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Subject: FW: Comments regarding CrR 3.4 proposed changes
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From: Manza, Maria [mailto:Maria.Manza@kingcounty.gov]
Sent: Wednesday, September 29, 2021 2:12 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Comments regarding CrR 3.4 proposed changes

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Good afternoon,

Regarding the proposed changes to CrR 3.4, I am generally supportive of expanding access to courtroom proceedings for all parties, provided it is done equitably. The proposed changes are concerning because they would likely perpetuate inequities that currently exist within the criminal legal system.

If adopted, the proposed changes to (e)(1) will result in inequitable treatment of defendants with limited means, who may not have devices and reliable internet access to appear remotely for hearings, particularly lengthy ones.

Proposed changes to (e)(2) present multiple issues, including ensuring voluntariness of waivers of constitutional rights and pleas and the identity of a person who appeared for the hearing (particularly if they are present by phone). Any technical issues or problems with understanding might not be obvious right away, and it would be very difficult (if not impossible) to verify the problem or even know if something was missed. These proposed changes also diminish the right to counsel. Interruptions to allow clients to talk with their attorneys may be expressly or inadvertently discouraged because of the actual or perceived disruption caused, which may make defendants reluctant to consult with their attorneys. People who require the use of an interpreter may be particularly disadvantaged here, leading to inequitable access. Finally, while the defendant would be given the privilege of appearing remotely for all hearings, other participants, including witnesses and victims, would not have the same opportunity.

Proposed rule (4), currently (3), presents issues around proving knowledge and voluntariness. This is particularly concerning for no contact orders and pleas.

Overall, the proposed amendments raise many practical problems. If they can be overcome in a specific case and there is a necessity, the current rule allows for remote appearance. While the party at greatest risk is the defendant, inevitable problems noted above will result in unnecessary reversals, retrials, and withdrawal of pleas. Victims and the community have an interest in finality of convictions that is not well served by this rule. Most concerning to me is that these proposed amendments would exacerbate inequities, continuing to expand options for privileged defendants while disadvantaging others who are already disproportionately impacted by the criminal legal system.

Thank you for your time and consideration.

Best,
Maria



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