

Tracy, Mary

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Sent: Tuesday, February 21, 2017 12:38 PM
To: Tracy, Mary
Subject: FW: Proposed Changes to GR 30

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From: Michael Brodsky [mailto:mpbrodsky@gmail.com]
Sent: Tuesday, February 21, 2017 12:24 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Proposed Changes to GR 30

I strongly object the removal of the phrase "only by agreement" in the proposed rule.

Contrary to the commentary by the proponent, this does not reflect current practice. Nor is the proposed change trivial as the comment implies. This change will have particularly deleterious effects on attorneys who's practices involve defense of traffic infractions as governed by the IRLJs.

As background, I represent clients who receive speeding and traffic tickets. 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 put in the untenable situation of not having sufficient 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.

I am all for the rules reflecting technological advances, but these changes 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

Sincerely,
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