From: OFFICE RECEPTIONIST, CLERK
To: Linford, Tera
Subject: FW: CrRLJ 3.3 and 3.4 Rule Change Commentary
Date: Wednesday, February 2, 2022 9:59:57 AM

From: Owen Sutanto [mailto:osutanto@barrarlaw.com]
Sent: Wednesday, February 2, 2022 9:59 AM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: CrRLJ 3.3 and 3.4 Rule Change Commentary

Good morning,

I practice in Clark County where the current rules are working very well. The current rules and the ruling in Gelinas have not caused significant issue. In fact, it appears to me to be more efficient. The District court here has adhered to the Gelinas ruling and stream lined the process for defendants to the required hearings under Gelinas simplifying the process for defendants. Frankly, the court system here moves more smoothly and efficiently under the current rules.

The proposed amendment to CrRLJ 3.3(f) is unrealistic at best. In some dockets, attorneys can have dozens of clients, especially public defenders. In a busy week, an attorney could easily have hearings on a hundred clients. Making it the responsibility of the attorney to notify clients of future court dates is an incredible burden and creates a conflict of interest between the attorney and their clients. Frankly the vast amount of time required to contact potentially each and every client of future court dates is a complete waste of an attorney's time. Time that could be spent negotiating and resolving cases to free up court and attorney resources. Further, if it's an attorney's responsibility to provide notice of future court dates, then missed dates could require that the attorney be a witness against their own client if the client gets a bail jump charge added. How can an attorney adequately and properly represent a client if there is going to be a risk of having to appear as witness against that client?

The proposed amendment to CrRLJ 3.4 (b)(3) forces an attorney to violate the Rules of Professional Conduct by requiring that the attorney disclose privileged communications with their client. In law school attorneys are taught that attorney client privilege is inviolate except in very specific circumstances. Here, the proposed rule is requiring that an attorney break this privilege. How is an attorney supposed to properly represent their client if they can't communicate privately and confidentially?

The proposed amendment to CrRLJ 3.4(b) altering it to (c) is entirely contrary to the ruling in Gelinas, it just returns us to pre-Gelinas times when a defendant was required to appear at all hearings forcing clients to appear requiring them to lose money by having to take off work, obtain childcare, care for relatives, missing school, missing treatment sessions. There would also be an incredible burden on defendants which will lead to a surplus of bench warrants clogging the court system and wasting time with warrant quash hearings.

The rules proposed by the DMCJA will not help an already busy court system. The rules will cause conflicts of interest, force violations of the RPC, and waste valuable time that attorneys could be spending resolving cases, preparing motions, or preparing for trials. The current rules under Gelinas are working smoothly and have in fact streamlined the current court process for clients. These proposed amendments would undermine and clog the system with useless bench warrants and conflicts.

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