

July 28, 2017

Via email to supreme@courts.wa.gov

Honorable Susan L. Carlson
Washington State Supreme Court Clerk
P.O. Box 40929
Olympia, WA 98504-0929

Re: Proposed Changes to RAP 10.2 – Time for Filing Briefs

Dear Ms. Carlson:

On behalf of Legal Voice and the Washington Employment Lawyers Association, we are writing to comment on proposed revisions to RAP 10.2(f), proposed by the Court of Appeals Rules Committee.

Legal Voice, founded in 1978 as the Northwest Women’s Law Center, is a regional non-profit public interest organization that works to advance the legal rights of all women and girls in the Pacific Northwest through litigation, legislative advocacy, and legal rights education. The **Washington Employment Lawyers Association (WELA)** is a chapter of the National Employment Lawyers Association, comprised of more than 180 attorneys admitted to practice law in the State of Washington. WELA advocates in favor of employee rights in recognition that employment with fairness and dignity is fundamental to the quality of life. Legal Voice and WELA regularly submit amicus briefs in appellate cases, and thus have an interest in the outcome of the proposed changes to RAP 10.2.

We support the change of the trigger date for the amicus deadline from the current language, “due date for the last brief of respondent,” to “the filing of the last brief.” We agree with the committee that this change would make it easier to determine the amicus deadline, as briefs are not always filed on the due date.

However, we oppose the proposal to change the deadline for amicus briefs from 45 days after the last brief of respondent to 30 days, for several reasons.

First, this change would require amicus briefs to be filed on the same day as appellant’s reply brief. Thus, the change would deprive amici of the opportunity to review the full briefing by the parties before filing an amicus brief. Moreover, RAP 10.6(b) requires amici to state their “familiarity with the issues involved in the review and with the scope of the argument presented or to be presented by the parties,” as well as the “reason for believing that additional argument is necessary on these specific issues.” The proposed timeline would impede amici’s ability to ensure their familiarity with the issues and parties’ arguments, as well as make it more difficult to avoid duplication and ensure that amici’s arguments will assist the Court.

Second, the Court of Appeals Rules Committee’s stated reason for the proposed change from 45 to 30 days is that 30 days “will be sufficient in most cases, and will allow the case to proceed in an expeditious manner. If more time is needed, amicus curiae may request an extension of time.” Yet the 15 additional days under the current rule do not add that much time to the case schedule,

considering that a typical briefing schedule will already include, at a minimum, over 105 days – 45 days for the appellant’s brief, 30 days for the respondent’s brief, and 30 days for the appellant’s reply. And that 105-day briefing schedule does not even include the time period between the filing of the notice of appeal and the trigger date for the appellant’s opening brief, which is counted from either the date the report of proceedings is filed, or, if the record on review does not include a report of proceedings, within 45 days after the party seeking review has filed the designation of clerk’s papers and exhibits in the trial court. *See* RAP 10.2(a).

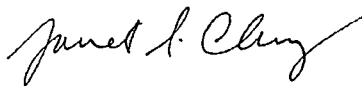
Finally, if potential amici are required to file a motion to request an extension of time, filing a motion and waiting for a ruling on the motion will serve only to add yet more time to the case schedule – not save time. Given the challenges to preparing a brief in a short time, while at the same time guessing at anticipated arguments on reply so as to avoid duplication, it is likely that many amici will seek additional time as a matter of course, which cumulatively would place an additional burden on the Court by requiring it to review and rule on these motions. In any case, the current 45-day deadline is reasonable and allows more amici to meet the deadline without seeking additional time, while also allowing them to focus on preparing higher quality briefs that will be useful to the Court.

In sum, for the above-stated reasons, Legal Voice and WELA

- (1) Support the change as to how to count the date on which the amicus brief is due, changing it from the “due date” to the “filing of” the last brief of respondent, and
- (2) Oppose the change to the deadline for amicus briefs from 45 to 30 days.

Thank you for considering these comments.

Very truly yours,



Janet S. Chung
Legal Voice

/s/

Jesse Wing
Washington Employment Lawyers Association

Tracy, Mary

From: OFFICE RECEPTIONIST, CLERK
Sent: Friday, July 28, 2017 3:50 PM
To: Tracy, Mary
Subject: FW: Legal Voice & WELA comments on proposed changes to RAP 10.2
Attachments: Legal Voice & WELA comments on proposed changes to RAP 10.2 (7-28-17).pdf

Forwarding.

From: Janet Chung [mailto:jchung@legalvoice.org]
Sent: Friday, July 28, 2017 3:46 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Cc: Jesse Wing <JesseW@mhb.com>
Subject: Legal Voice & WELA comments on proposed changes to RAP 10.2

Dear Clerk of Court:

Please see the attached letter with comments on proposed changes to RAP 10.2. Thank you.

Sincerely,
Janet Chung

Janet S. Chung
Legal & Legislative Counsel
Pronouns: she/her
Legal Voice
Women's rights. Nothing less.

206-682-9552 x111
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