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Ronald R. Carpenter
Clerk of the Supreme Court
P.O. Box 40929
Olympia, Wash. 98504-0929
Sent via email to: supreme@courts.wa.gov

Re: Proposed changes to RAP 10.2

Dear Mr. Carpenter,

I submit this rulemaking comment on behalf of Allied Daily Newspapers of Washington (ADN) and the Washington Newspaper Publishers Association (WNPA), which together represent most of the newspapers in our state. For decades, the newspaper associations have provided a voice for the general public in favor of open access to government and court records and proceedings. Because they often participate as amici in open government appeals, including at the invitation of courts, they have a strong interest in preserving opportunities to lend assistance to the appellate process.

ADN and WNPA are concerned that the proposed changes to RAP 10.2(f) could reduce the total amount of time available for amicus organizations to learn about and respond to cases of interest, possibly resulting in fewer amicus briefs on important issues affecting the public. By moving up the Supreme Court's filing deadline from 30 days before oral arguments to 45 days before oral arguments or earlier, depending on when review was accepted,¹ the proposed rule could allow insufficient time for amicus organizations to make useful contributions. Amicus organizations need time to identify cases of interest, review prior briefing, determine whether to participate as amicus, identify an available author, develop a position, confer with other potential amici to avoid duplication, conduct the necessary research and prepare an amicus brief.

Under current scheduling practices, amicus parties typically have at least 10 weeks between acceptance of review and filing. The proposed rule could reduce that to 8 weeks, or even less, under unusual circumstances. This can be problematic during busier periods when numerous open government cases in the state's appellate courts compete for attention, or when there is a delay in learning about the existence or nature of a case of potential interest.

Sometimes appellants and respondents do not finish briefing within the proposed time

¹ The proposed rule would require filing and service "the earlier of 90 days after review has been granted or 45 days before oral argument or consideration on the merits."

frame for amicus filing. For example, in the next case to be heard in the Supreme Court, *State v. Peltier*, the supplemental briefs were filed on March 28, which is 39 days before the May 6 hearing. If the proposed rule had been in effect, any interested parties would have been required to file amicus briefs before having a chance to review all arguments of the appellant and respondent. Such a sequence prevents amicus parties from identifying and addressing pertinent gaps in analysis, and from avoiding duplication of the parties' arguments.

The same problem arises from the proposed rule for the Court of Appeals, which would require amicus briefs to be filed "not later than 45 days after the due date for the last brief of respondent permitted under this rule." The Court of Appeals often grants extensions of time, such that the actual filing date may differ substantially from the "due date." Even if the respondent's brief is not delayed, the appellant's reply brief – ordinarily due within 30 days of the respondent's brief – may receive an extended schedule. Thus, there is a good chance that amici will not have a chance to review all of the parties' arguments before developing their own positions. This will reduce the number of amicus briefs by making it harder to discern if a case warrants participation. Even under the best of circumstances with no time extensions, amici would have only 15 days after seeing the appellant's reply to file their own briefs. This is insufficient time to analyze and respond.

Complicating matters, ADN and WNPA are not always contacted by parties whose pending cases may affect the open government rights of the public. Online publication of "Supreme Court Issues" is helpful to identifying pertinent cases, but the higher-volume Court of Appeals has no comparable method of summarizing what pending cases are about. Thus, a shorter filing period increases the risk of missing amicus opportunities altogether.

Under the current RAP 10.2, the Washington Supreme Court and the Court of Appeals have a month before oral arguments, and an indefinite period of time after oral arguments, to consider the viewpoints of various amici. Appellants and respondents have an opportunity to respond to amicus briefs by submitting briefs before the hearing as well as by making arguments at the hearing. Court opinions routinely reflect that amicus arguments, and responses to them, have been considered. ADN and WNPA have full faith in the courts to continue to fairly consider all arguments presented if the current rule is retained.

Thank you for your consideration of this important matter.

Very truly yours,

HARRISON-BENIS, LLP



Katherine A. George

cc Rowland Thompson, Allied Daily Newspapers of Washington
Fred Obee, Washington Newspaper Publishers Association