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**From:** OFFICE RECEPTIONIST, CLERK  
**Sent:** Wednesday, April 30, 2014 12:51 PM  
**To:** [REDACTED]  
**Subject:** FW: Proposed RAP Amendment 10.2(f) Comment  
**Attachments:** RAP.pdf

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**From:** Roberta Homoki [mailto:rjh@winstoncashatt.com]  
**Sent:** Wednesday, April 30, 2014 12:51 PM  
**To:** OFFICE RECEPTIONIST, CLERK  
**Subject:** Proposed RAP Amendment 10.2(f) Comment

Re: Proposed Rule Amendment RAP 10.2(f) – Regarding Amicus Brief Deadlines

Chief Justice Madsen and Justices of the Supreme Court:

We are private practitioners who regularly appear before the appellate courts of this state, and we are familiar with amicus curiae practice because of our work on behalf of the Washington State Association for Justice Foundation as amicus curiae. Also, Bryan served the Chair of the Washington Appellate Lawyers Association (WALA) subcommittee that worked on developing a proposal for amending RAP 10.2(f).

We both supported the proposed revision to RAP 10.2(f) that emerged out of the WSBA Rules Committee and was subsequently approved by the WSBA Board of Governors. A copy of the proposed amendment approved by the Board of Governors is attached. Also attached is a copy of our September 10, 2013 letter of support to the WSBA Board of Governors and our November 1, 2013 letter of support to the Supreme Court.

Notwithstanding the comprehensive and painstaking consideration of this issue by WALA and WSBA, when this Court published the proposed amendment for comment in its order of November 12, 2013, it altered the WSBA proposal by stating the due date in the alternative - "the earlier of 90 days after review has been granted or 45 days before oral argument or consideration on the merits."

We write to respectfully request that the Court restore the original language approved by the WSBA Board of Governors that provides amicus briefs in the Supreme Court are due 45 days before oral argument or consideration on the merits. This proposal best serves the competing interests of parties and amicus curiae, while fully honoring the Court's need for sufficient time to consider all amicus-related submissions in advance of oral argument.

We share many of the concerns expressed in the American Civil Liberties Union of Washington's comments on the proposed rule, which also requests restoration of the WSBA version.

The 45-day time provision dating back from oral argument is a variation on what the rule has been for many years in this state. It is simple, workable, and accommodates all interests, including the Court's predominant interest in timely submissions that are useful to the Court.

We encourage the Court to restore and adopt the original WSBA proposal.

Thank you for your consideration.

Respectfully submitted,

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OID #91108  
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Att:

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**GR 9 COVER SHEET**

**Suggested Change  
RULES OF APPELLATE PROCEDURE (RAP)  
Rule 10.2 – TIME FOR FILING BRIEFS**

**Submitted by the Board of Governors of the Washington State Bar Association**

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**A. Name of Proponent:** Washington State Bar Association.

**B. Spokespersons:**

Michele Radosevich, President, Washington State Bar Association, 1325 4<sup>th</sup> Ave., Ste. 600, Seattle, WA 98101-2539 (telephone 206-757-8124)

Hillary Evans, Chair, WSBA Court Rules and Procedures Committee, Washington State Bar Association, 1325 4<sup>th</sup> Ave., Ste. 600, Seattle, WA 98101-2539 (telephone 425-388-7365)

Elizabeth A. Turner, Assistant General Counsel, Washington State Bar Association, 1325 4<sup>th</sup> Ave., Ste. 600, Seattle, WA 98101-2539 (telephone 206-239-2109)

**C. Purpose:** The current rule for determining the deadline for an amicus curiae brief does not differentiate between cases in the Supreme Court and Court of Appeals, and, in both instances, primarily ties the amicus brief deadline to the oral argument date set by the appellate court. This approach has caused problems for both parties and the courts.

