

August 4, 2022

TO: Clerk of the Washington State Supreme Court
supreme@courts.wa.gov

RE: Public comment to suggested amendments to IRLJ 1.2, IRLJ 2.1, IRLJ 2.4, IRLJ 2.5, IRLJ 2.6, IRLJ 3.2, IRLJ 3.3, IRLJ 3.4, IRLJ 5.1, suggested new IRLJ 3.5, and the suggested repeal of IRLJ 4.2.

I first applaud and support all the hard work that was put into revising the IRLJs to comply with ESSB 5226 and agree with them that the Supreme Court should amend the rules to correspond with the legislation's effective date of January 2023. Below are my comments and suggestions to the proposed changes.

Please note that I have shared these comments with Karen Campbell of the Northwest Justice Project; Commissioner Rick Leo, DMCJA president; Ellen Attebery, DMCMA president; Kimberly Walden, Tukwila Municipal Court Judge; Whitney Rivera, Edmonds Municipal Court Judge. I also recently learned that the Uniform Infraction Citation Committee has completed a draft of a new traffic citation form in light of SB 5226 and other legislation. I have not seen that draft form.

I am submitting these comments as an individual based on my experience in courts of limited jurisdiction and not as a representative of any level of court or any organization.

* * *

IRLJ 2.1 NOTICE OF INFRACTION: "(10) For a notice of traffic infraction, a statement that the person understands that the court will mail information to the person explaining how to request a payment plan and that failure to pay or enter into a payment plan may result in a collection action, including garnishment of wages or other assets. A provision stating that this option only applies if the person is cited with a traffic infraction."

After hearing the presenters at the July 2022 Minority and Justice Commission meeting, it was apparent that the drafters' "intended" that courts only have to mail information about how to request a payment plan to those who attest to the inability to pay the traffic infraction in full or request a contested or mitigation hearing. This explanation is consistent with ESSB 5226 (2021) and proposed IRLJ 2.6(d)(1). However, the actual language in IRLJ 2.1(10) suggests that the notice of infraction will state that *every* person who receives a traffic infraction will receive information in the mail from the court explaining how to request a payment plan. Not only is this apparently *not* the intent of the legislature and the proposed rule drafters, it would create an enormous amount of work, staffing issues and expense for the courts of limited jurisdictions to have to mail information out for *every* traffic infraction filed regardless of whether the person can pay in full and does not request a hearing.

Because proposed IRLJ 2.6(d)(1) already requires courts to make available, on the court's website and also by calling a specific phone number, information on how to request a payment plan, perhaps proposed IRLJ 2.1(10) could, instead, state:

For a notice of traffic infraction, a court phone number and website address where instructions on how to request a payment plan may be found and that the person promises to follow instructions and submit a request for a payment plan within 60 days from the date infraction issued unless otherwise directed by the court, statement that the person understands that the court will mail information to the person explaining how to request a payment plan and that failure to pay or enter into a payment plan may result in a collection action, including garnishment of wages or other assets. A provision stating that this option only applies if the person is cited with a traffic infraction.”

Having dedicated space on the court's website or court phone number to provide information on payment plan also allows courts to provide this information in different languages in a cost-efficient manner. The phone number can be to a pre-recorded message that provides the information 24/7.

* * *

IRLJ 2.4 RESPONSE TO NOTICE:

(4) For a notice of traffic infraction, admitting responsibility for the traffic infraction and attesting that the person does not have the current ability to pay the infraction in full; or

(5) Submitting a written statement either contesting the infraction or explaining mitigating circumstances, if this alternative is authorized by local court rule. The statement shall contain the person's promise to pay the monetary penalty authorized by law if the infraction is found to be committed. For a notice of traffic infraction, the statement shall also include an alternative allowing the person to attest that they do not have the current ability to pay the infraction in full. If the person attests that they do not have the current ability to pay the infraction in full, the court must give the person information on how to request financial relief from the fine(s) as provided in IRLJ 2.6(d).

The underlined portion in subsection (5) seems out of place and is confusing. Subsection (5) is about the written statement that is submitted by the person either contesting or mitigating, if local court rules allow for it. The added language suggests that the person writing the statement shall include an alternative to allow the person to attest to the current inability to pay the infraction in full. It appears that the drafters are proposing a way to ensure that those who choose to mitigate or contest a traffic infraction also have the option to assert the current inability to pay the full infraction amount if imposed by the court. However, proposed changes to IRLJ 2.6(a)(2) and

(b)(2) already would require courts to provide those who request a contested or mitigation hearing information on how to request a waiver or remission of the fine(s) assessed, or a payment plan authorized under IRLJ 3.5.

Thus, the proposed language in the draft statement template for mitigation hearing does not need to include the proposed language, because everyone who requests a contested or mitigated hearing will automatically receive information about how to request a payment plan. Because the draft language for written statement in response to contested or mitigation hearing states a promise to pay the amount “assessed by the court” for contested hearing, and the amount “that may be set” for mitigation hearing, it does not conflict when the person requesting the hearing also submits a request for payment plan. If there is a concern that the person may send the written statement separately from the request for a payment plan, perhaps the draft language for both the contested and mitigated hearings could include:

I also attest that I do not have the current ability to pay the infraction in full and have enclosed, as instructed by the court, a request and information supporting a reasonable payment plan.

I also suggest rephrasing subsection (c) as follows:

(c) Method of Response. A person may respond to a notice of infraction either personally, ~~by mail, or as permitted by local rule by mail or by e-mail.~~ ~~mail.~~ If the response is mailed or ~~permitted to be submitted electronically-mailed,~~ it must be postmarked or ~~electronically submitted e-mailed~~ not later than midnight of the day the response is due.

