

This document does not contain legal advice.

WASHINGTON COURT OF APPEALS MOTION PRACTICE

(May 2019)

I. MECHANICS OF MOTION PRACTICE

A. Noting and Arguing Motions

All non-dispositive motions must be pursued in motion format, rather than contained in the briefs. A party may include in a brief “only a motion which, if granted, would preclude hearing the case on the merits.” RAP 17.4(d). Any other motion filed in a brief will not be considered by the court. See *Brower v. State*, 137 Wn.2d 44, 76, 969 P.2d 42 (1998).

RAP 17.4(a) describes the process for noting motions. Because each Division of the Court of Appeals and the Supreme Court have different practices for noting motions, you should contact the clerk’s office of a particular court when filing a motion or consult its general orders. (See the appended summaries of current practices for Division I, Division II, and Division III.)

The motion and notice of the motion must be filed and served on all parties entitled to notice at least 15 days before the date noted for hearing. RAP 17.4(a)(2).

Unless otherwise directed by the court, the answer to a motion must be filed and served no later than 10 days after the motion was served on the answering party. Unless otherwise directed by the court, any reply to an answer must be filed and served no later than 3 days after the

answer was served on the moving party, but at least one day prior to the date set for oral argument. RAP 17.4(e).

B. Supporting Papers

The moving and answering party should file and serve all supporting papers they want the court to consider. Because motions may relate to concerns outside the record on appeal, RAP 9.11 does not apply to supporting papers, except motions on the merits. RAP 17.4(f).

C. Length of Motions; No Copies Required.

A motion and answer should not exceed 20 pages, not including supporting papers. A reply should not exceed 10 pages. The court may allow an over-length motion, answer, or reply, upon motion of a party. RAP 17.4(g)(1).

Only a single original should be filed. The court will make any necessary copies. RAP 17.4(g)(2).

Practice Tips

1. Before you seek to continue a motion, contact the opposing party to determine mutually available future dates.
2. Give the court as much notice as possible if your case has settled or if you are waiving argument. Give opposing counsel sufficient notice so that counsel may also choose not to attend.
3. Questions regarding procedural handling of a case should be directed to the case manager, who serves both as docket clerk and

“bridge” between the parties and the commissioner. But remember that case managers cannot provide legal advice.

4. Hundreds of pleadings are filed every day in the appellate courts. When filing pleadings for a case to be heard that same week, please indicate the date of hearing. This will allow the case manager to promptly process and deliver the pleadings to the commissioner.
5. A commissioner typically has limited time to absorb, analyze and research a large number of motions set for a motion calendar. A clear font, descriptive headings and labeled or paginated appendices are all very helpful.
6. If you are contemplating the use of visual aids, please keep in mind the limited time for argument and the distraction that results from unwieldy or poorly designed items. Contact the clerk if you want an opportunity to familiarize yourself with the technologies contained in the courtroom.

II. MOTIONS FOR IMMEDIATE RELIEF

A. Stays and Supersedeas

1. RAP 8.1 defines the procedure for obtaining a stay of a trial court decision pending review by the appellate court. Some trial court decisions can be stayed as a matter of right. Those decisions include money judgments and decisions “affecting real, personal or intellectual property.” RAP 8.1(b). Note, however, that some statutes bar the

imposition of a stay pending review. See, for example, RCW 8.12.200, relating to eminent domain proceedings.

2. Money judgments can be stayed under RAP 8.1(b)(1) by filing a supersedeas bond or cash with the trial court. The amount of the supersedeas bond is (a) the amount of the judgment, plus (b) interest likely to accrue pending review, plus (c) attorney fees and costs likely to be awarded on appeal. RAP 8.1(c)(1).

3. Decisions affecting real or personal property can be stayed under RAP 8.1(b)(2) by filing a supersedeas bond or cash with the trial court. Decisions affecting intellectual property can be stayed under RAP 8.1(b)(2) by filing a supersedeas bond or cash with the trial court, but only if the loss that would be occurred by the inability to enforce the judgment can be quantified. The amount of the supersedeas bond is (a) the amount of the judgment, plus (b) interest likely to accrue pending review, plus attorney fees and costs likely to be awarded on appeal, plus (c) the amount of loss, plus (d) the loss that will result from the inability to enforce the judgment. RAP 8.1(c)(2). That amount of loss is ordinarily the reasonable value of the use of the property, and the party claiming that the amount of loss is greater than that has the burden of proof. RAP 8.1(c)(2). The value of the property may itself be full or partial security for that loss. RAP 8.1(c)(2).

