR 3.1/CRRLJ 3.1/JUCR

9-2

WSR 23-21-023
RULES OF COURT
STATE SUPREME COURT
[October 3, 2023]

IN THE MATTER OF THE PROPOSED) ORDER
AMENDMENTS TO CR 26—) NO. 25700-A-1536
GENERAL PROVISIONS)
GOVERNING DISCOVERY [REVISED])

The Washington State Bar Association, having recommended the proposed amendments to CR 26—General Provisions Governing Discovery [Revised], and the Court having approved the proposed amendments for publication;

Now, therefore, it is hereby

ORDERED:

(a) That pursuant to the provisions of GR 9(g), the proposed 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 2024.

(b) The purpose statement as required by GR 9(e) is waived because the published proposal has been modified since the original submission.

(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, 2024. 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 3rd day of October, 2023.

For the Court

Gonzalez, C.J.

CHIEF JUSTICE

CR 26

GENERAL PROVISIONS GOVERNING DISCOVERY

(a) [Unchanged.]

(b) Discovery Scope and Limits. Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

(1) - (4) [Unchanged.]

(5) Trial Preparation: Experts. Discovery of facts known and opinions held by experts, otherwise discoverable under the provisions of subsection (b)(1) of this rule and acquired or developed in anticipation of litigation or for trial, may be obtained only as follows:

(A)(i) A party may through interrogatories require any other party to identify each person whom the other party expects to call as an expert witness at trial, to state the subject matter on which the expert is expected to testify, to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion, and to state such other information about the expert as may be discoverable under these rules. A case schedule deadline to disclose experts does not excuse a party timely responding to expert discovery. (ii) Unless these rules impose an earlier deadline, and in no event later than the deadline for primary or

rebuttal expert witness disclosures imposed by a case schedule or court order, each party shall identify each person whom that party expects to call as a primary or rebuttal expert witness at trial, state the subject matter on which the expert is expected to testify, state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion.

(B) A party may, subject to the provisions of this rule and of rules 30 and 31, depose each person whom any other party expects to call as an expert witness at trial.

(CB) A party may discover facts known or opinions held by an expert who is not expected to be called as a witness at trial, only as provided in rule 35(b) or upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.

(DE) Unless manifest injustice would result, (i) the court shall require that the party seeking discovery pay the expert a reasonable fee for time spent in responding to discovery under subsections (b) (5) ~~(B)-(A)-(ii)~~ and (b) (5) ~~(C)-(B)~~ of this rule; and (ii) with respect to discovery obtained under subsection (b) (5) ~~(B)-(A)-(ii)~~ of this rule the court may require, and with respect to discovery obtained under subsection (b) (5) ~~(C)-(B)~~ of this rule the court shall require the party seeking discovery to pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert.

(6) - (8) [Unchanged.]

(c) - (d) [Unchanged.]

(e) Supplementation of Responses. A party who has responded to a request for discovery with a response has a duty to seasonably supplement or correct that response with information thereafter acquired. Supplementation or correction shall clearly set forth the information being supplemented or corrected. ~~that was complete when made is under no duty to supplement the response to include information thereafter acquired, except as follows:~~

~~(1) A party is under a duty seasonably to supplement their response with respect to any question directly addressed to:~~

~~(A) the identity and location of persons having knowledge of discoverable matters, and~~

~~(B) the identity of each person expected to be called as an expert witness at trial, the subject matter on which the expert witness is expected to testify, and the substance of the expert witness's testimony.~~

~~(2) A party is under a duty seasonably to amend a prior response if the party obtains information upon the basis of which:~~

~~(A) the party knows that the response was incorrect when made, or~~

~~(B) the party knows that the response though correct when made is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.~~

~~(3) A duty to supplement responses may be imposed by order of the court, agreement of the parties, or at any time prior to trial through new requests for supplementation of prior responses.~~

~~(4) Failure to seasonably supplement or correct in accordance with this rule will subject the party to such terms and conditions as the trial court may deem appropriate.~~

(f) [Unchanged.]

(g) Signing of Discovery Requests, Responses, and Objections. Every request for discovery or response or objection thereto made by a party represented party ~~by an attorney~~ shall be signed by at least one

attorney of record in the attorney's individual name., whose address shall be stated. A party who is not represented by an attorney shall sign the request, response, or objection by a nonrepresented party shall be signed by that party and state the party's address. Objections shall be in response to the specific request objected to. General objections shall not be made. A party making an objection based on privilege shall describe the grounds for the objection and, where consistent with subsection (b) (1), shall identify all matters the objecting party contends are subject to the privilege including sufficient information to allow other parties to evaluate the claim of privilege without disclosing protected content. The signature of the attorney or party constitutes a certification that the attorney or the party has read the request, response, or objection, and that to the best of their knowledge, information, and belief formed after a reasonable inquiry it is:

- (1) - (3) [Unchanged.]
- (h) - (j)** [Unchanged.]

WSR 23-21-024
RULES OF COURT
STATE SUPREME COURT
[October 3, 2023]

IN THE MATTER OF THE) ORDER
SUGGESTED AMENDMENT TO) NO. 25700-A-1537
RULE OF APPELLATE PROCEDURE)
(RAP) 9.5—FILING AND SERVICE)
OF REPORT OF PROCEEDINGS—)
OBJECTIONS)

The Washington State Court of Appeals Rules Committee, having recommended the suggested amendment to Rule of Appellate Procedure (RAP) 9.5—Filing and Service of Report of Proceedings—Objections, 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 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 2024.

(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, 2024. 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 3rd day of October, 2023.

For the Court

Gonzalez, C.J.

CHIEF JUSTICE

GR 9 COVER SHEET

Suggested Amendment

Rules of Appellate Procedure

Rule 9.5 - Filing and Service of Report of Proceedings - Objections

A. Proponent: Washington State Court of Appeals Rules Committee

B. Spokesperson: Judge Bradley Maxa, Chair

C. Purpose: The proposed amendment reflects current practice as a result of General Orders for the Court of Appeals, which require court reporters, transcribers, and case participants admitted to practice law in the State of Washington to file VRPs, briefs, and other court documents using the appellate court's electronic filing system. For example, on April 17, 2020, the Court of Appeals issued a General Order regarding procedures for court reporters and transcribers that requires that a "Qualifying Electronic VRP shall be filed using the appellate courts' web e-filing portal." When a Qualifying Electronic VRP is filed using the appellate court's electronic filing system, each party who participates in electronic filing receives an electronic copy of the electronic VRP. This proposed amendment waives the requirement that a party filing a brief promptly forward a copy of the

VRP to the party with the right to file the next brief where that party participates in electronic filing and, accordingly, has already received an electronic copy of the VRP.

