

No. 72848-2-I

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

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COURT OF APPEALS DIV 1
STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

MICHAEL SHELTON,

Appellant.

**AMICI CURIAE BRIEF OF COLUMBIA LEGAL SERVICES AND
THE CENTER FOR JUSTICE**

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I. INTEREST OF *AMICI CURIAE*

The interests of the two organizations joining as amici curiae in this brief are described in the motion for leave to participate as *amici* which accompanies this brief.

II. ISSUES TO BE ADDRESSED BY *AMICI*

A. Whether sentencing courts have a constitutional duty to consider a defendant's ability to pay prior to imposing mandatory LFOs such as the DNA collection fee.

B. Whether imposing mandatory LFOs, such as the DNA collection fee, without consideration of ability to pay contributes to a broken LFO system and disproportionately harms indigent defendants in the state of Washington.

III. STATEMENT OF THE CASE

Amici rely on the facts set forth in the briefs of appellant.

IV. ARGUMENT

Due process of law prohibits the arbitrary deprivation of life, liberty or property by federal and state government action. U.S. Const. amends. V, XIV, § 1; Wash. Const. art. I, § 3. Substantive due process “guards against arbitrary and capricious government action, even when the decision to take that action is made through procedures that are in themselves constitutionally adequate.” *Halverson v. Skagit County*, 42

F.3d 1257, 1261 (9th Cir. 1994); *see also Amunrud v. Bd. Of Appeals*, 158 Wn.2d 208, 218-19, 143 P.3d 571 (2006). To avoid a violation of substantive due process the State must show that imposing mandatory legal financial obligations (LFOs) such as the DNA collection fee without an inquiry into a defendant's ability to pay or an ability to remit the fee at a later time is rationally related to a legitimate state interest. A revisiting of the U.S. Supreme Court's decision in *Fuller v. Oregon*, 417 U.S. 40, 94 S.Ct. 2116 (1974), and relevant decisions by the Washington State Supreme Court, implores this Court to find that an inquiry into a defendant's ability to pay prior to the imposition of mandatory LFOs and an avenue for an adequate remission process are required under the Constitution.

Since the U.S. Supreme Court issued its decision in *Fuller*, Washington has increasingly disregarded the constitutional importance of requiring a sentencing court to inquire into a defendant's ability to pay LFOs. The legislature has limited trial courts' ability to engage in such inquiries by creating mandatory LFOs like the DNA collection fee. RCW 43.43.7541. Appellate courts, in turn, have upheld the constitutionality of these laws, finding that an inquiry into ability to pay is only necessary at the point "where an indigent may be faced with the alternatives of payment or imprisonment." *See State v. Blank*, 131 Wn.2d 230, 241, 930

P.2d 1213 (1997); *State v. Curry*, 118 Wn.2d 911, 917, 829 P.2d 166 (1992).

These decisions ignore the reasoning in *Fuller*, which placed great importance on consideration of a defendant's ability to pay at sentencing. *Fuller*, 417 U.S. at 45. These decisions incorrectly rely on the assumption that incarceration is the only point at which a defendant is adversely impacted by LFOs. Courts have also mistakenly held that vaguely-defined post-imposition relief options are adequate substitutes for an analysis of ability to pay at sentencing. *See Blank*, 131 Wn.2d at 242. In reality, because of mandatory LFOs like the DNA collection fee, indigent defendants receive debts they will never have the ability to pay and that result in immediate, onerous, and long-lasting burdens.

As such, the court should recognize the broken LFO system in Washington and its devastating impact on the poor, *see State v. Blazina*, 182 Wn.2d 827, 835, 344 P.3d 680 (2015), review *Fuller's* applicability in Washington, and reconsider the constitutionality of mandatory LFOs such as the DNA collection fee, which precludes sentencing courts from considering a defendant's ability to pay.

A. Legal Financial Obligations (LFOs) in Washington.

Washington courts are authorized to order that a defendant pay LFOs as the result of a felony or misdemeanor conviction. RCW 36.110.020;

9.94A.030(31). LFOs may be discretionary or mandatory. Discretionary LFOs may be waived by the court; mandatory LFOs must be imposed regardless of a defendant's ability to pay. *See* RCW 43.43.7541. As a result, Washington courts must impose these LFOs on defendants who have no current or future ability to pay.

