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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO

STATE OF WASHINGTON,
RESPONDENT,

V.

TERRY EUGENE GAINES,
APPELLANT.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR PIERCE COUNTY
CAUSE NO 10-1-00422-1
THE HONORABLE KATHRYN J. NELSON, JUDGE

Appellate Court Cause No. 53955-1-II

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I. STATEMENT OF THE ISSUES

1. Whether a superior court judge properly denied the motion of the Defendant/Appellant, Terry Eugene Gaines (hereinafter ,“Defendant”) requesting that the superior court judge order the Clerk of the Superior Court to remove the Defendant’s criminal legal financial obligation (LFO) judgment from a collection agency to which the LFO had been referred already for collection.

2. Whether the Clerk of the Superior Court violated constitutional due process in the referral of the Defendant’s criminal LFO judgment to a collection agency for collection.

3. Whether the statutory and contractual court cost which the Clerk of the Superior Court assessed at the time of referral of the Defendant’s criminal LFO judgment to a collection agency for collection violated the constitutional prohibition against an excessive fine.

II. STATEMENT OF THE FACTS

On March 2, 2012, the Honorable Judge Kathryn J. Nelson entered a criminal LFO judgment against the Defendant, in the amount of \$1,802,300.00, which amount included restitution in the amount of \$1,800,000.00 plus \$2,300.00 in non-restitution criminal fees and costs. CP 29.

On March 28, 2014, based on the Mandate of the Appellate Court, the Clerk of the Superior Court added to the Defendant’s criminal LFO judgment appellate costs in the amount of \$8,685.02.

On, or about, March 31, 2018, the Clerk of the Superior Court added to the Defendant's criminal LFO judgment a \$100.00 assessment, under RCW 9.94A.780(7).

On, or about, May 18, 2018, the Clerk of the Superior Court referred to AllianceOne Receivables Management, Inc. (ARMI) for collection the Defendant's criminal LFO judgment, which collection referral included an additional court cost, assessed by the Clerk of the Superior Court, under RCW 36.18.190, in the amount of \$738,312.68.

On August 2, 2019, the Honorable Judge Kathryn J. Nelson heard the Defendant's motion for LFO relief, and granted the Defendant's motion in part, CP 129, by:

- (1) waiving all accrued non-restitution LFO interest from the LFO judgment, in the amount of \$10,343.94; and,
- (2) removing all appellate costs, in the amount of \$8,685.02, from the LFO judgment; and,
- (3) providing that the Defendant shall not be prejudiced from the filing of a future motion regarding manifest hardship.

Thereafter, the Defendant's instant appeal was filed for consideration by this Appellate Court.

III. ARGUMENT

a. LFO COLLECTION REFERRAL COURT COSTS ARE ASSESSED UNDER RCW 36.18.190

It is necessary to draw an appropriate distinction among the

several statutes under which various types of obligations owed to governmental entities are referred to a private collection agency for collection.

In cases where there has been a judicial determination of, and entry of a judgment arising out of, a defendant's violation of law, such a judgment may be referred to a collection agency under RCW 36.18.190 (superior court judgments), or under RCW 13.40.192 (juvenile court judgments), or under RCW 3.02.045 (judgments in a court of limited jurisdiction). In each of these cases, the underlying court creditor is authorized to assess, as court costs, the remuneration to a collection agency, based on a written collection contract with the collection agency.

It should be noted that the reference to "collection agencies under chapter 19.16 RCW" does appear in both RCW 36.18.190 and RCW 3.02.045. However, chapter 19.16 RCW regulates two separate matters:

- (1) the licensing of collection agencies; and,
- (2) the collection of "claims" and "debts" by collection agencies.

The reference to "collection agencies under chapter 19.16 RCW", in both RCW 36.18.190 and RCW 3.02.045, means that no collection agency could even be considered for collection of court judgments if that collection agency were not properly licensed as a collection agency under the Washington Collection Agency Act (WCAA), specifically under RCW 19.16.110. A collection agency must be properly licensed before seeking to work with courts to attempt collection of unpaid criminal judgments and infraction judgments.

