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August 31, 2022

**VIA EMAIL**

Honorable Charles W. Johnson  
Washington Supreme Court Rules Committee  
C/O Clerk of the Supreme Court  
Temple of Justice  
PO Box 40929  
Olympia, WA 98504-0929

Re: DMCJA Comment in Response to the NJP's Proposed IRLJ Amendments

Dear Associate Chief Justice Johnson,

The District and Municipal Court Judges' Association (DMCJA) respectfully submits this comment in strong opposition to the Northwest Justice Project's<sup>1</sup> (NJP) proposed IRLJ amendments.

First, the proposal goes far beyond reflecting the statutory changes, includes many amendments that are contrary to current law, and are likely to create confusion with existing rules. RCW 46.63.060 requires only that the Notice of Infraction provide information related to a defendant's ability to pay, but the NJP proposal places this burden on the courts.

Second, the NJP proposal is contrary to the legislative intent of the infraction code. RCW 46.63.010 states that it is the legislative intent to facilitate the implementation of a uniform and expeditious system for the disposition of traffic infractions. Many of NJP's changes create additional hearings, add additional paperwork, and impose a crushing financial and logistical burden on courts to implement.

The proponents overlook these significant, and in some cases overwhelming, costs to local courts if this proposal is adopted. At a minimum, this Court should require the proponents to estimate how much these amendments would cost to implement so the Court will have a full understanding of its impact.

Third, the NJP proposal includes requirements that could result in court staff essentially providing legal advice to defendants as to how to challenge their infraction or the fine imposed.

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<sup>1</sup> The proposal to amend the IRLJ's was proposed by a number of organizations. The DMCJA refers to this as the Northwest Justice Project proposal because the order granting expedited publication of the proposals for comment refers to it as such.

Fourth, the DMCJA is also concerned that the proposal usurps the authority of the Uniform Infraction and Citation Committee and the statewide Pattern Forms Committee. On this issue, the DMCJA shows deference to the UICC due to their role in creating and implementing a statewide form to be used by law enforcement agencies. Specific concerns raised by the UICC that are shared by the DMCJA include (1) the authority to amend the infraction forms lies solely with the UICC; (2) the proposal does not require the same changes to the SECTOR form that are required for the paper form; and (3) the proposal should be addressed to all types of infractions, 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 exist.

Similarly, the DMCJA does not agree that the proposed pattern forms should be incorporated into the proposed rule. First, allowing these forms to be implemented in a rule proposal usurps the authority of the statewide Pattern Forms Committee, whose function is to draft and modify statewide pattern forms, and which has a subcommittee specifically for courts of limited jurisdiction forms. Second, embedding the forms in the rule requires a rule amendment every time the form needs to change, which is needlessly onerous.

Because NJP's proposal is so problematic, the DMCJA recommends wholesale rejection of this proposal. Moreover, the DMCJA opposes expedited consideration of these measures, to allow thoughtful consideration of potential financial impacts, logistical burdens, and ethical implications created by this proposal.

DMCJA acknowledges that some amendment to the rules may be required by the new statute and our Rules Committee is working on a proposal that implements these changes. DMCJA would be open to meeting with other stakeholders, including NJP and the other proponents of this proposal, to try to gain consensus on a proposal that effectively and efficiently implements the statute.

Objections to specific provisions of the NJP proposal follow.

Sincerely,



Commissioner Rick Leo  
DMCJA President

cc: Judge Catherine McDowall, DMCJA Rules Committee Co-Chair  
Judge Wade Samuelson, DMCJA Rules Committee Co-Chair  
J Benway, DMCJA Rules Staff  
Stephanie Oyler, DMCJA Primary Staff

## IRLJ 1.2 DEFINITIONS

For the purposes of these rules:

**(a)-(m)** [Unchanged.]

**(n) Payment Plan.** “Payment plan” means a plan that requires payments based on the financial ability of the person to pay as determined by GR 34.

