

WSR 23-21-025
RULES OF COURT
STATE SUPREME COURT
[October 3, 2023]

IN THE MATTER OF THE) ORDER
SUGGESTED AMENDMENT TO RAP) NO. 25700-A-1538
9.6—DESIGNATION OF CLERK'S)
PAPERS AND EXHIBITS)

The Washington State Court of Appeals Rules Committee, having recommended the suggested amendment to RAP 9.6—Designation of Clerk's Papers and Exhibits, 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 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 2024.

(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, 2024. 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 3rd day of October, 2023.

For the Court

Gonzalez, C.J.

CHIEF JUSTICE

GR 9 COVER SHEET

Suggested Amendment

Rules of Appellate Procedure

Rule 9.6 - Designation of Clerk's Papers and Exhibits

A. Proponent: Washington State Court of Appeals Rules Committee

B. Spokesperson: Judge Bradley Maxa, Chair

C. Purpose: RAP 9.6(a) requires that a petitioner or appellant file a designation of clerk's papers and exhibits within 30 days after filing a notice of appeal. However, some petitioners and appellants are appointed appellate counsel after a notice of appeal is filed. The proposed amendment acknowledges the reality that appointed appellate counsel are appointed sometime after the notice of appeal is filed, sometimes more than 30 days after the notice of appeal is filed. And, when the party seeking review is represented by appointed counsel, the proposed amendment allows the designation of clerk's papers and exhibits to be filed within 30 days of counsel's appointment.

D. Hearing: Not requested.

E. Expedited Consideration: Not requested.

F. Supporting Material: Suggested rule amendment.

RAP 9.6

DESIGNATION OF CLERK'S PAPERS AND EXHIBITS

(a) **Generally.** The party seeking review should, within 30 days after the notice of appeal is filed or discretionary review is granted, or 30 days after appointment of counsel, whichever is later, serve on all other parties and file with the trial court clerk a designation of those clerk's papers and exhibits the party wants the trial court clerk to transmit to the appellate court. A copy of the designation shall also be filed with the appellate court clerk. Any party may supplement the designation of clerk's papers and exhibits prior to or with the filing of the party's last brief. Thereafter, a party may supplement the designation only by order of the appellate court, upon motion. Each party is encouraged to designate only clerk's papers and exhibits needed to review the issues presented to the appellate court.

(b) **Designation and Contents.**

- (1) The clerk's papers shall include, at a minimum:
 - (A) the notice of appeal or the notice for discretionary review;
 - (B) the indictment, information, or complaint in a criminal case;
 - (C) the summons and complaint or case initiating petition in a civil case;
 - (D) any written order or ruling not attached to the notice of appeal, of which a party seeks review;
 - (E) the final pretrial order, or the final complaint and answer or other pleadings setting out the issues to be tried if the final pretrial order does not set out those issues;
 - (F) any written opinion, findings of fact, or conclusions of law;
 - (G) any jury instruction given or refused that presents an issue on appeal; and
 - (H) any order sealing documents if sealed documents have been designated;
 - (I) in a criminal case where a cost bill may be filed, any order concerning the defendant's indigency and current or likely future ability to pay discretionary legal financial obligations.
- (2) Each designation or supplement shall specify the full title of the pleading, the date filed, and, in counties where subnumbers are used, the clerk's subnumber.
- (3) Each designation of exhibits shall include the trial court clerk's list of exhibits and shall specify the exhibit number and the description of the exhibit to be transmitted.

(c) **Format.**

- (1) Full copies of all designated pleadings shall be included, unless the trial court orders otherwise.
- (2) The trial court clerk shall number the papers sequentially from beginning to end, including any supplemental clerk's papers, regardless of which party designated them.
- (3) The trial court clerk shall make available a copy of the clerk's papers transmitted to the appellate court to any party, upon payment of the trial court clerk's reasonable expenses. If the trial court clerk generates the clerk's papers in electronic format, the trial court clerk shall make available to any party a copy of the clerk's papers in electronic format, upon payment of the trial court clerk's reasonable expenses.