

WSR 22-08-079
 RULES OF COURT
 STATE SUPREME COURT
 [March 31, 2022]

IN THE MATTER OF THE)	ORDER
SUGGESTED AMENDMENTS TO)	NO. 25700-A-1419
IRLJ 1.2, IRLJ 2.1, IRLJ 2.4, IRLJ 2.5,)	
IRLJ 2.6, IRLJ 3.2, IRLJ 3.3, IRLJ 3.4,)	
IRLJ 5.1, SUGGESTED NEW IRLJ 3.5,)	
AND THE SUGGESTED REPEAL OF)	
IRLJ 4.2)	

The Northwest Justice Project, having recommended the suggested amendments to IRLJ 1.2, IRLJ 2.1, IRLJ 2.4, IRLJ 2.5, IRLJ 2.6, IRLJ 3.2, IRLJ 3.3, IRLJ 3.4, IRLJ 5.1, suggested new IRLJ 3.5, and the suggested repeal of IRLJ 4.2, and the Court having approved the suggested amendments for publication on an expedited basis;

Now, therefore, it is hereby

ORDERED:

(a) That pursuant to the provisions of GR 9(g), the suggested amendments as shown below are to be published expeditiously for comment in the Washington Reports, Washington Register, Washington State Bar Association and Administrative Office of the Court's websites.

(b) The purpose statement as required by GR 9(e), is published solely for the information of the Bench, Bar and other interested parties.

(c) Comments are to be submitted to the Clerk of the Supreme Court by either U.S. Mail or Internet E-Mail by no later than August 31, 2022. Comments may be sent to the following addresses: P.O. Box 40929, Olympia, Washington 98504-0929, or supreme@courts.wa.gov. Comments submitted by e-mail message must be limited to 1500 words.

DATED at Olympia, Washington this 31st day of March, 2022.

For the Court

Gonzalez, C.J.

 CHIEF JUSTICE

GR 9 COVER SHEET

Suggested Amendments, New Section, and Repealed Section to Infraction Rules for Courts of Limited Jurisdiction IRLJ 1.2, IRLJ 2.1, IRLJ 2.4, IRLJ 2.5, IRLJ 2.6, IRLJ 3.2, IRLJ 3.3, IRLJ 3.5, IRLJ 5.1, New IRLJ 3.5, Repeal IRLJ 4.2, Amend Notice of Infraction Form, New Draft Petition: Traffic Infraction Payment Plans, New Draft Order: Traffic Infraction Payment Plans

A. Name of Proponent:

ACLU of Washington, Columbia Legal Services, Northwest Justice Project, Public Defender Association, Washington Defender Association, Washington Driver's Relicensing Task Force

B. Spokesperson:

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C. Purpose:

The proposed suggested amendments to the Infraction Rules of Limited Jurisdiction and proposed forms are necessary due to passage of ESSB 5226 (2021) and to institutionalize more effective and equitable procedures in courts of limited jurisdiction for traffic infractions. Specific proposed amendments, new sections, and corresponding amendments and new forms include:

- IRLJ 1.2 DEFINITIONS
- IRLJ 2.1 NOTICE OF INFRACTION
- IRLJ 2.4 RESPONSE TO NOTICE
- IRLJ 2.5 FAILURE TO RESPOND
- IRLJ 2.6 SCHEDULING OF HEARINGS
- IRLJ 3.2 FAILURE TO APPEAL
- IRLJ 3.3 PROCEDURE AT CONTESTED HEARING
- IRLJ 3.4 HEARING ON MITIGATING CIRCUMSTANCES
- Proposed New IRLJ 3.5 ABILITY TO PAY
- IRLJ 3.5 LOCAL RULE OPTIONS (amended and renumbered to IRLJ 3.6)
- Repeal - IRLJ 4.2 FAILURE TO PAY OR COMPLETE COMMUNITY RESTITUTION TRAFFIC INFRACTION
- IRLJ 5.1 WHAT ORDERS MAY BE APPEALED
- Proposed Amended Form - NOTICE OF INFRACTION
- Proposed New Form - PETITION RE: TRAFFIC INFRACTION PAYMENT PLAN
- Proposed New Form - ORDER RE: TRAFFIC INFRACTION PAYMENT PLAN