### **DMCJA RESPONSE:**

The proposed definition of “payment plan” in subsection (n) is confusing because it references GR 34. GR 34 addresses indigency in the context of court fees and clerk’s fees; i.e., filing fees and surcharges that could affect an indigent person’s ability to access our courts. However, the financial concern with infractions is the assessment of fines and fees after the matter is already in court, which has nothing to do with filing fees and surcharges under GR 34. Even the title of GR 34 (Waiver of Court and Clerks Fees and Charges in Civil Matters on the Basis of Indigency) makes its application to “payment plans” confusing.

Generally speaking, the NJP proposal uses “indigency” and “ability to pay” as interchangeable concepts, which is problematic in this setting. It raises the question of whether an individual who technically does not qualify as indigent can still lack an ability to pay. For example, in a situation where a person’s income is above indigency standards, but excessive medical bills severely limit their ability to pay, how should that be considered? ESSB 5226 Sec. 1(e)(ii) uses the term “ability to pay” and not “indigency,” but the NJP proposal conflates these terms.

**IRLJ 2.1**  
**NOTICE OF INFRACTION**

(a) [Unchanged.]

**(b) Contents.** Subject to IRLJ 3.1(d), the notice of infraction shall contain the following information on the copy given to the defendant, except the information required by subsection (2) is not required on a notice of infraction alleging the commission of a parking, standing, or stopping infraction:

(1)-(5) [Unchanged.]

(6) For a notice of traffic infraction, a statement that the defendant must respond within thirty (30) days of the date the notice is personally served or, if the notice is served by mail, within thirty-three (33) days of the date the notice is mailed;

~~(6)~~(7) A space for entry of the monetary penalty ~~which~~ that respondent may pay in lieu of appearing in court;

~~(7)~~(8) A statement that a mailed response must be mailed not later than midnight on the day the response is due;

(9) For a notice of traffic infraction, a statement allowing a person to admit responsibility for the infraction and attest that the person does not have the current ability to pay the infraction in full.

(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 applies only if the person is cited with a traffic infraction.

~~(8)~~ (11) The statements required by RCW 46.63.060 or other applicable statute; and

~~(9)~~ (12) Any additional information determined necessary by the Administrative Office of the Courts.

**DMCJA RESPONSE:**

Subsection 6: There is no reason to distinguish between traffic and non-traffic infractions when describing the required notices. The current IRLJ scheme only distinguishes between “traffic” and “non-traffic” offenses when it is necessary to comply with other statutory

provisions such as those requiring courts to report information to the Department of Licensing. See, e.g. IRLJ 4.1. There is no rational basis to create different rules or timelines for traffic and non-traffic infractions in this section, which deals with notice requirements. Creating these unnecessary distinctions is contrary to the stated goals of the proposed amendments. These requirements would have the effect of making these already complicated notices and forms nearly indecipherable to defendants who receive them.

If the goal is to prevent FTAs, the DMCJA does not oppose expanding the period of time for which defendants have to respond to the notice of infraction, to the 30/33 day response deadline.

Subsection 9: The DMCJA suggests that the assertion of inability to pay be under oath to avoid abuses and misstatements. The revised subsection would read: “For a notice of traffic infraction, a statement allowing a person to admit responsibility for the infraction and attest under oath that the person does not have the current ability to pay the infraction in full.”

Subsection 10: This section is confusing, and creates unnecessary bureaucratic procedures that will not clarify or assist those attempting to respond to infractions. It also contains the unnecessary “traffic” and “non-traffic” distinction, and it assumes that mail is the preferred means of communication for responding to infractions. Moreover, this section places a burden on the courts that is not required by the statute. RCW 46.63.060(2)(e)(ii) only requires notice to be provided to the defendant in the Notice of Infraction, it does not require that courts separately mail or provide this information. This section also duplicates proposals set forth in the proposed new rule IRLJ 3.5, which we also oppose for the reasons stated below.

**IRLJ 2.4**  
**RESPONSE TO NOTICE**

**(a) Generally.** A person who has been served with a notice of infraction must respond to the notice within 15 days, 30 days for a notice of traffic infraction, of the date the notice is personally served or, if the notice is served by mail, within 18 days, 33 for a notice of traffic infraction, of the date the notice is mailed.

**(b) Alternatives.** A person may respond to a notice of infraction by:

(1)-(2) [Unchanged.]

