98932-0

No. 80654-8-I

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

SANDRA M. MERCERI, a single woman,

Petitioner,

v.

THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK, AS TRUSTEE FOR THE CERTIFICATEHOLDERS OF THE CWALT, INC. ALTERNATIVE LOAN TRUST 2006-OA19, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2006-OA19,

Respondent.

ON PETITION FOR REVIEW
TO THE
SUPREME COURT OF WASHINGTON

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Review should be accepted because Division One's Opinion ("Opinion") usurps the Supreme Court's rulemaking authority. It changed the Supreme Court's unambiguous "shall enter an order" directive in CR 60(e)(2) to be merely suggestive. By changing "shall enter an order" to effectively now "may enter" the show cause order," Division One interfered with the substantial rights to obtain relief from judgment based on material, newly discovered evidence, disregarding the vacation procedures addressed in *White v. Holm*, long-standing Supreme Court precedent. The Supreme Court should resolve the conflicts Division One's 2020 opinion presents with other appellate decisions from Divisions One, Two, and Three. RAP 13.4(b)(1), (b)(2).

II. IDENTITY OF PETITIONER

The Petitioner is Sandra Merceri ("Mrs. Merceri"), who moved for relief from judgment or order due to newly discovered evidence under CR 60(b)(3).

III. CITATION TO COURT OF APPEALS DECISIONS

Mrs. Merceri seeks review of Division One's June 15, 2020 Opinion denying her right obtain the show cause order, as mandated in CR 60(e)(2) ("Opinion," Appendix 1).

IV. ISSUES PRESENTED FOR REVIEW

1. Should the Supreme Court accept *de novo* review when the Court of Appeals interferes with Supreme Court rulemaking authority to obtain relief from judgment? Did the Court of Appeals effectively nullify CR 60(e) by not applying the Court's rule which unambiguously required the entry of a show cause order to vacate a judgment based on newly discovered evidence?

2. Should the Supreme Court accept *de novo* review under RAP 13.4(b)(1) when the Court of Appeals (1) did not comply with *White v. Holm* procedures under CR 60(e)(1) to obtain relief from judgment due to newly discovered evidence under CR 60(b), and (2) deprived petitioner of her constitutional right to have her case, with its newly discovered evidence, tried before a jury of her peers?

3. When Division One's Opinion conflicts with other decisions from Court of Appeals, should the Supreme Court (1) resolve the conflict under RAP 13.4(b)(2), and (2) enforce its rulemaking authority.

V. STATEMENT OF THE CASE

Octogenarian Sandra Merceri ("Mrs. Merceri") had been informed in writing that the Bank loan would be accelerated if her default was not cured by March 18, 2010. CP 206 ¶ 2; CP 209. Mrs. Merceri was not able to cure the default. CP 206. She understood that as of March 18, 2010, her entire loan obligation had been fully accelerated by the Bank. *Id.*

After the six-year statute of limitations barred the Bank from collecting on the accelerated loan and outlawed its deed of trust, Mrs. Merceri asked the trial court for relief. CP 1. On March 15, 2017, the trial court determined that the loan had been accelerated by the Bank's

February 16, 2010 Notice of Intent to Accelerate. CP 221-222; CP 225-26. The trial court enforced the six-year statute of limitations, ruling that the Bank was not entitled to foreclose on her home more than six years after March 18, 2010. *Id.* The trial court ruled that the deed of trust was an outlawed deed (time barred) under RCW 7.28.300 and removed the Bank's time barred lien from the Merceri home. *Id.* [1] The Bank appealed (*Merceri I*).

Seven months later, during the *Merceri I* appeal, on October 19, 2017, the Federal Bureau of Consumer Financial Protection's ("CFPB") new a new Truth in Lending Act rule became effective, requiring the Bank, among other lenders and servicers, to provide borrowers like Mrs. Merceri with mortgage statements that prominently stated the total amount due under all payment options, including the accelerated amount of the loan. 12 Code of Federal Regulations § 1026.41(d)(1)(iii); *see* CP 212. The Bank and its servicer never sent homeowner Merceri the required Truth-In-Lending-Act statements showing the accelerated home loan amount between October 2017 and July 2019. CP 206. During the Bank's appeal in *Merceri I*, the Bank also deprived Division One of the TILA-required mortgage statement, which would have confirmed that the Bank

[1] The deed of trust expressly provided that reinstatement was allowed even after acceleration ["[t]he notice shall further inform Borrower of the right to reinstate after acceleration." CP 243, 244.

had fully accelerated Mrs. Merceri's loan. The CFPB recognized that the TILA-required mortgage statements were particularly important when a loan has been accelerated or is in foreclosure, including during litigation. MORTGAGE SERVICING RULES UNDER THE TRUTH IN LENDING ACT (REGULATION Z), 78 Federal Register 10959-960 (February 14, 2013).[2]

Division One, in *Merceri I*, required confirmation that the Bank *actually* accelerated the loan as promised in its Notice of Intent to Accelerate. *Merceri v. Bank of New York Mellon*, 4 Wn.App. at 762-63.[3] Without the Bank providing these TILA-required confirmation statements, Division One reversed the trial court's judgment quieting title to Mrs. Merceri. *Id.*

On remand, the trial court followed the *Merceri I* decision, entering a declaratory judgment in the Bank's favor (CP 194) because the Bank did not provide the required TILA confirmation of its acceleration to either the homeowner or the court. CP 194.

After the Bank obtained an April 2019 judgment of dismissal against Mrs. Merceri, the Bank's servicer *then* sent out the TILA-required

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[2] *Available at* https://www.govinfo.gov/content/pkg/FR-2013-02-14/pdf/2013-01241.pdf

[3] On March 14, 2019, Mrs. Merceri moved to recall the mandate because she had uncovered evidence that, contrary to the Bank's representations on appeal that the Notice of Intent to Accelerate was not evidence of acceleration, the Bank had previously used its standard Notice of Intent to Accelerate as the sole proof of acceleration for foreclosures in other cases. Ct. App. docket 76706-2-I, 3/14/2019. That motion was denied. *Id.* at 4/29/2019.

July 2019 Mortgage Statement which confirmed the Bank's acceleration of the loan. CP 206-07, ¶ 3-4; CP 212.[4] The TILA mortgage statement highlighted in bold the "**Accelerated Amount**" of the loan. *Id.* (emphasis in original, as required by the federal Consumer Financial Protection Bureau 12 C.F.R. § 1026.41(d)(1)(iii)).

Mrs. Merceri received this TILA acceleration confirmation on August 1, 2019. CP 206-07, ¶ 3, 4; CP 212. She timely moved to vacate the judgments and order ("judgment")[5] under CR 60(b)(3) upon receiving this newly discovered evidence of the TILA required mortgage statement which confirmed the Bank's acceleration of the loan.[6] CP 187.

Mrs. Merceri complied with CR 60(e)(1) and submitted her motion and supporting affidavits to the trial court *ex parte*, with notice to be provided to the Bank under CR 60(e)(3). Such notice was to be provided once the trial court issued the mandatory show cause order CR 60(e)(2). CP 250 ¶ 1. But the trial court never issued the show cause order required to be entered under CR 60(e)(2). The trial court did not direct the Bank to

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[4] "As of 7/16/19" on the July 2019 Mortgage Statement (CP 212) refers to a "good through date" consistent with the Consumer Financial Protection Bureau's Truth in Lending Act requirements for periodic monthly statements in 12 United States Code § 1026.41. *See* "Official interpretation of 41(d)(1) Amount due. Providing for a "good through" date. *Available at* https://www.consumerfinance.gov/policy-compliance/rulemaking/regulations/1026/41/#d

[5] In this case, the relief requested was to vacate (1) the declaratory judgment (CP 194); (2) the judgment of dismissal (CP 205); and (3) the order granting an attorney fee motion (CP 205). In this petition, Mrs. Merceri collectively refers to these as "judgment."

[6] *See* Appendix 1 for a complete copy of CR 60.

appear and show cause why the judgment should be not vacated when the Bank had now confirmed in its July 2019 Mortgage Statemen that it fully accelerated the loan. CP 255.

The Bank never offered any explanation for its failure to provide the TILA-required mortgage statements, confirming its acceleration, between 2017 and June 2019 when Division One and the trial court were sorting out the ramifications of the Bank's 2010 Notice of Intent to Accelerate by March 18, 2010.

On October 16, 2019, the trial court denied Mrs. Merceri's motion to vacate, without issuing the required CR 60(e)(2) show cause order and without the Bank explaining its failure to comply with the TILA requirement to confirm its acceleration between 2017 and June 2019. Two days later, the Bank took Mrs. Merceri's home by nonjudicial foreclosure. Appellate dkt. 1/21/2020, Bank's Motion to Supplement the record, at 1.

Mrs. Merceri timely appealed. CP 252. The Court of Appeals ruled that the mandatory show cause order requirement of CR 60(e) was merely discretionary.[7] [8] *See* Opinion at Appendix 1 ("*Merceri II*").

Mrs. Merceri timely petitions for review.

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[7] The Court of Appeals rested its decision on an interpretation of CR 60 that was not advocated by the Bank and therefore not appropriate for response by Mrs. Merceri in her reply brief.

[8] Ignoring potential liability for its wrongful foreclosure of Mrs. Merceri's home of 35 years, the Bank foreclosed after she brought her appeal. Appellate Dkt. Jan. 21, 2010 at 1.

VI. STANDARD OF REVIEW

Since the proper interpretation of a court rule is a legal issue, review is *de novo*. *Jafar v. Webb*, 177 Wn.2d 520, 526, 303 P.3d 1042 (2013). Court rules are interpreted in the same manner as statutes. *Id.* If the rule's meaning is plain on its face, courts must give effect to the Supreme Court's rule as written. *Id*.

VII. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

1. The Supreme Court should accept *de novo* review because the Court of Appeals interferes with Supreme Court rulemaking authority to obtain relief from judgment. The Court of Appeals effectively nullified CR 60(e) by not applying the Court's rule which unambiguously required the entry of a show cause order to vacate a judgment based on newly discovered evidence.

