

always Appealing: Are Statements of Additional Authority Under RAP 10.8 Too Much of a Good Thing? The Supreme Court Doesn't Think So

Posted on: Jan 1, 2026

Bar Bulletin Blog: General



By Jonathan Collins

“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.

Dedicated Always Appealing readers will remember an article I wrote nearly three years ago about an amendment to RAP 10.8, the rule allowing parties to submit a statement of additional authorities. The old rule prohibited any argument, so submitting additional authority typically meant providing a case citation with a short reference to the relevant legal issue and nothing else. Sometimes, courts received citations without any explanation at all.¹

In 2022, the Washington State Court of Appeals Rules Committee sought to “enhance the helpfulness of additional authorities” by amending RAP 10.8. The amendment allowed a party to include up to 350 words of argument “contextualizing” the additional authority while allowing the other party to submit a

350-word response.² The amendment also required parties to submit their statements of additional authority “no later than seven days before the case is scheduled for argument or consideration without argument.”

But this deadline did not apply to “new authority” issued after that date. In other words, parties could submit a 350-word statement of additional authority addressing any authority up until seven days before the case was set for consideration with or without argument. After that, only new authority was allowed.

The Supreme Court partially adopted the Committee’s proposed amendment. While it approved the provision allowing up to 350 words of argument in both a statement and response, the Court did not adopt the timing deadline limiting statements to “new” authority if they are filed less than seven days before the date of consideration.³

The amendment became effective on Sept. 1, 2022. This was a big deal in appellate circles; for the first time, you could actually explain why additional authority was relevant to your case. But an unsettled question suddenly became crucial — does “additional” authority mean “new” authority?

Historically, Washington courts have disagreed on this question. Divisions One and Three have consistently held that RAP 10.8 was intended for authority “decided after the completion of briefing.”⁴ They have continued to do so post-amendment.⁵

Division Two, on the other hand, has considered “old” authority submitted under RAP 10.8.⁶ And the Supreme Court explained in a pre-amendment case that “nothing in the rule limits its application to newly created law.”⁷

The last time I wrote about this, I suggested that the Supreme Court should clarify whether RAP 10.8 is limited to “new” authorities or not. And, folks, we must have some Always Appealing readers on the Court, because we got our answer nearly three years later:

In *State v. Luna*,⁸ the Court noted its disagreement with Division One, reiterating that “nothing in the text of RAP 10.8 limits its application” to “new” authority. The Court further explained that “initial research does not always reveal every

pertinent case on a topic” and that “the interests of justice will be promoted by considering every relevant case, even if it is brought to our attention later than would be ideal.”

The Court is, of course, correct here. We’ve all had the experience of discovering helpful authority long after a brief was filed. And no rule should myopically restrict appellate review to the small universe of cases contained in the parties’ main briefs; if a case demands a particular outcome, courts can’t ignore it just because the parties failed to mention it at the right time.

Still, while courts may occasionally benefit from discovering crucial authority before issuing a decision, I can’t help but wonder whether the current rule achieves what the Committee originally had in mind when it proposed amending RAP 10.8 in the first place — that additional authority should be more helpful.

Ultimately, the amendment gave litigants a new tool. I suspect — and Always Appealing readers will no doubt be surprised to learn — that litigants do not always use that tool in ways that are helpful to courts.

Because the old rule prohibited including any argument, there usually wasn’t a reason to submit additional authority unless it was especially compelling and relevant to your case. But absent any limit on the kind of authority parties may submit or when they may submit it, the “statements” under the new rule are functionally indistinguishable from supplemental briefs on the merits — albeit very short ones. Unlike before, there is now strong incentive to file these supplemental “mini-briefs,” particularly among litigation maximalists.

I previously wrote that if parties could submit any authority, this strong incentive would make “mini-briefs” submitted under RAP 10.8 more common and perhaps even a routine part of appellate practice. While the Luna decision is very recent, I tried to figure out if the 2022 amendment itself resulted in more statements of additional authority. Here is what I found:

Understandably, Washington courts do not specifically track the frequency of RAP 10.8 filings. Instead, I reviewed all published and unpublished Washington opinions issued within the last six years that specifically mention a statement of additional authorities, comparing that number to the total number of opinions. Here’s what I found:

During the three-year period before the amended rule became effective, Washington appellate courts issued 4,535 total opinions, and 28 mention that a party filed a statement of additional authority.

