



March 14, 2018

The Honorable Mary Fairhurst  
Chief Justice of the Washington Supreme Court  
Washington Supreme Court  
PO Box 40929 Olympia, WA 98504-0929

Re: Suggested Changes to Rule of Appeal of Decisions of Courts of Limited Jurisdiction 9.3

Dear Chief Justice Fairhurst:

The Public Defender Association (PDA) is submitting for the Washington Supreme Court's consideration the enclosed suggested changes to RALJ 9.3. As an organization that provides legal advice and representation to people unable to pay Legal Financial Obligations, we see first-hand the practices that keep people in cycles of poverty and with barriers to successful reentry. As the enclosed GR 9 cover sheet explains, the language we propose is very similar to language the Washington Supreme Court adopted when it amended RAP 14.2 effective January 31, 2017. The primary difference is that our suggested changes to RALJ 9.3 discuss costs in civil and criminal appeals separately. This is because members of the WSBA RALJ Subcommittee asked that we make clear that any suggested changes to RALJ 9.3 apply only to indigent criminal defendants. We are available to answer any questions that may arise during the review of this proposal.

Thank you for your time and consideration.

Sincerely,

Lisa Daugaard  
Director  
[Lisa.daugaard@defender.org](mailto:Lisa.daugaard@defender.org)

Tarra Simmons  
Skadden Fellow  
[tarra.simmons@defender.org](mailto:tarra.simmons@defender.org)

Enclosures

cc: The Honorable Charles W. Johnson, Chair of the Supreme Court Rules Committee  
Shannon Hinchcliffe, AOC

1 **GR 9 Cover Sheet**

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3 **Suggested Changes to RALJ 9.3**

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5 **(A) Name of Proponent:** Washington Defender Association

6 **(B) Spokesperson:** Magda Baker, Misdemeanor Resource Attorney, Washington Defender  
7 Association

8 **(C) Purpose:** The Washington Defender Association suggests changes to RALJ 9.3 that  
9 would require a superior court judge who decides a criminal RALJ appeal to consider the  
10 defendant's current or likely future ability to pay before imposing costs of appeal. The  
11 proposed language is similar to language the Washington Supreme Court added to RAP  
12 14.2 effective January 31, 2017, and would give indigent people convicted of  
13 misdemeanors the same ability to appeal their convictions without having to weigh  
14 financial considerations that people convicted of felonies currently have. It would also  
15 increase uniformity between the RALJs and the RAPs.

16 The Washington Supreme Court has recognized problems with legal financial obligations  
17 (LFOs) when courts impose them on indigent people. These problems include increased  
18 difficulty becoming a productive member of society after a conviction, questionable  
19 recoupment of money by the government, and unequal administration of LFOs. *See State*  
20 *v. Blazina*, 182 Wn.2d 827, 836-37 (2015). These obstacles apply to misdemeanors as  
21 well as felonies. Changing RALJ 9.3 to more closely mirror RAP 14.2 would decrease  
22 the LFOs courts must impose on indigent misdemeanants.

23 **(D) Hearing:** None recommended.

24 **(E) Expedited Consideration:** Expedited consideration is not requested.

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1 *[Suggested changes to RALJ 9.3(a) and (g)]*

2 **RALJ 9.3 COSTS**

3 **~~(a) Party Entitled to Costs in Civil and Criminal Appeals.~~**

4 **(1) Civil Appeals.** The party that substantially prevails on a civil appeal shall be awarded costs  
5 on appeal. Costs will be imposed against a party whose appeal is involuntarily dismissed. Costs  
6 will be awarded in a case dismissed by reason of a voluntary withdrawal of an appeal only if the  
7 superior court so directs at the time the order is entered permitting the voluntary withdrawal of  
8 the appeal.

9 **(2) Criminal Appeals.** The party that substantially prevails on a criminal appeal shall be  
10 awarded costs on appeal unless the superior court judge determines the criminal defendant does  
11 not have the current or likely future ability to pay such costs. Costs will be imposed against a  
12 party whose appeal is involuntarily dismissed unless that party is a criminal defendant and the  
13 superior court judge determines the criminal defendant does not have the current or likely future  
14 ability to pay such costs. When the trial court has entered an order that a criminal defendant is  
15 indigent for purposes of appeal, that finding of indigency remains in effect unless the superior  
16 court judge determines by a preponderance of the evidence that the criminal defendant's  
17 financial circumstances have significantly improved since the last determination of indigency.  
18 The superior court judge may consider any evidence offered to determine the individual's current  
19 or future ability to pay. Costs will be awarded in a case dismissed by reason of a voluntary  
20 withdrawal of an appeal only if the superior court so directs at the time the order is entered  
21 permitting the voluntary withdrawal of the appeal.

22 **(b) – (f)** [No changes.]

23 **(g) Reasonable Attorney Fees.** A request for reasonable attorney fees should not be made in the  
24 cost bill. The request should be made as provided in rule 11.2. In a criminal case attorney fees  
25 are subject to rule 9.3(a)(2).

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**Tracy, Mary**

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**From:** OFFICE RECEPTIONIST, CLERK  
**Sent:** Monday, March 26, 2018 8:41 AM  
**To:** Tracy, Mary  
**Subject:** FW: Proposed changes to RALJ 9.3  
**Attachments:** 9.3 Comments.pdf

Forwarding.

**From:** Tarra Simmons [mailto:tarra.simmons@defender.org]  
**Sent:** Saturday, March 24, 2018 10:29 AM  
**To:** OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>  
**Subject:** Proposed changes to RALJ 9.3

Dear Supreme Court Clerk,

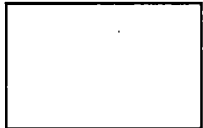
For your consideration to the proposed changes to RALJ 9.3, please accept the attached comments on behalf of the Public Defender Association.

Sincerely,

Tarra Simmons

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**Tarra Simmons**  
*Skadden Fellow*



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