

Misdemeanor/Infraction Rules Advisory Committee
Minutes from Meeting of October 2, 2013

Present: Judge Mike Oths, Chair, Judge Tyler Smith, Ralph Blount, Judge Jayme Sullivan, Ben Harmer, Jed Whitaker, Suzanne Johnson and Cathy Derden.

Form for withheld judgments. Misdemeanor Criminal Rule 10(d) states: “For any withheld judgment which is granted in the magistrates division, the court shall enter its order withholding judgment on the following form”, and then a form follows. ISTARS has a version of the Withheld Judgment form but the question arose whether anyone is using this form and following this requirement or whether it has become obsolete. As way of background from Julie Cottrell, the form may have originated due to the way that the computer system tracked withheld judgments before we had windows based ISTARS. All of the committee members reported that they had never seen this form used. Most withheld judgments in misdemeanor cases are done on a one page form. The Committee voted to recommend that subsection (d) and the form be deleted from Misdemeanor Rule 10.

CourtPay information. ISP is adding CourtPay Information and a link to CourtPay to their citations as a third way of paying infractions and some misdemeanors in addition to mailing in the payment or appearing at the clerk’s office and paying in person. According to Kevin Iwersen, CourtPay is available in every county. The Committee recommended that this information be added to the uniform citation information form set out in Misdemeanor Rule 5(g). Specifically this information would be added to the reverse side of the defendant’s copy that gives the PENALTY and COMPLIANCE instructions as follows:

READ CAREFULLY

☐ This is an INFRACTION charge in which:

NOTE: If you fail to appear within the time allowed for your appearance, judgment will be entered against you. Failure to pay the penalty could result in your license being suspended.

1. You may be represented by a lawyer at your expense.
2. You are entitled to a trial before a judge, but you do not have a right to trial by jury.
3. If you admit the offense or are found to have committed the offense, your fixed penalty and costs cannot be increased or decreased by the judge.
4. DENIAL OF CHARGE. If you do not feel you committed the offense(s) you may appear before the clerk of the court and DENY the charge, or you may indicate your denial below, within the time allowed for your appearance, and you will be given a trial date by the clerk.

☐ I DENY VIOLATION ☐ #1 ☐ #2. A court trial will be set and a notice sent to your home address.

5. ADMISSION OF CHARGE. You may admit the charge by mailing to the court (within the time allowed for your appearance) this copy of the citation together with your personal check or money order for the amount of the fixed penalty and costs. You may also pay over the Internet by going

to <http://courtpay.idaho.gov>. Payment of the fixed penalty and costs by mail or via the Internet will cause a judgment to be entered against you for the infraction for which driver violation points may be assessed against you by the Department of Transportation, OR You may go before the clerk of the court, within the time allowed for your appearance, to enter your admission at which time you must pay the same fixed penalty and costs.

FIXED PENALTY AND COSTS

VIOLATION #1 \$ _____

VIOLATION #2 \$ _____

Total Penalty and Costs \$ _____

☐ I ADMIT TO VIOLATION ☐ #1 ☐ #2 and enclose my check for the full penalty and costs.

MAIL TO: MAGISTRATE COURT,

_____ Idaho 83

☐ This is an infraction for failure to have insurance. If you admit the charge or are found to have committed the charge, your driver's license will be suspended until you pay the fixed penalty, provide proof of insurance to the Driver's Services Bureau of the Department of Transportation and pay a reinstatement fee.

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☐ This is a MISDEMEANOR charge in which:

NOTE: If you fail to appear within the time allowed for your appearance, another charge of failure to appear may be filed and a warrant may be issued for your arrest.

1. You may be represented by a lawyer, which will be at your expense unless the judge finds you are indigent.

2. You are entitled to a trial by jury if requested by you.

3. PLEA OF NOT GUILTY. You may plead not guilty to the charge by appearing before the clerk of the court or the judge, within the time allowed for your appearance, at which time you will be given a trial date.

4. PLEA OF GUILTY. You may plead guilty to the charge by going before the clerk of the court, within the time allowed for your appearance, at which time you will be told if you can pay a fixed fine or whether it will be necessary for you to appear before the judge;

OR

You may have your fine determined by a judge at a time arranged with the clerk of the court, within the time allowed for your appearance.

