

WASHINGTON STATE BAR ASSOCIATION

Court Rules and Procedures Committee

Meeting Minutes

June 30, 2025

Members Present: Chair Michael Chait, Charles Adams, Jonathan Bussey, Stephanie Dikeakos, William Elsinger, Jessica Fleming, John Hoglund, Eric Lindberg, Devon McCurdy, Martin Mooney, Matthew O’Laughlin, Kelly Oshiro, Tenaya Scheinman, Laurel Smith, Justin Steiner, Matthew Stolloff, Geoffrey Wickes

Members Excused: Brian Flaherty, Tamara Gaffney, Loni Hinton, Craig Moore, Christine Olson, Scott Prichard, Rachel Reynolds, Amanda Williamson, Andrew Yi

Also Attending: David Ward (AOC Liaison) Judge Paul Crisalli (Judicial Liaison) L. Parvin Price (BOG Liaison), Emily Crane (Staff Liaison), Nicole Gustine (Staff Liaison)

The meeting was called to order at 09:36am once a quorum was established.

1. Approval of Minutes
 - A motion was made and seconded to approve the minutes from the March 31, 2025 meeting. The motion passed by unanimous consent.
2. Subcommittee Reports
 - Rules of Appellate Procedure: Andrew Yi, the RAP Subcommittee Chair had sent a report to Chair Chait prior to the meeting. The subcommittee members’ are continuing their review of the RAP rules.
 - Rules for Appeal from Decisions of Courts of Limited Jurisdiction: Justin Steiner, the RALJ Subcommittee Chair, gave an update to the Committee. Subcommittee members’ are continuing their review of the RALJ rules.
 - Subcommittee X: William Elsinger, the Subcommittee X Chair, gave an update to the Committee. A rule recommendation was reviewed by the subcommittee, with the decision to not forward to the full Committee.

The meeting adjourned at 09:49am.

SUGGESTED AMENDMENTS TO THE RULES OF APPELLATE PROCEDURE

TITLE 18 SUPPLEMENTAL PROVISIONS

RULE 18.8 WAIVER OF RULES AND EXTENSION AND REDUCTION OF TIME

(a) Generally. The appellate court may, on its own initiative or on motion of a party, waive or alter the provisions of any of these rules and enlarge or shorten the time within which an act must be done in a particular case in order to serve the ends of justice, subject to the restrictions in sections (c) and (d).

(b) Streamlined Extensions of Time for Filing Briefs in the Court of Appeals. If a party in the Court of Appeals has not previously filed a motion for an extension of time to file a brief authorized by RAP 10.2(a)-(c) **and RAP 16.10**, that party may obtain a single streamlined extension of time to file that brief not to exceed 30 days. A party requesting a streamlined extension of time should file a written request as set forth in RAP Form 25. The clerk will approve requests that comply with this rule and will provide a new schedule. The clerk will inform parties not eligible for relief under this subsection as to the appropriate method to obtain relief. A streamlined extension of time to file a brief is not available if an appeal has been accelerated.

(c) Restriction on Extension of Time. The appellate court will only in extraordinary circumstances and to prevent a gross miscarriage of justice extend the time within which a party must file a notice of appeal, a notice for discretionary review, a motion for discretionary review of a decision of the Court of Appeals, a petition for review, or a motion for reconsideration. The appellate court will ordinarily hold that the desirability of finality of decisions outweighs the privilege of a litigant to obtain an extension of time under this section. The motion to extend time is determined by the appellate court to which the untimely notice, motion or petition is directed.

(d) Restriction on Changing Decision. The appellate court will not enlarge the time provided in rule 12.7 within which the appellate court may change or modify its decision.

SUGGESTED AMENDMENTS TO THE RULES OF APPELLATE PROCEDURE

1 (e) Terms. The remedy for violation of these rules is set forth in rule 18.9. The court may
2 condition the exercise of its authority under this rule by imposing terms or awarding
3 compensatory damages, or both, as provided in rule 18.9.

MEMORANDUM

TO Washington State Bar Rules Committee

FROM Devon McCurdy

DATE September 23, 2025

RE Proposed Amendments to Rules of Appellate Procedure 2.3, 3.2, and 4.2

Please consider this explanation for and summary of proposed rule changes.

