



Washington State Civil Legal Aid Oversight Committee

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Hon. Lesley Allan, Chair
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April 1, 2008

Hon. Charles Johnson, Chair
Washington Supreme Court Rules Committee
Temple of Justice
PO Box 40929
Olympia, WA 98504-0929

Re: Proposed GR 34 – Unifying Procedures for Obtaining Waivers of Fees

Dear Justice Johnson:

At its meeting on March 28, 2008, the bipartisan Civil Legal aid Oversight Committee voted unanimously to endorse proposed GR 34 as the suggested rule was amended by the Washington State Board of Governors at its meeting of March 7, 2008. The proposed rule, as most recently revised by the Board of Governors, would:

- Establish a uniform standard for determining a litigant's eligibility for waiver of civil filing fees
- Avoid unnecessary judicial process for assessing the eligibility of individuals who have been prescreened and determined qualified for civil legal assistance by a qualified legal aid provider employing generally accepted standards for determining indigency
- Facilitate efficient processing of requests for fee waivers filed by pro se litigants
- Preserve judicial prerogatives to review and collect waived fees should the circumstances of the parties allow
- Provide for the routine waiver of other fees that operate to deny indigent litigants of their constitutional right of access to the courts to assert and defend important personal rights.

The Oversight Committee believes that the proper standard for determining indigency should be the standard for determining eligibility for free civil legal aid services established by the Office of Civil Legal Aid (OCLA). The OCLA standard mirrors the longstanding benchmark established by the federal Legal Services Corporation, and is based on a presumption of indigency for persons at or below 125% of the federal poverty level (FPL) by family size. The 125% of FPL benchmark is also consistent with the standard for determining eligibility for indigent defense services set forth in RCW 10.101.010(1)(c), and will thus ensure consistency in practices between civil and criminal indigent users of court services.

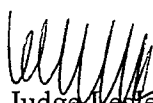
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The Oversight Committee does not believe that passage of this rule would require court clerks to perform judicial functions. Clerks would be required to accept for filing without payment of initial filing fees initial pleadings filed by staff and pro bono attorneys affiliated with Qualified Legal Services Providers (*see* APR 8(e)(2)) who certify that the individual(s) they represent have been screened and were found eligible for free civil legal aid services under the OCLA eligibility standards. Proposed GR 34(B); Appendix A. Upon submission of the certification (Appendix A), the clerk's acceptance of such initial filings without payment will become a purely ministerial act and will not require the exercise of judicial judgment. Notably, the rule has been written to require judicial review of all other requests.

While the Oversight Committee supports this rule, it notes that Appendix B seems cumbersome and potentially difficult for pro se litigants to understand and fill out correctly. Some revision of the form may be appropriate. The Oversight Committee also suggests that GR 34(a) and Appendix B be amended to include reference to the ex parte fee authorized by RCW 36.18.016(11).

For the reasons noted, the Civil Legal Aid Committee respectfully recommends adoption of proposed GR 34 as revised by the Washington State Bar Association's Board of Governors.

Sincerely,



Judge Lesley Allan, Chair

CIVIL LEGAL AID OVERSIGHT COMMITTEE

C: James Bamberger, OCLA Director
Stan Bastian, WSBA President
Paula Littlewood, WSBA Executive Director
Dan Young, Chair, WSBA Pro Bono and Legal Aid Committee