4. Some entities, particularly governmental entities, are statutorily exempted from the required of filing a supersedeas bond or cash in order

to obtain a stay. See RCW 4.92.030 (exempting the State) and 4.96.050 (exempting local governmental entities). In such instances, the party seeking the stay files a notice with the appellate court that the trial court's order is "superseded without bond." RAP 8.1(f).

5. Challenges to the amount of the supersedeas bond are heard first by the trial court. RAP 8.1(e). If a party objects to the trial court's ruling, it may move for review of the supersedeas bond decision in the appellate court.

6. With the approval of the trial court or the appellate court, a party may post alternate security in lieu of a supersedeas bond or cash. RAP 8.1(b)(4).

7. For all other civil cases, a stay is discretionary with the appellate court. RAP 8.1(b)(3). In order to obtain a stay, a party must (a) demonstrate that debatable issues will be presented on appeal and (b) demonstrate that the injury it will suffer in the absence of a stay is greater than the injury the non-moving party would suffer if a stay is granted. RAP 8.1(b)(3). The moving party must show that that the equities require the maintenance of the status quo to preserve the fruits of the appeal. *Purser v. Rahm*, 104 Wn.2d 159, 177, 702 P.2d 1196 (1985). The appellate court applies a sliding scale under which the greater the injury the moving party would suffer if a stay is not granted, the lesser the showing of a debatable issue need be. *Boeing Co. v. Sierracin Corp.*, 43 Wn. App. 288, 291, 716

P.2d 956 (1986), *rev'd on other grounds*, 108 Wn.2d 38 (1987).¹ If the fruits of an appeal would be totally destroyed in the absence of a stay, then a stay should be granted, unless the appeal is totally devoid of merit. *Boeing Co.*, 43 Wn. App. at 291.

8. If the appellate court grants a discretionary stay under RAP 8.1(b)(3), it will ordinarily require that a supersedeas bond or cash be filed with the trial court.

9. After a supersedeas bond or cash has been filed as security, upon a showing of good cause, the trial court may discharge the bond, change its amount, or require the filing of a new bond. RAP 8.1(g).

10. Motions for stays of judgments in criminal cases and juvenile offense proceedings are brought under RAP 8.2.

11. RAP 8.3 provides the appellate court with broad authority, on motion of a party, to issue orders “to insure effective and equitable review.” Such orders can grant injunctive relief to a party pending review. If the appellate court enters an order under RAP 8.3, it will ordinarily require that a bond or other security be filed with the trial court.

Practice Tips

1. CR 62 provides that a judgment cannot be executed upon for the first 10 days after its entry and, if a notice of appeal is filed,

¹ A commenter has contended that the 1990 amendments to RAP 8.1(b)(3) were intended to move away from the *Sierracin* “sliding scale” approach toward an approach where the party seeking the stay need only show that the appeal presents “debatable” issues. 2A Wash. Prac., Rules Practice RAP 8.1 (6th ed.) Author’s Comment 5 p. 530. However, no published opinion has abandoned the *Sierracin* sliding scale approach and appellate courts continue to employ it.

the judgment is stayed for the first 14 days after its entry. So if a party wishes relief during those periods, it needs to address why the appellate court needs to take action.

2. When obtaining a stay as a matter of right under RAP 8.1(b)(1) or (2), most of the action occurs in the trial court rather than the appellate court. The appellate court only addresses the amount of the security upon motion by a party.
3. When challenging the amount of the security, present some evidence of why the amount is either insufficient or excessive.
4. When seeking a discretionary stay under RAP 8.1(b)(3), first set forth what you believe are debatable issues and why (although you need not extensively brief those issues). Then describe **both** the effect on your client if a stay is not entered **and** the effect on the non-moving party if a stay is entered. Motions for stay often omit this last element.
5. RAP 8.3 is intended as an adjunct to, not a substitute for, stays under RAP 8.1. If seeking a stay under RAP 8.3 in a situation where you do qualify for a stay under RAP 8.1 but do not want to post security, be prepared to be **very** persuasive as to why a stay should be granted.

B. *Emergency Motions*

In an emergency, a party may submit a motion on less than 15 days notice. RAP 17.4(b). The Court will determine whether to require an answer and to set oral argument.

