

No. 65657-1-I

(King County Superior Court No. 00-2-09581-3 SEA)

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COURT OF APPEALS OF THE STATE OF WASHINGTON,  
DIVISION ONE

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ARMEN YOUSOUFIAN,

Appellant,

vs.

THE OFFICE OF RON SIMS, King County Executive, *et al.*,

Respondents,

and

DAVID ALLEN and LESLIE MILLSPAUGH,

Respondents.

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**REPLY BRIEF OF APPELLANT**

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## **INTRODUCTION**

Appellant Armen Yousoufian (“Yousoufian”) submits this Reply Brief in rebuttal to the Brief of Respondent King County (“County”). The County’s Brief fails to provide the comprehensive review and associated background of the law regarding general governmental immunity as it pertains to counties, as well as relevant case law interpreting awards of post-judgment interest under RCW 4.56.110.

Herein, Yousoufian demonstrates that counties historically have not been considered sovereign and, as such, have not partaken in the State’s immunity. Further, even assuming that counties retain general governmental immunity against liability for interest on their debts, the Public Records Act (“PRA”), chapter 42.56 RCW, clearly constitutes an implied and express waiver of such immunity under relevant jurisprudence. Finally, Yousoufian is entitled to a mandatory award of post-judgment interest, running from the date of the trial court’s 2005 decision because the Supreme Court modified the trial court’s decision, and left no discretion to the trial court on remand. Accordingly, Yousoufian respectfully requests reversal of the Order Denying Plaintiff’s Motion for Post-Judgment Interest, dated June 7, 2010. CP 300-01.

**A. King County Is Not Immune From Paying Post-Judgment Interest**

King County does not enjoy immunity from paying interest on its debts for a variety of reasons. First, from a historical perspective, counties traditionally have not been considered sovereign and, as such, have not partaken in the State's immunity, including immunity from the payment of post-judgment interest.<sup>1</sup> Second, even if counties retain some veneer of immunity, such immunity has been impliedly and expressly waived by the enactment of the Public Records Act, chapter 42.56 RCW. Finally, King County has specifically waived any veneer of immunity here by already having paid Yousoufian post-judgment interest in this case.

**1. Historically, counties have not enjoyed general governmental immunity**

The Brief of Appellant correctly anticipated that the County's principal defense against Yousoufian's request for an award of post-judgment interest would be to assert general governmental immunity. Br. at 23-27. However, until the County filed the Brief of Respondent, Yousoufian could not be apprised regarding the full extent and/or bases of

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<sup>1</sup> The historical perspective is explained and supported by Karl B. Tegland. See 15 Karl B. Tegland, *Washington Practice: Civil Procedure* § 46:3, *Actions against counties—Generally* (2010).

the County's assertion.<sup>2</sup>

With the benefit of this briefing, it is now clear that the County's Brief fails to provide a comprehensive review and associated background of the law regarding general governmental immunity as it pertains to counties. This background is necessary to understand the full context of the County's limited case citations. A brief historical review of relevant jurisprudence in this regard clearly demonstrates that counties have not traditionally enjoyed general governmental immunity.

As early as 1898, the Supreme Court held that, unlike the State, counties could be sued in either contract or tort. *Kirtley v. Spokane County*, 20 Wash. 111, 115 (1898) ("While counties are political divisions exercising the functions of local governmental agencies for the state, there are many local municipal powers conferred upon them as such, and they may sue and be sued as corporations..."); *see also Whiteside v. Benton County*, 114 Wash. 463, 465-66 (1921) ("[I]t is the settled law in this state that a county is liable for damages...whether it is engaged in carrying out a strictly ministerial duty or a strictly governmental function.").

