

WASHINGTON APPELLATE PROJECT

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August 16, 2016

To the Supreme Court:

The following organizations strongly support amending RAP 14.2.

A new, standardized mechanism for resolving requests for appellate costs in criminal cases will halt the imposition of legal financial obligations upon those who are unable to pay them. For most indigent appellants, these fees add at least \$3000 - \$5000 to existing LFO debt, with accumulating interest. Like all LFOs, appellate costs aggravate the difficulties of the reentry process. Because they are so substantial, they also chill due process by discouraging poor litigants from pursuing their appeals.

The amended rule does not, however, fully achieve the goal we believe the Supreme Court seeks. The proposed changes would create an unworkable process requiring indigent litigants to submit certified reports 10 days after a cost bill is filed, as described in RAP 14.5. Given the difficulties inherent in communicating with the majority of our clients who are homeless or incarcerated, this timeline is impracticable. And because this process will be necessary for virtually every indigent litigant, the rule will create considerable administrative burdens, lengthen case records, and drive up costs.

The language we propose comports with the intent of this rule change, while eliminating impractical procedures. Incorporating a presumption of indigence in accord with RAP 15.2(f) will encourage courts to focus resources on evaluating the ability to pay of litigants with significantly improved financial circumstances, of which there are likely to be very few. Once an evaluation is triggered, commissioners will be free to consider any offered evidence. This approach will avoid delays due to mandatory client-certified reports and facilitate the accurate, comprehensive evaluation of a litigant's ability to pay.

Our revision to RAP 14.2 will reduce unnecessary duplication of trial court efforts, expedite the evaluation process, standardize procedures across divisions, and give commissioners appropriate discretion to impose costs on litigants who have the means to pay appellate LFOs.

Proposed Language RAP 14.2

A commissioner or clerk of the appellate court will award costs to the party that substantially prevails on review, unless the appellate court directs otherwise in its decision terminating review, or unless the commissioner or clerk determines an adult offender does not have the current or likely future ability to pay such costs. An indigent offender shall be presumed unable to pay pursuant to RAP 15.2(f) unless there is a reasonable basis for believing the individual's financial circumstances have significantly improved. The commissioner or clerk may consider any evidence offered to determine the individual's current or future ability to pay. If there is no

substantially prevailing party on review, the commissioner or clerk will not award costs to any party. An award of costs will specify the party who must pay the award. In a criminal case involving an indigent juvenile or adult offender, an award of costs will apportion the money owed between the county and the State. A party who is a nominal party only will not be awarded costs and will not be required to pay costs. A "nominal party" is one who is named but has no real interest in the controversy.

Unless the parties agree that a cost bill will not be filed under RAP 14.2, the appellant in a case where an order of indigency has been entered should include in the record on review clerk's papers, exhibits, and the report of proceedings relating to the trial court's determination of the offender's current or likely future ability to pay discretionary legal financial obligations.

Rule 14.2 supersedes all formal and informal division orders establishing procedures for awarding costs.

Sincerely,

David Donnan
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Washington Appellate Project

Eric Nielsen
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King County Department of Public Defense

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Anne Benson
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Rick Eichsteadt
Center for Justice

Prachi Dave
Second Chances Project
American Civil Liberties Union of Washington

Marcy Bowers
Statewide Poverty Action Network

Nick Allen
Columbia Legal Services

John Tirpak
Unemployment Law Project

Paul Benz
Faith Action Network

Mauricio Ayon
Washington Can

Eric Gonzalez
Washington State Labor Council, AFL-CIO

Rich Stolz
One America

Layne Pavey
I Did the Time, Revive Reentry Services

Tracy, Mary

From: OFFICE RECEPTIONIST, CLERK
Sent: Tuesday, August 16, 2016 10:46 AM
To: Tracy, Mary
Subject: FW: Comments on RAP 14.2 by Washington Appellate Project, et al.
Attachments: RAP 14.2 Comments of Washington Appellate Project, et al..pdf

Supreme Court Clerk's Office

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From: Travis D. Stearns [mailto:Travis@washapp.org]
Sent: Tuesday, August 16, 2016 10:45 AM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Comments on RAP 14.2 by Washington Appellate Project, et al.

Thank you for considering the important issue of when to impose appellate court costs on indigent persons who lack the ability to pay additional legal financial obligations. Our comments are contained in the attached letter.

Yours,

Travis Stearns
Washington Appellate Project
www.washapp.org