Our Supreme Court "has inherent and supreme power to promulgate rules governing court procedures . . ." *Smukalla v. Barth*, 73 Wn.App. 240, 245 n.3, 868 P.2d 888 (1994), *collecting cases, citing* RCW 2.04.190.[9] This power is to ensure "a fair and expeditious process." GR

[9] **RCW 2.04.190** (in pertinent part) -- **Rules of pleading, practice, and procedure generally.** The supreme court shall have the power to prescribe, from time to time, . . . generally to regulate and prescribe by rule the forms for and the kind and character of the entire pleading, practice and procedure to be used in all suits, actions, appeals and proceedings of whatever nature by the supreme court, superior courts, and district courts of the state. In prescribing such rules the supreme court shall have regard to the simplification of the system of pleading, practice and procedure in said courts to promote the speedy determination of litigation on the merits.

9(a);[10] *Jafar, supra*, at 527 (the Supreme Court alone is "uniquely positioned to declare the correct interpretation of any court-adopted rule"). Only the Supreme Court has the authority to change its rules. The Court of Appeals has no authority to undermine Supreme Court rulemaking authority by disregarding CR 60(e)(2)'s mandatory show cause requirement.

CR 60(e)(2) provides:

> (e) Procedure on Vacation of Judgment.
>
> (2) Notice. Upon the filing of the motion and affidavit, the court **shall** enter an order fixing the time and place of the hearing thereof and directing all parties to the action or proceeding who may be affected thereby to appear and show cause why the relief asked for should not be granted.

CR 60(e)(2) (emphasis added).

With its rulemaking authority in GR 9 and the legislature's grant of such authority in RCW 2.04.190, the Supreme Court specifically chose mandatory "**shall** enter an order" language, not "may enter an order." The Supreme Court did not permit trial court discretion on this issue; a show cause order must issue on a motion to vacate a judgment for nearly discovered evidence. *See Banowsky v. Guy Backstrom, DC*, 193 Wn.2d 724, 727, 737 445 P.3d 543 (2019) (reversing the Court of Appeals when

[10] **GR 9 -- Supreme Court Rulemaking**: (a) Statement of Purpose. The purpose of rules of court is to provide necessary governance of court procedure and practice and to promote justice by ensuring a fair and expeditious process.

it failed to apply a valid and unambiguous court rule). The Court of Appeals effectively undermined the Supreme Court's rulemaking authority by disregarding CR 60(e)(2)'s "**shall** enter an order" directive. "It is well settled that the word 'shall' in a statute is presumptively imperative and operates to create a duty, rather than to confer discretion." *In re Parental Rights to K.J.B.*, 187 Wn.2d 592, 601, 387 P.3d 1072, (2017). Court rules are interpreted in the same manner as statutes are interpreted. *Jafar v. Web*, 177 Wn.2d at 526.

Because the word "shall" in CR 60(e)(2) is unambiguous, no further interpretation of the rule is required. *Id.* The Court of Appeals was required to enforce CR 60(e)(2) as written. *Jafar*, *supra*, at 526.

Mrs. Merceri relied on CR 60 as written. "A reading of the other subdivisions of CR 60 makes it clear that they all assume the existence of an adversary proceeding . . ." *Krueger Engineering, Inc. v. Sessums,* 26 Wn.App. 721, 724, 615 P.2d 502 (1980). To subvert the rule after the fact is unjust to Mrs. Merceri, deprives her of the adversarial proceeding, and is contrary to the fair administration of justice. In *Burnet v. Spokane Ambulance,* 131 Wn.2d 484, 933 P.2d 1036 (1997), the Supreme Court held:

> While we are not unmindful of the need for efficiency in the administration of justice, our overriding responsibility is to interpret the rules in a way that advances the underlying purpose of the rules, which is to reach a just determination in every action. *See* CR 1."

Id. at 498. *See also Banowsky v. Backstrom,* 193 Wn.2d at 737.

As this Court declared in *White v. Holm*, 73 Wn.2d 348, 351, 438 P.2d 581 (1968), when deciding CR 60 motions, the court should ensure that the substantial rights of the parties are preserved and justice between the parties be fairly administered.

Mrs. Merceri relied on CR 60(e)(2), with its unambiguous requirement that the trial court shall enter a show cause order requiring the Bank to appear and explain why the judgment should not be vacated under Rule 60. The Court of Appeals' decision not to apply the Supreme Court's unambiguous "shall enter an order" directive deprived Mrs. Merceri of her right to vacate the judgment under CR 60(b)(3) ("newly discovered evidence"). By accepting *de novo* review of Division One's failure to follow Civil Rule 60(e), the Supreme Court can fairly administer justice between the parties, consistent with CR 1, GR 9, and RCW 2.04.190. Division One's Opinion does not preserve the substantial rights of the parties and fails to administer justice in the equitable manner that our Supreme Court required in *Burnet v. Spokane Ambulance, White v. Holm, and Banowsky v. Backstrom.* It is not just or equitable for the trial court

and the Court of Appeals to turn a blind eye to the newly discovered evidence that directly contradicts the Bank's claim in *Merceri I* that it *never* accelerated.

Mrs. Merceri asks the Court to accept *de novo* review of the Court of Appeals' failure to enforce the Supreme Court's mandatory entry of a show cause order under CR 60(e)(2).

2. The Supreme Court should accept *de novo* review under RAP 13.4(b)(1) when the Court of Appeals (1) did not comply with *White v. Holm* procedures under CR 60(e)(1) to obtain relief from judgment due to newly discovered evidence under CR 60(b), and (2) deprived petitioner of her constitutional right to have her case, with its newly discovered evidence, tried before a jury of her peers.

De novo review by this Court is warranted. Division One's Opinion failed to address *White v. Holm*, supra, in its decision, even though appellate courts "must follow Supreme Court precedent, regardless of any personal disagreement with its premise or correctness." *State v. Jussila*, 197 Wn.App. 908, 931, 392 P.3d 1108 (2017) (internal citations omitted). The Court of Appeals "remains bound by a decision of the Washington Supreme Court." *Id.* "When the Court of Appeals fails to follow directly controlling authority by the Supreme Court, it errs." *Id.* When such error deprives a litigant of her right to such relief of judgment, the Supreme Court should accept review to correct this error and to ensure the fair administration of justice.

Not only did the Supreme Court, in CR 60(e)(2), unambiguously require the trial court to enter a show cause order, the Supreme Court set out the proper trial court procedures when presented with a CR 60 motion to vacate a judgment, with supporting affidavits, under CR 60(e)(1). *See Jafar, supra*, at 527; *White v. Holm*, 73 Wn.2d:

1. Under CR 60(e)(2), the trial court is required to issue the show cause order, requiring the non-moving party to appear and show cause why the order or judgment should not be vacated;
2. After the service required by CR 60(e)(3), under *White v. Holm*, 73 Wn.3d at 352-53, the trial court looks at the evidence, including the newly discovered evidence, and makes all reasonable inferences in a light most favorable to the moving party. When the moving party presents "minimal," "sufficient" evidence of a defense under CR 60(e)(1), the trial court grants the CR 60 motion to vacate. *Id.* at 353
3. The parties would then try the case to the jury to determine whether the Bank accelerated the home loan in 2010 and foreclosed more than six years after the loan was accelerated. *Id.* at 357.

In *Pfaff v. State Farm Mutual Auto. Ins. Co.*, 103 Wn.App. 829, 14 P.3d 837 (2000), *rvw. denied* 143 Wn.2d 1021 (2001), Division Two

summarized the 1968 Supreme Court's opinion in *White v. Holm,* 73 Wn.2d:

> *White* demonstrates that a trial court **must take the evidence and reasonable inferences in the light most favorable to the CR 60 movant** when deciding whether the movant has presented "substantial evidence" of a "prima facie" defense. For that reason, the trial court in *White* lacked discretion to reject Holm's version of the facts, even though, according to the Supreme Court, Holm had presented a defense that was not "strong" or "conclusive," but only "minimal," "prima facie," and "sufficient."

Pfaff at 834, 835 (bold emphasis added).

The Court of Appeals decision in *Merceri II* squarely conflicts with the Supreme Court holding in *White v. Holm;* once the mandatory show cause order issues, the trial court must grant the motion to vacate the judgment where all facts, viewed in a light most favorable Mrs. Merceri, the movant, establish that (a) that Mrs. Merceri made a "minimal," "sufficient," case that the loan acceleration occurred in 2010, and (2) and Mrs. Merceri made her *prima facie* statute of limitations defense. The Court of Appeals Opinion (*Merceri II*) failed to take the evidence of the 2010 acceleration and all reasonable inferences in the light most favorable to the Mrs. Merceri. The evidence that the Bank accelerated the loan in 2010 is compelling: (1) the Bank's written statement to Mrs. Merceri in 2010 that the defaulted loan would be accelerated on March 18, 2010, (2)

the absence of any other notice of acceleration, (3) the Bank's failure to provide acceleration confirmation as required by TILA from 2017 through June 2019, and (4) the newly discovered evidence in July 2019 that the Bank had accelerated the loan in its belated submission of a TILA-required mortgage statement which stated the accelerated amount. Those facts, taken in a light most favorable to movant Mrs. Merceri, establish a *prima facie* case that the Bank accelerated the loan, as promised, in 2010.

With its 2010 acceleration, the Bank was barred, under the six-year statute of limitations, from foreclosing on Mrs. Merceri's home in 2019. The Bank's deed of trust was an outlawed deed of trust under RCW 7.28.300, which is exactly what the trial court concluded in 2017 when it quieted title to homeowner Mrs. Merceri.