During the three-year period after the amended rule became effective, Washington appellate courts issued 3,862 total opinions, and 65 mention that a party filed a statement of additional authority.

While this is not an exact metric,⁹ it confirms a notable increase in statements of additional authority. Admittedly, I expected the numbers to be higher; our firm has seen many more statements of additional authority in the past three years than we did before the new rule became effective, and I have no doubt that some attorneys file one in every case. Now that the Court has confirmed the rule's purpose in *Luna*, other practitioners may choose to file additional authority more often.

Of course, increasing the flow of mini-briefs that courts have to wade through might be worth it if they are actually helpful. Are they? After my review of opinions from the last three years, I'm skeptical.

Indeed, the number of opinions where courts decline to follow "old" authority suggests that, generally speaking, courts are not finding the amended rule all that helpful. Courts typically wave away the "additional authority" submitted to them because it is either cumulative to related authority already discussed or irrelevant to the appeal altogether. In contrast, when parties submit additional authority that is helpful, it's usually because the authority is new.¹⁰

It's also worth considering how allowing parties to file supplemental mini-briefs discussing "old" authority drives up litigation costs, making access to our courts less equitable. Deep-pocketed clients will have no problem filling court dockets with more briefing, and their lawyers will be happy to oblige them. Meanwhile, parties who are already at an economic disadvantage may hesitate to file these mini-briefs at all; and if their opponent happens to file one, they will face a dilemma of either paying for a response or letting it go unanswered.

This concern is made worse by parties who submit additional authorities more than once. During my research for this article, I was surprised how many cases I found where parties filed multiple statements of additional authority — including

one case where the appellant separately filed nine supplemental authorities.¹¹ That seems contrary to the text of the rule, which allows a party to file “a” single “statement” of additional authority rather than multiple statements. At the same time, the reasoning in Luna arguably leaves the door open to more.

Ultimately, I can't say for sure whether Washington courts are finding the amendment to RAP 10.8 helpful or not. It may be that any additional costs are negligible in light of all the work the courts already do in processing appeals. Reasonable people could also decide that these costs are outweighed by the benefit courts gain from allowing litigants to point out authority they may have missed. From an outside perspective, you have to wonder whether the amendment achieved its stated goal.

Perhaps Washington courts will revisit RAP 10.8 at some point to address these issues. I'll check in again three years from now and let you know.

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1 The GR 9 Cover Sheet for the Washington State Court of Appeals Rules Committee proposed amendment to RAP 10.8 is available through the Washington Courts website.

2 Id.

3 In the Matter of the Proposed Amendments to RAP 10.8—Additional Authorities, No. 25700-A-1431 (Wash. June 9, 2022).

4 O'Neill v. City of Shoreline, 183 Wn. App. 15, 23 (2014).

5 See, e.g., M.G. v. Bainbridge Island Sch. Dist., 34 Wn. App. 2d 51, 69, n.19 (2025).

6 State v. Olsen, 175 Wn. App. 269, 290 (2013).

7 Futurewise v. Wn. Wash. Growth Mgmt. Hearing Bd., 164 Wn.2d 242, 248 n.2 (2008).

8 __ Wn.3d __, 578 P.3d 273, 299, n.19 (2025).

9 Courts may analyze a particular case without mentioning that a party submitted it as additional authority under RAP 10.8. Nevertheless, the numbers here likely approximate the ratio between how many statements of additional authorities were filed before and after the amendment.

10 See, e.g., *State v. Stott*, 29 Wn. App. 2d 55, 71, ¶43 (2025) (newly decided authority submitted in statement of additional authority was “dispositive”); *State v. Clark*, No. 86217-1-I (Dec. 8, 2025), analyzing *State v. Ray*, __ Wn.3d __, 575 P.3d 321 (2025).

11 See *Flarity v. Argonaut Ins. Co.*, 2023 WL 3959813, n.4 (2023) (noting the appellant filed nine separate additional authorities).