

THE SUPREME COURT OF WASHINGTON

IN THE MATTER OF THE SUGGESTED)
AMENDMENTS TO THE RULES OF APPELLATE)
PROCEDURE RELATED TO THE DEATH)
PENALTY)
_____)

ORDER

NO. 25700-A-1664

The American Civil Liberties Union of Washington and Washington Appellate Project, having recommended the suggested amendments to the Rules of Appellate Procedure related to the death penalty, and the Court having approved the suggested amendments for publication;

Now, therefore, it is hereby

ORDERED:

(a) That pursuant to the provisions of GR 9(g), the suggested amendments as attached hereto are to be published for comment in the Washington Reports, Washington Register, Washington State Bar Association and Administrative Office of the Court's websites in January 2026.

(b) The purpose statement as required by GR 9(e) is published solely for the information of the Bench, Bar and other interested parties.

(c) Comments are to be submitted to the Clerk of the Supreme Court by either U.S. Mail or Internet E-Mail by no later than April 30, 2026. Comments may be sent to the following addresses: P.O. Box 40929, Olympia, Washington 98504-0929, or supreme@courts.wa.gov. Comments submitted by e-mail message must be limited to 1500 words.

Page 2

ORDER

IN THE MATTER OF THE SUGGESTED AMENDMENTS TO THE RULES OF
APPELLATE PROCEDURE RELATED TO THE DEATH PENALTY

DATED at Olympia, Washington this 8th day of October, 2025.

For the Court


CHIEF JUSTICE

GENERAL RULE 9
RULE AMENDMENT COVER SHEET
PROPOSED AMENDMENT TO THE RULES OF APPELLATE PROCEDURE

1. Proponent Organization
 - a. The American Civil Liberties Union of Washington
 - b. The Washington Appellate Project
2. Spokesperson & Contact Info
 - a. La Rond Baker, Legal Director of the ACLU of Washington, baker@aclu-wa.org (206) 624-2184
 - b. Lila Silverstein, Staff Attorney at the Washington Appellate Project, lila@washapp.org (206) 587-2711
3. Purpose of Proposed Rule Amendment

In *State v. Gregory*, the Washington Supreme Court held that our state’s death penalty was unconstitutional. *State v. Gregory*, 192 Wn.2d 1, 427 P.3d 621 (2018). In the years following *Gregory*, the legislature repealed statutes that had authorized the death penalty. See [LAWS OF 2023, ch. 102, § 21](#) (repealing RCW 10.95.040 – 10.95.901). This has rendered portions of the Rules of Appellate Procedure surplusage. These portions should be removed.
4. Is Expedited Consideration Requested?
 - a. No.
5. Is a Public Hearing Recommended?
 - a. No.

RAP 4.2

DIRECT REVIEW OF SUPERIOR COURT DECISION BY SUPREME COURT

(a) Type of Cases Reviewed Directly. A party may seek review in the Supreme Court of a decision of a superior court which is subject to review as provided in Title 2 only in the following types of cases:

(1) *Authorized by Statute.* A case in which a statute authorizes direct review in the Supreme Court.

(2) *Law Unconstitutional.* A case in which the trial court has held invalid a statute, ordinance, tax, impost, assessment, or toll, upon the ground that it is repugnant to the United States Constitution, the Washington State Constitution, a statute of the United States, or a treaty.

(3) *Conflicting Decisions.* A case involving an issue in which there is a conflict among decisions of the Court of Appeals or an inconsistency in decisions of the Supreme Court.

(4) *Public Issues.* A case involving a fundamental and urgent issue of broad public import which requires prompt and ultimate determination.

(5) *Action against State Officer.* An action against a state officer in the nature of quo warranto, prohibition, injunction, or mandamus.

~~(6) *Death Penalty.* A case in which the death penalty has been decreed.~~

RAP 12.5 MANDATE

(c) When Mandate Issued by Supreme Court.

(1) The clerk of the Supreme Court issues the mandate for a Supreme Court decision terminating review upon stipulation of the parties that no motion for reconsideration will be filed.

