

 June 11, 2021

Chelan County District Court

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CLJ CMS Project

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**Re: Comments to LARLJ 8 Mandatory Electronic Filing Rule**

**To Whom It May Concern:**

Please find our concerns with regards to the proposed LRLJ 8 rule by this court. Our previous letter concerned the e-file requirement for criminal defendants and we are appreciative of that requirement being optional. However, the $5.00 e-file fee for any filings in district court is still of great concern for the following reasons:

**The Proposed e-File fee violates supreme court order No. 25700-B-627.**

On June 5, 2020, the Supreme Court of Washington adopted Access to Justice Technology Principles that should be considered when using technology to enhance access to justice. Attachment A**.**  The Access to Justice Technology Principles, *inter alia*, mandate “Technology in the justice system must be easy to use, affordable, and efficient” and “Any proposed technology that would result in unfairness or inequality must not be implemented.”

Regarding the unfairness or inequality issues of this fee, traffic law attorneys who handle a large volume of cases in district courts, would see an increase in court costs (fees and costs) of $500.00 per 100 cases, plus processing costs to pay the fee, which in the very least should be paid for by the processor of the fee whether it be the court or the recipient of the $5.00 fees. If an attorney has 100 infraction cases a month, the yearly costs would exceed $6,000.00-$10,000.00 per year conservatively. This is truly excessive and unfair. The $5.00 fee and processing fee are inherently unfair and burdensome on some attorneys more than others.

Similarly, attorneys practicing in debtor-creditor matters would also incur additional costs, however because they are court costs, these fees will be passed on to unfortunate debtors as collection fees, which are similarly unfair and excessive.

It might be one thing if the monies were somehow being paid to the court as our share for increased benefits to defendants and their attorneys, however, the burden is one-sided and any benefits are to the court, as they are getting a computer upgrade for free and the prosecutors or probation offices, who are paying nothing and also gaining the benefits.

The imposition of e-filing fees decrease access to justice and increases litigation costs. Even if a citizen can afford an attorney, additional e-filing costs will be passed to the client. Thereby making representation more expensive. In a 2017 report by the Legal Services Corporation titled, “The Justice Gap: Measuring the Unmet Civil Legal Needs of Low-income Americans” reported that 80 percent of low-income individuals in the United States cannot afford the legal assistance they need to avoid the loss of their homes, children, jobs, liberty and even lives. Any additional costs can make retraining an attorney impossible. In collection defense cases, additional e-filing costs will be added to the judgement, thereby increasing judgment costs of unrepresented citizens. Citizens with increased judgments will pay high interests costs and could have their driver’s licenses suspended if the judgment was related to a auto accident. Beyond collection defense cases, the WSBA Task Force on Escalating Costs of Civil Litigation report, dated June 15, 2015, noted:

[T]hat Most civil litigation occurs in superior court, but district court offers a potentially quicker and less expensive alternative for some cases. Many of the Task Force’s recommendations apply to district court as well as superior court. In addition, the Task Force recommends extending concurrent jurisdiction to unlawful detainer proceedings and issuing a case schedule in civil cases upon filing. District court cases would follow a 6-month schedule from filing to trial.

 p. 4. District Courts are currently seen as a low cost means of civil litigation, however, with the imposition of e-filing fees, any perceived costs lowering benefits would be greatly neutralized. The proposed e-filing rule will only worsen access to justice issues at the district court level.

**Chelan County District Court lacks statutory authority to impose e-file Fee.**

The Supreme Court may adopt rules of procedure for district courts. A district court may adopt local rules of procedure which are not inconsistent with state law or with the rules adopted by the supreme court. The rules for a county with a single district and multiple facilities may include rules to provide where cases shall be filed and where cases shall be heard. If the rules of the supreme court authorized under this section are adopted, all procedural laws in conflict with the rules shall be of no effect. RCW 3.30.080. The proposed district/municipal court local rules amendment mandating electronic filing are inconsistent with state law and with rules adopted by the supreme court of Washington. In short, the imposition or authorization of a fee for e-filing is deemed ultra vires. An ultra vires act is one performed without any authority to act on the subject. *Woodward v. Seattle*, 140 Wash. 83, 87, 248 P. 73 (1926). Ultra vires acts are those performed with no legal authority and are characterized as void on the basis that no power to act existed, even where proper procedural requirements are followed. Ultra vires acts cannot be validated by later ratification or events. *South Tacoma Way, LLC v. State of Washington*, 169 Wash.2d 118, 122, 233 P.3d 871 (2010).

