

## **A Cyclist's Account of The Citizen Initiated Violation Proceedings in Washington County (ORS 153.058)**

Following is a summary of how I used the Citizen Initiated Violation Proceedings process in Washington County, Oregon to successfully prosecute a motorist that struck me on my bicycle commute home. **The total process took about 5 months** (4 of these months was waiting for the defendant to make a plea and then for a court/trial date), **approximately 16 hours of my time, and about \$10 for a public records request** used to ensure I was armed with information prior to going to trial.

### **What Happened?**

I was commuting home on my bicycle at approximately 4:30pm on Dec. 13th, 2007. I was proceeding westbound on SW Tile Flat Road (approx. 300 feet west of SW Grabhorn Road). As there is no shoulder, I was riding in the outside wheelpath of the travel lane. Three to four cars passed me and gave me a fairly wide berth (4 feet), and the next car came right beside me and hit my left elbow with its passenger side view mirror, then proceeded to drive off.

I luckily was able to stay upright and I quickly looked at the rear of the vehicle to get the license plate info. I was uninjured but upset that the driver of the vehicle had room to safely pass (there was no oncoming traffic), but instead chose to "clip" me.

### **How I Got the Process Started**

Once I arrived home, I wrote down everything I remembered about the incident (description of vehicle, license plate #, date, time, weather conditions, etc.). I recalled attending workshop sponsored by the Bicycle Transportation Alliance (BTA) where attorney Ray Thomas spoke about cyclist's rights and how a citizen can have a motorist cited. I called Ray Thomas the next day and he encouraged me to follow the process and gave me important advice about the likely offense that the motorist could be cited for, ORS 811.410 (1)(a) (unsafe passing on the left).

I next contacted the Washington County Sheriff's Office non-emergency phone # (503-846-8611). I talked with Deputy Amos who wasn't familiar with the citizen initiation process, but looked up ORS 811.410(1)(a) and agreed that it looked to be the applicable violation for citing. He directed me to come into the Washington County Records Department, file a written complaint, swear in front of a clerk of the court that it is true, sign the complaint, and then an officer will serve the complaint/citation.

The next day I drove to the Washington County Records Department and Corporal Steve Brown (a patrol/traffic officer) took my testimony in the presence of Doug Price (Records Clerk). After taking my testimony, I swore all my statements were true and signed the complaint/citation. the who wrote the actual citation after confirming owner of vehicle was driving the vehicle at the time of incident.

### **What Happened Next?**

An investigation was completed and the registered owner of the vehicle admitted seeing me on my bicycle on the date and time the incident occurred. Based on my sworn testimony, Corporal Brown determined there was probable cause to cite the driver and issued a citation on December 29, 2007. A few days later I went back to the records department to obtain a copy of the citation and accompanying report. A court date was set (January 29, 2008) for the "defendant" to make a plea ("guilty," "no contest," or "not guilty"). The defendant pleaded "not guilty" by mail prior

to the court date. During the first week of April 2008, I received a subpoena to appear in court on April 14, 2008.

### **What to Expect If You Go to Trial**

The officer that issued the citation was asked by the judge to give his testimony first. The officer essentially restating for the record that I gave sworn testimony, he investigated the testimony, believed that there was probable cause to issue the citation, and lastly he issued the citation.

Although I expected to give my testimony next, the judge then asked the defendant to give his side of the story. The defendant then testified that he did see me in the roadway, but simply drove into the oncoming lane and passed me without contact.

I gave my testimony last and provided the judge a copy of some maps and pictures I took of the incident location to help him visualize the scene. I reiterated that I was riding in the outside wheelpath of the travel lane since there was no bike lane or shoulder, the speed I was traveling (displayed on my cycling computer), and that a few cars passed me giving a wide berth ( 3-4 feet). I then stated that I heard the defendant's vehicle behind me and was surprised to see it traveling right next to me, but at a speed just barely faster than mine, and that the car's passenger side view mirror struck my left elbow.

