

IN THE FLORIDA FIFTH JUDICIAL CIRCUIT COURT
IN AND FOR MARION COUNTY, FLORIDA

KEVIN WASHINGTON,

Plaintiff,

v.

Case No.: 2015 CA 1720

CLERK OF THE CIRCUIT COURT FOR
MARION COUNTY, FLORIDA,

Defendant.

/

COMPLAINT

Plaintiff KEVIN WASHINGTON (“Washington”) sues the CLERK OF THE CIRCUIT COURT FOR MARION COUNTY, FLORIDA (“Clerk”) and alleges as follows:

INTRODUCTION

1. Kevin Washington cannot afford \$53,114 in court costs and fines (legal financial obligations or “LFOs”) arising from a 2010 felony. However, § 28.246(4), Fla. Stat., provides him an avenue to pay the LFOs over time. When Washington sought to avail himself of this right, the Defendant Clerk refused to enroll him on a reasonable and affordable payment plan as the law directs. As a consequence, he cannot get his driver’s license reinstated. Washington wants the Clerk to follow the law and enroll him on a reasonable and affordable payment plan.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction over this equitable action pursuant to § 26.012(2)(c), Fla. Stat. This Court has jurisdiction over a petition for a writ of mandamus pursuant to Art. V, § 5(b), FLA. CONST.; Fla.R.Civ.P. 1.630; and § 119.11, Fla. Stat.

3. Venue is proper in this judicial circuit and county pursuant to § 47.011, Fla. Stat.

PARTIES

4. Plaintiff **Kevin Washington** (“Washington”) is incarcerated by the Florida Department of Corrections (“FDOC”) in Marion Correctional Institution. He has been incarcerated by the FDOC since October 19, 2011. His current release date is September 30, 2015.

5. Defendant **Clerk of the Circuit Court for Marion County, Florida** (“Clerk”) resides in Marion County, Florida. Florida law directs the Clerk to “enforce, satisfy, compromise, settle, subordinate, release, or otherwise dispose” of a criminal defendant’s LFOs. *See* § 938.29(3), Fla. Stat.; § 938.30(9), Fla. Stat. The Clerk has acted and threatens to continue acting under color of state law at all times alleged in this complaint.

GENERAL ALLEGATIONS

6. Section 28.246(4), Fla. Stat., provides:

(4) The clerk of the circuit court shall accept partial payments for court-related fees, service charges, costs, and fines in accordance with the terms of an established payment plan. An individual seeking to defer payment of fees, service charges, costs, or fines imposed by operation of law or order of the court under any provision of general law shall apply to the clerk for enrollment in a payment plan. The clerk shall enter into a payment plan with an individual who the court determines is indigent for costs. A monthly payment amount, calculated based upon all fees and all anticipated costs, is presumed to correspond to the person's ability to pay if the amount does not exceed 2 percent of the person's annual net income, as defined in s. 27.52(1), divided by 12. The court may review the reasonableness of the payment plan.

7. Section 28.246(4), Fla. Stat., requires the circuit clerks and the Clerk to set monthly payment plan installments to correspond to a person's ability to pay.

8. The law presumes that monthly installments are affordable when the amount does not exceed 2% of the person's monthly income.

9. On September 30, 2011, Washington pleaded guilty to felony conspiracy to traffic cocaine. *See State v. Washington*, No. 2010 CF 003216 (Fla. 5th Cir. Marion Cnty.) ("2010 felony"). The court sentenced him to five years in prison. This felony is unrelated to any driving offense or capacity to drive.

10. The court ordered Washington to pay court costs and fines (legal financial obligations or "LFOs") totaling \$53,068, broken out as follows:

Public Defender Application Fee	\$50
Criminal Justice Clearing Trust Fund	\$3
Crimes Compensation Trust Fund	\$50
Additional Court Cost	\$225

County Crime Prevention Program	\$50
Criminal Justice Education for Local Government	\$2
Teen Court	\$3
Additional Court Cost for County Programs	\$65
Prosecution / Investigation Costs	\$100
Controlled Substances Fine	\$50,000
5% Surcharge on any Fine	\$2,500
Fine Surcharge (Crime Stoppers)	\$20
Total	\$53,068

11. Washington was immediately jailed after his plea and transferred to prison the next month.

12. When Washington failed to pay the LFOs from prison, on November 9, 2011, the Clerk notified the Florida Department of Highway Safety & Motor Vehicles (“DMV”) of Washington’s unpaid LFOs.

