

WASHINGTON STATE BAR ASSOCIATION

Court Rules and Procedures Committee

Meeting Minutes August 29, 2022

Members Present: Chair Isham Reavis, Lesli Ashely, Magda Baker, Paul Crisalli, Duffy Graham, Ofelia Granados, Zahcary Pekelis Jones, Margaret Macrae, Andrew Van Winkle, Coreen Wilson, and Emory Wogenstahl

Members Excused: Rane Casalegno, Brian Esler, Travis Kennedy, Karen Knutsen, Matthew Monahan, Jeff Sbaih, Kathleen Shircliff, Laurel Smith, Alexandria Smith

Also Attending: Judge Blaine Gibson, J Benway (AOC Liaison), and Nicole Gustine (WSBA Assistant General Counsel), and Steve Larsen (Chief of Administration at the Dept. of Adult and Juvenile Detention).

The meeting was called to order at 12:08 p.m. once a quorum was established.

1. Approval of Minutes

A motion was made and seconded to approve the July 5, 2022, meeting minutes. The motion passed unanimously.

2. Subcommittee Reports

- Criminal Rules for Superior Courts (CrR)
Subcommittee will go over comments received and revise proposal by next meeting.
- Criminal Rules for Courts of Limited Jurisdiction (CrRLJ)
Subcommittee will go over comments received and revise proposal by next meeting.
- Subcommittee X
Subcommittee is working on two issues:
 - 1) Expecting feedback from BOG re: delayed mail and implications for rules
 - 2) Mental proceedings rulesThe subcommittee should have something to propose regarding these two issues by next meeting.

3. Other Requests

- GR 9 explainer – Coreen, Paul, and Isham will work on creating an infographic.
- GR 9 Communications Process – Motion made, seconded, and passed 5 to 1 to have Isham draft and send a letter to the BOG stating that the Court Rules

WASHINGTON STATE BAR ASSOCIATION

Court Rules and Procedures Committee

committee agrees in principle with the concept of the DMCJA and SCJA President's GR 9 proposal re: Supreme Court rules vetting process. Isham will circulate the draft of his letter to the committee in the next few days, prior to sending to President Tollefson.

No remaining business. Next meeting will be September 26, 2022.

The meeting adjourned at 1:00 p.m.

DRAFT

TO: WSBA Court Rules and Procedures Committee
FROM: Magda Baker, CrRLJ Subcommittee
DATE: September 21, 2022
RE: CrRLJ 4.7

The CrRLJ Subcommittee drafted proposed changes to CrRLJ 4.7 in an attempt to address two issues. One set of changes was in response to a concern that some public defenders were waiting an unnecessarily long time for discovery. A second set of changes made the rule gender neutral.

The Subcommittee has decided not to pursue the changes intended to address delayed discovery due to both the Supreme Court of Washington's adoption of GR 42 and stakeholder feedback. Under new GR 42, judges will no longer be able to directly assign appointed counsel. As a result, all defense attorneys will be filing notices of appearance and can include a request for discovery with that notice. Stakeholders also submitted feedback noting problems with the workability of our proposal. The District and Municipal Court Judges' Association (DMCJA) noted that courts could have difficulty knowing when discovery obligations commence if the defense attorney does not file a request for discovery. For these reasons, we are abandoning our proposed changes designed to address discovery delays.

We would like to submit to the Supreme Court of Washington a request that they adopt the parts of our proposal that would make CrRLJ 4.7 gender neutral. The proposed rule is attached.

Our subcommittee sees problems with the way current CrRLJ 4.7 is written and administered. It needs a larger overhaul than we originally suggested. We recommend that the next CrRLJ 4.7 Subcommittee look into revising the rule.

CrRLJ 4.7 DISCOVERY

(a) Prosecuting Authority's Obligations.

(1) Except as otherwise provided by protective orders or as to matters not subject to disclosure, the prosecuting authority shall, upon written demand, disclose to the defendant or the defendant's counsel the following material and information within ~~his or her~~ the prosecuting authority's possession or control concerning:

(i) the names and addresses of persons whom the prosecuting authority intends to call as witnesses at the hearing or trial, together with any written or recorded statements and the substance of any oral statements of such witnesses;

(ii) any written or recorded statements and the substance of any oral statements made by the defendant, or made by a codefendant if the trial is to be a joint one;

(iii) any reports or statements of experts made in connection with the particular case, including results of physical or mental examinations and scientific tests, experiments, or comparisons;

(iv) any books, papers, documents, photographs, or tangible objects which the prosecuting authority intends to use in the hearing or trial or which were obtained from or belonged to the defendant;

(v) any record of prior criminal convictions known to the prosecuting authority of the defendant and of persons whom the prosecuting authority intends to call as witnesses at the hearing or trial;

(vi) any electronic surveillance, including wiretapping, of the defendant's premises or conversations to which the defendant was a party and any record thereof;

(vii) any expert witnesses whom the prosecuting authority will call at the hearing or trial, the subject of their testimony, and any reports relating to the subject of their testimony that they have submitted to the prosecuting authority;

(viii) any information indicating entrapment of the defendant;

(ix) specified searches and seizures;

(x) the acquisition of specified statements from the defendant; and

(xi) the relationship, if any, of specified persons to the prosecuting authority.

(2) Unless the court orders otherwise, discoverable materials shall be made available for inspection and copying within 21 days of arraignment or within 21 days of receipt of the demand by the prosecuting authority, whichever is later.

(3) Except as otherwise provided by protective orders, the prosecuting authority shall disclose to defendant's lawyer any material or information within ~~his or her~~ the prosecuting authority's knowledge which tends to negate defendant's guilt as to the offense charged.

