

WSR 21-13-058
RULES OF COURT
STATE SUPREME COURT
[June 4, 2021]

IN THE MATTER OF THE) ORDER
SUGGESTED NEW GENERAL RULE) NO. 25700-A-1350
(GR) 39—REMISSION OF LEGAL)
FINANCIAL OBLIGATIONS)

The Washington State Legal Financial Obligation Stakeholder Consortium, having recommended the adoption of the suggested new General Rule (GR) 39—Remission of Legal Financial Obligations, and the Court having considered the suggested amendments, and having determined that the suggested amendments will aid in the prompt and orderly administration of justice;

Now, therefore, it is hereby

ORDERED:

(a) That the suggested amendments as shown below are adopted.

(b) That pursuant to the emergency provisions of GR 9 (j) (1), the suggested amendments will be published in the Washington Reports and will become effective on a date to be determined.

DATED at Olympia, Washington this 4th day of June, 2021.

Johnson, J.
Madsen, J.
Owens, J.
Stephens, J.
Gonzalez, C.J.
Gordon McCloud, J.
Yu, J.
Montoya-Lewis, J.
Whitener, J.

GR 9 COVER SHEET
Suggested New General Rule (GR)

WASHINGTON STATE COURT RULES:

RULE 39. REMISSION OF LEGAL FINANCIAL OBLIGATIONS

Submitted by Washington State LFO Stakeholder Consortium, Workgroup

(A) Name of Proponent: Washington State LFO Stakeholder Consortium, Workgroup

(B) Spokesperson: Judge David Steiner, King County Superior Court

(C) Purpose: Trial courts may not impose discretionary costs upon an indigent defendant and may not impose discretionary costs upon a non-indigent defendant unless the defendant is able to pay those costs. RCW 10.01.160 (3). When legal financial obligations (LFOs) in any form are imposed upon indigent defendants or imposed upon non-indigent defendants in an amount greater than the defendant's ability to pay, these LFOs create problems that have been well documented. State v. Blazina, 182 Wn.2d 827, 834 - 837, 344 P.3d 680 (2015). LFOs may include court-imposed costs, fines, fees, penalties, assessments, and restitution. LFOs may have been imposed without an individualized inquiry into a defendant's ability to pay, or a sentenced defendant may have lost the ability to pay LFOs ordered at the time of sentencing. State law currently requires that, upon motion by a defendant, following the defendant's release from total confinement, the court shall waive all interest on the portions of the LFOs that have accrued that are not restitution. RCW 10.82.090. In addition, if default on payment of LFOs is not willful and the defendant is indigent as defined in RCW 10.101.010 (3) (a) through (c), the court shall modify the terms of

payment of the LFOs, reduce or waive nonrestitution legal financial obligations, or convert nonrestitution legal financial obligations to community restitution hours if the jurisdiction operates a community restitution program, at the rate of no less than the state minimum wage established in RCW 49.46.020 for each hour of community restitution. RCW 9.94A.6333 (3)(f). This proposed rule creates a process whereby a defendant may request remission or reduction of LFOs (except for restitution and victim penalty assessment). Defendants may also request removal of LFOs from collection, payment by other forms of community restitution and additional time to pay. This proposed rule cites to existing authority regarding the disposition of hearings related to the imposition of LFOs and does not create new authority directing the outcome of a petition requesting remission of LFOs. In drafting this proposed rule, consideration was given to the following authorities: GR 34; RCW 9.94A.6333 (3)(f); RCW 9.94A.780(7); RCW 9.94B.040 (4)(f); RCW 10.01.160 (3) & (4); RCW 10.01.170(1); RCW 10.01.180(5); RCW 10.101.010(3); RCW 10.82.090; RCW 36.18.016(29); State v. Blazina, 182 Wn.2d 827, 344 P.3d 680 (2015); State v. Ramirez, 191 Wn.2d 732, 426 P.3d, 714 (2018).

The definition of an LFO within this proposed rule does not include clerk's fees imposed pursuant to RCW 9.94A.780(7) and RCW 36.18.016(29). These clerk's fees must not exceed the annual cost of collections and must never exceed \$100 annually. A county clerk may also "exempt or defer payment of all or part of the assessment" based upon any of the factors listed in RCW 9.94A.780(1). RCW 9.94A.780(7).

(D) Hearing: A hearing is not recommended.

(E) Expedited Consideration: Expedited consideration is not requested.

SUGGESTED NEW GENERAL RULE:

GR 39

REMISSION OF LEGAL FINANCIAL OBLIGATIONS

(a) Definitions.

