

Supreme Court No. 87009-8

SUPREME COURT
OF THE STATE OF WASHINGTON

Abeda Jafar,

Petitioner,

v.

William Douglass Webb,

Respondent.

PETITIONER'S BRIEF

Brian D. Buckley, WSBA No. 26423
Bradley T. Meissner, WSBA No. 39592
FENWICK & WEST LLP
1191 Second Avenue, 10th Floor
Seattle, WA 98101
Telephone: 206.389.4510
Facsimile: 206.389.4511

Janet Chung, WSBA No. 28535
LEGAL VOICE
907 Pine Street, Suite 500
Seattle, WA 98101-1818
Telephone: 206.682.9552
Facsimile: 206.682.9556

Attorneys for Petitioner Abeda Jafar

2012 JUN 11 P 3:54
STATE OF WASHINGTON
SUPREME COURT
RECEIVED
E

TABLE OF CONTENTS

	Page
I. INTRODUCTION	1
II. ASSIGNMENTS OF ERROR	5
III. STATEMENT OF THE CASE.....	5
IV. ARGUMENT	8
A. The U.S. Constitution and the Washington Constitution Require Courts to Grant Fee Waivers to Indigent Litigants.....	9
1. The Due Process Clause Mandates Fee Waivers for Indigent Litigants in Family Law Matters	9
2. Article I, Section 10 of the Washington Constitution Also Requires Washington Courts to Waive Fees for Indigent Litigants	12
B. GR 34 Was Intended to Give Shape to Indigent Litigants’ Constitutional Rights and to Establish a Uniform Standard for Civil Fee Waivers in Washington Courts.....	16
C. Many Washington Superior Courts Either Ignore or Misinterpret GR 34	24
D. Ms. Jafar Is Entitled to a Complete Waiver of Mandatory Fees and Surcharges Under GR 34.....	31
1. Standard of Review and Principles of Construction.....	32
2. GR 34 is Ambiguous and the Court Should Interpret the Rule to Give Effect to Its Clear Purpose	33

a.	GR 34 Was Intended to Provide Mandatory and Complete Fee Waivers to the Indigent.....	35
b.	The Provisions of GR 34 Should Not Be Rendered Superfluous or Meaningless	42
c.	The Provisions of GR 34 Must Be Interpreted In a Manner That Is Constitutional.....	43
E.	If GR 34 Does Not Require a Complete Waiver of Mandatory Fees and Surcharges for Indigent Litigants, Then GR 34 Is Unconstitutional as Applied to Ms. Jafar.....	44
1.	Ms. Jafar Is Entitled to a Full Fee Waiver Under the Due Process Clause.....	44
2.	Ms. Jafar Is Entitled to a Full Fee Waiver Under the Washington Constitution.....	46
V.	CONCLUSION.....	48

TABLE OF AUTHORITIES

	Page
FEDERAL CASES	
<i>Boddie v. Connecticut</i> 401 U.S. 371 (1971).....	<i>passim</i>
<i>Griffin v. Illinois</i> 351 U.S. 12 (1956).....	1, 11
<i>Wells v. Wellborn</i> No. Civ.A.03-58-D-M3, 2004 WL 3242340 (M.D. La. Oct. 29, 2004)	11
STATE CASES	
<i>Bellevue Fire Fighters Local 1604 v. City of Bellevue</i> 100 Wn.2d 748, 675 P.2d 592 (1984).....	38
<i>Bullock v. Superior Court</i> 84 Wn.2d 101, 524 P.2d 385 (1974).....	11
<i>Clallam County Deputy Sheriff's Guild v. Bd. of Clallam County Comm'rs</i> , 92 Wn.2d 844, 601 P.2d 943 (1979)	36
<i>Doe v. Puget Sound Blood Ctr.</i> 117 Wn.2d 772, 819 P.2d 370 (1991).....	14
<i>Gourley v. Gourley</i> 158 Wn.2d 460, 145 P.3d 1185 (2006).....	32
<i>Hall v. Hall</i> 708 P.2d 416 (Wyo. 1985).....	11
<i>Houser v. State</i> 85 Wn.2d 803, 540 P.2d 412 (1975).....	17
<i>Housing Authority of King County v. Saylor</i> 87 Wn.2d 732, 557 P.2d 321 (1977).....	15, 47

<i>In re Marriage of King</i> 162 Wn.2d 378, 174 P.3d 659 (2007).....	47
<i>In re Marriage of Wilson</i> 117 Wn. App. 40, 68 P.3d 1121 (2003).....	45
<i>Iverson v. Marine Bancorp.</i> 83 Wn.2d 163, 517 P.2d 197 (1973).....	<i>passim</i>
<i>Miller v. Arctic Alaska Fisheries Corp.</i> 133 Wn.2d 250, 944 P.2d 1005 (1997).....	32, 34, 40
<i>O'Connor v. Matzdorff</i> 76 Wn.2d 589, 458 P.2d 154 (1969).....	<i>passim</i>
<i>Onika v. Onika</i> No. 11-3-06586 KNT (King County Super. Ct.) (Oct. 10, 2011).....	29, 30
<i>State v. Balzer</i> 91 Wn. App. 44, 954 P.2d 931 (1998).....	17
<i>State v. Chhom</i> 162 Wn.2d 451, 173 P.3d 234 (2007).....	32, 33, 34, 42
<i>State v. Hecht</i> 173 Wn.2d 92, 264 P.3d 801 (2011).....	16, 36
<i>State v. Hubbard</i> 106 Wn. App. 149, 22 P.3d 296 (2001).....	36
<i>State v. Jackson</i> 137 Wn.2d 712, 976 P.2d 1229 (1991).....	37
<i>State v. Rutherford</i> 63 Wn.2d 949, 389 P.2d 895 (1964).....	13
<i>State v. Waldon</i> 148 Wn. App. 952, 202 P.3d 325 (2009).....	32, 34, 40, 43
<i>Whatcom County v. City of Bellingham</i> 128 Wn.2d 537, 909 P.2d 1303 (1996).....	32, 33, 34, 42

<i>Wyman v. Wallace</i> 94 Wn.2d 99, 615 P.2d 452 (1980).....	17
--	----

STATE STATUTES

RCW 10.101.010	16, 36
RCW 10.101.020	16
RCW 26.09.181	45
RCW 26.09.184, 187	45
RCW 26.26.130(7)(b)	45

OTHER AUTHORITIES

76 Fed. Reg. 3637-02 (Jan. 20, 2011).....	6
Constitution of the State of Washington.....	14
GR 9.....	19, 20, 22, 40
GR 9(e)(2).....	19
GR 34.....	<i>passim</i>
GR 34(a).....	<i>passim</i>
RAP 15.2.....	36, 37
RAP 15.2(a)	37
U.S. Constitution.....	9, 15
Washington Constitution	9, 43, 46, 47
Article I, Section 4, Washington Constitution.....	<i>passim</i>
Article I, Section 10, Washington Constitution.....	<i>passim</i>
Article I, Section 12, Washington Constitution.....	15

I. INTRODUCTION

“Equal justice under law is not merely a caption on the facade of the Supreme Court building, it is perhaps the most inspiring ideal of our society. It is one of the ends for which our entire legal system exists. ... It is fundamental that justice should be the same, in substance and availability, without regard to economic status.”

♦ *Lewis Powell, Jr., U.S. Supreme Court Justice*

Champions of equal justice have long recognized that poverty can be a fundamental barrier to fair access to our legal system. *Griffin v. Illinois*, 351 U.S. 12, 16 (1956) (“Providing equal justice for poor and rich, weak and powerful alike is an age-old problem. People have never ceased to hope and strive to move closer to that goal.”). Washington courts have both the inherent authority and the constitutional obligation to waive court fees where the inability to pay such fees would deny indigent litigants equal access to our courts. But historically there were no uniform standards or criteria to guide Washington courts in determining whether a particular litigant was indigent. As a result, Washington trial courts developed a variety of divergent local standards and practices, leaving individual litigants unable to predict whether they would be found indigent or, if so, which court fees would be waived.

In December 2010, with the aim of eliminating a barrier to equal justice for low-income citizens of Washington state, this Court adopted

General Rule (GR) 34. That rule, which was long overdue, establishes clear standards for trial courts to apply to determine whether a litigant is indigent. Moreover, GR 34 clarified that *all* mandatory fees and charges imposed as a precondition to judicial relief — not just filing fees — are subject to waiver for indigent litigants. By providing a uniform definition of “indigent,” and by defining the universe of fees subject to waiver, GR 34 was intended to bring consistency, predictability, and efficiency to the fee-waiver process in Washington courts.

Unfortunately, GR 34’s core purpose of providing equal access to justice for the poor has not been realized. Superior courts across Washington state either ignore the mandates of GR 34 and refuse to waive fees for the indigent, or erroneously interpret the rule to permit partial fee waivers or fee deferrals for poor litigants. Many trial courts have also failed to adopt the GR 34 pattern form order promulgated by the Administrative Office of the Courts. And several courts have directed stark and intimidating messages to indigent would-be litigants — *before* those individuals have even sought a fee waiver or had a chance to explain their financial condition — informing them that a complete fee waiver is not guaranteed under any circumstances.

The Petitioner in this case, Ms. Abeda Jafar, is the victim of just such a practice ignoring the letter and spirit of GR 34. In January 2012,

Ms. Jafar sought to file a parenting plan action in Snohomish County Superior Court, motivated in part by concerns for the safety of her now two-year-old son with his father. Pursuant to GR 34, Ms. Jafar sought a waiver of all mandatory fees and charges. The Superior Court correctly determined that Ms. Jafar — who is unemployed and has an annual income of less than \$5,000 — is below 125% of the federal poverty guideline, and therefore indigent under GR 34. Nevertheless, using a modified version of the GR 34 pattern form order, the Superior Court ordered Ms. Jafar to pay \$50 in mandatory surcharges within 90 days. If Ms. Jafar fails to pay those charges (which she quite clearly cannot afford), she risks dismissal of her case.

The Snohomish County Superior Court erred in denying Ms. Jafar a complete fee waiver after correctly determining that Ms. Jafar is indigent. GR 34 establishes a concrete, uniform standard to guide the Washington courts' exercise of their constitutional obligation to waive mandatory fees and surcharges for poor litigants, and to make the fee-waiver process consistent and predictable. Those important goals are accomplished only if GR 34 compels a waiver of all mandatory fees and surcharges upon a finding of indigency. And the goals of GR 34 are clearly thwarted if trial courts retain unfettered discretion to deny fee waivers to even the poorest litigants.

Even if this Court were to abandon the laudable purposes of GR 34 and decide that the rule does not require a complete waiver for indigent litigants, Ms. Jafar is still constitutionally entitled to a waiver under both the Due Process Clause of the Fourteenth Amendment and Article I, Section 10 of the Washington Constitution. Therefore, if (and insofar as) this Court interprets GR 34 to permit the Superior Court to deny Ms. Jafar a complete waiver, the rule is unconstitutional as applied to Ms. Jafar. Ms. Jafar therefore respectfully requests that the Court vacate the Superior Court's order and remand this case with instructions to waive all mandatory fees and surcharges, pursuant to GR 34.

Every day across Washington state, litigants are turned away from our courts and denied equal access to justice because they are poor. Refused the complete fee waivers to which they are entitled, indigent litigants are forced to choose between meeting the basic needs of their families or obtaining dissolutions, parenting plans, child support, and other critical forms of relief available only through our legal system. Justice is not for sale, and Washington should not condone or perpetuate a system that withholds justice from the most needy because they cannot pay.

Nearly two years after its adoption, GR 34 is widely ignored and misapplied by Washington courts. The Court must take this opportunity to state definitively the mandates of GR 34, to ensure its uniform application,

and thereby to vindicate the clear and just purpose of the rule to ensure equal access to justice in Washington.

II. ASSIGNMENTS OF ERROR

1. The Superior Court misapplied GR 34 when it ordered Ms. Jafar to pay \$50 in mandatory fees and surcharges, notwithstanding the Superior Court's determination that Ms. Jafar is indigent.

2. In the alternative, insofar as GR 34 permits the Superior Court to order Ms. Jafar to pay \$50 in mandatory fees and surcharges, notwithstanding the Superior Court's determination that Ms. Jafar is indigent, GR 34 is unconstitutional as applied to Ms. Jafar.

III. STATEMENT OF THE CASE

On January 11, 2012, Ms. Jafar sought to file in Snohomish County Superior Court an action to obtain a parenting plan governing custody and visitation of her now two-year-old son. *See Clerk's Papers ("CP") 39-47.* Ms. Jafar sought a parenting plan, in part, due to concerns about her child's safety with his father, Respondent William Douglass Webb. *See CP 10-26.*

Ms. Jafar does not have resources to pay mandatory court fees. Consequently, pursuant to GR 34, Ms. Jafar filed a Motion and Declaration For Waiver of Civil Filing Fees and Surcharges (the "Fee Waiver Motion"), seeking a waiver of all mandatory fees and surcharges

imposed by the Superior Court. CP 4-7. In the Declaration filed with her Fee Waiver Motion, Ms. Jafar stated under penalty of perjury that she cannot afford to meet her necessary household living expenses and also pay the fees and surcharges imposed by the Superior Court. CP 4. Ms. Jafar further stated that she had been dependent on Mr. Webb for everything, that she does not have a checking or savings account, and that she has "\$1.00 to [her] name." CP 5.

With her Fee Waiver motion, Ms. Jafar also submitted a Financial Statement. CP 6. The Financial Statement showed that Ms. Jafar is unemployed, and that her only sources of income for herself and her son are a monthly food stamp benefit and Temporary Assistance for Needy Families ("TANF") cash assistance of \$385 per month. CP 6. Ms. Jafar's Financial Statement also showed that she has \$380 in monthly expenses. CP 6. Based on her \$385 per month in cash assistance, Ms. Jafar's annual income is \$4,620, which is less than 32 percent of the federal poverty guideline of \$14,710 for a family of two. *See Annual Update of the HHS Poverty Guidelines*, 76 Fed. Reg. 3637-02 (Jan. 20, 2011).

On January 11, 2012, the Superior Court entered its Fee Order. CP 1-3. The Fee Order was entered using an altered version of the GR 34 pattern form order developed by the Administrative Office of the Courts.

CP 1-3. The Superior Court correctly found that Ms. Jafar is indigent, as defined in GR 34, because her household income is at or below 125 percent of the federal poverty guideline. CP 1. Based on that finding, the Superior Court granted Ms. Jafar a partial waiver of \$200 in filing fees, but nevertheless ordered her to pay a “\$20 facilitator surcharge” and a “\$30 Judicial Stabilization surcharge” within 90 days. CP 2. The Snohomish County filing fees also include a \$30 domestic violence prevention surcharge, but the Fee Order is silent on whether that surcharge is waived. CP 2. Consequently, Ms. Jafar may in fact ultimately be required to pay \$80.

Given Ms. Jafar’s extreme poverty and lack of resources, she cannot possibly afford to pay the \$50 ordered by the Superior Court (let alone \$80, if that is the amount ultimately due). As set forth in her sworn Financial Statement, Ms. Jafar’s monthly income just covers her most basic living expenses. CP 6. But if she fails to pay the ordered charges, Ms. Jafar risks having her case dismissed and being denied the parenting plan that is critical to the safety and welfare of her very young son. *See* Snohomish County Fee Waiver Application Packet (Appendix Tab A), at 5 (“If the Court defers payment of your fees to a later date, make your payment as ordered *or your action may be dismissed for nonpayment of these fees.*”) (emphasis added).

On February 23, 2012, Ms. Jafar filed her Motion for Discretionary Review and Statement of Grounds for Direct Review with this Court. On March 27, 2012, this Court granted review.

IV. ARGUMENT

“There can be no equal justice where the kind of trial a man gets depends on the amount of money he has.”

♦ *Hugo Black, U.S. Supreme Court Justice*

As discussed in detail below, the Superior Court erred when it required Ms. Jafar to pay \$50 in mandatory surcharges within 90 days or risk dismissal of her case. As the Superior Court correctly determined, Ms. Jafar is undeniably indigent within the meaning of GR 34 (or by any rational or objective measure). The intent of GR 34, as established by substantial evidence contemporaneous with its adoption, was to create a uniform statewide process to ensure the waiver of all mandatory court fees and surcharges for poor litigants. By refusing Ms. Jafar a full waiver, the Superior Court violated both the letter and the spirit of GR 34.

Moreover, Ms. Jafar is entitled to a complete fee waiver independent of GR 34’s requirements. Ms. Jafar is indisputably indigent and proceeding in good faith in her parenting plan action, and under Washington law Ms. Jafar cannot secure a binding parenting plan for the care and custody of her young son without resort to the courts.

Consequently, Ms. Jafar has a constitutional right to a complete waiver of all fees and charges, under both the Fourteenth Amendment's Due Process Clause and Article I, Section 10 of the Washington Constitution. If GR 34 is interpreted to permit the Superior Court to grant Ms. Jafar less than a full fee waiver, then GR 34 is unconstitutional as applied in this case.

A. **The U.S. Constitution and the Washington Constitution Require Courts to Grant Fee Waivers to Indigent Litigants.**

It has been settled law for over forty years that Washington courts have the authority, and in many cases the obligation, to waive mandatory court fees for indigent civil litigants. That authority and obligation stem from two sources: the Fourteenth Amendment's Due Process Clause and Article I, Section 10 of the Washington Constitution, which guarantee the right of access to Washington's courts.

1. **The Due Process Clause Mandates Fee Waivers for Indigent Litigants in Family Law Matters.**

The Due Process right to a civil fee waiver based on indigency was first articulated by the U.S. Supreme Court in *Boddie v. Connecticut*, 401 U.S. 371 (1971). In *Boddie*, several recipients of public assistance were denied the right to pursue divorce proceedings, based on their inability to pay filing fees. Those would-be litigants filed a class action claiming that a Connecticut statute requiring the payment of court fees as a

condition precedent to judicial relief was unconstitutional as applied to the class. *Id.* at 372-73.

In considering the plaintiffs' claims on appeal, the U.S. Supreme Court noted that its previous Due Process right-of-access jurisprudence had mostly centered on the rights of *defendants*. But because states extensively regulate marriage, including by requiring judicial involvement in divorce proceedings, the Court recognized that for plaintiffs in divorce actions "[r]esort to the judicial process ... is no more voluntary in a realistic sense than that of the defendant called upon to defend his interests in court." *Boddie*, 401 U.S. at 375-77. The Court then distilled from its prior Due Process jurisprudence two overarching principles: (1) where states force individuals to resolve particular disputes through the judicial system, all such individuals must be afforded a meaningful opportunity to be heard, *id.* at 377-79; and (2) a generally valid statute or court rule may be unconstitutional as applied when it operates to deprive an individual of Due Process in a particular case. *Id.* at 379-80 ("[A] cost requirement, valid on its face, may offend due process because it operates to foreclose a particular party's opportunity to be heard.").

Based in part on those principles, the *Boddie* Court found that the state had legitimate and substantial interests served by the imposition of court filing fees, but that those interests could not override the plaintiffs'

interests “in having access to the only avenue open for dissolving their allegedly untenable marriages.” *Boddie*, 401 U.S. at 381. Accordingly, the Court held that where a state requires court involvement for changes to “a fundamental human relationship,” the state may not constitutionally require an indigent plaintiff to pay filing fees that would effectively deny the plaintiff access to justice. *Id.* at 382-83; *Bullock v. Superior Court*, 84 Wn.2d 101, 104, 524 P.2d 385 (1974) (“Full access to the courts in a divorce action is a fundamental right.”) (citing *Boddie*).

Later cases have confirmed that the rationale and principles of *Boddie* also extend to other fundamental family law matters, including disputes concerning child custody and support. *See, e.g., Wells v. Wellborn*, No. Civ.A.03-58-D-M3, 2004 WL 3242340, *6 (M.D. La. Oct. 29, 2004) (finding that court clerk’s failure to process *in forma pauperis* application in custody dispute violated plaintiff’s Due Process rights: “Based on the principles established in *Griffin*, *Boddie* and *M.L.B.*, when a party files a Motion to Proceed In Forma Pauperis in a family court matter, it is constitutionally impermissible for the Clerk of Court to refuse to process the motion.”); *see also Hall v. Hall*, 708 P.2d 416, 421 (Wyo. 1985) (“Resolution of which parent shall have custody necessarily implicates the fundamental right of family association.”).

In summary, where a poor litigant has no choice but to seek court intervention in order to establish or alter any “fundamental human relationship,” waiver of all mandatory court fees and charges is constitutionally required. The failure to grant such a waiver is a violation of Due Process.

2. **Article I, Section 10 of the Washington Constitution Also Requires Washington Courts to Waive Fees for Indigent Litigants.**

Before the U.S. Supreme Court’s decision in *Boddie*, this Court held that Washington courts must grant fee waivers to indigent litigants in many circumstances. *See O’Connor v. Matzdorff*, 76 Wn.2d 589, 603, 458 P.2d 154 (1969). In *O’Connor*, an indigent plaintiff whose only source of income was a monthly public assistance grant of \$325 was prohibited from filing a civil action for damages because she could not pay the \$3.50 filing fee. *Id.* at 590. On plaintiff’s petition for a writ of mandamus, this Court held that Washington trial courts have both the inherent authority — and the *duty* — to waive court filing fees for indigent litigants in appropriate cases. *Id.* at 603, 606. The Court explained that the power to waive fees is intertwined with the courts’ “duty to see that justice is done in all cases” (*id.* at 600), and that courts thus have a responsibility to waive fees where the inability to pay such fees would prevent indigent plaintiffs from filing potentially meritorious cases: “[W]here a case appears to have

been brought in good faith and to have probable merit, *the exercise of sound discretion dictates that a litigant should not be denied his day in court simply because he is financially unable to pay the court fees.*” *Id.* at 603 (emphasis added).

In addition, in *O’Connor*, this Court articulated a general definition of “indigence” in the context of civil filing fee waivers. *O’Connor*, 76 Wn.2d at 594. The Court explained that indigency “does not and cannot, in keeping with the concept of equal justice to every man, mean absolute destitution or total insolvency,” but that it instead “connotes a state of impoverishment or lack of resources on the part of the defendant which, when realistically viewed in the light of everyday practicalities, substantially and effectively impairs or prevents his pursuit of his remedy.” *Id.* (citing *State v. Rutherford*, 63 Wn.2d 949, 389 P.2d 895 (1964)). It is not necessary that a litigant be utterly without resources; a fee waiver is required where a litigant’s poverty renders payment of court fees a practical barrier to relief.

Four years later, in *Iverson v. Marine Bancorp.*, 83 Wn.2d 163, 517 P.2d 197 (1973), this Court reaffirmed the basic principles articulated in *O’Connor*. *Iverson* involved an indigent plaintiff’s attempt to proceed *in forma pauperis* to appeal an allegedly insufficient award of damages in connection with a claim for wrongful eviction. *Id.* at 164-66. The trial

court denied plaintiff's request, but this Court reversed and held that a plaintiff has a state *constitutional* right to a waiver of fees on appeal, where the plaintiff is genuinely indigent and the appeal is non-frivolous. *See id.* at 166-67 (“Amicus curiae contends that this court has both a right and a duty stemming from the Constitution of the State of Washington to provide the plaintiff with the relief she requests.... We agree.”). Indeed, the Court eloquently stated the thesis of Ms. Jafar’s appeal:

The administration of justice demands that the doors of the judicial system be open to the indigent as well as to those who can afford to pay the costs of pursuing judicial relief.

....

Inherent within this reasoning and logic is the conclusion that financial inability to pay the costs of pursuing a legal remedy will not operate to bar one from this state’s system of justice.... ***Consistent with our affirmative duty to keep the doors of justice open to all with what appears to be a meritorious claim for judicial relief, we hold that the plaintiff is entitled to the relief requested.***

Having determined that this Court has a duty to provide the plaintiff with the relief she requests, we hereby waive the requirements of a filing fee

Id. at 167-68 (emphasis added).¹

¹ This Court based its decision in *O’Connor* on the courts’ inherent authority, but in *Iverson* the Court made clear that an indigent litigant’s right to a fee waiver is one of *constitutional* dimension. *See Iverson*, 83 Wn.2d at 166-67. In addition, although the *O’Connor* and *Iverson* courts did not explicitly base their decisions on Article I, Section 10 of the Washington State Constitution, this Court has since described both of those cases as concerning the right of access to the courts under Article I, Section 10. *See Doe v. Puget Sound Blood Ctr.*, 117 Wn.2d 772, 781, 819 P.2d 370 (1991).

Notably, the state constitutional right presaged in *O'Connor* and recognized in *Iverson* is significantly broader than the federal Due Process right recognized in *Boddie*. While *Boddie* applies only in cases where the parties are required to pursue relief from the courts in order to establish or alter fundamental family relationships, the principles articulated in *O'Connor* and *Iverson* apply to *any* Washington case in which an indigent plaintiff seeks to pursue non-frivolous claims in good faith. See *O'Connor*, 76 Wn.2d at 603; *Iverson*, 83 Wn.2d at 167-68.² In fact, the *O'Connor* and *Iverson* cases both involved ordinary tort claims for damages, not family matters such as those envisioned in *Boddie*. See *O'Connor*, 76 Wn.2d at 590; *Iverson*, 83 Wn.2d at 164. Thus, to ensure equal access to justice, the Washington Supreme Court has chosen to extend its protections for the poor beyond the basic protections afforded by the U.S. Constitution and Due Process.

This constitutional backdrop is critical to understanding the need for, and the core purposes of, GR 34 (which are discussed further below).

² *Housing Authority of King County v. Saylor*, 87 Wn.2d 732, 557 P.2d 321 (1977), is not to the contrary. The *Saylor* Court found that there is no general constitutional right to access or appeal in civil cases under Article I, Section 4 or Article I, Section 12 of the Washington Constitution. *Id.* at 738, 741-42. The *Saylor* Court did not, however, address Article I, Section 10 or question the holdings in either *O'Connor* or *Iverson*. *Id.* at 734-35, 737, 742. To the extent *Saylor* suggests that this Court's decision in *Iverson* was not based on constitutional principles (*see id.* at 737), the *Saylor* opinion simply misconstrues the express language of the *Iverson* opinion. See *Iverson*, 83 Wn.2d at 166-68. And, as noted (*see n.1, supra*), nearly 15 years after *Saylor*, this Court (correctly) characterized *Iverson* as a case involving the right of access to the courts under Article I, Section 10 of the Washington Constitution. In short, *Saylor* is inapposite here.

That constitutional backdrop also places in starker relief the truly egregious denials of equal justice that are occurring every day across our state when courts deny full fee waivers to poor litigants (addressed below).

GR 34 Was Intended to Give Shape to Indigent Litigants' Constitutional Rights and to Establish a Uniform Standard for Civil Fee Waivers in Washington Courts.

Notwithstanding the established constitutional principles set forth above, for decades Washington trial courts received little guidance on *how* to exercise their inherent powers and duties to waive fees. No statute or rule established a firm definition of “indigent” for the purposes of waiving civil filing fees and charges.³ Nor was there any shared understanding among Washington courts about what qualified a low-income civil litigant as “indigent,” or about what fees and charges should be waived for such litigants. Individual courts simply developed their own standards and procedures for waiving civil fees. Unsurprisingly, that process generated a host of inconsistent local standards and practices, and too frequently resulted in disparate treatment of similarly situated litigants based solely on where they filed their cases or what judge considered the waiver request. *See* Letter from Deborah M. Perluss, Director of

³ RCW 10.101.010 contains a definition of “indigent,” but that definition has never applied to mandatory-fee-waiver requests in civil cases. Rather, that definition applies only where a litigant has a right to counsel and is seeking appointment of counsel, and to cases in which a party seeks to pursue an appeal at public expense. RCW 10.101.020; *see also State v. Hecht*, 173 Wn.2d 92, 95, 264 P.3d 801 (2011).

Advocacy/General Counsel, Northwest Justice Project, to Ronald Carpenter, Clerk, Washington Supreme Court (Apr. 19, 2010) (Appendix Tab B) (citing various examples of divergent local practices concerning fee waiver requests).⁴

The problems associated with having indigency determinations made ad hoc in the absence of uniform standards or criteria have long been known. As one commentator noted in 1975:

To make fee waiver provisions more meaningful, the current wide judicial discretion should be eliminated. Judges do not have the resources to investigate whether an affidavit of inability to pay is valid. ... *Moreover, the perpetuation of this discretion means that there are no uniform statewide standards, so that many people in the lower middle-income groups do not know in advance whether they will qualify for assistance and may not be willing to invest the time and trouble to find out.*

Phillip L. Spector, *Financing the Courts through Fees: Incentives and Equity in Civil Litigation*, 58 *Judicature* 330, 336-37 (1975) (emphasis added). More to the point, the director of Washington's Office of Civil Legal Aid described the situation as follows:

⁴ The Court may properly take judicial notice of the Perluss letter and the other documents included in the Appendix to Ms. Jafar's brief. Ms. Jafar includes and relies on those documents for this appeal because they contain legislative facts that are relevant to the history of GR 34 and to this Court's determination of the correct interpretation of GR 34. See *Wyman v. Wallace*, 94 Wn.2d 99, 102, 615 P.2d 452 (1980) ("[T]rial courts and appellate courts can take notice of 'legislative facts' — social, economic, and scientific facts that 'simply supply premises in the process of legal reasoning.'" (quoting *Houser v. State*, 85 Wn.2d 803, 807, 540 P.2d 412 (1975)); *State v. Balzer*, 91 Wn. App. 44, 58-59, 954 P.2d 931 (1998).

While the right of low income litigants to access the courts free of financial obstacles has been the law in our state for more than 40 years, objective and anecdotal experience indicates this right is honored more often in the breach. ***Faced with fiscal pressures, judicial officers across our state (and often within the same judicial district) apply inconsistent standards for determining an individual litigant's right to waiver of court filing fees and costs that she cannot afford to incur.*** In all too many cases, the requirement to pay civil filing fees and other costs operates to limit, and even deny, access to judicial relief in a wide range of compelling civil cases.

Letter from James A. Bamberger, Director, State of Washington Office of Civil Legal Aid, to Ronald Carpenter, Clerk, Washington Supreme Court (Mar. 30, 2010) (Appendix Tab C) (emphasis added).

Against this landscape of inconsistent and prejudicial practices regarding fee waivers, GR 34 was born. The rule that eventually became GR 34 was drafted by the Washington State Bar Association (“WSBA”) Pro Bono and Legal Aid Committee. The rule was the result of a years-long process that included extensive consultation with interested parties and stakeholders, including, among others, the Washington State Association of County Clerks, the Superior Court Judges’ Association, the District and Municipal Court Judges’ Association, and the Washington State Access to Justice Board. The proposed rule was also vetted and approved by the WSBA Court Rules and Procedures Committee and the WSBA Board of Governors.

In November 2007, an initial draft of GR 34 was published for comment by this Court. That initial draft was not adopted; the Court deferred consideration of the rule after being notified that the draft rule had been revised by the WSBA Pro Bono and Legal Aid Committee. But the GR 9 cover sheet submitted with the draft rule by the WSBA nevertheless bears mention.⁵ In the GR 9 cover sheet, the WSBA explained that the purpose of the proposed rule was to “promote broader access to justice for people lacking the financial means to pay initial filing fees and other litigation fees and charges” by “establishing predictable, efficient and uniform statewide standards for waiving court and clerk’s fees and charges in civil cases.” Wash. State Bar Ass’n, GR 9 Cover Sheet, General Rules: New Rule 34 – Waiver of Court and Clerk’s Fees and Charges in Civil Matters (Nov. 2007) (the “2007 Cover Sheet”) (Appendix Tab D).

In April 2009, a revised version of the proposed GR 34 — in nearly identical form to the rule that was ultimately adopted⁶ — was

⁵ Pursuant to GR 9, the proponent of any requested rule change must submit a cover sheet that includes, among other things, a statement of the purpose of the proposed rule. *See* GR 9(e)(2).

⁶ The only change between the version of GR 34 published in April 2009 and the version eventually adopted was that the adopted version contained additional language clarifying that the waiver contemplated by GR 34 extends to all “filing fees or surcharges the payment of which is a condition precedent to a litigant’s ability to secure access to judicial relief from a judicial officer in the applicable trial court.” GR 34(a). *Compare* Proposed GR 34 (published for comment April 2009) (Appendix Tab E).

published by this Court for comment. Although the structure of the revised rule differed considerably from that of the 2007 draft, the WSBA's GR 9 cover sheet for the revised GR 34 made clear that the core purposes of the rule were unchanged:

The WSBA believes that this revision is consistent with the objectives initially sought to be achieved with the original GR 34 proposal, to wit:

- Establishment of a *statewide, uniform approach to presentation, consideration, and approval of requests for waiver of fees and costs for low civil income litigants*, whether they are represented by legal aid programs, pro bono attorneys, or appear in the proceeding *pro se*.
- *Establishment of a uniform standard for determining indigency* that is consistent with the standard employed by state and federally funded civil legal aid programs....

See Board of Governors of Wash. State Bar Ass'n, GR 9 Cover Sheet, Suggested Amendment, General Rules: GR 34 – Waiver of Court and Clerk's Fees and Charges in Civil Matters (New Rule; Rev'd Dec. 2008) (the "2009 Cover Sheet") (Appendix Tab F), at 2. In addition, the comments received by this Court in response to publication of the revised rule overwhelmingly demonstrate that both supporters and opponents of

the rule understood that GR 34, if enacted, would create uniform, mandatory standards for granting civil fee waivers.⁷

By order dated December 3, 2010, this Court adopted GR 34, which became effective December 28, 2010. Shortly after the rule's adoption, the Administrative Office of the Courts developed and published, in accordance with GR 34's directives, a set of mandatory pattern forms for Washington courts to use for civil fee waiver motions under GR 34. *See* GR 34(a)(1) (stating that fee waiver applications may

⁷ *See, e.g.*, Letter from Daniel S. Gottlieb, Chair, Access to Justice Board, to Ronald Carpenter, Clerk, Washington Supreme Court (Apr. 26, 2010) (Appendix Tab G) (supporting proposed GR 34; "Absent criteria and process, the 'practical application' [of indigent litigants' constitutional right to fee waivers] is that the granting of fee waivers in many Washington state jurisdictions is largely subjective."); Email from Brian M. Flock to Camila Faulk (Apr. 29, 2010) (Appendix Tab H) (supporting proposed GR 34 as establishing "consistent approach" to fee waivers; "[T]he current system allows for differing outcomes based on county of residence, or in some cases, the particular official who hears the request."); Letter from John Midgely, Director, Columbia Legal Services, to Ronald Carpenter, Clerk, Washington Supreme Court (Apr. 22, 2010) (Appendix Tab I) ("There is not currently a uniform system across counties of standards and procedures for waiver of filing fees, court facilitator charges, and other court and clerk's fee, which can lead to inconsistent and unfair results."); Letter from Mark A. Hutcheson, President, Endowment for Equal Justice, to Ronald Carpenter, Clerk, Washington Supreme Court (Apr. 22, 2010) (Appendix Tab J) ("[W]e support proposed GR 34, which would create uniform *in forma pauperis* standards across the state."); Letter from Gail R. Smith, Jones & Smith, to Justice Charles W. Johnson, Washington Supreme Court (June 21, 2010) (Appendix Tab K) (supporting GR 34; "[I]t is vitally important that it be clear that the Superior Court has the authority and obligation to waive any and all fees and costs that impede or thwart access to the Courts."); Letter from Hon. Tari Eitzen, President Judge, Superior Court Judges' Ass'n, to Justice Charles Johnson, Washington Supreme Court (Feb 10, 2010) (Appendix Tab L) (supporting GR 34 and stating that it would establish "a uniform system for submitting, considering and acting on applications to proceed without payment of filing fees and other costs"); Letter from Ruth Gordon, Jefferson County Clerk, to Ronald Carpenter, Clerk, Washington Supreme Court (Apr. 30, 2010) (Appendix Tab M) (opposing GR 34; stating that proposed rule "seeks to establish a consistent process and result for indigent parties who seek to bring civil actions before the court").

be made using a mandatory pattern form to be developed by the Administrative Office of the Courts).

As adopted, GR 34 gives structure to the dual constitutional principles recognized in *O'Connor* and *Iverson*, *i.e.*, that Washington courts have both the authority to waive fees and the responsibility for ensuring that the poor have access to justice. *See* GR 34 cmt. (“The adoption of this rule is rooted in the constitutional premise that every level of court has the inherent authority to waive payment of filing fees and surcharges on a case by case basis. Each court is responsible for the proper and impartial administration of justice which includes ensuring that meaningful access to judicial review is available to the poor as well as to those who can afford to pay.”). The WSBA’s GR 9 cover sheet also expressly invoked this Court’s decision in *O'Connor* and the courts’ constitutional obligation to ensure access to justice for the poor. *See* 2009 Cover Sheet (Appendix Tab F) at 2. Thus, if properly applied, GR 34 directs the courts’ exercise of their inherent, constitutional authority to ensure fair, consistent, and predictable treatment of mandatory fee-waiver requests based on indigency. The rule is designed to achieve those ends through several important features.

First, GR 34 standardizes the procedure for requesting fee waivers. The rule requires trial courts to accept fee waiver applications submitted

on mandatory pattern forms developed by the Administrative Office of the Courts, and to present such applications to a judicial officer in a timely manner. GR 34(a)(1)-(2). GR 34 also prohibits courts from charging litigants any local fee to make the application. GR 34(a)(2).

Second, GR 34 provides that litigants who are found to be indigent are entitled to a waiver of *all* mandatory fees. The text of the rule states that, based on indigent status, any litigant “may seek a waiver of filing fees or surcharges the payment of which is a condition precedent to a litigant’s ability to secure judicial relief.” To avoid ambiguity, the official comment to GR 34 explains that the rule applies to all fees or charges that are imposed as a condition precedent to judicial relief, including but not limited to filing fees and other legislatively established surcharges, family court facilitator charges, family court service charges, and domestic violence prevention charges. *See* GR 34(a) cmt.

