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April 29, 2014

Washington State Supreme Court  
Temple of Justice  
PO Box 40929  
Olympia, WA 98504-0929

RE: Comment on Proposed RAP 10.2(f)

**Washington Defender Association supports amending RAP 10.2(f) to require that amicus briefs be filed 45 days prior to oral argument, but does not support creating an alternative of the earlier of 45 days or 90 days after review has been granted.**

WDA does not support amending RAP 10.2(f) to require that amicus briefs be filed with the Supreme Court “the earlier of 90 days after review has been granted or 45 days before oral argument or consideration on the merits.” Instead, WDA supports the RAP subcommittee and Bar Court Rules Committee’s proposed amendments, which would amend the rule to require a brief be filed 45 days prior to argument or consideration on the merits.

Requiring that the brief be filed 90 days after review has been granted will create an artificial deadline that will not allow amici to properly consider whether a brief should be filed, especially because there are cases where this would require that the briefs would be filed prior to when the parties would be required to file their briefs.<sup>1</sup> WDA takes the obligation to only file an amicus brief when additional argument is necessary seriously. It is essential that the briefs of the parties be filed and that amici have sufficient time to consider whether filing is appropriate. Requiring that amicus briefs be filed before the parties have filed their briefs, which is likely to occur under this proposed rule change, means that amicus briefs are likely to cover issues that the parties intend to brief. It makes it impossible to know whether an important policy issue that the court should be educated upon might be raised by the parties. WDA expects that this rule will result in

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<sup>1</sup> This proposed rule change also means that amici briefs may be filed prior to the deadline for the parties’ briefs. There is at least one case in the current term that would have required amicus briefing prior to the deadline for the parties’ briefs had this rule been in effect now. WDA believes that the role of amici is to provide the court with information outside the parties’ briefs that is relevant to the issue before the court. Creating a deadline where that will not be possible will not improve court practice.

increased amicus briefs, in circumstances where they might not be necessary if the proposed amendments of the Bar Court Rules Committee are accepted.

Creating a rule that sets two potential deadlines creates confusion. WDA supports creating a clear and workable deadline that is not a radical change from the current rule, but that gives the courts and parties time to consider properly consider amicus briefs. Creating two potential deadlines creates uncertainty about the appropriate date for filing. It is likely to result in increased motion practice about deadlines and additional work for the court, the parties and potential amici.

It is also important to emphasize that amicus briefs filed by WDA are largely written by volunteer attorneys. Because of the pro bono nature of this effort, ensuring that the work done does not duplicate the work of the parties briefs, that there are clear deadlines and that the briefs are written when they are necessary rather than in an anticipatory manner.

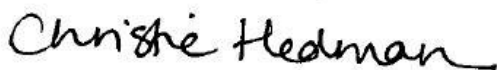
Amending RAP 10.2(f) to require that briefs be filed 45 days prior to argument in both the Supreme Court and the Courts of Appeal resolves the valid concern that courts have adequate time to consider amicus briefs and that parties have sufficient time to respond to them. Importantly, this change also maintains the ability of amici to prepare briefs that do not unduly duplicate the parties' arguments. This proposed change was widely supported, not only by the Bar Court Rules Committee and the RAP Subcommittee, but also by a diverse group of organizations, including ACLU-WA, Columbia Legal Services, Disability Rights Washington, Legal Voice, Northwest Justice Project, Washington Association of Criminal Defense Lawyers, WDA and Washington Employment Lawyers Association.

WDA always appreciates that the court considers it briefs and wants to ensure that the process creates the most opportunity for the courts and the parties to consider amici briefs. Amending the rule to require briefs be filed 45 days before argument accomplishes that goal.

Sincerely,



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President



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Travis Stearns  
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