

WASHINGTON STATE
ASSOCIATION OF
COUNTY CLERKS

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April 3, 2008

The Honorable Gerry L. Alexander, Chief Justice
The Honorable Charles W. Johnson, Chair, Rules Committee
Washington Supreme Court
Temple of Justice
415 12th Avenue SW
PO Box 40929
Olympia, WA 98504-0929

RE: Proposed State Court Rule GR 34

Dear Chief Justice Alexander and Justice Johnson:

The Washington State Association of County Clerks (WSACC) has many concerns about proposed rule GR 34 which this letter seeks to communicate to you and the Supreme Court. This proposed rule is fraught with so many problems identified by both the Clerks' Association and the Superior Court Judges' Association (SCJA) that we urge the Supreme Court not to adopt this rule.

The following are some of the issues WSACC has with this proposed rule:

The WSBA is seeking via state court rule to substantively modify statute, specifically fee-based statutes, which are the purview of the Executive and Legislative branches. Clerks' fees and the current fee waiver provisions are all statute-based, and clearly the provisions in this proposed rule should instead be proposed by the WSBA as statute changes.

One provision in the proposed rule, which would give fee-waiving prerogative to the Clerk in certain circumstances, is in direct conflict with state statute RCW 36.18.022, which gives this authority to the Court. Neither the Clerks nor the SCJA supports this transfer of authority. The Bar seeks to make this change to free pro bono attorneys from the waiting time associated with appearing before a judicial officer for an ex parte fee waiver order. Clerks believe this to be an inappropriate and substantial policy change addressing a small inconvenience. As valuable as time is for pro bono and legal aid attorneys, so is the time of other pro se parties who seek a fee waiver order. This proposed rule puts pro bono and legal aid attorneys 'to the head of the line' in front of others who seek the same relief. This is inappropriate.

Another conflict to statute in this rule is that the fee-waiver ability is broadened to include many more fees than the filing fee, which is the only fee allowed to be waived in the current statute. If this is a provision the WSBA wants to pursue, the WSBA should be pursue a statutory change, not state court rule. The Legislature has historically taken the lead on deciding Executive branch fees – who pays, how much, who is exempt, who can ask for a waiver and on what basis.

Another issue with this rule relates to case viability. There is a provision in case law that dictates that the Court check the viability of the case before granting an IFP. For example, the Court doesn't grant an IFP to the mentally ill person attempting to file a nonsensical lawsuit. When the Clerks and others brought this to the

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attention of the committee, the affidavit process was developed and included in rule, whereby the petitioner swears to have a "valid reason for bringing this claim." This affidavit process does not adequately stand in for the Court's actual review of the cause of action as the mentally ill plaintiff will also readily sign an affidavit assuring the Court that he/she has a legitimate cause.

The sealing language in section (e)4 is also problematic. It appears as if the rule is attempting to invoke the GR 22 coversheet process for an automatic sealing of certain documents in an open court case, but the language is not precise or clear enough. Again, this rule actually complicates and confuses a process that currently works well.

Another substantive conflict with current statute relates to the poverty level qualification provision. The rule as proposed allows for 200% of the federal poverty level to qualify for an In Forma Pauperis (IFP) order. Currently, statute defines criminal indigency at 125% of the poverty level, which all counties also use as the civil IFP standard. It is clearly inappropriate to have differing statute and state court rules on the definition of indigency, resulting in differing standards for criminal and civil litigants. This is simply a bad idea and should not be adopted in either statute or court rule.

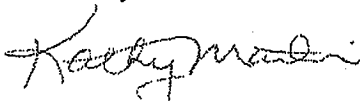
More broadly, Clerks don't agree with the need for this rule. Clerks constantly work with litigants who successfully seek filing fee waiver orders. We suggest that if there are specific problems with certain counties or certain Clerks' or Judges' procedures, that the WSBA address those problems specifically, instead of via a broad state court rule. If systematic problems exist with uneven implementation of IFP standards, we would suggest a legislative proposal to clearly add the poverty level that qualifies a party for IFP status as language in the existing statute. In addition, a statute change that mandates state pattern forms for the process of securing an IFP order will help ensure process uniformity state-wide. The Clerks would likely be supportive of both such initiatives.

In summary, WSACC concerns about this proposed rule are many and we stand ready to openly and strongly oppose it. However, it is very likely that the Clerks and the Bar Association could come together and agree on suggested statute changes for a WSBA legislative initiative on this topic, especially if the initiative was limited to setting the poverty standard in statute at 125% and mandating state pattern forms for the process. We have proposed this in our comments to the WSBA, but the BOG instead chose to pursue adoption of this proposed state court rule.

We strongly request that you not adopt this rule and instead instruct the WSBA to work with the WSACC and SCJA on a legislative proposal to address agreed topics in this arena.

Please contact me, or Barbara Miner, the WSACC Legislative Director, should you have questions or need further information.

Sincerely,



Kathy Martin
President

cc: Supreme Court Rules Committee Members
Ellen Dial, President, WSBA
Judge Vickie Churchill, President, Superior Court Judges Association
County Clerks