

WASHINGTON STATE BAR ASSOCIATION

Office of the Executive Director
Paula c. Littlewood, Executive Director

October 4, 2017

The Honorable Charles Johnson, Chair
Washington State Supreme Court Rules Committee
P.O. Box 40929
Olympia, WA 98504-0929

Re: Suggested Amendments to RALJ 9.3

Dear Justice Johnson,

The Washington State Bar Association Council on Public Defense ("Council") respectfully submits this letter urging the Court to adopt the suggested amendments to Rule for Appeal of Decisions of Courts of Limited Jurisdiction ("RALJ") 9.3. These amendments are intended to align the RALJ cost provisions with other recent amendments to appellate cost provisions adopted by the Court. This comment by the Council on the suggested amendments has been approved as allowed by the Washington State Bar Association's ("WSBA's") policy governing comments on legislation and court rules. The comments are solely those of the Council on Public Defense.

The Council is comprised of representatives of the public and private defense bar, current and former prosecutors, judicial officers, public officials, and at-large members, and has the charge of addressing issues affecting the quality of access to public defense services.

RALJ 9.3 governs the procedure for awarding costs for cases appealed from courts of limited jurisdiction. Currently, the rule provides that "the party that substantially prevails on appeal shall be awarded costs on appeal." RALJ 9.3(a). Thus, courts are precluded from considering a defendant's ability to pay before awarding costs to the substantially prevailing party. Consequently, persons who are indigent are often ordered to pay appellate costs despite lacking any current or likely future ability to pay.

Magda Baker of the Washington Defender Association (WDA) submitted suggested amendments to RALJ 9.3 providing that,

The party that substantially prevails on a criminal appeal shall be awarded costs on appeal unless the superior court judge determines the criminal defendant does not have the current or likely future ability to pay such costs. Costs will be imposed against a party whose appeal is involuntarily dismissed unless that party is a criminal defendant and the superior court judge determines the



criminal defendant does not have the current or likely future ability to pay such costs. When the trial court has entered an order that a criminal defendant is indigent for purposes of appeal, that finding of indigency remains in effect unless the superior court judge determines by a preponderance of the evidence that the criminal defendant's financial circumstances have significantly improved since the last determination of indigency. The superior court judge may consider any evidence offered to determine the individual's current or future ability to pay. Costs will be awarded in a case dismissed by reason of a voluntary withdrawal of an appeal only if the superior court so directs at the time the order is entered permitting the voluntary withdrawal of the appeal.

RALJ 9.3 (Suggested amendments in italics).

Under the suggested amendments, costs of appeal in civil cases would continue to be awarded to the substantially prevailing party without any consideration of ability to pay.

Given the Court's recent work on appellate costs, we believe it is appropriately situated to consider the suggested amendments to RALJ 9.3. This past year, the Court addressed appellate costs for appeals from the Superior Court when it adopted amendments to RAP 14.2. That rule, like the current version of RALJ 9.3, previously required the commissioner or clerk of the court to award appellate costs to the substantially prevailing party on review without consideration of the defendant's ability to pay. The amended language adopted by the Court largely mirrored the suggested language in RALJ 9.3 by requiring consideration of the defendant's ability to pay and the presumption of indigence throughout the appeal.

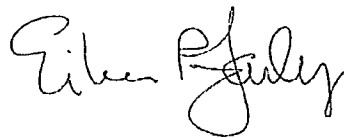
The Council believes these changes are necessary to increase access to justice within the courts, protect indigent defendants from unnecessary financial burdens, and promote the fair and proportional imposition of appellate costs.

Thank you in advance for your consideration of the CPD's request and the suggested changes to RALJ 9.3.

Sincerely,



Paula Littlewood
Executive Director



Eileen Farley
Council on Public Defense Chair

cc: President Brad Furlong, WSBA Board of Governors
Nick Allen, Member, Council on Public Defense and LFO Subcommittee

Tracy, Mary

From: OFFICE RECEPTIONIST, CLERK
Sent: Tuesday, January 30, 2018 11:03 AM
To: Tracy, Mary
Subject: FW: RALJ 9.3 comments
Attachments: 10-04-17 Letter to C Johnson re RALJ 9.3.pdf

Forwarding.

From: Bonnie Sterken [mailto:bonnies@wsba.org]
Sent: Tuesday, January 30, 2018 10:56 AM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Cc: Diana Singleton <dianas@wsba.org>
Subject: RALJ 9.3 comments

Good morning,

Attached, please find comments to the suggested changes to RALJ 9.3.

Thank you,



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Pronouns: She/Her

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