



WSBA

COURT RULES & PROCEDURES COMMITTEE

Telephone only Meeting

Agenda

May 21, 2012
9:30 a.m. to 1:00 p.m.
Washington State Bar Association
1325 Fourth Avenue – Sixth Floor
Seattle, Washington 98101

1. **Call to Order/Preliminary Matters**
 - Approval of Minutes (*see Minutes of February 27, 2012*, pp.117 - 121)
2. **Old Business**
3. **New Business/Subcommittee Assignments**
 - CR/CRLJ Subcommittee (*see CR Subcommittee Report*, pp. 122 - 123)
 - Proposed PRP Rules Changes Subcommittee (*See March 15, 2012 and April 19, 2012 Meeting Memos*, pp. 124 - 128)
 - ESI Subcommittee (no written report)
 - Subcommittee X (no report)
 - MAR Subcommittee (no report)
4. **Other Business/Good of the Order**
5. **Adjourn**

Dial access number: **1-866-577-9294**;

Dial the entry code when prompted: **55419#**



WSBA

COURT RULES AND PROCEDURES COMMITTEE

Meeting Minutes February 27, 2012

Committee Chair Ken Masters called the meeting to order at 9:35am.

Members present: Chair Ken Masters, Steven Buzzard (by phone), Mario Cava, Leslie Clark, Paul Crisalli, Anthony DiTommaso, Jr., Rebecca Engrav, Hillary Evans (by phone), Elizabeth Fraser (by phone), Dale Johnson (by phone), Shawn Larsen-Bright (by phone), Nicole McGrath, Bryan Page (by phone), Aaron Rocke, Ann Summers, Hon. Kevin Korsmo (by phone), Hon. Blaine Gibson, and Hon. Rebecca Robertson. Also attending were Marc Silverman (BOG Liaison – by phone), Elizabeth Turner (Assistant General Counsel), and Anna Schmidt (WSBA Paralegal).

Minutes

The January 23, 2012 meeting minutes were approved by consensus, with a few minor changes requested via email by Rebecca Engrav.

Chair's Report

Old Business: Chair did not have any old business. Ms. Turner reminded the members of the pending referendum and asked everyone to vote. For further information, please see the webpage on the referendum.

Subcommittee Reports

CR/CRLJ Subcommittee

- CR/CRLJ 5: Subcommittee Chair Rebecca Engrav reported the group met again regarding the subcommittee's proposed changes to this rule and discussed some new issues and feedback received. The current proposed CR/CRLJ 5 is slightly different from the last meeting. Specifically, the subcommittee replaced language regarding the meaning of alternative service. Some of the reasons for the subcommittee's proposed changes are discussed in the cover memo. Ms. Engrav explained that the certificate of service needs to describe the circumstances of why this alternative service was used, giving the judge adequate information to make a decision if service under this provision is

challenged. The Subcommittee also considered and resolved to its satisfaction whether the person being served would have adequate time to respond, and whether this proposal is consistent with the section of CR 6 allowing additional days after service by mail in some situations.

Ms. Nelson requested that, in the section stating that the papers must also be emailed or faxed, that the language state it should be done “on the same day” as the service. Judge Gibson felt the term “during business hours” could be interpreted in such a way that attorneys whose offices are open at different hours each day could still state their offices “are open during regular business hours.” Mr. Rocke questioned whether the problem this proposed rule change was addressing is already addressed in CR 6(b), which sets forth a procedure for extending time. Mr. Silverman questioned whether the lawyer who is serving the papers could make a special motion to the court in order to get his papers served. Judge Robertson suggested defining what regular business hours means. Mr. Cava questioned whether those offices that are closed on some holidays, ones not falling under a court holiday, would need to prove that their office is normally open during regular business hours.

Ms. Engrav responded that the subcommittee hasn’t specifically looked at CR 6(b) to date, but looking at it now she doesn’t feel that this rule truly addresses the problem because it’s not that the serving party needs more time, it’s the actual process of being able to serve the other party that is difficult. Plus, CR 6(b) can be cumbersome. This proposed rule is something that can be used without getting special permission from the court, whereas CR 6(b) requires a motion. Regarding the question of those who have irregular business hours, Ms. Engrav explained the serving party could also use this rule during a time when an office is closed, such as the Friday before Memorial Day, even if that office is normally open on business days (thus, it could be used for offices that are habitually closed or just occasionally closed on a regular business day that isn’t a court holiday). The Subcommittee discussed specifying what “regular business hours” means, but knew there are variations from county to county and decided against adding a definition.

