

The Court of Appeals
of the
State of Washington

KEVIN M. KORSMO, JUDGE
NORTH 500 CEDAR STREET
SPOKANE, WASHINGTON 99201



(509) 456-4032

March 26, 2014

Honorable Charles W. Johnson
Associate Chief Justice, Washington Supreme Court
P.O. Box 40929
Olympia, WA 98504-0929

Re: Proposed alternate RAP 16.7

Dear Justice Johnson:

I am writing you on behalf of the Court of Appeals Rules Committee. We met earlier this month to consider the alternate proposed version of RAP 16.7 posted on the court's website for comment by April 30. We have previously expressed our support for the amended version of RAP 16.7 submitted by the Board of Governors and published for comment at this time.

The Rules Committee was unanimously of the opinion that the alternate proposal should not be adopted. Our concerns with that proposal focused on both the discovery provision of proposed RAP 16.7(4) and the proposed change from "admissible" evidence to "reliable" evidence found in proposed RAP 16.7(2). As to the latter change, the committee believes that the standard of *In re Rice*, 118 Wn.2d 876, 885-886 (1992), has worked well and can be easily applied by our courts. We also question how this standard would work in cases of newly discovered evidence where the trial court must find that the proponent has "material" and "competent" evidence to grant a new trial (*see State v. Williams*, 96 Wn.2d 215, 222-223 (1981), and *Kurtz v. Fels*, 63 Wn.2d 871, 874 (1964)), while an appellate court could conceivably grant relief on a lesser standard of "reliable" evidence. Although appellate courts could adapt to the new standard, no compelling reason has been set forth for changing the *Rice* standard.

We have even graver concerns with the discovery provision. In conjunction with recent changes that now direct nearly all personal restraint petitions (PRPs) to this court in the first instance, the addition of a significant number of discovery motions will exceed our

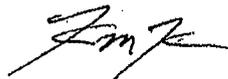
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resources for addressing the PRPs. We anticipate that this rule would lead to routine requests for counsel and discovery with the filing of the petition, creating additional work for each of the divisions of the court of appeals. Moreover, nothing in the language of the proposed rule limits discovery to units of state government (which are already subject to public disclosure requests) and could involve the court with private employers or private individuals within or without Washington state.

For these reasons, we ask that you not further consider the alternate version of RAP 16.7. It would cause significant additional work for the court of appeals.

Thank you very much for your attention to this matter. If you should have any questions, please do not hesitate to contact me.

Sincerely yours,



Kevin M. Korsmo
Chief Judge, Division Three
Chair, Court of Appeals Rules Committee

KMK:sh

c: Honorable Stephen J. Dwyer