From: OFFICE RECEPTIONIST, CLERK
To: Linford, Tera
Subject: FW: Comments Opposing Changes to CrRLJ 3.4
Date: Tuesday, February 22, 2022 8:10:26 AM

From: Mike Berens [mailto:mike@soundmilitarylawyer.com]
Sent: Monday, February 21, 2022 9:49 AM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Comments Opposing Changes to CrRLJ 3.4

Dear Reviewing Authorities,

Thank you for this opportunity to comment on the proposed changes to CrRLJ 3.4 being championed by the District Court and Municipal Judges Association (DCMJA). On 30 September 2020, I provided comments in support of the Washington Defender Association effort to change CrR 3.4 and CrRLJ 3.4. I stand by those comments.

Respectfully, many attorneys in the defense community are disappointed by attempts to reverse course on the meaningful change that that 1 February 2021 version of CrRLJ 3.4 brought. Attending court proceedings in municipal courts since the rule change was implemented, where far fewer defendants are required to be present for rudimentary appearances, has been a welcome experience. I am confident that the reduced number of appearances under CrRLJ 3.4 increases court efficiency, saves valuable resources, and allows defendants to remain at work, focused on childcare, and any number of other meaningful endeavors.

Changing CrRLJ now, as we shake the many impacts of the pandemic and costs of living are on the rise, is premature. Please reject the proposed changes to CrRLJ 3.4.

Please also consider the following:

1. Requiring defense counsel to notify clients about new court dates seems ill-advised unless the courts are willing to provide the defense the resources necessary to accomplish this responsibility. Courts across Washington have well established processes, procedures, and presumably

funding to accomplish notifications for upcoming court hearings. In almost every case it is highly likely that defense counsel will alert their clients. Placing this responsibility on the defense, when state funding gives courts resources to accomplish this important function, does not make sense.

2. Requiring defense counsel to affirmatively tell the court that they consulted with their client since their last appearance makes the defense counsel a witness at any future hearing over an alleged bench warrant violation. This does not make sense and it likely contravenes several rules of professional responsibility currently in place.

3. Requiring the physical presence of defendants for all hearings is not in the interest of the community for the reasons stated above and more.

4. Upholding the ruling from *State v. Gelinas*, 15 Wn.App.2d 484 (2020), restricting courts from issuing a warrant to a limited number of circumstances is in the interest of the community and judicial economy.

Many of us have learned of public reports where defendants awaiting criminal court proceedings are alleged to have committed other offenses in the community. It is unfortunate when this occurs, and the defense bar does not condone this conduct. That said, the changes to CrRLJ 3.4 being proposed will not eliminate this problem in our communities. That problem is better resolved by other means, such as bail, which in accordance with CrRLJ 3.2, must be used only under specific circumstances. Unfortunately, the provisions in CrRLJ 3.2 are often disregarded and bail is imposed in many more cases than necessary.

Thank you for considering these comments in opposition to the proposed changes to CrRLJ 3.4.

Sincerely,
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