(3) Requesting a hearing to explain mitigating circumstances surrounding the commission of the infraction in accordance with applicable law;

(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

~~(4)~~(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). For contested hearings, the statement shall be executed in substantially the following form:

I hereby state as follows:

I promise that if it is determined that I committed the infraction for which I was cited, I will pay the monetary penalty authorized by law and assessed by the court.

I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

\_\_\_\_\_ [Date and Place]

\_\_\_\_\_ [Signature]

(I understand that if this form is submitted by e-mail, my typed name on the signature line will qualify as my signature for purposes of the above certification.)

For mitigation hearings, the statement shall be executed in substantially the following form:

I hereby state as follows:

I promise to pay the monetary penalty authorized by law or, at the discretion of the court, any reduced penalty that may be set. 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 as provided in IRLJ 2.6(d).

I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

[Date and Place]

[Signature]

(I understand that if this form is submitted by e-mail, my typed name on the signature line will qualify as my signature for purposes of the above certification.)

(c) [Unchanged.]

### **DMCJA RESPONSE:**

As noted in comments to proposed amendments to IRLJ 2.1, the DMCJA urges uniformity in requiring that all infractions, not just traffic infractions, be responded to with thirty (30) and thirty-three (33) days. This will allow the language in subsection (a) to be removed and will allow for the term “traffic” to be removed from proposed (b)(4) and (5). Again, this will allow all defendants the same opportunity to respond and attest to their ability to pay.

The DMCJA also points out that the NJP proposal does not actually suggest language for courts to use to allow a defendant to attest that they do not have the current ability to pay, as the current rule does for contested and mitigation hearings.

## IRLJ 2.5 FAILURE TO RESPOND

**(a) Notice of Infraction.** If the defendant fails to respond to a notice of [traffic]<sup>1</sup> infraction, the court shall enter an order finding that the defendant has committed the infraction and shall assess any monetary penalties provided for by law. ~~and, in the case of a traffic infraction, shall notify the Department of the defendant's failure to respond in accordance with RCW 46.20.270.~~

**(b) Notice of Traffic Infraction.** If the defendant fails to respond to a notice of infraction, the court shall enter an order and Notice of Default finding that the defendant has committed the infraction and is in default. The order shall provide notice that unless the defendant appears or responds within thirty (30) days, the court will enter an Order and Judgment finding that the infraction was committed. The order shall clearly explain how a defendant may appear or respond so that they may come into compliance. The order shall state that upon finding that the infraction was committed, the defendant will be required to pay \$10.00 a month until the total judgment and fines have been paid. The order shall state that the defendant is permitted to make higher payments if they wish. The order shall clearly show an itemized assessment explaining the total amount owed to date, a breakdown of the amount owed, and a description or reason for each amount. The order shall explain that the collection of the amount may be transferred to a third party collection agency who may also assess fees against the defendant, and that upon the defendant's request, those agencies must provide a written, dated, itemized statement to the defendant showing how those fees are assessed. The order shall also explain that, after a finding that the traffic infraction was committed, the court shall notify the Department of the defendant's failure to respond in accordance with RCW 46.20.270.

### DMCJA RESPONSE:

The DMCJA objects to any change in IRLJ 2.5. As currently written, IRLJ 2.5 succinctly states what happens if a defendant fails to respond to their infraction after being given notice to respond.

The proposed changes create unnecessary bureaucratic procedures that will not clarify or assist those attempting to respond to infractions. Providing additional notices to defendants who have already failed to respond or pay does not make them more likely to pay or seek relief from payment. The requirement also would place a crushing financial and logistical burden on courts who have to send an additional notice when a defendant has already failed to appear.

With respect to specific proposals in subsection (b), the DMCJA submits these objections. First, it repeats what is already stated in subsection "a" regarding entering an order.

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<sup>1</sup> The current version of IRLJ omits the word "traffic" from the first line. This appears to be an error, as the 2015 amendments did not delete the word "traffic" but the version published inexplicably deleted it. However, the omission of the word "traffic" in the first line makes more sense in light of the fact that "traffic" infractions trigger a reporting requirement. DMCJA opposes inserting this word as it creates an unnecessary and confusing delineation between traffic and non-traffic infractions.