The Court of Appeals in *Merceri II* undermined the Supreme Court's rulemaking authority, disregarded the mandatory language in CR 60(e)(2), and failed to address and follow the Supreme Court's approved procedures in *White v. Holm*. Not only did Mrs. Merceri lose her home by unlawful foreclosure, but she also lost her constitutional right to have her case, with its newly discovered evidence, to be tried by a jury of her peers

Mrs. Merceri asks the Court to accept *de novo* review of these important issues.

3. Since Division One's Opinion conflicts with other decisions from Court of Appeals, the Supreme Court should (1) resolve the conflict under RAP 13.4(b)(2), and (2) enforce its rulemaking authority.

The Court of Appeals Opinion starkly conflicts with decisions from the appellate divisions regarding a trial court's duty under CR 60(e)(2) to issue the mandatory show cause order. Other than the Court of Appeals Opinion, all other cases acknowledge the mandatory issuance of a show cause order and the compliance with the Supreme Court procedures set forth in *White v. Holm*.

Pfaff from Division Two

In *Pfaff v. State Farm Mutual Auto. Ins. Co*, 103 Wn.App., Division Two upheld the grant of the CR 60 motion to vacate. The non-moving party's contention that "the trial court weighs and balances and decides whether it believes" the moving party was rejected by the appellate court, based on an application of *White v. Holm*, *supra*:

> We reject this view of the trial court's function on a CR 60 motion. We hold instead that when a trial court is considering whether a CR 60 movant has presented "facts constituting a defense" within the meaning of CR 60(e)(1*)*, **the trial court must take the evidence, and reasonable inferences therefrom, in the light most favorable to the movant.** The movant in this case was State Farm, and it presented evidence which, **if later believed by a trier of fact**, would be a defense to Pfaff's claims. Accordingly, the trial court **was both permitted and required** to rule that State Farm had come forward with "facts constituting a defense" or, in *White*'s terms, "substantial evidence" of a "prima facie" defense."

Pfaff at 835 (emphasis added) (upholding the trial court's grant of a CR 60 motion to vacate.)

Calhoun from Division Three

In *Calhoun v. Merritt*, 46 Wn.App. 616, 731 P.2d 1094 (1986), Division Three, unlike Division One in *Merceri II*, properly applied *White v. Holm*, reversing the denial of a CR 60 motion to vacate even where the moving party's CR 60(e)(1) motion and affidavits did not specify facts to support his allegation that damages awarded to the plaintiff were excessive, i.e. he was unable to make even his *prima facie* case. *Id.* at 620. There, Division Three said it would be "inequitable and unjust" to deny the motion to vacate without discovery as to plaintiff's medical condition, since that information was exclusively in the possession of plaintiff. *Id.* [11]

Waxman from Division One

Merceri II conflicts with *Farmers Ins. Co. of Wash., Inc. v. Waxman Indus., Inc.*, 132 Wn.App. 142, 146, 130 P.3d 874 (2006) decided by Division One in 2006. There, in *Waxman*, the trial court properly issued the mandatory show cause order required by CR 60(e)(2). Once the mandatory show cause order was issued and the non-moving party

[11] Discovery in a CR 60 motion makes sense -- the case is dismissed. No discovery tools are available to gather more information. Here, the Bank has sole possession of evidence of the date it actually accelerated the loan, and the Bank kept that evidence from both the trial court and the appellate court through *Merceri I* and *Merceri II*.

responded, the court considered both parties' pleadings before deciding whether to vacate the judgment. *Waxman* at 146. "The requirement to set forth facts constituting at least a *prima facie* defense is not burdensome, as *it does not demand conclusive proof." Id.* at 148 (emphasis added), *citing White v. Holm*, 73 Wn.2d at 353 (CR 60 movant need only show it can "carry a decisive issue to the finder of the facts in a trial on the merits.")

Waxman did not authorize the trial court to adjudicate facts *before* issuing the show cause order. And *Waxman* did not authorize the trial court to view evidence in a light most favorable to the *non-moving party*.[12] [13]

Division One's new Opinion directly conflicts with *Waxman* that all evidence shall be viewed in a light most favorable to the moving party under a CR 60 motion to vacate a judgment.

<u>*Okanogan County* from Division Three</u>

Recently, in *Okanogan County v. Various Parcels of Real Property, et al*, __ Wn.App. 2d __, No. 36611-1-III (Div. 3, April 2, 2020) (published June 9, 2020, six days before *Merceri II* was issued) Division

[12] Merceri prevailed on summary judgment at the trial level in *Merceri I*. The Bank did not assert until its appeal that no acceleration occurred. For that reason, the only evidence in the record as to the actual date acceleration occurred is the Bank's 2010 Notice of Intent to Accelerate, which specified March 18, 2010.

[13] The Bank *did not* attempt to supplement the appellate record to provide evidence as to when it accelerated the loan.

Three ruled that "the trial court erred in summarily determining, effectively, that "Wilmington Trust does not hold the note . . . Wilmington Trust is entitled at a minimum to an evidentiary hearing." *Okanogan County, slip op.* 10.

Division Three in *Okanogan County* correctly applied CR 60 and reversed the trial court's summary determination of the facts, to the benefit of *lender* Wilmington Trust; it permitted discovery on remand.

Contrary to *Pfaff*, *Calhoun*, *Waxman*, and *Okanogan County*, Division One's *Merceri II* Opinion is in stark conflict and breaks with established law that all evidence in a CR 60(b)(3) motion must be viewed in a light most favorable to the moving party. By failing to follow CR 60(e)(2) as written and failing to apply *White v. Holm* (which *Merceri II* did not address), the *Merceri II* Opinion is an outlier decision which will cause further confusion and conflict among the divisions.[14]

There is no Washington authority which permitted the Court of Appeals in *Merceri II* to rewrite CR 60(e) or to disregard the Supreme Court's authority in *White v. Holm*. *Merceri II* conflicts with binding precedent warrant Supreme Court *de novo* review. RAP 13.4(b)(2).

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[14] CR 60(e)(1) does *not* mean that the moving party must have concrete evidence from the outset of a CR 60 motion, especially where the non-moving party possesses documents which could confirm the March 18, 2010 acceleration date. *White v. Holm, 73 Wn.3d* at 353, *Pfaff,* 103 Wn.App at 835; *Waxman*, 132 Wn.App. at 148.

VIII. CONCLUSION

The Supreme Court's "overriding responsibility" to enforce its rules is an important reason to take *de novo* review of Division One's decision in *Merceri II*, which undermined the Supreme Court's rulemaking authority.

Mrs. Merceri's newly discovered evidence confirming acceleration, consistent with the Bank's 2010 Notice of Intent to Accelerate by March 18, 2010, together with the absence of conflicting evidence, constituted a *prima facie* statute of limitations defense to the Bank's foreclosure of her home of 35 years. *Merceri II* ignored this fact, ignored Supreme Court precedent in *White v. Holm*, and conflicted with decisions from other divisions, which have followed the Supreme Court's CR 60(e)(2) and the Supreme Court's procedures on a motion to vacate a judgment. The Supreme Court should restore Mrs. Merceri's constitutional right to a trial before a jury of her peers, with the newly discovered evidence, by accepting *de novo* review under RAP 13.4.

The Petition for Review should be granted.

Respectfully submitted this August 21, 2020.

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IX. APPENDIX

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APPENDIX 1

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

SANDRA M. MERCERI, a single woman, Appellant, v. THE BANK OF NEW YORK MELLON, a national banking association, as trustee, on behalf of the holders of the Alternative Loan Trust 2006-OA19, Mortgage Pass Through Certificate Series 2006-OA19; and THE BANK OF NEW YORK, as trustee, on behalf of the holders of the Alternative Loan Trust 2006-OA19, Mortgage Pass Through Certificate Series 2006-OA19; and BANK OF NEW YORK MELLON f/k/a THE BANK OF NEW YORK, as trustee, on behalf of the holders of the Alternative Loan Trust 2006-OA19, Mortgage Pass Through Certificate Series 2006-OA19, Respondent.	No. 80654-8-I DIVISION ONE UNPUBLISHED OPINION

CHUN, J. — The trial court denied Sandra Merceri's CR 60(b) motion to vacate a judgment based on newly discovered evidence. She appeals, contending that the trial court erred in entering its order without first issuing a mandatory show cause order as required by CR 60(e)(2). We conclude that the court acted within its discretion in denying the motion to vacate, and we affirm.

BACKGROUND

In 2006, Sandra Merceri obtained a residential loan from Countrywide Bank, secured by a deed of trust and adjustable rate note payable in monthly installments. Merceri defaulted on the loan in 2010. On February 16, 2010, the loan servicer issued a "Notice of Intent to Accelerate" informing Merceri that "if the default is not cured on or before March 18, 2010, the mortgage payments will be accelerated with the full amount remaining accelerated and becoming due and payable in full, and foreclosure proceedings will be initiated at that time."

In June 2011, the Mortgage Electronic Registration System (MERS) assigned the deed of trust to the Bank of New York Mellon (BONY) as trustee. Between 2013 and 2016, loan servicer Select Portfolio Services (SPS) sent Merceri mortgage statements showing the "amount due" as the amount necessary to reinstate the debt, not the accelerated full amount of the loan. A February 2013 statement specified that "SPS may accelerate all payments owing and sums secured by the Security Instrument."

On June 2, 2016, a substitute trustee acting on BONY's behalf issued a notice of trustee sale to sell Merceri's home. Merceri then filed a quiet title action asserting that the six-year statute of limitations precluded foreclosure because the February 2010 notice clearly communicated that her loan would be fully accelerated on March 18, 2010 and this acceleration took place more than six years before the suit was filed.[1] On March 17, 2017, the trial court granted

[1] An action to foreclose on a deed of trust must be commenced within six years. RCW 4.16.040; Terhune v. N. Cascades Tr. Serv., Inc., 9 Wn. App. 2d 708, 718, 446 P.3d 683 (2019).

Merceri's motion for summary judgment, entered a declaratory judgment quieting title to Merceri, and awarded her attorney fees and costs.