ESSB 5226, which passed in the 2021 legislative session, removes the penalty of driver's license suspension for failing to pay a ticket for a non-criminal traffic infraction. It also requires the court to enter into a payment plan when a person requests to do so and does not have the ability to pay the ticket. However, drivers are still punished with a license suspension if they fail to respond entirely or pay an installment of their payment plan and then fail to appear at a subsequent court hearing for the infraction.¹

¹ ESSB 5226, <https://app.leg.wa.gov/bills/summary/BillNumber=5226&Initiative=false&Year=2021>

On June 2, 2021, the Thurston County Superior Court entered an order in a lawsuit relevant to these court rules, *Pierce et al. v. DOL*.² The order required DOL to stop suspending driver's licenses for failure to pay or failure to appear for non-criminal moving violations, until the effective date of ESSB 5226, and requiring DOL to report back about the implementation of the new ability-to-pay determination system before the injunction expires.

² *Pierce et al. v. DOL* - <https://www.aclu-wa.org/file/105111/download?token=VGPrKdT>

ESSB 5226 goes into effect on January 1, 2023, at which point DOL will be allowed to suspend driver's licenses again. The suggested amendments to IRLJ and the new forms and amended form aim to create uniform, consistent and fairer practices for traffic infractions. Sections of ESSB 5226 authorize court rules to adjudicate these cases, including but not limited to:

Sec. 3(6) - Whenever a monetary penalty, fee, cost, assessment, or other monetary obligation is imposed by a court under this chapter, it is immediately payable and is enforceable as a civil judgment under Title 6 RCW. 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 section 4 of this act and standards that may be set out in court rule.

Sec. 4(9) - For the purposes of this section, "payment plan" means a plan that requires reasonable payments based on the financial ability of the person to pay as determined by court rule.

D. Hearing:

A hearing is not requested.

E. Expedited Consideration:

Expedited consideration is requested and is necessary to ensure no drivers face inequitable penalties after the effective date of ESSB 5226. As ESSB 5226 goes into effect on January 1, 2023, we request that the proposed changes be implemented before January 1, 2023.

F. Supporting Materials:

ESSB 5226 - Session Law - <https://lawfilesexternal.leg.wa.gov/biennium/2021-22/Pdf/Bills/Session%20Laws/Senate/5226-S.SL.pdf?q=20220201125323>

Thurston County Superior Court - *Pierce et al. v. DOL* - October 12, 2021 - First Amended Stipulated Order Enjoining Defendants from Suspending Certain Drivers Licenses and Requiring Recission of Certain Drivers Licenses Suspensions - <https://www.aclu-wa.org/docs/first-amended-stipulated-order>

Reviser's note: The typographical errors in the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

DRAFT PROPOSED AMENDMENTS TO INFRACTION RULES FOR COURTS OF LIMITED JURISDICTION - ONLY RULES BEING AMENDED ARE LISTED BELOW

IRLJ 1.2 DEFINITIONS

For the purposes of these rules:

(a) Infraction Case. "Infraction case" means a civil proceeding initiated in a court of limited jurisdiction pursuant to a statute that authorizes offenses to be punished as infractions.

(b) Notice of Infraction. "Notice of infraction" means a document initiating an infraction case when issued and filed pursuant to statute and these rules.

(c) Defendant. "Defendant" means a person cited for an infraction, a registered owner of a vehicle cited for a parking infraction, or the person who responds to the parking infraction or requests a hearing.

(d) Court. "Court" means a court of limited jurisdiction organized pursuant to RCW Title 3, RCW Title 35, or RCW Title 35A.

(e) Judgment. "Judgment" means any final decision in an infraction case, including, but not limited to, a finding entered after a hearing governed by these rules or after payment of a monetary penalty in lieu of a hearing.

(f) Plaintiff. "Plaintiff" means the governmental unit issuing the notice of infraction, including, but not limited to, the state, a county, or a municipality.

(g) Department. "Department" means the Washington State Department of Licensing.

(h) Lawyer. "Lawyer" means any person authorized by Supreme Court rule to practice law.

