Nick Brown
ATTORNEY GENERAL OF WASHINGTON

April 30, 2025

Via Electronic Mail

Sarah R. Pendleton
Washington Supreme Court Clerk
P.O. Box 40929
Olympia, WA 98504-0929
E-mail: supreme@courts.wa.gov

RE: Proposed Amendments to GR 14, RAP 17.7, RAP 18.13, RAP 18.13A, RAP 18.17, CrR 3.1, CrRLJ 3.1, JuCR 9.2, CR 68

Dear Clerk Pendleton:

Thank you for the opportunity to comment on proposed amendments to court rules posted on the court's website. These comments are submitted on behalf of the Attorney General's Office. Because of the statewide practice of the Attorney General's Office and our presence in every court in the State of Washington, our attorneys offer unique insight into the potential impacts of several of the proposed amendments. Should you have any questions concerning our response, please do not hesitate to contact our office.[1]

1. **GR 14 - Format for Pleadings and Other Papers: *Support***

Our office supports this proposed amendment, which would eliminate the requirement to include parallel citations to the Supreme Court Reporter and the Lawyers' Edition reporter. The current requirement unnecessarily adds to the length of briefs and increases editing time while adding little benefit. The proposed amendment would also simplify the brief writing and editing process by making the United States Supreme Court citation format consistent in state and federal briefs.

2. **RAP 17.7/18.13/18.13A - Rules of Appellate Procedure (time to move to modify ruling): *Oppose***

The purpose of these proposed amendments is to standardize the timeline for moving to modify following the disposition of a matter. While we support efforts to standardize timelines and reduce redundancies in the rules, we have concerns about the proposed amendment to RAP 18.13A. The current rule sets a deadline for a motion to modify certain rulings for 15 days after the

[1] On March 21, 2025, The Attorney General's Office also submitted a comment regarding RPC 1.0B/1.7/1.10/1.13 - Rules of Professional Conduct.

commissioner's ruling is filed, and it affords the answering party 15 days to respond. By deleting this language as proposed, the timelines would be governed by Title 17 generally, which requires an answer to be filed 10 days after a motion is served on the answering party.[2] The juvenile welfare matters covered by RAP 18.13A are often complex and substantive. While RAP 18.13A provides 15 days for an answer, other rules give appellate courts discretion to set an earlier deadline when needed.

3. **RAP 18.17 - <u>Word Limitations, Preparation, and Filing of Documents submitted to the Court of Appeals and Supreme Court</u>: *Support with Revision***

The purpose of this proposed amendment is to expressly disfavor overlength filings, and to require those requesting to file overlong briefs to demonstrate compelling need. We support the spirit of this proposed amendment—in setting page limits, the rules already anticipate complex appeals and cases with significant records. Still, we recommend that any final rule accommodate situations involving multiple appellants or appellees, and we recommend against adopting an explicit preference for filing a motion for an overlength brief before the filing deadline.

In some appeals, there may be multiple parties on the same side of a case filing separate briefs or there may be multiple amicus briefs. A party responding to two or more filings in a single brief will frequently need a modest expansion of word limits to respond to all arguments. Similarly, parties may wish to file a joint brief, which provides the benefit of avoiding unnecessary repetition and increased total length. A modest expansion of word limits avoids creating a disincentive to filing jointly.

Ninth Circuit Rule 32-2(b) expressly recognizes and accommodates these situations:

> **When Longer Briefs are Allowed Automatically:** If no order lengthening the page or type-volume limit has been obtained previously, the Court will allow an extra 5 pages or 1,400 words to separately represented parties that are filing a joint brief. That same longer limit also will be provided to a party or parties that file a single brief answering or replying to either (1) multiple briefs or (2) a longer joint brief filed pursuant to this subsection . . . .

This Court's rules should reflect a similar recognition.