This court reversed, holding that the "will be accelerated" language in the February 2010 notice of default, without more action, did not accelerate the debt. Merceri v. Bank of New York Mellon (Merceri I), 4 Wn. App. 2d 755, 761, 434 P.3d 84 (2018). "Acceleration must be made in a clear and unequivocal manner which effectively apprises the maker that the holder has exercised his right to accelerate the payment date." Id. (quoting Glassmaker v. Ricard, 23 Wn. App. 35, 38, 593 P.2d 179 (1979)). Because BONY did not take "affirmative action in a clear and unequivocal manner indicating that the payments had been accelerated," the six-year limitations period had not commenced. Merceri I, 4 Wn. App. 2d at 761. On remand, the trial court entered judgment in favor of BONY and awarded its attorney fees and costs under the note and deed of trust.

In October 2017, the Federal Bureau of Consumer Financial Protection's new Truth In Lending Act (TILA) rule became effective, requiring lenders and servicers to provide borrowers with mortgage statements that prominently state the total amount due under all payment options, including the accelerated amount if applicable. 12 C.F.R § 1026.41(d)(1)(iii). On August 1, 2019, Merceri received a mortgage statement from Bayview Loan Servicing, LLC specifying the accelerated amount due as of July 16, 2019. On October 11, 2019, Merceri filed a CR 60(b)(3) ex parte motion for order to show cause why the judgment should not be vacated based on this newly discovered evidence of acceleration. On

October 16, 2019, without issuing a show cause order to BONY or requiring it to appear, the trial court denied Merceri's motion for order to show cause on this basis: "Plaintiff's offer of proof is insufficient to establish that judgment should be vacated. The statement from July 2019, does not establish acceleration occurred in 2010." Merceri appeals from this ruling.

ANALYSIS

Motion to Vacate

Merceri argues that the court committed reversible error in denying her CR 60(b)(3) motion to vacate without first issuing a CR 60(b)(2) show cause order requiring BONY to appear and address the newly discovered evidence of acceleration. We disagree.

We review a trial court's decision on a CR 60(b) motion to vacate for abuse of discretion. Luckett v. Boeing Co., 98 Wn. App. 307, 309, 989 P.2d 1144 (1999). A court abuses its discretion when its decision stems from untenable grounds or reasoning. Luckett, 98 Wn. App. at 309. We review de novo the interpretation of a court rule. Guardado v. Guardado, 200 Wn. App. 237, 243, 402 P.3d 357 (2017). "Court rules are interpreted in the same manner as statutes. If the rule's meaning is plain on its face, we must give effect to that meaning as an expression of the drafter's intent." Jafar v. Webb, 177 Wn.2d 520, 526, 303 P.3d 1042 (2013).

CR 60(b) permits parties to seek relief from a final judgment, order, or proceeding for several reasons, including newly discovered evidence. CR 60(e) establishes the procedure for vacation of judgment:

> (1) Motion. Application shall be made by motion filed in the cause stating the grounds upon which relief is asked, and supported by the affidavit of the applicant or the applicant's attorney setting forth a concise statement of the facts or errors upon which the motion is based, and if the moving party be a defendant, the facts constituting a defense to the action or proceeding.
>
> (2) Notice. Upon the filing of the motion and affidavit, the court shall enter an order fixing the time and place of the hearing thereof and directing all parties to the action or proceeding who may be affected thereby to appear and show cause why the relief asked for should not be granted.
>
> (3) Service. The motion, affidavit, and the order to show cause shall be served upon all parties affected in the same manner as in the case of summons in a civil action at such time before the date fixed for the hearing as the order shall provide; but in case such service cannot be made, the order shall be published in the manner and for such time as may be ordered by the court, and in such case a copy of the motion, affidavit, and order shall be mailed to such parties at their last known post office address and a copy thereof served upon the attorneys of record of such parties in such action or proceeding such time prior to the hearing as the court may direct.

Merceri asserts that the "shall enter an order" language in CR 60(e)(2) is plain on its face. This plain language, she contends, required the trial court to issue a show cause order requiring BONY to appear and explain the July 2019 mortgage statement, which states the accelerated amount due but does not address when acceleration occurred. She also contends that, if the trial court had issued the mandatory show cause order, it would have been able to resolve this pivotal issue of fact.

But Merceri's argument disregards CR 60(e)(1), which requires the moving party to set forth "facts constituting a defense to the action or proceeding."[2]

> The prime purpose of [CR 60(e)(1)] is to prove to the court that there exists, at least prima facie, a defense to the claim. This avoids a useless subsequent trial if the defaulted defendant cannot bring forth facts to make such a showing when seeking to vacate the default. The affidavit must set out facts constituting a defense; it cannot merely state allegations and conclusions.

Farmers Ins. Co. of Wash., Inc. v. Waxman Indus., Inc., 132 Wn. App. 142, 146, 130 P.3d 874 (2006) (internal citation omitted).

CR 60(e)(1) serves a gate-keeping function by requiring the moving party to make a prima facie showing that the motion has merit. If the court determines that the moving party has made this showing, CR 60(e)(2) then requires it to enter an order fixing the time and place for a hearing and directing the non-moving party to appear and show cause why relief should be granted. If the court determines that the moving party has failed to make this showing, there is no reason to put the judgment holder through the needless expense of responding. Were this not the case, the moving party could simply move to vacate the judgment without first meeting CR 60(e)(1)'s requirements.

Merceri asserts that the trial court's denial of her motion to show cause prejudicially deprived her of an opportunity to force BONY to reveal the date her loan was accelerated. But CR 60(e)(2) is not a discovery tool for the moving

[2] Merceri was not the defendant below. But because she brought a declaratory judgment action seeking to prevent BONY from foreclosing, she was in the legal position of defending against a foreclosure proceeding. Therefore, CR 60(e)(1) required her to produce "facts constituting a defense to the action or proceeding."

party. It merely describes the process for setting an order to show cause, should one be required.

The CR 60(e)(2) show cause order is mandatory only if the moving party has met its CR 60(e)(1) burden of demonstrating a valid defense to the claim. Thus, the question before us is whether Merceri's offer of proof brings forth facts that make a prima facie showing for relief. We conclude that it does not.

A motion to vacate must show the presence of newly discovered evidence that will probably change the result of the trial. Go2Net, Inc. v. C I Host, 115 Wn. App. 73, 88, 60 P.3d 1245 (2003). Here, the July 2019 mortgage statement did not show when the acceleration took place. It cannot change the outcome of the trial court's prior rulings on remand in accordance with Merceri I. Given the trial court's determination that the newly discovered evidence did not suffice to change the outcome of the case, the court acted within its discretion in ruling on the motion to vacate without issuing a show cause order and requiring BONY to appear. Once it drew this conclusion, there was no reason to issue a CR 60(e)(2) show cause order.

BONY also argues that we must reject Merceri's arguments on mootness and collateral estoppel grounds. Because we conclude that the trial court did not err in denying Merceri's motion to vacate without a show cause hearing, we need not reach these arguments. As a result, we deny BONY's RAP 9.10 and 9.11 motion to supplement the appellate record with evidence supporting its mootness claim.

Attorney Fees on Appeal

Both parties request an award of attorney fees and costs on appeal. RAP 18.1 authorizes a party to recover reasonable attorney fees and expenses so long as the party "request[s] the fees or expenses" and "applicable law grants to a party the right to recover." RAP 18.1(a). We will award attorney fees to the prevailing party "only on the basis of a private agreement, a statute, or a recognized ground of equity." Equitable Life Leasing Corp. v. Cedarbrook, Inc., 52 Wn. App. 497, 506, 761 P.2d 77 (1988). "Generally, if such fees are allowable at trial, the prevailing party may recover fees on appeal." Thompson v. Lennox, 151 Wn. App. 479, 484, 212 P.3d 597 (2009). Here, the trial court has already awarded BONY attorney fees and costs under the deed of trust. We therefore award BONY reasonable attorney fees and costs as the prevailing party on appeal subject to compliance with RAP 18.1(d).

We affirm.

Chun, J.

WE CONCUR:

Brennan, J.

Andrus, A.C.J.

Hon. Veronica Alicea-Galván
Hearing: TBD

STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT

SANDRA M. MERCERI, a single woman, Plaintiff, vs. THE BANK OF NEW YORK MELLON et al, Defendants.	No. 16-2-24904-3 SEA **DECLARATION OF SANDRA M. MERCERI**

Sandra M. Merceri declares under penalty of perjury of the laws of the State of Washington that the following is true and correct to the best of my knowledge and belief.

1. I am the plaintiff in the above-captioned case, am over the age of 18, have personal knowledge of the events described herein and am competent to testify as to them.

2. In February of 2010, I received the Notice of Intent to Accelerate, stating that the loan would be fully accelerated if I did not cure the default by March 18, 2010. I was unable to cure the default and have to this date been unable to cure the default. The Notice of Intent to Accelerate clearly and unequivocally communicated to me, the borrower, that the lender would accelerate the loan if I did not cure the default by the deadline. Attached as **Exhibit 1** is a true and correct copy of the Notice of Intent to Accelerate.

3. On or about August 1, 2019, I received a "Mortgage Statement" from Bayview Loan Servicing, LLC, the first mortgage statement I have received in many years and the only mortgage statement I have received from Bayview Loan Servicing, LLC. Attached as **Exhibit 2** is a true and correct copy of the Mortgage Statement. The Mortgage Statement confirmed to me, the borrower, that the lender had accelerated the loan in 2010.

SUSAN L. FULLMER
Attorney at Law
5608 17th Ave NW, #599, Seattle, WA 98107
(206) 567-2757

4. The mortgage statement is dated July 16, 2019. However, the statement was initially mailed to my previous attorney, who is retired, and mailed to me from his prior law firm on July 29, 2019. Attached as **Exhibit 3** are true and correct copies of the envelopes that contained the Mortgage Statement or were inside the envelope from the law firm.

5. Since the beginning of this lawsuit, I have not received another mortgage statement or other communication from the Bank or its servicer, either before or since the one I received on or about August 1, 2019.