D. Hearing: Not requested.

E. Expedited Consideration: Not requested.

F. Supporting Material: Suggested rule amendment.

RAP 9.5

FILING AND SERVICE OF REPORT OF PROCEEDINGS—OBJECTIONS

(a) Generally. The party seeking review must file an agreed or narrative report of proceedings with the appellate court within 60 days after the statement of arrangements is filed. The court reporter or authorized transcriptionist preparing a verbatim report of proceedings must file it in the appellate court within 60 days after the statement of arrangements is filed and all named court reporters or authorized transcriptionists are served. The court reporter or authorized transcriptionist shall promptly notify all parties that the report of proceedings has been filed with the appellate court, and shall provide a copy of the report of proceedings to the party who arranged for the transcript.

(1) A party filing a brief must promptly forward a copy of the verbatim report of proceedings with a copy of the brief to the party with the right to file the next brief. If more than one party has the right to file the next brief, the parties must cooperate in the use of the report of proceedings. The party who files the last brief should return the copy of the report of proceedings to the party who paid for it. This subsection does not apply if the party with the right to file the next brief participates in electronic filing and has thereby received electronic copies of the verbatim report of proceedings.

(2) A searchable PDF electronic copy of the verbatim report of proceedings shall be filed with the original verbatim report of proceedings, with a copy provided to the party who caused the verbatim report of proceedings to be filed. The report of proceedings may be electronically filed with the appellate court in accordance with the court's filing procedures.

(b) Additional Time for Filing and Service of Verbatim Report of Proceedings. If a verbatim report of proceedings cannot be completed within 60 days after the statement of arrangements is filed and served, the court reporter or authorized transcriptionist shall, no later than 10 days before the report of proceedings is due to be filed, submit an affidavit to the party who ordered the report of proceedings stating the reasons for the delay. The party who requested the verbatim report of proceedings should move for an extension of time from the appellate court. The clerk will notify the parties of the action taken on the motion. Failure to timely file the verbatim report of proceedings and notice of service may subject the court reporter or video transcriber or authorized transcriptionist to sanctions as provided in rule 18.9.

(c) Objections to Report of Proceedings. A party may serve and file objections to, and propose amendments to, a narrative report of proceedings or a verbatim report of proceedings within 10 days after receipt of the report of proceedings or receipt of the notice of filing of the report of proceedings with the appellate court. If objections or amendments to the report of proceedings are served and filed, any objections or proposed amendments must be heard by the trial court judge before whom the proceedings were held for settlement and approval, except objections to the form of a report of proceedings, which

shall be heard by motion in the appellate court. The court may direct court reporters or authorized transcriptionists to pay for the expense of any modifications of the proposed report of proceedings. The motion procedure of the court deciding any objections shall be used in settling the report of proceedings.

(d) Substitute Judge May Settle Report of Proceedings. If the judge before whom the proceedings were held is for any reason unable to promptly settle questions as provided in section (c), another judge may act in the place of the judge before whom the proceedings were held.

WSR 23-21-025
RULES OF COURT
STATE SUPREME COURT
[October 3, 2023]

IN THE MATTER OF THE) ORDER
SUGGESTED AMENDMENT TO RAP) NO. 25700-A-1538
9.6—DESIGNATION OF CLERK'S)
PAPERS AND EXHIBITS)

The Washington State Court of Appeals Rules Committee, having recommended the suggested amendment to RAP 9.6—Designation of Clerk's Papers and Exhibits, 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 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 2024.

(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, 2024. 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 3rd day of October, 2023.

For the Court

Gonzalez, C.J.

CHIEF JUSTICE

GR 9 COVER SHEET

Suggested Amendment

Rules of Appellate Procedure

Rule 9.6 - Designation of Clerk's Papers and Exhibits

A. Proponent: Washington State Court of Appeals Rules Committee

B. Spokesperson: Judge Bradley Maxa, Chair

C. Purpose: RAP 9.6(a) requires that a petitioner or appellant file a designation of clerk's papers and exhibits within 30 days after filing a notice of appeal. However, some petitioners and appellants are appointed appellate counsel after a notice of appeal is filed. The proposed amendment acknowledges the reality that appointed appellate counsel are appointed sometime after the notice of appeal is filed, sometimes more than 30 days after the notice of appeal is filed. And, when the party seeking review is represented by appointed counsel, the proposed amendment allows the designation of clerk's papers and exhibits to be filed within 30 days of counsel's appointment.

D. Hearing: Not requested.

E. Expedited Consideration: Not requested.

F. Supporting Material: Suggested rule amendment.

RAP 9.6

DESIGNATION OF CLERK'S PAPERS AND EXHIBITS

(a) **Generally.** The party seeking review should, within 30 days after the notice of appeal is filed or discretionary review is granted, or 30 days after appointment of counsel, whichever is later, serve on all other parties and file with the trial court clerk a designation of those clerk's papers and exhibits the party wants the trial court clerk to transmit to the appellate court. A copy of the designation shall also be filed with the appellate court clerk. Any party may supplement the designation of clerk's papers and exhibits prior to or with the filing of the party's last brief. Thereafter, a party may supplement the designation only by order of the appellate court, upon motion. Each party is encouraged to designate only clerk's papers and exhibits needed to review the issues presented to the appellate court.

(b) **Designation and Contents.**

- (1) The clerk's papers shall include, at a minimum:
 - (A) the notice of appeal or the notice for discretionary review;
 - (B) the indictment, information, or complaint in a criminal case;
 - (C) the summons and complaint or case initiating petition in a civil case;
 - (D) any written order or ruling not attached to the notice of appeal, of which a party seeks review;
 - (E) the final pretrial order, or the final complaint and answer or other pleadings setting out the issues to be tried if the final pretrial order does not set out those issues;
 - (F) any written opinion, findings of fact, or conclusions of law;
 - (G) any jury instruction given or refused that presents an issue on appeal; and
 - (H) any order sealing documents if sealed documents have been designated;
 - (I) in a criminal case where a cost bill may be filed, any order concerning the defendant's indigency and current or likely future ability to pay discretionary legal financial obligations.
- (2) Each designation or supplement shall specify the full title of the pleading, the date filed, and, in counties where subnumbers are used, the clerk's subnumber.
- (3) Each designation of exhibits shall include the trial court clerk's list of exhibits and shall specify the exhibit number and the description of the exhibit to be transmitted.

