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August 22, 2022

VIA EMAIL

Honorable Charles W. Johnson
Honorable Mary I. Yu
c/o Clerk of the Supreme Court
Temple of Justice
PO Box 40929
Olympia, WA 98504-0929

RE: UICC Comment on Proposed Amendments to IRLJs (Order No. 25700-A-1419)

Dear Justice Johnson, Justice Yu, and Rules Committee Members:

1. Overview

The Washington Legislature has provided for a system of uniform notices of infractions and citations in RCW 46.63.060. The Administrative Office of the Courts exercises the authority granted by RCW 46.63.060 and Supreme Court Rule (CrRLJ 2.1 and IRLJ 2.1) to create and implement statewide infraction and citation forms by creating the Uniform Infraction and Citation Committee. The UICC has a broad, statewide group of committee members including the Washington State Patrol, the Washington Association of Prosecuting Attorneys, Public Defense, the Department of Licensing (DOL), WSBA, AOC, District and Municipal Court Management Association, and District and Municipal Court Judges Association.

The UICC has many concerns regarding the proposal. We believe, as outlined below, that the proponents do not accurately describe the state of the law or the changes that are necessary from the new legislation. The proposal usurps the statutory responsibility of the AOC and the longstanding UICC collaboration with state agencies and justice partners. Therefore, the UICC is opposed to the proposed amendments, except where specifically indicated.

2. The Requested Changes Do Not Accurately Reflect the Law

The proponents have requested several rule changes as a result of *Pierce et al v DOL* [Thurston County Superior Court No 20-2-02149-34] and SB 5226. As is accurately mentioned, the *Pierce* decision is only in effect until January 1, 2023. Not so accurately mentioned is the reason why both “failure to pay” and “failure to appear” are combined in the *Pierce* ruling, but not in SB 5226.

When someone who has committed an infraction either fails to appear, fails to pay, or fails to respond to an infraction, all are reported as “FTA” because there was previously no legal reason to distinguish in the Department of Licensing or court case management systems. In the *Pierce* case, all suspensions under RCW 46.20.289 were deemed unconstitutional **as applied** because there was no way for a court to notify DOL of a failure to appear or respond versus a failure to pay. By contrast, **SB 5226** only restricts suspensions for failure to pay traffic infractions. This distinction is not recognized in the proposed rule amendments.

3. IRLJ 1.2 Definition

The UICC objects to the proposed definition of “payment plan” because the reference to GR 34 is confusing. GR 34 applies to a waiver of filing fees or surcharges in civil matters based on indigency. To include this language and reference for infraction cases will cause confusion regarding the differences between indigency and ability to pay, as well as filing fees and surcharges versus fines.

4. IRLJ 2.1 (5), (6), and (10)

The UICC establishes the standards for the statewide paper and electronic (SECTOR) infraction forms. Both infraction forms are limited in space for the addition of language. For this reason, proposed additions to the form must be carefully considered and information consolidated whenever possible.

SB 5226 is aimed only at traffic infractions. It extends the time that a person can respond to a traffic infraction from 15 days to 30 days, and ignores the 3-day “mailbox rule” of IRLJ 2.4(a). This is reflected in the addition of subsection (6), which creates a 30-day period to respond for traffic infractions only (and includes the 3-day period). To save space, as well as confusion for court staff and the individual as to the type of infraction charged, UICC recommends that Section 5 be amended from 15/18 days to 30/33 days for all types of infractions. This will provide the same response time for each type of infraction.

With this amendment to Subsection 5, Subsection 6 is no longer necessary.

Proposed new subsection 10 requires courts to “mail” information rather than “provide” it. The requirement is not found in the legislation, which rather just states that a person “must receive information,” not specifically from the court, and “be informed,” that “failure to pay or enter into a payment plan may result in collection action.” If the court must be assigned this task, the UICC suggests using the term “provide” instead of “mail” to allow for more, and more modern, methods of communication.

5. IRLJ 2.4 (a) and (b)(4), (5)

As explained above in paragraph 4, the UICC suggests that the response time for all types of infractions be increased from 15/18 days to 30/33 days. This will alleviate the need to include the distinguishing language in subsection (a). It will also allow for the removal of the term “traffic” in proposed subsections (4) and (5). Again, this will allow all defendants regardless of the type of underlying infraction the same opportunity to respond and attest to their ability to pay.

6. IRLJ 2.5(b)

The UICC objects to the proposed language because it is not included in either *Pierce* or SB 5226.

Further, it creates an undue burden on courts to provide notice to a defendant, who has already failed to respond, of certain circumstances that the defendant has already been made aware. Many of the

items outlined do not appear in SB 5226. New subsection (b) is confusing and extraneous and should be removed.

