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PART III. RULES ON APPEAL (RAP 3.1–End)

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SUMMARY OF CONTENTS

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WASHINGTON RULES PRACTICE

PART III

RULES ON APPEAL—Continued

TITLE 3. PARTIES

RULE 3.1 WHO MAY SEEK REVIEW

Only an aggrieved party may seek review by the appellate court.

Cross References

Conservatorship for adult, order establishing, see RAP 2.2(a).
Guardianship for adult, order establishing, see RAP 2.2(a).
Nominal party, defined, see RAP 14.2.
Parent, right to personal restraint petition, see RAP 16.6(a).
Petitioner, defined, see RAP 3.4.

Committee Comment

Generally, only an aggrieved party may seek review. The doctrine applies equally to appeals as a matter of right and to discretionary review (review by extraordinary writ under previous rules). State ex rel. Simeon v. Superior Court, 20 Wn.2d 88, 145 P.2d 1017 (1944); Temple v. Feeney, 7 Wn.App. 345, 499 P.2d 1272 (1972). A person may be an aggrieved party even though that person was not a party to the proceedings below. For example, a complainant mother may be an aggrieved party in a filiation proceeding brought in the name of the State, as in State v. Casey, 7 Wn.App. 923, 503 P.2d 1123 (1972).

AUTHOR'S COMMENTS

§ 3131. In General

The Task Force despaired of trying to define or otherwise identify who is an aggrieved party. In essence, the rule provision is merely a cross-reference to case law on the subject. The concept is similar in function to the notions of real party in interest and of standing. Indeed, some textual discussions refer to the concept as being one of standing to appeal. Wright and Miller, Federal Practice and Procedure, § 3902.

Prior statutory and rule practice recognized a concept of an aggrieved party, without attempting to define the term. E. g., CAROA 14; cf. CAROA 2. In the current rules, the same approach is made. RAP 3.1. Although the rule does not identify aggrieved parties, the requirement is stated and must be observed.

If the judgment has an adverse effect against a party, that party will generally qualify as being aggrieved. In addition, a respondent who seeks review is often treated as having the aggrieved status when the matters challenged might have an adverse effect on that party if the appellant's appeal were to result in a reversal. Hilton v. Mumaw (C.A.9th, 1975) 522 F.2d 588.

For a party to be aggrieved, the decision must adversely affect that party's property or pecuniary rights, or a personal right, or impose on the party a burden or obligation. Sheets v. B.P.O.K. (1949) 34 Wash.2d 851, 210 P.2d 690 (review denied); State ex rel. Simeon v. Superior Court (1944) 20 Wash.2d 88, 145 P.2d 1017 (review denied).

Generally, a party is not aggrieved by a decision in his favor, and cannot properly appeal from such a decision. Paich v. Northern Pac. Ry. Co. (1915) 88 Wash. 163, 152 P. 719.

Not only must the person be aggrieved, but also, generally, the person must have been a party to the action below. Sheets v. B.P.O.K. (1949) 34 Wash.2d 851, 210 P.2d 690 (review denied); State v. Fair (1904) 35 Wash. 127, 76 P. 731 (review denied). Compare, however, State v. Casey (1972) 7 Wash.App. 923, 503 P.2d 1123, wherein the mother was permitted to appeal from a filiation proceeding, seemingly because she was de facto a real party in interest.

The availability of review at the instance of a given party is sometimes expressed in terms of standing. Thus, a plaintiff-sublessor who surrendered his right of possession to the head landlord prior to bringing an unlawful detainer action against the sublessee had no standing to maintain an appeal from a dismissal of his ac-

tion; the controversy was at an end when plaintiff gave up his possession. MacRae v. Way (1964) 64 Wash.2d 544, 392 P.2d 827.

An appealing defendant who claims no prejudice to him arising from a judgment against non-appealing defendants is not an aggrieved party, and will not be heard to argue on appeal that the judgment against the non-appealing party is invalid. Stratton v. United States Bulk Carriers, Inc. (1970) 3 Wash.App. 790, 478 P. 2d 253.

