

THE SUPREME COURT OF WASHINGTON

IN THE MATTER OF THE SUGGESTED)
AMENDMENTS TO RAP 10.10—STATEMENT OF)
ADDITIONAL GROUNDS FOR REVIEW)
)
)
_____)

ORDER

NO. 25700-A-1453

The Office of Public Defense, having recommended the suggested amendments to RAP 10.10—Statement of Additional Grounds for Review, 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 attached hereto 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.

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OF ADDITIONAL GROUNDS FOR REVIEW

DATED at Olympia, Washington this 9th day of June, 2022.

For the Court


González, C.J.

GR 9 COVER SHEET

Suggested Amendments Rules of Appellate Procedure RAP 10.10

STATEMENT OF ADDITIONAL GROUNDS FOR REVIEW

- A. Proponent:** Washington State Office of Public Defense
- B. Spokesperson:** Gideon Newmark, Appellate Program Manager
- C. Purpose:** Washington State Rule of Appellate Procedure (RAP) 10.10 is an important feature of appellate public defense in Washington. It permits indigent clients to file a Statement of Additional Grounds (SAG), ensuring that clients are not forced to choose between having the benefit of appointed counsel and being able to raise the appellate issues they choose. But the SAG process is currently limited by the lack of state funding for clients to receive copies of the entire record. This suggested RAP amendment corrects this needless and detrimental limitation.

RAP 10.10(e) entitles clients in criminal cases to receive a copy of the transcripts on direct appeal, for the purpose of preparing a SAG. Under this subsection, attorneys print copies of the transcripts and send them to clients. OPD reimburses the attorneys for this expense. RAP 10.10(e) is silent as to clerk's papers and exhibits, however, which OPD has long interpreted as not authorizing funding for clients to receive copies of these vital parts of the record.

Appointed attorneys are not ethically required to provide copies of the entire record to their clients at their own expense. As stated in Washington State Bar Association ethics opinion number 2117, while the client file ultimately belongs to the client, the lawyer is obligated to turn over the file only at the *conclusion* of the representation. Nothing in the ethics opinion suggests that lawyers for indigent clients must print out the file at their own expense to give their clients a copy *during* the representation. Because

appellate attorneys in the present day work exclusively with electronic files, and because incarcerated clients are generally barred from possessing or reviewing electronic legal files, printing is necessary if clients are to be able to review the entire record when preparing a SAG.

Some appellate attorneys provide copies of clerk's papers and exhibits to clients at their own expense, but many find they are not able to do so given the levels of compensation for indigent appellate defense. This is a frequent source of friction between lawyers and clients.

Clients often reasonably believe that if they are entitled to file a SAG, they should be entitled to review the entire record. While RAP 10.10(c) does not require citations to the record in a SAG, a SAG must identify the "nature and occurrence" of any errors. The RAP exempts the appellate courts from any requirement to search the record to support claim of error in a SAG. Thus, lack of access to the complete record makes drafting a SAG that identifies the "nature and occurrence" each issue much more difficult.

In order to fully implement the right to file a SAG and bolster access to justice in Washington, this Court should adopt this suggested rule amendment.

D. Hearing: A hearing is not requested

E. Expedited Consideration: Expedited consideration is not requested.

F. Supporting Material: Suggested rule amendment

SUGGESTED AMENDMENT
RULES OF APPELLATE PROCEDURE (RAP)
RAP 10.10 STATEMENT OF ADDITIONAL GROUNDS FOR REVIEW

1 **(a) Statement Permitted.** In a criminal case on direct appeal, the defendant
2 may file a pro se statement of additional grounds for review to identify and discuss
3 those matters related to the decision under review that the defendant believes have
4 not been adequately addressed by the brief filed by the defendant’s counsel.

5 **(b) Length and Legibility.** The statement may be submitted in handwriting
6 so long as it is legible and can be reproduced by the clerk. The statement should
7 comply with the formatting requirements and length limitations of RAP 18.17.

8 **(c) Citations; Identification of Errors.** Reference to the record and citation
9 to authorities are not necessary or required, but the appellate court will not
10 consider a defendant’s statement of additional grounds for review if it does not
11 inform the court of the nature and occurrence of alleged errors. Except as required
12 in cases in which counsel files a motion to withdraw as set forth in RAP 18.3(a)(2),
13 the appellate court is not obligated to search the record in support of claims made
14 in a defendant’s statement of additional grounds for review. Only documents that
15 are contained in the record on review should be attached or referred to in the
16 statement.

1 **(d) Time for Filing.** The statement of additional grounds for review should
2 be filed within 30 days after service upon the defendant of the brief prepared by
3 defendant’s counsel and the mailing of a notice from the clerk of the appellate
4 court advising the defendant of the substance of this rule. The clerk will advise all
5 parties if the defendant files a statement of additional grounds for review.

6 **(e) ~~Report of Proceedings~~ Record on Review.** If within 30 days after
7 service of the brief prepared by defendant’s counsel, defendant requests a copy of
8 the ~~verbatim report of proceedings~~record from defendant’s counsel, counsel should
9 promptly serve a copy of the ~~verbatim report of proceedings~~record, including the
10 verbatim report of proceedings, clerk’s papers, and exhibits transmitted to the
11 Court of Appeals, on the defendant, and should file in the appellate court proof of
12 such service. The pro se statement of additional grounds for review should then be
13 filed within 30 days after service of the ~~verbatim report of proceedings~~record. The
14 cost for producing and mailing the ~~verbatim report of proceedings~~record for an
15 indigent defendant will be reimbursed to counsel from the Office of Public
16 Defense in accordance with Title 15 of these rules.

17 **(f) Additional Briefing.** The appellate court may, in the exercise of its
18 discretion, request additional briefing from counsel to address issues raised in the
19 defendant’s pro se statement.