

Court Rules and Procedures Committee

AGENDA

April 15, 2019
(Telephonic Meeting)
9:30 a.m. – 11:00 a.m.

Conference Call: 1-866-577-9294, Code: 55419#

Call to Order/ Preliminary Matters

- Approval of Minutes:
 - March 18, 2019 **(pp. 2-3)**

Subcommittee Reports

1. Infraction Rules for Court of Limited Jurisdiction (IRLJ)
 - Subcommittee Chair Jon Zimmerman **(pp. 4-18)**
2. Subcommittee X
 - Subcommittee Chair Tony DiTommaso **(pp. 19-23)**
3. Mandatory Arbitration Rules (MAR)
 - Subcommittee Chair Stephanie Dikeakos **(Oral Report)**
4. Evidence Rules (ER)
 - Subcommittee Chair Kirk Miller **(Oral Report)**

Other Business/Good of the Order

Adjourn

Next meeting is scheduled for May 20, 2019



Meeting Minutes
March 18, 2019

Members Present (all by telephone):

Chair Jefferson Coulter, Olga Blotnis, Claire Carden, Stephanie Dikeakos, Tony DiTommaso, Geoff Grindeland, Joyce Heritage, Karen Horowitz, John Ledford, Sarah Lee, Alison Markette, Kirk Miller, Tim Moran, Isham Reavis, Ashton Rezayat, Ann Summers, Jon Zimmerman, Brian Zuanich, and Judge Kevin Korsmo.

Members Excused:

Mimy Bailey, Jody Cloutier, Rike Connelly, Bertha Fitzer, Richard Greene, Jack Guthrie, Rachael Rogers, Rooein Roshandel, Dalynne Singleton, James Smith, Kathleen Goodman, Jeremy Wood, Judge Blaine Gibson, Judge Jeffrey Goodwin, and Brian Tollefson (BOG Liaison).

Also Attending (all by telephone):

Nicole Gustine (WSBA Assistant General Counsel), Shannon Hinchcliffe (AOC Liaison), and Mike Chait (WDTL representative).

Chair Jefferson Coulter called the meeting to order at 9:30 a.m.

February 11, 2019, minutes were approved by consensus with minor changes.

MAR Subcommittee

Subcommittee chair Stephanie Dikeakos reported that the MAR materials submitted to the BOG at their March 7 meeting were tabled and will be reviewed at their May meeting.

The Committee discussed the MAR 7.2 proposal and suggested a few edits to the proposal. Chair Dikeakos accepted the proposal language as friendly changes.

Motion was made and seconded with the friendly amendment and passed unaniomously.

The proposed changes to the MAR 7.2 will be finalized and circulated to stakeholders for comments.

SUBCOMMITTEE X

Subcommittee chair Tony DiTommaso reported that CrR 8.2 and CrRLJ 8.2 have been disseminated to stakeholders for comments. The subcommittee has received four comments thus far. The deadline to submit comments is May 1, 2019.

Evidence Rule (ER) Subcommittee

Subcommittee chair Kirk Miller reported that the rules have been divided among the subcommittee and Isham Reavis is spearheading ER 413.

Infraction Rules for Court of Limited Jurisdiction (IRLJ) Subcommittee

Subcommittee chair Jon Zimmerman reported that the rules have been divided among the members and that he is scheduled to speak with Judge Goodwin and Judge Steiner on Thursday, March 21.

There being no further business, the meeting was adjourned.

DRAFT

To: Court Rules and Procedures Committee

From: Jon Zimmerman, IRLJ Subcommittee

Date: April 9, 2019

Re: Draft proposal to amend: IRLJ Rules 1.2(b); 1.2(k); 2.1(b)(6); 2.1(b)(7); IRLJ 2.2

A. Proponent:

Washington State Bar Association IRLJ Subcommittee

B. Spokesperson:

Jon Zimmerman, Subcommittee Chair

C. Purpose:

To provide clarity by defining the term “date of the notice of infraction,” which is used three times in the IRLJ without any definition. The DMCJA alerted the IRLJ Subcommittee that the lack of a definition of the above term is problematic and that defining a term would lend clarity for the parties and the court.

