THE SUPREME COURT OF WASHINGTON

IN THE MATTER OF THE SUGGESTED AMENDMENT TO RAP 9.2–VERBATIM REPORT OF PROCEEDINGS	)	**O R D E R**
	)	NO. 25700-A-1605

Attorney Christopher Taylor, having recommended the suggested amendment to RAP 9.2–Verbatim Report of Proceedings, and the Court having approved the suggested amendment for publication;

Now, therefore, it is hereby

ORDERED:

(a) That pursuant to the provisions of GR 9(g), the suggested amendment as attached hereto is to be published for comment in the Washington Reports, Washington Register, Washington State Bar Association and Administrative Office of the Court's websites in January 2025.

(b) The purpose statement as required by GR 9(e) is published solely for the information of the Bench, Bar and other interested parties.

(c) Comments are to be submitted to the Clerk of the Supreme Court by either U.S. Mail or Internet E-Mail by no later than April 30, 2025. Comments may be sent to the following addresses: P.O. Box 40929, Olympia, Washington 98504-0929, or supreme@courts.wa.gov. Comments submitted by e-mail message must be limited to 1500 words.

DATED at Olympia, Washington this 10th day of October, 2024.

For the Court

González, C.J.

GENERAL RULE 9

RULE AMENDMENT COVER SHEET

SUGGESTED AMENDMENT TO RAP 9.2

1. **Proponent:** Christopher Taylor (WSBA #38413)

2. **Spokesperson:** Christopher Taylor (taylor@crtaylorlaw.com)

3. **Purpose:**

I am suggesting a modification of RAP 9.2(b) that removes the second sentence, which currently reads, "A verbatim report of proceedings provided at public expense should not include the voir dire examination or opening statements unless appellate counsel has reason to believe those sections are relevant to the appeal or they are requested by the client for preparing a statement of additional grounds."

I am making this suggested change for three reasons.

First, I am concerned that because the way the rule is currently structured, some appellate counsel treat this as discouraging the preparation of a VRP containing voir dire examination or opening statements at the outset of the representation as a default position.

Basically, the rule suggests opening statements and voir dire examination are presumed to be irrelevant on appeal. This presumption can only be overcome if appellate counsel is informed independently (e.g. by trial counsel) that something of import occurred during those phases of the trial. If that independent source doesn't tip appellate counsel off (e.g. if trial counsel and appellate counsel don't communicate fully, or if trial counsel doesn't realize that something of note occurred during voir dire examination or opening statement and therefore neglects to mention it), some otherwise meritorious issues may be inadvertently waived.

Second, after hearing Chief Justice González speak at a CLE in March of 2024, I was struck by his poor opinion of how trial counsel are conducting voir dire examination. I believe that belief may be widespread amongst appellate courts. I also believe that belief may be exacerbated by the narrow opportunities appellate courts have to review how voir dire examination is actually conducted in ordinary cases. If the only jury selection proceedings to which appellate courts are routinely exposed are those in which appellate counsel has determined a problem occurred, that would tend to make it appear that the quality of voir dire examination in general is problematic.

Third, GR 37(g)(v) identifies, as a circumstance the court should consider in ruling on an objection to the exercise of a peremptory challenge, "whether the party has used peremptory challenges disproportionately against a given race or ethnicity, in the present case or in past cases." Without voir dire examination being routinely transcribed, it is more difficult to make a record about disproportionate use of peremptory challenges in past cases.

The only purpose in favor of the current inclusion of the second sentence of RAP 9.2(b) appears to be avoiding unnecessarily expending public resources. However, RAP 9.2 elsewhere already instructs the parties to "arrange for transcription of all those portions of the verbatim report of proceedings necessary to present the issues raised on review," and permits a party to "arrange[] for less than all of the verbatim report of proceedings." The idea of having only part of a trial transcribed, and therefore avoiding unnecessary costs, is already baked in to the rule, even without the sentence I am suggesting be removed.

The second sentence of RAP 9.2(b) is, essentially, redundant and unnecessary to further the goal of reducing costs. But by signaling two parts of the trial—voir dire examination and opening statements—are presumed irrelevant, with all other parts of the trial as having no presumption whatsoever—leaving the decision of whether to designate certain parts of the record to appellate counsel's discretion, as determined by whether appellate counsel believes them necessary to present the issues raised on review—serves no legitimate purpose.

4. **Is a Public Hearing Recommended?** I am not taking any position on whether a public hearing is needed.

5. **Is Expedited Consideration Requested?** I don’t believe exceptional circumstances justifying expedited consideration of the suggested rule exist.

SUGGESTED AMENDMENT TO
RAP 9.2
VERBATIM REPORT OF PROCEEDINGS

(a) [Unchanged.]

(b) Content. A party should arrange for the transcription of all those portions of the verbatim report of proceedings necessary to present the issues raised on review. ~~A verbatim report of proceedings provided at public expense should not include the voir dire examination or opening statements unless appellate counsel has reason to believe those sections are relevant to the appeal or they are requested by the client for preparing a statement of additional grounds.~~ If the party seeking review intends to urge that a verdict or finding of fact is not supported by the evidence, the party should include in the record all evidence relevant to the disputed verdict or finding. If the party seeking review intends to urge that the court erred in giving or failing to give an instruction, the party should include in the record all of the instructions given, the relevant instructions proposed, the party's objections to the instructions given, and the court's ruling on the objections. Unless the parties agree that a cost bill will not be filed under RAP 14.2, the party claiming indigency on appeal should include in the record all portions of the trial court proceedings relating to all trial court decisions on indigency and relating to any trial court decisions on the offender's current or likely future ability to pay discretionary legal financial obligations.

(c)–(f) [Unchanged.]