WASHINGTON APPELLATE PROJECT
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April 29, 2025

Washington Supreme Court
P.O. Box 40929
Olympia, WA 98504

Re: Proposed Amendment of RAP 18.17

Dear Justices:

The Washington Appellate Project asks the Court to reject the proposed amendment to RAP 18.17.

The language of the amendment states "[t]he specified length limits in RAP 18.17(c) already anticipate complex appeals and those with significant records." But no rule ever contemplates anything other than the ordinary. From their inception in 1976, the rules themselves have recognized that, as RAP 1.2(c) expressly directs, courts must liberally interpret the rules and waive most any provision to serve the ends of justice. *See also* RAP 18.8(a). RAP 18.17 is no different.

Prior to RAP 18.17's adoption in 2021, RAP 10.4 and other rules governed the permissible lengths of filings. Although RAP 18.17 converted the former page limits to the current word count, the "length limitations under new 18.17 are basically unchanged" from former RAP 10.4(b) and other rules and merely reflect the same length limitations "expressed differently." *See* 3 *Wash. Prac., Rules Practice, RAP 10.4*, author's comments on length of brief (9th ed. May 2025 updated). Those prior rules, on which RAP 18.17 is based, were adopted in the 1970s and could not contemplate the complexities of litigation a half century later.

As one example, after Congress adopted the Antiterrorism and Effective Death Penalty Act in 1996, a person's ability to seek a writ of habeas corpus in federal court requires they first exhaust any federal claim in state court. Thus, a direct appeal in a criminal case may require claims which otherwise may objectively seem to be unlikely to prevail in state court. Indeed, this obligation requires counsel raise issues they know will lose in state court, so they may later prevail on that claim in federal court. This exhaustion requirement did not exist until 20 years after the Rules of Appellate Procedure took

effect. That requirement certainly was not contemplated when the drafters determined the appropriate length of a brief in a criminal case.

Regardless of the complexity of the case or length of the record, case records have increased significantly in length and complexity over time. For example, in criminal cases the advent of body cameras and the availability of video surveillance have significantly increased the amount of discovery and complexity of issues litigated, contributing to an increase in length of transcripts and number of exhibits, among other things.

The Rules of Appellate Procedure appropriately contemplate the normal case. In the 31 years of the Washington Appellate Project's existence, pleadings exceeding the page limit or the current word limit, have always been a small number of the total filings. The same is true of the pleadings filed by opposing counsel. In that small number of filings, courts have employed existing rules, sometimes refusing the filing, sometimes allowing a shorter yet still overlength filing, and often granting the request. That experience suggests neither attorneys nor courts have struggled to apply existing rules. The amendment's proponents do not suggest that overlength documents are common, that litigants are abusing the existing rule, or that courts need guidance in considering motions. Experience shows the amendments are unnecessary. There is no reason for anything more.

The Washington Appellate Project asks the Court to reject the proposed amendment to RAP 18.17.

Sincerely,

Gregory C. Link, Director
Attorney At Law

From: OFFICE RECEPTIONIST, CLERK
To: Farino, Amber
Cc: Ward, David
Subject: FW: Washington Appellate Project Comments
Date: Wednesday, April 30, 2025 8:55:54 AM
Attachments: image003.png
Wash. App. Proj. Comment CrR 3.1, CrRLJ 3.1, JuCR 9.2 (appeals).pdf
Wash. App. Proj. Comment GR 14.pdf
Wash. App. Proj. Comment RAP 10.2.pdf
Wash. App. Proj. Comment RAP 18.17.pdf

From: Greg Link <greg@washapp.org>
Sent: Wednesday, April 30, 2025 8:54 AM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Washington Appellate Project Comments

Please find attached the Washington Appellate Project's comments on the following proposed rule changes:

CrR 3.1/CrRLJ 3.1/JuCR 9.2 Standards for Indigent Defense(appellate)
GR 14
RAP 10.2
RAP 18.17

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