



Superior Court Judges' Association- Criminal Law and Rules Committee

Hon. Laura M. Riquelme
Chair

Skagit County Superior Court
205 W. Kincaid, Room 202,
Mount Vernon, WA 98273

Hon. Maryann C. Moreno
Co-Chair

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Spokane, WA 99260

Hon. Patricia M. Fassett

Cowlitz County Superior Court
312 S.W. First Ave.,
Kelso, WA 98626

Hon. Amber L. Finlay

Mason County Superior Court
419 N. 4th St.,
Shelton, WA 98584

Hon. Evan P. Jones

Whatcom County Superior Court
311 Grand Avenue, Suite 301,
Bellingham, WA 98225

Hon. David S. Keenan

King County Superior Court
516 Third Avenue, Room C-203,
Seattle, WA 98104

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Snohomish County Superior Court
3000 Rockefeller Ave. M/S 502,
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Hon. Nelson K. H. Lee

King County Superior Court
1211 East Alder Street,
Seattle, WA 98122

Hon. Brian M. McDonald

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Seattle, WA 98104

Hon. Edmund Murphy

Pierce County Superior Court
930 Tacoma Ave. South, Room 334 County-
City Bldg.,
Tacoma, WA 98402

Hon. Andrea K. Robertson

King County Superior Court
401 4th Ave. N., Room 2D,
Kent, WA 98032

Hon. Stan J. Rumbaugh

Pierce County Superior Court
930 Tacoma Ave. South
Room 334 County-City Bldg.
Tacoma, WA 98402

Hon. Michael K. Ryan

King County Superior Court
401 4th Ave. N., Room 2D,
Kent, WA 98032

Hon. Thad E. Scudder

Cowlitz County Superior Court
312 SW 1st Ave., Room 233,
Kelso, WA 98626

Hon. Shane Silverthorn

Yakima County Superior Court
128 N. 2nd St., Rm. 314,
Yakima, WA 98901

Hon. John C. Skinder

Thurston County Superior Court
2000 Lakeridge Dr. S.W.,
Olympia, WA 98502

Hon. Christon C. Skinner

Island County Superior Court
101 N.E. 6th St.,
Coupeville, WA 98239

Hon. Aimee M Sutton

King County Superior Court
401 4th Ave. N., Room 2D
Kent, WA 98032

Date: December 29, 2021

Honorable Charles W. Johnson, Co-Chair
Honorable Mary I. Yu, Co-Chair
Washington State Supreme Court Rules Committee
Temple of Justice
P.O. Box 40929
Olympia, WA 98504-0929

Re: Suggestions for Proposed CrR 3.4 – Presence of the Defendant

Dear Justices Johnson and Yu,

The Superior Court Judges' Association (SCJA) appreciates this committee's acceptance of our request for an extension of the comment period for this association's proposed changes to CrR 3.4 – Presence of the Defendant. The SCJA board has approved this comment for submission to the Court Rules Committee.

After encouragement from the Board of Judicial Administration (BJA), the District and Municipal Court Judges' Association (DMCJA) and SCJA discussed their respective proposals on CrRLJ 3.4 and CrR 3.4. These groups met in an attempt to harmonize the two associations' proposals, which deal with different aspects of the rule. Despite having found some common ground with respect to remote proceedings, the SCJA has concluded that it will continue to pursue its proposed CrR 3.4 that is published for comment.

One suggestion from the DMCJA was to remove the sections on remote proceedings from CrR 3.4 and relocate them into their own standalone rule. The SCJA is not opposed to separating the sections covering remote proceedings into a distinct rule somewhere else within the criminal rules, although we do not believe that is necessary. The SCJA requests that any rule related to remote proceedings in criminal hearings remain somewhere within the criminal rules for ease of practitioners' reference and to avoid unnecessary duplication and cross-referencing of rules.

The SCJA continues to believe that remote proceedings and the safeguards contained within the proposed rule changes to CrR 3.4 (e) and (f) provide increased and appropriate access to justice in criminal proceedings.

In addition to our original proposed language for CrR 3.4, we suggest some further modifications to the rule, which are below in red. The full text of the proposed rule, including those recent changes, is attached.