13. On December 12, 2011, with the Clerk’s notice and pursuant to § 322.245(5)(a), Fla. Stat., the DMV suspended Washington’s driver’s license for failure to pay the LFOs.

14. After the court ordered Washington to pay \$53,068, the Clerk added additional LFOs to Washington’s account for recording the judgment (\$39) and notifying the DMV (\$7).

15. The Clerk now contends Washington owes \$53,114 in unpaid LFOs.

16. Washington currently owes LFOs. These obligations have not been suspended while he is in prison.

17. Washington lacks the present ability to pay \$53,114 in LFOs.

Washington has never had the ability to pay these LFOs.

18. On March 26, 2015, Washington requested the Clerk enroll him on a payment plan pursuant to § 28.246(4), Fla. Stat., to pay the LFOs over time.

Washington explained he did not have the present ability to pay the LFOs in full.

Washington explained that he was incarcerated, but upon release in September 2015 he expected to earn at most \$1,225 per month. Washington requested that the Clerk enroll him on a payment plan so that the monthly installments did not exceed \$25.

19. The Clerk denied Washington's March 26, 2015 request.

20. Initially, the Clerk denied Washington's March 26, 2015, request because Washington was in prison and had no income.

21. The Clerk has a policy on "Civil Traffic & Criminal Collections Division Payment Plans/Collections Contracts" (hereinafter "Payment Plan Policy"). Attached and incorporated as Exhibit 1 is a true and accurate copy of that policy.

22. The Clerk interprets § 28.246(4), Fla. Stat., to require him to set payment plan installments based on the amount of LFOs a person owes.

Therefore, pursuant to the Payment Plan Policy, the Clerk directs officials within his office to set payment plan installments based on the amount of LFOs a person owes.

23. Pursuant to that Payment Plan Policy, Washington would have to pay the \$53,114 in six months with each estimated monthly installment in excess of \$8,500.

24. At all times after Washington's conviction and presently, he lacked the ability to pay \$8,500 monthly installments.

25. Accordingly, on April 10, 2015, Washington requested that the Clerk deviate from his Payment Plan Policy and propose a monthly installment below \$8,500.

26. Two weeks later, the Clerk then offered to enroll Washington on a payment plan to pay the LFOs with a monthly installment of \$75. Attached as Exhibit 2 is the Criminal Case Payment Agreement ("proposed agreement"), which is a true and accurate copy of the proposed agreement.

27. The Clerk determined the proposed \$75 monthly installments without consideration of Washington's current or future ability to pay.

28. The Clerk's proposed agreement does not allow for a future reduction

based on a change in Washington's financial status or income. Instead, the Clerk will require Washington to pay the set installment each month "regardless of future circumstances (i.e. incarceration or unemployment)." Pursuant to the proposed agreement, if Washington fails to pay a monthly installment, the Clerk will terminate the payment plan agreement and send his account to collections.

29. In all cases, the Clerk requires persons on a payment plan to comply with the plan regardless of later changes in a person's financial circumstances, income, and ability to pay.

30. Washington lacks the present ability to pay the \$75 monthly installments.

31. Washington has not yet secured employment or any other sources of income once he is released from prison. Therefore, once released from prison, it is substantially likely that Washington will not be able to pay \$75 monthly installments.

32. Other than the suspension for failure to pay the LFOs related to the 2010 felony, no other reason prevents Washington from obtaining his driver's license. But for the DMV's suspension of his driver's license for failure to pay the LFOs related to the 2010 felony, Washington's driver's license could be reinstated upon his payment of the DMV's one-time reinstatement fee of approximately \$75.

