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SUPREME COURT
OF THE STATE OF WASHINGTON

ALLIANCEONE RECEIVABLES MANAGEMENT, INC.,

Respondent,

vs.

WILLIAM CARL LEWIS, JR., & JANE DOE & marital community,

Appellants.

BRIEF OF RESPONDENT

Philip A. Talmadge, WSBA #6973
Sidney Tribe, WSBA #33160
Talmadge/Fitzpatrick
18010 Southcenter Parkway
Tukwila, WA 98188
(206) 574-6661

Kevin Underwood, WSBA #15711
K.C. Hawthorne, WSBA #18241
AllianceOne Receivables
Management, Inc.
6565 Kimball Drive, Suite 200
Gig Harbor, WA 98335-1206
(253) 620-2222
Attorneys for Respondent
AllianceOne Receivables
Management, Inc.

ORIGINAL

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I. INTRODUCTION

A small-balance claim in Spokane County District Court was ended when the plaintiff, Respondent AllianceOne, voluntarily dismissed its claims against the defendant, Appellant William Carl Lewis Jr. The dismissal prevented the expense of a trial.

Lewis moved for attorney fees under RCW 4.84.250, but the trial court denied them because Lewis had not made an offer of settlement, and because AllianceOne had voluntarily dismissed its claim.

The purpose of the limited fee shifting available under RCW 4.84.250-.280 is to encourage settlement, allow plaintiffs to bring meritorious small-balance claims, and deter expensive and needless trials. Awarding attorney fees to a defendant when (1) that defendant never made an offer of settlement, and (2) no judgment has been rendered because the claims were voluntarily dismissed, would be contrary to the plain language and purpose of RCW 4.84.250-280.

II. COUNTERSTATEMENT OF ISSUES

1. Are attorney fees unavailable to a defendant under RCW 4.84.250 because the defendant never made an offer of settlement?

2. Are attorney fees unavailable to a defendant under RCW 4.84.250-.270 when the plaintiff exercised its right to pretrial voluntary dismissal, rather than forcing a trial?

3. Is a trial court required to enter findings of fact and conclusions of law with respect to an order denying attorney fees on statutory interpretation grounds?

III. RESPONSE TO STATEMENT OF THE CASE

Lewis' recital of the procedural history of this case is generally accurate, although in a more complicated form than is needed for review. However, at least two mischaracterizations in Lewis' recital deserve comment.

First, Lewis cannot state as a matter of fact: "[a]ll three claims were barred by the relevant Statute of Limitations " Br. of Appellant at 3. Not only does that assertion constitute legal argument, which has no place in a statement of the case (RAP 10.3), those legal questions were not resolved below and cannot be stated as fact.

Second, Lewis states incorrectly that: "[o]n June 24, 2011, despite the Answer, the Plaintiff presented and the court entered an Order of Default and Judgment without notice to the Defendant or his attorney " Br. of Appellant at 5. In fact, AllianceOne scheduled a hearing in open court on its motion for entry of a default judgment to be heard at 10:00 a.m. on June 24, 2011. AllianceOne sent notice of the hearing, and related pleadings, to Lewis' attorney Solan on June 10, 2011. AllianceOne received Lewis' Answer on the afternoon of June 23, 2011. After the

judgment was entered at the court hearing on the morning of June 24, 2011, AllianceOne acted promptly and forwarded a proposed agreed order vacating the judgment to Lewis' attorney Solan, who signed and returned the agreed order vacating the judgment, and the court entered the agreed order vacating the judgment on July 18, 2011.

AllianceOne filed this small-balance claim matter seeking a few hundred dollars that its records indicated were owing. Complaint at 2.¹ After very limited discovery and limited motions practice, AllianceOne exercised its right under CRLJ 4(a)(1)(ii) to voluntarily dismiss its claims without prejudice and without costs to either party. Motion and proposed order of dismissal at 1.

Lewis did not object to dismissal, but objected to each side bearing its own fees and costs. Response to Motion to Dismiss at 1. Instead, Lewis argued that under RCW 4.84.250 and RCW 4.84.270 AllianceOne should be required to pay his attorney fees. *Id.* The trial court denied Lewis' request for fees.

IV. SUMMARY OF ARGUMENT

RCW 4.84.250 was enacted not as pure fee-shifting statute, but to encourage plaintiffs to bring meritorious small-balance claims that might

¹ As Lewis correctly observes, because of the unusual nature of direct review in this case, the Spokane County District Court did not issue numbered clerk's papers as provided in the Rule of Appellate Procedure. Br. of Appellant at 2 n.1 AllianceOne adopts Lewis' method of referring to the record on review for this Court's convenience.

otherwise lay fallow because a plaintiff's attorney fees would outstrip the small amount of recovery sought. However, the Legislature wisely drafted the statute to discourage trials and encourage settlement by requiring plaintiffs and defendants to make offers of settlement in advance of trial. Such offers were critical to the operation of the statute. Plaintiffs could bring small-balance claims, but would be required to be realistic about such claims in the face of a defendant's offer of judgment. In this way, small-balance claims could be resolved in the most efficient and fairest manner, and expensive trials could be avoided. Thus, the trial court properly interpreted RCW 4.84.250 to deny attorney fees to Lewis, who had not made an offer of settlement.

Attorney fees are also unavailable under RCW 4.84.270 when a plaintiff has voluntarily dismissed claims before trial. The term "recover" as used in the statute is a term of art that operates only when there has been a final judgment on the merits. Because voluntary dismissal avoids a trial and final judgment on the merits, requiring both parties to bear their own fees obeys the plain language of the statute and fulfills the policy mandate underlying it.

V. ARGUMENT

(1) Standard of Review and Principles of Statutory Construction

The meaning of a statute is a question of law reviewed de novo. *State v. Breazeale*, 144 Wn.2d 829, 837, 31 P.3d 1155 (2001); *State v. J.M.*, 144 Wn.2d 472, 480, 28 P.3d 720 (2001). The courts' fundamental objective is to ascertain and carry out the Legislature's intent, and if a statute's meaning is plain on its face, then the courts must give effect to that plain meaning as an expression of legislative intent. *J.M.*, 144 Wn.2d at 480.