The fact that the collection agency must be licensed does not mean that a criminal judgment, or an infraction judgment, is therefore transformed into a “claim” or a “debt”, under Chapter 19.16 RCW, once the judgment is referred to a collection agency in order to attempt collection of the judgment.

b. RCW 19.16.500

In addition to the licensing of collection agencies, the WCAA regulates the collection of a “claim”, defined by RCW 19.16.100(2) to be “any obligation for the payment of money or thing of value arising out of any agreement or contract, express or implied”. RCW 19.16.100(7) defines “debtor” as “any person owing or alleged to owe a claim”. Claims under the WCAA can include commercial claims against a business, consumer claims against an individual, and claims owed to a governmental entity, including claims arising out of, for example, agreements for utility services, childcare services, lottery machine rentals, and real property leases.

It is true that RCW 19.16.500 also refers to the collection of public debts, which are defined as including “fines and other debts”, under RCW 19.16.500(4), and would include amounts owed for the salvage and sale of derelict vessels, for property abatement penalties, and for other citations issued by a governmental entity for administrative violations, such as performing work as a contractor while unlicensed by the State of Washington, where the obligation has not been imposed by a court, as well as restitution collected on behalf of a crime victim. In these cases, under RCW 19.16.500, the governmental entity adds a collection fee -

not a court cost - to the debt at the time of collection referral.

This distinction is unambiguous and significant. RCW 3.02.045 applies solely to:

“unpaid penalties on infractions, criminal fines, costs, assessments, civil judgments, or forfeitures that have been imposed by the courts”.

RCW 36.18.190 applies solely to:

“. . .unpaid court-ordered legal financial obligations as enumerated in RCW 9.94A.030 that are ordered pursuant to a felony or misdemeanor conviction and of unpaid financial obligations imposed under Title 13 RCW”.

and for that reason the Defendant is incorrect to characterize the statutory court costs added to the Defendant’s LFO in this matter as arising under RCW 19.16.500. Here, the applicable and controlling statute is RCW 36.18.190, and thus the additional amount assessed at the time of the referral of the Defendant’s LFO for collection is properly characterized as a court cost, not as a collection fee.

c. LFO COLLECTION BY THE COUNTY CLERK

In Washington State, the County Clerk is an elective office (under the Washington State Constitution, Article XI, Section 5, and under RCW 36.16.030), and the County Clerk is also the Clerk of the Superior Court (under the Washington State Constitution, Article IV, Section 26).

RCW 9.94A.760(5) states, in pertinent part, that the “. . . county clerk is authorized to collect unpaid legal financial obligations at any time the offender remains under the jurisdiction of the court for purposes of his or her legal

financial obligations.”

In order to attempt to accomplish the collection of an LFO, the Washington State legislature has provided to the Clerk of the Superior Court (“Clerk”) statutory administrative authority, under RCW 36.18.190.

Based on this specific statutory administrative authority, it is the Clerk that may contract with collection agencies for LFO collection; it is the Clerk that refers an LFO to a collection agency for attempted collection; it is the Clerk that assesses a statutory LFO court cost at the time of LFO collection referral; it is the Clerk that maintains control over the LFO, even after collection referral, under RCW 36.18.190; and, therefore, it is the Clerk that cancels an LFO back out of collection.

The Clerk’s control over an LFO, and the Clerk’s authority to cancel an LFO back out of collection, do not constitute exercises of judicial power, but are instead administrative functions.

What the Defendant sought in the instant case was to have the superior court judge enter an order that would have directly overridden an administrative and contractual decision by the Clerk (even though it is the Clerk that has the express statutory authority to make such decisions) which would have provided to the Defendant a type of remedy, or relief, from the LFO (even though the law in Washington State does not provide a criminal defendant with the right to seek, and does not authorize a trial judge the authority to grant, any such judicial remedy or relief). The superior court judge here did not agree with, and did not

grant, the Defendant's request to remove the LFO from collection.

