From:	OFFICE RECEPTIONIST, CLERK
To:	Tracy, Mary
Subject:	FW: Proposed Amendments to CrR 3.4 and CrRLJ 3.4
Date:	Monday, April 13, 2020 10:56:12 AM

From: Craig Swenson [mailto:Craig.Swenson@co.benton.wa.us]
Sent: Monday, April 13, 2020 10:47 AM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Proposed Amendments to CrR 3.4 and CrRLJ 3.4

To the Washington Supreme Court Justices,

I am writing to oppose the proposed amendments to CrR 3.4. and CrRLJ 3.4.

There are many problems with this proposal, including the loss of opportunities for the defendant to consult with counsel, prosecuting attorneys' inability to ensure the defendant is aware of the proceedings including our plea offers and intended amendments of the charges, and the possibility that a defendant will flee but the State and its witnesses will continue to invest time and resources in preparation for trial.

One problem is that prosecutors often provide notice of the State's intentions at interim case setting hearings, and omnibus hearings. For example, notice is provided that the State will be amending the charges, or of the State's plea offer. There is no way to ensure that the defendant has received that notice if the defendant is not in court at the time. It is very important that defendants understand the course of the proceedings as they occur. It will be difficult for defendants and the community to have faith in the openness of the process if hearings occur without the defendant present.

Another problem is defense attorneys often use court appearances as a means to ensure their ability to communicate with their client. This will eliminate those opportunities. It is very common for defense counsel to request a continuance of the trial date at a hearing pretrial. It is important for the defendant to have an opportunity to hear and understand the basis for that request and to have an opportunity to object (also common) or make a record that he or she is validly waiving the right to a timely trial date.

Another problem is that it is likely that defendants will challenge the validity of the waivers authorized by this rule based on alleged inaccurate advice about the nature of the proceedings at issue. Establishing the specific advice given years earlier by a defense attorney who represents many defendants is extremely difficult. Sometimes defense attorneys are no longer alive by the time a dispute about advice given is raised. Establishing that the defendant understood that advice and made a voluntary and intelligent waiver will be even more difficult. This will generate additional litigation and may result in reversals of convictions and the additional burden on victims and the criminal justice system when cases must be retried.

Another problem is that eliminating the need for defendants to appear between arraignment at trial

will result in the State being unaware if a defendant has fled to avoid prosecution. That will result in a massive waste of resources as the State and defense counsel prepare for a trial that cannot occur (wasting scarce time and money with attorney preparation, witness interviews, issuance of subpoenas, and forensic testing). It also will result in delays (possibly months) in attempting to locate the defendant who has fled.

Thank You for Your Consideration

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