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RAP RULE 1.1
SCOPE OF RULES

(a) Review of Trial Court Decision and of Administrative Adjudicative Order. These rules govern proceedings in the Supreme Court and the Court of Appeals for review of a trial court decision and for direct review in the Court of Appeals of an administrative adjudicative order under RCW 34.05.518.

(b) Review of Decision of Court of Appeals. These rules also establish the procedure for seeking review of a decision of the Court of Appeals by the Supreme Court. Review of a decision of the Court of Appeals is governed by Title 13 of these rules.

(c) Special Proceedings. These rules also establish the procedure for original actions in the Supreme Court and the Court of Appeals and the procedure for determining questions of law certified by a federal court, all called "special proceedings." Special proceedings are governed by Title 16 of these rules.

(d) Application to Both Appellate Courts. Each rule applies to proceedings both in the Supreme Court and in the Court of Appeals, unless a different application is indicated. Both the Supreme Court and the Court of Appeals are called "appellate court."

(e) Application to Civil and Criminal Proceedings and Juvenile Court Proceedings. Each rule applies to both civil and criminal proceedings,

unless a different application is indicated. If different rules apply in civil and criminal proceedings, the criminal rule applies to review of a decision in a juvenile offense proceeding, and the civil rule applies to review of any other decision by a juvenile court.

(f) Action of Appellate Court. The appellate court clerk and commissioner are given authority by these rules to make some decisions, called rulings. An act performed on the authority of these rules is action taken by the appellate court whether that act is performed by the clerk or a commissioner or by the judges of the Supreme Court or the Court of Appeals.

(g) Superseding Effect of Rules. These rules supersede all statutes and rules covering procedure in the Supreme Court and the Court of Appeals, unless one of these rules specifically indicates to the contrary.

(h) Effect of Subsequent Legislation. If a statute in conflict with a rule is enacted after these rules become effective and that statute does not supersede the conflicting rule by direct reference to the rule by number, the rule applies unless the rule specifically indicates that statutes control. If a statute in conflict with a rule is enacted after these rules become effective and that statute does supersede the conflicting rule by direct reference to the rule by number, the statute applies until such time as the rule may be amended or changed by the Supreme Court through exercise of its rulemaking power.

(i) General Orders. The Court of Appeals, pursuant to RCW 2.06.040, may establish rules that are supplementary to and do not conflict with rules of the Supreme Court. These supplementary rules will be called General Orders. The General Orders for each division of the Court of Appeals can be obtained from the division's clerk's office or found at www.courts.wa.gov.

References

Rule 18.22, Statutes and Rules Superseded.

[Amended effective September 1, 2006.]

RULE 1.2
INTERPRETATION AND WAIVER OF RULES BY COURT

(a) Interpretation. These rules will be liberally interpreted to promote justice and facilitate the decision of cases on the merits. Cases and issues will not be determined on the basis of compliance or noncompliance with these rules except in compelling circumstances where justice demands, subject to the restrictions in rule 18.8(b).

(b) Words of Command. Unless the context of the rule indicates otherwise: "Should" is used when referring to an act a party or counsel for a party is under an obligation to perform. The court will ordinarily impose sanctions if the act is not done within the time or in the manner specified. The word "must" is used in place of "should" if extending the time within which the act must be done is subject to the severe test under rule 18.8(b) or to emphasize failure to perform the act in a timely way may result in more severe than usual sanctions. The word "will" or "may" is used when referring to an act of the appellate court. The word "shall" is used when referring to an act that is to be done by an entity other than the appellate court, a party, or counsel for a party.

(c) Waiver. The appellate court may waive or alter the provisions of any of these rules in order to serve the ends of justice, subject to the restrictions in rule 18.8(b) and (c).

References

Rule 18.8, Waiver of Rules and Extension and Reduction of Time, (b) Restriction on extension of time, (c) Restriction on changing decision; Rule 18.9, Violation of Rules.

RULE 2.1
METHODS FOR SEEKING REVIEW OF TRIAL COURT DECISION--GENERALLY

(a) Two Methods for Seeking Review of Superior Court Decisions. The only methods for seeking review of decisions of the superior court by the Court of Appeals and by the Supreme Court are the two methods provided by these rules. The two methods are:

(1) Review as a matter of right, called "appeal"; and

(2) Review by permission of the reviewing court, called "discretionary review." Both "appeal" and "discretionary review" are called "review." The term "decision" refers to rulings, orders, and judgments of the trial court, or the appellate court, as the context indicates.

(b) Writ Procedure Superseded. The procedure for seeking review of trial court decisions established by these rules supersedes the review procedure formerly available by extraordinary writs of review, certiorari, mandamus, prohibition, and other writs formerly considered necessary and proper to the complete exercise of appellate and revisory jurisdiction of the Supreme Court and the Court of Appeals. Original writs in the appellate court are not superseded and are governed by Title 16.

(c) Method for Seeking Direct Review of Final Decision of Administrative Agency. The procedure for seeking direct review by the Court of Appeals of a final order in an administrative adjudicative proceeding is defined by RCW 34.05.518 and RCW 34.05.522.

(d) Method for Seeking Review of Decisions of Courts of Limited Jurisdiction. The only method for seeking direct review by the Supreme Court of a decision of a court of limited jurisdiction, without first obtaining a Superior Court decision under the RALJ, is by notice of appeal as provided for in Rule 4.3

References

Rule 16.2, Original Action Against State Officer; Rules 16.3-16.15, Personal Restraint Petition; Const. art. 4, section 4.

RULE 2.2
DECISIONS OF THE SUPERIOR COURT THAT MAY BE APPEALED

(a) Generally. Unless otherwise prohibited by statute or court rule and except as provided in sections (b) and (c), a party may appeal from only the following superior court decisions:

(1) Final Judgment. The final judgment entered in any action or proceeding, regardless of whether the judgment reserves for future determination an award of attorney fees or costs.

(2) (Reserved.)

(3) Decision Determining Action. Any written decision affecting a substantial right in a civil case that in effect determines the action and prevents a final judgment or discontinues the action.

(4) Order of Public Use and Necessity. An order of public use and necessity in a condemnation case.

(5) Juvenile Court Disposition. The disposition decision following a finding of dependency by a juvenile court, or a disposition decision following a finding of guilt in a juvenile offense proceeding.

(6) Termination of All Parental Rights. A decision depriving a person of all parental rights with respect to a child.

(7) Order of Incompetency. A decision declaring an adult legally incompetent, or an order establishing a conservatorship or guardianship for an adult.

(8) Order of Commitment. A decision ordering commitment, entered after a sanity hearing or after a sexual predator hearing.

(9) Order on Motion for New Trial or Amendment of Judgment. An order granting or denying a motion for new trial or amendment of judgment.

(10) Order on Motion for Vacation of Judgment. An order granting or denying a motion to vacate a judgment.

(11) Order on Motion for Arrest of Judgment. An order arresting or denying arrest of a judgment in a criminal case.

(12) Order Denying Motion to Vacate Order of Arrest of a Person. An order denying a motion to vacate an order of arrest of a person in a civil case.

(13) Final Order after Judgment. Any final order made after judgment that affects a substantial right.

(b) Appeal by State or a Local Government in Criminal Case. Except as provided in section (c), the State or a local government may appeal in a criminal case only from the following superior court decisions and only if the appeal will not place the defendant in double jeopardy:

(1) Final Decision, Except Not Guilty. A decision that in effect abates, iscontinues, or determines the case other than by a judgment or verdict of not guilty, including but not limited to a decision setting aside, quashing, or dismissing an indictment or information, or a decision granting a motion to dismiss under CrR 8.3(c).

(2) Pretrial Order Suppressing Evidence. A pretrial order suppressing evidence, if the trial court expressly finds that the practical effect of the order is to terminate the case.

(3) Arrest or Vacation of Judgment. An order arresting or vacating a judgment.

(4) New Trial. An order granting a new trial.

(5) Disposition in Juvenile Offense Proceeding. A disposition in a juvenile offense proceeding that:

(A) is below the standard range of disposition for the offense,

(B) the state or local government believes involves a miscalculation of the standard range,

(C) includes provisions that are unauthorized by law, or

(D) omits a provision that is required by law.

(6) Sentence in Criminal Case. A sentence in a criminal case that

(A) is outside the standard range for the offense,

(B) the state or local government believes involves a miscalculation of the standard range,

(C) includes provisions that are unauthorized by law, or

(D) omits a provision that is required by law.

(c) Superior Court Decision on Review of Decision of Court of Limited Jurisdiction. If the superior court decision has been entered after a proceeding to review a decision of a court of limited jurisdiction, a party may appeal only if the review proceeding was a trial de novo and the final judgment is not a finding that a traffic infraction has been committed.

(d) Multiple Parties or Multiple Claims or Counts. In any case with multiple parties or multiple claims for relief, or in a criminal case with multiple counts, an appeal may be taken from a final judgment that does not dispose of all the claims or counts as to all the parties, but only after an express direction by the trial court for entry of judgment and an express determination in the judgment, supported by written findings, that there is no just reason for delay. The findings may be made at the time of entry of judgment or thereafter on the court's own motion or on motion of any party. The time for filing notice of appeal begins to run from the entry of the required findings. In the absence of the required findings, determination and direction, a judgment that adjudicates less than all the claims or counts, or adjudicates the rights and liabilities of less than all the parties, is subject only to discretionary review until the entry of a final judgment adjudicating all the claims, counts, rights, and liabilities of all the parties.

[Amended December 5, 2002; September 1, 2006; September 1, 2008; September 1, 2010]

RULE 2.3
DECISIONS OF THE TRIAL COURT WHICH MAY BE REVIEWED BY DISCRETIONARY REVIEW

(a) Decision of Superior Court. Unless otherwise prohibited by statute or court rule, a party may seek discretionary review of any act of the superior court not appealable as a matter of right.

(b) Considerations Governing Acceptance of Review. Except as provided in section (d), discretionary review may be accepted only in the following circumstances:

(1) The superior court has committed an obvious error which would render further proceedings useless;

(2) The superior court has committed probable error and the decision of the superior court substantially alters the status quo or substantially limits the freedom of a party to act;

(3) The superior court has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by an inferior court or administrative agency, as to call for review by the appellate court; or

(4) The superior court has certified, or that all parties to the litigation have stipulated, that the order involves a controlling question of law as to which there is substantial ground for a difference of opinion and that immediate review of the order may materially advance the ultimate termination of the litigation.

(c) Effect of Denial of Discretionary Review. Except with regard to a decision of a superior court entered in a proceeding to review a decision of a court of limited jurisdiction, the denial of discretionary review of a superior court decision does not affect the right of a party to obtain later review of the trial court decision or the issues pertaining to that decision.

(d) Considerations Governing Acceptance of Review of Superior Court Decision on Review of Decision of Court of Limited Jurisdiction. Discretionary review of a superior court decision entered in a proceeding to review a decision of a court of limited jurisdiction will be accepted only:

(1) If the decision of the superior court is in conflict with a decision of the Court of Appeals or the Supreme Court; or

(2) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or

(3) If the decision involves an issue of public interest which should be determined by an appellate court; or

(4) If the superior court has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by the court of limited jurisdiction, as to call for review by the appellate court.

(e) Acceptance of Review. Upon accepting discretionary review, the appellate court may specify the issue or issues as to which review is granted.

[Amended December 24, 2002]

RULE 2.4
SCOPE OF REVIEW OF A TRIAL COURT DECISION

(a) Generally. The appellate court will, at the instance of the appellant,

review the decision or parts of the decision designated in the notice of appeal or, subject to RAP 2.3(e) in the notice for discretionary review and other decisions in the case as provided in sections (b), (c), (d), and (e). The appellate court will, at the instance of the respondent, review those acts in the proceeding below which if repeated on remand would constitute error prejudicial to respondent. The appellate court will grant a respondent affirmative relief by modifying the decision which is the subject matter of the review only (1) if the respondent also seeks review of the decision by the timely filing of a notice of appeal or a notice of discretionary review, or (2) if demanded by the necessities of the case.

(b) Order or Ruling Not Designated in Notice. The appellate court will review a trial court order or ruling not designated in the notice, including an appealable order, if (1) the order or ruling prejudicially affects the decision designated in the notice, and (2) the order is entered, or the ruling is made, before the appellate court accepts review. A timely notice of appeal of a trial court decision relating to attorney fees and costs does not bring up for review a decision previously entered in the action that is otherwise appealable under rule 2.2(a) unless a timely notice of appeal has been filed to seek review of the previous decision.

(c) Final Judgment Not Designated in Notice. Except as provided in rule 2.4(b), the appellate court will review a final judgment not designated in the notice only if the notice designates an order deciding a timely post-trial motion based on (1) CR 50(b) (judgment as a matter of law), (2) CR 52(b) (amendment of findings), (3) CR 59 (reconsideration, new trial, and amendment of judgments), (4) CrR 7.4 (arrest of judgment), or (5) CrR 7.5 (new trial).

(d) Order Deciding Alternative Post-trial Motions in Civil Case. An appeal from the judgment granted on a motion for judgment notwithstanding the verdict brings up for review the ruling of the trial court on a motion for new trial. If the appellate court reverses the judgment notwithstanding the verdict, the appellate court will review the ruling on the motion for a new trial.

(e) Order Deciding Alternative Post-trial Motions in Criminal Case. An appeal from an order granting a motion in arrest of judgment brings up for review the ruling of the trial court on a motion for new trial. If the appellate court reverses the order granting the motion in arrest of judgment, the appellate court will review the ruling on a motion for new trial.

(f) Decisions on Certain Motions Not Designated in Notice. An appeal from a final judgment brings up for review the ruling of the trial court on an order deciding a timely motion based on (1) CR 50(b) (judgment as a matter of law), (2) CR 52(b) (amendment of findings), (3) CR 59 (reconsideration, new trial, and amendment of judgments), (4) CrR 7.4 (arrest of judgment), or (5) CrR 7.5 (new trial).

(g) Award of Attorney Fees. An appeal from a decision on the merits of a case brings up for review an award of attorney fees entered after the appellate court accepts review of the decision on the merits.

[Amended December 5, 2002; amended effective September 1, 2010]

RULE 2.5
CIRCUMSTANCES WHICH MAY AFFECT SCOPE OF REVIEW

(a) Errors Raised for First Time on Review. The appellate court may refuse to review any claim of error which was not raised in the trial court. However, a party may raise the following claimed errors for the first time in the appellate court: (1) lack of trial court jurisdiction, (2) failure to establish facts upon which relief can be granted, and (3) manifest error affecting a constitutional right. A party or the court may raise at any time the question of appellate court jurisdiction. A party may present a ground for affirming a trial court decision which was not presented to the trial court if the record has been sufficiently developed to fairly consider the ground. A party may raise a claim of error which was not raised by the party in the trial court if another party on the same side of the case has raised the claim of error in the trial court.

(b) Acceptance of Benefits.

(1) Generally. A party may accept the benefits of a trial court decision without losing the right to obtain review of that decision only (i) if the decision is one which is subject to modification by the court making the decision or (ii) if the party gives security as provided in subsection (b)(2) or (iii) if, regardless of the result of the review based solely on the issues raised by the party accepting benefits, the party will be entitled to at least the benefits of the trial court decision or (iv) if the decision is one which divides property in connection with a dissolution of marriage, a legal separation, a declaration of invalidity of marriage, or the dissolution of a meretricious relationship.

(2) Security. If a party gives adequate security to make restitution if the decision is reversed or modified, a party may accept the benefits of the decision without losing the right to obtain review of that decision. A party that would otherwise lose the right to obtain review because of the acceptance of benefits shall be given a reasonable period of time to post security to prevent loss of review. The trial court making the decision shall fix the amount and type of security to be given by the party accepting the benefits.

(3) Conflict With Statutes. In the event of any conflict between this section and a statute, the statute governs.

(c) Law of the Case Doctrine Restricted. The following provisions apply if the same case is again before the appellate court following a remand:

(1) Prior Trial Court Action. If a trial court decision is otherwise properly before the appellate court, the appellate court may at the instance of a party review and determine the propriety of a decision of the

trial court even though a similar decision was not disputed in an earlier review of the same case.

(2) Prior Appellate Court Decision. The appellate court may at the instance of a party review the propriety of an earlier decision of the appellate court in the same case and, where justice would best be served, decide the case on the basis of the appellate court's opinion of the law at the time of the later review.

RULE 3.1
WHO MAY SEEK REVIEW

Only an aggrieved party may seek review by the appellate court.

RULE 3.2
SUBSTITUTION OF PARTIES

(a) Substitution Generally. The appellate court will substitute parties to a review when it appears that a party is deceased or legally incompetent or that the interest of a party in the subject matter of the review has been transferred.

(b) Duty To Move for Substitution. A party with knowledge of the death or declared legal disability of a party to review, or knowledge of the transfer of a party's interest in the subject matter of the review, shall promptly move for substitution of parties. The motion and all other documents must be served on all parties and on the personal representative or successor in interest of a party, within the time and in the manner provided for service on a party. If a party fails to promptly move for substitution, the personal representative of a deceased or legally disabled party, or the successor in interest of a party, should promptly move for substitution of parties.

(c) Where To Make Motion. The motion to substitute parties must be made in the appellate court if the motion is made after the notice of appeal was filed or discretionary review was granted. In other cases, the motion should be made in the trial court.

(d) Procedure Pending Substitution. A party, a successor in interest of a party, a personal representative of a deceased or legally disabled party, or an attorney of record for a deceased or legally disabled party who has no personal representative, may without waiting for substitution file (1) a notice of appeal, (2) a notice for discretionary review, (3) a motion for reconsideration, (4) a petition for review, and (5) a motion for discretionary review of a decision of a trial court or the Court of Appeals.

(e) Time Limits. The time reasonably necessary to accomplish substitution of parties is excluded from computations of time made to determine whether the following have been timely filed: (1) a notice of appeal, (2) a notice for discretionary review, (3) a motion for reconsideration, (4) a petition for review, and (5) a motion for discretionary review of a decision of a trial court or the Court of Appeals.

(f) Public Officer. If a public officer is a party to a proceeding in the appellate court and during its pendency dies, resigns, or otherwise ceases to hold office, a party or the new public officer may move for substitution of the successor as provided in this rule.

RULE 3.3
CONSOLIDATION OF CASES

(a) Cases Tried Together. If two or more cases have been tried together or consolidated for trial, the cases are consolidated for the purpose of review unless the appellate court otherwise directs.

(b) Cases Consolidated in Appellate Court. The appellate court, on its own initiative or on motion of a party, may order the consolidation of cases or the separation of cases for the purpose of review. A party should move to consolidate two or more cases if consolidation would save time and expense and provide for a fair review of the cases. If two or more cases have been consolidated for review in the Court of Appeals, the cases remain consolidated for review in the Supreme Court unless the Supreme Court otherwise directs.

RULE 3.4
TITLE OF CASE AND DESIGNATION OF PARTIES

The title of a case in the appellate court is the same as in the trial court except that the party seeking review by appeal is called an "appellant," the party seeking review by discretionary review is called a "petitioner," and an adverse party on review is called a "respondent."

Upon motion of a party or on the court's own motion, and after notice to the parties, the Supreme Court or the Court of Appeals may change the title of a case by order in said case.

[Adopted amended effective September 1, 2005]

RULE 4.1
REVIEW OF TRIAL COURT DECISION BY THE COURT OF APPEALS

(a) Decisions Reviewed by Court of Appeals. A party may seek review in the Court of Appeals of any trial court decision which is subject to review as provided in Title 2.

(b) Division of Court of Appeals.

(1) Division I. A party must seek review in Division I of the Court of Appeals of a decision by a trial court located in any of the following counties: Island, King, San Juan, Skagit, Snohomish, or Whatcom.

(2) Division II. A party must seek review in Division II of the Court of Appeals of a decision by a trial court located in any of the following counties: Clallam, Clark, Cowlitz, Grays Harbor, Jefferson, Kitsap, Lewis, Mason, Pacific, Pierce, Skamania, Thurston, or Wahkiakum.

(3) Division III. A party must seek review in Division III of the Court of Appeals of a decision by a trial court located in any of the following counties: Adams, Asotin, Benton, Chelan, Columbia, Douglas, Ferry, Franklin, Garfield, Grant, Kittitas, Klickitat, Lincoln, Okanogan, Pend Oreille, Spokane, Stevens, Walla Walla, Whitman, or Yakima.

RULE 4.2
DIRECT REVIEW OF SUPERIOR COURT DECISION BY SUPREME COURT

(a) Type of Cases Reviewed Directly. A party may seek review in the Supreme Court of a decision of a superior court which is subject to review as provided in Title 2 only in the following types of cases:

(1) Authorized by Statute. A case in which a statute authorizes direct review in the Supreme Court;

(2) Law Unconstitutional. A case in which the trial court has held invalid a statute, ordinance, tax, impost, assessment, or toll, upon the ground that it is repugnant to the United States Constitution, the Washington State Constitution, a statute of the United States, or a treaty;

(3) Conflicting Decisions. A case involving an issue in which there is a conflict among decisions of the Court of Appeals or an inconsistency in decisions of the Supreme Court;

(4) Public Issues. A case involving a fundamental and urgent issue of broad public import which requires prompt and ultimate determination;

(5) Action against State Officer. An action against a state officer in the nature of quo warranto, prohibition, injunction, or mandamus;

(6) Death Penalty. A case in which the death penalty has been decreed.

(b) Procedure for Seeking Direct Review. A party seeking direct review of a superior court decision in the Supreme Court must file a notice of appeal or notice of discretionary review directed to the Supreme Court. Within 15 days after filing the notice of appeal or notice for discretionary review, the party seeking direct review must serve on all other parties and file in the Supreme Court a statement of grounds for direct review in the form provided in section (c).

(c) Form of Statement of Grounds for Direct Review. The statement should be captioned "Statement of Grounds for Direct Review," contain the title of the case as provided in rule 3.4, conform to the formatting requirements of rule 10.4(a), and contain under appropriate headings and in the order here indicated:

(1) Nature of the Case and Decision. A short statement of the substance of the case below and the basis for the superior court decision;

(2) Issues Presented for Review. A statement of each issue the party intends to present for review; and

(3) Grounds for Direct Review. The grounds upon which the party contends direct review should be granted.

The statement of grounds for direct review should not exceed 15 pages, exclusive of appendices and the title sheet.

(d) Answer to Statement of Grounds for Direct Review. A respondent may file an answer to the statement of grounds for direct review. In an appeal, the answer should be filed within 14 days after service of the statement on respondent. In a discretionary review, the answer should be filed with any response to the motion for discretionary review. The answer should conform to the formatting requirements of rule 10.4(a). The answer should not exceed 15 pages, exclusive of appendices and the title sheet.

(e) Effect of Denial of Direct Review.

(1) Appealable Decision. If the Supreme Court denies direct review of a superior court decision appealable as a matter of right, the case will be transferred without prejudice and without costs to the Court of Appeals for determination.

(2) Discretionary Review. A motion for discretionary review in the Supreme Court of a superior court decision may be granted, denied, or transferred to the Court of Appeals for determination. If the Supreme Court denies a motion for discretionary review of a superior court decision, the moving party may not file the same motion in the Court of Appeals.

[Amended effective September 1, 2010]

RULE 4.3
DIRECT REVIEW OF DECISIONS OF COURTS OF LIMITED JURISDICTION

(a) Prerequisites for Direct Review of Decisions of Courts of Limited Jurisdiction. A party may seek direct review in the Supreme Court of a decision of a court of limited jurisdiction if:

(1) The decision is a final decision appealable under RALJ 2.2, and
(2) The trial court enters a written statement setting forth its reasons for concluding that:

(a) The case involves a fundamental and urgent issue of statewide importance which requires a prompt and precedential determination;

(b) Delay in obtaining such a determination would cause significant detriment to any party or to the public interest; and

(c) The record of the proceedings in the court of limited jurisdiction adequately presents the issue.

(b) Service and Filing of Statement of Grounds for Direct Review. A party seeking direct review of a decision of a court of limited jurisdiction in the Supreme Court must within 15 days after filing the notice of appeal serve on all other parties and file in the Supreme Court a statement of grounds for direct review in the form provided in section (c).

(c) Form of Statement of Grounds for Direct Review. The statement should be captioned "Statement of Grounds for Direct Review," contain the title of the case as provided in rule 3.4, conform to the formatting requirements of rule 10.4(a), and contain under appropriate headings and in the order here indicated:

(1) Nature of Case and Decision. A short statement of the substance of the case below and the basis for the trial court decision;

(2) Issues Presented for Review. A statement of each issue the party intends to present for review; and

(3) Grounds for Direct Review. The grounds upon which the party contends direct review should be granted.

(4) Appendix. A copy of the trial court's written statement under Rule 4.3(a)(2).

The statement of grounds for direct review should not exceed 15 pages, exclusive of appendices and the title sheet.

(d) Answer to Statement of Grounds for Direct Review. A respondent may file an answer to the statement of grounds for direct review. The answer should be filed within 14 days after service of the statement on respondent. The answer should conform to the formatting requirements of rule 10.4(a). The answer should not exceed 15 pages, exclusive of appendices and the title sheet.

(e) Procedure. Upon receipt of the statement of grounds for direct review and answer, the Supreme Court will set the matter for preliminary consideration on the motion calendar of a commissioner or clerk. The commissioner or clerk may accept review or transfer the case to the Court of Appeals or to the Superior Court. Any transfer will be without prejudice and without costs. Title 17 relating to motions governs oral argument, decisions by ruling, and the means of objecting to the ruling of the commissioner or clerk.

[Amended effective September 1, 2010]

RULE 4.4
TRANSFER OF CASES BY SUPREME COURT

The Supreme Court, to promote the orderly administration of justice may, on its own initiative, upon certification by the Court of Appeals, or on motion of a party, transfer a case from the Court of Appeals to the Supreme Court or from one division to another division of the Court of Appeals. The Court of Appeals, on its own initiative or on motion of a party, may transfer a case from one division to another division pursuant to CAR 21(a). A party should not file a motion to transfer until the record has been perfected and all briefs have been filed in the Court of Appeals.

[Amended effective September 1, 2010.]

RULE 5.1
REVIEW INITIATED BY FILING NOTICE OF APPEAL OR NOTICE FOR DISCRETIONARY REVIEW

(a) Review Initiated by Notice. A party seeking review of a trial court decision reviewable as a matter of right must file a notice of appeal. A party seeking review of a trial court decision subject to discretionary review must file a notice for discretionary review. Each notice must be filed with the trial court within the time provided by rule 5.2.

(b) Filing Fee. The first party to file a notice of appeal or notice for discretionary review must, at the time the notice is filed, pay the statutory filing fee to the clerk of the superior court in which the notice is filed. For cases that were tried together or consolidated for trial, only one filing fee need be paid, notwithstanding that separate notices are filed for each case.

(c) Incorrectly Designated Notice. A notice for discretionary review of a decision which is appealable will be given the same effect as a notice of appeal. A notice of appeal of a decision which is not appealable will be given the same effect as a notice for discretionary review.

(d) Cross Review. Cross review means review initiated by a party already a respondent in an appeal or a discretionary review. A party seeking cross review must file a notice of appeal or a notice for discretionary review within the time allowed by rule 5.2(f).

(e) Final Judgment Entered After Notice for Discretionary Review Has Been Filed. If a final judgment is entered after a notice for discretionary review is filed, a party seeking review of the final judgment must file a notice of appeal from the judgment within the time provided by rule 5.2.

(f) Order Entered After Review Accepted. If a party wants to seek review of a trial court decision entered pursuant to rule 7.2 after review in the same case has been accepted by the appellate court, the party must initiate a separate review of the decision by timely filing a notice of appeal or notice for discretionary review, except as provided by rules 2.4(c), (f) and (g), 8.1(h), 8.2(b), and 9.13.