Several decades later, in 1934, the Supreme Court was confronted

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<sup>2</sup> The trial court provided no analysis supporting the Order Denying Plaintiff's Motion for Post-Judgment Interest, dated June 7, 2010, CP 300-01, and King County's Response to Plaintiff's Motion For Post-Judgment Interest below was a scant 6 pages. CP 284-291.

with its first opportunity to address whether the *State's* immunity (as opposed a county's lack thereof), extended to interest on the State's debts. In doing so, the Court created a harsh rule **applicable to the State only** that, as demonstrated further herein, has long since been moderated: "The general rule is that the state cannot, without its consent, be held to interest on its debts." *Spier v. Dep't of Labor & Indus.*, 176 Wash. 374, 376-77 (1934). Many of *Spier's* progeny interpreted *Spier* to allow post-judgment interest in the limited circumstances in which the State enacted an express statutory waiver to the payment of post-judgment interest.

In 1964, the Supreme Court issued a decision in *Kelso v. City of Tacoma*, 63 Wn.2d 913 (1964). In *Kelso*, the Supreme Court was asked to determine, in light of certain legislative changes, that municipalities, including cities and counties, had no general governmental immunity. *Id.* at 915. In declining to extend immunity to municipal corporations, the *Kelso* court stated what has now become a well-known principle: "the doctrine of governmental immunity is a matter of state policy which can be changed only by the legislature." *Id.* (citing *Kilbourn v. Seattle*, 43 Wn.2d 373 (1953)). In other words, if the Legislature took exception to the Court's jurisprudence, holding that cities and counties did not enjoy general governmental immunity, the Legislature was free to preempt it by legislation. However, the Court was not inclined to impose its own policy

preferences onto the matter. Additionally, the *Kelso* court clarified that municipal corporations do not have governmental immunity in their own right, but may have immunity in the limited circumstance in which it participates in “duties imposed upon them as representing the state.” *Id.* at 916.

Subsequent to *Kelso*, in 1967, the Legislature enacted RCW 4.96.010, which expressly disclaimed any governmental immunity for municipalities against claims for damages arising from their tortious conduct. However, for counties, which had never enjoyed such immunity, this legislation “merely continued a policy of non-immunity for counties.” 15 Karl B. Tegland, *Washington Practice: Civil Procedure § 46:3, Actions against counties—Generally* (2010).

In light of the 1967 legislative change noted above, the Supreme Court was subsequently called upon to determine whether Pierce County could be liable for post-judgment interest for its tortious conduct. *See Silvernail v. Pierce County*, 80 Wn.2d 173 (1972). Interestingly, the Supreme Court concluded that a county’s acceptance of liability for damages under the 1967 legislation did not necessarily subject a county to liability for interest on damage awards. *Id.* at 174 (citing *Fosbre v. State*, 76 Wn.2d 255 (1969), *overruled by Architectural Woods, Inc. v. State*, 92 Wn.2d 521 (1979), *as recognized in Foster v. State Dep’t of Trans.*, 128

Wn. App. 275, 278 (2005)). However, the Court did not address what circumstances would present a waiver of any such immunity.

In 1979, the Supreme Court considered whether the *State* had waived its immunity against the payment of post-judgment interest in a certain construction contract. *Architectural Woods*, 92 Wn.2d 521 (1979). In particular, in claiming immunity against the payment of interest on its debts, the State relied upon *Spier* and its progeny, which had been interpreted to require that any waiver of immunity against the payment of interest be an express statutory waiver. In holding that the State waived its immunity against paying post-judgment interest in the construction contract, the Court moderated the unjust results of *Spier* and its progeny:

However, we depart from those cases which have modified and qualified the rule of *Spier* to the point that it cannot be justly applied. It is our opinion that **the consent to liability for interest which was required under the rule of *Spier* can be an implied consent, and is not limited to the express statutory or contractual consent,** which was required by subsequent cases.

*Id.* at 526. The Court went on to determine that an implied waiver of sovereign immunity had occurred in the construction contract, and allowed the recovery of post-judgment interest against the State. *Id.* at 528. Since *Architectural Woods*, an implied waiver of immunity has been deemed a sufficient waiver, in addition to an express waiver.

