

Faulk, Camilla

From: Gail R. Smith [gsmith@jonesandsmith.com]
Sent: Wednesday, April 30, 2008 3:08 PM
To: Faulk, Camilla
Subject: Proposed Court Rule GR 34 - In Forma Pauperis Rule

Dear Justice Johnson:

I am writing in support of the adoption of Proposed Rule GR 34. I am writing in my capacity as an attorney who has provided pro bono services through the Skagit County Volunteer Lawyer Program for 20 years. Although I also serve on the Steering Committee of the Skagit County Volunteer Lawyer Program and am a member of the Washington State Bar Association Pro Bono and Legal Aid Committee, the comments herein are my own thoughts and observations.

I believe the Proposed GR 34 will serve as a valuable tool to assist with the recruiting of volunteer attorneys. Most Skagit County attorneys, when directly approached with a request to volunteer their time and services in pro bono representation are more than happy to assist. We want, however, for our efforts to be devoted to providing legal representation rather than spending time obtaining IFP Orders that are, for practical purposes, pro forma. All clients of the Volunteer Lawyer Program are screened either through CLEAR or by the Volunteer Lawyer Program. The standards employed for eligibility under these programs unquestionably, constitute grounds for issuance of an IFP Order.

When I first started private practice in Skagit County over 25 years ago I would, on occasion, request that the client for whom I was providing pro bono services simply pay the filing fee rather than spend attorney time preparing the documents and obtaining the ex parte Order. I would no longer even consider such an alternative. The filing fee and surcharges have increased to such a level that to make such a request would have the net result of denying the client access to the Courts.

It is easy to lose sight of the fact that the filing fee, and for that matter the various surcharges imposed, constitute an appreciable portion of the income of many of these clients. It is accordingly important that the Rule provides for the waiver not only of the filing fee, but also of the other associated fees.

I believe the Proposed Rule does not, as suggested by some, improperly transfer decision making from the Judges to the Clerk's Office. The Clerks are not asked to exercise any discretion whatsoever. The Proposed Rule only instructs them to accept for filing any new pleadings which are accompanied by a Declaration from an attorney working through a QLSP that the claimant has been found to be financially eligible for the program. The Clerk's Office already performs this same ministerial function in a variety of other settings. For instance, the Clerk's Office is directed, by statute (RCW 11.88.030(2)(b)), to waive the payment of attorney fees in a Guardianship proceeding when the alleged incapacitated person has assets of less than \$3,000.00. Similarly, the Clerk is directed to waive filing fees in the appeal of a denial unemployment compensation benefits (RCW 50.32.110), relinquishment of parental rights (RCW 36.18.020), actions initiated by the Insurance Commissioner (RCW 48.31.230), eminent domain actions initiated by School Districts (RCW 8.16.150), child support actions initiated by the State of Washington (RCW 26.18.040(2)), and paternity actions initiated by Department of Social and Health Services (RCW 74.20.300). A Clerk would not be exercising any greater "discretion" when accepting a filing supported by a QLSP volunteer attorney than is exercised in each of these instances.

Existing Court Rules already direct the Clerk's Office to take action in other settings without prior judicial review. GR 22 provides for the automatic sealing of some Court documents without prior judicial review.

Accepting a filing which is accompanied by a Declaration of the volunteer lawyer on behalf of the indigent claimant without prior judicial review is not significantly different in scope or nature.

A number of Superior Courts have also adopted Local Rules which call for automatic actions to be taken by the Clerk's Office without further judicial review. Spokane, Whatcom, Island, Skagit, San Juan, Benton, and Franklin Counties have each adopted Local Rules which provide for the automatic issuance of a Restraining Order, upon the Court's Motion, in all Petitions for Dissolution, Legal Separation, or Invalidity. The Clerks in these Counties automatically provide the Temporary Restraining Order upon the initial filing.

In all of these instances the statutes, Court Rules, and Local Court Rules provide for the Clerk's Offices to implement, through a ministerial action, a function or activity normally exercised by the Courts.

The Proposed Rule will provide a uniform standard for In Forma Pauperis Petitions throughout the State. There has, historically been, a great variance in the standards imposed between Judges, let alone between Counties. Readily accessible information as to what standard is being employed has been lacking. The standards set forth in the Proposed Rule are very concise, understandable, and easily applied.

I strongly encourage the Court to adopt the proposed GR 34.

Sincerely,

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