Second, the proposal then requires that an additional 30 days be given with an additional court hearing for someone who failed to appear already. This is in addition to the timeframe for response being doubled from 15/18 days to 30/33 days. Third, it is not clear what is meant by requiring the order tell the defendant how they may come into compliance. Fourth, this proposal requires that payments be set at \$10.00 per month without any analysis as to the defendant's ability to pay. Fifth, this requires each order on a failure to respond to give a breakdown and itemization of all amounts owed as well as a description for each amount. This would be incredibly time consuming for the court and clerks. Sixth, this proposal requires that the order state the amount that may be transferred to a collection agency, who may assess fees, and requires that another itemized statement and breakdown of all fees owed be given to a defendant. This places a crushing burden on court staff, requiring them to calculate these amounts in order to report to the defendant. Without accounting for these costs to courts, the provisions are essentially an unfunded mandate being imposed on the courts.

**IRLJ 2.6**  
**SCHEDULING OF HEARINGS**

**(a) Contested Hearings.**

(1) [Unchanged.]

(2) The court shall send the defendant written notice of the time, place, and date of the hearing within twenty-one (21) days of the receipt of the request for a hearing. The notice of the hearing shall also include statements advising the defendant of the defendant's rights at the hearing, how the defendant may request that witnesses be subpoenaed, and stating that failure to appear may be a crime for which the defendant may be arrested, and, in a traffic infraction case, the defendant's privilege to operate a motor vehicle may be suspended if the person was cited with a moving violation. The notice must also state, in a traffic infraction case, how a defendant may request waiver or remission of the fine(s) assessed, a payment plan, or other monetary relief authorized under IRLJ 3.5 if they do not prevail. If a local rule is adopted implementing sections (a)(1)(i) and (ii), the court shall advise the defendant in the notice of the defendant's right to waive the prehearing conference.

(3)-(4) [Unchanged.]

**(b) Mitigation Hearings.**

(1) [Unchanged.]

(2) The court shall send the defendant written notice of the time, place, and date of the hearing within 21 days of the request for a hearing. The notice shall also include statements advising the defendant of the defendant's rights at the hearing and stating that failure to appear may be a crime for which the defendant may be arrested, and, in a traffic infraction case, that the defendant's privilege to operate a motor vehicle may be suspended if cited with a moving violation. The notice shall also include, in a traffic infraction case, information about how the defendant may request waiver or remission of the fine(s) assessed, or a payment plan, authorized under IRLJ 3.5, if they do not prevail.

(3) [Unchanged.]

**(c) Decisions on Written Statements.** If the court has adopted a local rule authorizing decisions on written statements submitted by mail, or e-mail, it shall, upon receipt of a statement pursuant to rule 2.4(b)(4), consider the case in accordance with rule 3.56. The requirements of GR 30(d) are not applicable to e-mail statements submitted pursuant to rule 2.4(b)(4). The court is not required to notify the parties of a date for the examination of the statements.

**(d) Inability To Pay**

(1) Within twenty-one (21) days of receiving a response submitted pursuant to IRLJ 2.4(b)(4), 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, in addition to a phone number the defendant can call for information. The court shall also make available on its website and at the courthouse the written instructions and forms.

(2) The judicial officer may schedule the petition for a hearing or consider the petition ex parte without a hearing no sooner than five (5) business days from the filing of the petition.

(3) The infraction shall be dismissed if the court does not follow the procedures outlined in subsection (1) of this section within twenty-one (21) days of the receipt of the notice of inability to pay.

**(de) Objection to Hearing Date.** A defendant who objects to the hearing date set by the court upon the ground that it is not within the time limits prescribed by this rule shall file with the court and serve upon the prosecuting authority a written motion for a speedy hearing date within 10 days after the notice of hearing is mailed or otherwise given to the defendant. Failure of a party, for any reason, to make such a motion shall be a waiver of the objection that a hearing commenced on such a date is not within the time limits prescribed by this rule. The written notice of the hearing date shall contain a copy of IRLJ 2.6(~~de~~).