Third, GR 34 establishes a detailed, three-tiered definition of “indigent.” In tier one, a litigant who receives need-based, means-tested assistance (such as TANF or food stamps), or whose household income is at or below 125 percent of the federal poverty guideline, is automatically deemed indigent, and the trial court has no discretion in making that determination. *See* GR 34(a)(3)(A)-(B). In tier two, a litigant whose household income is above 125 percent of the federal poverty guideline

may still be deemed indigent if the trial court finds that recurring monthly expenses or “other compelling circumstances” render that person unable to pay the fees and charges imposed by the court. *See* GR 34(a)(3)(C)-(D). Finally, in tier three, a litigant represented by a “qualified legal service provider” (“QLSP”) is granted a presumption of indigency if that litigant’s counsel submits a declaration confirming that the client was screened and found eligible for the QLSP’s services. *See* GR 34(a)(4). Thus, there should no longer be confusion regarding who is “indigent.”

C. Many Washington Superior Courts Either Ignore or Misinterpret GR 34.

Despite the fact that GR 34 was clearly intended to impose uniformity and consistency on the fee-waiver process in Washington courts, many Superior Courts have failed to implement GR 34 in a way that furthers those goals. As an initial matter, many courts have ignored GR 34’s most basic requirement that courts use the mandatory GR 34 pattern forms developed by the Administrative Office of the Courts. *See* GR 34(a)(1) (requiring superior courts to accept fee waiver requests on mandatory pattern forms).⁸ For example, the Kitsap County Superior

⁸ The Administrative Office of the Courts has promulgated a motion, declaration, and financial statement to be used by indigent litigants in requesting a fee waiver. *See* Motion and Declaration For Waiver of Civil Filing Fees and Surcharges (MTAF) (Appendix Tab N); Financial Statement (Appendix Tab O). Use of those forms by the Washington courts is mandatory under GR 34(a)(1), but (as discussed below) many courts have failed to adopt those mandatory forms. The Administrative Office of the

Court uses a modified version of the mandatory GR 34 pattern form that (1) expressly encourages litigants to request a fee *deferral*, rather than a fee waiver, and (2) requires litigants to acknowledge that, even if a waiver is granted, “the Court reserves the right to require payment of any and all fees and surcharges prior to finalization.”⁹ As another example, the Jefferson County Superior Court has an active link to its non-conforming local *in forma pauperis* application form on the Court’s website.¹⁰

It is clear that some judges and court administrators erroneously believe that GR 34 is not mandatory, but instead reserves to the Superior Courts unfettered discretion to grant or deny fee waivers to indigent litigants. *See, e.g.*, Letter from Hon. Cameron Mitchell, Presiding Judge, Benton-Franklin Superior Court, to Gary M. Smith, Senior Attorney, Northwest Justice Project, at 2 (Jan. 12, 2012) (the “Mitchell Letter”) (Appendix Tab S) (“It is our belief, that the current practices of the court assist the court in making more informed decisions as to when to *exercise*

(*footnote continued*) Courts has also promulgated a non-mandatory form order for courts to use in ruling on fee waiver requests. *See* Order Re Waiver of Civil Filing Fees and Surcharges (Appendix Tab P). As discussed below, many courts have modified that form order in ways that undermine GR 34’s goal to provide complete waivers to the indigent. The GR 34 pattern forms are available at <http://www.courts.wa.gov/forms/?fa=forms.contribute&formID=87> (last visited June 7, 2012).

⁹ *See* Kitsap County Motion and Declaration To Defer or Waive Payment of Civil Filing Fees and Surcharges (Appendix Tab Q).

¹⁰ *See* Jefferson County Motion and Declaration for Order to Proceed In Forma Pauperis (Appendix Tab R), available at <http://www.co.jefferson.wa.us/supcourt/PDFs/Family%20Law%20Indigency%20Screening.pdf> (last visited June 7, 2012).

the discretion to waive fees provided by GR 34.”) (emphasis added); Email from Ruth Gordon, Jefferson County Clerk, to Sara Hixon, Attorney, Northwest Justice Project (Jan. 5, 2011) (Appendix Tab T) (“It is my understanding from discussion with our judge that this rule deals with judicial discretion, not automatic blanket waivers ...”). The result of that erroneous interpretation is that Washington courts continue to make ad hoc fee-waiver decisions, even *after* finding a litigant indigent, thereby defeating the uniform application of GR 34 and, more importantly, denying access to justice to the most needy. As discussed in detail in Section IV.D below, in fact a fee waiver *is* mandatory under GR 34 for any litigant found to be indigent under the rule.

Several Washington counties have gone so far as to establish policies that they will not grant complete waivers of mandatory fees and surcharges in *any* case, irrespective of the litigant’s financial condition. The fee waiver instruction form available on the Thurston County Clerk’s website, for example, informs low-income litigants in no uncertain terms that they will never be granted a waiver of all fees and surcharges: “***Even if your filing fee is waived, there is a \$20.00 surcharge which WILL NOT BE WAIVED. Payment of the \$20.00 surcharge is required at the time of filing.***” Thurston County Clerk’s Office, Self-Help Center Form 8-6, What to Do if You Cannot Pay the Filing Fee, at 2 (Appendix Tab U)

(emphasis in original).¹¹ The courts in Spokane and Pierce Counties use similar forms.¹² It is a virtual certainty that the stark and absolute message from these courts — *i.e.*, that a complete fee waiver is never available under any circumstances — serves to deter some poor litigants from even attempting to seek judicial relief.

In other Washington counties, the practices are less overt (and less offensive in tone), but no less harmful to low-income litigants. Snohomish County, for example, has developed a modified version of the GR 34 pattern form order that actively encourages judges to grant indigent litigants only deferrals or partial fee waivers (as occurred with Ms. Jafar). *See* Fee Order (CP 1-3). Like the pattern order developed by the Administrative Office of the Courts, the Snohomish County form allows the court to waive “all filing fees and surcharges the payment of which is a condition precedent to the moving party’s ability to secure access to judicial relief.” *See id.* at 2. But, unlike the pattern form, the Snohomish

¹¹ The Thurston County form is available at http://www.co.thurston.wa.us/clerk/Forms/Facilitator/8-6_Fee_Waiver.pdf (last visited June 7, 2012).

¹² *See* GR 34 (Waiver of Civil Filing Fee and Surcharges), Spokane County Family Court Facilitator: Instruction #5 (Appendix Tab V), available at <http://www.spokanecounty.org/loaddoc.aspx?docid=2360> (last visited June 7, 2012) (stating that court may, upon fee waiver application, “*reduce your filing fee to \$20 or \$50*”); Instructions for Motion Declaration & Order For Waiver of Civil Filing Fees and Surcharges (Pierce County) (Appendix Tab W) (“If the Commissioner signs the Order, you will be able to file your case without paying the filing fee. **IN A FAMILY LAW MATTER, YOU MAY BE REQUIRED TO PAY THE COURTHOUSE FAMILY LAW FACILITATOR FEE \$20.00**”) (all emphases in originals).

County form order also includes boxes for each potentially applicable fee (*i.e.*, the \$200 filing fee, the \$20 facilitator surcharge, the \$30 Domestic Violence surcharge, and the \$30 Judicial Stabilization surcharge). *See id.* The court may check those boxes to order full payment of the fee before the case is filed or within a particular time; to require full payment of the fee prior to the entry of a final order in the case; or to waive the fee “subject to later court review.” *See id.* In Ms. Jafar’s case, the court used that modified form to order Ms. Jafar to pay \$50 in fees within 90 days, despite the Court’s express finding that Ms. Jafar is indigent. *Id.*

The Benton-Franklin Superior Court, which also uses its own modified version of the GR 34 pattern order, has implemented a local practice of ordering review of all fee-waiver decisions before the entry of any final order in the case.¹³ There is substantial evidence that, pursuant to local practice, indigent *pro se* litigants in Benton and Franklin counties are often ordered to pay all filing fees and surcharges just prior to the conclusion of their cases, without regard to their financial circumstances. *See* Letter from Gary M. Smith, Senior Attorney, Northwest Justice Project, to Hon. Cameron Mitchell, Presiding Judge, Benton-Franklin Superior Court, at 3 (Oct. 18, 2011) (Appendix Tab X) (“We have reason

¹³ *See* Mitchell Letter (Appendix Tab S), at 2 (discussing court practice of “reviewing the waiver of fees prior to entry of the final order”).

to believe all *pro se* litigants in cases where mandatory fees and surcharges are waived under GR 34 are later told they must nonetheless pay those fees and surcharges in full before final orders will be entered, without any findings or orders establishing that the litigant's financial circumstances have changed such that he or she no longer satisfies any of the GR 34 objective indigency standards.”). Similarly, the Kitsap County Superior Court's modified form order expressly informs litigants that “**the court reserves the right to require payment of any and all fees and surcharges prior to finalization.**” *See* Kitsap County Order Re Deferral/Waiver of Civil Filing Fees and Surcharges (Appendix Tab Q) (emphasis in original).

In addition, there is evidence that judicial officers in King County Superior Court are abdicating their authority and responsibility to waive mandatory surcharges (such as mandatory Family Law Orientation and Parenting Seminar fees) by referring waiver requests to the service providers administering those programs. In one recent case, for example, a King County Court Commissioner denied an initial GR 34 fee waiver request by a litigant who received TANF assistance and food stamps, and the Commissioner subsequently denied a motion for reconsideration. *See* Motion for Reconsideration of Denial of Fee Waiver, *Onika v. Onika*, No. 11-3-06586 KNT (King County Super. Ct.) (Oct. 10, 2011) (Appendix

Tab Y). In the order denying the motion for reconsideration, the Commissioner referred the petitioner's waiver request to the service providers: "If each service determines it is appropriate to waive [petitioner's] fees, the determination will be made by that particular service and the relevant form will be provided to the Court for signature." See Order on Civil Motion, *Onika v. Onika*, No. 11-3-06586 KNT (King County Super. Ct.) (Oct. 18, 2011) (Appendix Tab Z).¹⁴ There is absolutely no legal (or logical) authority to justify entrusting to non-judicial service providers the critical determination of whether a poor litigant will be granted access to judicial relief.¹⁵

In short, these practices denying equal justice to the indigent in our state are not isolated. Washington courts, like most governmental entities, undoubtedly face severe funding challenges, but we should not balance the budget on the backs of our poor. No fiscal dilemma, no matter how dire, justifies locking the courthouse doors to those without the means to pay, in contravention of clear constitutional principles requiring access.

¹⁴ The King County web-page for parenting classes notes that there is a fee-waiver process, and directs users to call the Family Court Operations coordinator for more information, but says nothing at all about GR 34. See <http://www.kingcounty.gov/courts/FamilyCourt/services/parentseminar.aspx> (last visited June 7, 2012). The same is true for the family law orientation web-page. See <http://www.kingcounty.gov/courts/FamilyCourt/services/FLO.aspx> (last visited June 7, 2012).

¹⁵ Petitioner anticipates that certain QLSPs, or other members of the legal services community, may submit amicus curiae filings setting forth in more detail how pervasive these issues have become statewide, and providing shocking examples of the very poor and vulnerable being denied the basic right to seek help from our judicial system.

D. Ms. Jafar Is Entitled to a Complete Waiver of Mandatory Fees and Surcharges Under GR 34.

As discussed above, when Ms. Jafar filed her parenting plan action she also filed a Fee Waiver Motion, requesting a waiver of all mandatory filing fees and surcharges (totaling \$280). CP 4-7. Despite correctly finding that Ms. Jafar is indigent, as defined in GR 34, the Snohomish County Superior Court granted Ms. Jafar only a partial fee waiver and ordered her to pay \$50 in mandatory surcharges within 90 days. CP 1-3. The Fee Order necessarily relies on the implicit legal conclusion that, even where a litigant is determined to be indigent, the decision whether to grant a fee waiver under GR 34 is entirely discretionary.

As explained below, the Superior Court's interpretation of GR 34 is incorrect as a matter of law. The text, structure, and history of GR 34 all establish that the rule is intended to make fee waivers automatic and non-discretionary upon a judicial determination of indigency. Indeed, the critical and fundamental goals of GR 34 can be achieved only if fee waivers are mandatory under the rule. This Court should vacate the Superior Court's Fee Order and remand with instructions to grant Ms. Jafar a full waiver of all mandatory fees and surcharges.

1. **Standard of Review and Principles of Construction.**

The Superior Court's interpretation of GR 34 is subject to *de novo* review by this Court. *See Gourley v. Gourley*, 158 Wn.2d 460, 466, 145 P.3d 1185 (2006).

When determining the meaning of a court rule, this Court applies the same principles that it uses in statutory construction. *See Gourley*, 158 Wn.2d at 466 (“In determining the meaning of a court rule, we apply the same principles used to determine the meaning of a statute.”); *Miller v. Arctic Alaska Fisheries Corp.*, 133 Wn.2d 250, 258, 944 P.2d 1005 (1997) (“We construe the terms of an ambiguous court rule as we construe an ambiguous statute.”). The Court's overriding purpose in interpreting a court rule is to give effect to the drafter's intent. *See State v. Chhom*, 162 Wn.2d 451, 458, 173 P.3d 234 (2007); *State v. Waldon*, 148 Wn. App. 952, 962, 202 P.3d 325 (2009). When a rule or statute's meaning is clear and unambiguous, the Court must give effect to that meaning as an expression of the drafter's intent. *See Gourley*, 158 Wn.2d at 466; *Whatcom County v. City of Bellingham*, 128 Wn.2d 537, 546, 909 P.2d 1303 (1996) (“In interpreting a statute, we do not construe a statute that is unambiguous.”).

On the other hand, when the text of a statute or rule is ambiguous, the Court must discern the drafter's intent by “reading the rule as a whole,

harmonizing its provisions, and using related rules to help identify the legislative intent embodied in the rule.” *Chhom*, 162 Wn.2d at 458; *Whatcom County*, 128 Wn.2d at 546.

Although the same rules of construction apply to statutes and court rules, there is an important distinction between the two. When construing a statute, courts are understandably cautious about usurping the role of the Legislature or “legislating from the bench.” With a court rule like GR 34, there is no such tension. This Court is the final arbiter of the meaning and application of the Washington court rules, and is uniquely positioned to declare the correct interpretation of GR 34 based on the interpretive principles set forth above.

2. **GR 34 is Ambiguous and the Court Should Interpret the Rule to Give Effect to Its Clear Purpose.**

GR 34 both memorializes and operates in conjunction with the well-established constitutional principles articulated by this Court in *O'Connor* and *Iverson*, which require the waiver of all court fees that act to deny equal access and justice to the poor. Perhaps because that constitutional underpinning is clear and unequivocal, the text of GR 34 was left silent on what specific action a trial court must take after finding a litigant indigent under the rule. That lack of express direction regarding the legal consequences of an indigency finding renders GR 34 ambiguous,

and the rule therefore requires interpretation and construction by this Court. *Miller*, 133 Wn.2d at 258; *Whatcom County*, 128 Wn.2d at 547.¹⁶

In construing an ambiguous rule, the Court is guided by a number of familiar bedrock principles: First, the Court need not, and should not, adopt a literal reading of the rule if it would be contrary to the drafter's intent. *Chhom*, 162 Wn.2d at 458 (“When interpreting a court rule, this court has eschewed a literal reading of the language where such a reading fails to effectuate the intent of the rule.”); *Whatcom County*, 128 Wn.2d at 546 (“[W]e avoid a literal reading if it would result in unlikely, absurd or strained consequences. The purpose of an enactment should prevail over express but inept wording.”) (internal citation omitted). Second, the Court should interpret the rule in a manner that gives effect to all its provisions and does not render any language in the rule superfluous or meaningless. *Whatcom County*, 128 Wn.2d at 546. Third, if possible, the Court should interpret rules in a manner that renders them constitutional. *See Waldon*, 148 Wn. App. at 962.

¹⁶ GR 34's silence regarding courts' obligation to waive fees for the indigent has regrettably provided a toehold for certain judges and court administrators who choose to deny fee waivers, or to grant only partial waivers or deferrals. Setting aside that such practices violate well-settled constitutional principles, those practices are also clearly contrary to the full text, intent, and spirit of GR 34 (as discussed below).

As discussed in the following subsections, all three principles of construction set forth above compel the conclusion that GR 34 requires a complete waiver of all court fees and charges upon a finding of indigency.

a. **GR 34 Was Intended to Provide Mandatory and Complete Fee Waivers to the Indigent.**

Consideration of the text, structure, and history of GR 34 makes clear that the drafters of GR 34 intended the rule to make fee waivers mandatory after a trial court determines that a plaintiff is indigent, as defined in the rule. As an initial matter, under the terms of GR 34, the *only* determination to be made by the trial court is whether the applicant is indigent. GR 34 permits any person to request a waiver of all mandatory filing fees and surcharges “on the basis of indigent status, as defined herein” (GR 34(a)), describes the procedure for making such a request (GR 34(a)(1)-(2)), and then defines what qualifies a litigant as indigent under the rule. GR 34(a)(3)-(4). Nothing in GR 34 authorizes a trial court to deny a complete fee waiver to an indigent litigant. Nor does the rule authorize other half-measures, such as partial fee waivers or deferrals.¹⁷

To the contrary, GR 34(a)’s statement that the basis for a fee waiver

¹⁷ A partial waiver or deferral is meaningless to an indigent litigant. For a person like Ms. Jafar — whose monthly income just covers her most basic monthly living expenses, with literally nothing left over — \$50 might as well be \$5,000. Nor does it help an indigent litigant to offer a 90-day “grace” period. Even with substantial time, the very poor simply cannot save enough to pay court fees without sacrificing basic needs, like food and shelter. It is not only unconstitutional but inhumane for our legal system to force individuals to make such choices.

motion under the rule is “indigent status, as defined herein,” strongly suggests that the court’s sole task under GR 34 is to determine whether the movant is indigent as defined in the rule.

With regard to the intent behind GR 34, a comparison of GR 34 with RAP 15.2 is instructive. RAP 15.2 was also adopted by this Court and governs the right of an indigent litigant to request waiver of fees, and other costs and expenses, on appeal. RAP 15.2 expressly contemplates and allows for partial waivers of costs and fees.¹⁸ The rule directs the court to determine whether the movant is unable to pay “all *or some* of the expenses of appellate review,” as well as “the amount, if any, the party is able to contribute.” RAP 15.2(a)(2) (emphasis added). GR 34, by contrast, contains no similar language or directive. That omission further supports the conclusion that GR 34 does not give trial courts discretion to grant only partial fee waivers or deferrals. *See State v. Hubbard*, 106 Wn. App. 149, 153-54, 22 P.3d 296 (2001) (stating that “omission of a similar provision from a similar statute usually indicates a different legislative intent”) (quoting *Clallam County Deputy Sheriff’s Guild v. Bd. of Clallam*

¹⁸ See RAP 15.2(a)(2) (“If the trial court finds the party seeking review is unable by reason of poverty to pay for all or some of the expenses of appellate review, the trial court shall enter such findings, which shall be forwarded to the Supreme Court for consideration, pursuant to section (d) of this rule. The trial court shall determine in those findings the portion of the records necessary for review and the amount, if any, the party is able to contribute toward the expense of review.”); *see also State v. Hecht*, 173 Wn.2d 92, 95, 264 P.3d 801 (2011) (construing RAP 15.2 in conjunction with RCW 10.101.010, which also contemplates partial waivers of costs and fees).

County Comm'rs, 92 Wn.2d 844, 581, 601 P.2d 943 (1979)); *State v. Jackson*, 137 Wn.2d 712, 724, 976 P.2d 1229 (1991).¹⁹

The history of GR 34 prior to its adoption further demonstrates that the omission of any language authorizing partial fee waivers was deliberate. In December 2009, the District and Municipal Court Judges' Association expressly requested that the Court amend the proposed rule, to give courts "the authority to grant partial fee waivers, in addition to full fee waivers."²⁰ Importantly, that suggested change to the proposed rule was not adopted. *See Jackson*, 137 Wn.2d at 722-23 (fact that legislature did not adopt model penal code language creating accomplice liability based on failures to act indicated legislative intent to not impose such

¹⁹ Moreover, there are rational reasons why partial fee waivers would be allowed on appeal under RAP 15.2, but not under GR 34. RAP 15.2 is much broader in scope than GR 34. RAP 15.2 applies to a greater variety of costs and expenses on appeal — including potentially attorneys' fees — and not simply filing fees and mandatory surcharges. *See* RAP 15.2(a) (applying to all expenses of review). GR 34, by contrast, applies only to a much more limited set of filing fees and other mandatory charges. In addition, one of the important purposes of GR 34 is to create an efficient procedure for processing fee waiver applications. *See* 2009 Cover Sheet (Appendix Tab F), at 2 (citing objective of "[s]trengthening the process" of granting fee waivers); 2007 Cover Sheet (Appendix Tab E) ("By establishing predictable, efficient and uniform statewide standards for waiving court and clerk's fees and charges in civil cases, **this rule should reduce the time spent by applicants or their lawyers in obtaining waiver of fees and charges**") (emphasis added). The structure of the GR 34, which allows only a limited judicial inquiry into indigency and does not provide for partial fee waivers, creates a more streamlined process than does RAP 15.2.

²⁰ *See* Letter from Hon. Glenn Phillips, President-Judge, District and Municipal Court Judges' Ass'n, to Hon. Charles L. Johnson, Washington Supreme Court (Dec. 8, 2009) (Appendix Tab AA) ("The DMCJA believes that requiring a party to pay a portion of the fee in appropriate cases will help to ensure that the party is serious about proceeding with the case. ... The DMCJA feels comfortable in assuming that judges will be responsible in deciding whether or not to impose a partial fee in a case, and that this change to GR 34 will not impose an undue hardship on parties.").

liability); *Bellevue Fire Fighters Local 1604 v. City of Bellevue*, 100 Wn.2d 748, 753, 675 P.2d 592 (1984) (finding rejection of proposed amendment to pending legislation to be evidence that legislature did not intend to enact substance of proposed amendment).

GR 34's definition of "indigent" also confirms that the rule does not give trial courts discretion to merely grant fee deferrals or partial waivers for litigants who are found to be indigent. Under GR 34(a)(3)(C), a litigant with income above 125 percent of the federal poverty guideline can be found indigent only if the trial court also finds that the applicant lacks "the financial ability to pay the filing fees *and* other fees or surcharges for which a request for waiver is made." GR 34(a)(3)(C) (emphasis added). In other words, indigent status under GR 34(a)(3)(C) is contingent on a showing that the litigant is unable to pay *any* filing fees or surcharges for which the litigant seeks a waiver. It would be inconsistent, illogical, and unfair to conclude that GR 34 permits a trial court to make an explicit finding of inability to pay, and then nevertheless require such a litigant to pay all or a portion of those same fees and surcharges.

GR 34's definition of "indigent" contemplates the exercise of some limited judicial discretion in making indigency determinations. But the structure of GR 34 permits discretion to be used only to *expand* the reach of GR 34 — *i.e.*, to enable trial courts to grant fee waivers to persons who

may not qualify as indigent under GR 34's objective indigency criteria, but whose circumstances nevertheless establish that a waiver is appropriate — *not* to deny waivers to litigants who are indigent under GR 34's objective standards. As explained above, GR 34 creates a three-tiered definition of indigency. The first tier is satisfied solely by reference to objectively determinable criteria, *i.e.*, a litigant is deemed indigent if she has household income at or below 125% of the federal poverty guideline, or if she receives need-based, means-tested public assistance. GR 34(a)(3)(A)-(B). If a litigant satisfies one of the above criteria, she must be found indigent. *Id.* But even if a litigant does not satisfy the above criteria under GR 34(a)(3)(A)-(B), and is not represented by a QLSP, that litigant can still qualify for a fee waiver if the trial court, in its discretion, determines that the litigant's recurring basic living expenses or "other compelling circumstances" make her unable to pay mandatory fees and surcharges. GR 34(a)(3)(C)-(D).

Thus, in summary, GR 34's detailed definition of "indigent" embodies a determination that the most vulnerable low-income people — *i.e.*, those on need-based, means-tested public assistance, and those with income at or below 125 percent of the federal poverty guideline — categorically should not be required to pay filing or other mandatory court fees in order to secure judicial relief. For other cases, GR 34 affirms the

trial courts' discretion to consider each individual litigant's circumstances to decide whether a fee waiver is appropriate.

The available historical evidence concerning the intent of GR 34's drafters also establishes that the rule was clearly intended to make waivers of *all* court fees and charges *mandatory* after a court determines that a litigant is indigent. As discussed above, the GR 9 cover sheet submitted by the WSBA in connection with the second version of the proposed GR 34 expressly invoked the constitutional obligation of Washington courts to ensure that the poor have equal access to our courts. *See* 2009 Cover Sheet (Appendix Tab F), at 2. The cover sheet also explained that GR 34 was designed to create a uniform, statewide approach for the approval of fee waiver requests. *See id.*; *see also Waldon*, 148 Wn. App. at 964 (considering GR 9 cover sheet as evidence of drafters' intent concerning amendments to court rule); *Miller*, 133 Wn.2d at 258 (considering drafters' comments in interpreting ambiguous court rule).

Those statements of purpose by the WSBA are further confirmed by the minutes of WSBA Pro Bono and Legal Aid Committee meetings at which the proposed GR 34 was discussed. *See* Minutes of April 10, 2008 WSBA Pro Bono and Legal Aid Committee Meeting (Appendix Tab BB), at 3 (noting that rule would provide "automatic" waiver for persons who qualify as indigent under the rule); Minutes of June 15, 2006 WSBA Pro

Bono and Legal Aid Committee Meeting (Appendix Tab CC), at 1 (“The committee was reminded that a fee waiver process is already in existence; the purpose of the proposed IFP rule is to simplify the process and make it consistent throughout the state.”); *accord* Minutes of July 27-28, 2007, WSBA Board of Governors Meeting (Appendix Tab DD), at 12 (stating that proposed GR 34 “promotes access to justice for people who lack the financial means to pay initial filing fees and other litigation fees and charges and establishes statewide standards for waiving these fees and charges in civil cases.”). Indeed, even *opponents* of the rule recognized GR 34’s central purpose. *See* Letter from Ruth Gordon, Jefferson County Clerk, to Ronald Carpenter, Clerk, Washington Supreme Court (Apr. 30, 2010) (Appendix Tab M) (opposing GR 34 because it would “directly cut funding to the courts and the clerks,” but recognizing the proposed rule “seeks to establish a *consistent process and result for indigent parties* who seek to bring civil actions before the court”) (emphasis added).

If GR 34 were interpreted to reserve unfettered discretion to the Superior Courts to deny fee waivers, or grant only partial fee waivers or deferrals, it would utterly thwart the intent of the GR 34 drafters and the core purposes of the rule. GR 34 was adopted specifically to create uniformity in the fee waiver process and predictability for the poor seeking judicial relief. The Court should vindicate those important goals

by affirming that GR 34 is mandatory and requires a full fee waiver for a person found indigent under the rule. *Chhom*, 162 Wn.2d at 458 (“When interpreting a court rule, this court has eschewed a literal reading of the language where such a reading fails to effectuate the intent of the rule.”).

b. **The Provisions of GR 34 Should Not Be Rendered Superfluous or Meaningless.**

It is axiomatic that a statute or rule may not be interpreted in a manner that nullifies any of its provisions or language. *See Whatcom County*, 128 Wn.2d at 546 (“Statutes must be interpreted and construed so that all the language used is given effect, with no portion rendered meaningless or superfluous.”). If GR 34 does not mandate fee waivers, then the rule is merely a mechanism for determining who is “indigent.” But that interpretation is at odds with the very title of the rule. GR 34 is not entitled “Indigency Determinations”; instead, it is pointedly entitled: “Waiver of Court and Clerk’s Fees and Charges in Civil Matters on the Basis of Indigency.” That title would be meaningless (or, at the very least, misleading and totally unrelated to the rule itself) if GR 34 does not, in fact, provide for *waivers of court and clerk’s fees and charges*.

Indeed, if a finding of indigency under GR 34 does not compel a fee waiver, the entire rule becomes largely meaningless additional bureaucracy. It defies common sense to conclude that the WSBA and this

Court spent over three years of drafting and extensive public review and comment, only to create some new forms and new procedural hoops for judges and poor litigants. Even the multi-prong definition of the term “indigent” under GR 34 would be rendered superfluous and meaningless, because satisfying any particular prong would have no particular legal significance. In short, GR 34 is pointless if it does not (as the rule’s title promises) guarantee a waiver of court fees and charges for the indigent.

c. **The Provisions of GR 34 Must Be Interpreted In a Manner That Is Constitutional.**

Finally, if GR 34 were interpreted to provide trial courts with complete discretion to grant or deny fee waivers, the rule would be unconstitutional as applied in many cases because it would operate to deprive indigent litigants of their federal and state constitutional rights to a fee waiver. *See Waldon*, 148 Wn. App. at 962; *Boddie*, 401 U.S. at 380 (“Just as a generally valid notice procedure may fail to satisfy due process because of the circumstances of the defendant, so too a cost requirement, valid on its face, may offend due process because it operates to foreclose a particular party’s opportunity to be heard.”). The Court can and should interpret GR 34 in a manner that squares with the Washington State Constitution and Due Process. *Waldon*, 148 Wn. App. at 962.

In summary, the only reasonable interpretation of GR 34 that is consistent with its full text, clear intent, and stated purposes is that GR 34 requires a trial court to grant a complete waiver of all mandatory fees and surcharges once the Court determines that a litigant is indigent. Because the Superior Court in this case found that Ms. Jafar is indigent under GR 34, she is entitled to a full fee waiver.

E. **If GR 34 Does Not Require a Complete Waiver of Mandatory Fees and Surcharges for Indigent Litigants, Then GR 34 Is Unconstitutional as Applied to Ms. Jafar.**

As explained above (*see* Section IV.A, *supra*), both the Fourteenth Amendment's Due Process Clause and Article I, Section 10 of the Washington State Constitution require fee waivers for indigent litigants in many circumstances. Based on the facts before the Superior Court, Ms. Jafar is entitled to a fee waiver under both of those constitutional provisions. Accordingly, if GR 34 can be interpreted to sanction the Superior Court's decision to order Ms. Jafar to pay \$50 in mandatory charges within 90 days, despite her indigent status, then GR 34 is unconstitutional as applied to Ms. Jafar.

1. **Ms. Jafar Is Entitled to a Full Fee Waiver Under the Due Process Clause.**

As the Supreme Court ruled in *Boddie*, the Fourteenth Amendment's Due Process Clause mandates fee waivers for indigent litigants where the

state requires individuals to use the courts to create or adjust fundamental family relationships. *See Boddie*, 401 U.S. at 382-83. As discussed, subsequent cases have confirmed that the rationale and principles of *Boddie* also extend to other fundamental family law matters, including disputes over child custody and support. *See* Section IVA.1, *supra*).

Because Washington state is deeply involved with, and ultimately controls, the process of obtaining a parenting plan for a minor child, Ms. Jafar's parenting plan action is one to which the Due Process right recognized in *Boddie* extends. Under Washington law, the only way for Ms. Jafar to secure a binding and enforceable parenting plan that creates a residential schedule and allocates decision-making authority with respect to Ms. Jafar's son is to have the plan approved by a court. *See* RCW 26.09.181 (permitting agreed parenting plans, but requiring final order from court); RCW 26.09.184, 187 (stating objectives and criteria for court's approval of permanent parenting plan); *In re Marriage of Wilson*, 117 Wn. App. 40, 47, 68 P.3d 1121 (2003) ("[N]ot even an approved agreed permanent parenting plan can be finally 'entered' and fully permanent ... until the final decree [by a court]").²¹ Thus, like a party seeking a marital dissolution, Ms. Jafar has no choice but to seek relief

²¹ The procedures for establishing a parenting plan are set out in the chapter of the Revised Code of Washington that governs marital dissolutions, but those provisions also apply to parenting plan actions filed by an unmarried parent. *See* RCW 26.26.130(7)(b).

through the courts. Due Process therefore requires that the Washington courts grant Ms. Jafar a waiver of any mandatory fees that would deprive Ms. Jafar of access to the courts. *See Boddie*, 401 U.S. at 382-83.

The Superior Court's Fee Order requiring Ms. Jafar to pay \$50 within 90 days violates Ms. Jafar's right to Due Process under *Boddie*. It is undisputed that Ms. Jafar is indigent because the Superior Court already determined that Ms. Jafar has household income below 125% of the federal poverty guideline. *See* CP 2. In the absence of any finding that Ms. Jafar has the financial ability to pay mandatory court fees despite her indigent status, or that she filed her parenting plan action in bad faith, Due Process forbids the Superior Court from requiring Ms. Jafar to pay any fees as a condition of pursuing her case. If GR 34 is interpreted to authorize that result, the rule is unconstitutional as applied to Ms. Jafar.

2. **Ms. Jafar Is Entitled to a Full Fee Waiver Under the Washington Constitution.**

In addition to violating Ms. Jafar's right to Due Process, the Superior Court's Fee Order also deprives Ms. Jafar of her right of access to the courts under Article I, Section 10 of the Washington Constitution, which requires Washington courts to waive court fees where the inability to pay such fees would deny an indigent litigant access to the courts to pursue a

good-faith, non-frivolous claim. *See O'Connor*, 76 Wn.2d at 603, 606; *Iverson*, 83 Wn.2d at 166-68.²²

Again, the Superior Court has affirmatively determined in this case that Ms. Jafar is indigent. And the Superior Court did not (nor could it) make any finding that Ms. Jafar's action is frivolous or brought in bad faith. *See* CP 1-2. Under those circumstances, this Court's precedent required the Superior Court to waive all mandatory fees and surcharges that would operate to prevent Ms. Jafar from access to judicial relief. *See O'Connor*, 76 Wn.2d at 603 (“[T]he exercise of a sound discretion dictates that a litigant should not be denied his day in court simply because he is financially unable to pay the court fees.”).

Because Ms. Jafar lacks the ability to pay the \$50 in fees ordered by the Superior Court within 90 days and risks dismissal of her case if she does not pay, the Superior Court's Fee Order effectively denies her access to any remedy from the courts. Thus, insofar as GR 34 could be

²² This Court's decision in *In re Marriage of King*, 162 Wn.2d 378, 174 P.3d 659 (2007), does not affect the constitutional analysis in this case. In *King*, this Court held that an indigent parent has no federal or state constitutional right to the appointment of counsel in a dissolution and parenting plan proceeding. *See id.* at 383-98. In so doing, however, the *King* Court expressly reaffirmed both that the right of access to the courts is a fundamental right and that court-imposed fees can violate that right of access. *Id.* at 390, 394 n.15. The *King* Court simply found that a state's failure to provide appointed counsel for indigent parents in dissolution proceedings did not implicate that right of access. *Id.* Ms. Jafar's case, by contrast, involves a recognized barrier to access (*i.e.*, poverty) under the Washington Constitution, and implicates the very same Due Process concerns recognized by the U.S. Supreme Court in *Boddie*. Accordingly, *King* has no bearing on Ms. Jafar's claims in this case.

interpreted to allow the Superior Court to grant Ms. Jafar less than a full waiver of mandatory fees and surcharges, GR 34 violates Article I, Section 10 of the Washington Constitution and is unconstitutional as applied to Ms. Jafar's case.

V. CONCLUSION

“If we are to keep our democracy, there must be one commandment: thou shalt not ration justice.”

♦ *Learned Hand, Second Circuit Appeals Court Judge*

If equal justice is, as Justice Powell posited, “the most inspiring ideal of our society,” it should go without saying that no person will ever be turned away from our courts and denied access to judicial relief because he or she cannot afford the price of admission. Unfortunately, Washington courts routinely deny indigent litigants access to judicial relief solely on the basis of their inability to pay. Indeed, some of our courts have adopted formal policies — written in bold capital letters, not to be missed by the poor seeking help — that justice is only available for a price. The U.S. and Washington Constitutions forbid such shameful policies, but GR 34 was intended to make the fundamental right to justice even more clear and easy to vindicate. Only this Court has the power to ensure that it achieves those goals.

For all of the reasons set forth above, Petitioner Abeda Jafar respectfully requests that this Court vacate the Superior Court's Fee Order and remand this case to the Superior Court with instructions to grant Ms. Jafar a waiver of all mandatory fees and surcharges.

RESPECTFULLY SUBMITTED: June 11, 2012.