References

Rule 2.2, Decisions of the Superior Court Which May Be Appealed; Rule 2.3, Decisions of the Trial Court Which May Be Reviewed by Discretionary Review; Rule 7.2, Authority of Trial Court After Review Accepted.

[Amended December 5, 2002]

RULE 5.2
TIME ALLOWED TO FILE NOTICE

(a) Notice of Appeal. Except as provided in rules 3.2(e) and 5.2(d) and (f), a notice of appeal must be filed in the trial court within the longer of (1) 30 days after the entry of the decision of the trial court that the party filing the notice wants reviewed, or (2) the time provided in section (e).

(b) Notice for Discretionary Review. Except as provided in rules 3.2(e) and 5.2(d) and (f), a notice for discretionary review must be filed in the trial court within the longer of (1) 30 days after the act of the trial court that the party filing the notice wants reviewed or (2) 30 days after entry of an order deciding a timely motion for reconsideration of that act under CR 59.

(c) Date Time Begins To Run. The date of entry of a trial court decision is determined by CR 5(e) and 58.

(d) Time Requirements Set by Statute Govern. If a statute provides that a notice of appeal, a petition for extraordinary writ, or a notice for discretionary review must be filed within a time period other than 30 days after entry of the decision, the notice required by these rules must be filed within the time period established by the statute.

(e) Effect of Certain Motions Decided After Entry of Appealable Order. A notice of appeal of orders deciding certain timely motions designated in this section must be filed in the trial court within (1) 30 days after the entry of the order, or (2) if a statute provides that a notice of appeal, a petition

for extraordinary writ, or a notice for discretionary review must be filed within a time period other than 30 days after entry of the decision to which the motion is directed, the number of days after the entry of the order deciding the motion established by the statute for initiating review. The motions to which this rule applies are a motion for arrest of judgment under CrR 7.4, a motion for new trial under CrR 7.5, a motion for judgment as a matter of law under CR 50(b), a motion to amend findings under CR 52(b), a motion for reconsideration or new trial under CR 59, and a motion for amendment of judgment under CR 59.

(f) Subsequent Notice by Other Parties. If a timely notice of appeal or a timely notice for discretionary review is filed by a party, any other party who wants relief from the decision must file a notice of appeal or notice for discretionary review with the trial court clerk within the later of (1) 14 days after service of the notice filed by the other party, or (2) the time within which notice must be given as provided in sections (a), (b), (d) or (e).

(g) Effect of Premature Notice. A notice of appeal or notice for discretionary review filed after the announcement of a decision but before entry of the decision will be treated as filed on the day following the entry of the decision.

References

Rule 2.2, Decisions of the Superior Court Which May Be Appealed, (d) Multiple parties or multiple claims or counts; Rule 15.2, Determination of Indigency and Rights of Indigent Party, (a) Motion for order of indigency; Rule 18.8, Waiver of Rules and Extension and Reduction of Time, (b) Restriction on extension of time; CR 5, Service and Filing of Pleadings and Other Papers; CR 58, Entry of Judgment.

[Amended effective September 1, 2006; amended effective September 1, 2010]

RULE 5.3
CONTENT OF NOTICE--FILING

(a) Content of Notice of Appeal. A notice of appeal must (1) be titled a notice of appeal, (2) specify the party or parties seeking the review, (3) designate the decision or part of decision which the party wants reviewed, and (4) name the appellate court to which the review is taken.

The party filing the notice of appeal should attach to the notice of appeal a copy of the signed order or judgment from which the appeal is made, and, in a criminal case in which two or more defendants were joined for trial by order of the trial court, provide the names and superior court cause numbers of all codefendants.

(b) Content of Notice for Discretionary Review. A notice for discretionary review must comply in content and form with the requirements for a notice of appeal, except that it should be titled a notice for discretionary review.

A party seeking discretionary review of a decision of a court of limited jurisdiction should include the name of the district or municipal court and the cause number for which review is sought.

(c) Identification of Parties, Counsel, and Address of Defendant in Criminal Case. The party seeking review should include on the notice of appeal the name and address of the attorney for each of the parties. In a criminal case the attorney for the defendant should also notify the appellate court clerk of the defendant's address, by placing this information on the notice. The attorney for a defendant in a criminal case must also keep the appellate court clerk advised of any changes in defendant's address during review.

(d) Multiple Parties Filing Notice. More than one party may join in filing a single notice of appeal or notice for discretionary review.

(e) Notices Directed to More Than One Case. If cases have been consolidated for trial, or have been tried together even though not consolidated for trial, separate notices for each case or a single notice for more than one case may be filed. A single notice for more than one case will be given the same effect as if a separate notice had been filed for each case. If cases have not been consolidated for trial or have not been tried together, separate notices must be filed.

(f) Defects in Form of Notice. The appellate court will disregard defects in the form of a notice of appeal or a notice for discretionary review if the notice clearly reflects an intent by a party to seek review.

(g) Notices Directed to More Than One Court. If a notice of appeal or a notice for discretionary review is filed which is directed to the Court of Appeals and a notice is filed in the same case which is directed to the Supreme Court, the case will be treated as if all notices were directed to the Supreme Court.

(h) Amendment of Notice Directed to Portion of Decision. The appellate court may, on its own initiative or on the motion of a party, permit an amendment of a notice to include additional parts of a decision in order to do justice. On discretionary review, the appellate court may, on its own initiative or on the motion of a party, permit an amendment of a notice to include acts of the trial court that are subsequent to the act for which discretionary review was first sought if the subsequent acts relate to the subject of the first review. If the amendment is permitted, the record should be supplemented as provided in rule 9.10. The appellate court may condition the amendment on appropriate terms, including payment of a compensatory award under rule 18.9.

(i) Notice by Fewer Than All Parties on a Side--Joinder. If there are multiple parties on a side of a case and fewer than all of the parties on that side of the case timely file a notice of appeal or notice for discretionary

review, the appellate court will grant relief only (1) to a party who has timely filed a notice, (2) to a party who has been joined as provided in this section or (3) to a party if demanded by the necessities of the case. The appellate court will permit the joinder on review of a party who did not give notice only if the party's rights or duties are derived through the rights or duties of a party who timely filed a notice or if the party's rights or duties are dependent upon the appellate court determination of the rights or duties of a party who timely filed a notice.

(j) Assistance to Defendant in Criminal Case or Party Entitled to Review at Public Expense. Trial counsel for a defendant in a criminal case or party entitled to review at public expense is responsible for filing any appropriate notice of appeal, notice for discretionary review, and motion for order of indigency under rule 15.2. If such a defendant or party is not represented by counsel at trial, the trial court clerk shall, if requested by a defendant or party in open court or in writing, supply a notice of appeal form, a notice for discretionary review form, or a form for a motion for order of indigency, and file the forms upon completion by the defendant or party.

References

Form 1, Notice of Appeal; Form 2, Notice for Discretionary Review; Rule 3.3, Consolidation of Cases; Rule 4.2, Direct Review of Trial Court Decision by Supreme Court.

[Amended effective September 1, 2010]

RULE 5.4
FILING AND SERVICE OF NOTICE

(a) Filing of Notice by Clerk of Trial Court. The clerk of the trial court shall within 14 days of the filing of a notice of appeal or notice for discretionary review file a copy of the notice with the appellate court designated in the notice and notify that court whether the filing fee has been paid. The clerk shall indicate on the notice in the clerk's file, or on a separate paper, the date the notice was mailed to the appellate court. Failure by the clerk to file the notice with the appellate court has no effect on the rights of any party to review.

(b) Service of Notice by Party. The party filing the notice of appeal or notice for discretionary review shall on the same day serve a copy of the notice on each party of record and file a copy of proof of service with the appellate court designated in the notice. Failure to serve a party with notice or file proof of service does not prejudice the rights of the party seeking review, but may subject the party to a motion by the clerk of the appellate court to dismiss the appeal if not cured in a timely manner. A party prejudiced by the failure to serve the notice or to file the proof of service may move in the appellate court for appropriate relief.

RULE 5.5
SETTLEMENT CONFERENCE IN COURT OF APPEALS

(a) Application of Rule. This rule applies only to an appeal to the Court of Appeals from a trial court decision in a civil case. A civil appeal statement or answer should be filed only if requested by the clerk in the notice given to the parties under section (b).

(b) Settlement Conference. A settlement conference may be held in a civil appeal when directed by the Court of Appeals or when all parties to the appeal agree that a conference would be beneficial. The parties should direct a request for a settlement conference in writing to the clerk of the court. If a settlement conference is requested by all parties, or directed by the Court of Appeals, the clerk of the court will then give notice to the parties of the date, time, and place of the conference; the name of the judge, judge pro tempore, or commissioner who will conduct the conference; and whether the parties are required to attend the conference. The clerk will also advise the parties if a civil appeal statement or answer is required and, if so, the date by which the documents should be filed.

(c) Form of Civil Appeal Statement. The statement should be captioned "Civil Appeal Statement," contain the title of the case as provided in rule 3.4, and contain under appropriate headings and in the order here indicated:

(1) Nature of Case and Decision. A short statement of the substance of the case below and the basis for the trial court decision.

(2) Issues Presented for Review. A statement of each issue the party intends to present for review by the Court of Appeals.

(3) Relief Sought in Court of Appeals. The relief the party seeks in the Court of Appeals.

(4) Trial Court. The name of the court from which the appeal was taken.

(5) Judge. The name of the trial court judge who made

the decision which is being reviewed.

(6) Date of Decision. The date the decision was entered in the trial court.

(7) Postdecision Motions. A statement of each postdecision motion made in the trial court including the nature of the motion, the date the motion was made, the decision on the motion, and the date the decision was entered.

(8) Notice of Appeal. The date the notice of appeal was filed. A copy of the notice should be attached to the statement.

(9) Counsel. The name, address, and telephone number of counsel for each party.

(10) Method of Disposition in Trial Court. A statement of the method used to decide the case in the trial court.

(11) Relief Granted by Trial Court. A short statement of the relief granted by the trial court.

(12) Relief Denied by Trial Court. A short statement of the relief sought by the party making the statement which was denied by the trial court.

(13) Certificate of Counsel. A statement signed by counsel for the party filing the statement certifying that the appeal is taken in good faith; the appeal is not taken for the purpose of delay; and that the party represented by counsel is or is not prepared to take all steps immediately to complete the appeal. If the party is not prepared to take all steps immediately to complete the appeal, the certificate of counsel must state the reason(s) why.

(d) Form of Answer to Civil Appeal Statement. The answer should include any modifications to the civil appeal statement that the respondent feels are necessary to give the settlement conference judge a fair presentation of the matters material to settlement of the case. To the extent reasonably necessary to meet this objective, the answer should correct any errors in the civil appeal statement, and present any new issues or modify those presented in the civil appeal statement.

(e) (Reserved.)

(f) Stay Pending Settlement Conference. Unless the notice of the settlement conference states otherwise, a party who has received a notice of settlement conference is not required to take any further steps to complete the review until the settlement conference is concluded. After the settlement conference is completed, the clerk or a commissioner or the settlement judge will establish the dates within which the remaining steps in the review should be completed.

(g) Attendance at Settlement Conference. The attorney for each party, and the party if the notice requires it, must attend the settlement conference on the date, time, and place specified in the clerk's notice. Those in attendance should be ready to consider seriously the possibility of settlement, limitation of the issues to be presented for review, and other matters that may promote the prompt and fair disposition of the appeal.

(h) Settlement Conference Order. If the parties agree to settle the case, to limit the issues, or to other matters to promote the prompt and fair disposition of the appeal, the settlement judge or commissioner may enter an order consistent with that agreement. If the settlement conference order fully settles the case, the clerk of the Court of Appeals will immediately issue the mandate to the trial court with directions to enter judgment as indicated in the order. In all other cases the order is binding on the parties during the review proceeding, unless the appellate court otherwise directs on its own initiative or on motion of a party for good cause shown and on those terms the appellate court deems appropriate.

(i) Sanctions. If a party or counsel for a party fails to comply with this rule or to comply with a settlement conference order, the Court of Appeals may impose sanctions or dismiss the review proceeding as provided in rule 18.9.

(j) Settlement Conference Judge May Be Disqualified. The settlement conference judge may hear the appeal on the merits unless (1) the judge decides the best interests of justice would be served by refraining from hearing the case on the merits, or (2) a party disqualifies the judge by request to the clerk of the appellate court. A party may disqualify the judge without cause. Each clerk of the Court of Appeals shall adopt and implement a procedure to preserve the confidentiality of the identity of a party who disqualifies the judge.

References

Form 21, Civil Appeal Statement.

RULE 6.1
APPEAL AS A MATTER OF RIGHT

The appellate court "accepts review" of a trial court decision upon the timely filing in the trial court of a notice of appeal from a decision which is reviewable as a matter of right.

References

Rule 2.2, Decisions of the Superior Court Which May Be Appealed.

RULE 6.2
DISCRETIONARY REVIEW

(a) Generally. The appellate court accepts discretionary review of a trial court decision by granting a motion for discretionary review.

(b) Time To Make Motion. The party seeking discretionary review must file in the appellate court a motion for discretionary review within 15 days after filing the notice for discretionary review, or, in cases where the appellate court has appointed counsel for a party entitled to seek discretionary review at public expense pursuant to rule 15.2, within 15 days after appointment. If a party files a notice of appeal from a decision which may not be subject to review as a matter of right, the clerk or a party may note for hearing the question whether the decision is reviewable as a matter of right and, if the decision is reviewable by discretion, the question whether review should be accepted.

(c) Regular Motion Procedure Governs. A motion for discretionary review is governed by the motion procedure established by Title 17.

(d) Notice of Decision on Motion. The clerk of the appellate court will promptly give written notice to the parties and the trial court of the appellate court's decision on the motion for discretionary review.

References

Form 3, Motion for Discretionary Review; Rule 2.3, Decisions of the Trial Court Which May Be Reviewed by Discretionary Review; Rule 17.3, Content of Motion, (b) Motion for discretionary review; Rule 17.6, Motion Decided by Ruling or Order.

[Amended effective September 1, 2010]

RULE 6.3
DIRECT REVIEW OF A FINAL DECISION OF AN ADMINISTRATIVE AGENCY

The appellate court accepts direct review of a final decision of an administrative agency in an adjudicative proceeding under RCW 34.05.518 and RCW 34.05.522 by entering an order or ruling accepting review. In requesting direct review, the parties shall follow the procedures set forth in rule 6.2.

RULE 7.1
AUTHORITY OF TRIAL COURT BEFORE REVIEW ACCEPTED

The trial court retains full authority to act in a case before review is accepted by the appellate court, unless the appellate court directs otherwise as provided in rule 8.3.

RULE 7.2
AUTHORITY OF TRIAL COURT AFTER REVIEW ACCEPTED

(a) Generally. After review is accepted by the appellate court, the trial court has authority to act in a case only to the extent provided in this rule, unless the appellate court limits or expands that authority as provided in rule 8.3.

(b) Settlement of Record. The trial court has authority to settle the record as provided in Title 9 of these rules.

(c) Enforcement of Trial Court Decision in Civil Cases. In a civil case, except to the extent enforcement of a judgment or decision has been stayed as provided in rules 8.1 or 8.3, the trial court has authority to enforce any decision of the trial court and a party may execute on any judgment of the trial court. Any person may take action premised on the validity of a trial court judgment or decision until enforcement of the judgment or decision is stayed as provided in rules 8.1 or 8.3.

(d) Attorney Fees and Litigation Expenses On Appeal. The trial court has authority to award attorney fees and litigation expenses for an appeal in a marriage dissolution, a legal separation, a declaration of invalidity proceeding, or an action to modify a decree in any of these proceedings, and in any other

action in which applicable law gives the trial court authority to do so.

(e) Postjudgment Motions and Actions To Modify Decision. The trial court has authority to hear and determine (1) postjudgment motions authorized by the civil rules, the criminal rules, or statutes, and (2) actions to change or modify a decision that is subject to modification by the court that initially made the decision. The postjudgment motion or action shall first be heard by the trial court, which shall decide the matter. If the trial court determination will change a decision then being reviewed by the appellate court, the permission of the appellate court must be obtained prior to the formal entry of the trial court decision. A party should seek the required permission by motion. The decision granting or denying a postjudgment motion may be subject to review. Except as provided in rule 2.4, a party may only obtain review of the decision on the postjudgment motion by initiating a separate review in the manner and within the time provided by these rules. If review of a postjudgment motion is accepted while the appellate court is reviewing another decision in the same case, the appellate court may on its own initiative or on motion of a party consolidate the separate reviews as provided in rule 3.3(b).

(f) Release of Defendant in Criminal Case. In a criminal case, the trial court has authority, subject to RCW 9.95.062 and .064, to fix conditions of release of a defendant and to revoke a suspended or deferred sentence.

(g) Questions Relating to Indigency. The trial court has authority to decide questions relating to indigency as provided in Title 15 of these rules.

(h) Supersedeas, Stay, and Bond. The trial court has authority to act on matters of supersedeas, stays, and bonds as provided in rules 8.1 and 8.4, CR 62(a), (b), and (h), and RCW 6.17.040.

(i) Attorney Fees, Costs and Litigation Expenses. The trial court has authority to act on claims for attorney fees, costs and litigation expenses. A party may obtain review of a trial court decision on attorney fees, costs and litigation expenses in the same review proceeding as that challenging the judgment without filing a separate notice of appeal or notice for discretionary review.

(j) Juvenile Court Decision. The trial court has authority to enter findings and conclusions in a juvenile offense proceeding pursuant to JuCR 7.11. The trial court has authority to act on matters of supersedeas, stays, bonds, the release of a person, and extension of jurisdiction pending review of a juvenile court proceeding.

(k) Perpetuation of Testimony. The trial court has authority to supervise discovery proceedings pursuant to CR 27.

(l) Multiple Parties, Claims, or Counts. If the trial court has entered a judgment that may be appealed under rule 2.2(d) in a case involving multiple parties, claims, or counts, the trial court retains full authority to act in the portion of the case that is not being reviewed by the appellate court.

References

Rule 5.1, Review Initiated by Filing Notice of Appeal or Notice for Discretionary Review, (f) Order entered after review accepted; Rule 8.1, Supersedeas in the Trial Court; Rule 8.3, Appellate Court Orders Needed for Effective Review; Rule 8.4, Bond With Individual Sureties-- Justification--Objection; CR 62, Stay of Proceedings To Enforce a Judgment, (a) Automatic stays, (b) Stay on motion for new trial or for judgment, (d) Multiple claims or multiple parties; RCW 6.08, Stay of Execution.

[Amended December 24, 2002]

RULE 7.3
AUTHORITY OF APPELLATE COURT

The appellate court has the authority to determine whether a matter is properly before it, and to perform all acts necessary or appropriate to secure the fair and orderly review of a case. The Court of Appeals retains authority to act in a case pending before it until review is accepted by the Supreme Court, unless the Supreme Court directs otherwise.

RAP 8.1
SUPERSEDEAS PROCEDURE

(a) Application of Civil Rules. This rule provides a means of delaying the enforcement of a trial court decision in a civil case in addition to the means provided in CR 62(a), (b), and (h).

(b) Right To Stay Enforcement of Trial Court Decision. A trial court decision may be enforced pending appeal or review unless stayed pursuant to the provisions of this rule. Any party to a review proceeding has the right to stay enforcement of a money judgment or a decision affecting real, personal or intellectual property, pending review. Stay of a decision in other civil cases is a matter of discretion.

(1) Money Judgment. Except when prohibited by statute, a party may stay enforcement of a money judgment by filing in the trial court a supersedeas bond or cash, or by alternate security approved by the trial court pursuant to subsection (b)(4).

(2) Decision Affecting Property. Except where prohibited by statute, a party may obtain a stay of enforcement of a decision affecting rights to possession, ownership or use of real property or of tangible personal property, or intangible personal property, by filing in the trial court a supersedeas bond or cash, or alternate security approved by the trial court pursuant to subsection (b)(4). If the decision affects the rights to possession, ownership or use of a trademark, trade secret, patent, or other intellectual property, a party may obtain a stay in the trial court only if it is reasonably possible to quantify the loss that would be incurred by the prevailing party in the trial court as a result of the party's inability to enforce the decision during review.

(3) Other Civil Cases. Except where prohibited by statute, in other civil cases, including cases involving equitable relief ordered by the trial court, the appellate court has authority, before or after acceptance of review, to stay enforcement of the trial court decision upon such terms as are just. The appellate court ordinarily will condition such relief from enforcement of the trial court decision on the furnishing of a supersedeas bond, cash or other security. In evaluating whether to stay enforcement of such a decision, the appellate court will (i) consider whether the moving party can demonstrate that debatable issues are presented on appeal and (ii) compare the injury that would be suffered by the moving party if a stay were not imposed with the injury that would be suffered by the nonmoving party if a stay were imposed. The party seeking such relief should use the motion procedure provided in Title 17.

(4) Alternate Security. Upon motion of a party, or stipulation, the trial court or appellate court may authorize a party to post security other than a bond or cash, may authorize the establishment of an account consisting of cash or other assets held by a party, its counsel, or a non-party, or may authorize any other reasonable means of securing enforcement of a judgment. The effect of doing so is equivalent to the filing of a supersedeas bond or cash with the Superior Court.

(c) Supersedeas Amount. The amount of the supersedeas bond, cash or alternate security required shall be as follows:

(1) Money Judgment. The supersedeas amount shall be the amount of the judgment, plus interest likely to accrue during the pendency of the appeal and attorney fees, costs, and expenses likely to be awarded on appeal.

(2) Decision Affecting Property. The supersedeas amount shall be the amount of any money judgment, plus interest likely to accrue during the pendency of appeal and attorney fees, costs and expenses likely to be awarded on appeal entered by the trial court plus the amount of the loss which the prevailing party in the trial court would incur as a result of the party's inability to enforce the judgment during review. Ordinarily, the amount of loss will be equal to the reasonable value of the use of the property during review. A party claiming that the reasonable value of the use of the property is inadequate to secure the loss which the party may suffer as a result of the party's inability to enforce the judgment shall have the burden of proving that the amount of loss would be more than the reasonable value of the use of the property during review. If the property at issue has value, the property itself may fully or partially secure any loss and the court may determine that no additional security need be filed or may reduce the supersedeas amount accordingly.

(3) Stay of Portion of Judgment. If a party seeks to stay enforcement of only part of the judgment, the supersedeas amount shall be fixed at such sum as the trial court determines is appropriate to secure that portion of the judgment, plus interest likely to accrue during the pendency of the appeal and attorney fees, costs, and expenses likely to be awarded on appeal. If the judgment or decision provides for periodic payments, the trial court may in its discretion deny supersedeas, or permit the periodic posting of bonds, cash or alternate security.

(d) Form of Cash Supersedeas; Effect of Filing Bond or Other Security.

(1) A party superseding a judgment with cash deposited with the Superior Court should deposit the supersedeas amount with the Superior Court Clerk, accompanied by a Notice of Cash Supersedeas. The Notice may direct the clerk to invest the funds, subject to the clerk's investment fee, as provided in RCW 36.48.090.

(2) Upon the filing of a supersedeas bond, cash or alternate security approved by the trial court pursuant to subsection (b)(4), enforcement of a trial court decision against a party furnishing the bond, cash or alternate security is stayed. Unless otherwise ordered by the trial court or appellate court, upon the filing of a supersedeas bond, cash or alternate security any execution proceedings against a party furnishing the bond, cash or alternate security shall be of no further effect.

(e) Objection to Supersedeas. A party may object to the sufficiency of an individual surety on a bond, to the form of a bond, or to the amount of a bond or cash supersedeas by a motion in the trial court made within 7 days after the party making the motion is served with a copy of the bond and any supporting affidavits, if required. If the trial court determines that the bond is improper in form, or that the amount of the bond, cash, or net worth of an individual surety is inadequate, stay of enforcement of the trial court decision may be preserved only by furnishing a proper bond or supplemental bond or cash within 7 days after the entry of the order declaring the supersedas deficient.

(f) Supersedeas by Party Not Required To Post Bond. If a party is not

required to post a bond, that party shall file a notice that the decision is superseded without bond and, after filing the notice, the party shall be in the same position as if the party had posted a bond pursuant to the provisions of this rule.

(g) Modification of Supersedeas Decision. After a supersedeas bond, cash or alternate security has been filed, the trial court may, upon application of a party or on its own motion, and for good cause shown, discharge the bond, change the supersedeas amount or require a new bond, additional cash or alternate security.

(h) Review of Supersedeas Decision. A party may object to a supersedeas decision of the trial court by motion in the appellate court.

References

CR 62, Stay of Proceedings To Enforce a Judgment; RCW 48.28.010, Requirements deemed met by surety insurer.

[Amended December 5, 2002; September 1, 2006.]

RULE 8.2
APPLICATION TO CRIMINAL OR JUVENILE CASES

(a) Release or Stay of Execution of Sentence Not Governed by These Rules. The conditions under which a defendant in a criminal case or a juvenile in a juvenile offense proceeding may be released pending review, or may obtain a stay of execution of sentence, are set forth in the criminal rules, juvenile court rules, and in statutes.

(b) Objection to Decision. A party may object to a trial court decision relating to release of a defendant or a juvenile, or relating to a stay of execution of sentence, during a review of a criminal case or a juvenile offense proceeding by motion in the appellate court.

References

RCW 9.95.062, Appeal stays execution--Credit for time in jail pending appeal; RCW 10.73.040, Bail pending appeal; CrR 3.2, Release of Accused.

RULE 8.3
APPELLATE COURT ORDERS NEEDED FOR EFFECTIVE REVIEW

Except when prohibited by statute, the appellate court has authority to issue orders, before or after acceptance of review or in an original action under Title 16 of these rules, to insure effective and equitable review, including authority to grant injunctive or other relief to a party. The appellate court will ordinarily condition the order on furnishing a bond or other security. A party seeking the relief provided by this rule should use the motion procedure provided in Title 17.

RULE 8.4
QUALIFICATIONS--ENCUMBRANCE

(a) Who May Be Surety. An individual who is a resident of this state or a surety company authorized to conduct a surety business in this state may be a surety on a bond. A party may not act as a surety.

(b) Qualifications. The bond given by an individual surety must be accompanied by an affidavit signed by the individual affirming that (1) the surety is a resident of this state, and (2) the surety alone has or, if two or more individuals together are acting as sureties, then the sureties together have a net worth, excluding property exempt from execution, consisting of assets located in this state, equal to at least twice the penalty in the bond. The affidavit must contain a description of the assets and liabilities of the surety reasonably sufficient to identify them and state the values or amounts thereof. Any party may obtain discovery from another party or the surety or sureties concerning the values and amounts of assets and liabilities stated in the affidavit.

(c) (Reserved. See rule 8.1(d).)

(d) Encumbrance of Property. The court may order an individual who is a surety on a bond to encumber his or her property, or to take other action to ensure recourse to the property to satisfy the bond.

References

RCW 19.72.020, Individual sureties--Eligibility.

RULE 8.5
STATE AS OBLIGEE ON BOND

The obligee in a bond given pursuant to rule 8.1 or 8.3 may be named as the State of Washington for the benefit of whom it may concern. If the

State is named as the obligee, anyone has the same right upon or concerning the bond as if named as an obligee in the bond. The State of Washington shall not, solely because the State is named as an obligee, be sued or named as a party in any suit on the bond.

RULE 8.6
TERMINATION OF SUPERSEDEAS, INJUNCTIONS, AND OTHER ORDERS

The issuance of the mandate as provided in rule 12.5 terminates any delay of enforcement of a trial court decision obtained pursuant to rule 8.1 and terminates orders entered pursuant to rule 8.3.

References

Rule 12.2, Disposition on Review.

RULE 9.1
COMPOSITION OF RECORD ON REVIEW

(a) Generally. The "record on review" may consist of (1) a "report of proceedings", (2) "clerk's papers", (3) exhibits, and (4) a certified record of administrative adjudicative proceedings.

