

August 31, 2022

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

RE: Proposed Changes to Infraction Rules for Courts of Limited Jurisdiction

Dear Justices:

We appreciate the close attention that comments on our suggested changes to the Infraction Rules for Courts of Limited Jurisdiction (IRLJs) show. We write to address some of the comments.

Proposed IRLJ 1.2

SB 5226, which will be codified in part at RCW 46.63.190(9), specifies that a “payment plan” “means a plan that requires reasonable payments based on the financial ability of the person to pay as **determined by court rule**” (emphasis added). Proposed IRLJ 1.2 suggests using the GR 34 standard for making this ability to pay determination and that it should be part of the definition of “payment plan” in the court rule. It makes sense to utilize this standard in the traffic infraction context because the courts are familiar with the GR 34 standard and how it is used for determining relief from court debt in non-civil contexts. *See State v. Blazina*, 182 Wn.2d 827, 344 P.3d 680 (2015) (courts should use GR 34 when determining if a person convicted of a crime is indigent for purposes of imposition of legal financial obligations).

Proposed IRLJ 2.1

SB 5226 amended RCW 43.63.060(2)(e) so that traffic infractions will have to include a fourth option allowing a person to admit responsibility for the infraction but attesting that they lack the ability to pay the infraction in full. If this option is chosen, the new statute requires that “**the person must receive information** on how to submit evidence of inability to pay, obtain a payment plan...and be informed that failure to pay or enter into a payment plan may result in collection action, including garnishment of wages or other assets” (emphasis added).

Proposed IRLJ 2.1 directs courts to mail information to comply with the legislative requirement that a person “receive information” in the event the person picks the new fourth option. If there are additional means of informing people about these requirements, those could be added to the rule, but notice provisions should not be limited to only the words on the infraction form itself. Court processes can be confusing and time-consuming to figure out. Courts are well situated to give reasonably detailed information to drivers about how to obtain a payment plan.

Proposed IRLJ 2.5

Proposed IRLJ 2.5 requires a finding that a driver committed an infraction if the driver does not respond to a ticket but would mandate the driver have 90 days to come into compliance with a payment plan before the court sends their ticket to collections. Requiring a person who does not

return a notice of infraction to pay off an entire ticket at once or face a suspended license is unfair and punishes people with the most limited resources. A driver may not respond to a traffic ticket because of the overwhelming prospect of a fine they cannot pay and a multitude of demands on their time. Many poor people have full time jobs but lack easy access to reliable transportation allowing them to travel at will to post offices and courthouses. Failure to mail in a form should not automatically lead to a suspended license.

Proposed IRLJ 2.6(d)

SB 5226 created a new way for drivers who cannot pay traffic fines to respond to tickets, but it did not set out a procedure implementing it. By creating a new option without detailing its implementation, the legislature has left it to the courts to develop procedures.

In proposing new IRLJ 2.6(d), it was our intent that requests for payment plans be treated similarly to requests for contested and mitigation hearings. The proposed language in IRLJ 2.6(d) mirrors that in current IRLJ 2.6(a) and (b), the subsections governing requests for contested and mitigated hearings. The current rule provides for dismissal if the court does not abide by its timelines. *See* current IRLJ 2.6(a)(4) and (f). The new legislatively mandated option of requesting a payment plan deserves no less deference than a request for a contested or mitigated hearing.

Proposed IRLJ 3.5

SB 5226, which will be codified in part at RCW 46.63.190(9), specifies that a “payment plan” “means a plan that requires reasonable payments based on the financial ability of the person to pay as **determined by court rule**” (emphasis added). SB 5226 also amended RCW 46.63.110(6), which will read in part “If the court determines that a person is not able to pay a monetary obligation in full, the court shall enter into a payment plan with the person in accordance with RCW 46.63.190 and **standards that may be set out in court rule**” (emphasis added). Proposed IRLJ 3.5 is thus a necessary rule that was directly authorized by the state legislature. The proposed rule gives courts guidance about how to decide if a person cannot pay a traffic ticket and what is a realistic payment plan.

Proposed IRLJ 5.1

In order to ensure courts abide by the spirit of SB 5226 and the IRLJs that implement it, there must be a mechanism for appellate review when a driver is denied a payment plan or asserts that a payment plan is unreasonable. Our proposed change to IRLJ 5.1 is rooted in our experience as advocates.

Northwest Justice Project (NJP) has assisted clients become relicensed for years. When appealing payment plans, NJP often faced the response that IRLJ 5.1 barred appeal because decisions about payment plans are outside the scope of what the current rule says is appealable. In other cases, NJP faced arguments that clients could not appeal a payment plan as a matter of right because it was not a “final” decision as required by RALJ 2.2(a). Drivers must have an opportunity to seek review of clearly unreasonable payment plans and the denial of payment plans.

Pattern forms

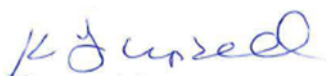
There is no need to treat the financial information that drivers would submit with a petition for a payment plan as confidential. We envision a process similar to that used for requests for GR 34 filing fee waivers. To request a filing fee waiver, the person completes a petition, containing financial information, and includes a financial statement if necessary. The courts do not seal the financial information obtained in the GR 34 process and should not do so here.

The petition that we propose is detailed and filed under penalty of perjury. It would give the court all of the information it needs to make a decision. Requiring additional financial documents would create a significant barrier for *pro se* drivers seeking payment plans and create additional burdens on busy local courts. Requiring drivers to provide financial documents and an additional form requesting sealing would make requesting a payment plan unnecessarily burdensome.

The statutes and ethics opinion discussed in the comment from the Island County District and Municipal Courts do not apply to civil traffic infractions. RCW 10.101.020(3) applies to criminal cases and states that financial information provided by an accused person to be screened for a public defender shall be confidential and shall not be available for use by the prosecution in the pending case. The ethics decision entered in *In Re the Matter of The Honorable Debra Burchett*, CJC No. 9848-F-191 addressed this statute in addition to CrRLJ 3.1(d)(3), which also applies to criminal cases and essentially mirrors the statutory requirements set forth in RCW 10.101.030(3).

Thank you again for the opportunity to comment on the proposed IRLJ rules and forms.

Sincerely,



Karen Campbell
Staff Attorney
Northwest Justice Project

ACLU of Washington

Columbia Legal Services

Public Defender Association

Washington Defender Association

Washington Driver's Relicensing Task Force

From: [OFFICE RECEPTIONIST, CLERK](#)
To: [Linford, Tera](#)
Subject: FW: Comment on Proposed IRLJs
Date: Wednesday, August 31, 2022 4:39:05 PM
Attachments: [08.31.22 Final Comments.pdf](#)

From: Karen Campbell <karenc@nwjustice.org>
Sent: Wednesday, August 31, 2022 4:36 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
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Please see attached.

Thank you.

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*****Northwest Justice Project, like the Snohomish County courts and most of our state, is taking measures to reduce exposure to the coronavirus. As a result, the Everett Office for Northwest Justice Project is physically closed to clients and community partners, and all staff are working remotely. Given the unprecedented circumstances it may take me longer than normal to respond to your message. Thank you, in advance, for your patience.*****



*Combatting Injustice
Strengthening Communities
Protecting Human Dignity*