Practice Tips

1. In your motion, explain why there is **a true emergency** and why it cannot wait to be heard in the ordinary course.
2. Explain any delay in filing the emergency motion.
3. Explain how it is **not a self-created emergency**.
4. If you choose to serve the opposing party by mail rather than some more expedient means, explain why you chose the slower method of service.
5. Attach copies of the trial court ruling and pertinent materials filed in the trial court.

III. DISCRETIONARY REVIEW; CERTIFICATION BY SUPERIOR COURT

A. Discretionary Review

RAP 2.3(b) governs discretionary review of a **superior court interlocutory ruling** containing:

- obvious error that renders further proceedings useless. RAP 2.3(b)(1)
 - probable error that substantially alters the status quo or substantially limits the freedom of a party to act. RAP 2.3(b)(2)
- For more on the “effect prong” of RAP 2.3(b)(2), see *State v.*

Howland, 180 Wn. App. 196, 207, 321 P.3d 303 (2014), *review denied*, 182 Wn.2d 1008 (2015).

- a departure from the accepted and usual course of judicial proceedings. RAP 2.3(b)(3).
- the superior court has certified, or all parties stipulate that the order involves a controlling question of law as to which there is substantial ground for a difference of opinion and immediate review may materially advance the ultimate resolution of the litigation. (added in 1998; similar to 28 USC §1292(b); drafter's comment that the amendment would "increase the likelihood of acceptance of review in circumstances that are effectively dispositive of the case. Examples are denials of motions to dismiss or summary judgments dealing with questions of law such as immunity or statutes of limitation." 2 Lewis H. Orland & Karl B. Tegland, Washington Practice: Rules Practice RAP 2.3, cmts. at 181 (5th ed. Supp. 2001); such a certification or stipulation is only one factor the court may consider and does not mandate discretionary review.)

RAP 2.3(d) governs discretionary review of a decision by the superior court on RALJ review of a decision by a **court of limited jurisdiction** containing:

- a decision in conflict with decision of Washington appellate court
- a significant question of constitutional law

- an issue of public interest
- a departure from the accepted and usual course of judicial proceedings or approval of such a departure by a court of limited jurisdiction.

RAP 17.3(b) describes the content of a motion for discretionary review. Note especially that the appendix should include a copy of the decision at issue and any other relevant parts of the record. See *State v. Mills*, 85 Wn. App. 285, 295 (1997) (party seeking review should present record sufficient to determine whether review should be granted).

Practice Tips:

1. It is **CRITICAL** that petitioner address the all criteria for **interlocutory discretionary review**. For example, if alleging obvious error, petitioner must persuade the court that further proceedings are useless. If alleging probable error, you must demonstrate that the superior court decision substantially alters the status quo or substantially limits the freedom of the party to act. Most litigants focus on the alleged error part of the criteria and ignore or only perfunctorily address the rest.

2. Be sure that you refer to the applicable test for the type of case presented for review.

3. Be certain to attach the trial court ruling and pleadings and exhibits that are necessary to the motion. The record does not automatically come to the Court of Appeals. Be thoughtful in selecting materials to include in appendices. An accurate record is important, but

there is no need to include multiple copies of lengthy exhibits to declarations.

4. Let the commissioner know the status of the case in the trial court, e.g., pending trial date, pending discovery cutoff.

B. Direct Review of Administrative Agency's Final Decision

RAP 2.1(c) notes that the process for seeking direct review of such decision is defined in RCW 34.05.518 and -.522.

RAP 6.3 states that, in seeking direct review, the parties shall follow the procedures in RAP 6.2. In other words, the party must move for discretionary review.

Practice Tips

1. If seeking direct review of the final decision by an administrative agency, focus on the statutory criteria.

2. Be prepared to address the status of the record required for direct review of any final administrative agency decision.

3. For Division II direct reviews, see Division II General Order 2018-1 (Amended), effective July 1, 2018, regarding organization of the administrative record.

IV. APPEALABILITY AND PROCEDURAL MOTIONS

A. Appealability

If a party files a notice of appeal from a decision that is not appealable as a matter of right, the court or opposing party may bring a motion to determine appealability. RAP 6.2(b). A notice of appeal from a

decision that is not appealable will be converted to a notice for discretionary review, and vice versa. RAP 5.1(c).

