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No. 1057750

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

WASHINGTON APPELLATE PROJECT, a Washington public
benefit nonprofit corporation, on its own behalf and on behalf
of its clients,

Petitioner,

vs.

STATE OF WASHINGTON AND WASHINGTON STATE OFFICE OF
PUBLIC DEFENSE,

Respondents.

PETITIONER'S MOTION FOR DISCRETIONARY REVIEW

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TABLE OF CONTENTS

	Page
I. IDENTITY OF PETITIONER	1
II. INTRODUCTION AND DECISION BELOW	2
III. ISSUES PRESENTED FOR REVIEW.....	8
IV. STATEMENT OF THE CASE	8
A. Factual background.....	8
1. OPD is responsible for administering state-funded appellate defense services.....	8
2. WAP has provided quality public appellate defense services in Washington for over 30 years	9
3. OPD has long compensated WAP for all work performed during a fiscal year, not solely for work on cases assigned in that year.....	11
4. OPD changed its contract model for fiscal year 2027, and WAP determined the organization could not ethically accept the new provisions.....	12

5.	Without reasonable compensation for its ongoing work, WAP will have to cease operations by December, and hundreds of indigent appellants will be deprived of their right to counsel	15
B.	Procedural background.....	19
V.	ARGUMENT.....	21
A.	Discretionary review is appropriate under RAP 2.3(b)(3).....	21
1.	The superior court’s order impacts significant rights.....	21
2.	These significant rights cannot be effectively remedied in an appeal from a final judgment.....	22
3.	The Court should exercise its discretion to grant review because of the important public interests at stake	24
B.	Discretionary review is appropriate under RAP 2.3(b)(2).....	25
1.	The superior court committed probable error	25
2.	The superior court’s decision substantially alters the status quo and limits the freedom of WAP to act.....	28

VI. CONCLUSION	29
RAP 18.17(b) CERTIFICATION	29

TABLE OF AUTHORITIES

Page

CASES

<i>City of Seattle v. Ratliff</i> , 100 Wn.2d 212 (1983)	2, 22
<i>Honore v. Wash. State Bd. of Prison Terms & Paroles</i> , 77 Wn.2d 660 (1970)	26
<i>In re Dependency of C.J.J.I.</i> , 4 Wn.3d 520 (2025)	21, 24
<i>In re Dependency of N.G.</i> , 199 Wn.2d 588 (2022)	29
<i>In re Welfare of A.B.</i> , 168 Wn.2d 908 (2010)	11
<i>New York Lawyers' Ass'n</i> , 745 N.Y.S.2d 376 (N.Y. Sup. Ct. 2002)	27
<i>Simmons v. State Public Defender</i> , 791 N.W.2d 69 (Iowa 2010)	22, 26
<i>State v. Blake</i> , 197 Wn.2d 170 (2021)	11
<i>State v. Gregory</i> , 192 Wn.3d 1 (2018)	11
<i>State v. Heng</i> , 2 Wn.3d 384 (2023)	2, 22

<i>State v. Howard</i> , 106 Wn.2d 39 (1985)	26
<i>State v. Lehirondelle</i> , 15 Wn. App. 502 (1976)	26
<i>State v. O'Dell</i> , 183 Wn.2d 680 (2015)	11
<i>State v. Sandoval</i> , 171 Wn.2d 163 (2011)	11

RULES

RAP 2.3(b)(2).....	25
RAP 2.3(b)(3).....	<i>passim</i>
RAP 2.3(b)(4).....	7
RAP 15.2	2, 8
RAP 15.2(b)(1).....	2, 22
CrR 3.1(b)(2)	2, 22

STATUTES

RCW 2.70.005	3, 9
RCW 2.70.020(1).....	<i>passim</i>
RCW 10.73.150	2, 8, 25

CONSTITUTIONS

Const. art. I, § 22.....	2, 8, 22
--------------------------	----------

OTHER AUTHORITIES

2A Wash. Prac., Rules Practice RAP 2.3, author’s cmts. 5 (9th ed.).....	24
<i>ABA Standards for Criminal Justice: Providing Defense Services</i> , Standard 5-1.6 (Am. Bar Ass’n 3d ed. 1992).....	2
Ian Cairns, <i>Beyond the Writ: Restoring the Protective Power of RAP 2.3(b)(3)</i> , King County Bar Bulletin (July 2025)	21
Geoffrey Crooks, <i>Discretionary Review of Trial Court Decisions Under the Washington Rules of Appellate Procedure</i> , 61 Wash. L. Rev. 1541 (1986).....	24, 25

