

## Faulk, Camilla

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**From:** Guy, Andrew A. [AAGUY@stoel.com]  
**Sent:** Wednesday, April 30, 2008 5:00 PM  
**To:** Faulk, Camilla  
**Subject:** Comments on GR 34  
**Attachments:** eCopy35W-Exchange-04302008-165711.pdf

-----Original Message-----

**From:** Guy, Andrew A. [mailto:AAGUY@stoel.com]  
**Sent:** Wednesday, April 30, 2008 5:00 PM  
**To:** Faulk, Camilla  
**Subject:** Comments on GR 34

Dear Ms. Faulk: Please deliver the attached letter containing my comments on proposed GR 34 to the Rules Committee.

Thank you,

Andrew A. Guy  
Stoel Rives LLP  
600 University Street, Suite 3600  
Seattle, WA 98101-3197  
Phone: 206-386-7620  
Fax: 206-386-7500  
email: [aaguy@stoel.com](mailto:aaguy@stoel.com)  
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600 University Street, Suite 3600  
Seattle, Washington 98101  
main 206.624.0900  
fax 206.386.7500  
www.stoel.com

April 30, 2008

ANDREW A. GUY  
Direct (206) 386-7620  
aaguy@stoel.com

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

**Re: Proposed General Rule 34**

Dear Justice Johnson:

I encourage the Supreme Court to adopt the proposed General Rule 34 and its related appendices in the form adopted by the Washington State Bar Association at its meeting held in Tacoma on March 6 and 7, 2008 and transmitted to Chief Justice Alexander under cover of a letter dated March 21, 2008 from the WSBA's general counsel, Robert Welden.

I am writing in my personal capacity as a Washington lawyer who is keenly interested in seeing steps taken to overcome and eliminate institutional obstacles to access to our courts for persons of limited means. Although I speak only for myself in this letter, my perspective is shaped and informed by almost three decades of participating actively as a pro bono volunteer attorney in Washington, as well as my approximately eight years of membership on the WSBA's Pro Bono and Legal Aid Committee, my several years as a board member of Washington Attorneys Assisting Community Organizations and as a member of the Community Advisory Board of the Access to Justice Institute of the Seattle University School of Law, and a year as a trustee of the King County Bar Association. I also have served for the past six years as the pro bono coordinator for the Seattle office of Stoel Rives LLP, where I am a partner practicing commercial litigation, and am a member of the Seattle Law Firm Pro Bono Coordinators Group.

Through these activities and lessons I have learned from representing clients on a pro bono basis, I can attest to the fact that the filing fees—particularly after they were increased a couple of years ago—can be a real deterrent to the filing of meritorious claims and counterclaims and that the current procedures for obtaining *in forma pauperis* relief on behalf of pro bono clients can be time consuming for pro bono attorney volunteers and daunting for *pro se* parties. Under RPC 1.8(e), lawyers are not allowed to advance litigation costs on behalf of clients unless the client remains ultimately liable for the expenses. Thus, in cases where the client is impoverished and

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cannot be expected to reimburse the filing fees and related expenses, the application for a waiver of court fees becomes necessary in order to file the claim or counterclaim.

I note that many of the comments opposing the adoption of GR 34 focus on potential impact on court revenues. In this regard, I believe there are at least four points to be made in response, two technical and two philosophical.

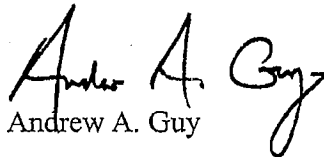
The first technical response is that it is not at all clear that adoption of the proposed rule will lead to a material increase in filings where fees are waived, and thus there may well not be a significant financial impact. Extrapolation of demographic data does not lead to a reasoned or analytical conclusion that the filings will increase materially.

The second technical response is that the revision to the form of the rule adopted by the WSBA at its March 6-7 meeting reduces the eligibility criteria from a maximum of 200% of the Federal poverty guidelines to the 125% figure used for criminal defense entitlement purposes and by the Office of Civil Legal Aid. This change avoids expanding the number of litigants who would already be eligible for fee waivers and thus reduces the prospect of any significant financial impact. This change should alleviate or eliminate the concern expressed about potential costs.

The third and fourth, more philosophical, responses are that, (a) even assuming that there is a cost to the courts for facilitating the filing of claims by persons of limited means, the cost of our judicial system should not be borne on the backs of those who are least able to pay those costs, and (b) the alternative to resolution of disputes through the courts may well be illegal forms of dispute resolution in the form of self-help or street justice, which are likely to create more costs to our justice system in the long run.

Thank you, the Rules Committee, and the other Justices for considering these comments.

Respectfully submitted,

  
Andrew A. Guy