WASHINGTON DEFENDER ASSOCIATION

28 February 2022

The Supreme Court of Washington
Supreme Court Rules Committee
Temple of Justice
P.O. Box 40929
Olympia, WA 98504-0929
supreme@courts.wa.gov

Re: Opposing the District & Municipal Court Judges' Association's proposal about CrRLJ 3.4

To Honorable Justices of the Supreme Court of Washington:

I am writing to oppose the proposal to change Criminal Rule for Courts of Limited Jurisdiction 3.4. I am the resource attorney at WDA's Incarcerated Parents Project. In that capacity, I work directly with formerly and currently incarcerated parents of minor children, their loved ones, and their attorneys. The proposed rule change is not consistent with the purpose of the criminal rules for courts of limited jurisdiction and runs afoul of the values of fair and just administration of criminal proceedings. It will undoubtedly result in an increase in the number of arrest warrants issued against people accused of misdemeanors, even in circumstances where they have come to court at arraignment and entered a plea of not guilty and are being diligently represented by their counsel of record. Arresting more people who stand accused of, but who are not convicted of, less serious offenses, will result in exorbitant carceral costs and social harms. In short, warrants lead to incarceration and incarceration will harm accused people and their loved ones.

The Proposal Contravenes the Purpose of Criminal Procedural Rules. In courts of limited jurisdiction, the criminal rules "are intended to provide for the just determination of every criminal proceeding. They shall be construed to secure simplicity in procedure, fairness in administration, effective justice, and the elimination of unjustifiable expense and delay." CrRLJ 1.2. The current rule reflects a simple, fair, just, and efficient process. An accused person must "appear" in the proceeding but may do so in person, remotely, or through their counsel. CrRLJ 3.4 (a). Issuing arrest warrants at hearings where counsel for the accused person is present and where the accused's attendance would not further the court's business is wasteful of public resources and burdensome on the accused person. It is simply not a justifiable expense, and allowing judges to issue warrants whenever they have the prerogative of requiring the accused person's presence will cause undue delays of proceedings as well.

Conflating Presence of an Accused with Their "Appearance" Breeds Confusion.
Whether an accused person has "appeared" to defend a legal proceeding; has attended a criminal court hearing; or is required to attend in order for the court to justly adjudicate the matter are three separate legal issues.[1] The first issue relates to the attachment of personal jurisdiction over the accused.[2] The second relates to the just administration of court procedure, i.e. does the accused person have the ability or opportunity to observe that their constitutional rights to defend a criminal allegation are being protected or afforded in accordance with due process requirements.[3] The third issue relates to whether the court may issue an arrest warrant under state law when the accused is not present at a court hearing where their presence is "necessary to advance the progress of the case."[4]

Simply put, whether a court asserts personal jurisdiction over an accused person in a misdemeanor case should not depend upon whether the accused is physically present alongside their attorney at every single hearing. The court should be able to administer justice with the accused's attorney present alone, reducing delays.

An accused person having secured legal representation and having entered a plea should be permitted to appear through counsel unless their presence is necessary for the progress of the case. When their presence is not necessary, no warrant should issue. The accused's ability to observe the court's handling of their criminal case is unaffected by CrRLJ 3.4. In fact, an accused person may still choose to attend any court hearing they wish even when the court has not deemed it necessary.

The DMCJA's proposal conflates and confuses these issues and is unhelpful at best; at worst, it will undoubtedly inflict harms upon the accused person and by extension their loved ones.

WDA IPP urges the court to adopt only equitable changes to court rules; these present proposals are not equitable. Submitting to the current criminal court process in and of itself (even if ultimately acquitted) brings unnecessary harms and strains upon the person accused who has not been convicted. At times, those harms to the accused person and their loved ones are irreparable, even when the criminal case resolves in their favor. Proposals that seek to reinstate prior practices that unjustifiably burden accused persons, that are wasteful, and that are not needed for

---

[1] It appears from the concurrent DMCJA proposal about CrRLJ 3.3 there is also a concern about implementing the time for trial rule. There is a concurrent proposal to shift the burden of notice of trial dates from the court to defense counsel. In addition to creating a court procedure that intends to rely upon privileged communications between an attorney and their client as evidence in the court's determination about a time for trial violation or as evidence of the crime of bail jumping, *see* RPC 1.6 (a), (b), RPC 3.3, and RPC 3.7, the proposal also appears to intend to facilitate continuances, i.e. delay. This proposal should also be rejected.

[2] *See, e.g. United States v. Warren*, 610 F.2d 680, 684 (9th Cir. 1980) ("…a court has exclusive personal jurisdiction over any party who appears before it, regardless of how that appearance was effected.")(citations omitted).

[3] A defendant has a constitutional right to be present at all critical stages of the trial proceedings. *State v. Irby*, 170 Wn.2d 874, 880, 246 P.3d 796 (2011).

[4] *State v. Gelinas,* 15 Wn. App. 2d 484, 493, 478 P.3d 638, 643 (2020) (there is no authority of law to issue bench warrant for arrest of accused person "when such attendance is not necessary to advance the progress of the case.").

the administration of justice should be rejected. For these reasons, WDA's IPP strongly urges the court not to adopt the DMCJA's proposals.

Sincerely,

Ms. D'Adre Cunningham
Washington Defender Association
Incarcerated Parents Project Resource Attorney

From: OFFICE RECEPTIONIST, CLERK
To: Linford, Tera
Subject: FW: Comment to CrRLJ 3.4
Date: Monday, February 28, 2022 3:39:30 PM
Attachments: Final WDA IPP Comment Letter re CrRLJ 3.4-28 Feb 2022.pdf

---

From: D'Adre Cunningham [mailto:dadre@defensenet.org]
Sent: Monday, February 28, 2022 3:38 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Comment to CrRLJ 3.4

Please see the attached comment letter about proposed changes to CrRLJ 3.4.

Thank you,

Ms. D'Adre Cunningham
Incarcerated Parents Project Resource Attorney
Washington Defender Association
110 Prefontaine Place South, Suite 610
Seattle, Washington 98104
email: dadre@defensenet.org
****IPP direct line: 206-799-1201** (IPP will accept collect calls from institutions)**
WDA main office: 206-623-4321
WDA fax: 206-623-5420
website: www.defensenet.org
****Please note that I respond to technical assistance on Tuesdays and Fridays.****

"If you don't like something, change it. If you can't change it, change your attitude."

-- Maya Angelou