(i) Statute. "Statute" means any state statute, local or county ordinance, resolution, or regulation, or agency regulation.

(j) Citing Officer. "Citing officer" means a law enforcement officer or other official authorized by law to issue a notice of infraction.

(k) Prosecuting Authority. "Prosecuting authority" includes prosecuting attorneys, city attorneys, corporation counsel, and their deputies and assistants, or such other persons as may be designated by statute.

(l) Judge. "Judge" means any judge of any court of limited jurisdiction and shall include every judicial officer authorized to preside over infraction cases.

(m) Community Restitution. "Community restitution" means compulsory service, without compensation, performed for the benefit of the community by the defendant.

(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.

[Adopted effective September 1, 1992; Amended effective June 2, 1998; January 3, 2006.]

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

IRLJ 2.1 NOTICE OF INFRACTION

(a) Infraction Form Prescribed or Approved by the Administrative Office of the Courts. Infraction cases shall be filed on a form entitled "Notice of Infraction" prescribed by the Administrative Office of the Courts; except that the form used to file cases alleging the commission of a parking, standing or stopping infraction shall be approved by the Administrative Office of the Courts. Notice of Infraction forms prescribed or approved by the Administrative Office of the Courts are presumed valid and shall not be deemed insufficient by reason of defects or imperfections which do not prejudice substantial rights of the defendant.

(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) The name, address, and phone number of the court where the notice of infraction is to be filed;

(2) The name, address, date of birth, sex, physical characteristics, and, for a notice of traffic infraction, the operator's license number of the defendant;

(3) For a notice of traffic infraction, the vehicle make, year, model, style, license number, and state in which licensed;

(4) The infraction which the defendant is alleged to have committed and the accompanying statutory citation or ordinance number, the date, time, and place the infraction occurred, the date the notice of infraction was issued, and the name and, if applicable, the number of the citing officer;

(5) A statement that the defendant must respond to the notice of infraction within fifteen (15) days of the date the notice is personally served or, if the notice is served by mail, within eighteen (18) days of the date the notice is mailed;

(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 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 only applies 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.

[Adopted effective January 1, 1981; Amended effective June 2, 1998; January 3, 2006; November 21, 2006; May 6, 2008; September 1, 2010; July 24, 2012.]

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

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) Paying the amount of the monetary penalty in accordance with applicable law, in which case the court shall enter a judgment that the defendant has committed the infraction;

(2) Contesting the determination that an infraction occurred by requesting a hearing in accordance with applicable law;

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

(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 in-

formation on how to request financial relief from the fine(s) as provided in IRLJ 2.6(d).

For contested hearing, 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) Method of Response. A person may respond to a notice of infraction either personally, or if allowed by local rule by mail or by e-mail. If the response is mailed or e-mailed, it must be postmarked or e-mailed not later than midnight of the day the response is due.

[Adopted effective January 1, 1981; Amended effective September 1, 1992; January 3, 2006.]

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

IRLJ 2.5 FAILURE TO RESPOND

(a) Notice of Infraction. If the defendant fails to respond to a notice of infraction, the court shall enter an order finding that the defendant has committed the infraction, 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 Judgement 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, shall notify the Department of the defendant's failure to respond in accordance with RCW 46.20.270.

[Adopted effective September 1, 1992; Amended effective December 8, 2015.]

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

IRLJ 2.6 SCHEDULING OF HEARINGS

(a) Contested Hearings.

(1) Except as provided in sections (1)(i) and (ii), upon receipt of a response submitted pursuant to rule 2.4 (b)(2), the court shall schedule a hearing to determine whether the defendant committed the infraction. The hearing shall be scheduled for not less than 14 days from the date the written notice of hearing is sent by the court, nor more than 120 days from the date of the notice of infraction or the date a default judgment is set aside.

(i) If authorized by local court rule, a defendant who requests a contested hearing may first be scheduled for a prehearing conference, which shall be scheduled for not less than 14 days from the date the written notice of the hearing is sent by the court nor more than 45 days from the date of the notice of infraction or the date a default judgment is set aside.

