From: OFFICE RECEPTIONIST, CLERK
To: Martinez, Jacquelynn
Subject: FW: Comment on CrR 4.11 and CrR 4.11 proposed rules
Date: Monday, April 24, 2023 9:39:40 AM

From: Dowdy, Casey <cdowdy@kingcounty.gov>
Sent: Monday, April 24, 2023 9:38 AM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Comment on CrR 4.11 and CrR 4.11 proposed rules

I am writing to ask that the Supreme Court not adopt proposed rules CrRLJ 4.11 and CrR 4.11. I concur with the concerns raised by fellow prosecutors Nicole Lawson, Yessenia Manzo and Stephanie Guthrie as well as the issues addressed by Judge Gerel and Judge Rogers.

I have concerns that CrRLJ 4.11 and CrR 4.11 are contrary to the premise of CrR 3.4 and CrR 3.3(f)(1), thus creating a system where defendants have no incentive to appear for important hearings which will then cause unnecessary delays putting an undue burden on victims and witnesses and an already taxed court system. It will also cause confusing expectations about when a defendant is required to appear.

The premise of CrR 3.4 is that the court can rely on defense counsel to provide adequate notice to the defendant. CrR 3.3(f)(1) allows defense counsel to sign a continuance order when the defendant is not present at court and the court's notice to defense counsel of new hearing dates constitute notice of the hearing to the defendant. Contrary to 3.4 and 3.3(f)(1) CrRLJ 4.11 and CrR 4.11's suggest that the court cannot rely on defense
counsel to convey court dates to the defendant and are not able to stay in adequate communication with their client.

If the law already asserts that defense attorneys are a reliable medium of communication between their client / the defendant and the court why impose rules that are contrary to what has already been determined? If the
court no longer believes that defense counsel can be depended upon to convey court dates to defendants, CrR 3.4 should be readdressed.

CrRLJ 4.11 and CrR 4.11 eliminate the incentive (i.e.: avoiding the issuances of a warrant) for defendants to appear at important hearings that require their presence. This is at the expensive of victims and witnesses who must bear the emotional, financial, and physical brunt of the delay. The

proposed rule creates extra unnecessary hearings on an already overburdened court operational system
that is still recovering from the effects of the pandemic.

Expectations about when a defendant is required to appear in person should be clear. CrRLJ 4.11 and CrR 4.11 essentially provides that a defendant is not required to appear at a hearing at which their
physical presence is required until at least the second time the hearing is scheduled. This will create confusion on behalf of the defendants about when their presence is needed.

Notably, it sends a message that following the court's orders are optional, not mandatory, and to be treated as a suggestions and not an order because a defendant would have to violate the court's order twice before a warrant could be issued.

It appears that the purpose of CrRLJ 4.11 and CrR 4.11 is in response to a concern that CrR 3.4 leads defense counsel to reveal attorney-client confidential communications in violation of RPC 1.6 and RPC 3.3. If the Supreme Court is concerned that CrR 3.4 causes defense counsel to be required to reveal privileged information in violation of the Rules of Professional Conduct, the proper remedy would be to
revisit the adoption of CrR 3.4.

I urge you to not add this confusion and burden to our system. Do not adopt the proposed rules.

Thank you,
Casey Dowdy

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