



Bob Ferguson

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April 18, 2016

The Honorable Barbara Madsen
Chief Justice of the Washington State Supreme Court
Justice Charles Johnson
Chair of the Rule Committee
Temple of Justice
PO Box 40929
Olympia, WA 98504-0929

RE: Proposed Amendment to GR 14.1, Citation to Unpublished Opinions

Dear Chief Justice Madsen and Justice Johnson:

The Attorney General's Office generally supports the proposed amendment to GR 14.1 and we support the purpose behind the Court of Appeals Rules Committee's requested revision. We recognize that easy and free access to unpublished opinions is a valid concern that impacts access to justice.

The Attorney General's Office requests, however, that the Court permit citation of only those unpublished opinions filed on or after the date this amendment to General Rule 14.1 takes effect, rather than on or after March 1, 2013. It is not uncommon for our office and our client agencies to consider whether a Court of Appeals opinion is published as a significant factor when deciding whether to file a petition for review to the Washington Supreme Court because such opinions cannot now be cited—even as persuasive authority. We believe it is likely that other parties do the same. State agencies, and likely other parties, have therefore relied on the current version of RAP 14.1 when making strategic decisions. The status of prior unpublished opinions should not change long after the time for filing a petition for review has expired and such decisions cannot be revisited.

This requested revision would satisfy the Court of Appeals Rules Committee's concern because all unpublished opinions after the effective date of this rule amendment will be easily accessible free of charge on the courts.wa.gov website. As a result, we also request that subsection (d), requiring that copies of unpublished opinions be attached as an appendix to the pleading in which it is cited, be eliminated. Courts, parties, and interested persons alike will be able to easily access unpublished opinions free of charge, so elimination of this requirement preserves

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resources, both in printing and paper costs, as well as in file size for purposes of electronic storage.

I am available to answer any questions during the Court's consideration of this proposed revision. Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink, appearing to read "Noah G. Purcell". The signature is fluid and cursive, with a long horizontal stroke at the end.

Noah G. Purcell
Solicitor General
(360) 753-2536