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April 28, 2023

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**Re: Support for Proposed Rules CrR 4.11 and CrRLJ 4.11 regarding
Notice of Court Dates to Defendant
Comment Deadline 4/30/23**

Dear Justices of the Supreme Court:

The American Civil Liberties Union of Washington and the Fred T. Korematsu Center for Law and Equality respectfully submit this comment to support the proposed new rules CrR 4.11 and CrRLJ 4.11. We join in supporting the points made in the GR 9 cover sheet for these proposed rules, and also join in the supportive comments submitted by the Washington Defender Association. Furthermore, we support the comments submitted by several judges, explaining why serving notice of hearings electronically should be allowed.

Proposed rules CrR 4.11 and CrRLJ 4.11 build on improvements achieved by recent changes to CrR 3.4 and CrRLJ 3.4. Those changes allowed counsel to appear at many hearings, instead of requiring physical presence of the defendant where the defendant's physical presence is not necessary. The changes to CrR 3.4 and CrRLJ 3.4 also made bench warrants less likely and reduced the risk of additional jail time based on arrests from bench warrants. The improvements reduced hardships on indigent defendants and many others for whom getting to court at the required date and time poses severe hardships.

Research shows that many people who miss court are experiencing difficulties with transportation, childcare, job disruption, homelessness, health problems, mental illness and other challenges often related to poverty. Many have difficult life circumstances that make it hard or impossible to attend a court hearing on a particular day. *See*, "Understanding and Improving Court Appearance Rates," Debbie Mayer, Ardavan Davaran, and Cesángari López-Martínez (September 2021) https://rdaconsulting.com/wp-content/uploads/2022/03/RDA-Court-Appearances_Policy-Brief_20210930_STC-REV.pdf.

Further, an ACLU-WA report documents the harms caused by unnecessary pretrial incarceration both from excessive bail and from unnecessary bench warrants:

Individuals jailed before trial are more likely to receive a sentence of jail or prison, and for a longer time, than those who are free before their trial. Keeping a person in jail may also prevent a trial from even occurring: The loss of income, possible loss of employment and housing, disruption of prescribed medications, and stresses on one's family that accompany incarceration have induced many a person to accept a plea bargain to get out.

Poor people, people of color, and people with certain disabilities are disproportionately affected by the unfairness of bail. They are more likely to be behind bars before trial, and this leads to a greater likelihood that they will be convicted and incarcerated.

No Money, No Freedom: The Need for Bail Reform, <https://www.aclu-wa.org/bail> (citing "Investigating the Impact of Pretrial Detention on Sentencing Outcomes," Christopher T. Lowenkamp, Marie VanNostrand, and Alexander Holsinger, The Arnold Foundation (November 2013) http://static.prisonpolicy.org/scans/ljaf/LJAF_Report_state-sentencing_FNL.pdf).

A Vera Institute report notes that reducing the number of required court appearances for defendants will have a particularly beneficial effect in reducing incarceration in rural counties in Washington. It will significantly reduce the number of missed court hearings, the number of unnecessary bench warrants, and the harmful and consequential impacts of pretrial detention that often result from the bench warrant. *See* "Rural Washington State Needs Criminal Legal System Reform", Jennifer Peirce, Madeline Bailey, and Shahd Elbushra (June 2022), <https://www.vera.org/downloads/publications/rural-washington-state-needs-criminal-legal-system-reform.pdf>

Adoption of proposed CrR 4.11 and CrRLJ 4.11 would continue the benefits of CrR 3.4 and CrRLJ 3.4, and avoid any ethical dilemma for defendant's counsel in situations where counsel was responsible for notifying the defendant of the next hearing date. The proposal allows the court to confirm service was timely completed without requiring a declaration or testimony from defense counsel which would likely compel privileged information. The proposal will also keep costs down, particularly if electronic service of notice is allowed. It will keep down the costs associated with issuing bench warrants and the costs of incarceration based on bench warrants.

The proposed rules also promote equity, by ameliorating problems associated with the criminal legal system's disproportionate and unfair impacts on those who are living in poverty, communities of color, and people with certain disabilities. As noted above, it has the benefits of defendants no longer needing to take time off of work and lose income, having to make childcare arrangements, and having to arrange transportation to attend routine court hearings that are then continued. Indigent defendants, and Black, Indigenous, People of Color (BIPOC) defendants in particular, disproportionately bear these costs, as they and their families particularly feel the impact of missed work and income, childcare, and other costs associated with attending court appearances, whether in-person or remote.

Based on the significant benefits that will be achieved from the proposed rules, we urge the Court to adopt them.

Sincerely,

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From: [OFFICE RECEPTIONIST, CLERK](#)
To: [Martinez, Jacquelynn](#)
Subject: FW: Proposed Rules of Court - ACLU-WA Comments on Rules 4.11
Date: Friday, April 28, 2023 1:26:51 PM
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From: Tracie Hooper Wells <twells@aclu-wa.org>
Sent: Friday, April 28, 2023 1:14 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Cc: La Rond Baker <baker@aclu-wa.org>; Nancy Talner <TALNER@aclu-wa.org>
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Good afternoon:

Please see attached comments from the American Civil Liberties Union of Washington on the referenced proposed court rules.

Best regards,

Tracie Hooper Wells

Paralegal

Pronouns: she/her

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“It is our duty to fight for our freedom. It is our duty to win. We must love each other and support each other. We have nothing to lose but our chains.” *Assata Shakur*