

# WASHINGTON STATE BAR ASSOCIATION

**TO:** WSBA Board of Governors

**CC:** Terra Nevitt, Executive Director

**FROM:** Andrew Yi, Chair, Court Rules and Procedures Committee  
Nicole Gustine, Staff Liaison, Court Rules and Procedures Committee  
Emily Crane, Staff Liaison, Court Rules and Procedures Committee

**DATE:** June 1, 2026

**RE:** Proposed Rule Changes to RAP 3.2 from the Court Rules and Procedures Committee

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**ACTION:** Approve the submission of the Court Rules and Procedures Committee’s Proposed Rule Changes to RAP 3.2. to the Washington Supreme Court.

## Background

As part of the Supreme Court’s rules review cycle, the WSBA Court Rules and Procedures Committee (Committee) is actively reviewing the Criminal Rules for Superior Courts and the Criminal Rules for Courts of Limited Jurisdiction this year. The Committee is separated into subcommittees for each set of rules they are tasked with reviewing. Additionally, the Committee has a “Supreme Court Comment Subcommittee” that reviews the proposed rules currently before the Washington Supreme Court that are published for comment and “Subcommittee X” that considers out-of-cycle rule requests.

Subcommittee X is currently continuing the review of proposed rule changes from the prior fiscal year, including RAP 3.2. This rule change is proposed 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. The proposed language would thus read, “**Duty To Notify 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.” (proposed language in underline and bold, full copy attached).

The proposed amendments add clarification to the existing language to better align with language from existing rules. These changes better align with [CR 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.” We ask that the Board of Governors to approve the submission of these proposed rule changes to RAP 3.2 to be submitted to the Washington Supreme Court.

## Stakeholder Input

Subcommittee X reached out to a wide range of stakeholders. No feedback was received in response.

### WSBA Risk Analysis

Risk analysis is included in the BOG's confidential materials.

### WSBA Fiscal Analysis

The fiscal impact to WSBA resulting from the proposed rule changes is limited primarily to staff time used to draft the rule change language, incorporate the changes into relevant records, and communicate changes to stakeholders. The staff time that would be allocated to this work is included in the overall duties of existing WSBA staff and does not require additional staff or allocation of resources from other internal sources.

### WSBA Equity Analysis

The purpose of the equity analyses is to understand how entities incorporated an equity lens into proposed action items presented to the Board of Governors. Applying an equity lens includes 1) identifying and centering people and communities most impacted decisions and/or 2) meeting people and communities according to their specific needs to produce fair and equal outcomes for all. Without having more specific information like how adding clarification and alignment with existing rules will impact those most impacted by the amendment, and what kind of outreach was done and what stakeholders were contacted, it is difficult to do an equity analysis.

### Attachment

Suggested Amendments to RAP 3.2

# GR 9 COVER SHEET

## Suggested Amendments RAP 3.2 Submitted by the Washington State Bar Association

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A. **Name of Proponent:**

WSBA Court Rules and Procedures Committee

B. **Spokesperson:**

Andrew Yi, Chair of the WSBA Court Rules and Procedures Committee

C. **Purpose:**

The primary purposes of the suggested amendments are to 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. These changes better align the rule with CR 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 proposed language would thus read, “(b) Duty To **Notify 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.” (proposed language in underline and bold).

D. **Hearing:** A hearing is not requested.

E. **Expedited Consideration:** Expedited consideration is not requested.

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

**RAP 3.2 SUBSTITUTION OF PARTIES**

**(a) No Change**

**(b) Duty To Notify ~~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**

# WASHINGTON STATE BAR ASSOCIATION

## Court Rules and Procedures Committee

### Meeting Minutes

**April 28, 2026**

Members Present: Chair Andrew Yi, Charles Adams, Jonathan Bussey, Stephanie Dikeakos, Eileen Farley, Rachel Forde, Samantha Kanner, Kellen Kooistra, Margo Martin, Kevin McCrae, Devon McCurdy, Martin Mooney Jr., Craig Moore, Christine Olson, Jill Reuter, Tenaya Scheinman, Nathaniel Sugg, Karissa Taylor, Mark Trivett

