



King County

Department of Judicial Administration

Catherine Cornwall

Director and Superior Court Clerk

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April 29, 2024

Clerk of the Supreme Court
Temple of Justice
P.O. Box 40929
Olympia, WA 98504-0929

Re: RAP 9.6 and 9.7

Dear Clerk of the Supreme Court,

The King County Superior Court Clerk's Office respectfully submits this extended comment regarding proposed changes to RAP 9.6 DESIGNATION OF CLERK'S PAPERS and RAP 9.7 PREPARING CLERK'S PAPERS AND EXHIBITS FOR APPELLATE COURT.

RAP 9.6

The King County Superior Court Clerk fully supports the comments submitted by the Washington State Association of County Clerks (WSACC) regarding the proposed changes to RAP 9.6.

We participated in the work group mentioned in the GR 9 cover sheet and WSACC's comments. The workgroup was formed to address problems that arose due to changes in the way the State Office of Public Defense (OPD) assigns attorneys to cases; namely, that attorneys from the western part of the state are assigned to cases in smaller, more remote counties. These appellate attorneys found it difficult to access trial court records and exhibits in those remote counties. Due to the complex nature of the problem, no resolution came out of that workgroup. The proposed changes to RAP 9.6 and the purpose provided in the GR 9 cover sheet do not contemplate the extent of the issues related to the problem, nor do they reflect that several stakeholders working together were unable to come up with a solution. The King County Superior Court Clerk's Office wants to be part of a solution, but the proposed change, which requires the clerk's offices across the state to shoulder the burden of exhibit management and access without funding for additional staff or technology, is not that solution.

As WSACC points out, the root of the problem is that current exhibit management processes are outdated and have not kept up with changing technology, especially in smaller courts. The King County Superior Court Clerk has implemented an electronic exhibit management system for some types of non-criminal trials. As a courtesy, and as staffing allows, we provide copies of digital exhibits to attorneys upon request. We receive no more than ten such requests per month out of several hundred appeals filed out of King County Superior Court annually. This proposed rule would severely impact King County if we were required to provide copies as proposed in this rule change. We simply do not have the staff to conduct such an enormous volume of work. The GR 9 cover sheet incorrectly states that the proposed rule would not impose a financial burden on the state's clerk's offices due to statutorily

mandated copy fees. Copying documents and exhibits requires staffing as well as reproduction costs, and the copy fees do not fully cover the costs.

Like WSACC, we are concerned about the requirement that clerks must photograph physical exhibits. Our concerns are twofold. First, as WSACC notes, if a clerk creates photographs of exhibits, do those photographs become court records? What kind of records are they, and what obligation does the clerk have to maintain these new photographic records? Additionally, we are concerned that taking photographs, including choosing angles, position, and so forth, would put the clerk's offices in a position of acting as an investigator on behalf of a party rather than remaining the independent record keeper.

The proposed rule requires the clerk to provide copies of all exhibits. What does "all exhibits" mean? All admitted exhibits, including demonstrative exhibits? Does it include exhibits offered but not admitted? As the largest Superior Court in the state, we have the largest number of hearings and trials, and as such, the total number of possible exhibits is overwhelming. We receive Notices of Appeal for hundreds of cases every year. In our experience, appellate attorneys only designate a small fraction of all the trial exhibits when designating Clerk's Papers. We simply do not have adequate staff to provide appellate counsel copies of all exhibits in all these cases.

The King County Superior Court Clerk provides access to court records and exhibits now, and we always have. Attorneys and all members of the public are welcome to view, photograph, and copy exhibits at our offices during our regular business hours. We permit customers to bring their own equipment to scan, copy, or otherwise memorialize exhibits.

Our understanding is that the OPD does not wish to require their staff to travel to remote counties to view and copy exhibits. However, the effect of the proposed rule is to shift this investigative and legal work onto the clerk's offices. As the WSACC stated, it is the trial attorney's responsibility to provide their files to the appellate attorney pursuant to RAP 15. Trial counsel of necessity must have physical access to the court location where the court records and exhibits are kept to adequately represent their clients. Perhaps an interim solution for OPD would be to have trial counsel physically visit the clerk's office to review, copy, and photograph exhibits for appellate counsel as part of their duty to provide all the information required to conduct an appeal.

A better and more permanent solution to the problem is to implement a statewide exhibit management system that puts all clerk's offices on the same footing, does not require substantial additional clerk staff, and does not require the clerk's offices to alter or manipulate exhibits. The onus should not be on the clerk's office to create a digital exhibit record. The obvious solution is a statewide digital exhibit system where the parties submit digital exhibits that are maintained safely and securely, and where the parties can access exhibits without requiring clerks to alter or manipulate exhibits in any way.

The King County Superior Court Clerk's Office fully supports the implementation of a statewide exhibit management system to help alleviate the burdens on all stakeholders, and we would be happy to share our experience and lessons learned from our own electronic exhibit management endeavors with AOC and other stakeholders.

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The changes mandated by the proposed rule would be unmanageable for the King County Superior Court Clerk's Office and staff, and due to the immense scope of the issue, we respectfully request that the Supreme Court not adopt the proposed rule.

If the Supreme Court is still considering adopting OPD's proposed changes to RAP 9.6, King County Superior Court Clerk's Office joins WSACC's request for a public hearing.

RAP 9.7

The proposed changes to RAP 9.7 add a requirement for the court clerk's offices to provide copies of Clerk's Papers to parties as well as to the Court of Appeals:

Within 14 days of receiving payment, the clerk shall forward the clerk's papers to the appellate court and to each party that has paid for copies.

The King County Superior Court Clerk's Office has a process in place for parties to obtain copies of Clerk's Papers. After the request for Clerk's Papers is processed and provided to the Court of Appeals, the Clerk's Papers are available for parties to order online from our KC Script Portal. Customers may also come to our offices during regular business hours to view the Clerk's Papers from our records access terminals. As such, we recommend adjusting the language as follows:

Within 14 days of receiving payment, the clerk shall forward the clerk's papers to the appellate court and to each party that has paid for copies. If the clerk's office has a system for online digital record ordering, copies of clerk's papers shall be ordered by the party via the online system.

Sincerely,



Catherine Cornwall

Director and Superior Court Clerk

King County Superior Court Clerk's Office

From: [OFFICE RECEPTIONIST, CLERK](#)
To: [Martinez, Jacquelynn](#)
Subject: FW: Comments for Rules RAP 9.6 and RAP 9.7
Date: Monday, April 29, 2024 11:21:42 AM
Attachments: [image001.png](#)
[DJA Letter re RAP 9.6 and 9.7.docx.pdf](#)

From: Willoughby, Elizabeth <Elizabeth.Willoughby@kingcounty.gov>
Sent: Monday, April 29, 2024 11:12 AM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Comments for Rules RAP 9.6 and RAP 9.7

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Clerk of the Supreme Court,

Attached are comments to rules RAP 9.6 and RAP 9.7. Comments have been uploaded directly to Rules for Comment site on the Washington Courts website, however, as they were not immediately accessible for viewing, I wanted to follow up to ensure comments have been submitted.

Thank you,

Elizabeth Willoughby
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