(b) Report of Proceedings. The report of any oral proceeding must be transcribed in the form of a typewritten report of proceedings. The report of proceedings may take the form of a "verbatim report of proceedings" as provided in rule 9.2, a "narrative report of proceedings" as provided in rule 9.3, or an "agreed report of proceedings" as provided in rule 9.4.

(c) Clerk's Papers. The clerk's papers include the pleadings, orders, and other papers filed with the clerk of the trial court.

(d) Avoid Duplication. Material appearing in one part of the record on review should not be duplicated in another part of the record on review.

(e) Review of Superior Court Decision on Review of Decision of Court of Limited Jurisdiction. Upon review of a superior court decision reviewing a decision of a court of limited jurisdiction pursuant to rule 2.3(d), the record shall consist of the record of proceedings and the transcript of electronic record as defined in RALJ 6.1 and 6.3.1. When requested by the appellate court, the superior court shall transmit the original record of proceedings and transcript of electronic record as was considered by the superior court on the appeal from the decision of the court of limited jurisdiction.

References

Rule 13.7, Proceedings (in Supreme Court) After Acceptance of Review (of Court of Appeals decision), (a) Procedure.

[Amended December 23, 2002; June 24, 2003.]

RULE 9.2
VERBATIM REPORT OF PROCEEDINGS

(a) Transcription and Statement of Arrangements. If the party seeking review intends to provide a verbatim report of proceedings, the party should arrange for transcription of and payment for an original and one copy of the verbatim report of proceedings within 30 days after the notice of appeal was filed or discretionary review was granted. If the proceeding being reviewed was recorded on videotape, transcription of the videotapes shall be completed by a court-approved transcriber in accordance with procedures developed by the Office of the Administrator for the Courts. Copies of these procedures are available at the court administrator's office in each county where there is a courtroom that videotapes proceedings or through the Office of the Administrator for the Courts. The party seeking review must file with the appellate court and serve on all parties of record and all named court reporters a statement that arrangements have been made for the transcription of the report and file proof of service with the appellate court. The statement must be filed within 30 days after the notice of appeal was filed or discretionary review was granted. The party must indicate the date that the report of proceedings was ordered, the financial arrangements which have been made for payment of transcription costs, the name of each court reporter or other person authorized to prepare a verbatim report of proceedings who will be preparing the transcript, the hearing dates, and the trial court judge. If the party seeking review does not intend to provide a verbatim report of

proceedings, a statement to that effect should be filed in lieu of a statement of arrangements within 30 days after the notice of appeal was filed or discretionary review was granted and served on all parties of record.

(b) Content. A party should arrange for the transcription of all those portions of the verbatim report of proceedings necessary to present the issues raised on review. A verbatim report of proceedings provided at public expense will not include the voir dire examination or opening statement unless so ordered by the trial court. If the party seeking review intends to urge that a verdict or finding of fact is not supported by the evidence, the party should include in the record all evidence relevant to the disputed verdict or finding. If the party seeking review intends to urge that the court erred in giving or failing to give an instruction, the party should include in the record all of the instructions given, the relevant instructions proposed, the party's objections to the instructions given, and the court's ruling on the objections.

(c) Notice of Partial Report of Proceedings and Issues. If a party seeking review arranges for less than all of the verbatim report of proceedings, the party should include in the statement of arrangements a statement of the issues the party intends to present on review. Any other party who wishes to add to the verbatim report of proceedings should within 10 days after service of the statement of arrangements file and serve on all other parties and the court reporter a designation of additional parts of the verbatim report of proceedings and file proof of service with the appellate court. If the party seeking review refuses to provide the additional parts of the verbatim report of proceedings, the party seeking the additional parts may provide them at the party's own expense or apply to the trial court for an order requiring the party seeking review to pay for the additional parts of the verbatim report of proceedings.

(d) Payment of Expenses. If a party fails to make arrangements for payment of the costs of the verbatim report of proceedings at the time the verbatim report of proceedings is ordered, the party may be subject to sanctions as provided in rule 18.9.

(e) Title Page and Table of Contents. The court reporter or other authorized transcriber shall include at the beginning of each volume of the verbatim report of proceedings a title page and a table of contents.

(1) The title page should include the following:

(A) Case name,

(B) Trial court and appellate cause numbers,

(C) Date(s) of hearings,

(D) Trial court judge(s),

(E) Names of attorneys at trial,

(F) Name, business address and telephone number of each court reporter or other authorized transcriber.

(2) The table of contents shall follow the title page and shall indicate, under the headings listed below, the pages where the following appear:

(A) Proceedings. The beginning of each proceeding and the nature of that proceeding;

(B) Testimony. The testimony of each witness, the page where it begins, and the type of examination, i.e., direct, cross, re-direct, re-cross, and the page where the plaintiff rests and the defendant rests;

(C) Exhibits. The admission into evidence of exhibits and depositions;

(D) Argument. The pages where opening statements occur, except as otherwise provided in rule 9.2(b) for verbatim reports of proceedings provided at public expense, and the pages where closing arguments occur;

(E) Instructions. All instructions proposed and given. Any other events should be listed under a suitable heading which would help the reviewing court locate separate parts of the verbatim report of proceedings.

(F) Multiple Days. If a volume includes hearings from more than one day, there shall be a separate table of contents for each day.

(f) Form

(1) Generally. The verbatim report of proceedings shall be on 8-1/2-by 11-inch paper. Margins shall be lined 1-3/8 inches from the left and 5/8 inches from the right side of each page. Indentations from the left lined margin should be: 1 space for "Q" and "A"; 5 spaces for the body of the testimony; 8 spaces for commencement of a paragraph; and 10 spaces for quoted authority. Typing should be double spaced except that comments by the reporter should be single spaced. The page should have 25 lines of type. Type must be pica type or its equivalent with no more than 10 characters an inch.

(A) Witnesses Designated/Examination. Indicate at the top or bottom of each page the name of the witness and whether the examination is on direct, cross, re-direct, re-cross, or rebuttal.

(B) Jury In/Out. Indicate when the jury is present, when the jury leaves, and when the jury returns.

(C) Bench/Side Bar Conferences. Designate whether a bench/side bar conference is on or off the record.

(D) Chamber Conferences. If the conference is recorded, note the presence or absence of persons participating in chamber conferences.

(E) Speaker/Event Identification. Identify speakers and events that occur throughout the proceedings in capital letters centered on the appropriate line. For example: recess/court reconvene; direct examination, cross examination, re-

direct examination, re-cross examination, plaintiff rests; defendant's evidence: direct examination, cross examination, re-direct examination, re-cross examination, defense rests; instructions, conference, closing arguments: for plaintiff, for defense, and rebuttal.

(2) Volume and Pages.

(A) Pages in each volume of the verbatim report of proceedings shall be numbered consecutively.

(B) Each volume shall include no more than 200 pages. The volumes shall be either bound or fastened securely.

(3) Copies. The verbatim report of proceedings should be legible, clean and reproducible.

References

Form 15, Statement of Arrangements; Title 6, Acceptance of Review.

[Amended December 5, 2002; amended effective September 1, 2010]

RULE 9.3
NARRATIVE REPORT OF PROCEEDINGS

The party seeking review may prepare a narrative report of proceedings. A party preparing a narrative report must exercise the party's best efforts to include a fair and accurate statement of the occurrences in and evidence introduced in the trial court material to the issues on review. A narrative report should be in the same form as a verbatim report, as provided in rule 9.2(e) and (f). If any party prepares a verbatim report of proceedings, that report will be used as the report of proceedings for the review. A narrative report of proceedings may be prepared if either the court reporter's notes or the videotape of the proceeding being reviewed are lost or damaged.

RULE 9.4
AGREED REPORT OF PROCEEDINGS

The parties may prepare and sign an agreed report of proceedings setting forth only so many of the facts averred and proved or sought to be proved as are essential to the decision of the issues presented for review. The agreed report of proceedings must include only matters which were actually before the trial court. An agreed report of proceedings should be in the same form as a verbatim report, as provided in rule 9.2(e) and (f). An agreed report of proceedings may be prepared if either the court reporter's notes or the videotape of the proceeding being reviewed are lost or damaged.

RULE OF APPELLATE PROCEDURE 9.5
FILING AND SERVICE OF REPORT OF PROCEEDINGS -- OBJECTIONS

(a) Generally. The party seeking review must file an agreed or narrative report of proceedings with the clerk of the trial court within 60 days after the statement of arrangements is filed. The court reporter or person authorized to prepare the verbatim report of proceedings must file it within 60 days after the statement of arrangements is filed and all named court reporters are served. If the proceeding being reviewed was recorded on videotape, the transcript must be filed by the transcriber with the clerk of the trial court within 60 days after the statement of arrangements is filed and all named court reporters are served.

(1) A party filing a brief must promptly forward a copy of the verbatim report of proceedings with a copy of the brief to the party with the right to file the next brief. If more than one party has the right to file the next brief, the parties must cooperate in the use of the report of proceedings. The party who files the last brief should return the copy of the report of proceedings to the party who paid for it.

(2) If the transcript was computer-generated, one diskette or compact disk (using ASCII format with hard page returns) shall be filed with the original verbatim report of proceedings and a second diskette or compact disk shall be provided to the party who receives the verbatim report of proceedings. The party who files the last brief should return the diskette or compact disk to the party who paid for the verbatim report of proceedings.

(b) Filing and Service of Verbatim Report of Proceedings. If a verbatim report of proceedings cannot be completed within 60 days after the statement of arrangements is filed and served, the court reporter or authorized person shall, no later than 10 days before the report of proceedings is due to be filed, submit an affidavit to the party who ordered the report of proceedings stating the reasons for the delay. The party who requested the verbatim report of proceedings should move for an extension of time from the appellate court.

The clerk will notify the parties of the action taken on the motion. When the court reporter or authorized person files the verbatim report of proceedings, a copy shall be provided to the party who arranged for transcription and either the reporter or authorized person shall serve and file notice of the filing on all other parties and the appellate court. The notice of filing served on the appellate court shall include a declaration that (1) the transcript was computer generated and ASCII diskette or compact disk was filed or (2) the transcript was not computer generated. Failure to timely file the verbatim report of proceedings and notice of service may subject the court reporter or video transcriber or authorized person to sanctions as provided in rule 18.9.

(c) Objections to Report of Proceedings. A party may serve and file objections to, and propose amendments to, a narrative report of proceedings or a verbatim report of proceedings within 10 days after receipt of the report of proceedings or receipt of the notice of filing of the report of proceedings. If objections or amendments to the report of proceedings are served and filed, any objections or proposed amendments must be heard by the trial court judge before whom the proceedings were held for settlement and approval, except objections to the form of a report of proceedings, which shall be heard by motion in the appellate court. The court may direct a party or a reporter or authorized transcriber to pay for the expense of any modifications of the proposed report of proceedings. The motion procedure of the court deciding any objections shall be used in settling the report of proceedings.

(d) Substitute Judge May Settle Report of Proceedings. If the judge before whom the proceedings were held is for any reason unable to promptly settle questions as provided in section (c), another judge may act in the place of the judge before whom the proceedings were held.

[Amended December 5, 2002; September 1, 2007; amended effective September 1, 2010]

RULE 9.6
DESIGNATION OF CLERK'S PAPERS AND EXHIBITS

(a) Generally. The party seeking review should, within 30 days after the notice of appeal is filed or discretionary review is granted, serve on all other parties and file with the trial court clerk and the appellate court clerk a designation of those clerk's papers and exhibits the party wants the trial court clerk to transmit to the appellate court. A copy of the designation shall also be filed with the appellate court clerk. Any party may supplement the designation of clerk's papers and exhibits prior to or with the filing of the party's last brief. Thereafter, a party may supplement the designation only by order of the appellate court, upon motion. Each party is encouraged to designate only clerk's papers and exhibits needed to review the issues presented to the appellate court.

(b) Designation and Contents.

(1) The clerk's papers shall include, at a minimum:

(A) the notice of appeal or the notice for discretionary review;

(B) the indictment, information, or complaint in a criminal case;

(C) any written order or ruling not attached to the notice of appeal, of which a party seeks review;

(D) the final pretrial order, or the final complaint and answer or other pleadings setting out the issues to be tried if the final pretrial order does not set out those issues;

(E) any written opinion, findings of fact or conclusions of law;

(F) any jury instruction given or refused that presents an issue on appeal; and

(G) any order sealing documents if sealed documents have been designated.

(2) Each designation or supplement shall specify the full title of thepleading, the date filed, and, in counties where subnumbers are used, the clerk's subnumber.

(3) Each designation of exhibits shall include the trial court clerk's list of exhibits and shall specify the exhibit number and the description of the exhibit to be transmitted.

(c) Format.

(1) Full copies of all designated pleadings shall be included, unless the trial court orders otherwise.

(2) The trial court clerk shall number the papers sequentially from beginning to end, including any supplemental clerk's papers, regardless of which party designated them.

(3) The trial court clerk shall make available a copy of the clerk's papers transmitted to the appellate court to any party, upon payment of the trial court clerk's reasonable expenses. If the trial court clerk generates the clerk's papers in electronic format, the trial court clerk shall make available to any party a copy of the clerk's papers in electronic format, upon payment of the trial court clerk's reasonable expenses.

[Amended effective September 1, 2006; amended effective September 1, 2010]

RULE 9.7
PREPARING CLERK'S PAPERS AND EXHIBITS FOR APPELLATE COURT

(a) Clerk's Papers. The clerk of the trial court shall make copies at cost, not to exceed 50 cents a page, of those portions of the clerk's papers designated by the parties and prepare them for transmission to the appellate court. The clerk shall assemble the copies and number each page of the clerk's papers in chronological order of filing, and bind in volumes of no more than 200 pages, or, as authorized by the appellate court, assemble and transmit the numbered clerk's papers to the appellate court in electronic format. The clerk shall prepare a cover sheet for the papers with the title "Clerk's Papers" and prepare an alphabetical index to the papers. The clerk shall promptly send a copy of the index to each party. The reproduction costs must be paid to the trial court clerk within 14 days of receipt of the index. Failure to do so may result in sanctions under rule 18.9. Within 14 days of receiving payment, the clerk shall forward the clerk's papers to the appellate court.

(b) Exhibits. The clerk of the trial court shall assemble those exhibits designated by the parties and prepare them for transmission to the appellate court. Exhibits which are papers should be assembled in the order the exhibits are numbered with a cover sheet which lists the exhibits and is titled "Exhibits."

(c) Certified Record of Administrative Adjudicative Orders. When an administrative agency has certified the record of an administrative order for review by the superior court, the clerk of the superior court shall transmit to the appellate court the original record certified by the administrative agency.

[Amended effective September 1, 2010]

RULE 9.8
TRANSMITTING RECORD ON REVIEW

(a) Duty of Trial Court Clerk. Except as provided in section (b), the clerk of the trial court shall send the clerk's papers and exhibits to the appellate court when the clerk receives payment for the preparation of the documents and shall send the verbatim report of proceedings to the appellate court at the end of the objection period set forth in rule 9.5. The clerk shall endorse on the face of the record the date upon which the record on review is transmitted to the appellate court.

(b) Cumbersome Exhibits. The clerk of the trial court shall transmit to the appellate court exhibits which are difficult or unusually expensive to transmit only if the appellate court directs or if a party makes arrangements with the clerk to transmit the exhibits at the expense of the party requesting the transfer of the exhibits. No weapons, controlled substances, hazardous items, or currency shall be forwarded unless directed by the appellate court.

(c) Temporary Transmittal to another Court. If the record or any part of it is needed in another court while a review is pending, the clerk of the appellate court will, on the order or ruling of the appellate court, transmit the record or part of it to the clerk of that court, to remain there until the purpose for which it is transmitted has been satisfied or until the clerk of the appellate court requests its return.

[Amended effective September 1, 2010]

RULE 9.9
CORRECTING OR SUPPLEMENTING REPORT OF PROCEEDINGS BEFORE TRANSMITTAL TO APPELLATE COURT

The report of proceedings may be corrected or supplemented by the trial court on motion of a party, or on stipulation of the parties, at any time prior to the transmission of the report to the appellate court. The trial court may impose the same kinds of sanctions provided in rule 18.9(a) as a condition to correcting or supplementing the report of proceedings after the time provided in rule 9.5.

RULE 9.10
CORRECTING OR SUPPLEMENTING RECORD AFTER TRANSMITTAL TO APPELLATE COURT

If a party has made a good faith effort to provide those portions of the record required by rule 9.2(b), the appellate court will not ordinarily dismiss a review proceeding or affirm, reverse, or modify a trial court decision or administrative adjudicative order certified for direct review by the superior court because of the failure of the party to provide the appellate court with a complete

record of the proceedings below. If the record is not sufficiently complete to permit a decision on the merits of the issues presented for review, the appellate court may, on its own initiative or on the motion of a party (1) direct the transmittal of additional clerk's papers and exhibits or administrative records and exhibits certified by the administrative agency, or (2) correct, or direct the supplementation or correction of, the report of proceedings. The appellate court may impose sanctions as provided in rule 18.9(a) as a condition to correcting or supplementing the record on review. The party directed or permitted to supplement the record on review must file either a designation of clerk's papers as provided in rule 9.6 or a statement of arrangements as provided in rule 9.2 within the time set by the appellate court.

RULE 9.11
ADDITIONAL EVIDENCE ON REVIEW

(a) Remedy Limited. The appellate court may direct that additional evidence on the merits of the case be taken before the decision of a case on review if: (1) additional proof of facts is needed to fairly resolve the issues on review, (2) the additional evidence would probably change the decision being reviewed, (3) it is equitable to excuse a party's failure to present the evidence to the trial court, (4) the remedy available to a party through postjudgment motions in the trial court is inadequate or unnecessarily expensive, (5) the appellate court remedy of granting a new trial is inadequate or unnecessarily expensive, and (6) it would be inequitable to decide the case solely on the evidence already taken in the trial court.

(b) Where Taken. The appellate court will ordinarily direct the trial court to take additional evidence and find the facts based on that evidence.

RULE 9.12
SPECIAL RULE FOR ORDER ON SUMMARY JUDGMENT

On review of an order granting or denying a motion for summary judgment the appellate court will consider only evidence and issues called to the attention of the trial court. The order granting or denying the motion for summary judgment shall designate the documents and other evidence called to the attention of the trial court before the order on summary judgment was entered. Documents or other evidence called to the attention of the trial court but not designated in the order shall be made a part of the record by supplemental order of the trial court or by stipulation of counsel.

RULE 9.13
REVIEW OF DECISION RELATING TO RECORD

A party may object to a trial court decision relating to the record by motion in the appellate court.

RULE 10.1
BRIEFS WHICH MAY BE FILED

(a) Scope of Title. The rules in this title apply only to the briefs referred to in this rule, unless a particular rule indicates a different application is intended.

(b) Briefs Which May Be Filed in Any Review. The following briefs may be filed in any review: (1) a brief of appellant or petitioner, (2) a brief of respondent, and (3) a reply brief of appellant or petitioner.

(c) Reply Brief of Respondent. If the respondent is also seeking review, the respondent may file a brief in reply to the response the appellant or petitioner has made to the issues presented by respondent's review.

(d) [Reserved; see rule 10.10]

(e) Amicus Curiae Brief. An amicus curiae brief may be filed only if permission is obtained as provided in rule 10.6. If an amicus curiae brief is filed, a brief in answer to the brief of amicus curiae may be filed by a party.

(f) Briefs in Cases Involving Cross Review. If a cross review is filed, the party first filing a notice of appeal or notice of discretionary review is deemed the appellant or petitioner for the purpose of this title, unless the parties otherwise agree or the appellate court otherwise orders.

The following briefs may be filed in cases involving cross review: (1) brief of appellant,

(2) brief of respondent/cross appellant, (3) reply brief of appellant/cross respondent, and (4) reply brief of cross appellant.

(g) Briefs in Consolidated Cases and in Cases Involving Multiple Parties. In cases consolidated for the purpose of review and in a case with more than one party to a side, a party may (1) join with one or more other parties in a single brief, or (2) file a separate brief and adopt by reference any part of the brief of another.

(h) Other Briefs. The appellate court may in a particular case, on its own motion or on motion of a party, authorize or direct the filing of briefs on the merits other than those listed in this rule.

References

Rule 13.7, Proceedings (in Supreme Court) After Acceptance of Review (of Court of Appeals decision), (a) Procedure; Rule 16.10, Personal Restraint Petition--Briefs.

[Amended December 5, 2002]

RAP RULE 10.2
TIME FOR FILING BRIEFS

(a) Brief of Appellant or Petitioner. The brief of an appellant or petitioner should be filed with the appellate court within 45 days after the report of proceedings is filed in the trial court; 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.

(b) Brief of Respondent in Civil Case. The brief of a respondent in a civil case should be filed with the appellate court within 30 days after service of the brief of appellant or petitioner.

(c) Brief of Respondent in Criminal Case. The brief of a respondent in a criminal case should be filed with the appellate court within 60 days after service of the brief of appellant or petitioner.

(d) Reply Brief. A reply brief of an appellant or petitioner should be filed with the appellate court within 30 days after service of the brief of respondent unless the court orders otherwise.

(e) [Reserved; see rule 10.10]

(f) Brief of Amicus Curiae. A brief of amicus curiae not requested by the appellate court should be received by the appellate court and counsel of record for the parties and any other amicus curiae not later than 30 days before oral argument or consideration on the merits, unless the court sets a later date or allows a later date upon a showing of particular justification by the applicant.

(g) Answer to Brief of Amicus Curiae. A brief in answer to the brief of amicus curiae may be filed with the appellate court not later than the date fixed by the appellate court.

(h) Service of Briefs. At the time a party files a brief, the party should serve one copy on every other party and on any amicus curiae, and file proof of service with the appellate court. In a criminal case in which the defendant is the appellant, appellant's counsel shall serve the appellant and file proof of service with the appellate court. Service and proof of service should be made in accordance with rules 18.5 and 18.6.

(i) Sanctions for Late Filing and Service. The appellate court will ordinarily impose sanctions under rule 18.9 for failure to timely file and serve a brief.

References

Rule 18.6, Computation of Time, (c) Filing by mail.

(Amended September 1, 1999; December 5, 2002; September 1, 2006.)

RULE 10.3
CONTENT OF BRIEF

(a) Brief of Appellant or Petitioner. The brief of the appellant or petitioner should contain under appropriate headings and in the order here indicated:

(1) Title Page. A title page, which is the cover.

(2) Tables. A table of contents, with page references, and a table of cases (alphabetically arranged), statutes and other authorities cited, with references to the pages of the brief where cited.

(3) Introduction. A concise introduction. This section is optional. The introduction need not contain citations to the record of authority.

(4) Assignments of Error. A separate concise statement of each error a party contends was made by the trial court, together with the issues pertaining

to the assignments of error.

(5) Statement of the Case. A fair statement of the facts and procedure relevant to the issues presented for review, without argument. Reference to the record must be included for each factual statement.

(6) Argument. The argument in support of the issues presented for review, together with citations to legal authority and references to relevant parts of the record. The argument may be preceded by a summary. The court ordinarily encourages a concise statement of the standard of review as to each issue.

(7) Conclusion. A short conclusion stating the precise relief sought.

(8) Appendix. An appendix to the brief if deemed appropriate by the party submitting the brief. An appendix may not include materials not contained in the record on review without permission from the appellate court, except as provided in rule 10.4(c).

(b) Brief of Respondent. The brief of respondent should conform to section (a) and answer the brief of appellant or petitioner. A statement of the issues and a statement of the case need not be made if respondent is satisfied with the statement in the brief of appellant or petitioner. If a respondent is also seeking review, the brief of respondent must state the assignments of error and the issues pertaining to those assignments of error presented for review by respondent and include argument of those issues.

(c) Reply Brief. A reply brief should conform with subsections (1), (2), (6), (7), and (8) of section (a) and be limited to a response to the issues in the brief to which the reply brief is directed.

(d) [Reserved; see rule 10.10]

(e) Amicus Curiae Brief. The brief of amicus curiae should conform to section (a), except assignments of error are not required and the brief should set forth a separate section regarding the identity and interest of amicus and be limited to the issues of concern to amicus. Amicus must review all briefs on file and avoid repetition of matters in other briefs.

(f) Answer to Brief of Amicus Curiae. The brief in answer to a brief of amicus curiae should be limited solely to the new matters raised in the brief of amicus curiae.

(g) Special Provision for Assignments of Error. A separate assignment of error for each instruction which a party contends was improperly given or refused must be included with reference to each instruction or proposed instruction by number. A separate assignment of error for each finding of fact a party contends was improperly made must be included with reference to the finding by number. The appellate court will only review a claimed error which is included in an assignment of error or clearly disclosed in the associated issue pertaining thereto.

(h) Assignments of Error on Review of Certain Administrative Orders. In addition to the assignments of error required by rule 10.3(a)(3) and 10.3(g), the brief of an appellant or respondent who is challenging an administrative adjudicative order under RCW 34.05 or a final order under RCW 41.64 shall set forth a separate concise statement of each error which a party contends was made by the agency issuing the order, together with the issues pertaining to each assignment of error.

[Amended December 5, 2002; September 1, 2006; amended effective September 1, 2010]

RULE 10.4
PREPARATION AND FILING OF BRIEF BY PARTY

(a) Typing or Printing Brief. Briefs shall conform to the following requirements:

(1) An original and one legible, clean, and reproducible copy of the brief must be filed with the appellate court. The original brief should be printed or typed in black on 20-pound substance 8-1/2 by 11-inch white paper. Margins should be at least 2 inches on the left side and 1-1/2 inches on the right side and on the top and bottom of each page. The brief shall not contain any tabs, colored pages, or binding and should be stapled in the left-hand upper corner.

(2) The text of any brief typed or printed must appear double spaced and in print as 12 point or larger type in the following fonts or their equivalent: Times New Roman, Courier, CG Times, Arial, or in typewriter fonts, pica or elite. The same typeface and print size should be standard throughout the brief, except that footnotes may appear in print as 10 point or larger type and be the equivalent of single spaced. Quotations may be the equivalent of single spaced. Except for material in an appendix, the typewritten or printed material in the brief shall not be reduced or condensed by photographic or other means.

(b) Length of Brief. A brief of appellant, petitioner, or respondent should not exceed 50 pages. Appellant's reply brief should not exceed 25 pages. An amicus curiae brief, or answer thereto, should not exceed 20 pages. In a cross-appeal, the brief of appellant, brief of respondent/cross appellant, and reply brief of appellant/cross respondent should not exceed 50 pages and the reply brief of the cross appellant should not exceed 25 pages. For the purpose of determining compliance with this rule appendices, the title sheet, table of contents, and table of authorities are not included. For compelling reasons the court may grant a motion to file an over-length brief.

(c) Text of Statute, Rule, Jury Instruction, or the Like. If a party presents an issue which requires study of a statute, rule, regulation, jury instruction, finding of fact, exhibit, or the like, the party should type the material portions of the text out verbatim or include them by copy in the text or in an appendix to the brief.

(d) Motion in Brief. A party may include in a brief only a motion which, if granted, would preclude hearing the case on the merits. The answer to a motion within a brief may be made within the brief of the answering party in the time allowed for filing the brief.

(e) Reference to Party. References to parties by such designations as "appellant" and "respondent" should be kept to a minimum. It promotes clarity to use the designations used in the lower court, the actual names of the parties, or descriptive terms such as "the employee," "the injured person," and "the taxpayer."

(f) Reference to Record. A reference to the record should designate the page and part of the record. Exhibits should be referred to by number. The clerk's papers should be abbreviated as "CP"; exhibits should be abbreviated as "Ex"; and the report of proceedings should be abbreviated as "RP." Suitable abbreviations for other recurrent references may be used.

(g) Citation Format. Citations should conform with the format prescribed by the Reporter of Decisions pursuant to GR 14(d). The format requirements of GR 14(a) - (b) do not apply to briefs filed in an appellate court.

(h) Unpublished Opinions. [Reserved. See GR 14.1.]