(2) In the absence of such a stipulation, ~~except in a case in which the penalty of death is to be imposed,~~ the clerk issues the mandate twenty days after the decision is filed, unless (i) a motion for reconsideration has been earlier filed, or (ii) the decision is a ruling of the commissioner or clerk and a motion to modify the ruling has been earlier filed. If a motion for reconsideration is timely filed and denied, the clerk will issue the mandate upon filing the order denying the motion for reconsideration.

~~(3) In a case in which the penalty of death is to be imposed, unless the parties stipulate to earlier issuance of the mandate, the clerk will issue the mandate upon the expiration of the time for applying for review by the United States Supreme Court, or, if such an application is timely filed, upon receipt of the Supreme Court's order disposing of the matter.~~

RAP 16.1

PROCEEDINGS TO WHICH TITLE APPLIES

a) Generally. The rules in this title establish the procedure for original actions in the Supreme Court and in the Court of Appeals, and the procedure for determining questions of law certified by a federal court.

(b) Original Actions in Supreme Court Against State Officers. Rule 16.2 defines the procedure for petitions against state officers for writs of mandamus, prohibition, quo warranto, and similar writs, but only when the proceeding is started for the first time in the Supreme Court.

(c) Original Actions in the Appellate Court--Personal Restraint Petition. Rules 16.3 through 16.15 define the procedure for a personal restraint petition, but only when the proceeding is started for the first time in the appellate court.

(d) Questions Certified by Federal Court. Rule 16.16 defines the procedure for determining questions of law certified by a federal court.

(e) Review of Decision of the Court of Appeals. Except as provided in rule 16.14, a Court of Appeals decision in a special proceeding is subject to review by the Supreme Court only by discretionary review as provided in Title 13.

(f) Removal of Public Officer. Proceedings to remove a public officer are governed by statute and not these rules.

(g) Review of Sentence. Rule 16.18 defines the procedure for reviewing a sentence committing an offender to the Department of Corrections, when an error of law is asserted by the Department.

~~**(h) Capital Cases.** Rules 16.19 through 16.27 define the procedure for appeals and original actions in which the death penalty has been decreed.~~

RAP 16.3

PERSONAL RESTRAINT PETITION—GENERALLY

(a) Procedure for Relief from Restraint. Rules 16.3 through 16.15 ~~and rules 16.24 through 16.27~~ establish a single procedure for proceedings in the appellate court to obtain relief from restraint.

(b) Former Procedure Superseded. The procedure established by rules 16.3 through 16.15 ~~and rules 16.24 through 16.27~~ for a personal restraint petition supersedes the appellate procedure formerly available for a petition for writ of habeas corpus and for an application for postconviction relief, unless one of these rules specifically indicates to the contrary. These rules do not supersede and do not apply to habeas corpus proceedings initiated in the superior court.

(c) Jurisdiction. The Supreme Court and the Court of Appeals have original concurrent jurisdiction in personal restraint petition proceedings ~~in which the death penalty has not been decreed~~. The Supreme Court will ordinarily exercise its jurisdiction by transferring the petition to the Court of Appeals. ~~The Supreme Court has exclusive original jurisdiction in personal restraint proceedings in which the petitioner is under a sentence of death.~~

RAP 16.5

PERSONAL RESTRAINT PETITION—WHERE TO SEEK RELIEF

(a) Court of Appeals. A personal restraint petition should be filed in the Court of Appeals, unless the petition is subject to subsection (b). A petition seeking review of a pretrial detention order under RCW 10.21.040 shall be filed in the Court of Appeals.

~~**(b) Supreme Court.** A personal restraint petition filed by a person under sentence of death shall be filed in the Supreme Court. See RAP 16.3(c).~~

(b) A personal restraint petition may be transferred by the court in which it is filed. The transfer of a personal restraint petition between the Supreme Court and the Court of Appeals shall not be subject to a motion to reconsider or, if the transfer is ordered by the clerk of the court, a motion to modify.

(c) If a petition filed in the Supreme Court is not transferred to the Court of Appeals, or has been transferred from the Court of Appeals to the Supreme Court, the determinations ordinarily made by the “Chief Judge” under rules 16.11 and 16.13 may be made by a commissioner.

