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August 31, 2022

VIA EMAIL

Honorable Charles W. Johnson, Co-Chair
Honorable Mary I. Yu, Co-chair
Washington State Supreme Court Rules Committee
c/o Clerk of the Supreme Court
Temple of Justice
PO Box 40929
Olympia, WA 98504-0929

RE: Pattern Forms Committee Comment to the Proposed IRLJ Amendments and
Related Forms

Dear Justice Johnson and Justice Yu:

The Washington State Pattern Forms Committee ("Pattern Forms Committee" or "PFC") is a neutral, judicial-branch committee. The PFC was established because of the need "to develop standardized forms to reflect new statutes and court rules" and "to establish effective procedures" in the drafting, revision, and use of standardized forms.¹ The Pattern Forms Committee takes no position on the policy aspects of the proposed IRLJ amendments and related forms. The PFC is focused solely on how the proposed IRLJ amendments and forms impact the Committee's ability to fulfill its responsibilities. Therefore, the PFC respectfully highlights four concerns.

- 1. The PFC develops pattern forms with the involvement of multiple stakeholder groups to meet users' needs, but there is no indication that the proponents consulted other stakeholders to address those users' form needs.**

The proponents submitted Petition and Order forms with their proposed IRLJ amendments. There is no indication that other primary stakeholder groups were consulted when developing those forms. The PFC follows consistent protocols to develop neutral forms that will best serve the entire legal community. The PFC has active participation from stakeholder groups, including judicial officers, court administrators, defense attorneys, prosecutors, and representatives of self-represented parties. Stakeholder involvement is essential in developing pattern forms that consider how different stakeholders will use the forms. For example, defendants may want

¹ See Wash. State Supreme Court Order, No. 25700-B-188 (Dec. 19, 1978) (*In re Establishment of a Forms Committee*).

forms that prompt them to provide information that the court needs to make their decisions, judicial officers may want to ensure that forms provide them the ability to create a complete record to support their decisions, and court clerks may be concerned with easily finding specific sections of the forms that allow them to perform their jobs. To the extent the proponents' Petition and Order forms were meant to be incorporated into one of the IRLJ's, the PFC requests that these forms be considered as drafts and then provided to the PFC to ensure that the needs of stakeholders are addressed in the final forms.

2. The PFC has difficulty publishing pattern forms in a timely manner when the text of forms, rather than only directives to create forms, is included in court rules.

When statutes or court rules mandate the Administrative Office of the Courts ("AOC") to develop or maintain pattern forms, the directive is carried out by the PFC. When the text of forms is included in court rules, any changes to those forms are considered court rule amendments and must be processed through the Supreme Court rules review process before publication. Pattern forms are frequently updated because of legislative changes. When the PFC is required to submit updated pattern forms through the Supreme Court rules review process, this step often extends the forms' implementation timeline beyond the effective date of the legislative changes. For that reason, the PFC requests that the court rules only reference the forms, in order to facilitate timely forms publications that reflect current law both at the initial implementation stage and also when revisions are needed.² If provisions for forms developed by the Administrative Office of the Courts are included in a court rule, the PFC requests that the language of the court rules direct users to those forms, but that the forms' text be excluded, similar to the language in GR 34.

3. The PFC is responsible for developing pattern forms that accurately reflect the law and court rules. Some of the proposed IRLJ amendments are inconsistent internally, or with the law or other court rules, and they do not adequately address gaps between the statutes and court rules.

The PFC reviewed the proposed IRLJ amendments and identified numerous instances in which the proposed IRLJ amendments are inconsistent internally, or with statutes or other court rules, and they do not adequately address gaps between statutes and court rules. These instances include:

- The Proponents apply sections of GR 34³ to the determination of a person's ability to pay their infraction fines, but did not amend GR 34 to reflect its applicability. Specifically, GR 34 applies only to "waiver of filing fees or surcharges," of which infraction fines are not. Moreover, GR 34 applies to matters of indigency, yet a person who "does not have the current ability to pay the infraction/monetary obligation in full" is not necessarily "indigent."
- Proposed IRLJ 3.5 appears to conflict with RCW 46.63.110. Proposed IRLJ 3.5(c) states that "[a] person may request a payment plan or other monetary relief from any penalty,

² Compare, e.g., GR 34(a)(1) ("The application for such a waiver. . . accompanied by a mandatory pattern form created by the Administrative Office of the Courts [with no form text included in the court rule])," with CrRLJ 4.2(g) ("A written statement of the defendant in substantially the form set forth below shall be filed on a plea of guilty: [with the text of the Statement on Defendant on Plea of Guilty form included in the court rule]).