Practice Tips

1. If the order appealed from does not appear on its face to be a final, appealable order, the court is likely to bring a motion to determine appealability on its own motion.
2. While case law is limited, do not overlook the few applicable cases.
3. Depending on the Division, if you come before the court on an appealability hearing, you may be expected to address whether the court should grant discretionary review even if your decision is not appealable. For more information, see the Motion Practice pages in these materials for each Division.
4. Judgments that do not resolve all claims as to all parties are not subject to an appeal as a matter of right without CR 54(b) and RAP 2.2(d) determinations and findings establishing that there is no just cause for delay. See *Pepper v. King County*, 61 Wn. App. 339, 810 P.2d 527 (1991). To satisfy the "no just cause for delay" standard, findings detailing the danger of hardship or injustice that would be alleviated by immediate appeal are critical; vague assertions of expense or inefficiency are not compelling.

B. Motion for an Extension of Time

General motions seeking an extension of time are governed by RAP 18.8(a).

Practice Tips

1. Address the specific circumstances applicable to this particular appeal.
2. Avoid filing a second motion for extension that merely repeats the same reasons relied upon for the first request for an extension.
3. Extensions of time to file the notice of appeal, a notice of discretionary review or a motion for reconsideration are granted “only in extraordinary circumstances and to prevent a gross miscarriage of justice.” RAP 18.8(b).

Practice Tips

1. **DO NOT MISS THE DEADLINE FOR FILING THE NOTICE OF APPEAL OR NOTICE OF DISCRETIONARY REVIEW.**
2. The time requirements for notices of appeal and notices of discretionary review are **strictly applied** in civil appeals.
3. Relief is usually limited to errors by legal messengers or the timely filing of the notice in the wrong court.

C. Court’s Motion Calendar and Party’s Motions

The court or a party may bring a motion for sanctions and/or dismissal based on violation of the Rules of Appellate Procedure. RAP 18.9. The power of dismissal is used sparingly and the court favors reaching the merits of a case. RAP 1.2(a). Even so, unnecessary or inexcusable delay may well result in sanctions.

Practice Tips

1. Nearly every court's motion can be resolved before the hearing date by attending to the deficiency that triggered the motion.
2. The appellate court is not responsive to finger-pointing sanctions motions, so think carefully before you bring a party's motion and make sure it is truly necessary for proper presentation of the appeal.
3. Do not anticipate an award of sanctions for your time in appearing for a run-of-the-mill court's motion directed to another party.
4. Do not use the court's motions as your tickler system.

V. *DISPOSITIVE MOTIONS*

A. *Motions on the Merits*

Note: All three Divisions have suspended the use of motions on the merits.

1. RAP 18.14 governs the motions on the merits procedure. Motions on the merits to affirm are heard by commissioners.
2. A motion on the merits to reverse cannot be granted by a commissioner. The commissioner must either deny it or refer it to a three-judge panel. RAP 18.14(d).
3. When moving to modify a commissioner's ruling on a motion on the merits, the party receives de novo review of the commissioner's ruling from a three-judge panel. *State v. Rolax*, 104 Wn.2d 129, 133 (1985).

B. *Types of Accelerated Review*

1. Manifest injustice dispositions in juvenile offense proceedings, and orders on juvenile dependency and termination of parental rights “shall be reviewed by accelerated review” as set forth in RAP 18.13 and 18.13A . These motions are heard by commissioners who may affirm or reverse the trial court rulings.

2. An exceptional sentence in an adult sentencing may be heard by accelerated review before a commissioner, who may affirm or reverse the sentence. RAP 18.15.

3. A party may also move that a case receive accelerated review by a three-judge panel under RAP 18.12. For example, such a motion may be made to avoid mootness or in a case impacting the physical welfare of young children.

VI. MOTIONS DECIDED BY JUDGES

Generally, a motion that is decided by the judges is decided without oral argument. RAP 17.5(b).

A. Motions to Modify Commissioner’s Rulings

A party may object to a ruling by either a commissioner or the court clerk by filing a motion to modify. RAP 17.7. Such motions receive de novo review by a three-judge panel. *State v. Rolax*, 104 Wn.2d 129, 133 (1985).

B. Certain Motions for Extension of Time

RAP 17.2 sets forth which motions are decided by judges and which may be decided by a commissioner or the clerk. A commissioner or the

clerk may rule on RAP 18.8(b) motions for extension of time within which to file a notice of appeal or notice of discretionary review, although some of these motions are referred to three-judge panels.