Here, courts lack statutory authority to impose e-filing fee. The district courts are created and organized under Title 3 of the Revised Code of Washington. Title 3 grants courts the ability to hear certain controversies (RCW 3.66), grant salary of judges (RCW 3.58) and filing fees and other costs passed to litigants (RCW 3.62.060 and 3.62.064). Specifically, RCW 3.62.065 allows the district court to charge fees by stating, “All courts organized under Title 3 or 35 RCW may charge fees as prescribed in RCW 3.62.060. The fees or charges imposed under this section shall be allowed as court costs whenever a judgment for costs is awarded.” RCW 3.62.060 enumerates a fee schedule:

(1) Clerks of the district courts shall collect the following fees for their official services:

(a) In any civil action commenced before or transferred to a district court, the plaintiff shall, at the time of such commencement or transfer, pay to such court a filing fee of forty-three dollars plus any surcharge authorized by RCW [7.75.035](http://app.leg.wa.gov/RCW/default.aspx?cite=7.75.035). Any party filing a counterclaim, cross-claim, or third-party claim in such action shall pay to the court a filing fee of forty-three dollars plus any surcharge authorized by RCW [7.75.035](http://app.leg.wa.gov/RCW/default.aspx?cite=7.75.035). No party shall be compelled to pay to the court any other fees or charges up to and including the rendition of judgment in the action other than those listed.

(b) For issuing a writ of garnishment or other writ, or for filing an attorney issued writ of garnishment, a fee of twelve dollars.

(c) For filing a supplemental proceeding a fee of twenty dollars.

(d) For demanding a jury in a civil case a fee of one hundred twenty-five dollars to be paid by the person demanding a jury.

(e) For preparing a transcript of a judgment a fee of twenty dollars.

(f) For certifying any document on file or of record in the clerk's office a fee of five dollars.

(g) At the option of the district court:

(i) For preparing a certified copy of an instrument on file or of record in the clerk's office, for the first page or portion of the first page, a fee of five dollars, and for each additional page or portion of a page, a fee of one dollar;

(ii) For authenticating or exemplifying an instrument, a fee of two dollars for each additional seal affixed;

(iii) For preparing a copy of an instrument on file or of record in the clerk's office without a seal, a fee of fifty cents per page;

(iv) When copying a document without a seal or file that is in an electronic format, a fee of twenty-five cents per page;

(v) For copies made on a compact disc, an additional fee of twenty dollars for each compact disc.

(h) For preparing the record of a case for appeal to superior court a fee of forty dollars including any costs of tape duplication as governed by the rules of appeal for courts of limited jurisdiction (RALJ).

(i) At the option of the district court, for clerk's services such as processing ex parte orders, performing historical searches, compiling statistical reports, and conducting exceptional record searches, a fee not to exceed twenty dollars per hour or portion of an hour.

(j) For duplication of part or all of the electronic recording of a proceeding ten dollars per tape or other electronic storage medium.

(k) For filing any abstract of judgment or transcript of judgment from a municipal court or municipal department of a district court organized under the laws of this state a fee of forty-three dollars.

(l) At the option of the district court, a service fee of up to three dollars for the first page and one dollar for each additional page for receiving faxed documents, pursuant to Washington state rules of court, general rule 17.

(2)(a) Until July 1, 2021, in addition to the fees required to be collected under this section, clerks of the district courts must collect a surcharge of thirty dollars on all fees required to be collected under subsection (1)(a) of this section.

(b) Seventy-five percent of each surcharge collected under this subsection (2) must be remitted to the state treasurer for deposit in the judicial stabilization trust account.

(c) Twenty-five percent of each surcharge collected under this subsection (2) must be retained by the county.

(3) The fees or charges imposed under this section shall be allowed as court costs whenever a judgment for costs is awarded.

 RCW 3.62.060 is very specific as to what charges are permissible and proscribe an exact amount to be charged. Nowhere in Title 3 are courts of limited jurisdiction authorized to impose an e-filing fee. Any local rule adoption without authority or conflict with any court rule or statute is deemed void under RCW 3.30.080.