FENWICK & WEST LLP

By: 
Brian D. Buckley, WSBA No. 26423
Bradley T. Meissner, WSBA No. 39592
1191 Second Avenue, 10th Floor
Seattle, WA 98101
Phone: 206.389.4521
Fax: 206.389.4511
Email: bbuckley@fenwick.com
bmeissner@fenwick.com

Janet Chung, WSBA 28535
LEGAL VOICE
907 Pine Street, Suite 500
Seattle, WA 98101-1818
Phone: 206.682.9552
Fax: 206.682.9556
Email: jchung@LegalVoice.org

Attorneys for Petitioner Abeda Jafar

APPENDIX

Appendix Tab

Description

- A Snohomish County Fee Waiver Application Packet
- B Letter from Deborah M. Perluss, Director of Advocacy/General Counsel, Northwest Justice Project, to Ronald Carpenter, Clerk, Washington Supreme Court (Apr. 19, 2010)
- C Letter from James A. Bamberger, Director, State of Washington Office of Civil Legal Aid, to Ronald Carpenter, Clerk, Washington Supreme Court (Mar. 30, 2010)
- D Wash. State Bar Association, GR 9 Cover Sheet, General Rules: New Rule 34 – Waiver of Court and Clerk’s Fees and Charges in Civil Matters (Nov. 2007)
- E Proposed GR 34 (published for comment April 2009)
- F Board of Governors of Wash. State Bar Association, GR 9 Cover Sheet, Suggested Amendment, General Rules: GR 34 – Waiver of Court and Clerk’s Fees and Charges in Civil Matters (New Rule; Rev’d Dec. 2008)
- G Letter from Daniel S. Gottlieb, Chair, Access to Justice Board, to Ronald Carpenter, Clerk, Washington Supreme Court (Apr. 26, 2010)
- H Email from Brian M. Flock to Camila Faulk (Apr. 29, 2010)
- I Letter from John Midgely, Director, Columbia Legal Services, to Ronald Carpenter, Clerk, Washington Supreme Court (Apr. 22, 2010)

2012 JUN 11 P 3:54
STATE OF WASHINGTON
SUPERIOR COURT
CLERK'S OFFICE

- J Letter from Mark A. Hutcheson, President, Endowment for Equal Justice, to Ronald Carpenter, Clerk, Washington Supreme Court (Apr. 22, 2010)
- K Letter from Gail R. Smith, Jones & Smith, to Justice Charles W. Johnson, Washington Supreme Court (June 21, 2010)
- L Letter from Hon. Tari Eitzen, President, Judge, Superior Court Judges' Association, to Justice Charles Johnson, Washington Supreme Court (Feb 10, 2010)
- M Letter from Ruth Gordon, Jefferson County Clerk, to Ronald Carpenter, Clerk, Washington Supreme Court (Apr. 30, 2010)
- N Pattern Form — Motion and Declaration For Waiver of Civil Filing Fees and Surcharges (MTAF)
- O Pattern Form — Financial Statement
- P Pattern Form — Order Re Waiver of Civil Filing Fees and Surcharges
- Q Kitsap County Motion and Declaration To Defer or Waive Payment of Civil Filing Fees and Surcharges
- R Jefferson County Motion and Declaration for Order to Proceed In Forma Pauperis
- S Letter from Hon. Cameron Mitchell, Presiding Judge, Benton-Franklin Superior Court, to Gary M. Smith, Senior Attorney, Northwest Justice Project (Jan. 12, 2012)
- T Email from Ruth Gordon, Jefferson County Clerk, to Sara Hixon, Attorney, Northwest Justice Project (Jan. 5, 2011)
- U Thurston County Clerk's Office, Self-Help Center Form 8-6, What to Do if You Cannot Pay the Filing Fee
- V GR 34 (Waiver of Civil Filing Fee and Surcharges), Spokane County Family Court Facilitator: Instruction #5

- W Instructions for Motion Declaration & Order For Waiver of Civil Filing Fees and Surcharges (Pierce County)
- X Letter from Gary M. Smith, Senior Attorney, Northwest Justice Project, to Hon. Cameron Mitchell, Presiding Judge, Benton-Franklin Superior Court (Oct. 18, 2011)
- Y Motion for Reconsideration of Denial of Fee Waiver, *Onika v. Onika*, No. 11-3-06586 KNT (King County Super. Ct.) (Oct. 10, 2011)
- Z Order on Civil Motion, *Onika v. Onika*, No. 11-3-06586 KNT (King County Super. Ct.) (Oct. 18, 2011)
- AA Letter from Hon. Glenn Phillips, President, Judge, District and Municipal Court Judges' Association, to Hon. Charles L. Johnson, Washington Supreme Court (Dec. 8, 2009)
- BB Minutes of April 10, 2008 WSBA Pro Bono and Legal Aid Committee Meeting
- CC Minutes of June 15, 2006 WSBA Pro Bono and Legal Aid Committee Meeting
- DD Minutes of July 27-28, 2007, WSBA Board of Governors Meeting

APPENDIX A

WHAT TO DO IF YOU CANNOT PAY THE FILING FEE

(See back for details)

** Getting a Fee Waiver*

10



*Sonya Kraski
Snohomish County Superior Court Clerk
MS 605, 3000 Rockefeller Avenue
Everett, WA 98201
(425) 388-3466*

Updated: 5/20/2011

Self-Help Center
#10

HOW TO GET THE FILING FEE WAIVED
RCW 36.18.022

CHECKLIST

Use the forms and instructions in this packet only if the following factors apply to your situation:

- * You want to file a Petition or a new case under RCW Chapter 26 (Domestic Relations).
OR
- * You want to file a civil law suit or a counterclaim, cross-claim or third-party claim in a civil action
OR
- * You want to file a probate or estate action
AND
- * You would like to request the court waive or defer those filing fees based on your current financial situation.

Types of cases and related filing fees include but are not limited to the following:

	<u>Filing Fee</u>
Dissolution of Marriage	\$280.00
Legal Separation	\$280.00
Invalidity of Marriage	\$280.00
Domestic Partnership	\$280.00
Establishment of Parentage	\$250.00
Nonparental Custody	\$250.00
Modification (Out of County)	\$250.00
Adoption	\$250.00
Civil Action	\$230.00
Estate/Probate	\$230.00
Unlawful Detainer	\$75.00/\$187.00
Modification of Child Support (Snohomish County Order)	\$56.00
Modification/ Adjustment of Custody Decree/ Parenting Plan (Snohomish County Order)	\$56.00
Ex Parte ("mail-in") fee	\$30.00

READ ME: It is very important for you to know that when you sign a court document, you may be helping or hurting your court case. Before you sign any court document or get involved with a court case, it is important that you carefully read the document to make sure you are doing the right thing. You may also want to contact a lawyer for legal advice and help with those issues you do not understand. The Snohomish County Bar Association has a list of local attorneys who can give you legal advice and who can help you on a task-by-task basis for a fee. If you need help with the forms, procedures and rules of the court, there is a Family Law Facilitator available to assist you.

INSTRUCTIONS

There are fees and surcharges required for filing a new case. If you cannot pay the fees right now, or if your current financial situation makes it difficult for you to pay the fees now or later, you can ask the Court to waive the fees or to allow you to file your case without paying a filing fee. To make this request, you need to fill out a motion and order requesting waiver of the fees and surcharges and present it to a Court Commissioner for approval. Do this **AFTER** you have completed your petition and other papers, but **BEFORE** filing or attempting to file your paperwork. The Court may waive all or part of the fees, may require you to pay all or part of the fees within a certain amount of time, or may temporarily waive the fees subject to later court review.

IF YOU ARE REPRESENTING YOURSELF, fill out the following documents from this packet, see instructions on the following page:

- Motion and Declaration For Waiver of Civil Filing Fees and Surcharges (MTAF)
- Financial Statement (Attachment)
- Order Re Waiver of Civil Filing Fees and Surcharges

IF YOU HAVE BEEN SCREENED BY A QUALIFIED LEGAL SERVICE PROVIDER (QLSP) AND HAVE BEEN FOUND ELIGIBLE FOR FREE CIVIL LEGAL AID SERVICES, have your attorney fill out the following documents from this packet, see instructions on the following page:

- Motion and Declaration For Waiver of Civil Filing Fees and Surcharges (QLSP Filing)
- Order Re Waiver of Civil Filing Fees and Surcharges

HOW TO FILL OUT THE FORMS

MOTION AND DECLARATION FOR WAIVER OF CIVIL FILING FEES AND SURCHARGES (MTAF):

Complete the caption. Insert the parties' names and a cause number if you have one.

Paragraph 1.1 Check if you are the petitioner/plaintiff or respondent/defendant.

Paragraph 2.1 Insert the date, sign and print your name where indicated.

Paragraph 3.2 Add any information that you would like the court to consider in addition to the financial statement attachment which you will be completing and including with your motion.

Check if you are submitting your motion by mail. See the instructions at the end of this packet for submitting your motion by mail.

Fill in the city, state, and date that you signed the motion. Sign where indicated and print or type in your name where requested.

FINANCIAL STATEMENT:

The Court reviews this document to determine whether or not to waive all or part of your filing fee. Complete all the blanks. If something does not apply to your situation, write "N/A." If you do not know the answer, write "Unknown." Date and sign at the bottom. Staple this statement to the Motion and Declaration for Waiver of Civil Filing Fees and Surcharges (MTAF).

ORDER RE WAIVER OF CIVIL FILING FEES AND SURCHARGES:

Complete the caption. Insert the parties names and a cause number if you have one.

In section I. Basis, check if you are the petitioner/plaintiff or respondent/defendant.

On page 3, sign and print your name where it says "Presented by". If you are working with a QLSP, your lawyer should sign where it says "Presented by". The Court will fill out the rest of the order based upon its findings.

MOTION AND DECLARATION FOR WAIVER OF CIVIL FILING FEES AND SURCHARGES (QLSP Filing)

This form should only be used if you have been screened by a qualified legal service provider (QLSP), have been found eligible for free civil legal aid services and are represented by a free legal aid attorney.

Have your attorney fill out, sign and submit the motion, declaration and order.

FINALIZING YOUR REQUEST

Remove the applicable documents from the instruction packet. Assemble and staple all documents individually. The Financial Statement, if needed, should be stapled to the Motion and Declaration for Waiver of Civil Filing Fees and Surcharges (MTAF).

You may submit your motion either in person or by mail.

Whether you are presenting your motion in person or by mail, you must have completely filled out your summons and petition or complaint and otherwise be ready to file your lawsuit.

TO SUBMIT YOUR MOTION IN PERSON:

You may present your motion and order on an *Ex Parte* basis, in the Ex Parte courtroom at the courthouse, Department A on the 1st floor. The hours are Monday - Friday from 9:00 a.m. - 10:30 a.m. and 1:00 p.m. - 4:00 p.m. The 9:00 - 10:30 a.m. timeframe is attorney priority which means that attorneys will be called first, and if there are a lot of attorneys, you may be asked to come back at 1:00 p.m.

Bring with you to court the motion/declaration to waive fees with the attachment, the order waiving the fee, and your completed summons and petition or complaint.

Sign in on the clipboard at the clerk's desk and be seated. When your name is called, go to the bench and hand the clerk your documents with a brief explanation to the Court of why you are there.

If the Court signs your order, you will take your documents directly to the Clerk's Office on the 2nd floor (room M206) to file. Please be sure to carefully read and understand the terms contained in your order.

If the Court denies your request or requires that you pay a portion of your fee at filing, you will have to pay those fees when you file your papers.

If the Court defers payment of your fees to a later date, make your payment as ordered or your action may be dismissed for nonpayment of these fees.

Sometimes the Court may waive the fees at filing, but may order a review your financial situation before final orders are entered. If the Court later finds that you can afford to pay the fee, you will be directed to do so prior to entry of any final orders. Please be prepared to address any changes that may occur in your financial situation.

Be sure to review the court order carefully so you understand what is required of you. Noncompliance may result in dismissal of your action.

TO SUBMIT YOUR MOTION BY MAIL:

Send your ex parte mail request to:

Snohomish County Clerk's Office
3000 Rockefeller Ave. MS 605
Everett, WA 98201

You must include all of the following. Failure to provide any of the following will result in return/rejection of your submission. If you do not provide a self-addressed stamped envelope with your submission, your paperwork will not be mailed back to you.

- Original Motion and Declaration for Waiver of Civil Filing Fees and Surcharges
- Original Financial Statement (if required)
- Original Order Re Waiver of Civil Filing Fees and Surcharges
- A copy of your completed summons and petition or complaint
- A self-addressed stamped envelope (postage paid)

The original Order Re Waiver of Civil Filing Fees and Surcharges with the Court's decision on your request will be returned to you. Be advised that it can take 7 to 10 business days to complete your request upon receipt by our mail ex parte department.

Once you receive the order granting the waiver of your filing fees, you may proceed with filing your action. Be sure to bring this order with you when you go to the Clerk's Office to file your action.

If the Court denies your request or requires that you pay a portion of your fee at filing, you will have to pay those fees when you file your papers.

If the Court defers payment of your fees to a later date, make your payment as ordered or your action may be dismissed for nonpayment of these fees.

Sometimes the Court may waive the fees at filing, but may order a review your financial situation before final orders are entered. If the Court later finds that you can afford to pay the fee, you will be directed to do so prior to entry of any final orders. Please be prepared to address any changes that may occur in your financial situation.

Be sure to review the court order carefully so you understand what is required of you. Noncompliance may result in dismissal of your action.

**Superior Court of Washington
In and For Snohomish County**

<p>_____ (Insert Petitioner's/Plaintiff's Name Above) Petitioner/Plaintiff,</p> <p style="text-align: center;">vs.</p> <p>_____ (Insert Respondent's/Defendant's Name Above) Respondent/Defendant.</p>	<p>Cause No.</p> <p>Motion and Declaration For Waiver of Civil Filing Fees and Surcharges (MTAF)</p>
--	--

I. Motion

- 1.1 I am the [] petitioner/plaintiff [] respondent/defendant in this action.
- 1.2 I am asking for a waiver of all filing fees and surcharges.

II. Basis for Motion

- 2.1 GR 34 allows the court to waive "filing fees or surcharges the payment of which is a condition precedent to a litigant's ability to secure access to judicial relief" for a person who is indigent. As outlined below, I am indigent.

Dated: _____ Signature of Requesting Party

Print or Type Name

III. Declaration

I declare that,

- 3.1 I cannot afford to meet my necessary household living expenses and pay the filing fees and surcharges imposed by the court. Please see the attached Financial Statement, which I incorporate as part of this declaration.

3.2 In addition to the information in the financial statement I would like the court to consider the following:

(Check if applies.) I filed this motion by mail. I enclosed a self-addressed stamped envelope with the motion so that I can receive a copy of the order once it is signed.

I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Signed at (city) _____, (state) _____ on (date) _____.

Signature

Print or Type Name

Case Name: _____ Case Number: _____

Financial Statement (Attachment)			
1. My name is: _____			
2. <input type="checkbox"/> I provide support to people who live with me: How many? _____ Age(s): _____			
3. My Monthly Income:		6. My Monthly Household Expenses:	
Employed: Full time <input type="checkbox"/> Part time <input type="checkbox"/> Unemployed <input type="checkbox"/>		Rent/Mortgage:	\$ _____
Employer's Name: _____		Housing/rent provided by other party <input type="checkbox"/> check if yes	
Dates of employment (to/from): _____		Food/Household Supplies:	\$ _____
Gross pay/month (salary or hourly pay):	\$ _____	Utilities (include cell phone):	\$ _____
Take home pay per month:	\$ _____	Transportation:	\$ _____
4. Other Sources of Income Per Month in my Household:		Ordered Maintenance actually paid:	\$ _____
Source:	\$ _____	Ordered Child Support paid:	\$ _____
Source:	\$ _____	Clothing:	\$ _____
Source:	\$ _____	Child Care:	\$ _____
Source:	\$ _____	Education Expenses:	\$ _____
Sub-Total:		Insurance (car, health):	\$ _____
<input type="checkbox"/> I receive food stamps.		Medical Expenses:	\$ _____
<input type="checkbox"/> I receive SSI, SSD, GAU, AFDC, TANF or other government assistance: \$ _____ /month		Other _____	\$ _____
Total Income, lines 3 (take home pay) and 4:		Sub-Total:	
		\$ _____	
5. My Household Assets:		7. My Other Monthly Household Expenses:	
Cash on hand:	\$ _____		\$ _____
Checking Account Balance:	\$ _____		\$ _____
Savings Account Balance:	\$ _____		\$ _____
Auto #1 (Value less loan):	\$ _____		\$ _____
Make/model:			
Auto #2 (Value less loan):	\$ _____	Sub-Total:	
Make/model:		\$ _____	
Home (Value less mortgage):	\$ _____	8. My Other Debts with Monthly Payments:	
Other:	\$ _____		\$ _____ /mo
Other:	\$ _____		\$ _____ /mo
Other:	\$ _____		\$ _____ /mo
Other:	\$ _____		\$ _____ /mo
Other:	\$ _____	Sub-Total:	
		\$ _____	
Total Household Assets:		Total Household Expenses and Debts, lines 6, 7, & 8:	
		\$ _____	
Date: _____		Signature: _____	

**Superior Court of Washington
In and For Snohomish County**

<p>_____ (Insert Petitioner's/Plaintiff's Name Above) Petitioner/Plaintiff,</p> <p style="text-align: center;">vs.</p> <p>_____ (Insert Respondent's/Defendant's Name Above) Respondent/Defendant.</p>	<p>Cause No.</p> <p>Motion and Declaration For Waiver of Civil Filing Fees and Surcharges (QLSP Filing) (MTAF)</p>
--	--

I. Motion

On behalf of the [] petitioner/plaintiff [] respondent/defendant, I am asking for a waiver of all filing fees and surcharges.

I base this motion on GR 34(a) and the declaration, below.

Dated: _____

Signature of Lawyer

WSBA No.

Print or Type Name

II. Declaration

I declare that,

2.1 I represent the [] petitioner/plaintiff [] respondent/defendant.

2.2 I am an attorney working with _____, which is a Qualified Legal Services Provider (QLSP) as defined by the Washington State Bar Association in APR 8(e)(2).

2.3 I am working with the QLSP as an:

- attorney employed by the QLSP, or
- attorney working in conjunction with the QLSP.

2.4 The QLSP screened the petitioner/plaintiff respondent/defendant and found the litigant eligible for free civil legal aid services.

(Check if applies.) I filed this motion by mail. I enclosed a self-addressed stamped envelope for timely return of a conformed copy of the order.

I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Signed at (city) _____ (state) _____ on (date) _____.

Signature of Lawyer

WSBA No.

Print or Type Name

**Superior Court of Washington
In and For Snohomish County**

 (Insert Petitioner's/Plaintiff's Name Above)
 Petitioner/Plaintiff,
 vs.

 (Insert Respondent's/Defendant's Name Above)
 Respondent/Defendant.

Cause No.
**Order Re Waiver of Civil Filing Fees
 and Surcharges**
 Granted (ORPRFP)
 Denied (ORDYMT)
 Clerk's Action Required 3.1

I. Basis

The court received the motion to waive filing fees and surcharges filed by or on behalf of the
 petitioner/plaintiff respondent/defendant.

The filing for most Civil and Probate cases is \$230, which includes a \$200 filing fee and a \$30
Judicial Stabilization surcharge, pursuant to RCW 3.18.020.

The filing fee for most Domestic and Family Law cases is \$280, which includes a \$200 filing fee,
a \$20 facilitator surcharge, a \$30 domestic violence surcharge, and a \$30 Judicial Stabilization
surcharge, pursuant to RCWs 3.18.016 and 3.18.020.

II. Findings

The Court reviewed the motion and supporting declaration(s). Based on the declaration(s) and
any relevant records and files, the Court finds:

- 2.1 The moving party is indigent based on the following: He or she:
- is represented by a qualified legal aid provider that screened and found the applicant eligible for free civil legal aid services; and/or
 - receives benefits from one or more needs-based, means-tested assistance programs; and/or
 - has household income at or below 125% of the federal poverty guideline; and/or

has household income above 125% of the federal poverty guideline but cannot meet basic household living expenses and pay the fees and/or surcharges; and/or

other: _____

2.2 The moving party is not indigent.

2.3 Other: _____

III. Order

Based on the findings the court orders:

3.1 The motion is granted, and

All filing fees and surcharges the payment of which is a condition precedent to the moving party's ability to secure access to judicial relief are waived.

The \$200 filing fee shall be paid within _____ days of entry of this order

The \$200 filing fee may be temporarily waived and shall be paid prior to entry of any final order

Are waived subject to later court review

The \$20 facilitator surcharge shall be paid within _____ days of entry of this order

The \$20 facilitator surcharge may be temporarily waived and shall be paid prior to entry of any final order

Are waived subject to later court review

The \$30 DV fee shall be paid within _____ days of entry of this order

The \$30 DV fee may be temporarily waived and shall be paid prior to entry of any final order

Are waived subject to later court review

The \$30 Judicial Stabilization surcharge shall be paid within _____ days of entry of this order.

The \$30 Judicial Stabilization surcharge may be temporarily waived and shall be paid prior to entry of any final order

Are waived subject to later court review

other: _____

3.2 [] The motion is denied.

3.3 If there is a material change in financial circumstances, the ruling can be revisited by the court or the moving party.

If the motion was granted and the court, upon review, later finds that either the petitioner or another responsible party to this proceeding has sufficient resources to pay the waived filing fees or surcharges, the Court may modify this order and require the moving party or another party to pay the filing fees and/or surcharges that have been waived by this order.

3.4 It is hereby ordered that this case shall be dismissed, without further order of the court, on _____ (date) if any of the above fees have not been paid as ordered

Dated: _____

Judge/Commissioner

Presented by:

Signature of Party or Lawyer/WSBA No.

Print or Type Name Date

APPENDIX B



Northwest Justice Project

401 Second Ave S, Suite 407
Seattle, WA 98104
Tel. (206) 464-1519
Fax (206) 903-0526

Toll Free 1-888-201-1012
www.nwjustice.org

César E. Torres
Executive Director

April 19, 2010

Mr. Ronald Carpenter Clerk
Washington Supreme Court
P.O. Box 40929
Olympia, WA 98504-0920

Attn: Camilla Faulk

Re: Proposed GR 34

Dear Mr. Carpenter:

I write on behalf of the Northwest Justice Project (NJP) to urge adoption of Proposed GR 34, establishing a general rule governing applications for waiver of filing fees for indigent persons in civil cases. Adoption of Proposed GR 34 is an important step in Washington's efforts to secure uniformity in the fee waiver process statewide and will significantly improve access to courts throughout Washington.

The proposed rule reflects substantial improvement over current practices by establishing a uniform *In Forma Pauperis* (IFP) application process and standards by which low-income persons can pursue fee waivers and by providing for the presumption of indigency on the basis of representation by a qualified legal services provider. As such, the proposed rule benefits clients represented by NJP, clients represented by volunteer attorneys around the state (most of whom are referred to the *pro bono* local bar programs through our statewide legal "hotline" (CLEAR)), and especially unrepresented low-income persons who face great difficulty negotiating the local court process to get in the proverbial courthouse door. Further, a statewide IFP rule to promote access to superior is an important and needed companion to the statewide IFP Rule of Appellate Procedure for accessing the state appellate courts.

While we greatly support this rule and urge its adoption, we are concerned that it does not address issues NJP raised in our April 29, 2008 comments support adoption of the earlier version of GR 34. We are concerned that as written the rule does not address a number of the troubling local court practices that our client community has experienced and which continue to create barriers for low income persons seeking access to the courts to resolve critical legal needs. One problem our client community experiences is that a local court will "waive" the payment of a filing fee to "initiate" the proceeding, but will also order that the fee be paid before the case can be finalized. Another problem is that proposed GR 34 does not expressly address the problem of differing local courts understandings as to what fees and costs are



Board of Directors: Lisa L. Atkinson • Stephen R. Crossland • Lisa Dickinson • Jacole Gronholdt • Celia Guardado •
Richard Harrison • Desiree S. Hosannah • Barbara Lindley • Christina Gerrish Nelson • Naomi Stacy • John Tracy • Roger Wynn •
Claude M. Pearson, President Emeritus



those for which "judicial officers have the authority to grant a waiver". See Comment to proposed GR 34. For example, filing fees, which as a constitutional matter must be subject to full waiver, include fees to support courthouse facilitators (RCW 26.12.240); domestic violence support services (RCW 36.18.016(b)); and a judicial surcharge (RCW 36.18.020(5)). Some courts refuse to waive some or all these fees, on the belief that they do not have the judicial authority to do so. GR 34 does not expressly prevent the practices or clarify that all fees required for filing an action in court are subject to waiver.

Examples of form orders from three different courts (enclosed) illustrate these issues:

- Cowlitz County IFP Motion and Form Orders: waive "filing fee" but require immediate payment of applicable surcharges in three distinct cases and state the "remaining [waived] filing fee **must be paid** before finalization or disposition of this action; OR "the remaining [waived] filing fee **will be reviewed** before finalization or disposition of this action." In our experience, clients we represent as well as low-income persons proceeding without representation are required to pay the surcharges as a condition of initiating an action. *Pro ses* are more often than not compelled to pay the "waived" filing fee as a pre-condition to finalizing their case.
- Lewis County IFP Motion and Form Order: Allows filing of case, however, the court "reserves the right to review this authorization from time to time and require payment of fees if justified at the time OR: "**Petitioner is required to pay the full amount of the filing fee before 90 days has expired, or entry of a final decree, or a dismissal, whichever is first**". Thus, the court does not "waive" the fee, but typically revisits the issue or simply requires applicants to pay before final relief is entered.
- Snohomish County IFP Application and Order: Sets out various boxes for the court to check to identify the specific filing fees the court will waive, but does not include a box to check for "all fees". The waiver is then either "subject to later court review" or only waived "temporarily" and ordered to be paid within a specific number of days of the IFP order or "prior to entry of final orders in this case: or partially waived with amounts to be paid at the time of initial filing, within a specified number of days of filing or prior to entry of final relief. The surcharges are similarly treated, but unlike in the Cowlitz County forms are capable of being fully waived.

As currently proposed, GR 34 does not address these inconsistencies or state whether all filing fees are subject to the Rule or subject to judicial authority to grant a waiver. Nor does it state that "waiver" means "waiver" (not deferral) for the duration of the proceeding up to and including final relief and/or that payment of waived fees cannot be a condition precedent to entry of final relief for those deemed eligible for waiver. In other words, once a litigant has been determined to be indigent and eligible for IFP waiver of fees and judicially imposed costs of litigation, they should not be subjected to repeated review and duplicative determinations of indigency or have their ability to obtain final judicial relief held hostage to their inability to pay the "waived" fee.

Mr. Ronald Carpenter Clerk
April 19, 2010
Page 3

The rule does not clearly and expressly define "waiver" as a determination that the litigant due to their indigency is unable to pay the costs and fees and does not include any limitation on local court review or rescission of the waiver decision as a condition of final relief. As a result, the current practices identified above by those courts and others do not appear to be resolved by proposed GR 34. If sub-section (b) is intended to prohibit a court from denying or delaying final relief on the basis of an "underlying" action on the merits, it is not clear from the language used. If this is the intent, then we propose that the language be clarified either in the text of the sub-section or by way of an additional Comment to the effect:

Waiver of fees under this rule is intended to be a permanent waiver and is not subject to later review or rescission by the court and may not be the basis the basis for withholding final relief or entry of orders pending payment of fees.

Finally, in order to avoid confusion on whether certain costs are able to be waived and provide consistency among courts statewide, the first comment should clarify that "[T]he rule establishes the process by which judicial officers may waive *all* civil filing fees and costs otherwise payable as costs for access to court services."

We greatly appreciate the opportunity to supplement our comments of April, 2008 and look forward to a much improved system for low-income persons to be able to effectively access the courts throughout the state without barriers based on their inability to pay.

Sincerely,



Deborah Perluss
Director of Advocacy/General Counsel
Northwest Justice Project

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50

SUPERIOR COURT OF WASHINGTON FOR COWLITZ COUNTY

In re:

CASE # _____

_____ Petitioner,
and

**MOTION, DECLARATION, AND
ORDER TO PROCEED
IN FORMA PAUPERIS**

_____ Respondent.

- Dissolution of Marriage \$280.00
- Petition for Legal Separation \$280.00
- Petition for Invalidation of Marriage \$280.00
- Dissolution of Meretricious Relationship with Children \$280.00

MOTION

I request the Court to allow me to proceed without payment of all or part of the filing fee. Attached is a Financial Statement in support of this motion.

DECLARATION

This proceeding is brought in good faith and it is my present intention to proceed to final disposition. I am unable to pay the filing fee without undue hardship.

I request entry of an order allowing commencement and prosecution of this action *in forma pauperis* and direction to the Clerk of the Court to file this action without fee.

Presented by:

Name _____

Address _____

Petitioner Signature

Phone _____

Date

ORPRFP (07-2009)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50

ORDER

The petitioner has presented a sufficient motion and declaration to proceed *in forma pauperis* and the Court, finding good cause shown, hereby:

[] **ORDERS** that the petitioner is authorized to file this action upon payment of \$80.00 which includes the \$20.00 Facilitator surcharge (1508) pursuant to RCW 26.12.240; the \$30.00 Domestic Violence surcharge (1512) pursuant to RCW 36.18.016(b) and the \$30.00 Judicial surcharge (1187) pursuant to RCW 36.18.020 (4.)

...Or

[] **ORDERS** that the **Judicial surcharge is deferred*** and the petitioner is authorized to file this action upon payment of \$50.00 which includes the \$20.00 Facilitator surcharge (1508) pursuant to RCW 26.12.240 and the \$30.00 Domestic Violence surcharge (1512) pursuant to RCW 36.18.016(b.)

IT IS FURTHER ORDERED THAT

- The remaining filing fee **must be paid** before finalization or disposition of this action. (1151) (1187*)
- The remaining filing fee **will be reviewed** before finalization or disposition of this action. (1151) (1187*)

SUFFICIENT CAUSE HAS NOT BEEN SHOWN to waive or defer the filing fees therefore it is

[] **ORDERED** that the motion to waive or defer any of the filing fees is denied.

ORDERED this _____ day of _____, _____.

Judge / Court Commissioner

Presented by:

Petitioner's signature, Pro Se

ORDER

The petitioner(s) have presented a sufficient motion and declaration to proceed *in forma pauperis* and the Court, finding good cause shown, hereby:

[] **ORDERS** that the petitioner(s) is/are authorized to file this action upon payment of \$50.00 which includes the \$20.00 Facilitator surcharge (1508) pursuant to RCW 26.12.240; the and the \$30.00 Judicial surcharge (1187) pursuant to RCW 36.18.020 (4.)

. . . Or

[] **ORDERS** that the **Judicial surcharge is deferred*** and the petitioner(s) is/are authorized to file this action upon payment of the \$20.00 Facilitator surcharge (1508) pursuant to RCW 26.12.240.

IT IS FURTHER ORDERED THAT

- The remaining filing fee **must be paid** before finalization or disposition of this action. (1151) (1187*)
- The remaining filing fee **will be reviewed** before finalization or disposition of this action. (1151) (1187*)

SUFFICIENT CAUSE HAS NOT BEEN SHOWN to waive or defer the filing fees therefore it is

[] **ORDERED** that the motion to waive or defer any of the filing fees is denied.

ORDERED this _____ day of _____, _____.

Judge / Court Commissioner

Presented by:

Petitioner's signature, Pro Se

Petitioner's signature, Pro Se

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50

SUPERIOR COURT OF WASHINGTON FOR COWLITZ COUNTY

In re:

CASE # _____

Petitioner,
And

**MOTION, DECLARATION, AND
ORDER TO PROCEED
IN FORMA PAUPERIS**

Respondent.

MODIFICATION OF COWLITZ COUNTY CASE

{ }	Support	\$56.00
{ }	Custody / Parenting Plan	\$56.00
{ }	Notice of Relocation	\$56.00
{ }	Decree	\$56.00

MOTION

I am the petitioner respondent in the above named cause and I request the Court to allow me to proceed without payment of all or part of the filing fee. Attached is a Financial Statement in support of this motion.

DECLARATION

This proceeding is brought in good faith and it is my present intention to proceed to final disposition. I am unable to pay the filing fee without undue hardship.

I request entry of an order allowing commencement and prosecution of this action *in forma pauperis* and direction to the Clerk of the Court to file this action without fee.

Presented by:

Name _____

Address _____

Petitioner's / Respondent's Signature

Phone _____

Date

ORPRFP (07-2009)

ORDER

The petitioner has presented a sufficient motion and declaration to proceed *in forma pauperis* and the Court, finding good cause shown, hereby:

[] **ORDERS** that the petitioner is authorized to file this action upon payment of the \$20.00 Facilitator surcharge (1508) pursuant to RCW 26.12.240

IT IS FURTHER ORDERED THAT

- The remaining filing fee **must be paid** before finalization or disposition of this action. (1105)
- The remaining filing fee **will be reviewed** before finalization or disposition of this action. (1105)

SUFFICIENT CAUSE HAS NOT BEEN SHOWN to waive or defer the filing fees therefore it is

[] **ORDERED** that the motion to waive or defer any of the filing fees is denied.

ORDERED this _____ day of _____, _____.

Judge / Court Commissioner

Presented by:

Petitioner's / Respondent's *signature*, Pro Se

FINANCIAL STATEMENT IN SUPPORT OF MOTION AND ORDER TO PROCEED IN FORMA PAUPERIS

GENERAL INFORMATION

- (a) Name: _____ (a) Spouse: _____
(b) Address: _____
(c) Phone: _____

FAMILY INFORMATION

- (a) Persons whom you financially support: Spouse Children Other
(b) List names, ages, relationship and address if different from yours:

_____	_____
_____	_____
_____	_____

EMPLOYMENT INFORMATION

- | | |
|--|--|
| (a) Are you presently employed: <input type="checkbox"/> Yes <input type="checkbox"/> No | Is spouse presently employed: <input type="checkbox"/> Yes <input type="checkbox"/> No |
| (b) Name and address of employer:

_____ | Name and address of spouse's employer:

_____ |
| (c) Length of employment: _____ | Length of Employment: _____ |
| (d) Occupation: _____ | Occupation: _____ |
| (e) Other source of income: _____ | Other source of income: _____ |

INCOME AND ASSETS

- (a) Gross monthly income (personal) _____
(b) Gross monthly income (spouse) _____
(c) Savings Accounts: _____
(d) Checking Accounts _____
(e) Stocks and Bonds _____
(f) Cash _____
(g) Vehicles/boats/RV/motorcycles _____
(h) Home equity (sale value less amount owing) _____
(i) Other _____

EXPENSES AND DEBTS

- (a) Monthly living expenses (itemize):
Rent/House Payment _____
Food _____
Utilities _____
Transportation _____
Insurance: Medical & Dental _____
Other _____
(b) Debts:
Name of Creditor Amount Owed

TOTAL ASSETS: _____

TOTAL OBLIGATIONS: _____

OTHER: _____

UNDER PENALTY OF PERJURY, I DECLARE THAT I HAVE EXAMINED THIS DOCUMENT AND THE PRECEDING INFORMATION IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE AND ABILITY.

Date

Signature

SUPERIOR COURT OF WASHINGTON
FOR LEWIS COUNTY

Petitioner

vs.

Respondent

NO.

MOTION, DECLARATION AND
ORDER TO PROCEED
IN FORMA PAUPERIS
(ORPRFP)

I. MOTION

I request the court to allow me to proceed without payment of the filing fee and other court costs.

II. DECLARATION

I am the petitioner in this action. This proceeding is brought in good faith and it is my present intention to proceed to a final dissolution of marriage. I am unable to pay the filing fee and other court costs without undue hardship in this proceeding.

The Supreme Court of the United States and the State of Washington have authorized the courts to waive fees in the following cases: Boddie v Connecticut, 401 US 371, 29 L.Ed.2d 113, 91 S.Ct. 780 (1971); Lois Ashley, et al v Superior Court, 82 Wn.2d 188 (1973) and 83 Wn.2d 630, (1974). I request entry of an order:

1. Allowing commencement and prosecution of this case In Forma Pauperis; and
2. Directing the clerk of the court to file and issue papers without any fee or charge whatsoever.

My income, assets are:

Cash \$ _____

My monthly income is \$ _____

Checking \$ _____

The source of my income is _____

Savings \$ _____

I have to support _____ child (ren)

My necessary expenses are:

Rent \$ _____ Utilities \$ _____ Food \$ _____ Daycare \$ _____

I certify under the penalty of perjury under the laws of the State of Washington that the foregoing statements are true and correct.

Dated _____ at _____, Washington.

Petitioner

ORDER

The petitioner having presented a sufficient motion and declaration to proceed In Forma Pauperis and the court finding good cause shown; now therefore, it is hereby:

ORDERED that the petitioner is hereby authorized to prosecute this action In Forma Pauperis; and the clerk of the court is ordered and directed to file and issue papers and pleadings as requested by the petitioner without payment of any fee or charge whatsoever. In approving this Order the court reserves the right to review this authorization from time to time and require the payment of fees if justified at the time OR:

- Petitioner is required to pay the full amount of the filing fee before 90 days has expired, or entry of a final decree, or a dismissal, whichever is first..**

DATED _____

JUDGE/COURT COMMISSIONER

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SNOHOMISH

<p>In re the Marriage of:</p> <p>Petitioner,</p> <p>vs.</p> <p>Respondent.</p>	<p>No.</p> <p>APPLICATION/ORDER TO PROCEED IN FORMA PAUPERIS</p> <p>(ORPRFP)</p>
---	--

I. APPLICATION

I, _____, move the Court for an Order authorizing me to proceed in
Forma Pauperis (at public expense) in this case.

Attached is a Financial Statement in support of this motion.

II. ORDER

It is hereby ordered that the above named is permitted to proceed without payment of the filing fees
indicated below:

- General Case Filing Fee \$200 Domestic Case filing Fee \$200.00 (see sections 2.3 and 2.4)
- Mandatory Arbitration Fee \$220 Domestic Modification Fee (in-County \$36 (see section 2.3)
- Request for Trial De Novo \$250 Other _____

It is hereby ordered that the above fee(s):

- Are waived subject to later court review;
- Are waived temporarily and shall be paid within _____ days of entry of this order;
- Are waived temporarily and shall be paid prior to entry of any final orders in this case;
- Are waived in the amount of \$ _____ with the balance to be paid:
 - at the time of filing within _____ days of filing
 - prior to entry of any final orders in this case
- Other _____

1 It is hereby ordered that the \$20.00 faciliitator surcharge in cases under Title 26 RCW (per
2 Snohomish County Code 4.90) shall be paid:

- 3 Does not apply
4 At the time of filing
5 Within _____ days of filing or no later than _____ (date)
6 Prior to entry of any final orders

7 It is hereby ordered that the \$30.00 Domestic Violence Prevention Surcharge (RCW
8 36.18.016(2)(b)) assessed on all petitions for dissolution, legal separation or declaration
9 concerning validity of a marriage shall be paid.

- 10 Does not apply
11 At the time of filing
12 Within _____ days of filing or no later than _____ (date)
13 Prior to entry of any final orders

14 It is hereby ordered that this case shall be dismissed on _____ (date) if any of
15 the above fees have not been paid as ordered.

16 DATED THIS _____ DAY OF _____, 20____.

17 _____
18 JUDGE/COURT COMMISSIONER

19 Presented by:
20 _____
21 _____
22 _____

23 _____
24 Signature of Petitioner

FAILURE TO PROSECUTE THIS ACTION BY FAILURE TO APPEAR AT YOUR HEARING OR
OTHER WISE MAY RESULT IN AN ORDER AND JUDGMENT REQUIRING THE PETITIONER TO PAY
THE FILING FEE AND SERVICE COSTS.