I. IDENTITY OF PETITIONER

Petitioner Washington Appellate Project (WAP) is a public benefit nonprofit organization whose mission is to provide the highest quality legal representation to indigent people appealing criminal convictions, civil commitments, dependencies, or terminations of parental rights. For more than 30 years, WAP has done this through contracts with Respondents the State of Washington and the Washington State Office of Public Defense (jointly, OPD). WAP has not contracted with any other entity to provide client services, and WAP does not take private clients.

WAP respectfully moves for discretionary review of a superior court order denying a request for a preliminary injunction that would have required OPD to reasonably compensate WAP for its ongoing representation of 539 indigent appellants, work that is expected to take more than two years to complete. Without such funding, WAP will be forced to cease operations in approximately three months, and its clients will be deprived of their constitutional and statutory rights to appellate counsel.

II. INTRODUCTION AND DECISION BELOW

The Washington Constitution guarantees that “[i]n criminal prosecutions the accused shall have the right to appear and defend . . . by counsel” and “the right to appeal in all cases.” Const. art. I, § 22. The right to public appellate counsel is also guaranteed by statute and court rule, and it extends to criminal, civil commitment, dependency, and termination of parental rights proceedings. *See, e.g., State v. Heng*, 2 Wn.3d 384, 389 (2023); CrR 3.1(b)(2); RAP 15.2(b)(1) (citing statutes). This Court has stated that “the right to counsel is of paramount importance to all persons appearing in our courts and must be jealously guarded.” *City of Seattle v. Ratliff*, 100 Wn.2d 212, 218 (1983).

“Government has the responsibility to fund the full cost of quality legal representation” for all entitled to receive it. *ABA Standards for Criminal Justice: Providing Defense Services*, Standard 5-1.6 (Am. Bar Ass’n 3d ed. 1992); *see also* RCW 10.73.150 (“[c]ounsel shall be provided at state expense”); RAP 15.2 (addressing rights of indigent parties in various appellate proceedings); RCW 2.70.020(1) (same). “[T]o implement the

constitutional and statutory guarantees of counsel and to ensure effective and efficient delivery of indigent defense services funded by the state of Washington,” the legislature established OPD as an “independent agency of the judicial branch.” RCW 2.70.005. OPD is responsible for administering public appellate defense services in Washington, RCW 2.70.020(1), which it does by contracting with legal organizations and individual attorneys.

Incorporated in 1994, WAP is the only nonprofit entity that has held appellate defense contracts with OPD. Over the past decade, those contracts covered a one-year fiscal period that began on July 1 and ended on June 30. Under each contract, OPD compensated WAP in uniform monthly installments, and the total revenue was essentially equal to the annual cost of the salaries and benefits that WAP paid to its full-time appellate attorneys plus the overhead expenses necessary to support those attorneys, including office space and staff. In fiscal year 2026, for example, OPD paid WAP more than \$4.75 million, dispensing this at a rate of just under \$400,000 per month.

For several years, WAP has been handling roughly 40 percent of all public appellate defense services in Washington, the largest share of any contractor. Most of these cases cannot be resolved in the fiscal year of assignment. On average, it takes a minimum of 21 months to get a case briefed and argued before the Court of Appeals, receive a decision, file a petition for review with this Court, and have that petition decided. If the Court accepts review, WAP will usually represent the client for an additional 14 to 18 months, sometimes more. Thus, a case filed in one fiscal year typically requires significant work by WAP over subsequent fiscal years.

Because the cases assigned to WAP extend well into the future, each contract with OPD essentially compensated the organization only for work performed in that fiscal year. The compensation remained steady regardless of whether the work was on cases assigned in previous years, whether WAP received fewer assignments than called for in the contract, or whether WAP declined assignments due to workload concerns.