[Amended December 23, 2002; September 1, 2003; September 1, 2006; September 1, 2007; September 1, 2010]

RAP RULE 10.5
REPRODUCTION AND SERVICE OF BRIEFS BY CLERK

(a) Reproduction of Brief. The appellate court clerk will arrange for the economical reproduction of each brief and bill the party or amicus filing the brief for the cost of reproduction. Each brief will be reproduced in the number of copies deemed necessary by the commissioner or clerk. The party or amicus must pay the cost of reproduction of the brief within 10 days after receiving the bill from the clerk. The appellate court commissioner or clerk may permit, under appropriate standards, a governmental party to reproduce and directly supply to the commissioner or clerk the number of copies required by the court in lieu of reproduction of the briefs being made by the court.

(b) Distribution of Brief. A party filing a brief must serve it in accordance with rules 10.2(h) and 18.5(a). The state law librarian shall determine how many copies of briefs from the Supreme Court and the Court of Appeals are to be transmitted to the State Law Library. The briefs will be transmitted by the clerks and provided at no cost to the State Law Library.

(c) Notice to Appellant in Criminal Case when Defendant is Appellant. In a criminal case, the clerk will, at the time of filing of defendant/appellant's brief, advise the defendant/appellant of the provisions of rule 10.10.

[Amended December 5, 2002; September 1, 2006.]

RAP
RULE 10.6
AMICUS CURIAE BRIEF

(a) When Allowed by Motion. The appellate court may, on motion, grant permission to file an amicus curiae brief only if all parties consent or if the filing of the brief would assist the appellate court. An amicus curiae brief may be filed only by an attorney authorized to practice law in this state, or by a member in good standing of the Bar of another state in association with an attorney authorized to practice law in this state.

(b) Motion. A motion to file an amicus curiae brief must include a statement of (1) applicants interest and the person or group applicant represents, (2) applicants familiarity with the issues involved in the review and with the scope of the argument presented or to be presented by the parties, (3) specific issues to which the amicus curiae brief will be directed, and (4) applicants reason for believing that additional argument is necessary on these specific issues. The brief of amicus curiae may be filed with the motion.

(c) On Request of the Appellate Court. The appellate court may ask for an amicus brief at any stage of review, and establish appropriate timelines for the filing of the amicus brief and answer thereto.

(d) Objection to Motion. An objection to a motion to file an amicus curiae brief must be received by the appellate court and counsel of record for the parties and the applicant not later than 5 business days after receipt of the motion.

(e) Disposition of Motions. The Supreme Court and each division of the Court of Appeals shall establish by general order the manner of disposition of a motion to file an amicus curiae brief, including whether such disposition is reviewable or subject to reconsideration by the particular court.

(Amended September 1, 1999.)

RULE 10.7
SUBMISSION OF IMPROPER BRIEF

If a party submits a brief that fails to comply with the requirements of Title 10, the appellate court, on its own initiative or on the motion of a party, may (1) order the brief returned for correction or replacement within a specified time, (2) order the brief stricken from the files with leave to file a new brief within a specified time, or (3) accept the brief. The appellate court will ordinarily impose sanctions on a party or counsel for a party who files a brief that fails to comply with these rules.

[Amended December 24, 2002]

RULE 10.8
ADDITIONAL AUTHORITIES

A party or amicus curiae may file a statement of additional authorities. The statement should not contain argument, but should identify the issue for which each authority is offered. The statement must be served and filed prior to the filing of the decision on the merits or, if there is a motion for reconsideration, prior to the filing of the decision on the motion.

[Amended effective September 1, 1999, December 5, 2002]

Rule of Appellate Procedure 10.9
Corresponding Briefs on CD-ROM

(a) Filing Corresponding Briefs on Compact Disc. The submission of briefs and appendices on compact disc read-only memory (CD-ROM), referred to in this rule as corresponding briefs, filed as companions to printed briefs is allowed and encouraged, provided that the Supreme Court and each Division of the Court of Appeals may by general order vary any of the conditions of this Rule, and may prohibit the filing of corresponding briefs.

(b) Conditions of filing. A party may file corresponding briefs upon 14 days notice to all other parties and the court, subject to the following requirements:

(1) Content. A CD-ROM with corresponding briefs must contain all appellate briefs filed by all parties. Corresponding briefs must be identical in content to the paper briefs. Corresponding briefs may provide hypertext links to the report of proceedings and clerks papers and to materials cited in the briefs such as cases, statutes, treatises, law review articles, and similar authorities. If any briefs are hyperlinked, all briefs must be similarly hyperlinked by the submitting party. All materials to which a hyperlink is provided must be included on the disc.

(2) Format. Corresponding briefs must come fully equipped with their own viewing program; or, if the disk does not contain its own viewing program, the briefs must be viewable within a version of a program such as Adobe Acrobat, Microsoft Word Viewer, or WordPerfect that is downloadable from the Internet at no cost to the user.

(3) Statement Concerning Instructions and Viruses. Corresponding briefs must be accompanied by a statement, preferably within or attached to the packaging, that

(A) sets forth the instructions for viewing the briefs and the minimum equipment required for viewing; and

(B) verifies the absence of computer viruses and lists the software used to ensure that the briefs are virus-free.

(c) Joint Submission. Upon receiving notice of intent to file corresponding briefs, within 14 days any other party may file notice of intent to join in the submission. When one or more parties join in the submission, the parties shall cooperate in preparing a joint submission.

Absent agreement to the contrary, each party shall arrange for preparation of its own briefs for the joint submission and the party first giving notice shall create the CD-ROM.

(d) Non-Joint Submission. No party is required to prepare a corresponding brief. A party shall cooperate in good faith in the preparation of corresponding briefs by expeditiously providing the submitting party with the party's brief or briefs in electronic format, if available.

(e) Time of Filing. Corresponding briefs must be filed no later than 60 days after the final reply brief. This rule does not affect deadlines for paper briefs. Additional time may be granted for completion of the corresponding briefs.

(f) Costs. The costs incurred in preparing and filing corresponding briefs are not recoverable costs under Title 14 or as attorney fees under Title 18 of these Rules.

[December 5, 2002]

RULE OF APPELLATE PROCEDURE 10.10
STATEMENT OF ADDITIONAL GROUNDS FOR REVIEW

(a) Statement Permitted. A defendant/appellant in a review of a criminal case may file a pro se statement of additional grounds for review to identify and discuss those matters which the defendant/appellant believes have not been adequately addressed by the brief filed by the defendant/appellant's counsel.

(b) Length and Legibility. The statement, which shall be limited to no more than 50 pages, may be submitted in handwriting so long as it is legible and can be reproduced by the clerk.

(c) Citations; Identification of Errors. Reference to the record and citation to authorities are not necessary or required, but the appellate court will not consider a defendant/appellant's statement of additional grounds for review if it does not inform the court of the nature and occurrence of alleged errors. Except as required in cases in which counsel files a motion to withdraw as set forth in RAP 18.3(a)(2), the appellate court is not obligated to search the record in support of claims made in a defendant/appellant's statement of additional grounds for review.

(d) Time for Filing. The statement of additional grounds for review should be filed within 30 days after service upon the defendant/appellant of the brief prepared by defendant/appellant's counsel and the mailing of a notice from the clerk of the appellate court advising the defendant/appellant of the substance of this rule. The clerk will advise all parties if the defendant/appellant files a statement of additional grounds for review.

(e) Report of Proceedings. If within 30 days after service of the brief prepared by defendant/appellant's counsel, defendant/appellant requests a copy of the verbatim report of proceedings from defendant/appellant's counsel, counsel should promptly serve a copy of the verbatim report of proceedings on the defendant/appellant and should file in the appellate court proof of such service. The pro se statement of additional grounds for review should then be filed within 30 days after service of the verbatim report of proceedings. The cost for producing and mailing the verbatim report of proceedings for an indigent defendant/appellant will be reimbursed to counsel from the Office of Public Defense in accordance with Title 15 of these rules.

(f) Additional Briefing. The appellate court may, in the exercise of its discretion, request additional briefing from counsel to address issues raised in the defendant/appellant's pro se statement.

[December 24, 2002]

RULE 11.1
ORAL ARGUMENTS TO WHICH TITLE APPLIES

The rules in this title apply to all oral argument in the appellate court except an argument on a motion.

References
Rule 17.5, Oral Argument of Motion.

RULE 11.2
WHO MAY PRESENT ORAL ARGUMENT

(a) Party. A party of record may present oral argument only if the party has filed a brief.
(b) Amicus Curiae. Amicus curiae may present oral argument only if time is made available for the argument by a party, or if the appellate court grants additional time for argument by amicus curiae.

RULE 11.3
DATE OF ARGUMENT

(a) Notice. The clerk will advise all parties and others who have filed briefs of the time and place of oral argument and the members of the court who will consider the case on the merits.

(b) Rescheduling. A request to reschedule oral argument must be made by motion filed within 15 days of receipt of the letter setting the date for oral argument, except upon a showing of good cause.

[Amended effective September 1, 2010]

RAP RULE 11.4
TIME ALLOWED, ORDER, AND CONDUCT OF ARGUMENT

(a) Time Allowed to a Party. The Supreme Court and each division of the Court of Appeals will define by general order the amount of time each side is allowed for oral argument. If there is more than one party to a side in a single review or in a consolidated review, the parties on that side will share the allotted time equally, unless the parties on that side agree to some other allocation. The appellate court may grant additional time for oral argument upon motion of a party.

(b) Time Allowed to Amicus Curiae. Amicus curiae may present oral argument with the consent of a party and within a portion of the time for oral argument allocated to that party, or within the time allowed by the court.

(c) Order of Argument. The appellant or petitioner is entitled to open and conclude oral argument. The party first filing a notice of appeal or a notice for discretionary review is deemed the appellant or petitioner for the purpose of this rule.

(d) Cross Review. The argument on any cross review must be made at the same time as the argument on the initial review.

(e) Failure To Appear. The appellate court will hear argument on behalf of a party who has filed a brief who appears at the time of oral argument. If none of the parties to the review appears for oral argument, the court may order oral argument at a later time or may decide the case on the briefs.

(f) Scope of Argument. The court ordinarily encourages oral argument. The opening argument may include a fair and concise statement of the facts of the case. Counsel need not argue all issues raised and argued in the briefs.

(g) Reading at Length. Counsel should avoid reading at length from briefs, records, or authorities.

(h) Duplication of Argument. Counsel should avoid duplication of argument, particularly if there are multiple parties arguing in support of the same issue.

(i) Use of Exhibits. Counsel may, to promote clarity of argument, use exhibits brought up as a part of the record and demonstrative or illustrative exhibits not a part of the record. Counsel should arrange, before court convenes, for the placement in the courtroom of exhibits and equipment to be used in oral argument.

(j) Submitting Case without Oral Argument. The appellate court may, on its own initiative or on motion of a party, decide a case without oral argument. If the appellate court decides that the case will be decided without oral argument, the clerk will advise the parties and others who have filed briefs of the date the case is set for consideration on the merits.

[Amended December 5, 2002; September 1, 2006.]

RULE 11.5
[RESERVED]

[December 24, 2002]

RULE 11.6
[RESERVED]

[December 24, 2002].

RULE 12.1
BASIS FOR DECISION

(a) Generally. Except as provided in section (b), the appellate court will decide a case only on the basis of issues set forth by the parties in their briefs.

(b) Issues Raised by the Court. If the appellate court concludes that an issue which is not set forth in the briefs should be considered to properly decide a case, the court may notify the parties and give them an opportunity to present written argument on the issue raised by the court.

RULE 12.2
DISPOSITION ON REVIEW

The appellate court may reverse, affirm, or modify the decision being reviewed and take any other action as the merits of the case and the interest of justice may require. Upon issuance of the mandate of the appellate court as provided in rule 12.5, the action taken or decision made by the appellate court is effective and binding on the parties to the review and governs all subsequent proceedings in the action in any court, unless otherwise directed upon recall of the mandate as provided in rule 12.9, and except as provided in rule 2.5(c)(2). After the mandate has issued, the trial court may, however, hear and decide postjudgment motions otherwise authorized by statute or court rule so long as those motions do not challenge issues already decided by the appellate court.

References

Rule 2.5, Circumstances Which May Affect Scope of Review, (c) Law of the case doctrine restricted; Rule 8.6, Termination of Supersedeas, Injunctions, and Other Orders; Rule 18.1, Attorney Fees and Expenses, (e) Fees and expenses determined after remand.

RAP RULE 12.3
FORMS OF DECISION

(a) Decision Terminating Review. A "decision terminating review" is an opinion, order, or judgment of the appellate court or a ruling of a commissioner or clerk of an appellate court if it:

(1) Is filed after review is accepted by the appellate court filing the decision; and

(2) Terminates review unconditionally; and

(3) Is (i) a decision on the merits, or (ii) a decision by the judges dismissing review, or (iii) a ruling by a commissioner or clerk dismissing review, or (iv) an order refusing to modify a ruling by the commissioner or clerk dismissing review.

(b) Interlocutory Decision. An "interlocutory decision" is any opinion, order, or judgment of the appellate court or ruling of a commissioner or clerk which is not a decision terminating review.

(c) Ruling. A "ruling" is any determination of a commissioner or clerk of an appellate court. The ruling may be a decision terminating review or an interlocutory decision.

(d) Publication of Opinions--Court of Appeals. A majority of the panel issuing an opinion will determine if it will be printed in the Washington Appellate Reports pursuant to RCW 2.06.040 or be filed for public record only. In determining whether the opinion will be published in the Washington Appellate Reports, the panel will use at least the following criteria: (1) Whether the decision determines an unsettled or new question of law or constitutional principle; (2) Whether the decision modifies, clarifies or reverses an established principle of law; (3) Whether a decision is of general public interest or importance; or (4) Whether a case is in conflict with a prior opinion of the Court of Appeals.

(e) Motion To Publish. A motion requesting the Court of Appeals to publish an opinion that had been ordered filed for public record should be served and filed within 20 days after the opinion has been filed. The motion must be supported by addressing the following criteria: (1) if not a party, the applicant's interest and the person or group applicant represents; (2) applicant's reasons for believing that publication is necessary; (3) whether the decision determines an unsettled or new question of law or constitutional principle; (4) whether the decision modifies, clarifies or reverses an established principle of law; (5) whether the decision is of general public interest or importance; or (6) whether the decision is in conflict with a prior opinion of the Court of Appeals. A party should not file an answer to a motion to publish or a reply to an answer unless requested by the appellate court. The court will not grant a motion to publish without requesting an answer.

[Amended December 5, 2002; September 1, 2006.]

RULE 12.4
MOTIONS FOR RECONSIDERATION OF DECISION TERMINATING REVIEW

(a) Generally. A party may file a motion for reconsideration only of a decision by the judges (1) terminating review, or (2) granting or denying a personal restraint petition on the merits. The motion should be in the form and be served and filed as provided in rules 17.3(a), 17.4(a) and (g), and 18.5, except as otherwise provided in this rule. A party may not file a motion for reconsideration of an order refusing to modify a ruling by the commissioner or clerk, nor may a party file a motion for reconsideration of a Supreme Court order denying a petition for review.

(b) Time. The party must file the motion for reconsideration within 20 days after the decision the party wants reconsidered is filed in the appellate court.

(c) Content. The motion should state with particularity the points of law or fact which the moving party contends the court has overlooked or misapprehended, together with a brief argument on the points raised.

(d) Answer and Reply. A party should not file an answer to a motion for reconsideration or a reply to an answer unless requested by the appellate court.

(e) Length. The motion, answer, or reply should not exceed 25 pages in length.

(f) No Oral Argument. A motion for reconsideration will be decided without oral argument.

(g) Grant of Motion. If a motion for reconsideration is granted, the appellate court may (1) modify the decision without new argument, (2) call for new argument, or (3) take such other action as may be appropriate.

(h) Only One Motion Permitted. Each party may file only one motion for reconsideration, unless the appellate court withdraws its opinion and files a subsequent opinion. Any party adversely affected by the subsequent opinion may file a motion for reconsideration.

(i) Amicus Curiae Memoranda. When a motion for reconsideration has been filed, the appellate court may grant permission to file an amicus curiae memorandum for the purpose of addressing the court regarding the soundness of legal principles announced in the course of the opinion. Absent a showing of particular justification, an amicus curiae memorandum should be received by the court and counsel of record for the parties and any other amicus curiae not later than 5 days after the motion for reconsideration has been filed. Rules 10.4 and 10.6 should govern generally disposition of a motion to file an amicus curiae memorandum, except that no answer to an amicus curiae memorandum should be filed unless requested by the court. An amicus curiae memorandum or answer should not exceed 10 pages.

[Amended September 1, 1999; December 5, 2002; September 1, 2010]

RULE 12.5
MANDATE

(a) Mandate Defined. A "mandate" is the written notification by the clerk of the appellate court to the trial court and to the parties of an appellate court decision terminating review. No mandate issues for an interlocutory decision of the appellate court.

(b) When Mandate Issued by Court of Appeals. The Clerk of the Court of Appeals will issue the mandate for a Court of Appeals decision terminating review upon stipulation of the parties that no motion for reconsideration or petition for review will be filed. In the absence of that stipulation, and except to the extent the mandate is stayed as provided in rule 12.6, the clerk will issue the mandate: (1) Thirty (30) days after the decision is filed, unless (i) a motion for reconsideration of the decision or a motion to publish has been earlier filed, (ii) a petition for review to the Supreme Court has been earlier filed, or (iii) the decision is a ruling of the commissioner or clerk and a motion to modify the ruling has been earlier filed. (2) If a motion for reconsideration or motion to publish is timely filed, 30 days after expiration of the time for filing a petition for review under rule 13.4(a). (3) If a petition for review has been timely filed and denied by the Supreme Court, upon denial of the petition for review.

(c) When Mandate Issued by Supreme Court. (1) The clerk of the Supreme Court issues the mandate for a Supreme Court decision terminating review upon stipulation of the parties that no motion for reconsideration will be filed. (2) In the absence of such a stipulation, except in a case in which the penalty of death is to be imposed, the clerk issues the mandate twenty days after the decision is filed, unless (i) a motion for reconsideration has been earlier filed, or (ii) the decision is a ruling of the commissioner or clerk and a motion to modify the ruling has been earlier filed. If a motion for reconsideration is timely filed and denied, the clerk will issue the mandate upon filing the order denying the motion for reconsideration. (3) In a case in which the penalty of death is to be imposed, unless the parties stipulate to earlier issuance of the mandate, the clerk will issue the mandate upon the expiration of the time for applying for review by the United States Supreme Court, or, if such an application is timely filed, upon receipt of the Supreme Court's order disposing of the matter.

(d) Copies Provided in Criminal Case. When the appellate court remands a criminal case to the trial court, the clerk of the appellate court shall transmit a copy of the mandate to the presiding judge of the trial court, to trial counsel of record, and to the clerk of the trial court.

(e) Certificate of Finality. A Certificate of Finality is the written notification by the clerk of the appellate court to the trial court and to the parties of the completion of the proceeding in the appellate court when review is not accepted. The clerk of the Court of Appeals will issue the Certificate of Finality 30 days after the decision is filed unless (i) a motion to modify has been earlier filed or (ii) a motion for discretionary review to the Supreme Court has been earlier filed.

[Amended effective September 1, 2010.]

RULE 12.6
STAY OF MANDATE PENDING DECISION ON APPLICATION FOR REVIEW BY UNITED STATES SUPREME COURT

Except as provided in RAP 12.5, the appellate court will not stay issuance of the mandate for the length of time necessary to secure a decision by the United States Supreme Court on an application for review.

RULE 12.7
FINALITY OF DECISION

(a) Court of Appeals. The Court of Appeals loses the power to change or modify its decision (1) upon issuance of a mandate in accordance with rule 12.5, except when the mandate is recalled as provided in rule 12.9, (2) upon acceptance by the Supreme Court of review of the decision of the Court of Appeals, or (3) upon issuance of a certificate of finality as provided in rules 12.5(e) and rule 16.15.(e).

(b) Supreme Court. The Supreme Court loses the power to change or modify a decision of the Court of Appeals upon issuance of the mandate of the Court of Appeals in accordance with rule 12.5, except when the mandate is recalled as provided in rule 12.9. The Supreme Court loses the power to change or modify a Supreme Court decision upon issuance of the mandate of the Supreme Court in accordance with rule 12.5, except when the mandate is recalled as provided in rule 12.9.

(c) Special Rule for Costs and Attorney Fees and Expenses. The appellate court retains the power after the issuance of the mandate or certificate of finality to act on questions of costs as provided in Title 14 and on questions of attorney fees and expenses as provided in rule 18.1.

(d) Special Rule for Law of the Case. The appellate court retains the power to change a decision as provided in rule 2.5(c)(2).

[Amended December 5, 2002; September 1, 2010]

RULE 12.8
EFFECT OF REVERSAL ON INTERVENING RIGHTS

If a party has voluntarily or involuntarily partially or wholly satisfied a trial court decision which is modified by the appellate court, the trial court shall enter orders and authorize the issuance of process appropriate to restore to the party any property taken from that party, the value of the property, or in appropriate circumstances, provide restitution. An interest in property acquired by a purchaser in good faith, under a decision subsequently reversed or modified, shall not be affected by the reversal or modification of that decision.

RULE 12.9
RECALL OF MANDATE OR CERTIFICATE OF FINALITY

(a) To Require Compliance With Decision. The appellate court may recall a mandate issued by it to determine if the trial court has complied with an earlier decision of the appellate court given in the same case. The question of compliance by the trial court may be raised by motion to recall the mandate, or by initiating a separate review of the lower court decision entered after issuance of the mandate.

(b) To Correct Mistake or Remedy Fraud. The appellate court may recall a mandate or certificate of finality issued by it to correct an inadvertent mistake or to modify a decision obtained by the fraud of a party or counsel in

the appellate court.

(c) Time for Motion. The motion to recall the mandate or certificate of finality must be made within a reasonable time.

[Amended September 1, 2010]

RULE 13.1
METHOD OF SEEKING REVIEW

(a) One Method of Seeking Review. The only method of seeking review by the Supreme Court of decisions of the Court of Appeals is review by permission of the Supreme Court, called "discretionary review."

(b) Writ Procedure Superseded. The procedure for seeking review of decisions of the Court of Appeals established by these rules supersedes the review procedure formerly available by extraordinary writs of review, certiorari, mandamus, prohibition, and other writs formerly considered necessary and proper to the complete exercise of appellate and revisory jurisdiction of the Supreme Court.

RULE 13.2

(RESCINDED)

RULE 13.3
DECISIONS REVIEWED AS A MATTER OF DISCRETION

(a) What May Be Reviewed. A party may seek discretionary review by the Supreme Court of any decision of the Court of Appeals which is not a ruling including:

(1) Decision Terminating Review. Any decision terminating review.

(2) Interlocutory Decision. Subject to the restrictions imposed by rule 13.5(b), any interlocutory decision, including but not limited to (i) a decision denying a motion to modify a ruling of the commissioner or clerk which denies a motion for discretionary review, and (ii) if the clerk refers a motion for discretionary review to the court, a decision by the court which denies a motion for discretionary review.

(b) Decision Terminating Review. A party seeking review of a Court of Appeals decision terminating review may first file a motion for reconsideration under rule 12.4 and must file a "petition for review" or an "answer" to a petition for review as provided in rule 13.4.

(c) Interlocutory Decision. A party seeking review of an interlocutory decision of the Court of Appeals must file a "motion for discretionary review" as provided in rule 13.5.

(d) Incorrect Designation of Motion or Petition. A motion for discretionary review of a decision terminating review will be given the same effect as a petition for review. A petition for review of an interlocutory decision will be given the same effect as a motion for discretionary review.

(e) Ruling by Commissioner or Clerk. A ruling by a commissioner or clerk of the Court of Appeals is not subject to review by the Supreme Court. The decision of the Court of Appeals on a motion to modify a ruling by the commissioner or clerk may be subject to review as provided in this title.

References

Rule 12.3, Forms of Decision; Rule 17.3, Content of Motion, (b) Motion for discretionary review.

RULE 13.4
DISCRETIONARY REVIEW OF DECISION TERMINATING REVIEW

(a) How to Seek Review. A party seeking discretionary review by the Supreme Court of a Court of Appeals decision terminating review must serve on all other parties and file a petition for review or an answer to the petition that raises new issues. A petition for review should be filed in the Court of Appeals. If no motion to publish or motion to reconsider all or part of the Court of Appeals decision is timely made, a petition for review must be filed within 30 days after the decision is filed. If such a motion is made, the petition for review must be filed within 30 days after an order is filed denying a timely motion for reconsideration or determining a timely motion to publish. If the petition for review is filed prior to the Court of Appeals determination on the motion to reconsider or on a motion to publish, the petition will not be forwarded to the Supreme Court until the Court of Appeals files an order on all such motions. The first party to file a petition for review must, at the time the petition is filed, pay the statutory filing fee to the clerk of the Court of Appeals in which the

petition is filed. Failure to serve a party with the petition for review or file proof of service does not prejudice the rights of the party seeking review, but may subject the party to a motion by the Clerk of the Supreme Court to dismiss the petition for review if not cured in a timely manner. A party prejudiced by the failure to serve the petition for review or to file proof of service may move in the Supreme Court for appropriate relief.

(b) Considerations Governing Acceptance of Review. A petition for review will be accepted by the Supreme Court only:

(1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or

(2) If the decision of the Court of Appeals is in conflict with another decision of the Court of Appeals; or

(3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or

(4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

(c) Content and Style of Petition. The petition for review should contain under appropriate headings and in the order here indicated:

(1) Cover. A title page, which is the cover.

(2) Tables. A table of contents, with page references, and a table of cases (alphabetically arranged), statutes and other authorities cited, with reference to the pages of the brief where cited.

(3) Identity of Petitioner. A statement of the name and designation of the person filing the petition.

(4) Citation to Court of Appeals Decision. A reference to the Court of Appeals decision which petitioner wants reviewed, the date of filing the decision, and the date of any order granting or denying a motion for reconsideration.

(5) Issues Presented for Review. A concise statement of the issues presented for review.

(6) Statement of the Case. A statement of the facts and procedures relevant to the issues presented for review, with appropriate references to the record.

(7) Argument. A direct and concise statement of the reason why review should be accepted under one or more of the tests established in section (b), with argument.

(8) Conclusion. A short conclusion stating the precise relief sought.

(9) Appendix. An appendix containing a copy of the Court of Appeals decision, any order granting or denying a motion for reconsideration of the decision, and copies of statutes and constitutional provisions relevant to the issues presented for review.

(d) Answer and Reply. A party may file an answer to a petition for review. A party filing an answer to a petition for review must serve the answer on all other parties. If the party wants to seek review of any issue that is not raised in the petition for review, including any issues that were raised but not decided in the Court of Appeals, the party must raise those new issues in an answer. Any answer should be filed within 30 days after the service on the party of the petition. A party may file a reply to an answer only if the answering party seeks review of issues not raised in the petition for review. A reply to an answer should be limited to addressing only the new issues raised in the answer. A party filing any reply to an answer must serve the reply to the answer on all other parties. A reply to an answer should be filed within 15 days after the service on the party of the answer. An answer or reply should be filed in the Supreme Court. The Supreme Court may call for an answer or a reply to an answer.

(e) Form of Petition, Answer, and Reply. The petition, answer, and reply should comply with the requirements as to form for a brief as provided in rules 10.3 and 10.4, except as otherwise provided in this rule.

(f) Length. The petition for review, answer, or reply should not exceed 20 pages double spaced, excluding appendices.

(g) Reproduction of Petition, Answer, and Reply. The clerk will arrange for the reproduction of copies of a petition for review, an answer, or a reply, and bill the appropriate party for the copies as provided in rule 10.5.

