

Tracy, Mary

From: OFFICE RECEPTIONIST, CLERK
Sent: Thursday, January 19, 2017 12:17 PM
To: Tracy, Mary
Subject: FW: GR 30 comments re: changes

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From: Joyce Heritage [mailto:joyce@heritage-law.com]
Sent: Thursday, January 19, 2017 11:40 AM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: GR 30 comments re: changes

Thank you in advance for reviewing all of the opposition to the changes in GR30.

There are many courts, who refuse to accept electronic documents— while at the same time, these same courts allow the PA offices to send discovery to the defense attorneys by electronic means— thereby forcing attorneys to accept discovery in the electronic manner of the choosing by the PA's office... sometimes by fax and sometimes by email.

As it is, the IRLJ is extremely tilted in favor of prosecutors. By making the changes to GR30, the court would be adding to the tilt in favor of the PA. Example— the discovery is required to be **provided** to the defense attorney within 7 days... Note the defense attorney is required to provide a request to the PA 14 days prior to the hearing— however, in order to get a dismissal for a discovery violation, the defense must provide proof of prejudice. Note, I have never seen a court find prejudice in favor of the defendant. And, the defendant must find prejudice (to get a dismissal), even if it is provided 2 days prior to the hearing. The courts only have to dismiss without prejudice if it is within a day prior to the hearing— however, I have one court that will not dismiss without prejudice when the discovery is provided the Friday prior to a Monday hearing. This is one day before the hearing and yet the court still requires prejudice and refuses to dismiss.

You might say, well the defendant can simply appeal— however in order to appeal, the cost is at least \$500 just to file— not including any attorney fees to hire an attorney. It is \$270 to file, \$40 for the district court, and then about \$200 to have the transcript typed. That is cost prohibitive for most people— which is why these courts get away with these types of rulings.

As soon as possible— I would like to see changes in the RALJ rules so that the defendants can get cases heard by upper courts for less costs. Or the Court should find a way to monitor these very poorly decided rulings by judges who feel that they have nothing to lose when they make rulings that are clearly outside the bounds of the law and rules of this court.

Other examples of IRLJ rules tilted toward the State:

1. IRLJ 1.1 says that the rules are construed to secure the just, speedy and inexpensive determination of every infraction case— but there is no teeth to this rule... nothing to make this really happen— AND— I have had the pleasure of going to a Superior court to appeal a decision by the district court judge— in clear violation of the rules herein, only to have the SC judge say- paraphrasing— Ms. Heritage, you should know that I believe judge **** is an excellent judge who knows more about traffic law than I do, so I am confident he/she made the correct decision— thereby rubber stamping the lower court decision...

2. Some judges still get away with requiring the presence of the defendant even though an attorney is representing him/her.
3. IRLJ 2.1— Again, no teeth to enforce what is required to be on the infractions— courts ignore these requirements.
4. IRLJ 2.2— Almost all tickets are e-tickets and there should be a requirement for 2 day filings, not 5-days. The filings can be done electronically— yet many courts do not allow defendants to file electronically.
5. IRLJ 2.5— when the defendant fails to respond, the court shall enter a finding of committed— yet when the officer fails to file timely— the court does not have to dismiss without a motion.
6. The rules do not require the ticket or the notice of hearing to include the information necessary to serve the PA a discovery request— there should be a requirement to advise the defendant who the PA is and their contact information.
7. IRLJ 3.1— subpoenas must be “Served and filed... on the same day the subpoena is sent out for service...” this is ludicrous, most assuredly when the court and/or the PA does not accept filings or service by email or fax.. So, I must drive to the court and the PA on the same day I mail the subpoena to the trooper? I have unsuccessfully made the argument that if the subpoena is mailed, that I could be allowed to mail to court too... denied!!
8. IRLJ 3.1— Prosecutors do not have to serve subpoenas they are issuing to the defense in the same manner— in fact they do not have to provide a copy at all!!
9. IRLJ 3.1 the discovery rules are much favored by the prosecutors! We have to request discovery 14 days in advance— or no dismissal— even without prejudice to the state... yet we have to provide proof of prejudice when the state fails to comply with rules... even when there is no reason they failed to comply...

And why is it the state can comply by way of the court clerks mailing out the discovery? Yes, it does happen that court clerks are acting for the state in many jurisdictions...
10. RALJ appeals to superior courts is a joke— they rubber stamp the decisions by their district court judges...