

WSR 22-01-105
RULES OF COURT
STATE SUPREME COURT
[December 6, 2021]

IN THE MATTER OF THE) ORDER
SUGGESTED AMENDMENTS TO) NO. 25700-A-1402
RAP 9.2—VERBATIM REPORT OF)
PROCEEDINGS)

The Washington Appellate Courts Rules Committee, having recommended the suggested amendments to RAP 9.2—Verbatim Report of Proceedings, and the Court having approved the suggested amendments for publication;

Now, therefore, it is hereby

ORDERED:

(a) That pursuant to the provisions of GR 9(g), the suggested amendments as shown below are 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 2022.

(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, 2022. 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 6th day of December, 2021.

For the Court

Gonzalez, C.J.

CHIEF JUSTICE

GR 9 COVER SHEET

Suggested Amendment
Rules of Appellate Procedure
Rule 9.2 - Verbatim Report of Proceedings

A. Proponent: Washington State Court of Appeals Rules Committee

B. Spokesperson: Judge Bradley Maxa, Chair

C. Purpose: RAP 9.2(d) provides that, if a party fails to make arrangements for payment of the costs of the verbatim report of proceedings when the report is ordered, the party may be subject to RAP 18.9 sanctions. As currently worded, the rule does not provide a consequence for failing to pay for the cost of a completed verbatim report of proceedings when that failure causes delay. Some litigants make arrangements to pay for the cost of the verbatim report of proceedings, but, when the report is complete and ready to be filed, the litigant does not pay. A court reporter will not file a completed verbatim report of proceedings without being paid for the work. If the verbatim report of proceedings is not filed due to lack of payment, delay in perfecting the appellate record, briefing, and deciding the merits of the appeal often results.

The proposed amendment to the rule subjects a party who fails to pay for a completed verbatim report of proceedings to RAP 18.9 sanctions when that failure delays the case.

D. Hearing: Not requested.

E. Expedited Consideration: Not requested.

F. Supporting Material: Suggested rule amendment.

RAP 9.2

VERBATIM REPORT OF PROCEEDINGS

(a) Transcription and Statement of Arrangements. If the party seeking review intends to provide a verbatim report of proceedings, the party should arrange for transcription of and payment for an original and one copy of the verbatim report of proceedings within 30 days after the notice of appeal was filed or discretionary review was granted. The party seeking review must file with the appellate court and serve on all parties of record and all named court reporters or authorized transcriptionists a statement that arrangements have been made for the transcription of the report and file proof of service with the appellate court. The statement must be filed within 30 days after the notice of appeal was filed or discretionary review was granted. The party must indicate the date that the report of proceedings was ordered, the financial arrangements which have been made for payment of transcription costs, the name of each court reporter or authorized transcriptionist preparing a verbatim report of proceedings, the hearing dates, and the trial court judge. If the party seeking review does not intend to provide a verbatim report of proceedings, a statement to that effect should be filed in lieu of a statement of arrangements within 30 days after the notice of appeal was filed or discretionary review was granted and served on all parties of record.

(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) Notice of Partial Report of Proceedings and Issues. If a party seeking review arranges for less than all of the verbatim report of proceedings, the party should include in the statement of arrangements a statement of the issues the party intends to present on review. Any other party who wishes to add to the verbatim report of proceedings should within 10 days after service of the statement of arrangements file and serve on all other parties and the court reporter or authorized transcriptionist a supplemental statement of arrangements which

designates the additional parts of the verbatim report of proceedings and file proof of service with the appellate court. If the party seeking review refuses to provide the additional parts of the verbatim report of proceedings, the party seeking the additional parts may provide them at the party's own expense or apply to the trial court for an order requiring the party seeking review to pay for the additional parts of the verbatim report of proceedings.

(d) Payment of Expenses. If a party either fails to make arrangements for payment of the costs of the verbatim report of proceedings at the time the verbatim report of proceedings is ordered or fails to make payment of completed verbatim report of proceedings and causes case delay, the party may be subject to sanctions as provided in rule 18.9.

