

Tracy, Mary

From: OFFICE RECEPTIONIST, CLERK
Sent: Friday, July 28, 2017 11:50 AM
To: Tracy, Mary
Subject: FW: Comment on Rulemaking RAP 10.2

Forwarding.

From: OFFICE RECEPTIONIST, CLERK
Sent: Friday, July 28, 2017 11:50 AM
To: 'Toby Nixon' <president@washingtoncog.org>
Subject: RE: Comment on Rulemaking RAP 10.2

Received 7-28-17.

Supreme Court Clerk's Office

From: Toby Nixon [<mailto:president@washingtoncog.org>]
Sent: Friday, July 28, 2017 11:31 AM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Comment on Rulemaking RAP 10.2

Clerk of the Supreme Court
415 12th Avenue Southwest
Olympia, Washington 98501-2314
By email to: supreme@courts.wa.gov

Re: Comment on Rulemaking RAP 10.2

Dear Clerk,

I submit this comment as president of the Washington Coalition for Open Government (WCOG), a nonprofit, nonpartisan organization dedicated to protecting the public's right to know about government. WCOG frequently files amicus briefs in order to provide appellate courts with an independent citizens' perspective on the importance of strictly enforcing the Public Records Act and Open Public Meetings Act. WCOG is concerned that amicus opportunities will be lost if the proposed amendment to RAP 10.2(f)(2) is adopted.

The Rules Committee proposes to change the deadline for Court of Appeals amicus briefs from 45 days after the due date for the respondent's brief to 30 days after the filing of the respondent's brief. This would require WCOG and others to file amicus briefs at the same time that reply briefs are filed. WCOG agrees with the July 21, 2017 rulemaking comments submitted by Allied Daily Newspapers of Washington as to why the 45-day deadline should be retained.

WCOG opposes a 30-day deadline for the additional reason that the Court of Appeals, Division II, has interpreted RAP 10.2(f) to prohibit a motion for extension of time to file an amicus brief once the ordinary deadline for amicus briefs has passed. Under the Court of Appeals' interpretation, a potential amicus party must always seek permission to file an amicus brief within 45 days of the due date for the respondent's brief, even if more time is needed to fully research and submit an amicus brief. Thus, if the 30-day deadline is adopted, potential amicus parties would have to file both a motion for leave to file an amicus brief and a motion to extend time for filing an amicus brief within 30 days of the filing of the respondent's brief just to preserve the opportunity to make amicus arguments once the parties are done with their briefing. Any amicus party routinely wanting to review reply briefs first, before making a final decision about amicus participation

and/or arguments, would have to file two motions in every appeal that is potentially of interest. This is inefficient for the Court of Appeals and all interested parties.

Thus, WCOG respectfully asks the Supreme Court to clarify that a motion for extension of time to file an amicus brief may be filed *after* the RAP 10.2(f) deadline has passed. The operative language is already in the current rule (“Unless the court sets a different date, or allows a later date upon a showing of particular justification,”). This clarification is particularly important if the proposed change is adopted.

Sincerely,

Toby Nixon

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