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Honorable Ronald R. Carpenter  
Temple of Justice  
Post Office Box 40929  
Olympia, Washington  
98504-0929

April 28, 2014

Re: Suggested Amendment to RAP 16.9

Dear Clerk Carpenter:

The Washington Association of Prosecuting Attorneys (WAPA) respectfully requests that the Court not adopt proposed RAP 16.9(b). This provision, which requires the respondent to admit or deny specific allegations, is unnecessary and unworkable.

Proposed RAP 16.9(b) is unnecessary because the State is already required by current RAP 16.9/proposed RAP 16.9(a) to respond to the petitioner's allegations. Proposed RAP 16.9(b) is unnecessary because the State regularly concedes facts and claims asserted in personal restraint petitions (PRPs). See, e.g., *In re Personal Restraint of Snively*, 180 Wn.2d 28, 30 (2014) ("The State conceded that the sentence was facially invalid..."); *In re Personal Restraint of Gentry*, 179 Wn.2d 614, 638 (2014) ("The State concedes its presentation..."); *In re Personal Restraint Petition of Henderson*, 316 P.3d 481 ("The State has correctly conceded that..."); *In re Personal Restraint of Heidari*, 174 Wn.2d 288, 291 (2012) ("The State conceded that there was no evidence of "sexual contact").

Proposed RAP 16.9(b) is unworkable because PRPs in Washington present the petitioner's claims in a narrative format. Frequently the pro se pleadings cover many pages with nonsensical rantings. Often times, the respondent cannot separate the "facts" from the ravings. While the proposed rule appears to contemplate that the court will identify the specific allegations the prosecutor is required to admit or deny, budget cuts at the Court of Appeals will result in an order directing the prosecutor to admit or deny the truth of all "allegations" contained in the PRP. This will only result in litigation over whether the failure to deny a specific buried "fact" or "allegation" contained in the PRP constitutes an "admission."

Proposed RAP 16.9(b) contains none of the safeguards of CR 36. CR 36 requires each request for admission to be set out separately. CR 36 provides guidance as to how and

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when a denial may be asserted. CR 36 has a body of case law describing what may and may not be the subject of a request for admission. More importantly, CR 36, unlike the one sided proposed RAP 16.9(b), extends the right to seek admissions to both parties.

Thank you for considering WAPA's comments.

Sincerely,

A handwritten signature in cursive script that reads "Pamela Beth Loginsky". The signature is written in black ink and is positioned above the typed name.

Pamela B. Loginsky  
Staff Attorney