1 FINANCIAL STATEMENT IN SUPPORT OF APPLICATION AND ORDER TO PROCEED IN FORMA
2 PAUPERIS

3 3.1 GENERAL INFORMATION

4 (a) Name: _____ (a) Spouse's Name: _____
5 (b) Address: _____ (b) Address: _____
6 (c) Social Security #: _____ (c) Social Security #: _____
7 (d) Telephone # _____ (d) Telephone # _____
8 (e) Date of Birth: _____ (e) Date of Birth: _____

9 3.2 FAMILY INFORMATION

10 (a) Persons whom you financially support: [] Spouse [] Children [] Other
11 (b) List names, relationship and address if different from yours:

12 _____
13 _____
14 _____

15 3.3 EMPLOYMENT INFORMATION

16 (a) Are you presently employed [] Yes [] No (a) Is your spouse presently employed [] Yes [] No
17 (b) Name & address of employer: _____ (b) Name & address of spouse's employer: _____
18 (c) Length of Employment: _____ (c) Length of Employment: _____
19 (d) Occupation: _____ (d) Occupation: _____
20 (e) Other Sources of Income: _____ (e) Other Sources of Income: _____

21 3.4 INCOME AND ASSETS

22 (a) Gross monthly income (personal) _____
23 (b) Gross monthly income (spouse) _____
24 (c) Savings accounts _____
(d) Checking accounts _____
(e) Stocks & Bonds _____
(f) Cash _____
(g) Vehicles/boats/RV/motorcycles _____
(h) Home equity (sale value less amount owing) _____
(i) Other _____

TOTAL ASSETS: _____

3.5 EXPENSES AND DEBTS

(a) Monthly living expenses (itemize):
Rent/house payment _____
Food _____
Utilities _____
Transportation _____
Insurance _____
Medical & Dental _____
Other _____

(b) Debts:
Name of Creditor _____ Amount Owed _____

TOTAL OBLIGATIONS: _____

25 UNDER PENALTY OF PERJURY, I DECLARE THAT I HAVE EXAMINED THIS DOCUMENT AND THE
26 PRECEDING INFORMATION IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE AND ABILITY.

27 _____
28 DATE

29 _____
30 SIGNATURE

APPENDIX C



STATE OF WASHINGTON
OFFICE OF CIVIL LEGAL AID

1112 Quince St SE
MS 41183
Olympia, WA 98504
360-704-4135
360-704-4003 FAX

James A. Bamberger
Director
JIM.BAMBERGER@OCLA.WA.GOV

March 30, 2010

Ronald Carpenter, Clerk
Washington Supreme Court
415 12th Ave., SW
PO Box 40929
Olympia, WA 98504-0929

Attn: Camilla Faulk

Re: Proposed GR 34
Waiver of Court and Clerks Fees and Charges in
Civil Matters on the Basis of Indigency

Dear Mr. Carpenter:

I write in my capacity as Director of the Washington State Office of Civil Legal Aid, an independent judicial branch agency dedicated, among other things, to ensuring access to the civil justice system for low income and vulnerable people in our state. I write to encourage the Supreme Court to adopt the proposed GR 34 in the form most recently published for comment in April 2009.

While the right of low income litigants to access the courts free of financial obstacles has been the law in our state for more than 40 years,¹ objective and anecdotal experience indicates that this right is honored more often in the breach. Faced with fiscal pressures, judicial officers across our state (and often within the same judicial district) apply inconsistent standards for determining an individual litigant's right to waiver of court filing fees and other costs that she cannot afford to incur. In all too many cases, the requirement to pay civil filing fees and other costs operates to limit, and even deny, access to judicial relief in a wide range of compelling civil legal cases.

For more than four years, the Washington State Bar Association's Pro Bono and Legal Aid Committee has worked to establish a workable, effective and simple means of ensuring consistent and efficient treatment of *in forma pauperis* (IFP) applications filed by low income people, whether or not they are represented by counsel. The current version of GR 34 is the culmination of these efforts, and represents a consensus understanding between the pro bono and legal aid community, the Superior Court

¹ *O'Connor v. Matzdorff*, 76 Wn.2d 589, 458 P.2d 154 (1969).

It's not justice, if it's not equal.

Re: GR 34
March 30, 2010
Page 2

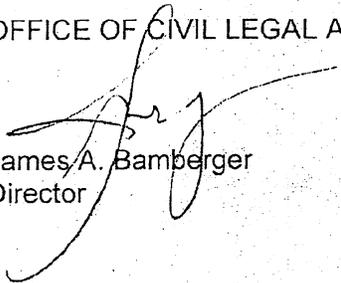
Judges Association and the Washington State Bar Association. In my capacity as Director of the Office of Civil Legal Aid, I have worked closely in the crafting of this rule and support its adoption unconditionally.

The rule ensures fair and appropriate treatment of IFP applications, establishes a uniform standard of indigency for determining whether individuals are presumed eligible for waivers of civil filing fees and other costs for which judicial officers have authority to waive, streamlines existing processes, encourages pro bono representation (by removing the need for pro bono attorneys to navigate unnecessary procedural obstacles) and ensures accountability.

The Office of Civil Legal Aid believes this rule protects the rights of indigent persons, effectively preserves judicial prerogatives and removes barriers that limit access to the justice system. Adoption of this rule is strongly encouraged.

Sincerely,

OFFICE OF CIVIL LEGAL AID


James A. Bamberger
Director

APPENDIX D



[Courts Home](#) > [Court Rules](#)



[Search](#) | [Site Map](#) | [eService Center](#)

GR 34 - Waiver of Court and Clerk's Fees and Charges in Civil Matters on the Basis of Indigency

Comments for GR 34 must be received no later than April 30, 2008.

- **Proposed New Rule GR 34 - Waiver of Court and Clerk's Fees and Charges in Civil Matters on the Basis of Indigency** (in Word Format)
- **Comments Received for GR 34 - Waiver of Court and Clerk's Fees and Charges in Civil Matters on the Basis of Indigency**

GR 9 COVER SHEET Suggested Amendment GENERAL RULES (GR) New Rule 34 – Waiver of Court and Clerk's Fees and Charges in Civil Matters

Submitted by the Washington State Bar Association

Purpose: This rule is intended to promote broader access to justice for people lacking the financial means to pay initial filing fees and other litigation fees and charges. Fees and charges that prevent courts from considering meritorious cases effectively bar justice to the indigent. By establishing predictable, efficient and uniform statewide standards for waiving court and clerk's fees and charges in civil cases, this rule should reduce the time spent by applicants or their lawyers in obtaining waiver of fees and charges, reduce court administration and judicial time in acting on waiver applications, and encourage *pro bono* representation by lawyers in private practice who wish to meet RPC 6.1's aspirational goals.

[Courts](#) | [Organizations](#) | [News](#) | [Opinions](#) | [Rules](#) | [Forms](#) | [Directory](#) | [Library](#)
[Back to Top](#) | [Privacy and Disclaimer Notices](#)

APPENDIX E

GENERAL RULES (GR)

RULE 34. WAIVER OF COURT AND CLERK'S FEES AND CHARGES IN CIVIL MATTERS ON THE BASIS OF INDIGENCY

(a) Any individual, on the basis of indigent status as defined herein, may seek a waiver of filing fees or costs from a judicial officer in the applicable trial court.

(1) The application for such a waiver may be made ex parte in writing or orally, accompanied by a mandatory pattern form created by the Administrative Office of the Courts (AOC) whereby the applicant attests to his or her financial status or, in the case of an individual represented by a qualified legal services provider ("QLSP") or an attorney working in conjunction with a QLSP, a declaration of counsel stating that the individual was screened and found eligible by the QLSP.

(2) The court shall accept an application submitted in person, by mail and where authorized by local practices, electronic filing. The process for presentation of the application shall conform to local court and clerk processes for presenting ex parte orders to the court directly or via the clerk. All applications shall be presented to a judicial officer for consideration in a timely manner and in conformity with the local court's established procedures. There shall be no locally imposed fee for making an application. The applicant or applicant's attorney filing by mail, shall provide the court with a self-addressed stamped envelope for timely return of a conformed copy of the order.

COMMENT

This rule establishes the process by which judicial officers may waive civil filing fees and such other costs for which judicial officers have authority to grant a waiver.

(3) An individual who is not represented by a qualified legal services provider (as that term is defined below) or an attorney working in conjunction with a qualified legal services provider shall be determined to be indigent within the meaning of this rule if such person, on the basis of the information presented, establishes that:

GENERAL RULES (GR)

RULE 34. WAIVER OF COURT AND CLERK'S FEES AND CHARGES IN CIVIL MATTERS ON THE BASIS OF INDIGENCY

(A) he or she is currently receiving assistance under a needs-based, means-tested assistance program such as the following:

- (i) Federal Temporary Assistance for Needy Families (TANF);
- (ii) State-provided general assistance for unemployable individuals (GA-U or GA-X);
- (iii) Federal Supplemental Security Income (SSI);
- (iv) Federal poverty-related veteran's benefits; or
- (v) Food Stamp Program (FSP); or

(B) his or her household income is at or below 125% of the federal poverty guideline; or

(C) his or her household income is above 125% of the federal poverty guideline and the applicant has recurring basic living expenses (as defined in RCW 10.101.010(4)(d)) that render him or her without the financial ability to pay the filing fees and other fees or costs for which a request for waiver is made.

(D) other compelling circumstances exist that demonstrate an applicant's inability to pay fees and/or costs.

(4) An individual represented by a QLSP, or an attorney working in conjunction with a QLSP that has screened and found the individual eligible for services, is presumptively deemed indigent when a declaration from counsel verifies representation and states that the individual was screened and found eligible for services.

(5) As used in this rule, "qualified legal services provider" means those legal services providers that meet the definition of APR 8(e).

GENERAL RULES (GR)

RULE 34. WAIVER OF COURT AND CLERK'S FEES AND CHARGES IN CIVIL MATTERS ON THE BASIS OF INDIGENCY

COMMENT

The adoption of this Rule is rooted in the constitutional premise that every level of court has the inherent authority to waive payment of filing fees and costs on a case by case basis. Each court is responsible for the proper and impartial administration of justice which includes ensuring that meaningful access to judicial review is available to the poor as well as to those who can afford to pay.

(b) Nothing in this rule shall prohibit or delay action on the underlying petition upon the court's approval of a waiver and presentation of an original petition may accompany the initial fee waiver.

APPENDIX F



[Courts Home](#) > [Court Rules](#)



[Search](#) | [Site Map](#) | [eService Center](#)

GR 34 - Waiver of Court and Clerk's Fees and Charges in Civil Matters on the Basis of Indigency

Comments for GR 34 must be received no later than April 30, 2010.

- **Proposed New Rule GR 34 - Waiver of Court and Clerk's Fees and Charges in Civil Matters on the Basis of Indigency** (in Word Format)
- **Comments Received for GR 34 - Waiver of Court and Clerk's Fees and Charges in Civil Matters on the Basis of Indigency**

GR 9 COVER SHEET Suggested Amendment GENERAL RULES (GR)

GR 34 - Waiver of Court and Clerk's Fees and Charges in Civil Matters (New Rule; revised December 2008)

Submitted by the Board of Governors of the Washington State Bar Association

Purpose: An initial version of this suggested rule was presented to and approved by the Board of Governors of the Washington State Bar Association in 2007. The rule was published for comment by the Supreme Court in November 2007. Substantial comments were submitted to the Court, including comments from the Washington Association of County Clerks (Clerks Association) and the Superior Court Judges Association (SCJA) opposing the rule. Principal substantive grounds for their opposition were:

- The proposed rule authorized non-judicial officials to accept filings without payment of fees and without independent review by a judicial officer.
- The proposed rule established a 200% threshold for indigency which, if adopted, would result in a substantial revenue loss for cash strapped court systems.
- The rule authorized waiver of a wide range of costs.
- The forms developed to implement the rule were complex, unwieldy and difficult for pro se litigants to understand.

A revised version of the suggested rule was submitted to the Supreme Court in March 2008. The Superior Court Judges Association filed additional comments which reflected continuing objections to the rule. In response to these objections, the WSBA Pro Bono and Legal Aid Committee (PBLAC) worked directly with the SCJA leadership and that of the Clerks Association to see whether a consensus approach might be developed. PBLAC achieved a meeting of the minds with the SCJA on a substantially revised version of the draft rule, but was not able to achieve agreement with the Clerks Association.

The revised draft is substantially different in approach than that which was previously submitted

to the Court. It includes no forms, but directs that pattern forms be developed by the Administrative Office of the Courts. It provides a simple mechanism for the submission and presentation of requests for fee and cost waivers, consistent with local court practices. It allows for simultaneous filing of requests for fee and cost waivers with the underlying pleadings. It establishes a uniform standard for determining indigency – one that is consistent with the standard for determining eligibility used by "qualified legal services providers" (see APR 8(e)). It provides for presumptive eligibility for waivers for those litigants represented by attorneys affiliated with qualified legal services providers (including pro bono attorneys who receive client referrals from a qualified legal services provider). It preserves the proper balance between judicial and executive branch functions. And, consistent with longstanding Supreme Court case law,¹ it affirms the power of judicial officers, in the exercise of inherent judicial authority, to waive such fees and costs as are appropriate, consistent with their responsibility to ensure fair access to the courts.

The WSBA believes that this revision is consistent with the objectives initially sought to be achieved with the original GR 34 proposal, to wit:

- Establishment of a statewide, uniform approach to presentation, consideration and approval of requests for waiver of fees and costs for low income civil litigants, whether they are represented by legal aid programs, pro bono attorneys

or appear in the proceeding *pro se*.

- Establishment of a uniform standard for determining indigency that is consistent with the standard employed by state and federally funded civil legal aid programs.
- Streamlining the process such that those who have been found eligible for state or federally funded civil legal aid services are presumed eligible for a waiver of filing fees and appropriate costs.
- Reducing the amount of time that pro bono attorneys spend developing and presenting *in forma pauperis* (IFP) requests, thereby allowing them to spend more time on the substantive issues presented in their cases.

The revised rule preserves the proper balance between judicial and executive branch functions. Upon the rule's adoption by the Supreme Court, the PBLAC and the SCJA will work with the Administrative Office of the Courts, the Clerks Association and representatives of the legal aid community to develop appropriate forms and a training curriculum designed to ensure the effective and proper application of this rule by judicial officers throughout the state.

¹ *O'Connor v. Matzdorff*, 76 Wn.2d 589, 458 P.2d 154 (1969).

APPENDIX G



MEMBERS

Kirsten Barron

M. Wayne Blair

Gregory R. Dallaire

Hon. Elizabeth Fry

Hon. Steven C. González

Daniel S. Gottlieb, Chair

Rep. Patricia Taylor Lantz (ret.)

Aiko Schaefer

Elizabeth Schoedel

STAFF

Joan E. Fairbanks
Justice Programs Manager
206 727-8282
joanf@wsba.org



THE ALLIANCE
for Equal Justice

SUPPORTER

April 26, 2010

Ronald Carpenter, Clerk
Washington Supreme Court
415 12th Ave., S.W.
PO Box 40929
Olympia, WA 98504-0929

ATTN: Camilla Faulk

RE: Proposed GR 34 – Waiver of Court and Clerks Fees and Charges in
Civil Matters on the Basis of Indigency

Dear Mr. Carpenter:

The Washington State Access to Justice Board (ATJ Board) was established by the Washington Supreme Court to address access issues for those who experience economic and other significant barriers to the justice system. Consistent with that directive, the ATJ Board encourages the Court to adopt the most recent version of GR 34, published for comment in April 2009.

The need for a fair and uniform system for determining eligibility for fee waivers is well established in this state. In a 1998 Report¹ to the Washington State Bar Association (WSBA), its Pro Bono and Legal Aid Committee (PBLAC) concluded that “the practical application of the constitutional right of indigent litigants to a waiver of filing fees was wanting in regularity of criteria and process.” Absent criteria and process, the “practical application” is that the granting of fee waivers in many Washington state jurisdictions is largely subjective. Moreover, the lack of information in many jurisdictions about the right to request a fee waiver may have the unintended consequence of dissuading indigent people from seeking redress in our courts because they cannot pay the filing fee. Given a worsening economic climate, an increasing poverty population, and reductions in court budgets, it is imperative that the constitutional right of access to the courts be protected.

The ATJ Board has been involved in the development of proposed GR 34 for the past four years, and believes its adoption will be an important step in ensuring that the costs necessary for an efficient and effective justice system do not serve as a barrier for those who can least afford to pay them. Proposed GR 34 creates a uniform standard of indigency, establishes a streamlined application process, and provides incentives for pro bono representation. It preserves the constitutional right to access the courts by removing a barrier for low income people.

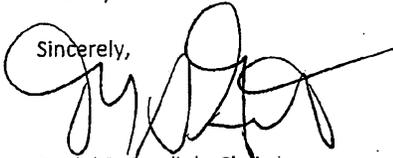
¹ FINAL REPORT OF THE PRO BONO AND LEGAL AID COMMITTEE OF THE WASHINGTON STATE BAR ASSOCIATION TO THE BOARD OF GOVERNORS OF THE WASHINGTON STATE BAR ASSOCIATION ON CIVIL EQUAL JUSTICE FUNDING OPTIONS – MAY 1998.

Ronald Carpenter
Page 2

The ATJ Board urges the Court's adoption of GR 34.

Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Gottlieb', with a large, sweeping flourish extending to the right.

Daniel S. Gottlieb, Chair
Access to Justice Board

APPENDIX H

Faulk, Camilla

From: Flock, Brian M. (Perkins Coie) [BFlock@perkinscoie.com]
Sent: Thursday, April 29, 2010 9:32 AM
To: Faulk, Camilla
Subject: Comment Regarding Proposed Amendments to GR 34

I am writing to express my personal support for the proposed amendments to GR 34. As an attorney committed to pro bono services to the indigent, I think it is important for Washington to adopt a consistent approach to handling requests for fee waivers. The current ad hoc and inconsistent approach leads to attorneys and the courts spending unnecessary time on these requests. More importantly, the current system allows for differing outcomes based on county of residence, or in some cases, the particular official who hears the request. Determining indigence based on the same criteria used by civil legal service providers in Washington will eliminate these inefficiencies and inconsistencies.

Brian M. Flock | Perkins Coie LLP
1201 Third Avenue, Suite 4800
Seattle, WA 98101-3099
PHONE: 206.359.6106
FAX: 206.359.7106
MOBILE: 206.714.7935
E-MAIL: BFlock@perkinscoie.com

[Facebook \(personal\)](#) | [Facebook \(fan page\)](#) | [Twitter: @brianflock](#) | [LinkedIn](#)

IRS CIRCULAR 230 DISCLOSURE: To ensure compliance with Treasury Department and IRS regulations, we inform you that, unless expressly indicated otherwise, any federal tax advice contained in this communication (including any attachments) is not intended or written by Perkins Coie LLP to be used, and cannot be used by the taxpayer, for the purpose of (i) avoiding penalties that may be imposed on the taxpayer under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein (or any attachments).

NOTICE: This communication may contain privileged or other confidential information. If you have received it in error, please advise the sender by reply email and immediately delete the message and any attachments without copying or disclosing the contents. Thank you.

APPENDIX H

Faulk, Camilla

From: Flock, Brian M. (Perkins Coie) [BFlock@perkinscoie.com]
Sent: Thursday, April 29, 2010 9:32 AM
To: Faulk, Camilla
Subject: Comment Regarding Proposed Amendments to GR 34

I am writing to express my personal support for the proposed amendments to GR 34. As an attorney committed to pro bono services to the indigent, I think it is important for Washington to adopt a consistent approach to handling requests for fee waivers. The current ad hoc and inconsistent approach leads to attorneys and the courts spending unnecessary time on these requests. More importantly, the current system allows for differing outcomes based on county of residence, or in some cases, the particular official who hears the request. Determining indigence based on the same criteria used by civil legal service providers in Washington will eliminate these inefficiencies and inconsistencies.

Brian M. Flock | Perkins Coie LLP
1201 Third Avenue, Suite 4800
Seattle, WA 98101-3099
PHONE: 206.359.6106
FAX: 206.359.7106
MOBILE: 206.714.7935
E-MAIL: BFlock@perkinscoie.com

[Facebook \(personal\)](#) | [Facebook \(fan page\)](#) | [Twitter: @brianflock](#) | [LinkedIn](#)

Perkins Coie LLP

IRS CIRCULAR 230 DISCLOSURE: To ensure compliance with Treasury Department and IRS regulations, we inform you that, unless expressly indicated otherwise, any federal tax advice contained in this communication (including any attachments) is not intended or written by Perkins Coie LLP to be used, and cannot be used by the taxpayer, for the purpose of (i) avoiding penalties that may be imposed on the taxpayer under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein (or any attachments).

NOTICE: This communication may contain privileged or other confidential information. If you have received it in error, please advise the sender by reply email and immediately delete the message and any attachments without copying or disclosing the contents. Thank you.

APPENDIX I



April 22, 2010

Ronald Carpenter, Clerk
Washington State Supreme Court
PO Box 40929
Olympia, WA 98504-0929

Sent via email

Attn: Camilla Faulk

Re: Support for Proposed GR 34

Dear Mr. Carpenter:

On behalf of Columbia Legal Services (CLS), I wish to express our strong support for proposed GR 34 regarding the waiver of civil court and clerk's fees based on indigence.

CLS, like other providers of civil legal services to low-income people in Washington State, has found that the current systems for waiver of fees have created unnecessary and sometimes insurmountable barriers to access to the courts for people of low income. There is not currently a uniform system across counties of standards and procedures for waiver of filing fees, court facilitator charges, and other court and clerk's fees, which can lead to inconsistent and unfair results. This creates problems for counsel, but is especially hard on pro se litigants. For example, CLS has found:

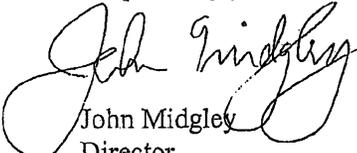
- Clients around the state who qualify as low-income for civil legal services do not meet fee waiver standards or practices in some counties. Some individuals have been denied waivers because they have minimal assets.
- In some counties, fee waivers are allowed for filing fees, but not for other fees such as the family law court facilitator fees and other required fees or costs.
- In some counties in central and southwestern Washington, the court may allow some low-income individual to commence a proceeding *in forma pauperis*, but will not issue final orders until the fees are paid.

Consistent with constitutional principles, Washington State should have clear, fair and consistent rules for allowing low-income people to access court services. Proposed GR 34 would address a crucial part of this need by creating uniform standards for qualifying for fee and cost waivers and requiring standard forms to demonstrate eligibility for fee waivers. And crucially, by creating a streamlined process for clients of qualified legal services providers, the rule would allow legal services programs and *pro bono* lawyers working with volunteer lawyer programs to focus their resources on serving indigent clients, rather than spending additional time on the fee waiver process. The proposed GR 34 could be clearer about which fees and costs must be subject to waiver, and we would suggest clarifying language on this point given the current inconsistent practice as between counties.

Washington State Supreme Court
April 22, 2010
Page 2

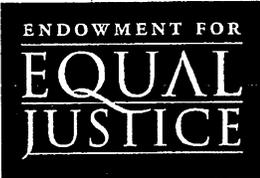
We are hopeful that adoption of a new GR 34 will continue our progress in Washington State toward full access to the civil justice system for people of low income. Thank you for your consideration of these comments.

Respectfully yours,



John Midgley
Director

APPENDIX J



April 22, 2010

Ronald Carpenter, Clerk
Washington Supreme Court
PO Box 40929
Olympia, WA 98504-0929

Re: GR 34

Dear Mr. Carpenter:

The Endowment for Equal Justice is dedicated to equal justice for low-income persons. Our mission is to raise charitable support for a permanently endowed fund to help provide stable funding for Washington's civil legal aid programs providing access to the civil justice system for those with nowhere else to turn. This is why we support proposed GR 34, which would create uniform *in forma pauperis* standards across the state.

The proposed rule will benefit our 26 grantee organizations and the low-income people they serve. For volunteer lawyer programs and other legal aid providers, GR 34 will make it easier to recruit volunteers whose time is better utilized providing legal advice and representation than spending substantial time obtaining an IFP order.

For low-income people, navigating the myriad IFP procedures in place around Washington state is extremely challenging, and payment of the fees is not a viable alternative. Filing fees and surcharges create a considerable barrier to the justice system for a significant number of low-income people. We encourage the Court to adopt proposed GR 34.

Sincerely,

Mark A. Hutcheson
President

Karen Falkingham
Director

ENDOWMENT FOR EQUAL JUSTICE BOARD MEMBERS

Mark A. Hutcheson, President
J. David Andrews
Carolyn Cairns
H. Scott Holte
Donald J. Horowitz
Garfield R. Jeffers
John McKay
William R. Rademaker, Jr.
Gordon W. Wilcox

LAW FUND BOARD OFFICERS

President
J. Richard Manning *Seattle*
Vice President
John R. Moffat *Everett*
Secretary
William F. Etter *Spokane*
Treasurer
John Teutsch *Seattle*

BOARD OF DIRECTORS

Anselah Afzali *Seattle*
Susan G. Duffy *Seattle*
Susan D. Fahringer *Seattle*
Mick Fleming *Seattle*
Mark A. Griffin *Seattle*
David Groesbeck *Spokane*
H. Scott Holte *Everett*
William A. Kinsel *Seattle*
Andrea H. McNeely *Tacoma*
Ron Morgan *Bellingham*
Joanna Plichta Boisen *Seattle*
John Powers *Seattle*
H. Andrew Saller *Tacoma*
Jill Haavig Stone *Tacoma*
Thomas B. Vertetis *Tacoma*
Emma Zavala-Suarez *Seattle*

ADVISORY COUNCIL

William H. Gates, Sr., *Chair*
Douglas P. Beighle
Jon Bridge
Hort, Carolyn R. *Dimmick*
John Ellis
Faith Ireland
Gov. Chris Gregoire
Roland H. Jortt
James A. Vander Stoep

RECEIVED
STATE COURT CLERK
WASHINGTON
APR 23 AM 8:22
BY: RONALD R. CARPENTER



THE ALLIANCE
for Equal Justice
SUPPORTER

APPENDIX K

Jones & Smith

Attorneys at Law

Gary T. Jones

Gail R. Smith

June 21, 2010

Justice Charles W. Johnson
Temple of Justice
PO Box 40929
Olympia, WA 98504-0929

Re: Proposed Court Rule GR 34 – In Forma Pauperis Rule

Dear Justice Johnson:

I am in receipt of your correspondence of May 27, 2010, regarding Proposed Rule GR 34. I have previously submitted comments in support of the proposed rule. The following comments are therefore restricted to the issues raised in your correspondence.

I enthusiastically endorse the additional language proposed by James Bamberger clarifying the issue of “costs” in the rule. It has become increasingly apparent, since the submission of the rule for comment, that the waiver “costs” is a critical component of the access to justice which this proposed Court rule addresses. It would be largely meaningless to provide waivers of filing fees if the add-on costs recently promulgated thwart the ability of indigent persons to gain access to the Courts.

Proposed Rule GR 34, from my perspective, serves two separate and related functions. It first, and foremost, would afford access to the Courts for those individuals who because of their financial circumstances would not otherwise be able to proceed. Secondly, it would remove a barrier to attorneys who are providing pro bono services to indigent individuals. I believe that it is vitally important that it be clear that the Superior Court has the authority and obligation to waive any and all fees and costs that impede or thwart access to the Courts. Neither objective of GR 34 will be achieved without such clarification.

The practice in courts around the state vary greatly with regard to the waiver of “costs.” Skagit County, where I primarily practice, takes the approach that the Court House Facilitator fee cannot be waived. Judges have expressed the opinion that they do not have the authority to waive the fee. The standard order made available through the Clerk’s office specifically states “the \$20 facilitator fee cannot be waived.” There are no exceptions to this blanket position. I listened with interest at the Access to Justice Conference to the comments of Court clerks from various other counties who detailed their practices and procedures for waiver of these fees. It is very clear that there is neither uniformity of procedural approach nor uniformity of opinion as to the Superior Court’s authority.

I listened with great interest to the presentation made by Barb Miner, King County Superior Court Clerk, concerning the additional fees and costs charged in King County. It was represented that there was a mechanism with regard to each of these fees for the indigent litigant to make an additional waiver request. There is apparently no uniform procedure for seeking the various waivers. There is also apparently no notification that waivers can be obtained. It was

Pine Street Legal Center · 415 Pine Street
P.O. Box 1245 · Mount Vernon, WA 98273
Telephone (360) 336-6608 · Facsimile (360) 336-2094

also apparent that obtaining the waivers entailed additional trips to the court house and additional form preparation. Imposing a requirement of multiple waiver requests upon indigent persons serves as a substantial barrier to access to the Courts.

Merely being able to initiate litigation in Superior Court through a filing fee waiver does not mean that the litigant has achieved meaningful access to the Courts if additional fees and costs or the threat of having to pay additional fees and costs stands in the way. In Skagit County the Court frequently enters an order that the filing fee is waived temporarily and shall be paid prior to the entry of any final orders in the case. I recently presented a motion on the Skagit County ex parte calendar for order allowing a client to proceed IFP. The order that I drafted and presented did not include the language from the standard Court drafted order which would allow for review of the filing fee at the conclusion of the case. The clerk's office refused to accept the IFP order which had already been signed by the Judge. They instead took the document back to the Judge who had just signed the order and had him insert the additional language. The Volunteer Lawyer Program has heard anecdotal reports, that I have not been able to confirm, that indigent individuals may not be seeking the entry of final Dissolution Decrees because they can no more pay the fee at the conclusion of the case than they could at its inception. They may not understand that the Court can and probably will grant a total waiver at that time if their circumstances have not changed. This illustrates the delicate role that fee and cost waivers play in access to justice. Similarly, I submit, any other fees imposed which present financial roadblocks will preclude access to the Courts.

The waiver of costs, in addition to the basic filing fee, is essential if we are going to be able to successfully recruit pro bono attorneys. It is inherently unreasonable to expect a pro bono attorney to return to Court on multiple occasions to obtain a waiver from the clerk's office for each and every fee or cost that they may assess. To impose this requirement would create an unreasonable burden upon the pro bono attorney and his time. It would undoubtedly result in a reduction in the number of attorneys willing to become involved in pro bono matters. It would also substantially reduce the number of pro bono hours available to address substantive issues as opposed to fee waiver issues.

The multiple tier system of fees and costs is creating a procedural nightmare for indigent individuals and their pro bono attorneys. The suggested amendment language would, in my estimation, address this increasing problem.

Sincerely,

JONES & SMITH

GAIL R. SMITH
GRS/ab

cc: Chief Justice Barbara Madsen

APPENDIX L



WASHINGTON
COURTS

Superior Court Judges' Association

Tari S. Eitzen, President (09-10)
Spokane County Superior Court
1116 W Broadway Ave
Spokane, WA 99260
(509) 477-5790 FAX: (509) 477-5714

Stephen Warning, President-Elect (09-10)
Cowlitz County Superior Court
312 SW 1st Ave, 2nd Fl
Kelso, WA 98626-1739
(360) 577-3085

Richard F. McDermott, Immed. Past Pres. (08-09)
King County Superior Court, Maleng Justice Center
401 4th Avenue N, Room 2D
Kent, WA 98032-4429
(206) 296-9115 FAX: (206) 205-2585

John O. Linde, Secretary (09-10)
San Juan County Superior Court
350 Court St, #7
Friday Harbor, WA 98250-7901
(360) 378-2399 FAX: (360) 249-6381

Chris Washington, Treasurer (09-10)
King County Superior Court
516 Third Avenue, Room C-203
Seattle, WA 98104-2361
(206) 296-9111 FAX: (206) 296-0986

Patricia Clark, District One Trustee (09-12)
King County Superior Court
516 Third Ave, Room C-203
Seattle, WA 98104-2361
(206) 296-9190 FAX: (206) 296-0986

Brian Gain, District One Trustee (07-10)
King County Superior Court, Maleng Justice Center
401 4th Avenue N, Room 2D
Kent, WA 98032-4429
(206) 296-9170 FAX: (206) 205-2585

Russell Hartman, District Two Trustee (08-11)
Kitsap County Superior Court
614 Division St, MS 24
Port Orchard, WA 98366-4683
(360) 337-7140 Fax: (360) 337-4673

Larry McKeeman, District Three Trustee (09-12)
Snohomish County Superior Courts
3000 Rockefeller Ave, MS 502
Everett, WA 98201-4046
(425) 388-3435 FAX: (425) 388-3498

Christine Pomeroy, District Four Trustee (09-12)
Thurston County Superior Court
2000 Lakeridge Dr SW, Bldg 2
Olympia, WA 98502
(360) 709-3232 FAX: (360) 754-4060

Craig Matheson, District Five Trustee (08-11)
Benton County Superior Court
7122 W Okanogan Pl, Bldg A
Kennewick, WA 99336-2359
(509) 736-3071 FAX: (509) 736-3057

Gregory D. Sypolt, District Six Trustee (07-10)
Spokane County Superior Court
1116 W Broadway Avenue
Spokane, WA 99260-0350
(509) 477-6373 FAX: (509) 477-5790

February 10, 2010

Justice Charles Johnson
Washington State Supreme Court
P. O. Box 40929
Olympia, WA 98504-0929

RE: General Rule 34 Comments by April 30, 2010

Dear Justice Johnson,

As president of the Superior Court Judges' Association (SCJA) I am writing about proposed General Rule 34, Waiver of Court and Clerk's Fees and Charges in Civil Matters. As you may recall, the SCJA initially opposed this rule. Since that time, our membership participated in a process to refine the language and intent of the proposal and encourages its passage. The proposal establishes a uniform system for submitting, considering and acting on applications to proceed without payment of filing fees and other costs. Specifically, the new draft rule allows each waiver request to be decided by a judicial officer. Each request remains a function of judicial decision-making on a case by case basis, rather than an executive branch function. It is with pleasure that we now endorse the rule.

Thank you for considering our request. Please let me know if you have questions.

Sincerely,

Tari Eitzen
President Judge

Cc: Board of Trustees
Justice Mary Fairhurst
Judge Mary Yu
Jim Bamberger
Nancy Sullins

APPENDIX M



RUTH GORDON
Jefferson County Clerk

P.O. Box 1220
Port Townsend, WA 98368
(360) 385-9125

Ronald Carpenter, Clerk
Washington State Supreme Court
P.O. Box 40929
Olympia, WA 98504-0929

April 30, 2010

Re: Proposed Rule 34 - Waiver of Court and Clerk's Fees and Charges in Civil Matters on the Basis of Indigency

Dear Mr. Carpenter,

Thank you for the opportunity to comment on this rule, which seeks to establish a consistent process and result for indigent parties who seek to bring civil actions before the court. I support the end sought but write today in opposition to the means.

The crushing burden of poverty will not be lifted by this rule, nor will access to services expand as a result of its provisions. Some people will save a modest amount of money and a modest amount of time. But by broadening the standard of indigency and expanding the scope of routine judicial waivers this rule will directly cut funding to the courts and the clerks. In our current climate service cuts will certainly follow. Clerks, who are funded at the pleasure of their respective county legislative boards and must bring in revenues to cover the costs of mandated and non-mandated services, provide access to justice for all the public at our front counters. We are currently losing staff and shortening hours of service, and GR 34 will accelerate those losses.

Inherent powers notwithstanding, for the Supreme Court to take the step of cutting revenue on ideological grounds without having any idea of the actual cost of this rule would be a disservice to the justice community it serves. I ask the honorable Justices to perform a due diligence assessment of caseload statistics and revenue generated statewide by the filing fees, surcharges and other costs targeted in GR 34 and model the likely results that will follow if waivers are routinely expanded to include a wider set of costs/fees and a wider sub-set of the population given that civil legal aid services use a higher income standard of indigency than the courts currently apply. Please evaluate how the projected revenue losses to the courts compare to the increases won just five years ago in the Justice in Jeopardy campaign. Does it wipe out those gains? Cut them by a fraction? I ask you to know this before you vote on proposed GR 34.

I remain ready at any time to work with those who advocate for adoption of GR 34 in a shared effort to seek more financial support for the courts and clerks from the legislature. Funding justice through user fees is a distasteful business, but I am sure that cutting these revenues with no alternative at hand will be a disservice to all citizens who depend upon the courts for justice.

Respectfully,

Ruth Gordon
Jefferson County Clerk

APPENDIX N

_____ Court of Washington For _____ _____ <div style="text-align: center;">Petitioner/Plaintiff, vs.</div> _____ <div style="text-align: center;">Respondent/Defendant.</div>	No. _____ Motion and Declaration For Waiver of Civil Filing Fees and Surcharges (MTAF)
--	--

I. Motion

- 1.1 I am the [] petitioner/plaintiff [] respondent/defendant in this action.
- 1.2 I am asking for a waiver of all filing fees and surcharges.

II. Basis for Motion

- 2.1 GR 34 allows the court to waive "filing fees or surcharges the payment of which is a condition precedent to a litigant's ability to secure access to judicial relief" for a person who is indigent. As outlined below, I am indigent.

Dated: _____

Signature of Requesting Party

Print or Type Name

III. Declaration

- I declare that,
- 3.1 I cannot afford to meet my necessary household living expenses and pay the filing fees and surcharges imposed by the court. Please see the attached Financial Statement, which I incorporate as part of this declaration.

3.2 In addition to the information in the financial statement I would like the court to consider the following:

(Check if applies.) I filed this motion by mail. I enclosed a self-addressed stamped envelope with the motion so that I can receive a copy of the order once it is signed.

I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Signed at (city) _____, (state) _____ on (date) _____.