- RAP 2.3(b)(4): Delete the first “that,” which appears to be a typographical error, so that the paragraph would read, “The superior court has certified, or <<that>> all parties to the litigation have stipulated, that the order involves a controlling question of law as to which there is substantial ground for a difference of opinion and that immediate review of the order may materially advance the ultimate termination of the litigation.”
- RAP 3.2(b): Revise the rule so that an adverse party is not required to move for substitution of parties in the event of a death or change of status in another party. I think this aligns the rule with Civil Rule 25, as well as with Federal Rule of Appellate Procedure 43, both of which call for a death to be “suggest[ed] . . . [on the record.” The subsection would read, “(b) Duty To Move for Substitution. A party with knowledge of the death or declared legal disability of a party to review, or knowledge of the transfer of a party's interest in the subject matter of the review, shall promptly suggest the death or other relevant circumstance on the record. A party to review may also move for substitution of parties. The motion and all other documents must be served on all parties and on the personal representative or successor in interest of a party, within the time and in the manner provided for service on a party. If a party fails to promptly move for substitution, the personal representative of a deceased or legally disabled party, or the successor in interest of a party, should promptly move for substitution of parties.”
- RAP 4.2(a): Delete paragraph (6), referencing the death penalty, in light of the elimination of the death penalty by Laws of 2023, ch. 102, following the Washington Supreme Court’s decision in *State v. Gregory*. The paragraph would be deleted

entirely: “<<~~(6) Death Penalty. A case in which the death penalty has been decreed.~~>>”

- Rap 4.2(d): Eliminate the last sentence, which is redundant with the preceding sentence’s reference to RAP 18.17 and also fails to include all brief elements excluded from page count under RAP 18.17. The subsection would read, “(d) Answer to Statement of Grounds for Direct Review. A respondent may file an answer to the statement of grounds for direct review. In an appeal, the answer should be filed within 14 days after service of the statement on respondent. In a discretionary review, the answer should be filed with any response to the motion for discretionary review. The answer should comply with the length limitations of RAP 18.17. << ~~The answer should not exceed 15 pages, exclusive of appendices and the title sheet.~~>>”

RAP 2.3
DECISIONS OF THE TRIAL COURT WHICH MAY BE
REVIEWED BY DISCRETIONARY REVIEW

(a) Decision of Superior Court. Unless otherwise prohibited by statute or court rule, a party may seek discretionary review of any act of the superior court not appealable as a matter of right.

(b) Considerations Governing Acceptance of Review. Except as provided in section (d), discretionary review may be accepted only in the following circumstances:

(1) The superior court has committed an obvious error which would render further proceedings useless;

(2) The superior court has committed probable error and the decision of the superior court substantially alters the status quo or substantially limits the freedom of a party to act;

(3) The superior court has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by an inferior court or administrative agency, as to call for review by the appellate court; or

(4) The superior court has certified, or that all parties to the litigation have stipulated, that the order involves a controlling question of law as to which there is substantial ground for a difference of opinion and that immediate review of the order may materially advance the ultimate termination of the litigation.

(c) Effect of Denial of Discretionary Review. Except with regard to a decision of a superior court entered in a proceeding to review a decision of a court of limited jurisdiction, the denial of discretionary review of a superior court decision does not affect the right of a party to obtain later review of the trial court decision or the issues pertaining to that decision.

(d) Considerations Governing Acceptance of Review of Superior Court Decision on Review of Decision of Court of Limited Jurisdiction. Discretionary review of a superior court decision entered in a proceeding to review a decision of a court of limited jurisdiction will be accepted only:

(1) If the decision of the superior court is in conflict with a decision of the Court of Appeals or the Supreme Court; or

(2) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or

(3) If the decision involves an issue of public interest which should be determined by an appellate court; or

(4) If the superior court has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by the court of limited jurisdiction, as to call for review by the appellate court.

(e) Acceptance of Review. Upon accepting discretionary review, the appellate court may specify the issue or issues as to which review is granted.

[Adopted effective July 1, 1976; Amended effective January 1, 1981; September 1, 1985; September 1, 1998; December 24, 2002.]

**SUGGESTED AMENDMENTS TO THE RULES OF APPELLATE PROCEDURE
RAP 2.3**

**RAP 2.3 DECISIONS OF THE TRIAL COURT WHICH MAY BE REVIEWED BY
DISCRETIONARY REVIEW**

(a) No Change

(b) Consideration Governing Acceptance of Review

(1)-(3) No Change

(4) The superior court has certified, or <<that>> all parties to the litigation have stipulated, that the order involves a controlling question of law as to which there is substantial ground for a difference of opinion and that immediate review of the order may materially advance the ultimate termination of the litigation.

(c) No Change

(d) No Change

(e) No Change

RAP 3.2
SUBSTITUTION OF PARTIES

(a) Substitution Generally. The appellate court will substitute parties to a review when it appears that a party is deceased or legally incompetent or that the interest of a party in the subject matter of the review has been transferred.

(b) Duty To Move for Substitution. A party with knowledge of the death or declared legal disability of a party to review, or knowledge of the transfer of a party's interest in the subject matter of the review, shall promptly move for substitution of parties. The motion and all other documents must be served on all parties and on the personal representative or successor in interest of a party, within the time and in the manner provided for service on a party. If a party fails to promptly move for substitution, the personal representative of a deceased or legally disabled party, or the successor in interest of a party, should promptly move for substitution of parties.