(c) **Format.**

- (1) Full copies of all designated pleadings shall be included, unless the trial court orders otherwise.
- (2) The trial court clerk shall number the papers sequentially from beginning to end, including any supplemental clerk's papers, regardless of which party designated them.
- (3) The trial court clerk shall make available a copy of the clerk's papers transmitted to the appellate court to any party, upon payment of the trial court clerk's reasonable expenses. If the trial court clerk generates the clerk's papers in electronic format, the trial court clerk shall make available to any party a copy of the clerk's papers in electronic format, upon payment of the trial court clerk's reasonable expenses.

WSR 23-21-026
RULES OF COURT
STATE SUPREME COURT
[October 3, 2023]

IN THE MATTER OF THE) ORDER
SUGGESTED AMENDMENTS TO) NO. 25700-A-1539
RAP 9.7—PREPARING CLERK'S)
PAPERS AND EXHIBITS FOR)
APPELLATE COURT)

The Washington State Court of Appeals Rules Committee, having recommended the suggested amendments to RAP 9.7—Preparing Clerk's Papers and Exhibits for Appellate Court, 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 2024.

(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, 2024. 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 3rd day of October, 2023.

For the Court

Gonzalez, C.J.

CHIEF JUSTICE

GR 9 COVER SHEET

Suggested Amendment

Rules of Appellate Procedure

Rule 9.7 - Preparing Clerk's Papers and Exhibits for Appellate Court

A. Proponent: Washington State Court of Appeals Rules Committee

B. Spokesperson: Judge Bradley Maxa, Chair

C. Purpose: The proposed amendments: (1) replace "50 cents a page" with a reference to the statute that sets the amount that must be charged for preparation of clerk's papers; (2) removes the requirement that clerk's papers be bound and increases volume size from 200 pages to 500 pages (considering that clerk's papers are now filed electronically and appellate court servers can accommodate the larger file size); and (3) adds a requirement that clerks provide not only a copy of the index to the clerk's papers but also a copy of the corresponding clerk's papers to each party who has paid for copies. These proposed changes acknowledge technological advancements and the reality that reproduction costs may change.

D. Hearing: Not requested.

E. Expedited Consideration: Not requested.

F. Supporting Material: Suggested rule amendment.

RAP 9.7

PREPARING CLERK'S PAPERS AND EXHIBITS FOR APPELLATE COURT

(a) Clerk's Papers. The clerk of the trial court shall make copies at cost, not to exceed ~~50 cents a page~~ the amount authorized by RCW 36.18.016(21), of those portions of the clerk's papers designated by the parties and prepare them for transmission to the appellate court. The clerk shall assemble the copies and number each page of the clerk's papers in chronological order of filing, ~~and bind~~ in volumes of no more than ~~200~~ 500 pages, or, as authorized by the appellate court, ~~assemble~~ and transmit the numbered clerk's papers to the appellate court in electronic format. The clerk shall prepare a cover sheet for the papers with the title "Clerk's Papers" and prepare an alphabetical index to the papers. The clerk shall promptly send a copy of the index to each party. The reproduction costs must be paid to the trial court clerk within 14 days of receipt of the index. Failure to do so may result in sanctions under rule 18.9. Within 14 days of receiving payment, the clerk shall forward the clerk's papers to the appellate court and to each party that has paid for copies.

(b) Exhibits. The clerk of the trial court shall assemble those exhibits designated by the parties and prepare them for transmission to the appellate court. Exhibits that are papers should be assembled in the order the exhibits are numbered with a cover sheet that lists only the exhibits being transmitted and is titled "Exhibits."

(c) Certified Record of Administrative Adjudicative Orders. When an administrative agency has certified the record of an administrative order for review by the superior court, the clerk of the superior court shall electronically transmit to the appellate court the record certified by the administrative agency.

WSR 23-21-027
RULES OF COURT
STATE SUPREME COURT
[October 3, 2023]

IN THE MATTER OF THE) ORDER
SUGGESTED NEW RAP 9. ___) NO. 25700-A-1540
APPELLATE COUNSEL ACCESS TO)
TRIAL COURT RECORD AND)
EXHIBITS)

The Washington State Court of Appeals Rules Committee, having recommended the suggested new RAP 9. ___—Appellate Counsel Access to Trial Court Record and Exhibits, and the Court having approved the suggested new rule for publication;

Now, therefore, it is hereby

ORDERED:

(a) That pursuant to the provisions of GR 9(g), the suggested new rule 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 2024.

(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, 2024. 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 3rd day of October, 2023.

For the Court

Gonzalez, C.J.

CHIEF JUSTICE

GR 9 COVER SHEET

Suggested New Rule
Rules of Appellate Procedure
Rule 9. ___

A. Proponent: Washington State Court of Appeals Rules Committee

B. Spokesperson: Judge Bradley Maxa, Chair

C. Purpose: The purpose of the proposed new rule is to facilitate appellate counsel's access to trial court records necessary for appeal. In some circumstances, trial court records are accessible to only counsel of record. See, e.g., RCW 13.50.100 (2), (7). The proposed rule clarifies that appellate counsel must be considered counsel of record for purposes of accessing trial court records regardless of case type. Requiring appellate counsel to file a notice of appearance in the trial court in order to access the trial court record is inappropriate because appellate counsel typically is not involved in representing the client at the trial court level, and trial court hearings might be ongoing despite the pendency of an appeal or appellate review proceeding.

D. Hearing: Not requested.

E. Expedited Consideration: Not requested.

F. Supporting Material: Suggested new rule.

New Rule

RAP 9. __

APPELLATE COUNSEL ACCESS TO TRIAL COURT RECORD AND EXHIBITS

The clerk of the trial court shall treat appellate counsel who appears for or is appointed to represent a party on appeal as counsel for the party for purposes of accessing the trial court record, including sealed and confidential records in juvenile proceedings. The clerk may require appellate counsel to provide the name of a specific attorney serving as appellate counsel, not simply the name of the appointed law firm or organization.

WSR 23-21-028
RULES OF COURT
STATE SUPREME COURT
[October 3, 2023]

IN THE MATTER OF THE) ORDER
SUGGESTED AMENDMENT TO RAP) NO. 25700-A-1541
10.2—TIME FOR FILING BRIEFS)

The Washington State Court of Appeals Rules Committee, having recommended the suggested amendment to RAP 10.2—Time for Filing Briefs, 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 2024.