Finally, as recently as 1993, the Supreme Court again considered whether counties could be liable for interest on their debts. *Our Lady of Lourdes Hosp. v. Franklin County*, 120 Wn.2d 439 (1993). The Court did not address or overrule the well-known rule from *Kelso* that municipal governments do not enjoy immunity in the first instance, or its limited exception that municipalities could enjoy immunity in the rare circumstances in which they participate in “duties imposed upon them as representing the state.” *Kelso*, 63 Wn.2d at 916. Instead, the Court summarily referenced *Silvernail* (which expressly relied on the then-overruled case of *Fosbre*, 76 Wn.2d 255) in concluding that the county partook of immunity against the payment of post-judgment interest when implementing a state program. *Id.* at 456. The Court did recognize *Architectural Woods*, however, and recognized that express or implied consent was sufficient to waive any claim to governmental immunity from paying post-judgment interest. *Id.*

In summary, unlike the State, counties have never enjoyed broad governmental immunity. The weight of cases demonstrate that municipal corporations have no immunity of their own right, including immunity against the payment of post-judgment interest, but may have immunity in the limited circumstance in which it participates in “duties imposed upon them as representing the state.” *Kelso*, 63 Wn.2d at 916. *Our Lady of*

*Lourdes Hospital* is best understood as a case following this exception from *Kelso*—post-judgment interest is not imposed when a County implements a State program. As explained in more detail below, the more recent decision in *Carrillo v. City of Ocean Shores*, 122 Wn. App. 592 (2004), makes it clear that post-judgment interest is proper against municipalities, while also recognizing the analysis in *Architectural Woods* allowing for express or implied waivers of any governmental immunity.

## **2. King County is not a sovereign**

As indicated in *Kelso*, counties do not partake of sovereignty in and of themselves. Instead, the limited exception of when they partake of such sovereignty is “only in the exercise of those governmental powers and duties imposed upon them as representing the state.” *Kelso*, 63 Wn.2d 916. Or stated otherwise, a county can partake of immunity “in so far as they represent the state.” *Id.* at 916-17.

Here, there is no question that in responding to PRA requests, the County does not act on behalf of the State. As such, the County enjoys no immunity, and no waiver of sovereignty is required for the County to be liable for post-judgment interest on its debts. As demonstrated in the Brief of Appellant, this concept is squarely answered by, 122 Wn. App. 592, which harmonizes all of the above precedent including *Silvernail* and *Our Lady of Lourdes Hospital*. Br. at 25. To summarize, the *Carrillo* court

reasoned that the City was liable for post-judgment interest because the imposition of the illegal sewer tax was not an activity “engaged in...on behalf of the state.” *Id.* at 616. In other words, the *Carrillo* court explained that immunity only applied to state agencies or other municipalities that were directly implementing state programs. As such, the City enjoyed no immunity, and it was not necessary to analyze whether there had been an implied or express waiver of sovereign immunity under *Architectural Woods*. The same result applies here.

**3. Even if the County enjoys immunity against the payment of post-judgment interest, the PRA impliedly and expressly waives such immunity**

If for some reason the Court determines that the County enjoys immunity, it must reach the additional step set forth in *Architectural Woods* to determine whether the County has waived that immunity. In addressing the issue of waiver, the County cites *Jenkins v. Department of Social and Health Services*, 160 Wn.2d 287 (2007). County Br. at 8.

Specifically, the County cites *Jenkins* as follows:

We have held this statute [RCW 4.56.110] does not apply to public agencies absent a clear waiver of sovereign immunity. Specifically, the general rule is that the state cannot be liable to interest on its debts without its consent, despite the fact that RCW 4.56.110 does not expressly exempt the state from its operation.

*Jenkins*, 160 Wn.2d at 302. This quote does nothing more than restate the

above rule from *Spier* and *Architectural Woods* recognizing the need for a clear waiver of sovereign immunity. As indicated above, *Architectural Woods* held that a clear waiver of immunity can either be express or implied. *Architectural Woods*, 92 Wn.2d at 526. *Jenkins* provides no further analysis regarding what constitutes an express or implied waiver, because it was not presented by its unique facts.

