

PROPOSED AMENDMENT
RULES OF APPELLATE PROCEDURE
RAP 14.2
WHO IS ENTITLED TO COSTS

A commissioner or clerk of the appellate court will award costs to the party that substantially prevails on review, unless the appellate court directs otherwise in its decision terminating review, or unless the commissioner or clerk determines an adult offender for whom an order of indigency has been entered does not have the current or likely future ability to pay such costs. An indigent adult offender who objects to a cost bill pursuant to RAP 14.5 shall file a report as to continued indigency and likely future ability to pay an award of costs on a form prescribed by the office of public defense. The form need not reiterate information contained in the trial court indigency screening form, but shall include supplemental information necessary to provide a basis for making a determination with respect to the individual's current or likely future ability to pay such costs. The form shall include a certification that no significant improvement during review in the financial condition of the indigent adult offender has occurred or, if a significant improvement during review in the financial condition has occurred, shall describe such improvements. [...] Shouldn't the text highlighted in blue be in RAP 14.5? Why put it here if you don't get to a cost bill (see RAP 14.4 and RAP 14.5) until you have determined who is entitled to costs (RAP 14.2)? Wouldn't it be better to keep RAP 14.2 focused on who is entitled to costs and RAP 14.5 focused on objections to a cost bill? If there is no substantially prevailing party on review, the commissioner or clerk will not award costs to any party. An award of costs will specify the party who must pay the award. In a criminal case involving an indigent juvenile or adult offender, [...] If this rule covers juvenile and adult offenders, why are the amendments here focused on adult offenders? A GR 9 sheet might explain the rationale, but the Court did not post any GR 9 sheet, an award of costs will apportion the money owed between the county and the State. A party who is a nominal party only will not be awarded costs and will not be required to pay costs. A "nominal party" is one who is named but has no real interest in the controversy.

Unless the parties agree that a cost bill will not be filed under RAP 14.2 [...] Does that need to be said? By including it, is the implication that, absent an agreement, the offender must include the following information in the record? See RAP 1.2(b) ("should" imposes an obligation)? And again, might this make more sense in RAP 14.5 regarding objections to the cost bill? [...], 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

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1 discretionary legal financial obligations. [...] Isn't the record set at the start of the appellate
2 process? If the intent is for this information to be part of the original record, shouldn't the
3 obligation be placed somewhere in Title 9? Who is going to look for it here when they are
4 initially setting up the record? If the intent is to wait until the proceedings are over, would this
5 information have to be introduced through a motion to supplement the record under RAP 9.10?
6 As an alternative, could you just rely on RAP 17.7, which allows review of a commissioner or
7 clerk ruling by motion, which presumably would allow the moving party to attach evidence from
8 the trial court not originally included in the record?]

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Tracy, Mary

From: OFFICE RECEPTIONIST, CLERK
Sent: Thursday, August 18, 2016 8:32 AM
To: Tracy, Mary
Subject: FW: Proposed amendment to RAP 14.2
Attachments: RAP14.2-Wynne.doc

Not sure if this goes to you Mary or to Susan?

-----Original Message-----

From: Roger Wynne [mailto:rogerwy@yahoo.com]
Sent: Wednesday, August 17, 2016 10:00 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Proposed amendment to RAP 14.2

Dear Clerk of the Supreme Court.

I write in my personal capacity, not on behalf of my employer or clients, to suggest the Court refer the proposed RAP 14.2 amendments to the WSBA Court Rules and Procedures Committee for review.

I am attaching a version of the proposal into which I have noted questions that occurred to me as I read it. My questions raise primarily structural issues, ones the Committee would be well positioned to consider and resolve.

I have no opinion about the proposed amendments as a matter of policy, although a GR 9 sheet would have been helpful to understand the policy implications.

Thank you for considering my input.

Sincerely,
- Roger Wynne, WSBA 23399
Seattle, WA