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To: supreme@courts.wa.gov

Subject: [Rule Proposal Comment] Designation Of Clerk's Papers And Exhibits (Washington State Office of Public Defense)-Jason Walker

Response to: In the matter of the suggested amendments to RAP 9.6 - designation of clerk's papers and exhibits (Order No. 25700-A-1550.)

Digital evidence is proliferating, and this trend will only increase. However, to any extent that the proponents of this suggested rule amendment have identified a legitimate issue, a technological solution would be much more effective in the long term.

The State of Minnesota has implemented a statewide digital evidence management system that would address all the concerns of the proponents, while assuaging the concerns of our state's county clerks. Minnesota's system (MNDES, for MiNnesota Digital Evidence System) allows litigants to upload their digital evidence to a secure system, where it is available through all stages of litigation. See <https://mcaa-mn.org/news/605765/Minnesota-Judicial-Branch-Launches-Digital-Exhibit-System.htm> . This includes appeal. <https://www.mncourts.gov/Help-Topics/Evidence-and-Exhibits.aspx> (click tab labelled "Minnesota Digital Exhibit System (MNDES)" then click the question, "Are the appellate courts able to see exhibits in MNDES").

Some may argue that such a system could not be deployed in Washington because we lack a unified court system. However, despite our nonunified courts, nearly all counties use the Odyssey digital filing system implemented by the Administrative Office of the Courts. Additionally, many more municipal and county (District) courts of limited jurisdiction use the DISCIS/JIS system as well as the forthcoming eFiling system.

Certainly, implementation would come with challenges. There always are in such an undertaking. However, the growth of the use of digital evidence is inevitable, and if we fail to pursue a statewide solution the only alternative will be a fragmented system, with each county pursuing its own option. In such a scenario, smaller, rural counties with less robust tax bases will inevitably be left behind, and these are precisely the counties that the proponents of the suggested amendment complain that they must now travel to.

Courts, clerks and attorneys will have to deal with increasing amounts of digital evidence from now on. A technological solution is inevitable. The only question is whether we take the initiative to implement a unified statewide system, or we risk with multiple, possibly incompatible systems in only the counties who can afford them.

Rather than implement a problematic rule that seems better suited to a bygone era of film, tapes and postal mail, efforts should be directed towards a modern solution to distributing digital data.

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