



PO Box 2463, Mount Vernon, WA 98273 | (360) 230-8101 | www.SkagitLegalAid.org

May 25, 2023

Skagit County Superior Court
Address: 205 W Kincaid St,
Mount Vernon, Washington 98273

Re: Proposed Local Rule Changes

Dear Skagit County Superior Court,

Skagit Legal Aid would greatly appreciate the Court to consider the following changes to its local rules affecting unlawful detainer actions, indigency fee waivers, and legal financial obligations.

I have attached the following documents:

- New Local Court Rule 39;
- Revisions to Local Court Rule 31 and New Local Court Rule 34;
- Revisions to Local Rule 8 - redlined copy;
- Revisions to Local Rule 8 - clean copy

We would be happy to discuss these proposals at any time.

If you have any additional questions or concerns, please contact Skagit Legal Aid at (360) 230-8101.

Sincerely Yours,

Skagit Legal Aid

Part II.

RULE 31

(A) Documents That Shall Not Be E-Filed. The following documents must be filed in paper form and not e-filed:

- (1) Certified records of proceedings for purposes of appeal;
- (2) Documents of foreign governments under official seal including foreign and out of state adoption documents and judgments;
- (3) Administrative Law Review (ALR) Petitions;
- (4) Interpleader or Surplus Funds Petitions;
- (5) Documents presented for filing during a court hearing or trial including documents submitted for in-camera review;
- ~~(6) New cases or fee-based documents filed with an Order to Waive Fees or in accordance with GR-34;~~
- ~~(67)~~ Comments: Negotiable instruments, exhibits, and trial notebooks are examples of items that are not to be filed in the court file either in paper form or by e-filing.

NEW LOCAL RULE 34 - Indigency Fee Waivers

- (a) Indigent litigants may seek a waiver of fees and surcharges, accompanied by the mandatory pattern form created by the Administrative Office of the Courts (AOC). The Court shall maintain and make available free copies of the standardized AOC forms.
- (b) An individual represented by a Qualified Legal Services Provider ("QLSP"), or an attorney working in conjunction with a QLSP that has screened and found the individual eligible for services, is presumptively deemed indigent.
- (c) The original petition, complaint, or other applicable filing may accompany the initial fee waiver. Nothing in this rule shall prohibit or delay action on the underlying action.
- (d) The original petition and the fee waiver request may be e-filed if the individual is represented by a QLSP, or an attorney working in conjunction with a QLSP.
- (e) The process for presentation of the application shall conform to SCLR 7(f) and clerk processes not inconsistent with this Rule.

Commented [1]: The current version of this Rule unfairly impacts individuals who are represented by attorneys with Qualified Legal Services Providers. Pursuant to GR 34(a)(4) "An individual represented by a QLSP, or an attorney working in conjunction with a QLSP that has screened and found the individual eligible for services, is presumptively deemed indigent when a declaration from counsel verifies representation and states that the individual was screened and found eligible for services."

- (i) All applications shall be presented to a judicial officer for consideration in a timely manner and in conformity with the clerk's procedures.
- (ii) There shall be no locally imposed fee for making an application or presentation of the fee waiver order.
- (iii) No appearance by the litigant or the attorney working in conjunction with a QLSP shall be required at any ex parte hearing to present the fee waiver.
- (f) This rule applies to mandatory fees and surcharges that have been lawfully established, the payment of which is a condition precedent to a litigant's ability to secure access to judicial relief. These include but are not limited to the following:
 - (i) Legislatively established filing fees and surcharges (e.g., RCW 36.18.020(5));
 - (ii) Family court facilitator surcharges established pursuant to RCW 26.12.240, family court service charges established pursuant to RCW 26.12.260, and domestic violence prevention surcharges established pursuant to RCW 36.18.016(2)(b)); and
 - (iii) Other lawfully established fees and surcharges which must be paid as a condition of securing access to judicial relief.