(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, 2024. 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 3rd day of October, 2023.

For the Court

Gonzalez, C.J.

CHIEF JUSTICE

GR 9 COVER SHEET

Suggested Amendment
Rules of Appellate Procedure
Rule 10.2 - Time for Filing Briefs

A. Proponent: Washington State Court of Appeals Rules Committee

B. Spokesperson: Judge Bradley Maxa, Chair

C. Purpose: Add a new sentence to paragraph (h) (Service of Briefs): "Separate service is not necessary as to parties or amici participating in electronic filing." Paragraph (h) has historically required a party who files a brief to serve a copy of the brief upon all other parties and amicus curiae with proof of service filed in the appellate court. The proposed new sentence waives this requirement for case participants who participate in electronic filing because, when a party files a brief using the electronic portal, a link to the brief is automatically transmitted to all other case participants. Accordingly, continuing to require the party who files a brief using the electronic portal to serve a copy of the brief upon all other case participants and file proof of such service is unnecessarily duplicious.

D. Hearing: Not requested.

E. Expedited Consideration: Not requested.

F. Supporting Material: Suggested rule amendment.

RAP 10.2

TIME FOR FILING BRIEFS

(a) Brief of Appellant or Petitioner. The brief of an appellant or petitioner should be filed with the appellate court within 45 days after the report of proceedings is filed in the appellate court; or, if the record on review does not include a report of proceedings, within 45 days after the party seeking review has filed the designation of clerk's papers and exhibits in the trial court.

(b) Brief of Respondent in Civil Case. The brief of a respondent in a civil case should be filed with the appellate court within 30 days after service of the brief of appellant or petitioner.

(c) Brief of Respondent in Criminal Case. The brief of a respondent in a criminal case should be filed with the appellate court within 60 days after service of the brief of appellant or petitioner.

(d) Reply Brief. A reply brief of an appellant or petitioner should be filed with the appellate court within 30 days after service of the brief of respondent unless the court orders otherwise.

(e) [Reserved; see rule 10.10.]

(f) Brief of Amicus Curiae. Unless the court sets a different date, or allows a later date upon a showing of particular justification, a brief of amicus curiae should be filed as follows:

(1) *Supreme Court.* A brief of amicus curiae should be received by the court, counsel of record for the parties, and any other amicus curiae not later than 45 days before oral argument or consideration of the merits.

(2) *Court of Appeals.* A brief of amicus curiae should be received by the court, counsel of record for the parties, and any other amicus curiae not later than 45 days after the filing of the last brief of respondent permitted under rule 10.2(b) or 10.2(c).

(g) Answer to Brief of Amicus Curiae. A brief in answer to the brief of amicus curiae may be filed with the appellate court not later than the date fixed by the appellate court.

(h) Service of Briefs. At the time a party files a brief, the party should serve one copy on every other party and on any amicus curiae, and file proof of service with the appellate court. Separate service and separate proof of service is not necessary as to parties or amici participating in electronic filing.

(i) Sanctions for Late Filing and Service. The appellate court will ordinarily impose sanctions under rule 18.9 for failure to timely file and serve a brief.

WSR 23-21-029
RULES OF COURT
STATE SUPREME COURT
[October 3, 2023]

IN THE MATTER OF THE) ORDER
SUGGESTED AMENDMENTS TO) NO. 25700-A-1542
RAP 10.4—PREPARATION AND)
FILING OF BRIEF BY PARTY)

The Washington State Court of Appeals Rules Committee, having recommended the suggested amendments to RAP 10.4—Preparation and Filing of Brief by Party, 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 2024.

(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, 2024. 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 3rd day of October, 2023.

For the Court

Gonzalez, C.J.

CHIEF JUSTICE

GR 9 COVER SHEET

Suggested Amendment

Rules of Appellate Procedure

Rule 10.4 - Preparation and Filing of Brief by Party

A. Proponent: Washington State Court of Appeals Rules Committee

B. Spokesperson: Judge Bradley Maxa, Chair

C. Purpose: The proposed amendments to RAP 10.4: (1) add the word "exhibit" to the title of subsection (c); (2) allow pictorial images that require study on review to be inserted into the body of a brief or added as an appendix to a brief; and (3) specifically allow pictorial images to be in color notwithstanding GR 14's prohibition against "colored pages, highlighting or other colored markings."

D. Hearing: Not requested.

E. Expedited Consideration: Not requested.

F. Supporting Material: Suggested rule amendment.

RAP 10.4

PREPARATION AND FILING OF BRIEF BY PARTY

(a) Format of Brief. Briefs shall comply with the formatting requirements of RAP 18.17.

(b) Length of Brief. Briefs shall comply with the formatting requirements of RAP 18.17.

(c) Text of Statute, Rule, Jury Instruction, Exhibit, or the Like. If a party presents an issue which requires study of a statute, rule, regulation, jury instruction, finding of fact, exhibit, or the like, the party should type the material portions of the text out verbatim or include them by copy in the text or in an appendix to the brief. Pictorial images may be copied in the body of the text or in an appendix and may be in color, notwithstanding GR 14(a).

(d) Motion in Brief. A party may include in a brief only a motion which, if granted, would preclude hearing the case on the merits. The answer to a motion within a brief may be made within the brief of the answering party in the time allowed for filing the brief.

(e) Reference to Party. References to parties by such designations as "appellant" and "respondent" should be kept to a minimum. It promotes clarity to use the designations used in the lower court, the actual names of the parties, or descriptive terms such as "the employee," "the injured person," and "the taxpayer."

(f) Reference to Record. A reference to the record should designate the page and part of the record. Exhibits should be referred to by number. The clerk's papers should be abbreviated as "CP"; exhibits should be abbreviated as "Ex"; administrative records should be abbreviated as "AR"; and the report of proceedings should be abbreviated as "RP." Suitable abbreviations for other recurrent references may be used.

(g) Citation Format. Citations should conform with the format prescribed by the Reporter of Decisions pursuant to GR 14(d). The format requirements of GR 14 (a)-(b) do not apply to briefs filed in an appellate court.

(h) Unpublished Opinions. [Reserved. See GR 14.1.]

WSR 23-21-030
RULES OF COURT
STATE SUPREME COURT
[October 3, 2023]

IN THE MATTER OF THE) ORDER
SUGGESTED AMENDMENTS TO) NO. 25700-A-1543
RAP 18.5—SERVICE AND FILING OF)
PAPERS)

The Washington State Court of Appeals Rules Committee, having recommended the suggested amendments to RAP 18.5—Service and Filing of Papers, 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 2024.