(h) Amicus Curiae Memoranda. The Supreme Court may grant permission to file an amicus curiae memorandum in support of or opposition to a pending petition for review. Absent a showing of particular justification, an amicus curiae memorandum should be received by the court and counsel of record for the parties and other amicus curiae not later than 60 days from the date the petition for review is filed. Rules 10.4 and 10.6 should govern generally disposition of a motion to file an amicus curiae memorandum. An amicus curiae memorandum or answer thereto should not exceed 10 pages.

(i) No Oral Argument. The Supreme Court will decide the petition without oral argument.

[Amended September 1, 1999; December 5, 2002; September 1, 2006; September 1, 2009; September 1, 2010 (format changes only)]

RULE 13.5
DISCRETIONARY REVIEW OF INTERLOCUTORY DECISION

(a) How To Seek Review. A party seeking review by the Supreme Court of an interlocutory decision of the Court of Appeals must file a motion for discretionary review in the Supreme Court and a copy in the Court of Appeals within 30 days after the decision is filed.

(b) Considerations Governing Acceptance of Review. Discretionary review of an interlocutory decision of the Court of Appeals will be accepted by the Supreme Court only:

(1) If the Court of Appeals has committed an obvious error which would render further proceedings useless; or

(2) If the Court of Appeals has committed probable error and the decision of the Court of Appeals substantially alters the status quo or substantially limits the freedom of a party to act; or

(3) If the Court of Appeals has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a trial court or administrative agency, as to call for the exercise of revisory jurisdiction by the Supreme Court.

(c) Motion Procedure. The procedure for and the form of the motion for discretionary review is as provided in Title 17. A motion for discretionary review under this rule, and any response, should not exceed 20 pages double spaced, excluding appendices.

(d) Effect of Denial. Denial of discretionary review of a decision does not affect the right of a party to obtain later review of the Court of Appeals decision or the issues pertaining to that decision.

References

Form 3, Motion for Discretionary Review.

RULE 13.5A
MOTIONS FOR DISCRETIONARY REVIEW OF SPECIFIED FINAL DECISIONS

(a) Scope of Rule. This rule governs motions for discretionary review by the Supreme Court of the following decisions of the Court of Appeals:

(1) Decisions dismissing or deciding personal restraint petitions, as provided in rule 16.14(c);

(2) Decisions dismissing or deciding post-sentence petitions, as provided in rule 16.18(g);

(3) Decisions on accelerated review that relate only to a juvenile offense disposition, juvenile dependency, or termination of parental rights, as provided in rule 18.13(e) or 18.13A(j);

(4) Decisions on accelerated review that relate only to an adult sentence, as provided in rule 18.15(g).

(b) Considerations Governing Acceptance of Review. In ruling on motions for discretionary review pursuant to this rule, the Supreme Court will apply the considerations set out in rule 13.4(b).

(c) Procedure. The procedure for motions pursuant to this rule shall be the same as specified in rule 13.5(a) and (c).

[Adopted effective September 1, 2006; amended effective October 21, 2008.]

RULE 13.6
ACCEPTANCE OF REVIEW

The Supreme Court accepts discretionary review of a decision of the Court of Appeals by granting a motion for discretionary review or by granting a petition for review. Upon accepting discretionary review, the Supreme Court may specify the issue or issues as to which review is granted.

RAP RULE 13.7
PROCEEDINGS AFTER ACCEPTANCE OF REVIEW

(a) Procedure. The procedure in the Supreme Court, after acceptance of review of a decision of the Court of Appeals, is the same as the procedure in the Supreme Court after acceptance of review of a trial court decision, except that (1) the record in the Court of Appeals is the record on review in the Supreme Court, and (2) only the briefs filed in the Court of Appeals and the documents submitted in connection with the motion for discretionary review or petition for review will be considered by the Supreme Court, unless additional briefs are submitted by the parties in accordance with sections (d) and (e) of this rule or are requested by the Supreme Court.

(b) Scope of Review. If the Supreme Court accepts review of a Court of Appeals decision, the Supreme Court will review only the questions raised in the motion for discretionary review, if review is sought of an interlocutory decision, or the petition for review and the answer, unless

the Supreme Court orders otherwise upon the granting of the motion or petition. The Supreme Court may limit the issues to one or more of those raised by the parties. If the Supreme Court reverses a decision of the Court of Appeals that did not consider all of the issues raised which might support that decision, the Supreme Court will either consider and decide those issues or remand the case to the Court of Appeals to decide those issues.

(c) Other Limitations on Scope of Review. The scope of review may be further affected by the circumstances set forth in rule 2.5.

(d) Supplemental Briefs, Authorized. Within 30 days after the Supreme Court grants a petition for review, or a motion for discretionary review, any party may file and serve a supplemental brief in accordance with these rules. No response to a supplemental brief may be filed or served except by leave of the Supreme Court.

(e) Supplemental Briefs, Special Requirements.

(1) Form. Except as to length, a supplemental brief should conform to rules 10.3 and 10.4 and should be captioned "supplemental brief of (petitioner/respondent--name of party)."

(2) Length. A supplemental brief should not exceed 20 double spaced pages. The title sheet, appendices, table of contents and table of authorities are not included in this page limitation. For compelling reasons the court may grant a motion to file an over-length brief.

(3) Filing and Service. A supplemental brief should be filed in the Supreme Court and served in accordance with rule 10.2.

References

Rule 2.5, Circumstances Which May Affect Scope of Review.

[Amended effective September 1, 2006.]

RULE 14.1
COSTS GENERALLY

(a) When Allowed. The appellate court determines costs in all cases after the filing of a decision terminating review, except as provided in rule 18.2 relating to voluntary withdrawal of review.

(b) Which Court Determines and Awards Costs. Costs on review are determined and awarded by the appellate court which accepts review and makes the final determination of the case.

(c) Who Determines and Awards Costs. If the court determines costs in its opinion or order, a commissioner or clerk will award costs in accordance with that determination. In all other circumstances, a commissioner or clerk determines and awards costs by ruling as provided in rule 14.6(a). A party may object to the ruling of a commissioner or clerk as provided in rule 14.6(b).

(d) Who Is Entitled to Costs. Rule 14.2 defines who is entitled to costs.

(e) What Expenses Are Allowed as Costs. Rule 14.3 defines the expenses which may be allowed as costs.

(f) How Costs Are Claimed--Objections. A party claims costs by filing a cost bill in the manner provided in rule 14.4. A party objects to claimed costs in the manner provided in rule 14.5.

References

Rule 18.1, Attorney Fees and Expenses.

RULE 14.2
WHO IS ENTITLED TO COSTS

A commissioner or clerk of the appellate court will award costs to the party that substantially prevails on review, unless the appellate court directs otherwise in its decision terminating review. If there is no substantially prevailing party on review, the commissioner or clerk will not award costs to any party. An award of costs will specify the party who must pay the award. In a criminal case involving an indigent juvenile or adult offender, an award of costs will apportion the money owed between the county and the State. A party who is a nominal party only will not be awarded costs and will not be required to pay costs. A "nominal party" is one who is named but has no real interest in the controversy.

RULE 14.3
EXPENSES ALLOWED AS COSTS

(a) Generally. Only statutory attorney fees and the reasonable expenses actually incurred by a party for the following items which were reasonably

necessary for review may be awarded to a party as costs: (1) preparation of the original and one copy of the report of proceedings, (2) copies of the clerk's papers, (3) preparation of a brief or other original document to be reproduced by the clerk, as provided in rule 14.3(b), (4) transmittal of the record on review, (5) expenses incurred in superseding the decision of the trial court, but not ordinarily greater than the usual cost of a commercial surety bond, (6) the lesser of the charges of the clerk for reproduction of briefs, petitions, and motions, or the costs incurred by the party reproducing briefs as authorized under rule 10.5(a), (7) the filing fee, and (8) such other sums as provided by statute. If a party has incurred an expense for one of the designated items, the item is presumed to have been reasonably necessary for review, which presumption is rebuttable. The amount paid by a party for the designated item is presumed reasonable, which presumption is rebuttable.

(b) Special Rule for Cost of Preparing Brief or Other Original Document. The costs awarded for preparing a brief or other original document is an amount per page fixed from time to time by the Supreme Court. The cost for preparing a brief or other original document will only be awarded for a brief or document which substantially complies with these rules and only for the actual number of pages of the brief or document including the front cover and appendix. If a brief or document is unreasonably long, costs will be awarded only for a reasonable number of pages.

(c) Special Rule for Indigent Review. An Indigent may not recover costs from the State for expenses paid with public funds as provided in Title 15. The clerk or commissioner will claim costs due from other parties which reimburse the State for expenses paid with public finds as provided in Title 15.

[Amended effective July 1, 1976; July 2, 1976; September 1, 1985; September 1, 1994; September 1, 2010 (references only)]

References

Rule 18.1, Attorney Fees and Expenses; RCW 4.84.080(2), Schedule of Attorneys' Fees

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RULE 14.4
COST BILL

(a) Generally. Except as provided in sections (b) and (c), a party seeking costs on review must file a cost bill with the appellate court and serve a copy of the cost bill on all parties within 10 days after the filing of an appellate court decision terminating review. If a party seeks costs for an expense incurred after the time to file a cost bill has expired, that party must serve on all parties and file a supplemental cost bill with the appellate court within 10 days after the expense was incurred. If a decision terminating review is modified to the extent that a different party is entitled to costs, the party seeking costs must file a cost bill with the appellate court and serve a copy of the cost bill on all parties within 10 days after the filing of the decision which modifies the original decision terminating review.

(b) When Costs Abide Final Result and There Is no Second Review. If the costs on review are to abide the final determination in the trial court and that final determination is not reviewed by the appellate court, a party seeking costs must, within 30 days after the time to seek review of the trial court decision has expired, file with the appellate court and serve on each party: (1) a cost bill for costs on review, or if a cost bill was filed for the earlier review, a copy of the cost bill previously filed in the appellate court, (2) a copy of the final determination of the trial court, and (3) an affidavit stating that a notice of appeal or notice for discretionary review of the decision finally determining the case has not been filed.

(c) When Costs Abide Final Result and There Is a Second Review. If the costs on review are to abide the final determination of the case by the trial court and that final determination is reviewed by the appellate court, the costs of the earlier review will be taxed at the same time the costs of the later review are taxed. A party seeking costs of the earlier review must file (1) a cost bill for costs on the earlier review or, if a cost bill was filed for the earlier review, a copy of the cost bill for the earlier review, and (2) a cost bill for the later review.

References

Form 10, Cost Bill; Rule 12.5, Mandate.

RULE 14.5
OBJECTIONS TO COST BILL

A party may object to items in the cost bill of another party by serving on all parties and filing with the appellate court objections to the cost bill within 10 days after service of the cost bill upon the party.

References

Form 11, Objections to Cost Bill.

RULE 14.6
AWARD OF COSTS

(a) Commissioner or Clerk Awards Costs. A commissioner or the clerk will determine costs within 10 days after the time has expired for filing objections to the cost bill. The commissioner or clerk will notify the parties of the ruling on costs.

(b) Objection to Ruling. A party may only object to the ruling on costs by motion to the appellate court in the same manner and within the same time as provided for objections to any other rulings of a commissioner or clerk as provided in rule 17.7.

(c) Transmitting Costs. The commissioner or clerk will award costs in the mandate or the certificate of finality or in a post-mandate ruling or order. An award of costs may be enforced as part of the judgment in the trial court.

[December 24 ,2002]

RULE 15.1
PROCEDURES TO WHICH TITLE APPLIES

The rules in this title define the procedure to be used (1) to determine indigency and to determine the expenses of an indigent party to review what will be paid from public funds as provided in rule 15.2, (2) to obtain a waiver of charges imposed by the court as provided in rule 15.3, (3) to claim payment from public funds for services rendered to an indigent party to review as provided in rule 15.4, (4) to allow claims for expense as provided in rule 15.5, and (5) to recover public funds expended on behalf of an indigent as provided in rule 15.6. The rules in this title apply to all proceedings in the appellate court, except the rules apply to personal restraint petitions only to the extent defined in rule 16.15(g) and (h).

[Amended September 1, 2010]

RAP RULE 15.2
DETERMINATION OF INDIGENCY AND RIGHTS OF INDIGENT PARTY

(a) Motion for Order of Indigency. A party seeking review in the Court of Appeals or the Supreme Court partially or wholly at public expense must move in the trial court for an order of indigency. The party shall submit a Motion for Order of Indigency in the form prescribed by the Office of Public Defense.
(b) Action by the Trial Court. The trial court shall determine the indigency, if any, of the party seeking review at public expense. The determination shall be made in written findings after a hearing, if circumstances warrant, or by reevaluating any order of indigency previously entered by the trial court. The court:

(1) shall grant the motion for an order of indigency if the party seeking public funds is unable by reason of poverty to pay for all or some of the expenses for appellate review of:

(a) criminal prosecutions or juvenile offense proceedings meeting the requirements of RCW 10.73.150,

(b) dependency and termination cases under RCW 13.34,

(c) commitment proceedings under RCW 71.05 and 71.09,

(d) civil contempt cases directing incarceration of the contemner,

(e) orders denying petitions for writ of habeas corpus under RCW 7.36, including attorneys' fees upon a showing of extraordinary circumstances, and

(f) any other case in which the party has a constitutional or statutory right to counsel at all stages of the proceeding; or

(2) shall deny the motion for an order of indigency if a party has adequate means to pay all of the expenses of review. The order denying the motion for an order of indigency shall contain findings designating the funds or source of funds available to the party to pay all of the expenses of review.

(c) Other Cases. In cases not governed by subsection (b) of this rule, the trial court shall determine in written findings the indigency, if any, of the party seeking review. The party must demonstrate in the motion or the supporting affidavit that the issues the party wants reviewed have probable merit and that the party has a constitutional or statutory right to review partially or wholly at public expense.

(1) Party Not Indigent. The trial court shall deny the motion if a party has adequate means to pay all of the expenses of review. The order denying the motion for an order of indigency shall contain findings designating the funds or source of funds available to the party to pay all of the expenses of review.

(2) Party Indigent. If the trial court finds the party seeking review is unable by reason of poverty to pay for all or some of the expenses of appellate review, the trial court shall enter such findings, which shall be forwarded to

the Supreme Court for consideration, pursuant to section (d) of this rule. The trial court shall determine in those findings the portion of the records necessary for review and the amount, if any, the party is able to contribute toward the expense of review. The findings shall conclude with an order to the clerk of the trial court to promptly transmit to the Supreme Court, without charge to the moving party, the findings of indigency, the affidavit in support of the motion, and all other papers submitted in support of or in opposition to the motion. The trial court clerk shall promptly transmit to the Supreme Court the papers designated in the findings of indigency.

(d) Action by Supreme Court. If findings of indigency and other papers relating to the motion for an order of indigency are transmitted to the Supreme Court, the Supreme Court will determine whether an order of indigency in that case should be entered by the superior court. The determination will be made by a department of the Supreme Court on a regular motion day without oral argument and based only on the papers transmitted to the Supreme Court by the trial court clerk, unless the Supreme Court directs otherwise. If the Supreme Court determines that the party is seeking review in good faith, that an issue of probable merit is presented, and that the party is entitled to review partially or wholly at public expense, the Supreme Court will enter an order directing the trial court to enter an order of indigency. In all other cases, the Supreme Court will enter an order denying the party's motion for an order of indigency. The clerk of the appellate court will transmit a copy of the order to the clerk of the trial court and notify all parties of the decision of the Supreme Court.

(e) Order of Indigency. An order of indigency shall designate the items of expense which are to be paid with public funds and, where appropriate, the items of expense to be paid by a party or the amount which the party must contribute toward the expense of review. The order shall designate the extent to which public funds are to be used for payment of the expense of the record on review, limited to those parts of the record reasonably necessary to review issues argued in good faith. The order of indigency must be transmitted to the appellate court as a part of the record on review.

(f) Continued Indigency Presumed. A party and counsel for the party who has been granted an order of indigency must bring to the attention of the trial court any significant improvement during review in the financial condition of the party. The appellate court will give a party the benefits of an order of indigency throughout the review unless the trial court finds the party's financial condition has improved to the extent that the party is no longer indigent.

(g) Appointment and Withdrawal of Counsel in Appellate Court. The appellate court shall determine questions relating to the appointment and withdrawal of counsel for an indigent party on review. The Office of Public Defense shall, in accordance with its indigent appellate representation policies, provide the names of indigent appellate counsel to the appeallate courts on a case-by-case basis. If trial counsel is not appointed, trial counsel must assist counsel appointed for review in preparing the record.

(h) Review of Order or Finding of Indigency. A party in a case of a type listed in section (b)(1) of this rule may seek review of an order of indigency or an order denying an order of indigency entered by a trial court. A party may also seek review of written findings under section (c)(1) of this rule that the party is not indigent. Review must be sought by a motion for discretionary review.

(i) Withdrawal of Counsel in Appellate Court. If counsel can find no basis for a good faith argument on review, counsel should file a motion in the appellate court to withdraw as counsel for the indigent as provided in rule 18.3(a).

[Amended December 2, 1999; December 5, 2002; Amended September 9, 2004 with delayed implementation date of July 1, 2005; amended effective January 3, 2006; amended effective September 1, 2010]

RULE 15.3
PAYMENT OF CHARGES FOR REPRODUCING BRIEFS

The appellate court will submit charges for reproducing briefs and other papers to the Office of Public Defense to the extent authorized by the order of indigency.

[Amended May 29, 2001.]

RULE 15.4
CLAIM FOR PAYMENT OF EXPENSE FOR INDIGENT PARTY

(a) Conditions for Payment. The expenses for an indigent party which are necessarily incident to review by an appellate court will be paid from public funds only if:

(1) An order of indigency is included in the record on review; and

(2) An order properly authorizes the expense claimed; and

(3) The claim is made by filing an invoice in the form and manner provided by this rule and procedures established by the Office of Public Defense.

The invoice of a court reporter may be submitted as soon as

the report of proceedings has been filed by the court reporter. The invoice of a superior court clerk may be submitted as soon as the expense has been incurred. Invoices of counsel, court reporters, and superior court clerks must be filed within 20 days after the filing of the decision terminating review or 30 days after the denial of reconsideration, whichever is later.

(b) Reserved.

(c) Invoice of Counsel. An invoice submitted by counsel representing an indigent party should be titled "Invoice of Counsel for Indigent Party." All invoices shall be submitted and certified in a form and manner consistent with policies adopted and published by the Office of Public Defense.

(1) The invoice must include a copy of the brief, a statement of the number of hours spent by counsel preparing the review, the amount of compensation claimed, and the reasonable expenses excluding normal overhead incurred by counsel for the review including travel expenses of counsel incurred for argument in the appellate court. Travel expenses may not exceed the amount allowable to state employees for travel by private vehicle. The invoice must include an affidavit of counsel stating that the items listed are correct charges for necessary services rendered and expenses incurred for proper consideration of the review.

(2) Providers who are under contract shall submit invoices in accordance with the terms of their contract.

(d) Invoice of Court Reporter or Typist.

(1) An invoice submitted by the court reporter should be titled "Invoice of Court Reporter or Typist--Indigent Case." The invoice must state the number of pages transcribed and the billing rate per page. The billing rate must be at the rate per page or line page equivalent set by the Supreme Court for the original and one copy of that portion of the report of proceedings ordered by the superior court. Additional copies which have been authorized and ordered from the reporter must be charged for as though reproduced by the most economical method available to the reporter. The superior court clerk shall certify the reporter's invoice as follows:

> I hereby certify that the amount claimed in this invoice is for that portion of the verbatim report of proceedings ordered by the trial court; that the typing of the report is in accordance with appellate rule 9.2(e) and (g); and that the bill is computed at the current rate per page set by the Supreme Court for the original and one copy, namely $_____ per page.

(e) Invoice of Superior Court Clerk. An invoice submitted by the superior court clerk should be titled "Invoice of Superior Court Clerk--Indigent Case." The invoice must itemize the clerk's charges for the preparation of the record ordered by counsel for the indigent or the trial court and list the actual expenses of the clerk for transmittal of those portions of the record. The superior court clerk shall certify the clerk's invoice as follows:

> I hereby certify that the items listed in this invoice are correct charges for the preparation of those portions of the record ordered by counsel or the trial court and for the actual expense of transmittal of those portions of the record.

[Amended June 6, 1996; May 29, 2001; November 25, 2003.]

RULE 15.5
ALLOWANCE OF CLAIM FOR PAYMENT OF EXPENSE FOR INDIGENT PARTY

(a) Allowance Generally. The director of the Office of Public Defense determines all claims for expense. The director will allow or disallow all or part of the claimed expense within 15 days, excluding weekends and legal holidays, after the invoice has been filed in the Office of Public Defense. The director will notify the claimant of the decision. A claimant may object to the decision of the director by letter to the Office of Public Defense Advisory Committee not later than 30 days after the director's decision and the Committee's decision is final.

(b) Disallowance of Claim. If a brief is unnecessarily long, improper in substance, or not in compliance with these rules, all or a portion of counsel's claim may be disallowed. If the court reporter or counsel has been dilatory, all or a portion of the claim of the court reporter or the claim of counsel may be disallowed.

[Amended June 6, 1996; May 29, 2001; September 1, 2010]

RULE 15.6
RECOVERY OF PUBLIC FUNDS

If a case on review is returned to the trial court for further proceedings and the case involves a claim for a money judgment for the party on whose behalf public funds have been expended, the Clerk of the Supreme Court will indicate the amount of public funds expended on behalf of the party in the mandate or in a supplemental judgment. The amount indicated in the mandate and supplemental judgment is a lien on any settlement or judgment obtained by the party on whose behalf public funds have been expended. This lien must be satisfied prior to the payment of any other amounts to the party. If a judgment is entered, the judgment should reflect the lien imposed by this rule. The amount of the lien must be paid to the clerk of the superior court. The clerk of the superior court shall forward all funds recovered to the director of the Office of Public Defense, who will credit these funds to the Indigent Appeal Allotment.

References

Rule 14.3, Expenses Allowed as Costs, (c) Special rule for indigent review.

Amended June 6, 1996

RULE 16.1
PROCEEDINGS TO WHICH TITLE APPLIES

(a) Generally. The rules in this title establish the procedure for original actions in the Supreme Court and in the Court of Appeals, and the procedure for determining questions of law certified by a federal court.

(b) Original Actions in Supreme Court Against State Officers. Rule 16.2 defines the procedure for petitions against state officers for writs of mandamus, prohibition, quo warranto, and similar writs, but only when the proceeding is started for the first time in the Supreme Court.

(c) Original Actions in the Appellate Court--Personal Restraint Petition. Rules 16.3 through 16.15 define the procedure for a personal restraint petition, but only when the proceeding is started for the first time in the appellate court.

(d) Questions Certified by Federal Court. Rule 16.16 defines the procedure for determining questions of law certified by a federal court.

(e) Review of Decision of the Court of Appeals. Except as provided in rule 16.14, a Court of Appeals decision in a special proceeding is subject to review by the Supreme Court only by discretionary review as provided in Title 13.

(f) Removal of Public Officer. Proceedings to remove a public officer are governed by statute and not these rules.

(g) Review of Sentence. Rule 16.18 defines the procedure for reviewing a sentence committing an offender to the Department of Corrections, when an error of law is asserted by the Department.

(h) Capital Cases. Rules 16.19 through 16.27 define the procedure for appeals and original actions in which the death penalty has been decreed.

RULE 16.2
ORIGINAL ACTION AGAINST STATE OFFICER

(a) Generally. The Supreme Court and the superior court have concurrent original jurisdiction of a petition against a state officer in the nature of quo warranto, prohibition, or mandamus. This rule applies only to an action originating in the Supreme Court.

(b) Initiating Proceeding. The proceeding is initiated by filing the petition in the Supreme Court and serving the petition on the proper parties. The petition must be noted for hearing before the commissioner or clerk as provided in rule 17.4 for motions. The notice of hearing should be served with the petition. Service of the petition and notice must be made as provided in the Superior Court Civil Rules and statutes for service of a summons in a superior court action.

(c) Motion Procedure Governs. The petition is treated by the Supreme Court as a motion to a commissioner or clerk. Title 17 relating to motions governs the response to the petition, oral argument, decisions by ruling, and the means of objecting to the ruling of the commissioner or clerk.

(d) Decisions Made by Commissioner or Clerk. A commissioner or clerk will, at the hearing, determine if the petition should be decided by the Supreme Court, transferred, or dismissed. If the commissioner or clerk decides that the petition should be transferred, the petition will be transferred to a superior court for determination on the merits. If the petition is not transferred or dismissed, the commissioner or clerk will refer questions of fact to a master or to the superior court unless an agreed and adequate written statement of facts is approved by the parties prior to or at the hearing. The commissioner or clerk will also determine the timing of all remaining steps in the proceeding, including time for filing briefs on the merits.

(e) Procedure if Petition Is Not Transferred. The procedure if the petition is not transferred is the same as the procedure in the Supreme Court after acceptance of review of a trial court decision, except as otherwise directed by a ruling of the commissioner or clerk as provided in section (d).

(f) Statutory Time Limits Govern. If a statute provides a time within which a petition against a state officer in the nature of quo warranto,

prohibition, or mandamus must be filed, the petition must be filed in the Supreme Court within the time period established by the statute.

(g) Costs. Costs are determined and awarded as provided in Title 14. The appellate court will award costs by supplemental judgment and will, on motion, transmit the judgment to the clerk of the superior court in the county selected by the party who is awarded costs. The supplemental judgment to the superior court shall be filed as a judgment in that court without payment of a filing fee.

References

Form 16, Petition Against State Officer; Const. art. 4, section 4; CR 4, Process, (d) Service; RCW 4.28, Commencement of Actions; RCW 7.16, Certiorari, Mandamus and Prohibition; RCW 7.56, Quo Warranto.

RULE 16.3
PERSONAL RESTRAINT PETITION--GENERALLY

(a) Habeas Corpus and Postconviction Relief. Rules 16.3 through 16.15 and rules 16.24 through 16.27 establish a single procedure for original proceedings in the appellate court to obtain relief formerly available by a petition for writ of habeas corpus or by an application for postconviction relief.

(b) Former Procedure Superseded. The procedure established by rules 16.3 through 16.15 and rules 16.24 through 16.27 for a personal restraint petition supersedes the appellate procedure formerly available for a petition for writ of habeas corpus and for an application for post-conviction relief, unless one of these rules specifically indicates to the contrary. These rules do not supersede and do not apply to habeas corpus proceedings initiated in the superior court.

(c) Original Appellate Court Jurisdiction. The Supreme Court and the Court of Appeals have original concurrent jurisdiction in personal restraint petition proceedings in which the death penalty has not been decreed. The Supreme Court will ordinarily exercise its jurisdiction by transferring the petition to the Court of Appeals. The Supreme Court has exclusive original jurisdiction in personal restraint proceedings in which the petitioner is under a sentence of death.

References

RCW 7.36, Habeas Corpus.

RULE 16.4
PERSONAL RESTRAINT PETITION--GROUNDS FOR REMEDY

(a) Generally. Except as restricted by section (d), the appellate court will grant appropriate relief to a petitioner if the petitioner is under a "restraint" as defined in section (b) and the petitioners restraint is unlawful for one or more of the reasons defined in section (c).

(b) Restraint. A petitioner is under a "restraint" if the petitioner has limited freedom because of a court decision in a civil or criminal proceeding, the petitioner is confined, the petitioner is subject to imminent confinement, or the petitioner is under some other disability resulting from a judgment or sentence in a criminal case.