C. Motion to Recall the Mandate

1. Once the mandate issues, the appellate court loses “the power to change or modify its decision[.]” RAP 12.7(a). As an exception, however, the court retains the power to act on costs, attorney fees, and expenses. RAP 12.7(c).

2. Under RAP 17.2(a), the judges decide a motion to recall the mandate. RAP 12.9 sets forth the factors that govern a motion to recall the mandate.

D. Motion to Publish

Under RAP 17.2(a), the judges decide a motion to publish. The motion must be filed within 20 days after the opinion has been filed. RAP 12.3(e). See the factors set forth in RCW 2.06.040. A motion to publish may be filed by a non-party, but must address the factors set forth in RAP 12.3(e).

Note: Commissioners sometimes pass a motion “to the merits” to be decided by the panel of judges at the same time the merits of the appeal is under consideration. Especially when a motion requires in depth consideration of the record, it is more efficient for the panel to rule on the motion. These motions may include motions to supplement the record and motions to take judicial notice.

DIVISION ONE MOTION PRACTICE
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- Motions are heard on two or three designated Fridays per month. Generally, motions for discretionary review are heard at 9:30 a.m. with the party's and court's motions at 10:30 a.m. Occasionally, motions are heard on Friday afternoons (1:30 and 2:30).
- Contact the clerk's office prior to noting a motion to confirm available dates and times.
- Motions for discretionary review under RAP 2.3(b) should be noted on a hearing date. Although most are considered with oral argument, counsel may choose to note the motion as "without oral argument." If a motion for discretionary review is not noted, the court may assign it to a calendar for consideration without oral argument.
- Motions for discretionary review of decisions of courts of limited jurisdiction (RALJ appeals) under RAP 2.3(d) are considered by commissioners without oral argument. The commissioner will occasionally note a RALJ discretionary review on a calendar for oral argument.
- Motions for accelerated review in juvenile disposition appeals and dependency appeals under RAP 18.13 and 18.13A are individually calendared by the commissioner. Currently appeals of parental rights terminations are decided by a panel of judges.
- Most party's motions are considered without oral argument. See Division I General Order In re Noting Motions for Hearing, September 2012. The moving party may request oral argument if there is a good reason for it, and occasionally a commissioner will request oral argument.
- Oral argument is generally limited to 10 minutes for the moving party and 10 minutes to be divided among the responding parties.
- Time available for argument is reflected by the countdown clock on the bench. An infrared assisted listening device is also available.
- Contact the clerk's office to request telephone or video conference argument.

- If a party wishes to waive oral argument, he/she must notify the clerk's office and opposing counsel. The argument will not be cancelled unless all parties agree to waive, or the commissioner independently determines that oral argument is unnecessary.

Practice Tips

Court's Motions

- If a court's motion to determine appealability is set, the parties should be prepared to address whether the challenged order is or is not appealable and cite applicable authority. Div I no longer expects parties to be prepared to address discretionary review at the appealability hearing. If the commissioner determines that an order is not appealable, the parties will be given an opportunity to address the discretionary review criteria.
- If you are counsel for appellant and are specifically ordered to appear and show cause why you have not done something, show up and be prepared to explain. Commissioners are sympathetic to life's problems, but the "head in the sand" approach is not helpful.

Party's Motions

- There is a place for motions to strike, but commissioners generally frown on them when the purpose appears to be, e.g., to provide additional argument or to take issue with the opposing party's recitation of the facts.

RALJ Discretionary Review

- Check to see what record has been transmitted. Commissioners want to have the record that was before the superior court on appeal, including the briefs (so that we can tell if/how the issues were raised). See RALJ 6.4 and RAP 9.1(e).
- If you are aware of other cases with the same issue (Div I, II, III, Sup Ct), we want to know about it. This is especially true if you are arguing an issue of public interest. See Eide v. Dept of Licensing, 101 Wn. App. 218, 210-11, 3 P.3d 208 (2000) (in determining whether an issue involves a sufficient public interest to warrant review under RAP 2.3(d)(3), the court considers the public or private nature of the question, the need for future guidance

provided by an authoritative determination, and the likelihood recurrence).