Executed on October 9, **2019 at** Bothell, **Washington.**

Sandra M. Merceri

Sandra M. Merceri

SUSAN L. FULLMER
Attorney at Law
5608 17th Ave NW, #599, Seattle, WA 98107
(206) 567-2757

EXHIBIT 1

Bank of America

Home Loans
P.O. Box 10221
Van Nuys, CA 91410-0221

Business Address:
450 American Street
Simi Valley, CA 93065-6285

Send Payments to:
P.O. Box 10219
Van Nuys, CA 91410-0219

February 16, 2010

Sandra Merceri
10827 NE 183RD CT
BOTHELL, WA 98011-1745

Account No.: [redacted]3154
Property Address:
10827 NE 183rd CT
Bothell, WA 98011-1745

NOTICE OF INTENT TO ACCELERATE

Dear Sandra Merceri:

BAC Home Loans Servicing, LP (hereinafter "BAC Home Loans Servicing, LP") services the home loan described above on behalf of the holder of the promissory note (the "Noteholder"). The loan is in serious default because the required payments have not been made. The total amount now required to reinstate the loan as of the date of this letter is as follows:

Monthly Charges:	01/01/2010	$4,180.08
Late Charges:	01/01/2010	$84.25
Other Charges:	Total Late Charges:	$86.72
	Uncollected Costs:	$0.00
	Partial Payment Balance:	($0.00)
	TOTAL DUE:	**$4,351.05**

You have the right to cure the default. To cure the default, on or before March 18, 2010, BAC Home Loans Servicing, LP must receive the amount of $4,351.05 plus any additional regular monthly payment or payments, late charges, fees and charges, which become due on or before March 18, 2010.

The default will not be considered cured unless BAC Home Loans Servicing, LP receives "good funds" in the amount $4,351.05 on or before March 18, 2010. If any check (or other payment) is returned to us for insufficient funds or for any other reason, "good funds" will not have been received and the default will not have been cured. No extension of time to cure will be granted due to a returned payment. BAC Home Loans Servicing, LP reserves the right to accept or reject a partial payment of the total amount due without waiving any of its rights herein or otherwise. For example, if less than the full amount that is due is sent to us, we can keep the payment and apply it to the debt but still proceed to foreclosure since the default would not have been cured.

If the default is not cured on or before March 18, 2010, the mortgage payments **will be accelerated** with the full amount remaining accelerated and becoming due and payable in full, and foreclosure proceedings will be initiated at that time. As such, the failure to cure the default may result in the foreclosure and sale of your property. If your property is foreclosed upon, the Noteholder may pursue a deficiency judgment against you to collect the balance of your loan, if permitted by law.

You may, if required by law or your loan documents, have the right to cure the default after the acceleration of the mortgage payments and prior to the foreclosure sale of your property if all amounts past due are paid within the time permitted by law. However, BAC Home Loans Servicing, LP and the Noteholder shall be entitled to collect all fees and costs incurred by BAC Home Loans Servicing, LP and the Noteholder in pursuing any of their remedies, including but not limited to reasonable attorney's fees, to the full extent permitted by law. Further, you may have the right to bring a court action to assert the non-existence of a default or any other defense you may have to acceleration and foreclosure.

Your loan is in default. Pursuant to your loan documents, BAC Home Loans Servicing, LP may, enter upon and conduct an inspection of your property. The purposes of such an inspection are to (i) observe the physical condition of your property, (ii) verify that the property is occupied and/or (iii) determine the identity of the occupant. If you do not cure the default prior to the inspection, other actions to protect the mortgagee's interest in the property (including, but not limited to, winterization, securing the property, and valuation services) may be taken. **The costs of the above-described inspections and property preservation efforts will be charged to your account as provided in your security instrument and as permitted by law.**

If you are unable to cure the default on or before March 18, 2010, BAC Home Loans Servicing, LP wants you to be aware of various options that may be available to you through BAC Home Loans Servicing, LP to prevent a foreclosure sale of your

Please write your account number on all checks and correspondence.
We may charge you a fee for any payment returned or rejected by your financial institution, subject to applicable law.

BLONSENV 6795 12/11/2008

Payment Instructions:

- Make your check payable to BAC Home Loans Servicing, LP
- Don't send cash
- Please include coupon with your payment.

For a full month payment periods, interest is calculated on a monthly basis. Accordingly, interest for all full months, including February, is calculated as 30/360 of annual interest, irrespective of the actual number of days in the month. For partial months, interest is calculated daily on the basis of a 365 day year.

Account Number: [redacted]3154-0
Sandra Merceri
10827 NE 183rd CT
Bothell, WA 98011-1745

Balance Due for charges listed above: $4,351.05 as of February 16, 2010.

Please update e-mail information on the reverse side of this coupon.

BLONSENV

Additional Principal

Additional Escrow

Check Total

BAC Home Loans Servicing, LP
PO BOX 10219
Van Nuys, CA 91410-0219

15413315400000043510500043510 5

:5869900 58: 154133154"

property. For example:

- Repayment Plan: It is possible that you may be eligible for some form of payment assistance through BAC Home Loans Servicing, LP. Our basic plan requires that BAC Home Loans Servicing, LP receive, up front, at least ½ of the amount necessary to bring the account current, and that the balance of the overdue amount be paid, along with the regular monthly payment, over a defined period of time. Other repayment plans also are available.
- Loan Modification: Or, it is possible that the regular monthly payments can be lowered through a modification of the loan by reducing the interest rate and then adding the delinquent payments to the current loan balance. This foreclosure alternative, however, is limited to certain loan types.
- Sale of Your Property: Or, if you are willing to sell your home in order to avoid foreclosure, it is possible that the sale of your home can be approved through BAC Home Loans Servicing, LP even if your home is worth less than what is owed on it.
- Deed-in-Lieu: Or, if your property is free from other liens or encumbrances, and if the default is due to a serious financial hardship which is beyond your control, you may be eligible to deed your property directly to the Noteholder and avoid the foreclosure sale.

If you are interested in discussing any of these foreclosure alternatives with BAC Home Loans Servicing, LP, you must contact us immediately. If you request assistance, BAC Home Loans Servicing, LP will need to evaluate whether that assistance will be extended to you. In the meantime, BAC Home Loans Servicing, LP will pursue all of its rights and remedies under the loan documents and as permitted by law, unless it agrees otherwise in writing. Failure to bring your loan current or to enter into a written agreement by March 18, 2010 as outlined above will result in the acceleration of your debt.

Additionally, the U.S. Department of Housing and Urban Development (HUD) funds free or very low cost housing counseling across the nation. Housing counselors can help you understand the law and your options. They can also help you to organize your finances and represent you in negotiations with your lender if you need this assistance. You may find a HUD-approved housing counselor near you by calling 1-800-569-4287. For the hearing impaired, HUD Counseling Agency (TDD) numbers are available at 1-800-877-8339.

Time is of the essence. Should you have any questions concerning this notice, please contact Loan Counseling Center immediately at 1-800-669-6654. Our office hours are between 8am to 9pm Eastern Time.

Sincerely,

Loan Counseling Center

BAC Home Loans Servicing, LP is a subsidiary of Bank of America, N.A.

Account Number [redacted]3154

E-mail use: Providing your e-mail address below will allow us to send you information on your account.
Sandra Merceri E-mail address:

How we post your payments: All accepted payments of principal and interest will be applied to the longest outstanding installment due, unless otherwise expressly prohibited or limited by law. If you submit an amount in addition to your scheduled monthly amount, we will apply your payments as follows: (i) to outstanding monthly payments of principal and interest, (ii) escrow deficiencies, (iii) late charges and other amounts you owe in connection with your loan and (iv) to reduce the outstanding principal balance of your loan. Please specify if you want an additional amount applied to future payments, rather than principal reduction.

Postdated checks: Postdated checks will be processed on the date received unless a loan counselor agrees to honor the date written on the check as a condition of a repayment plan.

EXHIBIT 2

SXJ6286671R-00C

Mortgage Statement

Statement Date: 07/16/19

BAYVIEW LOAN SERVICING

Bayview Loan Servicing, LLC
P.O. Box 650091
Dallas, TX 75265-0091
www.bayviewloanservicing.com

1.877.251.0990

12302

Sandra Merceri
C/O Walt Richard
3906 S 74th St
Tacoma, WA 98409

Account Number	1938608
Payment Due Date	08/01/19
Total Amount Due	**$296,275.46**

If payment is received after 8/16/19, a $120.53 late fee will be charged.

Please note, after 07/16/2019 this amount may not be sufficient to bring your loan current as additional fees, charges, or attorney fees/costs may have been incurred but not yet invoiced or processed as of the Statement Date, or may have been incurred after the Statement Date. Please contact us at the number above to obtain the current amount due.

Account Information

Outstanding Principal Balance †‡	$509,802.40
Interest Rate	5.625%
Interest Rate Change Date	08/01/19
Escrow Balance	-$38,676.02
Rec Corp Advance Balance	$18,270.86
Prepayment Penalty	N
Property Address	10827 NE 183RD CT BOTHELL WA 98011

Explanation of Amount Due

Principal	$320.31
Interest	$2,090.31
Escrow (Taxes and Insurance)	$626.04
Regular Monthly Payment	**$3,036.66**
Fees & Charges Assessed*	$5,341.99
Past Due Amount**	$290,933.47
Reinstatement Amount (as of 07/16/2019)	**$296,275.46**
Accelerated Amount (as of 07/16/2019)	**$743,118.96**

‡Payments will be applied in order that they become due (oldest first) unless bankruptcy or other court ordered payment plan is in place.
*Fees and Charges Assessed are comprised of Recoverable Corporate Advances, Late Fee and NSF Fees assessed since the last billing cycle.
**Past Due Amount is the sum of the due balances for Principal and Interest, Escrow and Fees & Charges.

