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Subject: FW: Proposed changes to CrRLJ 3.4 (Presence of the Defendant) and CrRLJ 3.3 (Time for Trial)
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From: Emily Gause [mailto:emily@emilygauselaw.com]
Sent: Monday, February 28, 2022 4:53 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Cc: Amy Hirotaka <amy@wacdl.org>; Leslie Tolzin <leslie.tolzin@piercecountywa.gov>; John Ziegler <zieggie@hotmail.com>
Subject: Proposed changes to CrRLJ 3.4 (Presence of the Defendant) and CrRLJ 3.3 (Time for Trial)

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February 28, 2022

Washington State Supreme Court
Court Rules Committee
supreme@courts.wa.gov

Re: Proposed changes to CrRLJ 3.4 (Presence of the Defendant)
and CrRLJ 3.3 (Time for Trial)

Honorable Justices of the Supreme Court:

The Washington Association of Criminal Defense Lawyers (WACDL) strongly opposes the changes to the court rules as proposed by the District and Municipal Court Judges Association (DMCJA).

CrR 3.4 and CrRLJ 3.4 were recently amended in light of the Court's ruling in *State v. Gelinas*, 15 Wn. App. 2d 484, 478 P.3d 638 (2020). These amendments went into effect on February 1, 2021. Although hardly a year has passed, during which Washington courts have still been dealing with the effects of the COVID Pandemic and the Supreme Court's emergency rules regarding court appearances, the DMCJA is now seeking to essentially roll back the recent amendments to CrR 3.4 and 3.3.

The current version of CrRLJ 3.4 alleviated important concerns including 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.

WACDL opposes the proposed rule change for several reasons:

- CrR 3.4 and CrRLJ 3.4 were just amended, and we have not had appropriate time to fully examine the rules' effects, and attempts to solve a problem that we do not believe exists. The current language of the rule and *State v. Gelinas* clearly indicate when a personal appearance is necessary.
- The proposed amendment to the rules creates ethical dilemmas for defense attorneys by requiring them to provide information to the Court about their last communication with their client in violation of RPC 1.6.
- The proposed amendment to the rules could lead to conflicts of interest by creating scenarios where the defense attorney becomes a material witness against their client. This is especially true in cases where a client is charged with bail jumping 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.

Thank you for your consideration,

/s/ Leslie Tolzin
Leslie Tolzin
WACDL President

Emily M. Gause
WACDL Court Rules Committee Co-Chair