(4) The prosecuting authority's obligation under this section is limited to material and information within the actual knowledge, possession, or control of members of ~~his or her~~ the prosecuting authority's staff.

(b) Defendant's Obligations.

(1) Except as otherwise provided by protective orders or as to matters not subject to disclosure, the defendant shall disclose to the prosecuting authority the following material and information within ~~his or her~~ defendant's possession or control concerning:

(i) the names and addresses of persons whom the defendant intends to call as witnesses at the hearing or trial, together with any written or recorded statements and the substance of any oral statements of such witnesses;

(ii) any books, papers, documents, photographs, or tangible objects which the defendant intends to use in the hearing or

(iii) any expert witnesses whom the defendant will call at the hearing or trial, the subject of their testimony, and any reports relating to the subject of their testimony that they have submitted to the defendant;

(iv) any claim of incompetency to stand trial;

(v) whether ~~his or her~~ the defendant's prior convictions will be stipulated or need to be proved;

(vi) whether or not ~~he or she~~ the defendant will rely on a defense of insanity at the time of the offense; and

(vii) the general nature of ~~his or her~~ the defendant's defense.

(2) Unless the court orders otherwise, discoverable materials shall be made available for inspection and copying not later than 14 days prior to the date set for trial.

(3) References in this section to defendant shall be deemed to include the defendant's lawyer, where appropriate.

(c) Physical and Demonstrative Evidence.

(1) Notwithstanding the initiation of judicial proceedings, and subject to constitutional limitations, the court on motion of the prosecuting authority or the defendant may require or allow the defendant to:

(i) appear in a lineup;

(ii) speak for identification by a witness to an offense;

(iii) be fingerprinted;

(iv) pose for photographs not involving reenactment of the crime charged; (v) try on articles of clothing;

(vi) permit the taking of samples of or from his or her blood, hair, and other materials of his or her body including materials under his or her fingernails which involve no unreasonable intrusion thereof;

(vii) provide specimens of ~~his or her~~ the defendant's handwriting; and

(viii) submit to a reasonable physical, medical, or psychiatric inspection or examination.

(2) Provisions may be made for appearance for the purposes stated in this section in an order for pretrial release.

(d) Material Held by Others. Upon defendant's request and designation of material or information in the knowledge, possession or control of other persons which would be discoverable if in the knowledge, possession or control of the prosecuting authority, the prosecuting authority shall attempt to cause such material or information to be made available to the defendant. If the prosecuting authority's efforts are unsuccessful and if such material or persons are subject to the jurisdiction of the court, the court shall issue suitable subpoenas or orders to cause such material to be made available to the defendant.

(e) Discretionary Disclosures.

(1) Upon a showing of materiality and if the request is reasonable, the court in its discretion may require disclosure of the relevant material and information not covered by sections (a) and (d).

(2) The court may condition or deny disclosure authorized by this rule if it finds that there is a substantial risk to any person of physical harm, intimidation, bribery, economic reprisals or unnecessary annoyance or embarrassment resulting from such disclosure, which outweigh any usefulness of the disclosure to the defendant.

(f) Matters Not Subject to Disclosure.

(1) *Work Product.* Disclosure shall not be required of legal research or of records, correspondence, reports or memoranda to the extent that they contain the opinions, theories or conclusions of investigating or prosecuting agencies except as to material discoverable under subsection (a)(1)(iii).

(2) *Informants.* Disclosure of an informant's identity shall not be required when ~~his or her~~ the informant's identity is a prosecution secret and a failure to disclose will not infringe upon the constitutional rights of the defendant. Disclosure of the identity of witnesses to be produced at a hearing or trial shall not be denied.

(g) Regulation of Discovery.

(1) *Investigations Not To Be Impeded.* Except as otherwise provided by protective orders or as to matters not subject to disclosure, neither the lawyers for the parties nor other prosecution or defense personnel shall advise persons, other than the defendant, who have relevant material or information to refrain from discussing the case with the opposing lawyer or showing the opposing lawyer any relevant material, nor shall they otherwise impede the opposing lawyer's investigation of the case.

(2) *Continuing Duty To Disclose.* If, after compliance with this rule or orders pursuant to it, a party discovers additional material or information which is subject to disclosure, ~~he or she~~ that party shall promptly notify the other party or ~~his or her lawyer~~ counsel of the existence of such additional material. If the additional material or information is discovered during trial, the court shall also be notified.

(3) *Custody of Materials.* Any materials furnished to a lawyer pursuant to these rules shall remain in the exclusive custody of the lawyer and be used only for the purposes of conducting the party's side of the case, unless otherwise agreed by the parties or ordered by the court, and shall be subject to such other terms and conditions as the parties may agree or the court may provide. Further, a defense lawyer shall

be permitted to provide a copy of the materials to the defendant after making appropriate redactions which are approved by the prosecuting authority or order of the court.

(4) *Protective Orders*. Upon a showing of cause, the court may at any time order that specified disclosure be restricted or deferred or make such other order as is appropriate, provided that all material and information to which a party is entitled must be disclosed in time to permit ~~his or her~~ the party's lawyer to make beneficial use of it.

(5) *Excision*. When some parts of certain material are discoverable under this rule and other parts are not discoverable, as much of the material shall be disclosed as is consistent with this rule. Material excised pursuant to judicial order shall be sealed and preserved in the records of the court, to be made available to the appellate court in the event of an appeal.

(6) *In Camera Proceedings*. Upon request of any person, the court may permit any showing of cause for denial or regulation of disclosure, or portion of such showing, to be made in camera. A record shall be made of such proceedings. If the court enters an order granting relief following a showing in camera, the entire record of such showing shall be sealed and preserved in the records of the court, to be made available to the appellate court in the event of an appeal.

(7) *Sanctions*.

