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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\GR34CommentLettertoSupremeCourt 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).

## 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 of all fees and in such case presentation of an original petition may accompany the initial fee waiver. However, nothing in this rule diminishes the court's discretion to grant only a partial waiver of fees and to require payment of a partial fee prior to court action.