d. STATUTORY JUDICIAL LFO REMEDIES

Although the Washington State legislature, even in the recent 2018 amendments to the LFO statutes, has not provided a criminal defendant with the right to seek, and has not authorized a trial judge the authority to grant, any such judicial remedy or relief to remove an LFO from collection, the law does provide a variety of methods by which a criminal defendant may seek judicial LFO relief. Some of these remedies limit the discretion of a superior court judge (for example, a superior court judge no longer has any discretion, and must waive all accrued non-restitution LFO interest based on nothing more than the request by a criminal defendant to do so, under RCW 10.82.090(2)(a); on the other hand, a superior court judge may not even consider waiving accrued restitution LFO interest until the restitution principal has been paid in full, under RCW 10.82.090(2)(b)).

Another remedy available to a criminal defendant is the possibility of remission of the payment of LFO costs, under RCW 10.01.160(4), if the criminal defendant is able to provide evidence sufficient to establish manifest hardship. The 2018 amendments to the LFO statutes incorporated the definition of "indigent", at RCW 10.101.010(3) (a) through (c), as the objective standard to measure whether or not manifest hardship exists with respect to a criminal defendant who is seeking remission of LFO costs. Remission is a remedy which RCW 10.01.160(4) specifies may be requested by a criminal defendant at any

time.

The statutory definition of an LFO, at RCW 9.94A.030(31), provides, in pertinent part, as follows:

“Legal financial obligation” means a sum of money that is ordered by a superior court of the state of Washington for legal financial obligations which may include restitution to the victim, statutorily imposed crime victims' compensation fees as assessed pursuant to RCW 7.68.035, court costs, county or interlocal drug funds, court-appointed attorneys' fees, and costs of defense, fines, and any other financial obligation that is assessed to the offender as a result of a felony conviction.

Therefore, in this case, the Clerk's assessment under RCW 9.94A.780(7), and the Clerk's court cost assessment under RCW 36.18.190 at the time of LFO referral for collection, were added to, and became part of, the Defendant's LFO.

Nevertheless, here, the Defendant is not prejudiced, and does retain the right, to request future judicial relief from LFO costs based on manifest hardship, a right that was referenced in the order of the superior court judge. CP 129.

Remission of restitution amounts is not an available judicial remedy under RCW 10.01.160(4). Removal of an LFO from collection is also not an available judicial remedy under RCW 10.01.160(4), or under any other statute.

e. **COUNTY CLERK CONTROLS LFO DURING COLLECTION**

ARMI does agree that an LFO may be canceled back out of collection, under both statutory law and case law, and - here - also under the agreement between the Clerk and ARMI.

It is a general principle of collection law that the referral of an account for collection to a collection agency does not deprive the underlying creditor of the

right to demand that the collection account be canceled back out of collection.

DeBenedictis v. Hagen, 77 Wash.App. 284, 289-290, 890 P.2d 529 (1995).

RCW 36.18.190 specifically provides that a collection contract with the collection agency does not deprive the underlying creditor court of control over the LFO. As it is the Clerk who has statutory administrative control over LFO collection, over negotiation of a collection contract with a collection agency, and assessment of court costs upon collection referral, it is also the Clerk who has the statutory administrative authority to have an LFO canceled back out of collection, under RCW 36.18.190. This statutory administrative authority granted to the Clerk is not, however, a proper basis for the Defendant's allegation that this portion of RCW 36.18.190 should be interpreted as a judicial remedy that is available to a criminal defendant seeking judicial LFO relief.

Here, the written Letter of Establishment between the Clerk and ARMI specifically incorporates RCW 36.18.190 as part of the agreement. CP 122.

For the reasons stated above, the Defendant's constitutional challenges to RCW 19.16.500 fail, because RCW 36.18.190, not RCW 19.16.500, is the controlling statute here with regard to additional court costs assessed at the time of the Clerk's LFO collection referral.

f. NOTICE OF LFO COLLECTION REFERRAL

Nothing in the law requires the Clerk to provide notice, by judicial hearing or otherwise, to a criminal defendant prior to the time that the Clerk decides to refer, and then does refer, an LFO to a collection agency for collection.