(1) Legal financial obligation (LFO), as referenced in this rule, means costs, fines, fees, penalties, assessments, and restitution imposed by a Washington court and does not include the RCW 9.94A.780 clerk's fee for collecting the LFO.

(2) Indigent is defined in RCW 10.101.010.

(b) Relief Available. An individual who has been required to pay LFOs may petition the sentencing court for a waiver of interest and remission or reduction of any unpaid portion of the LFOs, except restitution and victim penalty assessment, and may request any other relief as allowed by law. The petitioner may also request that the LFOs be removed from a collection agency; request additional time to pay the LFOs; and, excluding restitution and victim penalty assessment, request payment by community service or other forms of community restitution if available in the community.

(c) Indigence or Inability to Pay. A petition shall allege that the petitioner is indigent or lacks the financial ability to pay the LFO. Provided, indigence and ability to pay are not related to a request to waive interest pursuant to RCW 10.82.090.

(d) Mandatory Form and Notice. The petitioner shall complete and file a mandatory pattern form petition, declaration of mailing and proposed order created by the Administrative Office of the Courts (AOC). The petitioner may attach appropriately redacted financial documents supporting the request. See GR 31(e). The petitioner shall

also mail copies of the petition, declaration of mailing and proposed order to the appropriate prosecuting attorney.

(e) Submission of Petition; Fee. The court shall accept the petition submitted in person, by mail, or, where authorized by local court rule not inconsistent with GR 30, by electronic filing. All petitions shall be presented to a judicial officer for consideration in a timely manner and there shall be no fee imposed for filing and consideration of a petition.

(f) Hearings; Notice. The judicial officer may set the petition for a hearing, or may consider the petition ex parte without a hearing no sooner than three business days from filing of the petition and declaration of mailing or the filing of the declaration of mailing, if filed after the petition. Provided, when the appropriate prosecuting authority files a letter with a presiding judge requesting notice of all petitions filed pursuant to this rule, the court shall set all such petitions for hearing and send the notice of hearing to all parties. In the letter provided to the presiding judge, the prosecuting authority, however, may limit the notice requested to select cases, such as cases where the fine or costs are greater than a specified amount.

(g) Telephonic Hearing. Hearings by telephone improve access to the courts. If a petition is set for hearing, upon request, the court in its discretion may permit a telephone appearance by the petitioner subject to local court rule and/or local policies.

GR 39

REMISSION OF LEGAL FINANCIAL OBLIGATIONS

[Containing Amendments from the December 2020 through April 31, 2021 Comment Period]

(a) Definitions.

(1) Legal financial obligation (LFO), as referenced in this rule, means costs, fines, fees, penalties, assessments, and restitution imposed by a Washington court and does not include the RCW 9.94A.780 clerk's fee for collecting the LFO.

(2) "Indigent" is defined in RCW 10.101.010.

(b) Relief Available. An individual who has been required to pay LFOs may petition the sentencing court for a waiver of interest and remission or reduction of any unpaid portion of the LFOs, except restitution and mandatory LFOs not subject to remission or reduction, and may request any other relief as allowed by law. The petitioner may also request that the LFOs be removed from a collection agency; request additional time to pay the LFOs; and, excluding restitution and mandatory LFOs not subject to remission or reduction, request payment by community service or other forms of community restitution if available in the community.

(c) Indigence or Inability to Pay. A petition shall allege that the petitioner is indigent or lacks the financial ability to pay the LFO. Provided, a petitioner is not required to show indigence or the lack of ability to pay an LFO when making a request to waive interest on a nonrestitution LFO pursuant to RCW 10.82.090.

(d) Mandatory Form and Notice. The petitioner shall complete and file a mandatory pattern form petition, declaration of mailing and proposed order created by the Administrative Office of the Courts (AOC). The petitioner may attach appropriately redacted financial documents supporting the request. See GR 31(e). The petitioner shall also mail copies of the petition, declaration of mailing and proposed order to the appropriate prosecuting attorney.

(e) Submission of Petition; Fee. The court shall accept the petition submitted in person, by mail, or, where authorized by local court rule not inconsistent with GR 30, by electronic filing. All petitions shall be presented to a judicial officer for consideration in a timely manner and there shall be no fee imposed for filing and consideration of a petition.

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(g) Telephonic Hearing. Hearings by telephone or video conference improve access to the courts. If a petition is set for hearing, upon request, the court in its discretion may permit a telephone or video conference appearance by the petitioner subject to local court rule and/or local policies.