(c) Unlawful Nature of Restraint. The restraint must be unlawful for one or more of the following reasons:

(1) The decision in a civil or criminal proceeding was entered without jurisdiction over the person of the petitioner or the subject matter; or

(2) The conviction was obtained or the sentence or other order entered in a criminal proceeding or civil proceeding instituted by the state or local government was imposed or entered in violation of the Constitution of the United States or the Constitution or laws of the State of Washington; or

(3) Material facts exist which have not been previously presented and heard, which in the interest of justice require vacation of the conviction, sentence, or other order entered in a criminal proceeding or civil proceeding instituted by the state or local government; or

(4) There has been a significant change in the law, whether substantive or procedural, which is material to the conviction, sentence, or other order entered in a criminal proceeding or civil proceeding instituted by the state or local government, and sufficient reasons exist to require retroactive application of the changed legal standard; or

(5) Other grounds exist for a collateral attack upon a judgment in a criminal proceeding or civil proceeding instituted by the state or local government; or

(6) The conditions or manner of the restraint of petitioner are in violation of the Constitution of the United States or the Constitution or laws of the State of Washington; or

(7) Other grounds exist to challenge the legality of the restraint of petitioner.

(d) Restrictions. The appellate court will only grant relief by a personal restraint petition if other remedies which may be available to petitioner are inadequate under the circumstances and if such relief may be granted under RCW 10.73.090, .100, and .130. No more than one petition for similar relief on behalf of the same petitioner will be entertained without good cause shown.

References
RCW 7.36, Habeas Corpus.

RULE 16.5
PERSONAL RESTRAINT PETITION--WHERE
TO SEEK RELIEF

(a) Court of Appeals. A personal restraint petition should be filed with the Court of Appeals.

(b) Supreme Court. (1) If a personal restraint petition is filed in the Supreme Court, the Supreme Court will ordinarily transfer the petition to the Court of Appeals. (2) If a petition is not transferred to the Court of Appeals, or has been transferred from the Court of Appeals to the Supreme Court, the determinations ordinarily made by the "Chief Judge" under rules 16.11 and 16.13 may be made by a commissioner.

[Amended effective April 16, 2002.]

References RCW 7.36, Habeas Corpus.

RULE 16.6
PERSONAL RESTRAINT PETITION--PARTIES

(a) Parties. If petitioner is under a restraint imposed by the state or local government, the petition should be captioned only with the name of the petitioner. If petitioner is not under a restraint imposed by the state or local government, the petition should be captioned with the name of the petitioner and the name of the person or agency restraining petitioners liberty, as respondent. The petition may be brought by the person who is under a restraint or in the persons name by that persons guardian, conservator, parent, or attorney.

(b) Respondent--Restraint by Government. If petitioner is under a restraint imposed by the state or local government, the officer or agency responsible for the proceeding against petitioner at the time petitioner claims the proceeding was defective or improper shall respond to the petition. If there are two or more proper respondents, each shall serve and file a separate response unless they agree to joint representation and notify the appellate court and the petitioner of that agreement.

(c) Change of Respondent. If the petitioner is under a restraint imposed by the state or local government, the appellate court may on its own initiative or on motion substitute the proper respondent, and the clerk of the court will notify substituted respondent.

RULE 16.7
PERSONAL RESTRAINT PETITION--FORM OF PETITION

(a) Generally. Under the titles indicated, the petition should set forth:

(1) Status of Petitioner. The restraint on petitioner; the place where petitioner is held in custody, if confined; the judgment, sentence, or other order or authority upon which petitioners restraint is based, identified by date of entry, court, and cause number; any appeals taken from that judgment, sentence or order; and a statement of each other petition or collateral attack as that term is defined in RCW 10.73.090, whether filed in federal court or state court, filed with regard to the same allegedly unlawful restraint, identified by the date filed, the court, the disposition made by the court, and the date of disposition.

(2) Grounds for Relief. A statement of (i) the facts upon which the claim of unlawful restraint of petitioner is based and the evidence available to support the factual allegations, (ii) why other remedies are inadequate, and (iii) why the petitioners restraint is unlawful for one or more of the reasons specified in rule 16.4(c). Legal argument and authorities may be included in the petition, or submitted in a separate brief as provided in rule 16.10(a).

(3) Statement of Finances. If petitioner is unable to pay the filing fee or fees of counsel, a request should be included for waiver of the filing fee and for the appointment of counsel at public expense. The request should be supported by a statement of petitioners total assets and liabilities.

(4) Request for Relief. The relief petitioner wants.

(5) Oath. If a notary is available, the petition must be signed by the petitioner or his attorney and verified substantially as follows:

After being first duly sworn, on oath, I depose and say: That I am the petitioner, that I have read the petition, know its contents, and I believe the petition is true.

or

After being first duly sworn, on oath, I depose and say: That I am the attorney

for the petitioner, that I have read the petition, know its contents, and I believe the petition is true.

_____
[Signature]

Subscribed and sworn to before me this ____ [date] _____.

_____
Notary Public in and for the State of Washington,

residing at _____

If a notary is not available, the petition must be subscribed by the petitioner or his attorney substantially as follows:

I declare that I have examined this petition and to the best of my knowledge and belief it is true and correct.

Dated this _____ [date]_____.

_____
[Signature]

If a notary is available and a petition is filed that is not verified, the appellate court will return the petition for verified signature and advise the petitioners custodian to make a notary available.

(6) Verification. In all cases where the restraint is the result of a criminal proceeding and the petition is prepared by the petitioner's attorney, the petitioner must file with the court no later than 30 days after the petition was received by the court a document that substantially complies with the following form:

I declare that I have received a copy of the petition prepared by my attorney and that I consent to the petition being filed on my behalf.

Dated this ___ [date]_____.

_____
[Signature]

If the petitioner has been declared incompetent, the verification may be filed by the guardian ad litem. If a petition has been filed to determine competency, the verification procedure shall be tolled until competency is determined.

(b) Standard Form. The clerk of the appellate court will make the standard form of petition available to persons who are confined in state institutions and to others who may request the form.

(c) Length of Petition. The petition should not exceed 50 pages.

References

Form 17, Personal Restraint Petition.

[Amended effective September 1, 2006; September 1, 2010]

RULE 16.8
PERSONAL RESTRAINT PETITION --
FILING AND SERVICE

(a) Filing Fee. A personal restraint petition will be filed by the clerk of the appellate court only if the statutory filing fee is paid, unless the appellate court determines that the petitioner is unable to pay the filing fee. The statute requiring payment of a fee for filing a petition for writ of habeas corpus is controlling.

(b) Filing in Court of Appeals. A personal restraint petition filed in the Court of Appeals must be filed in the division which includes the superior court entering the decision on the basis of which petitioner is held in custody or, if petitioner is not being held in custody on the basis of a decision, in the division in which the petitioner is located.

(c) Service of Petition. If petitioners restraint is imposed by the state or local government, the clerk of the appellate court will reproduce a copy of the petition and serve the petition on the officer or agency under a duty to respond to the petition. If petitioners restraint is imposed by a person or agency other than the state or local government, the petitioner must prepare and serve a copy of the petition on the proper respondent.

References

RCW 2.32.070, Fees--Supreme Court clerk, clerks of Court of Appeals.

RAP RULE 16.9
PERSONAL RESTRAINT PETITION -- RESPONSE TO PETITION

The respondent must serve and file a response within 60 days after the

petition is served, unless the time is extended by the commissioner or clerk for good cause shown, or unless the court can determine without requiring a response that the petition should be dismissed under RCW 10.73.090 or RCW 10.73.140. The response must answer the allegations in the petition. The response must state the authority for the restraint of petitioner by respondent and, if the authority is in writing, include a conformed copy of the writing. If an allegation in the petition can be answered by reference to a record of another proceeding, the response should so indicate and include a copy of those parts of the record that are relevant. Respondent should also identify in the response all material disputed questions of fact.

[Amended effective April 16, 2002; September 1, 2006.]

RULE 16.10
PERSONAL RESTRAINT PETITION--BRIEFS

(a) Briefs Allowed. The following briefs may be, but need not be, filed:
(1) Petitioner's Opening Brief. Petitioners opening brief, which should be filed with the petition.
(2) Petitioner's Reply Brief. Petitioners reply brief, which should be filed within 30 days after the answering brief is served on petitioner.
(b) Brief Required. Respondent must file an answering brief within the time the response must be filed.
(c) Briefs at Request of Appellate Court. The appellate court may call for additional briefs at any stage of the consideration of the petition.
(d) Content and Style of Briefs. The content and style of briefs is governed by rules 10.3 and 10.4.
(e) Reproduction and Service of Briefs. Briefs must be filed with the clerk of the appellate court. Briefs will be reproduced and served by the clerk.

RULE 16.11
PERSONAL RESTRAINT PETITION--CONSIDERATION OF PETITION

(a) Generally. The Chief Judge will consider the petition promptly after the time has expired to file petitioners reply brief. The Chief Judge determines at the initial consideration if the petition will be retained by the appellate court for determination on the merits or transferred to a superior court for determination on the merits or for a reference hearing. For the purpose of rules in this Title 16, Chief Judge includes Acting Chief Judge.
(b) Determination by Appellate Court. The Chief Judge determines at the initial consideration of the petition the steps necessary to properly decide on the merits the issues raised by the petition. If the issues presented are frivolous, the Chief Judge will dismiss the petition. If the petition is not frivolous and can be determined solely on the record, the Chief Judge will refer the petition to a panel of judges for determination on the merits. If the petition cannot be determined solely on the record, the Chief Judge will transfer the petition to a superior court for a determination on the merits or for a reference hearing. The Chief Judge may enter other orders necessary to obtain a prompt determination of the petition on the merits.
(c) Oral Argument. Decisions of the Chief Judge will be made without oral argument. If a petition is to be decided on the merits by a panel of judges, the appellate court clerk will set the petition for consideration by the panel of judges, with or without oral argument. If oral argument is directed, the clerk will notify the parties of the date set for oral argument.

RULE 16.12
PERSONAL RESTRAINT PETITION -- SUPERIOR COURT HEARING

If the appellate court transfers the petition to a superior court, the transfer will be to the superior court for the county in which the decision was made resulting in the restraint of petitioner or, if petitioner is not being restrained on the basis of a decision, in the superior court in the county in which petitioner is located. If the respondent is represented by the Attorney General, the prosecuting attorney, or a municipal attorney, respondent must take steps to obtain a prompt evidentiary hearing and must serve notice of the date set for hearing on all other parties. The parties, on motion and for good cause shown, will be granted reasonable pretrial discovery. Each party has the right to subpoena witnesses. The hearing shall be held before a judge who was not involved in the challenged proceeding. The petitioner has the right to be present at the hearing and

the right to cross-examine adverse witnesses. The Rules of Evidence apply at the hearing. Upon the conclusion of the hearing, if the case has been transferred for a reference hearing the superior court shall enter findings of fact and have the findings and all appellate court files forwarded to the appellate court. Upon the conclusion of the hearing if the case has been transferred for a determination on the merits, the superior court shall enter findings of fact and conclusions of law and an order deciding the petition.

RULE 16.13
PERSONAL RESTRAINT PETITION--PROCEDURE AFTER REFERENCE HEARING

After a reference hearing and the findings of fact and appellate court files have been returned to the appellate court, the Chief Judge will dismiss the petition if the issues presented are frivolous. If the petition is not frivolous, the Chief Judge will refer the petition to a panel of judges for determination on the merits. The appellate court may, on motion of a party, order the preparation of and transmittal to the appellate court of a part or all of the record of the reference proceeding. The appellate court order will define at whose expense the record is prepared. Oral argument is governed by rule 16.11(c).

RAP RULE 16.14
PERSONAL RESTRAINT PETITION--APPELLATE REVIEW

(a) Decision Whether To Transfer. A decision to transfer a petition to a superior court for a hearing or to retain the petition for determination by the appellate court is not subject to review by the Supreme Court.

(b) Decision of Superior Court. A decision of a superior court in a personal restraint proceeding transferred to that court for a determination on the merits is subject to review in the same manner and under the same procedure as any other trial court decision.

(c) Other Decisions. If the petition is dismissed by the Chief Judge or decided by the Court of Appeals on the merits, the decision is subject to review by the Supreme Court only by a motion for discretionary review on the terms and in the manner provided in rule 13.5A.

[Amended effective September 1, 2006.]

RULE 16.15
PERSONAL RESTRAINT PETITION--SUPPLEMENTAL PROVISIONS

(a) Motion. The procedure for and form of a motion is as provided in Title 17. Motions will ordinarily be considered without oral argument.

(b) Release by Appellate Court of Person in Custody. The appellate court may release a petitioner on bail or personal recognizance before deciding the petition, if release prevents further unlawful confinement and it is unjust to delay the petitioner's release until the petition is determined. The appellate court or the superior court in its decision on the merits, or by separate order after a decision on the merits, may release a petitioner on bail or on personal recognizance. The appellate court may direct the release of petitioner with the conditions of release to be determined by a trial court.

(c) Oral Argument. Except as otherwise provided in rule 16.11(c), the procedure for oral argument is governed by Title 11.

(d) Disposition of Petition. The petition will be determined by the appellate court by written opinion or order briefly stating the reasons for the determination.

(e) Certificate of Finality. A certificate of finality is the written notification of the clerk of the appellate court to the trial court and the parties that the proceedings in the appellate court have come to an end.

(1) When Certificate of Finality is Issued by the Court of Appeals. The clerk of the Court of Appeals issues the certificate of finality:

(a) Thirty days after the decision is filed, unless (i) a motion for reconsideration of the decision has been earlier filed, or (ii) a motion for discretionary review to the Supreme Court has been earlier filed.

(b) If a motion for reconsideration is timely filed and denied, 30 days after filing the order denying the motion for reconsideration, unless a motion for discretionary review by the Supreme Court has been earlier filed.

(c) If a motion for discretionary review has been timely filed and denied by the Supreme Court, upon denial of the motion for discretionary review.

(2) When Certificate of Finality is Issued by the

Supreme Court. The clerk of the Supreme Court issues the certificate of finality twenty days after the written opinion or order disposing of the petition is filed unless a motion for reconsideration of the decision is filed. If a motion for reconsideration is timely filed, the certificate of finality shall issue upon the entry of an order denying the motion for reconsideration.

(f) Costs. Costs are awarded as provided in Title 14.

(g) Indigency--Superior Court Determination. The provisions of CrR 3.1 apply to a personal restraint petition transferred to a superior court. If any of the petitioners expenses incurred in the superior court are to be paid with public funds, the expenses shall be paid with funds appropriated by the county in which the superior court is located.

(h) Indigency--Appellate Court Proceeding. If the restraint is imposed by the state or local government, and if the appellate court determines that petitioner is indigent, the court may provide for the appointment of counsel at public expense for services in the appellate court, order waiver of charges for reproducing briefs and motions, provide for the preparation of the record of prior proceedings and provide for the payment of such other expenses as may be necessary to consider the petition in the appellate court. Invoices for expenses of an indigent person in the appellate court must be submitted to the appellate court which decided the petition in the form and manner provided in rule 15.4, except that a trial court order of indigency is not required and the invoice must be submitted within 45 days after the appellate court decision terminating the proceeding is filed. If a petitioner who claims to be indigent is in the custody of an agency of the Department of Social and Health Services, the clerk of the appellate court will obtain a statement of petitioners known assets from the superintendent of the institution where petitioner is confined. Statutes providing for payment of expenses with public funds are not superseded.

References

Title 15, Special Provisions Relating to Rights of Indigent Party.

RAP RULE 16.16
QUESTION CERTIFIED BY FEDERAL COURT

(a) Generally. The Supreme Court may entertain a petition to determine a question of law certified to it under the Federal Court Local Law Certificate Procedure Act if the question of state law is one which has not been clearly determined and does not involve a question determined by reference to the United States Constitution. Certificate procedure is the means by which a federal court submits a question of Washington law to the Supreme Court. This rule provides the procedure for implementing RCW 2.60.

(b) Caption of Pleadings and Briefs Filed in Supreme Court. The caption of the case should be:

CERTIFICATION FROM (ORIGINATING
UNITED STATES COURT)
IN
(Title of Action)

(c) Filing. The cause shall be filed, indexed, and numbered in the same manner as an appeal to the Supreme Court.

(d) Record. The record shall be certified by the federal court as required by statute.

(e) Briefs.

(1) Procedure. The federal court shall designate who will file the first brief. The first brief should be filed within 30 days after the record is filed in the Supreme Court. The opposing party should file the opposing brief within 20 days after receipt of the opening brief. A reply brief should be filed within 10 days after the opposing brief is served. The briefs should be served in accordance with rule 10.2. The time for filing the record, the supplemental record, or briefs may be extended for cause.

(2) Form and Reproduction of Briefs. Briefs should be in the form provided by rules 10.3 and 10.4. Briefs will be reproduced by the clerk in accordance with rule 10.5.

(f) Costs. The cost provisions of Title 14 are applicable except that both parties must file a cost bill, and that the commissioner or clerk will not award costs but will divide the total costs equally between the parties.

(g) Finality of Opinion. The opinion of the Supreme Court is certified to the federal court at the time a mandate would issue as provided in rule 12.5. The certification by the clerk states that the opinion is in answer to the question of Washington law submitted.

References

RCW 2.60, Federal Court Local Law Certificate Procedure Act.

[Amended effective September 1, 2006.]

RULE 16.17
OTHER RULES APPLICABLE

Rules 1.1, 1.2, 18.1, 18.3 through 18.10, and 18.21 through 18.24 are applicable to the special proceedings in this title.

RAP RULE 16.18
POST-SENTENCE PETITIONS

(a) Generally. The Department of Corrections may petition the Court of Appeals for review of a sentence committing an offender to the custody or jurisdiction of the Department of Corrections. The review shall be limited to errors of law.

(b) Filing. The petition should be filed no later than 90 days after the Department of Corrections has received the documents containing the terms of the sentence. The petition should be filed in the division that includes the superior court entering the decision under review.

(c) Parties. When the Department files the petition, it should serve copies on the prosecuting attorney and on the offender whose sentence is in question. The appellate court clerk will serve the offender with a statement of the right to counsel and the right to proceed at public expense if indigent. If the offender was found indigent at trial and has been incarcerated since trial, continued indigency is presumed. In other cases where the offender claims indigency, the Court of Appeals may make a determination of indigency or may remand to the sentencing court for such a determination. The Court of Appeals may appoint counsel for indigent offenders and waive costs as provided in RAP 16.15(g) or may remand to the sentencing court for such appointment. All parties should file a written response to the petition within 45 days after the appellate court clerk notifies the offender of the right to counsel and the right to proceed at public expense. The Department has 20 days after service of the last response to file a reply.

(d) Petition. The petition should contain:
(1) The county and superior court cause number below;
(2) The crime for which the offender was convicted;
(3) The date the Department of Corrections received the documents containing the terms of the sentence;
(4) The address of the offender;
(5) The error of law at issue;
(6) A statement by the Department of Corrections of all efforts that have been made to resolve the dispute at the superior court level, and the results thereof;
(7) Argument;
(8) The relief requested;
(9) A conclusion; and
(10) An appendix. The appendix should contain a copy of the judgment and sentence, the warrant of commitment, and any response of the superior court regarding the Departments administrative efforts to resolve the issue.

(e) Consideration of Petition.

(1) Generally. The Chief Judge will consider the petition promptly after the time has expired for filing of the Departments reply. The Chief Judge determines at the initial consideration if the petition will be retained by the appellate court for determination on the merits.

(2) Determination by Appellate Court. The Chief Judge determines at the initial consideration of the petition the steps necessary to properly decide on the merits the issues raised by the petition. If the issues presented are frivolous, the Chief Judge will dismiss the petition. If the petition is not frivolous, the Chief Judge will refer the petition to a panel of judges for a determination on the merits. The Chief Judge may enter other orders necessary to obtain a prompt determination of the petition on the merits.

(3) Oral Argument. Decisions of the Chief Judge will be made without oral argument. If a petition is to be decided on the merits by a panel of judges, the appellate court clerk will set the petition for consideration by the panel of judges, with or without oral argument. If oral argument is directed, the clerk will notify the parties of the date set for oral argument.

(f) Disposition. The Court of Appeals will dispose of the matter in such manner as the ends of justice require.

(g) Review of Court of Appeals Decision. If the petition is dismissed by the Chief Judge or decided by the Court of Appeals on the merits, the decision is subject to review by the Supreme Court by a motion for discretionary review on the terms and in the manner provided in rule 13.5A.

[Amended effective September 1, 2006.]

RAP 16.19
PREPARATION OF REPORT OF PROCEEDINGS IN CAPITAL CASES

(a) The clerk of the trial court shall prepare a list of all pre-trial hearings, trial proceedings, and post-trial hearings, including any in camera or ex parte proceedings, that specifies the date of the hearing and the name of the court reporter. This list shall be served by the clerk of the trial court on each court reporter, the prosecuting attorney, the defendant's trial counsel and appellate counsel, and the trial judge within 10 days of the entry of a judgment and sentence. If appellate counsel has not been appointed to represent the defendant when the list is first prepared, the clerk of the trial court shall send a copy of the list to each appellate counsel within 10 days of appointment.

(b) Any party may serve and file objections to, and propose amendments to the list within 10 days after receipt of the list prepared by the clerk of the trial court. If objections or amendments to the list are served and filed, any objections or proposed amendments must be heard by the trial court judge for settlement and approval. If the judge before whom the proceedings were held is for any reason unable to promptly settle questions, another judge may act in the place of the judge before whom the proceedings were held.

(c) Once the list of hearings is settled, the clerk of the trial court shall serve a copy on each court reporter and shall file a copy with the Supreme Court. The final list should indicate the date it was served on the court reporters and the financial arrangements which have been made for payment of transcription costs.

(d) The court reporter shall complete the report of proceedings within 90 days after the reporter receives the list of hearings. If the report of proceedings cannot be completed within this time, the court reporter shall, no later than 10 days before the due date, submit an affidavit to the prosecuting attorney, to the defense appellate attorney, and to the Supreme Court stating the reasons for the delay. Any party or any court reporter may move for an extension of time from the Supreme Court.

(e) The court reporter shall file the report of proceedings with the clerk of the trial court. The clerk of the trial court shall transmit the report of proceedings to the Supreme Court. The clerk of the Supreme Court shall provide one copy of the report of proceedings to the defendant, two copies of the report of proceedings to the defendant's appellate attorney, and one copy of the report of proceedings to the prosecuting attorney.

(f) Objections or amendments to the report of proceedings may be served and filed within 30 days after the party receives a copy of the report of all proceedings. Copies of all objections shall be filed with the Supreme Court. The trial court shall settle the report of proceedings in accordance with RAP 9.5(c) and (d). The briefing schedule shall be suspended until the record is settled.

(g) The record may be corrected or supplemented at any time in accordance with RAP 9.10.

RAP 16.20
TRANSMITTAL OF JURY QUESTIONNAIRES AND CLERK'S PAPERS IN CAPITAL CASES

If questionnaires are used during jury selection, the clerk of the trial court shall seal and transmit a copy of all the questionnaires to the Supreme Court along with all of the clerk's papers, including copies of any clerk's minutes. The clerk of the Supreme Court will provide defendant's appellate counsel and the prosecuting attorney copies of all of the juror questionnaires. These copies shall remain in the possession of counsel and not be made available to the defendant.

The clerk of the Supreme Court shall copy and distribute the clerk's papers as follows: one copy to the defendant, two copies to the defendant's appellate attorneys, and one copy to the prosecuting attorney.

[Amended September 1, 2010]

RAP 16.21
CLERK'S CONFERENCE IN CAPITAL CASES

(a) Application of Rule. This rule applies only in direct appeals in criminal cases.

(b) Clerk's Conference. Upon receipt of the notice of appeal in a capital case by the Supreme Court, the clerk of the court shall set a clerk's conference. The clerk of the court shall give notice to the parties of the date, time, and place of the conference; the name of the commissioner or

clerk who will conduct the conference; and the nature of the issues to be discussed at the conference. The convening of a clerk's conference shall not stay the requirements otherwise established by these rules. The clerk may continue a conference or convene another conference when necessary to establish procedures in the case.

(c) Attendance at Clerk's Conference. The attorneys for each party, if the notice requires it, shall attend the clerk's conference on the date, time, and place specified in the clerk's notice. Those in attendance should be ready to seriously consider the procedural issues attendant upon the case, including, but not limited to, settlement of the record, the briefing schedule, the page limitations for briefs, oral argument, and other matters which may promote the prompt and fair disposition of the appeal.

(d) Clerk's Conference Order. If, as a result of the clerk's conference, the parties agree to various matters to promote the prompt and fair disposition of the appeal, the Court may enter an order consistent with that agreement. If the parties fail to agree on any issue, the court will resolve the issues and enter an order. The order is binding on the parties during the review proceeding, unless the court otherwise directs on its own initiative or on motion of a party for good cause shown and on those terms the court deems appropriate.

NEW DOCUMENT

RAP 16.22

FILING OF BRIEFS IN CAPITAL CASES

(a) The brief of an appellant shall be filed in the Supreme Court within 120 days after the report of proceedings is settled or the last date for filing any objections pursuant to Rule 16.19(f). The brief of a respondent shall be filed within 120 days after service of the brief of appellant.

(b) The personal restraint petition shall be filed within 180 days after the appointment of counsel or the courts determination that counsel will not be appointed. The response to a personal restraint petition shall be filed within 120 days after service of the petition.

(c) A brief of appellant or respondent, or a brief in support of or opposition to a personal restraint petition, shall not exceed 250 pages. A reply brief, a pro se supplemental brief, or the response to a pro se supplemental brief, shall not exceed 75 pages.

(d) If legal arguments are included in a personal restraint petition or the response to a personal restraint petition, no separate brief may be filed. A petition or response that contains legal arguments may not exceed 300 pages. The petition or response shall comply with RAP 10.4(a).

(e) The clerk will retain but not formally file a brief, petition, or response that exceeds these page limits, except on prior order of the court. Such an order will only be granted for compelling reasons. The clerk will not file a brief, petition, or response that violates the format requirements of RAP 10.4(a), if a properly formatted brief would violate the page limits. The clerk shall direct the party whose document has been rejected for formal filing to correct the deficiencies within a specified time period.

(f) For the purpose of determining compliance with this rule, appendices, the title sheet, table of contents, and table of authorities are not included.

Amended 3/9/99

RAP 16.23

ORAL ARGUMENT ON APPEAL IN CAPITAL CASES

(a) The parties may file a non-binding notice 14 days prior to oral argument that specifies the order in which issues will be presented and identifies which counsel will present the argument on each issue.

(b) At any time before receipt of such notice the clerk of the Supreme Court shall inform the parties if any member of the Court wants certain issues to be addressed during oral argument. After receipt of such notice, the clerk of the Supreme Court may notify the parties if any member of the Court wants additional issues to be addressed during oral argument.

(c) Each side is allowed 120 minutes for oral argument.

RAP 16.24
STAY OF EXECUTION IN CAPITAL CASES

(a) An application for stay of execution will be decided by the en banc court, except that a commissioner or the clerk may decide an application for a stay of execution in connection with a first petition for relief from restraint. No stay will be granted until after a death warrant has been issued. When any stay is granted, a commissioner or the clerk will immediately notify, in addition to the parties, the Superintendent of the Washington State Penitentiary and the Attorney General.

(b) The petitioner or his or her lawyer may file an application for a stay of execution in connection with a first petition for relief from restraint. This application shall be accompanied by a statement, describing one or more grounds for relief, which shall be deemed to be a petition for relief from restraint with leave granted to amend the petition upon appointment of counsel.

(c) Upon the filing of this application for stay of execution in connection with a first petition for relief from restraint and statement, a commissioner or the clerk shall issue a stay of execution, if the statement identified any ground for relief that is not patently frivolous.

(d) A stay of execution pending a final disposition of a second or subsequent petition shall not be granted unless the petition makes a substantial showing that the petition is not barred by RCW 10.73 or RAP 16.4(d).

(e) A stay of execution will dissolve when a certificate of finality is issued unless otherwise ordered by the court.

Comment

The date the statement of grounds for relief that accompanies an application for a stay of execution in connection with a first petition for relief from restraint is filed shall be deemed under Washington law to be "the date on which the first petition for post-conviction review or other collateral relief is filed," 1996 Antiterrorism and Effective Death Penalty Act, Chapter 154, sec. 2263(b)(2).