**RCW 2.68 does not authorize district/municipal courts to impose an e-file fee.**

The judicial information system committee (JISC), under RCW 2.68.010 may authorize the Administrative Office of the Courts (AOC) to charge fees for accessing judicial information systems, however, a fee schedule must be published. The Administrative Office of the Courts (AOC) provides a facility that allows the public to access display-only Judicial Information System (JIS) court information through a web-based service called JIS-Link. JIS-Link is offered pursuant to RCW chapter 2.68 and Court Rule JISC 15. JIS-Link is a fee-based subscription service and provides links to the following systems: ACORDS - Appellate Court System, JIS - Judicial Information System - the District and Municipal Court Information System (DISCIS) and the Judicial Accounting Sub System (JASS), and SCOMIS - Superior Court Management Information System. JISC has published a fee schedule where a subscriber pays a $200.00 per year subscriber fee and a $ 0.145 transaction fee. Attachment B. The authors of this letter cannot find any other fee schedules published by JISC.

However, even if JISC published a fee schedule for the proposed e-file system, for courts of limited jurisdiction to pass these fees onto litigants, it must be authorized under RCW 2.68.040, which states:

(1) To support the judicial information system account provided for in RCW [2.68.020](http://app.leg.wa.gov/RCW/default.aspx?cite=2.68.020), the supreme court may provide by rule for an increase in fines, penalties, and assessments, and the increased amount shall be forwarded to the state treasurer for deposit in the account:

(a) Pursuant to the authority of RCW [46.63.110](http://app.leg.wa.gov/RCW/default.aspx?cite=46.63.110)(3), the sum of ten dollars to any penalty collected by a court pursuant to supreme court infraction rules for courts of limited jurisdiction;

(b) Pursuant to RCW [3.62.060](http://app.leg.wa.gov/RCW/default.aspx?cite=3.62.060), a mandatory appearance cost in the initial sum of ten dollars to be assessed on all defendants; and

(c) Pursuant to RCW [46.63.110](http://app.leg.wa.gov/RCW/default.aspx?cite=46.63.110)(6), a ten-dollar assessment for each account for which a person requests a time payment schedule.

(2) Notwithstanding a provision of law or rule to the contrary, the assessments provided for in this section may not be waived or suspended and shall be immediately due and payable upon forfeiture, conviction, deferral of prosecution, or request for time payment, as each shall occur.

(3) The supreme court is requested to adjust these assessments for inflation.

(4) This section does not apply to the additional monetary penalty under RCW [46.20.500](http://app.leg.wa.gov/RCW/default.aspx?cite=46.20.500).

(5) This section does not apply to the additional monetary fine under RCW [46.61.110](http://app.leg.wa.gov/RCW/default.aspx?cite=46.61.110), [46.61.145](http://app.leg.wa.gov/RCW/default.aspx?cite=46.61.145), [46.61.180](http://app.leg.wa.gov/RCW/default.aspx?cite=46.61.180), [46.61.185](http://app.leg.wa.gov/RCW/default.aspx?cite=46.61.185), [46.61.190](http://app.leg.wa.gov/RCW/default.aspx?cite=46.61.190), and [46.61.205](http://app.leg.wa.gov/RCW/default.aspx?cite=46.61.205).

(6) This section does not apply to the additional monetary penalties under RCW [46.61.165](http://app.leg.wa.gov/RCW/default.aspx?cite=46.61.165).

In this case, the legislature must amend subsection (b) to allow for a e-filing fee pursuant to RCW 3.62.060. RCW 3.62.060 must be amended by the legislature to allow the courts of limited jurisdiction to impose a $5.00 per envelope fee for e-filers. Any local rule authorizing e-filing fees must be supported by RCW 2.68.40 and RCW 3.62.060.

**RCW 2.68.030 only allows fees schedule for in state non-court users and out of state users and these fees can only be enough to cover operations and development costs of the information system.**

JISC can only charge in state non-court and out of state user for access to judicial information systems. Further, any costs imposed must limited to the actual costs of related to maintenance and operational costs of such system. RCW 2.68.030 states:

The judicial information system committee shall develop a schedule of user fees for in-state noncourt users and all out-of-state users of the judicial information computer system and charges for judicial information system products and licenses for the purpose of distributing and apportioning the full cost of operation and continued development of the system among the users. The schedule shall generate sufficient revenue to cover the costs relating to (1) the payment of salaries, wages, other costs including, but not limited to the acquisition, operation, and administration of acquired information services, supplies, and equipment; and (2) the development of judicial information system products and services. As used in this section, the term "supplies" shall not be interpreted to delegate or abrogate the state purchasing and material control director's responsibilities and authority to purchase supplies as provided in chapter [43.19](http://app.leg.wa.gov/RCW/default.aspx?cite=43.19) RCW.

