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Washington State Supreme Court
Temple of Justice
P.O. Box 40929
Olympia, WA 98504-0929

re: WACDL proposed alternative RAP 16.7

I am writing to urge the Court to adopt the alternative RAP 16.7 proposed by the Washington Association of Criminal Defense Lawyers. The WACDL version is written to address some of the problems with the current version of the rule.

In either 2010 or 2011, the Washington Appellate Lawyers Association made a presentation at the Judicial Conference about the difficulties facing a pro-se prisoner litigant with a valid issue for a personal restraint petition. WALA was invited to make suggestions for changes to the PRP rules to address these difficulties. WALA suggested that WACDL do this as WACDL members generally have more relevant experience. WACDL did this and submitted proposed changes which were vetted by the Bar Rules Committee.

The reason that WACDL's alternate RAP 16.7 should be adopted is that without the changes in that proposed rule, people with legitimate issues will still be denied access to the court because of the near impossibility of providing admissible evidence to support any fact-based claim. Prisoners cannot write to one another and they can only make collect calls. They likely have no access to the discovery in their case without a court order. By changing the requirement to reliable evidence and permitting discovery where warranted, some of these difficulties can be overcome. This is not an unworkable difference; most jurisdictions and federal court require much less. In federal court the petitioner need only state facts supporting a claim and may then conduct discovery. The Uniform Post-Conviction Procedure Acts is similar to federal procedures.

The sparing use of appointed counsel will also help to expeditiously resolve issues and can be appropriately limited to actions necessary to resolve the claim.

The current RAP 16.7 also raises constitutional concerns under Const. Art. 1, section 10 which provides for discovery as part of access to courts.

Thank you for your consideration of these comments.

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WSBA 14360