From:	OFFICE RECEPTIONIST, CLERK
To:	Linford, Tera
Cc:	Tracy, Mary
Subject:	FW: Comment on Proposed Change to CrR 3.4
Date:	Tuesday, September 29, 2020 10:34:56 AM

From: Montes, David [mailto:David.Montes@kingcounty.gov]
Sent: Tuesday, September 29, 2020 10:14 AM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Comment on Proposed Change to CrR 3.4

Good morning,

The proposed changes to CrR 3.4 reduce the harmful effects of repeated and unnecessary court appearances on our clients.

King County Superior Court requires that an individual facing a criminal charge attend numerous, non-substantive hearings. These "case setting hearings," a local phenomenon not created by the Criminal Rules, serve as little more than an opportunity for the respective attorneys to discuss discovery and scheduling. Generally held once every three weeks, the hearings, often up to six or more per case, occur in the middle of the day (1 pm) and may not end until 4 pm. Frequent appearances in court to avoid a bench warrant disrupt our indigent clients' lives, many of whom already face significant challenges with housing, employment, transportation, childcare, substance abuse and mental health. The exhaustion and frustration that our clients experience from repeated administrative court hearings often result in premature pleas driven by the client's need to end the process. "[T]he real punishment for many people is the pretrial process itself; that is why criminally accused invoke so few of the adversarial options available to them." [1]

- Prosecutors' arguments in support of the rule are meritless. Prosecutors' comments opposing this rule argue that without numerous court hearings, defense attorneys will not have contact with their clients. Defense counsel are required, pursuant to RPCs, to remain in contact with their clients and to communicate plea offers. Further, court hearings do not generally present defense attorneys with the opportunity to meaningfully consult with their clients.
- Prosecutors also suggest that the new rule would result in a challenge to waivers. The proposed rule makes waivers no more vulnerable to challenge than current practice, as no colloquy occurs at case setting hearings to confirm

waivers.
- Prosecutors suggest that victims will want to come to these hearings and the defendant should be required to attend as well. These hearings are a likely source of frustration for many victims and no less burdensome for victims than they are for our clients, especially when they will be non-substantive.

Prosecutors offer no evidence that repeated court hearings have any other impact than to require indigent individuals to find a way to attend court, only, in many cases, to have their case continued. Public defenders know that the elimination of the requirement that clients attend these hearings will reduce the harm of the criminal legal system to our clients and reduce delay in cases.

KCDPD urges the Court to amend CrR 3.4 as proposed.

Fn 1: Feeley, Malcolm, *The Process is the Punishment*. Russell Sage Foundation: New York (1979).

Thank you,

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[1] Feeley, Malcolm, *The Process is the Punishment*. Russell Sage Foundation: New York (1979).