All of this changed in the leadup to fiscal year 2027, when OPD significantly revised its contracting scheme for

appellate defense services. Among other things, the agency shifted to paying a flat amount per case credit; adopted case weighting designations that increase workloads and leave fewer hours available for client representation; and added provisions for reducing payments when attorneys are unable to take case assignments or seek an “excessive” number of extensions on brief filings, even if either of these things is done for ethical reasons.

WAP raised concerns about these new terms, but OPD would not modify them. As a result, WAP and OPD failed to agree on a contract for fiscal year 2027.

On July 1, WAP ended fiscal year 2026 with 539 ongoing cases and clients. The expiration of the 2026 contract triggered a provision labeled “Post-Expiration Representation Compensation” (PERC), under which OPD will pay WAP a limited amount per case for its ongoing work. The aggregate total that WAP expects to receive is less than \$755,000.

To continue providing effective representation, WAP must maintain its current attorney and staffing levels for at least one year, and the organization will need to stay

operational for two or more years beyond that before all cases are closed. WAP's average monthly expenditure right now is more than \$366,000, which means the compensation provided under the PERC provision will barely cover two months of work by the organization.

With insufficient funding from OPD and limited cash reserves, WAP will be unable to continue operations as of December 2026 and will have to shutter its doors and withdraw from representation. At that point, the hundreds of individuals WAP currently represents will be deprived of their right to counsel because OPD lacks the ability to promptly assign these cases to other attorneys.

On July 20, 2026, less than three weeks after the PERC provision kicked in, WAP brought this lawsuit on its own behalf and on behalf of its clients. WAP then moved for a preliminary injunction, arguing that the PERC provision is contrary to public policy; that OPD is obligated to reasonably compensate WAP for its ongoing appellate defense services; and that without sufficient funding, WAP's attorneys will lose their jobs and hundreds of clients will be left without representation.

On August 14, the superior court denied WAP's motion in an oral ruling from the bench. APP-0036-48 at 36:2–48:12. The court held that WAP failed to establish a clear legal or equitable right to reasonable compensation for its services or an immediate fear of invasion of that right. APP-0046-47. at 46:25–47:3. And while it acknowledged that OPD had not shown an ability to absorb WAP's caseload, the court concluded that WAP's impending cessation of operations "is not a legally compelling" allegation of harm when there is no indication "that there will be inadequate representation [of clients] until then." APP-0041 at 41:15-22, APP-0046 at 46:5-13.

On August 19, the Court entered a written order denying the motion. APP-0063. WAP filed a notice for discretionary review on September 10. APP-0058.¹

¹ Before filing a notice for discretionary review, WAP moved to have the superior court certify that the preliminary injunction order involved controlling questions of law under RAP 2.3(b)(4), but the court denied the motion. APP-0065.

III. ISSUES PRESENTED FOR REVIEW

1. Should discretionary review be granted where the superior court has so far departed from the accepted and usual course of judicial proceedings as to call for review by the Supreme Court? **Yes.**

2. Should discretionary review be granted where the superior court has committed probable error and its decision substantially alters the status quo or limits the freedom of a party to act? **Yes.**

IV. STATEMENT OF THE CASE

A. Factual background.

1. OPD is responsible for administering state-funded appellate defense services.

Indigent people in Washington have a right to legal representation at state expense in appeals from criminal convictions, civil commitments, dependencies, and terminations of parental rights. Const. art. I, § 22; RCW 10.73.150; RAP 15.2; RCW 2.70.020(1). To implement this right and “ensure effective and efficient delivery of the indigent appellate services funded by the state of Washington,” the legislature established the Office of Public Defense in 1996 as

“an independent agency of the judicial branch.” RCW 2.70.005 (1996), *amended by* RCW 2.70.005 (2008).

