# A Respondent's RAP 9.2 Dilemma: Pay Now or Pay Later

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What does a respondent's counsel do when the appellant has not ordered a full transcript? RAP 9.2 provides an answer, but its procedure for providing the court with an adequate record for appellate review when the appellant fails to do so can pose a headache for the respondent.

**RAP 9.2 allows an appellant to order less than a complete transcript.**

Washington's Rule of Appellate Procedure 9.2(a) places responsibility for ordering a transcript of relevant trial court proceedings squarely on the appellant. The appellant must, within 30 days of filing a notice of appeal,1 "arrange for the transcription of all those portions of the verbatim report of proceedings necessary to present the issues raised on review."2

The appellant must order and certify that they have paid, or made arrangements to pay, the court reporter or an authorized transcriptionist to prepare the verbatim report.3 Given that the cost of transcription exceeds $1,000 for each day of trial, paying for a full trial transcript is an expensive proposition.

If the appellant believes a complete report of proceedings is unnecessary for review, RAP 9.2(c) allows a party to order a partial transcript. That party must provide notice of the portions of the proceedings they wish to have transcribed and must "include in the statement of arrangements a statement of the issues the

party intends to present on review."4 This provision puts the respondent on notice that the appellant believes a complete transcript is unnecessary for the issues the appellant intends to raise.

RAP 9.2 authorizes a respondent to object within 10 days to the appellant's notice of a partial report of proceedings, by filing in the appellate court a supplemental statement of arrangements identifying the additional portions of the verbatim report necessary for a fair review of the issues the appellant has identified. If the appellant refuses to order those additional transcripts, the respondent can order them at their own expense, or file a motion in the trial court to compel "the party seeking review to pay for the additional parts of the verbatim report of proceedings."5

Appellants, not infrequently, fail to comply with the rule when ordering a partial verbatim report. Some appellants omit significant portions of a trial in the hope of saving money. Some fail to identify the issues they intend to raise. Some provide only the vaguest statement of issues. And some may include in their brief an argument that goes beyond the scope of the issue identified in the notice of a partial report of proceedings.

Faced with notice that the appellant is only ordering a portion of the proceedings, a respondent has several options:

- The respondent can do nothing until filing the respondent's brief, and then argue that the appellant has waived the right to review of an issue in the absence of an adequate record.
- Alternatively, the respondent can order the remaining portions of the record at respondent's own expense in the hope of recovering the expense as a taxable cost.
- Or a respondent may apply to the trial court for an order directing the appellant to order the missing portions of the proceedings.

Each alternative has its pitfalls.

**The appellate court may refuse to review an issue in the absence of an adequate record.**

The case law provides ample support for a respondent to argue in their merits brief that the appellant has waived review of an issue by failing to provide an adequate record. For instance, a party cannot challenge the trial court's findings of fact without providing a complete verbatim report of proceedings.6 The failure of an appellant to provide a complete report of trial proceedings may preclude the court from reviewing a claim of evidentiary error.7 A party challenging the denial of a continuance waived review by failing to provide a transcript of the hearing at which the court exercised its discretion.8

Similarly, if the appellant files a brief raising issues that go beyond those identified in the notice of a partial verbatim report of proceedings, the court may refuse to consider those issues.9 Absent a full record, the appellate court will lack the context in which the trial court made its ruling and, thus, be unable to assess the factors the court did and did not consider, or determine whether the challenged ruling was harmless.

But relying on the appellate court to refuse to review an appellant's assignments of error for failure to provide a full report of proceedings has its risks. Absent a report of proceedings, the respondent may be hard pressed to identify the relevance of missing portions of the trial court proceedings or to convince the appellate court that the appellant waived an issue below, for instance by inviting the error complained of or failing to object.

The court's view of an "adequate" record may differ from the respondent's. The respondent runs the risk that the appellate court will consider the issue without reviewing those portions of the record containing evidence or the court's reasoning that may support the trial court's decision.

**Respondents may order additional transcripts at their own expense, or force appellant to do so.**

RAP 9.2 authorizes a respondent to designate additional portions of the record for appellate review, including those portions of the proceedings that the appellant has failed to order in the initial statement of arrangements. The appellate court may rely on a respondent's burden under RAP 9.2(c) to provide the court any missing relevant portions of the record to address an issue raised by the appellant over the respondent's objection that the record is inadequate for appellate review.

