



April 8, 2022

Honorable Charles W. Johnson
Honorable Mary I. Yu
Supreme Court Rules Committee
c/o Clerk of the Supreme Court
Temple of Justice
PO Box 40929
Olympia, WA 98504-092

Re: Comment on DMCJA Proposed Amendments to CrRLJ 3.3 and CrRLJ 3.4

Dear Justice Johnson, Justice Yu, and Rules Committee Members:

The judges of Seattle Municipal Court respectfully submit this comment in support of the DMCJA proposed amendments to CrRLJ 3.4. We write separately to emphasize our view that these amendments provide clear guidance to courts of limited jurisdiction, and to propose additional language that would adequately address many of the concerns raised by the comments submitted in opposition.

The version of CrRLJ 3.4 that went into effect in February 2021 explicitly allows defendants to appear through counsel (without appearing themselves) if the defense counsel affirms in writing or in open court that is the defendant's preference. Prior to the Gelinas decision, many courts overlooked this provision, and common practice was to require the defendant's physical presence at all pretrial hearings and readiness hearings. However, as the DMCJA comment to the proposed amendments emphasize, "[t]he Gelinas case has resulted in a patchwork of procedures across the State for appearances in Courts of Limited Jurisdiction."

The proposed amendments to CrRLJ 3.4 clarify that the defendant may waive their presence for certain types of hearings by clearly defining the three ways a defendant may appear – in person, remotely, or through counsel. The proposed rule only requires physical presence of the defendant at the same hearings that were required in prior versions of the rule: arraignments, trial, and the imposition of sentence. It only expands the requirement for physical presence at hearings to codify the Gelinas holding that a trial court may find good cause to require the defendant's physical presence at other types of hearings. For example, a trial court could reasonably require a defendant's physical presence at entry of a guilty plea or other hearing where the defendant is waiving constitutional rights, in order to adequately assess whether the waiver is knowing and voluntary.

We join in the DMCJA comment submitted on February 22, 2022, in support of the amendments. However, we write separately to suggest that many of the comments submitted in opposition to this amendment could be easily addressed by adding language to paragraph (c) that would permit remote appearance for those essential hearings, at the discretion of the trial court. We have attached proposed alternate language at the end of this comment. The inclusion of such language is consistent with the purpose identified in DMCJA's GR 9 cover sheet for the proposal, which states that the technological advances during the pandemic "justify a broadening of the rule allowing for remote appearance by defendants."

Including a remote appearance option for defendants at the discretion of the trial court would allow courts who have successfully used remote appearances during the pandemic to continue to do so. For example, Seattle Municipal Court currently allows defendants to appear remotely (by video) for nearly all hearings that are not testimonial in nature, including arraignments, pleas, and sentencing hearings. We support the inclusion of language in the rule that would continue to permit remote appearances for these types of hearings.

Another common refrain in opposition to the proposed amendment is that the rule would require lawyers to violate RPC 1.6, addressing confidential client communications. This reading is incorrect. The February 2021 revisions already "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." The DMCJA proposed amendments do not alter this requirement or require any disclosure of confidential communications.

Rather, the proposed definition of "appearance through counsel" merely emphasizes an attorney's obligation under RPC 1.4(a)(3), which requires attorneys to "keep the client reasonably informed about the status of the matter." Stating the fact of communication with their client does not direct the attorney to disclose the substance of any confidential communications.

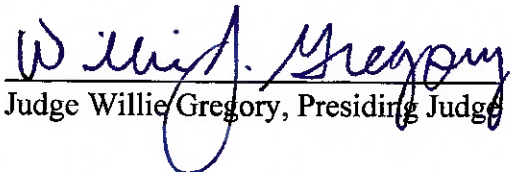
Moreover, requiring the attorneys to affirm that they have had contact with their client "about the instant hearing" prevents attorneys from obtaining blanket permission from their client at their initial meeting to indefinitely continue cases for any reason. In cases where client contact is difficult due to the housing status or lack of valid contact information, an attorney with such authority could conceivably keep continuing a hearing while attempting to locate their client. This does nothing to advance the case, and it unnecessarily clogs our calendars with excessive pretrial hearings, contributing to the already extraordinary backlog that developed as a result of court closures during the pandemic.

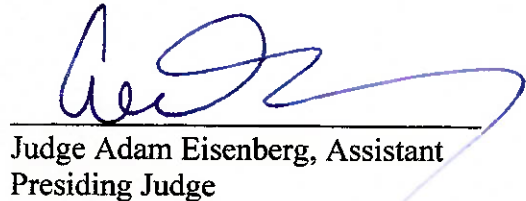
Some of the comments in opposition to proposed rule CrRLJ 3.3 express opposition to the requirement that "court's notice to defense counsel of new hearing dates

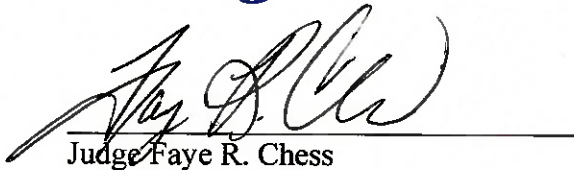
shall constitute notice to the defendant.” It is worth noting that the identical language has been proposed to CrR 3.3, and as of the date of this writing, no comments to those proposed changes have been submitted.

Additionally, the proposed amendments to CrRLJ 3.3 provide a significant benefit to defendants by allowing appearance through counsel and not requiring a defendant’s signature on every waiver of time for trial requirements. If the defendant is present in court, the court would give notice directly to the defendant. If the defendant receives the benefit of appearing through counsel, it makes sense that counsel would be required to notify their client of what happened at the hearing, including the resetting of the new date. If this language were omitted from the rule, it would place an excessive burden on trial courts to mail notice to defendants when they appear through counsel.

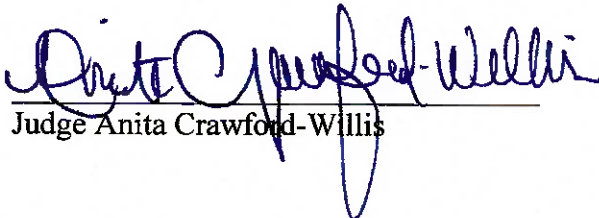
Sincerely,

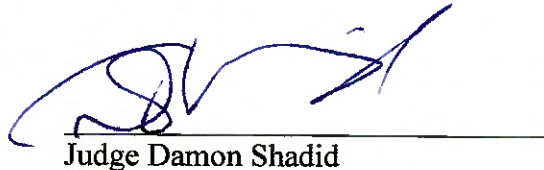

Judge Willie Gregory, Presiding Judge


Judge Adam Eisenberg, Assistant
Presiding Judge


Judge Faye R. Chess


Judge Andrea Chin


Judge Anita Crawford-Willis


Judge Damon Shadid


Judge Catherine McDowall

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Alternate proposal (SMC proposed additions in double underline):

~~(b)(c)~~ When Physical or Remote Appearance Is Required Necessary . The defendant's physical or remote (in the court's discretion) 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.

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Dear Justice Johnson, Justice Yu, and Rules Committee Members:

Attached for your information and records is a copy of the Comment on DMCJA Proposed Amendment to CrRLJ 3.3 and CrRLJ 3.4.

The original Amendment will be sent by mail.

Sincerely,

Rhana Adams

Judicial Assistant

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