The County also cites *Our Lady of Lourdes Hospital*, 120 Wn.2d 439. County Br. at 8. However, as recognized above, *Our Lady of Lourdes Hospital* relies on *Silvernail*, which has been overruled. *See supra* at 5-6. Additionally, nothing in *Our Lady of Lourdes Hospital* analyzed what constitutes an express or implied waiver of any such sovereign immunity. *Id.* at 456 (“nor has the Hospital attempted to show implied consent to liability for such interest. *See Architectural Woods*, 92 Wn.2d at 527, 529-30”).

Critically, however, relevant jurisprudence from our Supreme Court clearly addresses what constitutes an express and/or implied waiver sufficient for government to consent to the payment of post-judgment interest per *Architectural Woods*.

Specifically, in *Smoke v. City of Seattle*, 132 Wn.2d 214 (1997), a landowner who was wrongfully denied a building permit by the City of Seattle successfully sued the City for damages under chapter 64.40 RCW.

*Id.* at 218-19. The landowner obtained a judgment for damages and attorneys fees. *Id.* at 219. However, the trial court dismissed the landowner's claim for post-judgment interest. *Id.* at 220. The landowner appealed the denial of post-judgment interest. *Id.*

RCW 64.40.020 provides property owners who have filed a permit application "an action for damages to obtain relief from acts of...[the State or its political subdivisions, including counties and cities] which are arbitrary, capricious, unlawful, or exceed lawful authority." RCW 64.40.020. Like the County in the instant case, the City argued on appeal that it could not be liable for post-judgment interest because RCW 64.40.020 "lack[ed] and express waiver of sovereign immunity from postjudgment interest." *Id.* at 228. In rejecting the City's argument, the Supreme Court clarified *Architectural Woods* by stating:

Although the City protests RCW 64.40 lacks an express waiver of sovereign immunity from postjudgment interest, **by consenting to suit for damages from land use decisions the City impliedly waived immunity from the liabilities attendant to such claims.** *Architectural Woods, Inc. v. State*, 92 Wash.2d 521, 526-27, 598 P.2d 1372 (1979). Plaintiffs are entitled to interest from the date of entry of judgment. RCW 4.56.110(3); *Architectural Woods*, 92 Wash.2d at 526-27, 598 P.2d 1372.

*Smoke*, 132 Wn.2d at 228 (1997). *See also Wilson v. City of Seattle*, 122 Wn.2d 814, 824 (1993)(holding that enactment of chapter 64.40 RCW

constituted waiver of sovereign immunity). In other words, the mere enactment by the Legislature of chapter 64.40 RCW acted as an implied waiver from all associated governmental liabilities, including post-judgment interest.

*Smoke* applies here. But, in the instant case, the waiver is even stronger than the implied waivers found in *Smoke*. Here, the PRA itself includes both *implied* and *express* waivers.

First, by the mere enactment of a statutory cause of action against local government, the PRA contains an *implied* waiver:

Any person who prevails against an agency<sup>[3]</sup> in any action in the courts seeking the right to inspect or copy any public record or the right to receive a response to a public record request within a reasonable amount of time shall be awarded all costs, including reasonable attorney fees, incurred in connection with such legal action. In addition, it shall be within the discretion of the court to award such person an amount not less than five dollars and not to exceed one hundred dollars for each day that he or she was denied the right to inspect or copy said public record.

RCW 42.56.550(4). Under the rules of *Smoke* and *Wilson*, the mere enactment of this cause of action constitutes an implied waiver of immunity from all liabilities attendant to such claims, including post-

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<sup>3</sup> Under the PRA, an “agency” includes all “local agencies.” RCW 42.56.010(1). In turn, “local agencies” are defined to include “every county, city, town, municipal corporation, or special purpose district.” *Id.*

judgment interest.

However, this Court need not rely solely upon an *implied* waiver of immunity. Instead, the PRA itself contains multiple and unmistakable *express* waivers of immunity.