Signature

Print or Type Name

APPENDIX O

Case Name: _____ Case Number: _____

Financial Statement (Attachment)			
1. My name is:			
2. <input type="checkbox"/> I provide support to people who live with me: How many? Age(s):			
3. My Monthly Income:		6. My Monthly Household Expenses:	
Employed <input type="checkbox"/> Unemployed <input type="checkbox"/>		Rent/Mortgage:	\$
Employer's Name:		Food/Household Supplies:	\$
Gross pay per month (salary or hourly pay):	\$	Utilities:	\$
Take home pay per month:	\$	Transportation:	\$
4. Other Sources of Income Per Month in my Household:		Ordered Maintenance actually paid:	\$
Source:	\$	Ordered Child Support actually paid:	\$
Source:	\$	Clothing:	\$
Source:	\$	Child Care:	\$
Source:	\$	Education Expenses:	\$
Sub-Total:		Insurance (car, health):	\$
<input type="checkbox"/> I receive food stamps.		Medical Expenses:	\$
Total Income, lines 3 (take home pay) and 4:		Sub-Total:	\$
5. My Household Assets:		7. My Other Monthly Household Expenses:	
Cash on hand:	\$		\$
Checking Account Balance:	\$		\$
Savings Account Balance:	\$		\$
Auto #1 (Value less loan):	\$		\$
Auto #2 (Value less loan):	\$	Sub-Total:	\$
Home (Value less mortgage):	\$	8. My Other Debts with Monthly Payments:	
Other:	\$		\$ /mo
Other:	\$		\$ /mo
Other:	\$		\$ /mo
Other:	\$		\$ /mo
Other:	\$	Sub-Total:	\$
Total Household Assets:		Total Household Expenses and Debts, lines 6, 7, and 8:	\$
Date:		Signature:	

APPENDIX P

_____ Court of Washington For _____ _____ _____ vs. _____ Respondent/Defendant.	No. _____ Order Re Waiver of Civil Filing Fees and Surcharges <input type="checkbox"/> Granted (ORPRFP) <input type="checkbox"/> Denied (ORDYMT) <input checked="" type="checkbox"/> Clerk's Action Required 3.1
--	---

I. Basis

The court received the motion to waive filing fees and surcharges filed by or on behalf of the
 petitioner/plaintiff respondent/defendant.

II. Findings

The Court reviewed the motion and supporting declaration(s). Based on the declaration(s) and any relevant records and files, the Court finds:

- 2.1 The moving party is indigent based on the following: He or she:
- is represented by a qualified legal aid provider that screened and found the applicant eligible for free civil legal aid services; and/or
 - receives benefits from one or more needs-based, means-tested assistance programs; and/or
 - has household income at or below 125% of the federal poverty guideline; and/or
 - has household income above 125% of the federal poverty guideline but cannot meet basic household living expenses and pay the fees and/or surcharges; and/or
 - other: _____

2.2 [] The moving party is not indigent.

2.3 [] Other: _____

III. Order

Based on the findings the court orders:

3.1 [] The motion is granted, and

[] all filing fees and surcharges the payment of which is a condition precedent to the moving party's ability to secure access to judicial relief are waived.

[] other: _____

3.2 [] The motion is denied.

3.3 If there is a material change in financial circumstances, the ruling can be revisited by the court or the moving party.

If the motion was granted and the court, upon review, later finds that either the petitioner or another responsible party to this proceeding has sufficient resources to pay the waived filing fees or surcharges, the Court may modify this order and require the moving party or another party to pay the filing fees and/or surcharges that have been waived by this order.

Dated: _____

Judge/Commissioner

Presented by:

Signature of Party or Lawyer/WSBA No.

Print or Type Name Date

APPENDIX Q

- 2.3 The requesting party is not indigent, has not sought to defer payment of the filing fees and surcharges, and has the ability to pay the required filing fees and surcharges.

III. Order

Based on the findings the court orders:

- 3.1 The motion to defer payment of the filing fees and surcharges is granted. The requesting party shall pay the filing fee and applicable surcharges as follows:
- in full before the entry of a final Order, Judgment, or Decree in this case.
 - in monthly installments of \$25 \$50 \$_____, beginning _____, and continuing until the fee and surcharges are paid in full.
- The Court reserves the right to require payment in full prior to entry of the final orders.
- 3.2 The motion is granted, and the filing fees and surcharges the payment of which is a condition precedent to the moving party's ability to secure access to judicial relief are waived today; however, **the court reserves the right to require payment of any and all fees and surcharges prior to finalization. If the court, upon review, later finds that either the petitioner or another responsible party to this proceeding has sufficient resources to pay the waived filing fees or surcharges, the Court may modify this order and require the requesting party or another party to pay the filing fees and surcharges that have been waived by this order prior to entering a final Order, Judgment, or Decree in this case.**
- 3.3 The motion to waive or defer payment of the filing fees and/or surcharges is denied.
- 3.4 If there is a material change in financial circumstances, the ruling can be revisited by the court or the requesting party.

Dated: _____

Judge/Commissioner

Presented by:

Signature of Requesting Party or Lawyer/WSBA No.

Print or Type Name Date

Superior Court of Washington County of Kitsap	
_____	Petitioner/Plaintiff,
vs/and	
_____	Respondent/Defendant.

No. _____

Motion and Declaration To Defer or Waive Payment of Civil Filing Fees and Surcharges (MTAF)

I. Motion

- 1.1 I am the petitioner/plaintiff respondent/defendant in this action.
- 1.2 I am asking to defer payment of all filing fees and surcharges in order to secure access to judicial relief. If ordered to do so, I would be able to make monthly payments of \$25 \$50 \$_____ beginning on (date)_____, or I would be able to pay the filing fee in full before the entry of a final Order, Judgment or Decree.
- 1.3 I am asking for a waiver of all filing fees and surcharges. I acknowledge that if I am granted relief in the Order Re Waiver/Deferral of Civil Filing Fees and Surcharges, that the Court reserves the right to require payment of any and all fees and surcharges prior to finalization.

II. Basis for Motion

- 2.1. GR 34 allows the court to waive "filing fees or surcharges the payment of which is a condition precedent to a litigant's ability to secure access to judicial relief" for a person who is indigent. As outlined below, I am indigent and/or my ability to secure access to judicial relief is limited because I cannot pay all of the filing fees and surcharges at this time.

Dated: _____

Signature of Requesting Party

Print or Type Name

Financial Statement			
1. My name is: _____ Date of birth: _____ Marital Status: <input type="checkbox"/> Single <input type="checkbox"/> Married <input type="checkbox"/> Separated <input type="checkbox"/> Divorced			
2. <input type="checkbox"/> I provide support to people who live with me: How many? _____ Age(s): _____ <input type="checkbox"/> I live with or I am supported by another/others. Their relationship to me is: _____			
3. My Monthly Income		6. My Monthly Household Expenses	
<input type="checkbox"/> Employed <input type="checkbox"/> Unemployed		Rent/Mortgage	\$
Occupation:		Food/Household Supplies	\$
Length of Employment :		Transportation	\$
Take home pay per month: (Deduct mandatory federal withholding, social security and retirement from gross pay, but not savings allotments, loan payments or other voluntary deductions)	\$	Ordered Child Support actually paid	\$
4. Other Sources of Income Per Month in my Household		Ordered Spousal Maintenance actually paid	\$
		Utilities	\$
Source:	\$	Clothing	\$
Source:	\$	Child Care	\$
Source:	\$	Education Expenses	\$
Source:	\$	Insurance (car, health)	\$
Sub-Total:		Medical Expenses	\$
<input type="checkbox"/> I receive food stamps.		Recreation	\$
Total Household Income: (your take home + all other sources)		Sub-Total: \$	
5. My Household Assets:		7. My Other Monthly Household Expenses	
Cash on hand	\$	(describe)	\$
Checking Account Balance	\$	(describe)	\$
Savings Account Balance	\$	(describe)	\$
Motor Vehicle (Value less loan)	\$	(describe)	\$
Motor Vehicle (Value less loan)	\$	Sub-Total: \$	
Home (Value less mortgage)	\$	8. My Other Debts with Monthly Payments	
Household Furnishings/Effects	\$	(describe)	\$ /mo
Personal Effects and Jewelry	\$	(describe)	\$ /mo
Professional Equipment/Tools	\$	(describe)	\$ /mo
Other:	\$	(describe)	\$ /mo
Other:	\$	Sub-Total: \$	
Total Household Assets: \$		Total Household Expenses and Debts: \$	
Date:		Signature	

APPENDIX R

**Superior Court of Washington
County of Jefferson**

In re:

and

Petitioner(s),

Respondent(s).

No.

**Order to Proceed in Forma
Pauperis
(ORPRFP)**

_____ [Name of Moving Party (Requester)] presented a
Motion and Declaration for Order to Proceed in Forma Pauperis to this court. The court having
considered the motion, declaration, and accompanying Determination of Indigency form and finding
good cause,

It is hereby Ordered that said Motion be and is hereby granted and the parties are hereby allowed to
file and proceed in this matter In Forma Pauperis

Done in open court this _____ day of _____, 20__.

Judge/Commissioner

Presented by:

Signature of Moving Party/Petitioner

Print or Type Name

**Superior Court of Washington
County of Jefferson**

In re:		No.
and	Petitioner(s),	Motion and Declaration for Order to Proceed In Forma Pauperis (MTAF)
	Respondent(s).	

I. Relief Requested

_____ [Name of party] respectfully moves the court for an order allowing Petitioner to file and proceed in this matter In Forma Pauperis.

II. Statement of Facts/Statement of Grounds

Petitioner does not have sufficient finances to pay the filing fee or hire an attorney. It would impose an extreme hardship on petitioner if obligated to do so. Petitioner's financial situation is more fully set forth in the accompanying declaration.

III. Statement of Issues

Whether sufficient hardship will result to warrant the waiving of payment of filing fees by Petitioner.

IV. Evidence Relied Upon

The accompanying declaration and testimony of the petitioner is relied upon to support this motion.

V. Authority

The legal authority relied upon is the Constitutional right to due process of law.

VI. Proposed Order

A proposed order accompanies this motion.

Signed at _____, [City] _____ [State] on _____ [Date].

Signature of Moving Party/Petitioner

Print or Type Name

DECLARATION

I, undersigned, declare:

1. I am the Petitioner in the above-entitled proceeding. This action is brought in good faith, and it is my present intention to proceed to a final order on the merits of my petition.
2. I am unable to hire an attorney because I am without sufficient finances to do so. I cannot proceed further in this matter without financial hardship, and I am informed that this Court may waive payment of statutory filing fees so that I might seek relief as requested in my petition.
3. My household consists of myself and:

4. My gross income per month is: _____

5. My monthly debts are as follows: _____

6. I own the following property and assets: _____

7. I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Wherefore, this Court is requested to enter an order allowing this declarant to file and proceed In Forma Pauperis.

A proposed Order accompanies this motion.

Date: _____

Signature of Moving Party/Declarant

Print or type name

Address

Phone

STATE OF WASHINGTON
 COUNTY OF JEFFERSON
Family Law Determination Of Indigency Report

I. Identification

Applicant's Name _____ Case Number: _____
 Applicant's Address _____
 _____ (Street) _____ (City) _____ (State) _____ (Zip Code)
 Applicant's Telephone (____) _____ - _____ Date of Birth ____ / ____ / ____
 Occupation _____ Employer _____
 _____ (Name) _____ (Address) _____ (Telephone)

II. Support Obligations

Total Number Dependents (include applicant in count) _____

III. Presumptive Eligibility (check all that apply)

- a. ____ Party is indigent because receives public assistance in form of: () AFDC¹ () General Assistance () Food Stamps () Medicaid () Poverty-Related V.A.² Benefits () SSI³ () Refugee Resettlement Benefits () Other; specify _____
 Case Number _____ Verified? _____ Method _____
- b. ____ Party is indigent because committed to a public mental health facility.
 Verified? _____ Method: _____
- c. ____ Party is indigent because annual income, after taxes, is 125% or less of current federally established poverty level.
 (Specify annual income after taxes \$ _____.)

IV. Monthly Income

		Verified?
a. Monthly take-home pay (after deductions)	\$ _____	Y N
b. Spouse's take-home pay (enter N/A if conflict)	\$ _____	Y N
c. Contribution from any person domiciled with applicant and helping defray his/her basic living costs	\$ _____	Y N
d. Interest, dividends, or other earnings	\$ _____	Y N
e. Non-poverty based assistance (Unemployment, Social Security, Workers Compensation, pension, annuities) (DON'T include poverty-based assistance. See IV. a)	\$ _____	Y N
f. Other income (specify) _____	\$ _____	Y N
Total Income	\$ _____	

V. Monthly Expenses (for applicant and dependents; average where applicable)

a. Basic Living Costs - Shelter (rent, mortgage, board)	\$ _____	Y N
Utilities (heat, electricity, water); enter 0 if included in cost of shelter	\$ _____	Y N
Food	\$ _____	Y N
Clothing	\$ _____	Y N
Health Care	\$ _____	Y N
Transportation	\$ _____	Y N
Loan Payments (specify) _____	\$ _____	Y N
b. Court imposed obligations (check) ____ fines ____ court costs ____ restitution ____ support ____ ____ other	\$ _____	Y N
c. Other expenses (specify) _____	\$ _____	Y N
Total Expenses	\$ _____	

¹ Aid to Families with Dependent Children

² Veterans' Administration

³ Supplemental Security Income

VI. Total Income

Part IV (Monthly Income) minus Part V (Total Expenses) = Disposable Net Monthly Income \$ _____

VII. Liquid Assets

		Verified?	
a. Cash, savings, bank accounts (include joint accounts)	\$ _____	Y	N
b. Stocks, bonds, certificates of deposit	\$ _____	Y	N
c. Real estate or equity in real estate	\$ _____	Y	N
d. Vehicles or equity in vehicles	\$ _____	Y	N
e. Personal property (jewelry, boat, stereo, etc.)	\$ _____	Y	N
f. Interest dividends, or other earnings	\$ _____	Y	N

Total Liquid Assets \$ _____

VIII. Affidavit and Notification

I, _____ (print name) do hereby certify (or declare) under penalty of perjury under the Laws of the State of Washington that the foregoing is true and correct (RCW 9A.72.085). By my signature below, I authorize the court to verify all information provided here.

Signed _____ Date _____

Place _____ (City, State)

IX. Other considerations or comments:

X. Finding

- _____ Indigent
- _____ Not Indigent
- _____ Indigent and Able to Contribute \$ _____

Judge _____ Date _____

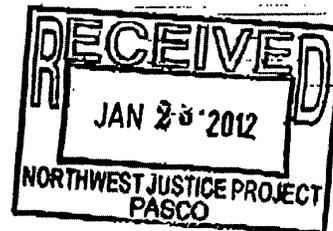
APPENDIX S

**Superior Court of the State of Washington
for Benton and Franklin Counties
7122 W. Okanogan Place, Building A, Kennewick, WA 99336**

**Judge
Cameron Mitchell**

**Benton County Justice Center
Franklin County Courthouse
Telephone (509)736-3071
Fax (509)736-3057**

January 12, 2012



Mr. Gary M. Smith, Senior Attorney
Northwest Justice Project
1310 N. 5th Avenue Suite B
Pasco, WA 99301

Re: Concerns as to Local Practices and Compliance With General Rule 34

Dear Mr. Smith:

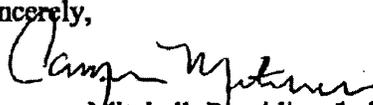
I apologize for my delay in responding to your letter regarding the Courts practices for considering and determination of *in forma pauperis* motions. I have had an opportunity to speak with the other Superior Court judicial officers regarding the concerns expressed in your letter.

I have also spoken to the Benton County Clerk, Josie Delvin. It is my understanding from my conversation with Ms. Delvin that the forms currently being used by the court are in compliance with the requirements of General Rule 34. Ms. Delvin informed me that she had specifically conferred with the Administrative Office of the Courts prior to adopting the forms and was informed that the forms do in fact comply with the rule. She was informed that the forms must include all the information in the mandatory form but that local jurisdictions may include additional information to assist the court in making its determination as to whether the relevant fees should be waived.

The judicial officers of the Benton/Franklin Superior Court certainly share your commitment to ensuring that those who are truly indigent are provided meaningful access to the courts and judicial review. The judicial officers also have the obligation to ensure that county funds are appropriately allocated and spent. It is our belief, that the current practices of the court assist the court in making more informed decisions as to when to exercise the discretion to waive fees provided by GR 34. In particular, the practice of reviewing the waiver of fees prior to entry of the final order allows the court an opportunity to evaluate the financial status of the parties after significantly more information is available to the court regarding the income, assets and liabilities of the parties.

Again, the judicial officers share your commitment to providing access to the courts for those who lack financial resources. Thank you for bringing your concerns to our attention.

Sincerely,


Cameron Mitchell, Presiding Judge

APPENDIX T

From: Ruth Gordon [<mailto:rgordon@co.jefferson.wa.us>]
Sent: Wednesday, January 05, 2011 5:41 PM
To: Michelle Moore; Sara Hixson
Cc: Steve Robins; bchristensen@co.clallam.wa.us
Subject: RE: MOTION AND ORDER TO PROCEED IN FORMA PAUPERIS

Hi, Sara -

As you know, GR34 deals with the following waivers:

This rule establishes the process by which judicial officers may waive ~~civil filing fees and surcharges~~ for which judicial officers have authority to grant a waiver. This rule applies to ~~mandatory fees and surcharges~~ that have been lawfully established, ~~the payment of which is a condition precedent to a litigant's ability to secure access to judicial relief~~. These include but are not limited to legislatively established ~~filing fees and surcharges~~ (e.g., RCW 36.18.020(5)); ~~other initial filing charges~~ required by statute (e.g., family court facilitator surcharges established pursuant to RCW 26.12.240; family court service charges established pursuant to RCW 26.12.260; domestic violence prevention surcharges established pursuant to RCW 36.18.016(2)(b)); ~~and other lawfully established fees and surcharges which must be paid as a condition of securing access to judicial relief~~.

The way I read this rule, it's more limited in scope than your order, which non-specifically sweeps in all potential costs associated with a court case and implies that somehow our office may pursue the other party to pay these costs, but makes no requirement that the other party provide any financial data to the court to ascertain financial capacity. As a non-party to the case the clerk is not likely to file a motion in the case, so I am wondering what process that phrase implies.

It is my understanding from discussion with our judge that this rule deals with judicial discretion, not automatic blanket waivers of all costs associated with a lawsuit. We have a local In Forma Pauperis packet we

provide people seeking a waiver, and in my opinion it is adequate in the wake of GR34, but we will probably choose to update it soon.

From GR34 again:

This rule establishes the process by which judicial officers ~~may~~ waive...

So, the language in a new order, which I do not have to share with you at the moment, will address the nuances of that discretion in light of the addition of surcharges and other payments which are "paid as a condition of securing judicial relief" – which is different than a blanket order to "file and issue....without payment of any fees costs or charges."

I am glad to see that you have your name and Bar# on your motion. It is important, in my opinion, to make a certification or declaration that the party has been screened, found eligible for services and is being represented by NWJ or an attorney who has accepted your referral for pro bono representation. That makes a difference under GR34:

(4) ~~An individual represented by a QLSP, or an attorney working in conjunction with a QLSP that has screened and found the individual eligible for services,~~ is presumptively deemed indigent when a declaration from counsel verifies representation and states that the individual was screened and found eligible for services.

Earlier today we received an email from Steve stating that the individual who first presented this motion and order to us showed in your database as "Rejected" – even though he consistently presents himself as being represented by NWJ. He was back today to file paperwork that was created with a 2006 version of FamilySoft – so the calculations were of course all off – but I digress. We assumed from his statements and the forms he presented that he was an NWJ client, but apparently not.

Please be aware that if an individual is your client they are (naturally) represented by counsel and our Courthouse Facilitator will refer them back to their attorney for assistance as the Facilitator is not allowed to assist represented parties. (See RCW 26.12,240.)

Another factor that will be addressed in our upcoming indigency order is the requirement for a judicial finding of merit in the case. See generally *Bowman v. Waldt*, 9 Wn. App. 562, 567, 513, P.2d 559 (1973); citing *Ashley v. Superior Court*, 82 Wn. 2d, 188, 192, 509 P.2d 751 (1973). Currently our local order makes a finding of good cause but the language could be more specific.

So, to address your initial question to Michelle, my opinion is that the form you've attached is unlike the version we are likely to create or use in Jefferson County. I'm sorry we don't have a new one ready to send off to you, but the fact is we are still using the current pre- GR34 form, because our way of handling IFP's has always been very close to the particulars incorporated in GR34 as adopted.

Best wishes and thanks for the email, Ruth

Ruth Gordon
Jefferson County Clerk
P.O. Box 1220
Port Townsend, WA 98368

From: Michelle Moore
Sent: Wednesday, January 05, 2011 3:14 PM
To: 'Sara Hixson'; Ruth Gordon
Cc: 'Steve Robins'
Subject: MOTION AND ORDER TO PROCEED IN FORMA PAUPERIS
Importance: High

Sara,

I am forwarding this to Ruth Gordon the Jefferson County Clerk as it is her office that receives the pleadings for filing and I look forward to her response.

Michelle

MM

Michelle Moore
Court Administrator
Superior Court
P.O. Box 1220
Port Townsend, WA 98368
(360) 385-9360
mmoore@co.jefferson.wa.us

From: Sara Hixson [<mailto:sarah@nwjustice.org>]
Sent: Wednesday, January 05, 2011 2:41 PM
To: Michelle Moore
Cc: Steve Robins
Subject: MOTION AND ORDER TO PROCEED IN FORMA PAUPERIS
Importance: High

Hi Michelle –

I wanted to follow up with you on your email regarding the use of Jefferson County forms for finding indigency in family law cases.

It's my understanding that now - under GR 34 - a person represented by a "qualified legal services provider" (civil legal aid attorneys like Steve and I) may be found indigent upon a declaration of counsel stating the individual was screened and found eligible for services by the "QLSP". See GR 34(a)(1) and (4).

I am preparing a case now and had drafted a motion/declaration and order to proceed in forma pauperis in light of GR 34. I'm going to attach it and I'm hoping you'll look it over and let me know if it would be acceptable.

If you have any questions about this, please feel free to give me a call. Thanks!

Sara Hixson
Attorney - Northwest Justice Project
816 E. 8th Street
Port Angeles, WA 98362
ph: 360.452.9137 ext. 205
fax: 360.452.4053

*This e-mail may contain information that is protected by attorney-client, work product or other privileges. If you are not the intended recipient, you are notified that dissemination, use or reliance upon its contents is strictly prohibited. If you received this e-mail in error, please contact me by reply e-mail and then delete this e-mail.

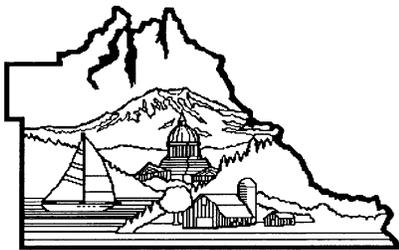
APPENDIX U

NO CHARGE FORMS

**WHAT TO DO IF YOU
CANNOT PAY THE
FILING FEE**

8-6

✓ How to Get Your Filing Fee Waived



THURSTON COUNTY
WASHINGTON
SINCE 1852

*Betty J. Gould, Thurston County Clerk
Family and Juvenile Court
2801 - 32nd Avenue SW
Tumwater, WA 98512
(360) 709-3269*

Self-Service Center

HOW TO GET A FILING FEE WAIVED

Use the forms and instructions in this packet only if the following factors apply to your situation:

- ✓ You want to file a Petition for a new case or a modification action under RCW Chapter 26 (Domestic Relations). Inquire at the Clerk's office for the current filing fee amount for:

Dissolution of Marriage (children/no children)...	\$250.00
Challenge to Acknowledgement of Paternity...	\$220.00
Legal Separation (children/no children)...	\$250.00
Invalidity of Marriage (children/no children)...	\$250.00
Establishment of Parentage...	\$220.00
Establishment of Parenting Plan/Child Support	\$220.00
Nonparental Custody...	\$220.00
Modification (Thurston County Order)	
- Child Support...	\$ 56.00
- Custody Decree/Parenting Plan...	\$ 56.00
- Relocation	\$ 56.00
Modification (Out of County Order)	
- Child Support...	\$220.00
- Custody Decree/Parenting Plan...	\$220.00
- Relocation	\$220.00

Even if your filing fee is waived, there is a \$20.00 surcharge which WILL NOT BE WAIVED. Payment of the \$20.00 surcharge is required at the time of filing.

AND

- ✓ You believe you can have your court fees and/or costs deferred or waived due to your current financial situation.

READ ME: It is very important for you to know that when you sign a court document, you may be helping or hurting your court case. Before you sign any court document or get involved with a court case, it is important that you carefully read the document to make sure you are doing the right thing. You may also want to contact a lawyer for legal advice and help with those issues you do not understand. The Self-Service Center has a list of local attorneys who can give you legal advice and who can help you on a task-by-task basis for a fee. If you need help with the forms, procedures and rules of the court, there is a Family Court Facilitator available to assist you.

APPENDIX V

GR 34
(WAIVER OF CIVIL FILING FEE AND SURCHARGES)

SPOKANE COUNTY FAMILY COURT FACILITATOR: INSTRUCTION #5

Checklist of Steps to Complete:

_____ 1. If you are on a low or fixed income and feel you may qualify to have all or part of the filing fee waived, pick up in Clerk's Office, Room 300, between the hours of 8:30 a.m. – 12:00 noon and 1:00 p.m. – 4:00 p.m., Monday through Friday, Cashier's Window and fill out the **GR 34 Motion and Declaration for Waiver of Civil Filing Fees and Surcharges** (fee waiver form) completely and sign. Print clearly in black ink or type.

Current filing fees are as follows:

- \$280 for divorce, legal separation or invalidity action;
- \$250 for paternity action;
- \$250 for non-parental custody action;
- \$56 modification of child support or parenting plan/custody decree action;
- \$250 for modification of out of county or out of state order

The court may reduce your filing fee to \$20 or \$50.

_____ 2. Make one copy of the original form for your records.

_____ 3. Take all original documents you intend to file and the **GR 34 Motion and Declaration for Waiver of Civil Filing Fees and Surcharges** (on top) to Superior Court Courtroom 304 (Ex Parte Court) between the hours of 9:00 a.m. - 12:00 p.m. and 1:30 p.m. - 4:00 p.m. Give these documents to the Clerk and take a seat in the courtroom. The Commissioner will review your documents. If there are any questions from the court, answer respectfully.

_____ 4. If your Order is signed by the Court Commissioner, take all documents to the Spokane County Superior Court Clerk, Room 300, between the hours of 8:30 a.m. – 12:00 noon and 1:00 p.m. – 4:00 p.m., Monday through Friday, Cashier's Window (to the far right when you enter). The Court Clerk will file all documents to start the action. Enter the case number and date stamp on the front page of each of your copies.

OR

_____ 5. If your Order is **not** signed by the Court Commissioner, file the original of each document with the Spokane County Superior Court Clerk, Room 300, between the hours of 8:30 a.m. – 12:00 noon and 1:00 p.m. – 4:00 p.m., Monday through Friday, Cashier's Window (to the far right when you enter). Pay the appropriate filing fee in cash. Enter the case number and date stamp on the front page of each of your copies.

APPENDIX W

INSTRUCTIONS FOR MOTION DECLARATION & ORDER FOR WAIVER OF CIVIL FILING FEES AND SURCHARGES

If you believe that you are unable to afford the filing fee and surcharges in your family law or other type of court case, you may request that the Court waive them. In determining whether the fees should be waived, the Court will apply a financial availability table based on 125% of the Federal Poverty Standard (see below). If there is a joint petition in a family law matter, your income will be added to your spouse's income in determining eligibility for a fee waiver.

Family Size	1	2	3	4	5	6	7	8	9 or more
Maximum Monthly Income	\$1,134	\$1,532	\$1,930	\$2,328	\$2,726	\$3,124	\$3,522	\$3,920	Add \$320 For each Additional Person
Maximum Annual Income***	\$13,613	\$18,388	\$23,163	\$27,938	\$32,713	\$37,488	\$42,263	\$47,038	Add \$3,820 for Each Additional Person

*** **Income** - means net income received, after taxes and childcare costs are deducted.

FORMS TO USE: This Court has standard forms for obtaining fee waivers, which you are to use even though you may have obtained similar forms elsewhere. The forms are available at no cost from the Law Library (Rm 1A-105) Clerk's office (Rm 110-E) or the Family Law Facilitators (Rm 104 & 119) or on the internet at www.courts.wa.gov (form GR 34.0100, 34.0300 and GR 34.0500).

1. Motion & Declaration for Waiver of Civil Filing Fees & Surcharges with Financial Statement
2. Order for Waiver of Civil Filing Fees and Surcharges

INSTRUCTIONS:

1. Fill out all forms **COMPLETELY**. Be sure to **SIGN** and **DATE**:
 - 1) Motion & Declaration for Waiver & Financial Statement
 - 2) Order for Waiver
2. Take the completed forms along with the initial papers you will be filing to open your case to the **Ex Parte Department, Rm 105** to have the Commissioner review your request and sign your order.

Scheduled times for the ExParte Department are:

Monday through Friday, 9:00AM to 11:30AM & 1:30PM to 3:30PM

- If the Commissioner signs the Order, you will be able to file your case without paying the filing fee. **IN A FAMILY LAW MATTER, YOU MAY BE REQUIRED TO PAY THE COURTHOUSE FAMILY LAW FACILITATOR FEE \$20.00 (In cash or with debit card);** also, you or the opposing party may be required to pay the remaining filing fee at a later date if there is a joinder to the petition.
 - If the waiver is denied, you will be required to pay the filing fee **(In cash or with debit card)** to file your case.
3. After obtaining a signed, approved Order, take it and all your case initial forms to the Legal Process Counter in the Clerk's Office (Rm 110-E).
 - **DO NOT REMOVE SIGNED ORDERS FROM THE COURTHOUSE.**
 - **YOU MUST FILE ONLY ORIGINAL DOCUMENTS IN THE COURT FILE.**

APPENDIX X



Northwest Justice Project

1310 N. 5th Ave., Suite B
Pasco, WA 99301
Tel. (509) 547-2760
Fax (509) 547-1612
Toll Free 1-800-310-6076

www.nwjustice.org
César E. Torres
Executive Director

COPY

October 18, 2011

The Honorable Judge Cameron Mitchell
Administrative Presiding Judge of the Benton-Franklin Superior Court
c/o Court Administrator
Benton County Justice Center
7122 W Okanogan Place Bldg-A
Kennewick, WA 99336-7665

Re: Concerns as to Local Practices and Compliance with General Rule 34

Dear Judge Mitchell:

As you are aware, on December 3, 2010 the Washington Supreme Court adopted General Rule 34. This Rule established the first uniform, state-wide standards for consideration and determination of *in forma pauperis* motions by Washington's trial courts. A copy of that rule and the mandatory forms promulgated for its implementation in February 2011 are attached as Exhibit 1 for ease of reference.

Under GR 34 and the constitutional obligations underlying it, Washington trial courts must waive payment of all mandatory fees and surcharges which are a condition precedent to judicial relief for any litigant whose circumstances satisfy one or more of the objective criteria the Rule defines as legal indigency. Those objective standards include household income of less than 125% of the federal poverty guidelines; and/or receipt of need-based and means-tested public benefits (examples of which include TANF, food stamps, Disability Lifeline (formerly known as GAU), SSI, some veteran's benefits, etc.); and/or representation by an APR 8(e)-defined "qualified legal services provider."¹

¹ Qualified legal services providers (QLSPs) in the Benton-Franklin area include Northwest Justice Project, Benton-Franklin Legal Aid, and Columbia Legal Services.

In the past few weeks, NJP has become aware of what appear to be local customs or practices of the Benton-Franklin Superior Court and its judicial and/or court-related officeholders that are not consistent with, or which directly violate, the standards and requirements mandated by GR 34. These include:

1. Continuing distribution to litigants and use through at least June of the local pre-GR 34 *in forma pauperis* motion and order form ORPRFP, instead of the mandatory application and order forms promulgated in February 2011. See examples attached as Exhibit 2. Use of the old motion and order form precluded compliance with GR 34. The old form did not inquire as to the litigant's receipt of food stamps or other public benefits which constitute proof of indigency as a matter of law; and illegally required even those found indigent to pay the \$20.00 facilitator surcharge.

I recently was given new local order and motion forms, apparently adopted by the Court without public notice or opportunity for comment, which are substantially different from the mandatory forms. See Exhibit 3, attached. Again, the local forms do not expressly inquire as to the litigant's receipt of food stamps or other needs-tested public benefits which constitute indigency as a matter of law, and facially allow both a finding of indigency and an order that does not waive all fees or surcharges.

2. In August, using the mandatory forms, I prepared a motion and declaration under GR 34 as an attorney for the Northwest Justice Project, verifying that NJP was a qualifying legal services provider, that the plaintiff was my client, and that she had been financially screened and determined eligible for NJP's services. My office presented that motion and a proposed *in forma pauperis* order for signature to that day's ex parte judge. Under GR 34, NJP's certification as a QLSP was all that could be legally required to justify and obtain an *in forma pauperis* order. The ex parte judge rejected the motion and order, expressing unfamiliarity with the QLSP certification and demanding that the litigant instead complete a personal declaration disclosing income and assets.

During the week of September 19th, I personally presented a similar QLSP motion and order on behalf of a different client to the Benton County Court Administrator for ex parte signature. The Administrator's office staff initially rejected the motion and proposed order, telling me that my client had to complete and file a personal declaration disclosing income and assets. I protested, cited the QLSP provisions of GR 34, and asked that I be given a chance to speak with the ex parte judge if he or she would not accept my certification. A different member of the Administrator's staff returned some time later with word that the judge would accept my certification but would not sign the proposed order that I tendered because, while that order was

on the state-established mandatory form, the court required use of the revised local order form only.

3. When the Benton-Franklin judges sign an order finding a litigant to be indigent, some or all include a requirement that the waiver be "reviewed at the time of entry of final decree". We have reason to believe all *pro se* litigants in cases where mandatory fees and surcharges are waived under GR 34 are later told they must nonetheless pay those fees and surcharges in full before final orders will be entered, without any findings or orders establishing that the litigant's financial circumstances have changed such that he or she no longer satisfies any of the GR 34 objective indigency standards. In at least one case, that of Ms. Griselda Romero, Ms. Romero was told her case would be dismissed if the waived fees and surcharges were not fully paid within thirty days, although there had been no judicial inquiry into her current financial circumstances, and even though (1) her household income remained well under 125% of poverty and (2) her family continued to receive food stamps.

Attached as Exhibit 4, please find a memorandum filed in Ms. Romero's case explaining many of the reasons NJP believes this custom or practice violates the plain requirements of GR 34 and the constitutional authority which lead the Washington Supreme Court to its adoption. The commissioner hearing Ms. Romero's case denied reading the memorandum but entered that litigant's final orders at counsel's insistence, while stating she "was not happy about it." The commissioner did *not* order the clerk to refund to Ms. Romero the \$20.00 facilitator fee which she was illegally required to pay in violation of GR 34.

That same day two other *pro se, in forma pauperis* litigants – each with *less* monthly income than Ms. Romero – obtained entry of their final orders only after they paid the full amount of fees and charges already waived under GR 34. See Exhibit 5, attached. NJP's regular attendance at family court docket proceedings in both Benton and Franklin Counties, and the docket print outs circulated every week, make plain these fee reviews continue as a standard court practice.

I believe the Benton-Franklin Superior Court, its judicial officers and officeholders, and the Northwest Justice Project share an interest in assuring that GR 34 is fully, fairly, and reliably applied to all litigants according to its plain terms and the requirements of the Washington and United States Constitutions. Some of our concerns may arise from easily-corrected logistical issues, good faith error, or the initial uncertainties that always accompany changes to complex, on-going systems. Whatever the cause or justifications, NJP, Columbia Legal Services,

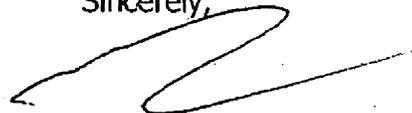
October 18, 2011

Page 4

Benton-Franklin Legal Aid, and representatives of our coalition partners Legal Voice, the Washington State Coalition Against Domestic Violence, and Domestic Violence Services of Benton-Franklin Counties would like to meet with the judicial officers and clerks of the Benton-Franklin Superior Court, or their designees, at the earliest available opportunity to discuss ways to assure full, immediate and consistent compliance with GR 34 by all elements of the Benton-Franklin Superior Court. Our hope is to facilitate a broad, good faith discussion toward negotiation of a reliable agreement by which local customs or practices can be brought into conformity with state and constitutional requirements, and restitution made to those already injured, so that other means of legal recourse will not be required.

Please consider me the contact person for the coalition of advocacy and service organizations requesting this meeting. Please have a representative contact me at your earliest convenience with any questions and to confer about the logistics for our meeting. Thank you for your attention and cooperation.

Sincerely,



Gary M. Smith
Senior Attorney

Encls.

cc: The Honorable Judge Bruce Spanner, Assist. Admin. Presiding Judge
The Honorable Judge Craig Matheson
The Honorable Judge Carrie L. Runge
The Honorable Judge Vic L. VanderSchoor
The Honorable Judge Robert G. Swisher
The Honorable Jerri G. Potts, Commissioner
The Honorable Joseph R. Schneider, Commissioner
Ms. Josie Delvin, Clerk of the Benton County Superior Court
Mr. Michael J. Killian, Clerk of the Franklin County Superior Court
Columbia Legal Services
Benton-Franklin Legal Aid
LegalVoice
Washington State Coalition Against Domestic Violence
Domestic Violence Services of Benton-Franklin Counties

THE SUPREME COURT OF WASHINGTON

IN THE MATTER OF THE ADOPTION OF NEW)
GR 34-WAIVER OF COURT AND CLERK'S FEES)
AND CHARGES IN CIVIL MATTERS ON THE)
BASIS OF INDIGENCY)

ORDER

NO. 25700-A-975

The Washington State Bar Association having recommended the adoption of the proposed New GR 34-Waiver of Court and Clerk's Fees and Charges in Civil Matters on the Basis of Indigency, and the Court having considered New GR 34 and comments submitted thereto, and having determined that the new rule will aid in the prompt and orderly administration of justice;

Now, therefore, it is hereby

ORDERED:

- (a) That New GR 34 as attached hereto is adopted.
- (b) That New GR 34 will be published in the Washington Reports and will become effective upon its publication.

CLERK

BY ROYAL L. CARPENTER

10 DEC -3 AM 9:22

FILED
SUPREME COURT
WASHINGTON

DATED at Olympia, Washington this 3rd day of December, 2010.

[Signature]
Alexander, J.
[Signature]
Chen, J.

Madsen, C.J.
[Signature]
Fairhurst, J.
[Signature]
Stephens, J.