(i) If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with an applicable discovery rule or an order issued pursuant thereto, the court may order such party to permit the discovery of material and information not previously disclosed, grant a continuance, or enter such other order as it deems just under the circumstances.

(ii) The court may at any time dismiss the action if the court determines that failure to comply with an applicable discovery rule or an order issued pursuant thereto is the result of a willful violation or of gross negligence and that the defendant was prejudiced by such failure.

(iii) A lawyer's willful violation of an applicable discovery rule or an order issued pursuant thereto may subject the lawyer to appropriate sanctions by the court.

From: [Terra Nevitt](#)
To: [Brian Tollefson](#)
Cc: [Isham Reavis](#); [Francis Adewale \(francisadewalebog@gmail.com\)](mailto:francisadewalebog@gmail.com); [lauren. boyd \(lauren.boyd.bog@gmail.com\)](mailto:lauren.boyd.bog@gmail.com); [Dan Clark](#); [Dan Clark](#); [Nicole Gustine](#)
Subject: RE: [External]Fwd: Letter re: GR 9(f)(2) Communication Process Prior to Publishing Proposed Rule Changes for Comment
Date: Thursday, August 25, 2022 9:51:07 AM

Thanks for this. The BOG would need to take action to approve WSBA being a co-sponsor of this rule change and if they intend to submit the change by October 1, we would need to take this up in September. An alternative would be for WSBA to submit a letter in support, which could happen after the rule change is submitted. As you know, the agenda for the September meeting is really tightly packed, but I hope to have a better sense of some of our timing issues by early next week and will know how many candidates we are interviewing by Friday of next week. I can make this a priority to make space for.

Terra

From: Brian Tollefson <TollefsonBOG@outlook.com>
Sent: Thursday, August 25, 2022 7:11 AM
To: Terra Nevitt <terran@wsba.org>; Nicole Gustine <nicoleg@wsba.org>
Cc: Isham Reavis <isham@aokilaw.com>; Francis Adewale (francisadewalebog@gmail.com) <francisadewalebog@gmail.com>; lauren. boyd (lauren.boyd.bog@gmail.com) <lauren.boyd.bog@gmail.com>; Dan Clark <danclarkbog@yahoo.com>; Dan Clark <danclarkbog@yahoo.com>
Subject: [External]Fwd: Letter re: GR 9(f)(2) Communication Process Prior to Publishing Proposed Rule Changes for Comment

Greetings,

Please see attached that I received yesterday afternoon.

Can we find room on the September BOG meeting agenda for this if you feel that the BOG has to be involved?

I also believe that our Court Rules and Procedures Committee should review. However, I believe the draft addresses concerns raised earlier by that Committee years ago when I was the BOG liaison.

I copied the liaisons for Court Rules, SCJA and DMCJA as well.

Your thoughts. Thanks.

Best regards,

Judge Brian Tollefson, retired
WSBA President 2021-22
TollefsonBOG@outlook.com

From: Jennifer Forbes <jforbes@kitsap.gov>
Sent: Wednesday, August 24, 2022, 4:29 PM
To: B Tollefson <bhmtollefson@outlook.com>
Cc: 'Leo, Enrico' <Enrico.Leo@co.snohomish.wa.us>; 'Goodwin, Jeffrey' <Jeffrey.Goodwin@snoco.org>; Oyler, Stephanie <Stephanie.oyler@courts.wa.gov>; 'Anderson, Rachelle E.' <RANDERSON@spokanecounty.org>; Charles D Short <cshort@co.okanogan.wa.us>; Ramseyer, Judith <Judith.Ramseyer@kingcounty.gov>; Leo, Enrico <Enrico.Leo@co.snohomish.wa.us>; Chung, Samuel <Samuel.Chung@kingcounty.gov>; Lee Muller, Allison <Allison.LeeMuller@courts.wa.gov>; Valdez, Andrea <Andrea.Valdez@courts.wa.gov>; Green, Heidi <Heidi.Green@courts.wa.gov>
Subject: RE: Letter re: GR 9(f)(2) Communication Process Prior to Publishing Proposed Rule Changes for Comment

Judge Tollefson:

Back in May of this year the WSBA joined the SCJA and DMCJA in expressing concerns about the failure of the Supreme Court to comply with the GR 9 vetting process (see email below, letter reattached). Since that letter, the SCJA and the DMCJA have both experienced some improvement in the communication between the Supreme Court Rules Committee and the trial courts in the review of draft rules. We do not know if the WSBA has had a similar experience.

Over the last couple months, the DMCJA and the SCJA have engaged in extensive discussion about our state's rule making process and the need to ensure that all stakeholders have an opportunity to review and vet rules – and steps that might make the process more transparent. During this discussion, we also looked at how other states approach rule making. The product of this discussion is the attached draft proposed changes to GR 9. (See attached – rule provided in both “redline” and “clean” versions).

Our intention is to submit it formally during the GR 9(i) review and adoption schedule in early October. We are hoping that the WSBA (and maybe others) would be a co-sponsor for this proposed rule. We are, of course, open to any of your thoughts on our proposal (or others who should look at it) before it is formally submitted – regardless of whether your association would be willing to co-sponsor. If you are interested in co-sponsoring this proposed rule, we will include you in further discussions of the GR 9 Coversheet that would accompany the rule.

We have also sent this draft to Justices Yu and Johnson in the interest of true transparency and to get any feedback they may have before it is formally submitted.

