



April 30, 2014

VIA Email: supreme@courts.wa.gov

Justices of the Washington Supreme Court
P.O. Box 40929
Olympia, WA 98504-0929

Re: Comments on Proposed Revision to RAP 10.2(f) (Amicus Brief Deadlines)

Dear Honorable Justices:

Columbia Legal Services (CLS) is a statewide legal services organization dedicated to seeking social and economic justice for people and communities of low income. CLS often seeks amicus status in cases in the appellate courts that affect the communities we serve, and so we have an interest in the current proposal to amend RAP 10.2(f).

CLS supports the goals of this amendment process, stated as to “minimize uncertainties regarding amicus curiae brief deadlines, increase the time available after an amicus 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.” And we agree that the current rule allowing amicus briefs to be filed as late as 30 days before argument often does not provide sufficient time for the courts to adequately consider responses to amicus briefs before arguments.

However, CLS also agrees with the concerns expressed in detail in comment letters recently submitted by the American Civil Liberties Union of Washington (ACLU) and Northwest Justice Project (NJP). A summary of CLS's concerns about the proposed rule as published for comment, which have been elaborated more fully by ACLU and NJP, is as follows:

- A rule allowing amicus brief filing in this Court at “the earlier of 90 days after review has been granted or 45 days before oral argument or consideration on the merits...” will create unnecessary confusion as practitioners try to determine which deadline applies.
- The date on which review is granted is often not readily publicly available, or is not readily available at an early date, which would make it very difficult for organizations wishing to file amicus briefs to know in a timely way about cases in which they wish to participate. The same potential confusion arises if the rule includes a provision tying amicus brief filing to the filing of a party’s last brief, as practitioners may not know when that filing occurs (or, as NJP points out, a party controlling the triggering brief may not file that brief at all for some reason).

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- In some cases, under this proposal amicus briefs would be due before supplemental briefs are filed when this Court grants review, which would frustrate the thrust of the amicus rules that amici will address matters not covered by the parties.

CLS agrees with NJP that the best option would be to simply change the rule to require amicus briefs to be filed 45 days before oral argument. This would address the timing concerns that led to the proposal in the first place while retaining one understandable standard for all. It would also prevent what we believe will be a large number of motions to forgive failure to follow one of the time limits that the proposed rule would create, which would not be an efficient use of scarce judicial resources.

Thank you for considering these comments.

Sincerely,

A handwritten signature in cursive script that reads "John Midgley". The signature is written in black ink and is positioned above the typed name and title.

John Midgley
Advocacy Director