A real estate broker was an aggrieved party and entitled to appeal when he was named as a co-defendant in an action for rescission, was found by the trial court to have participated in fraudulent misrepresentations, and was ordered to reconvey property received by him as his commission. Temple v. Feeney (1972) 7 Wash.App. 345, 499 P.2d 1272. The reviewing court pointed out that the trial court determination substantially affected appellant's property, pecuniary, and personal rights.

Library References

West's Key No. Digests, Appeal and Error ⇐151; Criminal Law ⇐1136.
C.J.S. Appeal and Error §§ 183 et seq.; Criminal Law § 1841.

Washington Decisions

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1. Right to review

Defendant had no standing on appeal to challenge possible application of statute to various hypothetical factual situations, none of which furnished basis of charge against him. State v. Lewis (1976) 15 Wash.App. 172, 548 P.2d 587.

Party who has no interest in fund cannot appeal from order disbursing that fund. Seaboard Sur. Co. v. United States (C.A.Wash.1962) 306 F.2d 855.

Where city filed petition in superior court for determination of factual question whether land, which was owned by city and which city proposed to transfer to county in order to qualify for federal aid in financing of a city-county health district building, was necessary to needs of county or surplus or excess to future foreseeable needs of city, and court found land was surplus and excess to future foreseeable needs of city, resident taxpayer had no standing to controvert the petition by demurrer or answer or to appeal from decision of trial court. Petition by City of Bellingham (1958) 52 Wash.2d 497, 326 P.2d 741.

Witnesses in a criminal case had no right to appeal from an order disallowing their fees for attendance and mileage, as certified by the clerk, they not being "parties" to the proceeding. State v. Fair (1904) 35 Wash. 127, 76 P. 731, 102 Am.St.Rep. 897.

The objection that an action has been brought by the lessee, instead of by the lessor for his benefit, urged for the first time on appeal, is not ground for reversal, if defendant has not thereby been deprived of any substantial right. Jenkins v. Columbia Land & Improvement Co. (1896) 13 Wash. 502, 43 P. 328.

2. Aggrieved parties or persons

Generally, an aggrieved party has a right of appeal from an order granting a new trial. State v. Casey (1972) 7 Wash.App. 923, 503 P.2d 1123.

Unwed mother, who had a definite personal financial interest in the amount of award for support, a right to recover expenses incident to the birth of the child and was natural guardian of the child, was an "aggrieved party" entitled to appeal from court's order granting a new trial in filiation proceeding. State v. Casey (1972) 7 Wash. App. 923, 503 P.2d 1123.

In products liability action, record showed that warranty instructions adequately covered the law and that negligence instructions placed an unncessary burden on the plaintiff, who, accordingly, was the only party that could complain about the instructions. Brown v. Quick Mix Co., Division of Koehring Co. (1969) 75 Wash.2d 833, 454 P.2d 205.

While statute relating to increase or reduction of verdict as alternative to trial does not expressly provide for appeal by a nonconsenting party adversely affected by the order, implication is clear that, on such an appeal, the statute governs review of order reducing a verdict. Ma v. Russell (1967) 71 Wash. 2d 657, 430 P.2d 518.

By its failure to appeal from subcontractor's judgment against it, prime contractor assented to having money due it from owner paid to subcontractor; and even though owner had, pursuant to settlement agreement, retained a sum due prime contractor, owner had no appealable interest in subcontractor's judgment against contractor. Berger Engineering Co. v. Hopkins (1959) 54 Wash.2d 300, 340 P.2d 777.

Respondent, who was not aggrieved by any appealable order or judgment entered in the case, could not have cross-appealed. Latimer v. Western Machinery Exchange (1952) 40 Wash.2d 155, 241 P.2d 923.

A party or person is "aggrieved" by a judgment, order or decree so as to be entitled to appeal whenever it operates prejudicially and directly upon his property, pecuniary rights, interest or his personal rights. Sheets v. Benevolent and Protective Order of Keglers (1949) 34 Wash.2d 851, 210 P.2d 690.

The word "aggrieved" in a statute permitting appeal by an aggrieved party refers to a substantial grievance, a denial of some personal or property right, legal or equitable, or the imposition on a party of a burden or obligation and the right invaded must be immediate, not merely some possible, remote consequence. Sheets v. Benevolent and Protective Order of Keglers (1949) 34 Wash.2d 851, 210 P.2d 690.