B. Due Process requires that courts can neither order payment of costs nor initiate collection without a proper finding that the Defendant had a present or likely future ability to pay.

The United States Supreme Court has upheld the constitutionality of a cost recoupment statute on the grounds that the requirement to pay this LFO was not mandatory. *Fuller*, 417 U.S. at 44. Inquiry at sentencing into the defendant's ability to pay was a necessary element for determining whether the court could order payment. *Id.* at 45. After such inquiry, the requirement to repay could not be imposed on an indigent defendant unless that individual foreseeably had the ability to pay at a later time. *Id.* at 46. A court could not require an indigent defendant to pay LFOs if the court found that the defendant's indigence was unlikely to end. *Id.* at 45. Hence, Oregon's statute was constitutional because it protected against oppressive application on indigent defendants by being

carefully designed to ensure that only those who actually become capable of repaying the state will ever be obliged to do so. Those who remain indigent or for whom repayment

would work ‘manifest hardship’ are forever exempt from any obligation to repay.

Id.

C. Washington statutes allowing for mandatory LFOs fail to meet due process requirements because they do not require an ability to pay inquiry and impose immediate burdens on those ordered to pay.

Washington imposes mandatory LFOs, such as the DNA collection fee, with no discretion to consider ability to pay. RCW 43.43.7541; *State v. Lundy*, 176 Wn. App. 96, 103, 308 P.3d 755 (2013) (DNA fee required irrespective of ability to pay). This results in the oppressive application of the fee on indigent defendants who encounter a myriad of adverse effects once they are ordered to pay. See Alexes Harris, Heather Evans & Katherine Beckett, *Drawing Blood from Stones: Legal Debt and Social Inequality in the Contemporary United States*, 115 Am. J. Soc. 1753 (2010).

For example, individuals who cannot immediately pay off their LFOs are subject to an interest penalty from the outset. Interest accrues on LFOs at 12% per annum, RCW 19.52.020, and state law mandates that it accrue on all superior-court ordered LFOs from the date of judgment. RCW 10.82.090; *State v. Claypool*, 111 Wn. App. 473, 476, 45 P.3d 609 (2002). Thus, interest accrues during an individual’s entire term of confinement, when few opportunities exist to earn the wages necessary to make

meaningful payments toward these debts.¹ When the Department of Corrections deducts from a prisoner's wages for payment of LFOs,² it does little to reduce the debt, because the amounts deducted are not sufficient to keep pace with the interest rate. Even when a prisoner makes serious efforts to address LFOs during confinement, the outstanding LFO balance may dramatically *increase* during that period.

After release, these debts continue to accrue interest, thus lengthening the amount of time required to pay off the debt. *See In For a Penny: The Rise of America's New Debtors' Prisons*, (American Civil Liberties Union) (2010) at 68. Additionally, for those who lack the ability to pay, there is little hope for interest relief because, in most cases, payment is a prerequisite to accessing a waiver of interest. RCW 10.82.090.

In addition to interest, an individual who has been released is almost immediately subject to a number of criminal and civil collection processes. A monthly payment toward LFOs ordered under RCW 9.94A is a condition of sentence. RCW 9.94A.760(10). Consequently, while an indigent defendant may, in theory, avoid being incarcerated for failing to

¹ See Peter Wagner, *The Prisoner Index: Taking Pulse of the Crime Control Industry*, (Prison Policy Initiative) (2003), available at: prisonpolicy.org/prisonindex/prisonlabor.html (minimum wages for state prisoners, in dollars per day for non-industry work averaged \$0.93; maximum wages paid to prisoners by the states averages \$4.73 per day).

² The Department of Corrections is authorized to deduct a percentage of inmates' wages for payment of outstanding LFOs. Generally, a 20% deduction is required. RCW 72.09.111.

pay,³ he will likely be subjected to all of the means the criminal court can employ prior to ordering incarceration, including the issuance of a bench warrant, arrest, the threat of incarceration, and a hearing before the court where he must produce evidence that his failure to pay is not willful. RCW 9.94B.040; 9.94A.737; 9.94A.740; *State v. Bower*, 64 Wn. App. 227, 233, 823 P.3d 1171 (1992) (defendant facing incarceration for failing to pay LFOs must do more than plead poverty in general). The individual may also be subject to regular review hearings and financial audits. *See* RCW 9.94A.760(7)(b) (authorizing the county clerk to require that defendant bring all documents requested to review the monthly LFO payment collection schedule). Additionally, a defendant can face each of the various civil collection processes the state can use to collect unpaid criminal debts. *See State v. Wiens*, 77 Wn. App. 651, 654, 894 P.2d 569 (1995) (authorizing wage garnishment for collection of LFOs); RCW 9.94A.7602; 9.94A.7606; 9.94A.7701; 19.16.500 (allowing courts to contract with private collection agencies for collection of LFOs).⁴