The DMCJA further explained that the current rule indicates that the “speedy hearing” clock begins on the “date of the notice of infraction,” a term for which there is currently no definition. However, a “notice of infraction,” is defined as “a document initiating an infraction case when issued and filed pursuant to statute and these rules.” IRLJ 1.2(b). This gives no assistance in determining the start of the “clock.” Further confusion is added by IRLJ 2.2(a), which states that:

“An infraction case is initiated by the issuance, service, and filing of a notice of infraction in accordance with this rule. An infraction is issued on the date the infraction is signed by the citing officer or prosecuting authority.”

The Subcommittee discussed the issues of the definition of “date of the notice of infraction” as well as the definition of “notice of infraction,” and recommends a definition of “date of the notice of infraction” and an amendment to “notice of infraction.”

The need for a definition for “date of the notice of infraction” is for speedy hearing purposes and for proportionality and consistency among courts of limited jurisdiction. It was the experience of practitioners on the subcommittee that the term is unevenly and inconsistently applied because typically three dates may become an issue with a Notice of Infraction—the issue date, the violation date, and the filing date. Hence defining the term “date of the notice of infraction” will give clarity.

In addition, amending the definition of “notice of infraction” will give similar clarity and consistency. IRLJ 2.2(a)’s initiation of an infraction case is problematic because often an

infraction is issued but may lack a date, the name of the citing officer, and in almost all cases the lack of a prosecutor's name (because a citing officer issued the Notice of Infraction). However, just because a Notice of Infraction is *issued* and, if *served*, a response is required by statute and court rule, the Notice of Infraction may not be *filed*. The intent of amending IRLJ 1.2(b), adding a definition to IRLJ 1.2(b) as IRLJ 1.2(b)(1) for "Date of the Notice of Infraction", proposed IRLJ 1.2(b)(1), and IRLJ 2.2(a) is to achieve clarity and consistency.

With regards to IRLJ 1.2(k), this was mostly a cosmetic change. There was some discussion in the Subcommittee as to whether the term "their deputies and assistants" meant non-attorneys and yet the Subcommittee was of the unanimous belief that only attorneys could appear on behalf of parties to an infraction case. The language is clarified to include modern use of the types of attorneys who encompass a prosecuting authority.

With regards to IRLJ 2.1(b)(6), the Subcommittee reviewed the terms "defendant" and "respondent" in the IRLJ. "Defendant" is used 83 times and "respondent" a single time. The Subcommittee recommends changing the single instance of "respondent" to "defendant" to keep the rules uniform.

Also, a number of courts are allowing individuals served a Notice of Infraction to respond by e-mail in addition to more traditional methods, as enumerated by IRLJ 2.4(c). The Subcommittee supports this method to the extent individual courts are equipped to utilize a system to gather e-mailed responses to notices of infraction. Hence, there was a proposal to add "e-mail" to the language of IRLJ 2.1(b)(7), which right now only contains the word "mail." One committee member raised the issue of whether this requirement would be workable with AOC's task of approving infraction forms; however, IRLJ 2.4(c) already allows for response by e-mail if allowed at the local level, and all individuals issued a notice of infraction are allowed to mail back the response.

Finally, a revision to IRLJ 2.2(b)(1) adds an apostrophe before the "s" to "officers," as the word "officers" is grammatically incorrect in the online edition of the rule, and possibly the written edition.

GR 9 COVER SHEET

Suggested Amendment

INFRACTION RULES FOR COURTS OF LIMITED JURISDICTION (IRLJ) 1.2

A. Proponent:

Washington State Bar Association Rules Committee, IRLJ Subcommittee

B. Spokesperson:

Jon Zimmerman, Subcommittee Chair

C. Purpose:

To provide clarity by defining the term “date of the notice of infraction,” which is used three times in the IRLJ without any definition. The proposal adds a definition to IRLJ 1.2(b) by creating IRLJ 1.2(b)(1). Without this definition, there has been dispute as to the meaning of the term “date of the notice of infraction.” The DMCJA alerted the IRLJ Subcommittee, which was concurrently working on language for an IRLJ definition of the term.

The lack of a definition of the above term is problematic and defining this term would lend clarity for the parties and courts throughout the State of Washington.