Members Excused: William Elsinger, Jessica Fleming, Cade Jones, Matthew O’Laughlin, Robin Olson, Rachel Reynolds, Justin Steiner, Judge Brian Tollefson, David Trujillo

Also Attending: Judge Paul Crisalli (Judicial Liaison), Judge Wade Samuelson (Judicial Liaison), Judge Eric Biggar (Judicial Liaison), David Ward (AOC Liaison), Emily Arneson (BOG Liaisons), Nicole Gustine (WSBA Staff Liaison), Emily Crane (WSBA Staff Liaison)

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The meeting was called to order at 12:02 p.m. once a quorum was established.

1. Approval of Minutes

- A motion was made and seconded to approve the February 10, 2026 meeting minutes. The motion passed by unanimous consent.

2. Chair Report

- The Chair gave a report of his respective meetings with Judge Chung, the new COA Rules Committee judicial liaison and the WSBA Executive Director Terra Nevitt, as well as a briefing on the meeting materials. The Chair will be presenting at the upcoming WSBA BOG meeting regarding a request to grant limited authority to pre-screen rules sent by the Supreme Court to the Committee without BOG approval. This limited authority refers to the review of typography, grammatical errors, and related technicalities. If approved by the BOG, a new subcommittee may be created in the next fiscal year. The Chair also reviewed the new proposed rulemaking schedule.

3. Subcommittee Reports

- Criminal Rules for Superior Courts: Subcommittee Chair Christine Olson gave a report on the subcommittee’s continued rule review. There may be rule proposals from this subcommittee at a future Committee meeting.
- Criminal Rules for Courts of Limited Jurisdiction: Subcommittee Chair Eileen Farley gave a report on the subcommittee’s continued rule review. There may be rule proposals from this subcommittee at a future Committee meeting. There was discussion regarding the submission of subcommittee meeting notes being included in the full Committee’s meeting materials. This is not required and is at the discretion of the subcommittee Chair. AOC Liaison, David Ward noted for subcommittees, that the rules posted on the Court’s website may contain spelling or grammatical errors as well as the potential for

# WASHINGTON STATE BAR ASSOCIATION

## Court Rules and Procedures Committee

discrepancies with the rules published by other entities, and that if any of the subcommittee members note mistakes of that nature, they can contact him directly.

- Supreme Court Comment Subcommittee: Subcommittee Chair Judge Brian Toleffson was not present at this meeting.
  - Subcommittee X: Subcommittee Chair Nathan Sugg gave a report on the subcommittee's continued rule review. The subcommittee also had a proposed rule for approval before the full Committee, proposed by Devon McCurdy, who gave additional explanation and background. There was some discussion among Committee members regarding suggested wording, including a change to the title. A motion was made and seconded to change the wording from "(b) Duty To Move for Substitution" to "(b) Duty To Notify". The motion passed by unanimous consent. A motion was made and seconded to forward the proposed rule to the WSBA BOG. The motion passed by unanimous consent.
4. Additional Information: AOC Liaison, David Ward gave a reminder of the upcoming deadline for submitting comments to proposed court rules by April 30, 2026. The WSBA will be submitting comments for three proposed rules.

The meeting adjourned at 12:53 p.m.

### **Explanation for proposed amendments to RAP 16.10 and RAP 18.17(c)(13)**

The proposal intends to clarify that opening filings in a personal restraint petition are limited to 12,000 words regardless of the form used. It also closes the gap between represented and unrepresented petitioners.

When a personal restraint petition begins as a filing to the court of appeals or supreme court, a *pro se* petitioner tends to use RAP Form 17 which incorporates the recommendations from RAP 16.7. This form does not differ appreciably from a brief. It allows for a procedural case history or statement of the case (Status of Petitioner), an argument (Grounds for Relief), reference to the record (Citations to Court Documents), and a signature (Oath and Verification). The form also incorporates a financial declaration for purposes of seeking a waiver of the filing fee and appointment of counsel. The petition is limited to 12,000 words. RAP 18.17(c)(13).

