



WSBA

COURT RULES & PROCEDURES COMMITTEE

SUPPLEMENTAL MATERIALS
FEBRUARY 27, 2012 MEETING

- PRP Rules Subcommittee Report (pp. 114 - 115).



22 February 2012

MEMORANDUM

TO: Ken Masters, Chair, WSBA Rules Committee

FROM: Ann Summers

SUBJECT: PRP rules subcommittee: Summary of February 16, 2012 meeting

There are currently two competing rule change proposals on the table. WACDL wishes to amend its proposals as suggested by Sam Rutherford. WAPA has submitted counterproposals to the rule changes proposed by WACDL.

After some discussion, the subcommittee agreed that by the end of April they could most likely identify for the Rules Committee the changes upon which the subcommittee members have reached a consensus and the changes upon which no consensus can be reached.

Generally speaking, WACDL's stated goals are to make the current rules easier for pro se litigants to understand and follow, and to provide pro se litigants with additional procedures that allow them to obtain evidence to support their claims. WAPA believes that the appellate courts are currently inundated with frivolous PRPs, and opposes any changes that would exacerbate that problem.

The proposed changes to RAP 16.3, 16.4 and 16.5 were discussed.

As to RAP 16.3 - Personal Restraint Petitions- Generally, it was agreed that the rule could be simplified, to make it more accessible to pro se litigants. It was also agreed that the rule should convey that there is a single procedure for obtaining relief in the appellate courts, that habeas corpus petitions should be mentioned, including the right to file a habeas petition in the trial court with citation to the statute (RCW 7.36.040), and that the rule should state that both the Court of Appeals and the Supreme Court have jurisdiction over personal restraint petitions. There was some discussion that a comment should be added to the rule noting that habeas petitions filed in the trial court are not favored, referencing CrR 7.8(c)(2)'s transfer procedure and referring litigants to Washington Practice's discussion of that procedure. Members of the committee will work on new proposed language that meets these goals.

As to RAP 16.4- Grounds for Remedy, many members of the subcommittee felt that the change to (2) was unnecessary. WACDL will reconsider that proposal. It was agreed that striking the reference to RCW 10.73.130 in (4) as proposed by WACDL is proper. Many subcommittee members felt the language requiring other remedies to be unavailable or inadequate should be retained in (4), as that language most clearly provides a basis for the court

to deny relief for premature petitions (petitions that are filed before there is a conviction or direct appeal).

As to RAP 16.5 - Where to Seek Relief, WACDL will closely study WAPA's proposed overhaul, which purports to more accurately reflect when petitions should be filed in the Supreme Court and the Court of Appeals. All parties agreed that guidance should be given to litigants in this rule that will better allow them to file their petitions in the correct court, to avoid unnecessary delay.

New rule, RAP 16.5A - Transfer from the Superior Court. It was suggested that rather than referencing the transfer procedure of CrR 7.8(c)(2) in 16.5, as proposed by WACDL, a new rule should be drafted. However, there is no broad agreement that an appellate filing fee should not be required when a trial court motion is transferred to the appellate court pursuant to CrR 7.8(c)(2), although it was agreed that this rule change would impact a very small number of cases (litigants who are not indigent).