The DMCJA explained that the current rule indicates that the “speedy hearing” clock begins on the “date of the notice of infraction,” a term for which there is currently no definition. However, a “notice of infraction,” is defined as “a document initiating an infraction case when issued and filed pursuant to statute and these rules.” IRLJ 1.2(b). This gives no assistance in determining the start of the “clock.” Further confusion is added by IRLJ 2.2(a), which states that:

“An infraction case is initiated by the issuance, service, and filing of a notice of infraction in accordance with this rule. An infraction is issued on the date the infraction is signed by the citing officer or prosecuting authority.”

To resolve these issues, the Subcommittee discussed the issues of the lack of a definition of “date of the notice of infraction” as well as the definition of “notice of infraction,” and recommends a definition of “date of the notice of infraction,” added as IRLJ 1.2(b)(1), and an amendment to “notice of infraction in IRLJ 1.2(b). Specifically, the terms “and filed” are removed from IRLJ 1.2(b) because the Subcommittee sees the issuance of an infraction as initiation. Per statute and court rule, a defendant issued a Notice of Infraction has a set time to respond,

regardless of filing. Hence, the Notice of Infraction's issuance commences the case.

The need for a definition for "date of the notice of infraction" is for speedy hearing purposes and for proportionality and consistency among courts of limited jurisdiction. It was the experience of practitioners on the Subcommittee that the term is unevenly and inconsistently applied because typically three dates may become an issue at hearing with a Notice of Infraction: the issue date, the violation date, and the filing date. Hence defining the term "date of the notice of infraction" will give clarity, create consistency, and lend uniformity.

Amending the definition of "notice of infraction" will give similar clarity and consistency.

With regards to IRLJ 1.2(k), this was mostly a cosmetic change. There was some discussion in the Subcommittee as to whether the term "their deputies and assistants" means non-attorneys and yet the Subcommittee was of the unanimous belief that only attorneys could appear on behalf of parties to an infraction case. The language is clarified to include modern use of the types of attorneys who encompass a prosecuting authority.

The Subcommittee addresses IRLJ 2.2 in the GR 9 Cover Sheet; however, the Subcommittee has looked at any proposed change to IRLJ 2.2 in light of the proposed changes to IRLJ 1.1.

Amendment to IRLJ 1.2(b), addition of definition to IRLJ 1.2(b) as 1.2(b)(1), and amendment to IRLJ 1.2(k).

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.

(1) Date of the Notice of Infraction. "Date of the Notice of Infraction" means (1) the date a Notice of Infraction is handed to a defendant, or (2) the date a Notice of Infraction is signed and dated by a citing officer or prosecutor, whichever date occurs first.

(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 and deputy prosecuting attorneys, city and assistant city attorneys, corporation and assistant 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.

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

SUGGESTED AMENDMENT
INFRACTION RULES FOR COURTS OF LIMITED
JURISDICTION (IRLJ)
RULE 1.2 – DEFINITIONS

1 For the purposes of these rules:

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

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

6 (1) Date of the Notice of Infraction. "Date of the Notice of Infraction" means (1) the date a
7 Notice of Infraction is handed to a defendant, or (2) the date a Notice of Infraction is signed and
8 dated by a citing officer or prosecutor, whichever date occurs first.

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

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

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

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

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

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

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

SUGGESTED AMENDMENT
INFRACTION RULES FOR COURTS OF LIMITED
JURISDICTION (IRLJ)
RULE 1.2 – DEFINITIONS

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

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

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

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

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

GR 9 COVER SHEET

Suggested Amendment

INFRACTION RULES FOR COURTS OF LIMITED JURISDICTION (IRLJ) 2.1

A. Proponent:

Washington State Bar Association Rules Committee, IRLJ Subcommittee

B. Spokesperson:

Jon Zimmerman, Subcommittee Chair

C. Purpose:

To create uniformity among different terms having the same purpose or meaning. With regards to IRLJ 2.1(b)(6), the Subcommittee reviewed the terms “defendant” and “respondent” in the IRLJ. “Defendant” is used 83 times and “respondent” a single time. The Subcommittee recommends changing the single instance of “respondent” to “defendant” to keep the rules uniform.