Sincerely,
Commissioner Rick Leo, DMCJA President
Judge Jennifer Forbes, SCJA President



April 27, 2022

Honorable Steve González
Honorable Charles W. Johnson
Honorable Mary I. Yu
Supreme Court Rules Committee
C/O Clerk of the Supreme Court
Temple of Justice
PO Box 40929
Olympia, WA 98504-0929

VIA EMAIL

RE: GR 9(f)(2) Vetting Process for Rules Changes Prior to Publishing for Comment

Dear Chief Justice González, Justice Yu, Justice Johnson, and Rules Committee Members:

Over the past several years, the adoption of rules proposals has become increasingly complex. While there are a wide variety of factors that have contributed to that complexity, we believe there are three main factors at play. The first is the COVID-19 pandemic and the collateral impacts on our courts. The second factor is the increasingly wide range of groups and individuals suggesting rules amendments and new rules. The final factor impacting complexity is the lack of participation of the Superior Court Judges' Association (SCJA), District and Municipal Court Judges' Association (DMCJA), and Washington State Bar Association (WSBA) in the preliminary vetting process for rules changes prior to publishing for comment as required by GR 9(f)(2).

With regard to the pandemic, trial courts and court users have responded admirably adopting remote hearings and health and safety protocols during this pandemic, and it is understandable that a number of proposals have been presented. With regard to the variety of entities proposing rules changes, the diversity of suggestions and opinions is a valuable resource for trial courts.

The concern we bring to your attention is the absence of involvement of SCJA, DMCJA, and WSBA, in the preliminary vetting process of proposed rules required by GR (9)(f)(2). In bypassing the requirements of the rule, the Supreme Court Rules Committee is missing the opportunity to refine rules proposals and correct substantive challenges before proposed rules are sent for comment. This is particularly important where rules submissions are coming from individuals and groups without substantial experience in drafting rules. Our organizations all have rules committees with extensive drafting expertise.¹


¹ In addition to WSBA's Court Rules Committee, other WSBA entities are allowed to comment on a proposed rule change under certain circumstances if that WSBA entity's position has been approved through WSBA's Comment Policy.

April 27, 2022

Several recent rules proposals illustrate the need to continue involving our associations in the preliminary vetting. CrR /CrRLJ 3.4 have proven to be very challenging for trial courts to implement and the result has been a patchwork of approaches. Had we been involved earlier, prior to the rule going out for comment, many of the challenges in implementation could have been addressed. The proposed amendments to CrR /CrRLJ 7.8 and the proposed amendments to GR 11.3 are two additional examples of the need to involve our associations in vetting prior to comment. Rule 7.8 poses unique challenges to Courts of Limited Jurisdiction and the proposed amendments to GR 11.3 pose significant concerns for trial courts. These rule concerns affect the public's view of the justice system and impact the experience of court users.

We request the opportunity to meet with you and members of the Supreme Court Rules Committee to further discuss facilitating GR 9(f)(2) related communication.

Sincerely,



Judge Charles D. Short
DMCJA President



Judge Rachelle E. Anderson
SCJA President

Honorable Brian Tollefson
WSBA President

Cc: Presiding Chief Judge George B. Fearing, Court of Appeals

GR 9 - SUPREME COURT RULEMAKING

(a) Statement of Purpose. The purpose of rules of court is to provide necessary governance of court procedure and practice and to promote justice by ensuring a fair and ~~expeditious~~ considered process. In promulgating rules of court, the Washington Supreme Court seeks to ensure that:

- (1) The adoption and amendment of rules proceed in an orderly and uniform manner;
- (2) All interested persons and groups receive notice and an opportunity to express views regarding proposed rules;
- (3) There is adequate notice of the adoption and effective date of new and revised rules;
- (4) Proposed rules are necessary statewide;
- (5) Minimal disruption in court practice occurs by limiting the frequency of rule changes; ~~and~~
- (6) Rules of court are clear and definite in application, and
- (7) Public confidence in rulemaking is increased through transparency.

(b) Definitions. As used in this rule, the following terms have these meanings:

- (1) “Suggested rule” means a request for a rule change ~~or~~, a new rule that has been submitted to the ~~Supreme Court~~ Rules Committee, and a suggested rule amended by the Rules Committee.
- (2) “Proposed rule” means a suggested rule that the ~~Supreme Court~~ Rules Committee has ~~ordered published for public comment~~ referred to the Supreme Court for further action.
- (3) “Rules Committee” means the Supreme Court Rules Committee. Voting members of the Supreme Court Rules Committee shall be comprised of four Washington State Supreme Court Justices appointed by the Chief Justice, one judicial representative selected by the Washington State Court of Appeals, one judicial representative selected by the Superior Court Judges Association, one judicial representative selected by the District and Municipal Court Judges Association, and one attorney member selected by the Washington State Bar Association. Members shall serve three-year terms at the discretion of the appointing organization and may be re-appointed to successive terms. The names and positions of Rules Committee members shall be posted on the Supreme Court website.
- (4) “Supreme Court” means the full Washington State Supreme Court.
- (5) A “technical change” is one that corrects a clerical mistake or an error arising from oversight or omission.