First, the PRA contains an express waiver in its provision regarding the manner in which it is to be construed as follows:

**The people of this state do not yield their sovereignty to the agencies that serve them.** The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may maintain control over the instruments that they have created. **This chapter shall be liberally construed** and its exemptions narrowly construed **to promote this public policy and to assure that the public interest will be fully protected.** In the event of conflict between the provisions of this chapter and any other act, the provisions of this chapter shall govern.

RCW 42.56.030 (emphasis added). Quite tellingly, Yousoufian cited this provision in the Brief of Appellant, and the County's Response Brief failed to address it.

Additionally, RCW 42.17.010 also contains an express waiver as follows:

It is hereby declared by the **sovereign people** to be the public policy of the state of Washington:

...

(11) ...[F]ull access to information concerning the

conduct of government on every level must be assured as a fundamental and necessary precondition to the sound governance of a free society.

The provisions of this chapter shall be liberally construed to promote complete disclosure of all information respecting...full access to public records.

RCW 42.17.010<sup>4</sup> (emphasis added).

Finally, relevant case law has reinforced the PRA's clear intent to waive any governmental sovereignty:

**The stated purpose of the Public Records Act is nothing less than the preservation of the most central tenets of representative government, namely, the sovereignty of the people and the accountability to the people of public officials and institutions. RCW 42.17.251.**

*Progressive Animal Welfare Soc. v. Univ. of Washington*, 125 Wn. 2d 243, 251 (1994) (emphasis added).

There can be little doubt that the PRA constitutes both an implied and express waiver to any claim of governmental immunity against the payment of post-judgment interest under *Smoke and Wilson*. The County implicitly concedes as much by failing to address Yousoufian's argument.

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<sup>4</sup> Although this provision is now codified in chapter 42.17 RCW, which regulates campaign finances, it was originally enacted as part of the PRA with the enactment of Initiative Measure No. 276, approved November 7, 1972.

**4. The County also waived any immunity by previously paying post-judgment interest to Yousoufian in this case**

It is quite apparent that not even the County *really* believes that it is immune from paying post-judgment interest. Revealingly, in this very case, the County already paid \$4,639.21 in post-judgment interest to Yousoufian as expressly set forth in the Final Judgment in this matter:

Amount of Post-Judgment Interest After March 25, 2010  
Supreme Court decision \$4,639.21 – SATISFIED

CP 44 (emphasis added). The County simply cannot explain why it already willingly paid post-judgment interest to Yousoufian if it was truly immune from doing so. The County's payment constitutes a further waiver of any immunity in this case.

**5. The County's citations to *Ventoza* and *Blake* are inapposite**

Additionally, the County also argues that post-judgment interest generally is not available on punitive statutes. County Br. at 10 (citing *Ventoza v. Anderson*, 14 Wn. App. 882, 897 (1976) and *Blake v. Grant*, 65 Wn. 2d 410 (1964)). *Ventoza* and *Blake* are readily distinguishable from this case. First, both cases presented claims for timber trespass under RCW 64.12.030, which provides for treble damages. *Ventoza*, 14 Wn. App. at 884; *Blake*, at 65 Wn.2d at 411. Critically, however, both *Ventoza* and *Blake* address the availability of prejudgment interest, not post-

judgment interest. *Ventoza*, 14 Wn. App. at 897 (addressing interest “[from] the date of trespass, to... the date of judgment”); *Blake*, at 65 Wn.2d at 412 (addressing interest “from the date of the trespass to the date of the commencement of the action”). As indicated in the Brief of Appellant, “[i]n contrast to the body of Washington law regarding awards of pre-judgment interest, which is based entirely on common law, awards of post-judgment interest are governed by statute.” Br. at 11. Because an award of prejudgment interest is a function of common law, it may be shaped by public policy. An award of post-judgment interest, however, is governed by statute, specifically RCW 4.56.110. For this reason, the statute establishes the applicable policy, and an award of “[p]ost-judgment interest, unlike prejudgment interest, is **mandatory** under RCW 4.56.110.” *Womack v. Von Rardon*, 133 Wn. App. 254, 264 (2006) (emphasis added). Moreover, *Blake* did not even reach the issue of whether pre-judgment interest was available under a punitive statute. *Id.* at 413 (“we do not decide the question.”). In other words, neither *Ventoza* nor *Blake* alter the long existing precedent that governs this case.