If the court appoints counsel after receiving the petition, the court will direct the attorney to file a supplemental brief, i.e., an opening brief limited to 12,000 words. RAP 16.10(d); RAP 18.17(c)(2).

When a *represented* party begins a personal restraint petition, the attorney tends to file the petition in the familiar form of a brief. It is limited to 12,000 words. RAP 18.17(c)(13).

We have also seen petitioners begin a personal restraint petition with two filings: (1) the RAP Form 17-style petition with a summary statement of the claims and (2) a RAP 10.4-style brief which develops the facts and arguments in greater detail. This is consistent with RAP 16.10(a)(1) which allows petitioners to file a brief “with” a petition. The opening brief is limited to 12,000 words. RAP 16.10(d); RAP 18.17(c)(2). [The State’s response is likewise limited to 12,000 words. *Id.* And the petitioner is permitted a reply of 6000 words. RAP 16.10(d); RAP 18.17(c)(3).]

Recently, however, prosecutors from Seattle to Spokane have seen different petitioners’ attorneys file opening cases approaching 24,000 words in which the filings entitled “petition” are the statement of the case and the filings entitled “brief” are the argument. Because the opening case is divided between two filings, the petitioners avoid having to obtain the court’s permission to file an overlength brief.

This new practice does not appear to be within the spirit of the rules. It is also a tactic that is only available to parties that can afford representation, because an attorney appointed after the pro se party has filed the petition is only permitted to file a single brief which must include both facts and law.

Accordingly, the proposed change would clarify that the combined length of the opening brief and petition should not exceed 12,000 words, unless the appellate court has granted permission for an overlength document.

**RAP 16.10**  
**PERSONAL RESTRAINT PETITION—BRIEFS**

**(a) Briefs Allowed.** The following briefs may be, but need not be, filed:

(1) *Petitioner's Opening Brief.* Petitioner's opening brief, which should be filed with the petition.

(2) *Petitioner's Reply Brief.* Petitioner's reply brief, which should be filed within 30 days after the answering brief is served on petitioner.

**(b) Brief Required.** Respondent must file an answering brief within the time the response must be filed.

**(c) Briefs at Request of Appellate Court.** The appellate court may call for additional briefs at any stage of the consideration of the petition.

**(d) Content, Format and Length and Style of Briefs.**

(1) The content, format, and length of briefs is governed by rules 10.3, 10.4, and 18.17.

(2) If the petitioner files both a petition and an opening brief as described in RAP 16.10(a)(1), the combined length of the opening brief and petition shall not exceed the total length limit in RAP 18.17(c)(13), unless the appellate court has granted permission for an overlength document.

**(e) Reproduction and Service of Briefs.** Briefs must be filed with the clerk of the appellate court. Briefs will be reproduced and served by the clerk.

**RAP 18.17**  
**WORD LIMITATIONS, PREPARATION, AND FILING OF DOCUMENTS**  
**SUBMITTED TO THE COURT OF APPEALS AND SUPREME COURT**

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(c) Length Limitations. ....

(13) Personal restraint petitions (RAP 16.7) and Petitioner's Opening Brief (RAP 16.10(1)(a)): combined total of 12,000 words (word processing software) or 50 pages (typewriter or handwritten).

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4.2(a)(6), 16.22

## SUGGESTED AMENDMENTS TO THE RULES OF APPELLATE PROCEDURE

### 1 TITLE 18 SUPPLEMENTAL PROVISIONS

#### 2 RULE 18.8 WAIVER OF RULES AND EXTENSION AND REDUCTION OF TIME

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

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

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

24 (d) Restriction on Changing Decision. The appellate court will not enlarge the time provided in  
25 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.

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