**(ef) Time for Hearing; Effect of Delay or Continuances.** A motion for dismissal for the failure to hold a hearing within the time period provided by this rule shall not be granted if the failure to hold the hearing was attributable to the defendant or the defendant's counsel.

**(fg) Dismissal With Prejudice.** An infraction not brought to hearing within the time period provided by this rule shall, upon motion, be dismissed with prejudice.

**(gh) Change of Judge.** The provisions of CRLJ 40(f) apply.

## **DMCJA RESPONSE:**

Subsections (a)(2) and (b)(2): The added language in these subsections is unnecessary and confusing. The current rule provides adequate and accurate notice to defendants of their rights and possible negative consequences for failing to appear. The new proposed language also creates the unnecessary distinction between "traffic" and "non-traffic" infractions. For the reasons stated below, DMCJA also opposes any reference to or adoption of new IRLJ 3.5.

Subsection (d): The DMCJA objects to the inclusion of proposed subsection (d). This section is confusing, creates additional bureaucratic procedures and notices, and could be interpreted to require court staff to provide legal advice to defendants who call the court asking for more information. Further, creates a hearing that the person may fail to attend, thereby creating an additional opportunity for driver suspension. Finally, the proposed language requires dismissal if the bureaucratic requirements are not met, even though a defendant has already admitted committing the infraction.

**IRLJ 3.2**  
**FAILURE TO APPEAR**

**(a) Entry of Judgment.** If the defendant fails to appear at a requested hearing the court shall enter judgment against the defendant finding that the defendant has committed the infraction and assessing against the defendant any monetary penalties provided by law. In a traffic infraction case, the court shall follow the procedures contained in IRLJ 2.5(b). A judgment upon a failure to appear shall not be entered if it appears to the court from the papers on file that the infraction case was brought in an improper court.

**(b)** [Unchanged.]

**DMCJA RESPONSE:**

The proposed additional language refers to IRLJ 2.5(b). As noted in its response to IRJL 2.5(b), the DMCJA objects to the inclusion of the proposed language, which requires courts to provide notice far beyond the requirements of ESSB 5226.

**IRLJ 3.3**  
**PROCEDURE AT CONTESTED HEARING**

**(a)-(d)** [Unchanged.]

**(e) Disposition.** If the court determines that the infraction has been committed, it may assess a monetary penalty against the defendant and, in a traffic infraction case, only after determining the defendant's ability to pay in accordance with IRLJ 3.5. The monetary penalty assessed may not exceed the monetary penalty provided for the infraction by law. The court may waive or suspend a portion of the monetary penalty, or provide for time payments, or in lieu of monetary payment provide for the performance of community restitution as provided by law and, in a traffic infraction case, in accordance with the procedures set forth in IRLJ 3.5. The court has continuing jurisdiction and authority to supervise disposition for not more than one (1) year. A defendant may request relief in accordance with IRLJ 3.5 at any time.

**IRLJ 3.4**  
**HEARING ON MITIGATING CIRCUMSTANCES**

**(a)-(b)** [Unchanged.]

**(c) Disposition.** The court shall determine whether the defendant's explanation of the events justifies reduction of the monetary penalty. The court shall enter an order finding the defendant committed the infraction and may assess a monetary penalty and, in a traffic infraction case, only after determining the defendant's ability to pay in accordance with IRLJ 3.5. The court may not impose a penalty in excess of the monetary penalty provided for the infraction by law. The court may waive or suspend a portion of the monetary penalty, or provide for time payments, or in lieu of monetary payment provide for the performance of community restitution as provided by law and, in a traffic infraction case, in accordance with the procedures set forth in IRLJ 3.5. The court has continuing jurisdiction and authority to supervise disposition for not more than one (1) year. A defendant may request relief in accordance with IRLJ 3.5 at any time.

**DMCJA RESPONSE:**

Because DMCJA opposes the proposed IRLJ 3.5, the DMCJA opposes any reference to (proposed) IRLJ 3.5 in other rules. Additionally, these proposed changes unnecessarily distinguish between traffic and non-traffic infractions.