Appellant, not a party to action in trial court, was not "aggrieved" by decree and could not appeal therefrom. Sheets v. Benevolent and Protective Order of Keglers (1949) 34 Wash.2d 851, 210 P.2d 690.

One cannot appeal unless he is aggrieved. Peterson v. Department of Labor and Industries (1945) 22 Wash.2d 647, 157 P.2d 298.

A party to the litigation who has a legitimate interest therein is aggrieved by order of trial court adverse to position taken by such party, and is entitled to appeal. Meade v. Pacific Gamble Robinson Co. (1944) 21 Wash.2d 866, 153 P.2d 686.

Where Delaware courts alone had authority to appoint appraiser to deter-

mine value of stock in Delaware corporation held by a dissenting stockholder, corporation was aggrieved by order of Washington court appointing appraiser and was entitled to appeal. Meade v. Pacific Gamble Robinson Co. (1944) 21 Wash.2d 866, 153 P.2d 686.

Under statute granting "party aggrieved" right to appeal, no one may appeal to appellate court unless he has substantial interest in subject matter which is before court and he is prejudiced by judgment or order of court and some personal rights or pecuniary interest of party must be affected, but mere fact that party may be hurt in his feelings does not entitle him to appeal, since he must be aggrieved in the legal sense. State ex rel. Simeon v. Superior Court for King County (1944) 20 Wash. 2d 88, 145 P.2d 1017.

Under statute authorizing any party aggrieved by final judgment to appeal therefrom, the surety, on a guardianship bond was a "party aggrieved" by final judgment holding guardian and surety jointly and severally liable to ward for guardianship funds inventoried by guardian for which guardian could not account, and hence surety was entitled to appeal from such judgment, notwithstanding guardian did not take an appeal. In re LeFevre's Guardianship (1941) 9 Wash.2d 145, 113 P.2d 1014.

Person has no standing to appeal unless he is aggrieved or prejudiced by judgment or decree. Elterich v. Arndt (1934) 175 Wash. 562, 27 P.2d 1102.

Party must be "legally aggrieved" by decision of court before he has right of appeal. Yamada v. Hall (1927) 145 Wash. 365, 260 P. 243.

Error in requiring codefendant, testifying in own behalf, to testify as to prior conviction is not available to defendant. State v. Johnson (1926) 141 Wash. 324, 251 P. 589.

Where the sole interest of a party in bringing an action and asking for a receiver for defendant was the collection of a debt, which by the order appealed from was to be satisfied, such party is not aggrieved by a court order discharging the receiver, and is without appealable interest. Union Auto Supply Co. v. Enumclaw Transp. Co. (1923) 124 Wash. 483, 214 P. 1044.

Where a temporary restraining order prevented council from revoking a particular license and the city appealed, it could not contend that suit must fail because it was proposing to enact a general ordinance fixing a standard and revoking licenses which did not conform to requirements, and injunction would not lie to enjoin proposed legislative action, since city would not be aggrieved by the temporary order which did not curtail proposed action and hence could not appeal therefrom. Vincent v. City of Seattle (1921) 115 Wash. 475, 197 P. 618.

Defendant who moved for judgment notwithstanding verdict and for new trial, and who obtained judgment, was not aggrieved by denial of new trial, and was not required to appeal to protect his rights. Paich v. Northern Pac. Ry. Co. (1915) 88 Wash. 163, 152 P. 719.

Where an action was dismissed as against certain defendants before verdict, but inadvertently a judgment was rendered against them all, and subsequently the court, by an order, eliminated the names of the defendants as to whom the action had been dismissed, the defendants were not aggrieved and could not prosecute an appeal from the order. Schulze v. Oregon R. & Nav. Co. (1906) 41 Wash. 614, 84 P. 587.

In a suit by a lien claimant against the owner of the property and other lien claimants, where an issue as to the priority of the liens is raised, the fact that the owner does not appeal from a judgment for plaintiff for the amount of his claim, which was rendered before the expiration of the owner's time for answering, does not prevent his co-defend-

ants from raising the objection, since they are aggrieved thereby. Murray v. Guse (1894) 10 Wash. 25, 38 P. 753.

