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Honorable Ronald Carpenter  
Temple of Justice  
Post Office Box 40929  
Olympia, Washington  
98504-0929

April 28, 2014

Re: Suggested Amendment to RALJ 5.4

Dear Clerk Carpenter:

The Washington Association of Prosecuting Attorneys (WAPA) recognizes that the proposed amendments to RALJ 5.4 may reduce the number of retrials resulting from the loss of an electronic record. The proposed language, however, still prejudices victims and the public by unnecessarily mandating new trials.

~~RAP 9.3 contains the following provision regarding lost records:~~

~~narrative~~ report of proceedings may be prepared if either the court reporter's notes or the videotape of the proceeding being reviewed are lost or damaged.

WAPA can discern no rational basis for authorizing a narrative report of proceedings to replace a lost record in felony cases, while prohibiting them in misdemeanor cases.

WAPA urges this Court to add a similar provision to RALJ 5.4. Specifically, WAPA recommends adding the bold and italicized phrase to the suggested rule change:

In the event of loss or damage of the electronic record, or any significant or material portion thereof, the appellant, upon motion to the superior court, shall be entitled to a new trial, but only if the loss or damage of the record is not attributable to the appellant's malfeasance. ***If the lost record pertains to material or significant pretrial matter, the appellant shall be entitled to a new hearing on the matter for which the record was lost or destroyed. The trial court of limited jurisdiction will not relitigate a pretrial matter or a trial for which there is an electronic record subject to appellate review, unless the appellant demonstrates a court determines that the pretrial matter or the trial was materially affected by the lost***

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electronic record. In lieu of a new trial, the parties may stipulate to a nonelectronic record as provided in rule 6.1(b) or the court may direct that a narrative report of proceedings be prepared. The court of limited jurisdiction shall have the authority to determine whether or not significant or material portions of the electronic record have been lost or damaged, subject to review by the superior court upon motion.

Thank you for considering WAPA's suggestion.

Sincerely,

A handwritten signature in black ink, appearing to read "Pamela B. Loginsky". The signature is fluid and cursive, with a large initial "P" and a long, sweeping tail.

Pamela B. Loginsky  
Staff Attorney