Nothing in the law requires the Clerk to provide notice to a criminal by judicial hearing or otherwise, to a criminal defendant prior to the time that the Clerk decides to assess, and does assess, court costs to be added to an LFO at the time the LFO is referred to a collection agency for collection.

Nevertheless, here, though not required by the law to do so, the Clerk did send notice to the Defendant prior to the Clerk's LFO collection referral to ARMI. CP 69. The written Letter of Establishment between the Clerk and ARMI also provides, as part of the agreement, that the Clerk would send such notice prior to collection referral. CP 123.

The Clerk's actions, in assessing additional LFO court costs and in referring an LFO to a collection agency for collection, are actions which are administrative in nature, not judicial, as explained above.

To accept the Defendant's allegation that due process requires some type of preliminary judicial hearing prior to the Clerk's assessment of the court cost at the time of collection referral, and prior to the Clerk's subsequent collection referral to a collection agency, would require this Appellate Court, in effect, to amend RCW 36.18.190 by means of statutory construction and to add language that the statute does not contain. This Appellate Court should reject the Defendant's request to do so.

This conclusion does not mean that a criminal defendant is without any recourse whatsoever with respect to LFO court costs. As mentioned above, judicial remission of LFO court costs may be requested at any time, under the

objective standards incorporated into RCW 10.01.160(4) regarding manifest hardship. Because such a motion may be filed at any time, RCW 10.01.160(4) satisfies the constitutional protections of procedural due process, and of substantive due process. However, the existence of an available judicial remedy should not delay, or suspend, or replace, or impose a new judicial pre-requisite upon, the Clerk's exercise of statutory administrative authority under RCW 36.18.190.

g. LFO COURT COST IS NOT AN UNCONSTITUTIONALLY EXCESSIVE FINE

It is important to correct the Defendant's mistaken assertion, in Appellant's Brief, page 7, in the 2nd paragraph, that "AllianceOne assessed a 19% collection fee" on the Defendant's LFO. First, the Clerk, not ARMI, assesses the amount. Second, the assessed amount is a court cost, not a collection fee. Third, the court cost amount is assessed at the rate of \$23.4568 per \$100.00, or 23.4568%. The 19% mentioned by the Defendant is the percentage of ARMI's retained earnings from a payment, not percentage used to calculate the amount of the Clerk's assessed court cost.

The written Letter of Establishment between the Clerk and ARMI provides an example to explain the distinction between the two percentage rates. Using an example of an LFO referral in the amount of \$100.00, the additional court cost equals \$23.45 (rounded down), for a total amount owed of \$123.45. If ARMI were to collect the entire amount of \$123.45, ARMI would retain \$23.45 of the \$123.45 as ARMI's remuneration for accomplishing the collection. ARMI

would remit to the Clerk the original amount of \$100.00 (an amount equal to 81% of \$123.45). The amount of \$23.45 is equal to 19% of \$123.45, would be ARMI's retained earnings, and those retained earnings are equal to 19%. CP 122.

Here, the amount of the Clerk's LFO court cost of \$738,312.68 was calculated, using a slightly lower rate of 23.456%, at the time of collection referral, as follows:

\$2,300.00	- LFO non restitution principal
\$1,800,000.00	- LFO restitution principal
\$8,685.02	- appellate costs
\$100.00	- Clerk's RCW 9.94A.780(7) assessment
\$1,336,764.50	- interest accrued at the time of collection referral
(\$199.95)	- payments
=====	
\$3,147,649.57	- total amount of original LFO referred to ARMI

\$3,147,649.57 x .23456 = \$738,312.68 Clerk's LFO court cost.

To the extent that ARMI cannot accomplish collection, ARMI receives no payment whatsoever for its collection efforts, regardless of the total amount of the Clerk's assessed LFO court cost. Currently, ARMI has retained, and thus has been paid, a total of \$28.50, an amount equal to 19% of the total of \$150.00 that ARMI has collected so far on the Defendant's LFO.