³ *See Bearden v. Georgia*, 461 U.S. 660, 672-73, 103 S.Ct. 2064 (1983); *State v. Nason*, 168 Wn.2d 936, 945, 233 P.3d 848 (2010).

⁴ The court may require the defendant to pay a collections transfer fee of “*up to fifty percent* of the first one hundred thousand dollars of the unpaid debt per account and up to *thirty-five percent* of the unpaid debt over one hundred thousand dollars per account is reasonable, and a minimum fee of *the full amount* of the debt up to one hundred dollars per account is reasonable.” RCW 19.16.500 (emphasis added).

Most troubling is that an indigent person may never escape his debt and the accompanying consequences because the court retains jurisdiction to collect LFOs until they are paid in full. RCW 9.94A.760. Therefore, a person who forever lacks the ability to pay will be under lifetime supervision of the court, in many cases for years, even decades, after the individual last engaged in criminal activity, simply due to poverty. *See In For a Penny, supra* at 6.

D. Defendant is denied due process when Washington courts impose mandatory fees without an inquiry into ability to pay at sentencing.

Washington courts have increasingly created unnecessary burdens that indigent defendants can never overcome. After *Fuller* was decided, Washington courts held that each of the safeguards in the Oregon statute at issue in *Fuller* was required for a constitutional cost and fee structure, including that a court inquire into ability to pay at sentencing and impose the condition to pay only if no likelihood existed that the defendant's indigence would end. *See State v. Barklind*, 87 Wn.2d 814, 557 P.2d 314 (1976); *Curry*, 118 Wn.2d at 915.

However, mandatory LFO statutes have been upheld as constitutional absent the inquiry requirement because there are "sufficient safeguards in the current sentencing scheme to prevent *imprisonment* of indigent defendants." *Curry*, 118 Wn. 2d. at 918 (emphasis added). These decisions

relied on federal case law that did not address the crucial language in *Fuller* regarding ability to pay at sentencing. See *U.S. v. Pagan*, 785 F.2d 378 (2d Cir. 1986) (“the imposition of assessments on an indigent per se, does not offend the Constitution,” and “it is at the point of enforced collection...where an indigent may be faced with the alternatives of payment or imprisonment that he ‘may assert a constitutional objection on the ground of his indigency’”); see also *Blank*, 131 Wn.2d at 241; *Lundy*, 176 Wn. App. at 102-03. Application of the principles set forth in *Fuller* demonstrates that indigence must be considered at sentencing.

- i. Mandatory LFOs such as the DNA fee are unconstitutional because they are directed at those who are indigent at the time of sentencing and will not later have the ability to pay.**

The cost recoupment scheme upheld by the U.S. Supreme Court was “quite clearly directed only at those who are indigent at the time of the criminal proceedings but who subsequently gain the ability to pay.” *Fuller*, 417 U.S. at 46. An analysis at sentencing of the defendant’s ability to pay was central to effectuating this constitutional scheme. *Id.* Without the ability to pay requirement, Washington’s system for imposing the DNA fee cannot meet this standard because it is clearly directed at those who are indigent at the time of sentencing and *will not* subsequently gain the ability to pay. In fact, due to the formerly discretionary nature of the

DNA fee (see below at pp 16-17), the only defendants who suffer the detriment of the mandatory nature of the DNA fee are those whose indigence is unlikely to end. Those with the current or likely future ability to pay will receive the DNA fee regardless of whether it is mandatory.

ii. Due process demands an ability to pay inquiry whenever collection procedures are initiated, which in Washington is effectively immediately upon sentencing.

Under the cost scheme in *Fuller*, “[d]efendants...upon whom a conditional obligation is imposed are not subjected to *collection procedures* until their indigence has ended and no manifest hardship will result.” *Fuller*, 417 U.S. at 46 (emphasis added). However, the Court was silent on what constituted “collection procedures.”