In the past, the plain meaning rule rested on theories of language and meaning, now discredited, which held that words have inherent or fixed meanings. *Dep't of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 11, 43 P.3d 4, 10 (2002). These theories are unnecessary to the plain meaning rule, however, if the rule is interpreted to direct a court to construe and apply words according to the meaning that they are ordinarily given, taking into account the statutory context, basic rules of grammar, and any special usages stated by the legislature on the face of the statute. *Id.*

Now, the plain meaning rule requires courts to consider legislative purposes or policies appearing on the face of the statute as part of the statute's context. *Id.* In addition, background facts of which judicial notice can be taken are properly considered as part of the statute's context, because courts presume the Legislature also was familiar with them when

it passed the statute. *Id.* Reference to a statute's context to determine its plain meaning also includes examining closely related statutes, because legislators enact legislation in light of existing statutes. *Id.*, citing 2A Norman J. Singer, *Statutes and Statutory Construction* § 48A:16 at 809–10 (6th ed. 2000) (extracts from R. Randall Kelso & C. Kevin Kelso, *Appeals in Federal Courts by Prosecuting Entities Other than the United States: The Plain Meaning Rule Revisited*, 33 *Hastings L.J.* 187 (1981)). Under the modern approach, the plain meaning is still derived from what the Legislature has said in its enactments, but that meaning is discerned from all that the Legislature has said in the statute and related statutes which disclose legislative intent about the provision in question. *Id.*

Of course, if, after this inquiry, the statute remains susceptible to more than one reasonable meaning, the statute is ambiguous and it is appropriate to resort to aids to construction, including legislative history. *Id.*, see also, *Cockle v. Dep't of Labor & Indus.*, 142 Wn.2d 801, 808, 16 P.3d 583 (2001); *Timberline Air Serv., Inc. v. Bell Helicopter–Textron, Inc.*, 125 Wn.2d 305, 312, 884 P.2d 920 (1994).

(2) A Party Seeking Fees under RCW 4.84.250-.300 Must Make an Offer of Settlement

RCW 4.84.250-.310 were first enacted by the Legislature in 1973. The “overriding purpose” of RCW 4.84.250-.300 is to encourage

settlement of claims for less than \$10,000 to avoid the expense of trial. *Beckmann v. Spokane Transit Auth.*, 107 Wn.2d 785, 790, 733 P.2d 960, 961 (1987); *see also, Harold Meyer Drug v. Hurd*, 23 Wn. App. 683, 687, 598 P.2d 404 (1979). “It is evident that the settlement scheme contained in RCW 4.84 is designed to promote non-judicial determination of court actions and to discourage resistance to just claims for damages in cases in which litigation costs may well exceed the amount involved.” *Davy v. Moss*, 19 Wn. App. 32, 34, 573 P.2d 826, 827 (1978), *review denied*, 90 Wn.2d 1021 (1978).

The statute enables plaintiffs to pursue their small-balance claims where otherwise defendants would avoid liability because the plaintiffs’ legal fees would exceed the amount sought in judgment. *Beckmann*, 107 Wn.2d at 788. As the Court of Appeals has observed, “[t]he obvious legislative intent is to enable a party to pursue a meritorious small claim without seeing his award diminished in whole or in part by legal fees.” *Northside Auto Serv., Inc. v. Consumers United Ins. Co.*, 25 Wn. App. 486, 492, 607 P.2d 890, 894 (1980). The statute is also designed to deter those who *unjustifiably* bring or resist small claims. *Williams v. Tilaye*, 174 Wn.2d 57, 63, 272 P.3d 235, 239 (2012).

Washington State has a public policy of encouraging settlement and avoiding expensive trials whenever practicable. For example, our

Supreme Court has adopted CR 68, the offer of judgment statute, to “encourage parties to reach settlement agreements and to avoid lengthy litigation.” *Lietz v. Hansen Law Offices, P.S.C.*, 166 Wn. App. 571, 581, 271 P.3d 899, 905 (2012); *citing Dussault v. Seattle Pub. Schs.*, 69 Wn. App. 728, 732, 850 P.2d 581 (1993), *review denied*, 123 Wn.2d 1004, 868 P.2d 872 (1994). The policy underlying the Tort Reform Act is virtually identical to the policy underlying RCW 4.84.250: “to encourage settlement and to assure tort victims complete satisfaction of their claims.” *Brewer v. Fibreboard Corp.*, 127 Wn.2d 512, 531, 901 P.2d 297, 307 (1995). Encouraging settlement is also the goal of the enduring common law rule that contribution and indemnity rights do not survive a settlement. *Zamora v. Mobil Corp.*, 104 Wn.2d 211, 220, 704 P.2d 591, 596 (1985).

There is no question that under RCW 4.84.250, a plaintiff must make an offer of settlement to qualify for a fee award under the statute. Under the express language of RCW 4.84.260, a plaintiff is deemed the prevailing party *only* if the plaintiff's recovery exceeds an offer of settlement the plaintiff *must make* pursuant to RCW 4.84.280.

Regarding whether a defendant is equally obligated to make an offer, RCW 4.84.270 is ambiguous. Lewis would have this Court believe that the statute forces only plaintiffs to make settlement offers to recover

fees, but allows defendants to risk trial without settlement offers and still recover fees.

A fair reading of RCW 4.84.270 requires an offer of settlement as a predicate to an award of fees. The defendant is the prevailing party under two possible results:

- the plaintiff recovers nothing, or
- the plaintiff recovers an amount equal to or less than the defendant's offer of settlement.

However, the notion that the plaintiff might "recover nothing" is not incompatible with the notion that the defendant made an offer of settlement. For example, a defendant could offer a settlement amount of zero dollars, or non-monetary settlement in the form of a release of cross-claims, etc. It is noteworthy also that the defendant is *not* the prevailing party if the plaintiff recovers less than the amount of the *plaintiff's* offer of settlement.

That offers of settlement and judgment are mandatory predicates to fees is further evidenced by the language of RCW 4.84.280:

Offers of settlement *shall be served* on the adverse party in the manner prescribed by applicable court rules at least ten days prior to trial. ...Offers of settlement shall not be filed or communicated to the trier of the fact until after judgment, at which time a copy of said offer of settlement shall be filed for the purposes of determining attorneys' fees as set forth in RCW 4.84.250.

RCW 4.84.280 (emphasis added).²

Lewis argues that the statutes at issue are unambiguous, and that this Court has actually resolved the issue before it in Lewis' favor, citing *LRS Elec. Controls, Inc. v. Hamre Const., Inc.*, 153 Wn.2d 731, 745, 107 P.3d 721, 728 (2005) (where the court affirmed the *defendant's* cross-motion for, and entered, a summary judgment of dismissal because the plaintiff had no claim as a matter of law, and that the defendant was entitled to attorney's fees) and *Williams* (where the court held that a plaintiff who prevailed at a trial *de novo* was not entitled to attorney's fees based on the *plaintiff's* offer of settlement, because the plaintiff conveyed the offer of settlement only *after* the plaintiff received an adverse arbitration decision of no award). However, neither of those cases addresses whether an offer of settlement is a prerequisite to an award of fees, nor whether fees to a defendant are appropriate after a CR 41, or after a CRLJ 41, voluntary dismissal.

