



April 29, 2021

Justices of the Washington Supreme Court  
P.O. Box 40929  
Olympia, Washington 98504-0929  
VIA E-MAIL: supreme@courts.wa.gov

RE: Proposed General Rule 39

Dear Justices:

The Washington Defender Association (WDA) supports many parts of proposed GR 39, which would establish a uniform framework governing sentencing courts' acceptance and consideration of petitions to remit legal financial obligations (LFOs). We suggest three changes to the proposal. We ask that this Court limit the authority of prosecutors to require hearings on all petitions for remission, allow required hearings to occur via video, and emphasize that courts cannot require people to use Social Security disability payments to pay LFOs.

A clear framework governing petitions for remission of LFOs would greatly assist indigent people who owe LFOs, many of whom navigate petitions for remissions without the assistance of counsel, and a uniform approach among courts would help people with convictions out of more than one court. We especially support the sentence in section (b) that would allow petitioners to ask for removal of their LFOs from collections, additional time to make payments, or the option of paying LFOs by performing community service, as it would alert courts and petitioners that those options are permissible. We also favor the requirement in section (d) that the Administrative Office of the Courts (AOC) create a pattern form petition and declaration of mailing, which would make the remissions process more accessible and understandable.

We support the allowance in section (f) for judges to consider petitions for remissions *ex parte*. We ask that you not adopt the part of section (f) that would allow prosecutors in some jurisdictions to eliminate *ex parte* consideration by requiring hearings on all petitions or all petitions on LFOs above a certain amount. A better approach would be to let judges determine whether to consider petitions *ex parte* or order hearings. People who owe LFOs have an interest in seeking remission free of the barriers associated with hearings, such as difficulties with transportation to court, scheduling, and childcare. Allowing judges to decide whether to set hearings would balance their interests with those of prosecutors.

The requirement in section (e) that courts accept petitions by mail and the allowance for telephone hearings in section (g) would allow more people to request remissions. We suggest that section (g) also allow hearings by video. We have heard from our members that video hearings are often their clients' preference.

Finally, we request that you include language in GR 39 that reflects this Court's decisions prohibiting requirements that people use Social Security disability benefits to pay their LFOs. *See State v. Wakefield*, 186 Wn.2d 596, 609 (2016) ("federal law prohibits courts from ordering defendants to pay LFOs if the

person's only source of income is social security disability"); *State v. Catling*, 139 Wn.2d 252, 266 (2019) (judgment and sentence against person who receives Social Security disability insurance should indicate LFOs may not be satisfied out of Social Security payments). Reiterating these holdings in GR 39 would help ensure that courts not consider Social Security income as a possible source of payment when deciding on petitions for remissions.

WDA believes proposed GR 39 is a step in the right direction that could be even stronger with the modifications we propose. Thank you for your time and attention.

Sincerely,

/s/Magda Baker

Magda Baker, Misdemeanor Resource Attorney

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**From:** Magda Baker [mailto:[Magda@defensenet.org](mailto:Magda@defensenet.org)]  
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Attached is the Washington Defender Association's comment on proposed new court rule GR 39.

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