Transaction Activity (06/17/19 to 07/16/19)

Date	Description	DEBITS	CREDITS
06/18	Litigation Fees	2495.00	
06/18	Litigation Fees	2274.50	

Additional Transaction may be found on Page 3

Past Payments Breakdown

	Paid Last Bill	Paid Year to Date
Principal	$0.00	$0.00
Interest	$0.00	$0.00
Escrow (for Taxes & Insurance)	$0.00	$0.00
Fees & Charges	$0.00	$0.00
Partial Payment (Unapplied)‡‡	$0.00	$0.00
Total	**$0.00**	**$0.00**

Important Messages

‡‡ Partial Payments: Any partial payment that you make is not applied to your mortgage payment, but instead is held in a separate suspense account. If you pay the balance of a partial payment, the funds will then be applied to your mortgage.

Delinquency Notice

You are late on your mortgage payments. Failure to bring your loan current may result in fees and foreclosure – the loss of your home. As of 07/16/19 you are 3424 days delinquent on your mortgage.

Recent Account History:

Payment due: 02/01/19: Unpaid balance of $2,967.64
Payment due: 03/01/19: Unpaid balance of $3,036.66
Payment due: 04/01/19: Unpaid balance of $3,036.66
Payment due: 05/01/19: Unpaid balance of $3,036.66
Payment due: 06/01/19: Unpaid balance of $3,036.66
Payment due: 07/01/19: Unpaid balance of $3,036.66
Current payment due 08/01/19: $3,036.66
Total: $296,275.46 due. You must pay this amount to bring your loan current.

If you are experiencing Financial Difficulty: See Back for information about mortgage counseling or assistance.

Please be advised, we have made the first notice or filing required by applicable law to start the judicial or non-judicial foreclosure process.

†This is your Principal Balance only, not the amount required to pay your loan in full. Please contact Customer Service for your exact payoff balance. In the event you are in default or foreclosure, you must contact 1.877.251.0990 for payoff information.

BAYVIEW LOAN SERVICING, LLC
PO BOX 650091
DALLAS, TX 75265-0091

Please include the loan number on your check. If we cannot clearly associate the check with a single loan, it may delay or prohibit us from crediting your account.

Borrower SANDRA MERCERI
Loan Number 1938608
Monthly Payment Due $3,036.66

Due By: 08/01/19 **Total Amount Due: $296,275.46**

If payment is received after 8/16/19, a $120.53 late fee will be charged.

BAYVIEW LOAN SERVICING, LLC
PO BOX 650091
DALLAS, TX 75265-0091

Please indicate additional funds. Excess funds received by BLS without explicit application instructions, will be posted based on BLS internal payment hierarchy, which is driven by your loan documents and/or applicable law.

Additional Principal	$
Additional Escrow	$
Other _____	$
Total Amount Sent (Please do not send cash)	$

☐ Check here if your address/telephone number has changed and fill out form on reverse side.

Make check payable to Bayview Loan Servicing.

Please do not write below this line. Servicing Code: MSP

0001938608 MSP 0000303666 0029627546 9

How to contact us

www.bayviewloanservicing.com

The below mailing address must be used for all Error Notices and Information Requests:

Bayview Loan Servicing, LLC
ATTN: Customer Support
4425 Ponce De Leon Blvd., 5th Floor
Coral Gables, FL 33146

Customer Service
Mon – Fri 8:00 am to 9:00 pm ET
Telephone: 1.877.251.0990
Fax: 305.631.5660

Mail payments to:
Bayview Loan Servicing, LLC
PO Box 650091
Dallas, TX 75265-0091

Payoff Request:
Bayview Loan Servicing
Payoff Department
4425 Ponce De Leon Blvd., 5th Floor
Coral Gables, FL 33146
Fax: 305.644.8102

Real Estate Tax Bills:
Bayview Loan Servicing, LLC
Tax Department
P.O. Box 331409
Miami, FL 33233-1409
Fax: 305.644.8104

Bayview Loan Servicing LLC
Billing Statement Opt In/Opt Out
PO BOX 331409
MIAMI FL 33233-1409

Customer Relations
Mon – Fri 8:00 am to 9:00 pm ET
Telephone: 1.888.326.7191

Homeowner's Insurance Inquiries
Mon – Fri 8:00 AM – 7:00 PM ET
Telephone: 877-826-4419
Fax: 248-824-7960

Insurance or Binder:
Bayview Loan Servicing, LLC, its successors and/or assigns
PO Box 5933
Troy, MI 48007-5933
Telephone: 877.826.4419
Fax: 248.824.7960

For hearing/speech impaired accessibility (TTY):
Mon – Fri 8:00 am to 9:00 pm ET
Toll Free #877-676-1565
DID #305-646-6440

Loss Mitigation or Workout Documents:
Email:
LossMitDocs@bayviewloanservicing.com
Fax: 855.330.8077

When Making Calls from Outside the U.S.:
Mon – Fri 8:00 am to 9:00 pm ET
Phone Number: 305.646.3980

Additional Payment Methods

Please include the Bayview Loan number on all remittances.

***Western Union Quick Collect:**	Code City: BFTG Code State: FL (Locate the agent nearest you by calling 1.800.525.6313, or visiting www.westernunion.com)
***MoneyGram:**	Receive Code: 13910 1-800-555-3133; 7 days a week, 24 hours a day
***Wire:**	JP Morgan Chase New York, NY ABA #: 021000021 Account No.: 447450847
Overnight Payment or Certified Payoff Funds:	Bayview Loan Servicing, LLC ATTN: Cashiering 4425 Ponce de Leon Blvd., 5th Floor Coral Gables, FL 33146
****By Phone:**	1.877.251.0990
****Online:**	www.bayviewloanservicing.com

**Fees may be imposed by money transmitter.*
***Fees may be imposed by money transmitter; to the extent a fee is imposed, the fee will be $0.25.*

For your convenience, you may have the payment automatically debited every month from the checking or savings account of your choice. To participate in Auto Pay, Bayview's automatic debit program, visit www.bayviewloanservicing.com/**autopay.**

Payment Handling

We reserve the right to electronically collect your eligible payment checks, at first presentment and any additional presentment, from the bank account on which the check was drawn. Our receipt of your payment check is authorization for us to collect the amount of the check electronically, or if needed by draft drawn against the bank account. Checks will be collected electronically by sending the check amount along with the check, routing and account numbers to your bank. Your bank account may be debited as early as the same day we receive your payment. The original check will be destroyed and an image maintained for our records.

Housing Counselor Information

If you would like counseling or assistance, for a list of homeownership counselors or counseling organizations in your area, you can contact the following: U.S. Department of Housing and Urban Development (HUD), go to http://www.hud.gov/offices/hsg/sfh/hcc/hcs.cfm or call 800-569-4287.

If you are a confirmed successor in interest of the account, unless you assume the mortgage loan obligation under state law, you are not personally liable for the mortgage debt and cannot be required to use your own assets to pay the mortgage debt.

National Schedule of Fees

FEE DESCRIPTION	FEE AMOUNT
Appraisal – An expense charged to the loan to determine the value of the property, which includes an interior inspection of the property.	$400.00 – $675.00, unless prohibited by state law.
Assumption – Charge for the work involved with processing a new buyer that is assuming the terms of an existing loan.	$0.00 – 1% of the UPB or $250, whichever is greater.
Bankruptcy Fees and Costs*	$0 – $5,000
Bankruptcy Attorney Fees* – Fees charged by local counsel as a result of a bankruptcy. Varies depending on the circumstances and is not always charged to the customer's loan.	$0 – $50,000
BPO – An expense charged to the loan in which a broker's price opinion will be used to determine the value of a property on a delinquent loan.	$81.00 – $160.00, unless prohibited by state law.
Foreclosure Attorney Fees* – Fees charged by local counsel as a result of a foreclosure. Varies depending on the circumstances and is not always charged to the customer's loan.	$0 – $50,000
Foreclosure Fees and Costs*	$0 – $5,000
Late Charge – Assessed for payments received after the due date and expiration of any applicable grace period per the loan documents.	As stated in the loan documents, subject to state law requirements.
Litigation Fees and Costs* – Varies depending on the circumstances and is not always charged to the customer's loan.	$0 – $50,000.00
Non-Sufficient Funds Fee – Fee assessed on payments/checks received that are not honored due to insufficient funds.	$0 -- $50, or maximum permitted by state law.
Partial Release – Charge for the processing the release of a portion of the mortgaged property.	Loan balance $300,000 or less – $0; loan balances between $300,000 and $750,000 – $500; loan balance greater than $750,000 – $1,000
Pay-by-Phone, Web and IVR Payment Fee	$0 – $0.25, subject to state law and requirements.
Pre-Foreclosure Notice Registration Fee	$0 – $75, subject to state law requirements.
Priority Processing (Overnight Delivery) – Fee charged if customer requests expedited service.	$0 – $15
Property Inspection	$10 – $15
Property Preservation Fee – An expense charged to the loan to ensure that the condition an appearance of the property are maintained satisfactorily.	$0 – $2,500 and $0 – $110 for grass cuts.
Title Search – An expense charged to the loan for a detailed examination of the historical records concerning the property.	$0 – $500

Other Fees Charged (And fees not included above)

Currently, no fees are assessed for the following: Amortization Schedule, Deed of Trust Copy, Document Copy, Loan History, Release Recording-Residential, Subordination and Verification of Mortgage for Third Party Requests. A prepayment penalty may be assessed against your loan under the terms of the Note.

The above contains a list of common servicing fees. You may incur additional fees if, for example, your loan becomes delinquent or is subject to litigation (e.g. condemnation proceeding).

***These fees will vary depending on the circumstances and is not charged to the customer's loan if not permitted by contract or applicable law.** Such fees may include, but are not limited to, court costs and attorney fees. These fees will vary with the circumstances of the case and the nature of the work performed.
Bayview Loan Servicing, LLC. NMLS #2469

Mortgage Scams Relief Programs

Be cautious of any notices you receive that advise you that you have been approved for a loan modification or trial plan. These may be deceptive scams from persons pretending to be us. For your protection, please verify any such information received by contacting your assigned Asset Manager or Customer Service immediately to confirm that any offer or decision comes from us.

