

Superior Court of Washington  
In and for the County of Grant

Evan E. Sperline  
Judge, Department One  
1983 -

Grant County Courthouse  
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January 18, 2008

Clerk of the Supreme Court  
P. O. Box 40929  
Olympia, WA 98504-0929

CLERK

RECEIVED  
SUPREME COURT  
STATE OF WASHINGTON  
08 JAN 24 AM 8:12  
BY RONALD R. CARPENTER

Re: *Proposed GR 34*

Dear Mr. Carpenter:

I reviewed Proposed GR 34 with Shea Larkin, our Family Law Facilitator. We offer the following comments:

**Concept:**

We applaud the concept of standardizing the courts' approach to fee waivers for indigent litigants. That said, we have two general concerns regarding the approach taken in the rule:

1. *Eligibility.* We question the standard which purports to extend fee waiver eligibility in civil cases to those whose income is less than double the federal poverty guideline, while restricting appointment of counsel in criminal cases to accused persons whose income is not over 125% of the same guidelines.

2. *"All or nothing."* Below the eligibility ceiling, the rule establishes no standards or guidelines for partial waiver, deferment of fees, or full waiver of some but not all fees.

**Content:**

1. *Partial waiver.* We often waive fees in part (i.e., reduce a fee) and/or defer payment of a fee until conclusion of the case or for payment in installments. We do so under the "court's inherent authority and discretion" preserved in section (h) of the proposed rule.

It would be preferable to express these “partial” waivers in the rule. We suggest that proposed GR 34(c)(1) be amended to read as follows:

*Applicant Receiving Benefits Through Assistance Program.* The court may waive, in whole or in part, and/or defer for later payment the fees and charges referred to in section (a) when ...

2. *Re-evaluation.* The ability to re-visit the waiver question, including the assessment of previously waived fees against an opposing party, or the adjustment of fees between the parties, is an important tool. However, if it is done after conclusion of the case, it is probably futile as a practical matter. The court needs the authority to withhold entry of concluding documents until re-assessed or re-apportioned fees are paid.

We suggest that proposed GR 34(f) and (g) be amended to read as follows:

**(f) Recoupment.** At or before the time of entry presentment of a final order, judgment, or decree in any action, suit, or proceeding in which any fees or charges have been waived under this rule, the court may reevaluate the original grounds for granting the waiver and consider any changed financial circumstances of the party who obtained the waiver, and the financial circumstances of any other party, and in its discretion require the party to pay any waived fees or charges to the clerk, or assess any waived fees or charges against another party as provided in section (g). The court may defer entry of any final order, judgment, or decree until compliance with orders made under this section (f) or section (g).

3. *Interpreter fees.* RCW 2.43.040(3) requires non-English-speaking participants in some legal proceedings (those not instituted by government agencies) to bear the cost of interpreters unless they establish indigency. The interpreter fees assessed pursuant to RCW 2.43.040(1) should be added to proposed GR 34(a)(2) as a fee which may be waived under the rule (and added as a fee potentially waived in both the Application and the Order portions of Appendix B).

#### **Forms:**

Locally, we developed and have long used forms similar in import to those appended to proposed GR 34. Since the forms are so often used by *pro se* litigants, we have learned beyond question that simple, intuitive language is an absolute must.

The proposed forms are wanting in this regard. It is probably not productive to list specific examples from the forms. We strongly recommend that the forms be reviewed and revised by a non-lawyer expert in such matters.

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Thank you, the Court, and the Rules Committee for your efforts, and for giving consideration to these comments.

Very truly yours,

A handwritten signature in black ink, appearing to read "Evan E. Sperline". The signature is fluid and cursive, with a long horizontal stroke at the end.

Evan E. Sperline  
Presiding Judge

cc: Judge Antosz  
Judge Jorgensen  
Commissioner Chlarson  
Facilitator Larkin