33. If the Clerk enrolls Washington on a payment plan to pay the outstanding LFOs, he must provide the DMV an affidavit stating that Washington has entered into a written agreement for the payment of LFOs. Once the DMV receives such an affidavit from a clerk, pursuant to § 322.245(5)(b), Fla. Stat., the DMV must reinstate the driver's license.

34. To date, the Clerk has not enrolled Washington in a reasonable and affordable payment plan to pay the LFOs.

35. Washington wants to legally operate a motor vehicle in Florida and must have a driver's license to do so. If the DMV would reinstate his driver's license, he would pay the administrative fees associated with the reinstatement and take other necessary steps to have his license reinstated.

36. Washington faces imminent and irreparable injury if he is unable to reinstate his driver's license before or immediately upon release from prison. He will have fewer and diminished job opportunities and earning prospects. He also will lose income that he could use to repay the LFOs. His professional and social interactions and engagements will be significantly limited. He will lose autonomy to legally drive.

37. Prior to going to prison, Washington cared for his elderly mother and plans to continue doing so upon his release from prison. Prior to his conviction, he

regularly drove his mother to doctors' appointments and other places she needed to go. If he does not have a driver's license, his ability to assist her will be severely limited.

38. The suspension of Washington's driver's license based solely on his financial inability to pay his LFOs also deprives him of an important property interest.

39. The Clerk is the cause of these imminent and irreparable injuries that Washington faces. The Clerk's refusal to enroll Washington on a reasonable and affordable payment plan results in Washington being unable to reinstate his driver's license. Unless the Clerk is restrained by this Court, Washington will continue to suffer these injuries.

COUNT 1:
WRIT OF MANDAMUS

40. Plaintiff realleges and incorporates by reference all of the foregoing allegations.

41. Section 28.246(4), Fla. Stat., creates an indisputable legal duty on the Clerk to enter into a reasonable and affordable payment plan that allows Washington to pay his remaining LFOs overtime.

42. The Clerk has failed to perform his duty under § 28.246(4), Fla. Stat.

43. As part of the 2010 felony case, Washington applied for criminal indigent status and was determined to be indigent. Attached and incorporated as Exhibit 3 is a true and accurate copy of that determination.

44. Section 28.246(4), Fla. Stat., provides Washington with a clear legal right to enroll in a reasonable and affordable payment plan with the Clerk.

45. Washington has no adequate remedy at law.

COUNT 2:
VIOLATION OF § 28.246(4), FLA. STAT.

46. Plaintiff realleges and incorporates by reference all of the foregoing allegations.

47. Section 28.246(4), Fla. Stat., requires the Clerk to enroll Washington on a reasonable and affordable payment plan that may be revised based on a future change in Washington's financial circumstances. The Clerk violates this law by refusing to do so.

48. In addition to the plain reading of the statute, constitutional due process requires the Clerk to properly apply § 28.246(4), Fla. Stat. Allowing the government to impose a sanction and suspend Washington's driver's license for failure to pay his LFOs in their entirety when he lacks the ability to pay them, or to enroll Washington in a payment plan beyond his financial abilities is not rationally

related to any legitimate government interest and thus violates substantive due process rights.

RELIEF REQUESTED

WHEREFORE, Plaintiff respectfully requests the following relief:

A. Declare the following:

(1) Upon request by a criminal defendant who owes LFOs related to a criminal conviction, § 28.246(4), Fla. Stat., requires a circuit clerk to enroll the defendant on a payment plan to pay the LFOs, if (a) the defendant was previously determined in the criminal case to be indigent pursuant to § 27.52, Fla. Stat., and (b) the clerk does not have competent evidence that the defendant has the present ability to pay the LFOs in their entirety.

(2) Section 28.246(4), Fla. Stat., requires a circuit clerk to inquire into a person's ability to pay (e.g., request a financial affidavit) and—absent competent evidence to the contrary—set the monthly payment plan installments based on the person's ability to pay. Absent unusual circumstances, a person has the ability to pay no more than 2% of their take home pay.

