

**April 30, 2024**

***Sent via email***

Ms. Erin L. Lennon  
Clerk - Washington State Supreme Court  
P.O. Box 40929  
Olympia, WA 98504-0929  
Email: [supreme@courts.wa.gov](mailto:supreme@courts.wa.gov)

**Re: Opposition to proposed amendments to RAP 13.5**

Dear Ms. Lennon,

I appreciate the opportunity to submit my comments regarding proposed amendments to a variety of court rules listed on the Washington Courts [website](#), including RAP 13.5.

As a practical matter, despite my regular weekly review of the [Recent Opinions](#) section of the Washington Courts website for the past decade or so, I do not recall a single case where an “interlocutory” opinion, as envisaged by [RAP 12.3](#), was posted to the Recent Opinions. If state appellate courts have been issuing interlocutory opinions but not posting them to the Recent Opinions section, that’s a problem, as justice in this state must be administered openly, and because all opinions are to be “filed for public record,” RAP 12.3(d)<sup>1</sup>.

While the recently established [Appellate Court Public Document Portal](#) (“ACPDP”) can be helpful to non-parties in reviewing what documents may have been filed in a case if they know a specific appellate court and case number, the Recent Opinions section, assuming it is a public-record repository of all recent opinions, gives non-parties a convenient notice to be able to comply with RAP 12.3(e) 20-day deadline for filing such motions.

RAP 12.3(e)(1) specifically envisages that motions to publish may be filed by non-parties:

The motion must be supported by addressing the following criteria: (1) if not a party, the applicant's interest and the person or group applicant represents;

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<sup>1</sup> Compare <https://www.courts.wa.gov/opinions/index.cfm?fa=opinions.displayAll> “On this website are slip opinions from the Supreme Court and the Court of Appeals that were filed after February 22, 2013. Slip opinions are the opinions that are filed on the day that the appellate court issues its decision and are often not the court's final opinion.”

As evidenced by my Motion to Re-Designate July 10, 2020 *Towessnute* Order as a Formal Opinion for Publication in WA Reports, filed on February 8, 2021 in Washington Supreme Court Case No. 13083-3, and available via ACPDP, which was granted by our Supreme Court, there are problems with effectively having secret law the public would not find posted in the Recent Opinions section or the (all) [Available Opinions](#) section.

[RAP 13.4](#) has a language different from that proposed for RAP 13.5, specifically:

If no motion to publish or motion to reconsider all or part of the Court of Appeals decision is timely made, a petition for review must be filed within 30 days after the decision is filed. If such a motion is made, the petition for review must be filed within 30 days after an order is filed denying a timely motion for reconsideration or determining a timely motion to publish. If the petition for review is filed prior to the Court of Appeals determination on the motion to reconsider or on a motion to publish, the petition will not be forwarded to the Supreme Court until the Court of Appeals files an order on all such motions.

For consistency, I recommend that, should it be determined that “interlocutory opinions” are filed by the Court of Appeals or the Supreme Court with sufficient frequency to necessitate a rule amendment, the language proposed should be modify to track, with relevant modifications, that already in place in RAP 13.4.

Before implementing an amendment to RAP 13.5, the **Court should require the appropriate office to complete a study of just how many “interlocutory opinions” have been issued by the WA state appellate courts** that were “filed after February 22, 2013” but not posted to the Recent Opinions or All Available Opinions sections of the Washington Courts website, and ensure that, going forward, all “interlocutory opinions” are posted to the Recent Opinions section, so that non-party members of the public can be timely notified to be able to effectively request publication under RAP 12.3(e).

I urge the Court to reject the proposed amendments to RAP 13.5 as unnecessary, given the apparent lack of “interlocutory opinions” in recent (post-February 22, 2013) appellate court practice; or, in the alternative, modify the language to track that already in RAP 13.4 for consistency, especially since Supreme Court review under either RAP 13.4 or RAP 13.5 is discretionary, see [RAP 13.3](#), and RAP 13.3(d), Incorrect Designation of Motion or Petition.

Sincerely,  
s/ Igor Lukashin