Washington courts have held that the Constitution requires an inquiry into ability to pay at “the point of collection and when sanctions are sought for nonpayment.” *Blank*, 131 Wn.2d at 230. However, this focuses only on the time of sanctions for nonpayment, *see Curry*, 118 Wn.2d at 917, and ignores that collection procedures begin long before an indigent is faced with imprisonment for non-payment. If the defendant is imprisoned, DOC will immediately begin seizing his wages or monies sent in by family members. RCW 72.09.111; 72.09.480. Upon release, he will almost immediately be required to pay a monthly amount. RCW

9.94A.760(10). If he fails to pay, a warrant may be issued for his arrest. See RCW 9.94B.040. His account may be transferred to a private collection agency, which will attempt to enforce payment. RCW 19.16.500. If employed, his wages may be garnished. Each of these collection procedures occurs without a prior inquiry into the individual's ability to pay, although the language in *Fuller* and even the Washington cases show that an inquiry is required at each of these points.

E. Due process requires that defendants ordered to pay mandatory LFOs be provided meaningful relief options, which do not currently exist in Washington.

Mandatory LFOs such as the DNA collection fee are also unconstitutional because they do not allow an indigent defendant to petition the court to remit the fee. A constitutional cost and fee scheme must provide a meaningful opportunity to seek a remission of the costs or fees. *Fuller*, 417 U.S. at 45. An individual is only allowed to seek remission of discretionary LFOs imposed under RCW 10.01.160(4). See *Lundy*, 176 Wn.App. at 103 (distinguishing mandatory LFOs, which must be imposed, from discretionary costs and fees, which can be remitted). Because mandatory LFOs such as the DNA collection fee are not imposed under this statute, a defendant cannot later seek a waiver or reduction of the fee even if payment creates a manifest hardship. Thus the DNA fee

lacks one of the “salient features of a constitutionally permissible costs and fees structure.” *Curry*, 118 Wn.2d at 915-16.

Even if remission were an available option for mandatory LFOs, it would not be an adequate substitute for a meaningful inquiry into ability to pay at sentencing. A defendant lacking the future ability to pay at sentencing should never have to request remission because the sentencing court must relieve that individual of the payment requirement. *Fuller*, 417 U.S. at 45-46 (sentencing court *cannot* impose costs or fees on an indigent defendant if indigence is unlikely to end). It can only impose them if it finds the defendant will likely have some future ability to pay. *Id.* at 54. Therefore, remission should only apply to those who at the time of sentencing are found likely have some future ability to pay LFOs.

Furthermore, while at sentencing the court has the burden of determining ability to pay before imposing LFOs, at a remission hearing, the defendant must prove that the LFOs create a manifest hardship. RCW 10.01.160(4). And, what must be proven is vague and mysterious; neither statute nor case law provides any guidance on what “manifest hardship” means or how to demonstrate it to the court.

Even if a defendant persuades a court that there will be a “manifest hardship,” the court still has discretion to deny relief. RCW 10.01.160(4) (court *may* remit LFOs if satisfied payment will impose manifest

hardship). Additionally, the defendant is not entitled to representation at remission, and recent data suggests that defendants lack knowledge of the process.⁵

Therefore, remission is not available on DNA fees and in any event is largely ineffective in practice. Thus the remission process alone cannot save the constitutionality of the imposition of mandatory LFOs such as the DNA fee.

F. Washington’s failure to meet due process requirements has resulted in a broken LFO system.

The Washington Supreme Court has recognized that the LFO system is broken and harms indigent defendants. *See Blazina*, 182 Wn.2d at 827 (2015) (exercising RAP 2.5(a) discretion because of “local cries for reform of broken LFO systems”); *In for a Penny, supra* (national report highlighting Washington among five states with troubling LFO practices); Harris, Evans &, Beckett, *supra* (highlighting impact of Washington’s LFO system on poor defendants); Roopal Patel & Meghna Philip, *Criminal Justice Debt: A Toolkit for Action*, (Brennan Center for Justice) (2012) (national report highlighting Washington’s LFO problems); *Modern-Day Debtors’ Prisons: How Court-Imposed Debts Punish Poor People in Washington*, ACLU of WA & Columbia Legal Services (2014) (examining negative impact Washington’s LFO policies have on poor

⁵ Wash. State Minority & Justice Comm’n, *infra*, at 55.

defendants). Much of the damage results from indigent defendants receiving LFOs at sentencing that they have no ability to pay. Locally and nationally, courts, advocates, and criminal justice experts have pushed for reforms focused on requiring examination of ability to pay at sentencing. *See* Patel and Phillip, *supra* at 13 (recommending states adopt up-front determination of defendant's ability to pay prior to imposition of fees and fines); *In For a Penny, supra*, at 11 (recommending that courts be required to consider ability to pay when determining whether to assess fines).

