



WSBA

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August 19, 2016

Hon. Charles W. Johnson
Washington Supreme Court
PO Box 40929
Olympia, WA 98504

RE: WSBA Council on Public Defense Comment on Proposed Amendment to RAP 14.2

Dear Justice Johnson,

I am writing to share with you the enclosed comment from the Washington State Bar Association's Council on Public Defense regarding proposed amendments to RAP 14.2. These comments have been approved through the WSBA's legislative and court rule comment policy and the comments are solely those of the Council on Public Defense.

The WSBA Council on Public Defense unites prosecutors, members of the public and private defense bar, the bench, elected officials and the public to address new and recurring issues impacting the public defense system and the public that depends upon it.

The Council appreciates the Court's consideration of this comment.

Sincerely,

Paula C. Littlewood

Encl.

cc: President William Hyslop, WSBA Board of Governors
Brooks Holland, Chair, Council on Public Defense
Shannon Hinchcliff, AOC

Working Together to Champion Justice



Council on Public Defense Comment on Proposed Amendment to RAP 14.2

The Washington State Bar Association Council on Public Defense ("Council") respectfully submits this comment to the proposed amendment to RAP 14.2. 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 and access to indigent defense services.

The WSBA Council on Public Defense supports the comment and suggested amendments submitted by the Washington Appellate Project, which provides that in assessing costs, the appellate court should maintain a presumption of indigence with indigent defendants, absent evidence to believe the individual's financial circumstances have significantly improved.

Proposed Language RAP 14.2

A commissioner or clerk of the appellate court will award costs to the party that substantially prevails on review, unless the appellate court directs otherwise in its decision terminating review, or unless the commissioner or clerk determines an adult offender does not have the current or likely future ability to pay such costs. An indigent offender shall be presumed unable to pay pursuant to RAP 15.2(f) unless there is a reasonable basis for believing the individual's financial circumstances have significantly improved. The commissioner or clerk may consider any evidence offered to determine the individual's current or future ability to pay. If there is no substantially prevailing party on review, the commissioner or clerk will not award costs to any party. An award of costs will specify the party who must pay the award. In a criminal case involving an indigent juvenile or adult offender, an award of costs will apportion the money owed between the county and the State. A party who is a nominal party only will not be awarded costs and will not be required to pay costs. A "nominal party" is one who is named but has no real interest in the controversy.

Unless the parties agree that a cost bill will not be filed under RAP 14.2, the appellant in a case where an order of indigency has been entered should include in the record on review clerk's papers, exhibits, and the report of proceedings relating to the trial court's determination of the offender's current or likely future ability to pay discretionary legal financial obligations.

Rule 14.2 supersedes all formal and informal division orders establishing procedures for awarding costs.