



February 7, 2014

The Honorable Barbara Madsen, Chief Justice
Washington State Supreme Court
415 12th Ave SW
Olympia, WA 98501-2314

Dear Chief Justice Madsen,

We write to express our concerns with statewide policies and practices concerning the imposition and collection of Legal Financial Obligations (LFOs). The ACLU of Washington (ACLU) and Columbia Legal Services (CLS) have worked for years to address the negative consequences that LFOs have on low-income persons convicted of crimes in Washington State. On Monday February 10th, we will release a report entitled “Modern Day Debtors’ Prisons: The Ways Court-Imposed Debts Punish People for Being Poor.” The report documents the results of a multi-month investigation into courts around the state.

We write to urge you and other Justices of the Supreme Court to promulgate court rules or other uniform guidance necessary to bring trial court practice in compliance with state and federal law. In addition, we respectfully request that the Supreme Court initiate conversations with the judiciary and court clerks about the use of LFOs to help fund the courts, and whether our current systems for imposing and collecting legal financial obligations further shared interests in ensuring restitution to crime victims and furthering successful re-entry of offenders.

Our investigation, documented in the report, revealed the following:

- Many courts routinely impose LFOs without considering whether a person is able to pay them, contrary to state law. People convicted of crimes in Washington are ordered to pay high amounts of fines, fees, and court costs. In superior court, the average LFO is \$2540 per case. Yet in the counties we investigated, courts regularly fail to consider an individual’s ability to pay when imposing discretionary court costs.
- LFOs can amount to a lifetime sentence. After it is imposed, an LFO debt can grow quickly – due to a 12% statutorily mandated interest rate and added

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collection fees of \$100 per year. A person making \$20 payments per month in an effort to repay the average LFO debt may be unable to succeed even after years of regular payment. LFOs cannot be discharged in bankruptcy and many never expire.

- People who are unable to pay can end up in jail as a result of procedures that violate their rights, losing their jobs and homes in the process. Courts have the power to incarcerate debtors for non-payment of LFOs and some routinely use that power without considering a person's ability to pay LFOs, in violation of state and federal constitutions and case law.
- In Benton County, approximately 20% of people booked into county jail are serving time because of LFO non-payment. This staggeringly high rate of incarceration is entirely counterproductive. It costs valuable state and local resources while making repayment more difficult for some due to job loss and further indebtedness resulting from incarceration.
- The threat of incarceration forces impoverished people to choose between meeting their most basic needs and paying for LFOs. Some Washington counties require individuals to transfer public payments for subsistence to pay for LFO debt, even though those benefits cannot lawfully be garnished or attached to pay other debt.

Many of these issues could be addressed through guidance to the trial courts. In particular, we believe that lower courts would benefit from a court rule or other guidance setting forth the necessary inquiry that a court must conduct when considering sanctioning a person for non-payment of court fines. Our observation indicated there is wide variation in the depth and nature of inquiry into ability to pay. Some courts use detailed forms to acquire information about income, expenses, and assets. Others consider only a defendant's payment history, while others speculate about a defendant's ability to borrow or otherwise obtain funds. Similarly, a court rule or guidance setting forth when an individual is entitled to the assistance of counsel or other due process protections would ensure that persons are advised and informed of their rights and responsibilities.

We thank you for your attention to this important matter and are available to meet at your convenience to discuss it further.

Sincerely,



Kathleen Taylor
Executive Director
ACLU of Washington Foundation



Aurora Martin
Executive Director
Columbia Legal Services

Enclosed: LFO Report

cc: Honorable Charles W. Johnson
Honorable Susan Owens
Honorable Mary Fairhurst
Honorable James Johnson
Honorable Debra Stephens
Honorable Charles Wiggins
Honorable Steven González
Honorable Sheryl Gordon McCloud