OPD is responsible for administering these services across the state. RCW 2.70.020(1). With limited exception, OPD and its attorneys are prohibited from directly representing clients. RCW 2.70.023. Accordingly, OPD must fulfill its obligations by contracting with qualified organizations and attorneys. *Id.*

2. WAP has provided quality public appellate defense services in Washington for over 30 years.

WAP is a nonprofit entity whose sole mission is to provide the highest quality legal representation to indigent clients appealing from criminal convictions, civil commitments, dependencies, or terminations of parental rights. APP-0066-67 ¶ 2. Since 1994, WAP has contracted exclusively with the state of Washington, and it is the only nonprofit organization to have held such contracts over those 32 years. *Id.*

For the past decade, WAP has handled the largest share of indigent appeals in Washington, approximately 40 percent

in recent years. APP-0067 ¶ 3. This includes appeals heard by this Court as well as each division of the Court of Appeals. *Id.*

WAP currently has a director, 26 staff attorneys, two Rule 9 interns, an office administrator who also acts as a senior paralegal, another senior paralegal, and three legal assistants. *Id.* ¶ 4. WAP provides substantial efficiencies for the courts that smaller or individual providers cannot. *Id.* For example, WAP offers courts a single point of contact and uniformity in the perfection process. *Id.* And the structure of WAP also allows courts and clients to depend on consistent, high-quality briefing and argument. *Id.*

WAP also provides substantial efficiencies for OPD, eliminating the need for the agency to separately manage and oversee numerous independent contractors. *Id.* Except where a conflict of interest required the organization to withdraw, WAP has never walked away from a client and left OPD to find new counsel, unlike several other contractors. *Id.*

WAP has been at the center of many of the most significant indigent defense rulings in our state, demonstrating an extraordinary ability to protect the constitutional rights of

all citizens, regardless of economic status, and promote equal justice under the law. A few examples include *State v. Gregory*, 192 Wn.3d 1, 19 (2018) (holding Washington’s capital punishment statute is unconstitutional); *State v. Blake*, 197 Wn.2d 170, 186 (2021) (holding Washington’s strict liability drug possession statute is unconstitutional); *State v. Sandoval*, 171 Wn.2d 163, 174-76 (2011) (holding failure to advise clients of immigration consequences violates right to effective assistance of counsel); *State v. O’Dell*, 183 Wn.2d 680, 696 (2015) (holding sentencing court must be permitted to consider defendant’s youthfulness as mitigating factor at sentencing); *In re Welfare of A.B.*, 168 Wn.2d 908, 920 (2010) (holding parent has due process right to determination of fitness before relationship with natural child is terminated).

3. OPD has long compensated WAP for all work performed during a fiscal year, not solely for work on cases assigned in that year.

Over the past decade, the contracts between WAP and OPD have covered a one-year fiscal period that begins on July 1 and ends on June 30. APP-0234 ¶ 3. While the contracts were ostensibly for a certain number of case assignments, the

process of appellate review in each case extends beyond the fiscal year. *Id.* WAP, for example, typically represents a client for at least 21 months, which is the minimum amount of time it takes to get a case briefed and argued, to receive a decision from the Court of Appeals, and to get a petition for review filed with and decided by this Court. APP-0067 ¶ 6. The average is longer and if review is granted, WAP will represent the client for an additional 14 to 18 months or more. *Id.* Thus, for a case assigned in the tenth month of a fiscal year, WAP's representation would usually continue through the next two fiscal years and could even extend another two fiscal years after that if the case came before this Court. APP-0234 ¶ 3.

Because nearly every case assigned to WAP would continue well beyond the end of the fiscal year, OPD's contract in each of the past 12 years effectively paid WAP for the work it performed (and the operating expenses it incurred) in that fiscal year, not for the cases assigned in that year. APP-0068 ¶ 7. In other words, OPD did not withhold funds from a fiscal-year contract for WAP's ongoing work on cases assigned during previous years, and OPD did not pay extra funds for work that

WAP would have to perform in subsequent years on that year's case assignments. *Id.* Moreover, OPD never sought to recoup compensation if WAP received fewer assignments during the fiscal year than called for in the contract or if WAP stopped taking assignments due to excessive caseload concerns. *Id.*

WAP's most recent contract with OPD covered the period of July 1, 2025, to June 30, 2026. APP-0234 ¶ 5. Under that contract, OPD paid WAP \$396,973 per month, a total of \$4,763,676. *Id.* ¶ 6. This essentially equaled WAP's operating expenses for the year, including payroll and benefits for attorneys and staff, rent and utilities, insurance, supplies, and other overhead expenses. *Id.* WAP does not seek financial gain, and there is no profit margin. APP-0269 ¶ 11, APP-0271 ¶ 17.