(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, 2024. 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 3rd day of October, 2023.

For the Court

Gonzalez, C.J.

CHIEF JUSTICE

GR 9 COVER SHEET

Suggested Amendment
Rules of Appellate Procedure
Rule 18.5 - Service and Filing of Papers

A. Proponent: Washington State Court of Appeals Rules Committee

B. Spokesperson: Judge Bradley Maxa, Chair

C. Purpose: The proposed amendments to RAP 18.5: (1) add a new paragraph (b), entitled "Electronic Filing" and change current paragraphs (a) and (b) to (i) and (ii), respectively, and insert paragraphs (i) and (ii) under a new paragraph (a) heading, entitled "Nonelectronic Filing". The purpose of paragraph (a) ("Nonelectronic Filing") and paragraph (b) ("Electronic Filing") is to clarify that service and proof of service requirements for filed papers apply to papers filed nonelectronically and not to papers filed electronically unless a case participant entitled to service of the filed paper does not participate in electronic filing.

D. Hearing: Not requested.

E. Expedited Consideration: Not requested.

F. Supporting Material: Suggested rule amendment.

RAP 18.5

SERVICE AND FILING OF PAPERS

(a) Nonelectronic Filing.

(ai) Service. Except when a rule requires the appellate court commissioner or clerk or the trial court clerk to serve a particular paper, and except as provided in rule 9.5, a person filing a paper must, at or before the time of filing, serve a copy of the paper on all parties, amicus, and other persons who may be entitled to notice. If a person does not have an attorney of record, service should be made upon the person. Service must be made as provided in CR 5(b), (f), and (g).

(bii) Proof of Service. Proof of service should be made by an acknowledgment of service, or by an affidavit, or, if service is by mail, as provided in CR 5(b). Proof of service may appear on or be attached to the papers filed.

(b) Electronic Filing. When documents are filed electronically, the service and proof of service requirements set forth in subsection (a) apply to only parties, amicus, or other persons who are entitled to service but do not participate in electronic filing.

(c) Filing. Papers required or permitted to be filed in the appellate court must be filed with the clerk, except that an appellate court judge may permit papers to be filed with the judge, in which event the judge will note the filing date on the papers and promptly transmit them to the appellate court clerk.

(d) Filing by Facsimile. (Reserved. See GR 17—Facsimile Transmission.)

(e) Service and Filing by an Inmate Confined in an Institution. An inmate confined in an institution may file and serve papers by mail in accordance with GR 3.1.

WSR 23-21-031
RULES OF COURT
STATE SUPREME COURT
[October 3, 2023]

IN THE MATTER OF THE) ORDER
SUGGESTED AMENDMENT TO RAP) NO. 25700-A-1544
18.6—COMPUTATION OF TIME)

The Washington State Court of Appeals Rules Committee, having recommended the suggested amendment to RAP 18.6—Computation of Time, 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 2024.

(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, 2024. 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 3rd day of October, 2023.

For the Court

Gonzalez, C.J.

CHIEF JUSTICE

GR 9 COVER SHEET

Suggested Amendment
Rules of Appellate Procedure
Rule 18.6 - Computation of Time

- A. Proponent: Washington State Court of Appeals Rules Committee
B. Spokesperson: Judge Bradley Maxa, Chair
C. Purpose: To adopt a uniform definition of "end of day" for filing and service purposes. Defines "end of day" as 5:00 p.m. PT.
D. Hearing: Not requested.
E. Expedited Consideration: Not requested.
F. Supporting Material: Suggested rule amendment.

RAP 18.6
COMPUTATION OF TIME

(a) Generally. In computing any period of time prescribed by these rules, the day of the event from which the time begins to run is not included. The last day of the period so computed is included unless it is a Saturday, Sunday, or legal holiday, in which case the period extends to the end of the next day that is not a Saturday, Sunday, or legal holiday. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation.

(b) Service by Mail. Except as provided in GR 3.1, if the time period in question applies to a party serving a paper by mail, the paper is timely served if mailed within the time permitted for service. Except as provided in GR 3.1, if the time period in question applies to the party upon whom service is made, the time begins to run 3 days after the paper is mailed to the party.

(c) Filing by Mail. Except as provided in GR 3.1, a brief authorized by Title 10 or Title 13 is timely filed if mailed to the appellate court within the time permitted for filing. Except as provided in GR 3.1, any other paper, including a petition for review, is timely filed only if it is received by the appellate court within the time permitted for filing.

(d) End of day, defined. For purposes of filing and service, the end of day is defined as 5:00 PM Pacific Time.

WSR 23-21-032
RULES OF COURT
STATE SUPREME COURT
[October 3, 2023]

IN THE MATTER OF THE) ORDER
SUGGESTED AMENDMENTS TO) NO. 25700-A-1545
RAP 18.8—WAIVER OF RULES AND)
EXTENSION AND REDUCTION OF)
TIME)

The Washington State Court of Appeals Rules Committee, having recommended the suggested amendments to RAP 18.8—Waiver of Rules and Extension and Reduction of Time, 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 2024.

(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, 2024. 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 3rd day of October, 2023.

For the Court

Gonzalez, C.J.

CHIEF JUSTICE

GR 9 COVER SHEET

Suggested Amendment

Rules of Appellate Procedure

Rule 18.8 - Waiver of Rules and Extension and Reduction of Time

A. Proponent: Washington State Court of Appeals Rules Committee

B. Spokesperson: Judge Bradley Maxa, Chair

C. Purpose: The proposed amendments to RAP 18.8: (1) add a new paragraph (b) and re-letter subsequent paragraphs and references within the rule to those paragraphs; (2) like in federal court, allow a single, automatic extension of time of up to 30 days to file a party's opening brief in a non-accelerated appeal upon filing a form request.

D. Hearing: Not requested.

E. Expedited Consideration: Not requested.

F. Supporting Material: Suggested rule amendment and form.

RAP 18.8

WAIVER OF RULES AND EXTENSION AND REDUCTION OF TIME

(a) Generally. The appellate court may, on its own initiative or on motion of a party, waive or alter the provisions of any of these rules and enlarge or shorten the time within which an act must be done

in a particular case in order to serve the ends of justice, subject to the restrictions in sections (bc) and (ed).