A stay will be granted "if the statement identifies any ground for relief that is not patently frivolous." In general, a claim could be considered "patently frivolous" only if (1) it was rejected on its merits on direct appeal, (2) it is clearly contrary to binding precedent, or (3) it is clearly contrary to the established record. A claim of ineffective assistance of counsel that was not raised on direct appeal will generally not be considered "patently frivolous."

RAP 16.25
APPOINTMENT OF COUNSEL ON PERSONAL RESTRAINT PETITION IN CAPITAL CASES

Unless petitioner is proceeding pro se or is represented by retained counsel, upon a request by petitioner to the Clerk of the Supreme Court and upon a finding that the petitioner is indigent, the Supreme Court shall appoint counsel to assist in preparing and presenting a first personal restraint petition. Appointed counsel must have demonstrated the necessary proficiency and commitment which exemplifies the quality of representation appropriate to capital cases. At least one attorney so appointed must have at least three years of experience in handling appeals or collateral reviews on criminal convictions and must be learned in the law of capital punishment by training or experience.

A list of attorneys qualified for appointment in death penalty personal restraint petitions will be recruited and maintained by a panel created by the Supreme Court. In appointing counsel, the Supreme Court will consider this list. However, the Supreme Court will have the final discretion in the appointment of counsel in personal restraint petitions in capital cases.

Counsel will not be appointed if the petitioner has clearly elected to proceed pro se and the court is satisfied that petitioner's election is knowing, intelligent, and voluntary. An attorney who represented the petitioner at trial will not be appointed. An attorney who represented petitioner on direct appeal will not be appointed unless petitioner and the attorney expressly request continued representation. Statutes providing for payment of expenses with public funds are not superseded by this rule.

The Supreme Court may appoint counsel to assist in a second or subsequent petition in accord with RCW 10.73.150.

RAP 16.26

PERSONAL RESTRAINT PETITIONS IN CAPITAL CASES - DISCOVERY

(a) Before or after a person under sentence of death files a personal restraint petition, the Supreme Court, on motion of that person, may order discovery. To obtain such an order, the person under sentence of death must establish

facts that give rise to a substantial reason to believe that the discovery will produce information that would support relief under RAP 16.4(c). Information in support of the request that the person under sentence of death believes is privileged may be separated into a second confidential affidavit which identifies the asserted privilege with specificity and the law supporting the assertion of the privilege. Any affidavit which does not contain confidential information and the motion must be served on the prosecutor. The procedure for and form of the motion is as provided in RAP Title 17. Motions will ordinarily be considered without oral argument. Prior to ruling on the motion, the Court will review the confidential affidavit to determine whether the contents therein are protected by the asserted privilege. If the asserted privilege does not apply, the court will serve the State with a copy of the confidential affidavit at least five working days before the State's response to the motion is due.

(b) After a person under sentence of death has filed a personal restraint petition, the Supreme Court, on motion of the State, may order discovery. To obtain such an order, the State must establish facts that give rise to a substantial reason to believe that the discovery will produce information that would support the denial of relief under RAP 16.4(c).

(c) Discovery conducted pursuant to this rule shall be governed by the civil rules, unless otherwise ordered by the court.

(d) In the event a remand hearing is ordered, discovery shall be governed by RAP 16.12.

(e) Discovery may be allowed for preparation of a second or subsequent petition attacking the same judgment and sentence only upon a substantial showing that the petition is not barred by RCW ch. 10.73 or RAP 16.4(d).

RAP 16.27

PERSONAL RESTRAINT PETITION IN CAPITAL CASES - INVESTIGATIVE, EXPERT, AND OTHER SERVICES

Before or after the filing of a personal restraint petition, a person under sentence of death may file a motion for investigative, expert, or other services. Such a motion shall be granted only if the person establishes facts that give rise to a substantial reason to believe that the services will produce information that would support relief under RAP 16.4(c), and if the legislature has authorized and approved funding for such services. The motion shall be directed to the Supreme Court and may be made ex parte. Upon a showing of good cause, the moving papers may be ordered sealed by the court and shall remain sealed until further order of the court. Services may be allowed for preparation of a second or subsequent petition attacking the same judgment and sentence only upon a substantial showing that the petition is not barred by RCW ch. 10.73 or RAP 16.4(d).

RULE 17.1
SCOPE

(a) Relief Under This Title. A person may seek relief, other than a decision of the case on the merits, by motion as provided in Title 17.

(b) Motion on the Merits. A party may seek a decision on the merits by motion as provided in rule 18.14. The rules in Title 17 apply to a motion for a decision on the merits only to the extent provided in rule 18.14.

RULE 17.2
WHO DECIDES A MOTION

(a) Generally. The judges determine (1) a motion in a brief, (2) a motion to modify a ruling by a commissioner or the clerk, (3) a motion for reconsideration of a decision, (4) a motion to recall the mandate, except for a motion made to correct an inadvertently issued mandate, and (5) a motion to publish. All other motions may be determined initially by a commissioner or the clerk of the appellate court.

(b) Reference to the Judges. A commissioner or clerk may refer a motion to the judges for determination. If the motion is referred to the judges, the commissioner or clerk will give notice of the reference to all persons entitled to notice of the motion.

(c) Transfer by Supreme Court to Court of Appeals. A commissioner or clerk of the Supreme Court may transfer a

motion for discretionary review of a trial court decision to the Court of Appeals for determination.

[Amended December 24, 2002]

RULE 17.3
CONTENT OF MOTION

(a) Generally. A motion must include (1) a statement of the name and designation of the person filing the motion, (2) a statement of the relief sought, (3) reference to or copies of parts of the record relevant to the motion, and (4) a statement of the grounds for the relief sought, with supporting argument.

(b) Motion for Discretionary Review. A motion for discretionary review should contain under appropriate headings and in the order here indicated:

(1) Cover. A title page, which is the cover.

(2) Identity of Petitioner. A statement of the name and designation of the person filing the motion.

(3) Decision Below. A statement of the decision which petitioner wants reviewed, the court entering or filing the decision, the date entered or filed, and the date and a description of any order granting or denying motions made after the decision.

(4) Issues Presented for Review. A concise statement of the issues presented for review.

(5) Statement of the Case. A statement of the facts and procedure below relevant to the issues presented for review, with appropriate reference to the record.

(6) Argument. A direct and concise statement of the reasons why review should be granted, with supporting argument.

(7) Conclusion. A short conclusion stating the precise relief sought.

(8) Appendix. An appendix containing a copy of the decision which the party wants reviewed, a copy of any order granting or denying motions made with respect to that decision, and a copy of parts of the record relevant to the motion. In addition, the appendix may include copies of statutes and constitutional provisions relevant to the issues presented for review, and other material which would assist the court in determining whether the motion should be granted.

(c) Statement of Grounds for Direct Review. If the motion is for discretionary review of a trial court decision and the party making the motion seeks direct review by the Supreme Court, the party seeking review must also serve and file a separate statement urging grounds for Supreme Court review as provided in rule 4.2(b) and (c).

References

Form 3, Motion for Discretionary Review; Form 4, Statement of Grounds for Direct Review; Form 18, Motion; Form 20, Motion To Modify Ruling; Rule 6.2, Discretionary Review; Rule 12.4, Motion for Reconsideration of Decision Terminating Review.

[Amended December 24, 2002]

RULE 17.4
FILING AND SERVICE OF MOTION--ANSWER TO MOTION

(a) Filing and Service Generally. Procedure for Noting a Motion Where Permitted.

(1) A motion filed by a party must be served on all parties, amicus, and other persons entitled to notice, and filed in the appellate court.

(2) The Supreme Court and each division of the Court of Appeals will determine by General Order whether a party may note a motion for hearing. If a party is permitted to note a motion for hearing, the motion must be accompanied by a notice of the time and date set for oral argument of the motion. The movant should contact the clerk of the appellate court to determine the date and time available for argument of the motion. The motion and notice must be served on all parties, amicus, and other persons entitled to notice and filed in the appellate court at least 15 days before the date noted for the hearing on the motion. If a motion is not

noted for hearing and the court does not set a date for a hearing, the motion will be decided without oral argument.

(b) Emergency Motion. In an emergency, a person may request expedited consideration of a motion. The person presenting the motion must, at the time the motion is made, file an affidavit stating the type of notice given and the time and date the notice was given to each person, and explain in the motion why it should be decided on an emergency basis. If the court requires an answer or sets the motion for argument, it will notify the parties and other persons entitled to notice as to when an answer should be filed, and of the date, time, and place the motion will be heard. The commissioner or clerk may decide the motion only if satisfied (1) that adequate relief cannot be given if the motion is considered in the normal course, and (2) the movant has taken reasonable steps under the circumstances to give notice to persons who would be affected by the ruling sought. An emergency motion may be presented on less notice than that required by section (a).

(c) Summary Determination.

(1) The commissioner or clerk may summarily determine without oral argument, and without awaiting an answer, a motion which, in the judgment of the commissioner or clerk, does not affect a substantial right of a party. (2) If the commissioner or clerk makes a summary determination granting a motion under subsection (c)(1) of this rule, and a party files and serves a timely responsive pleading after the ruling has been entered, the commissioner or clerk will treat the responsive pleading as a motion for reconsideration of the ruling. If such a responsive pleading is filed, the commissioner or clerk may permit the moving party to file a reply and may allow oral argument on the motion.

(d) Motion in Brief. A party may include in a brief only a motion which, if granted, would preclude hearing the case on the merits. The answer to a motion within a brief may be made within the brief of the answering party in the time allowed for filing the brief.

(e) Answer and Reply to Motion. A person with a recognized interest in the subject matter of the motion may submit a written answer to the motion. Unless the court directs otherwise, any answer must be filed and served no later than 10 days after the motion is served on the answering party. The moving party may submit a written reply to the answer to the motion. Unless the court directs otherwise, any reply to an answer must be filed and served no later than 3 days after the answer is served on the moving party, but at least 1 day prior to the date set for oral argument.

(f) Supporting Papers. A person should serve and file with the motion all affidavits and other papers submitted in support of the motion. Affidavits and other papers submitted in support of an answer or reply must be served and filed with the answer or reply. Rule 9.11 does not apply to affidavits and other papers submitted in connection with a motion other than a motion on the merits under rule 18.14.

(g) Length of Motion, Answer and Reply; Form of Papers and Number of Copies.

(1) A motion and answer should not exceed 20 pages, not including supporting papers. A reply should not exceed 10 pages, not including supporting papers. For compelling reasons, the court may grant a motion to file an over-length motion, answer, or reply.

(2) All papers relating to motions or answers should be filed in the form provided for briefs in rule 10.4(a), provided an original only and no copy should be filed. The appellate court commissioner or clerk will reproduce additional copies that may be necessary for the appellate court and charge the appropriate party as provided in rule 10.5(a).

References

Form 19, Notice of Motion; Rule 12.4, Motion for Reconsideration of Decision Terminating Review, (d) Answer and reply, (f) No oral argument.

[Amended December 5, 2002; September 1, 2006; September 1, 2010]

RULE 17.5
ORAL ARGUMENT OF MOTION

(a) Oral Argument to Commissioner or Clerk. If oral argument is permitted by General Order, the movant, and any person entitled to notice of the motion who has filed a response to the motion, may present oral argument on a motion to be decided by a commissioner or the clerk.

(b) Oral Argument to Judges. A motion to be decided by the judges will be decided without oral argument, unless the appellate court directs otherwise.

(c) Date and Time of Argument. Oral argument on a motion to be determined by the clerk or a commissioner of the Court of Appeals will be held on the date and time noted for hearing the motion, unless otherwise directed by the Court of Appeals. Oral argument on a motion to be determined by the clerk or commissioner of the Supreme Court will be held on the date and time directed by the clerk.

(d) Time Allowed, Order, and Conduct of Oral Argument. The Supreme Court and each division of the Court of Appeals will define by general order the amount of time each side is allowed for oral argument. If there is more than one party to a side in a single review or in a consolidated review, the parties on that side will share the allotted time equally, unless the parties on that side agree to some other allocation. The appellate court may grant additional time for oral argument upon motion of a party. The moving party is entitled to

open and conclude oral argument.

(e) Telephone Argument. The appellate court may direct the parties to conduct oral argument of a motion to the commissioner or clerk or to the court by conference telephone call. The expense of the call will be paid by the moving party, unless the appellate court directs otherwise in the ruling or decision on the motion. A party may request telephone conference argument by letter or telephone call to the appellate court clerk.

References

Rule 10.4, Preparation and Filing of Brief by Party, (d) Motion in brief.

[Amended effective September 1, 2006; September 1, 2010]

RULE 17.6
MOTION DECIDED BY RULING OR ORDER

(a) Motion Decided by Commissioner or Clerk. A commissioner or clerk decides a motion by a written ruling which includes a statement of the reason for the decision. The commissioner or clerk will file the ruling and serve a copy on the movant and all persons entitled to notice of the original motion.

(b) Motion Decided by Judges. Ordinarily the judges decide a motion by an order. The judges may decide a motion by an opinion. The clerk will notify the movant and all persons entitled to notice of the motion of the order made or opinion rendered by the court.

RULE 17.7
OBJECTION TO RULING--REVIEW OF DECISION
ON MOTION

An aggrieved person may object to a ruling of a commissioner or clerk, including transfer of the case to the Court of Appeals under rule 17.2(c), only by a motion to modify the ruling directed to the judges of the court served by the commissioner or clerk. The motion to modify the ruling must be served on all persons entitled to notice of the original motion and filed in the appellate court not later than 30 days after the ruling is filed. A motion to the Justices in the Supreme Court will be decided by a panel of five Justices unless the court directs a hearing by the court en banc.

References

Form 20, Motion To Modify Ruling.

RULE 17.8

(RESCINDED)

RULE 18.1
ATTORNEY FEES AND EXPENSES

(a) Generally. If applicable law grants to a party the right to recover reasonable attorney fees or expenses on review before either the Court of Appeals or Supreme Court, the party must request the fees or expenses as provided in this rule, unless a statute specifies that the request is to be directed to the trial court.

(b) Argument in Brief. The party must devote a section of its opening brief to the request for the fees or expenses. Requests made at the Court of Appeals will be considered as continuing requests at the Supreme Court, except as stated in section (j). The request should not be made in the cost bill. In a motion on the merits pursuant to rule 18.14, the request and supporting argument must be included in the motion or response if the requesting party has not yet filed a brief.

(c) Affidavit of Financial Need. In any action where applicable law mandates consideration of the financial resources of one or more parties regarding an award of attorney fees and expenses, each party must serve upon the other and file a financial affidavit no later than 10 days prior to the date the case is set for oral argument or consideration on the merits; however, in a motion on the merits pursuant to rule 18.14, each party must serve and file a financial affidavit along with its motion or response. Any answer to an affidavit of financial need must be filed and served within 7 days after service of the affidavit.

(d) Affidavit of Fees and Expenses. Within 10 days after the filing of a decision awarding a party the right to reasonable attorney fees and expenses, the party must serve and file in the appellate court an affidavit detailing the expenses incurred and the services performed by counsel.

(e) Objection to Affidavit of Fees and Expenses; Reply. A party may object to a request for fees and expenses filed pursuant to section (d) by serving and filing an answer with appropriate documentation containing specific objections to the requested fee. The answer must be served and filed within 10 days after service of the affidavit of fees and expenses upon the party. A party may reply to an answer by serving and filing the reply documents within 5 days after the service of the answer upon that party.

(f) Commissioner or Clerk Awards Fees and Expenses. A commissioner or clerk will determine the amount of the award, and will notify the parties. The determination will be made without a hearing, unless one is requested by the commissioner or clerk.

(g) Objection to Award. A party may object to the commissioner's or clerk's award only by motion to the appellate court in the same manner and within the same time as provided in rule 17.7 for objections to any other rulings of a commissioner or clerk.

(h) Transmitting Judgment on Award. The clerk will include the award of attorney fees and expenses in the mandate, or the certificate of finality, or in a supplemental judgment. The award of fees and expenses, including interest from the date of the award by the appellate court, may be enforced in the trial court.

(i) Fees and Expenses Determined After Remand. The appellate court may direct that the amount of fees and expenses be determined by the trial court after remand.

(j) Fees for Answering Petition for Review. If attorney fees and expenses are awarded to the party who prevailed in the Court of Appeals, and if a petition for review to the Supreme Court is subsequently denied, reasonable attorney fees and expenses may be awarded for the prevailing party's preparation and filing of the timely answer to the petition for review. A party seeking attorney fees and expenses should request them in the answer to the petition for review. The Supreme Court will decide whether fees are to be awarded at the time the Supreme Court denies the petition for review. If fees are awarded, the party to whom fees are awarded should submit an affidavit of fees and expenses within the time and in the manner provided in section (d). An answer to the request or a reply to an answer may be filed within the time and in the manner provided in section (e). The commissioner or clerk of the Supreme Court will determine the amount of fees without oral argument, unless oral argument is requested by the commissioner or clerk. Section (g) applies to objections to the award of fees and expenses by the commissioner or clerk.

[Amended to become effective December 29, 1998; December 5, 2002; September 1, 2003; September 1, 2006; September 1, 2010]

RULE 18.2
VOLUNTARY WITHDRAWAL OF REVIEW

The appellate court on motion may, in its discretion, dismiss review of a case on stipulation of all parties and, in criminal cases, the written consent of the defendant, if the motion is made before oral argument on the merits. The appellate court may, in its discretion, dismiss review of a case on the motion of a party who has filed a notice of appeal, a notice for discretionary review, or a motion for discretionary review by the Supreme Court. Costs will be awarded in a case dismissed on a motion for voluntary withdrawal of review only if the appellate court so directs at the time the motion is granted.

RULE 18.3
WITHDRAWAL BY COUNSEL

(a) Criminal Cases.

(1) Counsel for a defendant in a criminal case may withdraw only with the permission of the appellate court on a showing of good cause. The appellate court will not ordinarily grant permission to withdraw after the opening brief has been filed. Counsel must serve the motion to withdraw on all parties, and may serve the defendant by mail at the last known address. An affidavit of service must be filed with the motion to withdraw.

(2) If counsel appointed to represent an indigent defendant can find no basis for a good faith argument on review, counsel should file a motion in the appellate court to withdraw as counsel for the indigent. The motion shall identify the issues that could be argued if they had merit and, without argument, include references to the record and citations of authority relevant to the issues. The adverse party shall file an answer to the motion within 30 days after the motion is served on the adverse party. If requested by the court, an amended answer shall be submitted including argument as to why the identified issues are without merit. The motion and answer will be reproduced by the clerk and served on the adverse party and the person represented by counsel seeking to withdraw.

(3) If the matter is heard on the motion calendar and

decided by a commissioner, counsel appointed to represent an indigent defendant must file an affidavit denoting:

(A) that the defendant has been advised of the action of the commissioner and that the defendant has been advised of the right to file a motion to modify with the Court of Appeals, or

(B) in the event counsel is unable to notify the defendant of the court action, counsel shall specify the efforts that have been made.

(4) Once the Court of Appeals has taken final action, counsel appointed to represent an indigent defendant must file an affidavit denoting:

(A) that the defendant has been advised of the action of the appellate court, and that the defendant has been advised of the right to petition pro se for review to the Supreme Court, or

(B) in the event counsel is unable to notify the defendant of the courts action, counsel shall specify the efforts that have been made.

(b) Civil Cases. Except as otherwise provided in this section, withdrawal by counsel in a civil case shall be governed by CR 71. If a notice of intent to withdraw is given before oral argument, the notice should include the date set for oral argument. Any reference in the notice to the clerk of the court shall mean the clerk of the appellate court. A motion to withdraw should be filed in the appellate court, which will decide such motion.

RULE 18.4
DISPOSITION OF EXHIBITS

When a case is mandated, or returned to the trial court for further proceedings, exhibits in the custody of the appellate court will be returned to the trial court.

[Amended December 24, 2002]

RAP RULE 18.5
SERVICE AND FILING OF PAPERS

(a) Service. Except when a rule requires the appellate court commissioner or clerk or the trial court clerk to serve a particular paper, and except as provided in rule 9.5, a person filing a paper must, at or before the time of filing, serve a copy of the paper on all parties, amicus, and other persons who may be entitled to notice. If a person does not have an attorney of record, service should be made upon the person. Service must be made as provided in CR 5(b), (f), (g), and (h).

(b) Proof of Service. Proof of service should be made by an acknowledgment of service, or by an affidavit, or, if service is by mail, as provided in CR 5(b). Proof of service may appear on or be attached to the papers filed.

(c) Filing. Papers required or permitted to be filed in the appellate court must be filed with the clerk, except that an appellate court judge may permit papers to be filed with the judge, in which event the judge will note the filing date on the papers and promptly transmit them to the appellate court clerk.

(d) Filing by Facsimile. (Reserved. See GR 17--Facsimile Transmission.)

(e) Service and Filing by an Inmate Confined in an Institution. An inmate confined in an institution may file and serve papers by mail in accordance with GR 3.1.

References

Rule 9.5, Filing and Service of Report of Proceedings-Objections.

[Amended effective September 1, 2006.]

RAP 18.6
COMPUTATION OF TIME

(a) Generally. In computing any period of time prescribed by these rules, the day of the event from which the time begins to run is not included. The last day of the period so computed is included unless it is a Saturday, Sunday, or legal holiday, in which case the period extends to the end of the next day that is not a Saturday, Sunday, or legal holiday. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation.

(b) Service by Mail. Except as provided in GR 3.1, if the time period in question applies to a party serving a paper by mail, the paper is timely served if mailed within the time permitted for service. Except as provided in GR 3.1, if the time period in question applies to the party upon whom service is made, the time begins to run 3 days after the paper is mailed to the party.

(c) Filing by Mail. Except as provided in GR 3.1, a brief authorized by Title 10 or Title 13 is timely filed if mailed to the appellate court within the time permitted for filing. Except as provided in GR 3.1, any other paper, including a petition for review, is timely filed only if it is received by the appellate court within the time permitted for filing.

[Amended February, 10, 2000; September 1, 2006; September 1, 2010]

RAP RULE 18.7
SIGNING AND DATING PAPERS

Each paper filed pursuant to these rules should be dated and signed by an attorney (with the attorney's Washington State Bar Association membership number in the signature block) or party, except papers prepared by a judge, commissioner or clerk of court, bonds, papers comprising a record on review, papers that are verified on oath or by certificate, and exhibits.

References

CR 11, Signing of Pleadings.

[Amended effective September 1, 2006.]

RULE 18.8
WAIVER OF RULES AND EXTENSION AND REDUCTION OF TIME

(a) Generally. The appellate court may, on its own initiative or on motion of a party, waive or alter the provisions of any of these rules and enlarge or shorten the time within which an act must be done in a particular case in order to serve the ends of justice, subject to the restrictions in sections (b) and (c).

(b) Restriction on Extension of Time. The appellate court will only in extraordinary circumstances and to prevent a gross miscarriage of justice extend the time within which a party must file a notice of appeal, a notice for discretionary review, a motion for discretionary review of a decision of the Court of Appeals, a petition for review, or a motion for reconsideration. The appellate court will ordinarily hold that the desirability of finality of decisions outweighs the privilege of a litigant to obtain an extension of time under this section. The motion to extend time is determined by the appellate court to which the untimely notice, motion or petition is directed.

(c) Restriction on Changing Decision. The appellate court will not enlarge the time provided in rule 12.7 within which the appellate court may change or modify its decision.

(d) Terms. The remedy for violation of these rules is set forth in rule 18.9. The court may condition the exercise of its authority under this rule by imposing terms or awarding compensatory damages, or both, as provided in rule 18.9.

RULE 18.9
VIOLATION OF RULES

(a) Sanctions. The appellate court on its own initiative or on motion of a party may order a party or counsel, or a court reporter or other authorized person preparing a verbatim report of proceedings, who uses these rules for the purpose of delay, files a frivolous appeal, or fails to comply with these rules to pay terms or compensatory damages to any other party who has been harmed by the delay or the failure to comply or to pay sanctions to the court. The appellate court may condition a party's right to participate further in the review on compliance with terms of an order or ruling including payment of an award which is ordered paid by the party. If an award is not paid within the time specified by the court, the appellate court will transmit the award to the superior court of the county where the case arose and direct the entry of a judgment in accordance with the award.

(b) Dismissal on Motion of Commissioner or Clerk. The commissioner or clerk, on 10 days' notice to the parties, may (1) dismiss a review proceeding as provided in section (a) and (2) except as provided in rule 18.8(b), will dismiss a review proceeding for failure to timely file a notice of appeal, a notice for discretionary review, a motion for discretionary review of a decision of the Court of Appeals,

or a petition for review. A party may object to the ruling of the commissioner or clerk only as provided in rule 17.7.

(c) Dismissal on Motion of Party. The appellate court will, on motion of a party, dismiss review of a case (1) for want of prosecution if the party seeking review has abandoned the review, or (2) if the application for review is frivolous, moot, or solely for the purpose of delay, or (3) except as provided in rule 18.8(b), for failure to timely file a notice of appeal, a notice of discretionary review, a motion for discretionary review of a decision of the Court of Appeals, or a petition for review.

(d) Objection to Ruling. A counsel upon whom sanctions have been imposed or a party may object to the ruling of a commissioner or the clerk only as provided in rule 17.7.

References

Rule 10.7, Submission of Improper Brief.

RULE 18.10
FORMS

A person may use any form which substantially complies with these rules. The forms in the Appendix are only illustrative.

RULE 18.11

(RESCINDED)

RULE 18.12
ACCELERATED REVIEW GENERALLY

The appellate court on its own motin or on motion by a party may set any review proceeding for accelerated disposition. The appellate court clerk will notify the parties of the setting and any orders entered to promote the accelerated disposition under rules 1.2(c) and 18.8(a).

RULE 18.13
ACCELERATED REVIEW OF DISPOSITIONS IN JUVENILE OFFENSE PROCEEDINGS

(a) Generally. Dispositions in a juvenile offense proceeding beyond the standard range for such offenses shall be reviewed on the merits by accelerated review as provided in this rule.

(b) Accelerated review by motion. The accelerated review of the disposition shall be done by motion. The motion must include (1) the name of the party filing the motion; (2) the offense in a juvenile offense proceeding; (3) the disposition of the trial court; (4) the standard range for the offense; (5) a statement of the disposition urged by the moving party; (6) copies of the clerk's papers and a written verbatim report of those portions of the disposition proceeding that are material to the motion; (7) an argument for the relief the party seeks; and (8) a statement of any other issues to be decided in the review proceeding.

(c) Motion procedure controls. Unless otherwise specified in this rule, the motion procedure, including a party's response, is governed by rule 17.

(d) Accelerated review of other issues. The decision of issues other than those relating to the juvenile offense disposition may be accelerated only pursuant to rules 18.8, 18.12, or 18.13A.

(e) Supreme Court review. A decision by the Court of Appeals on accelerated review that relates only to a juvenile offense disposition is subject to review by the Supreme Court only by a motion for discretionary review on the terms and in the manner provided in rules 13.3(e) and 13.5A.

(f) Schedule. The accelerated review shall include a schedule for filing the record on review, the motion, response, and reply, and setting oral argument.

[Amended December 5, 2002; September 1, 2006; October 2, 2008.]

RULE 18.13A
ACCELERATED REVIEW OF JUVENILE DEPENDENCY DISPOSITION ORDERS AND ORDERS TERMINATING PARENTAL RIGHTS

(a) Generally. Juvenile dependency disposition orders and orders terminating parental rights under RCW 13.34 may be reviewed by a commissioner on the merits by accelerated review as provided in this rule. Review from other orders entered in juvenile dependency and termination actions are not subject to this rule. The provisions of this rule supersede all other provisions of the Rules of Appellate Procedure to the contrary, and this rule shall be construed so that appeals from juvenile dependency disposition orders and orders terminating parental rights under RCW 13.34 shall be heard as expeditiously as possible.