(3) Upon request and presentation of a financial affidavit from a person currently on a payment plan, § 28.246(4), Fla. Stat., requires a circuit clerk to alter a payment plan when a person no longer has the ability to pay the set monthly payment plan installments.

(4) The Clerk's refusal to enroll Washington on any payment plan until he was released from prison and had an income was unreasonable and a per se violation of § 28.246(4), Fla. Stat.

(5) The Clerk's refusal to enroll Washington on a payment plan with monthly installments below \$75 was unreasonable and a violation of § 28.246(4), Fla. Stat.

B. Order the Clerk to enroll Washington on a reasonable and affordable payment plan to pay the LFOs with installments set no higher than 2% of his income and a provision requiring the Clerk to alter the installment amounts upon Washington presenting a financial affidavit reflecting a change in his ability to pay absent competent evidence to the contrary.

C. Order the Clerk to add a one-time enrollment service charge of \$25 as permitted by § 28.24(26)(c), Fla. Stat., to the LFOs currently owed without making Washington pay this service charge upfront.

D. An award of nominal damages.

E. Order the Clerk pursuant to § 322.245(5)(b)(3), Fla. Stat., to provide an affidavit to the Florida Department of Highway Safety and Motor Vehicles stating that “a court has entered an order granting relief to [Washington] [and] ordering the reinstatement of [his] [driver’s] license.”

F. An order retaining the Court’s jurisdiction of this matter to enforce the terms of the Court’s orders.

G. Such further and different relief as is just and proper or that is necessary to make the Plaintiff whole.

Respectfully Submitted,

s/Benjamin James Stevenson
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ACLU Found. of Fla.
Post Office Box 12723
Pensacola, FL 32591-2723
T. 786.363.2738
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Counsel for Plaintiff Washington

 <p>Marion County Clerk of the Circuit Court and Comptroller</p>	Work Instructions		Choose an item.
	<p>Title: Civil Traffic & Criminal Collections Division Payment Plans/Collections Contracts</p>	<p>Origination Date: 4/21/2014</p>	<p>Version Date: 4/21/2014</p>

Approvals				
Title	Dept.	Name	Signature	Date
Originator	Admin	Staci Winston		4/21/14

Reference Documents	
Document Number	Document Title
Admin 05/01/14	Civil Traffic & Criminal Collections Division Payment Plan/Collections Contracts

Revision History			
Version	Description of Change	Author	Effective Date
1.0	Procedures for Civil Traffic & Criminal Collections Division Payment Plans & Collections Contracts	Staci Winston	5/1/14
2.0			

Purpose

This document sets forth the procedures for Payment Plans & Collections Contacts for the Civil Traffic & Criminal Collections Divisions, effective May 01, 2014.

Scope

These procedures are to be followed by all Clerk staff in relation to Clerk's Payment Plans & Collections Contacts

1.0 Civil Traffic Division Payment Plan Agreements: The Payment Plan Agreement form can be located on the Clerk's Website under Form > Traffic.

- 1.1 A Defendant may request a payment plan for a citation which has not reached the original 30 day due date.
 - 1.1.1 A \$25.00 payment plan fee, per case, is due upon acceptance of the signed payment agreement form.
 - 1.1.2 Upon acceptance of the signed payment agreement, the case must be paid in full within 60 days from the original due date of the citation.
 - 1.1.3 Staff will manually calculate this due date and enter the date in the due date table.

- 1.2 A Defendant may request a payment plan on a citation which is past due and the license has been suspended. **Cases that have gone to court are not eligible for a payment plan.**
 - 1.2.1 A \$25.00 payment plan fee, per case, outstanding D6 suspension fee and the first months payment is due upon acceptance of the signed payment agreement form.
 - 1.2.2 The first months payment will be calculated by the total divided by 2.
 - 1.2.3 Upon acceptance of the signed payment agreement, the case must be paid in full within 60 days of signing the payment plan agreement.
 - 1.2.4 Staff will manually calculate this due date and enter in the due date table.