(b) Streamlined Extensions of Time for Filing Briefs in the Court of Appeals. If a party in the Court of Appeals has not previously filed a motion for an extension of time to file a brief authorized by RAP 10.2 (a)-(c), that party may obtain a single streamlined extension of time to file that brief not to exceed 30 days. A party requesting a streamlined extension of time shall file a written request as set forth in RAP Form XX. The clerk will approve requests that comply with this rule and will provide a new schedule. The clerk will inform parties not eligible for relief under this subsection as to the appropriate method to obtain relief. A streamlined extension of time to file a brief is not available if an appeal has been accelerated.

(bc) Restriction on Extension of Time. The appellate court will only in extraordinary circumstances and to prevent a gross miscarriage of justice extend the time within which a party must file a notice of appeal, a notice for discretionary review, a motion for discretionary review of a decision of the Court of Appeals, a petition for review, or a motion for reconsideration. The appellate court will ordinarily hold that the desirability of finality of decisions outweighs the privilege of a litigant to obtain an extension of time under this section. The motion to extend time is determined by the appellate court to which the untimely notice, motion or petition is directed.

(ed) Restriction on Changing Decision. The appellate court will not enlarge the time provided in rule 12.7 within which the appellate court may change or modify its decision.

(de) Terms. The remedy for violation of these rules is set forth in rule 18.9. The court may condition the exercise of its authority under this rule by imposing terms or awarding compensatory damages, or both, as provided in rule 18.9.

RAP FORM XX

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ____

[CASE NAME]) No. [CASE NUMBER]
)
) STREAMLINED REQUEST
) FOR EXTENSION OF TIME
) TO FILE BRIEF [Rule 18.8(b)]
)
)

Name of party requesting the extension:
For which brief are you requesting an extension:
___ Opening Brief
___ Response Brief
What is your current due date? _____
What is your requested due date? _____
(must not exceed 30 days)
Name of person filing request: _____
Date: _____
Signature: _____

WSR 23-21-033
RULES OF COURT
STATE SUPREME COURT
[October 3, 2023]

IN THE MATTER OF THE) ORDER
SUGGESTED AMENDMENTS TO) NO. 25700-A-1546
RAP 16.7—PERSONAL RESTRAINT)
PETITION—FORM OF PETITION)
AND RAP FORM 17—PERSONAL)
RESTRAINT PETITION FOR PERSON)
CONFINED BY STATE OR LOCAL)
GOVERNMENT)

The Washington State Court of Appeals Rules Committee, having recommended the suggested amendments to RAP 16.7—Personal Restraint Petition—Form of Petition and RAP Form 17—Personal Restraint Petition for Person Confined by State or Local Government, 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 2024.

(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, 2024. 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 3rd day of October, 2023.

For the Court

Gonzalez, C.J.

CHIEF JUSTICE

GR 9 COVER SHEET

Suggested Amendment

Rules of Appellate Procedure

RAP 16.7 - Personal Restraint Petition—Form of Petition

RAP Form 17 - Personal Restraint Petition for Person Confined by State or Local Government

A. Proponent: Washington State Court of Appeals Rules Committee

B. Spokesperson: Judge Bradley Maxa, Chair

C. Purpose: Add "1. My anticipated release date is _____." to Section A of the Personal Restraint Petition Form, renumber the existing inquiries in Section A, and amend RAP 16.7 (a) (1) to reflect the addition to the form. Requesting the petitioner's anticipated release date assists the court with case prioritization and increases the likelihood that a successful petitioner will obtain meaningful relief before the matter becomes moot.

D. Hearing: Not requested.

E. Expedited Consideration: Not requested.

F. Supporting Material: Suggested rule and form amendment.

RAP 16.7

PERSONAL RESTRAINT PETITION—FORM OF PETITION

(a) Generally. Under the titles indicated, the petition should set forth:

(1) Status of Petitioner. The restraint on petitioner; the place where petitioner is held in custody and anticipated release date, if confined; the judgment, sentence, or other order or authority upon which petitioners restraint is based, identified by date of entry, court, and cause number; any appeals taken from that judgment, sentence or order; and a statement of each other petition or collateral attack as that term is defined in RCW 10.73.090, whether filed in federal court or state court, filed with regard to the same allegedly unlawful restraint, identified by the date filed, the court, the disposition made by the court, and the date of disposition.

. . .

See RAP 18.17 for document formatting requirements.

RAP FORM 17. Personal Restraint Petition for Person Confined by State or Local Government [Rule 16.7]

No. [appellate court]

[Put name of appellate court that you want to hear your case.]

OF THE STATE OF WASHINGTON

[Put your name here],) PERSONAL
) RESTRAINT
) PETITION
Petitioner.)

If there is not enough room on this form, use the back of these pages or use other paper. Fill out all of this form and other papers you are attaching before you sign this form in front of a notary.

A. STATUS OF PETITIONER

I, _____,
(full name and address)

apply for relief from confinement. I am _____ am not _____ now in custody serving a sentence upon conviction of a crime. (If not serving a sentence upon conviction of a crime) I am now in custody because of the following type of court order:

_____.
(identify type of order)

1. My anticipated release date is _____.

1.2. The court in which I was sentenced is _____.

2.3. I was convicted of the crime(s) of _____.

3.4. I was sentenced after trial _____, after plea of guilty _____

on

_____.
(date of sentence) The judge who imposed sentence was

_____.
(name of trial court judge)

2. My lawyer at trial court was

_____.
(name and address if known; if none, write "none")

3. I did _____ did not _____ appeal from the decision of the trial court. (If the answer is that I did), I appealed to

_____.

(name of court or courts to which appeal was taken)

My lawyer on appeal was

(name and address if known; if none, write "none")

The decision of the appellate court was _____ was not _____ published. (If the answer is that it was published, and I have this information), the decision is published in

(volume number, Washington Appellate Reports or Washington Reports, and page number)

4. Since my conviction I have _____ have not _____ asked a court for some relief from my sentence other than I have already written above. (If the answer is that I have asked), the court I asked was

(name of court or courts in which relief was sought)
Relief was denied on

(date of decision or, if more than one, dates of all decisions)

5. (If I have answered in question 6 that I did ask for relief), the name of my lawyer in the proceeding mentioned in my answer to question 6 was

(name and address if known; if none, write "none")

6. If the answers to the above questions do not really tell about the proceedings and the courts, judges and attorneys involved in your case, tell about it here:

B. GROUNDS FOR RELIEF

(If I claim more than one reason for relief from confinement, I attach sheets for each reason separately, in the same way as the first one. The attached sheets should be numbered "First Ground", "Second Ground", "Third Ground", etc.). I claim that I have _____ (number) reason(s) for this court to grant me relief from the conviction and sentence described in Part A.

