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SUPREME COURT
STATE OF WASHINGTON

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Ronald R. Carpenter, Clerk
Washington Supreme Court
P.O. Box 40929
Olympia, WA 98504-0929

BY RONALD R. CARPENTER

CLERK



Attn: Camilla Faulk

Re: Proposed General Rule 34

907 Pine Street
Suite 500
Seattle, WA 98101

Dear Mr. Carpenter:

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LegalVoice.org

On behalf of Legal Voice, I wish to express our strong support for adoption of proposed GR 34. Through Legal Voice's statewide Self Help Program and our long-term collaborative work with other legal service organizations, we are aware of the many barriers that litigants face in accessing the justice system in Washington State. Financial constraints are among the most serious of these barriers. We believe that the courts and Washington residents will benefit from fairness, efficiency, and uniformity. As explained below, we encourage the Supreme Court to adopt proposed GR 34, subject to one change we believe is necessary to clarify the rule and its effect.

Background Regarding Legal Voice's Perspective

Thousands of people contact Legal Voice's Self Help Program every year. Most of them cannot afford an attorney, are unable to obtain pro bono representation, and end up appearing *pro se* in matters of dissolution, family violence, employment, collections, landlord-tenant, and other areas of the law. The waiver of filing fees and costs is often essential to their ability to pursue a legal matter. For a family of three at 125% of the federal poverty level, a \$200 filing fee represents over 10% of their monthly gross income. For a family of three receiving Temporary Assistance to Needy Families, it represents 37% of monthly income.

Establishing a consistent process for granting waivers of civil fees and costs, as provided by proposed GR 34, would make a significant difference to low-income litigants. And by providing for automatic waivers for certain litigants, proposed GR 34 would also improve court efficiency.

Proposed Clarification to the Rule

We suggest that the Comment immediately following proposed GR 34(a)(2) is unnecessary. It states: "This rule establishes the process by which judicial officers may waive civil filing fees and such other costs for which judicial offers [sic] have authority to grant a waiver." We believe this first Comment is

redundant in light of the second Comment (following proposed GR 34(a)(5)), which states: “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.” Both comments address the same fundamental principle – with which we agree – that the courts of Washington may waive filing fees and other costs. That principle is firmly rooted in case law from the Washington Supreme Court and the United States Supreme Court. See *O’Connor v. Matzdorff*, 76 Wn.2d 589, 600 (1969); *Boddie v. Connecticut*, 401 U.S. 371, 374, 383 (1971).

Not only is this first Comment unnecessary, but its final clause (“... for which judicial [officers] have authority to grant a waiver”) is potentially problematic. As currently proposed, this clause could be read to suggest that Washington’s judicial officers *lack the authority* to waive certain filing fees or other costs for indigent litigants. This suggestion is wrong. The “authority to grant a waiver” is rooted in the courts’ inherent authority, as acknowledged in the Comment following proposed GR 34(a)(5), and recognized in this Court’s own precedent. *O’Connor*, 76 Wn.2d at 600 (courts have “within their powers an inherent power to waive the prepayment of court fees, where a suitor or defendant has shown that he is impoverished, regardless of statutory authority”); *Bullock v. Roberts*, 84 Wn.2d 101, 105 (1974) (“Full access to the courts in a divorce action is a fundamental right... It is within the inherent power of a court exercising common law jurisdiction, which the superior court does, to make such orders as are necessary to protect the rights of the poor to access to the judicial system.”); *In re Marriage of King*, 162 Wn.2d 378, 390 (2007) (“it is within the inherent power of a court exercising common law jurisdiction to make such orders as are necessary to protect the rights of the poor to access to the judicial system”). Further, as established in *Boddie*, as a matter of due process, courts *must* waive fees and costs for indigent individuals petitioning for dissolution: “[D]ue process does prohibit a State from denying, solely because of inability to pay, access to its courts to individuals who seek judicial dissolution of their marriages.” *Boddie*, 401 U.S. at 374.

We understand that superior courts in some counties are refusing to waive certain fees upon initiation of a dissolution action, or are only “waiving” them temporarily and requiring payment before issuance of final orders. Such fees include: (1) a \$20 facilitator surcharge, RCW 36.18.016(16); (2) a \$20 surcharge for dissolution and legal separation actions, RCW 36.18.016(30); and (3) a \$30 surcharge for the judicial stabilization trust account, RCW 36.18.020(5)(b). Whether these courts are refusing to waive these fees as a matter of budgetary concerns or due to a mistaken understanding of their authority and the requirements of due process, we would not want to see an otherwise excellent rule perpetuate this situation.

Accordingly, we urge the Court to remove the first Comment to proposed GR 34. In the alternative, we urge the Court to delete the final clause from the Comment so that it

reads: "This rule establishes the process by which judicial officers may waive civil filing fees and other costs."

Thank you for considering our support for proposed GR 34 and our proposal to ensure the rule is consistent with the law of Washington State and the federal constitution.

Sincerely,



Lisa M. Stone
Executive Director



Sara L. Ainsworth
Senior Legal & Legislative Counsel