

An August Tradition

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By Catherine W. Smith

“Always Appealing” is a column addressing current issues in appellate practice and recent appellate cases written by the lawyers of Smith Goodfriend, P.S., a Seattle law firm that limits its practice to civil appeals and related trial court motions practice.

It’s August, and things are quieter than usual at Smith Goodfriend. Honestly, it’s usually pretty quiet here — most of the time, we’re all in our offices (or at home), researching the law, reviewing the trial court record, writing or (my favorite) editing pleadings or briefs. Some days, only cries of joy (or anguish) are heard when a ruling or decision arrives via email to break the studious silence. But August remains a slower time of year, even now when the courts (or at least the filing portals) are “open” 24/7.¹

Back when I began practicing law — before email, the internet, or even fax machines, when briefs (after being printed out, at a page a minute, on a Wang daisy-wheel printer so loud it was encased in a plexiglass “hood”) were filed, on paper, and considered timely if mailed to the appellate court, postmarked by the due date² — August was a slow time for the entire legal profession. Vacation schedules of judges and attorneys virtually guaranteed that civil trials would not be set in August, and no one was much interested in doing discovery (or deals) either, when the sun (and the mountain) was out on a daily basis.

Those days are gone. But I am pleased that the appellate courts have continued this summertime tradition in some form. According to the calendar posted on its website,³ the state Supreme Court is sitting in a “special department” the first week of August this year. And I know the hard-working Commissioners are holding some motions arguments, because our new associate Nick is arguing a motion for discretionary review in Division Two that same week. But neither the Supreme Court nor any of the Divisions of the Court of Appeals have scheduled

merits arguments in August. As a result, at least in our office, things remain quiet; there are no moot courts, practice sessions, or round-table discussions of upcoming merits arguments to present or prepare for.

It's nice to take a break.⁴ But we'll all undoubtedly be hard at it again after Labor Day.

Enjoy the rest of your summer.

Catherine W. Smith is a principal in Smith Goodfriend. She founded the Washington Appellate Lawyers Association and is a past president of the American Academy of Appellate Lawyers. She can be reached at cate@washingtonappeals.com.

¹ For further ruminations of an old codger on this topic, see Smith, Catherine, Shifting Baselines, in the KCBA Bulletin, [washingtonappeals.com/_ARTICLES/2211-Shifting_Baselines-Catherine_Smith.pdf](https://www.kcba.org/_ARTICLES/2211-Shifting_Baselines-Catherine_Smith.pdf) (Nov. 2022).

² When originally adopted in 1976, RAP 10.5 “relieve[d] the parties of the responsibility for reproducing and serving briefs”; “[t]he clerk reproduce[d] the brief ... and mail[ed] a copy to each party and amicus ... substantially reduc[ing] costs to the litigants and assur[ing] briefs of a uniform quality acceptable to the courts.” Task Force Comment to RAP 10.5, reproduced at 3 Washington Practice at 105 (9th ed. 2022). Those were the days. The rule was changed, shifting responsibility for serving briefs back to the parties, in 1990 — though the rule technically required the clerk to serve briefs on the parties until 1998. That obligation was observed in the breach by enforcement of the requirement that the parties serve briefs. That practice prevailed, at least in part, until 2020. Filing and service is now effected (and required) through the appellate court’s online portal — a change that appears to be reflected only in a General Order of the Court of Appeals. Washington State Court of Appeals, Gen. Order, courts.wa.gov/appellate_trial_courts/?fa=atc.genorders_orddisp&ordnumber=2020_002&div=III (Apr. 17, 2020).

³ Supreme Court Docket: Spring 2025, Washington Courts, courts.wa.gov/appellate_trial_courts/supreme/calendar/?fa=atc_supreme_calendar.displayPDF&year=2025&file=docspr25.

4 That's one reason this column is shorter (and more inane) than usual. ...