

WSR 23-03-026
RULES OF COURT
STATE SUPREME COURT
[January 5, 2023]

IN THE MATTER OF THE) ORDER
SUGGESTED AMENDMENTS TO) NO. 25700-A-1487
RAP 14.3—EXPENSES ALLOWED AS)
COSTS)

The Washington State Court of Appeals Rules Committee, having recommended the suggested amendments to RAP 14.3—Expenses Allowed as Costs, 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 2023.

(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, 2023. 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 5th day of January, 2023.

For the Court

Gonzalez, C.J.

CHIEF JUSTICE

GR 9 COVER SHEET

Suggested Amendment
Rules of Appellate Procedure
Rule 14.3 - Expenses Allowed as Costs

A. Proponent: Washington State Court of Appeals Rules Committee

B. Spokesperson: Judge Bradley Maxa, Chair

C. Purpose: RAP 14.3 provides for a list of certain allowed costs that a substantially prevailing party on review may recover. This list includes the cost of "preparation of a brief or other original document to be reproduced by the clerk," which is an amount per page fixed by the Supreme Court. The list also includes as cost the lesser of the clerk's charges for reproduction of briefs, petitions, and motions "or the costs incurred by the party reproducing briefs as authorized under rule 10.5(a)," which allows appellate court commissioner or clerk to permit a governmental party to reproduce and directly supply copies of briefs required by the court in lieu of the clerk's reproduction.

In light of the current status of electronic filings, reproduction of briefs or other original documents may not be necessary, and the cost of preparing a brief or other original document as measured by an amount per page appears outdated. The proposed change to RAP

14.3(a) will thus eliminate these costs, while maintaining the cost of the clerk's reproduction charges. Separate proposed changes to RAP 10.5 and RAP 17.4 will make the court's reproduction of briefs and other documents relating to motions discretionary. Additionally, as the court has not utilized the practice of allowing a governmental party to directly supply copies of briefs in lieu of reproduction by the court, a separate proposed change to RAP 10.5 will eliminate this separate practice for a governmental party. Accordingly, the proposed change to RAP 14.3 will also remove the language referring to this practice.

D. Hearing: Not requested.

E. Expedited Consideration: Not requested.

F. Supporting Material: Suggested rule amendment.

RAP 14.3 EXPENSES ALLOWED AS COSTS

(a) Generally. Only statutory attorney fees and the reasonable expenses actually incurred by a party for the following items which were reasonably necessary for review may be awarded to a party as costs: (1) preparation of the original and one copy of the report of proceedings, (2) copies of the clerk's papers, (3) ~~preparation of a brief or other original document to be reproduced by the clerk, as provided in rule 14.3(b),~~ (4) transmittal of the record on review, (4) expenses incurred in superseding the decision of the trial court, but not ordinarily greater than the usual cost of a commercial surety bond, (5) ~~the lesser of the charges of the clerk for reproduction of briefs, petitions, and motions, or the costs incurred by the party reproducing briefs as authorized under rule 10.5(a),~~ (6) the filing fee, and (7) such other sums as provided by statute. If a party has incurred an expense for one of the designated items, the item is presumed to have been reasonably necessary for review, which presumption is rebuttable. The amount paid by a party for the designated item is presumed reasonable, which presumption is rebuttable.

~~(b) Special Rule for Cost of Preparing Brief or Other Original Document. The costs awarded for preparing a brief or other original document is an amount per page fixed from time to time by the Supreme Court. The cost for preparing a brief or other original document will only be awarded for a brief or document which substantially complies with these rules and only for the actual number of pages of the brief or document including the front cover and appendix. If a brief or document is unreasonably long, costs will be awarded only for a reasonable number of pages.~~

(b) Special Rule for Indigent Review. An indigent may not recover costs from the State for expenses paid with public funds as provided in Title 15. The clerk or commissioner will claim costs due from other parties which reimburse the State for expenses paid with public funds as provided in Title 15.

Reviser's note: The typographical errors in the above material occurred in the copy filed by the state supreme court and appear in the Register pursuant to the requirements of RCW 34.08.040.