The Chair stated his concern that the language as drafted creates an ambiguity – because you could read the language to mean that if the office is closed regularly during lunch, then it is closed during business hours and you could use this rule. His concern is inconsistent results/readings of the rule in different courts. Judge Gibson pointed out that we have no idea how the Court of Appeals would interpret this rule, which, coupled with inconsistent results from trial courts, could make the situation even worse. Ms. Engrav explained they used the term “business hours” because they didn’t want to make the rule unduly and overly specific; but she expressed understanding that Judge Gibson and the Chair were raising an issue of whether the trigger for use of this new provision would be if the office were closed during “all or some” of business hours. Mr. Cava asked if the subcommittee considered stating “service during the court’s business hours” or the court’s operating hours. That would leave an expectation of the offices being open when the courts are open. Ms. Engrav questioned if that might be problematic because of all the court furloughs occurring recently.

Ms. McGrath (CR Subcommittee member) stated that they looked through other court rules to see where the term “business hours” was used. The term is used in other rules, without being defined, such as CR 78. She suggested the Subcommittee could try to find if there were challenges with using that term. She felt the Subcommittee was trying to craft a rule that is consistent in all jurisdictions, where the practice of law may differ from one jurisdiction to the next. Thus, she concluded perhaps the Subcommittee should take a second look at this rule.

Judge Korsmo (CR/CRLJ Subcommittee member) stated the Subcommittee didn’t want to punish the server by making them have to go to Court to seek alternative ways of service. Also, the individual being served will receive the pleading by fax and email as well. Mr. Runyan , who had participated in the Subcommittee’s work, stated that the subcommittee discussed all these variations and decided that business hours differ so much that it’s better not to define the term. The Chair suggested more examples in the GR 9.

Judge Gibson suggested that an office not open regularly somehow be required to give notice to those who would normally serve them. Ms. Engrav explained that there were two different examples of those who are difficult to be served: those who work remotely, and those working in a sort of office that doesn’t have access (sometimes in order not to be served). Mr. Rocke brought up the fact that the attorney who is serving the paper may not know in a timely way that the service couldn’t be completed, but several members stated that the attorney serving the paper would need to make sure they let the person actually doing the service inform them know right away if someone can’t be served.

Ms. Nelson disagreed with putting the burden on the person being served to inform everyone of when they cannot be served. Mr. Cava suggested eliminating the phrase “during business hours” completely. Ms. Engrav stated that they discussed this, but didn’t want the serving party to feel obliged to have to camp out all the time in order to serve someone. Mr. Silverman opined that when you are a lawyer, there are common sense things expected of you, such as having normal business hours during the day so that you can receive documents (this shouldn’t vary based on where you live). He thinks this rule should be extended to anyone whose hours vary from that norm and that the default should be to uniformity in all 39 counties. Ms. Fraser agreed with Mr. Silverman. She stated that she is a public defender, but believes that uniformity is very important and could be defined in the rule. Judge Gibson stated that CR 10 describes that every pleading must contain a mailing address and feels that they can simply go to that address, tape the pleading to the door, and then state that service has been made. Discussion ensued, though, as to what options the server party has if the opposing party’s pleadings state a P.O. Box as the mailing address.

Ms. Engrav decided to take this rule back to the Subcommittee for further discussion.

- CR/CRLJ 62(b): Ms. Engrav explained that this proposed rule change [pp. 88-90] brought by former chair Roger Wynne updates the language in CR and CRLJ 62(b). The Subcommittee moved to adopt these proposed amendments, and the motion passed unanimously.

Subcommittee X

- CrR 4.6: Subcommittee Chair Cava reported that they've been reviewing proposed changes to CrR 4.6 suggested by the SCJA, which would allow a deposition to be ordered for good cause and authorizing tape recording of witnesses. The Court's deadline for comments is April 30. The Subcommittee sent out a letter to additional stakeholders [pp. 96 – 99] inviting them to a Subcommittee meeting on February 2, 2012. Several people sent in comments, and Dave Trieweiler (Defense Counsel) attended the meeting in person. The Subcommittee discussed an alternative proposal to the rule. A second Subcommittee meeting convened on February 14th, which didn't have a large turnout. They discussed having a second alternative proposal, which would contain "good cause" requirement but omits the recording authorization. Thus, if there is good cause to have a deposition, the court could order it. Ms. Turner pointed out that the proposed letter to the court [p. 98] would not contain the second to the last sentence because there wouldn't be a GR 9 included with the proposed alternative rule since we are making the proposal in a comment on another entity's proposed amendment. Mr. Cava moved that the Committee approve the proposed letter to Judge Madsen [pp94-95], with the second to the last sentence struck out, and the proposed alternative rule [p. 93], as recommendations to the BOG. Mr. DiTommaso seconded the motion.