Those cases are distinguishable on multiple grounds. First, *the parties seeking fees made offers of settlement*. *Williams*, 174 Wn.2d at 59; *LRS Electric*, 153 Wn.2d at 735. Second, they address different sections

² The mandatory language "shall be served" differs from the language of the statute when it was first enacted, when it read: "Offers of settlement *are to be served* on the adverse party...." Laws of 1973, ch. 84 § 4. This mandatory language applies to settlements and judgments under both RCW 4.84.260 and .270. RCW 4.84.280. It is determinative of whether fees are available under RCW 4.84.250. *Id.*

of the statute. In *LRS Electric*, the issue before this Court was whether the prevailing party *on appeal* was entitled to attorney fees under RCW 4.84.290. *LRS Electric*, 153 Wn.2d at 745. After a small-balance claims case is appealed, the definition of “prevailing party” reverts from the statutory definitions laid out in RCW 4.84.250-.270 to the traditional definition of a “prevailing party” on appeal: the party in whose favor the appellate court rules. RCW 4.84.290.³ *Williams* is distinguishable because it addressed whether a plaintiff could put a defendant through arbitration without making a settlement offer, lose at arbitration, then refuse to settle before the superior court trial de novo and ask for fees under RCW 4.84.260. *Williams*, 174 Wn.2d at 59. This Court’s concern in *Williams* was whether an arbitration was a “trial” under RCW 4.84.250-.300. If the plaintiff fails to offer settlement before arbitration, thus resulting in a “trial,” and was allowed to recover attorney fees, this Court noted, it would thwart the statute’s purpose of encouraging settlement *before* trial.

Because neither *Williams* nor *LRS Electrical* addresses a situation where no settlement offer was made, nor resolves whether a defendant is a

³ This Court in *LRS Electric* should have applied the “prevailing party” definition from RCW 4.84.290, as the case related to fees on appeal. In *Last Chance Riding Stable, Inc. v. Stephens*, 66 Wn. App. 710, 832 P.2d 1353 (1992), Division III denied fees under .290 to small claims court defendants who prevailed in a trial de novo, but failed to make an offer of settlement.

“prevailing party” under RCW 4.84.270 based on a plaintiff’s voluntary dismissal, these cases do not resolve the issues before the court and the statements upon which Lewis relies is dicta. As Lewis correctly observes, RCW 4.84.250-.300 has been construed by the Court of Appeals in numerous contexts, with varying results. At times, the Court of Appeals has concluded (with little analysis) that no offer of settlement is required for a defendant to receive fees under the statute. *Kingston Lumber Supply v. High Tech. Dev. Inc.*, 52 Wn. App. 864, 967, 765 P.2d 27, 29 (1988), review denied, 112 Wn.2d 1010 (1989); *Skyline Contractors, Inc. v. Spokane Hous. Auth.*, ___ Wn. App. ___, 289 P.3d 690, 698 (December 6, 2012). Division II, however, in *Smukalla v. Barth*, 73 Wn. App. 240, 868 P.2d 888 (1994) concluded that a successful arbitration defendant could not recover fees in the absence of an offer of settlement.

Given the multiplicity of results in the decisional law it is clear that RCW 4.84.270 is ambiguous and a resort to its legislative history is appropriate. A statute is ambiguous if it can be reasonably interpreted in more than one way. *W. Telepage, Inc. v. City of Tacoma Dept. of Fin.*, 140 Wn. 2d 599, 608, 998 P.2d 884, 890 (2000); *Vashon Island Comm. for Self-Gov't v. Washington State Boundary Review Bd.*, 127 Wn.2d 759, 771, 903 P.2d 953 (1995).

RCW 4.84.250-.310 were first enacted in 1973 for claims of \$1000 or less. Philip A. Talmadge, *The Award of Civil Litigation in Washington*, 16 Gonz. L. Rev. 57, 62-63 (1980). The basis for the statute was well known: "... the trial court must award attorneys' fees as costs if a party makes an offer of settlement and subsequently improves upon that offer at trial." *Id.*

The statute was substantially amended in 1984, as part of major court reform legislation, to address claims up to the corresponding civil jurisdictional limits of the district courts. A ban on fees under the statute to assigned claims was repealed. Laws of 1984, ch. § 258. Throughout the legislative history materials addressing the legislation, the Legislature referenced RCW 4.84.250-.310, as the "offer of judgment/attorney fees" mechanism. *See, e.g.,* Summary of ESSB 4430, concurrence memorandum of Senate Judiciary Committee in Appendix. These provide an insight into the legislative understanding of RCW 4.84.250-.310.

Further, this statutory sequence is similar to CR 68 and CRLJ 68 relating to offers of judgment with respect to costs. Often, the offer of settlement under RCW 4.84.250-.310 is utilized as the offer of judgment under CR 68 and CRLJ 68 for costs. *See, e.g., Reynolds v. Hicks*, 134 Wn.2d 491, 951 P.2d 761 (1998). In *Reynolds*, this Court clearly held that a party is not treated as a prevailing party under CR 68 for costs in the

absence of an offer of judgment. *Id.* at 502-03. The rule should be no different for defendants under RCW 4.84.270.

Finally, the better public policy is to require a defendant to make an offer of judgment before being deemed a prevailing party under RCW 4.84.250. In the absence of such an offer, the undisputed policy of RCW 4.84.250-300 to encourage settlements is not fulfilled. Defendants will not try to resolve cases short of trial, and instead hope for a defense verdict. Moreover, any interpretation of RCW 4.84.270 without a requirement of an offer of settlement is truly anomalous, given the emphasis upon such offers for plaintiffs in RCW 4.84.260, the general language of RCW 4.84.280, and the public policy of encouraging settlement evidenced in CR 68 and elsewhere. The Legislature created an offer of settlement statute for small-balance claims, not a fee-shifting statute that forces only plaintiffs, but not defendants, to make settlement offers.

(3) Imposing Attorney Fees Against a Plaintiff that Voluntarily Dismisses a Claim Before Trial Is Contrary to the Plain Language of the Statute and Encourages Plaintiffs to Go to Trial Rather than Dismissing Claims

When applying the statute on a similar question to the one before this Court, the Court of Appeals has concluded that voluntary dismissal cannot result in a fee award to a defendant because no judgment is entered.

Cork Insulation Sales Co., Inc. v. Torgeson, 54 Wn. App. 702, 706, 775 P.2d 970, 973, *review denied*, 113 Wn.2d 1022 (1989); *Hubbard v. Scroggin*, 68 Wn. App. 883, 890 n.2, 846 P.2d 580, 585, *review denied*, 122 Wn.2d 1004 (1993).⁴

Lewis argues that he should receive fees despite AllianceOne's CRLJ 41 voluntary dismissal, because by dismissing its claims before trial AllianceOne has "recover[ed] nothing" under RCW 4.84.270. Br. of Appellant at 10.

The Legislature's use of language in drafting fee statutes is critical to the resolution of whether a plaintiff's voluntary dismissal renders a defendant the "prevailing party." *Wachovia SBA Lending, Inc. v. Kraft*, 165 Wn.2d 481, 488, 200 P.3d 683 (2009). In *Wachovia*, this Court addressed the question of whether a final judgment is required under a related statute, RCW 4.84.330. *Id.* at 488-89. RCW 4.84.330's definition of "prevailing party" means the party in whose favor final judgment is rendered. *Id.* The Court held that the statutory definition of "prevailing party" in RCW 4.84.330 precluded an award of fees to parties after voluntary dismissal, because there was no "final judgment." *Id.* at 494.