A writ of error will not be dismissed because prosecuted in the name of one party defendant only, since any party aggrieved, if he be a party or privy to the judgment, may prosecute such writ. Garrison v. Cheeney (1875) 1 Wash.T. 489.

3. Interest in subject matter

Devisee of wheatlands could not appeal on behalf of lessees, who had instituted action against devisee and subsequent purchasers of wheatlands to enforce summer fallow provisions of leases, from trial court's failure to render judgment in favor of lessees and against purchasers. Higgenbotham v. Topel (1973) 9 Wash.App. 254, 511 P.2d 1365.

To be deemed to have an appealable interest, one must qualify as a party. Temple v. Feeney (1972) 7 Wash.App. 345, 499 P.2d 1272.

The "piecemeal" rule that all interested parties shall jointly prosecute their appeals and cross-appeals, so that the cause does not appear in appellate court by piecemeal, is applicable only where action of appellate court may adversely affect party who has not been served with notice of appeal. Coleman v. Wisbey (1951) 37 Wash.2d 737, 225 P.2d 1067.

One who has no interest in subject matter and is not injuriously affected by judgment, order, or decree is not entitled to appeal. In re Gallinger's Estate (1948) 31 Wash.2d 823, 199 P.2d 575.

One desiring to appeal from judgment must have immediate, pecuniary, and substantial interest in subject matter of litigation, not merely future, contingent, or speculative interest, and be aggrieved or prejudiced by judgment. Terrill v. City of Tacoma (1938) 195 Wash. 275, 80 P.2d 858.

One appealing from superior court's judgment must show that she has substantial interest in subject matter of action, and is affected or injured by judgment. Terrill v. City of Tacoma (1938) 195 Wash. 275, 80 P.2d 858.

In taxpayers' injunction action against county treasurer and board of county commissioners, where treasurer and board acquiesced in order temporarily restraining treasurer and board members "as the board," individual board member *held* without appealable interest, though permitted, over taxpayers' objection, to appear separately in trial court. Elterich v. Arndt (1934) 175 Wash. 562, 27 P.2d 1102.

Person has no standing to appeal unless he had substantial interest in subject-matter of litigation. Elterich v. Arndt (1934) 175 Wash. 562, 27 P.2d 1102.

Assignee of cause of action, if obtaining sufficient legal title to become real party in interest for purpose of prosecuting action, has sufficient title to prosecute appeal. National Ass'n of Creditors v. Grassley (1930) 159 Wash. 185, 292 P. 416.

When interest of a defendant is separate from that of other defendants, he may appeal without them. Adamson v. Black Rock Power & Irr. Co. (D.C.Wash. 1926) 12 F.2d 437.

An automobile accident insurer which, though it had moved to vacate default judgments on the ground that it had not been notified of the accident by insured as required by the terms of the policy, issued under Laws 1920–21, p. 338, until after default judgments had been entered, refused to intervene in the action, had no appealable interest in the action, and plaintiff's notice to dismiss its appeal from an order denying the motion to vacate the defaults will be granted. Lawrence v. Rawson (1923) 126 Wash. 158, 217 P. 1019.

A daughter who assigned to her father, the administrator, all her interest in her mother's estate, at same time making agreement with him as to what she should receive, had no such interest in estate as would entitle her to appeal from decree approving administrator's final report and distributing estate; the probate court being neither bound nor entitled to consider her contract with her father, the administrator, on which was her sole remedy. In re Thompson's Estate (1920) 110 Wash. 635, 188 P. 784.

The interest of a city in the question of law as to the superiority of a local assessment lien which it had sold over a mortgage does not entitle it to appeal from a decree determining the priority. Carstens & Earles v. City of Seattle (1915) 84 Wash. 88, 146 P. 381, Ann.Cas. 1917A, 1070, modified 88 Wash. 632, 153 P. 1080.

The purchaser of land sold under a tax judgment is a party in interest to an order vacating the judgment, entitling him to appeal therefrom. Pierce County v. Alexander (1908) 49 Wash. 599, 96 P. 164.

Where a defendant against whom a judgment is asked disclaims any interest in certain funds held by others, and the decree of the court deals entirely with the payment into court and disposition of such funds, an appeal by such defendant need not be considered by the Supreme Court. Lazier v. Cady (1906) 44 Wash. 339, 87 P. 344.