Mr. Rocke questioned if the person seeking the deposition must pay the costs of the deposition. Mr. Cava stated they didn't want the parties being deposed to have the burden of paying for the deposition. Ms. Engrav opined that the term "good cause" didn't seem clear. Mr. Cava explained the Subcommittee looked at rules in other jurisdictions and felt this version was broad enough to apply in other instances and give the court the ability to decide when good cause exists. Ms. Engrav pointed out that this wouldn't stop the court from determining that there is good cause to depose the victim. Mr. Cava pointed out that "good cause" creates another opportunity for when a deposition could be ordered. The individual seeking the deposition would need to explain why they need this transcript, and the judge makes the ultimate decision. Judge Robertson opined that the ultimate result will be that, even in the case of a cooperating witness, this rule will probably be used. Judge Gibson didn't feel that most defense attorneys would ask for a deposition unnecessarily if they didn't really need it due to costs. He thinks it will help solve the *Mankin* issue (allowing Defense to request a deposition from an officer who is unwilling to cooperate in an interview). Mr. Silverman pointed out that *Mankin* was just a request to interview an officer, not to take an interview under oath. Ms. McGrath questioned whether the witness being deposed would be able to seek a protective order - especially for witnesses who are victims trying to avoid a pro se defendant from interviewing them. Mr. Cava stated that there's

nothing to prevent a prosecutor from moving to prevent the victim from being deposed by the pro se defendant.

The motion passed by 12 to 3. This will go to the BOG in March for first read and will be voted on at their April meeting.

PRP Subcommittee

Subcommittee Chair Ann Summers reported that their Subcommittee met to discuss two competing rule change proposals: WACDL proposed 20 changes to the rules pertaining to RAPs dealing with Personal Restraint Petitions, while WAPA counter-proposed some additional changes. The Subcommittee believes they will be able to determine where there can be some consensus by April, but Ms. Summers isn't sure that that is realistic time line. The Chair explained that it's better to put these forward during the regular RAP cycle, when the Court of Appeal's Subcommittee will be ready to look at them. Ms. Summers envisions that their work product will show exactly where there is consensus and where there probably won't be any consensus. The Chair stated the Subcommittee's work can carry over to the next season. Judge Korsmo stated that he is not aware of the WAPA counter proposals or the Subcommittee's work. Ms. Summers will send to Judge Korsmo WAPA's counter proposals and stated their Subcommittee meets the third Thursday of every month.

The meeting adjourned at 10:46 a.m.

May 15, 2012

TO: WSBA Court Rules & Procedures Committee

FROM: Rebecca S. Engrav, CR Subcommittee

RE: **CR Subcommittee Report**

A. CR 5/CRLJ 5

After the discussion at the full committee February meeting and further conversations with the original proponent of this rule change and other interested parties from the full Committee and the WSBA, the subcommittee crafted a new approach to the issue of attorney offices that cannot be hand-served. We have sent it to the WSBA Solo & Small Practice Section. We are awaiting their feedback before bringing it again to the full committee.

B. CR 4.1

A practitioner has proposed amending CR 4.1 to make the rule state that certain post-decree proceedings in family law matters do not require new original process service. The intent is to make the rule track existing substantive law regarding when original process service is required. We have discussed this proposal several times, and the proponent participated in one of our meetings. We have sent the proposal for comment to the judges for the three levels of court, WSAJ, ATJ, and the Family and Litigation Law Sections of the WSBA. We are awaiting feedback from these groups.

C. CRLJ 65

A practitioner has proposed creating a CRLJ 65 that mirrors CR 65. Some time ago, the Washington Constitution was amended to state that district courts have original jurisdiction in matters of equity. But yet, the CRLJs (which were enacted before the constitutional amendment) have no CRLJ 65 to set out procedures for temporary restraining orders and preliminary injunctions, as superior courts have in CR 65. The proponent of this rule change discussed it with us at a meeting. We have sent the proposal for comment to the judges for the three levels of court, the clerks' association, WSAJ, ATJ, and the Family, Juvenile, and Litigation Law Sections of the WSBA. We are awaiting feedback from these groups.