1) The SCJA recommends that CrR 3.4 clarify that arraignments, sentencing, and plea hearings could happen remotely as permitted by local court rules. This would give individual courts the discretion to establish or maintain procedures for handling these types of hearings remotely:

CrR 3.4 (e)(2) Video appearances:

~~(1) (2) Authorization. Remote appearances are authorized for all criminal proceedings except for arraignment, all phases of a trial, entry of a guilty plea, and sentencing, for which the defendant must have prior court approval permitting a remote appearance, unless otherwise permitted under local court rules for any hearing other than trial.~~

2) The SCJA also suggests that ableist language in CrR 3.4(e)(4)(a) regarding the ability to “see and hear” be modified as proposed below:

~~(4) Standards for Remote Appearances Video Conference Proceedings.~~

~~(a) Video Appearances. Subject to any accommodations for persons with disabilities, pursuant to GR 33, t~~The judge, counsel, all parties, and the public must be able to see and hear each other during proceedings, and speak as permitted by the judge.

3) Finally, we propose that CrR 3.4(f)(1) be amended to exclude superfluous language below:

~~(1) Authorization. Proceedings held pursuant to chapter 10.77 RCW may be conducted by video conference using the same safeguards in CrR 3.4(e)(4)(a), in which all participants can simultaneously see, hear, and speak with each other except as otherwise directed by the trial court judge. When these proceedings are conducted via by video conference, it is presumed that all participants will be physically present in the courtroom except for the forensic evaluator unless as otherwise provided by these rules, or as excused or excluded by the court for good cause shown. Good cause may include circumstances where at the time of the hearing, the court does not have the technological capability or equipment to conduct the conference by video as provided in this rule. Such video proceedings shall be deemed held in open court and in the defendant’s presence for the purposes of any statute, court rule, or policy. All video conference hearings conducted pursuant to this rule shall be public, and the public shall be able to simultaneously see and hear all participants and speak as permitted by the trial court judge. Five days prior to the hearing date, any party may request the forensic evaluator be physically present in the courtroom, which may in the trial court judge’s discretion be granted. Five days prior to the hearing date, any party may request the forensic evaluator be physically present in the courtroom, which may in the trial court judge’s discretion be granted.~~

Finally, the SCJA Criminal Law and Rule committee would like to thank the DMCJA for their time and collaboration with respect to what had been hoped to be a joint proposal for 3.4 rules. After several meetings, we have concluded that a timely harmonization of the two associations' 3.4 proposals is not likely, however we greatly appreciate their efforts.

If you have any questions please contact me at (360) 416-1200 or at 205 W. Kincaid, Room 202, Mount Vernon, WA 98273.

Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink, appearing to read "Laura M. Riquelme", is written over a horizontal blue line.

Judge Laura M. Riquelme, Chair
SCJA Criminal Law and Rules Committee

CrR 3.4 - PRESENCE OF THE DEFENDANT

(a) – (d) [Unchanged]

~~(e) Video Conference Proceedings.~~ Remote Appearances.

(1) In General. A defendant may appear remotely through video or telephonic conferencing as available in each court and indicated in this rule. A defendant who is out of custody and wishes to appear remotely is responsible for his or her own device and internet access to connect to court.

~~(4) (2) Authorization.~~ Remote appearances are authorized for all criminal proceedings except for arraignment, all phases of a trial, entry of a guilty plea, and sentencing, for which the defendant must have prior court approval permitting a remote appearance, unless otherwise permitted under local court rules for any hearing other than trial. Preliminary appearances held pursuant to CrR 3.2.1, arraignments held pursuant to this rule and CrR 4.1, bail hearings held pursuant to CrR 3.2, and trial settings held pursuant to CrR 3.3, may be conducted by video conference in which all participants can simultaneously see, hear, and speak with each other. Such proceedings shall be deemed held in open court and in the defendant's presence for the purposes of any statute, court rule or policy. All remote video conference hearings conducted pursuant to this rule shall be public, and the public shall be able to simultaneously see and hear all participants and speak as permitted by the trial court judge. Any party may request an in-person hearing, which may in the trial court judge's discretion be granted.

(3) Remote Appearances Required by Video Remote appearances at arraignments, testimonial hearings, trials, sentencing, and whenever the defendant is in-custody shall include video. Local court rules may require all remote appearances take place over video.

~~(2) Agreement.~~ Other trial court proceedings including the entry of a Statement of Defendant on Plea of Guilty as provided for by CrR 4.2 may be conducted by video conference only by agreement of the parties, either in writing or on the record, and upon the approval of the trial court judge pursuant to local court rule.

~~(3) (4) Standards for Remote Appearances~~ Video Conference Proceedings.