- (c) Request for Notification. Any person or group may file a request with the ~~Supreme Court Rules Committee~~ to receive notice of a suggested rule. The request may be limited to certain kinds of rule changes. The request shall state the name and address of the person or group to whom the suggested rule is to be sent. Once filed, the request shall remain in effect until withdrawn or unless notice sent by regular, first-class U.S. mail is returned for lack of a valid address.
- (d) Initiation of Rules Changes. Any person or group may submit to the ~~Supreme Court Rules Committee~~ a request to adopt, amend, or repeal a court rule. ~~The Supreme Court shall determine whether the request is clearly stated and in the form required by section (e) of this rule. If the Supreme Court determines that a request is unclear or does not comply with section (e), the Supreme Court may (1) accept the request notwithstanding its noncompliance, (2) ask the proponent to resubmit the request in the proper format, or (3) reject the request, with or without a written notice of the reason or reasons for such rejection.~~
- (e) Form for Submitting a Request to Change Rules.
- (1) The text of all suggested rules ~~should~~ shall be submitted on 8 1/2- by 11-inch line-numbered paper with consecutive page numbering and in an electronic form as may be specified by the Supreme Court. If the suggested rule affects an existing rule, deleted portions ~~should~~ shall be shown and stricken through; new portions ~~should~~ shall be underlined once.
 - (2) A suggested rule ~~should~~ shall be accompanied by a cover sheet and not more than 25 pages of supporting information, including letters, memoranda, minutes of meetings, research studies, or the like. The cover sheet ~~should~~ shall contain the following:
 - (A) Name of Proponent--the name of the person or group requesting the rule change;
 - (B) Spokesperson--a designation of the person who is knowledgeable about the proposed rule and who can provide additional information;
 - (C) Purpose--the reason or necessity for the suggested rule, including whether it creates or resolves any conflicts with statutes, case law, or other court rules;
 - (D) Hearing--whether the proponent believes a public hearing is needed and, if so, why;
 - (E) Expedited Consideration--whether the proponent believes that exceptional circumstances justify expedited consideration of the suggested rule, notwithstanding the schedule set forth in section (i).
- (f) Rules Committee Action on Consideration of Suggested Rules by Supreme Court.
- (1) Initial Considerations. ~~The Supreme Court Rules Committee shall initially determine whether the suggested rule is clearly stated and in the form required by section (e) of this rule. If the Rules Committee determines that a request is unclear or does not comply with section (e), the Rules Committee may accept the request notwithstanding its~~

noncompliance, ask the proponent to resubmit the request in the proper format, or reject the request for noncompliance with section (e).

- (2) The Rules Committee shall determine whether a suggested rule has merit and, whether it the suggested rule involves a significant or merely technical change¹ whether the suggested rule should be amended, and A “technical change” is one which corrects a clerical mistake or an error arising from oversight or omission. ~~The Supreme Court shall also initially determine whether the suggested rule should be considered under the schedule provided for in section (i) or should receive expedited consideration for the reason or reasons to be set forth in the transmittal form provided for in section (f)(2). The Supreme Court Rules Committee may consult with other persons or groups in making this these initial determinations.~~
- (3) Rules Deemed Without Merit. If the Rules Committee determines a suggested rule is without merit, the Rules Committee shall reject the suggested rule and shall notify the proponent in writing of the reason(s) for rejection.
- (4) Suggested Rules Amended by the Rules Committee. If the Rules Committee amends a suggested rule, the suggested rule shall be returned to the proponent who shall have 30 days to comment on the proposed amendment. Following the 30-day comment period, the Rules Committee shall reject the amended suggested rule pursuant to section (f)(3) or send notice to interested parties pursuant to section (f)(5).
- (5) Notice to Interested Parties. After making its initial determination, and allowing time for comment on an amended suggested rule pursuant to section (f)(4), the Supreme Court Rules Committee shall forward each suggested rule and cover sheet, except those deemed “without merit”, along with a transmittal form setting forth such determinations, to the Washington State Bar Association, the Superior Court Judges Association, the District and Municipal Court Judges Association, and the Chief Presiding Judge of the Court of Appeals for their consideration. The transmittal shall include the cover sheet and any additional information provided by the proponent. The Supreme Court shall also forward the suggested rule and cover sheet to any person or group that has filed a notice pursuant to section (c), and to any other person or group the Supreme Court Rules Committee believes may be interested. The transmittal form shall specify a deadline by which the recipients may comment on the suggested rule. in advance of any determination under section (f)(3) of this rule. If the Supreme Court determines that the suggested rule should receive expedited consideration, it shall so indicate on the transmittal form. The form may contain a brief statement of the reason or reasons for such consideration.
- (6) Fiscal Note. The Rules Committee may request a fiscal note from the Administrative Office of the Courts (AOC) for costs incurred by courts regarding the suggested rule.
- (37) Action on Suggested Rules. Referral of Suggested Rules to Supreme Court. After the expiration of the deadline set forth in the transmittal form, the Rules Committee shall refer the suggested rule to the Supreme Court with a recommendation to either may reject

the suggested rule, adopt a merely technical change without public comment, or order the suggested rule published for public comment.

(8) Rules Committee proceedings shall be accessible to the public through remote viewing. The Rules Committee shall publish the dates and times of proceedings along with instructions to access the hearing for remote viewing on such Internet sites as the Rules Committee may determine, including those of the Supreme Court and the Washington State Bar Association.

(g) Publication for Comment.

(1) If the Supreme Court orders that a proposed rule be published for public comment, the A proposed rule shall be published ~~for public comment~~ in such media of mass communication as the Supreme Court deems appropriate, including, but not limited to, ~~the Washington Reports Advance Sheets and the Washington State Register. The proposed rule shall also be posted on~~ such Internet sites as the Supreme Court may determine, including those of the Supreme Court and the Washington State Bar Association. The purpose statement required by section (e)(2)~~(C)~~ shall be published along with the proposed rule. Publication of a proposed rule shall be announced in the Washington State Bar News.

(2) Publication of a proposed rule in the Washington State Register shall not subject Supreme Court rule-making to the provisions of the Administrative Procedures Act.

(3) All comments on a proposed rule shall be submitted in writing to the Supreme Court by the deadline set forth in section (i).

(4) If a comment includes a related suggested rule, it ~~should~~ shall be presented in the format set forth in section (e).

(5) All comments received ~~will~~ shall be posted on the Supreme Court website and kept on file in the office of the Clerk of the Supreme Court for public inspection and copying.

(h) Final Action by the Supreme Court on Proposed Rules, Publication, and Effective Date.