Defendants to a suit to foreclose a tax lien, who have no interest in the property, cannot complain of a judgment of foreclosure. City of Port Townsend v. Trumbull (1905) 40 Wash. 386, 82 P. 715.

Where the court refused to enjoin a city from passing an ordinance granting a street-railway franchise, or from receiving bids and accepting the highest bid, but enjoined appellants, who were applicants for such franchise, from taking any action under such ordinance, if enacted, until further order of court, etc., such appellants have an appealable interest, though there are bids for the franchise other than that of appellants, and it is undetermined as to who the highest bidder is. Wood v. City of Seattle (1900) 23 Wash. 1, 62 P. 135, 52 L.R.A. 369.

4. Prevailing party

Appellee cannot attack decree beneficial to her even if she disagrees with legal theory. In re Lyman's Estate (1972) 7 Wash.App. 945, 503 P.2d 1127, adopted 82 Wash.2d 693, 512 P.2d 1093.

Motion to dismiss appeal on ground that action to cancel agreements for fraud was tried as one in equity, consolidated with unlawful detainer action wherein appellant prevailed, was denied where appellant appealed from only part of judgment which by stipulation was made one judgment in actions wherein it failed. Sanders v. General Petroleum Corp. of California (1933) 171 Wash. 250, 17 P.2d 890.

Where court discharged attachment upon one of defendant's grounds stated, defendant could not appeal from order discharging attachment. Yamada v. Hall (1927) 145 Wash. 365, 260 P. 243.

Where the issue involved was which two of three men were entitled under a municipal civil service system to two positions, each of which as far as appears is equal in rank and authority, one of these men has no appealable interest in a judgment which left him in full possession and enjoyment of one of the positions. State v. City of Seattle (1924) 127 Wash. 681, 221 P. 997.

5. Proper party

Life insurance company, setting up interest of first beneficiary not appealing, *held* not entitled to appeal from judgment for cash surrender value. Mende v. Mende (1928) 148 Wash. 432, 269 P. 494.

The receiver of an insolvent corporation, appointed on petition of certain judgment creditors of such corporation, was a proper party to plaintiff's appeal from a judgment finding that plaintiff's claim against the common debtor was barred by limitations, and ordering the receiver to distribute the fund among such judgment creditors, and was entitled to notice of such appeal. Pacific Coast Trading Co. v. Bellingham Bay Baseball Ass'n (1897) 18 Wash. 245, 51 P. 382.

6. Real party in interest

Where insured left part of proceeds of matured life policy with insurance company under option in policy and supplementary contract which provided that insured could make withdrawals and if at his death there should remain any unpaid balance the amount should be payable to various relatives, individuals who by agreement were to receive such unpaid balance upon insured's death were real parties in interest in action by executor of deceased against insurance company for balance of such money, and court would not consider appeal therefrom upon merits until all claimants to fund were before court. Toulouse v. New York Life Ins. Co. (1951) 39 Wash.2d 439, 235 P.2d 1003.

7. Necessary party

Defendants not affected by judgment against principal appellant *held* not necessary parties on codefendant's appeal. Du Pont Cellophane Co. v. Kinney (1934) 179 Wash. 270, 36 P.2d 1061.

All creditors in receivership proceeding who appear and take part in contesting another creditor's claim are necessary parties to appeal from order disallowing claim. Stone v. Brakes, Inc. (1933) 172 Wash. 644, 21 P.2d 524.

Plaintiffs, in suit in which receiver was appointed being general creditors of defendant, and adversely affected by reversal of an order allowing certain preferred claims and fixing their rank, were necessary parties to an appeal by claimant; and failure to join them required dismissal of the appeal. Campbell v. Nichols (1924) 131 Wash. 1, 228 P. 833, affirmed 133 Wash. 700, 234 P. 463.

Where garnishee defendant was in no way interested in controversy between plaintiff and the principal defendant, he was not necessary party to appeal. Lemagie v. Acme Stamp Works (1917) 98 Wash. 34, 167 P. 60.

Where judgment went for the garnishee on the issue of his possession or control of the debtor's property, the debtor was not a necessary party upon plaintiff's appeal from the judgment. Iverson v. Bradrick (1909) 54 Wash. 633, 104 P. 130.

