

## Tracy, Mary

---

**From:** OFFICE RECEPTIONIST, CLERK  
**Sent:** Friday, June 24, 2016 3:16 PM  
**To:** Tracy, Mary  
**Subject:** FW: Comment re: Proposed Rule Change to RAP 14.2

Supreme Court Clerk's Office

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

Questions about the Supreme Court Clerk's Office? Check out our website:

[http://www.courts.wa.gov/appellate\\_trial\\_courts/supreme/clerks/](http://www.courts.wa.gov/appellate_trial_courts/supreme/clerks/)

Looking for the Rules of Appellate Procedure? Here's a link to them:

[http://www.courts.wa.gov/court\\_rules/?fa=court\\_rules.list&group=app&set=RAP](http://www.courts.wa.gov/court_rules/?fa=court_rules.list&group=app&set=RAP)

Searching for information about a case? Case search options can be found here:

<http://dw.courts.wa.gov/>

---

**From:** Rothrock, Averil [mailto:ARothrock@SCHWABE.com]  
**Sent:** Friday, June 24, 2016 3:10 PM  
**To:** OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>  
**Subject:** Comment re: Proposed Rule Change to RAP 14.2

Dear Clerk of the Supreme Court,

This is a comment related to proposed rule changes to RAP 14.2. It concerns the last portion of the proposed addition, which reads: Unless the parties agree that a cost bill will not be filed under RAP 14.2, an adult offender for whom an order of indigency has been entered should include in the record on review clerk's papers, exhibits, and the report of proceedings relating to the trial court's determination of the offender's current or likely future ability to pay discretionary legal financial obligations.

The comment concerns the location in the RAP of the new requirements regarding the record. I suggest that a cross-reference to the proposed changes to RAP 14.2 should appear in Title 9. I do not see that any change to Title 9 is proposed. Because the content of the new paragraph relates to the record and the designation of clerk's papers, the requirement should be referenced in Title 9. A practitioner seeking to confirm what should be included in the record should be able to find this requirement in Title 9. For example, RAP 9.6(b) states what should be included at a minimum in the designation of clerk's papers. It is potentially misleading if RAP 9.6(b) makes no reference to the requirement of RAP 14.2. Because the proposed rule changes potentially require clerk's papers, exhibits and report of proceedings, they implicate RAP 9.2 (and potentially RAP 9.3 and 9.4), and RAP 9.6.

This comment arises from concern that only experienced practitioners would know that a revised RAP 14.2 contains requirements that relate to composition of the record. Because a practitioner first prepares the record based on the direction found in Title 9, the practitioner might miss the requirements if they are located only in Title 14. Often, the cost rules are not fully scrutinized until later in the appellate process. This presents a potential trap or, at the least, will cause delay at the conclusion of the appeal if the items were not included. If the rule is to be adopted with requirements relating to the record, the Court should consider an appropriate amendment to Title 9 to assist all practitioners. It seems important to have rules in the section of the RAP where one would expect to find them.

Perhaps, similar to RAP 9.12, a rule should be added titled "9.14 SPECIAL RULE FOR COSTS ON APPEAL" stating the new requirements. Alternatively, a subsection could be added to RAP 9.1 along similar lines and making reference to RAP 14.2.

Thank you for consideration of this comment.

Sincerely,  
Averil Rothrock

**Schwabe Williamson & Wyatt**

**Averil Rothrock**  
Shareholder  
Direct: 206-689-8121  
[arothrock@schwabe.com](mailto:arothrock@schwabe.com)  
[Vcard](#) [LinkedIn](#)

Ideas fuel industries, learn more at:  
[www.schwabe.com](http://www.schwabe.com)



---

NOTICE: This email may contain material that is confidential, privileged and/or attorney work product for the sole use of the intended recipient. Any review, reliance or distribution by others or forwarding without express permission is strictly prohibited. If you are not the intended recipient, please contact the sender and delete all copies.