

WSR 23-09-019
RULES OF COURT
STATE SUPREME COURT
[April 6, 2023]

IN THE MATTER OF THE) ORDER
SUGGESTED AMENDMENT TO RAP) NO. 25700-A-1499
13.5—DISCRETIONARY REVIEW OF)
INTERLOCUTORY DECISION)

The Supreme Court Clerk's Office, having recommended the suggested amendment to RAP 13.5—Discretionary Review of Interlocutory Decision, 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 6th day of April, 2023.

For the Court

Gonzalez, C.J.

CHIEF JUSTICE

GR 9 Cover Sheet

Name of Proponent: Supreme Court Clerk's Office

Spokesperson: Erin L. Lennon, Washington State Supreme Court Clerk

Sarah R. Pendleton, Washington State Supreme Court Deputy Clerk

Purpose: The purpose of the rule amendment is to update the Rules of Appellate Procedure (RAP) to reflect the Supreme Court's holding in In re Pers. Restraint of Fero, 190 Wn.2d 1, 409 P.3d 214 (2018) that the 30-day time period to file a motion for discretionary review begins to run after a decision on a timely motion for reconsideration.

As background, RAP 13.3 provides two methods for seeking Supreme Court review of a decision by the Court of Appeals: a petition for review and a motion for discretionary review. The rules for a petition for review explicitly state that if a timely motion for reconsideration is filed, the petition for review must be filed within 30 days after an order is filed denying a timely motion for reconsideration. See RAP 13.4(a). The rules for a motion for discretionary review do not address the effect of a timely motion for reconsideration on the deadline for filing a motion for discretionary review. See RAP 13.5(a).

In *In re Pers. Restraint of Fero*, 190 Wn.2d at 14, the Supreme Court held that a motion for discretionary review is considered timely filed if it is filed within 30 days after an order is filed denying a timely motion for reconsideration (in this split opinion, three Justices joined Justice González in his lead opinion holding that such a motion would be timely, and Justice Stephens filed a separate concurrence joining in that holding).

To ensure that the RAP properly inform litigants of the timeline that will apply to a motion for discretionary review when a motion for reconsideration is filed, the Supreme Court Clerk's Office recommends that RAP 13.5(a) be amended to reflect the holding announced in *Fero*. There remains confusion on behalf of litigants, some of whom file a motion for discretionary review while a motion for reconsideration is pending because they are not aware of *Fero*.

The Supreme Court Clerk's Office recommends that the same rule apply when a motion to publish is filed. This would ensure that the rules for motions for discretionary review parallel the rules for petitions for review.

The rule amendment also proposes removing the requirement to file a copy of the motion for discretionary review at the Court of Appeals and the Supreme Court. In the age of electronic documents, it is not necessary to file two copies. This change brings the rule for motions for discretionary review in alignment with the rule for petitions for review (RAP 13.4(a)), which directs the party to file at the Court of Appeals, who then forward the document to the Supreme Court.

Hearing: The proponent does not believe a public hearing is necessary.

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

RAP 13.5

DISCRETIONARY REVIEW OF INTERLOCUTORY DECISION

(a) How To Seek Review. A party seeking review by the Supreme Court of an interlocutory decision of the Court of Appeals must file a motion for discretionary review in the ~~Supreme Court and a copy in the~~ Court of Appeals within 30 days after the decision is filed. If the Court of Appeals decision is in the form of an opinion and a motion to publish is timely filed, the motion for discretionary review should be filed within 30 days after an order deciding the motion to publish is filed. If the Court of Appeals decision is subject to a motion for reconsideration under RAP 12.4 and a motion for reconsideration is timely filed, the motion for discretionary review should be filed within 30 days after an order deciding the motion for reconsideration is filed.

(b) - (d) [unchanged.]