

The Court of Appeals  
of the  
State of Washington



KEVIN M. KORSMO, JUDGE  
NORTH 500 CEDAR STREET  
SPOKANE, WASHINGTON 99201

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August 1, 2016

The Honorable Barbara Madsen  
Chief Justice of the Washington State Supreme Court  
Temple of Justice  
PO Box 41174  
Olympia, WA 98504-1174

Re: Proposed Amendment to RAP 14.2

Dear Chief Justice Madsen:

On behalf of the Court of Appeals Rules Committee, I am writing to request that further revisions be made to the proposed amendment to RAP 14.2 that has been published for comment.

At the behest of the presiding chief judge, our committee has considered the published proposal via e-mail. The rule amendment addresses two different aspects of the cost award process: (1) judicial discretion to resolve costs in the opinion; and (2) clerk/commissioner rulings on cost bill objections. To facilitate those rulings, the amendment contemplates the filing of a "report as to continued indigency." We have two concerns regarding the report form.

One concern involves an ambiguity concerning the certification of the report form. It is unclear whether an attorney could file a form on behalf of the client or if the indigent adult offender is required to certify the form. We would recommend that the certification come from the offender and suggest that on line 18 of the proposed rule the words "signed by the indigent offender" be placed after the word "certification."

The other concern that we desire to share with you involves the timing of the filing of the report. The rule does not indicate when the report form must be filed. This is problematic both for the timely issuance of a panel opinion and for a timely ruling on a cost bill. The rule should be amended in some manner to establish a filing date. One suggestion that would address the cost bill process is that the form should be filed within a specific number of days – perhaps 30 or 60 -- from the filing of the objection to the cost bill.

Another approach, that seeks to provide the report form to the panel of judges for timely consideration, was recently adopted by Division Three. It directs that the certification form, signed by the offender under penalty of perjury, be filed within 60 days of a brief of appellant objecting to a cost award. I have enclosed a copy of Division Three's general rule and

accompanying report form, both drafted by Judge Siddoway with input from her colleagues, for your consideration.

These are but two possible approaches to the timing issue and, undoubtedly, others could be devised. Whether the court desires to adopt one of these approaches, or some other approach, we do believe it is important that practitioners understand when they need to provide information to the appellate court. It is equally important that the appellate courts receive the information in a timely manner to facilitate prompt resolution of all cases. We believe that adopting a specific timeframe in the rule will assist both bench and bar.

Thank you for your consideration of our proposals. We remain ready to answer any questions that may arise.

Sincerely,

A handwritten signature in blue ink, appearing to read 'K. Korsmo', is written over the printed name.

Kevin M. Korsmo  
Chair, Court of Appeals Rules Committee

Enclosures

cc: The Honorable Charles W. Johnson, Chair of the Supreme Court Rules Committee  
The Honorable Lisa R. Worswick, Presiding Chief Judge Washington Court of Appeals



## General Orders of Division III

### IN RE THE MATTER OF COURT ADMINISTRATION ORDER RE; REQUEST TO DENY COST AWARD

*The Court of Appeals  
of the  
State of Washington  
Division III*

IN RE THE MATTER OF COURT	)	GENERAL COURT ORDER
ADMINISTRATION ORDER RE:	)	
REQUEST TO DENY COST AWARD	)	
_____	)	
	)	

For an adult offender convicted of an offense who wishes the court to exercise its discretion not to award costs in the event the State substantially prevails on appeal, effective immediately,