ARMI's retained earnings in the amount of \$28.50 cannot logically or reasonably be characterized as an excessive penalty on the Defendant, or as a violation of any constitutional prohibition against excessive fines, because no portion of the RCW 36.18.190 Clerk's assessed LFO court cost is actually retained by, and paid to, ARMI until collection in some amount is actually

accomplished.

h. LFO INTEREST ACCRUAL

In 2018, the Washington State legislature made significant changes to the manner in which interest accrues on an LFO.

The relevant statute, RCW 10.82.090, was amended so that, as of June 7, 2018, non-restitution LFO amounts accrue no interest, although restitution LFO amounts still continue to accrue interest until paid in full.

In this case, the effect of this statutory amendment, is that no further interest on the Defendant's non-restitution LFO amounts can ever accrue. Of course, all \$10,343.94 of interest on the Defendant's non-restitution LFO amounts that accrued before June 7, 2018, has been waived already by the Superior Court order entered on August 2, 2019. CP 129.

The law regarding the statutory accrual of interest on an LFO - for both restitution LFO amounts and for non-restitution LFO amounts - applies whether or not the Clerk refers the LFO to a collection agency for collection.

It should also be noted that the written Letter of Establishment between the Clerk and ARMI provides that ARMI will remit to the Clerk all LFO interest that ARMI collects. CP 122.

i. STATUTORY LIMITATION ON LFO ENFORCEMENT

Although the enforcement of judgments must generally occur within a 10 year period of time under RCW 4.16.020, and may be extended for an additional 10 year period of time under RCW 6.17.020, the relevant statutory limitation with

regard to the enforcement of LFO judgments is found at RCW 9.94A.760(5).

Under RCW 9.94A.760(5), the controlling date is the date on which the underlying offense was committed. If the underlying offense was committed before July 1, 2000, and if the offense did not involve the rape of a child, then that statute provides that:

“[a]ll other legal financial obligations for an offense committed prior to July 1, 2000, may be enforced at any time during the ten-year period following the offender's release from total confinement or within ten years of entry of the judgment and sentence, whichever period ends later. Prior to the expiration of the initial ten-year period, the superior court may extend the criminal judgment an additional ten years for payment of legal financial obligations including crime victims' assessments. All other legal financial obligations for an offense committed on or after July 1, 2000, may be enforced at any time the offender remains under the court's jurisdiction. For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for purposes of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime.

“The county clerk is authorized to collect unpaid legal financial obligations at any time the offender remains under the jurisdiction of the court for purposes of his or her legal financial obligations.”

In this statute, therefore, the Washington State legislature has provided that one of two alternatives will apply with respect to the time allowed for attempted collection and enforcement of an LFO, based solely on the date of the defendant's underlying offense, as follows:

- 1) if the underlying offense was committed prior to July 1, 2000, then, within 90 days prior to expiration of the original 10 year judgment period of time, an application for an extension of the LFO

judgment must be filed with the court in order to extend the LFO judgment for an additional 10 year period of time (note that in this situation only one 10 year extension of the LFO judgment is allowed, and the burden to act in order to accomplish an extension is on the judgment creditor); or, in the alternative,

2) if the underlying offense was committed on or after July 1, 2000, then, until such time as the LFO judgment is completely satisfied, the court retains jurisdiction over the defendant, the LFO judgment is enforceable, and the LFO judgment may be collected by the clerk of the court (note that in this situation no extension of the LFO judgment is required, the court's jurisdiction does not end solely by means of the passage of time, and the burden is on the defendant to act in order to end the court's LFO jurisdiction by means of satisfying the LFO judgment in full).

In *State v. Adams*, 153 Wn.2d 746, 751, 108 P.3d 130 (2005), at footnote 3, the Court states that: “[f]or legal financial obligations regarding crimes committed after July 1, 2000, the court retains jurisdiction for payment purposes ‘until the obligation is completely satisfied.’ RCW 9.94A.760(4) [which is now found at RCW 9.94A.760(5), as of 06/07/18, the effective date of the 2018 LFO amendments].”

