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From: George Steele [mailto:GSteele@masoncountywa.gov]
Sent: Wednesday, February 23, 2022 8:32 AM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>;
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Subject: Comment on CrRLJ 3.4

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I have taken a few moments to review the proposed rule. I made one addition a subsection (4) to section (b). I do believe that more clarity is needed. Quite frankly, this ruling and the current rule has created situations where defendants are not appearing and there is nothing that the court can do, other than continue on to the next calendar, until trial. As a result we, in Mason County, have a "trial" calendar that includes all cases that have not already been disposed of and they have been huge. We do not call juries for that trial and schedule a date to select the jury and start presenting evidence. If they fail to appear for that hearing, many do, we can order a warrant. This is very unwieldy.

I have concerns about attorneys disclosing too much information when asked to explain their client's non-appearance; many do seem to want to share. I want to be sure that counsel who do not have their client's waivers, say nothing. I usually pose the question along the lines of "Is there anything you can ethically tell me about your client's absence?" My concerns center around putting the attorney in jeopardy by disclosing too much and then be accused of disclosing confidential communications. I believe the language of the proposed rule would allow the attorney to disclose things if she or he are able to do so and not encourage the attorney to disclose anything that they cannot ethically disclose.

My addition would outline when a physical presence of the defendant is necessary.

I have reviewed many of the comments of this rule. All or most seem to be from public defenders and have a central theme. That theme is that going to court is too gosh darn inconvenient. Yes, I am being a bit flippant. They seem to regard the court process as nothing more than an annoyance. Going to court is not just an annoyance. The people were accused

of violating the law, they are presumed to be not guilty, and they have the right to get their cases adjudicated. For that matter, the public has the right to have these cases adjudicated.

My answer to their concerns are three: First, most of the extra hearings are the result of the defense seeking continuance and extra hearings, often times for "further negotiations." That is not just a comment about this court, it is pretty universal in the courts where I have appeared. Second, the proposed rule allows for a good balance of the interests of not going to court repeatedly for no reason and the need of the courts to control their caseloads. The defendant can always waive her or his presence and authorize their attorney to relay that to the court. Third, at least here in Mason County, not being able to get people off of the calendars when they fail to appear crowds our trial calendars, makes it difficult for the prosecuting authority and the defense to focus on the cases that need to be prepared for trial, making a very short time frame between hard scheduling jury selection and evidence taking, to get out subpoenas, etc. Additionally, there are hearings that I believe require the actual presence of the defendant, such as waiving rights, pleading guilty, presentation of evidence, etc.

Anyway, my two cents. If you can direct me to where to submit my two cents I would appreciate it.

Sincerely,

George A. Steele

CrRLJ 3.4 ~~PRESENCE~~ APPEARANCE OF THE DEFENDANT

(a) ~~Presence Defined.~~ Unless a court order or this rule specifically requires the physical presence of the defendant, the defendant may appear remotely or through counsel. ~~Appearance through counsel requires that counsel either (i) present a waiver the defendant has signed indicating the defendant wishes to appear through counsel or (ii) affirm, in writing or in open court, that this is the defendant's preference.~~ **Appearance Required.** The appearance of the defendant is required at all hearings set by the Court.

(b) Definitions. For purposes of this rule, “appear” or “appearance” means the defendant’s physical appearance, remote appearance, or appearance through counsel.

(1) “Physical appearance” means the defendant’s appearance pursuant to the CrRLJ 3.3(a) definition of appearance.

(2) “Remote appearance” means the defendant appears through a telephonic or videoconference platform approved by the Court.

(3) “Appearance through counsel” means that counsel appears on behalf of the defendant. Appearance through counsel requires that counsel affirm, in writing or in open court, that they have consulted with the defendant since the last appearance and that the defendant waives the right to be present at the instant hearing.

(4) Required Appearance shall mean any physical appearance where the requirements of appearance through counsel, as described in CrRLJ 3.4(b)(3) cannot be met or the court makes a determination that a defendant’s physical appearance is necessary to conclude some determination that the court finds is necessary to address, including but not limited to waiving rights, change of pleas, or entering any type of disposition.

