



Bob Ferguson  
**ATTORNEY GENERAL OF WASHINGTON**

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July 27, 2017

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

RE: Comment on Proposed Change to RAP 10.2

Dear Ms. Carlson:

On behalf of the Washington Attorney General's Office, I write to comment on the amendments to RAP 10.2(f)(2) that have been proposed by the Washington Court of Appeals Rules Committee. We agree that the amicus clock should start with the *filing* of the last brief of respondent. We oppose, however, the change in the deadline for filing amicus briefs in the Court of Appeals from 45 days after the filing of the respondent's brief to 30 days after that date.

As other commenters have ably explained, this change in the rule would mean that the amicus brief would be due on the due date for the reply, and in some cases before, where the appellant gets an extension of the reply deadline. Amicus briefs should not repeat arguments already fully addressed by the parties and RAP 10.6(b) requires amici to articulate why additional argument is necessary. Our office frequently files amicus briefs and we believe it is crucial to have the benefit of the parties' full briefing, including the reply, before completing a thoughtful amicus motion and brief.

From our office's perspective, amicus briefs on behalf of the State are carefully vetted at multiple levels in our office and with clients, and we take the full 45 days to complete an amicus brief. Moreover, we are aware that amicus briefs submitted by other entities are often written pro bono. Any reduction in the number of days for drafting an amicus brief could have a negative impact on a pro bono attorney's willingness and ability to represent clients as amicus counsel. As you know, amicus briefs are more common in cases likely to have broad impact and we believe the courts, the parties, and ultimately the citizens of Washington benefit from the complete discussion of issues from multiple perspectives. Reducing the time for filing amicus brief could harm these important goals.

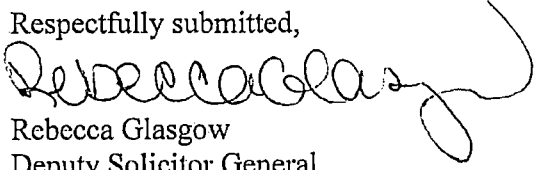
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Consistent with the experience of the Washington State Association of Municipal Attorneys, it has also been our experience in all divisions of the Washington Court of Appeals that oral arguments and non-oral argument calendar dates generally occur at least four months after the respondent's brief is filed. This is true even where the court screens the case soon after the respondent's brief filing. As a result, we do not believe that reducing the time for filing amicus briefs will substantially impact the time within which Court of Appeals cases are ultimately decided. In addition, we believe that if the time for filing amicus briefs is reduced, extensions will be more routinely sought, creating additional work for the courts. On balance, any benefit gained by the 15-day reduction in time for filing amicus briefs is outweighed by these concerns.

Thank you for considering these comments.

Respectfully submitted,

  
Rebecca Glasgow  
Deputy Solicitor General

RRG/kdj

**Tracy, Mary**

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**From:** OFFICE RECEPTIONIST, CLERK  
**Sent:** Thursday, July 27, 2017 3:01 PM  
**To:** Tracy, Mary  
**Subject:** FW: Comment to Proposed Rule Change  
**Attachments:** RAP 10.2.pdf

Forwarding.

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**From:** Jensen, Kristin (ATG) [mailto:KristinJ@ATG.WA.GOV]  
**Sent:** Thursday, July 27, 2017 2:42 PM  
**To:** OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>  
**Subject:** Comment to Proposed Rule Change

*Sent on behalf of the Office of the Attorney General*

Dear Clerk of the Court:

Please see the attached Comment on Proposed Change to RAP 10.2.

Respectfully,  
Kristin  
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Washington Attorney General's Office  
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