RAP 16.19 – 16.27

- ~~16.19 Preparation of Report of Proceedings in Capital Cases~~
- ~~16.20 Transmittal of Jury Questionnaires and Clerk's Papers in Capital Cases~~
- ~~16.21 Clerk's Conference in Capital Cases~~
- ~~16.22 Filing of Briefs in Capital Cases~~
- ~~16.23 Oral Argument on Appeal in Capital Cases~~
- ~~16.24 Stay of Execution in Capital Cases~~
- ~~16.25 Appointment of Counsel on Personal Restraint Petition in Capital Cases~~
- ~~16.26 Personal Restraint Petitions in Capital Cases – Discovery~~
- ~~16.27 Personal Restraint Petition in Capital Cases – Investigative, Expert, and Other Services~~

RAP 18.17

WORD LIMITATIONS, PREPARATION, AND FILING OF DOCUMENTS SUBMITTED TO THE COURT OF APPEALS AND SUPREME COURT

(c) Length Limitations. All documents filed with the appellate court should conform to the following length limitations unless the appellate court has granted permission to file an overlength document. The following length limitations are expressed as word limitations for documents produced using word processing software and as page limitations for documents produced by typewriter or written by hand. The word limitations exclude words in the appendices, the title sheet, the table of contents, the table of authorities, the certificate of compliance, the certificate of service, signature blocks, and pictorial images (e.g., photographs, maps, diagrams, and exhibits).

(1) Statements of grounds for direct review and answers to statements of grounds for direct review (RAP 4.2 or RAP 4.3): 4,000 words (word processing software) or 15 pages (typewriter or handwritten).

(2) Briefs of appellants, petitioners, and respondents (RAP 10.4): 12,000 words (word processing software) or 50 pages (typewriter or handwritten).

(3) Reply briefs of appellants (RAP 10.4): 6,000 words (word processing software) or 25 pages (typewriter or handwritten).

(4) In cross appeals, briefs of appellants, briefs of respondents/cross appellants, and reply briefs of appellants/cross respondents (RAP 10.4): 12,000 words (word processing software) or 50 pages (typewriter or handwritten).

(5) In cross-appeals, reply briefs of the cross appellants (RAP 10.4): 6,000 words (word processing software) or 25 pages (typewriter or handwritten).

(6) Amicus briefs and answers to amicus briefs (RAP 10.4): 5,000 words (word processing software) or 20 pages (typewriter or handwritten).

(7) Statements of additional grounds for review (RAP 10.10): 12,000 words (word processing software) or 50 pages (typewriter or handwritten).

(8) Motions to reconsider a decision terminating review and answers and replies thereto (RAP 12.4): 6,000 words (word processing software) or 25 pages (typewriter or handwritten).

(9) Amicus curiae memoranda and answers thereto (RAP 12.4 or RAP 13.4): 2,500 words (word processing software) or 10 pages (typewriter or handwritten).

(10) Petitions for review, answers, and replies (RAP 13.4): 5,000 words (word processing software) or 20 pages (typewriter or handwritten).

(11) Motions for discretionary review and responses thereto (RAP 13.5): 5,000 words (word processing software) or 20 pages (typewriter or handwritten).

(12) Supplemental briefs (RAP 13.7): 5,000 words (word processing software) or 20 pages (typewriter or handwritten).

(13) Personal restraint petitions (RAP 16.7): 12,000 words (word processing software) or 50 pages (typewriter or handwritten).

~~**(14)** Briefs of appellants or respondents, and briefs in support of or opposition to a personal restraint petition submitted in capital cases (RAP 16.22): 60,000 words (word processing software) or 250 pages (typewriter or handwritten).~~

~~**(15)** Personal restraint petitions that contain legal argument filed in capital cases (RAP 16.22): 72,000 words (word processing software) or 300 pages (typewriter or handwritten).~~

~~**(16)** Reply briefs, pro se supplemental briefs, and responses to pro se supplemental briefs filed in capital cases (RAP 16.22): 18,000 words (word processing software) or 75 pages (typewriter or handwritten).~~

(17) Motions and answers (RAP 17.4): 5,000 words (word processing software) or 20 pages (typewriter or handwritten).

(18) Replies to answers to motions (RAP 17.4): 2,500 words (word processing software) or 10 pages (typewriter or handwritten).

(19) Motions on the merits (RAP 18.14): 6,000 words (word processing software) or 25 pages (typewriter or handwritten).