

The Court of Appeals
of the
State of Washington

KEVIN M. KORSMO, JUDGE
NORTH 500 CEDAR STREET
SPOKANE, WASHINGTON 99201



(509) 456-4032

February 10, 2016

The Honorable Barbara Madsen
Chief Justice of the Washington State Supreme Court
Temple of Justice
PO Box 41174
Olympia, WA 98504-1174

Re: Proposed Amendment to GR 14.1

Dear Chief Justice Madsen:

On behalf of the Court of Appeals Rules Committee, I am writing to request that a revision be made to the proposed amendment to GR 14.1 that has been published for comment.

At the behest of the presiding chief judge, our committee met February 1 to discuss the proposed amendment that would permit limited citation to unpublished Court of Appeals opinions. Our discussion was informed by the presence of Judge Michael Spearman and Judge Brad Maxa, two members of the committee that drafted the proposed amendment. They explained that when drafting the amendment they anticipated the court would set a date from which unpublished decisions could be used.

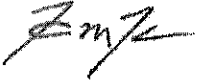
The concern, unanimously shared by the members of our committee, was that certain institutional and specialized parties would have greater access to unpublished opinions, particularly those that predate the electronic posting period, than would most attorneys or the general public. In addition, more unpublished opinions are available in subscription services than by free public services, a factor that skews use of the unpublished opinion in favor of those with access to the subscription resources. After discussion, it was unanimously agreed that we would ask the court to permit use of only those unpublished opinions filed on or after March 1, 2013. That is the oldest date that the court's website retains unpublished opinions. You may recall that prior to that time, the unpublished opinions were only available for 90 days before being removed from the website. We believe this date levels the playing field to the date all unpublished opinions are currently provided by the court.

A revision to the proposed amendment to GR 14.1(a), with our suggested language in italics, is attached.

We remain available to answer any questions that may arise during the Supreme Court's review of this proposal.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Korsmo".

Kevin M. Korsmo
Chair, Court of Appeals Rules Committee

Enclosures

cc: The Honorable Charles W. Johnson, Chair of the Supreme Court Rules Committee
The Honorable J. Robert Leach, Presiding Chief Judge Washington Court of Appeals

SUGGESTED REVISION TO PROPOSED GR 14.1(a)

(a) Washington Court of Appeals. Unpublished opinions of the Court of Appeals are those opinions not published in the Washington Appellate Reports.

Unpublished opinions of the Court of Appeals have no precedential value and are not binding upon any court. However, unpublished opinions of the Court of Appeals filed on or after March 1, 2013, may be cited as non-binding authorities, if identified as such by the citing party, and may be accorded such persuasive value as the court deems appropriate.