(ii) The prehearing conference may be waived by the defendant in writing if the waiver is received by the court before the time set for the prehearing conference. If the prehearing conference is waived, the case will be set for contested hearing. The contested hearing shall be scheduled for not more than 90 days from the date of the prehearing conference or, if the prehearing conference is waived, from the date the waiver of the prehearing conference is received by the court.

(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 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) The court may schedule the hearing on a contested infraction for the same time as the hearing on another infraction alleged to have been committed by the defendant. The court may schedule the hearing on a contested infraction for the same time as the trial on a misdemeanor arising out of the same occurrence as the infraction.

(4) The infraction may be dismissed upon a showing of prejudice if the court does not send a defendant written notice of a hearing within twenty-one (21) days of receipt of the request for a hearing.

(b) Mitigation Hearings.

(1) Upon receipt of a response submitted pursuant to rule 2.4

(b)(3) the court shall schedule a hearing to determine whether there were mitigating circumstances surrounding the commission of the infraction. The hearing shall be scheduled for not less than 14 days from the date the written notice of hearing is sent by the court, nor more than 120 days from the date of the notice of infraction or the date a default judgment is set aside, unless otherwise agreed by the defendant in writing.

(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, remission, of the fine(s) assessed, or a payment plan, authorized under IRLJ 3.5, if they do not prevail.

(3) The court may schedule the mitigation hearing for the same time as the mitigation hearing on another infraction alleged to have been committed by the defendant.

(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.

[Adopted as JTIR effective January 1, 1981; Amended effective September 1, 1989. Changed from JTIR to IRLJ effective September 1, 1992; Amended effective September 1, 1997; September 1, 1998; January 3, 2006; April 30, 2013.]

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) Setting Aside Judgment Upon Failure To Appear. For good cause shown and upon terms the court deems just, the court may set aside a judgment entered upon a failure to appear in accordance with CRLJ 60(b).

[Adopted effective January 1, 1981; Amended effective September 1, 1992.]

IRLJ 3.3 PROCEDURE AT CONTESTED HEARING

(a) Generally. The court shall conduct the hearing for contesting the notice of infraction on the record in accordance with applicable law.

(b) Representation by Lawyer. At a contested hearing, the plaintiff shall be represented by a lawyer representative of the prosecuting authority when prescribed by local court rule. The defendant may be represented by a lawyer. If the defendant is represented by a lawyer and the lawyer has filed a notice of appearance, including a waiver of the defendant's presence, the defendant need not personally appear at the contested hearing unless the defendant's presence is otherwise required by statute or the court rules.

(c) Rules of Evidence. The Rules of Evidence and statutes that relate to evidence in infraction cases shall apply to contested hearings. The court may consider the notice of infraction and any other written report made under oath submitted by the officer who issued the

notice or whose written statement was the basis for the issuance of the notice in lieu of the officer's personal appearance at the hearing, unless the defendant has caused the officer to be served with a subpoena to appear in accordance with instructions from the court issued pursuant to rule 2.6 (a) (2).

(d) Factual Determination. The court shall determine whether the plaintiff has proved by a preponderance of the evidence that the defendant committed the infraction. If the court finds the infraction was committed, it shall enter an appropriate order on its records. If the court finds the infraction was not committed, it shall enter an order dismissing the case.

(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.

[Adopted as JTIR effective January 1, 1981; Amended effective March 20, 1981. Changed from JTIR to IRLJ effective September 1, 1992; September 1, 1997; January 3, 2006; September 1, 2018.]

IRLJ 3.4 HEARING ON MITIGATING CIRCUMSTANCES

(a) Generally. The court shall conduct the hearing concerning mitigating circumstances in accordance with applicable law.

(b) Procedure at Hearing. The court shall hold an informal hearing which shall not be governed by the Rules of Evidence. Subject to the other provisions of these rules, all relevant evidence is admissible which, in the opinion of the judge, is the best evidence reasonably obtainable, having due regard for its necessity, availability and trustworthiness. The plaintiff and the defendant may each be represented by a lawyer. The defendant may present witnesses, but they may not be compelled to attend.

(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.

[Adopted effective January 1, 1981; Amended effective September 1, 1992; January 3, 2006.]

