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C R I M I N A L D E F E N S E

March 7, 2025

To the Justices of the Washington Supreme Court

Re: Proposed Changes to RAP 17.7, 18.13, and 18.13A

Dear Justices:

I am a long-time appellate practitioner, having nearly 40 years of appellate experience in this state. I was a public defender for 17 years and then have been in private practice for over 22 years. I primarily handle criminal defense cases, both at the trial and appellate levels, although I also do some limited civil work.

I am writing to oppose the proposed changes to RAP 17.7 that would shorten the time for filing a motion to modify from 30 days to 15 days. The proposal is clearly designed to address conventional civil cases and not criminal or quasi-criminal civil cases like Personal Restraint Petitions (“PRPs”). The proposal would create additional burdens on criminal defense attorneys and erect barriers to the justice for many people including *pro se* litigants.

Like the proponent of the proposed changes, Catherine Smith, I too recall the era when the time limit was 10 days, but I welcomed the change to 30 days when it was adopted in 1994. Unlike Ms. Smith, I do not believe that the reasons for the changes “are anachronistic, have long outlived their purpose, and the rule is ripe for change.”

Indeed, many of the reasons cited in 1994 still exist today in criminal cases -- particularly the incarceration of many of our clients. While in the modern world, email is an efficient method of communicating with one's client in conventional cases and practitioners do obtain rulings electronically instantaneously, many appellants in criminal cases and petitioners in PRP cases are in prisons and lack such instantaneous communication.

While some prisoners may now have tablets, the Department of Corrections does not provide for confidential email communications between prisoners and their attorneys. Lawyers still need to send paper letters and copies of court rulings by conventional mail. Not only is paper mail subject to unexplained delays, but there are security procedures in DOC for legal mail where staff routinely have to phone the lawyers to confirm that legal mail was indeed sent. This slows down the process for lawyers and clients to communicate effectively. Phone communication with prisoners in DOC is also complicated, and there have been persistent challenges dealing with the vendors that DOC contracts with to allow for legal calls. Thus, contrary to the experiences of civil lawyers whose use of technology in their professional lives have changed since 1994, in many respects criminal defense practitioners are still stuck in the 20th Century. For *pro se* incarcerated litigants, the problems are just magnified.

While the consequences of missing a deadline for filing a motion to modify on surface may not be as irreparable as for missing the deadline for filing a notice of appeal or a petition for review, still if the deadline for filing a motion to modify is missed, the consequences are significant. If a criminal defendant or PRP petitioner intends to file in federal court for § 2254 relief, full exhaustion is required and missing a motion to modify may mean that a later petition in federal court will be barred.

Limiting the time to file a motion to modify to 15 days will also have a negative impact on busy public defenders who already have high caseloads. They will necessarily have to push other matters aside to file a motion to modify within the shortened amount of time.

For solo practitioners also, there will be a negative impact. One never knows exactly when a commissioner will issue a ruling. For instance, sometimes it takes months for the Supreme Court Commissioner to rule on a motion for

discretionary review in a PRP case. Thus, there are cases where a lawyer knows a ruling can come out at any time, but does not know when. If they are going to take off time for vacation or even if they are in trial, they must plan accordingly so as not to miss a deadline when the ruling is handed down at an inconvenient time.

If the deadline is only 15 days and a lawyer takes a two week vacation, they may well have to plan to work on a motion to modify while out of the office or else risk missing the deadline. The lawyer would have to take their laptop with them, even on an extended camping trip, or else commit malpractice. This may not be a problem in a large civil firm where other lawyers can fill in and write the motion to modify if the primary lawyer is unavailable. But it is a realistic problem for criminal defense lawyers, particularly those in solo practice.

Finally, there is something to be said for consistency of deadlines -- 30 days for filing a notice of appeal, 30 days for filing a petition for review, and 30 days for filing a motion to modify. The lawyers and *pro se* litigants know what the general 30-day rule is and can follow it easily. To be sure, there other deadlines in the RAPs, but the 30 days for filing a motion to modify has worked for 30 years and there is not a compelling reason to change it now.

While Ms. Smith suggests that “practitioners and parties intent on using the rules for improper purposes can effect at least some uncertainty about the ruling simply by filing a motion to modify within 30 days,” this is not a current concern in criminal cases (or PRP cases). I have not seen or heard of any such improper purposes in criminal cases, by the defense or prosecution bars or by *pro se* litigants.

On the other hand, if the deadline is changed to 15 days, there will be a problem with missed deadlines and there will be more motions to extend the deadline after the fact. One supposes that cautious counsel who is going out of the office for a two week period may even file a motion to stay a case briefly so that they will not have to worry about a Commissioner’s ruling coming out when they are out of cell range. Keeping the deadline at 30 days would avoid these problems.

Accordingly, I am asking that the Court not adopt the proposed changes to RAP 17.7 and leave the deadline as it currently exists.

Sincerely,

A handwritten signature in black ink, appearing to read "Neil M. Fox". The signature is fluid and cursive, with the first name "Neil" being the most prominent part.

Neil M. Fox
Attorney at Law

From: [Neil Fox](#)
To: [OFFICE RECEPTIONIST, CLERK](#)
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Please see the attached letter commenting on the proposed changes to RAP 17.7.

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