



February 4, 2014

The Honorable Barbara D. Johnson, Presiding Judge
Clark County Superior Court
1200 Franklin Street
Vancouver, WA 98660

Re: Legal Financial Obligations Report

Dear Judge Johnson,

For the past several years, the ACLU of Washington (ACLU) and Columbia Legal Services (CLS) have worked to address the negative consequences that legal financial obligations (LFOs) have on low-income persons convicted of crimes in Washington state. Through our work we have discovered that LFOs and their consequences disproportionately impact the poor and serve as a major barrier to successful rehabilitation and community reentry.

This summer, the ACLU and CLS launched an investigation into court processes for collection of LFOs. While the focus of this investigation was statewide, we gave additional attention to four counties that have been regularly referenced by individuals contacting our organizations: Benton County, Clallam County, Clark County, and Thurston County. Staff attorneys observed “pay or appear” calendars in superior and district courts, spoke to local attorneys and individuals who owed LFOs, and reviewed court records. The results of this investigation are documented in our enclosed report “Modern-Day Debtors’ Prisons: The Ways Court-Imposed Debts Punish People for Being Poor.” This report will be issued on February 10, 2014.

We have concerns with some features of Clark County’s process for imposing and collecting LFOs. First, it appears that Clark County Superior Court routinely imposes discretionary LFOs in amounts well above the state average. We are unaware of any policies or guidance regarding consideration of ability to pay before imposing discretionary LFOs. These LFOs quickly compound due to the 12% interest rate, per-payment charges for payments made online or electronically, and the imposition of an annual \$100 collection fee.

We are particularly concerned that Clark County appears to take the \$100 collection fee on every open account before making any payments to the underlying LFO

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balance. This practice delays the payment of LFOs, including restitution owed to victims. Victims and defendants would be better served by a system that delays payment of collection fees or surcharges until after restitution has been satisfied, and which waives the collection fee and surcharges in the event of financial hardship.

In addition, the county's LFO practices make it difficult for low-income individuals to meet their monthly payments, thus making sanctions more likely. For example, it appears that the Clark County Superior Court Clerk sets payment plans according to the amount owed, and that \$25 is the lowest minimum monthly payment a court will order an individual to pay, including those whose only income is needs-based public assistance. This occurs despite the fact that these individuals are by definition indigent in Washington, and their needs-based assistance is not subject to garnishment or attachment. Individuals would be more likely to meet their monthly payments if payment schedules were set according to individual financial circumstances, with no minimum. Furthermore, by considering the receipt of needs-based public assistance as per se evidence of indigence, the county could help to ensure that only those who wilfully fail to pay end up before the court.

We encourage Clark County to adopt policies to limit barriers to successful reentry, such as tailoring the payment schedule to defendant's ability to pay, reducing or eliminating the use of clerks' collection fees, reducing the imposition of discretionary LFOs, and prohibiting the inclusion of public benefits in the determination of income that can be used for payments. We commend the county for building some safeguards against unjustified incarceration into its collections process (such as using a comprehensive form to elicit individual financial circumstances, accepting partial payments from those who appear on the pay or appear program, and taking steps to advise individuals of the opportunity to waive interest).

We hope to work together to ensure that the imposition and collection of LFOs in Clark County is fully compliant with state law and the constitution, and does not impose harsher burdens on the poor. We received a voice message from a Clark County prosecuting attorney in December, explaining that the county is reviewing its LFO collections practices, but we have not heard anything further.

We would appreciate the opportunity to meet and discuss these LFO policy issues with you. Please feel free to contact either the ACLU's Vanessa Hernandez at (206) 624-2184, vhernandez@aclu-wa.org; or CLS' or Nick Allen at (206) 464-0838 ext. 131, nick.allen@columbialegal.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Vanessa Hernandez", with a stylized flourish at the end.

Vanessa Hernandez
Staff Attorney
ACLU of Washington Foundation

A handwritten signature in black ink, appearing to read "Nick Allen", with a stylized flourish at the end.

Nick Allen
Staff Attorney
Columbia Legal Services

Enclosure: LFO Report

Cc: Mr. Scott G. Weber, Clark County Clerk
Mr. Tony Golik, Clark County Prosecuting Attorney
Ms. Ann Christian, Clark County Indigent Defense Office