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**Subject:** FW: Comment to Proposed Rule GR 39  
**Date:** Thursday, April 8, 2021 1:12:23 PM

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**From:** Sugg, Nathan [mailto:Nathan.Sugg@co.snohomish.wa.us]  
**Sent:** Thursday, April 8, 2021 1:06 PM  
**To:** OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>  
**Subject:** Comment to Proposed Rule GR 39

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Dear Reader:

I write in support of a modified version of the proposed GR 39. The proposed rule as published for comment would create a new mechanism by which criminal defendants may be able to remit certain LFOs for which there is presently no process to remit. Current law sets forth two mechanisms by which LFOs may be remitted. The first is a motion to remit LFOs that fit the specific subset of “costs” under RCW 10.01.160(4). State v. Clark, 191 Wn. App. 369, 362 P.3d 309 (2015). The second occurs under RCW 10.01.180(5) which allows the court to modify LFOs after the court has made a non-willful finding related to a violation. The creation of a new mechanism to address LFOs other than costs and in situations other than after a violation hearing should be supported.

However, the proposed rule should be modified to only allow remittance for those non-restitution LFOs which are “discretionary” at the time of the petition and exclude those LFOs which would be mandatory if sentencing occurred at the time of the petition. This modification would address the mandatory DNA fee which must be imposed if DNA has not yet been previously collected. RCW 43.43.7541. By ignoring mandatory LFOs, the proposed rule would create a situation where mandatory LFOs would be regularly imposed against indigent defendants and then almost immediately remitted under GR 39. Such a process is inefficient and would defeat the legislature’s intent in making a very limited number of LFOs mandatory even against indigent defendants.

By modifying the proposed GR 39 to reach only those obligations which would be discretionary if sentencing occurred at the time of the petition (as opposed to at the time the sentence was imposed), the rule would address the problem exemplified by the mandatory DNA fee but would still allow sentencing courts the authority to remit LFOs which had been mandatory at the time of sentencing but are now discretionary (like pre-2018 DNA fees on second and subsequent felonies). The rule would also become future-proof such that future courts could remit those LFOs which are

mandatorily imposed now but may become discretionary in the future. Finally, it would obviate the need for any research by a reviewing court about which obligations were mandatory at the time of sentencing because the court would only need to be familiar with the mandatory and discretionary obligations at the time of the petition.

One fix would be to amend the proposed rule as follows:

**(b) Relief Available.** An individual who has been required to pay LFOs may petition the sentencing court for a waiver of interest and remission or reduction of any unpaid portion of any LFOs, except restitution and LFOs which would be mandatory if sentencing were to occur at the time the petition is considered~~victim penalty assessment~~, and may request any other relief as allowed by law. The petitioner may also request that the LFOs be removed from a collection agency; request additional time to pay the LFOs; and, excluding restitution and LFOs which would be mandatory if sentencing were to occur at the time the petition is considered~~victim penalty assessment~~, request payment by community service or other forms of community restitution if available in the community.

Thank you for your consideration.

Sincerely,

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