From: OFFICE RECEPTIONIST, CLERK
To: Linford, Tera
Cc: Tracy, Mary
Subject: FW: Proposed rule changes
Date: Monday, September 28, 2020 1:07:38 PM
Importance: High

From: Carole Highland [mailto:carole.highland@co.kittitas.wa.us]
Sent: Monday, September 28, 2020 12:45 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Cc: Greg Zempel <greg.zempel@co.kittitas.wa.us>
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Hello, I write to share my concerns with several of the proposed rule changes. I start with **CrR 3.4 and CrRLJ 3.4**. While it may seem more convenient to allow defendants to appear through their attorneys and miss actual in-court participation of their case, I believe it will have the opposite effect. The rule speaks to those instances when a defendant is unavoidably unable to come to court. My experience has been that in such a situation, a defense attorney requests and receives a rescheduled court date, unless there is good cause to believe that the request is an abuse of the system. However, to excuse the defendant for the sake of "expediency" only means that court proceedings will be extended longer, and cases will clog the calendar. For example, a defendant does not appear for a scheduling hearing. His or her attorney is there, and has the authority to set hearings. A 3.5 hearing is set and officers are subpoenaed. It later turns out that the defendant had told his or her attorney that that date wasn't any good, hadn't told his or her attorney that date wasn't any good, or the attorney is unable to contact the client to give him or her the date. In the meantime, subpoenas are sent, witnesses appear, victims who wish to stay abreast of the proceedings appear, the court and counsel prepare, and nothing happens.

It is unclear how by allowing the defendant to absent him or herself from the proceedings will streamline the system or add to any type of efficiency. In the above referenced example, say the defendant signs a scheduling order, and then denies it? Is that now a mini-hearing that has to be held? What if a signed stipulation is entered which the defendant denies on the eve of trial? Is that now a mini-hearing that has to be held? Will we hold the defense bar to the burden of notifying the defendant of required court hearings? Will we need to put the defense attorney under oath if there's a conflict between his/her assertion regarding the defendant's knowledge or agreement, and the defendant's assertion? What about the rights of victims, who sometimes show up for every hearing? Delaying proceedings may result in the loss of witnesses, or the loss of evidence. Delaying proceedings is stressful not

only for the victims, but for the defendants themselves. Finally, I have a concern that by allowing a defendant to absent themselves from the proceedings, we really lessen the formality and seriousness of the court system. It is an important process for everyone involved, the defendant, the defendant's family, the victim, the victim's family, the State, the court, and the attorneys. Allowing the defendant to appear in somewhat of a hit and miss fashion seems to derogate the proper and methodical process that we call the justice system. The take away seems to be that it really isn't all that serious or important, when in fact, it is, for all concerned, and society as a whole.

I also have some concerns with the proposed changes to rules **CrR 3.1(f), CrRLJ 3.1(f), and JuCR 9.3(a)** which would mandate that all requests for funds for experts on the behalf of defendants occur in an *ex parte* fashion. This requirement seems to remove the discretion from the trial court who may have good cause to seek input from the prosecutor. I personally cannot think of a single time that the court has asked me about the expenditure of public funds for a defense expert, so I am of the opinion that if it isn't broken, don't fix it. Additionally, I can conceive of a scenario in which the request for the expenditure accompanies a request to control, utilize, manipulate, or test the State's evidence without the court being able to either notify, or seek input, from the State. I can also conceive of a defense request for a specific expert which has serious scheduling ramifications for the State's witnesses and/or victim. The upshot is that the court should not have their discretion taken away in this particular area.

Finally, I'd like to indicate my support for the proposed amendment to **CrR 8.2 and CrRLJ 8.2** to allow and/or clarify the ability to file a motion for reconsideration. Motions for reconsideration add a buffer between the trial court and reviewing courts and would allow the trial court the opportunity to clarify, correct, or confirm the record. It's important that litigants have this opportunity, and that the trial court have that ability.

Thank you for your consideration of my comments.

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