Mortgage Loan Scam Alert

Beware of home loan rescue scams. Facing the possibility of not being able to make your mortgage payments is an unsettling time. Unfortunately, con artists often attempt to take advantage of vulnerable homeowners and may try deceptive scams where they pretend to represent Bayview Loan Servicing, LLC ("Bayview")and allege to have your best interest in mind. You should know that loss mitigation options and counseling do not require fees when working directly with Bayview or a HUD approved housing counselor. For your protection, if you are unsure if the person communicating with you about a modification or other deferment agreement or requiring you to make payments is from Bayview or a legitimate counseling resource, please contact the Customer Relations Department at 1.877.251.0990 or at customerservice@bayviewloanservicing.com and tell us about your situation.

Know your Rights

The FTC's Mortgage Assistance Relief Services (MARS) Rule is establish to protect distressed homeowners from mortgage relief scams that have sprung up during the mortgage crisis. Bogus operations falsely claim that, for a fee, they will negotiate with the consumer's mortgage lender or servicer to obtain a loan modification, a short sale, or other relief from foreclosure.

Servicemembers Civil Relief Act

The Service members Civil Relief Act (SCRA) may offer protection or relief to members of the military who have been called to active duty. If either you have been called to active duty, or you are the spouse, registered domestic partner, partner in a civil union, or financial dependent of a person who has been called to active duty, and you haven't yet made us aware of your status, please contact our Customer Relations Department toll-free at 1.877.251.0990, Monday – Friday 8am – 5pm ET. As your loan servicer, we are here to help you understand your options.

Credit Reporting

We may report information about your account to credit bureaus. Late payments, missed payments, or other defaults on your account may be reflected in your credit report.

Bayview Loan Servicing, LLC, is a debt collector. This letter is an attempt to collect a debt, and any information obtained will be used for that purpose. To the extent that your obligation has been discharged or is subject to an automatic stay in bankruptcy this notice is for information purposes only and does not constitute a demand of payment or any attempt to collect such obligation.

Has any of your contact information changed?
If so, please complete this and check the box on the front of the coupon.

Mailing Address: _____

City: _____ **State:** _____ **Zip:** _____

Home Phone: ( ) _____ **Business Phone:** ( ) _____

Customer Name: *Please Print* _____ **Email Address:** _____

Customer Name: *Please Print* _____ **Email Address:** _____

Customer Signature: _____ **Customer Signature:** _____

Date: _____ **Date:** _____

Please be advised that Bayview Loan Servicing, LLC, ("Bayview"), may employ the use of automated technology to place calls, pre-recorded messages and text messages to any wireless numbers provided by you in regards to the servicing of your mortgage loan. This is not a condition for Bayview to service your account and you may revoke your consent to this form of contact at any time by notifying Bayview.

Mortgage Statement

Statement Date: 07/16/19

Bayview Loan Servicing, LLC
P.O. Box 650091
Dallas, TX 75265-0091
www.bayviewloanservicing.com

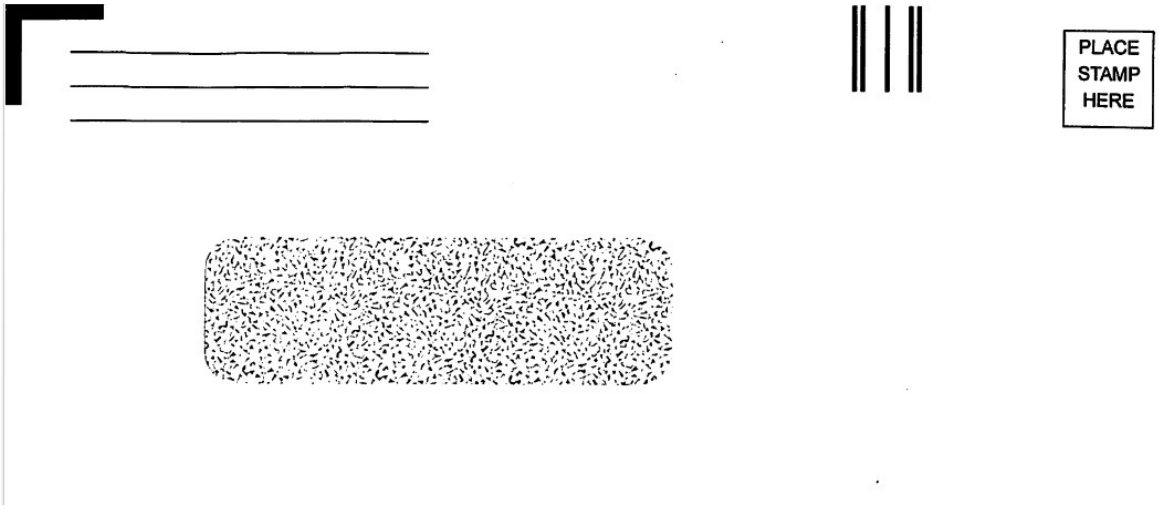
Account Number	1938608
Payment Due Date	08/01/19
Total Amount Due	**$296,275.46**

If payment is received after 8/16/19, a $120.53 late fee will be charged.
Please note, after 07/16/2019 this amount may not be sufficient to bring your loan current as additional fees, charges, or attorney fees/costs may have been incurred but not yet invoiced or processed as of the Statement Date, or may have been incurred after the Statement Date. Please contact us at the number above to obtain the current amount due.

Transaction Activity (06/17/19 to 07/16/19)

Date	Description	DEBITS	CREDITS
06/19	Property Inspection	11.00	
06/20	Litigation Fees	539.00	
06/20	Litigation Attorney Costs	22.49	

EXHIBIT 3



DO NOT ENCLOSE CORRESPONDENCE WITH PAYMENT.

DON'T FORGET!

1. Please write your loan/account number on your check or money order.
2. Sign your check or money order.
3. Do not staple payment to return portion of statement.
4. Do not send cash through the mail.
5. Please be sure that our address shows through the window.

CR 1
SCOPE OF RULES

These rules govern the procedure in the superior court in all suits of a civil nature whether cognizable as cases at law or in equity with the exceptions stated in rule 81. They shall be construed and administered to secure the just, speedy, and inexpensive determination of every action.

[Adopted effective July 1, 1967; September 1, 2005.]

APPENDIX 4

GR 9
SUPREME COURT RULEMAKING

(a) Statement of Purpose. The purpose of rules of court is to provide necessary governance of court procedure and practice and to promote justice by ensuring a fair and expeditious process. In promulgating rules of court, the Washington Supreme Court seeks to ensure that:

(1) The adoption and amendment of rules proceed in an orderly and uniform manner;

(2) All interested persons and groups receive notice and an opportunity to express views regarding proposed rules;

(3) There is adequate notice of the adoption and effective date of new and revised rules;

(4) Proposed rules are necessary statewide;

(5) Minimal disruption in court practice occurs by limiting the frequency of rule changes; and

(6) Rules of court are clear and definite in application.

(b) Definitions. As used in this rule, the following terms have these meanings:

(1) "Suggested rule" means a request for a rule change or a new rule that has been submitted to the Supreme Court.

(2) "Proposed rule" means a suggested rule that the Supreme Court has ordered published for public comment.

(c) Request for Notification. Any person or group may file a request with the Supreme Court to receive notice of a suggested rule. The request may be limited to certain kinds of rule changes. The request shall state the name and address of the person or group to whom the suggested rule is to be sent. Once filed, the request shall remain in effect until withdrawn or unless notice sent by regular, first-class U.S. mail is returned for lack of a valid address.

(d) Initiation of Rules Changes. Any person or group may submit to the Supreme Court a request to adopt, amend, or repeal a court rule. The Supreme Court shall determine whether the request is clearly stated and in the form required by section (e) of this rule. If the Supreme Court determines that a request is unclear or does not comply with section (e), the Supreme Court may (1) accept the request notwithstanding its noncompliance, (2) ask the proponent to resubmit the request in the proper format, or (3) reject the request, with or without a written notice of the reason or reasons for such rejection.

(e) Form for Submitting a Request to Change Rules.

(1) The text of all suggested rules should be submitted on 8 1/2- by 11-inch line-numbered paper with consecutive page numbering and in an electronic form as may be specified by the Supreme Court. If the suggested rule affects an existing rule, deleted portions should be shown and stricken through; new portions should be underlined once.

(2) A suggested rule should be accompanied by a cover sheet and not more than 25 pages of supporting information, including letters, memoranda, minutes of meetings, research studies, or the like. The cover sheet should contain the following:

(A) Name of Proponent--the name of the person or group requesting the rule change;

(B) Spokesperson--a designation of the person who is knowledgeable about the proposed rule and who can provide additional information;

(C) Purpose--the reason or necessity for the suggested rule, including whether it creates or resolves any conflicts with statutes, case law, or other court rules;

(D) Hearing--whether the proponent believes a public hearing is needed and, if so, why;

(E) Expedited Consideration--whether the proponent believes that exceptional circumstances justify expedited consideration of the suggested rule, notwithstanding the schedule set forth in section (i).

(f) Consideration of Suggested Rule by Supreme Court.

(1) The Supreme Court shall initially determine whether a suggested rule has merit and whether it involves a significant or merely technical change. A "technical change" is one which corrects a clerical mistake or an error arising from oversight or omission. The Supreme Court shall also initially determine whether the suggested rule should be considered under the schedule provided for in section (i) or should receive expedited consideration for the reason or reasons to be set forth in the transmittal form provided for in section (f)(2).

The Supreme Court may consult with other persons or groups in making this initial determination.