At the Supreme Court level, timely amicus curiae brief submissions do not always leave parties with sufficient time to submit an answering brief, or provide the court itself with sufficient time to fully consider amicus-related submissions in advance of oral argument. Under RAP 10.6, the Supreme Court does not set a date for filing the parties' answers to amicus briefs until the expiration of five business days after the amicus motion and accompanying amicus brief have been filed. The proposed amendment is designed to allow the Supreme Court adequate time to consider not just the amicus brief, but also the parties' answer to an amicus brief, before circulation of the Court's pre-hearing memorandum.

At the Court of Appeals level, letters setting oral argument are sometimes issued relatively close to the oral argument date, creating unreasonable time constraints for amicus curiae, parties submitting answering briefs, and for the court itself in fully considering amicus-related submissions in advance of oral argument. These same difficulties also may occur in those Court of Appeals cases where the court determines

to consider the case on the merits without oral argument.

The proposed amendments set deadlines for amicus curiae briefs with due regard for these problems, and the differences between Supreme Court and Court of Appeals practice. The amendment is designed to minimize uncertainties regarding amicus curiae brief deadlines, increase the time available after an amicus curiae brief is submitted for the parties to file answering briefs, and allow the court more time to fully consider amicus-related submissions in advance of oral argument.

D. **Hearing**: A hearing is not requested.

E. **Expedited Consideration**: Expedited consideration is not requested.

F. **Supporting Material**: Suggested rule amendment.

**SUGGESTED AMENDMENT**  
**RULES OF APPELLATE PROCEDURE (RAP)**  
**RULE 10.2 – TIME FOR FILING BRIEFS**

1           **(a) Brief of Appellant or Petitioner.** The brief of an appellant or petitioner should be  
2 filed with the appellate court within 45 days after the report of proceedings is filed in the trial  
3 court; or, if the record on review does not include a report of proceedings, within 45 days after  
4 the party seeking review has filed the designation of clerk's papers and exhibits.

5           **(b) Brief of Respondent in Civil Case.** The brief of a respondent in a civil case should  
6 be filed with the appellate court within 30 days after service of the brief of appellant or  
7 petitioner.

8           **(c) Brief of Respondent in Criminal Case.** The brief of a respondent in a criminal case  
9 should be filed with the appellate court within 60 days after service of the brief of appellant or  
10 petitioner.  
11

12           **(d) Reply Brief.** A reply brief of an appellant or petitioner should be filed with the  
13 appellate court within 30 days after service of the brief of respondent unless the court orders  
14 otherwise.

15           **(e) [Reserved; see rule 10.10]**

16           **(f) Brief of Amicus Curiae.** ~~A brief of amicus curiae not requested by the appellate~~  
17 ~~court should be received by the appellate court and counsel of record for the parties and any~~  
18 ~~other amicus curiae not later than 30 days before oral argument or consideration on the merits;~~  
19 ~~Unless the court sets a later different date, or allows a later date upon a showing of particular~~  
20 ~~justification by the applicant, a brief of amicus curiae should be filed as follows;~~  
21

**SUGGESTED AMENDMENT**  
**RULES OF APPELLATE PROCEDURE (RAP)**  
**RULE 10.2 – TIME FOR FILING BRIEFS**

1 (1) Supreme Court. A brief of amicus curiae should be received by the court and  
2 counsel of record for the parties and any other amicus curiae not later than 45 days  
3 before oral argument or consideration on the merits.

4 (2) Court of Appeals. A brief of amicus curiae should be received by the court and  
5 counsel of record for the parties and any other amicus curiae not later than 45 days after  
6 the due date for the last brief of respondent permitted under rule 10.2(b).

7 **(g) Answer to Brief of Amicus Curiae.** A brief in answer to the brief of amicus curiae  
8 may be filed with the appellate court not later than the date fixed by the appellate court.  
9

10 **(h) Service of Briefs.** At the time a party files a brief, the party should serve one copy  
11 on every other party and on any amicus curiae, and file proof of service with the appellate court.  
12 In a criminal case in which the defendant is the appellant, appellant's counsel shall serve the  
13 appellant and file proof of service with the appellate court. Service and proof of service should  
14 be made in accordance with rules 18.5 and 18.6.

