From: OFFICE RECEPTIONIST, CLERK
To: Linford, Tera; Tracy, Mary
Subject: FW: Opposition to proposed rule changes to CrRLJ 3.3 and 3.4
Date: Monday, February 7, 2022 11:38:20 AM

From: Ben Jordan [mailto:bjordan@cdocc.com]
Sent: Monday, February 7, 2022 11:30 AM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Opposition to proposed rule changes to CrRLJ 3.3 and 3.4

Hello,

I am a public defense attorney working in Chelan County District Court. I am opposed to the proposed rule changes for several reasons:

They would create a presumption that defendants must be physically present in court. This will re-introduce problems that existed before February 2021, when the current version of CrRLJ 3.4 went into effect. Those problems include burdening people accused of misdemeanors with many trips to court when they may have difficulty with transportation or may already have multiple demands on their time, such as childcare, care for elderly relatives, work, school, or treatment. Zoom appearances are working just fine for the vast majority of my clients.

The change would likely result in more bench warrants because some people will be unable to get to court frequently and because the change would allow judges to issue warrants in more situations than they currently can. This only serves to increase the financial burden of attending additional court dates on defendants, the courts, prosecutors' offices, and public defense offices and does not lead to increased efficiency of the administration of justice. Most of the warrants would be quashed anyway. This creates extra work, is inefficient, and allows judges to "pass the buck" in the short-run, but actually creates a lot more work in the long-run.

Requiring defense attorneys to let clients know about new court dates would burden already busy public defenders. I always send letters to every client for every court date. I do my best to call each client before court. I know many public defenders are too busy to call all their clients. Even though it is the defendant's job to call us, I spend many hours, often after 5pm, trying to track them down and remind them they have court. This is discretionary, and I do it because I care about the work and trying to help poor people in my community. If this were a job requirement, I'm not sure I could keep doing this job. Am I supposed to drive around looking for those who I cannot get ahold of?

How are we supposed to know if they actually got our notice?

Requiring defense lawyers to say whether they have consulted with their clients since the last hearing would violate RPC 1.6, which requires lawyers to keep communications with their clients confidential. It could also reduce the trust people charged with crimes have in their lawyers. This is potentially the most problematic aspect of these proposed rule changes, and this should never be adopted. Why would we ever try to undermine confidentiality? This is perhaps the most important age-old tenant of the of ethical practice. I can't imagine how this system would function without it. I would probably lose my job, get sanctioned, or have to quit because I would be unwilling to breach confidentiality without a waiver from my client.

Because defense lawyers would be responsible for giving their clients notice of upcoming hearings, a defense lawyer could become a witness in new cases of bail jump under RCW 9A.76.170 and failure to appear under RCW 9A.76.190. The defense attorney would then have to withdraw from both cases, disrupting representation and ethical conflicts for the lawyer.

The current CrRLJ 3.4 is working smoothly here, and so I am opposed to the rule change.

Respectfully,

Ben Jordan
Attorney at Law, WSBA 56306
(He/Him/His)
Counsel for Defense of Chelan County
115 S. Chelan
Wenatchee WA 98801
Office: (509) 663-2444 Ext. 120
Cell: (509) 470-2352