Tracy, Mary

From: OFFICE RECEPTIONIST, CLERK
Sent: Thursday, December 08, 2016 12:12 PM
To: Tracy, Mary
Subject: FW: Do not eliminate "Only by Agreement" language from GR 30

Forwarding.

From: John Patrick Mucklestone [mailto:johnpatrickmucklestone@comcast.net]
Sent: Thursday, December 08, 2016 12:07 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Cc: Mucklestone, Jm Office <jeannie@mucklestone.com>
Subject: Do not eliminate "Only by Agreement" language from GR 30

Please note my objection to changing GR 30 for the reasons stated below by attorney Jeannie Mucklestone.

Her reasons are well stated, very true, and would result in defendants being deprived of Due Process.

Thank you.

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From: Jeannie Mucklestone
Sent: Thursday, December 8, 2016 11:29 AM
To: supreme@courts.wa.gov
Subject: Do not eliminate "Only by Agreement" language from GR 30

GR 30 Electronic Filing and Service

- Permit electronic filing of certified records of proceedings, conforming to practice;
- Strike the corresponding reference prohibiting such in the comment;
- The current rule permits electronic service of documents only when 1) local rule mandates electronic filing, and 2) the parties agree to accept electronic service. The CMC recommends striking the phrase "only by agreement" to reflect current practice;

I strongly object the striking of the phrase "only by agreement".

Contrary to the commentary by the proponent, this does not reflect current practice. The change is not trivial as the comment implies. While I am certain there are more examples, I am providing one that clearly shows that removing consent can result in an unfair advantage to one party at a minimum and more importantly can impede

access to justice for the client.

As background, I have been representing clients who receive DUIs, Criminal misdemeanors, speeding and traffic tickets for the past 27 years. The CrRLJ and IRLJ rules have never allowed one party to arbitrarily serve another without their consent unless the service is by mail or in person. Eliminating the "only by agreement" phrase allows service 24 hours a day on any day including holidays. This is not right. Counsel should not be forced to respond to work related matters 24 hours a day.

According to the Infraction Rules for Limited Jurisdiction, discovery may be served by the prosecutor until one day before the hearing unless prejudice can be shown (which is extremely difficult to do). Both my peers and I have had situations where we can have more than 40 infraction cases scheduled on a single day. If the rule change is implemented, discovery for 40+ cases can be emailed or faxed to defense counsel without consent on the day (even in the afternoon or evening) before the hearing. If "only by agreement is eliminated" the prosecution can argue that they complied with both GR 30 and the discovery rule under IRLJ 3.1(b) . If defense counsel did not have adequate time to prepare, he or she either would have to show prejudice for 40+ clients or request a continuance which the judge may not grant. Even if defense is allowed to continue in this scenario, this would be contrary to IRLJ 1.1(b) Purpose. These rules (referring to the infraction rules) shall be construed to secure the just, speedy, and inexpensive determination of every infraction case.

Under this scenario, defense counsel may be unwillingly put in a situation where they do not have enough time to provide competent representation for their clients. This ultimately could lead to the attorney being reprimanded or even disbarred if things go wrong as a result of the proposed rule change. Equally or even more important, this could deny the defendant's access to justice where the attorney is put in a situation where they do not have adequate time to prepare the best defense for their client.

Changes to this rule should not be made in a vacuum without considering the ultimate consequences. Electronic service should be permitted, but only in situations where the parties agree.

Thank you for your consideration

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