



INSTITUTE FOR JUSTICE
WASHINGTON CHAPTER

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SUPREME COURT
STATE OF WASHINGTON
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BY RONALD R. CARPENTER
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April 29, 2014

Via email to supreme@courts.wa.gov and U.S. Mail

Washington State Supreme Court
Temple of Justice
P.O. Box 40929
Olympia, WA 98504-0929
Attn: Justices of the Supreme Court

Re: Proposed Revisions to RAP 10.2(f)

Dear Honorable Justices:

We write today regarding proposed changes to the Rules of Appellate Procedure (RAP) 10.2.

The Institute for Justice Washington Chapter (IJ-WA) is a nonprofit, public interest law firm that files original litigation and submits briefs as amicus curiae in Washington state courts.¹ IJ-WA is the Bellevue-based chapter of the Institute for Justice (IJ). IJ files amicus curiae briefs in courts across the nation, including at the U.S. Supreme Court, which has specifically cited to IJ's amicus briefs in a number of its opinions.²

The Washington Supreme Court is considering changes to RAP 10.2(f) concerning the deadline to submit amicus curiae briefs. Specifically, this Court is considering whether to amend the rule to make amicus briefs due at the Washington Supreme Court "the earlier of 90 days after review has been granted or 45 days before oral argument or consideration on the merits."

¹ IJ-WA has submitted amicus curiae briefs in the following appellate cases in Washington courts: *Utter v. Bldg. Indus. Ass'n of Wash.*, 176 Wn. App. 646, 310 P.3d 829 (2013), *review granted*, 2014 Wash. LEXIS 163 (Wash., Mar. 4, 2014) (No. 89462-1) (Washington Supreme Court only); *McCleary v. State*, 173 Wn.2d 477, 269 P.3d 227 (2012); *Brutsche v. City of Kent*, 164 Wn.2d 664, 193 P.3d 110 (2008); *Rickert v. Pub. Disclosure Comm'n*, 161 Wn.2d 843, 168 P.3d 826 (2007); *City of Pasco v. Shaw*, 161 Wn.2d 450, 166 P.3d 1157 (2007); *Pub. Util. Dist. No. 2 of Grant Cnty. v. N. Am. Foreign Trade Zone Indus., LLC*, 159 Wn.2d 555, 151 P.3d 176 (2007); *In re Seattle Monorail Auth.*, 155 Wn.2d 612, 121 P.3d 1166 (2005); *Farm Bureau Fed'n v. Reed*, 154 Wn.2d 668, 115 P.3d 301 (2005); and *City of Pasco v. Shaw*, 127 Wn. App. 417, 110 P.3d 1200 (2005).

² See, e.g., *Citizens United v. FEC*, 558 U.S. 310, 370 (2010); *Dist. of Columbia v. Heller*, 554 U.S. 570, 614 (2008); and *Tahoe-Sierra Preserv. Council v. Tahoe Reg'l Planning Agency*, 535 U.S. 302, 333 n. 28 (2002).

IJ-WA believes that a fixed deadline of 45 days prior to oral argument draws the appropriate line between giving the members of the Washington Supreme Court sufficient time to fully consider an amicus curiae brief and any responses thereto and permitting potential amici enough time to learn about cases and prepare a quality brief that aids the Court's analysis.³ Many public interest firms only file amicus curiae briefs after they have received the approval of their board of directors or similar governing body. Making amicus briefs due 45 days prior to oral argument permits the management of such firms to fully consider the need and appropriateness of an amicus curiae brief while still giving the attorneys in these firms enough time to craft well-written and well-researched briefs. Moreover, a 45-day deadline prior to oral arguments permits the parties to receive, consider, and incorporate any responses they may have to such a brief into their oral argument preparation.

We respectfully request that this Court reject the alternative deadline of "90 days after review has been granted" for two reasons.⁴ First, doing away with one certain date upon which the brief would be due would create unnecessary confusion. Second, a period longer than 45 days before oral argument would make it difficult for organizations and firms to learn about a case, familiarize themselves with the issues raised and briefed by the parties, and submit a well-thought-out argument to this Court. Based on our experience both in Washington and across the country, we believe that a shorter time period for entities to submit amicus curiae briefs would not help the Court's consideration of issues, nor would it allow amici to fully explore the issues that gave rise to the need to file such a brief in the first place. In other words, a time period shorter than 45 days will lead to fewer amicus curiae briefs—meaning that the full range of consequences of the Court's actions on non-parties will not be presented to this Court—and the briefs that amicus curiae do submit will often be less helpful. We do not believe that such a result is in the Court's best interest, nor in the best interests of the litigants or amici.

IJ-WA therefore recommends that this Court revise the proposal to read:

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

³ We understand that members of the Washington Supreme Court expressed concern that the justices of the Court have more time to consider amicus curiae briefs than the current rule permits. In particular, these justices felt that the current rule requiring amicus curiae to submit briefs at least thirty (30) days before oral argument left insufficient time for them to consider the briefs.

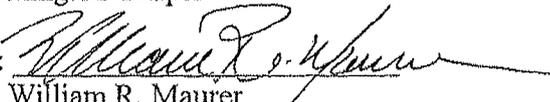
⁴ IJ-WA agrees with the comments submitted by the Northwest Justice Project on April 22, 2014, regarding these proposed changes.

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We appreciate the opportunity to provide you with this analysis. Please do not hesitate to call or email the undersigned with any questions you may have or if you require further information.

Sincerely,

INSTITUTE FOR JUSTICE
Washington Chapter

By: 
William R. Maurer
Its: Executive Director

cc: Sarah A. Dunne, ACLU-WA Foundation (via email)
Nancy Talner, ACLU-WA Foundation (via email)

OFFICE RECEPTIONIST, CLERK

To: Bill Maurer
Subject: RE: Comments of the Institute for Justice Washington Chapter regarding Proposed Revision to RAP 10.2(f)

Received 4-29-14

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

From: Bill Maurer [mailto:wmaurer@ij.org]
Sent: Tuesday, April 29, 2014 2:55 PM
To: OFFICE RECEPTIONIST, CLERK
Cc: 'Nancy Talner'; 'Sarah Dunne'
Subject: Comments of the Institute for Justice Washington Chapter regarding Proposed Revision to RAP 10.2(f)

To whom it may concern,

Attached please find an electronic version of the comments of the Institute for Justice Washington Chapter regarding the proposed changes to RAP 10.2(f) under consideration by the Washington Supreme Court. We have sent a hard copy of this letter via U.S. Mail this afternoon.

Please contact me with any questions.

Thank you,

William R. Maurer

Executive Director and Attorney at Law
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