From: OFFICE RECEPTIONIST, CLERK
To: Martinez, Jacquelynn
Subject: FW: Comments on Proposed CrR 4.11 and CrRLJ 4.11
Date: Friday, April 21, 2023 10:07:12 AM

From: James Herr <james@jamesherrlaw.com>
Sent: Friday, April 21, 2023 10:01 AM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Comments on Proposed CrR 4.11 and CrRLJ 4.11

I agree with many of the comments written by Judges discussing amendments/corrections to the rule to address service by email, remote hearing attendance, and those orders setting dates which have been signed by the defendant. Those issues can be addressed with minor modifications. The larger objections appear to stem from an ignorance of attorney-client privilege, an attorney's duties to their client, and the breakdown in the attorney-client relationship that would occur when a defense attorney is compelled by a judge to sell out their client.

When prosecutors argue that 'it's totally fine for the defense attorney to report to the court whether notice was given to their client,' it demonstrates that prosecutors have **no** experience working with actual clients, which results in a profound obliviousness to attorney-client privilege concerns. The fact that defense attorneys have made representations to the court in the past (presumably in ways the attorney had previously determined would be helpful to their client and would not violate their ethical duties) does not somehow mean its okay for courts to now demand information from attorneys about what they have communicated to their client. Furthermore, defense attorneys should have **no** requirement to help the courts issue warrants for their clients. Compelling attorneys to assist the court in such a way violates the attorney's duty to their client, puts the defense attorney on the same side as the court and prosecutor, and will irreparably harm the relationship between the attorney and the client who (rightfully) feels like their attorney violated their trust and sold them out.

Similarly, concerns about the cost of *actually mailing notice of a court hearing to a defendant* bely the underlying argument of prosecutors: they want to be able to prosecute as much as they see fit without having to concern themselves with costs, budgets, or having to do the real-world work of evaluating various courses of action within a limited budget. If King County doesn't feel that it can financially run its current criminal caseload while also mailing defendants notice of their cases, then it would appear that King County needs to prioritize and determine what's actually worth prosecuting. If courts are concerned that this shifts costs from prosecutor's offices to court staff

without attendant funding, then courts *should increase their criminal filing fees to accommodate the increased cost*.

Hyperbolic comments about how this proposed rule will upend court systems and delay hearings because defendants will never have an incentive to show up reflect a complete naivete in what the rules actually require. If a defendant has signed the order setting dates, then they had notice to appear (and a warrant could be issued). If the court mailed notice to the defendant (and a condition of release required the defendant to keep the court updated with a valid mailing address), then a warrant could be issued. If King County's trial standby system is ineffective at providing actual notice to defendants of their court hearing, *then King County should fix its system so that it isn't such a mess*.

The gist of the opposition comments is generally that any fixes to ensure defendants have received actual notice of hearing might impede or slow down the carceral system's steady march. It is inconceivable to those people that perhaps our system needs corrections in order to fix flaws in it. On the other hand, it is readily apparent that none of the opposing commentors have worked with a client who was unaware of a missed court date and whose life is then upended by a sudden and unexpected arrest and incarceration. Prosecutors, who are paid a salary and enjoy the protections of a government job, are oblivious to the needs of people working hourly jobs who will often lose their job for missing a single shift while incarcerated on a warrant they didn't know about, and who will then struggle to find a new job and get an initial paycheck before their rent is due. Until these prosecutors have been unexpectedly arrested on a warrant, their opposition should be dismissed as uninformed and oblivious to the realities of the people affected here.

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