³ Waiver of Court and Clerk's Fees and Charges in Civil Matters on the Basis of Indigency.

fee, costs, assessment, or other monetary obligation associated with a traffic infraction at any time." While the proposed language is mostly consistent with RCW 46.63.190 as introduced in ESSB 5226, proposed IRLJ 3.5 does not indicate that certain fees cannot be waived under any circumstances. Fees that are not waivable under any circumstances are listed in RCW 46.63.110(7). In addition, the court can only waive fees that are not "prohibited from being waived or remitted by state law" as indicated in RCW 46.63.110(1)(b) as amended by ESSB 5226.

The PFC cannot resolve conflicts or lack of clarity through forms, but instead must leave ambiguities in the law for legislators and rule makers to resolve. The proposed IRLJ amendments could benefit from further analysis to ensure that these types of issues are resolved before implementation.

4. The PFC has already exceeded its capacity to develop IRLJ forms by January 1, 2023.

The PFC is currently responsible for over 700 pattern forms and has already exceeded its capacity to develop additional forms that are not already on its schedule for this year. In recent years, legislative mandates have strained the Committee's infrastructure and exhausted the PFC's resources. This year alone, the PFC will publish over 100 new protection order forms because of legislative changes, as well as many other forms due primarily to legislative and court rule changes. For this reason, the PFC requests that provisions and references to new pattern forms be removed from the proposed IRLJ amendments due to its capacity issues. These provisions and references include, but are not limited to, proposed IRLJ 2.6(d)(1) ("... the court shall send the defendant a "Petition and Order" for a traffic infraction payment plan, as required in IRLJ 3.5(a) with written instructions on how to complete these forms and request a payment plan. . . ") and proposed IRLJ 3.5(a) ("... pattern forms (Petition and Order) developed by the Administrative Office of the Courts. . . ")⁴ Alternatively, if the final IRLJ amendments include provisions for AOC to develop new forms and related instructions, the PFC requests a forms publication date no sooner than July 2024.⁵

Please let me know if the PFC can provide any additional information about these Comments.

Sincerely,



Commissioner Rebekah Zinn
Thurston County Superior Court
Washington State Pattern Forms Committee, Chair



Judge William H. Hawkins
Island County District and Municipal Courts
Courts of Limited Jurisdiction Forms Subcommittee, Chair

⁴ Although proposed IRLJ 2.6 does not specifically state this, the PFC assumes that the written instructions for the forms would likely be drafted by the PFC in conjunction with the Petition and Order forms, rather than by the individual courts.

⁵ The forms publication date is dependent on the timing of finalized court rules, the time needed for stakeholder review of new forms and related written instructions, and competing obligations imposed by legislation and court rules.

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

From: [OFFICE RECEPTIONIST, CLERK](#)
To: [Linford, Tera](#)
Subject: FW: Pattern Forms Committee Comment to the Proposed IRLJ Amendments and Related Forms
Date: Wednesday, August 31, 2022 2:25:38 PM
Attachments: [08312022 PFC Comment Zinn_Hawkins.pdf](#)
[image001.png](#)

From: Tam, Ashley <Ashley.Tam@courts.wa.gov>
Sent: Wednesday, August 31, 2022 2:14 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Cc: Rebekah Zinn <rebekah.zinn@co.thurston.wa.us>; B.Hawkins@islandcountywa.gov; Rubio, Dawn Marie <DawnMarie.Rubio@courts.wa.gov>; Marler, Dirk <Dirk.Marler@courts.wa.gov>
Subject: Pattern Forms Committee Comment to the Proposed IRLJ Amendments and Related Forms

Good afternoon.

On behalf of the Washington State Pattern Forms Committee, please find the attached comments of Commissioner Rebekah Zinn and Judge William H. Hawkins to the suggested IRLJ amendments and related forms listed in the Supreme Court of Washington Order No. 25700-A-1419.

Thank you.

Ashley Tam

Sr. Legal Analyst | Office of Legal Services and Appellate Court Support

Administrative Office of the Courts

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