 Here, charging Washington State licensed attorneys e-filing fees is impermissible under RCW 2.68.030 and any costs imposed must be limited to operations and maintenance of the system. A plain reading of RCW 2.68.030 supports this assertion. If a statute's meaning

is plain on its face, we must “give effect to that plain meaning as an expression of legislative intent.” [Campbell & Gwinn, 146 Wash.2d 1, 9–10, 43 P.3d 4 (2002).](https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=2002211639&pubNum=4645&originatingDoc=I44a806a3ab3e11e191598982704508d1&refType=RP&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)) In determining who should pay such fees, the legislature made a distinction between in state non-court users, out of state users and in state court users. It chose not to impose fees on the latter.

 Furthermore, the imposition of a $5.00 fee for e-filing likely exceeds the “full costs of operation and continued development of the system among users.” RCW 2.68.030. Although there are no Washington State cases addressing this statute, there are federal cases pertaining to fees accessing court documents. *National Veterans Legal Services Program v. United States*, 968 F.3d 1340 (2020), dealt with electronic court access fees. In the Federal Court System, Case Management/Electronic Case Files (CM/ECF) does not charge defendants a fee to file documents, but Public Access to Court Electronic Records (PACER) does charge 10 cents per page for the public to view and print out court documents. Under 28 U.S.C. §1913, such access fees are permissible however, “The Director of the [AO], under the direction of the Judicial Conference of the United States, shall prescribe a schedule of reasonable fees for electronic access to information which the Director is required to maintain and make available to the public.” In other words, any fees demanded must be limited to cover the costs of the information system. The Federal Circuit Court agreed that excessive PACER fees that go beyond the cost of providing the service for which the fees are charged may infringe the First Amendment rights of access to the courts.

 Here, RCW 2.68.030 is more restrictive on permissible fees that its federal counterpart, 28 U.S.C. §1913, by outlining what fees should cover. Specifically, fees under RCW 2.68.030 should cover cost enough to “[G]enerate sufficient revenue to cover the costs relating to (1) the payment of salaries, wages, other costs including, but not limited to the acquisition, operation, and administration of acquired information services, supplies, and equipment; and (2) the development of judicial information system products and services.” Here, there is no evidence the proposed $5.00 e-file fee is composed only to cover operational and maintenance costs of the e-file system. The proposed $5.00 e-file fee, without more justification and cost analysis, violates RCW 2.69.030.

**Unfair to Charge Only the Defendants to Finance an Upgrade in the Court’s Computer Systems**

It is unfair to expect the criminal and civil defendants (non-state parties) to pay for the court’s upgrade in computer systems. The State Prosecutors and Probation departments all have budgets that should be charged as well. It is unfair that a prosecutor could file a motion or a pleading requiring the defendant to answer in a subsequent pleading which requires the defendant to pay an additional envelope fee. If any parties have to pay to finance the court’s upgrade in computer systems, then all parties should likewise have to pay. There should be no exemptions for prosecutors or probation. This makes the fee even more unfair.

Likewise, it is foreseeable that the employment costs at the district and municipal courts will be lessened as a result in this upgrade in computer systems. Basically, the fees charged to one party over other parties will be paying the courts fees. The courts have a duty to pay for their own computer upgrades. If the costs are passed on, they should be passed on in an equitable manner to all parties not to a select few.

These costs are equivalent to a tax that is selectively targeted to only some of the parties who use the system. The fees paid are being paid directly to a company and not to the court. The fees are being paid by a few defendants or parties and attorneys who use the system rather than all parties.

In regards to the $5.00 and the processing fees, as proposed, this will create an accounting nightmare. Attorneys would have to have separate accounts to process these fees or have their general operating accounts inundated with $5.00 and $.25 or 2.89% fees. Although it seems that the defense bar is being required to fight these unjust and unauthorized state fees when the burden should be on the CLJ CMS Project and those who negotiated a burdensome and unjust contract to pay for the court’s computer upgrade. The burden should be equitable and just not targeted at private attorneys.

We respectfully request this Court reconsider adopting LARLJ 8 for the foregoing reasons. There are other appropriate ways of generating fees, one way is to require attorneys to pay an annual fee or to simply increase the fees on to court fees at the conclusion of cases. We welcome further discussion on this matter with the Court.

 Very truly yours,

 

Joyce Heritage



Elizabeth Gagley