From: OFFICE RECEPTIONIST, CLERK
To: Linford, Tera
Subject: FW: Proposed Change to RAP 2.2
Date: Tuesday, March 29, 2022 4:49:02 PM
Attachments: image004.png
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From: Ken Masters [mailto:ken@appeal-law.com]
Sent: Tuesday, March 29, 2022 4:28 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Proposed Change to RAP 2.2

Your Honors:

This is a bad idea whose time has come and (thankfully) long gone.

When I first served on the Bar's Rules Committee beginning more than 20 years ago, I was part of what had become a roughly *10-year* effort to *remove* the comments from the Evidence Rules. This massive effort was undertaken because the Rules Committees (the Bar's and this Court's) have no time to police the comments, so there were outdated comments that were in fact *misleading*. The complete lack of resources to update comments and weed-out bad ones still exists, so starting to insert comments once again – this time in the RAPs, which have *never* contained comments – is a recipe for another decade of wasted effort. Our Rules of Appellate Procedure are simple and clear, and our Washington Appellate Practice Deskbook is an invaluable resource for those in need of guidance.

If this precedent is set, how many more comments will be added over then next 10 years? On what subjects? Where does it end? The answer to that last question is, unfortunately, only after years of effort to remove obsolete, unhelpful, and even misleading comments that never should have been added in the first place.

Moreover, the purported reason for adding this comment is an extremely well-known decision of this Court plainly stating what the comment would state. No competent lawyer would miss the fact that, under the plain language of the RAPs, *supplemented* by this Court's decision in ***Denney***, a summary judgment order that disposes of all claims and all parties is a final, appealable order. Adding comments supposedly to

assist incompetent lawyers is wasted effort, as only an incompetent lawyer would fail to actually *read the rules*, and if there was any doubt, *do the research*. ***Denney*** – which cites the RAPs – would be hard to miss. Comments are no substitute for competent legal research. Lawyers who don't read the rules don't read the comments either.

Now, I do recognize that in the extremely rare case, a *pro se* litigant might have to figure this out. They would be at a disadvantage, no doubt. They always are. But they are also held to the standard of a lawyer, and at the very least, they would expected to *read the RAP*s. As ***Denney*** itself holds, the RAPs plainly state that one must appeal from a dispositive summary judgment order. *See, e.g.*, RAP 2.2(a)(3) ("a party *may* appeal from . . . [a]ny written decision affecting a substantial right in a civil case that in effect determines the action and prevents a final judgment or discontinues the action"); RAP 5.1(a) ("A party seeking review of a trial court decision reviewable as a matter of right *must* file a notice of appeal"); RAP 5.2(a) ("a notice of appeal *must* be filed in the trial court within the longer of (1) 30 days after the entry of the decision of the trial court that the party filing the notice wants reviewed . . ."); RAP 5.2(g) ("A notice of appeal . . . filed after the announcement of a decision but before entry of the decision will be treated as filed on the day following the entry of the decision"). Since the RAPs spell it out, comments are unnecessary.

I ask the Court to please not start back down this dead-end road again. Any comment can easily become archaic, or worse, misleading. No comment is much better than a harmful comment.

Best,

Ken Masters
Founder

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Effective April 1, 2021, our new mailing address is 321 High School Road NE, D-3 #362, Bainbridge Island, WA 98110.

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