4. OPD changed its contract model for fiscal year 2027, and WAP determined the organization could not ethically accept the new provisions.

In May 2026, OPD issued a Request for Qualifications and Quotes Seeking Client Services Contracts for fiscal year 2027. APP-0069 ¶ 16. In that request, the agency significantly changed the contracting scheme that had been in place for

over a decade. APP-0069-71 ¶¶ 16-25. For example, OPD shifted to paying a flat amount per case credit assigned, which does not account for work being done on cases assigned in previous years. APP-0070-71 ¶¶ 21, 24. OPD also adopted case weighting designations that increase attorney workloads by allowing fewer hours for representation. APP-0069-70 ¶¶ 18-20. In doing so, OPD ignored the results of a workload study that the agency paid for and helped design and direct. APP-0069 ¶¶ 14, 15, 17. OPD’s fiscal year 2027 proposal also allows the agency to reduce compensation when attorneys are temporarily unable to take case assignments due, for example, to medical leave or ethical constraints, or if they request what OPD deems to be an “excessive” number of extensions on brief filings. APP-0071 ¶ 25. No exceptions are made for an attorney’s need to comply with constitutional, ethical, or professional obligations. *Id.*

WAP concluded that the 2027 contract model was unethical, but OPD refused to modify it. *Id.* ¶¶ 26-27; *see also* APP-0269-71 ¶¶ 11-20. As a result, WAP and OPD failed to enter a contract for fiscal year 2027. APP-0268 ¶ 7.

5. Without reasonable compensation for its ongoing work, WAP will have to cease operations by December, and hundreds of indigent appellants will be deprived of their right to counsel.

OPD understands that representation continues long beyond the year in which a case is assigned. Because of this, the agency has included a provision in its services contracts labeled “Post-Expiration Representation Compensation” (PERC). APP-0068 ¶ 8 & APP-0077. Under that provision, OPD will pay according to a fee schedule for certain events on cases after the contract expires. *Id.* First, OPD will pay between \$1,796 and \$4,751 for the filing of an opening brief, depending on the number of case credits. APP-0068 ¶ 9 & APP-0099. And second, OPD will pay \$417 when a case “closes,” which OPD defines as the date of oral argument or the date of consideration if there is no argument. *Id.* OPD will make no payments for other work, including client meetings and communications, oral arguments, or the drafting of reply

briefs, motions, petitions for review, or other briefing before this Court—much of which is done *after* the “closing” date.² *Id.*

On July 1, when WAP exited the fiscal year 2026 contract, the organization had 539 open cases, some of which were assigned as far back as 2022. APP-0235 ¶ 10. In 65 percent of the cases (approximately 353), WAP had already submitted an opening brief and will only receive \$417 when the case closes—a total of \$147,201—no matter what other work occurs. *Id.* For the other 35 percent (approximately 186 cases), WAP estimates that it will receive a total of \$607,000—\$529,438 for filing opening briefs and \$77,562 for closing cases. *Id.* In short, WAP expects that OPD will pay no more than \$755,000 for the work WAP has done since July 1 or will do in the future in relation to all 539 retained cases. *Id.*

To effectively represent the clients in these cases, WAP must maintain its current attorney and staffing levels for at least one year and will need to continue operations for at least

² The fee schedule identifies an “assignment” payment but with rare exception, WAP is ineligible to receive these because the cases were assigned before July 1. APP-0069 ¶ 13.

two more years beyond that. *Id.* ¶ 11. Based on an analysis of the organization's expenses over the first six months of 2026 and other information, WAP estimates that it is averaging \$366,644 in monthly expenditures right now. APP-0235-36 ¶¶ 12-15. That includes salaries paid to attorneys, wages paid to staff, payroll taxes, health and retirement benefits, rent and utilities, insurance, supplies, and other overhead expenses. *Id.*