This change recognizes that some courts allow responses to be submitted through an online system, which is different than just submitting by e-mail. Using the term “electronically” would encompass both online and e-mail submissions.

* * *

DRAFT INFRACTION CITATION – PART 3

It is confusing for the top of the infraction to say, “This is a non-criminal offense for which you cannot go to jail” and below, “NON-TRAFFIC (see front of Notice of Infraction) It is a crime and will be treated accordingly.”

I also suggest reorganizing the ways to respond as such:

- I agree that I have committed the infraction(s). I understand this will go on my driving record if “traffic” is checked on the front. Check one of the following:
- A. I have either paid online (if the court supports online payments) or enclosed a check or money order, in U.S. funds, for

the amount listed on the front. DO NOT SEND CASH. NSF checks will be treated as a failure to respond.

B. I do not have the current ability to pay the “traffic” infraction(s) in full. I promise to 1) follow instructions found at the court, at [insert Court’s website] or by calling [insert phone number] and 2) submit my request for a payment plan within 60 days from the date the infraction issued. Failure to submit a request within this time frame will be treated as a failure to respond.

C. I do not have the current ability to pay the “traffic” infraction(s) in full. Please mail me information explaining how I can request a payment plan and I promise to submit a request by the date specified by the court. Failure to submit a request within this time frame will be treated as a failure to respond.

Mitigation Hearing. . . .

Contested Hearing. . . .

~~Cannot Afford to Pay. I agree that I have committed the traffic infractions(s), but I do not have the current ability to pay the infraction(s) in full. I understand the court will mail me information explaining how I can request a payment plan. Failure to pay or enter into a payment plan may result in a collection action, including garnishment of wages or other assets. THIS OPTION ONLY APPLIES IF YOU ARE CITED WITH A TRAFFIC INFRACTION.~~

~~**NOTICE: You may be able to enter into a payment plan with the court under RCW 46.63.110.**~~

NOTICE: Failure to pay or enter into a payment plan may result in a collection action, including garnishment of wages or other assets.

* * *

IRLJ 2.5 FAILRE TO RESPOND

The proposed subsection (b) requires courts to set up monthly \$10 payments for those who are found in default for failing to respond. I disagree that those who fail to respond should be given the same payment plan as those who do respond who are indigent. See proposed IRLJ 3.5(b) (setting payment plan at or below \$10 a month for those found indigent). What incentive would it be for people to request a payment plan and provide evidence of indigency, if they can receive the same payment plan if they did nothing? For courts who manage their own payment plans, it takes much more staffing hours to manage payment plans. Because those who are in default can still petition for post-conviction relief and get on a payment plan, I do not see a basis to require courts to set a payment plan for those who are in default. It is asking the court staff to do

additional work with little evidence that it will result in actual payments after initial default finding. For courts who work with a third-party to manage payment plans, the respondent is normally required to sign a contract to enter the payment plan agreement with the third-party. It is unclear how the court and the third-party are expected to set up an agreement for the payment plan that the defaulting respondent has not requested or agreed to.

* * *

IRLJ 3.5 INABILITY TO PAY (New Rule)

Recognizing some courts have online options for responding to infractions, I suggest the following changes to proposed IRLJ 3.5(a):

- (a) Generally. Before imposing any monetary penalty, fee, cost, assessment or other monetary obligation associated with a traffic infraction in full, the court must conduct an ability to pay determination pursuant to GR 34(3)-(4), utilizing forms that substantially follow the pattern forms (Petition and Order) developed by the Administrative Office of the Courts and approved by the Supreme Court.

Also, subsection (e)(2) requires courts, prior to referring the monetary obligation to a collection agency, to “attempt to enter into a payment plan” with a person who responded to a traffic infraction for a moving violation attesting that the person did not have the ability to pay the infraction in full. What constitutes “attempt” in this context? If someone responds initially attesting to the inability to pay and requests information on payment plan, but then never follows through by submitting information or a request for payment plan. Or if person promised to submit request for payment plan and fails to do so by the deadline, is the court required to do more? If the respondent received an infraction notice that informed the person of the option to request a payment plan, and the court has provided that information as indicated by the response (i.e. through the court’s website, phone number or by requesting the court mail the information), then the burden should not be placed on the court to do more in order to satisfy the “attempt” requirement in IRLJ 3.5(e)(2).

Sincerely,



Linda W.Y. Coburn, Judge
Court of Appeals – Div I
Member of the Minority and Justice Commission
Former Edmonds Municipal Court Judge

cc: Karen Campbell, Northwest Justice Project
DMCMJ President Commissioner Rick Leo
DMCMA President Ellen Attebery

From: [OFFICE RECEPTIONIST, CLERK](#)
To: [Linford, Tera](#)
Subject: FW: Public Comment to IRLJ
Date: Tuesday, August 23, 2022 4:09:56 PM
Attachments: [Coburn Comment to 2022 proposed amendments to IRLJ.PDF](#)

From: Coburn, Linda <Linda.Coburn@courts.wa.gov>
Sent: Tuesday, August 23, 2022 4:05 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Public Comment to IRLJ

Hello Office of the Clerk of the Supreme Court,

Attached is my public comment to the proposed amendments to the IRLJs. Thank you for your consideration.

Judge Linda W.Y. Coburn

Washington Court of Appeals. Division I
One Union Square, 600 University Street
Seattle, Washington 98101-1176
206-464-7423