599/186

EXHIBIT
1

GENERAL RULES (GR)

RULE 34. WAIVER OF COURT AND CLERK'S FEES AND CHARGES IN CIVIL MATTERS ON THE BASIS OF INDIGENCY

(a) Any individual, on the basis of indigent status as defined herein, may seek a waiver of filing fees or surcharges the payment of which is a condition precedent to a litigant's ability to secure access to judicial relief from a judicial officer in the applicable trial court.

(1) The application for such a waiver may be made ex parte in writing or orally, accompanied by a mandatory pattern form created by the Administrative Office of the Courts (AOC) whereby the applicant attests to his or her financial status or, in the case of an individual represented by a qualified legal services provider ("QLSP") or an attorney working in conjunction with a QLSP, a declaration of counsel stating that the individual was screened and found eligible by the QLSP.

(2) The court shall accept an application submitted in person, by mail and where authorized by local court rule not inconsistent with GR 30, electronic filing. The process for presentation of the application shall conform to local court rules and clerk processes not inconsistent with the rules of this court for presenting ex parte orders to the court directly or via the clerk. All applications shall be presented to a judicial officer for consideration in a timely manner and in conformity with the local court's established procedures. There shall be no locally imposed fee for making an application. The applicant or applicant's attorney filing by mail, shall provide the court with a self-addressed stamped envelope for timely return of a conformed copy of the order.

COMMENT

This rule establishes the process by which judicial officers may waive civil filing fees and surcharges for which judicial officers have authority to grant a waiver. This rule applies to mandatory fees and surcharges that have been lawfully established, the payment of which is a condition precedent to a litigant's ability to secure access to

GENERAL RULES (GR)

RULE 34. WAIVER OF COURT AND CLERK'S FEES AND CHARGES IN CIVIL MATTERS ON THE BASIS OF INDIGENCY.

judicial relief. These include but are not limited to legislatively established filing fees and surcharges (e.g., RCW 36.18.020(5)); other initial filing charges required by statute (e.g., family court facilitator surcharges established pursuant to RCW 26.12.240; family court service charges established pursuant to RCW 26.12.260; domestic violence prevention surcharges established pursuant to RCW 36.18.016(2)(b)); and other lawfully established fees and surcharges which must be paid as a condition of securing access to judicial relief.

(3) An individual who is not represented by a qualified legal services provider (as that term is defined below) or an attorney working in conjunction with a qualified legal services provider shall be determined to be indigent within the meaning of this rule if such person, on the basis of the information presented, establishes that:

(A) he or she is currently receiving assistance under a needs-based, means-tested assistance program such as the following:

(i) Federal Temporary Assistance for Needy Families (TANF);

(ii) State-provided general assistance for unemployable individuals (GA-U or GA-X);

(iii) Federal Supplemental Security Income (SSI);

(iv) Federal poverty-related veteran's benefits; or

(v) Food Stamp Program (FSP); or

(B) his or her household income is at or below 125 percent of the federal poverty guideline;

or

(C) his or her household income is above 125 percent of the federal poverty guideline and the applicant has recurring basic living expenses (as defined in RCW 10.101.010(4)(d)) that

GENERAL RULES (GR)

RULE 34. WAIVER OF COURT AND CLERK'S FEES AND CHARGES IN CIVIL MATTERS ON THE BASIS OF INDIGENCY

render him or her without the financial ability to pay the filing fees and other fees or surcharges for which a request for waiver is made; or

(D) other compelling circumstances exist that demonstrate an applicant's inability to pay fees and/or surcharges.

(4) An individual represented by a QLSP, or an attorney working in conjunction with a QLSP that has screened and found the individual eligible for services, is presumptively deemed indigent when a declaration from counsel verifies representation and states that the individual was screened and found eligible for services.

(5) As used in this rule, "qualified legal services provider" means those legal services providers that meet the definition of APR 8(e).

COMMENT

The adoption of this rule is rooted in the constitutional premise that every level of court has the inherent authority to waive payment of filing fees and surcharges on a case by case basis. Each court is responsible for the proper and impartial administration of justice which includes ensuring that meaningful access to judicial review is available to the poor as well as to those who can afford to pay.

(b) Nothing in this rule shall prohibit or delay action on the underlying petition upon the court's approval of a waiver and presentation of an original petition may accompany the initial fee waiver.

Superior Court of Washington
County of Franklin

MARIA D. MORENO
Petitioner

vs.

MANUEL MORENO
Respondent

No.

MOTION & ORDER TO PROCEED
IN FORMA PAUPERIS
(ORPRFP)

MOTION

Petitioner moves the Court for an order permitting petitioner to proceed without payment of the filing fee. Attached is a Financial Statement in support of this motion. Petitioner states that the information contained in the Financial Statement is true and correct.

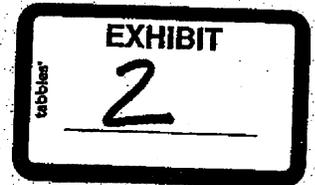
Dated: 05/12/11

Maria D Moreno
SIGNATURE OF PETITIONER

ORDER

IT IS HEREBY ORDERED that:

- The petitioner is permitted to proceed without payment of the filing fee as set forth below. The petitioner shall be required to pay the \$20.00 facilitator surcharge at the time of filing.
- No payment shall be required except the \$20.00 facilitator surcharge. (1508)
 - Shall be paid prior to the entry of the final Decree herein. (1103)
 - Shall be paid within _____ days. (1103)
 - Shall be reviewed at the time of entry of the final Decree herein.
 - Waiver of Parenting Class Fee.
 - Monthly payments of \$ _____ (1103)
 - Reduction of Parenting Class Fee to \$ _____



The Motion to Proceed in Forma Pauperis is denied. The filing fee shall be paid in full when the case is filed.

Dated this 19 day of May, 2011.

Presented by:

SIGNATURE OF PETITIONER

Jerry G. Potts
JUDGE/COURT COMMISSIONER
JERRY G. POTTS

FINANCIAL STATEMENT IN SUPPORT OF MOTION AND ORDER TO PROCEED IN FORMA PAUPERIS

3.1 GENERAL INFORMATION

(a) Name: MARIA D MORENO (a) Spouse's Name: MANUEL MORENO
(b) Address: 243 S. OWEN #1 (b) Address: _____
ASCO, WA 98201
(c) Telephone #: (609) 222-9062 (c) Telephone #: _____
(d) Date of Birth: 12/19/74 (d) Date of Birth: _____

3.2 FAMILY INFORMATION

(a) Persons whom you financially support: Spouse Children Other
(b) List names, ages, relationship, and address (if different from yours):
BYRON MORENO (SON) 7
BRANDON MORENO (SON) 5
CHRISTOPHER MORENO (SON) 3
ESTRELLA G. MORENO (DAUGHTER) 2

3.3 EMPLOYMENT INFORMATION

(a) Are you presently employed? Yes No (a) Is your spouse presently employed? Yes No
(b) Name and address of employer: _____ (b) Name and address of spouse's employer: _____

(c) Length of Employment: _____ (c) Length of Employment: _____
(d) Occupation: _____ (d) Occupation: _____
(e) Other source(s) of Income: Child Support (e) Other source(s) of Income: _____
\$855.00

3.4 INCOME AND ASSETS

(a) Gross monthly income (personal): 855.00
(b) Gross monthly income (spouse): _____
(c) Savings Accounts: _____
(d) Checking Accounts: _____
(e) Stocks & Bonds: _____
(f) Cash: _____
(g) Vehicles/boats/RVs: _____
(h) Home equity (sale value less amount owing): _____
(i) Other: _____
TOTAL ASSETS: 855.00

3.5 EXPENSES AND DEBTS

(a) Monthly living expenses (itemize):
Rent/House Payment: _____
Food: _____
Utilities: _____
Transportation: _____
Medical Insurance: _____
Dental Insurance: _____
Other: _____
(b) Debts:
Name of Creditor Amount Owed

TOTAL OBLIGATIONS: _____

Under penalty of perjury, I declare that I have examined this document and the preceding information is true and accurate to the best of my knowledge and ability.

Dated: 05/12/11

Maria D Moreno
SIGNATURE OF PETITIONER

**Instructions for filing a Motion and Declaration for
Waiver of Civil Filing Fees and Surcharges.**
(A request for fee waiver, payment plan or deferment)

If you are on a low or fixed income you may qualify to have the \$280 filing fee for Dissolution or \$250 for Custody or Parenting Plans waived or reduced. You will need to fill out the attached Motion and Order for Waiver of Civil Filing Fees and Surcharges (including the Financial Statement). Print clearly in black ink (or type) and fill out the form as completely and accurately as possible. Make one copy of the original for your records.

Benton County does not accept "mailed in" motions/orders to be signed. Therefore you will be required to take all original documents for your dissolution, paternity, nonparental custody or modification case and the Motion and Order to Waive the Filing Fees to the Superior Court Administration Office (1st Floor, Justice Center) between 8:00-9:00 a.m. or 1:00-1:30 p.m. A member of the staff will deliver your motion and order to a judge for review. If there are questions, answer respectfully. If your motion is approved, take all documents to the Benton County Superior Court Clerk's Office for immediate filing.

A deputy clerk will file all your original documents to start the action, provide you with a case number and date stamp the top page of one set of copies for you to serve.

OR

If your request was denied, you will be required to pay the full filing fee at the time you file your original documents. Be prepared to pay any fee with cash or debit/credit card. Checks are not accepted



Superior Court of Washington
For Benton County

No. _____

Petitioner/Plaintiff,
vs.

Respondent/Defendant.

Motion and Declaration For Waiver of
Civil Filing Fees and Surcharges
(MTAF)

I. Motion

- 1.1 I am the [] petitioner/plaintiff [] respondent/defendant in this action.
- 1.2 I am asking for a waiver of all filing fees and surcharges.

II. Basis for Motion

- 2.1 GR 34 allows the court to waive "filing fees or surcharges the payment of which is a condition precedent to a litigant's ability to secure access to judicial relief" for a person who is indigent. As outlined below, I am indigent.

Dated: _____

Signature of Requesting Party

Print or Type Name

III. Declaration

I declare that,

- 3.1 I cannot afford to meet my necessary household living expenses and pay the filing fees and surcharges imposed by the court. Please see the attached Financial Statement, which I incorporate as part of this declaration.

3.2 In addition to the information in the financial statement I would like the court to consider the following:

(Check if applies.) I filed this motion by mail. I enclosed a self-addressed stamped envelope with the motion so that I can receive a copy of the order once it is signed.

I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Signed at (City) _____, (state) _____ on (date) _____

Signature

Print or Type Name

Case Name: _____ Case Number: _____

Financial Statement (Attachment)			
1. My name is:			
2. <input type="checkbox"/> I provide support to people who live with me: How many? Age(s):			
3. My Monthly Income:		6. My Monthly Household Expenses:	
Employed <input type="checkbox"/>	Unemployed <input type="checkbox"/>	Rent/Mortgage:	\$
Employer's Name:		Food/Household Supplies:	\$
Gross pay per month (salary or hourly pay):	\$	Utilities:	\$
Take home pay per month:	\$	Transportation:	\$
4. Other Sources of Income/Benefits Per Month in my Household and/or Other Parties Household:		Ordered Maintenance actually paid:	\$
Source:	SPOUSE/PARTNER	\$	Ordered Child Support actually paid:
Source:	RESPONDENT	\$	Clothing:
Source:		\$	Child Care:
Source:		\$	Education Expenses:
Sub-Total:		\$	Insurance (car, health):
\$_____ received monthly in food stamps		Medical Expenses:	\$
Total Income, lines 3 (take home pay) and 4:		\$	Sub-Total:
		\$	\$
5. My Household Assets:		7. My Other Monthly Household Expenses:	
Cash on hand:	\$		\$
Checking Account Balance:	\$		\$
Savings Account Balance:	\$		\$
Auto #1 (Value less loan):	\$		\$
Auto #2 (Value less loan):	\$		\$
Sub-Total:		\$	\$
Home (Value less mortgage):	\$	8. My Other Debts with Monthly Payments:	
Other:	\$		\$ /mo
Other:	\$		\$ /mo
Other:	\$		\$ /mo
Other:	\$		\$
Sub-Total:		\$	\$
Total Household Assets:		\$	Total Household Expenses and Debts, lines 6, 7, and 8:
		\$	\$
Date:		Signature:	

Superior Court of Washington In and
For the County of Benton

In Re Marriage of

Petitioner/Plaintiff,
vs.

Respondent/Defendant.

No. _____

Order Re Waiver of Filing Fees and
Surcharges

Granted (ORPRFP)

Denied (ORDYMT)

Clerk's Action Required 3.1

Anti-Harassment

Dissolution

Parenting Class

Other _____

I. Basis

The court received the motion to waive filing fees and surcharges filed by or on behalf of the
 petitioner/plaintiff respondent/defendant.

The filing for most Civil and Probate cases is \$230, which includes \$30 Judicial Stabilization surcharge.

The filing fee for most Domestic and Family Law cases is \$280, which includes \$200 filing fee, \$20 facilitator surcharge, \$30 DV fee, and \$30 Judicial Stabilization surcharge.

II. Findings

The Court reviewed the motion and supporting declaration(s). Based on the declaration(s) and any relevant records and files, the Court finds:

2.1 The moving party is indigent based on the following: He or she:

is represented by a qualified legal aid provider that screened and found the applicant eligible for free civil legal aid services; and/or

receives benefits from one or more needs-based, means-tested assistance programs; and/or

- has household income at or below 125% of the federal poverty guideline; and/or
- has household income above 125% of the federal poverty guideline but cannot meet basic household living expenses and pay the fees and/or surcharges; and/or
- the grounds for the action are meritorious and not frivolous.

2.2 The moving party is not indigent.

2.3 Other: _____

III. Order

Based on the findings the court orders:

- 3.1 The motion is granted, and
- All filing fees and surcharges, the payment of which is a condition precedent to the moving party's ability to secure access to judicial relief, are waived.
 - The \$200 filing fee shall be waived
 - The \$20 facilitator surcharge shall be waived
 - The \$30 DV fee shall be waived
 - The \$30 Judicial Stabilization surcharge shall be waived
 - The \$53 Anti-Harassment filing fee shall be waived
 - The parenting class fee shall be waived.
 - The parenting class fee shall be paid on the sliding fee scale.
 - Shall be reviewed at the time of entry of final decree herein.
 - Other: _____

3.2 [] The motion is denied and all appropriate filing fees shall be paid when the case is filed.

[] The motion is denied and all appropriate filing fees shall be paid with monthly payments of \$ _____ starting _____, 201__.

3.3 If there is a material change in financial circumstances, the ruling can be revisited by the court or the moving party.

If the motion was granted and the court, upon review, later finds that either the petitioner or another responsible party to this proceeding has sufficient resources to pay the waived filing fees or surcharges, the Court may modify this order and require the moving party or another party to pay the filing fees and/or surcharges that have been waived by this order.

Dated: _____

Judge/Commissioner

Presented by:

Signature of Party or Lawyer/WSBA No.

Print or Type Name

Date

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

COPY

COPY
ORIGINAL FILED
SEP - 9 2011
MICHAEL J. KILLIAN
FRANKLIN COUNTY CLERK

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF FRANKLIN

In re the Marriage of:

GRISELDA ROMERO

Petitioner,

And

REVERIANO ROMERO

Respondent.

No. 11-3-50066-3

MEMORANDUM IN SUPPORT OF
ENTRY OF FINAL DECREE OF
DISSOLUTION

I. INTRODUCTION

The Northwest Justice Project submits this memorandum in support of petitioner Griselda Romero's request for entry of her final decree of dissolution of her marriage.

On December 10, 2010, the Washington Supreme Court adopted GR 34. That rule mandates the process and standards under which Washington trial courts must waive the payment of any filing fees or surcharges which would otherwise be a condition precedent to an indigent litigant's ability to obtain judicial relief.

Three months later, on March 8, 2011, Ms. Romero sought such a waiver from this Court. On that date, Judge Vanderschoor found her to be indigent based on a declaration proving a low

1 wage income for herself and her two minor children of \$1200 - \$1400 per month, a level well
2 under the 125% of federal poverty level indigency standard established by GR 34.

3 Ms. Romero's status as an indigent under the legal standards established by GR 34 has
4 not changed since March 2011. Nonetheless, on August 22, 2011, this Court refused to enter the
5 decree of dissolution and other final documents Ms. Romero tendered to obtain judicial relief in
6 this dissolution action. The Court told Ms. Romero she had to pay \$260.00 in filing fees before
7 the Court would enter her dissolution orders, and warned that unless she paid those fees within
8 thirty days, the Court would dismiss her case.

9 This Court may not make payment of filing fees or surcharges a condition precedent to
10 affording Ms. Romero access to the judicial relief she requests without denying her legal rights
11 under GR 34 and the due process clauses of the Washington and the United States Constitutions.

12 II. STATEMENT OF RELEVANT FACTS

13 Ms. Romero is seeking a divorce from her abusive husband. She separated from her
14 husband when he was arrested for assaulting her in December 2010.

15 Ms. Romero filed for dissolution on March 8, 2011, seeking an end to her marriage, a
16 final parenting plan appointing her residential parent of minor son of the marriage, and child
17 support. Though the Administrative Office of Courts issued mandatory forms in February 2011
18 to implement the requirements of GR 34, Ms. Romero was required to complete and present
19 older forms used under local Benton/ Franklin County practices that pre-dated and were
20 superseded by GR 34. Unless expressly modified, the order form under the prior local practice
21 required even those found indigent to pay the \$20.00 facilitator surcharge as a precondition to
22 filing the dissolution petition.

23 Ms. Romero's motion for waiver of the filing fees was granted on March 8, 2011. Judge
24

1 Vanderschoor did not modify the boilerplate of the superseded order form, and specifically
2 checked the box mandating that Ms. Romero pay the \$20.00 facilitator surcharge, in violation of
3 GR 34. *See Petitioner's Motion and Order for In Forma Pauperis attached as Exhibit 1.*
4 Although it was a hardship, Ms. Romero paid the \$20.00 in order to file the petition and start her
5 dissolution case.

6 Ms. Romero's husband ultimately signed a joinder to her petition. On August 22, 2011
7 Ms. Romero tendered to the Court the final entries necessary to obtain the judicial relief sought
8 in her petition. The Court refused to enter those orders solely because she had not paid a \$260.00
9 filing fee. The Court admonished that Ms. Romero made an hourly wage at her employment and
10 that the Court was not going to make the taxpayers of Franklin County pay her filing fee.

11 GR 34 set very specific and objective legal standards by which the trial courts of this
12 state must determine indigency as a matter of law. At all relevant times, Ms. Romero has met the
13 GR 34 standards in at least two ways.

14 First, Ms. Romero's income was and remains well below 125 percent of federal poverty
15 level. *See the current federal poverty guideline, attached as Exhibit 2.* When Ms. Romero
16 submitted her motion for waiver of the filing fee in March 2011, she worked as a cashier at
17 Fiesta Foods making around \$1200 to \$1400 a month. *See Ms. Romero's motion and order to*
18 *Proceed In Forma Pauperis attached as Exhibit 1.* Ms. Romero's motion also stated that she is
19 responsible for the support of herself as well as two young children (ages 3 and 7). Ms. Romero
20 is paid an hourly wage of \$10.50 and works between 30 to 35 hours a week depending on how
21 many hours she is scheduled to work by Fiesta Foods. Her income varies every month due to the
22 number of work hours she is given. In a month where she gets the most hours, Ms. Romero
23 works 35 hour weeks, earning \$1,592.50. In months in which she is offered the least, she works
24

1 30 hour weeks and earns \$1,365.00. Ms. Romero's income at the time of filing her motion to
2 waive the filing fee in March 2011 was well below 125% of federal poverty level. In fact, Ms.
3 Romero's family income was only 70 to 90 percent of federal poverty level.

4 Ms. Romero filed her 2010 tax return under seal as part of her documents in this case.
5 That return showed that her family's total income in 2010, even before she separated from her
6 abusive husband, was only \$21,784. *See Ms. Romero's 2010 Tax Return under seal in the court's*
7 *file.* Even that level of income, significantly greater than the income Ms. Romero and her
8 children now must live on, totaled well below the 125 percent federal poverty level indigency
9 standard.

10 Since March 2011, Ms. Romero's income has not increased although her monthly
11 expenses have, leaving less income available to provide daily necessities for her and her minor
12 children. Ms. Romero is not receiving any child support. She pays \$650.00 a month for rent. Her
13 remaining income goes to necessities for her children: utilities, food when her food assistance
14 runs out, and transportation and \$480 per month in childcare cost, both expenses required so that
15 she can work. If any money is left, Ms. Romero uses it for her own personal and hygiene
16 necessities. Ms. Romero has no uncommitted funds that would allow her to pay any filing fees or
17 surcharges to dissolve this marriage involving domestic violence. She could only do so by
18 depriving herself or her children of some minimum daily necessity of life.

19 Further, Ms. Romero's family has been on food stamps since well before she filed her
20 petition, and continues to receive food assistance. Eligibility for that public benefit also
21 establishes her legal indigency pursuant to GR 34.

22 At the August 22nd hearing, the Court did not ask Ms. Romero about her current
23 expenses, her continued receipt of any public benefits, or if her income or financial
24

1 circumstances had changed in any way since March 2011. The Court noted simply Ms. Romero
2 stood to receive \$470 per month in child support under the tendered final order. Any inquiry
3 would have established that respondent has not paid a penny in support, and that Ms. Romero's
4 income remains the same as in March and that she continues to receive qualifying public benefits
5 meeting the GR 34 standard. The Court did that day enter Ms. Romero's final parenting plan.
6 However, it told Ms. Romero that if she did not pay the \$260.00 filing fee within thirty days, her
7 dissolution case would be dismissed, rendering the final parenting plan void.

8 III. STATEMENT OF ISSUE

9 Ms. Romero requests this Court comply with GR 34 and enter Ms. Romero's final decree
10 of dissolution without further delay. In addition, Ms. Romero demands a refund of the \$20.00
11 facilitator surcharge she was wrongly required to pay in March 2011, in violation of GR 34. The
12 questions presented include:

- 13 (1) After a determination of indigency and waiver of filing fees at the onset of a
14 divorce, does GR 34 allow a trial court to require an indigent to pay fees as a
15 condition precedent to judicial relief in the form of entry of final orders in a
16 dissolution case?
- 17 (2) Does a trial court have discretion regarding the criteria for a litigant's
18 indigency, or are the permissible objective criteria established by GR 34 as a
19 matter of law?
- 20 (3) After granting a GR 34 waiver due to indigency, does a trial court have any
21 authority to modify or vacate that waiver, at least in the absence of proof that
22 the litigant is no longer indigent under the GR 34 criteria?
- 23
24

1 IV. EVIDENCE AND AUTHORITY RELIED UPON

2 Ms. Romero's request for this Court to enter final orders in her dissolution and comply
3 with GR 34 are based on the facts in the court file, the March 8, 2011 Declaration of Ms.
4 Romero's Indigency, the September 8, 2011 Declaration Re: Finances, the Financial Declaration
5 of Ms. Romero, and the March 8, 2011 Application/Order to Proceed In Forma Pauperis.

6 Ms. Romero's request for entry of her final orders in the dissolution and compliance with
7 GR 34 are brought pursuant to GR 34; RCW 36.18.022; 36.18.016(2)(b); 26.12.260; 26.12.240;
8 GR 34; *Boddie v. Connecticut*, 401 U.S. 371, 91 S. Ct. 780 (1971); *Bullock v. Roberts*, 84 Wn.2d
9 101, 524 P.2d 385 (1974); *Ashley v. Superior Court*, 82 Wn.2d 188, 509 P.2d 751 (1973);
10 *O'Connor v. Matzdorff*, 76 Wn.2d 589, 458 P.2d 154 (1969); *Dep't of Ecology v. Campbell &*
11 *Gwinn*, 146 Wn.2d 1, 9-10, 43 P.3d 4 (2002); *State ex rel. Morgan v. Kinnear*, 80 Wn.2d 400,
12 402, 494 P.2d 1362 (1972), and *State v. Dejarlais*, 136 Wn.2d 939, 944, 969 P.2d 90 (1998).

13 V. ARGUMENT

14 Denying the Ms. Romero the judicial relief necessary to dissolve her abusive marriage
15 simply because she is unable to afford the filing fee violates GR 34 and her constitutional right to
16 due process.

17 **A. WASHINGTON STATE LAW REQUIRES A WAIVER OF FILING FEES**
18 **AND SURCHARGES WHEN THERE IS A SHOWING OF INDIGENCY.**

19 The Supreme Court of Washington adopted GR 34 on December 3, 2010. The rule
20 establishes the process and standards by which trial courts must exercise their statutory authority
21 to waive civil filings fees and surcharges. GR 34 mandates that waiver cover all fees and
22 surcharges the payment of which is a condition precedent to a litigant's ability to secure access to
23 judicial relief. The rule provides that if a litigant is currently receiving assistances under a needs-
24 based, means-tested assistance program (including the food stamp program) or if the litigant's

1 household income is at or below 125 percent of federal poverty guidelines, the litigant shall be
2 determined to be indigent.

3 Ms. Romero currently receives food stamps for the family. In addition, her current
4 income and her income listed on her 2010 tax return both fall under 125 percent of federal
5 poverty level. Per the federal poverty level guideline, a family of three making \$1,930.21 a
6 month is at 125 percent federal poverty level. Ms. Romero is currently at 91 percent of federal
7 poverty level and is clearly indigent.

8 This Court's dealings with Ms. Romero have already violated GR 34 on two occasions.
9 First, Judge Vanderschoor wrongly required Ms. Romero to pay the \$20.00 facilitator surcharge
10 at the onset of her dissolution in March 2011 although he agreed she was indigent. GR 34 clearly
11 required Judge Vanderschoor to waive payment of that surcharge as well as the filing fees. Ms.
12 Romero paid the \$20.00 facilitator surcharge in order to get her case started, although it was a
13 hardship. This Court should order its Clerk to refund that surcharge to Ms. Romero.

14 Second, the Court violated GR 34 and its own March 8, 2011 order when it refused to
15 enter judicial relief for her on August 22nd and threatened to dismiss her case unless she paid
16 \$260.00 in filing fees. This Court does not have power under GR 34 or the due process clause to
17 waive filing fees and then resurrect the obligation to pay them as a condition to final relief. The
18 plain language of GR 34 requires a "waiver" of filing fees and surcharges, not a "waiver of
19 prepayment." If the rule drafters intended to allow this Court to hold a party and her action
20 hostage ultimately for payment of fees and costs, the rule would have been drafted to provide
21 only for "waiver of prepayment." However, rule GR 34 does not say "waiver of prepayment"
22 and specifically states that upon a finding of indigency, the court shall waive the filing fee and
23 surcharges. Since the term waiver is not defined in the rule, courts must afford it the word's
24

1 usual and customary meaning: the complete and voluntary relinquishment of a known right.
2 Under GR 34, indigents are therefore entitled to a waiver that means the Court's complete
3 relinquishment of any right to seek or demand payment of filing fees or surcharges from that
4 person. It is impossible to resurrect a legal obligation or duty to pay once it has been legally
5 waived. Since this Court found Ms. Romero indigent in March 2011, after GR 34 controlled that
6 finding, any obligation Ms. Romero may have had to pay fees or surcharges was waived as a
7 matter of law. Under state law, this Court must therefore enter Ms. Romero's final orders in her
8 dissolution immediately without requiring Ms. Romero to pay the \$260.00 filing fee.

9 **B. THE MS. ROMERO MEETS REQUIREMENTS FOR INDIGENCY**
10 **MANDATING WAIVER OF FEES AND SURCHARGES IN ORDER TO**
11 **OBTAIN FINAL DISSOLUTION DECREE AND OTHER FINAL**
12 **ORDERS.**

13 Before GR 34, the court had discretion regarding what criteria to use in order to
14 determine if a litigant was indigent. Specifically, the court in *O'Connor* stated that a family that
15 receives relief from the state is generally considered to be indigent. 76 Wn.2d 589, 594. The
16 Court further explained that indigence does not mean absolute destitution or total insolvency. *Id.*

17 The Court explained:

18 This court has recently had occasion to discuss the concept of
19 indigence... We held that the term does not and cannot in
20 keeping with the concept of equal justice to every man, mean
21 absolute destitution or total insolvency. Rather it connotes a
22 state of impoverishment or lack of resources on the part of the
23 defendant which, when realistically viewed in the light of
24 everyday practicalities, substantially and effectively impairs
or prevents his pursuit of his remedy.

(Citing *State v. Rutherford*, 63 Wn.2d 949, 389 P.2d 895
(1964); *Id.*)

Hence, pre-GR 34, Ms. Romero is considered to be indigent if she demonstrates a state of
impoverishment, or lack of resources, that would substantially and effectively impair an

1 individual's pursuit of a remedy. *Id.*

2 However, the court no longer has discretion regarding what criteria to use to
3 determine a litigant's indigency. GR 34 gives the court very specific objectives to consider when
4 determining indigency. As discussed earlier, Ms. Romero meets this specific criteria outlined in
5 GR 34 and is indigent. This Court does not have the ability nor the discretion to determine what
6 criteria they will use to determine Ms. Romero's ability to pay the \$260.00 filing fee. Ms.
7 Romero receives public assistance by way of food stamps and medical coupons and meets the
8 criteria for indigency set out in GR 34(3)(A). In addition, Ms. Romero also meets a second
9 criteria set out in GR 34 for indigency. Ms. Romero's income is below 125% of federal poverty
10 level and she is indigent per GR 34(3)(B). Therefore, this Court must enter Ms. Romero's final
11 documents in her dissolution and grant her the judicial relief she has petitioned for without
12 further delay.

13 **C. REQUIRING AN INDIGENT MS. ROMERO TO PAY A FILING FEE IN**
14 **ORDER TO OBTAIN A DISSOLUTION VIOLATES DUE PROCESS.**

15 Under the Fourteenth Amendment of the United States Constitution, the State of
16 Washington must not impose fees the Ms. Romero cannot afford and thereby prevent her from
17 having access to the court to obtain a dissolution. The judicial process is the only available
18 means through which an individual can obtain a legally sanctioned divorce in Washington State.
19 For this reason, the United States Supreme Court long ago held that due process prohibits States
20 from denying an individual, who seeks a divorce in good faith, access to the courts due solely to
21 an inability to afford the filing fee. *Boddie*, 401 U.S. at 374. The Washington Supreme Court
22 also has determined that "[f]ull access to the courts in a divorce action is a fundamental right."
23 *Bullock*, 84 Wn.2d at 104. An individual cannot be prevented from obtaining a divorce solely
24 because she is unable to pay court fees and costs. *Boddie*, 401 U.S. 371; *see also Ashley v*

1 *Superior Court*, 82 Wn.2d 188, 509 P.2d 751 (1973). The Superior Courts have inherent power
2 “to make such orders as are necessary to protect the rights of the poor to access to the judicial
3 system.” *O’Connor*, 84 Wn.2d at 105.

4 1. Regardless of when a filing fee and/or “surcharge” is required to be
5 paid, a due process violation occurs when it is imposed on an indigent
6 person in order to obtain a dissolution.

7 The Ms. Romero’s right to due process is violated if she is prevented from finalizing her
8 divorce for the sole reason that she is unable to pay the court filing fees and/or “surcharge.” A
9 violation of due process occurs whenever a court does not provide a party a meaningful
10 opportunity to be heard. *Boddie*, 401 U.S. at 379. A cost requirement that effectively operates to
11 foreclose this opportunity offends due process. *Id.* The *Boddie* Court noted that a State’s refusal
12 to admit an individual to its court in a divorce proceeding is equivalent to a denial of one’s
13 opportunity to be heard on their right to dissolve their marriage. *Id.*

14 Due Process was violated when Ms. Romero was required to pay the \$20.00 facilitator
15 surcharge at the onset of her dissolution. Due Process will again be violated if this court refuses
16 to enter Ms. Romero’s final documents in her dissolution without payment of the filing fee. The
17 Superior Court previously recognized Ms. Romero’s indigent status when it issued the March 8,
18 2011 order that authorized her to file the action without payment of a \$260.00 Domestic Case
19 filing fee, subject to review at the time of the finalization of the dissolution. Regardless if a filing
20 fee and/or surcharge are required at the time of filing or before final dissolution orders are
21 entered, the cost requirement operates as a barrier to her opportunity to be heard and equal access
22 to the courts in order to obtain a necessary remedy.
23
24

1
2 2. No Countervailing State Interest Outweighs Ms. Romero's Right to a
3 Complete Waiver of the Fees and Surcharges In Order to Obtain a
4 Dissolution.

5 The Ms. Romero's interest to be heard outweighs the State's interests to impose a filing
6 fee and/or surcharges. The U.S. Supreme Court has held that absent a sufficient countervailing
7 justification for the state's action, the requirement that an indigent party pay a filing fee is a
8 denial of due process. 401 U.S. at 380-81. The State's interest in preventing frivolous litigation
9 and conserving its own limited financial resources, are an important consideration in determining
10 whether a request to proceed *in forma pauperis* should be granted. *Id.* at 381. However, a court
11 has alternative means at its disposal to conserve its resources. *Id.* Specifically, the court has
12 authority to award costs against the opposing party in the final entry of orders. RCW 4.84.010
13 and CR 54(d). The court's remedy is to order the opposing party to pay the filing fees and
14 surcharges and allow the clerk to undertake collection. RCW 19.16.500 and RCW 36.18.190.

15 In addition, Ms. Romero's need to obtain a divorce from a perpetrator of domestic
16 violence in a timely way is not frivolous. "Domestic violence is a problem of immense
17 proportions affecting individuals as well as communities." *State v. Dejarlais*, 136 Wn.2d 939,
18 944, 969 P.2d 90 (1998). There is no justification for the State to impose a filing fee and/or
19 surcharges that violate an indigent person's right to due process.

20 ///

21 ///

22 ///

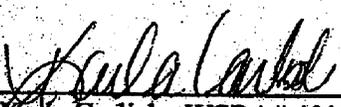
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

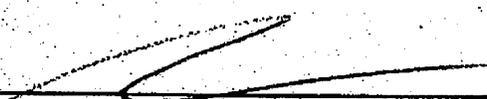
VI. CONCLUSION

For the foregoing reasons, Ms. Romero respectfully requests this Court enter a final decree of dissolution in her case without further delay so she can end her abusive marriage. In addition, Ms. Romero requests that this Court refund the \$20.00 facilitator surcharge Ms. Romero was required to pay at the onset of the case as it was a violation of GR 34.

Respectfully submitted this 9th day of September, 2011.

NORTHWEST JUSTICE PROJECT

By 
Karla Carlisle, WSBA# 40107

By 
Gary M. Smith, WSBA# 42792

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**SUPERIOR COURT OF WASHINGTON
FOR FRANKLIN COUNTY**

GIUSELDA ROMERO
Plaintiff/Petitioner,

vs.

ROBERTIANO ROMERO
Defendant/Respondent.

FILED
FRANKLIN CO CLERK
1201 MAR -8 P 1:05
MICHAEL J. KILLIAN

NO. BY JK DEPUTY
11 3 50066 3
MOTION & ORDER TO
PROCEED IN FORMA PAUPERIS
(ORPRFP)

MOTION

Petitioner moves the court for an order permitting petitioner to proceed without payment of the filing fee. Attached is a Financial Statement in support of this motion. Petitioner states that the information contained in the Financial Statement is true and correct.

Dated: 03-08-11

GIUSELDA ROMERO
Signature of Petitioner

ORDER

IT IS HEREBY ORDERED that

The petitioner is permitted to proceed without payment of the filing fee as set forth below. The petitioner shall be required to pay the \$20.00 facilitator surcharge at the time of filing. Payment of Filing fee:
 No payment required (except the \$20.00 facilitator surcharge). 1508

Shall be paid prior to entry of final decree herein. 1103 (FW)

Shall be paid within _____ days. 1103 (FW)

Shall be reviewed at the time of entry of final decree herein. (FW)

Waiver of Parenting Class Fee.

Monthly payment of \$ _____ 1103 (FW)

Reduction of Parenting Class Fee \$ _____

The motion to proceed in forma pauperis is denied. The filing fee shall be paid when the case is filed.

DATED this 8 day of March, 2011.

Presented by:

GIUSELDA ROMERO
Signature of Petitioner

Vic L. Vanderschoor
JUDGE/COURT COMMISSIONER
VIC L. VANDERSCHOOB

FAILURE TO PROCEED WITH THIS ACTION (FAILURE TO APPEAR AT HEARING) MAY RESULT IN AN ORDER AND JUDGMENT REQUIRING THE PETITIONER TO PAY THE FILING FEE AND SERVICE COSTS.

