



## The Washington Association Of Prosecuting Attorneys

September 29, 2020

Hon. Susan L. Carlson  
Clerk of the Supreme Court  
PO Box 40929  
Olympia, WA 98504-0929

[Sent via email to [supreme@courts.wa.gov](mailto:supreme@courts.wa.gov)]

Re: Suggested Amendment to GR 13, CrR 2.2; 2.3; 3.2.1, CrRLJ 2.1; 2.2; 2.3; 3.2.1; 3.6, IRLJ 6.7, RALJ 6.3.1, JuCR 7.3, and SPR 98.16W

Dear Clerk Carlson:

The Board for Judicial Administration Legislative Committee, the Superior Court Judges' Association Legislative Committee, and the District and Municipal Court Judges' Association Legislative Committee (collectively "Committees") have identified numerous court rules that reference RCW 9A.72.085 which has been repealed by Laws of 2019, ch. 132, § 6, effective July 1, 2021. The Washington Association of Prosecuting Attorneys ("WAPA") agrees with the Committees that these rules must be amended to reflect current law. WAPA disagrees with the Committees as to what language should be substituted.

The Committees wish to replace the statutory references to RCW 9A.72.085 with a reference to GR 13 or GR 30. WAPA believes that the current references to RCW 9A.72.085 should be replaced with a reference to RCW 9A.72.010(2). The legislature moved the text of RCW 9A.72.085 to RCW 9A.72.010(2) and included a cross-reference to chapter 5.50 RCW, the new Uniform Unsworn Declarations Act. Replacing the soon to be repealed RCW 9A.72.085, with its replacement statute will avoid litigation challenging the validity of search warrants and arrest warrants.

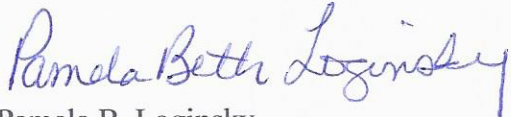
Many of the court rules that reference RCW 9A.72.085 relate to the Fourth Amendment's "oath or affirmation" requirement for search warrants and arrest warrants. The Fourth Amendment's "oath or affirmation" requirement is only satisfied if the document will support a perjury prosecution. *See, e.g., United States v. Bueno-Vargas*, 383 F.3d 1104, 1111 (9th Cir. 2004), *cert. denied*, 543 U.S. 1129 (2005) (the "true test" of whether the required "oath or affirmation" was made is whether the procedures followed were such that perjury could be charged therein if any material allegation contained therein is false). A search warrant or arrest warrant that is not supported by probable cause supported by "oath or affirmation" is invalid.

The Washington legislature establishes the elements for perjury. *See* Chapter 9A.72 RCW. The statutes that define the crime of perjury make no reference to GR 13, but do contain a definition of "oath," RCW 9A.72.010(2), that was amended by Laws of 2019, ch. 132, § 10, to replace RCW

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9A.72.085. The statutes that define the crime of perjury contain only one reference to GR 30 and that subjects false documents signed pursuant to GR 30 to possible perjury charges in extremely limited circumstances. See RCW 9A.72.010(2)(c) ("written statements shall be treated as if made under oath if . . . (c) It is a statement, declaration, verification, or certificate, made within or outside the state of Washington, which is declared to be true under penalty of perjury as provided in chapter 5.50 RCW"); RCW 5.50.010(3) ("Sign" means with present intent to authenticate or adopt a record..(d) To affix or logically associate the declarant's signature in the manner described in general rule 30 to the record if he or she is a licensed attorney").

Sincerely,



Pamela B. Loginsky  
Staff Attorney

**From:** [OFFICE RECEPTIONIST, CLERK](#)  
**To:** [Linford, Tera](#)  
**Cc:** [Tracy, Mary](#)  
**Subject:** FW: Comment re Suggested Amendment to GR 13, CrR 2.2; 2.3; 3.2.1, CrRLJ 2.1; 2.2; 2.3; 3.2.1; 3.6, IRLJ 6.7, RALJ 6.3.1, JuCR 7.3, and SPR 98.16W  
**Date:** Tuesday, September 29, 2020 11:11:38 AM  
**Attachments:** [Rules comment re signature proposals.pdf](#)

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**From:** Pam Loginsky [mailto:pamloginsky@waprosecutors.org]  
**Sent:** Tuesday, September 29, 2020 10:49 AM  
**To:** OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>  
**Cc:** Salina James <salinajames@waprosecutors.org>; Russell Brown <rbrown@waprosecutors.org>  
**Subject:** Comment re Suggested Amendment to GR 13, CrR 2.2; 2.3; 3.2.1, CrRLJ 2.1; 2.2; 2.3; 3.2.1; 3.6, IRLJ 6.7, RALJ 6.3.1, JuCR 7.3, and SPR 98.16W

Dear Clerk Carlson:

Please find attached WAPA's comment letter regarding suggested amendment to GR 13, CrR 2.2; 2.3; 3.2.1, CrRLJ 2.1; 2.2; 2.3; 3.2.1; 3.6, IRLJ 6.7, RALJ 6.3.1, JuCR 7.3, and SPR 98.16W.

Please do not hesitate to contact me if you should encounter any difficulty in accessing the attachment.

Sincerely,

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