Where a trustee to whom the court in a divorce suit had ordered a conveyance of land for the benefit of minor children had never appeared in the case, he was not a necessary party to an appeal. Lowe v. Lowe (1909) 53 Wash. 50, 101 P. 704.

Parties defendant who were dismissed from the action before the cause was submitted to the jury, without the consent of plaintiff, are necessary parties to an appeal by their co-defendants. Casey v. Oakes (1895) 13 Wash. 38, 42 P. 621.

Defendants to a mortgage foreclosure suit, whose interests have attached subsequent to that of plaintiff, and who appear only to disclaim title, and as to whom the suit is dismissed, are not necessary parties to an appeal. Watson v. Sawyer (1895) 12 Wash. 35, 40 P. 413, rehearing denied 12 Wash. 35, 41 P. 43.

8. Parties of record

Where administrator of divorced husband's estate did not see fit to appeal ruling of trial court that estate was not entitled to proceeds of insurance policies on husband's life, deceased's former wife

had no standing to make such contention. Estate of Reynolds v. Central Life Assur. Co. (1977) 17 Wash.App. 472, 563 P.2d 1311.

Where action was brought on behalf of a minor by his father as guardian ad litem to disaffirm and rescind a contract to purchase an automobile and to recover the purchase price, and sellers obtained an order making the father individually an additional party defendant, and judgment was entered dismissing the complaint and granting sellers costs against the father as guardian ad litem, but no judgment was entered against the father individually, the father could not appeal as an individual, since he was not, as an individual, a party aggrieved. Hines v. Cheshire (1950) 36 Wash.2d 467, 219 P.2d 100.

Generally, no one can appeal from a judgment, order or decree unless he is a party to the proceedings below or unless he is a legal representative of a party or his privity of estate, title or interest appears from the record. Sheets v. Benevolent and Protective Order of Keglers (1949) 34 Wash.2d 851, 210 P.2d 690.

The fact that counsel for city and plaintiff in suit to restrain city officials from checking and verifying sufficiency of signatures to referendum petition assented to intervention therein by one introducing no evidence of her interest in subject matter, gave intervener no right to appeal from superior court's judgment for plaintiff against city and its officials only. Terrill v. City of Tacoma (1938) 195 Wash. 275, 80 P.2d 858.

United States Veterans' Bureau officials, authorized to contest allowance to guardian out of minors' estates, consisting solely of money received through Veterans' Bureau as compensation, could appeal from order making allowance to minors' personal guardian from corpus of minors' estates. In re Guardianship of MacNair (1931) 163 Wash. 508, 2 P.2d 82.

County prosecutor, not a party to compromise of county's claim of taxes, could not compel certification of record for appeal. State v. Ronald (1927) 142 Wash. 54, 252 P. 102.

Where the petition in an equitable proceeding to assess stockholders of an insolvent bank relates to the rights of the stockholders, who are served with notice, and who appear and contest the proceedings, they are parties having the right to appeal, though the corporation is named as defendant. Bennett v. Thorne (1904) 36 Wash. 253, 78 P. 936, 68 L.R.A. 113.

A person neither an active party to the hearing of a motion for confirmation of a sale by a receiver, nor a party to a motion to vacate the order of confirmation, cannot appeal from the decisions thereon. Nicol v. Skagit Boom Co. (1895) 12 Wash. 230, 40 P. 984.

A county cannot sue out a writ of error to review a judgment in a proceeding to compel the county commissioners to perform duties devolving on them as individuals. Kitsap County v. Carson (1873) 1 Wash.T. 419.

9. Co-parties

Real estate broker, who was named as codefendant in action for rescission of real estate contract, who filed answer and took active part in proceedings, and who, pursuant to judgment granting rescission, was required to transfer title to real estate previously received by him as payment for his commission, had an appealable interest. Temple v. Feeney (1972) 7 Wash.App. 345, 499 P.2d 1272.

If party to action, who was not given notice of appeal, could be affected by decision rendered in appeal, such party was a "necessary party" to appeal and must be served under statutory provision with notice thereof. Brewster Co-op. Growers v. American Fruit Growers (1943) 19 Wash.2d 131, 141 P.2d 871.