(2) After making its initial determination, the Supreme Court shall forward each suggested rule, except those deemed "without merit", along with a transmittal form setting forth such determinations, to the Washington State Bar Association, the Superior Court Judges Association, the District and Municipal Court Judges Association, and the Chief Presiding Judge of the Court of Appeals for their consideration. The transmittal shall include the cover sheet and any additional information provided by the proponent. The Supreme Court shall also forward the suggested rule and cover sheet to any person or group that has filed a notice pursuant to section (c), and to any other person or group the Supreme Court believes may be interested. The transmittal form shall specify a deadline by which the recipients may comment in advance of any determination under section (f)(3) of this rule. If the Supreme Court determines that the suggested rule should receive expedited consideration, it shall so indicate on the transmittal form. The form may contain a brief statement of the reason or reasons for such consideration.

(3) After the expiration of the deadline set forth in the transmittal form, the Supreme Court may reject the suggested rule, adopt a merely technical change without public comment, or order the suggested rule published for public comment.

(g) Publication for Comment.

(1) A proposed rule shall be published for public comment in such media of mass communication as the Supreme Court deems appropriate, including, but not limited to, the Washington Reports Advance Sheets and the Washington State Register. The proposed rule shall also be posted on such Internet sites as the Supreme Court may determine, including those of the Supreme Court and the Washington State Bar Association. The purpose statement required by section (e)(2)(C) shall be published along with the proposed rule. Publication of a proposed rule shall be announced in the Washington State Bar News.

(2) Publication of a proposed rule in the Washington State Register shall not subject Supreme Court rule making to the provisions of the Administrative Procedures Act.

(3) All comments on a proposed rule shall be submitted in writing to the Supreme Court by the deadline set forth in section (i).

(4) If a comment includes a suggested rule, it should be in the format set forth in section (e). All comments received will be kept on file in the office of the Clerk of the Supreme Court for public inspection and copying.

(h) Final Action by the Supreme Court, Publication, and Effective Date.

(1) After considering a suggested rule, or after considering any comments or written or oral testimony received regarding a proposed rule, the Supreme Court may adopt, amend, or reject the rule change or take such other action as the Supreme Court deems appropriate.

Prior to action by the Supreme Court, the court may, in its discretion, hold a hearing on a proposed rule at a time and in a manner defined by the court. If the Supreme Court orders a hearing, it shall set the time and place of the hearing and determine the manner in which the hearing will be conducted. The Supreme Court may also designate an individual or committee to conduct the hearing.

(2) Regarding action on a suggested rule:

(A) If the Supreme Court rejects the suggested rule, it may provide the proponent with the reason or reasons for such rejection.

(B) If the Supreme Court adopts the suggested rule without public comment, it shall publish the rule and may set forth the reason or reasons for such adoption.

(3) Regarding action on a proposed rule:

(A) If the Supreme Court rejects a proposed rule, it may publish its reason or reasons for such rejection.

(B) If the Supreme Court adopts a proposed rule, it may publish the rule along with the purpose statement from the cover sheet.

(C) If the Supreme Court amends and then adopts a proposed rule, it should publish the rule as amended along with a revised purpose statement.

(4) All adopted rules, or other final action by the Supreme Court for which this rule requires publication, shall be published in a July edition of the Washington Reports advance sheets and in the Washington State Register immediately after such action. The adopted rules or other Supreme Court final action shall also be posted on the Internet sites of the Supreme Court and the Washington State Bar Association. An announcement of such publication shall be made in the Washington State Bar News.

(5) All adopted rules shall become effective as provided in section (i) unless the Supreme Court determines that a different effective date is necessary.

(i) Schedule for Review and Adoption of Rules.

(1) In order to be published for comment in January, as provided in section (i)(2), a suggested rule must be received no later than October 15 of the preceding year.

(2) Proposed rules shall be published for comment in January of each year.

(3) Comments must be received by April 30 of the year in which the proposed rule is published.

(4) Proposed rules published in January and adopted by the Supreme Court shall be republished in July and shall take effect the following September 1.

(5) All suggested rules will be considered pursuant to the schedule set forth in this section, unless the Supreme Court determines that exceptional circumstances justify more immediate action.

(6) The Supreme Court, in consultation with the Washington State Bar Association, the Superior Court Judges Association, the District and Municipal Court Judges Association, and the Chief Presiding Judge of the Court of Appeals, shall develop a schedule for the periodic review of particular court rules. The schedule shall be posted on such Internet sites as the Supreme Court may determine, including those of the Supreme Court and the Washington State Bar Association.

(j) Miscellaneous Provisions.

(1) The Supreme Court may adopt, amend, or rescind a rule, or take any emergency action with respect to a rule without following the procedures set forth in this rule. Upon taking such action or upon adopting a rule outside of the schedule set forth in section (i) because of exceptional circumstances, the Supreme Court shall publish the rule in accordance with sections (g) or (h) as applicable.

(2) This rule shall take effect on September 1, 2000 and apply to all rules not yet adopted by the Supreme Court by that date.

[Adopted effective March 19, 1982; amended effective September 1, 1984; September 1, 2000.]

APPENDIX 5

Washington Court Rules

Washington Superior Court Civil Rules

Chapter 7. Judgment

As amended through November 8, 2017

Rule 60. Relief from Judgment or Order

(a) Clerical Mistakes. Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. Such mistakes may be so corrected before review is accepted by an appellate court, and thereafter may be corrected pursuant to RAP 7.2(e).

(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud; etc. On motion and upon such terms as are just, the court may relieve a party or the party's legal representative from a final judgment, order, or proceeding for the following reasons:

(1) Mistakes, inadvertence, surprise, excusable neglect or irregularity in obtaining a judgment or order;

(2) For erroneous proceedings against a minor or person of unsound mind, when the condition of such defendant does not appear in the record, nor the error in the proceedings;

(3) Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under rule 59(b);

(4) Fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;

(5) The judgment is void;

(6) The judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application;

(7) If the defendant was served by publication, relief may be granted as prescribed in RCW 4.28.200;

(8) Death of one of the parties before the judgment in the action;

(9) Unavoidable casualty or misfortune preventing the party from prosecuting or defending;

(10) Error in judgment shown by a minor, within 12 months after arriving at full age; or

(11) Any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time and for reasons (1), (2) or (3) not more than 1 year after the judgment, order, or proceeding was entered or taken. If the party entitled to relief is a minor or a person of unsound mind, the motion shall be made within 1 year after the disability ceases. A motion under this section (b) does not affect the finality of the judgment or suspend its operation.

(c) Other Remedies. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding.

(d) Writs Abolished--Procedure. Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review are abolished. The procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

(e) Procedure on Vacation of Judgment.

(1) Motion. Application shall be made by motion filed in the cause stating the grounds upon which relief is asked, and supported by the affidavit of the applicant or the applicant's attorney setting forth a concise statement of the facts or errors upon which the motion is based, and if the moving party be a defendant, the facts constituting a defense to the action or proceeding.

(2) Notice. Upon the filing of the motion and affidavit, the court shall enter an order fixing the time and place of the hearing thereof and directing all parties to the action or proceeding who may be affected thereby to appear and show cause why the relief asked for should not be granted.

(3) Service. The motion, affidavit, and the order to show cause shall be served upon all parties affected in the same manner as in the case of summons in a civil action at such time before the date fixed for the hearing as the order shall provide; but in case such service cannot be made, the order shall be published in the manner and for such time as may be ordered by the court, and in such case a copy of the motion, affidavit, and order shall be mailed to such parties at their last known post office address and a copy thereof served upon the attorneys of record of such parties in such action or proceeding such time prior to the hearing as the court may direct.

(4) Statutes. Except as modified by this rule, RCW 4.72.010-.090 shall remain in full force and effect.

History. Amended effective September 26, 1972; January 1, 1977; April 28, 2015.

RCW 2.04.190 **APPENDIX 6**

Rules of pleading, practice, and procedure generally.

The supreme court shall have the power to prescribe, from time to time, the forms of writs and all other process, the mode and manner of framing and filing proceedings and pleadings; of giving notice and serving writs and process of all kinds; of taking and obtaining evidence; of drawing up, entering and enrolling orders and judgments; and generally to regulate and prescribe by rule the forms for and the kind and character of the entire pleading, practice and procedure to be used in all suits, actions, appeals and proceedings of whatever nature by the supreme court, superior courts, and district courts of the state. In prescribing such rules the supreme court shall have regard to the simplification of the system of pleading, practice and procedure in said courts to promote the speedy determination of litigation on the merits.

[**1987 c 202 § 101; 1925 ex.s. c 118 § 1;** RRS § 13-1.]

NOTES:

Rules of court: *Cf. Title 1 RAP.*

Intent—1987 c 202: "The legislature intends to:

(1) Make the statutes of the state consistent with rules adopted by the supreme court governing district courts; and

(2) Delete or modify archaic, outdated, and superseded language and nomenclature in statutes related to the district courts." [**1987 c 202 § 1.**]

*Court of appeals—Rules of administration and procedure: RCW **2.06.030**.*

SUSAN L. FULLMER, ATTORNEY AT LAW

August 21, 2020 - 4:11 PM

Transmittal Information

Filed with Court:	Court of Appeals Division I
Appellate Court Case Number:	80654-8
Appellate Court Case Title:	Sandra Merceri, Appellant v. Bank of New York Mellon et al, Respondents

The following documents have been uploaded:

- 806548_Petition_for_Review_20200821155002D1146809_0870.pdf
  This File Contains:
  Petition for Review
  The Original File Name was 2020-08-21 Petition for Review CR 60 final.pdf

A copy of the uploaded files will be sent to:

- asoldato@klinedinstlaw.com
- ghensrude@klinedinstlaw.com
- pray@klinedinstlaw.com
- susan@fullmerlaw.info
- woodley@gmail.com

Comments:

This petition for review is amended and includes the appendix, which was inadvertantly omitted from the filing a few minutes ago.

Sender Name: Susan Fullmer - Email: susan@fullmerlaw.info
Address:
5608 17TH AVE. NW
#599
SEATTLE, WA, 98107
Phone: 206-567-2757

Note: The Filing Id is 20200821155002D1146809