This Court noted that, despite numerous pronouncements to the contrary by the Court of Appeals, there is no "default rule" in Washington

⁴ In *Cork*, the defendant did make an offer of settlement, thus the Court of Appeals construed RCW 4.84.280.

that a plaintiff's voluntary dismissal automatically makes a defendant a "prevailing party" for attorney fees purposes. *Id.* at 490. Rather, when a statute defines a "prevailing party," the specific language of that definition must be interpreted and applied, without resort to the application of cases interpreting other statutes with different language. *Id.*

When this issue has been addressed by the Court of Appeals, the result similarly has depended upon the nuances of the "prevailing party" language statute at issue. *See, e.g., Boeing Co. v. Lee*, 102 Wn. App. 552, 555, 8 P.3d 1064 (2000), *review denied*, 142 Wn.2d 1026 (2001); *Beckman v. Wilcox*, 96 Wn. App. 355, 362, 979 P.2d 890 (1999), *review denied*, 139 Wn.2d 1017 (2000); *Hubbard*, 68 Wn. App. at 890 n.2.

Here, the Legislature specifically chose to award fees to a small-balance claim defendant only if the plaintiff "recovers" nothing or "recovers" less than the settlement amount. RCW 4.84.270. Thus, the question of whether the Legislature intended to award fees to defendants upon voluntary dismissal before trial turns on the meaning of "recovers," and whether that word necessitates entry of a final judgment after trial.

This Court should adopt the reasoning of the Court of Appeals in *Hubbard*, 68 Wn. App. at 890, and *Cork*, 54 Wn. App. at 706, and hold that a voluntary dismissal does not authorize an award of fees under RCW 4.84.250-.300.

(a) “Recover” Is a Term of Art that Means a Trial Has Been Held. It Does Not Encompass Voluntary Dismissal

The Legislature determined that a defendant should receive fees under RCW 4.84.270 only if the plaintiff “recovers” nothing, or “recovers” the same or less than the defendant offered in settlement. When applied in the context of a legal claim in court, the word “recover” always connotes disposition of the claim *after judgment*:

2. To obtain by a judgment or other legal process, <the plaintiff recovered punitive damages in the lawsuit>.
3. To obtain (a judgment) in one’s favor <the plaintiff recovered a judgment against the defendant>.
4. To obtain damages or other relief; to succeed in a lawsuit or other legal proceeding <the defendant argued that the plaintiff should not be allowed to recover for his own negligence>.

Black’s Law Dictionary at 1302 (8th ed. 2004). “Recovery” is similarly defined as relating to a suit and judgment:

2. The obtainment of a right to something (esp. damages) by a judgment or decree.
3. An amount awarded in or collected from a judgment or decree.

*Id.*⁵ The Washington Attorney General has defined the term as relating exclusively to proceedings where a final judgment is rendered: “Recover: . . . 5. Law. to get or get back by final judgment in a court [to recover damages]. . . .AGO 1979 N. 11 (1979).

⁵ The first definitions of “recover” and “recovery” relate to those terms’ general meaning outside the judicial context, and are thus irrelevant because RCW 4.84.250 only awards fees in “actions for damages,” which involve the judicial process. Thus, a non-judicial definition of “recover” has no application here.

Thus, the term “recover” is reserved for the context of a judgment on the merits. *See Hubbard*, 68 Wn. App. at 890; *Cork Insulation*, 54 Wn. App. at 706. The Legislature deliberately used the term “recovery” three times as part of its “prevailing party” definitions in RCW 4.84.260 and .270: (1) a plaintiff receives fees if that plaintiff’s “recovery” exceeds the settlement offer under RCW 4.84.280, (2) a defendant receives fees if the plaintiff “recovers” less than the amount offered in settlement under RCW 4.84.280, or (3) the defendant receives fees if the plaintiff “recovers nothing.”

There is no question that, with respect to the Legislature’s first two uses of “recover,” a final judgment must occur. Under RCW 4.84.280, the settlement may not be opened until *after* final judgment is rendered. So the only way a court can know if a plaintiff or defendant meets the definition of a “prevailing party” is to examine a “recovery” after judgment and compare it to the settlement offers.

It is a fundamental principle of statutory construction that the same word, used repeatedly within the same statute, it must have the same meaning throughout unless context dictates otherwise. *State v. Roggenkamp*, 153 Wn.2d 614, 633, 106 P.3d 196, 205 (2005). “Whenever a legislature had used a word in a statute in one sense and with one meaning, and subsequently uses the same word in legislating on the same

subject-matter, it will be understood as using it in the same sense, unless there be something in the context or the nature of things to indicate that it intended a different meaning thereby.” *Champion v. Shoreline Sch. Dist. No. 412*, 81 Wn.2d 672, 676, 504 P.2d 304 (1972) (quoting *State ex rel. Am. Piano Co. v. Superior Court*, 105 Wash. 676, 178 P. 827 (1919)); *Welch v. Southland Corp.*, 134 Wn.2d 629, 636, 952 P.2d 162 (1998).

Thus, the Legislature’s deliberate use of the term “recovers” with respect to the third contingency—when the plaintiff “recovers nothing”—also means that there must be a judgment on the merits, because there is nothing in the context of the statute to indicate otherwise.

A voluntary dismissal does not result in a judgment on the merits after a trial, and thus, in that situation, the plaintiff cannot properly be said to have “recovered” nothing. *Cork Insulation*, 54 Wn. App. at 706. “A voluntary dismissal results in an order, not a final judgment.” *Hubbard*, 68 Wn. App. at 890. Instead, it leaves the parties as if the action had never been brought. *Wachovia SBA Lending*, 165 Wn.2d at 492; *State v. Taylor*, 150 Wn.2d 599, 602, 80 P.3d 605 (2003); *Beckman*, 96 Wn. App. at 359. Although a plaintiff who voluntarily dismisses a claim may *receive* nothing, it is not the same as *recovering* nothing from a judgment entered on the merits.

If the Legislature intended fees to be available after a voluntary dismissal of claims, there are a number of other, broader terms it could have used other than the phrase “*recovers* nothing.” It could have granted fees to a defendant when a plaintiff “obtains” nothing, “receives” nothing, or “recoups” nothing. It did not.

Thus, the Legislature’s deliberate use of the phrase “recovers nothing” in RCW 4.84.270 establishes that fees are only available if the matter is actually tried and a judgment rendered. This reading not only applies the plain language of the statute, it is a logical interpretation of a statute designed to *avoid* trials, not to encourage them.

(b) Allowing Fees to a Defendant Before Trial After a Plaintiff Voluntarily Dismisses a Claim Is Contrary to the Purposes of RCW 4.84.250 and Will Result In More Trials

This Court has stated that the purpose of RCW 4.84.250 is to encourage settlement, and to avoid trial of small-balance claims. In other words, plaintiffs should not be afraid to bring meritorious small-balance claims for fear of the burden of attorney fees, but also should seek to resolve those claims through settlement or other means that avoid the expense of actually trying the claims.

