Tracy, Mary

From: OFFICE RECEPTIONIST, CLERK
Sent: Monday, May 01, 2017 8:55 AM
To: Tracy, Mary
Subject: FW: Proposed change to GR 30; Comment submission

Forwarding.

From: Attorney Roberto Yranela [mailto:help@lyattorneys.com]
Sent: Sunday, April 30, 2017 4:49 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Proposed change to GR 30; Comment submission

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 to striking of the phrase, "only by agreement." I practice in the courts of limited jurisdiction, specifically in the areas of traffic infraction and criminal misdemeanor defense. Not having to obtain permission from all parties to serve electronic pleadings puts the defendant in a disadvantage.

For traffic infractions, defendants often represent themselves *pro se*. The playing field is unlevel as *pro se* defendants do not have the knowledge and experience of the prosecution, which is the State or local municipal prosecuting attorney. *Pro se* defendants struggle with the IRLJ and other civil rules pertaining to requests for discovery. Prosecutors may respond electronically by email, currently only with prior approval of the parties. Unless the defense is expecting an email response to be received, that defendant would have already went to the court hearing expecting to make a motion to dismiss under IRLJ 3.1(b) for discovery not being received. Only at the hearing would the defendant learn the prosecutor sent an email discovery response. Judges usually will continue a case to obtain and sort out discovery issues that the prosecutor asserts they complied with, thus leading to delay and another court hearing. Service of discovery by email or other electronic means without prior permission by the defendant leads to confusion by *pro se* defendants who are expecting mailed responses.

Discovery receipt problems also occur in attorney -represented cases because most prosecuting agencies respond by mail. Some jurisdictions will try to respond to discovery requests by email. Such responses have a tendency to either get sent directly to spam mail or otherwise not received as being sent to the wrong email address. Not expecting discovery to come by email and none-specific subject headings leads to discovery responses being lost. Since the proper remedy for none receipt of discovery under the IRLJ 3.1(b) is a suppression of evidence and ultimately a dismissal of the case, the defense would have to go to court on the

hearing day to find out if discovery was sent to the proper place. Needless delay and confusion occurs in some of the same ways as in the *pro se* defendant discovery situation. Traffic infraction defense is a volume based practice, where the attorney may be representing numerous traffic infraction cases at any given time. It is easy enough for discovery to get misplaced and lost. Mailed responses with an electronic exception only by permission keeps a certain order to our practice.

The burdens above are worse to *pro se* defendants who sometimes take half their day off to go to court to defend against a traffic infraction case. Such examples lead to delays and prejudice against the defendant. Such would go against other Washington Court Rules, such as the IRLJs, which are to be construed for the just, speedy, and inexpensive a adjudication of every infraction case (IRLJ 1.1(b)). For the reasons noted above, as well as others not discussed in this comment, I strongly object to striking of the phrase, "only by agreement."

Thanks for your consideration.

Best regards,

--
Roberto Yranela
Attorney At Law

YRANELA & ASSOCIATES

Ph: 425-260-9366 Fax: 425-523-9158
lyattorneys.com