

Dear Clerk of the Supreme Court of Washington,

We write to generally support GR 39, but to also suggest modifications:

First, we recommend that GR 39 include language limiting the ability of courts to collect legal financial obligations (LFOs) from individuals receiving public benefits and to require courts to remove such LFOs from any contracted collection agencies once they become aware of the debtor's status as a public benefit recipient. This recommendation is in line with current caselaw—see: *City of Richland v. Wakefield*, 186 Wash. 2d 596 (2016) (holding that costs must be waived if they create a manifest hardship for an indigent defendant and that a court may not order an individual to pay LFOs from a public benefit); and *State v. Catling*, 193 Wash. 2d 252 (2019) (prohibiting sentencing courts from imposing mandatory \$200 filing fees on indigent defendants and the use of Social Security moneys for debt retirement).

Ideally, additional language in the rule would also reduce as far as possible the degree to which individuals have to appear in court or provide additional documentation to the court to prove that they are still receiving benefits or still experiencing the conditions that entitle them to those benefits, as these conditions are oftentimes permanent. This would not only increase judicial efficiency, but also further protect individuals seeking public benefits as directed by the Supreme Court's decisions in *Wakefield* and *Catling*. The language in the rule should also mandate that LFOs are not sent to collection agencies at any point in time to ensure that courts do not cause undue harm in seeking to collect LFOs from those who cannot pay them.

Second, as to proposed subsection (f), we recommend that GR 39 limit the ability of prosecuting attorneys to require hearings on all petitions presented to the court. The ability for prosecutors to *en masse* call for remission hearings in all cases in their jurisdiction would entirely negate the spirit and functionality of the proposed rule. This poses serious access to justice issues and will likely result in “justice by geography” where individuals in jurisdictions with prosecutors who understand the importance of reducing reentry barriers will be more likely to get relief than individuals in jurisdictions in which prosecutors are not as inclined to recognize this importance of reducing these barriers. Additionally, for the petitions prosecuting attorneys do choose to request hearings for, we recommend that language in proposed subsection (f) reflect the ability for petitioners to appear telephonically or by video.

Creating equitable access to relief from LFOs is paramount. Allowing a prosecutor to dictate when and where an indigent individual should appear militates against the access to justice principles underlying this proposed rule. The drafted language in subsection g) remedies this barrier and would provide access to justice for individuals that long outlives the short-term COVID-19 guidelines and long-term reform of how our courts support those who ask for relief.

Third, we recommend adding provisions to subsection (d) to ensure that the GR 39 process is meaningfully available to *pro se* requesters. Such provisions should require that the pattern form be provided in multiple languages that are commonly spoken in Washington (not only in English), that courts make the form and process clearly available online and in courthouses, and that courts accept nonconforming submissions and assist with proper redactions of confidential and private information for *pro se* requesters.

We broadly support the proposed rule and applaud its potential to increase access to justice and make LFO relief easier for individuals across Washington. We suggest the above modifications to make such relief more accessible to people throughout the state, regardless of county, to make such relief more accessible to *pro se* requestors, and to ensure that the courts do not expend undue resources or cause undue harm in seeking to collect LFOs from people unable to pay them.

Sincerely,

Prachi Dave, Policy and Advocacy Director,
Catherine Bentley, Tony Orange Fellow,
Rebecca Fish, Staff Attorney,
Public Defender Association

Nick Allen, Deputy Director of Advocacy,
Columbia Legal Services

Tarra Simmons, Director,
Civil Survival Project

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From: Catherine Bentley [mailto:catherine.bentley@defender.org]
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Dear Clerk of the Supreme Court of Washington,

Please see the attached comment of Public Defender Association, Civil Survival, and Colombia Legal Services on GR 39. Thank you for accepting comments on this exciting development.

Thank you,
Catherine Bentley

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Catherine Bentley
Pronouns: she, her, hers
Staff Attorney, *Tony Orange Fellowship*

110 Prefontaine Place S, Suite 502
Seattle, WA 98104
Phone: (206) 627-0153
catherine.bentley@defender.org
Website: www.defender.org