~~(b) (c) When Physical Appearance Is Required Necessary.~~ The defendant’s physical appearance ~~shall be present physically or remotely (in the court’s discretion)~~ is required at arraignment (if one is held), at every stage of the trial including the empaneling of the jury, and the returning of the verdict, and at the imposition of imposing the sentence, and at hearings set by the Court upon a finding of good cause, except as otherwise provided by these rules, or as excused or excluded by the court for good cause shown.

~~(e) (d) Effect of Voluntary Absence.~~ The defendant's voluntary absence after the trial has commenced in their presence shall not prevent continuing with the trial to and including the return of the verdict. A corporation may appear ~~by its lawyer~~ through counsel for all purposes. In prosecutions for offenses punishable by fine only, the court, with the defendant’s written consent ~~of the defendant~~, may permit arraignment, plea, trial and imposition of sentence in the defendant's absence.

~~(d) (c) Defendant Not Present. Failure To Appear.~~ If in any case the defendant fails to appear ~~is not present~~ when their ~~personal attendance~~ appearance is ~~necessary~~ required, the court

may order the clerk to issue a bench warrant for the defendant's arrest, which may be served as a warrant of arrest in other cases.

~~(e) Videoconference Proceedings.~~

~~(1) *Authorization.* Preliminary appearances held pursuant to CrRLJ 3.2.1(d), arraignments held pursuant to this rule and CrRLJ 4.1, bail hearings held pursuant to CrRLJ 3.2, and trial settings held pursuant to CrRLJ 3.3(f), may be conducted by video conference in which all participants can simultaneously see, hear, and speak with each other. Such proceedings shall be deemed held in open court and in the defendant's presence for the purposes of any statute, court rule or policy. All video conference hearings conducted pursuant to this rule shall be public, and the public shall be able to simultaneously see and hear all participants and speak as permitted by the trial court judge. Any party may request an in person hearing, which may in the trial court judge's discretion be granted.~~

~~(2) *Agreement.* Other trial court proceedings including the entry of a Statement of Defendant on Plea of Guilty as provided for by CrRLJ 4.2 may be conducted by video conference only by agreement of the parties, either in writing or on the record, and upon the approval of the trial court judge pursuant to local court rule.~~

~~(3) *Standards for Videoconference Proceedings.* The judge, counsel, all parties, and the public must be able to see and hear each other during proceedings, and speak as permitted by the judge. The video and audio should be of sufficient quality to ensure participants are easily seen and understood. Videoconference facilities must provide for confidential communications between attorney and client, including a means during the hearing for the attorney and the client to read and review all documents executed therein, and security sufficient to protect the safety of all participants and observers. For purposes of videoconference proceedings, the electronic or facsimile signatures of the defendant, counsel, interested parties and the court shall be treated as if they were original signatures. This includes all orders on judgment and sentence, no contact orders, statements of defendant on pleas of guilty, and other documents or pleadings as the court shall determine are appropriate or necessary. In interpreted proceedings, the interpreter must be located next to the defendant and the proceeding must be conducted to assure that the interpreter can hear all participants.~~

~~(f) Videoconference Proceedings under Chapter 10.77 RCW.~~

~~(1) *Authorization.* Proceedings held pursuant to chapter 10.77 RCW, may be conducted by video conference in which all participants can simultaneously see, hear, and speak with each other except as otherwise directed by the trial court judge. When these proceedings are conducted via video conference, it is presumed that all participants will be physically present in the courtroom except for the forensic evaluator unless as otherwise provided by these rules, or as excused or excluded by the court for good cause shown. Good cause may include circumstances where at the time of the hearing, the court does not have the technological capability or equipment to conduct the conference by video as provided in this rule. Such video proceedings shall be deemed held in open court and in the defendant's presence for the purposes of any statute, court rule, or policy. All video conference hearings conducted pursuant to this rule shall~~

~~be public, and the public shall be able to simultaneously see and hear all participants and speak as permitted by the trial court judge. Five days prior to the hearing date, any party may request the forensic evaluator be physically present in the courtroom, which may in the trial court judge's discretion be granted.~~

~~(2) *Standards for Video Conference Proceedings under Chapter 10.77 RCW.* The judge, counsel, all parties, and the public must be able to see and hear each other during the proceedings, and speak as permitted by the judge. Video conference facilities must provide for confidential communications between attorney and client and security sufficient to protect the safety of all participants and observers. In interpreted proceedings, the interpreter must be located next to the defendant and the proceeding must be conducted to assure that the interpreter can hear all participants.~~