Although a claim may appear worthy of trial based on known facts when it was filed, the litigation process allows for the possibility that

discovery, researching motions, and other litigation events or expenses may reveal that a claim may not be suitable for trial. In courts of limited jurisdiction, the plaintiff has the right to withdraw the suit so long as the plaintiff does so prior to resting at the conclusion of his or her opening case. 15A *Wash. Prac., Handbook Civil Procedure* § 67.19 (2012-13 ed.). Under the court rule applicable here, such dismissal upon the plaintiff's request is mandatory. CRLJ 41(a)(1)(ii).

So long as the plaintiff's motion is timely, the court has no discretion to deny a voluntary dismissal. *Goin v. Goin*, 8 Wn. App. 801, 508 P.2d 1405 (1973). Thus, the court has no authority to impose conditions on the dismissal itself, such as payment of the defendant's costs and attorney fees. 15A *Wash. Prac., Handbook Civil Procedure* § 67.19 (2012-13 ed.).

When a plaintiff, through litigation, discovers that a claim should be dismissed rather than tried, voluntary dismissal is a responsible act that fulfills the policy purpose of RCW 4.84.250. Thus the Legislature's decision to allow defendants to obtain attorney fees only upon a final judgment is sensible.

Here, the claims were dismissed before trial. Although the procedural history of the case was somewhat complex, there is nothing in

the record to suggest that AllianceOne did not act in good faith in voluntarily dismissing the claims that have prompted Lewis' fee request.

On the other hand, had AllianceOne believed that dismissal would result in payment of Lewis' attorney fees the calculation would have changed: would it choose to dismiss, knowing that imposition of fees was a certainty, or pursue trial, where fees are only a risk? If this Court adopts Lewis' reasoning, future plaintiffs faced with that choice may force a trial, contrary to the purposes of the statute to encourage meritorious claims and settlement, and to discourage trials.

If there has been no trial, presumably no trial expenses have been incurred. *Cork*, 54 Wn. App. at 706. Voluntary dismissal before trial fulfills the purposes of RCW 4.84.250, and should be encouraged.

It is contrary to one of the purposes of RCW 4.84.250-.300 to penalize plaintiffs who voluntarily dismiss claims once they have determined those claims should not be taken to trial. To do so would encourage such plaintiffs to risk trial and the possibility of recovery, rather than to voluntarily dismiss such claims and avoid a trial.

(4) The Trial Court Did Not Err By Declining to Enter Findings Regarding the Denial of Attorney Fees

Lewis faults the district court for declining to enter findings and conclusions with respect to the denial of attorney fees, citing *Mahler v.*

Szucs, 135 Wn.2d 398, 957 P.2d 632 (1998). Br. of Appellant at 14. Lewis claims that a trial court must enter findings regarding the denial of fees under a statute, so that this Court may “properly exercise [its] supervisory role.” *Id.*

The district court was not required to enter findings and conclusions with respect to its order *denying* fees, because the order is not a “fee award.” *Mahler*, 135 Wn.2d at 435. The purpose of the *Mahler* rule is to allow for proper appellate review of a lower court’s decision to award a particular amount of fees. *Id.* This rule was instituted because the amount of fees is discretionary with the trial court, and findings regarding how those fees were calculated assist appellate courts in determining whether that discretion was abused. *Id.*

Lower courts are not required to enter findings regarding their interpretation of statutes, which are reviewed *de novo*. In fact, any findings entered by the district court here would be superfluous to this Court’s analysis, and would be disregarded.

(5) AllianceOne Is Entitled to Attorney Fees On Appeal Under RCW 4.84.290

A prevailing party on appeal is entitled to an award of attorney fees if allowed by contract, statute, or common law. RAP 18.1. RCW 4.84.290 has a separate definition of “prevailing party” to the ones

outlined in RCW 4.84.260-.270. Once a small-balance claim is on appeal, the “prevailing party” is the party who prevails on appeal. RCW 4.84.290; *Lay v. Hass*, 112 Wn. App. 818, 827, 51 P.3d 130, 135 (2002).

AllianceOne should be awarded attorney fees on appeal under RAP 18.1 and RCW 4.84.290.

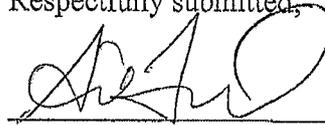
VI. CONCLUSION

The purpose of RCW 4.84.250-.300 is to facilitate bringing and settling small-balance claims in a way that encourages plaintiffs to vindicate their rights, but also encourages them to bring to trial only the most meritorious claims that cannot be resolved through settlement. Thus, defendants who refuse to make or accept reasonable offers of settlement are not eligible for an award of attorney fees under the statute.

Voluntary dismissal, like settlement, fulfills the purposes of RCW 4.84.250 of avoiding the expense of trial. That is why the Legislature restricted eligibility of fee awards to situations where trial has not been avoided, and judgment has been entered.

DATED this 4th day of March, 2013.

Respectfully submitted,



Philip A. Talmadge, WSBA #6973
Sidney Tribe, WSBA #33160
Talmadge/Fitzpatrick
18010 Southcenter Parkway
Tukwila, WA 98188
(206) 574-6661

Kevin Underwood, WSBA #15711
K.C. Hawthorne, WSBA #18241
AllianceOne Receivables
Management, Inc.
6565 Kimball Drive, Suite 200
Gig Harbor, WA 98335-1206
(253) 620-2222

Attorneys for Respondent
AllianceOne Receivables
Management, Inc.

APPENDIX

RCW 4.84.250:

Notwithstanding any other provisions of chapter 4.84 RCW and RCW 12.20.060, in any action for damages where the amount pleaded by the prevailing party as hereinafter defined, exclusive of costs, is seven thousand five hundred dollars or less, there shall be taxed and allowed to the prevailing party as a part of the costs of the action a reasonable amount to be fixed by the court as attorneys' fees. After July 1, 1985, the maximum amount of the pleading under this section shall be ten thousand dollars.

RCW 4.84.260:

The plaintiff, or party seeking relief, shall be deemed the prevailing party within the meaning of RCW 4.84.250 when the recovery, exclusive of costs, is as much as or more than the amount offered in settlement by the plaintiff, or party seeking relief, as set forth in RCW 4.84.280.

RCW 4.84.270:

The defendant, or party resisting relief, shall be deemed the prevailing party within the meaning of RCW 4.84.250, if the plaintiff, or party seeking relief in an action for damages where the amount pleaded, exclusive of costs, is equal to or less than the maximum allowed under RCW 4.84.250, recovers nothing, or if the recovery, exclusive of costs, is the same or less than the amount offered in settlement by the defendant, or the party, resisting relief, as set forth in RCW 4.84.280.

RCW 4.84.280:

Offers of settlement shall be served on the adverse party in the manner prescribed by applicable court rules at least ten days prior to trial. Offers of settlement shall not be served until thirty days after the completion of the service and filing of the summons and complaint. Offers of settlement shall not be filed or communicated to the trier of the fact until after judgment, at which time a copy of said offer of settlement shall be filed for the purposes of determining attorneys' fees as set forth in RCW 4.84.250.