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

RULE 3.5 INABILITY TO PAY (New Rule)

(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 (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 video conference appearance by the defendant subject to local court rule and/or local policies.

IRLJ 3.56 LOCAL RULE OPTIONS

(a) Decisions on Written Statements.

(1) *Contested Hearing Procedures.* The court shall examine the citing officer's report and any statement or documents submitted by the defendant. The examination may be held in chambers and shall take place within one hundred and twenty (120) days after the defendant filed the response to the notice of infraction. The court shall determine whether the plaintiff has proved by a preponderance of the evidence submitted whether the infraction was committed.

(2) *Mitigation Hearing Procedures.* A mitigation hearing based on a written statement may be held in chambers and shall take place within 120 days after the defendant filed the response to the notice of infraction.

(3) *Notice to Defendant.* The court shall notify the defendant in writing of its decision, including any penalty imposed.

(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) Telephonic or Video Conference Mitigation Hearings.

(1) *Local Rule Permitted.* A court may adopt a local rule permitting defendants to appear at a mitigation hearing by telephone or video conference in lieu of an in-person appearance; such proceedings are open to the public.

(2) *Requirements.* Such local rule shall comply with the requirements that the hearings shall be conducted on the record and the defendant be advised that the hearing is being audio recorded, and the court shall advise the defendant in writing of its decision and any penalty imposed.

[Adopted as JTIR effective January 1, 1981. Changed from JTIR to IRLJ effective September 1, 1992; Amended effective September 1, 1997; January 3, 2006; September 1, 2017.]

~~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 10 days of payment or of completion of community restitution on a form prescribed by the Department.

[Adopted effective January 1, 1981; Amended effective September 1, 1992; January 3, 2006.]

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.

[Adopted effective January 1, 1981; Amended September 1, 1992.]

INFRACTION CITATION - PART 3 - FACE

INFRACTION TRAFFIC NON-TRAFFIC PARKING **I**

IN THE DISTRICT MUNICIPAL COURT OF _____, WASHINGTON
 STATE OF WASHINGTON, PLAINTIFF VS. NAMED DEFENDANT
 COUNTY OF _____
 CITY/TOWN OF _____

L.C.A. OR I.D. # _____ COURT OR I.D. # _____

THE UNDER SIGNED CERTIFIES AND SAYS THAT IN THE STATE OF WASHINGTON

DRIVER'S LICENSE NO. STATE EXPIRES PHOTO I.D. MATCHED YES NO
NAME: LAST FIRST MIDDLE COL/CLP YES NO
ADDRESS: _____ IF NEW ADDRESS
CITY STATE ZIP CODE EMPLOYER LOCATION
DATE OF BIRTH RACE SEX HEIGHT WEIGHT EYES HAIR
RESIDENTIAL PHONE NO. COLLAGER NO. WORK PHONE NO.
VIOLATION DATE MONTH DAY YEAR TIME INTERPRETER NEEDED
ON OR ABOUT _____ AM HOUR LAW: _____
AT LOCATION N.P. CITY/TOWN OF _____

DID OPERATE/PARK THE FOLLOWING VEHICLE ON A PUBLIC HIGHWAY/PROPERTY AND

VEHICLE LICENSE NO. STATE EXPIRES VEH. YR. MAKE MODEL STYLE COLOR
TRAILER # LICENSE NO. STATE EXPIRES TR. YR. TRAILER # LICENSE NO. STATE EXPIRES TR. YR.
OWNER/COMPANY IF OTHER THAN DRIVER
ADDRESS: _____ CITY STATE ZIP CODE
ACCIDENT: YES NO YES NO YES NO YES NO YES NO
NO NR R I F NO NO NO NO NO NO NO

DID THEN AND THERE COMMIT EACH OF THE FOLLOWING OFFENSES

#1 VIOLATION/STATUTE CODE VEHICLE SPEED #1 A ZONE BMO RACC AIRCRAFT
#2 VIOLATION/STATUTE CODE BMO RACC AIRCRAFT
#3 VIOLATION/STATUTE CODE
PENALTY U.S. \$
RELATED # DATE ISSUED

