



WASHINGTON
COURTS

District and Municipal Court Judges' Association

President

JUDGE DAVID A. SVAREN
Skagit County District Court
600 S 3rd Street
PO Box 340
Mount Vernon, WA 98273-0340
(360) 336-9319

President-Elect

JUDGE VERONICA ALICEA-GALVAN
Des Moines Municipal Court
21630 11th Ave S Ste C
Des Moines, WA 98198
(206) 878-4597

Vice-President

JUDGE DAVID STEINER
King County District Court
585 112th Ave. S.E.
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(206) 477-2102

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JUDGE G. SCOTT MARINELLA
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535 Cameron St
Dayton, WA 99328-1279
(509) 382-4812

Past President

JUDGE SARA B. DERR
Spokane County District Court
Public Safety Building
1100 W Mallon Avenue
Spokane, WA 99260-0150
(509) 477-2959

Board of Governors

JUDGE SANDRA L. ALLEN
Ruston/Milton Municipal Courts
(253) 759-8545

JUDGE JOSEPH M. BURROWES
Benton County District Court
(509) 7535-8476

JUDGE JEFFREY J. JAHNS
Kitsap County District Court
(360) 337-7033

JUDGE MARY C. LOGAN
Spokane Municipal Court
(509) 622-4400

JUDGE SAMUEL MEYER
Thurston County District Court
(360) 786-5562

JUDGE KELLEY C. OLWELL
Yakima Municipal Court
(509) 575-3050

JUDGE REBECCA C. ROBERTSON
Federal Way Municipal Court
(253) 835-3000

COMMISSIONER PETE SMILEY
Bellingham Municipal Court
(360) 778-8150

JUDGE HEIDI SMITH
Okanogan County District Court
(509) 422-7170

April 23, 2014

Honorable Charles W. Johnson
Rules Committee Chair
Washington State Supreme Court
Temple of Justice
PO Box 40929
Olympia, WA 98054-0929

Dear Justice Johnson:

RE: PROPOSED AMENDMENTS TO RALJ 2.2, 5.4, AND 11.7(e)

The District and Municipal Court Judges' Association's (DMCJA) Board of Governors has reviewed the Washington State Bar Association (WSBA) proposals to amend the Rules for Appeal of Decisions of Courts of Limited Jurisdiction (RALJ) 2.2, RALJ 11.7(e), and RALJ 5.4.

RALJ 2.2 What May be Appealed

We have no objection to the proposed amendment to RALJ 2.2. The proposed language is nearly identical to the Rules of Appellate Procedure (RAP) 2.5.

RALJ 11.7(e) Application of Other Court Rules – Rules of Appellate Procedure

We have no objection to the proposed amendment to RALJ 11.7(e).

RALJ 5.4 An Amendment to Clarify the Scope of When a New Trial is Required When an Electronic Record Is Lost Or Damaged

There is some concern with the proposed language of the amendment; therefore, we offer some alternative language that matches the intent of the proposed amendment by the WSBA but makes it more understandable.

The existing first sentence of the rule clearly provides that the remedy is a new trial. Therefore, it seems that the second sentence of the rule, the proposed amendment, should begin with a modifier which allows for a remedy other than a new trial, and should reference a damaged record. For example:

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1206 Quince Street SE • P.O. Box 41170 • Olympia, WA 98504-1170
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However, if the lost or damaged record pertains to a material or significant pretrial matter, the appellant shall only be entitled to a new hearing on the matter for which the record was lost or destroyed.

The third sentence of the rule, the proposed amendment, could be simplified and clarified as to when the trial court will be required to rehear a motion or trial. For example:

Unless the appellant demonstrates that a pretrial matter or trial was materially affected by a lost or damaged electronic record, a trial court will not be required to rehear a pretrial matter or trial for which an electronic record is available for appellate review.

Thank you for considering these comments. If you have any questions regarding this recommendation, please let me know.

Sincerely,



Judge David A. Svaren
President, DMCJA

cc: Judge Janet E. Garrow, DMCJA Rules Committee Chair
Nan Sullins, AOC
Denise.Foster@courts.wa.gov (e-mail)
J. Krebs, AOC
Sharon R. Harvey, AOC