

HONORABLE JOHN C. COUGHENOUR
Hearing Date: November 20, 2009
Oral Argument Requested

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MICHAEL TODD, et al.,

Plaintiffs,

v.

CITY OF ABERDEEN, et al.

Defendants.

No. 09-cv-01232 JCC

PLAINTIFFS' RESPONSE TO RENTON'S
MOTION FOR JUDGMENT ON
THE PLEADINGS

NOTE ON MOTION CALENDAR:
November 20, 2009

I. INTRODUCTION

The municipal Defendants have filed pleadings indicating their agreement with Motions filed by the traffic camera Defendants ("Redflex" and "ATS") on many issues, including whether some or all failed to obtain proper approval of the Notices of Infraction that were sent to persons cited for a traffic camera violation. The City of Renton has submitted its own briefing on this issue. This brief responds to all arguments raised regarding the need for approval of citations, and should apply to all Defendants.

PLAINTIFFS' RESPONSE TO
RENTON'S MOTION FOR JUDGMENT
ON THE PLEADINGS - 1
[Cause No. 09-cv-01232 JCC]

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1 **II. STATEMENT OF FACTS**

2 To put it simply, many of the tickets issued to plaintiffs were unlawful attempts to initiate
3 civil proceedings. For an infraction to be lawfully initiated, a proper form must be utilized. If a
4 proper form is not utilized, no infraction is issued and there is no presumption that an infraction
5 has been committed. RCW 46.63.060(1) (“A notice of traffic infraction represents a
6 determination that an infraction has been committed. The determination will be final unless
7 contested as provided in this chapter.”)

8 Per RCW 46.63.060(2), the form for the notice of traffic infraction shall be “**prescribed**
9 **by rule of the supreme court**”. . . (emphasis added) The “rules of supreme court” described in
10 RCW 46.63.060 are found in the Infraction Rules of Limited Jurisdiction. The initiation of an
11 “infraction case” is guided by the IRLJ’s, which govern the procedure in courts of limited
12 jurisdiction for all cases involving “infractions.” Infractions are “noncriminal violations of law
13 defined by statute.” (IRLJ 1.1(a)).

14 IRLJ 1.2(a) defines an “Infraction case” as a civil proceeding initiated in a court of
15 limited jurisdiction pursuant to a statute that authorizes offenses to be punished as infractions.
16 IRLJ 1.2(b) describes a “Notice of infraction” as a “document initiating an infraction case when
17 issued and filed pursuant to statute and these rules.”

18 IRLJ 2.1(a) also states that a Notice of infraction must be filed on an approved form:

19 **IRLJ 2.1(a) Traffic Infraction Form Prescribed by the Administrative Office of the**
20 **Courts.** Traffic infraction cases shall be filed on a form entitled “Notice of Traffic
21 Infraction” prescribed by the Administrative Office of the Courts; except that the form
22 used to file cases alleging the commission of a parking, standing or stopping infraction
23 shall be approved by the Administrative Office of the Courts. Traffic infraction forms
24 prescribed by the Administrative Office of the Courts are presumed valid and shall not be
25 deemed insufficient by reason of defects or imperfections which do not prejudice
26 substantial rights of the defendant. [emphasis added]

1
2 Thus, there are two types of forms that may be used in infraction cases. First, “traffic
3 infraction” cases must be filed on forms prescribed by AOC. AOC does have a standard form
4 that is used by law enforcement throughout Washington for traffic infraction cases such as
5 speeding tickets. (*See* Exhibit 1 to Declaration of Andrea Robertson (“Robertson Decl.”)- AOC
6 July 17, 2009 email). Second, “parking, standing, or stopping infractions” must be filed on
7 forms that are **approved** by AOC. AOC has a formal approval process including checklists and
8 an AOC attorney’s review of proposed forms. (*See* Robertson Decl. Exhibit 2 - Redflex
9 representatives emailing with AOC attorney Haake). In the Plaintiffs’ cases, the Defendants
10 were either required to use the standard “traffic infraction” form or a specially approved
11 “parking, standing or stopping infraction” form. A number of Defendant Cities (including
12 Renton), with the assistance of Defendant Companies, used neither form.

