From: OFFICE RECEPTIONIST, CLERK
To: Linford, Tera
Subject: FW: Concerns regarding proposed rule changes to CrR 3.4
Date: Wednesday, September 29, 2021 2:05:59 PM

From: Lloyd, Stanley [mailto:Stanley.Lloyd@kingcounty.gov]
Sent: Wednesday, September 29, 2021 1:54 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Concerns regarding proposed rule changes to CrR 3.4

Good Afternoon,

I wanted to share my concerns regarding the proposed rule changes to CrR 3.4.

Over the past year and a half, I have watched as the court system has struggled to adapt to the new world of the pandemic. While there have been many positive things that have come out of our forced adaptation, these proposed rule changes go too far and would only create additional problems. What these changes are proposing is not just a codification of pandemic practice, as stated in the proposal. Even now, courts are not allowing defendants (or witnesses, jurors, or counsel) to appear remotely for trial.

In general, the assertions that this rule change "should decrease daily court congestion and allow for a more expeditious case resolution while improving access to justice" are just patently untrue. In participating in and observing court proceedings over the course of the pandemic, it is clear that many court bailiffs/staff are not adequately trained, nor do they have bandwidth to do all that is necessary to coordinate remote hearings for numerous cases on a given calendar on a regular basis. To give an example, when a bailiff has to try multiple phone numbers or meeting platforms in order to get a hold of a defendant, defense attorney, Juvenile Probation Counselor, Community Partner, and any number of other folks who want to participate in a hearing remotely, this inherently slows down a court day. Furthermore, I have watched as numerous respondents have had their calls or internet drop in the middle of a hearing, resulting in them missing important/critical moments in a court proceeding and/or portions of the proceeding having to be repeated. Many of our respondents and defendants do not have reliable/stable access to the high quality of internet required to support video and auto streaming between devices and as such this type of rule change does not meaningfully improve access to justice. Rather, it only improves "access" for more wealthy defendants.

Concerns with remote appearance:

The amendments invite problems verifying the defendant's identity at critical stages of the proceedings. If the defendant isn't physically present and printed, any conviction cannot be added to felony criminal history databases. If the defendant is not present, the parties will be unable to conduct in-court identification – positive or negative. The amendments authorize a defendant to testify remotely, which would deprive the fact-finder of the chance to observe the defendant's demeanor. It also would allow coaching to occur off-screen without detection by the fact-finder or the court. The defendant could refer to notes that are not apparent remotely. It will be impossible to assure the voluntariness of a guilty plea or waiver of other constitutional rights, especially via phone, where there is no ability to determine who else is present (off screen) when the plea is taken, who may be exerting undue influence. The defendant appearing remotely for trials, guilty pleas, and sentencing diminishes the seriousness, importance, and dignity of these proceedings – that is important to all parties and to the public perception of fair administration of justice. Because victims are required to attend in person but defendants are not, victims will understand that they are being treated with less consideration than the defendant. If defendants appear remotely for sentencing, victims will not be able to speak in the defendant's presence.

Concerns with "/s/" signatures and guilty pleas occurring remotely

It should not be common practice for defendants to plead guilty remotely. It is too difficult to assure that the plea is made freely and voluntarily. Moreover, there are serious risks that the record of a remote plea will be inadequate to refute later challenges to voluntariness. The lack of a signature on the plea form will cause the problems to multiply. If it is not signed by the defendant, proving knowledge of an order prohibiting contact that is entered at sentencing will require testimony of a person present at the sentencing hearing who was able to identify the defendant via the remote access used and is available when the order is violated years later. This is an unreasonable and unnecessary burden. Further, there are other notice requirements at the time of conviction and sentencing – e.g., sex offender registration, firearm prohibition, rights on appeal/collateral attack. It will be difficult to assure the defendant has received these notices unless the entire notice is read on the record, causing substantial delay. If it is necessary to prove receipt of the notice for purposes of later prosecution, the same identity issue arises as noted for orders prohibiting contact.

In short, I would ask that these drastic and sweeping changes not be implemented as currently drafted. While I can understand the value of decreasing the amount of times a defendant is required to be present in court, these proposed changes are far too broad and create a significant amount of problems with the processing of a case both pre and post conviction.

Thank you,

Stanley Langford Lloyd
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