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Subject: FW: CrRLJ 3.4
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From: David A. Larson [mailto:David.Larson@cityoffederalway.com]
Sent: Sunday, March 13, 2022 4:30 PM
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I support the changes to CrRLJ 3.3 and CrRLJ 3.4, except as follows:

1. The standards in the current Par. (e)(1) and (e)(3) should not be removed until the new ARLJ or GR setting those standards is adopted. The presence of the defendant in open court is guaranteed by Art. I, Sec. 22 of the Washington State Constitution. In addition, open courts are guaranteed to all by Art. I, Sec. 10 of the Washington State Constitution. Both provisions will be in jeopardy if there are no clear standards that provide for the ability of everyone to view and hear the proceedings. Shortcuts that could be taken without this guidance would definitely implicate violations of Art. I, Sec. 22 and Art. I, Sec. 10 of the Washington State Constitution. The simple fix is to keep Par. (e) for now, but conditionally approve its removal once the ARLJ or GR is adopted.
2. Par. (b) takes great effort to define “appear” or “appearance”, but then Par. (b)(1) refers to the definition of “appearance” from CrRLJ 3.3(a) even though appearance is defined in CrRLJ 3.4(b). Here is the definition in CrRLJ 3.3(a):

“(iii) “Appearance” means the **defendant’s physical presence** in the trial court. Such presence constitutes appearance only if (A) the prosecutor was notified of the presence and (B) the presence is contemporaneously placed on the record under the cause number of the pending charge.”

Why does the current proposal define “appearance” in both rules, but then 3.4 refers to 3.3 for part of the definition of the definition in 3.4? If CrRLJ 3.3 is also being amended then why can’t “appearance” just be defined in one of the rules with a reference to the other rule

for the definition needed in that rule?

3. As to Par. (c)...the problem with requiring physical presence for arraignments is that an arraignment is one of the hearings allowed to be held via video in the current version of CrRLJ 3.4(e)(1) even if the defendant does not consent. I am not sure why we are now requiring people to appear in person at arraignments when they were not required to be physically present before COVID. Many people have suspended licenses and yet we are forcing them to commute to court for arraignment? Also, the proposed rule does not account for defendants arraigned via video if they are in custody. This means that defendants will need to be transported to the courthouse for arraignments. This increases security risks and expense. Perhaps there needs to be flexibility in the rule that would allow a local rule to define when the defendant must be present in open court for an arraignment. For example, Federal Way has a local rule that requires certain arraignments to be held in person based on the charge, but we allow all other arraignments to be held via video.

Thank you.

Judge David Larson
Federal Way Municipal Court