



WASHINGTON STATE
ASSOCIATION OF
COUNTY CLERKS

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April 26, 2010

The Honorable Barbara Madsen, 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 Justice Madsen and Justice Johnson:

On behalf of WSACC, I write to compliment the SCJA and PBLAC on the compromises in the new version of GR 34 which yield a dramatically improved version of the rule compared to the original version published for comment by the Supreme Court. However, the Clerks continue to believe that 1) the rule is unnecessary overall and that 2) there continue to be places in the rule that mix statutory authority and court rule authority. Should the Supreme Court decide to implement the rule, we believe the two areas described below need to be addressed.

1. Clerks acknowledge and respect the Court's authority granted in statute to waive filing fees; however, Clerks cannot support a general, broad authority authorized in this general rule version to waive 'costs.' Costs are addressed in numerous places in the rule including section (a) and the comments at section (a)(2) and (a)(5). This cost language dramatically broadens RCW 36.18.022¹, which gives the court the specific authority to waive the domestic violence surcharge to the filing fee in domestic cases, and filing fees in civil cases and civil appeals based on indigency status. Fee setting is the purview of the legislative branch, and clearly the Washington state legislature has taken that responsibility for both setting fees and authorizing the waiver of fees. This state court rule infringes on that legislative responsibility. We respectfully request that the rule references to 'costs' as well as the comment that describes 'costs' be removed from any version of the rule adopted by the Supreme Court.

¹ RCW 36.18.022: Filing fees may be waived — When. The court may waive the filing fees provided for under RCW 36.18.016(2)(b) and 36.18.020(2) (a) and (b) upon affidavit by a party that the party is unable to pay the fee due to financial hardship. [2005 c 374 § 6; 1995 c 292 § 16; 1992 c 54 § 5.]

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2. There is statutory authority in RCW 10.101.010 to set the poverty standard for indigency status. That poverty standard is set in criminal statute, and it is a logical and easy inference to apply the same standard to civil cases. Superior Courts and Clerks across the state have been using this statute to apply to both civil and criminal cases for many many years. The rule being submitted by WSBA creates a different poverty standard for civil cases than the RCW-based criminal case standard. And the rule allows for a poverty standard to be set by "QLSP" standards for representation which allows an agency outside of the Court or the legislature to set the poverty standard for indigent fee waiver. The impact of this is both an inappropriate reach into legislative purview and an ill-advised standard setting differentiating indigent criminal-defendants from indigent civil litigants. The rule needs only to recognize the statutory standard set in RCW 10.101.010.

We have included a copy of the rule with our proposed changes as attachment A. With the removal of the 'costs' language and a change to recognizing the RCW-based poverty standard, Clerks can likely bring the support of other groups, such as Washington State Association of County Officials (Sheriffs, Prosecutors, Coroners, Auditors, Treasurers, Assessors and Clerks), and Washington State Association of Counties (Commissioners), and several individual county commissioners, who wrote in opposition to the rule as it was first published.

In addition, we pass along comments related to the court's authority and perhaps obligation to consider the merits of a case when considering the motion for indigency. From our experience in this arena, we see a merit review regularly undertaken by the court when considering indigency motions and we think that perhaps it was an oversight that such a provision was not included in this rule. The merit review prevents the expenditure of public funds on cases that are frivolous and inappropriate. We have attached a version of the rule with these comments as well (attachment B).

Please contact me at 206-296-2910 or Kevin Stock at 253-798-3372 should you have any questions or need more information.

Sincerely,



Barbara Miner
President

cc: Supreme Court Rules Committee Members
Nan Sullins, Legal Services Manager, AOC
WSACC Executive Board Members
Debra Wilke, Executive Director, Washington Association of County Officials

GENERAL RULES (GR)

[New Rule - Revised WSBA Proposal December 2008]

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 their indigent status as defined herein, may seek
2 a waiver 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
5 Courts (AOC) whereby the applicant attests to his or her financial status or, in the case of an
6 individual represented by a qualified legal services provider ("QLSP") or an attorney
7 working in conjunction with a QLSP, a declaration of counsel stating that the individual was
8 screened and 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
11 application shall conform to local court and clerk processes for presenting ex parte orders to
12 the court directly or via the clerk. All applications shall be presented to a judicial officer for
13 consideration in a timely manner and in conformity with the local court's established
14 procedures. Any fee, locally imposed for presenting ex parte orders, shall not apply to the
15 application. The applicant or applicant's attorney filing by mail, shall provide the court with
16 a self addressed stamped envelope for timely return of a conformed copy of the order.

COMMENT

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19 This rule establishes the process by which judicial officers may waive civil
20 filing fees ~~and such other costs~~ for which judicial officers have authority to grant a
21 waiver.

22 (3) An individual ~~who is not represented by a qualified legal services provider (as~~
23 ~~that term is defined below) or an attorney working in conjunction with a qualified legal~~
24 ~~services provider~~ shall be determined to be indigent within the meaning of this rule if such

GENERAL RULES (GR)

[New Rule - Revised WSBA Proposal December 2008]

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1 person, on the basis of the information presented, establishes that: he/she meets the
2 provisions established in RCW 10.101.010.