Further, we question whether there is a practical benefit to expressing the preference that parties file a motion for an overlength brief before the filing deadline. When a brief is too long, diligent attorneys should use all available time to attempt to shorten it as much as possible. A stated preference for an earlier filing creates a tension between complying with the rule's goal and taking

[2] *Compare* RAP 18.13A(j)(2) ("An answer to the motion to modify should be filed not later than 15 days after the motion to modify is filed."), *with* RAP 17.4(e) ("Unless the court directs otherwise, any answer must be filed and served no later than ten (10) days after the motion is served on the answering party.").

that time to further shorten the overlength brief. And if the Court denies the motion to file an overlength brief, the effect may be to disclose work product (i.e., which arguments were included in a draft but not in the final version).

4. CCrR 3.1/CrRLJ 3.1/JuCR 9.2 - Standards for Indigent Defense (family defense cases): *Comment on Caseload and Social Worker Proposals*

Quality of advocacy matters, and the Attorney General's Office supports efforts to ensure that all litigants have access to high-quality representation, including indigent parents in family court. Our office has a significant stake in supporting an effective and fair family court system. We provide legal advice to the Department of Children, Youth, and Families (DCYF), and our attorneys represent DCYF in dependency, parental rights, and guardianship cases. We also provide advice to the Office of Public Defense. We know how difficult this work is and how taxing it can be for all involved, including attorneys.

We support the Supreme Court's efforts over the past several years to address current inequities in the family court system, but we write to raise concerns about the scope of the proposed amendments. The amendments would set a caseload maximum of 35 clients for family defense attorneys and would limit an attorney's docket to no more than 40 active cases. They would also require agencies to provide one social worker for every full-time attorney representing parents by July 3, 2028. First, without adequate commitment of funding, and proper attention to the very real challenges of implementation, the proposed amendments could inadvertently result in longer timeframes to achieve the permanency and stability that is so critical for children in these cases. This is particularly so given the difficulties in recruiting and retaining attorneys and social workers, and the broader challenges in building a child welfare system that is effective at preventing harm from occurring in the first place. Second, before setting final caseloads for attorneys and social workers, the Court may benefit from further study of the unique aspects of Washington's family court system and the workload of attorneys. This would be consistent with the proposal recommended by the Counsel for Public Defense in studying workload to set caseloads for appellate defenders.[3] By contrast, the current family defense proposal is based on a study out of Oregon, which, unlike Washington, operates a unified court system. The experience of attorneys in our state varies across counties, including in court procedures and the application of legal requirements. We have expertise in this area and believe that our participation in a Washington-specific study would be beneficial before the Court makes any final decision on appropriate caseloads. Finally, in considering the proposed amendments, the Court should evaluate whether its rulemaking authority affords it a legal basis to require a one-to-one ratio of social workers to attorneys. We appreciate that family defense social workers provide important services to parents in child welfare cases. But using the court's rulemaking authority to mandate a set number of non-attorney employees may intrude into the policymaking and budget-setting prerogatives of the state Legislature.

[3] *See* Proposed Changes to CrR 3.1/CrRLJ 3.1/JuCR 9.2 – Standards for Indigent Defense (appellate caseloads), https://www.courts.wa.gov/court_rules/?fa=court_rules.proposedRuleDisplay&ruleId=6222.

5. CR 68 - **Offer of Judgment**: *Oppose*

Under this proposed amendment, a CR 68 offer of judgment would no longer be available to resolve litigation brought under the Public Records Act (PRA). This amendment would reverse well-settled law and is unnecessary to furthering the purpose of the PRA, which is to promote transparency and ensure that government officials are held accountable to the people.

Our office often represents the state in court, and we maintain an active PRA practice. We also make efforts to improve the state's compliance with the PRA through training and investment of resources – last year, we conducted numerous formal trainings with thousands of attendees from local agencies across the state, in addition to providing regular advice and training to our client state agencies.