In the instant case, the Defendant's underlying offense occurred after July 1, 2000, and therefore the Court retains jurisdiction over the Defendant until the

LFO is completely satisfied, and the Clerk may continue to attempt collection of the LFO from the Defendant, without any need to seek an extension of the time during which enforcement of the LFO judgment may be attempted.¹

The statutory limitation for enforcement of an LFO judgment applies whether or not the Clerk refers the LFO to a collection agency for collection.

j. CONSTITUTIONAL PROTECTION IN THE CONTRACT CLAUSE

Because here the Clerk has not directed ARMI to cancel and return the Defendant's LFO back out of collection, what the Defendant is seeking is, in effect, for a Superior Court judge to be substituted, in place of the Clerk, into the contract with ARMI, with respect to the determination as to whether or not the Defendant's LFO should be removed from collection, and then for the Superior Court judge to order the Clerk to cancel the LFO back out of collection.

Such a decision would constitute an exercise of statutory authority, by a Superior Court judge, which the legislature granted specifically to the Clerk that actually entered into the contract with ARMI. The remedy the Defendant seeks in this respect is not provided under the law. The legislature has not granted to judges in Washington State Superior Courts the authority to administer, or to

¹ A juvenile LFO does still require application within 10 years for an extension of time for attempted collection because the juvenile LFO statute, RCW 13.40.192, does not utilize the date of the underlying offense to determine whether or not an LFO must be extended at all, unlike RCW 9.94A.760(5). For this reason, the decision in *In re. Pers. Restraint of Brady*, 154 Wn. App. 189, 224 P.3d 842 (2010) is distinguishable from the instant case with respect to the issue of an extension of time for attempted collection of an LFO.

direct, or to undo, a collection referral resulting from a contract between a Clerk and a collection agency.

Those portions of a statute which are not included by the legislature are presumed to have been intentionally excluded by the legislature (under the principle *expressio unius est exclusio alterius*). *Washington Natural Gas Co. v. PUD No. 1*, 77 Wash.2d 94, 98, 459 P.2d 633 (1969); *Bour v. Johnson*, 122 Wash.2d 829, 836, 864 P.2d 380 (1993); *Landmark Dev., Inc. v. City of Roy*, 138 Wash.2d 561, 571, 980 P.2d 1234 (1999). Of course, nowhere in RCW 36.18.190 does the statute provide that the decision of the Clerk to refer, or to cancel, or not to cancel, an obligation from collection can be overturned on the basis of a defendant's motion asking a superior court judge to intervene in the collection contract between the Clerk and a collection agency.

Such a result - which would be the equivalent of adding to the statute a legislative-type remedy without the consent of the legislature - would constitute an impairment of the existing obligation under the contract between ARMI and the Clerk, by lessening the value that ARMI could expect to realize for ARMI's collection efforts under the written Letter of Establishment between the Clerk and ARMI.

The U.S. Constitution, in Article I, Section 10, Clause 1 (the Contract Clause), states, in pertinent part, as follows: "No State shall . . . pass any . . . Law impairing the Obligation of Contracts, . . .".

“It long has been established that the Contract Clause limits the power of the States to modify their own contracts as well as to regulate those between private parties. [citations omitted]. Yet the Contract Clause does not prohibit the States from repealing or amending statutes generally, or from enacting legislation with retroactive effects.” *United States Trust Co. of NY v. New Jersey*, 431 U.S. 1, 17 (1977).

The Declaration of Rights in the Washington State Constitution also contains an obligation of contracts clause, in Article I, Section 23, which states, in pertinent part, as follows: “No . . . law impairing the obligations of contracts shall ever be passed.

“Article 1, section 23 of the Washington State Constitution [is similar to the U.S. Constitution’s Contract Clause]. ‘It is fundamental that this prohibition reaches any form of legislative action, including delegated legislative activity by a municipal corporation or even direct action by the people.’ *Ruano v. Spellman*, 81 Wn.2d [820,] at 825 [(1973)].” *Bidwell v. City of Bellevue*, 65 Wn. App. 43, 49-50, 827 P.2d 339 (1992).

