**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 conductan 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, thecourt 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.