



September 26, 2020

The Honorable Charles Johnson, Chair
Supreme Court Rules Committee
Temple of Justice
PO Box 40929
Olympia, WA 98504-0929
VIA EMAIL: supreme@courts.wa.gov

Re: Response to Concerns Regarding Suggested Changes to Superior Court Criminal Rule 3.4 and Criminal Rule for Courts of Limited Jurisdiction 3.4

Dear Justice Johnson:

WDA has proposed changes to CrR 3.4 and CrRLJ 3.4 that would allow people accused of crimes to appear through their attorneys at some hearings, freeing them to attend work, treatment or school, or to take care of their children. In discussing our proposal with others, we have heard support based on fairness and a desire for a more functional court process and concerns based on lack of attorney-client communication and the speed at which parties would resolve criminal cases under changed court rules. While the proposed rules would require some defenders and prosecutors to change the ways they handle their caseloads, best practices militate against requiring defendants to attend numerous hearings, which are often just “ticklers” for the lawyers or the court, where their presence is not necessary.

The proposed rule rightly assumes defense counsel will communicate with their clients before and after hearings. This is their responsibility under the Rules of Professional Conduct (RPCs) and Washington case law. RPC 1.4(a)(3) (lawyer must keep client reasonably informed about client’s case); *State v. James*, 48 Wn.App. 353, 361–62 (1987) (“failure to communicate a plea bargain or failure to discuss a potential plea bargain may constitute ineffective assistance of counsel”). Courts can rely on defense attorneys to relay important information to their clients. *See Washington Supreme Court Amended Order No. 25700-B-607; Washington Supreme Court Revised and Extended Order Regarding Court Operations No. 25700-B-615; Washington Supreme Court Second Revised and Extended Order Regarding Court Operations No. 25700-B-618; Washington Supreme Court Third Revised and Extended Order Regarding Court Operations No. 25700-B-625.* (requiring defense attorneys to provide court dates to their clients following continuances due to COVID 19).

There might be fewer last minute plea bargains under amended court rules, but cases would continue to resolve, and the amended rules would encourage better practice and planning by

all parties. If prosecutors review discovery and discuss it in advance with defense counsel and defense counsel conveys that information to their clients, the parties will know in advance how they plan to proceed in each case. Counsel could then calendar the appropriate motions and hearings. Defendants should not bear the burden of the disorganization of the lawyers handling their cases.

Adoption of WDA's court rule proposal will encourage lawyers to prepare for hearings and communicate with each other and their clients. It will also allow those charged with crimes to attend to their responsibilities rather than attend multiple hearings that, practically, do not require their presence.

Sincerely,

A handwritten signature in black ink that reads "Magda Baker". The signature is written in a cursive style with a long, sweeping horizontal line extending to the right.

Magda Baker, Misdemeanor Resource Attorney

From: [OFFICE RECEPTIONIST, CLERK](#)
To: [Linford, Tera](#)
Cc: [Tracy, Mary](#)
Subject: FW: comment on court rule proposal
Date: Monday, September 28, 2020 8:12:18 AM
Attachments: [image002.png](#)
[image003.png](#)
[09.26.20 SUBMITTED WDA comment-3.4 rule proposal response to concerns.pdf](#)

From: Magda Baker [mailto:Magda@defensenet.org]
Sent: Saturday, September 26, 2020 8:35 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: comment on court rule proposal

Please see attached comment regarding proposed changes to CrR 3.4 and CrRLJ 3.4.

Magda Baker
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This exchange of information does not create an attorney-client relationship nor does it constitute legal advice. The Washington Defender Association (WDA) expects you will evaluate this information and independently decide how to best represent your client. The name of your client, if disclosed to the resource attorney, is considered confidential; however, for the purposes of recordkeeping, we may provide your name and general information about the type of assistance you received to other WDA staff, the WDA board, or the Washington State Office of Public Defense.