“However, when the State impairs its own contracts, the reviewing court must apply an independent analysis to determine if the impairment was ‘reasonable and necessary’. [citations omitted].” *Carlstrom v. State*, 103 Wn.2d 391, 394, 694 P.2d 1 (1985); *see also, In re Estate of Hambleton*, 181 Wn.2d 802, 830, 335 P.3d 398 (2014).

The *Ruano* court, *id.*, at 828, also affirmed the established rule that an action - even if it is an indirect action - which “. . . diminishes the value of the contract constitutes a prohibited impairment [of the Contract Clause in both the Washington State Constitution and the U.S. Constitution]”

The Defendant seeks to have this Appellate Court approve a policy decision to alter the statute in order to create a new, quasi-legislative remedy, overriding the Clerk’s statutory authority, and to use the newly-created remedy as the basis on which to cancel the Defendant’s LFO back out of collection. Such a result would constitute an unconstitutional impairment of the Contract Clause, with respect to the written Letter of Establishment between the Clerk and ARMI. CP 122-123.

k. CONCLUSION

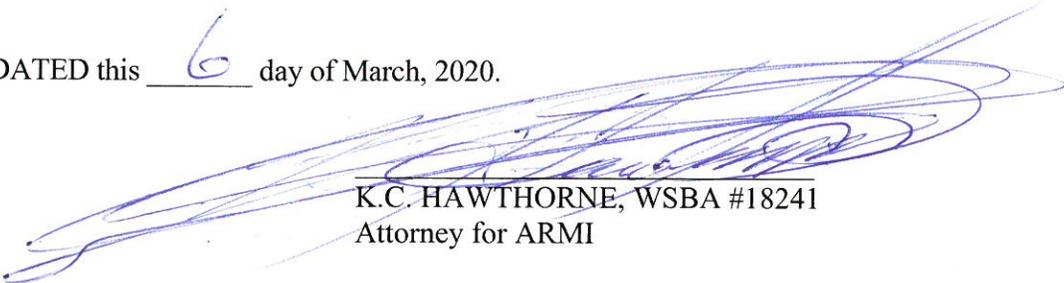
For the reasons set forth above, ARMI respectfully requests that this Appellate Court:

- 1) affirm the August 2, 2019, Order entered by the Honorable Judge Kathryn J. Nelson after hearing the Defendant’s motion for LFO relief; and,
- 2) reject the Defendant’s assignment of error no. 1, and hold that the Honorable Judge Kathryn J. Nelson, Superior Court judge, properly denied the Defendant’s request that the superior court judge order the Clerk to remove the Defendant’s LFO

from a collection agency to which the LFO had been referred already for collection; and,

- 3) reject the Defendant's assignment of error no. 2, and hold that the Clerk did not violate constitutional due process in the referral of the Defendant's LFO to a collection agency for collection; and,
- 4) reject the Defendant's assignment of error no. 3, and hold that the court cost which the Clerk assessed at the time of referral of the Defendant's LFO to a collection agency for collection did not violate the constitutional prohibition against an excessive fine; and,
- 5) grant such other and further relief as this Appellate Court deems just and equitable.

DATED this 6 day of March, 2020.



K.C. HAWTHORNE, WSBA #18241
Attorney for ARMI

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**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO**

STATE OF WASHINGTON
Respondent,
vs.
TERRY EUGENE GAINES
Appellant.

Case No.: 53955-1-II
**ALLIANCEONE RECEIVABLES
MANAGEMENT, INC.**
**DECLARATION OF DOCUMENT
FILING AND SERVICE**

I, Michelle Schurman, state that on 03-06-2020, I caused the original **opening brief of Allianceone Receivables Management, Inc.** to be filed in the Court of Appeals, Division Two and a true copy of the same to be served on the following in the manner indicated below:

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Signed on 03-06-2020
at Gig Harbor, Washington

Michelle Schurman

ALLIANCEONE RECEIVABLES MANAGEMENT, INC.

March 06, 2020 - 12:36 PM

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: 53955-1
Appellate Court Case Title: State of Washington, Respondent v. Terry Eugene Gaines, Appellant
Superior Court Case Number: 10-1-00422-1

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