#### IT IS HEREBY ORDERED:

- (1) Under RAP 14.2, the commissioner or clerk will award costs to the party that substantially prevails on review, "unless the appellate court directs otherwise in its decision terminating review." In most cases, the decision terminating review (which is defined in RAP 12.3 (a)) is the court's decision on the merits.
- (2) An adult offender convicted of an offense who wishes this court to exercise its discretion not to award costs in the event the State substantially prevails on appeal must make the request and provide argument in support of the request, together with citations to legal authority and references to relevant parts of the record, in the offender's opening brief or by motion as provided in Title 17 of the Rules on Appeal. Any such motion must be filed and served no later than 60 days following the filing of the appellant's opening brief. RAP 17.3 and 17.4 apply to the motion's content, filing and service and to the submission and service of any answer or reply.
- (3) If inability to pay is a factor alleged to support the request, then the offender should include in the record on appeal the clerk's papers, exhibits, and the report of proceedings relating to the trial court's determination of indigency and the offender's current or likely ability to pay discretionary financial obligations. The offender shall also file a report as to continued indigency and likely future inability to pay an award of costs on the form set forth below. The original report, signed by the offender under penalty of perjury, shall be filed with the court and a copy shall be served on the respondent no later than 60 days following the filing of the appellant's opening brief.
- (4) The panel issuing the opinion shall address the request or decide the motion in the opinion. Its decision may direct the commissioner or clerk to award costs subject to criteria identified by the panel.

Dated this 10<sup>th</sup> day of June, 2016

FOR THE COURT:

GEORGE B.FEARING  
CHIEF JUDGE

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REPORT AS TO CONTINUED INDIGENCY

(in support of motion or request that the court exercise discretion  
not to award costs on appeal)

Please fill out this report to the best of your ability. While you are not required to answer all of the questions, complete information will help the court determine whether to deny costs on appeal to the State, should it prevail.

I, \_\_\_\_\_ certify as follows:

1. That I own:

- ☐ a. No real property
- ☐ b. Real property valued at \$\_\_\_\_\_.
- ☐ c. Real property valued at \$\_\_\_\_\_, on which I am making monthly payments of \$\_\_\_\_\_ for the next \_\_\_\_\_ months/years (circle one).

2. That I own:

- ☐ a. No personal property other than my personal effects
- ☐ b. Personal property (automobile, money, inmate account, motors, tools, etc.) valued at \$\_\_\_\_\_.
- ☐ c. Personal property valued at \$\_\_\_\_\_, on which I am making monthly payments of \$\_\_\_\_\_ for the next \_\_\_\_\_ months/years (circle one).

3. That I have the following income:

- ☐ a. No income from any source.
- ☐ b. Income from employment: \$\_\_\_\_\_ per month.
- ☐ b. Income of \$\_\_\_\_\_ per month from the following public benefits:

- ☐ Basic Food (SNAP) ☐ SSI ☐ Medicaid ☐ Pregnant Women Assistance Benefits
- ☐ Poverty-Related Veterans' Benefits ☐ Temporary Assistance for Needy Families
- ☐ Refugee Settlement Benefits ☐ Aged, Blind or Disabled Assistance Program
- ☐ Other: \_\_\_\_\_

4. That I have:

- ☐ a. The following debts outstanding:

Approximate amount  
owed:

Credit cards, personal loans, or other installment debt:	\$ _____
Legal financial obligations (LFOs):	\$ _____
Medical care debt:	\$ _____
Child support arrears:	\$ _____
Other debt:	\$ _____

Approximate total monthly debt payments: \$ \_\_\_\_\_

( ) b. No debts.

5. That I am without other means to pay costs if the State prevails on appeal and desire that the court exercise discretion to deny costs.

6. That I can pay the following amount toward costs if awarded to the State:  
\$ \_\_\_\_\_.

7. That I am \_\_\_\_\_ years of age at the time of this declaration.

8. That the highest level of education I have completed is: \_\_\_\_\_.

9. That I have held the following jobs over the past 3 years:

Employer/job title	Hours per week	Pay per week	Months at job

10. That I have received the following job training over the past three years: \_\_\_\_\_

11. That I have the following mental or physical disabilities that may interfere with my ability to secure future employment: \_\_\_\_\_

12. That I am financially responsible for the following dependents (children, spouse, parent, etc.):  
\_\_\_\_\_  
\_\_\_\_\_

I, \_\_\_\_\_, certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

\_\_\_\_\_  
Date and Place

\_\_\_\_\_  
Signature of (Defendant) (Respondent) (Petitioner)