P. Talavage, Chairman

Jerry Hughes, Vice Chairman
Dick Hemstad, Ranking Minority Member
George Clarke
George Fleming
Jeannette Hayner
Irving Newhouse
Alan Thompson
Al Williams
Dianne Woody



Washington State Senate
48th Legislature
1988 Session

435 Public Lands Building
Olympia, Washington 98504
(806) 758-7719

SENATE JUDICIARY COMMITTEE

SUMMARY OF ESSB 4430

Court Improvement Act of 1984

As Passed By The Legislature

Introduction

Substitute Senate Bill 4430 makes a large number of changes in the statutes governing the state's judicial system. These changes range from minor technical amendments to existing statutes to more fundamental changes in the organization and funding of the state's courts. Taken as a whole, the provisions of this act lay the foundation for consideration of comprehensive reform of our court system in the years to come. Briefly, the act does the following:

1. Makes numerous technical changes in Title 3 RCW which eliminate obsolete and inconsistent language;
2. Repeals obsolete provisions in Title 3 RCW relating to justice of the peace courts not operating under the 1961 District Court Act;
3. Modifies statutory provisions relating to the imposition and collection of fees, fines, forfeitures and assessments by superior, district and municipal courts;
4. Places all municipal courts under one statute in Title 3 with the exception of the Seattle Municipal Court and municipal departments and, with those two same exceptions, repeals existing municipal court statutes;
5. Prohibits the abolition of municipal courts or repeal of municipal criminal codes unless the municipality and the appropriate county have entered into an agreement under which the county is to be reimbursed for costs associated with criminal filings in the district court resulting from the termination or repeal;
6. Requires municipalities that, prior to the effective date of this act, have repealed their municipal criminal code while retaining authority to process traffic infractions to enter into an agreement with the county

under which the county is to be reimbursed for costs associated with criminal filings in the district court resulting from the repeal;

7. Authorizes the creation of dispute resolution centers by local governments and, in some cases, nonprofit corporations, and prescribes standards for their operation;
8. Requires judicial salaries to be prescribed by the Legislature in the biennial state budget;
9. Modifies law relating to the establishment of a mandatory civil arbitration program in large counties;
10. Establishes a Judicial Administration Commission charged with studying the existing structure, administration and funding of Washington's courts and making recommendations for improvements in the courts to the Legislature, Governor and Supreme Court;
11. Authorizes preparation of judicial impact statements on proposed legislation by the Administrator for the Courts;
12. Authorizes statewide service of process by the district court in civil cases and increases the civil jurisdiction of the district court;
13. Gives municipal courts the same sentencing authority as district courts;
14. Updates statutes relating to referees in civil actions and enhances the use of referees agreed to by the parties as an alternative to in-court trial of civil actions in superior court;
15. Authorizes the Court of Appeals to sit in Wenatchee;
16. Provides small counties with more flexibility in appointing pro tem district court judges; authorizes judges of any court to perform marriages anywhere in the state;
17. Clarifies that statutes governing the award of costs in civil actions apply in mandatory civil arbitration proceedings.
18. Provides that the "offer of judgment/attorneys' fees" mechanism in chapter 4.84 RCW is applicable to assigned claims.

OVERVIEW OF MAJOR PROVISIONS

Sections 3 through 79 -- Technical Amendments to Title 3 RCW

The amendments in these sections are intended to be primarily technical in nature. With the few exceptions described below there is no intent to make substantive changes in the law. The technical changes fall into three categories:

1. Amendments designed to make the terminology used throughout Title 3 RCW more uniform. For example, changing references to "justices of the peace" and "justice courts" to "district court judge" or "district judge" and "district courts" (See comment to section 90);
2. Amendments which reflect the fact that all counties in the state now operate under the 1961 district court act. For example, the deletion of language describing the procedure to be followed after a county's election to operate under the act;
3. Amendments which replace obsolete and possibly confusing terminology. For example, substituting "county legislative authority" for "county commissioners" or "board of county commissioners."

In addition to technical changes, the amendment to RCW 3.34.130(1) deletes the requirement that district court pro tempore judges must reside in the county in which the court is located. The amendment provides flexibility in small counties where it is difficult to get attorneys to serve as pro tempore judges because of the small number of attorneys residing in the county.

Section 31 authorizes district commissioners to hear civil matters; current law allows them to hear only criminal and traffic matters. The change is designed to facilitate the processing of civil cases in district court and alleviate congestion which may develop as the court's civil jurisdictional limit is increased. As under current law, a commissioner would have only that authority prescribed by the appointing judges. Section 41 of the act increases the civil jurisdiction of the district court to \$10,000, effective July 1, 1985.

Sections 80 through 86 -- Title 3 RCW Repealers

These sections primarily repeal chapters in Title 3 RCW which govern the "justice of the peace courts" which do not operate under the 1961 District Court Act. Every county in the state has now elected to operate its district courts under that Act, thereby eliminating the need for these statutes. Because they use terminology similar to that used

in the District Court Act (chapters 3.30 - 3.74 RCW), however, they continue to cause confusion among individuals seeking information about the authority and workings of the courts of limited jurisdiction. These sections repeal those chapters for that reason.

Sections 88 and 89 -- Attorneys' Fees

These sections update two existing statutes to reflect recent increases in the civil jurisdiction of district court. RCW 4.84.250 authorizes the award of reasonable attorneys' fees to a prevailing party in certain cases if the amount pleaded is \$3,000 or less -- that was the jurisdictional limit of district court when the statute was last amended. Section 88 increases the amount specified in RCW 4.84.250 to \$7,500 -- the current jurisdictional limit -- and raises the amount to \$10,000, effective July 1, 1985, in accordance with the amendment made to RCW 3.66.020 in section 41 of the act.

Section 89 amends RCW 12.20.060, making clear that legislation enacted in 1983 relating to the award of costs to the prevailing party in a civil action applies in district court.

Section 90 -- Statutory Construction

There are a large number of statutes outside Title 3 RCW which include references to "justice courts", "justices of the peace", etc. To avoid amending all of those statutes in this act, this section requires that those terms be construed as meaning district judges and district courts.

Section 91 -- Court of Appeals

The Court of Appeals is authorized to set in Wenatchee.

Section 92 -- Award of Costs to Prevailing Party

RCW 4.84.010, relating to the award of costs to a prevailing party, is amended to clarify that its provisions apply to mandatory civil arbitration proceedings. As a practical matter, the amendment makes no change in the law. See Superior Court Mandatory Arbitration Rule 6.4. This section also modifies slightly the types of notary fees which may be awarded as costs. Notary fees would be recoverable only to the extent they are for services required by law and to the extent they are actually incurred.