- 1.3 Failure to comply with the conditions of the payment plan agreement will result in the suspension of the Defendant's drivers license and the case being turned over or reinstated with MSB. No overdue notices will be issued for Traffic Payment Plans.

Exhibit 1

Click here to enter a date.

UNCONTROLLED COPY

	<p>Marion County Clerk of the Circuit Court and Comptroller</p>	<p>Work Instructions</p>		<p>Choose an item.</p>
<p>Title: Civil Traffic & Criminal Collections Division Payment Plans/Collections Contracts</p>		<p>Origination Date: 4/21/2014</p>	<p>Version Date: 4/21/2014</p>	<p>Page # 2 of 2</p>

2.0 Criminal Collections Division Payment Plan Agreements:

- 2.1 These procedures exclude cases where the Defendant is ordered to enter into a payment plan with the Clerk's Office as a condition of probation **OR** cases where non-monetary obligations are outstanding (ie: community service hours show proof of valid Drivers License, etc)
 - 2.1.1 A \$25.00 payment plan fee, applicable D6 fees & the first months payment **per case**, are due upon the acceptance of the signed payment agreement form. A payment plan will not be initiated without full payment of the \$25.00 fee. D6 fee and 1st months payment.
 - 2.1.2
 - \$1.00 - \$300.00 - 60 days
 - \$301.00 - \$600.00 - 90 days
 - \$601.00 - \$1200.00 - 120 days
 - \$1200.00 & up - 180 days
 - 2.1.3 Failure to comply with the conditions of the payment plan agreement will result in the suspension of the Defendant's drivers license. Once the payment plan has been terminated the Defendant is no longer eligible for a payment plan in that case. (ie: only one payment plan per case)
 - 2.1.4 No overdue notices will be issued for Criminal Payment Plans, as the payment agreement outlines the requirement to make a payment every thirty days. Once the agreement due date is reached, if they case is not paid in full the contract will be terminated, the license will be suspended and the case turned over or reinstated with MSB.

Clearance Fee: _____

**IN THE CIRCUIT / COUNTY COURT OF THE FIFTH JUDICIAL CIRCUIT
IN AND FOR MARION COUNTY, FLORIDA**

CRIMINAL CASE PAYMENT AGREEMENT

Defendant Information: KEVIN J. WASHINGTON

Case Number: 10-CF-3216-B

Phone Number:

DOB: [REDACTED]

Your total amount due is \$53,114.00. Your minimum payment due per month is \$75.00. Your first payment is due on 06/01/2015. Subsequent payments are due on the 1st of each month.

Initial Each Section Below:

_____ I understand I must make a payment every thirty (30) days regardless of future circumstances (i.e., incarceration or unemployment). If I pay extra one month, I must still make a payment the following month.

_____ I understand failure to make a monthly payment will result in this contract being terminated, my driver license being suspended pursuant to FS 322.245, and the outstanding balance forwarded to a collection agency pursuant to FS 28.246(6) with additional fees being assessed.

Defendant Full Name	Date	Clerk/Notary Public	Date

If you are currently on probation and required to pay these fines as a condition of probation, your failure to do so could violate your probation which would result in a warrant for your arrest.

Payment Information:

Acceptable methods of payment are cash (in person), check, money order, cashier's check, and credit card. You may also call (352) 671-5674 to make a payment using your Visa, MasterCard, or Discover Card. There is a 3.5% convenience fee added for processing credit card payments. Always include the case number when making a payment by mail.

