RAP RULE 15.2
DETERMINATION OF INDIGENCY AND RIGHTS OF INDIGENT PARTY

(a) Motion for Order of Indigency. A party seeking review in the Court of Appeals or the Supreme Court partially or wholly at public expense must move in the trial court for an order of indigency. The party shall submit a Motion for Order of Indigency in the form prescribed by the Office of Public Defense.

(b) Action by the Trial Court. The trial court shall determine the indigency, if any, of the party seeking review at public expense. The determination shall be made in written findings after a hearing, if circumstances warrant, or by reevaluating any order of indigency previously entered by the trial court. The court:

(1) shall grant the motion for an order of indigency if the party seeking public funds is unable by reason of poverty to pay for all or some of the expenses for appellate review of:

(a) criminal prosecutions or juvenile offense proceedings meeting the requirements of RCW 10.73.150,

(b) dependency and termination cases under RCW 13.34,

(c) commitment proceedings under RCW 71.05 and 71.09,

(d) civil contempt cases directing incarceration of the contemner,

(e) orders denying petitions for writ of habeas corpus under RCW 7.36, including attorneys' fees upon a showing of extraordinary circumstances, and

(f) any other case in which the party has a constitutional or statutory right to counsel at all stages of the proceeding; or

(2) shall deny the motion for an order of indigency if a party has adequate means to pay all of the expenses of review. The order denying the motion for an order of indigency shall contain findings designating the funds or source of funds available to the party to pay all of the expenses of review.

(c) Other Cases. In cases not governed by subsection (b) of this rule, the trial court shall determine in written findings the indigency, if any, of the party seeking review. The party must demonstrate in the motion or the supporting affidavit that the issues the party wants reviewed have probable merit and that the party has a constitutional or statutory right to review partially or wholly at public expense.

(1) Party Not Indigent. The trial court shall deny the motion if a party has adequate means to pay all of the expenses of review. The order denying the motion for an order of indigency shall contain findings designating the funds or source of funds available to the party to pay all of the expenses of review.

(2) Party Indigent. If the trial court finds the party seeking review is unable by reason of poverty to pay for all or some of the expenses of appellate review, the trial court shall enter such findings, which shall be forwarded to the Supreme Court for consideration, pursuant to section (d) of this rule. The trial court shall determine in those findings the portion of the records necessary for review and the amount, if any, the party is able to contribute toward the expense of review. The findings shall conclude with an order to the clerk of the trial court to promptly transmit to the Supreme Court, without charge to the moving party, the findings of indigency, the affidavit in support of the motion, and all other papers submitted in support of or in opposition to the motion. The trial court clerk shall promptly transmit to the Supreme Court the papers designated in the findings of indigency.

(d) Action by Supreme Court. If findings of indigency and other papers relating to the motion for an order of indigency are transmitted to the Supreme Court, the Supreme Court will determine whether an order of indigency in that case should be entered by the superior court. The determination will be made by a department of the Supreme Court on a regular motion day without oral argument and based only on the papers transmitted to the Supreme Court by the trial court clerk, unless the Supreme Court directs otherwise. If the Supreme Court determines that the party is seeking review in good faith, that an issue of probable merit is presented, and that the party is entitled to review partially or wholly at public expense, the Supreme Court will enter an order directing the trial court to enter an order of indigency. In all other cases, the Supreme Court will enter an order denying the party's motion for an order of indigency. The clerk of the appellate court will transmit a copy of the order to the clerk of the trial court and notify all parties of the decision of the Supreme Court.

(e) Order of Indigency. An order of indigency shall designate the items of

expense which are to be paid with public funds and, where appropriate, the items of expense to be paid by a party or the amount which the party must contribute toward the expense of review. The order shall designate the extent to which public funds are to be used for payment of the expense of the record on review, limited to those parts of the record reasonably necessary to review issues argued in good faith. The order of indigency must be transmitted to the appellate court as a part of the record on review.

(f) Continued Indigency Presumed. A party and counsel for the party who has been granted an order of indigency must bring to the attention of the trial court any significant improvement during review in the financial condition of the party. The appellate court will give a party the benefits of an order of indigency throughout the review unless the trial court finds the party's financial condition has improved to the extent that the party is no longer indigent.

(g) Appointment and Withdrawal of Counsel in Appellate Court. The appellate court shall determine questions relating to the appointment and withdrawal of counsel for an indigent party on review. The Office of Public Defense shall, in accordance with its indigent appellate representation policies, provide the names of indigent appellate counsel to the appeallate courts on a case-by-case basis. If trial counsel is not appointed, trial counsel must assist counsel appointed for review in preparing the record.

(h) Review of Order or Finding of Indigency. A party in a case of a type listed in section (b)(1) of this rule may seek review of an order of indigency or an order denying an order of indigency entered by a trial court. A party may also seek review of written findings under section (c)(1) of this rule that the party is not indigent. Review must be sought by a motion for discretionary review.

(i) Withdrawal of Counsel in Appellate Court. If counsel can find no basis for a good faith argument on review, counsel should file a motion in the appellate court to withdraw as counsel for the indigent as provided in rule 18.3(a).

[Amended December 2, 1999; December 5, 2002; Amended September 9, 2004 with delayed implementation date of July 1, 2005; amended effective January 3, 2006; amended effective September 1, 2010]