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Subject: FW: Comment re Proposed RAP 9.6 - Designation Of Clerk's Papers And Exhibits (Washington State Office of Public Defense)
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From: Richard Lechich <richard@washapp.org>
Sent: Tuesday, April 30, 2024 1:41 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Comment re Proposed RAP 9.6 - Designation Of Clerk's Papers And Exhibits (Washington State Office of Public Defense)

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I urge the Court to adopt the proposed rule. In my decade of appellate practice, I routinely review, designate, and cite to exhibits. Under the RPCs and the constitutional right to effective assistance of counsel, I believe I have a duty to generally review the admitted exhibits when they are the form of a document, photograph, or video. Ideally, I like to do so while I am reviewing the transcripts and clerk's papers. I have spotted issues in my review of exhibits and they have become central issues in the appeal. For example, in my review of a 911 call on a CD that was admitted as exhibit, I discovered additional files and pictures on the CD which had not been admitted into evidence, but had been sent to the jury. If I had not reviewed the CD, I would have not discovered this.

But sometimes my requests for copies of exhibits are delayed or even denied.

For example, last fall 2023, I was working on brief in a homicide case arising out of King County (Seattle), *State v. Hogan*, No. 84796-1-I, with a large record and many exhibits. Excluding a copy of an excel file containing juror questionnaires, the clerk's office refused to copy any files and send them to my office. I was told in emails that I could come down any time to review the exhibits. When I traveled to the clerk's office, however, I was told that I needed to have an appointment. Despite being told that the clerk's office did not have the capacity to copy the exhibits at that time, I was told that copies could be made following my viewing appointment and paying the scheduled fees for copies. Otherwise, I could take pictures using my own devices during the appointment.

After arranging an appointment, I returned the next week to view hundreds of exhibits in the tiny viewing room. Stacks of paper exhibits, consisting of photos and written documents were passed through a secured glass window with a court clerk on the other side. To access electronic exhibits, I was provided a wireless mouse to control a laptop that was preloaded with the electronic exhibits. The laptop remained with the clerk, but the computer was connected by wires to a monitor on my side with small speakers. Over the next hour or two, I took photos and recorded video using my

phone of exhibits that I found relevant. This was not an effective use of time.

It is the year 2024. Courts should be capable of copying exhibits and providing copies to counsel. Reviewing exhibits is an essential part of counsel's job of reviewing the record and providing effective assistance on appeal.

The rule should be adopted.

Richard Lechich, Staff Attorney
Washington Appellate Project
206-587-2711