(a) Video Appearances. Subject to any accommodations for persons with disabilities, pursuant to GR 33, ~~t~~The judge, counsel, all parties, and the public must be able to see and hear each other during proceedings, and speak as permitted by the judge. The audio and video should be of sufficient quality to ensure that the audio and video connections are clear and intelligible participants are easily seen and understood. ~~Video conference facilities~~ Platforms, court procedures, or in-custody facilities must provide for allow confidential communications between attorney and client, including a means during the hearing for the attorney and the client to read and review all documents executed therein, and security sufficient to protect the safety of all participants and observers when conducted in a custodial environment. ~~For purposes of videoconference proceedings, t~~ The electronic, scanned, or facsimile signatures of the defendant, counsel, interested parties, and the court shall be treated as if they were original signatures. This includes all orders on judgment and sentence, no contact orders, statements of defendant on pleas of guilty, and other documents or pleadings as the court shall determine are appropriate or

necessary. Defense counsel or the court may affix a “/s/” on any documents except a judgment and sentence to indicate the defendant’s signature when the defendant indicates their approval during the hearing. In interpreted proceedings, the interpreter must be in a location or over a platform where the defendant and defense attorney can have confidential conversations through the interpreter. ~~the interpreter must be located next to the defendant and~~ The proceeding must be conducted to assure that the interpreter can hear all participants. When the public appears remotely, members of the public need not enable their video to be visible to other participants absent a finding of good cause and order of the court.

(b) Telephonic Appearances. If participants appear remotely with only an audio connection, the connection should be of sufficient quality to ensure participants are clearly audible. Telephonic appearances shall otherwise have the same requirements as indicated for video appearances.

(f) Remote Video Conference Proceedings under chapter 10.77 RCW.

(1) *Authorization.* ~~Proceedings held pursuant to chapter 10.77 RCW may be conducted by video conference using the same safeguards in CrR 3.4(e)(4)(a), in which all participants can simultaneously see, hear, and speak with each other except as otherwise directed by the trial court judge. When these proceedings are conducted via by video conference, it is presumed that all participants will be physically present in the courtroom except for the forensic evaluator unless as otherwise provided by these rules, or as excused or excluded by the court for good cause shown. Good cause may include circumstances where at the time of the hearing, the court does not have the technological capability or equipment to conduct the conference by video as provided in this rule. Such video proceedings shall be deemed held in open court and in the defendant’s presence for the purposes of any statute, court rule, or policy. All video conference hearings conducted pursuant to this rule shall be public, and the public shall be able to simultaneously see and hear all participants and speak as permitted by the trial court judge. Five days prior to the hearing date, any party may request the forensic evaluator be physically present in the courtroom, which may in the trial court judge’s discretion be granted.~~

(2) *Standards for Video Conference Remote Proceedings under chapter 10.77 RCW.* ~~These proceedings shall use the same standards enumerated in CrR 3.4(e)(4)(a). The judge, counsel, all parties, and the public must be able to see and hear each other during the proceedings, and speak as permitted by the judge. Video conference facilities must provide for confidential communications between attorney and client and security sufficient to protect the safety of all participants and observers. In interpreted proceedings, the interpreter must be located next to the defendant and the proceeding must be conducted to assure that the interpreter can hear all participants.~~

From: [OFFICE RECEPTIONIST, CLERK](#)
To: [Linford, Tera](#)
Subject: FW: SCJA CrR 3.4 Comment
Date: Wednesday, December 29, 2021 1:44:43 PM
Attachments: [SCJA Comment 3.4 12.29.21.pdf](#)
[SCJA Proposed CrR 3.4 12.29.21.pdf](#)

From: Anderson, Crissy
Sent: Wednesday, December 29, 2021 1:44 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Cc: 'Laura M. Riquelme' <lriquelme@co.skagit.wa.us>; 'Anderson, Rachelle E.' <RANDERSON@spokanecounty.org>; Song, Jerome <Jerome.Song@courts.wa.gov>; Valdez, Andrea <Andrea.Valdez@courts.wa.gov>; Green, Heidi <Heidi.Green@courts.wa.gov>
Subject: SCJA CrR 3.4 Comment

Good afternoon,

Please see attached the Superior Court Judges' Association Criminal Law and Rules Committee comment regarding proposed changes to CrR 3.4. Thank you very much and happy new year.

Crissy Anderson, J.D. (she/her)

Court Association Coordinator

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