

**Sent by e-mail**

November 13, 2020

**RE: Motion for leave to submit proposed GR 30's comments out of time**

Esteemed Clerk and persons who previously submitted comments,

I respectfully move to submit my comments regarding GR 30's signature requirements out of time. The Court has discretion, GR 9(j)(1)<sup>1</sup>, *also* No. 25700-A-1286. *Cf.* RAP 1.2(c). I did not receive a "notice and an opportunity to express views regarding proposed rules", GR 9(a)(2), 9(g)(1), 9(i)(5).

Earlier this week, I reviewed *State v. Listoe*, No. 52893-2-II (Wash. App. Nov. 10, 2020)<sup>2</sup>, with Concurrence, at p. 22 n. 14, drawing my attention to comments for GR 37 ("Many people commented..."). Upon investigation, I discovered "July 2020 - Proposed Rules Published for Comment"<sup>3</sup>, with comment period that expired **September 30**. Upon further investigation, proposed changes to, *inter alia*, GR 30, were published for comment per Order 25700-A-1299.

Lukashin has been regularly monitoring Washington Courts' website, Courts tab<sup>4</sup>, "Supreme Court Orders Regarding Cases and Rules" ("SCORCR") link<sup>5</sup> under the Supreme Court heading. Unlike orders A-1286 (*supra*), A-1295<sup>6</sup> (extending, on April 16, the comment periods for numerous rule amendments to September 30), A-1306 or A-1307, as well as B-611 (suspending RAP 18.8(b) and (c)), B-621 (closing Temple of Justice), B-626 (suspending/modifying some GR 30 signature requirements, ¶21), B-646 (same), or the seminal *Towessnute* July 10, 2020 Order, appearing on that page, notice about proposed amendments to GR 30 and period of public comments is conspicuously absent from SCORCR. Lukashin previously cited several "B" orders to the Court on several separate occasions this year in the course of his petitioning activity, including in *Towessnute*.

Lukashin previously notified the Court regarding signature concerns while attempting to become a nonlawyer amicus in No. 97929-4, RAP 17.7 motion<sup>7</sup> is available, seeking to revise a comment in *Walker v. Orkin, LLC*, 448 P.3d 815, 819 n. 5 (Wash. App. 2019). The concerns, I believe and assert, have not been fully appreciated by the commenters<sup>8</sup>, *e.g.* Benedetti letter, p. 2, citing to B-626.

As such, I respectfully request that the Court accept out-of-time comments below.

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<sup>1</sup> [http://www.courts.wa.gov/court\\_rules/?fa=court\\_rules.display&group=ga&set=GR&ruleid=gagr09](http://www.courts.wa.gov/court_rules/?fa=court_rules.display&group=ga&set=GR&ruleid=gagr09)

<sup>2</sup> <http://www.courts.wa.gov/opinions/pdf/D2%2052893-2-II%20Published%20Opinion.pdf>

<sup>3</sup> [http://www.courts.wa.gov/court\\_rules/?fa=court\\_rules.proposedDetails&proposedId=2148](http://www.courts.wa.gov/court_rules/?fa=court_rules.proposedDetails&proposedId=2148)

<sup>4</sup> [http://www.courts.wa.gov/appellate\\_trial\\_courts/](http://www.courts.wa.gov/appellate_trial_courts/)

<sup>5</sup> <http://www.courts.wa.gov/opinions/index.cfm?fa=opinions.scorders>

<sup>6</sup> <http://www.courts.wa.gov/content/publicUpload/Supreme%20Court%20Orders/25700-A-1295.pdf>

<sup>7</sup> [http://www.courts.wa.gov/content/petitions/97929-](http://www.courts.wa.gov/content/petitions/97929-4%20Motion%20to%20Modify%20Deputy%20Clerk's%20Ruling.pdf)

[4%20Motion%20to%20Modify%20Deputy%20Clerk's%20Ruling.pdf](http://www.courts.wa.gov/content/petitions/97929-4%20Motion%20to%20Modify%20Deputy%20Clerk's%20Ruling.pdf)

<sup>8</sup> [http://www.courts.wa.gov/court\\_rules/?fa=court\\_rules.commentDisplay&ruleId=4777](http://www.courts.wa.gov/court_rules/?fa=court_rules.commentDisplay&ruleId=4777)

## July 2020 Proposed Rule Changes to GR 30

I submit this letter on my own behalf to suggest an approach that would avoid eviscerating the assurances a “digital signature”, as defined in the proposed GR 30(a)(1)(a)-(b) amendment, provides.

In my briefing to this Court seeking to appear as nonlawyer amicus in No. 97929-4, I identified the following authorities: *Becker v. Montgomery*, 532 U.S. 757,762–68 (2001) (meaning of a “signature”, cure provision in the federal rules); *US v. Santos*, 947 F.3d 711, 724 (11th Cir. 2020) (signature importance), as well as *Waters v. Drake*, No. 2: 14-cv-1704 (S.D. Ohio Sept. 3, 2015)<sup>9</sup> (rejecting a typewritten “signature” for a manually filed document) and *Lambert v. Lowe's Home Centers, LLC*, No. 1: 14-CV-00107-JHM (W.D. Ky. Oct. 19, 2016)<sup>10</sup> (same for individual without login credentials). I provided examples in the context of RCW 6.27.105(1)(c) and (2), as well as RCW 6.27.020(2) subscription requirements where documents were “signed” by “/s” and a check mark near the appropriate name in a list, with documents not bearing any filing stamp or other court imprimatur.