At the end of fiscal year 2026, WAP had \$1,602,480 in cash reserves. APP-0236 ¶ 16. The following month, WAP received an extraordinary compensation payment from OPD in the amount of \$221,832, which was for work performed in fiscal year 2026, and a reimbursement of payment of \$1,602 for costs. *Id.* By year's end, WAP expects it will have received a total of \$312,000 under the PERC provision. *Id.* Thus, WAP's revenue and cash reserves for July 1 to December 31, 2026, will total \$2,137,914. *Id.*

Because it is a nonprofit entity that contracts solely with OPD to provide appellate defense services, WAP has no other source of income. APP-0073 ¶ 34. With a current burn rate of \$366,644 per month, WAP will be entirely out of cash by

December 2026. APP-0237 ¶ 17.³ At that point, WAP will still have more than 400 open cases, all in various stages, and WAP's attorneys will have to withdraw from each of them. APP-0073 ¶ 34.

In the first month of fiscal year 2027, OPD had 215 new cases pending assignment but was only able to secure counsel for 118 of them, which left the other 97 unassigned. APP-0287 ¶ 42. That 45-percent deficit is close to the 41-percent shortage of "full-time appellate attorneys [necessary] to ensure reasonably effective assistance of counsel" identified as part of a workload study in fiscal year 2026. APP-0069 ¶ 14 & APP-109-110. OPD has provided no evidence showing that it can promptly assign attorneys to more than 400 additional cases. See APP-0287 ¶ 42. The best OPD can say is that it will "prioritize older cases ahead of new requests," but that will only deprive other individuals of their right to counsel. APP-0288 ¶ 43.

³ Because WAP will need funds to wind down its practice, the organization will have to begin ceasing work and laying off attorneys earlier than this date.

Even if OPD could promptly assign WAP's current caseload, those cases equate to more than 800 credits. APP-0237 ¶ 18. OPD will need to pay the attorneys to whom WAP's cases are reassigned, and that would likely cost the agency more than \$6 million. *Id.*

B. Procedural background.

WAP filed this lawsuit against OPD on July 20, 2026, asserting claims for declaratory and injunctive relief under the Uniform Declaratory Judgments Act, chapter 7.24 RCW. APP-0330-334 ¶¶ 184–214. WAP brings these claims on its own behalf and on behalf of the clients it represents. APP-0292-293 ¶ 6.

On August 6, WAP moved for a preliminary injunction, asking the superior court to prohibit OPD from enforcing the PERC provision and to require OPD to reasonably compensate WAP for its ongoing appellate defense work. APP-0341 at 1:20-22. WAP argued that its clients have a right to effective representation; that the PERC provision is contrary to public policy because it fails to sufficiently fund necessary legal services; that OPD is obligated to reasonably compensate WAP

for those services; and that WAP and its clients will be harmed without such compensation. APP-0348-355 at 8:15–15:20. OPD opposed the motion, which was fully briefed and argued. APP-0358-505.

On August 14, the court denied the motion in an oral ruling, as noted in Section II above. APP-0036-48 at 36:2–48:12. A written order was entered five days later. APP-0063.

After ruling, the court urged the parties to mediate their dispute. APP-0048-49 at 48:20–49:4. The parties did so on August 28, 2026, but were unable to reach an agreement. APP-0506-508. The court also asked the parties to meet and confer on an expedited schedule. APP-0049 at 49:5-10. The parties complied and shortly thereafter, the court set deadlines for written discovery, depositions, and dispositive motions in September and October. APP-0509-510. The court also scheduled a hearing for November 6, 2026. *Id.*.