(1) The Supreme Court may, in its discretion, hold a hearing on a proposed rule. If the Supreme Court orders a hearing, it shall set the time and place of the hearing and determine the manner in which the hearing will be conducted. The Supreme Court may also designate an individual or committee to conduct the hearing. All hearings set by the Supreme Court pursuant to section (h)(1) of this rule shall be accessible to the public. The Supreme Court shall publish, on its website and the Washington State Bar Association website, the dates and times of hearings along with instructions to access the hearing for remote and/or in-person viewing.

~~(42) After consideration of the recommendations from the Rules Committee, review of comments received during publication of the proposed rule, and testimony and other evidence presented in any hearing ordered by the Supreme Court, the Supreme Court After considering a suggested rule, or after considering any comments or written or oral testimony received regarding a proposed rule, the Supreme Court may adopt, amend, or reject the proposed rule change, or take such other action as the Supreme Court deems appropriate. Prior to action by the Supreme Court, the court may, in its discretion, hold a hearing on a proposed rule at a time and in a manner defined by the court. If the Supreme Court orders a hearing, it shall set the time and place of the hearing and determine the manner in which the hearing will be conducted. The Supreme Court may also designate an individual or committee to conduct the hearing.~~

~~(2) Regarding action on a suggested rule:~~

~~(A) If the Supreme Court rejects the suggested rule, it may provide the proponent with the reason or reasons for such rejection.~~

~~(B) If the Supreme Court adopts the suggested rule without public comment, it shall publish the rule and may set forth the reason or reasons for such adoption.~~

~~(3) Regarding Actions on a Proposed Rules:~~

~~(A) If the Supreme Court rejects a proposed rule, it may shall publish its reason or reasons for such rejection.~~

~~(B) If the Supreme Court adopts a proposed rule, it may shall publish the rule along with the purpose statement from the cover sheet.~~

~~(C) If the Supreme Court amends and then adopts a proposed rule, it should shall publish the rule as amended along with a revised purpose statement.~~

(4) All adopted rules, or other final action by the Supreme Court for which this rule requires publication, shall be published in a July edition of the Washington Reports advance sheets and in the Washington State Register immediately after such action. The adopted rules or other Supreme Court final action shall also be posted on the Internet sites of the Supreme Court and the Washington State Bar Association. An announcement of such publication shall be made in the Washington State Bar News.

(5) All adopted rules shall become effective as provided in section (i) unless the Supreme Court determines that a different effective date is necessary.

(i) Schedule for Review and Adoption of Rules.

(1) In order to be published for comment in January, as provided in section (i)(2), a suggested rule must be received no later than October 15 of the preceding year.

- (2) Proposed rules shall be published for comment in January of each year.
- (3) Comments must be received by April 30 of the year in which the proposed rule is published.
- (4) Proposed rules published in January and adopted by the Supreme Court shall be republished in July and shall take effect the following September 1.
- (5) All suggested rules will be considered pursuant to the schedule set forth in this section, unless the Supreme Court determines that exceptional circumstances justify more immediate action. The Supreme Court shall publish a statement identifying the exceptional circumstances relied upon to deviate from the normal schedule for review and publication with the Order to Publish for a proposed rule.
- (6) The Supreme Court, in consultation with the Washington State Bar Association, the Superior Court Judges Association, the District and Municipal Court Judges Association, and the Chief Presiding Judge of the Court of Appeals, shall develop a schedule for the periodic review of particular court rules. The schedule shall be posted on such Internet sites as the Supreme Court may determine, including those of the Supreme Court and the Washington State Bar Association.

(j) Miscellaneous Provisions.

- (1) The Supreme Court may adopt, amend, or rescind a rule, or take any emergency action with respect to a rule without following the procedures set forth in this rule. Upon taking such action or upon adopting a rule outside of the schedule set forth in section (i) because of exceptional circumstances, the Supreme Court shall publish the rule in accordance with sections (g) or (h) as applicable and shall publish a statement with the adopted, amended, or rescinded rule identifying the exceptional circumstances and reasons supporting emergency action.
- (2) This rule shall take effect on September 1, 2023 and apply to all rules not yet adopted by the Supreme Court by that date.

[Adopted effective March 19, 1982; Amended effective September 1, 1984; September 1, 2000; Amended _____]

GR 9 - SUPREME COURT RULEMAKING

(a) Statement of Purpose. The purpose of rules of court is to provide necessary governance of court procedure and practice and to promote justice by ensuring a fair and considered process. In promulgating rules of court, the Washington Supreme Court seeks to ensure that:

- (1) The adoption and amendment of rules proceed in an orderly and uniform manner;
- (2) All interested persons and groups receive notice and an opportunity to express views regarding proposed rules;
- (3) There is adequate notice of the adoption and effective date of new and revised rules;
- (4) Proposed rules are necessary statewide;
- (5) Minimal disruption in court practice occurs by limiting the frequency of rule changes;
- (6) Rules of court are clear and definite in application, and
- (7) Public confidence in rulemaking is increased through transparency.

(b) Definitions. As used in this rule, the following terms have these meanings:

- (1) “Suggested rule” means a request for a rule change, a new rule that has been submitted to the Rules Committee, and a suggested rule amended by the Rules Committee.
- (2) “Proposed rule” means a suggested rule that the Rules Committee has referred to the Supreme Court for further action.
- (3) “Rules Committee” means the Supreme Court Rules Committee. Voting members of the Supreme Court Rules Committee shall be comprised of four Washington State Supreme Court Justices appointed by the Chief Justice, one judicial representative selected by the Washington State Court of Appeals, one judicial representative selected by the Superior Court Judges Association, one judicial representative selected by the District and Municipal Court Judges Association, and one attorney member selected by the Washington State Bar Association. Members shall serve three-year terms at the discretion of the appointing organization and may be re-appointed to successive terms. The names and positions of Rules Committee members shall be posted on the Supreme Court website.
- (4) “Supreme Court” means the full Washington State Supreme Court.
- (5) A “technical change” is one that corrects a clerical mistake or an error arising from oversight or omission.

