

WSR 23-15-066
RULES OF COURT
STATE SUPREME COURT
[July 13, 2023]

IN THE MATTER OF THE) ORDER
SUGGESTED AMENDMENTS TO) NO. 25700-A-1528
RULE OF APPELLATE PROCEDURE)
(RAP) 16.5—PERSONAL RESTRAINT)
PETITION—WHERE TO SEEK)
RELIEF, RAP 16.11—PERSONAL)
RESTRAINT PETITION—)
CONSIDERATION OF PETITION,)
AND RAP 16.13—PERSONAL)
RESTRAINT PETITION—)
PROCEDURE AFTER REFERENCE)
HEARING)

Justice Barbara A. Madsen and Justice Sheryl Gordon McCloud, having recommended the suggested amendments to Rule of Appellate Procedure (RAP) 16.5—Personal Restraint Petition—Where to Seek Relief, RAP 16.11—Personal Restraint Petition—Consideration of Petition, and RAP 16.13—Personal Restraint Petition—Procedure After Reference Hearing, and the Court having approved the suggested amendments for publication on an expedited basis;

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 expeditiously for comment in the Washington Reports, Washington Register, Washington State Bar Association and Administrative Office of the Court's websites.

(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 October 5, 2023. 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 13th day of July, 2023.

For the Court

Gonzalez, C.J.

CHIEF JUSTICE

GENERAL RULE 9
RULE AMENDMENT COVER SHEET
PROPOSED AMENDMENT TO RULES OF APPELLATE PROCEDURE 16.11, and 16.13

- 1. Proponent Organization: Justice Barbara A. Madsen and Justice Sheryl Gordon McCloud
2. Spokesperson & Contact Info: Justice Barbara A. Madsen and Justice Sheryl Gordon McCloud
3. Purpose of Proposed Rule Amendment
Washington's constitution provides for the right to bail. Wash. Const. Art. 1 §20. However, some individuals are held in confinement for nonviolent offenses without bail. This court should clarify that such detention orders are subject to expedited review.

Specifically, RCW 10.21.040 provides expedited review for a detention order and hearing, and in pertinent part, states that "[a] detainee is entitled to expedited review of the detention order by the court of appeals under the writ provided in RCW 7.36.160." The current personal restraint procedures, by operation of the Rules of Appellate Procedure (RAPs), do not provide expedited relief for petitioners who are challenging a pretrial determination, like denial of bail, creating a potential conflict between the statute and the RAPs. For this reason, we request that the rules be amended as set forth below.

4. Is Expedited Consideration Requested? [Yes because expedited consideration aligns with the existing statute].

5. Is a Public Hearing Recommended? [No public hearing recommended for the reason noted above].

RAP 16.5

PERSONAL RESTRAINT PETITION—WHERE TO SEEK RELIEF

(a) Court of Appeals. A personal restraint petition should be filed in the Court of Appeals, unless the petition is subject to subsection (b). A petition seeking review of a pretrial detention order under RCW 10.21.040 shall be filed in the Court of Appeals.

(b) Supreme Court. A personal restraint petition filed by a person under sentence of death shall be filed in the Supreme Court. See RAP 16.3(c).

(c) A personal restraint petition may be transferred by the court in which it is filed. The transfer of a personal restraint petition between the Supreme Court and the Court of Appeals shall not be subject to a motion to reconsider or, if the transfer is ordered by the clerk of the court, a motion to modify.

(d) If a petition filed in the Supreme Court is not transferred to the Court of Appeals, or has been transferred from the Court of Appeals to the Supreme Court, the determinations ordinarily made by the "Chief Judge" under rules 16.11 and 16.13 may be made by a commissioner.

References

RCW 7.36, Habeas Corpus.

[Adopted effective July 1, 1976; Amended effective April 16, 2002; September 1, 2014.]

RAP 16.11

PERSONAL RESTRAINT PETITION—CONSIDERATION OF PETITION

(a) Generally. The Chief Judge will consider the petition promptly after the time has expired to file petitioner's reply brief. The Chief Judge determines at the initial consideration if the petition will be retained by the appellate court for determination on the merits or transferred to a superior court for determination on the merits or for a reference hearing. Review of a detention order issued pursuant to RCW 10.21.040 shall be expedited. For the purpose of rules in this Title 16, "Chief Judge" includes "Acting Chief Judge."

(b) Determination by Appellate Court. The Chief Judge determines at the initial consideration of the petition the steps necessary to properly decide on the merits the issues raised by the petition. If, after consideration of the response and any reply, the Chief Judge determines that the issues presented are frivolous, the Chief Judge will dismiss the petition. If the petition is not frivolous and can be de-

terminated solely on the record, the Chief Judge will refer the petition to a panel of judges for determination on the merits. If the petition cannot be determined solely on the record, the Chief Judge will transfer the petition to a superior court for a determination on the merits or for a reference hearing. If a petitioner is subject to a pretrial detention order, the hearing must be expedited pursuant to RCW 10.21.040. The Chief Judge may enter other orders necessary to obtain a prompt determination of the petition on the merits.

(c) Oral Argument. Decisions of the Chief Judge will be made without oral argument. If a petition is to be decided on the merits by a panel of judges, the appellate court clerk will set the petition for consideration by the panel of judges, with or without oral argument. If oral argument is directed, the clerk will notify the parties of the date set for oral argument.

[Adopted effective July 1, 1976; Amended effective January 1, 1977; September 1, 1998; September 1, 2014.]

RAP 16.13

PERSONAL RESTRAINT PETITION—PROCEDURE AFTER REFERENCE HEARING

After a reference hearing and the findings of fact and appellate court files have been returned to the appellate court, the Chief Judge will dismiss the petition if the issues presented are frivolous. If the petition is not frivolous, the Chief Judge will refer the petition to a panel of judges for determination on the merits. Review of a detention order issued pursuant to RCW 10.21.040 shall be expedited. The appellate court may, on motion of a party, order the preparation of and transmittal to the appellate court of a part or all of the record of the reference proceeding. The appellate court order will define at whose expense the record is prepared. The record will be prepared at public expense where the petitioner is indigent, as set forth in rule 16.15(h). Oral argument is governed by rule 16.11(c).

[Adopted effective July 1, 1976; Amended effective July 2, 1976; September 1, 2014.]