WSR 23-13-065
RULES OF COURT
STATE SUPREME COURT
[June 8, 2023]

IN THE MATTER OF THE SUGGESTED AMENDMENT TO RAP 12.4—MOTIONS FOR RECONSIDERATION OF DECISION TERMINATING REVIEW	)))))	ORDER NO. 25700-A-1522

The Supreme Court Clerk's Office, having recommended the suggested amendment to RAP 12.4—Motions for Reconsideration of Decision Terminating Review, 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 8th day of June, 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 clarify whether a motion for reconsideration may be filed of a decision by a single Court of Appeals judge.

Currently, RAP 12.4(a) provides that a party may file a motion for reconsideration of a decision by "the judges" that meets certain criteria.

The Supreme Court and the three divisions of the Court of Appeals have long interpreted the words "the judges" to mean that a party may not file a motion for reconsideration of a decision by a single judge. This is significant because the vast majority of personal restraint petitions are resolved by the Chief Judge alone pursuant to RAP 16.11(b).

However, there is consistent confusion by self-represented parties and attorneys reading the Rules of Appellate Procedure, who miss the subtle "s" at the end of "judges" and believe that a motion for

reconsideration is permitted of an order entered by a single judge. This can sometimes lead the party to miss the deadline for filing a motion for discretionary review of the decision. To avoid this confusion, the Court should add a sentence to RAP 12.4 that explicitly states "A decision by a single judge is not subject to a motion for reconsideration."

As to the underlying policy of whether such a decision should be subject to reconsideration, I note that the Chief Judge may only dismiss a personal restraint petition on their own if they have determined it to be frivolous. See RAP 16.11(b). There does not appear to be significant value to permitting motions for reconsideration of a finding of frivolousness, when a party can seek relief by filing a motion for discretionary review. However, if the Court believes that a motion for reconsideration should be permitted in those circumstances, they should be aware that is not how the current rule is interpreted and should instead amend RAP 12.4 to state that a motion for reconsideration may be filed "of a decision by a judge or judges."

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

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

RAP 12.4

MOTIONS FOR RECONSIDERATION OF DECISION TERMINATING REVIEW

(a) Generally. A party may file a motion for reconsideration only of a decision by the judges (1) terminating review, or (2) granting or denying a personal restraint petition on the merits. The motion should be in the form and be served and filed as provided in rules 17.3(a), 17.4(a) and (g), 18.5, and 18.17, except as otherwise provided in this rule. A party may not file a motion for reconsideration of a decision by a single judge. A party may not file a motion for reconsideration of an order refusing to modify a ruling by the commissioner or clerk, nor may a party file a motion for reconsideration of a Supreme Court order denying a petition for review.

(b)-(i) [unchanged]