Marion County Clerk of the Circuit Court and Comptroller
Traffic and Criminal Payment Division, Room 101
Post Office Box 907
Ocala, Florida 34478-0907

**PLEASE CONTACT THE COLLECTIONS DEPARTMENT AT 352-671-5621 TO
VERIFY YOUR FINAL PAYMENT AMOUNT.**

Exhibit 2

STATE OF FLORIDA vs. Washington, Kevin
Defendant/Minor Child

APPLICATION FOR CRIMINAL INDIGENT STATUS

I AM SEEKING THE APPOINTMENT OF THE PUBLIC DEFENDER

OR

I HAVE A PRIVATE ATTORNEY OR AM SELF-REPRESENTED AND SEEK DETERMINATION OF INDIGENCE STATUS FOR COSTS

Notice to Applicant: The provision of a public defender/court appointed lawyer and costs/due process services are not free. A judgment and lien may be imposed against all real or personal property you own to pay for legal and other services provided on your behalf or on behalf of the person for whom you are making this application. There is a \$50.00 fee for each application filed. If the application fee is not paid to the Clerk of the Court within 7 days, it will be added to any costs that may be assessed against you at the conclusion of this case. If you are a parent/guardian making this affidavit on behalf of a minor or tax-dependent adult, the information contained in this application must include your income and assets.

- I have 2 dependents. (Do not include children not living at home and do not include a working spouse or yourself.)
- I have a take home income of \$ 0 paid () weekly () bi-weekly () semi-monthly () monthly () yearly
(Take home income equals salary, wages, bonuses, commissions, allowances, overtime, tips and similar payments, minus deductions required by law and other court-ordered support payments)
- I have other income paid () weekly () bi-weekly () semi-monthly () monthly () yearly: (Circle "Yes" and fill in the amount if you have this kind of income, otherwise circle "No")

Social Security benefits..... Yes \$ _____ No	Veterans' benefit..... Yes \$ _____ No
Unemployment compensation..... Yes \$ _____ No	Child support or other regular support from family members/spouse..... Yes \$ _____ No
Union Funds..... Yes \$ _____ No	Rental income..... Yes \$ _____ No
Workers compensation..... Yes \$ _____ No	Dividends or interest..... Yes \$ _____ No
Retirement/pensions..... Yes \$ _____ No	Other kinds of income not on the list..... Yes \$ _____ No
Trusts or gifts..... Yes \$ _____ No	
- I have other assets: (Circle "Yes" and fill in the value of the property, otherwise circle "No." Use the back of this form to provide additional information.)

Cash..... Yes \$ _____ No	Savings..... Yes \$ _____ No
Bank account(s)..... Yes \$ _____ No	Stocks/bonds..... Yes \$ _____ No
Certificates of deposit or money market accounts..... Yes \$ _____ No	*Equity in Real estate (excluding homestead) Yes \$ _____ No
*Equity in Motor Vehicles/Boats/ Other tangible property..... Yes \$ _____ No	*Equity means value minus loans. Also list any expectancy in an interest in such property.

List the year, make/model and tag #: _____
Address _____
City, State, Zip _____
County of Residence _____
- I have a total amount of liabilities and debts in the amount of \$ _____
- I receive: (Circle "Yes" or "No")

Temporary Assistance for Needy Families-Cash Assistance.....	Yes	No
Poverty-related veterans' benefits.....	Yes	No
Supplemental Security Income (SSI).....	Yes	No
- I have been released on bail in the amount of \$ _____ Cash _____ Surety _____ Posted by: Self _____ Family _____ Other _____

A person who knowingly provides false information to the clerk or the court in seeking a determination of indigent status under s. 27.52, F.S., commits a misdemeanor of the first degree, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S. I attest that the information I have provided on this Application is true and accurate to the best of my knowledge.

Signed this 2 day of August, 2010.

Kevin Washington
Signature of Applicant for Indigent Status

Date of Birth _____

Print Full Legal Name Washington Kevin

Driver's license or ID number _____

Address _____
City, State, Zip _____
Phone number _____

CLERK'S DETERMINATION

Based on the information in this Application, I have determined the applicant to be Indigent () Not Indigent

The Public Defender is hereby appointed to the case listed above until relieved by the Court.

Dated this 16 day of August, 2010

Clerk of the Circuit Court
Beiderwell
Clerk/Deputy Clerk/Other authorized person

This form was completed with the assistance of _____

APPLICANTS FOUND NOT INDIGENT MAY SEEK REVIEW BY ASKING FOR A HEARING TIME. Sign here if you want the judge to review the clerk's decision of not indigent. _____