(c) Request for Notification. Any person or group may file a request with the Rules Committee to receive notice of a suggested rule. The request may be limited to certain kinds of rule changes. The request shall state the name and address of the person or group to whom the suggested rule is to be sent. Once filed, the request shall remain in effect until withdrawn or unless notice sent by regular, first-class U.S. mail is returned for lack of a valid address.

(d) Initiation of Rules Changes. Any person or group may submit to the Rules Committee a request to adopt, amend, or repeal a court rule.

(e) Form for Submitting a Request to Change Rules.

- (1) The text of all suggested rules shall be submitted on 8 1/2- by 11-inch line-numbered paper with consecutive page numbering and in an electronic form as may be specified by the Supreme Court. If the suggested rule affects an existing rule, deleted portions shall be shown and stricken through; new portions shall be underlined once.
- (2) A suggested rule shall be accompanied by a cover sheet and not more than 25 pages of supporting information, including letters, memoranda, minutes of meetings, research studies, or the like. The cover sheet shall contain the following:
 - (A) Name of Proponent--the name of the person or group requesting the rule change;
 - (B) Spokesperson--a designation of the person who is knowledgeable about the proposed rule and who can provide additional information;
 - (C) Purpose--the reason or necessity for the suggested rule, including whether it creates or resolves any conflicts with statutes, case law, or other court rules;
 - (D) Hearing--whether the proponent believes a public hearing is needed and, if so, why;
 - (E) Expedited Consideration--whether the proponent believes that exceptional circumstances justify expedited consideration of the suggested rule, notwithstanding the schedule set forth in section (i).

(f) Rules Committee Action on Suggested Rules.

- (1) Initial Considerations. The Rules Committee shall initially determine whether the suggested rule is clearly stated and in the form required by section (e) of this rule. If the Rules Committee determines that a request is unclear or does not comply with section (e), the Rules Committee may accept the request notwithstanding its noncompliance, ask the proponent to resubmit the request in the proper format, or reject the request for noncompliance with section (e).
- (2) The Rules Committee shall determine whether a suggested rule has merit, whether the suggested rule involves a significant or merely technical change, whether the suggested rule should be amended, and whether the suggested rule should be considered under the schedule provided for in section (i) or should receive expedited consideration. The Rules Committee may consult with other persons or groups in making these initial determinations.
- (3) Rules Deemed Without Merit. If the Rules Committee determines a suggested rule is without merit, the Rules Committee shall reject the suggested rule and shall notify the proponent in writing of the reason(s) for rejection.

- (4) Suggested Rules Amended by the Rules Committee. If the Rules Committee amends a suggested rule, the suggested rule shall be returned to the proponent who shall have 30 days to comment on the proposed amendment. Following the 30-day comment period, the Rules Committee shall reject the amended suggested rule pursuant to section (f)(3) or send notice to interested parties pursuant to section (f)(5).
- (5) Notice to Interested Parties. After making its initial determination, and allowing time for comment on an amended suggested rule pursuant to section (f)(4), the Rules Committee shall forward each suggested rule and cover sheet, except those deemed “without merit”, along with a transmittal form setting forth such determinations, to any person or group that has filed a notice pursuant to section (c), and to any other person or group the Rules Committee believes may be interested. The transmittal form shall specify a deadline by which the recipients may comment on the suggested rule.
- (6) Fiscal Note. The Rules Committee may request a fiscal note from the Administrative Office of the Courts (AOC) for costs incurred by courts regarding the suggested rule.
- (7) Referral of Suggested Rules to Supreme Court. After the expiration of the deadline set forth in the transmittal form, the Rules Committee shall refer the suggested rule to the Supreme Court with a recommendation to either reject the suggested rule, adopt a merely technical change without public comment, or order the suggested rule published for public comment.
- (8) Public Access to Rules Committee Proceedings. Rules Committee proceedings shall be accessible to the public through remote viewing. The Rules Committee shall publish the dates and times of proceedings along with instructions to access the hearing for remote viewing on such Internet sites as the Rules Committee may determine, including those of the Supreme Court and the Washington State Bar Association.

(g) Publication for Comment.

- (1) If the Supreme Court orders that a proposed rule be published for public comment, the proposed rule shall be published in such media of mass communication as the Supreme Court deems appropriate, including, but not limited to such Internet sites as the Supreme Court may determine, including those of the Supreme Court and the Washington State Bar Association. The purpose statement required by section (e)(2) shall be published along with the proposed rule. Publication of a proposed rule shall be announced in the Washington State Bar News.
- (2) Publication of a proposed rule in the Washington State Register shall not subject Supreme Court rulemaking to the provisions of the Administrative Procedures Act.
- (3) All comments on a proposed rule shall be submitted in writing to the Supreme Court by the deadline set forth in section (i).
- (4) If a comment includes a related suggested rule, it shall be presented in the format set forth in section (e).

- (5) All comments received shall be posted on the Supreme Court website and kept on file in the office of the Clerk of the Supreme Court for public inspection and copying.

(h) Final Action by the Supreme Court on Proposed Rules, Publication, and Effective Date.

