

WSR 23-21-027
RULES OF COURT
STATE SUPREME COURT
[October 3, 2023]

IN THE MATTER OF THE) ORDER
SUGGESTED NEW RAP 9. ___) NO. 25700-A-1540
APPELLATE COUNSEL ACCESS TO)
TRIAL COURT RECORD AND)
EXHIBITS)

The Washington State Court of Appeals Rules Committee, having recommended the suggested new RAP 9. ___—Appellate Counsel Access to Trial Court Record and Exhibits, and the Court having approved the suggested new rule for publication;

Now, therefore, it is hereby

ORDERED:

(a) That pursuant to the provisions of GR 9(g), the suggested new rule 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 New Rule
Rules of Appellate Procedure
Rule 9. ___

A. Proponent: Washington State Court of Appeals Rules Committee

B. Spokesperson: Judge Bradley Maxa, Chair

C. Purpose: The purpose of the proposed new rule is to facilitate appellate counsel's access to trial court records necessary for appeal. In some circumstances, trial court records are accessible to only counsel of record. See, e.g., RCW 13.50.100 (2), (7). The proposed rule clarifies that appellate counsel must be considered counsel of record for purposes of accessing trial court records regardless of case type. Requiring appellate counsel to file a notice of appearance in the trial court in order to access the trial court record is inappropriate because appellate counsel typically is not involved in representing the client at the trial court level, and trial court hearings might be ongoing despite the pendency of an appeal or appellate review proceeding.

D. Hearing: Not requested.

E. Expedited Consideration: Not requested.

F. Supporting Material: Suggested new rule.

New Rule

RAP 9. __

APPELLATE COUNSEL ACCESS TO TRIAL COURT RECORD AND EXHIBITS

The clerk of the trial court shall treat appellate counsel who appears for or is appointed to represent a party on appeal as counsel for the party for purposes of accessing the trial court record, including sealed and confidential records in juvenile proceedings. The clerk may require appellate counsel to provide the name of a specific attorney serving as appellate counsel, not simply the name of the appointed law firm or organization.