

April 30, 2014

The Honorable Justice Charles W. Johnson  
Rules Committee Chair, Washington Supreme Court  
Sent via email: supreme@courts.wa.gov

RE: Rule Comment: Alternative Proposal RAP 16.7

Dear Justice Johnson,

Innocence Project Northwest (IPNW) supports adoption of alternative proposal to RAP 16.7 offered by the Washington Association of Criminal Defense Lawyers. IPNW works exclusively on post-conviction claims of actual innocence in Washington State. Since its formation in 1997, IPNW has exonerated 13 people who served over 100 years in prison for crimes they did not commit. Many of our clients were exonerated after pursuing relief through personal restraint petitions.

IPNW supports alternative RAP 16.7 because it remedies the unfairness of requiring a petitioner to meet a high burden of proof at the initial filing stage of the petition and permits the Court to grant discovery prior to granting a reference hearing, when material evidence is not available to a party because it is in the possession of others. The two revisions are interconnected. Reliable evidence may exist that would entitle a *pro se* petitioner to post-conviction relief, yet the petitioner may be unable to obtain the admissible evidence without a subpoena. For example, a petitioner may obtain copies of records showing he was reporting to probation in Los Angeles, California when the crime for which he was convicted occurred in Tacoma, Washington. However these copies, although reliable, are inadmissible hearsay as they are not supported by evidence from a custodian or other qualified witness. *See* ER 803(6); RCW 5.45.020. Alternative RAP 16.7 confirms that the petitioner's claim should not be dismissed and provides that he can file a motion to subpoena business records necessary to support an ineffective assistance of counsel claim.<sup>1</sup>

This Court has long acknowledged the "role of collateral review in preserving constitutional liberties and remedying prejudicial error." *In re Personal Restraint of Bailey*, 141 Wn.2d 20, 26 (1120). Alternative RAP 16.7 strikes a balance between finality and the protection of fundamental constitutional rights. Adoption of alternative RAP 16.7 will facilitate the truth-seeking function of our criminal justice system by ensuring that meritorious claims based on reliable evidence are not dismissed at the initial stage and that both sides represented in the adversarial system have access to evidence.

Thank you for considering our comments.

Sincerely,



Jacqueline McMurtrie, Associate Professor  
Director, Innocence Project Northwest

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<sup>1</sup> The scenario is drawn from the facts of IPNW client James Anderson, who was exonerated after serving 4 years out of a 17 year prison sentence for a robbery he did not commit. *In re Anderson*, No. 37073-5-II, (Wash. Ct. App. Dec. 8, 2008).  
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