To address concerns expressed, *inter alia*, by Seattle City Attorney (incompatibility of digital signatures with current state & municipal systems), Lukashin proposes that GR 30(d)(2)(A) and (B) format would be appropriate, as Ms. Benedetti suggests on p. 2 of August 11, 2020 comments<sup>11</sup>, while citing to General Order No. 25700-B-626<sup>12</sup>, but only if the signatory’s login credentials are used to file a document with a court, that is, “filer” GR 30(a)(5) and (d)(1)(A),(B) must be the same as the signatory of the document being filed. To address the needs of organizations and government entities, GR 30(d)(E)(ii) should be duplicated and revised to require a non-signatory filer to provide, additionally, own (d)(2)(B) signature and representation that the filer “has the express authority to file for the specific attorney or nonlawyer”.

**GR 30 should also include a new section focused on service of electronically filed document in hard copy (by mail or courier).** It should provide that, if a party is to be served with a paper copy of a document filed electronically in compliance with GR 30, the paper copy shall contain the “Filed” stamp information, as well as the “Transmittal Information” sheet (or equivalent) generated by the respective court system upon filing<sup>13</sup>.

Lukashin opposes adopting on a permanent basis, waiver of GR 30 requirements as outlined in General Order 25700-B-646, ¶21

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<sup>9</sup> [https://scholar.google.com/scholar\\_case?case=3919754221343470743&](https://scholar.google.com/scholar_case?case=3919754221343470743&); “In this case, a document has been filed manually which bears only a typed “signature” of an attorney. The document did not arrive by electronic means. The Court therefore lacks the assurance provided by that method that the document was prepared and authorized by the attorney whose name appears in typewritten form on the document’s signature line. Without such assurance, the signature requirement of Rule 11(a) has not been satisfied.”

<sup>10</sup> [https://scholar.google.com/scholar\\_case?case=14460274648771175504&](https://scholar.google.com/scholar_case?case=14460274648771175504&) “While anyone can type the name of an attorney at the bottom of a filing, only that attorney should have the login credentials necessary to complete the filing, making those credentials the guarantee of authenticity... If no login credentials have been issued to Lambert, then the Court has no similar verification that the declaration did in fact originate from him.”

<sup>11</sup> Available from: [http://www.courts.wa.gov/court\\_rules/?fa=court\\_rules.commentDisplay&ruleId=4777](http://www.courts.wa.gov/court_rules/?fa=court_rules.commentDisplay&ruleId=4777)

<sup>12</sup> Available from: <http://www.courts.wa.gov/opinions/index.cfm?fa=opinions.scorders>


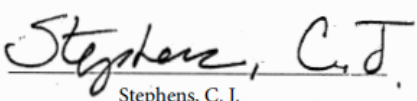
<sup>13</sup> For example, by the Appellate filing portal, <https://ac.courts.wa.gov>

**GR 30 should also include provisions for use of a judicial officer's digital signature** to address concerns identified by *Schexnayder v. Vannoy*, 140 S. Ct. 354, 355 (U.S. 2019)<sup>14</sup> (“hundreds of pro se submissions that had been dismissed without consideration”), where “courthouse staff prepared rulings that judges signed "without so much as a glance" at the underlying petitions or any review of the applications' merits.”

Having moved numerous times under RAP 12.3(e) to publish opinions, each time receiving only emailed orders containing an unexplained denial with a judicial signature facsimile, Lukashin believes Washington judiciary can and should provide for secure judicial digital signatures. *Cf. US v. Yepiz*, 844 F.3d 1070, 1081 & n. 2 (9th Cir. 2016)<sup>15</sup> (“That Judge Walter's signature is on the notice of discrepancy doesn't definitively tell us the answer as most judges have signature stamps for their courtroom deputy's use.”).

Unlike the opinions, which are published on the Washington Courts website, and an individual judge not signing a particular opinion could review what is posted and voice their concerns, documents purportedly signed by a judge and delivered electronically from Court staff may suffer from *Schexnayder* problem, as Lukashin repeatedly argued, with the judge unaware. As **Confidential Court Materials**<sup>16</sup> makes clear, the public is unlikely to discover any such abuses elsewhere.

Compare the following two signatures, purportedly by Chief Justice Stephens:

October 19, 2020 letter to Lukashin		<i>Gronquist v. DOC</i> , No. 97277-0 <sup>17</sup> , p. 16
<p>Sincerely,</p>  <p>Debra L. Stephens, Chief Justice Washington State Supreme Court</p>		 <p>Stephens, C. J.</p>

As such, Lukashin respectfully requests further GR 30 amendment, mandating correspondence from individual judicial officers, delivered electronically, bearing the officer's “digital signature”, as defined in the proposed GR 30(a)(1)(a)-(b) amendment, especially when a decision is made on briefs, thus without assurances that any judicial officer actually reviewed the briefing.

If a staff member is filing at the judge's direction, likewise a digital signature of the staff member and certification that the document is being filed/communicated at the specific judicial officer's direction (GR 30(d)(E)(ii) should be duplicated and revised)

Sincerely,

s/ Igor Lukashin

<sup>14</sup> [https://scholar.google.com/scholar\\_case?case=17798941484384555578&](https://scholar.google.com/scholar_case?case=17798941484384555578&)

<sup>15</sup> [https://scholar.google.com/scholar\\_case?case=2305387543100451021&](https://scholar.google.com/scholar_case?case=2305387543100451021&)

<sup>16</sup> [http://www.ca7.uscourts.gov/rules-procedures/Confidential\\_Court\\_Materials.pdf](http://www.ca7.uscourts.gov/rules-procedures/Confidential_Court_Materials.pdf)

<sup>17</sup> <http://www.courts.wa.gov/opinions/pdf/972770.pdf> ; published November 12, 2020