(b) Notice of Appeal - Filing with Appellate Court. The notice of appeal must be filed with the trial court in compliance with Title 5 of these rules. Notwithstanding the other provisions of this rule, a timely notice of appeal shall be accepted for filing. A copy of the notice of appeal with proof of service should be filed with the appellate court by the appellant at the time it is filed with the trial court.

(c) Motion for Order of Indigency. Parties seeking review at public expense must file a motion for order of indigency in the trial court. Any order of indigency should be filed contemporaneously with the notice of appeal.

(d) Consolidation. When one or more appellants seek review of more than one dependency dispositional order or order terminating parental rights arising from cases tried together, each appellant may file a single statement of arrangements and a single designation of clerk's papers under the lowest trial court cause number. The appellate court normally will consolidate the appeals for purposes of review.

(e) Statement of Arrangements. A statement of arrangements should be filed contemporaneously with the notice of appeal. The party seeking review should arrange for the transcription of an original and one copy of the verbatim report of proceedings. If the proceeding being reviewed was recorded electronically, transcription of the recordings shall be completed by a court-approved transcriber in accordance with the procedures developed by the Administrative Office of the Courts. An indigent party should provide the court reporter, transcriber, or court administrator a copy of the order of indigency. A non-indigent party should arrange for payment for the transcription of the report.

The party seeking review must file with the trial and appellate courts and serve the statement of arrangements on all parties of record and all named court reporters and file proof of service with the appellate court. The party must indicate the date that the report of proceedings was ordered, the financial arrangements which have been made for payment of transcription costs, the name of each court reporter or other person authorized to prepare the report of proceedings who will be preparing a transcript, the hearing dates, and the trial court judge. If the party seeking review does not intend to provide a report of proceedings, a statement to that effect should be filed in lieu of a statement of arrangements and served on all parties of record.

See Form 15B

(f) Report of Proceedings. The preparation and filing of reports of proceedings in appeals under this rule take precedence over all other appeal records. The format of the verbatim report of proceedings is governed by rule 9.2(e) and (f). The filing and service of the report of proceedings is governed by rule 9.5, except that any motion for extension of time to file the report of proceedings must be accompanied by an affidavit from the court reporter or other person authorized to prepare the report of proceedings demonstrating exceptional circumstances. Extensions otherwise will be denied and sanctions may be imposed.

(g) Designation and Filing of Clerk's Papers. The party seeking review should file a designation of clerk's papers with the trial and appellate courts contemporaneously with the notice of appeal. In appeals under this rule, the entire trial court file shall be designated as clerk's papers to be transmitted to the appellate court. All of the exhibits filed in the trial court shall also be designated and transmitted to the appellate court. In cases appropriate for consolidation under subsection (d) of this rule, a designation of clerk's papers need only request the preparation of a single trial court file. The clerk shall prepare and transmit the clerk's papers as set forth in rules 9.7 and 9.8, except that a copy of the clerk's papers and the exhibits shall be provided to appellate counsel. The clerk should give priority to the preparation and filing of clerk's papers in appeals under this rule.

See Form 15C

(h) Briefing. Parties shall file briefs in compliance with rules 10.3 and 10.4.

(i) Time for Filing Briefs.

(1) Brief of Appellant. The brief of an appellant should be filed with the appellate court within 30 days after the report of proceedings is filed with the trial court; or, if the record on review does not include a report of proceedings, within 30 days after the party seeking review has received an index of clerk's papers and exhibits. Appellant shall append to the brief a copy of the trial court's findings of fact and conclusions of law.

(2) Brief of Respondent. The brief of a respondent should be filed with the appellate court within 30 days after service of the brief of appellant. When there is more than one appellant, the respondent may file one brief in response to all appellants.

(3) Reply Brief. A reply brief of an appellant should be filed with the appellate court within 15 days after service of the brief of respondent unless

the court orders otherwise.

(4) Other Briefs. The appellate court may, on its own motion or on motion of a party, authorize or direct the filing of briefs on the merits other than those listed in this rule.

(5) Briefs in Consolidated Cases. In consolidated cases, a party may (i) join with one or more other parties in a single brief, or (ii) file a separate brief and adopt by reference any part of the brief of another.

(j) Supreme Court Review. A decision by the Court of Appeals on accelerated review that relates only to juvenile dependency dispositional orders or orders terminating parental rights is subject to review by the Supreme Court only by a motion for discretionary review on the terms and in the manner provided in rules 13.3(e) and 13.5A.

(k) Termination Appeals - Notice of Intent to Deliver Consent to Adoption. When an order terminating parental rights is under review, the department of social and health services or supervising agency having the right to consent to an adoption should serve a written notice of its intent to deliver consent to adoption. The notice of intent should specify the intended delivery date, and should be served on all parties to the appeal and on anyone appointed to represent the interests of the child, no fewer than 30 days before the intended delivery date. A copy of the notice of intent and a proof of service should be filed in the appellate court.

After service of the notice of intent, any party may move the court in which the appeal is pending to stay the order terminating parental rights, but only to the extent it authorized consent to adoption. The department or supervising agency should not deliver its consent to adoption if any party seeks a stay before the intended delivery date, pending a ruling on the motion to stay. The appellate court will hear the motion to stay on an expedited basis. Any stay of enforcement shall terminate upon issuance of the mandate as provided in Rule 12.5, unless otherwise directed by the appellate court.

[Adopted October 2, 2008; amended effective April 3, 2012]

RULE 18.14
MOTION ON THE MERITS

(a) Generally. The appellate court may, on its own motion or on motion of a party, affirm or reverse a decision or any part thereof on the merits in accordance with the procedures defined in this rule. A motion by a party pursuant to this rule should be denominated a "motion on the merits." The general motion procedures defined in Title 17 apply to a motion on the merits only to the extent provided in this rule.

(b) Time. A party may submit a motion on the merits to affirm any time after the opening brief has been filed. A party may submit a motion on the merits to reverse any time after the respondents brief has been filed. The appellate court on its own motion may, at any time, set a case on the motion calendar for disposition and enter orders the court deems appropriate to facilitate the hearing and disposition of the case. The clerk will notify the parties of the setting and of any orders entered by the court.

(c) Content, Filing, and Service; Response. A motion on the merits should be a separate document and should not be included within a party's brief on the merits. The motion should comply with rule 17.3(a), except that material contained in a brief may be incorporated by reference and need not be repeated in the motion. A motion on the merits should not exceed 25 pages, excluding attachments. The motion should be filed and served as provided in rule 17.4. A response may be filed and served as provided in rule 17.4(e) and may incorporate material in a brief by reference. Requests for attorney fees are governed by rule 18.1.

(d) Who Decides Motion. A motion on the merits to affirm shall be determined initially by a judge or commissioner of the appellate court. A motion to reverse may be denied by a commissioner or judge or submitted with a recommendation to a panel of the appellate court.

(e) Considerations Governing Decision on Motion.

(1) Motion To Affirm. A motion on the merits to affirm will be granted in whole or in part if the appeal or any part thereof is determined to be clearly without merit. In making these determinations, the judge or commissioner will consider all relevant factors including whether the issues on review (a) are clearly controlled by settled law, (b) are factual and supported by the evidence, or (c) are matters of judicial discretion and the decision was clearly within the discretion of the trial court or administrative agency.

(2) Motion To Reverse. A motion on the merits to reverse will be granted in whole or in part if the appeal or any part thereof is determined to be clearly with merit. In making these determinations, the judge or commissioner will consider all relevant factors including whether the issues on review (a) are clearly controlled by settled law, (b) are factual and clearly not supported by the evidence, or (c) are matters of judicial discretion and the decision was clearly an abuse of discretion.

(f) Oral Argument. A motion on the merits may be denied without oral argument if the case obviously requires full appellate review. In all other instances rule 17.5 applies to a motion on the merits, except that oral argument will ordinarily be granted for a motion on the merits that is to be decided initially by the judge or judges. If the appellate court initiates the motion on the merits, the parties will be given an opportunity to submit briefs on the motion before the date set for oral argument on the motion.

(g) Form of Decision Denying Motion. Rule 17.6 is applicable to a decision denying a motion on the merits.

(h) Form of Decision Granting Motion. A ruling or decision granting a motion on the merits will be concise and will include a description of the facts sufficient to place the issues in context, a statement of the issues, and a resolution of the issues with supportive reasons.

(i) Review of Ruling. A ruling or decision denying a motion on the merits or referring the motion to the judges for decision pursuant to rule 17.2(b) is not subject to review by the judges. A ruling or decision granting a motion on the merits by a single judge or commissioner is subject to review as provided in rule 17.7.

(j) Non-disqualification of Judge. Participation in a ruling or decision on a motion on the merits does not thereby disqualify a judge from further participation in the case.

(k) Procedure Optional With Court. The Supreme Court or any division of the Court of Appeals may, by general order, decide not to use the procedure defined by this rule.

[Amended effective September 1, 2010]

RAP RULE 18.15
ACCELERATED REVIEW OF ADULT SENTENCINGS

(a) Generally. A sentence that is beyond the standard range may be reviewed on the merits in the manner provided in the rules for other decisions or by accelerated review as provided in this rule.

(b) Accelerated Review by Motion. After the notice of appeal has been filed, any party may seek accelerated sentence review and must do so by motion. The motion must include (1) the name of the party filing the motion; (2) the offense; (3) the disposition of the trial court; (4) the standard range for the offense; (5) a statement of the disposition urged by the moving party; (6) copies of the findings of fact, conclusions of law and judgment and sentence; (7) an argument for the relief sought with reference to that portion of RCW 9.94A.210(4) relied upon by the moving party.

(c) Service on Court Reporter or Clerk. A copy of the motion for accelerated review must be served upon the court reporter in attendance at the sentencing, or, in the case of electronic recording, upon the clerk of the superior court.

(d) Time for Hearing. The hearing will be conducted no later than 28 days following filing of the record required by RCW 9.94A.210(5). The court will notify the parties of the hearing date.

(e) Motion Procedure Controls. The motion procedure, including a party's response, is governed by Title 17.

(f) Accelerated Review of Other Issues. The decision of issues other than those relating to the sentence may be accelerated only pursuant to rules 18.8 and 18.12.

(g) Supreme Court Review. A decision by the Court of Appeals on accelerated review that relates only to an adult sentence is subject to review by the Supreme Court only by a motion for discretionary review on the terms and in the manner provided in rules 13.3(e) and 13.5A.

[Amended December 5, 2002; September 1, 2006.]

RULES 18.17 through 18.20

(RESERVED)

RULE 18.21
TITLE AND CITATION OF RULES

These rules are called the Rules of Appellate Procedure and may be cited as RAP.

RULE 18.22
STATUTES AND RULES SUPERSEDED

(a) Generally. Rule 1.1(g) provides that these rules supersede all statutes and rules covering procedure in the appellate courts, unless a particular rule indicates that statutes control. The statutes and rules superseded by these rules continue to apply to any case pending before the Supreme Court or the Court of Appeals on July 1, 1976.

(b) List of Statutes and Rules. Some, but not necessarily all, of the statutes and rules which are superseded by these rules are listed below. If a listed statute relates to appellate procedure and to some other subject, it is superseded only as it relates to appellate procedure. If a listed statute relates in part to one of these rules which specifies that statutes control, and in part to other rules, the listed statute is superseded only as it relates to the other rules. The rules listed are superseded and no longer effective.

STATUTES AND RULES SUPERSEDED

SAR	15	CAROA 1 through 66
ROA	I-1 through I-67	CR 62(c), (d), (e), and (g)
ROA	II-1 through II-4	CrR 7.4(d)(2)
CAR	15 and 24	CrR 7.7
RCW	1.12.040	RCW 29.79.170
	2.04.010	29.79.210
	2.04.160	29.82.160
	2.04.170	30.30.090
	2.06.030	31.12.050
	2.32	33.40.120
	4.20.050	35.44.260
	4.32.190	36.18.020(7)
	4.32.250	36.94.290
	4.36.240	43.24.120
	4.80.050	48.28.030
	4.84.180	49.32.080
	4.88.260	49.60.260
	5.48.050	50.32.130
	6.24.110	51.52.110
	7.36.040	52.34.090
	8.04.070	56.20.080
	8.04.150	57.16.090
	10.77.130	84.64.120
	10.77.230	85.05.130
	19.10.110	85.06.130
	24.32.360	85.08.440
	26.32.120	91.04.325
	26.32.130	91.08.580

RULE 18.23
MAIL ADDRESSED TO APPELLATE COURTS

All briefs and other papers submitted to the Supreme Court and the Court of Appeals to be filed or considered in a case should be addressed to the clerk of the appropriate court and should clearly show, in the brief or paper itself or in a cover letter, (1) the name of the court to which the brief or paper is being submitted, (2) the caption of the case, and (3) the docket number of the case in the appellate court or, if none, the docket number of the case in the trial court and the name of the trial court.

A pleading will be considered timely filed by the Supreme Court and the Court of Appeals if it is timely filed in any Division of the Court of Appeals or in the Supreme Court.

RULE 18.24
STATUS OF REFERENCES

The references to these rules have not been adopted by the Supreme Court. The references are solely those of the advisory task force on appellate rules.

FORM 1. Notice of Appeal (Trial Court Decision)

(Rule 5.3(a))

SUPERIOR COURT OF WASHINGTON FOR
(_____) COUNTY

(Name of plaintiff),	)	No. (trial court)
Plaintiff,	)	
v.	)	NOTICE OF APPEAL TO
(Name of defendant),	)	(COURT OF APPEALS or
Defendant.	)	SUPREME COURT)

(Name of party seeking review), (plaintiff or defendant), seeks review by the designated appellate court of the (Describe the decision

or part of decision which the party wants reviewed: for example, "Judgment", "Paragraph 4 of the Marriage Dissolution Decree".) entered on (date of entry.)

A copy of the decision is attached to this notice.

(Date)

_____
Signature

Attorney for (Plaintiff or Defendant)

(Name, address, telephone number, and Washington State Bar Association membership number of attorney for appellant and the name and address of counsel for each other party should be listed here. In a criminal case, the name and address of the defendant should also be listed here. See rule 5.3(c).)

FORM 2. Notice for Discretionary Review

(Rule 5.3(b))

SUPERIOR COURT OF WASHINGTON
FOR (_____) COUNTY

(Name of plaintiff), Plaintiff,	)	No. (trial court)
v.	)	NOTICE OF DISCRETIONARY REVIEW TO (COURT OF APPEALS or SUPREME COURT)
(Name of defendant), Defendant.	)	

(Name of party seeking review), (plaintiff or defendant), seeks review by the designated appellate court of the (Describe the decision or part of decision which the party wants reviewed: for example, "Order Denying Discovery", "Paragraph 4 of the Restraining Order".) entered on (date of entry).

A copy of the decision is attached to this notice.

(Date)

_____
Signature
Attorney for (Plaintiff or Defendant)

(Name, address, telephone number, and Washington State Bar Asociation membership number of attorney for appellant and the name and address of counsel for each other party should be listed here. In a criminal case, the name and address of the defendant should also be listed here. See rule 5.3(c).)

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3 MOTION FOR DISCRETIONARY REVIEW (IN WORD FORMAT)

The contents of this item are only available on-line.

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4 STATEMENT OF GROUNDS FOR DIRECT REVIEW (IN WORD FORMAT)

The contents of this item are only available on-line.

FORM 5. Title Page for all Briefs and Petition for Review

(Rule 10.3 (briefs); Rule 13.4(d) (petition for review))

No. (appellate court)

(SUPREME COURT or COURT OF APPEALS, DIVISION ___)
OF THE STATE OF WASHINGTON

_____

(Title of trial court proceeding with parties designated as in rule 3.4, for example:

JOHN DOE, Respondent,
v.
MARY DOE, (Appellant or Petitioner),
and
HENRY JONES, Defendant.)

_____

(PETITION FOR REVIEW or title of brief, for example: BRIEF OF PETITIONER, REPLY BRIEF OF APPELLANT)

_____

(Name of attorney for party filing brief)
Attorney for (Identity of party, as Appellant)

(Address, telephone number, and Washington State Bar Association number of attorney for party filing

brief or petition)

6 BRIEF OF APPELLANT (IN WORD FORMAT)

The contents of this item are only available on-line.

RAP FORM 7
Notice of Intent To File Pro Se Supplemental Brief

(DELETED)

[Deleted effective September 1, 2006.]

FORM 8. Notice of Appeal From Court of Appeals Decision

(Obsolete)

9 PETITION FOR REVIEW (IN WORD FORMAT)

The contents of this item are only available on-line.

FORM 10. Cost Bill

(Rule 14.4)

No. (appellate court)

(SUPREME COURT or COURT OF APPEALS, DIVISION ___)
OF THE STATE OF WASHINGTON

(Title of trial court proceeding)
with parties designated as in)
rule 3.4))

COST BILL

(Name of party asking for costs), (appellant, petitioner, or respondent), asks that the following costs be awarded:

1. Statutory attorney's fees $
2. Preparation of original and one copy of report of proceedings $
3. Copies of clerk's papers $
4. Transmittal of record on review $
5. Expenses incurred in superseding the decision of the trial court (Identify) $
6. Charges of appellate court clerk for reproduction of briefs, petitions, and motions (Identify and separately state the charge for each.) $
7. Preparing 50 pages of original documents $
8. Filing fee $___

Total $

The above items are expenses allowed as costs by rule 14.3, reasonable expenses actually incurred, and reasonably necessary for review. (Name of party) should pay the costs.

(Date)

_____
Signature
Attorney for (Appellant, Respondent, or Petitioner)
(Name, address, telephone number, and Washington State Bar Association membership number of attorney)

FORM 11. Objections to Cost Bill

(Rule 14.5)

No. (appellate court)

(SUPREME COURT or COURT OF APPEALS, DIVISION ___)
OF THE STATE OF WASHINGTON

(Title of trial court proceeding)
with parties designated as in)
rule 3.4))

OBJECTIONS TO COST BILL

(Name of party objecting), (appellant, petitioner or respondent),

objects to the award of any costs to (name of party) because:
(Here state reasons. See rule 14.2.)

Alternate Form
(Name of party objecting), (appellant, petitioner, or respondent), objects to the following expenses listed on the Cost Bill of (name of party):
(List the items on the cost bill which are objectionable, by number of item on the cost bill with a description of the item and the amount claimed. State the objection after each item. For example:
2. Report of Proceedings $320.00
Objection: The amount claimed is unreasonable. See RAP 14.3.
(a). The report of proceedings is double spaced and is ____ pages. The usual charge per page is $____. Computed on the usual basis, the total charge should be $220.00.
5. Bond $10.00
Objection: The charge is for the premium on a cost bond. A cost bond is not required under the new rules. The charge was not reasonably necessary for review. See RAP 14.3(a).)
(Date)

_____
Signature
Attorney for (Appellant, Respondent, or Petitioner)
(Name, address, telephone number, and Washington State Bar Association membership number of attorney)

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12 ORDER OF INDIGENCY (IN WORD FORMAT)

The contents of this item are only available on-line.

12A FINDINGS OF INDIGENCY AND ORDER TO TRANSMIT FINDINGS OF INDIGENCY (IN WORD FORMAT)

The contents of this item are only available on-line.

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13 MOTION FOR ORDER OF INDIGENCY (IN WORD FORMAT)

The contents of this item are only available on-line.

RAP FORM 14
Invoice of Court Reporter--Indigent Case

[DELETED]

[Amended effective September 1, 2006.]

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15 STATEMENT OF ARRANGEMENTS (IN WORD FORMAT)

The contents of this item are only available on-line.

15A NOTICE OF FILING VERBATIM REPORT OF PROCEEDINGS (RAP 9.5) (IN WORD FORMAT)

The contents of this item are only available on-line.

15B STATEMENT OF ARRANGEMENTS IN APPEALS FROM DEPENDENCY DISPOSITIONAL ORDERS AND ORDERS TERMINATIING PARENTAL RIGHTS (IN WORD FORMAT)

The contents of this item are only available on-line.

15C DESIGNATION OF CLERK'S PAPERS IN APPEALS FROM DEPENDENCY DISPOSITIONAL ORDERS AND ORDERS TERMINATIING PARENTAL RIGHTS (IN WORD FORMAT)

The contents of this item are only available on-line.

15D NOTICE OF INTENT TO DELIVER CONSENT TO ADOPTION

The contents of this item are only available on-line.

FORM 16. Petition Against State Officer

(Rule 16.2(b))

No. (appellate court)

SUPREME COURT OF THE STATE OF WASHINGTON

(Name of petitioner),)
Petitioner,)
v.) PETITION AGAINST STATE OFFICER
(Name of respondent),)
Respondent.)

Petitioner alleges:
(Set forth in numbered, descriptively titled paragraphs, as in a

complaint in a civil action, a short and plain statement of the claim showing that petitioner is entitled to relief. Conclude with a demand for judgment for the relief sought. See CR 10.)
(Date)

_____
Signature
Attorney for Petitioner
(Name, address, telephone number, and Washington State Bar Association membership number of attorney)

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17 PERSONAL RESTRAINT PETITION FOR PERSON CONFINED BY STATE OR LOCAL GOVERNMENT (IN WORD FORMAT)

The contents of this item are only available on-line.

FORM 18. Motion

(Rule 17.3(a))

No. (appellate court)

(SUPREME COURT or COURT OF APPEALS, DIVISION ___)
OF THE STATE OF WASHINGTON

(Title of trial court proceeding) with parties designated as in rule 3.4)	MOTION FOR (identify relief sought)

1. IDENTITY OF MOVING PARTY
(Name), (designation of moving party, for example: "Appellant" or "Assignee of Respondent's interest in the judgment being reviewed") asks for the relief designated in Part 2.

2. STATEMENT OF RELIEF SOUGHT
(State the relief sought, for example: "Substitution of John Doe as respondent in place of Alvin Jones".)

3. FACTS RELEVANT TO MOTION
(Here state facts relevant to motion with reference to or copies of parts of the record relevant to the motion. For example: "Alvin Jones, plaintiff, obtained a judgment against defendant, Henry Hope (Judgment, CP 17). Alvin Jones assigned the judgment to John Doe after defendant filed his Notice of Appeal. A true copy of the assignment is attached. Defendant did not assert a counterclaim against plaintiff in the trial court".)

4. GROUNDS FOR RELIEF AND ARGUMENT
(Here state the grounds for the relief sought with authority and supporting argument. For example: "RAP 3.2(a) authorizes substitution of parties when the interest of a party in the subject matter of the review has been transferred. Substitution should be granted here as defendant has no claim against plaintiff-respondent and respondent no longer has an interest in the judgment which is the subject matter of this appeal".)
(Date)

Respectfully submitted,

_____
Signature
Attorney for (Appellant, Respondent, or Petitioner)
(Name, address, telephone number, and Washington State Bar Association membership number of attorney)

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19 NOTICE OF MOTION (IN WORD FORMAT)

The contents of this item are only available on-line.

FORM 20. Motion To Modify Ruling

(Rule 17.7)

No. (appellate court)

(SUPREME COURT or COURT OF APPEALS, DIVISION ___)
OF THE STATE OF WASHINGTON

(Title of trial court proceeding) with parties designated as in rule 3.4)	MOTION TO MODIFY RULING

1. IDENTITY OF MOVING PARTY
(Name of moving party), (designation of moving party) asks for the relief designated in Part 2.

2. STATEMENT OF RELIEF SOUGHT
Modify ruling of the (Clerk or Commissioner) filed on (date). The ruling (state substance of ruling, for example: "denied the motion to be substituted as respondent in place of Alvin Jones") This court should (State relief requested, for example: "authorize the requested

substitution".).

3. FACTS RELEVANT TO MOTION
(Here state facts relevant to original motion, with reference to or copies of parts of the record relevant to that motion. The facts set forth in the original motion may be incorporated by reference. For example: "The facts are set out in Part 3 of the original motion to the commissioner.")

4. GROUNDS FOR RELIEF AND ARGUMENT
(Here state the grounds for relief sought with authority and supporting argument. The grounds for relief set forth in the original motion may be incorporated by reference.)
(Date)

Respectfully submitted,

_____
Signature
Attorney for (Appellant, Respondent, or Petitioner)
(Name, address, telephone number, and Washington State Bar Association membership number of attorney)

FORM 21. Civil Appeal Statement

(Rule 5.5(c))

COURT OF APPEALS, DIVISION ___ OF THE
STATE OF WASHINGTON

(Title of trial court proceeding) with parties designated as in rule 3.4)	CIVIL APPEAL STATEMENT

1. NATURE OF THE CASE AND DECISION
(State the substance of the case below and the basis for the trial court decision. For example: "Defendant was driving his automobile when struck from the rear by a truck driven by Jones. An automobile coming from the opposite direction driven by an uninsured motorist crossed the center line into the lane occupied by defendant and collided with the defendant's car. Defendant settled his claim against Jones and executed a release without the consent of plaintiff insurance company. The policy issued by plaintiff contained a provision which excluded coverage under the uninsured motorist provisions for bodily injury to an insured who has made any settlement with any person without the written consent of the company. The trial court held that this exclusion violated public policy by restricting the uninsured motorist coverage required by RCW 48.22.030 and declared the exclusion void.")

2. ISSUES PRESENTED FOR REVIEW
(State the issues the party intends to present for review by the Court of Appeals. For example: "Whether a provision which excludes coverage when the insured does not secure the insurer's consent before settling with any person responsible for any injury violates public policy by restricting the uninsured motorist coverage required by RCW 48.22.030?" List under each issue the legal authority relevant to that issue.)

3. RELIEF SOUGHT IN COURT OF APPEALS
(State the relief the party seeks in the Court of Appeals. For example: "Reversal of trial court decision with directions to enter judgment declaring that defendant is not covered by the uninsured motorist provisions of the liability policy issued by plaintiff.")

4. TRIAL COURT
(Name of County) County Superior Court

5. JUDGE
(Name of Trial Court Judge)

6. DATE OF DECISION
(The date the decision was entered in the trial court)

7. POST-DECISION MOTIONS
(State each post-decision motion made in the trial court including the nature of the motion, the date the motion was made, the decision on the motion, and the date the decision was entered.)

8. NOTICE OF APPEAL
The notice of appeal was filed on date. A copy of the notice of appeal is attached to this statement.

9. COUNSEL
Counsel for appellant (name of appellant) is (name, address, and telephone number of attorney). Counsel for respondent (name of respondent) is (name, address, and telephone number of attorney).

10. METHOD OF DISPOSITION IN TRIAL COURT
(State the method used to decide the case in the trial court. For example: "summary judgment, order of dismissal, judgment after trial to the court, judgment after jury trial.")

11. RELIEF GRANTED BY TRIAL COURT
(State the relief granted by the trial court. For example: "The trial court entered a judgment declaring that defendant has coverage under the uninsured motorist provisions of the automobile liability policy issued by plaintiff.")

12. RELIEF DENIED BY TRIAL COURT

(State the relief sought by the party making the statement which was denied by the trial court. For example: "Plaintiff sought a judgment declaring that the uninsured motorist provision of the automobile liability policy no longer provided coverage to defendant.")

13. CERTIFICATE OF COUNSEL

I, attorney for appellant (name of appellant), certify that this appeal is taken in good faith and not for purposes of delay.
I further certify that my client (is or is not) prepared to immediately take all steps to complete the appeal. (If the statement indicates the party is not prepared to immediately take all steps to complete the appeal, state here why the party is not prepared to immediately complete the appeal.)

(Date)

_____
Signature
Attorney for Appellant
(Name, address, telephone number, and
Washington State Bar Association
membership number of attorney)

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22 NOTICE TO APPELLANT RE: STATEMENT OF ADDITIONAL GROUNDS FOR REVIEW (IN WORD FORMAT)

The contents of this item are only available on-line.

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23 FORM STATEMENT OF ADDITIONAL GROUNDS FOR REVIEW (IN WORD FORMAT)

The contents of this item are only available on-line.