14 III. LEGAL ARGUMENT

15 A. Response to Redflex and ATS Arguments

16 Defendants Redflex and ATS (whose briefs are incorporated by reference in the Renton
17 and Cities briefs) engage in a tortured analysis which defies logic and semantics. Redflex claims
18 “the forms used for traffic infractions need only be consistent with the contents *prescribed* by the
19 AOC” but claims that AOC approval is only needed for “parking, standing, or stopping
20 infractions.” “Prescribe” is defined by Blacks Law Dictionary as “To lay down authoritatively
21 as a guide, direction or rule; to impose as a peremptory order; to dictate; to point, to direct; to
22 give as a guide, direction, or rule of action; to give law. To direct; define; mark out.” Whether
23 this Court finds that the Safety Camera infractions are to be treated as “parking” infractions,
24 “traffic” infractions, or “parking, standing, stopping” infractions, the result is the same – an
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1 approved form must be used. As a number of the Defendant Companies or Cities chose not to
2 use a pre-approved standardized AOC form, they authored their own forms. IRLJ 2.1 requires
3 “approval” of these forms before they can be used to initiate an infraction. In **either** instance,
4 AOC involvement is necessary for an infraction to be lawfully initiated.
5

6 Redflex attempts to claim that IRLJ 2.1(a) shall not deem a notice “insufficient by reason
7 of defects ...which do not prejudice substantial rights of the defendant.” But the Company only
8 selectively quotes the rule, failing to mention the preceding requirement that these “defects” will
9 only be ignored if the defective form was still a form **prescribed** by the AOC.

10 Preliminary attempts at investigation by Plaintiffs have found numerous instances of
11 forms which lacked clarity regarding legal consequences, ignored provisions in the statute for
12 contesting responsibility, or misstated burdens. Plaintiffs have been provided proof that **Redflex**
13 **itself** took steps in 2006 to obtain AOC approval of forms for four different cities. Redflex
14 Regional Representative Glen Post and Redflex Director of Programs Jack Weaver
15 communicated with AOC in a clear attempt to meet the AOC requirements mandated by the
16 IRLJ’s. Attached as Exhibit 2 to the Robertson Declaration is a 2006 email exchange between
17 Mr. Post, Mr. Weaver, and Douglas Haake of the Administrative Office of the Courts. Redflex
18 attempted to obtain AOC approval not only for 4 cities (Auburn, Lakewood, Moses Lake and
19 Seatac), but specifically indicated that they wish to “use approved templates for other cities that
20 contract for our services.” Notably, all four forms failed to meet AOC approval and were
21 rejected by AOC. Specific provisions in the submitted forms were brought to the attention of
22 Redflex for alteration. These included requirements to make court information more prominent,
23 to clarify misstatements of the law, to properly present sworn testimony by the citing officer, as
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1 well as to clarify options for contesting or mitigating these infractions. As of May 22, 2009,
2 Seatac, Lakewood, and Auburn still persisted in using forms that had NEVER been approved by
3 AOC (Roberson Decl. Exhibit 4), (response from AOC to Plaintiff counsel's Public Disclosure
4 request).

5
6 Several Defendant Cities themselves have undergone efforts to obtain AOC approval of
7 their safety camera forms, and several did so **after** this lawsuit was filed, **including** the City of
8 Renton. Notably, the Defendant Companies submit apparently *revised* versions of their Notices
9 of Infraction with their motions to dismiss, failing to notify this Court that these forms were
10 approved by AOC **subsequent** to the filing of this lawsuit.

11 The Administrative Office of the Courts has taken the firm position that citations for
12 infractions without approved forms are "unlawful" initiations of infraction proceedings.
13 (Robertson Decl. Exhibit 1 - July 17, 2009 email between AOC and various police and court
14 personnel, including the District and Municipal Courts Judges Association of Washington). This
15 email related to a change in the "approved" form, and explained that the older form would be
16 non-approved after a certain date. The email states,

17
18 Agencies which perform law enforcement are hereby informed that
19 the forms you are currently using will no longer be approved
20 forms, and therefore will not be acceptable for filing after
21 September 30... The criminal court rules (CrRLJ 2.1(b)(1)) and the
22 infraction court rules (IRLJ 2.1), direct the **courts only to accept**
23 **Notice of Infraction and Criminal Citations written on forms**
24 **approved by the AOC**. A general court order may be issued by
25 the local court directing any forms mistakenly accepted by the
26 court **will not be treated as filed**, and should be returned to the
law enforcement agencies...The Department of Licensing may
reject the submittal of non-approved forms. Convictions may not
be recorded on the driver's record. (*Emphasis added*)

1 The Plaintiffs who were issued unapproved notices were never issued lawful traffic
2 infractions (per RCW 46.63.060(2) and IRLJ 2.1), were not presumed to have committed the
3 infractions (per RCW 46.63.060(1)), were not required to respond to the infractions (per RCW
4 46.63.070(1)), the officer's statement included in an unapproved notice could not and cannot be
5 admitted in a hearing (RCW 46.63.090(2)), and most importantly: a plaintiff could not be
6 assessed a monetary penalty unless he/she committed a traffic infraction (RCW 46.63.110(1)).
7 Because Defendants failed to follow Washington law by having their notices approved by AOC,
8 they were and are without jurisdiction to assess, collect, or keep any monetary penalty.

