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September 30, 2020

VIA EMAIL

Honorable Charles W. Johnson
Supreme Court Rules Committee
c/o Clerk of the Supreme Court
Temple of Justice
PO Box 40929
Olympia, WA 98504-0929

RE: Comment on Proposed CrRLJ 8.2 Amendment

Dear Justice Johnson and Members of the Rules Committee:

On behalf of the District and Municipal Court Judges' Association (DMCJA), I am writing to oppose adoption of the Washington State Bar Association-proposed amendments to CrRLJ 8.2.

The DMCJA recommend that the proposed amendment be opposed for the following reasons:

1. The rule does not require amendment because the court already has the inherent discretion to permit review of any ruling during the course of course of criminal proceedings.
2. We do not agree that there is a conflict in current case law regarding reconsideration. Under *State v. Keller*, 32 Wn. App. 135, 139 (1982), there is no authority for the contention that CRLJ 59 applies to criminal cases. The remedy for error of law is appeal. *Hurley v. Wilson*, 129 Wash. 567 (1924); *Jones v. Babcock*, 116 Wash. 424 (1921).

In their GR 9 coversheet, the WSBA cites to *State v. Batsell*, 198 Wn. App. 1066 (2017) (Unpublished) for the proposition that CRLJ 59 Reconsideration is permitted in criminal proceedings. This is unpersuasive. First, *Batsell* is unpublished so it has no precedential value. Second, the two cases cited in *Batsell* don't support the extension of CRLJ 59 to criminal proceedings. In *State v. Englund*, 186 Wn. App. 444 (2015), the defendant sought to represent himself.

The court denied the motion and appointed counsel. Counsel then renewed the motion for self-representation. The *Englund* court uses the term reconsideration, but no CR 59 analysis was applied. Defense counsel's request was simply a renewed motion for self-representation. In *State v. Chaussee*, 77 Wn. App. 803 (1995), the question before the court was not whether CR 59 was permitted, but whether in light of the trial court's decision to permit CR 59 reconsideration, did the appeal timelines change. Nothing in *Batsell* supersedes the express holding in *Keller* that CR 59 reconsideration does not apply to criminal proceedings.

3. Existing Court Rules already allow the court to review its own decisions under CrRLJ 7.4, 7.5 and 7.8.

4. The proposed rule adopts CRLJ 59(b) (timelines for filing), CRLJ 59(e) (hearing procedures) and CRLJ 59(j) (reconsideration is requested before judgment) and does not specify what court actions would be subject to reconsideration. Potentially every action of the court is subject to reconsideration, although error of law would seem the most likely.

5. Despite these concerns, we do appreciate the potential clarity gained by adoption of the timelines and procedures if reconsideration were permitted.

For these reasons, the DMCJA requests that you reject the proposed amendments.

Thank you for your consideration.

Sincerely,

s/Judge Michelle K. Gehlsen
DMCJA President

Cc: Judge Jeffrey Goodwin, DMCJA Rules Chair
Ms. Shannon Hinchcliffe, WSSC Rules Staff
Ms. J Benway, DMCJA Rules Staff

From: [Benway, Jennifer](#)
To: [Linford, Tera](#)
Cc: [Nicpon, Dory](#); [Hahn, Sondra](#); [Goulet, Susan](#)
Subject: FW: DMCJA Comment on CrRLJ 8.2 proposal
Date: Wednesday, September 30, 2020 5:05:53 PM
Attachments: [DMCJA Cmt Ltr re CrRLJ 8.2 proposed amendment.docx](#)

FYI – thank you!

From: Benway, Jennifer
Sent: Wednesday, September 30, 2020 5:03 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: DMCJA Comment on CrRLJ 8.2 proposal

Hello,

Attached please find attached District and Municipal Court Judges' Association (DMCJA) comments regarding the WSBA proposal to amend CrRLJ 8.2.

Please let me know if you have any questions or concerns. Thank you.

Sincerely,

J Benway

Legal Services Senior Analyst

Administrative Office of the Courts

360-357-2126

Get the most current information on the Courts' response to COVID-19 [here](#).