READ THE BACK

Served on Violator
 Sent to Court for Mailing
 Referred to Prosecutor
OFFICER #
OFFICER #

YOU MUST RESPOND TO THE COURT BELOW ACCORDING TO THE INSTRUCTIONS ON THE REVERSE SIDE OF THIS NOTICE
 Send to Court for Mailing
 Referred to Prosecutor
INFRACTION

INFRACTION CITATION - PART 5 - FACE

INFRACTION TRAFFIC NON-TRAFFIC PARKING

IN THE DISTRICT MUNICIPAL COURT OF _____, WASHINGTON
 STATE OF WASHINGTON, PLAINTIFF VS. NAMED DEFENDANT
 COUNTY OF _____
 CITY/TOWN OF _____

L.C.A. OR I.D. # _____ COURT OR I.D. # _____

THE UNDER SIGNED CERTIFIES AND SAYS THAT IN THE STATE OF WASHINGTON

DRIVER'S LICENSE NO. STATE EXPIRES PHOTO I.D. MATCHED YES NO
NAME: LAST FIRST MIDDLE INITIAL YES NO
ADDRESS: STATE OF WASHINGTON COUNTY OF CITY STATE ZIP CODE EMPLOYER LOCATION
DATE OF BIRTH RACE GENDER SEX HEIGHT WEIGHT EYES HAIR
RESIDENTIAL PHONE NO. CELLPHONE NO. WORK PHONE NO.
VIOLATION DATE MONTH DAY YEAR TIME PER HOUR INTERPRETER NEEDED
ON OR ABOUT AT LOCATION N.P. CITY/COUNTY OF

DID OPERATE/PARK THE FOLLOWING VEHICLE ON A PUBLIC HIGHWAY/PROPERTY AND

VEHICLE LICENSE NO. STATE EXPIRES VEH. YR. MAKE MODEL STYLE COLOR
TRAILER #1 LICENSE NO. STATE EXPIRES TR. YR. TRAILER #2 LICENSE NO. STATE EXPIRES TR. YR.
OWNER/COMPANY IF OTHER THAN DRIVER
ADDRESS: CITY STATE ZIP CODE
ACCIDENT NO. NR R I F CHY YES NO 18+ YES NO HAZMAT YES NO EXEMPT FIRE LEA

DID THEN AND THERE COMMIT EACH OF THE FOLLOWING OFFENSES

#1 VIOLATION/STATUTE CODE VEHICLE SPEED #1 A ZONE BMD RACE AIRCRAFT
#2 VIOLATION/STATUTE CODE VEHICLE SPEED #2 A ZONE BMD RACE AIRCRAFT
#3 VIOLATION/STATUTE CODE VEHICLE SPEED #3 A ZONE BMD RACE AIRCRAFT

PERMITS Served on Violator Sent to Court for Mailing Referred to Prosecutor
RELATED # DATE ISSUED
PENALTY U.S. \$
OFFICER # DATE ISSUED
OFFICER # DATE ISSUED

OFFICER REMARKS
 Served on Violator
 Sent to Court for Mailing
 Referred to Prosecutor

DO NOT WRITE IN THIS SECTION
WASHINGTON UNIFORM OFFICERS REPORT - COPY November 2015

DRAFT INFRACTION CITATION – PART 3

NOTICE OF INFRACTION

This is a non-criminal offense for which you cannot go to jail. YOU MUST RESPOND WITHIN FIFTEEN (15) DAYS FROM THE DATE ISSUED. IF THIS IS A TRAFFIC INFRACTION, YOU MUST RESPOND WITHIN THIRTY (30) DAYS FROM THE DATE ISSUED.

Your response must be postmarked by midnight of the day it is due at the court.

To respond, you must check one of the boxes below and return this form to the court listed on the front. If you do not respond or appear for court hearings:

The court will find that you committed the infraction; your penalty maybe increased; failure to pay may result in a referral of your case to a collection agency; AND if

TRAFFIC (see front of Notice of Infraction) You may lose your driver's license/privilege.

NON-TRAFFIC (see front of Notice of Infraction) It is a crime and will be treated accordingly.