1 FINANCIAL STATEMENT IN SUPPORT OF MOTION AND ORDER TO PROCEED IN FORMA PAUPERIS

2 3.1 GENERAL INFORMATION

3 (a) Name: GUILBERTA ROMERO (a) Spouse's Name: _____
4 (b) Address: 1312 N. 25th Ave. (b) Address: _____
5 Pasco wa. 99301.
6 (c) Telephone # (509) 947-0938 (c) Telephone #: _____
7 (d) Date of Birth: 08-29-53 (d) Date of Birth: _____

8 3.2 FAMILY INFORMATION

9 (a) Persons whom you financially support: Spouse Children Other
10 (b) List names, ages, relationship and address if different from yours:
11 ~~Guilberta Romero 2 years~~
12 Pablo Garcia 7 years 09-13-03
13 _____
14 _____

15 3.3 EMPLOYMENT INFORMATION

16 (a) Are you presently employed: Yes No (a) Is spouse presently employed: Yes No
17 (b) Name & address of employer: _____ (b) Name & address of spouse's employer: _____
18 Fiesta Foods (Grocery Store)
19 115 S. 10th Ave. Pasco wa. 99301.
20 (c) Length of Employment: _____ (c) Length of Employment: _____
21 (d) Occupation: Cashier (d) Occupation: _____
22 (e) Other Source of income: _____ (e) Other source of income: _____

23 3.4 INCOME AND ASSETS

24 (a) Gross monthly income (personal) 1200 to 1100
25 (b) Gross monthly income (spouse) _____
26 (c) Savings Accounts 0
27 (d) Checking Accounts _____
28 (e) Stocks & Bonds _____
29 (f) Cash _____
30 (g) Vehicles/boats/RV/motorcycles 0
31 (h) Home equity (sale value less amount owing) 0
32 (i) Other _____

3.5 EXPENSES AND DEBTS

(a) Monthly living expenses (itemize):
Rent/House Payment 635.00
Food 400
Utilities Electricity 150.00
Transportation 195.00
Insurance
Medical & Dental
Other Babysitter 100.00
(b) Debts: PHONE FOR CABLE 40.00
Name of Creditor _____ Amount Owed _____

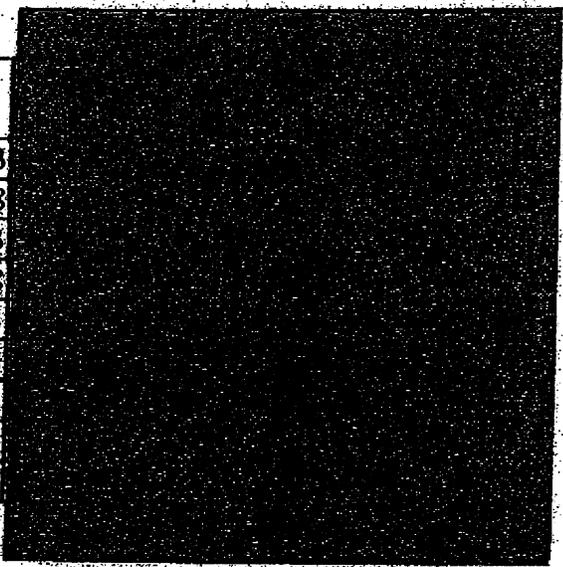
23 TOTAL ASSETS: _____ TOTAL OBLIGATIONS: _____

24 OTHER: _____
25 _____

26 UNDER PENALTY OF PERJURY, I DECLARE THAT I HAVE EXAMINED THIS DOCUMENT AND THE
27 PRECEDING INFORMATION IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE AND ABILITY.

28 DATE 03-08-11 SIGNATURE GUILBERTA ROMERO

People in Household	125% Monthly	125% Annual
1	\$1,134.42	13,613
2	\$1,532.33	18,388
3	\$1,930.21	23,163
4	\$2,328.13	27,938
5	\$2,726.04	32,713
6	\$3,123.96	37,488
7	\$3,521.88	42,263
8	\$3,919.79	47,038
each person > 8	\$397.92	4,775



THE SUPREME COURT OF WASHINGTON

IN THE MATTER OF THE ADOPTION OF NEW
GR 34-WAIVER OF COURT AND CLERK'S FEES
AND CHARGES IN CIVIL MATTERS ON THE
BASIS OF INDIGENCY

ORDER

NO. 25700-A-975

The Washington State Bar Association having recommended the adoption of the proposed New GR 34-Waiver of Court and Clerk's Fees and Charges in Civil Matters on the Basis of Indigency, and the Court having considered New GR 34 and comments submitted thereto, and having determined that the new rule will aid in the prompt and orderly administration of justice;

Now, therefore, it is hereby

ORDERED:

- (a) That New GR 34 as attached hereto is adopted.
- (b) That New GR 34 will be published in the Washington Reports and will become effective upon its publication.

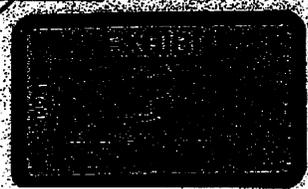
DATED at Olympia, Washington this 3rd day of December, 2010.

FILED
SUPREME COURT
10 DEC - 3 AM 9:02
BY RONALD L. CARPENTER
CLERK

[Signature]
Alexander, J.
[Signature]
[Signature]

Madsen, C. J.
[Signature]
Fairhurst, J.
[Signature]
[Signature]

599/186



GENERAL RULES (GR)

RULE 34. WAIVER OF COURT AND CLERK'S FEES AND CHARGES IN CIVIL MATTERS ON THE BASIS OF INDIGENCY

(a) Any individual, on the basis of indigent status as defined herein, may seek a waiver of filing fees or surcharges the payment of which is a condition precedent to a litigant's ability to secure access to judicial relief from a judicial officer in the applicable trial court.

(1) The application for such a waiver may be made ex parte in writing or orally, accompanied by a mandatory pattern form created by the Administrative Office of the Courts (AOC) whereby the applicant attests to his or her financial status or, in the case of an individual represented by a qualified legal services provider ("QLSP") or an attorney working in conjunction with a QLSP, a declaration of counsel stating that the individual was screened and found eligible by the QLSP.

(2) The court shall accept an application submitted in person, by mail and where authorized by local court rule not inconsistent with GR 30, electronic filing. The process for presentation of the application shall conform to local court rules and clerk processes not inconsistent with the rules of this court for presenting ex parte orders to the court directly or via the clerk. All applications shall be presented to a judicial officer for consideration in a timely manner and in conformity with the local court's established procedures. There shall be no locally imposed fee for making an application. The applicant or applicant's attorney filing by mail, shall provide the court with a self-addressed stamped envelope for timely return of a conformed copy of the order.

COMMENT

This rule establishes the process by which judicial officers may waive civil filing fees and surcharges for which judicial officers have authority to grant a waiver. This rule applies to mandatory fees and surcharges that have been lawfully established, the payment of which is a condition precedent to a litigant's ability to secure access to

GENERAL RULES (GR)

RULE 34. WAIVER OF COURT AND CLERK'S FEES AND CHARGES IN CIVIL MATTERS ON THE BASIS OF INDIGENCY

judicial relief. These include but are not limited to legislatively established filing fees and surcharges (e.g., RCW 36.18.020(5)); other initial filing charges required by statute (e.g., family court facilitator surcharges established pursuant to RCW 26.12.240; family court service charges established pursuant to RCW 26.12.260; domestic violence prevention surcharges established pursuant to RCW 36.18.016(2)(b)); and other lawfully established fees and surcharges which must be paid as a condition of securing access to judicial relief.

(3) An individual who is not represented by a qualified legal services provider (as that term is defined below) or an attorney working in conjunction with a qualified legal services provider shall be determined to be indigent within the meaning of this rule if such person, on the basis of the information presented, establishes that:

(A) he or she is currently receiving assistance under a needs-based, means-tested assistance program such as the following:

(i) Federal Temporary Assistance for Needy Families (TANF);

(ii) State-provided general assistance for unemployable individuals (GA-U or GA-X);

(iii) Federal Supplemental Security Income (SSI);

(iv) Federal poverty-related veteran's benefits; or

(v) Food Stamp Program (FSP); or

(B) his or her household income is at or below 125 percent of the federal poverty guideline;

or

(C) his or her household income is above 125 percent of the federal poverty guideline and the applicant has recurring basic living expenses (as defined in RCW 10.101.010(4)(d)) that

GENERAL RULES (GR)

RULE 34. WAIVER OF COURT AND CLERK'S FEES AND CHARGES IN CIVIL MATTERS ON THE BASIS OF INDIGENCY

render him or her without the financial ability to pay the filing fees and other fees or surcharges for which a request for waiver is made; or

(D) other compelling circumstances exist that demonstrate an applicant's inability to pay fees and/or surcharges.

(4) An individual represented by a QLSP, or an attorney working in conjunction with a QLSP that has screened and found the individual eligible for services, is presumptively deemed indigent when a declaration from counsel verifies representation and states that the individual was screened and found eligible for services.

(5) As used in this rule, "qualified legal services provider" means those legal services providers that meet the definition of APR 8(e).

COMMENT

The adoption of this rule is rooted in the constitutional premise that every level of court has the inherent authority to waive payment of filing fees and surcharges on a case by case basis. Each court is responsible for the proper and impartial administration of justice which includes ensuring that meaningful access to judicial review is available to the poor as well as to those who can afford to pay.

(i) Nothing in this rule shall prohibit or delay action on the underlying petition upon the court's approval of a waiver and presentation of an original petition may accompany the initial fee waiver.

FILED
FRANKLIN CO CLERK
2011 MAY 31 A 11:49
MICHAEL J. KILLIAN
BY *JK* DEPUTY

Superior Court of Washington
County of Franklin

Ana Balderras
Petitioner

vs.

Manuel Gonzalez
Respondent

No. 11 3 50172-4

MOTION & ORDER TO PROCEED
IN FORMA PAUPERIS
(ORPRFP)

MOTION

Petitioner moves the Court for an order permitting petitioner to proceed without payment of the filing fee. Attached is a Financial Statement in support of this motion. Petitioner states that the information contained in the Financial Statement is true and correct.

Dated: 5-25-11

Ana Balderras
SIGNATURE OF PETITIONER

ORDER

IT IS HEREBY ORDERED that:

The petitioner is permitted to proceed without payment of the filing fee as set forth below. The petitioner shall be required to pay the \$20.00 facilitator surcharge at the time of filing.

- No payment shall be required except the \$20.00 facilitator surcharge. (1508)
- Shall be paid prior to the entry of the final Decree herein. (1103)
- Shall be paid within _____ days. (1103)
- Shall be reviewed at the time of entry of the final Decree herein. *for order.*
- Waiver of Parenting Class Fee.
- Monthly payments of \$_____ (1103)
- Reduction of Parenting Class Fee to \$_____

The Motion to Proceed in Forma Pauperis is denied. The filing fee shall be paid in full when the case is filed.

Dated this 31 day of May, 2011.

Presented by:

Ana Balderras
SIGNATURE OF PETITIONER

CARRIE RUDGE
JUDGE/COURT COMMISSIONER

CARRIE L. RUDGE

EXHIBIT

5

FINANCIAL STATEMENT IN SUPPORT OF MOTION AND ORDER TO PROCEED IN FORMA PAUPERIS

3.1 GENERAL INFORMATION

(a) Name: Ana Balderas (a) Spouse's Name: N/A
 (b) Address: 2311 N Jay St Apt C (b) Address: _____
Pasco WA
 (c) Telephone #: 509-521-6329 (c) Telephone #: _____
 (d) Date of Birth: 11-14-74 (d) Date of Birth: _____

3.2 FAMILY INFORMATION

(a) Persons whom you financially support: Spouse Children Other
 (b) List names, ages, relationship, and address (if different from yours):
Lellany Espinoza 10mo Lisandro Balderas 9yrs
Edwin Balderas 18yrs
Laura Balderas 16yrs
Cesar Balderas 12yrs

3.3 EMPLOYMENT INFORMATION

(a) Are you presently employed? Yes No (a) Is your spouse presently employed? Yes No
 (b) Name and address of employer: _____ (b) Name and address of spouse's employer: _____

 (c) Length of Employment: _____ (c) Length of Employment: _____
 (d) Occupation: _____ (d) Occupation: _____
 (e) Other source(s) of income: _____ (e) Other source(s) of income: _____

3.4 INCOME AND ASSETS

(a) Gross monthly income (personal): 850
 (b) Gross monthly income (spouse): N/A
 (c) Savings Accounts: none
 (d) Checking Accounts: mm
 (e) Stocks & Bonds: none
 (f) Cash: none
 (g) Vehicles/boats/RVs: _____
 (h) Home equity (sale value less amount owing): _____
 (i) Other: Food Stamps 664.00
 TOTAL ASSETS: 1514.00

3.5 EXPENSES AND DEBTS

(a) Monthly living expenses (itemize):
 Rent/House Payment: 201
 Food: 664.00
 Utilities: 210.00
 Transportation: 125
 Medical Insurance: _____
 Dental Insurance: _____
 Other: House Supplies 50.00
 (b) Debts:

Name of Creditor	Amount Owed
<u>Car Payment</u>	<u>300.00</u>
<u>Car Insurance</u>	<u>100.00</u>
TOTAL OBLIGATIONS:	<u>1650.00</u>

Under penalty of perjury, I declare that I have examined this document and the preceding information is true and accurate to the best of my knowledge and ability.

Dated: 5-25-11

Ana Balderas
 SIGNATURE OF PETITIONER

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR FRANKLIN COUNTY - DOMESTIC DOCKET

CASE NO: 11-3-50172-4 JUDGE: MITCHELL, MATHESON, POTTS, RUNGE, SPANNER, SWISHER, VANDERSCHOOR
DAY: MON REPORTER: ADAMS, KING, LANG, McLAUGHLIN, MUNOZ, PELLETIER
DATE: 09/12/2011 CLERK: MARIA AGUILAR
TIME: 9:19/9:32 INTERPRETER: FR
TITLE: BALDERAS, ANA GUADALUPE VS. MACIAS GONZALEZ, MANUEL

NOTED FOR: DECREE OF DISSOLUTION *FEE REVIEW*

PLA PRES / NP, REP PRO SE pd. Provided receipt.
DEF PRES / NP, REP

THIRD PART

ARGUMENT IN SUPPORT OF MOTION

ARGUMENT IN OPPOSITION OF MOTION BY

ARGUMENT IN REBUTTAL BY

ARGUMENT IN SURBUTTAL BY

CONT TO _____ FOR _____ BY _____ PLA _____ DEF _____ CRT _____ FTA

STRICKEN BY _____ PLA _____ DEF _____ CRT _____ FTA

THE COURT GRANTED / DENIED MOTION / PETITION FOR:

ORDER / JUDGMENT / DECREE SIGNED IN OPEN COURT:

ORDER TO BE SIGNED WHEN PRESENTED: _____

AGREED ORDERS SIGNED BY CRT. NO HRG HELD TAKEN UNDER ADVISEMENT _____

FINALS ORDERS SIGNED EX-PARTE UPON PRESENTATION BY COURT FACILITATOR _____

COURT FACILITATOR PRESENTS FINALS ORDERS TO COURT AFTER REVIEW _____

PARENTING SEMINAR TO BE COMPLETED BY: PET / RSP

STATEMENT BY THE COURT: parties to pay in full.

DOB: _____ FTA BW TO ISSUE \$ _____ CASH BAIL TO USE
RE-ISSUE WARRANT, SUPERSEDING PREV WARRANT
REFERENCE: 37

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**SUPERIOR COURT OF WASHINGTON
FOR FRANKLIN COUNTY**

Maria Isabel Barajas

Plaintiff/Petitioner,

vs.

JOSE ROMERO ORAZO

Defendant/Respondent.

FILED
FRANKLIN CO CLERK

2011 JUN -6 P 1:23

MICHAEL J. KILLIAN

NO. BY JK DEPUTY

MOTION & ORDER TO
PROCEED IN FORMA PAUPERIS
(ORPRFP) 11-3-50180-5

MOTION

Petitioner moves the court for an order permitting petitioner to proceed without payment of the filing fee. Attached is a Financial Statement in support of this motion. Petitioner states that the information contained in the Financial Statement is true and correct.

Dated: 6/6/11 Maria Isabel Barajas
Signature of Petitioner

ORDER

IT IS HEREBY ORDERED that:

- The petitioner is permitted to proceed without payment of the filing fee as set forth below. The petitioner shall be required to pay the \$20.00 facilitator surcharge at the time of filing. Payment of filing fee:
 - No payment required (except the \$20.00 facilitator surcharge). 1508
 - Shall be paid prior to entry of final decree herein. 1103 (FW)
 - Shall be paid within _____ days. 1103 (FW)
 - Shall be reviewed at the time of entry of final decree herein. (FW)
 - Waiver of Parenting Class Fee.
 - Monthly payment of \$ _____ 1103 (FW)
 - Reduction of Parenting Class Fee \$ _____

The motion to proceed in forma pauperis is denied. The filing fee shall be paid when the case is filed.

DATED this 6th day of June, 2011

Presented by:
Maria Isabel Barajas
Signature of Petitioner

Cameron Mitchell
JUDGE/COURT COMMISSIONER
CAMERON MITCHELL

FAILURE TO PROCEED WITH THIS ACTION (FAILURE TO APPEAR AT HEARING) MAY RESULT IN AN ORDER AND JUDGMENT REQUIRING THE PETITIONER TO PAY THE FILING FEE AND SERVICE COSTS.

2

1 FINANCIAL STATEMENT IN SUPPORT OF MOTION AND ORDER TO PROCEED IN FORMA PAUPERIS

2 3.1 GENERAL INFORMATION

3 (a) Name: MARIA ISABEL BARAJAS MORA (a) Spouse's Name: UNKNOWN
4 (b) Address: 1505 Rd 40E #29 (b) Address: in Mexico
Pasco, WA. 99301
5 (c) Telephone # 509-619-9238 (c) Telephone #: _____
6 (c) Date of Birth: 09-18-1975 (d) Date of Birth: _____

6 3.2 FAMILY INFORMATION

7 (a) Persons whom you financially support: Spouse Children Other
8 (b) List names, ages, relationship and address if different from yours:

8 Juan Carlos Gutierrez Son

10 3.3 EMPLOYMENT INFORMATION

11 (a) Are you presently employed: Yes No (a) Is spouse presently employed: Yes No
12 (b) Name & address of employer: _____ (b) Name & address of spouse's employer: _____
13 (c) Length of Employment: _____ (c) Length of Employment: 7 MONTHS
14 (d) Occupation: _____ (d) Occupation: operator
15 (e) Other Source of income: _____ (e) Other source of income: _____

15 3.4 INCOME AND ASSETS

16 (a) Gross monthly income (personal) 310.⁰⁰
17 (b) Gross monthly income (spouse) 0
18 (c) Savings Accounts 0
19 (d) Checking Accounts 200.⁰⁰
20 (e) Stocks & Bonds 0
21 (f) Cash 0
22 (g) Vehicles/boats/RV/motorcycles _____
(h) Home equity (sale value less amount owing) _____
(i) Other Food Stamp 200.⁰⁰

15 3.5 EXPENSES AND DEBTS

(a) Monthly living expenses (itemize):
Rent/House Payment 330.⁰⁰
Food 200.⁰⁰
Utilities 40.⁰⁰
Transportation 120.⁰⁰
Insurance _____
Medical & Dental _____
Other _____
(b) Debts:
Name of Creditor Amount Owed

23 TOTAL ASSETS: 310.⁰⁰

TOTAL OBLIGATIONS: 1058.⁰⁰

24 OTHER: _____

26 UNDER PENALTY OF PERJURY, I DECLARE THAT I HAVE EXAMINED THIS DOCUMENT AND THE
27 PRECEDING INFORMATION IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE AND ABILITY.

28 x 6-6-11
DATE

Maria Isabel Barajas
SIGNATURE

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR FRANKLIN COUNTY - DOMESTIC DOCKET

CASE NO: 11-3-50180-5 JUDGE: MITCHELL, MATHESON, POTTS, RUNGE, SPANNER, SWISHER, VANDERSCHOOR
DAY: Mon REPORTER: ADAMS, KING, LANG, McLAUGHLIN, MUNOZ, PELLETIER
DATE: 09/12/2011 CLERK: MARIA AGUILAR (PAC)
TIME: 9:19/9:32 INTERPRETER:
TITLE: BARAJAS MERAZ, MARIA ISABEL ET AL VS. ROMERO GROZCO, JOSE ET AL

NOTED FOR: DECREE OF DISSOLUTION *FEE REVIEW*

PLA PRES / NP, REP PRO SE / \$260 pd. receipt provided

DEF PRES / NP, REP

THIRD PART

ARGUMENT IN SUPPORT OF MOTION

ARGUMENT IN OPPOSITION OF MOTION BY

ARGUMENT IN REBUTTAL BY

ARGUMENT IN SURBUTTAL BY

CONT TO _____ FOR _____ BY _____ PLA _____ DEF _____ CRT _____ FTA

STRICKEN BY _____ PLA _____ DEF _____ CRT _____ FTA

THE COURT GRANTED / DENIED MOTION / PETITION FOR:

ORDER / JUDGMENT / DECREE SIGNED IN OPEN COURT:

ORDER TO BE SIGNED WHEN PRESENTED: _____

AGREED ORDERS SIGNED BY CRT. NO HRG HELD TAKEN UNDER ADVISEMENT _____

FINALS ORDERS SIGNED EX-PARTE UPON PRESENTATION BY COURT FACILITATOR _____

COURT FACILITATOR PRESENTS FINALS ORDERS TO COURT AFTER REVIEW _____

PARENTING SEMINAR TO BE COMPLETED BY: PET / RSP

STATEMENT BY THE COURT: (Parties) to pay in full.

DOB: _____ FTA BW TO ISSUE \$ _____ CASH BAIL TO OSE

RE-ISSUE WARRANT, SUPERSEDING PREV WARRANT

REFERENCE: 38

8

APPENDIX Y

Commissioner Hollis Holman
Hearing Date: October 18, 2011
Without Oral Argument

1
2
3
4
5
6
7 SUPERIOR COURT OF WASHINGTON
COUNTY OF KING

8 In re the marriage of:

9 VERA ONIKA,

Petitioner,

11 And

12 ALEXANDER ONIKA,

13 Respondent.

No. 11-3-06586-7 KNT

MOTION FOR RECONSIDERATION OF
DENIAL OF FEE WAIVER

14
15 **I. RELIEF REQUESTED**

16 Pursuant to Civil Rule 59 and KCLR 59, the Petitioner, Vera Onika, respectfully moves
17 for reconsideration of the court's ruling denying waiver of mandatory court fees in this matter.

18 **II. STATEMENT OF FACTS RELEVANT TO THE MOTION**

19 1. This is an action for dissolution of marriage with children.

20 2. On September 29, 2011, the Petitioner, who is the wife, filed a Motion and

21 Declaration For Waiver of Civil Filing Fees and Charges, pursuant to General Civil Rule 34 (GR
22 34). Petitioner included with her motion a Financial Statement, reflecting that her income is
23 \$478 per month in TANF assistance for herself and two children, and \$490 per month in food
24

1 stamps. A copy of the Motion and Financial Declaration is submitted with this motion as Exhibit
2 A to the Declaration of Counsel (hereafter "Williams Declaration").

3 3. Petitioner requested waiver of all filing fees and surcharges in the case.

4 4. Petitioner's motion was presented in ex parte before Commissioner Hollis
5 Holman. The Petitioner was found to be indigent and the request to waive filing fees was
6 granted; however, Petitioner's requests to waive the fee for the mandatory Family Law
7 Orientation and mandatory Parenting Seminar were denied without comment. Exhibit B,
8 Williams Declaration.

9 5. Petitioner subsequently paid the fee for both the Family Law Orientation and
10 Parenting Seminar. Declaration of Vera Onika, submitted herewith.

11 III. EVIDENCE RELIED UPON

12 This Motion is based on the Declaration of Counsel, submitted herewith, and the record
13 below.

14 IV. STATEMENT OF ISSUES

15 4.1 **Whether, after determining that the Petitioner is indigent pursuant to the**
16 **definition set forth by GR 34, the Court improperly denied Petitioner's**
17 **request to waive fees for the mandatory Parenting Seminar and mandatory**
18 **Family Law Orientation?**

19 4.2 **Whether the Petitioner should be refunded fees she has already paid which**
20 **should have been waived?**

21 V. AUTHORITY AND ARGUMENT

22 5.1 Standard of Review

23 The court has authority to reconsider its order, entered September 29, 2011, pursuant to
24 Civil Rule 59(a), which provides, in pertinent part:

On the motion of the party aggrieved, a verdict may be vacated and a new
trial granted to all or any of the parties, and on all issues, or on some of the

1 issues when such issues are clearly and fairly separable and distinct, or
2 any other decision or order may be vacated and reconsideration granted.
3 Such motion may be granted for any one of the following causes
4 materially affecting the substantial rights of such parties: (1) Irregularity in
5 the proceedings of the court or abuse of discretion, by which such party
6 was prevented from having a fair trial; (7) That there is no evidence or
7 reasonable inference from the evidence to justify the verdict or the
8 decision, or that it is contrary to law; (9) That substantial justice has not
9 been done.

6 5.2 GR 34 Mandates Waiver of All Mandatory Fees for Indigent Parties

7 Reconsideration should be granted because the denial of Petitioner's request to waive
8 mandatory fees is inconsistent with the mandates of GR 34. The Supreme Court of Washington
9 adopted GR 34 on December 3, 2010. The rule establishes the process and standards by which
10 trial courts must exercise their statutory authority to waive civil filings fees and surcharges. An
11 individual shall be determined to be indigent within the meaning of this rule if she is currently
12 receiving assistance under a needs-based, means-tested assistance program such as Temporary
13 Aid to Needy Families ("TANF") or Food Stamp Program ("FSP"). GR 34(a)(3)(A)(i), (v). The
14 Petitioner, Ms. Onika, requested a fee waiver and certified that her sole monthly income for
15 herself and her two children is from TANF and the FSP. She is therefore indigent under the rule.

16 After properly concluding that the Petitioner is indigent, the Court waived "all filing fees
17 and surcharges the payment of which is a condition precedent to the moving party's ability to
18 secure access to judicial relief." Exhibit B, Williams Declaration. The waiver, once granted, is
19 intended to cover "all filing fees and surcharges." However, the court denied Petitioner's request
20 to waive the fees for the parenting seminar (mandatory completion is a precondition of obtaining
21 a final decree of dissolution with children, pursuant to King County LFLR 13) and Family Law
22 Orientation (mandatory completion is a precondition of obtaining a final decree of dissolution for
23 all unrepresented parties, pursuant to King County LFLR 20), both of which require fees, even
24

1 for indigent litigants¹. In denying the Petitioner's request to waive those fees, the court violated
2 GR 34 by selectively imposing certain mandatory fees while waiving others. This irregularity
3 justifies reconsideration of the Court's order to include a waiver of all mandatory fees.

4 **5.3 No Evidence Supports the Denial of the Requested Fee Waiver**

5 The order denying waiver of the mandatory fees should be reconsidered because there is
6 no evidence to support the Court's selective application of GR 34. The Financial Declaration
7 submitted by the Petitioner reflects that her only income is from TANF and Food Stamps. As
8 described above, the Petitioner was properly deemed indigent by the court under the definition as
9 set forth in GR 34(a)(3)(A)(i), (v). However, despite the Court's finding that the Petitioner is
10 indigent, the court denied the Petitioner's request to waive fees which are a condition precedent
11 to her ability to complete her divorce, namely the mandatory parenting seminar and Family Law
12 Orientation fees. No evidence is provided by the court for its denial, and the only evidence in the
13 record supports the opposite conclusion, which is that the terms of the general rule require
14 waiver of any fee the payment of which is a condition precedent to the moving party's ability to
15 secure access to judicial relief.

16 **5.4 Denial of the Fee Waiver Results in Substantial Injustice**

17 The Court's order should be reconsidered because it results in a substantial injustice to
18 the Petitioner. It is well established that as an indigent party seeking relief in the King County
19 Superior Court, the Petitioner should enjoy the same access to the judicial system as those
20 litigants who are able to pay. The judicial process is the only available means through which an
21 individual can obtain a legally sanctioned divorce in Washington State. For this reason, the

22 ¹ According to the registration materials for the Parenting Seminar ("What About The Children?"), the registration
23 fee of \$40 will be reduced to \$5, but not waived, for litigants who receive TANF. According to the registration
24 materials for the Family Law Orientation, the registration fee of \$20 will be reduced to \$5, but not waived, for
litigants who receive TANF. Copies of Registration materials are attached to the Declaration of Counsel as Exhibits
C and D.

1 United States Supreme Court long ago held that due process prohibits States from denying an
2 individual, who seeks a divorce in good faith, access to the courts due solely to an inability to
3 afford the filing fee. *Boddie v. Connecticut*, 401 U.S. 371, 374, 91 S. Ct. 780 (1971). The
4 Washington Supreme Court also has determined that “[f]ull access to the courts in a divorce
5 action is a fundamental right.” *Bullock v. Roberts*, 84 Wn.2d 101, 104, 524 P.2d 385 (1974). An
6 individual cannot be prevented from obtaining a divorce solely because she is unable to pay
7 court fees and costs. *Boddie* at 371; *see also Ashley v. Superior Court*, 82 Wn.2d 188, 509 P.2d
8 751 (1973).

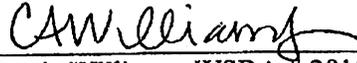
9 GR 34 sets forth clear guidelines for determining whether a party is indigent, and in this
10 case, a waiver was granted. Since the term waiver is not defined in the rule, courts must afford it
11 the word’s usual and customary meaning: the complete and voluntary relinquishment of a known
12 right. Under GR 34, waiver of “all filing fees and surcharges the payment of which is a condition
13 precedent to the moving party’s ability to secure access to judicial relief” means the Court’s
14 complete relinquishment of the right to seek or demand payment of filing fees or surcharges
15 from the Petitioner as a condition to her obtaining her final divorce. Requiring her to pay fees for
16 the mandatory parenting seminar and Family Law Orientation is inconsistent with both the court
17 rule and the long-established principle that access to the courts is a fundamental right.

18 IV. CONCLUSION

19 Based on the foregoing, the Petitioner requests that the court reconsider the order denying
20 the waiver of the mandatory parenting seminar and Family Law Orientation fees. The
21 Petitioner’s proposed order is submitted herewith.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

Respectfully submitted this 10th day of October, 2011.


Carrie Williams, WSBA # 28183
Limited Appearance Attorney for Vera Onika

APPENDIX Z

RECEIVED
18 OCT 2011
SERVICES
JUDICIAL ADMINISTRATION
KING COUNTY

IN THE SUPERIOR COURT OF WASHINGTON, COUNTY OF KING

Vera Onika

Plaintiff

vs.

Alexander Onika

Defendant.

Cause No 11-3-06586-7 KWT

ORDER ON CIVIL MOTION
(ORM)

The above-entitled Court, having ^{considered} heard a motion for reconsideration of the
Court's order to waive filing fees entered on 9/29/2011.

IT IS HEREBY ORDERED that no motion for reconsideration shall
be and hereby is denied. The filings are on the
return. If each service determines it is appropriate to
wave Ms Onika's fees, the determination will be
made by that particular service and the relevant form
will be provided to the Court for signature.

DONE IN OPEN COURT this 18 day of October, 2011.

Nellis A. Palma
COURT COMMISSIONER/JUDGE

Presented by:

Copy Received:

APPENDIX AA



WASHINGTON
COURTS

District and Municipal Court Judges' Association

President
JUDGE GLENN PHILLIPS
Keni Municipal Court
1220 Central Ave S
Kent, WA 98032-7426
(253) 856-5730
(253) 856-6730 FAX

President-Elect
JUDGE STEPHEN BROWN
Grays Harbor District Court
102 Broadway W
Montesano, WA 98563-3621
(360) 249-3441
(360) 249-6382 FAX

Vice-President
JUDGE GREGORY TRIPP
Spokane District Court
1100 W Mallon Ave
Spokane, WA 99260-0150
(590) 477-4770
(590) 477-6445 FAX

Secretary/Treasurer
JUDGE DOUGLAS HAAKE
Bonney Lake Municipal Court
19306 Bonney Lake Blvd
Bonney Lake, WA 98391-0944
(253) 447-4303
(253) 447-4329 FAX

Past President
JUDGE MARILYN PAJA
Kitsap County District Court
614 Division St MS 25
Port Orchard, WA 98366-4684
(360) 337-7261
(360) 337-4865 FAX

Board of Governors

JUDGE FRANK Y. LA SALATA
King County District Court
(206) 205-9200

JUDGE DAVID SVAREN
Skagit County District Court
(360) 336-9319 (360) 336-9318 FAX

JUDGE DARREL ELLIS
Kittitas County District Court
(509) 674-5533 (509) 674-4209 FAX

JUDGE VERONICA ALICEA-GALVAN
Des Moines Municipal Court
(206) 878-4597 (206) 870-4387 FAX

JUDGE PATRICK R. BURNS
Auburn Municipal Court
(253) 931-3076 (253) 804-5011 FAX

JUDGE LINDA S. PORTNOY
Lake Forest Park Municipal Court
(206) 364-7711 (206) 364-7712 FAX

COMM. ADAM EISENBERG
Seattle Municipal Court
(206) 684-8709 (206) 615-0766 FAX

JUDGE SCOTT AHLF
Olympia Municipal Court
(360) 753-8312 (360) 753-8775 FAX

JUDGE R. W. BUZZARD
Lewis County District Court
(360) 740-1203 (360) 740-2779 FAX

December 8, 2009

Honorable Charles W. Johnson
Washington State Supreme Court
Temple of Justice
PO Box 40929
Olympia, WA 98504-0929

Dear Justice Johnson:

RE: GENERAL RULE (GR) 34 WAIVER OF COURT AND CLERK'S FEES
AND CHARGES IN CIVIL MATTERS ON THE BASIS OF INDIGENCY (NEW
RULE)

Thank you for the opportunity to comment on proposed new rule GR 34. The District and Municipal Court Judges' Association (DMCJA) supports the proposed new rule GR 34 with one minor change to GR 34 (b) to specify that judges have the authority to grant partial fee waivers, in addition to full fee waivers. A copy of our suggested changes to the proposed new rule is enclosed with this letter.

The DMCJA believes that requiring a party to pay a portion of the fee in appropriate cases will help to ensure that the party is serious about proceeding with the case and will follow through with his or her responsibilities for appearing for hearings, delivery of pleadings, to law enforcement for service, and proceeding with the claim. Allowing for partial payment may also help to curb litigation abuse, which is a problem in some courts. The DMCJA feels comfortable in assuming that judges will be responsible in deciding whether or not to impose a partial fee in a case, and that this change to GR 34 will not impose an undue hardship on parties.

Thank you for your consideration of our suggested changes.

Sincerely,

Glenn Phillips
President-Judge

Enclosure

DMCJA\PresidentsCorrespondence\09-10Phillips\GR34Comment\LettertoSupremeCourt 1.doc

GENERAL RULES (GR)

RULE 34. WAIVER OF COURT AND CLERK'S FEES AND CHARGES IN CIVIL MATTERS ON THE BASIS OF INDIGENCY

1 (a) Any individual, on the basis of indigent status as defined herein, may seek a waiver
2 of filing fees or costs from a judicial officer in the applicable trial court.

3 (1) The application for such a waiver may be made ex parte in writing or orally,
4 accompanied by a mandatory pattern form created by the Administrative Office of the Courts
5 (AOC) whereby the applicant attests to his or her financial status or, in the case of an individual
6 represented by a qualified legal services provider ("QLSP") or an attorney working in
7 conjunction with a QLSP, a declaration of counsel stating that the individual was screened and
8 found eligible by the QLSP.

9 (2) The court shall accept an application submitted in person, by mail and where
10 authorized by local practices, electronic filing. The process for presentation of the application
11 shall conform to local court and clerk processes for presenting ex parte orders to the court
12 directly or via the clerk. All applications shall be presented to a judicial officer for consideration
13 in a timely manner and in conformity with the local court's established procedures. There shall
14 be no locally imposed fee for making an application. The applicant or applicant's attorney filing
15 by mail, shall provide the court with a self-addressed stamped envelope for timely return of a
16 conformed copy of the order.

17 COMMENT

18 This rule establishes the process by which judicial officers may waive civil filing
19 fees and such other costs for which judicial officers have authority to grant a waiver.

20 (3) An individual who is not represented by a qualified legal services provider (as that
21 term is defined below) or an attorney working in conjunction with a qualified legal services
22 provider shall be determined to be indigent within the meaning of this rule if such person, on the
23 basis of the information presented, establishes that:

GENERAL RULES (GR)

RULE 34. WAIVER OF COURT AND CLERK'S FEES AND CHARGES IN CIVIL MATTERS ON THE BASIS OF INDIGENCY

1 (A) he or she is currently receiving assistance under a needs-based, means-tested assistance
2 program such as the following:

3 (i) Federal Temporary Assistance for Needy Families (TANF);

4 (ii) State-provided general assistance for unemployable individuals (GA-U or GA-X);

5 (iii) Federal Supplemental Security Income (SSI);

6 (iv) Federal poverty-related veteran's benefits; or

7 (v) Food Stamp Program (FSP); or

8 (B) his or her household income is at or below 125% of the federal poverty guideline; or

9 (C) his or her household income is above 125% of the federal poverty guideline and the
10 applicant has recurring basic living expenses (as defined in RCW 10.101.010(4)(d)) that render
11 him or her without the financial ability to pay the filing fees and other fees or costs for which a
12 request for waiver is made.

13 (D) other compelling circumstances exist that demonstrate an applicant's inability to pay
14 fees and/or costs.

15 (4) An individual represented by a QLSP, or an attorney working in conjunction with a
16 QLSP that has screened and found the individual eligible for services, is presumptively deemed
17 indigent when a declaration from counsel verifies representation and states that the individual
18 was screened and found eligible for services.

19 (5) As used in this rule, "qualified legal services provider" means those legal services
20 providers that meet the definition of APR 8(e).

21

22

APPENDIX BB

MINUTES
Pro Bono and Legal Aid Committee
April 10, 2008 12:00 p.m. – 1:30 p.m.

Present: Chair, Dan Young, Jim Bamberger, Joan Fairbanks, Monty Gray, Andy Guy, Amy Klosterman, Carla Lee, Gail Smith, Sharlene Steele

By phone: Val Carlson, Pria Cloutier, Carolyn deRoos, Becca Glasgow, Beth Helm, Chris Lanese, Tracy Sarich, Robin Warren, Dina Yunker

March 13 Meeting Minutes

Approved as written

WSBA Consideration to move PBLAC under ATJ Board

The Washington State Bar Association is in the process of a comprehensive review of all WSBA programs and services. The goal is to ensure the WSBA is operating efficiently and effectively while serving Washington citizens, its members and the courts. The review will examine how to best utilize WSBA resources to accomplish the WSBA's stated mission through its guiding principles. One of the first areas for review is the WSBA committees, boards and panels.

In a Memorandum dated November 21, 2007, WSBA Executive Director Paula Littlewood and WSBA department directors suggest to the WSBA President and Board of Governors that further discussion is needed with PBLAC and the ATJ Board in light of implementation of the new *State Plan*. Preliminary thoughts from the WSBA Strategic Planning Committee (SPC) suggest that the functions of PBLAC could be moved under the umbrella of the Access to Justice Board. This recommendation appears to be based on the fact that the two entities share common goals and that there may be efficiencies realized if the work of PBLAC is incorporated into Access to Justice Board initiatives.