All the parties to a suit for a receiver need not join in an appeal by a defendant mortgagee from an order giving priority to certain claims for wages. Radebaugh v. Tacoma & P. R. Co. (1894) 8 Wash. 570, 36 P. 460.

Where an action has been decided as to some of the parties, and their claims paid, they are not parties to a judgment afterwards rendered therein, disposing of the claims of the remaining parties, and are not entitled to notice of appeal from such judgment. Doyle v. McLeod (1892) 4 Wash. 732, 31 P. 96.

10. Representative or official capacity

Where purpose of insurance rating bureau trust was to qualify rating bureau under statute for license to operate as rating organization, but trial court's judgment threatened such purpose by placing ultimate responsibility for management of rating bureau in hands of insurer subscribers to rating bureau, in violation of statute, trustee had standing to appeal such judgment in order to protect integrity and fundamental purpose of trust. Retail Store Emp. Union, Local 1001 Chartered By Retail Clerks Intern. Ass'n, AFL-CIO v. Washington Surveying and Rating Bureau, Washington Bureau (1976) 87 Wash.2d 887, 558 P.2d 215.

A trustee who is party to action in representative capacity need not have personal interest in controversy to have right to appeal if it is his duty to appeal in order to protect interests of those whom he represents. Retail Store Emp. Union, Local 1001 Chartered By Retail Clerks Intern. Ass'n, AFL-CIO v. Washington Surveying and Rating Bureau, Washington Bureau (1976) 87 Wash.2d 887, 558 P.2d 215.

A trustee, in his fiduciary or representative capacity, is aggrieved by a judgment which threatens continuance of trust in form directed by trustor, whether or not beneficiaries appeal; trustee is more than a mere stakeholder. Retail Store Emp. Union, Local 1001 Chartered By Retail Clerks Intern. Ass'n, AFL-CIO v. Washington Surveying and Rating Bureau, Washington Bureau (1976) 87 Wash.2d 887, 558 P.2d 215.

Where trial court's judgment threatened integrity and fundamental purpose of insurance rating bureau trust, trustee had standing to appeal such judgment in order to protect interests of beneficiary subscribers to rating bureau. Retail Store Emp. Union, Local 1001 Chartered By Retail Clerks Intern. Ass'n, AFL-CIO v. Washington Surveying and Rating Bureau, Washington Bureau (1976) 87 Wash.2d 887, 558 P.2d 215.

Widow who obtained appointment as executrix, pursuant to nomination in will, and obtained dismissal of probate proceeding on ground that she was entitled to all community property under community property agreement, was not party aggrieved by determination that will was not improperly executed and either waived her right to attack will or was estopped to do so. In re Lyman's Estate (1972) 7 Wash.App. 945, 503 P.2d 1127, adopted 82 Wash.2d 693, 512 P.2d 1093.

Administrator has right of appeal from order of probate court and such right is not precluded on theory that he is not an aggrieved party in such capacity and has no interest in estate except as appointee of court. In re Shea's Estate (1966) 69 Wash.2d 899, 421 P.2d 356.

Next friend of minor can appeal on behalf of minor, where minor has right to appeal but is unable to exercise it. In re Guardianship of Ivarsson (1962) 60 Wash.2d 733, 375 P.2d 509.

Appeal by ancillary administrator from order of superior court revoking administrator's letters of administration and dismissing probate proceedings would be dismissed on ground that administrator had no appealable interest and was not a "party aggrieved" by the

order. In re Ludwig's Estate (1956) 49 Wash.2d 312, 301 P.2d 158.

Officers of non-profit corporation and of grand lodge were not "aggrieved" by portion of decree adjudicating that corporation and grand lodge were two distinct corporations having no relation to each other and could not appeal therefrom. Sheets v. Benevolent and Protective Order of Keglers (1949) 34 Wash.2d 851, 210 P.2d 690.

Testamentary trustees, under record, had such interest in subject matter of litigation as entitled them to appeal from decree removing such trustees. Monroe v. Winn (1943) 16 Wash.2d 497, 133 P.2d 952.

