

Proposed Local Rule (SCLGR 22) submitted by Clerk's Office

The Prosecutor's Office is **opposed** to this change.

The proposed rule dictates how parties and practitioners are to present their case and limits the type of evidence that may be admitted in a hearing. The proposed rule does not contemplate that the original document and/or best evidence may in fact be over 8.5 x 11 in size. It is not appropriate to make a blanket determination as to what is and is not of value as an exhibit. Jurors are only able to review items marked as evidence during deliberations, and they should not be restricted to 8.5x11 sheets of paper. What is or is not needed as evidence is necessarily a case-specific inquiry.

Additionally, the proposed rule indicates that oversized exhibits will not be given an exhibit number when used, including for demonstrative evidence. This is concerning from an appellate perspective. Rules of Appellate Procedure (RAP) 9.1 indicates that the record on review on appeal includes exhibits. All evidence presented to the jury or judge should be given an exhibit number in a trial and/or hearing. A party could challenge the use of a demonstrative exhibit. However, under the proposed rule, because such is not given a number, it would not be preserved for appeal. This could cause case problems in the future. It also may contradict RAP 9.8 which discuss the duty of the trial court clerk regarding exhibits and also has a provision in place for "cumbersome exhibits."

Additionally, WA Court General Rule 20 already seems to address the situation that the proposed rule seeks to resolve. Currently SCLGR 22(a) perfectly mirrors GR 20(a). However, the proposed rule no longer would parallel the state rule. We should not be creating or amending rules that are already addressed for this exact scenario by the state court rules. Finally, there may be issues with access to court records as GR 31 specifically lists exhibits as being part of the "court record." GR 31(d)(1) states that, "[t]he public shall have access to all court records except as restricted by federal law, state law, court rule, court order, or case law." Without giving an item over 8.5 x 11 inches an exhibit number and preserving it, this may limit the public's right to access court records as allowed by the rule.

Proposed Local Rule 10 submitted by Clerk's Office

The proposed modification to rule 10(d)(3) would have the case number prevail on filings where the case name and case number do not match. While it makes sense to have a

uniform policy to handle scrivener's errors, this rule does not actually assist in the goal of getting documents into the correct file.

In the vast majority of all situations with mismatched case names and numbers, the name on the document is correct and the case number is incorrect. If the case number prevails, the policy will be to place documents into the wrong file.

This creates downstream issues when, for example, Attorney A and Attorney B file a continuance intended for the John Doe case but use the cause number for the Jane Smith case involving Attorney C and Attorney D. Attorneys C and D have no way of knowing that other attorneys have created errors in their case file, and would have no reason to check the record in Odyssey to discover the existence of the mislabeled document. All the same, Attorney C and D are now at risk of losing their selected court dates and defendant Smith's time for trial may be affected.

A better policy would be for the case name to prevail in circumstances in which the clerk can easily ascertain the correct cause number (i.e. only one cause number with that defendant and those attorneys associated), and/or to reject filing of all other mismatched documents.