Ground
(First, Second, etc.)

1. I should be given a new trial or released from confinement because (Here state legal reasons why you think there was some error made in your case which gives you the right to a new trial or release from confinement.):

2. The following facts are important when considering my case (After each fact statement, put the name of the person or persons who know the fact and will support your statement of the fact. If the fact is already in the record of your case, indicate that, also.):

3. The following reported court decisions (include citations if possible) in cases similar to mine show the error I believe happened in my case (If none are known, state "None known".):

4. The following statutes and constitutional provisions should be considered by the court (If none are known, state "None known".):

5. This petition is the best way I know to get the relief I want, and no other way will work as well because

_____.

C. STATEMENT OF FINANCES

If you cannot afford to pay the filing fee or cannot afford to pay an attorney to help you, fill this out. If you have enough money for these things, do not fill out this part of the form.

1. I do _____ do not _____ ask the court to file this without making me pay the filing fee because I am so poor I cannot pay the fee.

2. I have a spendable balance of \$_____ in my prison or institution account.

3. I do _____ do not _____ ask the court to appoint a lawyer for me because I am so poor I cannot afford to pay a lawyer.

4. I am _____ am not _____ employed. My salary or wages amount to \$_____ a month. My employer is

_____.

(name and address)

5. During the past 12 months I did _____ did not _____ get any money from a business, profession or other form of self-employment. (If I did, it was _____ and the total income I got was \$_____.)

(kind of self-employment)

6. During the past 12 months, I

_____ did _____ did not _____ get any rent payments. If so, the total amount I got was \$_____.

_____ _____ get any interest. If so, the total amount I got was \$_____.

_____ _____ get any dividends. If so, the total amount I got was \$_____.

_____ _____ get any other money. If so, the amount of money I got was \$_____.

7.

_____ _____ have any cash except as said in answer 2. If so, the total amount of cash I have is \$_____.

_____ _____ have any savings accounts or checking accounts. If so, the amount in all accounts is \$_____.

_____ _____ own stocks, bonds, or notes. If so, their total value is \$_____.

8. List all real estate and other property or things of value which belong to you or in which you have an interest. Tell what each item of property is worth and how much you owe on it. Do not list household furniture and furnishings and clothing which you or your family need.

Items Value

9. I am _____ am not _____ married. If I am married, my wife or husband's name and address is

_____.

10. All of the persons who need me to support them are listed here.

Name and Address Relationship Age

11. All the bills I owe are listed here.

Name of creditor you owe money to	Address	Amount
--------------------------------------	---------	--------

D. REQUEST FOR RELIEF I want this court to:

- _____ vacate my conviction and give me a new trial
- _____ vacate my conviction and dismiss the criminal charges
against me without a new trial
- _____ other (specify)

E. OATH OF PETITIONER

THE STATE OF WASHINGTON)
County of _____) ss.

After being first duly sworn, on oath, I depose and say: That I am the petitioner, that I have read the petition, know its contents, and I believe the petition is true.

[sign here]

SUBSCRIBED AND SWORN to before me this ____ day of ____.
Notary Public in and for the State of Washington, residing at:

If a notary is not available, explain why none is available and indicate who can be contacted to help you find a notary:

Then sign below:

I declare that I have examined this petition and to the best of my knowledge and belief it is true and correct.

[If the petition is prepared using word processing software, include the following statement: This document contains ____ words, excluding the parts of the document exempted from the word count by RAP 18.17.]

[date].

[sign here]

[Adopted effective July 1, 1976; Amended effective September 1, 1990; September 1, 2006; November 21, 2006; September 1, 2021.]

WSR 23-21-038

NOTICE OF PUBLIC MEETINGS

EMPLOYMENT SECURITY DEPARTMENT

(Paid Family and Medical Leave Advisory Committee)

[Filed October 9, 2023, 12:46 p.m.]

2023 Advisory Committee Meeting Dates

DATE	TIME	LOCATION
October 25	1 - 3 p.m.	Meeting will be hybrid. Remote participation details are included in the agenda.
November 29 Canceled	1 - 3 p.m.	Meeting will be hybrid. Remote participation details are included in the agenda.
December 13	1 - 3 p.m.	Meeting will be hybrid. Remote participation details are included in the agenda.

If you need further information, contact Taiyler Pyle, taiyler.pyle@esd.wa.gov, <https://paidleave.wa.gov/advisory-committee/>.

WSR 23-21-042
PUBLIC RECORDS OFFICER
OFFICE OF
INDEPENDENT INVESTIGATIONS
[Filed October 9, 2023, 3:33 p.m.]

Pursuant to RCW 42.56.580, the public records officer for the Office of Independent Investigations is Xavier Witherspoon, P.O. Box 40270, Olympia, WA 98504-0270, 360-229-4720, Xavier.Witherspoon@oii.wa.gov.

Jane Nesbitt
Chief of Staff

**WSR 23-21-048
NOTICE OF PUBLIC MEETINGS
STATE INDEPENDENT
LIVING COUNCIL**

[Filed October 10, 2023, 1:35 p.m.]

The following is the schedule of regular meetings for the Washington state independent living council (SILC) for 2024.

Once specific locations have been determined, an updated notice will be sent. A time for public comment will be available. All are welcome to attend.

Date	Time	Location
January 18, 2024	9:00 a.m. - 4:00 p.m.	Hybrid meeting Olympia, Washington Location TBA Zoom day one https://dshs-telehealth.zoom.us/j/88161277125?pwd=c1VHcXg1eEZBRlpRLzAwam9taG5Odz09
January 19, 2024	9:00 a.m. - 12:00 p.m.	Hybrid meeting Olympia, Washington Location TBA Zoom day two https://dshs-telehealth.zoom.us/j/83332580410?pwd=NUhpajJsbUN5VIA2QnBrV205MTdEQT09
April 11, 2024	9:00 a.m. - 4:00 p.m.	Hybrid meeting Spokane, Washington Location TBA Zoom day one https://dshs-telehealth.zoom.us/j/81085570433?pwd=Yzc0dmxpSjFhRHRNcjFwQWtSOEFjUT09
April 12, 2024	9:00 a.m. - 12:00 p.m.	Hybrid meeting Spokane, Washington Location TBA Zoom day two https://dshs-telehealth.zoom.us/j/88293345074?pwd=TnczNk5iS2ZYM1BqdW9vamcwWWF2QT09
July 11, 2024	9:00 a.m. - 4:00 p.m.	Hybrid meeting Ellensburg, Washington Location TBA Zoom day One https://dshs-telehealth.zoom.us/j/85167163086?pwd=RIUxWHlvNnhnZWg1cnVEUHFcrnZhQT09
July 12, 2024	9:00 a.m. - 12:00 p.m.	Hybrid meeting Ellensburg, Washington Location TBA Zoom day two https://dshs-telehealth.zoom.us/j/83068816499?pwd=dVhVMloyanlkSWZPcVU1ZHdFVdDdDQT09
October 24, 2024	9:00 a.m. - 4:00 p.m.	Hybrid meeting Vancouver, Washington Location TBA Zoom day one https://dshs-telehealth.zoom.us/j/83809489260?pwd=RVkybUxESjFRIMxaEVHdjFIUHpzQT09
October 25, 2024	9:00 a.m. - 12:00 p.m.	Hybrid meeting Vancouver, Washington Location TBA Zoom day two https://dshs-telehealth.zoom.us/j/88495690219?pwd=Z2VtM0w1L1hESEkvZFF0MjJlJTHIKZz09