In summary, the County does not enjoy immunity from paying interest on its debt because (1) counties traditionally have not been considered sovereign, (2) in answering PRA requests, the County is not acting on behalf of the State, (3) even if the County enjoys immunity, such

immunity has been impliedly and expressly waived by the enactment of the PRA, chapter 42.56 RCW, and (4) the County has specifically waived any veneer of immunity by already having paid Yousoufian post-judgment interest in this case.

**B. Relevant Jurisprudence Construing RCW 4.56.110(4) Demonstrates Yousoufian's Entitlement to Post-Judgment Interest**

The County presents several statutory arguments to assert that Yousoufian is not entitled to post-judgment interest under RCW 4.56.110. County Br. 11-18. However, these statutory arguments can only fairly be described as somewhat incoherent, and utterly fail to distinguish clear precedent presented in the Brief of Appellants. Br. at 14-27.

As relevant to this case, RCW 4.56.110 states:

Interest on judgments **shall accrue** as follows:

....

(4)...In any case where a court is directed on review to enter judgment on a verdict or in any case where a judgment entered on a verdict **is wholly or partly affirmed on review, interest on the judgment or on that portion of the judgment affirmed shall date back to and shall accrue from the date the verdict was rendered.**

RCW 4.56.110 (emphasis added).

Rather than debate the relevant precedents, the County resorts to semantics in order to attempt to escape its obligation to pay post-judgment interest under RCW 4.56.110(4). Specifically, the County

argues “[t]he express language of [RCW 4.56.110(4)] does not allow post judgment interest, however, when the court of review reverses the trial court’s judgment and the result is a new judgment.” County Br. at 12 (citing *Coulter v. Asten Group, Inc.*, 155 Wn. App. 1, 15 (2010)). County Br. at 12. The County’s argument is not a model of clarity. It appears, however, that the County is arguing that Yousoufian obtained a complete reversal of the earlier trial court judgment, as opposed to a partial reversal (*i.e.* partial affirmance), and that he is somehow thereby disqualified from obtaining retroactive post-judgment interest.

First, from a factual standpoint, the County is simply incorrect. In *Yousoufian III*, the Court of Appeals determined that the trial court’s per day penalty of \$15 for the County’s gross negligence was inadequate. *Yousoufian v. Office of Ron Sims*, 137 Wn. App. 69, 80-81 (2007)(*Yousoufian III*). As such, the Court of Appeals “reverse[d] and remanded[ed] to the trial court for a determination of an appropriate penalty...consistent with [the court’s] opinion.” *Id.* at 81.

However, the Supreme Court did not simply affirm the Court of Appeals decision in *Yousoufian III*. Instead, the Supreme Court in *Yousoufian V* “affirm[ed] **but modif[ied]** the Court of Appeals’ decision” and clarified that “[b]ecause of the unique circumstances of this case, we do not remand to the trial court for redetermination of the penalty” but

instead “set the penalty at \$45 per day for 8,252 days [for]...a total PRA penalty of \$371,340 plus reasonable attorney fees and costs incurred in connection with this appeal.” *Yousoufian v. Office of Ron Sims*, 168 Wn.2d 444, 470 (2010) (*Yousoufian V*). In other words, the Court left no discretion to the trial court regarding the amount of the judgment to be entered following issuance of the mandate.

From a legal standpoint, applicable case law also expressly rejects the City’s game of semantics. For example, *Sintra* states that retroactive post-judgment interest is allowed “where the appellate court, **in reversing, merely modifies the trial court award** and the only action necessary in the trial court is compliance with the mandate” *Sintra, Inc. v. City of Seattle*, 96 Wn. App. 757 (1999) (citing *Fisher Properties, Inc. v. Arden-Mayfair, Inc.*, 115 Wn.2d 364, 373-74 (1999))(emphasis added).

