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).