Also, a number of courts are allowing individuals served a Notice of Infraction to respond by e-mail in addition to more traditional methods, as enumerated by IRLJ 2.4(c). The Subcommittee supports this method to the extent individual courts are equipped to utilize a system to gather e-mailed responses to notices of infraction, and the number of courts using this option appears to be increasing. Hence, there was a proposal to add “e-mail” to the language of IRLJ 2.1(b)(7), which right now only contains the word “mail.” One committee member raised the issue of whether this requirement would be workable with AOC’s task of approving infraction forms; however, IRLJ 2.4(c) already allows for response by e-mail if allowed at the local level, and all individuals issued a notice of infraction are allowed to mail back the response. It seems appropriate that if some courts allow e-mail as a way to respond to a Notice of Infraction, the forms for courts that allow that option ought to have method and the addition of “e-mail” to IRLJ 2.1(b)(7) is uniform and consistent with IRLJ 2.4(c).

Amendment to IRLJ 2.1(b)(6) and IRLJ 2.1(b)(7)

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

(7) A statement that a mailed response must be mailed and, if allowed by local court rule, an e-mailed response must be e-mailed, not later than midnight on the day the response is due;

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

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

[Adopted effective January 1, 1981; amended effective September 1, 1992; June 2, 1998; January 3, 2006; November 21, 2006; May 6, 2008; September 1, 2010; July 24, 2012.]

SUGGESTED AMENDMENT
INFRACTION RULES FOR COURTS OF LIMITED
JURISDICTION (IRLJ)
RULE 2.1 – NOTICE OF INFRACTION

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

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

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

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

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

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

SUGGESTED AMENDMENT
INFRACTION RULES FOR COURTS OF LIMITED
JURISDICTION (IRLJ)
RULE 2.1 – NOTICE OF INFRACTION

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

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

6 (7) A statement that a mailed response must be mailed and, if allowed by local court
7 rule, an e-mailed response must be e-mailed, not later than midnight on the day the response is
8 due;

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

10 (9) Any additional information determined necessary by the Administrative Office of
11 the Courts.

12 [Adopted effective January 1, 1981; amended effective September 1, 1992; June 2, 1998;
13 January 3, 2006; November 21, 2006; May 6, 2008; September 1, 2010; July 24, 2012.]
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GR 9 COVER SHEET

Suggested Amendment

INFRACTION RULES FOR COURTS OF LIMITED JURISDICTION (IRLJ) 2.2

A. Proponent:

Washington State Bar Association Rules Committee, IRLJ Subcommittee

B. Spokesperson:

Jon Zimmerman, Subcommittee Chair

C. Purpose:

To create uniformity with an amendment to IRLJ 1.2(b), as well as some cosmetic changes.

Substantively, the amendment to IRLJ 2.2(a) removes “service, and filing” from the present rule because the Subcommittee discussed that issuance alone of a Notice of Infraction can initiate an infraction case. The date an infraction is issued is also in the proposed amendment. Also, this amendment will be consistent with the proposed amendment to IRLJ 1.2(b). The DMCJA also noted that IRLJ 2.2 as presently written added some confusion as to how infraction cases are in reality initiated. Hence, the Subcommittee proposes this amendment.

Cosmetically, sometimes prosecutors issue Notices of Infraction. The amendment removes the term “prosecuting authority” and instead uses the term “prosecutor,” in favor of plain language.

Along the same lines, IRLJ 2.2(b)(1) appeared to lack an apostrophe. The proposed amendment adds an apostrophe.

Finally, the term “Notice” is sometimes capitalized and sometimes is not, even when both terms are referring to the Notice of Infraction (“NOI”). An NOI is usually both a first and final charging document in an infraction case, unlike other notices, such as notices of hearing or payment notices. Hence the amendment to capitalize the term.

Amendment to IRLJ 2.2

(a) Generally. An infraction case is initiated by the issuance, ~~service, and filing~~ of a ~~n~~Notice of ~~i~~Infraction in accordance with this rule. An infraction is issued on (1) the

date the Notice of infraction is handed to the defendant or (2) the date on which the Notice of Infraction is signed and dated by ~~the~~ a citing officer or prosecutor, whichever date occurs first. prosecuting authority

(b) Who May Issue. A notice of infraction may be issued, upon certification that the issuer has probable cause to believe, and does believe, that a person has committed an infraction contrary to law:

(1) By a citing officer. The infraction need not have been committed in the officer's presence, except as provided by statute;

(2) By the prosecuting authority.

