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Subject: FW: Comment on proposed amendment to CrRLJ 3.4
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From: Boruchowitz, Robert [mailto:boruchor@seattleu.edu]
Sent: Monday, February 21, 2022 11:40 AM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Comment on proposed amendment to CrRLJ 3.4

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Greetings.

I write to oppose the proposed amendment to CrRLJ 3.4.

This amendment would change drastically the current rule, as it would establish a presumption that the accused person has to appear in person at all hearings. The current rule, which was informed by lessons learned during the pandemic, has much broader permission for accused persons to appear through counsel.

I have studied misdemeanor courts since 2003, and I serve as the Assessor for Public Defense Services for the City of Edmonds. I have represented people in misdemeanor courts in several cities and I supervised other attorneys in misdemeanor cases for 28 years. I know how difficult it can be for people accused of misdemeanors to attend frequent court hearings, many of which last only a few minutes and are uncontested. Allowing appearance through counsel minimizes the impact of frequent hearings.

In 2021, there were 126,878 misdemeanor cases filed in Washington. Overwhelmingly, these were against poor people entitled to public defense counsel, and we know that disproportionately, people accused of misdemeanors are of color. The proposed rule would allow more frequent issuance of bench warrants by changing “necessary” to “required”. Changing this rule to require more in-person appearances and to allow issuing more bench warrants would have an adverse impact on thousands of Washington residents and increase jail costs.

The proposed amendment would delete the provisions for video conference proceedings. Allowing accused persons to appear by video during the pandemic has led to significant efficiencies as public defenders and their clients can appear from their computers and cell phones and do not have to travel often significant distances to court for short hearings. An accused person much more easily can step out of work for a few minutes to attend a court hearing by video. It is my impression that many judges have found video proceedings to be beneficial, as the failure to appear rate is reduced and their courtrooms are not full of people

waiting long periods for their cases to be heard,
Contrary to the claim in the cover sheet proposing the amendment, the current rule is not limited to pretrial proceedings. It allows for other trial court proceedings to proceed by video by agreement of the parties and approval of the judge.

The pandemic has not ended. People remain at risk if they go to crowded courthouses. And we have learned from the pandemic that changes to old ways of operating can improve the legal system.

The existing rule has led to great benefits to lawyers, clients, and courts.
I urge rejection of the proposed amendment to CrRLJ 3.4.

Thank you for your consideration.
Sincerely,

Robert C. Boruchowitz

Professor from Practice

Director, The Defender Initiative

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