5. If you plead guilty, you may still give an explanation to the judge.

6. You may call the clerk of the court to determine if you can sign a plea of guilty and pay the fine and costs by mail or over the Internet by going to <http://courtpay.idaho.gov>.

Traffic Safety Education Program. Effective January 1, 2014, there is a new statute, I.C. § 50-336, that allows cities by ordinance to elect to offer a traffic safety program to drivers issued an infraction citation as an alternative to receiving violation points and insurance rating changes. The statute states that “[a]t the time of issuance of the citation, the drivers shall elect whether they wish to attend the program and, if so, the citing police officer shall record the election in the uniform citation.” The Committee discussed how this election would be made on a citation. Since not every city will be offering a traffic safety education program the Committee did not recommend adding language to the uniform citation addressing this issue. Officers now have room on a citation to make officer notes and an officer could make a note of the election on the citation in this manner or a preprinted sticker could be placed on the citation as is done with the Alive After 25 program. It will be up to cities that adopt such an ordinance to determine how to advise and make note of the election.

E-Citations and Officer’s Signature. An issue recently arose as to whether e-citations require an officer’s signature to show proof of service. Misdemeanor Rule 5(d) provides: “Service of Citation. Service of a citation may be made by the defendant signing a written promise to appear on the citation at the time indicated, but if the defendant fails or refuses to sign the written promise to appear, or an electronic citation is issued, a peace officer may serve the citation on the defendant by personal delivery to the defendant and indicate such service on the face of the citation.” The committee minutes from 2010 reflect there was concern about e-citations and the ability to have the defendant’s signature to show proof of service, not the officer’s. Thus, Misdemeanor Rule 5(d) on service of citation was amended in 2010 to add that if an electronic citation is issued a peace officer may serve the citation on the defendant by personal delivery to the defendant and indicate such service on the face of the citation. The committee contemplated a box on the e-citation where the officer could check he had personally served the defendant and ISTARS did add this box so that some affirmative action on the part of the officer is required. The Committee members discussed the possibility of electronic signatures on the part of the officer and the defendant but recognized that the e-citation machines were not designed for the defendant to sign the citation and found a box for an electronic signature was really no different than checking a box to indicate service. Before any defendant is defaulted on a citation, he or she is sent a notice and if there is an issue as to service the defendant has an opportunity to raise it at this time.

Infraction Rule 9(b)(30). This rule sets out the penalty for “All-terrain vehicle and snowmobile infractions. Driving on highway. Section 67-7109, Idaho Code”. It was noted that I.C. § 67-7109 refers only to snowmobiles and a question was raised as to whether the reference to ATVs should be deleted. Rule 9(b)(32) references the penalty for “all other all-terrain vehicle and snowmobile infractions. Sections 67-7102 through 67-7112, 67-7122, 67-7125, Idaho Code.” Ralph Blount believed there was a specific statute on driving ATVs on the highway and suggested that code section be added to 9(b)(30). Ralph volunteered to look up the information and a proposal will be circulated to the committee with the minutes.

Bail Bond Schedule. The schedule found in Misdemeanor Rule 13 lists a violation of most subsections of I.C. § 49-331 as payable misdemeanors under Rule 14. This includes:

49-331(1) Displaying mutilated or	201.00
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fictitious license	
49-331(2) Lending or permitting use of license by another	221.00
49-331(3) Displaying a license of another as one's own	271.00
49-331(4) Failure to surrender license when revoked or suspended	271.00
49-331(6) Permitting any unlawful use of license	271.00

Since this statute provides that the “court upon conviction may enter an order directing the department to suspend the driver's license, a permit to drive, privileges or any nonresident's driving privileges for a period of ninety (90) days,” a question was submitted by one of the clerks as to whether this should be payable or require an appearance. The suspension is discretionary and Misdemeanor Rule 14(a) provides that the judge may determine summary disposition under this rule is not appropriate. The violations have been payable for some time and no problem has arisen. No change was recommended.