15 **(i) Sanctions for Late Filing and Service.** The appellate court will ordinarily impose  
16 sanctions under rule 18.9 for failure to timely file and serve a brief.  
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September 10, 2013

(Transmitted by email:  
margarets@wsba.org)

WSBA Board of Governors  
c/o Margaret Shane  
1325 Fourth Ave., Sixth Floor  
Seattle, WA 98101

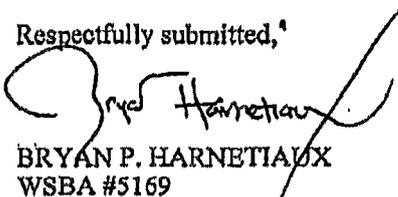
Re: Proposed Amendment to RAP 10.2 Governing Amicus Brief Deadlines

Dear Board of Governors:

The Board of Governors is scheduled to consider at its September 26/27 meeting a proposed revision to RAP 10.2, submitted by the WSBA Rules Committee, regarding amicus curiae brief deadlines. We write in support of the proposed revision, as submitted.

Each of us practices regularly in the appellate courts of the state, and are conversant with amicus curiae practice in Washington because of our work on behalf of the Washington State Association for Justice Foundation. The proposal before the Board was developed after considerable input from appellate practitioners, and has been approved by both the WSBA RAP Subcommittee and WSBA Rules Committee. (It has also benefitted from input by Supreme Court Commissioner Steve Goff and Office Manager Lisa Bausch.) We believe the separate amicus brief deadline formulas for the Supreme Court and Court of Appeals are each workable, and that this revision will benefit the appellate courts, parties and amicus curiae. The revision represents an improvement upon the current rule and should be approved.

Respectfully submitted,

  
BRYAN P. HARNETIA  
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GEORGE M. AHREND  
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16 Basin Street S.W.  
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November 1, 2013

(Transmitted by email  
via the Administrative  
Office of the Courts at  
Nan.Sullins@courts.wa.gov)

Hon. Justice Charles Johnson  
Chair, Supreme Court Rules Committee  
P.O. Box 40929  
Olympia, WA 98504-0929

**Re: Proposed Revision to RAP 10.2(f) (Amicus Brief Deadlines)  
November 5, 2013, En Banc Conference Agenda Item**

Dear Justice Charles Johnson and Justices of the Supreme Court:

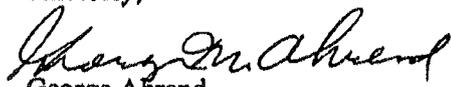
The Court is scheduled to consider a proposed revision of the rule governing filing deadlines for amicus briefs in the appellate courts (RAP 10.2(f)) at its en banc conference on November 5.

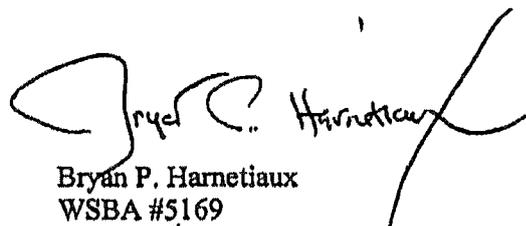
We are private practitioners who regularly appear before the appellate courts of this state, and we are familiar with amicus curiae practice because of our work on behalf of the Washington State Association for Justice Foundation as amicus curiae.

We support the proposal submitted by the Washington State Bar Association (WSBA), which would make Supreme Court amicus briefs due 45 days prior to oral argument and Court of Appeals amicus briefs due 45 days after filing of respondent's brief (rather than the current deadline of 30 days before oral argument in both the Supreme Court and the Court of Appeals). We believe that this proposal addresses and resolves the problems with the current rule, and that its adoption will benefit the appellate courts, parties, and amici. A letter that we previously sent to the WSBA Board of Governors in support of the proposal is enclosed with this letter.

Thank you for your consideration.

Sincerely,

  
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Encl.