For accommodation requests or for further information, please contact SILC at 800-624-4105.

SILC is appointed by the governor to guide development of and promote access to independent living services for individuals with disabilities statewide. SILC works to increase opportunities for self-determination and empowerment of people with disabilities, and to create awareness of people with disabilities as a valuable human re-

source. We welcome your feedback concerning your experiences and concerns.

WSR 23-21-049

DEPARTMENT OF AGRICULTURE

[Filed October 10, 2023, 2:03 p.m.]

2023 QUARTERLY REPORT ON RULE-MAKING ACTIVITIES

Petitions Received

The following information is being filed in order to implement RCW 1.08.112 (1)(g) and WAC 1-21-180. The Washington state department of agriculture received five petitions for rule making during the third quarter of 2023.

Date	Requestor	Subject
1ST QUARTER (JANUARY THROUGH MARCH)		
	None	
2ND QUARTER (APRIL THROUGH JUNE)		
4/3/2023	Patricia Dunn	Adding <i>Impatiens capensis</i> to the quarantine list in chapter 16-752 WAC.
4/27/2023	Kristi Park, BioDesign Studio	Adding <i>Heder Helix</i> (English ivy) to the quarantine list in chapter 16-752 WAC.
6/14/2023	Kathy Furtado	Adding <i>Heder Helix</i> (English ivy) to the quarantine list in chapter 16-752 WAC.
3RD QUARTER (JULY THROUGH SEPTEMBER)		
7/14/2023	Wes Glisson, Department of Ecology	Adding <i>Aponogeton distachyos</i> (cape pondweed) to the quarantine list in chapter 16-752 WAC.
7/21/2023	Wes Glisson, Department of Ecology	Adding <i>Pistia stratiotes L.</i> (water lettuce) to the quarantine list in chapter 16-752 WAC.
7/28/2023	Multiple Electric Vehicle Service Providers	Align the electric vehicle supply equipment payment method requirements in WAC 16-662-210 with the National Electric Vehicle Infrastructure technical requirements.
7/31/2023	Jon DeVaney, Washington State Tree Fruit Association	Amend the apple maggot quarantine area in Okanogan County in WAC 16-470-105 as recommended by the Okanogan subcommittee of the apple maggot working group.
8/21/2023	Aaron Jeschke, Washington State Crop Improvement Association	Increase seed certification fees in WAC 16-303-340 to cover the current cost of providing certification services and to align with the department, as needed.

WSR 23-21-060

NOTICE OF PUBLIC MEETINGS

HEALTH CARE AUTHORITY

(Health Care Cost Transparency Board)

[Filed October 12, 2023, 10:06 a.m.]

Revised to reflect the December 5 meeting as cancelled.

The following is the schedule of regular meetings for the Washington state health care authority's health care cost transparency board's advisory committee of health care providers and carriers for 2023:

Date	Time	Location
December 5, 2023 (cancelled)	2:00 - 4:00 p.m.	*Hybrid

Visit our advisory committee of health care providers and carriers page to learn more about the committee, meeting materials, and Zoom information.

WSR 23-21-086

NOTICE OF PUBLIC MEETINGS

MINT COMMISSION

[Filed October 17, 2023, 9:59 a.m.]

The Washington mint commission has changed the following fourth quarter regular meeting:

From: Tuesday, November 7, 2024.

To: Wednesday, November 1, 2024.

The meeting will be held at the Washington State University Research Station in Prosser, Washington, starting at 10:00 a.m.

If you need further information, contact Shane Johnson, 6601 West Deschutes Avenue, Suite C-2, Kennewick, WA 99336, 509-585-5460, shanej@agmgt.com.

WSR 23-21-096
NOTICE OF PUBLIC MEETINGS
DEPARTMENT OF HEALTH
 (Orthotics and Prosthetics Advisory Committee)
 [Filed October 18, 2023, 7:42 a.m.]

In accordance with the Open Public Meetings Act (chapter 42.30 RCW) and the Administrative Procedure Act (chapter 34.05 RCW), the following is the approved schedule of regular meetings for the Washington state orthotics and prosthetics advisory committee (committee) for the year 2024. The board's [committee's] meetings are open to the public and access for persons with disabilities may be arranged with advance notice; please contact the staff person below for more information.

Agendas for the meetings listed below are made available in advance via GovDelivery and the board's [committee's] website [contact agency for link]. Every attempt is made to ensure that the agenda is up-to-date. However, the committee reserves the right to change or amend agendas at the meeting.

2024 Meeting Schedule

Date	Time	Location
April 23, 2024	8:00 a.m.	Hybrid: Physical location: TBD in the Tumwater vicinity. Virtual: Hyperlink will be provided on agenda. Public attendees can access the meeting online.
October 8, 2024	8:00 a.m.	Hybrid: Physical location: TBD in the Tumwater vicinity. Virtual: Hyperlink will be provided on agenda. Public attendees can access the meeting online.

If you need further information, please contact Rachel Phipps, Program Manager, Orthotics and Prosthetics Advisory Committee, Washington Department of Health, P.O. Box 47852, Olympia, WA 98504-7852, phone 564-233-1277, fax 360-236-2901, Rachel.Phipps@doh.wa.gov, www.doh.wa.gov.

Please be advised the committee is required to comply with the Public Records Act, chapter 42.56 RCW. This act establishes a strong state mandate in favor of disclosure of public records. As such, the information you submit to the board, including personal information, may ultimately be subject to disclosure as a public record.