(c) Service of Notice. A notice of infraction may be served either by:

(1) The citing officer serving the notice of infraction on the person named in the notice of infraction at the time of issuance;

(2) The citing officer affixing to a vehicle in a conspicuous place the notice of a traffic infraction if it alleges the violation of a parking, standing, or stopping statute; or

(3) The citing officer or the prosecuting authority filing the notice of infraction with the court, in which case the court shall have the notice served either personally or by mail, postage prepaid, on the person named in notice of infraction at his or her address. If a notice of infraction served by mail is returned to the court as undeliverable, the court shall issue a summons.

(d) Filing of Notice. When a notice of infraction has been issued, the notice shall be filed with a court having jurisdiction over the infraction or with a violations bureau subject to such courts supervision. The notice must be filed within five days of issuance of the notice, excluding Saturdays, Sundays, and holidays. In the absence of good cause shown, a notice of infraction not filed within the time limits of this section shall, upon motion, be dismissed with prejudice.

[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, 1999; amended effective January 3, 2006.]

SUGGESTED AMENDMENT
INFRACTION RULES FOR COURTS OF LIMITED
JURISDICTION (IRLJ)

RULE 2.2 – INITIATION OF AN INFRACTION CASE

1 (a) Generally. An infraction case is initiated by the issuance, ~~service, and filing~~ of a
2 ~~Notice of~~ ~~Infraction~~ in accordance with this rule. An infraction is issued on (1) the date the
3 ~~Notice of~~ ~~Infraction~~ is ~~handed to the defendant or (2) the date on which the Notice of Infraction~~
4 ~~is signed and dated~~ by ~~the a~~ citing officer or ~~prosecutor, whichever date occurs first. prosecuting~~
5 ~~authority~~

6 (b) Who May Issue. A ~~Notice of~~ ~~Infraction~~ may be issued, upon certification that the
7 issuer has probable cause to believe, and does believe, that a person has committed an infraction
8 contrary to law:

9 (1) By a citing officer. The infraction need not have been committed in the officer's
10 presence, except as provided by statute;

11 (2) By the prosecuting authority.

12 (c) Service of Notice. A ~~Notice of~~ ~~Infraction~~ may be served either by:

13 (1) The citing officer serving the ~~Notice of~~ ~~Infraction~~ on the person named in the
14 ~~Notice of~~ ~~Infraction~~ at the time of issuance;

15 (2) The citing officer affixing to a vehicle in a conspicuous place the ~~Notice of~~ a
16 traffic infraction if it alleges the violation of a parking, standing, or stopping statute; or

17 (3) The citing officer or the prosecuting authority filing the ~~Notice of~~ ~~Infraction~~ with
18 the court, in which case the court shall have ~~the~~ ~~Notice~~ served either personally or by mail,
19 postage prepaid, on the person named in the ~~Notice of~~ ~~Infraction~~ at his or her address. If a
20 ~~Notice of~~ ~~Infraction~~ served by mail is returned to the court as undeliverable, the court shall
21 issue a summons.

22 (d) Filing of Notice. When a ~~Notice of~~ ~~Infraction~~ has been issued, the ~~Notice~~

SUGGESTED AMENDMENT
INFRACTION RULES FOR COURTS OF LIMITED
JURISDICTION (IRLJ)

RULE 2.2 – INITIATION OF AN INFRACTION CASE

1 shall be filed with a court having jurisdiction over the infraction or with a violations bureau
2 subject to such courts supervision. The ~~h~~nNotice must be filed within five days of issuance of the
3 ~~h~~nNotice, excluding Saturdays, Sundays, and holidays. In the absence of good cause shown, a
4 ~~h~~nNotice of ~~i~~nfraction not filed within the time limits of this section shall, upon motion, be
5 dismissed with prejudice.

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7 [Adopted as JTIR effective January 1, 1981; amended effective September 1, 1989. Changed
8 from JTIR to IRLJ effective September 1, 1992; amended effective September 1, 1997;
9 September 1, 1999; amended effective January 3, 2006.]

Court Rules and Procedures Committee

Subcommittee X Report

April 1, 2019

Subcommittee: Subcommittee X is tasked with considering proposed rule changes outside the scope of the evidence rules and infraction rules being considered in this year's cycle.

Subcommittee members attending the March 29 meeting were Brian Zuanich and Jody Coultier.

Issue being worked on:

Included with this report is a GR 9 coversheet with proposed new language to Superior Court Criminal Rule 8.2 and District Court Criminal Rule 8.2.