V. ARGUMENT

A. Discretionary review is appropriate under RAP 2.3(b)(3).

Discretionary review is appropriate where the superior court has so far departed from the accepted and usual course of judicial proceedings as to call for review by an appellate court. RAP 2.3(b)(3). The Court recently acknowledged that “there is little guidance in the precedent to aid in interpreting” this rule. *In re Dependency of C.J.J.I.*, 4 Wn.3d 520, 521 (2025). But the history behind the rule demonstrates that it was designed to allow for “review of orders that impact significant rights but cannot be effectively remedied in an appeal from a final judgment.” Ian Cairns, *Beyond the Writ: Restoring the Protective Power of RAP 2.3(b)(3)*, King County Bar Bulletin (July 2025). Both conditions are satisfied here.

1. The superior court’s order impacts significant rights.

WAP sought a preliminary injunction because the PERC provision fails to adequately compensate for the organization’s ongoing representation of 539 clients. APP-0341 at 1:2-18. The funding is so deficient that WAP will have to close its doors by

December of this year and withdraw from representation.

APP-0237 ¶ 17. At that point, hundreds of indigent people will be deprived of the right to counsel. *See* Section IV.A.5, *supra*.

Washington guarantees the right to counsel in appeals from criminal convictions, civil commitments, dependencies, and terminations of parental rights. *See* Const. art. I, § 22; *Heng*, 2 Wn.3d at 389; CrR 3.1(b)(2); RAP 15.2(b)(1) (citing statutes). It is a right of “paramount importance.” *Ratliff*, 100 Wn.2d at 218. “[I]nextricably linked” to the right to counsel is “an attorney’s right to fair compensation.” *Simmons v. State Public Defender*, 791 N.W.2d 69, 84 (Iowa 2010) (citation omitted). Thus, the first criterion for review under RAP 2.3(b)(3) is met.

2. These significant rights cannot be effectively remedied in an appeal from a final judgment.

The earliest this case will be resolved is November 6, 2026, when the superior court hears argument on the parties’ dispositive motions. APP-0510. A final resolution could be delayed weeks or months longer if genuine issues of material fact necessitate a trial.

Even if WAP prevails on November 6, the organization and its clients will suffer irreparable damages. Some of WAP's line attorneys and staff members are likely to soon depart for new employment given WAP's forthcoming demise. And because it needs funds to wind down, WAP will have to start withdrawing from cases before then, leaving clients without counsel for the indefinite future.

If the superior court enters judgment in OPD's favor, even as early as November 6, WAP will be unable to obtain meaningful appellate review for itself or its clients. The organization will run out of funds by December, weeks later, and will close its doors and withdraw from representation. At that point, WAP will no longer exist, and its former clients will be deprived of their right to counsel.

Because the rights of WAP and its clients cannot be effectively remedied in an appeal from a final judgment, the second criterion for review under RAP 2.3(b)(3) is met.

3. The Court should exercise its discretion to grant review because of the important public interests at stake.

Under RAP 2.3(b)(3), this Court may “intervene prior to a final decision when the situation is ‘significant enough to warrant interlocutory review.’” *Dependency of C.J.J.I*, 4 Wn.3d at 526 (quoting Geoffrey Crooks, *Discretionary Review of Trial Court Decisions Under the Washington Rules of Appellate Procedure*, 61 Wash. L. Rev. 1541, 1548 (1986)). Indeed, “in the right circumstance [Rule 2.3(b)(3)] can be used without implying senseless or inappropriate conduct by the trial judge.” Crooks, *supra*, 61 Wash. L. Rev. at 1548. The Court has “maximum discretion” to determine what calls for review. 2A Wash. Prac., Rules Practice RAP 2.3, author’s cmts. 5 (9th ed.).

The cases that WAP is currently handling span the various stages of the appellate process. APP-0235 ¶ 10. If the organization withdraws from those cases, hundreds of indigent people will be deprived of counsel, and Washington’s appellate courts will experience significant gridlock because pending cases will not be fully briefed or argued. Thus, the issues raised

in this case are of substantial public interest, and the Court should grant review.

B. Discretionary review is appropriate under RAP 2.3(b)(2).

Discretionary review is appropriate where the superior court has committed probable error and its decision substantially alters the status quo or limits the freedom of a party to act. RAP 2.3(b)(2). This subsection “was intended to apply primarily to orders pertaining to injunctions . . . which have formerly been appealable as a matter of right.” Crooks, *supra*, 61 Wash. L. Rev. at 1545-46 (citation omitted). The conditions for discretionary review are satisfied here.