PARKING (see front of Notice of Infraction) May result in the refusal of DOL to renew the vehicle registration.

Here are the three four ways you can respond. Check one box, then sign and date the bottom of the Notice of Infraction.

- I have enclosed a check or money order, in U.S. funds, for the amount listed on the front. I understand this will go on my driving record if "traffic" is checked on the front. DO NOT SEND CASH. NSF checks will be treated as a failure to respond.
Mitigation Hearing. I agree I have committed the infraction(s), but I want a hearing to explain the circumstances. Please send me a court date, and I promise to appear on that date. I know I can ask witnesses to appear but they are not required to appear. I understand this will go on my driving record if "traffic" is checked on the front. The court may allow time payments or reduce the penalty where allowed by law.
Contested Hearing. I want to contest (challenge) this infraction. I did not commit the infraction. Please send me a court date, and I promise to appear on that date. The state must prove by a preponderance of the evidence that I committed the infraction. I know I can require (subpoena) witnesses, including the officer who wrote the ticket, to attend the hearing. The court will tell me how to request a witness's appearance. I understand this will go on my driving record if I lose and "traffic" is checked on the front.
Cannot Afford to Pay. I agree that I have committed the traffic infractions(s), but I do not have the current ability to pay the infraction(s) in full. I understand that the court will mail me information explaining how I can request a payment plan. Failure to pay or enter into a payment plan may result in a collection action, including garnishment of wages or other assets. THIS OPTION ONLY APPLIES IF YOU ARE CITED WITH A TRAFFIC INFRACTION.

NOTICE: You may be able to enter into a payment plan with the court under RCW 46.63.110.

My mailing address is: (PLEASE PRINT)
Name:
Street or P.O. Box: Apt:
City: State: Zip code:
Telephone: Email:
Is interpreter needed? Language:

X (SIGNATURE)

Court of Washington, County/City of

Plaintiff,

vs.

Defendant. DOB

PCN/TCN: SID

NO.
Petition re: Traffic Infraction Payment Plan
(Traffic Infraction)
Clerk's Action Required.

Petition re: Traffic Infraction Payment Plan

Use this form to request that your traffic infraction(s) fines be waived, reduced, pulled from collections, converted to community restitution hours, or to modify an existing payment plan.

The undersigned requests that the court grant an order that will (check the boxes that apply):

1. Interest

[] Waive all unpaid interest on my traffic infraction fines.

2. Traffic Infraction Fines (Check all that apply)

[] Remission or Reduction. Waive or reduce all unpaid discretionary traffic infraction fines. (RCW 46.63.190.)

[] Additional Time. Grant me additional time to pay my unpaid traffic infraction fines. (RCW 46.63.190.)

[] Collection. Remove my unpaid traffic fines from collection and waive all collection fees. (RCW 19.16.500 (1)(b).)

[] Community Restitution. Convert any unpaid traffic infraction fines to community service hours through a community restitution program. (RCW 46.63.120, RCW 46.63.110 (8)(a).)

3. Declaration

I am the defendant in the above action and declare: (Check all that apply)

[] I do not have the ability to pay because:

[] I am receiving one of the following types of public assistance: temporary assistance for needy families (TANF), aged, blind, or disabled assistance benefits (ABD), medical care services under RCW 74.09.035, pregnant women assistance benefits, poverty-related veterans' benefits, food stamps or food stamp benefits transferred electronically, refugee resettlement benefits, Medicaid (for example, Apple Health), or supplemental security income. (GR 34 (a)(3)(A).) I am receiving the following forms of public assistance:

[] I am unemployed or have a job but I do not make enough to afford to pay my traffic infraction fines. Please list your monthly income here, after taxes, the number of people you support, and your basic living expenses, for example clothing, food, rent, and any other expenses you might have including other debt. (GR 34 (a)(3)(B)-(C)).

[] Other compelling circumstances exist that demonstrate my inability to pay fees and/or charges. (GR 34 (a)(3)(D)). Details:

[] I am represented by a Qualified Legal Services Provider. GR 34 (a)(4).