This proposed rule change is a carryover from last year's committee.

As is noted in the coversheet, there is inconsistency in court decisions regarding whether a motion for reconsideration is authorized in criminal matters.

Subsequent to the subcommittee's last meeting of January 31, 2019 the subcommittee received comments from WAPA (Pam Loginsky, staff attorney) and two assistant city attorneys from the City of Longview in opposition to the change to the district court rule.

WAPA recommended a different format regarding the proposed changes to Rule 8.2 and the subcommittee was in agreement with those changes.

The objections from the City of Longview assistant city attorneys were twofold: 1) the rule would give a party "another bite at the apple" and 2) would result in "judge shopping".

The committee discussed this opposition and believes that the issue of judge shopping is a non-issue as a motion for reconsideration, in everyone's experience on the subcommittee is always put in front of the judge who made the decision the party seeks reconsideration of. We are not aware of any judge considering a motion for reconsideration of a decision of a different judge.

Regarding the issue of a "another bite at the apple", that is quite a common argument on a motion for reconsideration but it is not an appropriate argument because there also needs to be a basis for filing the motion for reconsideration. So the subcommittee did not believe that was a valid argument against the proposed rule.

Based upon comments made at the full committee meeting, the subcommittee also believes that adding additional references regarding the procedure to use on a motion for reconsideration from CR 59 and CRLJ 59 were appropriate to address the procedural issues.

At the subcommittee meeting then of March 29 it was unanimously agreed that the proposed new language to Superior Court Criminal Rule 8.2 and District Court Criminal Rule 8.2 be presented to the full committee for discussion and we hope approval.

The GR 9 coversheet and proposed rule amendments are included with this report.

GR 9 COVER SHEET
Suggested Amendment
SUPERIOR COURT CRIMINAL RULES (CrR)
Rule 8.2 MOTIONS

A. Proponent: Washington State Bar Association Rules Committee, CrR Subcommittee

B. Spokespersons: Jefferson Coulter, Committee Chairman

C. Purpose:

There is currently a conflict in the case law as to whether the criminal rules allow a motion for reconsideration. State v. Batsell, 198 Wn.App. 1066, unpublished (issued May 2, 2017), illustrates that there is some confusion as to whether a motion for reconsideration is allowed under the criminal rules. The Batsell court noted that State v. Gonzalez, 110 Wn.2d 738, 744, 757 P.2d 925 (1988), noted that civil rules are instructive as to matters of procedure on which the criminal rules are silent. However, State v. Keller, 32 Wn.App. 135, 647 P.2d 35 (1982), held that CR 59 did not apply in criminal cases. In contrast, as the Batsell court noted, “at least two reported decisions in criminal appeals have involved motions for reconsideration without questioning CR 59’s application in criminal cases.” (citing State v. Englund, 186 Wn.App. 444, 459, 345 P.3d 859, review denied, 183 Wn.2d 1011, 352 P.3d 188 (2015); State v. Chaussee, 77 Wn.App. 803, 806-07, 895 P.2d 414 (1995)).

This confusion results in inconsistency across courts. It also presents a problem when a party in a criminal case wishes to move for discretionary review, as the time for filing a notice of discretionary review runs from the entry of an order deciding a timely motion for reconsideration pursuant to RAP 5.2(b).

The district court criminal rules do not have an express provision for motions for reconsideration. To be consistent with the superior court rule it is also recommended that District Court Criminal Rule 8.2 also be amended.

D. Hearing: A hearing is not recommended.

E. Expedited Consideration: Expedited consideration is not requested.

F. Supporting Material: Suggested rule amendments.

SUPERIOR COURT CRIMINAL RULES (CrR)
Rule 8.2 MOTIONS

(a) Rules 3.5 (confession) and 3.6 (suppression) and CR 7(b) shall govern motions in criminal cases.

(b) A motion for reconsideration shall be governed by CR 59(b), (e) and (j).

DISTRICT COURT CRIMINAL RULES (CrRLJ)
Rule 8.2 MOTIONS

(a) Rules 3.5 (confession) and 3.6 (suppression) and CRLJ 7(b) shall govern motions in criminal cases.

(b) A motion for reconsideration shall be governed by CRLJ 59(b), (e) and (j).