

RAP 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 respondent's 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 the length limitations of RAP 18.17. 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) Nondisqualification 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.

[Adopted effective July 1, 1976; Amended effective July 1, 1984; September 1, 1984; September 23, 1988; September 1, 1990; September 1, 1994; September 1, 2010; September 1, 2021.]