In Washington, inquiry into one's ability to pay before imposing the DNA collection fee is imperative; failure to do so only perpetuates our broken system and offers few if any benefits to defendants and the public.

i. Imposing the DNA collection fee on indigent defendants does not serve any public policy purposes.

LFOs fail to promote rehabilitation or increase public safety when they are imposed on individuals who lack the ability to pay. *See* Harris, Evans & Beckett, *supra*, at 1792 (when LFOs are imposed on indigent defendants it creates counterproductive incentives). LFOs can impede housing and employment opportunities, affect credit, and push individuals to make difficult choices between meeting basic needs or paying LFOs. *Id.* at 1777. Such decisions not only affect the defendant but also children and family members for whom the defendant must provide. *Id.* at 1778-79.

Additionally, there are serious doubts about whether LFOs serve a fiscal purpose. *See id.* at 1792 (costs of collecting LFOs may outweigh amounts collected); *In For a Penny, supra*, at 9 (collecting LFOs is cost-ineffective given resources used to collect).

Collection of LFOs from poor defendants does not even appear to meet the purposes justifying imposition of LFOs that are included in the Sentencing Reform Act (SRA):

(1) Assists the courts in sentencing felony offenders regarding the offenders' LFOs; (2) hold offenders accountable to victims, counties, cities, the state, municipalities and society for the assessed costs associated with their crimes; and (3) provides remedies for an individual or other entities to recoup or at least defray a portion of the loss associated with the costs of felonious behavior.

RCW 9.94A.030. This is particularly true of the DNA fee, when it is unnecessarily imposed multiple times upon the same defendant.

Additionally, there is no justifiable policy reason for making the DNA collection fee mandatory, as it was previously discretionary and is currently a conditionally mandatory LFO.⁶ In 2002, the Legislature created the DNA Database and established the DNA collection fee. S.H.B. 2468, Ch. 289, Laws of 2002. But the court was not required to impose the fee if doing so “would result in undue hardship on the offender.” *Id.* The

⁶ *See* RCW 9.94A.777, requiring sentencing courts to consider a defendant's ability to pay before imposing the DNA fee if the defendant suffers from a mental health condition.

waiver provision did not frustrate the intent of the bill – submission of a DNA sample was required for law enforcement purposes regardless of whether the fee was imposed. *Id.* However, persons who could prove indigence or undue hardship were not burdened with the fee.

In 2009, the Legislature made the DNA collection fee mandatory. 2.S.H.B. 2713, Ch. 97, Laws of 2008. Despite this change, negligible increases in revenue were forecasted:

[t]his bill will...require all felony offenders to pay the full amount of the \$100 fee, no longer allowing the court to reduce the fee for findings of undue hardship. However, the collection rate is expected to be very low for these cases, so it is assumed there will be no significant change to revenue for felony matters.

Multiple Agency Fiscal Note Summary, 2713 2S HB PL (Office of Financial Management) (3/28/2008).

Making the DNA fee mandatory did not increase the amount of money collected. In reality, “when debts are imposed without taking into account ability to pay, states end up chasing debt that is simply uncollectable.” *See* Alicia Bannon, Mitali Nagrecha & Rebekah Diller, *Criminal Justice Debt: A Barrier to Reentry*, (Brennan Center for Justice) (2010) at 13. At the time the DNA fee was made mandatory, collection rates averaged about ten percent in superior court. *Id.* Moreover, when imposed for felony convictions, the fee is the last LFO collected. RCW

43.43.7541. Therefore, the only real impact of making the DNA collection fee mandatory is to saddle indigent defendants with additional unpayable debts and make it increasingly difficult for them to get out from under the court's jurisdiction and to successfully reintegrate into society.

ii. **Implications from the failures of Washington's LFO system have a disproportionate impact on the poor and people of color.**

The effect of Washington's broken LFO system is disproportionately felt by the poor and communities of color.⁷ *See* Harris, Evans & Beckett, *supra* at 1791 (LFOs enhance poverty by reducing income, limiting access to housing, credit, transportation, and employment); Katherine Beckett, Alexes Harris & Heather Evans, *Assessment and Consequences of Legal Financial Obligations in Washington State*, (Wash. State Minority & Justice Comm'n) (2008) at 36-38 (persons in LFO study were disproportionately poor which exacerbated difficulties with LFOs).

