

# Jones & Smith

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Justice Charles W. Johnson  
Temple of Justice  
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## **Re: Proposed Court Rule GR 34 – In Forma Pauperis Rule**

Dear Justice Johnson:

I am in receipt of your correspondence of May 27, 2010, regarding Proposed Rule GR 34. I have previously submitted comments in support of the proposed rule. The following comments are therefore restricted to the issues raised in your correspondence.

I enthusiastically endorse the additional language proposed by James Bamberger clarifying the issue of “costs” in the rule. It has become increasingly apparent, since the submission of the rule for comment, that the waiver “costs” is a critical component of the access to justice which this proposed Court rule addresses. It would be largely meaningless to provide waivers of filing fees if the add-on costs recently promulgated thwart the ability of indigent persons to gain access to the Courts.

Proposed Rule GR 34, from my perspective, serves two separate and related functions. It first, and foremost, would afford access to the Courts for those individuals who because of their financial circumstances would not otherwise be able to proceed. Secondly, it would remove a barrier to attorneys who are providing pro bono services to indigent individuals. I believe that it is vitally important that it be clear that the Superior Court has the authority and obligation to waive any and all fees and costs that impede or thwart access to the Courts. Neither objective of GR 34 will be achieved without such clarification.

The practice in courts around the state vary greatly with regard to the waiver of “costs.” Skagit County, where I primarily practice, takes the approach that the Court House Facilitator fee cannot be waived. Judges have expressed the opinion that they do not have the authority to waive the fee. The standard order made available through the Clerk’s office specifically states “the \$20 facilitator fee cannot be waived.” There are no exceptions to this blanket position. I listened with interest at the Access to Justice Conference to the comments of Court clerks from various other counties who detailed their practices and procedures for waiver of these fees. It is very clear that there is neither uniformity of procedural approach nor uniformity of opinion as to the Superior Court’s authority.

I listened with great interest to the presentation made by Barb Miner, King County Superior Court Clerk, concerning the additional fees and costs charged in King County. It was represented that there was a mechanism with regard to each of these fees for the indigent litigant to make an additional waiver request. There is apparently no uniform procedure for seeking the various waivers. There is also apparently no notification that waivers can be obtained. It was

also apparent that obtaining the waivers entailed additional trips to the court house and additional form preparation. Imposing a requirement of multiple waiver requests upon indigent persons serves as a substantial barrier to access to the Courts.

Merely being able to initiate litigation in Superior Court through a filing fee waiver does not mean that the litigant has achieved meaningful access to the Courts if additional fees and costs or the threat of having to pay additional fees and costs stands in the way. In Skagit County the Court frequently enters an order that the filing fee is waived temporarily and shall be paid prior to the entry of any final orders in the case. I recently presented a motion on the Skagit County ex parte calendar for order allowing a client to proceed IFP. The order that I drafted and presented did not include the language from the standard Court drafted order which would allow for review of the filing fee at the conclusion of the case. The clerk's office refused to accept the IFP order which had already been signed by the Judge. They instead took the document back to the Judge who had just signed the order and had him insert the additional language. The Volunteer Lawyer Program has heard anecdotal reports, that I have not been able to confirm, that indigent individuals may not be seeking the entry of final Dissolution Decrees because they can no more pay the fee at the conclusion of the case than they could at its inception. They may not understand that the Court can and probably will grant a total waiver at that time if their circumstances have not changed. This illustrates the delicate role that fee and cost waivers play in access to justice. Similarly, I submit, any other fees imposed which present financial roadblocks will preclude access to the Courts.

The waiver of costs, in addition to the basic filing fee, is essential if we are going to be able to successfully recruit pro bono attorneys. It is inherently unreasonable to expect a pro bono attorney to return to Court on multiple occasions to obtain a waiver from the clerk's office for each and every fee or cost that they may assess. To impose this requirement would create an unreasonable burden upon the pro bono attorney and his time. It would undoubtedly result in a reduction in the number of attorneys willing to become involved in pro bono matters. It would also substantially reduce the number of pro bono hours available to address substantive issues as opposed to fee waiver issues.

The multiple tier system of fees and costs is creating a procedural nightmare for indigent individuals and their pro bono attorneys. The suggested amendment language would, in my estimation, address this increasing problem.

Sincerely,

JONES & SMITH

GAIL R. SMITH  
GRS/ab

cc: Chief Justice Barbara Madsen