

WSR 22-01-109
RULES OF COURT
STATE SUPREME COURT
[December 6, 2021]

IN THE MATTER OF THE) ORDER
SUGGESTED AMENDMENT TO RAP) NO. 25700-A-1406
18.9—VIOLATION OF RULES)

The Washington Appellate Courts Rules Committee, having recommended the suggested amendment to RAP 18.9—Violation of Rules, 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 6th day of December, 2021.

For the Court

Gonzalez, C.J.

GR 9 COVER SHEET
Suggested Amendment
Rules of Appellate Procedure
Rule 18.9 - Violation of Rules

A. Proponent: Washington State Court of Appeals Rules Committee

B. Spokesperson: Judge Bradley Maxa, Chair

C. Purpose: RAP 18.9 sets forth a judicial officer's authority to sanction a party, counsel, court reporter, or transcriptionist for violating the rules of appellate procedure. Authorized sanctions include dismissal and imposition of terms and compensatory damages.

Under the first provision in subdivision (b), the commissioner or clerk may dismiss a case on any of the grounds listed in subdivision (a) of the rule (i.e., using the rules for the purpose of delay, filing a frivolous appeal, failing to comply with the rules). The second provision in subdivision (b) states that the commissioner or clerk will dismiss for failure to timely file a notice of appeal, notice for discretionary review, a motion for discretionary review, or a petition for review. In other situations, the commissioner or clerk has no discretion to dismiss. Clerks often move to dismiss review of a case for abandonment, and commissioners often rule on those motions. The proposed amendment reflects current practice by explicitly authorizing a commissioner or clerk to dismiss a review proceeding for abandonment on its own motion. This proposed amendment mirrors and uses the same

wording as subdivision (c), which allows a party to move to dismiss review of a case "for want of prosecution if the party seeking review has abandoned the review".

D. Hearing: Not requested.

E. Expedited Consideration: Not requested.

F. Supporting Material: Suggested rule amendment.

RAP 18.9

VIOLATION OF RULES

(a) Sanctions. The appellate court on its own initiative or on motion of a party may order a party or counsel, or a court reporter or authorized transcriptionist preparing a verbatim report of proceedings, who uses these rules for the purpose of delay, files a frivolous appeal, or fails to comply with these rules to pay terms or compensatory damages to any other party who has been harmed by the delay or the failure to comply or to pay sanctions to the court. The appellate court may condition a party's right to participate further in the review on compliance with terms of an order or ruling including payment of an award which is ordered paid by the party. If an award is not paid within the time specified by the court, the appellate court will transmit the award to the superior court of the county where the case arose and direct the entry of a judgment in accordance with the award.

(b) Dismissal on Motion of Commissioner or Clerk. The commissioner or clerk, on 10 days' notice to the parties, ~~may~~ (1) may dismiss a review proceeding as provided in section (a), (2) may dismiss a review proceeding for want of prosecution if the party seeking review has abandoned the review, and ~~(23)~~ except as provided in rule 18.8(b), will dismiss a review proceeding for failure to timely file a notice of appeal, a notice for discretionary review, a motion for discretionary review of a decision of the Court of Appeals, or a petition for review. A party may object to the ruling of the commissioner or clerk only as provided in rule 17.7.

(c) Dismissal on Motion of Party. The appellate court will, on motion of a party, dismiss review of a case (1) for want of prosecution if the party seeking review has abandoned the review, or (2) if the application for review is frivolous, moot, or solely for the purpose of delay, or (3) except as provided in rule 18.8(b), for failure to timely file a notice of appeal, a notice of discretionary review, a motion for discretionary review of a decision of the Court of Appeals, or a petition for review.

(d) Objection to Ruling. A counsel upon whom sanctions have been imposed or a party may object to the ruling of a commissioner or the clerk only as provided in rule 17.7.