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Subject: FW: RAP 9.6 Amendment
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From: Greg Link <greg@washapp.org>
Sent: Tuesday, April 16, 2024 3:56 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: RAP 9.6 Amendment

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I urge the court to adopt the amendment to RAP 9.6 proposed by the Office of Public Defense.

Recently in *State v. Waits*, this Court reaffirmed access to a complete record on review is a fundamental component of the constitutional right to appeal. Review of the entire record is essential to providing the effective assistance of counsel on appeal. Like the court file and report of proceedings, exhibits are a part of the trial court record to which counsel must have access for review.

I am the director of the Washington Appellate Project and have been representing clients in criminal appeals for over 25 years. My office has handled cases where review of the exhibits revealed jurors were provided information they were not supposed to see. Review of exhibits has cemented arguments that convictions were not supported by sufficient evidence. Review of exhibits has permitted the demonstration and finding of prejudice for a variety of trial errors. Examples of this last point are seen in *State v. Allen* and *State v. Walker*, in which prosecutors made improper arguments in PowerPoint presentations, as well as verbally. Just as every other part of the record, counsel must have the ability to access and thoroughly review exhibits. This proposal ensures that can occur.

Electronic exhibits such as body-camera or surveillance video and recordings are an increasingly prevalent part of trial. Yet requests to clerks' offices to review or obtain copies of these and other electronic exhibits have been met with refusal. The reasons for refusal vary but have included the lack of technology to make copies or IT policies which prevent copying in county computers (but which apparently did not apply to the county computer used to show the exhibit to the judge and jury). And, to be clear, refusal of access to exhibits has not been limited to electronic exhibits, and has involved physical and documentary exhibits as

well. Even counties which previously had no difficulty providing counsel access to exhibits now resist that access.

The proposed rule recognizes the importance of counsel's access to the entire record. The proposal provides clear guidance to all involved. To the extent the proposed rule imposes new costs on clerks' offices, I would suggest a simple amendment to the proposal to allay those fears. Such an amendment could clarify the cost of copying and transmitting the exhibits is borne by the litigants, and in the case of indigent appellants represented by appointed counsel, those costs can be borne by the Office of Public Defense.

I urge the Court to adopt the proposed amendment to RAP 9.6.



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