



FORMAL WRITTEN COMMENT FROM PRIVATE DEFENSE BAR
RE: SCLGR 30

The undersigned members of the private defense bar, who have all approved their names to appear on this electronic document, have grave concerns about SCLGR 30, even in its newly amended format (May 6, 2021).

We recognize that one of the primary issues (the mandatory nature of eFiling) was addressed and that we are now no longer required to eFile, but rather are “encouraged” to do so. We also recognize that if we choose to do so, we will still end up being charged \$5 per “envelope.”

We are excited about the possibility of e-filing and appreciate the Court’s diligence in helping create this system. However, the undersigned counsel believe the provision imposing a filing fee of \$5 per envelope violates Article I, Section 22 of the Washington State Constitution on its face.

SECTION 22 RIGHTS OF THE ACCUSED. In criminal prosecutions the accused shall have the right to appear and defend in person, or by counsel, to demand the nature and cause of the accusation against him, to have a copy thereof, to testify in his own behalf, to meet the witnesses against him face to face, to have compulsory process to compel the attendance of witnesses in his own behalf, to have a speedy public trial by an impartial jury of the county in which the offense is charged to have been committed and the right to appeal in all cases: Provided, The route traversed by any railway coach, train or public conveyance, and the water traversed by any boat shall be criminal districts; and the jurisdiction of all public offenses committed on any such railway car, coach, train, boat or other public conveyance, or at any station or depot upon such route, shall be in any county through which the said car, coach, train, boat or other public conveyance may pass during the trip or voyage, or in which the trip or voyage may begin or terminate. **In no instance shall any accused person before final judgment be compelled to advance money or fees to secure the rights herein guaranteed.**

(Emphasis ours).

The proposed rule requires a defendant to advance fees in order to facilitate their defense. The proposed e-filing rule mandates that the defendant pay five dollars for filing “envelopes” of pleadings electronically. In order for an attorney to enter a notice of appearance in this manner, a defendant is required to advance money.

If a defendant wishes to challenge a confession under CrRLJ 3.5 or argue suppression under CrRLJ 3.6, respectively, they must demand such a hearing through a pleading, and such exercise of rights afforded by the court rules and constitution would require at minimum a 5 dollar fee. Furthermore, the State will be exempted from such filing fees to respond, and the defendant would be required to advance an additional five dollars to reply. Furthermore, a defendant would be required to advance five dollars to reply to any offensive pleadings from the State.

The proposed e-filing system inhibits a defendant’s ability to efficiently and effectively defend against criminal charges and would require a defendant to advance costs of their defense in violation of Article I, Section 22 of the Washington State Constitution. The proposed system places the entire financial burden on clients with private counsel and requires advance costs when the adjudication of guilt is undetermined.

This seems to be acceptable to the County, as the original answer as to why the private defendant was singled out as the only criminal defendant required to pay was “We have to pay for the system somehow.” While we agree that an effective e-filing system is not only a good idea, but perhaps a necessary one as we move into a new era of court ushered in by COVID, we do not agree in any way that paying for access to it is appropriate in **any** criminal matters. The ability to pay should not control access to justice.

The state of Idaho has an e-filing system that does not charge a fee (we believe this system to **also** be an Odyssey system). Oregon charges no fees except statutory filing fees. In Indiana there are multiple 3rd party options for e-filing with fees, but the state’s e-filing system is provided at no cost. In the Federal Court System, defendant’s are not charged to file documents electronically, but public access to view and print costs 10 cents per page. This was subject to a lawsuit in *National Veterans Legal Services Program v. United States*, 968 F.3d 1340 (2020). Specifically the Court noted, “if large swaths of the public cannot afford the fees required to access court records, it will diminish the public’s ability “to participate in and serve as a check upon the judicial process - an essential component in our structure of self-government.””

If the Federal Circuit Court was concerned about charges for accessing public documents by **non-parties**, then it should be equally, if not more concerned about actual defendants being charged to file and defend against the state.

Even King County District Court and Seattle Municipal Court's in house e-filing programs are free to use. The e-filing system as proposed imposes another barrier for all to access the court system, mandatory or not.

We respectfully request this Court reconsider the e-filing rule change for the reasons stated above. Multiple jurisdictions with e-filing systems do not charge the user to file pleadings. Perhaps, the Court could explore imposition of filing fees post-conviction or a standard assessment of technology fees at the conclusion of the case, but the imposition of a fee for filing documents is troublesome, unconstitutional and will reduce access to the courts and increase the workload of court staff who will be required to continue to man fax machines, scan documents, and receive paper copies. We welcome further discussion and thank the court for the private bars continued access to the county court meetings.

Very Truly Yours,

Jonathan Dichter
Attorney at Law

Rachel Reich
Attorney at Law

Katelyn Thomason
Attorney at Law

Bruce Finley
Attorney at Law

Scott Wonder
Attorney at Law

John Strait
Attorney at Law
Professor Emeritus
Distinguished
Practitioner in
Residence
Professional Ethics
Counsel

Melissa Sullivan
Attorney at Law

Andy Phipps
Attorney at Law

Walt Potebnya
Attorney at Law

Glen Hoff
Attorney at Law

Len Nahajski
Attorney at Law

Christopher J. Mainard
Attorney at Law

Aaron Lukoff
Attorney at Law

Karen Halverson
Attorney at Law

Emily Gause
Attorney at Law

Joyce Heritage
Attorney at Law

Mark Vovos
Attorney at Law

Vitaliy Kertchen
Attorney at Law

Richard L. Warner
Attorney at Law

Praire Cloutier
Attorney at Law

David G. Speikers
Attorney at Law

Tim Milios
Attorney at Law

Michael J. Andrews
Attorney at Law

Kent W. Underwood
Attorney at Law

Laura Robinett
Attorney at Law

Jim Johanson
Attorney at Law

Aaron L. Shields
Attorney at Law

Crystal Davieau
Attorney at Law

John Ziegler
Attorney at Law

Jeannie Mucklestone
Attorney at Law

Mike Sheehan
Attorney at Law

Dustin Burk
Attorney at Law

Matt Russell
Attorney at Law

Jonathan Rands
Attorney at Law

Lisa Donaldson
Attorney at Law

Mark W. Garka
Attorney at Law

Lucas McWethy
Attorney at Law

John Garza
Attorney at Law