D. CR 71

A practitioner has proposed modifying the subsection of CR 71 regarding withdrawal of an attorney by notice to change the requirement that the client receive the notice through personal service or certified mail to instead allow mail with delivery confirmation (i.e., no signature of recipient required). The subcommittee has reviewed this proposal internally and will next discuss it with the proponent.

E. CR 6

The subcommittee is continuing to review how to address the “counting backwards” problem for calculating the date a brief is due under CR 6 when the time period is calculated by counting backwards from a certain date and the end of the counted period is a weekend or holiday. This issue was noted for us by prior members of the rules committee. The rule says the brief is due on the “next” day but does not state if you determine the “next” day by continuing to count in the direction you were already counting (backward), or always count forward. *Washington Practice* states it is unclear and advises to be cautious and finish the brief before the weekend or holiday. Conversely, informal surveys indicate most practitioners think one always gets the benefit of the holiday. Telephone calls to clerks’ offices produced varying answers as to what clerks believed the rule to mean. The same ambiguity used to exist in the federal counting rule, which was recently amended to resolve it.

The subcommittee is of the view that as the research above summarized indicates, the current language in CR 6 is ambiguous, and ambiguity in rules about calculating a deadline is not acceptable. One might not like the deadline once calculated, but one should be able to determine what a deadline is by reading the rule and looking at the calendar. Thus, the subcommittee thinks an amendment is necessary.

As to how to amend the rule, the subcommittee’s tentative inclination is to amend the rule to match what most practitioners instinctively think is the right approach: i.e., to always allow the extra day for the drafter of the brief that would otherwise be due on a weekend or holiday.

The subcommittee is aware that no matter which way the ambiguity is resolved in the statewide rule, the varying local rules and short time periods used in many of our counties will lead to odd results on occasion. For example, if an extra day is allowed for an opposition brief, there might end up being extremely little time for a reply brief. The rule could perhaps address the specific situation of holiday Mondays since there are many holiday Mondays, but certain holidays (e.g., Christmas, New Year’s Day, and the Fourth of July) fall on varying days of the week. Thus it is likely impossible to craft a rule that both (1) ends the current ambiguity and also (2) never creates the possibility of an oddly short reply brief period. Local rules may need to be amended in light of a change to CR 6. However, the potential for odd briefing patterns in specific holiday circumstances already exists, so even if an amendment to CR 6 is unable to make a regime that is perfect in all situations, it could at least end some current ambiguity.

To reiterate, the proposal only concerns time periods calculated *backwards* from a date, such as opposition and reply briefs due so many days before a noting or hearing date. It is not about all situations when a brief’s ordinary due date would be on a holiday.

As it continues its deliberations, the subcommittee would be interested to hear of any specific, real-life examples of situations that have occurred regarding time periods calculated backwards from a given date with the date initially calculated falling on a holiday or weekend.



22March 2012

MEMORANDUM

TO: Ken Masters, Chair, WSBA Rules Committee
FROM: Ann Summers
SUBJECT: PRP rules subcommittee: Summary of March 15, 2012 meeting

The subcommittee revisited its previous discussion of rules RAP 16.3, 16.4 and 16.5 and reached a consensus that the following amendments to the current rules should be recommended.

RULE 16.3 PERSONAL RESTRAINT PETITION--GENERALLY

(a) Habeas Corpus and Postconviction Relief. Single Procedure for Relief from Restraint. Rules 16.3 through 16.15 and rules 16.24 through 16.27 establish a single procedure for original proceedings in the appellate court to obtain relief formerly available by a petition for writ of habeas corpus or by an application for post-conviction 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 post-conviction 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) Original Appellate Court 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.

Comment

These rules do not supersede and do not apply to habeas corpus proceedings initiated in the superior court pursuant to RCW 7.36.040.

RULE 16.4 PERSONAL RESTRAINT PETITION—GROUNDS FOR REMEDY

(a) Generally. Except as restricted by section (d), the appellate court will grant appropriate relief to a petitioner if the petitioner is under a “restraint” as defined in section (b) and the petitioner’s restraint is unlawful for one or more of the reasons defined in section (c).

(b) Restraint. A petitioner is under a “restraint” if the petitioner has limited freedom because of a court decision in a civil or criminal proceeding, the petitioner is confined, the petitioner is subject to imminent confinement, or the petitioner is under some other disability resulting from a judgment or sentence in a criminal case.