Section 93 -- Award of Costs to Prevailing Party

This section repeals RCW 4.84.310 which provides that the "offer of judgment/attorneys' fees" mechanism in RCW 4.84.250 et seq. is inapplicable to assigned claims. The intent of those sections is to encourage settlements and

thereby lessen court congestion. The repealer represents a belief that this policy should apply regardless of the nature of the party bringing the action.

Section 94 -- Attorneys Fees -- Enforcement of Small Claims Judgment

Last year, the legislature added a section to the district court execution statute which provided for the award of "reasonable costs and attorneys' fees" incurred in seeking enforcement of a small claims judgment in district courts. This section, added in the House, is designed to deal with a perception that judges are interpreting this language to authorize only a reward of "reasonable costs" and not an award of "reasonable attorney's fees." The section simply inserts the word "reasonable" before "attorney's fees."

Section 95 -- Marriage Solemnization

The section authorizes judges of any court to perform marriages anywhere in the state. Current law allows district court and municipal court judges to perform marriages only within their respective counties.

Sections 101 through 139 -- Reorganization of Municipal Courts

This portion of the act reorganizes the statutes governing municipal courts in this state. Statutes pertaining to municipal courts of first, second and third class cities, towns, and code cities are repealed. All municipal courts in those municipalities would be governed by chapter 3.50 RCW as amended by the act.

The Seattle Municipal Court (chapter 35.20 RCW) and those cities which have established municipal departments of the district court (chapter 3.46 RCW) generally are not affected by these sections. This portion of the act is not intended to significantly alter the manner in which municipal courts operate and will simply clarify the operations and procedures of those courts.

Sections 201 through 210 -- Restrictions on Termination of Municipal Courts/Repeal of Municipal Criminal Code

This portion of the act places restrictions on the ability of a municipality to terminate its municipal court, repeal its entire municipal criminal code or repeal any provision of its municipal code which defines a crime for which a court appearance is mandatory. The effect of such a termination or repeal is to place a significant burden on the county's district court. The act provides that no such action may be taken until the municipality and the county have reached an agreement under which the court is to be paid for costs associated with prosecution, adjudication and

sentencing of district court cases following the termination or repeal. A municipality which has taken such action prior to the effective date of this act is, in certain cases, required to enter into an agreement under which the county is to be paid for costs associated with the prosecution, adjudication and sentencing in criminal cases filed in district court as a result of the municipality's action.

Sections 301 through 340 -- Procedures for Imposition and Collection of Fees, Fines, Penalties and Assessments

This portion of the act significantly modifies current law governing the imposition and collection of fees, fines, forfeitures, penalties and assessments by the state's courts. The purpose of these provisions is to ensure more uniformity in the imposition and collection and distribution of court receipts across the state. Generally, the sections provide for a division of those monies on a percentage basis between local jurisdictions and the state. The percentages set forth are (excluding parking revenue), for municipal courts 35 percent (state)/65 percent (city), and for district courts 35 percent (state)/65 percent (county). A specific percentage of the monies retained by the city or county jurisdiction is earmarked for support of county crime victim-witness programs. The percentages specified in the act are intended to maintain current revenue flows to local government, the state and local victim-witness programs.

With one exception, statutory provisions which impose assessments on fines, penalties, etc. or which earmark a portion of court receipts for specific purposes or funds are either amended or repealed, and replaced with a single "public safety and education" assessment of 60 percent. The crime victims compensation assessment will continue to be imposed in superior court.

Funds remitted to the state are to be deposited by the state treasurer into a public safety and education account in the general fund. The money in the account is to be appropriated by the legislature for programs formerly funded by statutory penalty assessments which were deposited in dedicated accounts. Among the programs to be funded in this manner are traffic safety education, crime victims compensation, the Criminal Justice Training Commission, the Judicial Information System, and the Board for Judiciary Education.

This portion of the act takes effect on July 1, 1985.

Sections 501 through 510 -- Dispute Resolution Centers

This portion of the act provides for the creation of dispute resolution centers by cities, counties and nonprofit corporations through which persons can voluntarily resolve their disputes in an informal setting. The act prescribes

standards for the creation and operation of a center. It addresses issues related to the dispute resolution process, the confidentiality of records generated during the mediation process, and the effect of the mediation process on any subsequent legal proceedings. Dispute resolution centers are authorized to seek funding from various sources.

Section 511 -- Mandatory Arbitration

This section changes current law, giving the authority to institute a mandatory arbitration program in the largest counties (class AA and A, first and second class) to either the appropriate county legislative authority or the superior court. In smaller counties, authority to establish a program remains solely with the superior court.

Sections 512 through 524 -- Referees in Civil Actions

This portion of the act makes numerous changes in Chapter 4.48 RCW which will improve its usefulness as an alternative to in-court trial of civil actions. It clarifies the authority of parties to consent to a trial by referee and requires that written evidence of the consent be filed with the court prior to appointment of a referee. The qualifications of persons who may serve as referees are also clarified. Authority to modify or set aside a referee's report is given to the court only in those cases in which the referee is appointed by the court, not in those instances in which the referee serves pursuant to the parties' consent. If a case is tried by a referee appointed following consent of the parties, the referee's decision is given the same force and effect as the decision of a judge and may be reviewed in the same fashion. If a case is to be tried by a referee pursuant to the parties' consent, notice of the proceeding must be posted in the courthouse. Provisions related to compensation for referees and payment of costs associated with a trial before a judge are updated.

Sections 601 through 603 -- Judicial Administration Commission

The act establishes a Judicial Administration Commission charged with examining the structure, administration and funding of the state court system and making recommendations for improvements in the system to the Legislature, Supreme Court and the Governor in 1985.

Section 604 -- Judicial Impact Notes

The act establishes a process under which the Administrator for the Courts is to provide an assessment of the effect a particular piece of legislation will have on the state's courts. Preparation of judicial impact notes is to be coordinated with preparation of state and local government fiscal notes.

Sections 701 through 703 -- Statewide Civil Process for District Courts

Current law places restrictions on the district court's authority to issue process in civil actions. This portion of the act would authorize statewide service of process in district court civil actions.

Sections 801 through 808 -- Sentencing Authority of Municipal Courts

The act modifies the sentencing authority of municipal courts (or more accurately, the power of municipalities to prescribe the punishment for violation of municipal ordinances), giving them the same authority as district courts (\$5,000/one year imprisonment). It also makes a technical correction in the section of the criminal code prescribing penalties for misdemeanors.

Section 901 -- Appropriation -- Judicial Administration Commission

This section appropriates \$8,500 for the remainder of the biennium to the Administrator for the Courts for the purpose of paying travel expenses for the members of the public appointed to the Judicial Administration Commission.

TH:d9/3

Phil Talmadge, Chairman

Jerry Hughes, Vice Chairman
Dick Hemstad, Ranking Minority Member
George Clarke
George Fleming
Jeannette Hayner
Irving Newhouse
Alan Thompson
Al Williams
Dianne Woody



Washington State Senate
48th Legislature
1988 Session

435 Public Lands Building
Olympia, Washington 98504
(206) 753-7719

SENATE
JUDICIARY COMMITTEE

MEMORANDUM

DATE: February 26, 1984

TO: Senator Phil Talmadge
Senator Dick Hemstad

FROM: Tom Hoemann, Staff Coordinator

SUBJECT: House Amendment to Engrossed Substitute Senate Bill 4430
-- Court Improvement Act

This is a summary of the changes made by the House's striking amendment to ESSB 4430. Page and line references are to the House Judiciary Committee's striking amendment to the bill.

