From: OFFICE RECEPTIONIST, CLERK
To: Linford, Tera
Subject: FW: Opposition to Proposed Changes to CrRLJ 3.4
Date: Thursday, February 10, 2022 11:00:13 AM

From: Ana Faoro [mailto:afaoro@snocopda.org]
Sent: Thursday, February 10, 2022 10:42 AM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Opposition to Proposed Changes to CrRLJ 3.4

Good Morning,

I oppose the DMCJA's proposal to amend CrRLJ 3.4.

DMCJA's proposed changes to CrRLJ 3.4 completely undermine the *State v. Gelinas* opinion and the Court's recognition that a defendant's appearance at many hearings is not required or necessary to move their case forward. And, DMCJA's assertion that the proposed changes would "continue current appearance opportunities for defendants and allow limited jurisdiction courts to manage calendars and trial terms" ignores the difficulties of many people charged with misdemeanors and is disingenuous given that some courts of limited jurisdiction have refused to even attempt to work with the new court rule.

First, many defendants do not want "appearance opportunities." Most defendants want to go to work, go to school, care for their children or other family members, receive medical care, or, if they are immune compromised, want to stay secluded in their home. Many defendants do not have the ability to get to court—they lack transportation and community support. Some do not have a way to appear remotely because of limited access to technology or because their jobs and other responsibilities limit when they can take breaks. Court appearances interrupt defendants' lives. Many defendants are already struggling, and adding the burden of necessary court appearances under the threat of bench warrants and being booked into custody serves nothing—not the court calendars, not the community, and not the defendants.

Second, requiring defendants to appear may do a little help the court manage calendars, but courts can certainly run without that requirement. Lawyers—not defendants—move cases forward. Therefore, as long as lawyers know what their clients want to do, defendants need not appear in order to calendars to run smoothly. At least some courts of limited jurisdiction have never even

attempted to follow CrRLJ 3.4 while managing calendars, so it is hard to know how the current rule would work without judicial resistance. For example, in Snohomish County, the unified district court adopted its own local court rule requiring defendants' appearances at all trial confirmation hearings (called pretrial hearings under the former local court rule). The local rule carved out a narrow exception that defendants' may appear through their attorneys if their attorney is continuing their matter. Even so, the local court rule also requires defense attorneys to file a specific court form to waive a client's appearance rather than allowing for oral waivers as contemplated under CrRLJ 3.4(a)(ii). Judges have been open about their opposition to following current CrRLJ 3.4 and have fought the current rule instead of looking for ways to make it work. One judge in Snohomish County District Court said on the record on February 3, 2021 when discussing the local court rule "…as you can tell by our local rules, we've determined [CrRLJ 3.4] does not allow the court to operate properly because I'm not sure that the Supreme Court Rules Committee has a clear understanding of how courts of limited jurisdiction operate."

The DMCJA says that the existing Washington Court Rule for Courts of Limited Jurisdiction is unworkable, but some courts have not even attempted to make it work. The DMCJA proposal is a response to losing some of their ability to note failure to appears and issue bench warrants against defendants charged with misdemeanors and should not be adopted.

Thank you for your time,

Ana Faoro
(she/her/hers)
Staff Attorney
Snohomish County Public Defender Association
(425) 339-6300, ext. 487
2722 Colby Avenue, Suite 200
Everett, WA 98201