(c) Unlawful Nature of Restraint. The restraint must be unlawful for one more of the following reasons:

(1) The decision in a civil or criminal proceeding was entered without jurisdiction over the person of the petitioner or the subject matter; or

(2) The conviction was obtained or the sentence or other order entered in a criminal proceeding or civil proceeding instituted by the state or local government was imposed or entered in violation of the Constitution of the United States or the Constitution or laws of the State of Washington; or

(3) Material facts exist which have not been previously presented and heard, which in the interest of justice require vacation of the conviction, sentence or other order entered in a criminal proceeding or civil proceeding instituted by the state or local government; or

(4) There has been a significant change in the law, whether substantive or procedural, which is material to the conviction, sentence, or other order entered in a criminal proceeding or a civil proceeding instituted by the state or local government, and sufficient reasons exist to require retroactive application of the changed legal standard; or

(5) Other grounds exist for a collateral attack upon a judgment in a criminal proceeding or civil proceeding instituted by the state or local government; or

(6) The conditions or manner of the restraint of petitioner are in violation of the Constitution of the United States or the Constitution or laws of the State of Washington; or

(7) Other grounds exist to challenge the legality of the restraint of petitioner.

(d) Restrictions. The appellate court will only grant relief by a personal restraint petition if other remedies which may be available to petitioner are inadequate under the circumstances and if such relief may be granted under RCW 10.73.090 ~~or 100 and 130~~. No more than one petition for similar relief on behalf of the same petitioner will be entertained without good cause shown.

RAP 16.5 PERSONAL RESTRAINT PETITION—WHERE TO SEEK RELIEF

(a) Court of Appeals.

(1) A personal restraint petition should ~~may~~ be filed with the Court of Appeals.

(2) If a petition falls within one of the categories specified in subdivision (b)(1), the Court of Appeals may transfer the petition to the Supreme Court.

(b) Supreme Court.

(1) A personal restraint petition should be filed with the Supreme Court only in the following types of cases:

(i) A case in which the Court of Appeals lacks jurisdiction under RCW 10.73.140.

(ii) A case involving an issue in which there is a conflict among decision of the Court of Appeals or an inconsistency in decisions of the Supreme Court.

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

(iv) A case in which the death penalty has been decreed.

(2) The petition should include or be accompanied by a statement explaining the grounds for filing the case in the Supreme Court.

(3) If a personal restraint petition is filed in the Supreme Court ~~determines that the case does not fall within one of the categories specified in this rule~~, the Supreme Court will ~~ordinarily~~ transfer the petition to the Court of Appeals

~~(2)~~ (4) If a petition 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.

WACDL proposed a new rule, RAP 16.5A - Transfer from the Superior Court as suggested in the prior meeting. However, it became the consensus of the group that the subject matter addressed in this new proposed rule would be better placed in a reformulation of RAP 16.9, which would be retitled "Initial Consideration of Petition" and would set forth the court's duty to initially review a petition, and the court's ability to dismiss a petition that is patently frivolous without calling for a response, and the court's ability to summarily return an improperly transferred CrR 7.8 motion to the superior court without calling for a response or requiring that a motion be filed or a filing fee paid. Seth Fine and David Zuckerman are going to work on these revisions before the next meeting, on April 19th.



April 26, 2012

MEMORANDUM

TO: Ken Masters, Chair, WSBA Rules Committee

FROM: Ann Summers

SUBJECT: PRP rules subcommittee: Summary of April 19, 2012 meeting

The subcommittee discussed the proposed changes to RAP 16.7 and 16.8.

The subcommittee came to a consensus regarding the following changes RAP 16.7 and 16.8.

RAP 16.7 PERSONAL RESTRAINT PETITION—FORM OF PETITION

(a) Generally. Under the titles indicated, the petition should set forth:

(1) *Status of Petitioner.* The restraint on petitioner; the place where petitioner is held in custody, if confined; the judgment, sentence, or other order or authority upon which petitioners restraint is based, identified by date of entry, court, and cause number; any appeals taken from that judgment, sentence or order; and a statement of each other petition or collateral attack as that term is defined in RCW 10.73.090, whether filed in federal court or state court, filed with regard to the same allegedly unlawful restraint, identified by the date filed, the court, the disposition made by the court, and the date of disposition.

