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Washington State  
Supreme Court

July 17, 2017

Honorable Susan Carlson  
Clerk of the Court  
Washington Supreme Court  
PO Box 40929  
Olympia, WA 98504-0929  
[supreme@courts.wa.gov](mailto:supreme@courts.wa.gov)

**RE: Comments on Proposed Change to RAP 10.2**

Dear Ms. Carlson:

On behalf of the Board of Directors of the Washington State Association of Municipal Attorneys (“WSAMA”), I send this letter to comment on the changes to Rule of Appellate Procedure 10.2(f)(2) that were proposed by the Washington Court of Appeals Rules Committee in March 2017. In short, the WSAMA Board favors the amendment altering the deadline for any amicus brief at the Court of Appeals to a date “after the filing of the last brief of respondent” as opposed to “after the last brief of respondent.” However, for the reasons expressed in greater detail below, the WSAMA Board opposes the other proposed amendment, altering that timeline from 45 days to 30 days.

WSAMA has taken an active role as *amicus curiae* since forming its Amicus Committee in the early 1990s. Over the past four years, WSAMA has submitted briefs in 35 cases that have resulted in published decisions from both the Washington Supreme Court and Washington Court of Appeals combined. Those opinions have clarified areas of law ranging from public records and open government to tort liability, land use, and criminal prosecution. Though at times the arguments advanced by WSAMA are rejected, much of the time they strongly assist the judiciary in reaching a fair and just result not only for Washington municipalities, but also all citizens of this State.

Decisions from the Court of Appeals have a profound influence over parties and practitioners throughout Washington. Since the beginning of 2013, the Court of Appeals has issued 875 more precedential opinions than the Supreme Court.<sup>1</sup> This amount does not include unpublished opinions, which though lacking precedential value, are now able to be used to persuade the trial courts of general and limited jurisdiction. *See* GR 14.1. Therefore, the impact of decisions by the Court of Appeals cannot be discounted, making

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<sup>1</sup> This number was calculated by counting opinions issued between January 1, 2013, and June 30, 2017. In that timeframe, the Supreme Court has issued 364 opinions, whereas the Court of Appeals has issued 1,239 opinions that are published either in full or in part.

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*amicus curiae* participation at the Court of Appeals all the more valuable in appropriately shaping Washington case law.

The rationale offered for reducing the 45-day period to 30 days is to “allow the case to proceed in an expeditious manner.” Oftentimes, it is necessary to review both the appellant’s and respondent’s brief before determining whether, and to what extent, *amicus curiae* participation would be beneficial to the Court. Additionally, *amicus curiae* briefs submitted by WSAMA members are prepared on a volunteer basis (i.e., without any extra compensation). Our organization is not unique in this regard. Therefore, the extra 15 days is vital to ensure that an *amicus curiae* brief adequately covers all arguments necessary for a just disposition of an appeal while simultaneously avoiding undue repetition of arguments advanced by the real parties in interest.

WSAMA does not wish to discount the sensible policy of advancing cases through the Court of Appeals expeditiously. However, the reality is that a typical period between the filing of a respondent’s brief and oral argument (or submission without oral argument) is often several months. The following sample of cases recently argued or scheduled to be argued soon at the Court of Appeals confirm this timeline:

<u>DIV.</u>	<u>CASE</u>	<u>RESP'T BR. FILED</u>	<u>ORAL ARG./ SUBMISSION</u>	<u>TIME PERIOD</u>
I	<i>In re PRP of Kinzle</i>	10/21/2016	07/17/2017	7.75 months
I	<i>Jackson v. Esurance Ins. Co.</i>	1/13/2017	07/17/2017	6 months
I	<i>State v. Laureano</i>	12/21/2016	07/17/2017	6.75 months
I	<i>Blakey v. Wren</i>	03/03/2017	07/24/2017	4.5 months
II	<i>Verjee-Van v. Pierce County (consolidated case)</i>	11/07/2016 / 03/30/2017	07/06/2017	8 months / 3 months
II	<i>State v. Mayfield</i>	03/14/2017	07/06/2017	3.75 months
II	<i>State v. Jackman</i>	02/10/2017	07/06/2017	4.75 months
II	<i>State v. Hicks</i>	05/03/2017	07/18/2017	2.5 months
III	<i>Swanson Hay Co. v. Emp't Sec. Dep't</i>	01/30/2017	06/13/2017	5 months
III	<i>Lincoln County v. Specialty Asphalt</i>	02/03/2017	06/13/2017	4 months
III	<i>State v. Watson</i>	04/13/2017	09/01/2017	4.75 months
<b><u>AVERAGE TIME PERIOD:</u></b>				5 months

When the average period of time between the filing of the respondent’s brief and oral argument is five months, shortening the time for the filing of *amicus* briefs by 15 days would have a negligible impact on expeditiously advancing cases through the appellate court. Conversely, as discussed above, the added 15 days is essential to appropriately evaluate and prepare an *amicus curiae* brief.

Washington State Association of Municipal Attorneys

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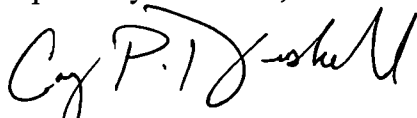
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For similar reasons, the WSAMA Board disagrees with the justification advanced that “If more time is needed, *amicus curiae* may request an extension of time.” If the brief writers volunteering their time must consistently move under RAP 17.7 and 18.6 for additional time, such will delay disposition on whether the *amicus brief* will be accepted for filing and also shift focus from the substance of the arguments to when and how they can be advanced. That would have a much more severe impact in “allow[ing] the case to proceed in an expeditious manner” than an additional 15 days that would most often eliminate the need for additional unnecessary motion practice.

Therefore, on behalf of the WSAMA Board, I strongly urge the Court to reject the suggested change to RAP 10.2(f)(2) shortening the timeline from 45 days to 30 days. However, the WSAMA Board strongly supports the first suggested change, which would designate the actual filing date of the respondent’s brief as the trigger on which the time starts to run for the filing of an *amicus curiae* brief.

On behalf of the WSAMA Board, I express our gratitude to the Court for considering these comments. Please let me know if you wish further explanation of WSAMA’s position.

Respectfully submitted,



Cary R. Driskell

City Attorney, City of Spokane Valley, WA

WSAMA President 2016-17