- (1) The Supreme Court may, in its discretion, hold a hearing on a proposed rule. If the Supreme Court orders a hearing, it shall set the time and place of the hearing and determine the manner in which the hearing will be conducted. The Supreme Court may also designate an individual or committee to conduct the hearing. All hearings set by the Supreme Court pursuant to section (h)(1) of this rule shall be accessible to the public. The Supreme Court shall publish, on its website and the Washington State Bar Association website, the dates and times of hearings along with instructions to access the hearing for remote and/or in-person viewing.
- (2) After consideration of the recommendations from the Rules Committee, review of comments received during publication of the proposed rule, and testimony and other evidence presented in any hearing ordered by the Supreme Court, the Supreme Court may adopt, amend, or reject the proposed rule, or take such other action as the Supreme Court deems appropriate,
- (3) Actions on Proposed Rules:
 - (A) If the Supreme Court rejects a proposed rule, it shall publish its reason or reasons for such rejection.
 - (B) If the Supreme Court adopts a proposed rule, it shall publish the rule along with the purpose statement from the cover sheet.
 - (C) If the Supreme Court amends and then adopts a proposed rule, it shall publish the rule as amended along with a revised purpose statement.
- (4) All adopted rules, or other final action by the Supreme Court for which this rule requires publication, shall be published in a July edition of the Washington Reports advance sheets and in the Washington State Register immediately after such action. The adopted rules or other Supreme Court final action shall be posted on the Internet sites of the Supreme Court and the Washington State Bar Association. An announcement of such publication shall be made in the Washington State Bar News.
- (5) All adopted rules shall become effective as provided in section (i) unless the Supreme Court determines that a different effective date is necessary.

(i) Schedule for Review and Adoption of Rules.

- (1) In order to be published for comment in January, as provided in section (i)(2), a suggested rule must be received no later than October 15 of the preceding year.
- (2) Proposed rules shall be published for comment in January of each year.

- (3) Comments must be received by April 30 of the year in which the proposed rule is published.
- (4) Proposed rules published in January and adopted by the Supreme Court shall be republished in July and shall take effect the following September 1.
- (5) All suggested rules will be considered pursuant to the schedule set forth in this section, unless the Supreme Court determines that exceptional circumstances justify more immediate action. The Supreme Court shall publish a statement identifying the exceptional circumstances relied upon to deviate from the normal schedule for review and publication with the Order to Publish for a proposed rule.
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[Adopted effective March 19, 1982; Amended effective September 1, 1984; September 1, 2000; Amended _____]

WASHINGTON STATE BAR ASSOCIATION

Court Rules and Procedures Committee

September 16, 2022

Hon. Brian M. Tollefson
President, Board of Governors
Washington State Bar Association
1325 Fourth Ave., Suite 600
Seattle, WA 98101
tollefsonBOG@outlook.com

RE: Proposed GR 9 Amendment

Dear President Tollefson:

I write on behalf of the Court Rules and Procedures Committee regarding the proposed GR 9 amendment drafted by the District & Municipal Court Judges Association and the Superior Court Judges Association. WSBA has been asked to join in presenting the proposal to the Washington State Supreme Court, and you had asked us to review the proposal in advance of the Board of Governors' September meeting.

The proposed amendment aims to increase public confidence and transparency in Supreme Court rulemaking through a Supreme Court Rules Committee to receive and vet rule proposals. The Supreme Court already has a committee which performs this function. However, the proposal would encode the committee within GR 9, and allow DMCJA, SCJA, the Washington State Court of Appeals, and WSBA to each appoint a voting member joining four Washington State Supreme Court Justices.

Our Committee supports the spirit of the proposal, and its stated goals of increased transparency and public confidence. And we welcome the prospect of involving WSBA, along with the lower courts, early in the rulemaking process for every proposed rule. To the extent the GR 9 proposal furthers these aims, we support it.

However, there was not enough time for us to fully evaluate the proposed amendment's language. Therefore, while we generally support the proposal, at this time we are not ready to recommend joining the DMCJA and SCJA as a co-sponsor.

Additionally, our Committee notes two issues which the Board of Governors may wish to consider in deciding whether to join the DMCJA and SCJA's proposal:

First, we see the primary value of the proposed GR 9 rules committee amendment as vetting proposals submitted to the Court. But the proposal also provides that the new committee may also amend submissions before publishing them for comment.

While the Supreme Court ultimately has authority to publish for comment any proposed rule it wishes, including amended versions of proposals submitted by outside parties, this would for the first time give a vote in the process to stakeholders outside of the Supreme Court—namely,



WSBA and the lower courts. Other stakeholder organizations may question why they were not also included as members in the new committee with broad power to amend rule proposals. And because the committee's constitution would itself be set by rule, any change to its membership would have to go through the GR 9 process.

Second, our Committee has some concern about what effect the proposed GR 9 amendment might have on its own role in vetting future rule proposals.

DMCJA and SCJA's proposed letter notes the recent trend of proponents submitting rule proposals directly to the Supreme Court, and how this has often resulted in shortcutting the traditional evaluation process. An important part of that traditional process has been consideration by the WSBA Court Rules & Procedures Committee, and the benefit of the institutional competence it offers in crafting rules.

While the GR 9 proposal under consideration would codify WSBA's role in evaluating new rule proposals, it does not explicitly involve our Committee. Our concern is that a newly-created process which does not include the Court Rules & Procedures Committee could diminish the Committee's relevance. To address this possibility, if the GR 9 proposal is adopted we suggest WSBA's appointee on the new committee be our Committee's chair, or the chair's delegate.

Again, our Committee supports the broad outlines of the GR 9 proposal under consideration. Thank you for giving our Committee the opportunity to review and offer comment. Please do not hesitate to contact me if there are any questions, or additional aspects of the proposal you wish our Committee to consider. Thank you.

Sincerely,

s/Isham M. Reavis

Isham M. Reavis
Chair, WSBA Court Rules & Procedures Committee
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cc: Terra Nevitt, Executive Director, WSBA
Shelly Bynum, Executive Administrator, WSBA