NEW - Local Rule 39 - Legal Financial Obligations and Vacating Prior Convictions

- (a) At the time of sentencing, the court shall determine what legal financial obligations (“LFOs”) should be imposed or waived, and if it should impose interest on any restitution the court orders following a defendant’s release from incarceration. The court shall inquire into and consider the following factors:
1. Whether the defendant is indigent as defined by RCW 10.101.010(3) or general rule 34;
 2. Whether the defendant’s income is protected from garnishment or other legal processes to satisfy a debt. Types of protected income can include Social Security benefits, child support benefits, and benefits from the Department of Veterans Affairs. *City of Richland v. Wakefield*, 186 Wn.2d 596, 380 P.3d 459 (2016); *State v. Catling*, 193 Wn.2d 252, 438 P.3d 1174 (2019).
 3. The defendant’s available funds, as defined in RCW 10.010.010(2), and other liabilities including child support and other legal financial obligations;
 4. Whether the defendant is homeless;
 5. Whether the defendant is mentally ill, as defined in RCW 71.24.025;
 6. Whether the defendant is represented by a Public Defender or other counsel assigned through the Office of Assigned Counsel, or a Qualified Legal Services Provider (QLSP);
 7. The victim’s input, in any, as it related to financial hardship caused to the victim if interest is not imposed;
 8. In juvenile court cases, if restitution should be joint and severable or divided equally among co-respondents pursuant to RCW 13.40.190;
 9. Any other information the court believes, in the interest of justice, relates to not imposing interest on restitution;
 10. The Court takes judicial notice of, and recommends parties consult, the LFO Calculator, created by the Washington State Supreme Court Minority and Justice Commission, to help judges set appropriate levels of LFOs. There will be a

rebuttable presumption that information contained in the LFO Calculator is accurate. The calculator can be found at <https://beta.lfocalculator.org/>.¹

- (b) If restitution is ordered, the court shall set a minimum monthly payment that the defendant is required to make towards any restitution that is owed. The court shall take into consideration the total amount owed, the defendant's ability to pay as laid out above in section (a), and any assets that the defendant may have. The court shall not impose interest on restitution during a defendant's period of incarceration.
- (c) At any time, a defendant may seek relief from LFOs, including restitution and restitution interest as permitted by applicable law using the standardized form(s) as maintained by the Administrative Office of the Courts ("AOC") pursuant to General Rule 39.
 - 1. The court shall consider the same factors as laid out above in section (a).
 - 2. The judicial officer may consider petitions ex parte ten (10) business days from the date of filing for applications seeking relief solely based on the following:
 - i. Expiration of jurisdiction to collect LFOs; and/or
 - ii. Non-restitution based LFOs and non-restitution interest;
 - 3. A courtesy copy of petitions requesting relief as described in (c)(1) shall be provided to the prosecuting attorney. Copies may be in electronic form.
 - 4. All petitions seeking relief from restitution or restitution interest shall be served to the prosecuting attorney. The prosecuting attorney shall review the petition within twenty-one (21) days of receipt of service.
 - a. If the prosecuting attorney objects to the petition, the petition shall be noted for a hearing on the criminal motion docket.
 - b. If the prosecuting attorney agrees to the petition, the petition may be granted ex parte.
 - 5. The prosecuting attorney shall make reasonable efforts to notify any applicable victim(s).

¹ The LFO Calculator is compatible with most current versions of the following browsers: Microsoft Edge, Google Chrome, Mozilla Firefox, and Apple Safari. It is not compatible with Explorer.

(d) If the court completely waives a defendant's remaining LFOs, the Court shall issue a certificate of discharge if the clerk has been previously notified that the defendant has completed all of the requirements of the sentence except their legal financial obligations in accordance with RCW 9.94A.637. The certificate of discharge is effective on the date that the defendant completes all of the conditions of their sentence.

(e) At any time allowed by law, a defendant may request to vacate a prior eligible conviction using the standardized form(s) as maintained by AOC. The motion shall be served to the prosecuting attorney. The prosecuting attorney shall review the petition within twenty-one (21) days of receipt of service.

1. If the prosecuting attorney objects to the petition, the petition shall be noted for a hearing on the criminal motion docket.
2. If the prosecuting attorney agrees to the petition, the petition may be granted ex parte.