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April 30, 2010

Hon. Charles Johnson, Chair  
Washington Supreme Court Rules Committee  
Temple of Justice  
415 12<sup>th</sup> Ave., SW  
PO Box 40929-0929

Re: Proposed GR 34

Dear Justice Johnson and Members of the Rules Committee:

With this letter I briefly supplement the comments previously submitted by the Office of Civil Legal Aid relative to proposed GR 34. I do so to address the substance and implications of the comments submitted by the Washington State Association of County Clerks and Washington Association of County Officials/Washington Association of Prosecuting Attorneys.

The essential focus of both comments is that the rule impinges on legislative authority to establish fees and costs associated with operations of the courts and other governmental functions. This argument is without merit. It has long been understood that the courts, as guardians of the right of access to the justice system, have inherent constitutional authority to remove obstacles that interfere with such access. In the case of economic obstacles, it has long been the law in our state that courts may exercise this authority to waive filing fees, surcharges and other mandatory costs (however characterized) that would undermine the ability of an indigent person to secure timely access to the judicial forum itself. See *O'Connor v. Matzdorff*, 76 Wn.2d 589, 458 P.2d 154 (1969). The draft makes clear that this rule is promulgated in the exercise of such inherent constitutional authority. The fact that the legislature or a local legislative body establishes a fee, surcharge or cost does not operate to deny the courts of their inherent authority to ensure access. Accepting the suggested interpretation would represent an unprecedented concession of inherent constitutional judicial authority.<sup>1</sup>

Additionally, the comments suggest that the Legislature has effectively preempted the field of setting standards for determining indigency. While RCW 10.101.010 does set

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<sup>1</sup> Note that the comment expressly acknowledges the limitation of this inherent authority. It notes that the rule authorizes the waiver of "... civil filing fees and such other costs for which judicial officers have authority to grant a waiver."

*It's not justice, if it's not equal.*

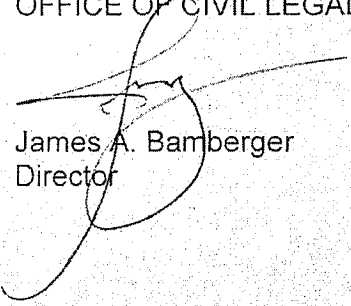
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the standards for determining whether an individual has a right to counsel at public expense, it has no relevance to the question of whether individuals are sufficiently indigent such that filing fees and costs should be waived in civil legal proceedings. As written, the draft rule employs a standard that is consistent with the general focus of RCW 10.101.010, minimizes duplicative determinations and ensures uniform application of this standard statewide. It is a solid, workable standard.

Thank you for the opportunity to provide these additional clarifying comments. The Office of Civil Legal Aid looks forward to your favorable consideration of the draft rule in its current form.

Sincerely,

OFFICE OF CIVIL LEGAL AID



James A. Bamberger  
Director