On page 8, lines 28 and 29 -- Qualifications of Pro Tem District Court Judge.

The House amendment deletes the requirement that a district court pro tem judge reside in the county in which the court sits. The amendment is designed to provide some flexibility in small counties where it is difficult to get attorneys to serve as pro tem judges because of the small number of attorneys in the county.

On page 40, lines 1 and 2 -- Costs in Civil Actions.

The House amendment makes clear that the statute enacted last year relating to the award of costs to a prevailing party applies to district court actions.

On page 41, New Section 92 -- Costs in Civil Actions.

The House amendment provides that the costs awardable in civil litigation may be awarded to a party who prevails in a mandatory arbitration proceeding. In my opinion, the amendment simply restates current law as set forth in court rule. See Superior Court Mandatory Arbitration Rule 6.4. This section also modifies slightly the types of notaries fees which may be awarded as costs. Notary fees would be recoverable only to the extent they are for services required by law and to the extent they are actually incurred.

On page 42, New Section 93 -- Attorney's Fees.

The House amendment repeals the existing statute which makes the "offer of judgment/attorneys fees" mechanism in Chapter 4.84 RCW inapplicable to assigned claims.

On page 42, New Section 94 -- Attorney's Fees -- Enforcement of Small Claims Judgment.

Last year, the legislature added a section to the district court execution statute which provided for the award of "reasonable costs and attorney's fees" incurred in seeking enforcement of a small claims judgment in district court. The House amendment is designed to deal with some members' perception that judges are interpreting this language to authorize only a reward of "reasonable costs" and not an award of "reasonable attorney's fees." The House simply inserts the word "reasonable" before "attorney's fees." I believe that it was the intent of last year's enactment that the word "reasonable" modified both "costs" and "attorney's fees." Accordingly, I believe that the House amendment represents no significant change in the law.

On page 42, New Section 95 -- Marriage Solemnization.

The House amendment authorizes judges of any court to perform marriages anywhere in the state. Current law allows district court and municipal court judges to perform marriages only within their respective counties.

On page 58, New Section 203 -- Termination of Municipal Courts.

The House amendment adds language to this section authorizing a municipality which is terminating its municipal court to contract with another municipality, in addition to the county, to process violations of municipal ordinances.

On page 64, Sections 301 through 340 -- Collection and Distribution of Court Receipts.

The House amendment makes several changes in this portion of the bill. These sections are now identical in all significant respects to ESHB 1183, as amended by the Senate Ways and Means Committee. The amendment reflects the discussions between Senator Talmadge and Representatives Sommers and Monohon.

The key features of this portion of the bill are as follows:

1. The state-local split of court revenues is 35 percent/65 percent (same as ESSB 4430).
2. All courts are subject to the provisions in this part of the bill; ESSB 4430 covered only courts of limited jurisdiction.

3. A portion of local monies is earmarked for support of county victim witness assistance programs. The percentage set forth in the House amendment retains the current level of support provided to those programs. Under the amendment, the percentage earmarking terminates in July, 1987. After that date, counties determine the funding level for the programs. Cities must then match a county's contribution to such programs up to a limit of 1.75 percent of the court receipts retained by a municipality.
4. Existing statutory assessments are repealed and replaced with a 60 percent "public safety and education" assessment on fines, forfeitures and penalties imposed in courts of limited jurisdiction. The crime victims compensation assessment is retained in superior court. These provisions are substantially the same as those found in ESSB 4430.
5. The state's share of court receipts (35 percent of the total) is placed in a "public safety and education" account in the general fund out of which the legislature shall appropriate funds for the support of programs which were previously funded by statutory assessments. ESSB 4430 provided that the state's share of court receipts is deposited by the state treasurer into accounts according to specific percentages designed to preserve revenue flow generated by statutory assessments.

On page 137, New Section 808 -- Penalties for Misdemeanors.

The House amendment adds the provisions of Senate Bill 4614 which simply makes a technical amendment to the criminal code, conforming two sections which prescribe penalties for misdemeanors.

Technical Amendments

The House amendment makes numerous technical changes in the bill which correct internal references, avoid double amendments and reconcile a few instances of inconsistent language.

RECOMMENDATION

I recommend that the Senate concur in the House amendments. The House Judiciary Committee and its staff did an unusually fine job of working this bill.

TH:d8-10

DECLARATION OF SERVICE

On this day said forth below, I emailed a courtesy copy and deposited with the U.S. Postal Service for service a true and accurate copy of the Brief of Respondent in Supreme Court Cause No. 87445-0 to the following parties:

Michael D. Kinkley
Scott M. Kinkley
Michael D. Kinkley PS
4407 N. Division Street, Suite 914
Spokane, WA 99207-1660

Lara A. Wilcox
Law Office of Joseph A. Blumel III, P.S.
4407 N. Division Street, Suite 900
Spokane, WA 99207-1660

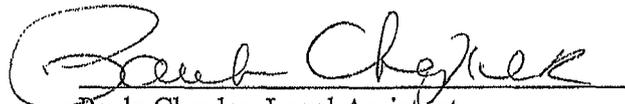
Kevin Underwood
K.C. Hawthorne
Allianceone Receivable Management, Inc.
6565 Kimball Drive, Suite 200
Gig Harbor, WA 98335-1206

Original efiled with:

Washington Supreme Court
Clerk's Office
415 12th Street W
Olympia, WA 98504

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

DATED: March 5, 2013, at Tukwila, Washington.



Paula Chapler, Legal Assistant
Talmadge/Fitzpatrick

OFFICE RECEPTIONIST, CLERK

To: Paula Chapler
Subject: RE: Allianceone Receivables Management, Inc. v. William Carl Lewis, Jr., et al. --- Cause No. 87445-0

Rec'd 3-5-13

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

From: Paula Chapler [<mailto:paula@tal-fitzlaw.com>]
Sent: Tuesday, March 05, 2013 11:46 AM
To: OFFICE RECEPTIONIST, CLERK
Subject: Allianceone Receivables Management, Inc. v. William Carl Lewis, Jr., et al. --- Cause No. 87445-0

Per Ms. Tribe's request, attached please find the Brief of Respondent for filing in the following case:

Case Name: Allianceone Receivables Management, Inc. v. William Carl Lewis, Jr., et al.
Cause No. 87445-0
Attorney: Sidney Tribe, WSBA #33160
Talmadge/Fitzpatrick
18010 Southcenter Parkway
Tukwila, WA 98188
(206) 574-6661

Sincerely,

Paula Chapler
Legal Assistant
Talmadge/Fitzpatrick
(206) 574-6661