3 ~~(A) he or she is currently receiving assistance under a needs-based, means-tested~~
4 ~~assistance program such as the following:~~

5 ~~(i) Federal Temporary Assistance for Needy Families (TANF);~~

6 ~~(ii) State provided general assistance for unemployable individuals (GA-U or GA-~~
7 ~~X);~~

8 ~~(iii) Federal Supplemental Security Income (SSI);~~

9 ~~(iv) Federal poverty related veteran's benefits; or~~

10 ~~(v) Food Stamp Program (FSP); or~~

11 ~~(B) his or her household income is at or below 125% of the federal poverty guideline; or~~

12 ~~(C) his or her household income is above 125% of the federal poverty guideline and the~~
13 ~~applicant has recurring basic living expenses (as defined in RCW 10.101.010(4)(d)) that~~
14 ~~render him or her without the financial ability to pay the filing fees and other fees or costs~~
15 ~~for which a request for waiver is made.~~

16 ~~(D) other compelling circumstances exist that demonstrate an applicant's inability to~~
17 ~~pay filing fees and/or costs.~~

18 ~~(4) An individual represented by a QLSP, or an attorney working in conjunction with~~
19 ~~a QLSP that has screened and found the individual eligible for services, is presumptively~~
20 ~~deemed indigent when a declaration from counsel verifies representation and states that the~~
21 ~~individual was screened and found eligible for services.~~

GENERAL RULES (GR)

[New Rule - Revised WSBA Proposal December 2008]

RULE 34. WAIVER OF COURT AND CLERK'S FEES AND CHARGES IN CIVIL MATTERS ON THE BASIS OF INDIGENCY

1 ~~(5) As used in this rule, "qualified legal services provider" means those legal services~~
2 ~~providers that meet the definition of APR 8(e).~~

COMMENT

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4 The adoption of this Rule is rooted in the constitutional premise that every
5 level of court has the inherent authority to waive payment of filing fees and costs
6 on a case by case basis. Each court is responsible for the proper and impartial
7 administration of justice which includes ensuring that meaningful access to judicial
8 review is available to the poor as well as to those who can afford to pay.

9
10 **(b)** Nothing in this rule shall prohibit or delay action on the underlying petition upon
11 the court's approval of a waiver and presentation of an original petition may accompany the
12 initial fee waiver.

GENERAL RULES (GR)

RULE 34. WAIVER OF COURT AND CLERK'S FEES AND CHARGES IN CIVIL MATTERS ON THE BASIS OF INDIGENCY

(a) Any individual, on the basis of indigent status as defined herein, may seek a waiver of filing fees or costs from a judicial officer in the applicable trial court.

(1) The application for such a waiver may be made ex parte in writing or orally, accompanied by a copy of the complaint, petition or motion for which the applicant is seeking a fee waiver and a mandatory pattern form created by the Administrative Office of the Courts (AOC) whereby the applicant attests to his or her financial status or, in the case of an individual represented by a qualified legal services provider ("QLSP") or an attorney working in conjunction with a QLSP, a declaration of counsel stating that the individual was screened and found eligible by the QLSP.

(2) The court shall accept an application submitted in person, by mail and where authorized by local practices, electronic filing. The process for presentation of the application shall conform to local court and clerk processes for presenting ex parte orders to the court directly or via the clerk. All applications shall be presented to a judicial officer for consideration in a timely manner and in conformity with the local court's established procedures. There shall be no locally imposed fee for making an application. The applicant or applicant's attorney filing by mail, shall provide the court with a self-addressed stamped envelope for timely return of a conformed copy of the order.

(3) In any case where a party does not have a constitutional or statutory right to waiver of filing fees, the party must demonstrate in the motion or supporting affidavit or it must appear from the complaint or petition that the action has probable merit.

(4) Nothing in this rule, in the absence of a statutory or constitutional right to waiver of filing fees, requires the court to waive filing fees or other costs.

GENERAL RULES (GR)

RULE 34. WAIVER OF COURT AND CLERK'S FEES AND CHARGES IN CIVIL MATTERS ON THE BASIS OF INDIGENCY

COMMENT

This rule establishes the process by which judicial officers may waive civil filing fees and such other costs for which judicial officers have authority to grant a waiver.

(3) An individual who is not represented by a qualified legal services provider (as that term is defined below) or an attorney working in conjunction with a qualified legal services provider shall be determined to be indigent within the meaning of this rule if such person, on the basis of the information presented, establishes that:

(A) he or she is currently receiving assistance under a needs-based, means-tested assistance program such as the following:

- (i) Federal Temporary Assistance for Needy Families (TANF);
- (ii) State-provided general assistance for unemployable individuals (GA-U or GA-X);
- (iii) Federal Supplemental Security Income (SSI);
- (iv) Federal poverty-related veteran's benefits; or
- (v) Food Stamp Program (FSP); or

(B) his or her household income is at or below 125% of the federal poverty guideline; or

(C) his or her household income is above 125% of the federal poverty guideline and the applicant has recurring basic living expenses (as defined in RCW 10.101.010(4)(d)) that render

GENERAL RULES (GR)

RULE 34. WAIVER OF COURT AND CLERK'S FEES AND CHARGES IN CIVIL MATTERS ON THE BASIS OF INDIGENCY

him or her without the financial ability to pay the filing fees and other fees or costs for which a request for waiver is made.

(D) other compelling circumstances exist that demonstrate an applicant's inability to pay fees and/or costs.

(4) An individual represented by a QLSP, or an attorney working in conjunction with a QLSP that has screened and found the individual eligible for services, is presumptively deemed indigent when a declaration from counsel verifies representation and states that the individual was screened and found eligible for services.

(5) As used in this rule, "qualified legal services provider" means those legal services providers that meet the definition of APR 8(e).

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 and presentation of an original petition may accompany the initial fee waiver.