(c) Where To Make Motion. The motion to substitute parties must be made in the appellate court if the motion is made after the notice of appeal was filed or discretionary review was granted. In other cases, the motion should be made in the trial court.

(d) Procedure Pending Substitution. A party, a successor in interest of a party, a personal representative of a deceased or legally disabled party, or an attorney of record for a deceased or legally disabled party who has no personal representative, may without waiting for substitution file (1) a notice of appeal, (2) a notice for discretionary review, (3) a motion for reconsideration, (4) a petition for review, and (5) a motion for discretionary review of a decision of a trial court or the Court of Appeals.

(e) Time Limits. The time reasonably necessary to accomplish substitution of parties is excluded from computations of time made to determine whether the following have been timely filed: (1) a notice of appeal, (2) a notice for discretionary review, (3) a motion for reconsideration, (4) a petition for review, and (5) a motion for discretionary review of a decision of a trial court or the Court of Appeals.

(f) Public Officer. If a public officer is a party to a proceeding in the appellate court and during its pendency dies, resigns, or otherwise ceases to hold office, a party or the new public officer may move for substitution of the successor as provided in this rule.

[Adopted effective July 1, 1976; Amended effective September 1, 1998.]

**SUGGESTED AMENDMENTS TO THE RULES OF APPELLATE PROCEDURE
RAP 3.2**

RAP 3.2 SUBSTITUTION OF PARTIES

(a) No Change

(b) Duty To Move for Substitution. A party with knowledge of the death or declared legal disability of a party to review, or knowledge of the transfer of a party's interest in the subject matter of the review, shall promptly suggest the death or other relevant circumstance on the record. A party to review may also move for substitution of parties. The motion and all other documents must be served on all parties and on the personal representative or successor in interest of a party, within the time and in the manner provided for service on a party. If a party fails to promptly move for substitution, the personal representative of a deceased or legally disabled party, or the successor in interest of a party, should promptly move for substitution of parties.

(c) No Change

(d) No Change

(e) No Change

(f) No Change

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.

(b) Procedure for Seeking Direct Review. A party seeking direct review of a superior court decision in the Supreme Court must file a notice of appeal or notice of discretionary review directed to the Supreme Court. Within 15 days after filing the notice of appeal or notice for discretionary review, the party seeking direct review must serve on all other parties and file in the Supreme Court a statement of grounds for direct review in the form provided in section (c).

(c) Form of Statement of Grounds for Direct Review. The statement should be captioned "Statement of Grounds for Direct Review," contain the title of the case as provided in rule 3.4, conform to the formatting requirements of RAP 18.17, and contain under appropriate headings and in the order here indicated:

(1) *Nature of the Case and Decision.* A short statement of the substance of the case below and the basis for the superior court decision;

(2) *Issues Presented for Review.* A statement of each issue the party intends to present for review; and

(3) *Grounds for Direct Review.* The grounds upon which the party contends direct review should be granted.

The statement of grounds for direct review should comply with the length limitations of RAP 18.17.

(d) Answer to Statement of Grounds for Direct Review. A respondent may file an answer to the statement of grounds for direct review. In an appeal, the answer should be filed within 14 days after service of the statement on respondent. In a discretionary review, the answer should be filed with any response to the motion for discretionary review. The answer should comply with the length limitations of RAP 18.17. The answer should not exceed 15 pages, exclusive of appendices and the title sheet.

(e) Effect of Denial of Direct Review.

(1) *Appealable Decision.* If the Supreme Court denies direct review of a superior court decision appealable as a matter of right, the case will be transferred without prejudice and without costs to the Court of Appeals for determination.

(2) *Discretionary Review.* A motion for discretionary review in the Supreme Court of a superior court decision may be granted, denied, or transferred to the Court of Appeals for determination. If the Supreme Court denies a motion for discretionary review of a superior court decision, the moving party may not file the same motion in the Court of Appeals.

References

Form 4, Statement of Grounds for Direct Review.

[Adopted effective July 1, 1976; Amended effective September 1, 1990; September 1, 1994; January 27, 1998; September 1, 2010; September 1, 2021.]

**SUGGESTED AMENDMENTS TO THE RULES OF APPELLATE PROCEDURE
RAP 4.2**

RAP 4.2 DIRECT REVIEW OF SUPERIOR COURT DECISION BY SUPREME

(a) Type of Cases Reviewed Directly.

(1) – (5) No Change

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

(b) No Change

(c) No Change

(d) Answer to Statement of Grounds for Direct Review. A respondent may file an answer to the statement of grounds for direct review. In an appeal, the answer should be filed within 14 days after service of the statement on respondent. In a discretionary review, the answer should be filed with any response to the motion for discretionary review. The answer should comply with the length limitations of RAP 18.17. <<~~The answer should not exceed 15 pages, exclusive of appendices and the title sheet.>>~~>>

(e) No change