(2) *Grounds for Relief.* A statement of (i) the facts upon which the claim of unlawful restraint of petitioner is based and the evidence available to support the factual allegations, ~~(ii) why other remedies are inadequate,~~ and (iii) why the petitioners restraint is unlawful for one or more of the reasons specified in rule 16.4(c). Legal argument and authorities may be included in the petition, or submitted in a separate brief as provided in rule 16.10(a).

(3) *Citations to Court Documents.* If some of the evidence supporting the factual allegations is contained in the files of the superior court or the Court of Appeals, the petitioner should identify the documents needed for review and the case numbers under which they can be found. The appellate court may order that any court documents identified for review be transferred or transmitted to the court.

(4) *Statement of Finances.* If petitioner is unable to pay the filing fee or fees of counsel, a request should be included for waiver of the filing fee and for the appointment of counsel at public expense. The request should be supported by a statement of petitioner's total assets and liabilities.

~~(4)~~ (5) *Request for Relief.* The relief petitioner wants.

~~(5)~~ (6) *Oath.* ~~If a notary is available,~~ The petition must be signed by the petitioner or his attorney and verified substantially as follows under penalty of perjury. The verification may be in the following form:

~~After first being duly sworn, on oath, I depose and say: I declare under penalty of perjury under the laws of the State of Washington that I am the petitioner, that I have read the petition, know its contents, and I believe the petition is true~~

or

~~After first being duly sworn, on oath, I depose and say: I declare under penalty of perjury under the laws of the State of Washington that I am the attorney for the petitioner, that I have read the petition, know its contents, and I believe the petition is true.~~

~~[Signature]~~

~~Signed this _____ [date] at _____ [place].~~

~~Subscribed and sworn to before me this _____ [date].~~

~~Notary Public in and for the State of Washington, residing at _____.~~

~~If a notary is not available, the petition must be subscribed by the petitioner or his attorney substantially as follows:~~

~~I declare that I have examined this petition and to the best of my knowledge and belief it is true and correct.~~

~~Dated this _____ [date].~~

~~[Signature]~~

~~If a notary is available and a petition is filed that is not verified, the appellate court will return the petition for verified signature and advise the petitioner's custodian to make a notary available verification.~~

~~(6) (7) Verification.~~ In all cases where the restraint is the result of a criminal proceeding and the petition is prepared by the petitioner's attorney, the petitioner must file with the court no later than 30 days after the petition was received by the court a document that substantially complies with the following form:

I declare that I have received a copy of the petition prepared by my attorney and that I consent to the petition being filed on my behalf.

Dated this ____ [date]_____.

[Signature]

If the petitioner has been declared incompetent, the verification may be filed by the guardian ad litem. If a petition has been filed to determine competency, the verification procedure shall be tolled until competency is determined.

(b) Standard Form. The clerk of the appellate court will make the standard form of petition available to persons who are confined in state institutions and to others who may request the form.

(c) Length of Petition. The petition should not exceed 50 pages.

RAP 16.8 PERSONAL RESTRAINT PETITION – FILING AND SERVICE

(a) Filing Fee. A personal restraint petition will be filed by the clerk of the appellate court only if the statutory filing fee is paid, unless the appellate court determines that the petitioner is unable to pay the filing fee. The statute requiring payment of a fee for filing a petition for writ of habeas corpus is controlling.

(b) Filing in Court of Appeals. A personal restraint petition filed in the Court of Appeals must be filed in the division which includes the superior court entering the decision on the basis of which petitioner is held in custody or, if petitioner is not being held in custody on the basis of a decision, in the division in which the petitioner is located.

(c) Deficient Petitions. If the clerk of the appellate court determines that a petition submitted is in a form that does not conform with this rule or with rule 16.7, the petition should be filed and the clerk will direct the petitioner to correct the deficiency within 60 days.

(d) Service of Petition. If petitioner's restraint is imposed by the state or local government, the clerk of the appellate court will reproduce a copy of the petition and serve the petition on the officer or agency under a duty to respond to the petition. If petitioner's restraint is imposed by a person or agency other than the state or local government, the petitioner must prepare and serve a copy of the petition on the proper respondent.

(e) Amendment of Petition. The appellate court may allow a petition to be amended. All amendments are subject to the time limitation provided in RCW 10.73.090 and 10.73.100.

Additional proposed changes to RAP 16.7, involving the right to discovery and the appointment of counsel, were tabled for the next meeting, to be held on May 17.