As clunky as it may be, RAP 9.2(c)'s procedure shifting to the respondent the duty to identify missing portions of the record was crafted for a reason, and a respondent who ignores that procedure does so at their peril. Rather than penalizing the appellant for failing to provide a sufficient record, the appellate court may tag the respondent, who is on notice that the appellant seeks to transcribe only a portion of the proceedings, for failing to supplement the record as the rule authorizes.

In Marriage of Berg, 47 Wn. App. 754 (1987), the respondent did not object to the appellant's partial report of proceedings, choosing instead to argue that the appellant failed to provide an adequate record for review of the appellant's assignments of error. The court reviewed the issues anyway, holding that "[b]ecause respondent has neither attempted to supplement what has been filed nor indicated more specifically how the omitted testimony is necessary, we are satisfied that the record is sufficient to consider the merits of appellant's argument." 47 Wn. App. at 756.

Berg is not the only published case that has penalized the respondent for failing to supplement the record by obtaining a more complete report of proceedings.10 The lesson of Berg is that a respondent's argument that the record is incomplete to consider the appellant's assignments of error may backfire. Respondent's counsel would do well to make sure the appellant's statement of arrangements contains all relevant trial dates and hearings, and if it does not, that the appellant has identified the issues for appeal.

**Pay now or pay later?**

Under RAP 9.2(c), the first move for a respondent who thinks additional portions of the report are needed is to notify the appellant, within 10 days, that the statement of arrangements is deficient either because it does not include all recorded proceedings or does not identify the issues appellant intends to raise. Competent appellate counsel will usually correct the deficiency.

What if they do not? RAP 9.2(c) gives the respondent the option of (1) ordering at its own expense additional transcripts or (2) filing a motion in the trial court to compel the appellant to do so.

In our experience, it is usually more economical to simply order the additional portions and pay the court reporter at respondent's expense. The court reporter's fees are a recoverable cost under RAP 14.3, whereas the fees incurred for a motion to require the appellant to provide additional portions of the record under RAP 9.2(c) are not. The fees incurred in litigating in the trial court the adequacy of the partial record ordered by an appellant can easily surpass the additional expense of paying the court reporter for additional transcripts.

If a respondent, upon receipt of the appellant's brief, believes that it raises issues beyond those identified in the appellant's notice of partial report of proceedings, the appellate rules allow the respondent to supplement the record by ordering additional transcripts, by filing a supplemental statement of arrangements and a motion in the appellate court explaining why the existing record is inadequate for review.11 RAP 9.10 reflects the appellate court's preference to obtain a complete record rather than dismiss review,12 and the appellate court will usually grant permission to have additional proceedings transcribed even if it delays the due date for the respondent's brief.

All said, it's usually better for a respondent to pay to obtain an adequate record, rather than to gamble on the court's refusal to review an issue based on the appellant's failure to follow the rule.

*Howard Goodfriend is a principal in Smith Goodfriend. He is a former president of both the American Academy of Appellate Lawyers and the Washington Appellate Lawyers Association. Howard can be reached at howard@washingtonappeals.com.*

*1 RAP 9.2(a).*

*2 RAP 9.2(b). The Rules of Appellate Procedure use the term "verbatim report of proceedings" to refer to what the corresponding federal rule calls the "transcript of proceedings." RAP 9.1(b); FRAP 10(a)(2).*

*3 RAP 9.2(a).*

*4 RAP 9.2(c).*

*5 Id.*

*6 Chappel v. Johnson, __ Wn. App. 2d __ ¶¶11-12, 2025 WL 2640908 (2025); Rekhi v. Olason, 28 Wn. App. 751, 753, 626 P.2d 513 (1981).*

*7 Lau v. Nelson, 92 Wn.2d 823, 829, 601 P.2d 527 (1979).*

*8 Bonneville v. Pierce County, 148 Wn. App. 500, 508, ¶12, 202 P.3d 309 (2008), rev. denied, 166 Wn.2d 1020 (2009).*

*9 St. Hilaire v. Food Services of America, Inc., 82 Wn. App. 343, 352, 917 P.2d 1114 (1996).*

*10 See Fairway Collections, LLC v. Turner, 29 Wn. App.2d 204, 228, ¶54, n.25, 540 P.3d 805 (2023) (rejecting request to dismiss appeal; "the rules on appeal allowed Turner to add the transcript ... if he wished.").*

*11 RAP 9.10.*

*12 "[T]he appellate court will not ordinarily dismiss a review proceeding or affirm ... because of the failure of the party to provide the appellate court with a complete record of the proceedings below." RAP 9.10.*