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February 9, 2009

Ronald R. Carpenter, Clerk  
Washington State Supreme Court  
Temple of Justice  
P.O. Box 40929  
Olympia, WA 98504-0929

RECEIVED  
SUPREME COURT  
STATE OF WASHINGTON  
2009 FEB 10 AM 7:48  
CLERK

Re: Proposed Amendment To RAP 13.4, Published In 165 Wn.2d Advance Sheet No. 1 at Proposed-19.

Dear Mr. Carpenter:

The proposed change to RAP 13.4 shifts the responsibility for serving a petition for review, answer and reply from the Clerk of the Court to the party filing the petition, answer or reply. I have no objection to the basic change, which I regard as positive.

I am concerned that the Rule should make clear that a failure to serve a petition, answer or reply, or late serving of a petition, answer or reply, or late serving of a petition, answer or reply, will not mean that the pleading is untimely and therefore rejected. My concern is that late filing of a petition will result in motions and arguments over RAP 18.8(b), which restricts the circumstances under which the Court will allow an extension of time for filing a petition for review. I suggest the Rule be amended to track with the provisions of RAP 5.4(b), which provides that failure to serve a notice of appeal in a timely manner does not affect the validity of the appeal:

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.

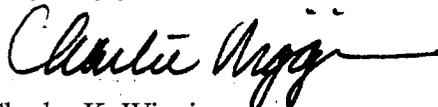
It seems to me that this could be easily accomplished by adding similar language to RAP 13.4(g), and leaving the title of this subsection as it currently reads, "Service And Reproduction Of Petition, Answer, And Reply." Alternatively, RAP 13.4(g) could simply provide that "failure to timely serve a party with notice or file proof of service is governed by the provisions of RAP 5.4(b)."

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One of the beauties of the Rules of Appellate Procedure is that they are clear and are drafted to reduce ambiguities. My proposal would help maintain that clarity and reduce or eliminate future motions.

Thank you for your consideration of my comments.

Very truly yours,

  
Charles K. Wiggins

CKW:sw

Cc: Ken Masters