Similarly, in *Yarno v. Hedlund Box & Lumber Co.*, 135 Wash. 406 (1925), in an earlier appeal the Supreme Court reduced the amount of a trial court judgment for breach of a logging contract. *Id.* at 406. In doing so, although the Supreme Court “**reversed and...remanded**” to the trial court for the completion of a simple mathematical computation, the trial court nonetheless awarded post-judgment interest retroactively “from the date of the original judgment.” *Id.* at 407. The Court reasoned that “having kept respondent from the use of this money from the date of the

original judgment,” interest thereon was rightly included. *Id.* at 409. Under the County’s argument, use of the word “reversed” necessarily would require entry of a new judgment and thereby preclude retroactive post-judgment interest. Clearly, Washington courts reject such semantics and look to the practical effect and substance of the appellate court decision.

In fact, the very case relied upon by the County, *Coulter*, also rejects the County’s semantics. Specifically, the *Coulter* court clarified that the date from which interest runs is not determined as a matter of semantics (*i.e.* did the appellate court technically use the term “reverse” versus “partially reversed,” etc.), instead it’s a function of whether the appellate court left discretion to the trial court in entering the judgment:

[W]e reversed the judgment in *Coulter* and remanded for a reasonableness hearing, at the conclusion of which a new money judgment was entered. **This required an exercise of discretion, rather than mere computation, on the part of the trial court. There was no judgment on which interest could have run. RCW 4.56.110(3).**

*Coulter v. Asten Group, Inc.*, 155 Wn. App. 1, 16 (2010).

The County relies upon a citation from American Law Reports for the proposition that “when an appellate court completely reverses a trial court award and a new judgment is entered, it is immaterial whether the trial court or the appellate court actually enters the new judgment.”

County Br. at 14 (citing L. R. James, *Date from which interest on judgment starts running as affected by modification of amount of judgment on appeal*, 4 A.L.R.3d 1221, Sections 4 and 5). Interestingly, the County argues for the *minority rule* as presented by ALR. Instead, the *majority rule* is contrary to the County's own argument:

In most cases where a money award has been modified on appeal, and the only action necessary in the trial court has been compliance with the mandate of the appellate court, the view has been taken that interest on the award as modified should run from the same date as if no appeal had been taken, that is, ordinarily, from the date of entry of the verdict or judgment. It has been so held, regardless of whether the appellate court reduced, or increased the original award.

4 A.L.R.3d 1221.

Ultimately, however, Washington case law interprets a specific statute, RCW 4.56.110(4), which is not the basis of the jurisprudence in other states. Additionally, ALR specifically recognizes Washington case law, which rejects the County's contentions. County Br., App. A at 9 (citing A.L.R.3d 1221)(citing *Fulle v. Boulevard Excavating, Inc.*, 25 Wn. App. 520 (1980) and *Yarno*, 135 Wash. 406 (1925), etc.).

Finally, the County argues that even if Yousoufian was entitled to post-judgment interest, he "could only recover post-judgment interest on that portion of the trial court's judgment affirmed on review." County Br. at 17.

This is merely a reformulation of the County's earlier argument. When reduced to its essence, the County's argument appears to be that, if an appellate court increases the amount of a judgment on appeal, the judgment debtor is only obligated to pay interest on the portion representing the original judgment (*i.e.*, and not the portion representing the increase). This argument is flatly contradicted by relevant case law previously cited by Yousoufian, and for which the County provided no response in its brief. *See* Br. at 15 (citing *Fulle*, 25 Wn. App. at 521-23 (holding that post-judgment interest ran to date of original judgment, despite the fact that court of appeals **increased** the judgment from \$31,587 to \$99,820)).

**C. Yousoufian Is Entitled to Attorneys Fees on Appeal and for the Motion in the Trial Court**

Yousoufian is entitled to attorneys fees if he is the prevailing party in this matter. The County's minimal attempt to respond to Yousoufian's entitlement to fees is devoid of any legal citations whatsoever.