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10 **B. Response to City of Renton Argument**

11 The City of Renton has filed a motion which provides neither clarity nor any issues of
12 merit. Renton alleges that IRLJ 2.2 somehow governs the format of a notice of infraction, and
13 because it does not use the word "approved" in IRLJ 2.2, the form does not require AOC
14 approval. IRLJ 2.2 governs the initiation of an infraction case, not the form of the notice. The
15 IRLJs clearly designate Rule 2.1 as the provision which governs the form and substance of a
16 notice of infraction. Renton's argument is nonsensical.

17
18 Further, Renton argues that RCW 46.63.060(2) doesn't use the word "approved" and
19 therefore approval of the form is not necessary. Again, the City's argument is misplaced. RCW
20 46.63.060(2) does indeed dictate that "The form for the notice of traffic infraction shall be
21 prescribed by rule of the supreme court . . ." Of course, the rule of the supreme court that is
22 referenced is found in the Infraction Rules for Courts of Limited Jurisdiction (IRLJs).

23
24 Prior to the initiation of this lawsuit, Renton itself did not have an AOC "approved"
25 version of a safety camera infraction notice. Interestingly, on September 24, 2009
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1 (approximately 3 months after this suit was filed), Renton received approval of a form they had
2 finally submitted for consideration. For a City that claims no approval was needed, the timing of
3 their submission for approval provides telling insight.

4 Prior to approval, Renton's form contained the following provisions which AOC found to
5 be grounds to deny approval to other cities with similar forms. More is expected to be found in
6 full discovery efforts:

- 8 ● Missing item by AOC: no signature of citing officer, only a typed name indicated. AOC
9 requires a pin and password be used if an electronically generated citation is used.
- 10 ● Perjury language not proper: AOC requires officer to state that the "foregoing is true and
11 correct" ... and sign after a statement of facts. Instead, Renton form does not encompass
12 a vehicle description, location, etc. in the sworn statement language, as required by
13 perjury statute.
- 14 ● Information on how to request hearing is on a completely separate form from the notice
15 of infraction. The form is called "hearing request form" and is not apparently part of the
16 notice of infraction. It must all be provided on one form, per RCW 46.63.060(2)(e-f).
- 17 ● Phone number of court is buried in the documents sent to a plaintiff, and is not readily
18 available. It does not even appear on the notice of infraction, it is found only on the
19 Hearing Request Form. AOC denied approval of an Auburn form submitted or
20 consideration for a similar problem. AOC found that the phone number was not
21 "prominent and readily available."
- 22 ● While form mentions that failing to appear on this infraction can cause non-renewal of
23 vehicle registration, it misses the language of the statute as required by RCW 46.63.060
24 (2)(i), that "until any penalties imposed pursuant to this chapter have been satisfied."
25 Thus, Renton appears to make the non-renewal consequence endless.

18 Since the initiation of this lawsuit, several other Defendant Cities have scrambled to
19 obtain AOC approval for forms. According to Plaintiffs' preliminary attempts at investigation,
20 this may include Renton, Lynnwood, Lake Forest Park, Fife, and Bellevue. Which means that
21 these cities were attempting to cite Plaintiffs with unapproved forms prior to this suit.

22 Interestingly, at one point, Bremerton received a preliminary approval, though AOC still
23 requested that a defect in the Bremerton form be changed. (See Robertson Decl attached to
24 Plaintiff's Response to Cities Motion to Dismiss, Exhibit 1) This change was not made prior to
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1 Bremerton’s attempted issuance of infractions. Some cities have continued to ignore the AOC
2 requirements, and based on the most recent information provided to Plaintiffs, Seatac, Monroe,
3 Lakewood, Bonney Lake, and Auburn continue to have no AOC approval for their safety camera
4 infraction forms. Notably, Seatac, Lakewood, and Auburn all submitted forms for approval,
5 were explicitly denied approval, and chose to cite plaintiffs with defective forms anyway. (See
6 Robertson Decl.- Exhibit 3)
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8 Any and all forms utilized by the Defendants which were not approved by AOC are to be
9 treated under State law and Supreme Court rule as defective. Any infractions initiated with these
10 forms should be treated as “unfiled” and thereby unlawful attempts to collect a debt from
11 unsuspecting Plaintiffs.
12

13 IV. CONCLUSION

14 The portion of the Defendants’ Motions which seek dismissal of claims related to
15 approval of the forms of citation should be denied.
16
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18 DATED this 9 day of November, 2009.

19 Breskin Johnson & Townsend
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CERTIFICATE OF SERVICE

PLAINTIFFS’ RESPONSE TO
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1 I, Leslie A. Listy, hereby certify that on November 9, 2009, I electronically filed the
2 foregoing document with the Clerk of the Court using the CM/ECF system which will send
3 notification of such filing to all attorneys of record.
4

5 s/Leslie A. Listy
6 Leslie A. Listy, legal assistant
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