[] I am homeless. _____ Housing Instability (___ facing eviction; ___ emergency shelter; ___ temporary with family/friends; ___ outdoors in a tent, or vehicle; Other _____)

[] I am not able to complete community restitution hours because:

[] I was not able to make my payments on my traffic infraction debt because:

[] I failed to complete community restitution/service because:

[] My wages and/or bank account is currently being garnished to pay my traffic infraction debt because:

I request:

[] the court rule without a hearing.

[] a hearing by [] telephone [] video conference [] in court appearance.

I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Signed at (city) _____, (state) _____ on (date) _____.

Signature of Defendant

Print Name

Dated

Defendant's Attorney, WSBA No.

Print Name

_____ Court of Washington, County/City of _____

_____,
Plaintiff,

vs.

Defendant. DOB
PCN/TCN: SID

NO.
Petition re: Traffic Infraction
Payment Plan
(Traffic Infraction)
Clerk's Action Required.

Order re: Traffic Infraction Payment Plan

This Court has considered the defendant's Petition for and Order Granting relief from traffic infraction fines pursuant to GR 34 and GR 39, the defendant's declaration, and any testimony, and has reviewed the relevant court records.

The Court finds:

[] The defendant does not have the ability to pay the infraction fines in full because:

[] The defendant is receiving one of the following types of public assistance: temporary assistance for needy families (TANF), aged, blind, or disabled assistance benefits (ABD), medical care services under RCW 74.09.035, pregnant women assistance benefits, poverty-related veterans' benefits, food stamps or food stamp benefits transferred electronically, refugee resettlement benefits, Medicaid (for example, Apple Health), or supplemental security income. (GR 34 (a)(3)(A)).

[] The defendant is receiving an annual income, after taxes, of 125% or less of the current federally established poverty level. (GR 34 (a)(3)(B)).

[] The defendant is receiving an annual income, after taxes, of more than 125% of the federally established poverty level but has recurring basic living expenses rendering the person unable to pay the monetary obligation in full. (GR 34 (a)(3)(C)).

[] There are other compelling circumstances exist that demonstrate the defendant's inability to pay fees and/or charges. (GR 34 (a)(3)(D)).

[] The defendant is homeless. ___ Housing Instability (___ facing eviction; emergency shelter; ___ temporary with family/friends; ___ outdoors in a tent, or vehicle; Other ___)

[] The defendant is represented by a Qualified Legal Services Provider. GR 34 (a)(4).

[] Because the defendant 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 grant the request for a payment plan or other relief.

[] The defendant [] has [] has not requested the opportunity for community restitution.

[] The defendant defaulted on a previous payment plan and/or community restitution. There is [] is not [] good cause to grant another payment plan and/or community restitution.

[] The defendant's wages and/or bank account is subject to a garnishment action but there is [] is not [] good cause to remove the debt from collections and to grant another payment plan/community restitution.

[] Because the defendant has defaulted on a previous payment plan on this monetary obligation, or the defendant failed to complete a community restitution program, the court may enter into a payment plan/community restitution or other relief.

[] Other:

The Court orders:

[] **Interest.** All interest that has accrued on the unpaid traffic debt is waived.

[] **Remission.** All discretionary traffic infraction fines, including all costs or fees attendant to private debt collection efforts are waived. RCW 46.63.110 (1)(b). These include fees incurred pursuant to a civil legal enforcement action. The following mandatory fines shall remain:

[] **Reduction.** All discretionary traffic infractions are reduced as follows:

[] **Community Restitution.** All traffic infraction fines are converted to community restitution hours through a community restitution program at the rate of \$ ___ per hour for each hour of community restitution. RCW 46.63.110(8) (a).

[] **Additional Time.** All remaining traffic infraction may be paid according to the following schedule: RCW 46.63.110(6); RCW 46.63.190.

Next payment due date: _____

Minimum monthly payment: _____

Payments shall be made to: _____

[] **Collection.** The traffic infractions fines are removed from a third-party collection agency and payments shall now be made to the court or an account receivable company.

[] **Other**

Dated: _____

Judge

Presented by:

Signature of Defendant/Defendant's Attorney, WSBA No.

Print Name

Reviser's note: The typographical errors in the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.