The idea was presented by Gregg Hirakawa, WSBA Deputy Director of External Communications, and discussed at the April 4 Access to Justice Board meeting. Budgetary/staff workload concerns were stated as the primary reason for the proposal, along with the perceived nexus between the two entities. A few members of PBLAC attended the meeting, and expressed strong opposition to the idea, stating that PBLAC's mission clearly falls under the WSBA Guiding Principles. The Access to Justice Board requested more time for discussion, noting that neither the ATJ Board nor the Pro Bono and Legal Aid Committee has had a chance to discuss the idea. Gregg agreed to ask the SPC to extend the deadline for its recommendation to the WSBA BOG to allow more time (beyond the April 10 SPC meeting) for discussion by both entities.

Having just come from the SPC meeting, Gregg announced that the committee denied the request for additional time for discussion, and voted overwhelmingly to recommend to the WSBA Board of Governors that PBLAC be sunset. The SPC will ask the BOG to reconsider if the Access to Justice Board declines to assume PBLAC functions. It is not anticipated that funding for the committee would be allocated to the ATJ Board budget. The SPC will make the recommendation to the BOG at its April 25-26 meeting in Spokane.

A lengthy discussion ensued. PBLAC members were offended by the lack of meaningful consultation by the SPC with either with PBLAC or the Access to Justice Board. There was consensus, for a variety of reasons, that this is a bad idea. A motion was made and carried to

formally oppose the SPC recommendation. Monty and Val will draft a letter to the WSBA Board of Governors. Dan will check his calendar to see if he can attend the April BOG meeting. Carla offered to talk to SPC member/BOG member Sal Mungia and get back to Monty and Val.

Sub-Committee Reports

Survey Sub-Committee (Andy Guy, Chair)

Andy received several responses from the questionnaire mailed to QLSPs in reference to substance and merits of the proposed WSBA membership survey. The survey proposal was very well received, with only one QLSP opposing the idea. Most QLSPs submitted very specific suggestions. The Survey subcommittee met yesterday and went through all suggestions to decide which ones have merit. Andy will revise the survey and meet with Paula Littlewood, Joan Fairbanks, Gail Stone and Sharlene Steele to discuss and coordinate next steps. Once we have an idea of the time and resources necessary to develop, distribute and compile results of the electronic survey, Andy will contact Caitlin Davis Carlson at the Legal Foundation of Washington about the possibility of applying for a grant from LFW for the project.

Rules for Pro Bono (Elizabeth Helm, Chair)

GR 34 Update

Talking points and a sample letter of support template have been distributed to members of the Alliance for Equal Justice and others for use in submitting comments to the Supreme Court.

Jim recently met with Judge Mary Yu, outgoing chair of the Rules Committee of the Superior Court Judges Association and Judge Richard McDermott, incoming chair. They discussed the status of GR 34 and the possibility achieving consensus support for a rule that would achieve our objectives of:

- Establishing a uniform standard for reviewing applications for IFP waivers
- Establishing a uniform procedure for submission and review of IFP waivers
- Minimizing the time spent by pro bono counsel in securing approval of fee waivers for clients who have been screened and found eligible for free civil legal aid services under the income eligibility standards established by the Office of Civil Legal Aid and LSC
- Avoiding confusion of judicial and executive functions

The Supreme Court Judges Association (SCJA) has filed a second letter formally opposing the current revised draft of GR 34. Judge Yu said that she personally agrees with the objectives that we are trying to accomplish and that she is willing to spend her time and capital to help us get to a place that is acceptable to the SCJA and the Washington State Court Clerks Association.

Judge Yu indicated that the SCJA, and most likely the clerks, would support a rule that provided express authority for mailed submission and review of IFP applications, whether by attorneys associated with QLSP's, other attorneys representing indigent clients, or pro se applicants. She believes that a rule requiring prompt review and approval against a commonly accepted standard (125% FPL as the rule has been revised) would achieve the objectives that we are hoping to achieve in ways that avoid improper involvement of executive branch officials (i.e., Clerks) in judicial or quasi-judicial functions.

Judge Yu suggested that the WSBA withdraw the rule from consideration while we continue to discuss this matter. Jim wants to get back to Judge Yu as soon as possible.

Jim distributed a revised draft of the rule that incorporates Judge Yu's suggestions. The rule maintains much of the substance of the current draft, though some of it is reorganized. It does away with the distinction in the handling of cases filed by QLSP's and others, though it continues the automatic waiver for applications filed by attorneys working in conjunction with QLSP's. Under the revision, courts MUST accept applications for IFP waivers by mail and MUST act on such applications within 48 hours using the standards set forth in the rule. Thus, waivers will continue to be automatic for persons who:

- Are represented by a QLSP
- Are recipients of needs-based governmental assistance
- Have incomes that meet the OCLA income eligibility requirements

The draft revision establishes a benchmark for determining whether other fees and charges should be waived: "to ensure the applicant's meaningful access to and ability to seek relief through the court."

There was consensus that if we move forward with negotiations with SCJA, we're more likely to get something out of the effort. PBLAC agreed to ask Justice Johnson to stay consideration of the rule for a short period of time (e.g., no more than 45 days) so that the Committee could see whether there was the potential to achieve a consensus with the SCJA and the court clerks.

A member of PBLAC should attend the April BOG meeting to ask for extension for comments or revisions. Jim will talk to Paula, and draft a letter to the court, explaining that conversations are pending. The letter will request a 45-day extension request for no action (45 days following April 30).

Gail has concerns about the mail-in process in the re-draft. He will get these concerns to Jim, to be discussed by the GR 34 sub-committee within the next few days.

Becca offered to talk to Justice Fairhurst to bring her up to speed: She also offered to contact Nan Sullins if we have questions about court procedure.

2008-2009 WSBA Committee Application Form

The WSBA Committee Application Forms were mailed to WSBA members this week. Regardless of the pending recommendation to sunset PBLAC, Sharlene reminded committee members to complete and mail the paper forms, or apply on-line. **Current committee members will not be automatically re-appointed for 2008-09.**

Tabled for Next Meeting

Emeritus (Greg Abbott, Chair)

Proposed modifications to APR 8(e)(attached)

Draft letter to WSBA President and Board of Governors (attached)

Government Attorney Pro Bono (Dina Yunker Frank, Chair)

Draft letter to prosecutors attached

Supreme Court Involvement (Gail Smith, Chair)

Corporate Attorney Pro Bono (Robin Warren, Interim Chair)

Private Bar Pro Bono Participation/Education (Chris Lanese, Chair)

WSBA Request for Comments on Proposed Legal Technician Rule
See request for comments (due August 1, 2008) and proposed rule at
<http://www.wsba.org/#tech>

Proposed Pro Bono Support Center Update

Future PBLAC Meetings – 2nd Thursday of the month (unless otherwise indicated)

May 15 (3rd Thursday)

June 12

July 10

August 7 (1st Thursday)

September 11

Respectfully submitted,

Sharlene Steele

APPENDIX CC

MINUTES
Pro Bono and Legal Aid Committee
June 15, 2006

Present: Dan Young, Chair; Greg Abbott, Val Carlson, Dina Yunker Frank, Monty Gray, Andy Guy, Heather Rogers, Gail Smith, Sharlene Steele, Jason Vail and Jim Yand

By phone: Carolyn deRoos and Amy Klosterman. The WSBA conference call system failed and was not functioning the first half of the meeting.

May 11 Meeting Minutes

Monty Gray requested that the Minutes be corrected to reflect that Oregon does not use a nominations-based process for its pro bono recognitions efforts.

Sub-Committee Reports

Informa Pauperis: Jason and Dan met with King County Superior Court Clerk Barbara Minor to discuss the revised proposed IFP rule. Even though Barbara's original concerns have been addressed with revisions to the rule, she admitted that she will probably never be a strong supporter of the rule. Her opinion is that the system is working fine the way it is, and she sees no reason for a change. Although she is not a supporter of the rule, she will not oppose it.

Other comments/edits: The committee decided to leave the eligibility percentage of the current federal poverty guidelines at or below 200%, after realizing that a county-by-county, or case-by-case system would be too complicated. A check box for the purpose of tracking the case should be added. Reference to "court administration official" in the Comments should be changed to "court clerks." Current fee waiver statistics may be useful in the vetting process.

Jason distributed copies of sample fee waiver Orders, which clearly show that the current system is not working. One Order indicates the waiver is only temporary and that the case will not go forward without payment of the filing fee. Jason also provided the committee with documents that disclose additional fees such as Courthouse Facilitator surcharge and user fees, domestic violence court funding surcharge, family court services, mediation and parenting seminar fees. Given the number of various potential fees, we may want to be very specific about which fee(s) are included in the fee waiver. One form currently in use (Spokane?) lists all of the fees along with check boxes. It may be risky to add requests for additional fee/surcharge waivers given the fact that the courts do need fees in order to operate the various programs. A perception of an even greater loss of funding for the courts could result in opposition to the rule. The committee was reminded that a fee waiver process is already in existence; the purpose of the proposed IFP rule is to simplify the process and make it consistent throughout the state. The consensus was to defer the discussion until we're further along in the vetting process. The issue/question may become evident during this process.

The committee reviewed a letter to judicial associations drafted by Joan Fairbanks. It was suggested the letter be revised to explain that a fee waiver process already exists, so this is not a *new* access to justice initiative. The proposed draft rule should be enclosed with the letter. Letters should be followed up with phone calls or in-person meetings. Jim Baker, WSBA Board of Governors representative to PBLAC, should be asked to get involved.

Rules: No report

Supreme Court Involvement: Gail reported that a revised version of *Proposals for Washington State Supreme Court Pro Bono Honor Roll* will be available at the July PBLAC meeting.

CLE for Volunteer Attorneys: Andy has a meeting with Michele Storms, Northwest Justice Project, scheduled for June 21.

Corporate and Government Attorney Pro Bono: The committee reviewed a draft article to be submitted to the *Bar News*. The topic of the article is the presentation of Thurston County Volunteer Legal Service's "Pro Bono Law Firm of the Year Award" to the Attorney General's Office. Amy will make minor edits and route to the committee, giving the committee one last chance to make edits. She also plans to submit a photo(s) with the article.

Amy does not yet know if PBLAC will be able to participate in the Washington Association of Prosecuting Attorneys' annual conference.

Dina noted that the American Bar Association web-site features sample pro bono policies. This would be a good resource if PBLAC decides to create a model pro bono policy project.

Val commented that many prosecutors in King County are participating in King County Bar Association volunteer programs. It is evident they are trying to make procedural and systemic changes.

Language Proficiency Data

In Kim Tran's absence, the topic was deferred to the July meeting.

Access to Justice Conference

Dan and Greg were first-time attendees at the conference and both came away impressed by the level of dedication and commitment for improving access to the legal system for low-income people. They found the history of legal services in Washington state and the Legal Services Corporation very interesting. They also commented on the great degree of technology now available to support the mission. Both agreed the topic of the plenary session (civil right to counsel in certain civil cases) generated a very good discussion.

Val Carlson added that implementation of the recently revised *State Plan* was discussed at the conference. The new *State Plan* is more readable and divides the state into regions (rather than by county) in order to more effectively address rural service delivery.

Future Meetings

July 20, 2006

August 17, 2006

Respectfully submitted,

Sharlene Steele

APPENDIX DD

MINUTES

Public Session **Washington State Bar Association BOARD OF GOVERNORS**

**Quincy, WA
July 27 – 28, 2007**

The Public Session of the Board of Governors of the Washington State Bar Association was called to order by President Ellen Conedera Dial at 10:00 a.m., recessed at 4:35 p.m. on Friday, July 27, 2008; and reconvened at 9:00 a.m. on Saturday, July 28, 2007 at the Cave B Inn in Quincy, Washington. Governors in attendance were:

Marcine Anderson
Russell M. Aoki
James E. Baker
Eron Berg
Anthony Butler (Friday only)
Liza Burke
Lonnie Davis
Eric C. de los Santos
Peter J. Karademos
Douglas C. Lawrence
Salvador A. Mungia
Edward F. Shea Jr. (Friday only)
Jason T. Vail
Kristal K. Wiitala

Also in attendance were President-elect Stanley A. Bastian, Immediate Past-President S. Brooke Taylor, 2007-2008 President-elect Mark Johnson, Governor-elect Geoff Gibbs, Executive Director and Meeting Secretary Paula C. Littlewood, and General Counsel Bob Welden.

LIAISONS, GUESTS AND STAFF IN ATTENDANCE:

Jean Cotton	Family Law Section
Judge Richard Fitterer	DMCJA
Gary Riesen	WAPA

Alan White	Criminal Law practitioner
Joseph Svoboda	Washington State Association of Municipal Attorneys
Daniel Gandara	KCBA
Maureen Hart	Attorney General's Office
Caitlin Davis Carlson	Legal Foundation of WA, Executive Director
Nancy Isserlis	Legal Foundation of WA, Trustee
Anita Paulsen	CPD
Jon Ostlund	CPD Co-Chair
Roger Wynne	Court Rules and Procedures Committee Chair
Dan Young	Pro Bono and Legal Aid Committee Chair
Lee Pence	APR 6 Law Clerk Program Regulations
Rebecca Robertson	Criminal Law Section
Judge Christopher Washington	SCJA
Teresa Chen	Grant County Prosecutor's Office
Douglas Ende	WSBA Assistant General Counsel
Guadalupe Cavazos	Justice Program State Plan Specialist
Joan Fairbanks	Justice Programs Manager
Julie Mass	WSBA Deputy for Finance and Administration
Judy Berrett	WSBA Director of MCR
Gail Stone	WSBA Director of Justice and Diversity Initiatives
Jean McElroy	WSBA Director of Regulatory Services
Randy Beitel	WSBA Interim Chief Disciplinary Counsel
Mark Sideman	WSBA CLE Director
Suzanne Kim	WSBA Intern
Donna Sato	WSBA Executive Assistant

WELCOME AND INTRODUCTIONS

Officers, governors, liaisons, guests, and staff introduced themselves.

APPROVAL OF MINUTES FROM THE JUNE BOARD MEETING

President Dial and Governors Baker, Davis, and Vail offered additions to the minutes. The minutes were adopted as amended.

REPORT ON EXECUTIVE SESSION

President Dial reported that in Executive Session the Board adopted the Executive Session minutes of June 1, 2007; discussed and acted on a Civil Rights Committee issue; discussed and acted on a selection process for the *Bar News* editor position; adopted additional recommendations from the Annual Awards Committee; and, approved a petition for reinstatement through reciprocal admission.

President Dial announced that the Executive Session was recessed and scheduled to reconvene at 8:00 a.m. Saturday morning.

CONSENT CALENDAR

The following items were approved by the circulation of a written consent form:

- a. Bylaw Amendments of the Environmental and Land Use Section;
- b. BOG Conflict of Interest Policy;
- c. Hearing Officer Appointment Recommendations;
- d. WLI Advisory Board Appointments; and
- e. Request for Amicus Brief – Court of Appeals Division 1

GOVERNORS' FORUM

Governor Karademos

Governor Karademos raised concerns regarding the request for disclosure of malpractice insurance coverage on the WSBA website via the Lawyer Directory. Discussion transpired. Governor Butler suggested that a statement that malpractice insurance is discretionary in the State of Washington be posted prior to listing those groups of attorneys who do not carry malpractice insurance, e.g., government lawyers. Governor Karademos emphasized that since malpractice insurance is discretionary in Washington, the WSBA should be precluded from

requesting disclosure as it may discredit solo and small firm practitioners who may not be covered. General Counsel Welden noted that the Supreme Court adopted a rule effective this year requiring this disclosure.

Governor Vail

Governor Vail reported that at the June WYLD Board of Trustees meeting, Alexis Wallace was elected as the first at-large trustee by the Board of Trustees; he further noted that August 10 is the deadline for WYLD Annual Awards nominations.

Governor Aoki

Governor Aoki reported that economic constraints directly impact the minority bar associations and their ability to attend BOG meetings. Governor Aoki suggested that the Board consider establishing a fund to cover the cost for a liaison of the minority bar associations to attend BOG meetings in the amount of approximately \$5,000.

President-elect Bastian noted that Board support of this fund would demonstrate good faith on the part of the WSBA towards the minority bar associations. Governor Anderson reported that the subject of a listserv amongst the BOG and minority bar presidents was raised at a recent meeting with minority bar leadership. Governor Wiitala questioned whether or not the specialty bars would be included. Governor Butler requested a clear definition as to "diversity" issues, further stating that the minority bar associations should not receive special treatment. Immediate Past-President Taylor spoke in response to Governor Butler's statement by reminding the Board of the efforts made in 2005 when the officers sent a special invitation to all the minority bars to attend the BOG meeting in Bremerton and received no response. Treasurer Berg expressed concern over the fiscal impact of a new liaison stipend program without cutting back something else. He suggested that the Diversity Committee make a proposal which includes a funding source. There was a general consensus that the WSBA create a listserv.

President Dial

President Dial reported on a recent discussion she had with the Chair of the Real Property, Probate, and Trust Section, Steve Crossland, concerning RPC Rule 1.15A. In light of this discussion, President Dial is considering the establishment of a task force to address RPC Rule

1.15A to educate members about RPC Rule 1.15A and its impact on clients and families. The RPPT Section has expressed a willingness to take the lead in this effort and looks to the Board for direction. Other sections noted who may have an interest in the project included the Family Law, Elder Law, and Solo and Small Practice sections.

LIAISONS' FORUM

Jean Cotton – Family Law Section

Jean Cotton, Chair of the Family Law Section, announced an upcoming Family Law CLE scheduled for October 12. Cotton requested the Board's consideration of the time and effort made by sections to attend BOG meetings i.e., remote locations add to the inability of section representatives to attend BOG meetings on a regular basis.

Judge Richard Fitterer – District and Municipal Court Judges Association

Judge Fitterer welcomed the Board to Grant County. Judge Fitterer acknowledged the leadership of Governor Lawrence in chairing the Judicial Selection Task Force on which he serves as a member. Judge Fitterer further thanked the Board for the work of the Committee on Public Defense and commended Court Rules and Procedures Committee Chair, Roger Wynne, for his efforts in arriving at a consensus with the DMCJA regarding CrRLJ 4.1 and CrRLJ 4.2.

FISCAL MATTERS – Treasurer Eron Berg

Resolution Authorizing Banking Relationships

Motion made by Governor Mungia, seconded by Governor Lawrence, that the Board approve the Resolution Authorizing Banking Relationships, as circulated. The motion passed unanimously.

Reactivation Investigation Fee

Motion made by Governor de los Santos, seconded by Governor Lawrence, that the Board approve a \$100.00 fee to cover costs in the investigation of a member's application for a change to active status. The motion passed unanimously.

Proposed Change to ELC 13.9

Motion made by Governor Lawrence, seconded by Governor Mungia, that the Board approve an increase in the amount of fees and costs assessed in discipline cases to better reflect the actual

costs incurred (as follows). The proposed change must be submitted to the Supreme Court for approval.

ELC 13.9 COSTS AND EXPENSES

(a) Assessment. The Association's costs and expenses may be assessed as provided in this rule against any respondent lawyer who is ordered sanctioned or admonished.

....

(c) Expenses Defined. "Expenses" for the purposes of this rule means a reasonable charge for attorney fees and administrative costs. Expenses assessed under this rule may equal the actual expenses incurred by the Association, but in any case cannot be less than the following amounts:

- (1) for an admonition that is accepted under rule 13.5(a), \$750 \$1,000;
- (2) for a matter that becomes final without review by the Board, \$1,500 \$2,000;
- (3) for a matter that becomes final following Board review, without appeal to the Supreme Court, a total of \$2,000 \$3,000;
- (4) for a matter appealed to the Supreme Court or in which the Court accepts discretionary review but not requiring briefing, a total of \$2,500 \$4,000; and
- (5) for a matter appealed to the Supreme Court or in which the Court accepts discretionary review in which briefing is required, a total of \$3,000 \$5,000.

The motion passed unanimously.

Document Management Copier (CLE Department)

Motion made by Governor Mungia, seconded by Governor Lawrence, that the Board approve the purchase of a new copier for the WSBA production division for the reproduction of CLE coursebooks. The CLE Department will fund this purchase, out of its reserves, which will be included in the FY08 budget. The motion passed unanimously.

Fiscal Year 2008 Budget

Treasurer Berg and Deputy Director of Finance and Administration Julie Mass presented an overview of the FY08 budget. The current draft contains a general fund deficit of \$419,470. The reasons for this include expenses growing at a faster rate than revenues, a fixed 2% license fee growth through FY2009, and the recent increase in rent. Ms. Mass explained that we can no longer rely on large surpluses due to the changing trends and better budgeting process. Treasurer Berg explained that the Board can adopt another deficit budget but must be committed to conducting program reviews in FY08, look at future license fee increases beyond 2%, and continue long-range fiscal planning. An overview of the CLE, LFCP, and section budgets was also presented.

Staffing, salary growth, benefits, and requests not in the FY08 budget were discussed in some detail.

President Dial acknowledged Deputy Director of Finance and Administration Julie Mass and her staff for their excellent work in providing the Board with the tools necessary to make decisions as well as implementing the major changes in reporting that provides transparency to the membership in the area of finances and budgets.

BOG MATTERS

APR 6 Law Clerk Program Regulations – Chair Lee Pence

Lee Pence, chair of the APR 6 Law Clerk Committee, presented for Board approval the proposed amendments to program regulations that were circulated for first reading at the June Board meeting. Highlights of the proposed amendments include: (1) adding Indian Law; (2) adding regulations governing the termination of a law clerk's participation; (3) adding specific authorization to revise the regulations; and (4) adding language that applicants may be referred to the WSBA Character and Fitness Board.

Governor Berg moved, seconded by Governor Anderson, that the Board approve the proposed amendments to the APR 6 Law Clerk Program Regulations.

Governor Berg acknowledged the law clerk program as a great program and thanked Mr. Pence for taking the time to improve its process and the program in general. Governor Anderson acknowledged the Law Clerk Committee as an exceptional committee and noted the high level of commitment on the part of its tutors as well as students.

The motion passed unanimously.

LRAP Advisory Committee Appointment (1)

President Dial reported that two members of the Washington State Bar Foundation's LRAP Committee are nominated by the WSBA. The at-large position term, currently held by Dwight Williams, expires on September 30.

Governor Davis moved, seconded by Governor Lawrence, that the Board nominate Katrina Glogowski; Governor Berg moved, seconded by Governor Lawrence, that the Board nominate Keith Scully; Governor Mungia moved, seconded by Governor Wiitala, that the Board nominate Marie Docter; Governor Vail moved, seconded by Governor Aoki, that the Board nominate Joanna Plichta; Governor Anderson moved, seconded by Governor Burke, that the Board nominate Karen Schweigert; and Governor de los Santos moved, seconded by Governor Baker, that the Board nominate Brian Gruber.

A run-off vote was called between Marie Docter and Brian Gruber. The Board nominated Marie Docter as the at-large member to the Washington State Bar Foundation for the Foundation's consideration and final appointment.

Treasurer Appointment Proposed Bylaw Amendment

President Dial presented the Board with the proposed bylaw amendment, that was circulated for first reading at the June Board meeting, calling for the election of the Treasurer at a regular meeting held not less than one month prior to the annual meeting in September. Dial highlighted the scenarios of past practice that gave rise to the proposed amendment.

Governor Karademos moved, seconded by Governor Mungia, that the Board approve the proposed amendment. Motion passed unanimously. Governor Anderson was not present.

President-elect Bastian nominated Governor Lawrence as WSBA Treasurer 2007-2008 for Board confirmation.

Governor Mungia moved, seconded by Governor Karademos, that the Board confirm Governor Lawrence as WSBA Treasurer 2007-2008. The motion passed unanimously.

Board for Court Education Nomination (1)

The WSBA has one representative serving on the Board for Court Education. The representative is nominated by the Board of Governors and appointed by the Supreme Court.

Governor Anderson moved, seconded by Governor Wiitala, that the Board nominate Robin Zukoski; Governor Lawrence moved, seconded by Governor Mungia, that the Board nominate

Steven Olswang; Governor Baker moved, seconded by Governor de los Santos, that the Board nominate Mark Baumann; and Governor Karademos moved, seconded by Governor Berg, that the Board nominate Mabry De Buys.

A vote was taken and Robin Zukoski was nominated to the Supreme Court for the Court's consideration and final appointment.

Council for Public Legal Education

Executive Director Littlewood addressed Immediate Past-President Taylor's "Foundations of Freedom" initiative and the WSBA's efforts to institutionalize its concept notwithstanding the sunset of his task force. Staff proposes that the Council for Public Legal Education, currently placed under the oversight of the Access to Justice Board, be reclassified as an advisory committee of the BOG under the oversight of the Board of Governors. By consolidating all public legal education efforts under the Board, the Foundations of Freedom Task Force, Public Information and Media Relations Committee, and Law Week will be eliminated from the FY08 budget and additional funds will be allocated for these efforts under the CPLE budget.

Governor Mungia moved, seconded by Governor Butler, that the Council for Public Legal Education be included in the 2008 budget as an advisory committee of the BOG (as outlined in Littlewood's memo to the Board dated July 12, 2007). The motion passed unanimously.

Washington Pattern Jury Instructions

President Dial provided the Board with background concerning ongoing negotiations with West Publishing and the Supreme Court's Pattern Jury Instructions Committee, for a pilot program placing Washington pattern jury instructions on a free, public website operated by West.

The officers are not convinced at this time whether or not having Washington pattern jury instructions placed on a free, public website would be providing a service commensurate with the potential cost. Discussions with the Supreme Court are scheduled and the officers will keep the Board apprised of these discussions.

Commission on Judicial Conduct Alternate Position Appointment (1)

Governor Lawrence moved, seconded by Governor Vail, that the Board appoint Lin-Marie Nacht to an alternate position on the Commission on Judicial Conduct; and Governor de los Santos moved, seconded by Governor Karademos, that the Board appoint Paul Swegle to an alternate position on the Commission on Judicial Conduct.

A vote was taken and Lin-Marie Nacht was appointed as an alternate to the Commission on Judicial Conduct.

APR Rule on Provision of Legal Services Following Determination of a Major Disaster

In light of the Board's action to co-sponsor a report to the ABA House of Delegates in 2006 proposing a Model Court Rule on Provision of Legal Services Following Determination of Major Disaster, which was approved by the House of Delegates in February 2006, General Counsel Welden proposed a new Admission to Practice Rule 27 and an amendment to RPC 5.5, Comment 14, for submission to the Supreme Court for adoption.

The proposed rule would provide that if the Supreme Court determines that a major disaster has occurred in Washington, lawyers authorized to practice law in another jurisdiction may provide pro bono legal services in Washington under the supervision of a Washington lawyer and on matters assigned by a qualified legal services provider. It also provides that lawyers authorized to practice law in an affected jurisdiction, whose practices are disrupted by a major disaster there, are authorized to provide legal services on a temporary basis in Washington. Those legal services must arise out of and be reasonably related to the lawyer's practice of law in the affected jurisdiction.

Governor de los Santos moved, seconded by Governor Davis, that the Board approve the proposed ARP Rule 27, and an amendment to RPC 5.5, Comment 14 for submission to the Supreme Court. The motion passed unanimously.

Judicial Recommendation Committee – Chair and Vice-Chair Appointments

Governor Berg moved, seconded by Governor Butler, that the Board approve the appointments of Susan Hinkle as Chair and Shawn Otorowski as Vice-Chair of the Judicial Recommendation Committee 2007-2008. The motion passed unanimously.

2007 Annual Awards Committee Recommendation – Leadership Award

President Dial introduced a recommendation of the 2007 Annual Awards Committee that an annual Norm Maleng Leadership Award be given jointly by the ATJ Board and the WSBA at the ATJ and Bar Leaders Conference commencing in June 2008.

Governor Karademos moved, seconded by Governor Anderson, that the Board approve the establishment of a Norm Maleng Leadership Award to be presented annually at the ATJ and Bar Leaders Conference commencing June 2008. The motion passed unanimously.

MCLE Board Nominations (2)

Governor Lawrence moved, seconded by Governor Mungia, that the Board approve the nominations of Effrem Krisher and J. Tappan Menard for appointment by the Supreme Court to the MCLE Board. The motion passed unanimously.

Proposed WSBA Bylaw Amendment – Definition of Section Membership

The Board considered a proposed WSBA bylaw amendment that would provide sections with an option to expand the definition of who can be “voting members” of sections, thereby broadening the pool of eligible people who can join as voting members of the section and serve in a leadership role with the section.

Discussion transpired. This matter was presented as a first reading and is expected to be before the Board for action at its next scheduled meeting.

JUDICIAL SELECTION TASK FORCE REPORT – Governor Lawrence

Governor Lawrence reported that the task force report is currently being worked on. The issue of judicial selection is a very important one and it was the consensus of the task force that its report be presented at a location where interested people could easily attend.

WSBA COURT RULES AND PROCEDURES COMMITTEE – Chair Roger Wynne and Assistant General Counsel Douglas Ende

ER 408 and 410: Making compromise and offers of compromise inadmissible in certain criminal proceedings

The Court Rules and Procedures Committee recommended amending ER 408 to clarify,

consistent with a 2005 Supreme Court ruling, that it applies only in civil cases. The Committee further recommended a companion amendment to ER 410 specifying that evidence of civil negotiations or compromise pursuant to RCW 4.24.230 or RCW 10.22.010-.020 is inadmissible in civil or criminal proceedings. Governor Mungia moved, seconded by Governor Berg, that the Board approve the Committee's recommendation to approve the suggested amendments to ER 408 and ER 410. The motion passed unanimously.

CrR/CrRLJ 8.3, RAP 2.2, and RALJ 2.2(c)(1): Codifying a summary dismissal procedure in criminal proceedings

Citing State v. Knapstad, 107 Wn.2d 346 (1986), the Court Rules and Procedures Committee recommended codification of the "Knapstad motion" procedure in what will be called a motion for pretrial dismissal, and to approve conforming amendments to the rules governing how decisions may be appealed.

Governor Mungia moved, seconded by Governor Berg, that the Board approve the Committee's suggested amendments to CrR/CrRLJ 8.3, RAP 2.2, and RALJ 2.2(c)(1). The motion passed unanimously.

GR 34: Waiver of court and clerk's fees and charges in civil matters – Dan Young and Val Carlson

Chair of the Pro Bono and Legal Aid Committee, Dan Young, and Committee member, Val Carlson, presented a joint proposal submitted by the PBLAC and the Court Rules and Procedures Committee. The joint proposal promotes access to justice for people who lack the financial means to pay initial filing fees and other litigation fees and charges and establishes statewide standards for waiving these fees and charges in civil cases.

Chair Young described the standards and process for the issuance of waivers: the applicant must be referred by a qualified legal service provider; the applicant must be receiving assistance under a needs-based, means-tested assistance program; and the applicant cannot be earning more than 200% of the then current federal poverty guideline.

Governor Vail spoke in support of the proposed new rule by noting the patchwork of procedures currently being followed throughout the State of Washington. Vail emphasized that this is a procedural issue and disagrees with the Washington State Association of County Clerks who

believe modification to clerks' fees and the current fee waiver provisions, being statute-based, should be proposed as statute changes.

Governor Vail moved, seconded by Governor Berg, that the Board approve the jointly proposed new GR 34.

A lengthy discussion transpired. Concerns were raised regarding the appearance of the removal of a judicial function being placed with the court clerks; the impact on court funding; and the likelihood of an increase in complaints filed by prisoners.

Pam Daniels, Snohomish County Clerk, spoke in opposition to the proposed GR 34 as outlined in Kathy Martin's, President of the Washington State Association of County Clerks, letter to the Board dated July 23, 2007.

A vote was called. The motion passed with a vote of 9-3-1. Governors Baker, Butler, and Karademos voted against. Governor Mungia abstained. Governor Anderson was not present.

**TRUST ACCOUNT RESPONSIBILITIES AND RETAINERS TASK FORCE REPORT –
Chair Mark Johnson and Assistant General Counsel Douglas Ende**

Chair of the Trust Account Responsibilities and Retainers Task Force, Mark Johnson, provided the Board with a brief history that gave rise to the need for the establishment of this task force and presented highlights of the task force report currently before the Board.

Johnson described the work of the task force as an effort to balance client protection with an attorney's need to make a living. Governor Mungia stated that the report has successfully struck the right balance.

Governor Karademos opined that the term "availability retainer" is defined too broadly and opened discussion regarding availability retainers and the definition of that term. Governor Lawrence suggested the following areas for further analysis: (1) whether the general applicability of the flat fee provision goes beyond the intent of the Board to address problems in specific practice areas; (2) whether the "reasonably in dispute" standard places the burden on the client, not the lawyer – a mandatory arbitration requirement should be considered; and (3) should further public outreach on the proposed change be sought. Johnson responded that the

task force report sets out to narrow the box and clearly defines what a flat fee “is not”; pointed out that the burden of proof is on the lawyer to establish what a reasonably prudent lawyer must do; and agreed that, though there was one non-lawyer on the task force itself, there was no general public outreach to non-lawyers.

Randy Beitel, Acting Chief Disciplinary Counsel, reported that the Office of Disciplinary Counsel offers a proposed alternative rule. However, whichever proposal the Board adopts, the WSBA will have moved considerably forward (except in the area of flat fees which essentially conflicts with public understanding). Beitel further reported that in the area of fee disputes, ODC feels strongly that fee arbitration is the way to go.

General Counsel Welden agreed and reiterated whichever rule the Board adopts the WSBA will have made great strides; and noted that a subcommittee of the Discipline Task Force will be proposing a mandatory fee arbitration rule to the full Discipline Task Force.

COMMITTEE ON PUBLIC DEFENSE – JON OSTLUND, Co-Chair

Non-Legislative Fixes for Enforcement of Standards Subcommittee – CrR and CrRLJ 4.1 – Arraignment and CrR and CrRLJ 4.2 – Pleas

Co-Chair Ostlund introduced the Committee on Public Defense proposed rule changes to CrRLJ 4.1 and CrRLJ 4.2 and the companion amendments to the CrR rules. Ostlund reported that both the CPD and the District and Municipal Court Judges Association had developed proposed revisions to these rules and the WSBA Court Rules and Procedures Committee had brought the proponents together to attempt to reconcile the two proposals. While those discussions were fruitful, some differences between the DCMJA and the CPD proposals remain. In the end, the Court Rules Committee recommended adoption of the CPD version of the rules. Co-chair Ostlund described the differences between the CPD version and the proposal submitted by the District and Municipal Court Judges Association, the major remaining difference being the CPD proposal's requirement that prosecutors be available for in-custody arraignments, while the DCMJA version does not include this requirement.

Gary Riesen, WAPA liaison, spoke in favor of the DMCJA proposed rule citing the following reasons: (1) having a prosecutor at arraignment is not necessary because most cases are not prepared to proceed; (2) the significant financial impact; and (3) having a prosecutor present at arraignment will not resolve cases.

Rebecca Robertson, Criminal Law Section, spoke in favor of the CPD proposed rule citing the following reasons: (1) as a pro tem judge, it is very difficult to play multiple roles when a prosecutor is not present; (2) it is very difficult to get defendants to understand their rights without confessing to crimes; and (3) arraignment is on many occasions the first appearance, at which time the judge may consider conditions of release if defense counsel is present.

President-elect Bastian asked whether or not the CPD conducted a cost analysis. Ostlund reported there was no cost analysis completed.

President Dial reminded the Board that the CPD was charged with conducting a global review of the criminal justice system throughout the State of Washington. The Committee has reported details of its review including what *is* and what *should be*; not whether what *should be* is too expensive.

Governor Mungia reported that the impartiality of the bench is of key importance. Governor Mungia moved, seconded by Governor Burke, that the Board adopt the CPD proposed rule with the amendment that a prosecutor be present at all arraignments not just "in custody" arraignments.

Governor Vail moved, seconded by Governor Davis, to amend Governor Mungia's motion and require the presence of a prosecutor at in-custody arraignments only, as originally proposed by the CPD. Governor Vail suggested and Governor Davis concurred that the amendment may be a "poison pill."

Governor Mungia contended that the amendment would not be a "poison pill," that the Supreme Court will proceed as it deems appropriate, and that the amended language would be a statement by the Board that it fully stands behind its proclamation that a fair and impartial judiciary is a core value of the WSBA. Governor Burke urged support of Governor Mungia's modification

A vote was taken on Governor Vail's motion. The vote result was 6-4-0. Governors Aoki, Burke, Davis, and Mungia against. Governors Anderson, Butler, de los Santos, and Shea were excused.

A vote was taken on the motion to adopt the CPD proposed rule as submitted. The vote result was 10-1-0. Governor Anderson against. Governors Butler, de los Santos, and Shea were excused.

System Efficiencies and Legislative Changes – Two Track System for Contempt of Court Proceedings

Ostlund presented the Two Track System for Contempt of Court Proceedings (which was deferred at the June Board meeting to provide the Family Law Section an opportunity to comment). Ostlund reported that the system has been very successful in King County, which demonstrates an estimated \$300,000 in savings.

After discussion, Ostlund agreed that the title of the resolution should read: "Supporting the Implementation of a Two-Track System for Contempt of Court Proceedings in Child Support Matters Initiated by the State". Governor Mungia moved, seconded by Governor Davis, that the Board adopt the resolution subject to its change in title and incorporated changes to the last sentence of the resolution. The motion passed unanimously with a vote of 11-0-0. Governors Butler, de los Santos, and Shea were excused.

Mental Illness and Sex Offender Civil Commitments Subcommittee

Anita Paulsen, Chair of the Mental Illness and Sex Offender Civil Commitments Subcommittee, shared some highlights of the findings of this subcommittee and urged the Board's support of the CPD's request that further study in this area be made a part of the work of CPD Phase II. Governor Davis moved, seconded by Governor Burke, that the Board formally add further study in this area to the task of CPD Phase II. The motion passed with a vote of 10-0-1. Governor Anderson abstained. Governors Butler, de los Santos, and Shea were excused.

PRESIDENT'S REPORT

By written report only.

PRESIDENT-ELECT'S REPORT

By written report only.

EXECUTIVE DIRECTOR'S REPORT

By written report only.

ADJOURNMENT

There being no further business, the Board of Governors meeting was adjourned at 11:10 a.m. on Saturday, July 28, 2007.

Respectfully submitted,

Paula C. Littlewood
WSBA Executive Director