

Tracy, Mary

From: OFFICE RECEPTIONIST, CLERK
Sent: Thursday, November 29, 2018 11:24 AM
To: Tracy, Mary
Subject: FW: Comment to Proposed Rule CrR 3.4

From: Sugg, Nathan [mailto:Nathan.Sugg@co.snohomish.wa.us]
Sent: Thursday, November 29, 2018 11:16 AM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Comment to Proposed Rule CrR 3.4

To the Clerk of the Supreme Court:

The language of the Proposed Amendment to Rule CrR 3.4 published by Order No 25700-A-1252 of Chief Justice Fairhurst dated November 28, 2018 would significantly hamper the ability to enforce collection of Legal Financial Obligations by the Courts of Washington or encourage blanket findings of willfulness.

Under the final sentence of subsection (c) of the proposed amendment an individual ordered to pay legal financial obligations mandated by the legislature who had wilfully ignored those obligations could also wilfully ignore a summons to appear for failing to pay them. After doing so, at the time of the hearing, absent the individual's presence, the Court likely would be unable to make any meaningful determination as to the willfulness of the failure to pay. The proposed rule would then force the Court to take one of two actions. First, the Court could refrain from issuing a warrant because the court could not meaningfully determine whether a failure to pay was willful. If the Court took this action, and as word spread of it, this would likely encourage the public to largely ignore both the Court's order to pay obligations as well as summons or subpoenas to appears. It is reasonable to assume attorneys representing such a client would advise them that no warrant would be issued for their failure to appear if they failed to pay. This would encourage disregard for orders of the court and summonses. The second alternative action, is that the Court wishing to authorize a warrant would enter a finding of willfulness based on the limited information before it and absent any information presented by the defendant. Upon execution of the arrest warrant, unless the Court opted to reconsider its prior finding of willfulness, such prior finding could stand and be used to support incarcerating of the defendant for wilfully failing to pay. Again, the defendant would be then sanctioned absent any meaningful input from the defendant.

Either alternative does not appear to be preferable to the current system. The Court should not adopt the final sentence as proposed under CrR 3.4(c) and instead rely upon recent statutory amendments to protect the rights of individuals surrounding legislatively mandated legal financial obligations.

Respectfully,

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