**IRLJ 3.5**  
**INABILITY TO PAY**

[NEW]

**(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(a)(3)-(4) utilizing pattern forms (Petition and Order) developed by the Administrative Office of the Courts and approved by the Supreme Court.

**(b) Disposition.** If the court finds that the person is unable to pay the monetary obligation in full, the court may waive or remit these obligations unless the specific monetary obligation is prohibited from being waived or remitted by state law. The court may also grant a payment plan or community restitution according to the procedures set forth below. If the court finds that the person is indigent, as defined in GR 34(a)(3)-(4), and decides to grant a payment plan, the court shall set payments at or below \$10.00 a month unless the defendant requests higher monthly payments.

**(c) Procedure.** A person may request a payment plan or other monetary relief from any penalty, fee, costs, assessment, or other monetary obligation associated with a traffic infraction at any time. The court may also modify a payment plan at any time including if a legal proceeding, such as garnishment, has commenced to collect any delinquent amount owed by the person for any penalty imposed by the court.

(1) *Mandatory Payment Plan.* If the person does not have the ability to pay the monetary obligation in full, the person has not previously been granted a payment plan for the same monetary obligation, and the court has not authorized its collections agency to take civil legal enforcement action, the court shall enter into a payment plan with the individual.

(2) *Discretionary Payment Plan.* Where the court has authorized its collections agency to take civil legal enforcement action, the court may, at its discretion, enter into a payment plan.

(3) *Community Restitution.* If a court authorized community restitution program for offenders is available in the jurisdiction, the court may allow conversion of all or part of the monetary obligations due to court authorized community restitution in lieu of time payments if the person is unable to make reasonable time payments.

**(d) Voluntary Payments.** The person may voluntarily pay an amount at any time in addition to the payments required under the payment plan.

**(e) Civil Enforcement.** If a payment required to be made under the payment plan is delinquent or the person fails to complete a community restitution program on or before the time established under the payment plan, unless the court determines good cause therefor and adjusts the payment plan or the community restitution plan accordingly, the court may refer the unpaid monetary penalty, fee, costs, assessment, or other monetary obligation for civil enforcement until all monetary obligations have been paid and court authorized community restitution has been

completed, or until the court has entered into a new payment plan or community restitution agreement with the person.

(1) If a person has not entered into a payment plan with the court and has not paid the monetary obligation in full, no sooner than 90 days from the date of the infraction, the court may refer the unpaid monetary penalty, fee, cost, assessment, or other monetary obligation to a collections agency until all monetary obligations have been paid or until the person has entered into a new payment plan.

(2) If a person responded to a traffic infraction for a moving violation attesting that the person did not have the ability to pay the infraction in full, the court must attempt to enter into a payment plan with the person prior to referring the monetary obligation to a collections agency.

**(f) Hearings.** The court may require a person who fails to make payments as required under a payment plan to appear and provide evidence of ability to pay. A request for a hearing or ex parte relief may also be made by a person in support of a petition for a payment plan, modification of a payment plan, or other monetary remedies available under this rule. If a petition for a payment plan or other monetary relief is set for hearing, the court in its discretion may permit a telephonic or videoconference appearance by the defendant subject to local court rule and/or local policies.

#### **DMCJA RESPONSE:**

The DMCJA objects to proposed new IRLJ 3.5 in its entirety. As a preliminary matter, the proposed IRLJ 3.5 references GR 34, which is problematic for the reasons stated in our response to proposed changes to IRLJ 1.2.

Additionally, subsection (a) will be impossible to accomplish in a large percentage of cases, because many defendants fail to appear for their hearing or request their case to be decided by written request.

The DMCJA also opposes language in subsection (b) that restricts the discretion of judicial officers to set payment plans above the \$10 maximum.

The remaining subsections primarily regurgitate the language of the statute and are unnecessary. Courts already have the ability to reduce fines, and RCW 46.63.190 sets forth clear guidance as to payment plans, procedures, civil enforcement, and additional hearings. Our member courts currently and routinely employ these procedures on a daily basis across the state. Repeating that language in a new court rule serves no purpose.

Finally, if the Legislature amends the statute in the future, it would require amendments to the rule as well.