Interlocutory Discretionary Review

- In the written motion address the criteria on which you are relying and cite any applicable authority. Typically oral argument will focus on the substantive issues. Be prepared to provide any updates regarding ongoing trial court proceedings.
- Include a brief introduction of the type counsel often use in briefs, and provide some brief context for the issues you are raising. Keep in mind that the commissioner is not living and breathing the case the way the attorneys are.
- A table of contents and list of cited cases is not required, but is helpful.
- Identify the standard of review the appellate court would apply on appeal if review is granted. This is important because it is in light of the standard of review that the moving party must show obvious or probable error.
- If you are aware of other cases with the same issue (Div I, II, III, Sup Ct), we want to know about it.
- Understand that the time available to rule will impact the length/depth of the ruling. The format of the ruling (formal ruling with caption or email ruling) does not say anything about the level of work put into the ruling – it is a matter of getting the ruling out quickly when necessary.

Appendices

- Make a conscious decision to provide important documents the commissioner will want to see. Because you are asking the appellate court to consider whether the trial court's ruling is in error, provide copies of the relevant pleadings the trial court considered. In a civil case, the commissioner will want a copy of the complaint. Avoid providing every document filed in the trial court. As a respondent, provide pertinent documents the appellant did not provide; do not provide duplicate copies of the same documents.
- Include a table of contents with the name of the documents and page numbers. The documents should be consecutively

numbered, and it is preferable if respondent's appendix continues the numbering rather than starting over – that way the commissioner only has a single Page 1.

Sealing Documents/Briefs/Record

- See Div I General Order, In re Matter of Sealed or Redacted Materials, 2012.

DIVISION TWO MOTION PRACTICES
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- Motions are not noted for hearing. With the exception of motions discussed below, the commissioner will decide whether to call for an answer from the non-moving parties. The commissioner will then either decide the motion without oral argument, RAP 17.4(c), or to require oral argument.
- Motions for discretionary review, except RALJ appeals addressed below, require a response from the non-moving parties. Upon receipt of a notice of discretionary review, the clerk will issue a perfection schedule setting out the dates for the filing of the motion, the filing the response, the filing of any reply, and the date and time of oral argument.
- Motions for accelerated review in juvenile disposition appeals, dependency appeals and appeals from terminations of parental rights, under RAP 18.13 and 18.13A, require a response from the non-moving parties. Upon receipt of a notice of appeal in such cases, the clerk will issue a perfection schedule setting out the dates for the filing of the motion, the filing the response, the filing of any reply, and the date and time of oral argument.
- Motions for Discretionary Review of decisions of courts of limited jurisdiction (RALJ appeals) governed by RAP 2.3(d) considered without oral argument unless the commissioner requests argument. Upon receipt of a notice of discretionary review in such cases, the clerk will issue a perfection schedule setting out the dates for the filing of the motion, the filing the response and the filing of any reply.
- Oral argument is generally limited to 10 minutes for the moving party and 10 minutes to be divided among the responding parties. Please inform the bailiff of any rebuttal time that you wish to reserve.
- Time available for argument is reflected by a count-down clock on the lectern. An infrared assisted listening device is also available.
- If oral argument has been scheduled and a party wishes to waive argument, it must do so in writing. The argument will **not** be cancelled unless all parties waive argument.
- Contact the clerk's office to request telephone or video conference argument.

DIVISION THREE MOTION PRACTICES
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- Pursuant to a General Order of Division Three as required by RAP 17.4(a)(2), parties may **not** note a motion for hearing. The commissioners' docketing clerk will issue a perfection schedule setting out the due dates for the filing of the record (report of proceedings and/or clerk's papers, if needed), the answer to the motion and the date and time for oral argument. The commissioner may elect to decide a motion without oral argument pursuant to RAP 17.4(c)(1).
- An opposing party is required to file an answer to a motion that "affect[s] a substantial right of a party." RAP 17.4(c)(1).
- All motions for discretionary review are set for oral argument and decided by the commissioners.
- Appeals from juvenile dependency orders and termination of parental rights orders, previously heard by the commissioners on motions for accelerated review, are being heard by a panel of judges.
- Division Three is not setting motions on the merits.
- Due to budgetary considerations, all hearings on motions before the commissioners are conducted telephonically.
- For motions, oral argument is limited to 10 minutes for the moving party and 10 minutes to be divided among the responding parties. The moving party may reserve some of their time for rebuttal. Please inform the commissioner before the start of oral argument as to how much time will be reserved for rebuttal.
- Since all arguments are telephonic, the commissioner will inform counsel of any remaining time for argument, when no more time is available, and how much time is remaining for any rebuttal.
- If a party wishes to waive oral argument, they must notify the Commissioners' office and opposing counsel. The argument will **not** be cancelled unless all parties agree to waive.