(e) Title Page and Table of Contents. The court reporter or other authorized transcriber shall include at the beginning of each volume of the verbatim report of proceedings a title page and a table of contents.

(1) The title page should include the following:

- (A) Case name,
- (B) Trial court and appellate cause numbers,
- (C) Date(s) of hearings,
- (D) Trial court judge(s),
- (E) Names of attorneys at trial,

(F) Name, business address and telephone number of each court reporter or other authorized transcriber.

(2) The table of contents shall follow the title page and shall indicate, under the headings listed below, the pages where the following appear:

(A) Proceedings. The beginning of each proceeding and the nature of that proceeding;

(B) Testimony. The testimony of each witness, the page where it begins, and the type of examination, i.e., direct, cross, re-direct, re-cross, and the page where the plaintiff rests and the defendant rests;

(C) Exhibits. The admission into evidence of exhibits and depositions;

(D) Argument. The pages where opening statements occur, except as otherwise provided in rule 9.2(b) for verbatim reports of proceedings provided at public expense, and the pages where closing arguments occur;

(E) Instructions. All instructions proposed and given. Any other events should be listed under a suitable heading which would help the reviewing court locate separate parts of the verbatim report of proceedings.

(F) Multiple Days. If a volume includes hearings from more than one day, there shall be a separate table of contents for each day.

(f) Form.

(1) *Generally.* The verbatim report of proceedings shall be on 8 1/2- by 11-inch paper. Margins shall be lined 1 3/8 inches from the left and 5/8 inches from the right side of each page. Indentations from the left lined margin should be: 1 space for "Q" and "A"; 5 spaces for the body of the testimony; 8 spaces for commencement of a paragraph; and 10 spaces for quoted authority. Typing should be double spaced except that comments by the reporter should be single spaced. The page should have 25 lines of type. Type must be pica type or its equivalent with no more than 10 characters an inch.

(A) Witnesses Designated/Examination. Indicate at the top or bottom of each page the name of the witness and whether the examination is on direct, cross, re-direct, re-cross, or rebuttal.

(B) Jury In/Out. Indicate when the jury is present, when the jury leaves, and when the jury returns.

(C) Bench/Side Bar Conferences. Designate whether a bench/side bar conference is on or off the record.

(D) Chamber Conferences. If the conference is recorded, note the presence or absence of persons participating in chamber conferences.

(E) Speaker/Event Identification. Identify speakers and events that occur throughout the proceedings in capital letters centered on the appropriate line. For example: recess/court reconvene; direct examination, cross examination, re-direct examination, re-cross examination, plaintiff rests; defendant's evidence: direct examination, cross examination, re-direct examination, re-cross examination, defense rests; instructions, conference, closing arguments: for plaintiff, for defense, and rebuttal.

(2) *Volume and Pages.*

(A) Pages in each volume of the verbatim report of proceedings shall be numbered consecutively and be arranged in chronologic order by date of hearing(s) requested in the statement of arrangements.

(B) Each volume of the verbatim report of proceedings shall include no more than 250 pages. The page numbers in the first volume should start with page 1 and continue to 250, as needed, regardless of how many hearing dates are included in the volume. In the second volume of the verbatim report of proceedings and subsequent volumes page numbers should start with the next page number in sequence where the previous volume ended. The volumes shall be either bound or fastened securely.

(3) *Copies.* The verbatim report of proceedings should be legible, clean and reproducible.

References

Form 15, Statement of Arrangements; Title 6, Acceptance of Review.

[Adopted effective July 1, 1976; Amended effective July 2, 1976; September 1, 1985; September 1, 1993; December 10, 1993; September 1, 1994; September 1, 1998; December 24, 2002; September 1, 2010; September 1, 2015; September 1, 2017; September 1, 2018.]