7. IRLJ 2.6 (a)(2) and (d)

As stated above, the UICC requests that the rule apply to all types of infractions without singling out “traffic” and a different timeline. Therefore, the UICC requests that the phrase “in a traffic infraction case” be removed from the proposed language.

The UICC objects to the inclusion of proposed new subsection (d). The proposed language is not included in either *Pierce* or SB 5226. Further, (d)(3) requires dismissal in certain circumstances that are not found in statute or case law.

8. IRLJ 3.2(a)

As stated above, the UICC does not agree that new subsection IRLJ 2.5(b) has support in the law. Therefore, this reference to those procedures should be removed.

9. IRLJ 3.3(e), 3.4(c), 3.5, and 3.6(a)(4)

The UICC objects to the proposed new IRLJ 3.5 in its entirety. These requirements propose a one-size fits all procedure, which is not appropriate for many infraction cases. The proposed new rule is not included in either *Pierce* or SB 5226.

Further, the proposed rule references GR 34. However, GR 34 only applies to those seeking a waiver of filing fees and surcharges, not fines. Should the Rules Committee and/or the Supreme Court believe that new rule 3.5 is appropriate, the UICC suggests that it be entitled “Ability to Pay”.

Because we argue that IRLJ 3.5 should not be enacted, references to it in 3.3 and 3.4 should be removed. Should the new rule be deemed appropriate, then any reference to “traffic infraction case” should be removed and it should apply to all infraction types.

Regardless of the decision going forward with the new proposed rule 3.5, the proposed language in current 3.5(a)(4) and proposed 3.6(a)(4) should be removed. Individuals currently have the opportunity to appear in person to state and attest to an ability to pay. Should they choose to provide the information in writing rather than appear, as proposed in 3.5, then the same bar to appeal should apply.

10. IRLJ 5.1

First, the proposed language contradicts itself. It states that “a defendant may appeal a decision... under IRLJ 3.5,” and also that a “decision for relief pursuant to IRLJ 3.5 is a final decision.” The proposed language should be removed for this reason, as well as the reasons listed above regarding proposed 3.6(a)(4).

11. Technical Concerns

As stated above, in *Pierce*, all suspensions under RCW 46.20.289 were deemed unconstitutional as applied because there was no way for a court to notify DOL of a failure to appear or respond versus a failure to pay. This distinction is reflected in the proposed amendments. Because of this, it will be necessary for AOC to create appropriate codes to correctly distinguish between failures to appear,

failure to pay, and failure to respond. We understand that AOC is making the changes to implement this new requirement when it takes effect on January 1, 2023.

12. Proposed Notices and Forms

As stated above, the UICC is charged with creating and implementing the statewide infraction and citation forms that are used by law enforcement agencies. SB 5226 requires more changes that must be reflected on the proposed notices, which are not reflected in the proposed rules. It is the responsibility of the UICC to ensure that legally required notices are provided on the citation and infraction forms in a certain format, and this responsibility cannot be delegated through a rule amendment.

An additional concern is that the statewide paper tickets must match the statewide electronic (SECTOR) tickets. However, the proponent provides no proposed changes to the SECTOR form that would provide the same information as the paper form. This discrepancy must be addressed, if a form is made part of the rule.

As stated above, the UICC prefers that the rule reflect the mandate of SB 5226 for all types of infraction, not just traffic infractions. It would be disingenuous for the judicial branch to believe that only those who may not be able to pay a traffic infraction, as opposed to other types of infractions, exist.

The same is true of the proposed forms. If a pattern form is to be created, then we, as the judiciary, should create a form that works for all types of case, not simply traffic infractions.

Thank you for considering our comments in opposition to the proposed changes to the IRLJ.

Kevin G. Ringus

Judge Kevin G. Ringus
Fife Municipal Court
Uniform Infraction/Citation Committee (UICC), Chair

cc: Dawn Marie Rubio, Washington State Court Administrator
Dirk Marler, AOC Chief Legal Counsel

From: [OFFICE RECEPTIONIST, CLERK](#)
To: [Linford, Tera](#)
Subject: FW: UICC Comment on Proposed Amendments to IRLJs (Order No. 25700-A-1419)
Date: Tuesday, August 23, 2022 11:14:45 AM
Attachments: [UICC Comments on Requested Rule Changes.docx](#)

From: Kevin Ringus <kringus@cityoffife.org>
Sent: Tuesday, August 23, 2022 10:05 AM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Cc: Rubio, Dawn Marie <DawnMarie.Rubio@courts.wa.gov>; Marler, Dirk <Dirk.Marler@courts.wa.gov>
Subject: UICC Comment on Proposed Amendments to IRLJs (Order No. 25700-A-1419)

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Greetings

On behalf of the Uniform Infraction-Citation Committee, attached please find our comments to the suggested amendments listed in No. 25700-A-1419.

Kevin G. Ringus
UICC Chair