In our experience, an offer of judgment is an important tool to encourage fair, reasonable, and efficient resolution of PRA claims and to avoid unnecessary expenditure of limited state resources, in accordance with CR 1's admonitions in favor of "just, speedy, and inexpensive" resolution of civil actions in Washington courts.[4]

The Supreme Court has made clear that the civil rules govern in PRA actions.[5] That is for good reason—civil litigation benefits from consistency and standardization. Absent compelling circumstances, all cases should be subject to the same set of rules. Most recently, in *Rufin v. City of Seattle*, the Court of Appeals confirmed that offers of judgment are "an appropriate tool" for resolving violations of the PRA.[6] The Court explained that use of CR 68 in PRA actions is a reflection of the PRA's reasonableness requirement—generally, a person who prevails against an agency under the PRA is entitled to "all costs, including reasonable attorney fees, incurred in connection with such legal action."[7] As the Court explained, "if a plaintiff fails to improve her position at trial, the costs and attorney fees associated with the additional litigation are not reasonable, and may be limited pursuant to CR 68."[8]

Offers of judgment under CR 68 can help avoid unnecessary litigation and provide efficient and fair resolution. It is particularly important in today's difficult budgetary landscape and the ever-increasing volume of information subject to disclosure.

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[4] *See* CR 1 ("These rules govern the procedure in the superior court in all suits of a civil nature whether cognizable as cases at law or in equity with the exceptions stated in rule 81. They shall be construed and administered to secure the just, speedy, and inexpensive determination of every action. To this end, proceedings held by remote means are permitted.").

[5] *See Spokane Rsch. & Def. Fund v. City of Spokane*, 155 Wn.2d 89, 104, 117 P.3d 1117 (2005).

[6] *Rufin v. City of Seattle*, 199 Wn. App. 348, 363, 398 P.3d 1237 (2017).

[7] RCW 42.56.550(4).

[8] *Rufin v. City of Seattle*, 199 Wn. App. 348, 362, 398 P.3d 1237 (2017).

Review of data suggests no systemic issues with PRA compliance or litigation trends that would justify the proposed amendments. For example, the Joint Legislative Audit and Review Committee annually collects data from agencies that spend $100,000 or more on public records requests. In 2023, the 230 agencies that reported to the Committee collectively received 437,813 requests, closed 417,924 requests, spent $134,836,971 fulfilling requests, and spent an estimated $213,592,632 managing and retaining records. Reporting agencies received more than 100,000 more requests in 2023 than they did in 2018, the first year of the Committee's reporting requirement. Even with such a significant increase in PRA requests, the overall number of PRA lawsuits against state agencies was consistent—going from 74 cases in 2018 to 78 cases in 2023.

Carving out PRA cases from CR 68 is not a compliance tool. It will simply create a class of case that cannot benefit from a rule that encourages reasonable resolution of cases and efficient use of the resources of the court, the parties, and the taxpayers. The court should reject the proposed amendment.

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We appreciate the opportunity to comment on these proposed rules and thank the Court for its ongoing efforts to improve the administration of justice across the state.

Sincerely,

s/ *Maureen Johnston*
MAUREEN JOHNSTON
First Assistant Attorney General

MJ:TR

From: OFFICE RECEPTIONIST, CLERK
To: Farino, Amber
Cc: Ward, David
Subject: FW: AGO comments on proposed amendments to court rules
Date: Thursday, May 1, 2025 8:09:14 AM
Attachments: AGO comments on 2025 court rules.pdf

From: Johnston, Maureen (ATG) <maureen.johnston@atg.wa.gov>
Sent: Wednesday, April 30, 2025 6:27 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Cc: Rose-Johnston, Tanya M (ATG) <tanya.rosejohnston@atg.wa.gov>
Subject: AGO comments on proposed amendments to court rules

I have attached comments from the Attorney General's Office on the proposed amendments to GR 14, RAP 17.7, RAP 18.13, RAP 18.13A, RAP 18.17, CrR 3.1, CrRLJ 3.1, JuCR 9.2, and CR 68.

Please do not hesitate to contact us if you have any questions.

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