I noted that the primary reason I was able to get a good look at both the vehicle and license plate was that the vehicle was traveling slowly and was very close to me. I also stated that had the vehicle been traveling faster and been farther away from me it would have been difficult to make out the license plate.

The judge then asked the defendant if he had anything to add. The defendant stated something along the lines of "after he passed me he saw in his rearview mirror that I was still upright and riding along." This seemed odd to me and seemed to indicate that the defendant had a reason to look back.....maybe because he knew he had clipped me or came too close.

Lastly, the judge asked if I had anything to add. I only noted that I drove an automobile too and that there is room on the road for both bikes and cars. Then the judge asked the officer if the State had any recommendation on the case, and the officer stated he did not.

The judge then addressed the defendant and explained the ORS law about passing on the left and noted that he believed that the defendant did try to pass me, but didn't perform the maneuver safely in accordance with the law. He recommended that the defendant make sure to pass safely in the future and not come back into the lane until he has completely overtaken the vehicle. **The final ruling was that the defendant was cited for unsafe passing on the left, ORS 811.410 (1)(a), a \$242 fine.**

### **Lessons Learned**

- ***You have a better chance of success if you can be politely assertive, courteous, and patient when interacting with Washington County Sheriff and Court personnel.*** I believe this is important because the person you are dealing with might not be familiar with the process and will likely be more responsive and helpful if you are polite.
- ***If at all possible, try to get a look at the driver of the vehicle.*** This is important because an officer typically investigates to try and determine if the registered owner of the vehicle was driving the vehicle at the time the incident occurred. If the officer can't determine this, and you didn't get a look at the driver, the officer might not have probable cause to serve the citation.
- ***Before you make a trip to the Records Department,*** call and confirm that a "clerk of court" will be available so you can swear/attest and sign that all testimony you gave is

- true (otherwise you may waste trip or have to wait until they can find an available clerk).
- ***If a citation is served/issued, obtain the traffic citation # and case # for your records*** (you will need these numbers to obtain copies of the information via a public records request).
  - ***Call the court in advance of the date the defendant is scheduled to make a plea to check on the status of the case.*** In my case I appeared at the court the date the defendant was scheduled to make a plea, but found out that he had already plead “not guilty” by mail in advance of the plea date.
  - ***If the case does go to trial, be prepared. You don’t have to prove beyond a reasonable doubt that the defendant is guilty, but the judge does need to believe your account (say 51% more than the defendant’s account (say 49%) for you to be successful.***

Obtain a copy of the citation and case file/report via a public records request. Review the report and pay special attention to the statements made by the defendant. I used Google Maps to create both a vicinity map and map of the incident location.

Additionally, I took several pictures of the roadway at the location of the incident and also pictures of my bike and clothing that I was wearing (the latter to establish that I was highly visible and had proper reflective devices). I then presented the maps and pics to the judge to help him visualize the incident location and roadway conditions when I gave my verbal testimony.

### **Washington County Contacts/Info**

Sheriff Non-Emergency #: (503-846-8611),  
General Website: <http://www.co.washington.or.us/cgi/sheriff/lec.pl>

Sheriff’s Records Department  
215 SW Adams, MS 32  
Hillsboro, OR 97123  
Phone (503) 846-2700  
Web: <http://www.co.washington.or.us/sheriff/service/records.htm>

Doug Price (Records Clerk/Clerk of the Court)  
Phone (503) 846-2700

Corporal Steve Brown (Patrol)  
(503) 846-3998 ext. 1046  
Email: [stephen\\_brown@co.washington.or.us](mailto:stephen_brown@co.washington.or.us)

Public Records  
Request Forms: [http://www.co.washington.or.us/sheriff/service/docs/rec\\_req.pdf](http://www.co.washington.or.us/sheriff/service/docs/rec_req.pdf)