In equitable action against executor of testator's estate based on testator's alleged breach of oral contract to devise property to claimants, executor had right and duty to appeal from decree which ordered executor to "distribute" assets of the estate to the claimants pursuant to terms of the alleged contract, since the claimants were not "distributees" within rule that executor cannot appeal personally from decree of distribution. Thompson v. Weimer (1939) 1 Wash.2d 145, 95 P.2d 772.

On appeal by legatee and executor from order overruling exceptions to findings of supervisor of inheritance tax and escheat division of tax commission construing the will and fixing inheritance taxes, appeal of executor would be dismissed on motion on ground that executor was not aggrieved party where all interested parties were before court and there was no occasion for executor to take either side in controversy. In re Lambell's Estate (1939) 200 Wash. 220, 93 P.2d 352.

Although judgment debtor did not appeal from decree erroneously seizing his interest in future income from trust, active trustees *held* sufficiently interested to entitle them to reversal. Knettle v. Knettle (1931) 164 Wash. 468, 3 P.2d 133.

A receiver can appeal, as the representative of the general creditors, from a judgment allowing certain claims, as preferred claims. Cavanaugh v. Art Hardware & Mfg. Co. (1923) 124 Wash. 243, 214 P. 152.

Where an administrator with the will annexed, who was one of the legatees under the will, petitioned for distribution of the estate to the other legatees because of an alleged indebtedness from him to decedent, but, on objections by the administrator's trustees in bankruptcy, one-third of the estate was ordered distributed to the trustee, the administrator was not a "party aggrieved," and had no right to appeal. In re Tucker's Estate (1921) 116 Wash. 475, 199 P. 765.

Where an order is made that an alleged incompetent had fully recovered, and discharging the guardian, the guardian is an aggrieved party within statute giving such party the right of appeal. In re Bayer's Estate (1919) 108 Wash. 565, 185 P. 606.

Where a father's interests were adverse to those of his minor children, his attempted appeal as their guardian from a judgment from which their guardian ad litem did not appeal will not be considered. Battyany v. McNeley (1915) 83 Wash. 666, 145 P. 978.

An administrator whose letters are revoked on the admission to probate of a will, the question of his compensation being left open has no interest entitling him to appeal from the order. Cairns v. Donahey (1910) 59 Wash. 130, 109 P. 334.

A sheriff who has been restrained from levying an execution on certain land has a sufficient interest in the controversy to appeal from such decree. Heintz v. Brown (1907) 46 Wash. 387, 90 P. 211, 123 Am.St.Rep. 937.

II. Intervenors

A motion for entry of order by Supreme Court permitting movant to enter his appearance as a party appellant in a representative capacity on behalf of

stockholders would be denied if treated as an application to intervene in a cause on appeal, where motion was not timely under statute providing that applications for intervention must be made before trial. Colburn v. Spokane City Club (1944) 20 Wash.2d 412, 147 P.2d 504.

Where the Supreme Court, in accordance with a stipulation of the parties, after affirming a judgment dismissing an action for an injunction, modified a temporary injunction entered below so as to include plaintiff and interveners only, whereupon a petition for leave to intervene was filed by parties not covered by such injunction, who claimed the right to the benefit thereof because they were similarly situated, but, subsequent to the hearing on such petition a petition for rehearing in the principal case was filed and denied, such petition for leave to intervene will be denied; the matter covered thereby having become only a moot question. McGlothern v. City of Seattle (1921) 117 Wash. 703, 202 P. 1.

Under 2 Ballinger's Ann.Codes & St. § 4846, providing that an application to intervene must be made before trial, a motion to intervene cannot be granted after appeal. Hight v. Batley (1903) 32 Wash. 165, 72 P. 1034, 98 Am.St.Rep. 851.

RULE 3.2 SUBSTITUTION OF PARTIES

(a) Substitution Generally. The appellate court will substitute parties to review when it appears that a party is deceased or legally incompetent or that the interest of a party in the subject matter of the review has been transferred.

(b) Duty To 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 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) Where To Make Motion. The motion to substitute parties must be made in the appellate court if the motion is made after review is accepted. In other cases, the motion should be made in the trial court.

(d) Procedure Pending Substitution. A party, a successor in interest of a party, a personal representative of a deceased or legally disabled party, or an attorney of record for a deceased or legally disabled party who has no personal representative, may without waiting