Additionally, it is well understood that racial disparities exist within our criminal justice system. *See Preliminary Report on Race and Washington's Criminal Justice System*, (Seattle University School of Law)

⁷ Defendants in Washington State superior courts are overwhelmingly indigent. *See* Washington State Office of Public Defense, *Determining and Verifying Indigency for Public Defense (2014)* at 19 (national estimates that 80-90 percent of all felony defendants are represented by public counsel are consistent with felony indigency rates reported by Washington counties in a 2013 survey).

(2011) at 1 (highlighting indisputable evidence of racial disproportionality in Washington’s criminal justice system); *see also* Lori Pfingst, Angela Powell & Elena Hernandez, *Creating an Equitable Future in Washington State: Black Well-Being and Beyond*, (Centerstone) at 21 (2015) (“race and racial bias affect outcomes in [Washington’s] criminal justice system and matter in ways that are not fair, that increase disparity in incarceration rates, that do not advance legitimate public safety objectives, and that undermine public confidence in our criminal justice system”); *Farrakhan v. Gregoire*, 590 F.3d 989, 1009-10 (9th Cir. 2010) *overruled en banc on other grounds*, 623 F.3d. 990 (9th Cir. 2010)(recognizing that from arrest to sentencing and beyond, practices throughout Washington’s criminal justice system are “infected with racial disparities”) ; *see also* Modern-Day Debtors’ Prisons, *infra*, at 67. This sentiment also holds true in the context of LFOs. *Id.* For example, “cases involving Hispanic defendants, drug charges, and trials are assessed significantly higher fees and fines. . .” Wash. State Minority & Justice Comm’n, *supra*, at 70; *see also* *Blazina*, 182 Wn.2d at 837.

- G. **Should the court find that ability to pay is constitutionally required before imposing mandatory LFO’s such as the DNA collection fee, it should require use of GR 34 to guide inquiries into ability to pay.**

GR 34 addresses the waiver of mandatory court fees in civil matters, and establishes guidelines for indigence. Under GR 34, an individual is indigent if: 1) he or she receives needs-based, means-tested assistance; 2) his or her household income is at or below 125 percent of the federal poverty guidelines (FPG); 3) his or her household income is above 125 percent of the FPG, but recurring basic living expenses do not provide a financial ability to pay fees and charges; or 4) “other compelling circumstances” render him or her unable to pay. GR 34(a)(3)(A)-(D). An individual is also presumed indigent when represented by a qualified legal services provider. GR 34(a)(4). GR 34 provides complete and total relief from mandatory fees and surcharges for litigants deemed indigent. *Jafar v. Webb*, 177 Wn.2d 520, 530-31, 303 P.3d 1042 (2013) (courts have a fundamental duty to waive filing fees for *any* indigent litigant).

By requiring use of GR 34 in determining indigence in criminal cases, the *Blazina* Court provided a similar message regarding the imperative need to revisit the imposition of LFOs on the poor. 182 Wn.2d at 837 (“the state cannot collect money from defendants who cannot pay, which obviates one of the reasons for courts to impose LFOs”).

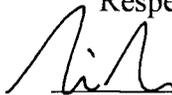
Although *Blazina* addressed discretionary LFOs, its endorsement of GR 34 – which addresses *mandatory* fees in civil matters – is applicable here as well. GR 34 provides a uniform standard that realistically assesses

indigence. Id. at 839 (“if someone does meet the GR 34 standard for indigency, *courts should seriously question that person’s ability to pay LFOs*”) Id. at 839 (emphasis added).

V. CONCLUSION

This Honorable Court should find that Washington courts have a constitutional duty to consider a defendant’s ability to pay prior to imposing mandatory LFOs such as the DNA collection fee and provide an adequate process for determining indigence and eligibility for remission.

Respectfully submitted this 31st day of August, 2015.



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