**IRLJ 3.56**  
**LOCAL RULE OPTIONS**

**(a) Decisions on Written Statements.**

(1)-(3) [Unchanged.]

(4) *No Appeal Permitted.* There shall be no appeal from a decision on written statements except that denial of monetary relief, requested pursuant to IRLJ 3.5, may be appealed.

**(b)** [Unchanged.]

**IRLJ 5.1**  
**WHAT ORDERS MAY BE APPEALED**

A defendant may appeal a judgment entered after a contested hearing finding that the defendant has committed the infraction. The plaintiff may appeal a decision, which in effect abates, discontinues, or determines the case other than by a judgment that the defendant has not committed an infraction. No other orders or judgments are appealable by either party except that the defendant may appeal a decision to deny relief under IRLJ 3.5. A decision for relief pursuant to IRLJ 3.5 is a final decision.

**DMCJA RESPONSE:**

The DMCJA opposes this proposed language in both IRLJ 3.6 and IRLJ 5.1. First, it is completely inequitable in that it only allows an appeal in the case of denial of monetary relief. If a court grants relief, in full or in part, there is no ability to appeal by either the defendant or the prosecuting authority.

Second, allowing appeals regarding judicial determinations of ability to pay is contrary to the stated goals of RCW 46.63.010: “to facilitate the implementation of a uniform and expeditious system for the disposition of traffic infractions.” (emphasis added). The rule already provides a means to appeal the substantive decision regarding commission of the infraction, in the case of misapplication of the law. There is no rational reason to expand the right to appeal to financial assessments as well.

## IRLJ 4.2

### ~~FAILURE TO PAY OR COMPLETE COMMUNITY RESTITUTION FOR TRAFFIC INFRACTION~~

~~(a) Failure to Pay or Complete Community Restitution.~~ Unless the traffic infraction is a parking, standing, stopping, or pedestrian infraction, the court shall notify the Department within ten 10 days:

~~(1) If the defendant fails to pay the monetary penalty assessed after a hearing to contest the traffic infraction or a hearing to explain mitigating circumstances, or after a decision on written statements, if authorized by local court rule, or~~

~~(2) If the defendant fails to meet a time payment authorized by the court or fails to complete community restitution approved by the court.~~

~~(b) Notice to Department.~~ The notice to the Department shall be in the form prescribed by the Department.

~~(c) Removal of the Failure to Pay or Complete Community Restitution.~~ When the defendant has paid all monetary penalties owing, including completion of community restitution, the court shall notify the Department within ten (10) days of payment or of completion of community restitution on a form prescribed by the Department.

#### DMJCA RESPONSE:

The NJP proposal fails to articulate any reason why this section should be rescinded. The DMCJA opposes rescinding this section. CLJs already have procedures in place to report this information to the Department. Providing the Department information about failure to pay does not require the Department to take any particular action, it merely provides a mechanism for gathering information. This information could be relevant to actions other than license suspensions.

**From:** [OFFICE RECEPTIONIST, CLERK](#)  
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**Date:** Wednesday, August 31, 2022 3:27:54 PM  
**Attachments:** [DMCJA Comment in Opposition to the NJPs proposed IRLJ amendments 08312022.pdf](#)  
[image001.png](#)

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**From:** Dugas, Tracy <Tracy.Dugas@courts.wa.gov>  
**Sent:** Wednesday, August 31, 2022 3:17 PM  
**To:** OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>  
**Cc:** 'rick.leo@snoco.org' <rick.leo@snoco.org>; 'McDowall, Catherine' <Catherine.McDowall@seattle.gov>; 'Wade Samuelson' <Wade.Samuelson@lewiscountywa.gov>; Benway, Jennifer <Jamanda.Benway@courts.wa.gov>; Oyler, Stephanie <Stephanie.oyler@courts.wa.gov>  
**Subject:** DMCJA Comment in Opposition to the NJPs Proposed IRLJ Amendments

Greetings,

Please see the attached comment in opposition to the NJPs proposed IRLJ amendments, sent on behalf of Commissioner Rick Leo, DMCJA President.

Thank you,

**Tracy Dugas (she/her)**

Court Program Specialist | Office of Judicial and Legislative Relations

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