From: OFFICE RECEPTIONIST, CLERK
To: Martinez, Jacquelynn
Subject: FW: Comment re: Amendment to RAP 9.6 in Opposition
Date: Tuesday, April 30, 2024 8:14:41 AM

From: Ruth Gordon <ruthinpt@yahoo.com>
Sent: Tuesday, April 30, 2024 12:38 AM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Comment re: Amendment to RAP 9.6 in Opposition

To the honorable members of the Supreme Court,

Greetings. I write regarding the suggested amendments to RAP 9.6 DESIGNATION OF CLERK'S PAPERS AND EXHIBITS and the GR9 Cover Sheet, Proponent Washington State Office of Public Defense.

Prior to my retirement I served as clerk in a one-judge Superior Court for eighteen years, and for most of that time I was the appellate clerk. I've read all the RAP 9.6 comment letters that are posted online as of April 29th, and notice a common complaint – even clerks' offices that used to provide ready access to exhibits now delay, resist or refuse to provide access to exhibits for appellate counsel review. That situation cannot be addressed by a change in rule language; it results from a lack of resources in clerks' offices across the state.

Advances in records technology have made the administration of court records in general and exhibits in particular more complex, time consuming and expensive. Thirty-nine counties are on their own regarding software and hardware purchases, LAN security, and staffing. Without some kind of state-based exhibit transfer system there will be no uniformity of access to local records, no matter what rule is adopted, because the culture and capacity of each courthouse will continue to evolve in its own way. No

county prioritizes adding court clerk staff, and thus offices that used to be able to provide satisfactory service are now apparently disappointing appellate counsel with their lack of responsiveness. I can understand why the appellate counsel seek improved and timely access to exhibits, but spelling out new duties for the clerk in RAP 9.6 will not give the expected result. It is likely to further degrade the relationship between the stakeholders. The posture of the sponsors has been adversarial to the clerks, in my opinion, since September, 2022. Adopting this rule change without providing any assistance to make compliance feasible will lead to dissatisfaction for anyone.

In addition, I wonder if the suggested rule language says what it is meant to convey. If “all” means all, then the language is too broad. Surely justice does not require review of every exhibit that was presented to the clerk but never mentioned in trial. It is regular protocol in our county for the prosecutor to prepare every possible exhibit, and only offer three to ten percent of those exhibits at trial. However, the clear meaning of “all” would be everything marked for identification. Do the sponsors mean all admitted exhibits? If so, that is what the rule should say.

To the attorneys who wonder why it’s not safe for the clerk to make a digital copy but it’s okay for the trial counsel to do it, many counties have a policy that prohibits staff from inserting media into any computer on the Local Access Network. During trial, counsel play the media from their own laptops, then provide the media to the court clerk as an exhibit. The media is retained but never played by the clerk. And this is a real problem, because 1) the clerk has no idea if the exhibit is accessible from the media, 2) if it’s contaminated and we send it to the COA, that’s bad, and 3) if it wasn’t contaminated but we check it out to trial counsel to make a copy and their system contaminates the exhibit during duplication, that’s also bad. We just do not have electronic exhibit control figured out at this time. This request for a rule change highlights a problem we need to work together to resolve.

Mr. Link states that the cost of providing copies of exhibits can be paid by the requester. The statutory costs do not begin to cover the county’s expense. To have a workstation in the clerk’s office dedicated to copying digital exhibits the county would need to purchase the workstation for say, $2000 and would charge the department’s budget an additional $1800 annually for tech support. In a small county we might have five appealed

criminal convictions in a year. Maybe three of those would have an audio or video exhibit. How would we cover the cost of those copies? Let alone successfully justify the increase in our budget to procure the dedicated workstation? Every county is different, but that is what I saw in my office.

All this to say I oppose adoption of the proposed amendments to RAP 9.6.

But I do think the appellate counsel should have access to trial exhibits. While the AOC works toward implementing an exhibit sharing technology that all stakeholders can use to accomplish access without travel to a courthouse, perhaps the out-of-town counsel could contract with in-town counsel to review the clerk's exhibits and make copies as needed for appellate counsel's use? While some exhibits may hold the key to overturning conviction, most are not going to figure in an appellate brief and would not need to be copied.

Alternately, I know it is common procedure for our local public defender to retain all trial exhibits and other documents on file until they receive notice that all appeals are completed. Using the rule already on the books, maybe appellate counsel could contract with trial counsel to transfer the trial record for use during the appeal? It would not be that hard for trial counsel to put everything into a fixed price USPS mail carton after trial and when the perfection letter is received send it all off certified return receipt. RAP 15.2(e) could work.

Respectfully,
Ruth Gordon
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