For example, the County's Brief asserts that Yousoufian is "not entitled to attorney fees [because]...[t]hese proceedings relate to post-judgment interest under RCW 4.56.110(4), not inspection or copying of records the [sic.] Public Records Act." County Br. at 18.

RCW 42.56.550(4) provides for an award of attorneys fees as follows:

Any person who prevails against an agency<sup>[5]</sup> in any action in the courts seeking the right to inspect or copy any public record or the right to receive a response to a public record request within a reasonable amount of time **shall be awarded all costs, including reasonable attorney fees, incurred in connection with such legal action.**

RCW 42.56.550(4).

Even the County's own brief demonstrates that the current dispute is inextricably "connected" with the PRA. For example, the County's Brief employs numerous arguments regarding the nature of Yousoufian's PRA request, the purpose of the PRA, and other similar arguments to defend against Yousoufian's claim to post-judgment interest:

- "[H]ere, King County was not acting on the State's behalf in responding to a PRA request." County Br. at 8.
- "Maintaining and producing public records is a uniquely governmental function undertaken for the common good. Municipalities do not produce public records for their own benefit in a corporate capacity or for their own profit, and this activity therefore cannot be regarded as proprietary in nature." County Br. at 9-10.
- "Furthermore, the records Yousoufian sought related to a sovereign activity - - the construction of a sports stadium." County Br. at 10.
- "The PRA penalty provision, RCW 42.56.550(4), contains no allowance for interest on the penalty amount, and Yousoufian cites

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<sup>5</sup> Under the PRA, an "agency" includes all "local agencies." RCW 42.56.010(1). In turn, "local agencies" are defined to include "every county, city, town, municipal corporation, or special purpose district." *Id.*

no authority stating that agencies have consented to payment of interest on statutory penalties under the Public Records Act.” County Br. at 10.

The County simply cannot use the PRA itself as a defense to an award of post-judgment interest, but then claim that the instant proceedings are “too far removed from the PRA to be considered ‘in connection’ with the Act.” County Br. at 18.

### CONCLUSION

In summary, the County does not enjoy immunity from paying interest on its debt because (1) counties traditionally have not been considered sovereign, (2) in answering PRA requests, the County is not acting on behalf of the State, (3) even if the County enjoys immunity, such immunity has been impliedly and expressly waived by the enactment of the PRA, chapter 42.56 RCW, and (4) the County has specifically waived any immunity by already having paid Yousoufian post-judgment interest in this case.

In addition, under relevant jurisprudence, post-judgment interest will accrue from the date of the original judgment even when an appellate court reverses in part, “where the appellate court, in reversing, merely modifies the trial court award and the only action necessary in the trial court is compliance with the mandate.” *Sintra, Inc. v. City of Seattle*, 96 Wn. App. 757, 763 (1999). In this case, rather than remanding to the trial

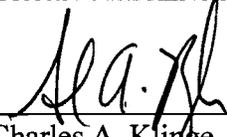
court for a re-determination of the appropriate penalty, the Supreme Court set the penalty itself, leaving the trial court with no discretion to do anything other than comply with the mandate. *Yousoufian V*, 168 Wn.2d at 470. As such, an award of post-judgment interest was mandatory.

For the foregoing reasons, Yousoufian respectfully requests reversal of the Order Denying Plaintiff's Motion for Post-Judgment Interest, dated June 7, 2010. Yousoufian also requests that this Court award attorneys fees on appeal. The Court should order a remand to calculate final post-judgment interest and attorney's fees incurred in trial court.

RESPECTFULLY SUBMITTED this 7th day of February, 2011.

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By:

  
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**DECLARATION OF SERVICE**

I, Samuel A. Rodabough, declare:

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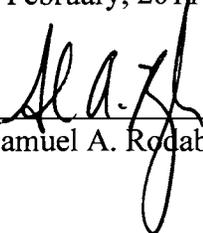
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I declare under penalty of perjury under the laws of the State of  
Washington that the foregoing is true and correct.

Executed this 7<sup>th</sup> day of February, 2011 at Bellevue, Washington.

  
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Samuel A. Rodabough