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**To:** [Martinez, Jacquelynn](#)  
**Subject:** FW: Comment to Proposed RAP 9.6  
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**From:** Barb & Chip <miner1243@comcast.net>  
**Sent:** Tuesday, April 30, 2024 1:23 PM  
**To:** OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>  
**Subject:** Comment to Proposed RAP 9.6

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April 30, 2024

TO: Justices of the Supreme Court

RE: Proposed Amendments to RAP 9.6 Requiring Clerk to Provide Copies

I write to urge you to oppose the proposed amendments to RAP 9.6 requiring the trial court clerk to provide copies of entire case files and all exhibits to parties upon request. This is an inappropriate and substantial work shift to county clerks and counties.

There are good reasons for OPD appellate counsel to wish for the things proposed in this rule change. However, there are several serious issues with the proposed changes.

First and foremost, County Clerks do not have the local mechanisms or staff in place to copy and send exhibits, as contemplated by this rule. For example, if clerks accept jump drives with numerous exhibit documents, most clerks do not have the local tools necessary to safely make copies of documents from those drives and readily send to any party requesting. This work burden would be substantial (see comment letter from Donna Wise) and the technology that clerks would need to do the work would fall to individual counties to provide. Counties mostly do not allow the use of external jump drives in county computers. Even if they did, Clerks do not have the staff to perform this added work.

Please note that there is no state-provided uniform electronic exhibit management system for County Clerks similar to the state provided Odyssey system for case files. An electronic exhibit management system would substantially provide the mechanisms to assist clerks and counties with the work added in this rule proposal. I understand that a project proposal to JIS for such a system is in its infancy, and has recently cleared an initial milestone, which is good news. County Clerks and appellate clerks are collaborating on this new system proposal, which is the right way to help address some of the issues behind this rule proposal. However, I understand that implementation of such a system is projected to be as much as 5+ years in the future.

Another issue with the rule is the inappropriate proposal to give County Clerks the responsibility of taking pictures of physical exhibits such as guns or drugs. Again, this component is a completely new work burden to clerks and would demand that counties provide cameras and the supporting technology to clerks. Those photos would necessarily

become a record of some kind and would need an infrastructure of record keeping and rules of use. Inserting the clerk into the exhibit practice of a case by dictating the creation of these exhibit photos is not appropriate.

Yet another reason to oppose this proposed rule change is that current RAP rules already dictate the appropriate practice related to this subject area. RAP 15.2(e) states in part, "*If trial counsel is not appointed, **trial counsel must assist counsel appointed for review in preparing the record.***" This is an appropriate rule and is already in place. Those who say trial attorneys do not have the bandwidth to assist appellate attorneys in preparing the record are mistakenly and inappropriately assuming county clerks *do* have the bandwidth to perform this work. They are also ignoring that that a state court rule already exists and governs this topic.

With respect, I suggest that this rule change may be more appropriately proposed as legislation, specifically because of the new work and new costs to clerks and counties. The legislative process would ensure a fiscal note be associated with any such bill, so that the state could recognize these new duties and provide the funding for the substantial work increase and costs to the counties. In fact, the Washington State constitution (Article XI, Section 5) gives ***the legislature***, not state OPD, the responsibility for prescribing duties to county clerks. The legislative process is also a key component of a new electronic exhibit management system which would greatly assist with the exhibit submission, management and access. It would cost millions of *state* dollars to implement and would come via funding by the legislature. Implementing this OPD proposal as a rule without 1) the funding for the shift in work and added costs to the clerks and counties, or 2) the assist of an electronic exhibit system, is improper, untimely and a recipe for failure.

Another legislative option is for state OPD to continue to work under current rules and seek additional funding from the legislature to support their current centralized model of appellate defense, which has apparently led them to propose handing off duties to clerks and counties.

Thank you for considering these concerns.

*Barbara Miner*

Barbara Miner

Former King County Clerk

Contact: [miner1243@comcast.net](mailto:miner1243@comcast.net)