1. The superior court committed probable error.

In ruling on the motion for a preliminary injunction, the superior court held that WAP failed to establish a clear legal or equitable right. APP-0046-47 at 46:25–47:1. This conclusion is erroneous.

The primary right at issue in this case is the constitutional and statutory right to quality appellate counsel, which must be provided at state expense. RCW 10.73.150. A

secondary right at issue is the right of the entity that is providing the representation to be adequately compensated. *See Honore v. Wash. State Bd. of Prison Terms & Paroles*, 77 Wn.2d 660, 679 (1970) (holding attorney appointed to represent indigent appellant “is entitled to compensation for his services from public funds”).

These two rights go hand in hand. In other words, “a defendant’s right to effective assistance of counsel and an attorney’s right to fair compensation are ‘inextricably linked.’” *Simmons*, 791 N.W.2d at 84 (citation omitted). In *Simmons*, the Iowa Supreme Court held that an indigent appellate defense contract with the state violated public policy because it contained a fee cap that, “if enforced, would have a substantial chilling effect on the constitutional rights of criminal defendants.” *Id.* at 73. The Court remarked “that the concepts of ‘reasonable fee’ and the constitutional requirements of effective assistance of counsel are related but not identical.” *Id.* at 87. “The focus is . . . not solely on providing the lawyer with a reasonable fee, although that is important, but on showing that *the system* is designed to ensure that an indigent

defendant receives effective assistance of counsel.” *Id.*
(emphasis added).

Other authorities have reached similar conclusions, including courts in Washington. In *State v. Howard*, for example, this Court held that the state was responsible for compensating attorneys “in excess of the amount provided” under an indigent defense contract given “the complexity of the case.” 106 Wn.2d 39, 41, 46 (1985). And in *State v. Lehirondelle*, two attorneys challenged an award of compensation under a public defense “fee schedule” because the award was so insufficient that it “[did] not cover their office overhead.” 15 Wn. App. 502, 504-04 (1976). Holding the attorneys were entitled to “an amount which will allow the financial survival of [their] practice,” the Court of Appeals reversed the award and ordered payment of “a reasonable amount for all professional services” provided. *Id.* at 504; see also *New York Lawyers’ Ass’n*, 745 N.Y.S.2d 376, 379-80 (N.Y. Sup. Ct. 2002) (granting “mandatory preliminary injunction directing payment” of reasonable hourly rate for public defense services).

Unless WAP is reasonably compensated for its ongoing caseload, the indigent appellants in those cases will be deprived of their right to counsel. The superior court erred in holding that WAP failed to establish a clear legal or equitable right to the relief it seeks, and the first element of RAP 2.3(b)(2) is met.

2. The superior court's decision substantially alters the status quo and limits the freedom of WAP to act.

The second element of RAP 2.3(b)(2) is also met because the superior court's order alters the status quo and limits the freedom of WAP to act.

WAP has an attorney-client relationship with each of its current clients, some of whom have been represented by the organization for years. APP-0235 ¶ 10. The court's denial of a preliminary injunction has substantially threatened these relationships and significantly hampered WAP's ability to continue providing effective representation. The organization has limited cash reserves and cannot last beyond December of this year. It is hamstrung. Thus, the superior court's denial of a preliminary injunction has fundamentally impaired WAP's

substantive rights outside of this proceeding. *See In re Dependency of N.G.*, 199 Wn.2d 588, 596-98 (2022).

Discretionary review under RAP 2.3(b)(2) is appropriate.

VI. CONCLUSION

WAP respectfully asks this Court to grant the motion for discretionary review.

RAP 18.17(b) CERTIFICATION

Petitioner's counsel certifies that this brief contains 5,000 words in compliance with RAP 18.17(b) and RAP 18.17(c)(11).

RESPECTFULLY SUBMITTED AND DATED this 16th day of September, 2026.

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I certify that on September 16, 2026, I caused a true and correct copy of the foregoing to be served on the following via the Court of Appeals Electronic Filing Notification System:

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I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

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